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تقرير السيد دودو دينين، المقرر الخاص المعني بالأشكال المعاصرة للعنصرية
والتمييز العنصري وكره الأجانب وما يتصل بذلك من تعصب

إضافة*

مهمة في سويسرا

* يعمم ملخص هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه، الذي يرد في مرفق هذا الملخص، فلا يعمم إلا باللغة الأصلية التي قُدم بها وبالإنكليزية.

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ملخص

اضطلع المقرر الخاص المعني بالأشكال المعاصرة للعنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك من تعصب في الفترة من ٩ إلى ١٣ كانون الثاني/يناير ٢٠٠٦ بمهمة في سويسرا هدفها الرئيسي هو تقييم حالة العنصرية والتمييز العنصري وكرهية الأجانب، وكذلك السياسات والتدابير التي تعتمدها الحكومة لمكافحة ذلك.

وزار المقرر الخاص خلال مهمته ثلاث مناطق في البلد ناطقة بلغات مختلفة. واجتمع بالسلطات الاتحادية وسلطات الكانتونات وبأعضاء وممثلي الجاليات الأجنبية والأقليات القومية والعرقية والثقافية والدينية، وممثلي منظمات غير حكومية وجهات فاعلة أخرى في المجتمع المدني، من قبيل ممثلي الأحزاب السياسية، ورجال الأعمال، والنقابات، ومختلف الأديان ووسائل الإعلام.

ولدى إعداد هذا التقرير، قارن المقرر الخاص المعلومات والتحليل المتعلقة بمسألة العنصرية وكره الأجانب والتي قُدمت إليه من جانب السلطات السياسية الوطنية والإقليمية، وأعضاء وممثلي الجاليات المعنية، والمنظمات غير الحكومية وغيرها من الجهات الفاعلة الأخرى في المجتمع المدني. واستند المقرر الخاص أيضاً إلى التقارير والوثائق الوجيهة التي قدمتها إليه هذه الجهات الفاعلة في المجتمع السويسري.

وفي ختام زيارته، واستناداً إلى المعلومات التي جمعها، كون المقرر الخاص فكرة رئيسية عن وجود دينامية للعنصرية وكره الأجانب في سويسرا. وفي هذا الصدد، ورغم وجود آليات مختصة ومسؤولين متحمسين ولايُتهم مكافحة العنصرية، لاحظ المقرر الخاص أن ثمة على الصعيد الوطني غياباً للاعتراف بهذا الواقع وعدم وجود استراتيجية سياسية وقانونية متماسكة وأكيدة لمكافحة العنصرية وكره الأجانب. ولاحظ بوجه خاص سببين كبيرين لهذه الدينامية هما: شدة المقاومة الثقافية التي يبديها المجتمع السويسري إزاء عملية التعددية الثقافية، لا سيما إذا كانت هذه الثقافات من جنوب شرق أوروبا وغير أوروبية، وازدياد قوة الخطاب الداعي إلى العنصرية وكره الأجانب في البرامج والخطب السياسية، لا سيما بمناسبة الانتخابات ومختلف عمليات التصويت.

وبالتالي تتمحور توصيات المقرر الخاص حول الإجراءات الرئيسية التالية: الاعتراف بوجود دينامية للعنصرية وكره الأجانب والتعبير عن الإرادة السياسية لمكافحتها، وضرورة وضع برنامج عمل وطني لمكافحة العنصرية وكره الأجانب يتضمن قانوناً وطنياً لهذا الغرض واستراتيجية ثقافية وحلقية لبناء مجتمع متعدد الثقافات في الأجل الطويل يقوم على الاعتراف بالتنوع الثقافي والعنصري والديني للمجتمع وتعزيز هذا التنوع، وتشجيع التفاعل والمعرفة المتبادلة لمختلف المجتمعات التي تشكل المجتمع السويسري.

**REPORT SUBMITTED BY MR. DOUDOU DIÈNE, SPECIAL RAPPORTEUR
ON CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION,
XENOPHOBIA AND RELATED INTOLERANCE**

MISSION TO SWITZERLAND (9-13 JANUARY 2006)

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Introduction

1. Following an invitation from the Swiss authorities, issued in response to his request, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance visited Switzerland from 9 to 13 January 2006. The purpose of the visit was to assess the situation of racism, racial discrimination and xenophobia, as well as the policies and measures adopted by the Government to address these phenomena.
2. During his visit, the Special Rapporteur met, at the federal level, in Bern, with Federal Councillors Pascal Couchepin and Christopher Blocher, the State Secretary Michael Ambühl, and several directors and representatives of federal departments and offices. He also visited the cantons of Ticino, Basel and Neuchâtel, where he met with, among others, State Councillors Luigi Pedrazzini, Gabriele Gendotti, Guy Morin, Eva Herzog and Bernard Soguel and Chancellor Robert Heuss.
3. The Special Rapporteur also spoke with Ermete Gauro, cantonal delegate for the integration of foreigners and for combating racism in Ticino; with Thomas Kessler, director of the Office for Integration of Basel City canton; and with Thomas Facchinetti, cantonal delegate for foreigners' affairs in Neuchâtel. He also met with members of the Federal Commission against Racism in Bern and of the Federal Commission for Foreigners in Neuchâtel.
4. In the cities that he visited, the Special Rapporteur met with many associations, non-governmental organizations (NGOs), members and representatives of foreign communities and national, ethnic and cultural minorities. He also talked with representatives of other civil society groups, such as political parties, employers, trade unions, the sports world, various religions and the media. At the request of one NGO, the Special Rapporteur went to Solothurn to meet with asylum-seekers whose applications had not been considered for formal reasons. He also visited, in Basel, a deportation centre and a registration and procedure centre.
5. The Special Rapporteur wishes to thank the Government of Switzerland for its invitation, as well as for its availability and openness. He also wishes to thank the competent services for their cooperation, particularly the Service for Combating Racism, for the efficient manner in which his visit was organized.
6. During the months of preparation preceding his visit, the Special Rapporteur closely examined the documents and reports sent to him by the Swiss authorities and NGOs, and followed with attention articles in the Swiss and international press dealing with questions relating to his mandate.
7. In the course of his mission, the Special Rapporteur raised three main questions with all the persons with whom he met, concerning (a) the existence of racism, racial discrimination and xenophobia in Switzerland; (b) their principal manifestations; and (c) measures and programmes adopted by the Government to address these phenomena, or to be carried out in cooperation with civil society and the communities concerned. The Special Rapporteur also asked them to transmit to him with any documents that might help him to obtain the most objective and complete picture possible and to draft an objective, credible and useful report.

I. GENERAL INFORMATION

A. Linguistic and religious composition

8. The Swiss Confederation is a multicultural country with four national languages: German (spoken by 63.7 per cent of the population), French (20.4 per cent), Italian (6.5 per cent) and Rumantsch (0.5 per cent).¹

9. Catholicism and Protestantism are the two traditional religions in Switzerland and, according to the latest federal census in 2000, represent 39.98 per cent and 46.32 per cent of the Swiss population, respectively.

10. According to the 2000 federal census, there are 310,807 Muslims in Switzerland; most of them are nationals of the former Yugoslavia or Turks; Arabic speakers account for only 5.6 per cent of the Muslims in Switzerland. The Muslim population is more concentrated in predominantly urban cantons than in mountainous or rural cantons.² Of the total number of Muslims in Switzerland, 11.75 per cent have Swiss nationality. The census also indicates that 0.4 per cent of the population is Hindu, 0.3 per cent Buddhist and 0.2 per cent Jewish.

B. Distinctive features of the Swiss federal system

11. The Swiss political structure is composed of three levels: the commune, the canton and the Confederation. Switzerland has approximately 2,800 communes in 26 cantons and semi-cantons. Each canton has its own constitution, parliament and courts, and has broad powers, particularly in the areas of public education, health, the judicial system and security.

12. One of the distinctive features of Swiss democracy is that it is direct, in that the people monitor their elected officials on a continuous basis. In fact, the electorate has two instruments that enable it to take action on a measure decided by the State: popular referendums, which may be optional or mandatory, and popular initiatives. The optional referendum makes it possible to question a law adopted by the Federal Assembly. Referendums are mandatory in the cases enumerated in the Federal Constitution. Popular initiatives at the federal level enable a citizens' committee to propose amendments to the Federal Constitution.

13. The Federal Council is the executive organ of the Swiss Confederation. It is composed of seven members, elected or re-elected for a four-year term, renewable by the

¹ Source: EUREL, <http://eurel.u-strasbg.fr/FR/index.php>.

² «Vie musulmane en Suisse, profils identitaires, demandes et perceptions des musulmans en Suisse», rapport réalisé par le Groupe de recherche sur l'Islam en Suisse (GRIS), documentation sur la politique d'intégration, Berne: Commission fédérale des étrangers, 2005, p. 5.

Federal Assembly, and operates according to the principle of collegiate responsibility. The Council is currently composed of two socialists, two radicals, a Christian democrat and two members of the Swiss People's Party/Centre Democratic Union (SVP/UDC).

14. The Federal Constitution defines the fundamental rights and powers of the Confederation. The Confederation is responsible for foreign policy, defence, customs, monetary policy and national legislation on entry into, sojourn in and departure from Switzerland and settlement by foreigners, and on the granting of asylum. In keeping with the principle according to which the Confederation has only the powers conferred on it by the Constitution, whereas the cantons have general and subsidiary powers, matters that do not fall within the competence of the Confederation are dealt with by the cantons.

15. The Swiss State system is very distinctive owing to federalism, the sharing of powers between the Confederation and the cantons, and the operation of direct democracy. Problem relating to racism can therefore fall within the competence of the Confederation, the cantons or even the communes.

C. Legislative framework

16. The new Federal Constitution, which entered into force in 2000, contains a provision on equality and non-discrimination (art. 8). By amending the article of the previous Constitution, which stated that "All Swiss are equal before the law", article 8, paragraph 1, affirms the equality of all "human beings" before the law. Paragraph 2 of the same article declares that "Nobody shall suffer discrimination, particularly on grounds of origin, race, sex, age, language, social position, lifestyle, religious, philosophical or political convictions, or because of a physical or mental disability."

17. The International Convention on the Elimination of All Forms of Racial Discrimination was adopted by the Federal Assembly on 9 March 1993 and entered into force in Switzerland on 29 December 1994. In order to meet the requirements of the convention, article 261 bis, which criminalizes discrimination and public incitement to racial hatred, was introduced in the Criminal Code. The authorities have also envisaged the adoption of two additional articles to this article concerning the wearing of distinctive signs of a discriminatory attitude based on race or the public use of slogans, gestures or forms of salutation with a racist meaning (art. 261 ter) and the criminalization of the creation of, or participation in, groups that intend to commit acts prohibited under article 261 bis (art. 261 quater). Moreover, in June 2003 Switzerland recognized the individual communications procedure under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination.

18. Article 261 bis of the Criminal Code remains subject to two paradoxical criticisms. On the one hand, some voices, particularly from the political right, are calling for the abolition of this article, which they consider useless or contrary to freedom of expression. During an official mission to Turkey in October 2006, the Swiss Minister of Justice, Christophe Blocher, criticized

the use of this article and stated: “this article makes me sick”.³ On his return, the Minister of Justice confirmed his intention of amending the anti-racist provision of the Criminal Code.⁴

19. On the other hand, article 261 bis has been criticized because of its lack of scope and because it is difficult to use and apply. During the Special Rapporteur’s visit, the question was asked whether racist behaviour in the Swiss army was in the “public” domain. In the context of an inquiry to obtain additional evidence, an investigating judge of the Military Tribunal proposed that the competent commander should not order the taking of evidence against four of his recruits for the offence of racial discrimination (Nazi salutes and racist speech), but should subject them to disciplinary measures. According to him, the accused and the soldiers that complained knew each other well and, therefore, the remarks were not made in public in the meaning of the law. The Attorney-General of the Swiss Army rejected this argument and pointed out that “the practice of military justice in racial discrimination cases is no different from the practice of civil criminal justice, in particular that of the Swiss Federal Tribunal”.⁵ In accordance with article 171 (c) of the Military Criminal Code, the content of which is identical to article 261 bis, military proceedings are still pending.

20. According to statistics provided by the Federal Commission against Racism, 212 complaints were lodged between 1995 and 2002 with the competent authorities through the application of article 261 bis. In 48 per cent of the cases, the investigating authorities, after a brief examination of the facts, did not institute judicial proceedings, suspended the proceedings or did not consider the complaints. In the other cases, the complaints were considered in the context of substantive law and a judgement was handed down. In some 80 per cent of these cases, the authorities found the accused person guilty. These decisions and judgements were handed down by the prosecution authorities or courts of various instances; certain cases were brought before higher judicial bodies.⁶

21. New article 386 of the Criminal Code, which entered into force on 1 January 2006, created the legal basis for the Confederation’s measures to stop reprehensible acts and prevent crime, and to establish and support organizations that pursue such objectives.

22. The Committee on the Elimination of Racial Discrimination considered three reports submitted by Switzerland to its fifty-second and sixtieth sessions in 1998 and 2002, respectively, and made a number of recommendations to the authorities (CERD/C/304/Add.44 and CERD/C/60/CO/14). Other institutions that have also considered questions relating to racism

³ www.swissinfo.org, de Turquie, Blocher provoque une polémique en Suisse, 4 octobre 2006.

⁴ www.swissinfo.org, Christoph Blocher tient à réviser la norme antiracisme, 6 octobre 2006.

⁵ Office de l’auditeur en chef, communiqué de presse, 10 janvier 2006.

⁶ La Commission fédérale contre le racisme a ouvert une base de données sur Internet répertoriant les arrêts rendus relatifs à l’article 261 bis (<http://www.edi.admin.ch/ekr/db/start/>).

and xenophobia in Switzerland include the Council of Europe and the European Commission against Racism and Intolerance (ECRI).⁷ It should be noted that, when it acceded to the International Convention on the Elimination of All Forms of Racial Discrimination, Switzerland made two reservations to article 2, paragraph 1 (a), stating that “Switzerland reserves the right to apply its legal provisions relating to the admission of foreigners to the Swiss labour market”, and also to article 4, concerning freedom of association.

D. Recent votes on immigration and asylum

23. Since 1970, 22 federal votes have dealt with foreigners or questions relating to asylum. A list of these votes is contained in the annex to this document.

24. In September 2004, a vote was taken on two issues: facilitated naturalization for young second-generation foreigners and acquisition of citizenship for third-generation foreigners. During this campaign, some people condemned the “disinformation attempting to link facilitated naturalization with delinquency”. Indeed, sharp criticism was levelled at the political campaigns launched by the Swiss People’s Party/Centre Democratic Union (SVP/UDC) on this subject and, inter alia, posters such as one showing the hands of persons of colour trying to catch Swiss passports in a basket or a poster showing Osama Bin Laden on a Swiss identity card with the subtitle “don’t be fooled”.⁸ The two issues were rejected.

25. On 24 September 2006, two issues were submitted for a vote in Switzerland concerning the amendment of the Asylum Act and the Federal Act on Foreign Nationals. During his mission, the Special Rapporteur followed with great interest the various debates on these votes, which involve matters directly related to his mandate.

26. With regard to the amendment of the law on asylum, the Special Rapporteur’s attention was drawn, in particular, to the position of certain NGOs that denounced the amendment of the law as incompatible with Switzerland’s international obligations. Among other things, the NGOs criticized:

- The refusal of the authorities to consider requests for asylum if the applicant cannot furnish, within 48 hours, a passport or an identity card (birth certificates or driving licences will no longer be recognized as valid);

⁷ Respectivement, rapport de M. Alvaro Gil-Robles, Commissaire aux droits de l’homme, sur sa visite en Suisse, 29 novembre-3 décembre 2004, Strasbourg, 8 juin 2005, CommDH(2005)7 et Commission européenne contre le racisme et l’intolérance (ECRI), troisième rapport sur la Suisse, adopté le 27 juin 2003, Strasbourg, 27 janvier 2004, CRI(2004)5.

⁸ Affiche signée par les jeunesses UDC Valais Romand.

- The systematic refoulement of all persons coming from neighbouring transit countries that are considered safe;
- The transmission of information to the State of origin of the person without ascertaining whether or not the person in question, or his or her family who remained in the State of origin, will be subject to any risk, as soon as the first decision is taken to deport the person;
- The exclusion of social assistance for all applicants who have been rejected;
- Incarceration for up to two years for persons resisting return.⁹

27. Moreover, the amendment of the law eliminates the notion of “honourable motive” for persons who assist asylum-seekers whose requests have not been considered for formal reasons (*requérants d’asile frappés de non-entrée en matière*)¹⁰ and those whose requests for asylum have been dismissed. Thus, on the one hand, whoever “facilitates the entry, departure or illegal sojourn of a foreigner or takes part in preparations for this purpose” is liable to a penalty of imprisonment for up to one year and a fine of 20,000 Swiss francs. On the other hand, any person acting within the framework of an association or group of persons who, even for humanitarian reasons or for the purpose of protecting human rights, provide assistance to persons whose requests have been dismissed, are liable to a penalty of imprisonment for up to five years and a fine of up to 500,000 Swiss francs.¹¹

28. The Office of the United Nations High Commissioner for Refugees (UNHCR) expressed serious concern at certain aspects of the law, particularly the provisions restricting access to asylum for persons without valid travel or identity documents. The 1951 Convention relating to the Status of Refugees specifically provides for refugees who may have had to flee their country without being able to obtain valid travel or identity documents. This Swiss legal provision, which has been called one of the “strictest in Europe”, seems to ignore the case of persons fleeing for their lives who have not been able to obtain such documents.¹² The Special Rapporteur takes note of the fact that Swiss law provides for exceptions and hopes that courts take account of this in their jurisprudence.

⁹ Voir par exemple le site <http://www.stopexclusion.ch/>.

¹⁰ Une décision de non-entrée en matière signifie que, pour des raisons formelles, la demande d’asile ne connaîtra pas un traitement plus approfondi. Les personnes concernées doivent en règle générale quitter immédiatement la Suisse, <http://www.osar.ch/asylum-rights/all-about-asylum-in-switzerland/non-admission?appendLang=fr>.

¹¹ Loi fédérale sur les étrangers (LEtr) du 16 décembre 2005, chap. 16: Dispositions pénales et sanctions administratives.

¹² Ron Redmond, porte-parole du HCR, information aux médias du 27 septembre 2005, <http://www.unhcr.fr/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&id=4339291211>.

29. With regard to the revision of the law on foreigners, the Special Rapporteur has taken note of the position of opponents to the amendment who have criticized the discriminatory treatment of foreigners who do not belong to a European country, the toughening of the rules on family reunification with regard to foreigners of non-European origin, the obligation to live together (and the possible effects on women of non-European origin) or the proliferation of measures making it possible to place foreigners who refuse to leave Switzerland in detention for up to two years.

30. The two issues obtained a majority in all cantons.¹³

II. ANALYSIS OF THE SITUATION BY THE AUTHORITIES

31. The Swiss Government recently submitted the fourth, fifth and sixth periodic reports of Switzerland to the Committee on the Elimination of Racial Discrimination. These reports contain a detailed description of the various problems relating to migration policy, as well as police violence and other issues, for example, the question of the status of the Travellers.

32. As the Federal Council pointed out in a decision of 23 February 2005, the fight against racism is a cross-cutting task for which all offices of the Confederation are responsible. Several federal departments deal with matters that are directly or indirectly linked to the subject of racism and xenophobia. In addition to the specialized service to combat racism, the Federal Department of the Interior includes the Federal Office for Cultural Affairs, which is responsible for the Travellers,¹⁴ and the Federal Office for Equality between Women and Men whose mandate, which derives from the article on equality in the Federal Constitution and equality legislation, is to combat all forms of sex-based discrimination, direct or indirect. The Department of Justice and Police includes, inter alia, the Federal Office for Migration,¹⁵ which deals with questions relating to the right of foreigners and the right of asylum, and the Federal Police, which deals with all violent forms of extremism, including rightist extremism, as a threat to the State. At the federal and cantonal levels, various federal departments have units or focal points that deal with questions of discrimination and produce information materials for foreigners and migrants. The Directorate for Public International Law of the Department of Foreign Affairs is responsible for preparing periodic reports under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination.

¹³ Voir par exemple <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/17/03/blank/key/2006/02.html/>.

¹⁴ Il existe en Suisse deux communautés de gens du voyage: les Jenisches et les Manouches-Sinti.

¹⁵ Institué le 1^{er} janvier 2005, l'ODM est le résultat de la fusion de l'Office fédéral des réfugiés (ODR) et de l'Office fédéral de l'immigration, de l'intégration et de l'émigration (IMES).

A. Immigration and integration policy

33. Swiss migration policy is based in theory on the needs of the job market. In 1991, Switzerland opted for a “three-circle” immigration policy: the first circle was composed of the countries of the European Union before enlargement, and the countries of the European Free Trade Association; the second, of countries with similar economies and ideologies, such as the United States of America, Canada and New Zealand; the last circle being the rest of the world. The Committee on the Elimination of Racial Discrimination considered “the conception and effect of this policy to be stigmatizing and discriminatory, and therefore contrary to the principles and provisions of the Convention” (CERD/C/304/Add.44, para. 6). This “three-circle model” was officially abandoned in October 1998 and replaced by a “binary admission system” established by the Federal Council (see CERD/C/351/Add.2, para. 270). This system is based on Switzerland’s conclusion with the European Union and the European Free Trade Association, within the framework of close bilateral relations, of an agreement on the free movement of persons. It should be noted, however, that the Federal Act on the Temporary and Permanent Residence of Foreigners, which concerned all foreigners, has been replaced by the new Federal Act on Foreign Nationals, which deals with foreigners from countries that are not members of the European Union. This binary admission system, which provides for two different legal regimes depending on the person’s origin, is considered by some, including Swiss anti-racist circles, to be highly discriminatory and a perpetuation of the spirit of the “three-circle model” in Swiss legislation.¹⁶

34. With regard to integration, every year Switzerland allocates 14 million Swiss francs for the integration of the migrant population in accordance with article 25 (a) of the Federal Act on the Temporary and Permanent Residence of Foreigners and the Ordinance on the Integration of Foreigners. Article 3 and article 14 (a) of the Ordinance indicate that integration efforts and measures are the common task of the cantons and the Confederation.

35. Integration is understood as a cross-cutting task involving all official institutions, each participating in its area of competence. The Federal Office for Migration coordinates the integration measures adopted by the federal offices, guarantees exchanges of views and experience with the cantons and the cities, and finances integration measures for refugees and foreigners. At the cantonal level, delegates for integration are also active in efforts to combat discrimination, which is considered as a central objective in the context of promoting integration.

36. The naturalization of foreigners in Switzerland involves three procedures that are carried out at the federal, cantonal and communal levels. The procedures are governed by cantonal law; however, there may be variations depending on the commune. Naturalization procedures have

¹⁶ Voir par exemple, Position de la Commission fédérale contre le racisme sur le système binaire d’admission de la politique des étrangers en suisse, 2 mai 2003, http://www.edi.admin.ch/ekr/themen/00104/00660/030502_prise-de-position_systeme_binaire_admission_fr.pdf?PHPSESSID=ebcf4c4ff4#search=%22syst%C3%A8me%20binaire%20d%E2%80%99admission%22.

sometimes been challenged, as demonstrated by the case of Emmen commune (Lucerne) which, in March 2002, refused to grant Swiss citizenship to 19 candidates from the Balkans, while it had granted citizenship to Italian candidates.¹⁷ On 9 July 2003, the First Chamber of Public Law of the Federal Tribunal handed down a ruling rescinding this decision.

37. Some Swiss cantons have granted foreigners residing in their territory the right to vote.¹⁸

B. Specialized bodies and commissions

1. Federal Commission against Racism

38. The Federal Council established the Federal Commission against Racism on 23 August 1995 with a view to implementing the International Convention on the Elimination of All Forms of Racial Discrimination. In its message concerning Switzerland's accession to this Convention and on the relevant amendment of its criminal law of 2 March 1992, the Federal Council noted that the fight against racial discrimination is a task that involves pedagogical, sociological, cultural, federalist and legal aspects, as well as aspects of development policy and migration policy, and it mandated the Commission to "concern itself with racial discrimination, to work towards promoting better understanding between persons of different races, colours, origins, ethnic or national backgrounds or different religions and to combat all forms of direct or indirect racial discrimination, attaching particular importance to effective prevention".¹⁹

39. The Federal Commission against Racism is composed of 19 experts appointed *ad personam* by the Federal Council, representing religious communities, minorities, NGOs, social partners as well as cantonal directors of public education and the police. Interest groups, the sexes, languages, regions and age groups should, in principle, be equitably represented in the Commission.

40. The Federal Commission against Racism has, among others, the tasks of raising awareness, making recommendations, issuing opinions, and providing advice and support to persons who consider themselves to be victims of racial discrimination, and provides mediation services in cases of conflict.²⁰

¹⁷ Valérie de Graffenried, «Histoire de la loi sur les naturalisations, élaborée en 1952 dans un climat émotionnel tendu», *Le Temps*, 26 juillet 2004.

¹⁸ Il s'agit du Jura, Appenzell Rhodes extérieur, Grisons, Vaud, Fribourg, Genève et Neuchâtel.

¹⁹ Composition et mandat de la CFR, Décision du Conseil fédéral du 23 août 1995.

²⁰ Les rapports de la CFR peuvent être trouvés à l'adresse Internet: <http://www.edi.admin.ch/ekr/>.

41. In its discussion with the Special Rapporteur, the Federal Commission against Racism raised several important points. It believes that there is no coherent policy concerning racism in Switzerland and that measures taken in this area are isolated and divided among the various institutions. The Commission also referred to the lack of political will in this respect, the decline in resources available to actors involved in combating racism, xenophobia and the propagation of extremist ideas, and to the limited scope of, and difficulties in implementing, article 261 bis.

2. Federal Commission for Foreigners

42. The Federal Commission for Foreigners, established in 1970, is composed of 30 members of which half are of foreign nationality, elected by the Federal Council and, at the administrative level, attached directly to the Federal Department of Justice and Police. The Commission deals with social, economic, cultural, political, demographic and legal questions with a view to encouraging the coexistence of foreign nationals settled in Switzerland and the Swiss population. The Commission takes positions on questions of migration and gives its opinion to the Federal Council on questions of integration policy. It defines integration as “the will of foreigners to become integrated in the host society and the openness of Swiss society to the foreign population”.²¹ The Commission also administers an integration loan, established in 2001, to support projects in different areas.²²

43. During his discussion with the Federal Commission for Foreigners, the Special Rapporteur’s attention was drawn to the very restrictive nature of naturalization in Switzerland. One of the members of the Commission pointed out that article 16 of the 1931 Federal Act on the Temporary and Permanent Residence of Foreigners refers to “foreign overpopulation”, which would indicate that any foreign presence is considered excessive by the law.²³ The text of the amended Act on Foreign Nationals no longer refers to “foreign overpopulation” but to “sociodemographic evolution”. In spite of this semantic progress, the Commission believes that the new text is more restrictive than the one currently in force. According to the Commission, the agreements on the free movement of persons between the European Union and the European Free Trade Association have had the result that this article no longer applies to nationals from these countries, who account for 60 per cent of the foreigners in Switzerland. In this regard, the Special Rapporteur noted that the situation is strangely reminiscent of the old “three-circle” immigration policy, which was considered discriminatory by the Committee on the Elimination of Racial Discrimination. Here, there are only two circles: the Swiss, the Europeans and “close” countries (such as the United States or Canada) and the “others”, or the rest of the world.

²¹ <http://www.eka-cfe.ch/f/kommission.asp>.

²² Voir *supra* note 20.

²³ Cet article dit à son alinéa 1: «Pour les autorisations, les autorités doivent tenir compte des intérêts moraux et économiques du pays, ainsi que du degré de surpopulation étrangère.».

3. Service for Combating Racism

44. The Service for Combating Racism, which is part of the Department of the Interior, is the Confederation's representative in matters concerning the fight against racism, anti-Semitism, xenophobia and rightist extremism. The activities of the Service include coordination and encouragement of initiatives to prevent and combat these phenomena at the federal, cantonal and communal levels.

45. The Service was established on 21 February 2001 by the Federal Council with a view to coordinating and networking internal administrative measures, and cooperating with cantonal and communal partners and representatives of civil society. On the same day, the Federal Council decided to create a fund for projects against racism and in favour of human rights, with 15 million Swiss francs to support projects in these areas (2001-2005). On 23 February 2005, the Federal Council decided to continue to support the work of the Service and third-party projects by allocating to them, beginning in 2006, an annual amount of 1.1 million Swiss francs.²⁴

C. Other relevant departments and services

46. During discussions with representatives of offices and departments of special interest to his mandate, the Special Rapporteur gathered the following information concerning measures to combat racism and promote integration:

- According to the Office for Equality between Women and Men, women of foreign origin are more likely to be employed in precarious jobs and have lower-than-average salaries;
- The Federal Office for Statistics informed the Special Rapporteur that there were no statistics or indicators for racism. The representative of the Office stated that Swiss society was beginning to become stratified by ethnic origin;
- The lack of a specific study on racial discrimination by the Federal Office of Public Health;
- In the area of employment, termination is abusive when it is given by one party "because of a quality inherent in the personality of the other party" (article 336 of the Code of Obligations). Nevertheless, the State Secretary for Economic Affairs has stated that he has no information on this subject;
- Primary school is accessible to all children, even children whose parents are in an illegal situation.

²⁴ Les documents du SLR peuvent être consultés sur l'Internet: <http://www.edi.admin.ch/frb>.

47. During the Special Rapporteur's discussions with various cantonal and federal departments, in particular the Federal Office for Migration and the departments of justice and police, it was pointed out that crime in Switzerland was perpetrated mainly by foreigners, particularly asylum-seekers, that 90 per cent of requests for asylum do not meet admissibility criteria, and that it would therefore be necessary to adopt measures to distinguish "bad" asylum-seekers from "good" ones. Moreover, in a letter to the Special Rapporteur, the Federal Office for Migration, states that "the return of individuals to certain countries of origin is often very difficult, or even impossible, when the foreigner concerned chooses not to cooperate with the authorities. Such problems are currently encountered by a large number of persons from African countries. For this reason, they are likely to be subjected to coercive measures and are comparatively often placed in detention pending deportation. However, this state of affairs does not have any racial connotations".

48. The delegates for integration who met with the Special Rapporteur stressed the importance of the policy for promoting the integration of foreigners, and noting in this regard that foreigners should be allowed to vote and stand for election.

49. The Special Rapporteur noted with interest the initiatives undertaken by certain cantonal police forces, particularly in Basel City, where the police authorities and associations representing black communities have begun meetings for dialogue and exchange of views. Such exchanges have reportedly improved reciprocal knowledge, reduced prejudice and misunderstandings, and fostered better contacts between the police and these communities. The Special Rapporteur notes that the encouragement of similar intercultural dialogues is one way to prevent the deterioration of social relations and to avoid misunderstandings and errors arising from ignorance and lack of comprehension of others.

50. In Basel, the Special Rapporteur visited a deportation centre and a centre for registering applicants at the border. He noted that, while almost all detainees in this deportation centre were black, there were few blacks in the registration centre. According to the explanation given by the authorities, "the high proportion of Africans in the Basel deportation centre can be explained by an enforcement problem. Persons whose countries have concluded bilateral return agreements or who are considered to be willing to cooperate cannot be held in deportation centres. Bilateral return agreements provide for material assistance for the return, which gives individuals an incentive to return to their countries without resistance; there are no such agreements with African countries. This is why a high number of Africans are held in deportation centres". This explanation is contained in a letter from the Service for Combating Racism, entitled "Additional information on the subject of remedies", which was sent to the Special Rapporteur following his visit.

III. ANALYSIS OF THE SITUATION BY OTHER ACTORS

A. Civil society

51. The Special Rapporteur met with various components of civil society, including representatives of foreign communities, religious communities, NGOs, associations, asylum-seekers, trade unions and employers. He therefore had an opportunity to hear real-life

testimonies from members of the communities and to verify the information provided by Swiss and foreign institutions concerning the situation of racism, racial discrimination and xenophobia in Switzerland.

52. During his meetings, the Special Rapporteur collected several testimonies concerning racist and xenophobic acts on the part of the population, particularly on the part of State bodies, such as the police.²⁵ The information submitted indicated the following:

- A feeling of great anxiety in the black community in Switzerland owing to, on the one hand, the general rise in discrimination and, on the other, serious and recurrent acts - particularly by the police - of racism against blacks, although there are only 37,000 black persons - or 0.5 per cent of the population - in Switzerland;
- The high number of racial profiling incidents targeting certain groups of foreigners, particularly blacks;
- A feeling of growing Islamophobia in Swiss society, according to most of the Muslim community representatives with whom the Special Rapporteur met;
- The existence of old and new forms of anti-Semitism in Switzerland, according to the Jewish community leaders with whom the Special Rapporteur met;
- The existence of discriminatory practices in stations and airports, particularly Zurich airport, including racial profiling, physical violence and verbal abuse, as well as violent expulsions of persons tied to wheelchairs, with helmets and diapers;
- The negative trend in Swiss domestic legislation towards restricting the rights of and reducing protection for, foreigners, or criminalizing foreigners;
- The toughening of social relations and the rise of racist and xenophobic discourse by political parties;
- The general increase of acts and manifestations of racial discrimination²⁶ felt by members of all foreign communities and national minorities;

²⁵ De nombreux rapports d'ONG suisses et internationales sur les formes contemporaines de racisme, de discrimination raciale, de xénophobie et de l'intolérance qui y est associée en Suisse sont disponibles. On peut citer entre autres: Rapport 2005 d'Amnesty International, Suisse (<http://web.amnesty.org/report2005/che-summary-fra/>); Rapport d'observatoire du racisme 2004, ACOR SOS Racisme, 30 p.; Ramdane Babadji, Lutte contre le racisme: où va la Suisse? Association mondiale pour l'École instrument de paix (EIP), 2005.

²⁶ Voir entre autres rapports, Carrefour de réflexion et d'action anti-Noir (CRAN), Actualité du racisme anti-Noir en Suisse, Rapport annuel 2002-2003 et l'Association contre le racisme (ACOR) SOS Racisme, Rapport d'observation du racisme 2004 et Tableau des situations concernant la police genevoise suivies par ACOR SOS Racisme depuis 2002, août 2005.

- The real suffering of the victims and the difficulty of lodging complaints, which is often a long and costly procedure that is not always successful and does not guarantee the restoration of the rights and respect for the dignity of the victim;
- The need expressed by civil society for a national human rights institution;
- The lack of mechanisms for an independent investigation into allegations of police violence.

53. The Special Rapporteur took note of reports concerning the treatment of persons whose applications had not been considered for formal reasons. Such treatment allegedly includes physical and verbal abuse, humiliation, refusal to provide medical treatment, body searches and the undressing of the victim in public without regard for the sex of the persons present, theft of money and property by public authority officials, unhealthy accommodations, detention in public toilets, refusal to accept complaints lodged by the victims, etc.²⁷

54. Some associations have denounced discriminatory practices in the methods used by the Swiss authorities in matters relating to asylum, particularly with regard to requests from West African asylum-seekers.²⁸

55. Representatives of the Union of Swiss Employers (Schweizerischer Arbeitgeberverband/ Union Patronale Suisse) said that the question of racism did not arise at the level of enterprises, and referred to the positive stance taken in votes on foreigners and facilitated naturalization. They also pointed to the existence, in certain collective agreements, of articles on the protection of the person and on non-discrimination against workers.

56. Representatives of trade unions talked about discrimination in hiring foreigners and in the availability of training places for foreigners, particularly young people, based on their origin and social status. They consider that worker protection in Switzerland is particularly poor, especially in cases of discrimination.

B. Political parties

57. Switzerland's policy towards foreigners and its asylum policy continue to be the subject of lively political debates. The following paragraphs provide a general survey of the position of the main parties in Switzerland.

²⁷ Voir par exemple Didier Estoppey, «Soleure: les W.C. pour ultime horizon?», *le Courrier*, 3-4 septembre 2005 ou l'émission de la télévision suisse romande (TSR), Temps présent, du 7 avril 2005.

²⁸ Gaétan Nanchen, «L'Afrique et l'asile, Analyses des méthodes des autorités suisses en matière d'asile au regard des demandes des requérants ouest africains», Organisation suisse d'aide aux réfugiés (OSAR), août 2005.

58. The Swiss Liberal Party (Liberale Partei der Schweiz/Parti libéral suisse; LPS/PLS) is calling for the prosecution of asylum-seekers who commit criminal offences and for greater flexibility in particularly difficult humanitarian situations for which exceptional measures (“humanitarian permit”) should be taken. The measures to be taken include: the speedier and more systematic execution of return decisions, graduated social assistance, subject to established justification for extending the stay of the person in question and, under certain conditions, limited work permits.²⁹

59. For the Christian Democratic Party (Christlich-demokratische Volkspartei/Parti démocratique chrétien; CVP/PDC), the declared guiding principle is to control immigration in Switzerland while reducing crime committed by foreigners. The Party advocates the facilitation, under certain conditions, of naturalization for young foreigners, the maintenance of the prohibition on work by asylum-seekers for three months, the reduction of the time limit for lodging an appeal in asylum procedures, and support for expulsion orders for persons residing in the country illegally.³⁰

60. The Swiss People’s Party/Centre Democratic Union (Schweizerische Volkspartei/Union démocratique du Centre; SVP/UDC) is calling for a tougher policy towards foreigners, particularly asylum-seekers. The Party advocates, inter alia, the more effective surveillance of Switzerland’s borders, the placement of asylum-seekers in collective shelters pending the authorities’ decision and the execution of this decision, the reduction of time limits for procedures, appeals and re-evaluations of asylum procedures, as well as the immediate expulsion of asylum-seekers who are known criminals, or their internment pending their expulsion. This Party’s political campaigns and posters have often been criticized and denounced by civil society organizations, the Federal Commission against Racism, the media and members of foreign communities and minorities as advocating racist and xenophobic ideas.

61. For the Freethinking Democratic Party of Switzerland/Radical Democratic Party of Switzerland (Freisinnige Demokratische Partei Schweiz/Parti radical-démocrate Suisse; FDP/PRD), integration includes “respect and recognition of the norms and habits of the indigenous population”. Foreigners should be willing to integrate and the Swiss population should be open to that wish.³¹ According to the Radical Democratic Party’s programme, the management of immigration should take account of national interests and national identity and

²⁹ Programme du Parti libéral suisse 2004-2007, 11 juin 2003.

³⁰ Programme du PDC suisse, adopté par le Congrès de la base du PDC suisse, le 18 septembre 2004.

³¹ PRD, Politique de migration, Papier de position adopté par la conférence des Président(e)s des partis cantonaux du PRD suisse le 12 avril 2002 à Hergiswil (NW), p. 9.

the limitation of immigration in accordance with the objective of integration.³² The position of the Radical Democratic Party on the right to asylum is not as clear-cut as that of the Christian Democratic Party or the Centre Democratic Union. For the Radical Democratic Party, “despite the political implications of the asylum policy, asylum in Switzerland accounts for only 7 per cent of total immigration. The exaggerated problems that this policy causes are the result of difficulties in implementing legally adopted decisions”.³³

62. For the Social Democratic Party of Switzerland or the Swiss Socialist Party (Sozialdemokratische Partei der Schweiz/Parti socialiste suisse; SPS/PSS), the “establishment of quotas for foreigners” (*contingentement des personnes étrangères*) reflects the policy of fear surrounding migration policy. That policy is viewed as a bureaucratic approach to the global quantitative management of the number of foreign workers, which is not adapted to the changing needs of regional economies. The Party denounces “the combination of vague legislation and the broad discretionary powers accorded to the cantonal police for foreigners”, which opens the way to unequal treatment and arbitrariness. Moreover, it states that “the attitude of the authorities towards migrants has largely contributed to the population’s adoption of a distrustful approach towards persons who do not hold Swiss passports”.³⁴

63. The Green Party of Switzerland (Grüne Partei der Schweiz/Parti écologiste suisse) has taken a clear position against the toughening of legislation on foreigners and the right of asylum. It considers the tightening of Swiss legislation discriminatory and in violation of the basic human rights of asylum-seekers. With several other organizations, the Green Party launched a referendum against the Act on Foreign Nationals, which it called a “discriminatory and segregationist law that leaves the way completely open for arbitrary acts on the part of the administration”.³⁵

IV. ANALYSIS AND CONCLUSIONS

64. Switzerland has adopted general laws concerning respect for and the promotion of human rights. However, the lack of comprehensive national legislation against racism, racial discrimination and xenophobia poses a major obstacle to the effectiveness of its fight against racism. One illustration of this situation is the relative lack of legislation or remedies against the recurring manifestations of discrimination in employment and housing, which may be considered symbolic social indicators of discrimination.

³² PRD, Politique de migration, Papier de position adopté par la conférence des Président(e)s des partis cantonaux du PRD suisse le 12 avril 2002 à Hergiswil (NW), p. 11.

³³ PRD, Politique de migration, Papier de position adopté par la conférence des Président(e)s des partis cantonaux du PRD suisse le 12 avril 2002 à Hergiswil (NW), p. 13.

³⁴ PSS, Fondements de la politique migratoire suisse, Concept adopté par le Congrès ordinaire des 19 et 20 octobre 2002 à Zurich.

³⁵ Référendum contre la loi sur les étrangers lancé, communiqué sur le site Internet daté du 22 décembre 2005.

65. Moreover, neither civil nor criminal law in Switzerland grants an association the right to bring legal proceedings on behalf of or for victims of racism, contrary to the situation in other countries. However, in certain cantons, a request may be submitted to a judge, who decides on a case-by-case basis. This gap in Swiss legislation has long been criticized by civil society and the Federal Commission against Racism.

66. Moreover, Switzerland is one of the rare European countries that does not have a national institution devoted entirely to human rights, in spite of the existence, for the past five years, of a parliamentary initiative calling for the establishment of a federal human rights commission.

67. The Special Rapporteur notes that the Swiss authorities, at both the federal and cantonal levels, have recognized the existence of problems related to racism and xenophobia, but that they have considered that these problems are not really serious, or that they are only a “secondary phenomenon”.³⁶ He noted that this assessment varies from department to department and according to the hierarchical position of the person questioned: persons who are closest to social realities more openly acknowledge the existence of manifestations of racism, racial discrimination and xenophobia; this acknowledgement tends to become more diffuse at higher levels in the hierarchy. Most of the members of foreign communities and national minorities with whom the Special Rapporteur met stated, often with great emotion, that they experienced racism and discrimination on a daily basis and that there was an overall atmosphere of xenophobia; they expressed a feeling of loneliness within the population and their fear of certain institutions, particularly the police. The most affected communities and groups seem, at present, to be blacks, Jews, Travellers, asylum-seekers and Muslims or persons of Muslim culture.

68. Like all modern societies, Swiss society is faced with a process of far-reaching multiculturalism. While the previous waves of migration came from European countries, the new migrations come from regions of Eastern Europe and from other geocultural regions and areas of the world. Swiss society is therefore tending to be more marked than in the past by a higher degree of cultural, ethnic and religious diversity. In Switzerland, as elsewhere in Europe, the challenge to national identity posed by this new diversity is a source of identity-related tensions. The political, legal and cultural awareness, recognition and treatment of these tensions are crucial factors in the construction of a harmonious multicultural society. However, Switzerland illustrates, in a particularly striking manner, one of the underlying causes of racism and xenophobia, namely the politicization of identity-related tensions that is embodied not only by the existence, according to civil society, of political parties with racist and xenophobic platforms and with the ability to implement them through government alliances, but also the gradual infiltration of these platforms into the political programmes of democratic parties. This most often takes the form of legislation and policies that approach immigration and asylum issues solely from a security point of view and criminalize immigrants and asylum-seekers.

³⁶ Lettre adressée au Rapporteur spécial par l’ODM, p. 1.

69. The Special Rapporteur noted, both in political discourse and in political platforms, as well as in some of the media, the growing emphasis on rhetoric based on the “defence of national identity” and the “threat of the foreign presence”. The electoral success of these platforms reflects the existence in society of a current of political opinion that promotes the defence of identity vis-à-vis immigration and fosters the emergence of a culture of xenophobia in some segments of society - particularly rural society - which has been confirmed by the results of certain recent votes. Questions relating to the place of foreigners in society, immigration and asylum are not treated as a matter of priority on the basis of the relevant international human rights instruments but, increasingly, only on the basis of two criteria: the security imperative and the defence of national identity.

70. Historically, the Swiss authorities have linked foreign immigration to the job market. This is reflected in the text of laws on the granting of residence permits. The Special Rapporteur notes that these successive waves of workers have been tolerated and later accepted in the country as long as there was no deterioration in the economy and the job market. The most recent influxes of foreigners in Switzerland have come at a time of a relative increase in unemployment and a decrease in growth owing to international factors and to the Swiss economy. These new arrivals, including refugees and asylum-seekers, have been singled out by certain populist parties as responsible for rising unemployment or the State debt.

71. The Special Rapporteur notes with regret the tendency, which began several years ago, to criminalize foreigners, asylum-seekers and refugees in Switzerland. This is done by the enactment of laws, regulations and decrees that place these groups of persons in a vulnerable legal situation, resulting in their social marginalization and cultural stigmatization.

72. In this context, the Special Rapporteur notes the political authorities’ lack of unity and a coherent national policy concerning the question of racism and xenophobia. The general picture, which is one of significant progress and serious regression and is therefore marked by contrast and contradiction, seems to reflect the existence of internal tensions and profound disagreements among the political authorities. Indeed, on the one hand, the Swiss Confederation has adopted anti-discriminatory norms, even if there is room for progress in this area, and finances projects to combat discrimination and racism. On the other, it constantly reinforces its legislative restrictions against foreigners, refugees and asylum-seekers. In doing so, it sends the population the message that foreigners are stigmatized and criminalized, thereby reinforcing prejudices and increasing discrimination and xenophobia within society. This tends to legitimize acts of racism and xenophobia, both on the part of State bodies and in everyday social relations. The Special Rapporteur noted significant questions in this regard within certain State institutions and in civil society. Thus, an eminent official of one of these institutions stated in a letter addressed to the Special Rapporteur following his visit that “significant efforts have been made over the past few years to integrate foreigners. However, paradoxically, rarely has speech reflecting distrust, and even contempt, towards them been so crude, nauseating and so widespread and echoed”.

73. The Special Rapporteur considers that racist and xenophobic discourse has left its mark on people’s minds, even within the State apparatus. The leitmotif of foreigners as criminals,

repeatedly revived on the occasion of many votes, punctuated by political discourse and exaggerated by certain media, increasingly penetrates the collective mentality and gives legitimacy not only to identity-related tensions hostile to cultural diversity but also to discriminatory and arbitrary behaviour by members of certain State bodies.

74. The establishment of the Service for Combating Racism and the Fund for Projects against Racism and in favour of Human Rights within the Federal Department of the Interior reflects a certain degree of political will to implement the Durban Programme of Action adopted by the World Conference against Racism, Racial Discrimination and Related Intolerance. The establishment of the Federal Commission against Racism and the Federal Commission for Foreigners reflects a desire to involve civil society in this undertaking. The personal commitment and high degree of motivation and sensitivity regarding the question of racism of officials and staff of the Service for Combating Racism and the members of these commissions demonstrate the existence in the State apparatus of motivated staff capable of implementing, with the appropriate means, any declared political will to combat racism and xenophobia. However, two significant factors undermine this political will: the absence of political consensus at the highest level, demonstrated by repeated proposals by political parties represented in the Government to abolish or marginalize these services and mechanisms, and by the fact that these services and mechanisms do not have the necessary powers and authority and do not receive the means and resources that they need to implement their mandates effectively.

75. The Special Rapporteur notes that the new legislation on foreigners and on asylum, owing to its restrictive and repressive nature, reveals a tendency to approach immigration and asylum issues solely from a security point of view and to criminalize foreigners, immigrants and asylum-seekers. The considerable number of acts of police violence with racist and xenophobic overtones against these target groups and the judicial and administrative impunity enjoyed, according to the victims, by the perpetrators, as well as the absence of clear policy guidelines for the police force in order to prevent all discriminatory practices, are alarming signs of the failure to attach priority to combating racism and xenophobia.

76. Nevertheless, the Special Rapporteur took note with interest of initiatives, such as that of the Basel police, to implement an intercultural training programme and establish direct dialogue with representatives of the black community. He was informed that a federal bill on the use of coercion by the police and police measures in areas that fall within the competence of the Confederation, expressly providing for training in the areas of “basic rights, protection of the person and procedural law and behaviour towards persons of different cultural backgrounds” is under consideration. Nevertheless, the Special Rapporteur, with reference to the testimonies that he received during his visit, as well as to various reports prepared by recognized national and international NGOs, must conclude that police practices differ not only from canton to canton but remain one of the dark stains on Switzerland’s efforts to combat racism and xenophobia.

77. The Special Rapporteur was particularly alarmed at the lack of reliable data and statistics concerning manifestations and expressions of racism, discrimination and xenophobia in

Switzerland.³⁷ The absence of this essential measuring tool makes it difficult to assess the phenomenon and limits the effectiveness of even sporadic policies, programmes and initiatives to combat racism. Moreover, since statistics are not standardized among the cantons, whatever data are available, particularly data on crime, are difficult to interpret.

78. Through the diversity of situations and policies, the Special Rapporteur noted the impact of the distinctive nature of the federal structure, the powers and prerogatives of the cantons and the democratic tradition of popular votes on the recognition and treatment of questions relating to racism and xenophobia. It would appear, therefore, that the question of racism, racial discrimination and xenophobia has not been the subject of a comprehensive and coherent approach or a resolute and credible national political programme.

79. The Special Rapporteur is particularly alarmed at the possibility that, owing to their electoral impact, racist and xenophobic political platforms will spread in the future, bearing in mind the degree of resistance to cultural diversity in the light of the increasing multiculturalization, particularly as a result of non-European immigration, of Swiss society. In this regard, there are already signs, particularly in the context of the widespread tendency in Europe to associate Islam with terrorism, that one of the prime targets of these platforms will be the presence of Muslims in Switzerland.

80. During his visit, the Special Rapporteur spoke at length with his interlocutors concerning integration measures and programmes. He noted that the positive aspects of some of these programmes are handicapped by two political and cultural factors in Switzerland: (a) at the political level, by ideological hostility to integration, reflected in the political platforms of parties, such as the Swiss People's Party/Centre Democratic Union, which are members of the Government; and (b) at the cultural level, by the rejection of cultural diversity, which takes the form of refusing to acknowledge the cultural specificity of immigrant minorities, particularly non-European minorities, which are suspected of threatening "national identity" and are enjoined to "adapt to national values", thereby depriving such minorities of any opportunity to make cultural contributions to and enrich Swiss society.

81. The Special Rapporteur welcomes the commitment, in the context of Switzerland's participatory democracy, of associations and civil society, including churches, to combating racism in Switzerland. However, he notes with concern the current political and legal trend, demonstrated by the most recent vote, towards abolishing measures to defend and protect victims.

82. The Special Rapporteur is particularly alarmed at the situation, often extremely precarious, of asylum-seekers whose applications have not been considered for formal reasons, and at the Government's policy - characterized by criminalization, suspicion and rejection -

³⁷ De telles informations ont déjà été demandées à la Suisse par le CERD en 2002: «Le Comité demande des informations sur la législation en vigueur concernant l'interdiction de la discrimination raciale dans le secteur privé, dans des domaines tels que l'emploi, le logement, l'enseignement, la santé et l'accès aux lieux publics.» (CERD/C/60/CO/14, par. 16).

towards such persons. Reports and official documents³⁸ clearly indicate a reduction of social assistance for such persons. According to an official report, the measure excluding social assistance, which has been in force since 1 April 2004, has a twofold objective: “reduce by 10,000 persons staff involved in asylum matters in order to realize savings on the order of 117 million over three years, and create a better basis for asylum policy by refusing access to social assistance to persons who clearly have no need to be protected by the Swiss authorities”.³⁹ These “negative incentives” aimed at decisions not to consider requests for formal reasons will take the form of “a reduction to a minimum of the conditions of housing, food and health care provided, an obligation to renew on a regular basis requests for social benefits with the institutions stipulated by the authorities”.⁴⁰ The Special Rapporteur would like to mention here his satisfaction with the decision of the Federal Tribunal of 18 March 2005, in which the Tribunal ruled that Solothurn canton’s withholding of all material assistance, including emergency assistance, from persons whose requests had not been considered and who refused to cooperate in their return, was unconstitutional (Federal Tribunal ruling 131 166).

83. The Special Rapporteur regrets that such measures are used by a democratic State in contravention of Switzerland’s international human rights obligations, and that they damage the dignity of the persons affected. In this regard, he wishes to remind the Swiss authorities of article 12 of the Federal Constitution, which states: “Persons in distress and incapable of looking after themselves have the right to be helped and assisted, and to receive the means that are indispensable for leading a life in human dignity.” It is in this spirit that the obligations contained in the Universal Declaration of Human Rights and other international instruments applicable to Switzerland must also be understood. Moreover, the publication of certain documents by the authorities, such as the report referred to in the previous paragraph, reflects a premise of suspicion: the asylum-seeker is a priori a false applicant whose only aim is to take advantage of Switzerland’s wealth.

84. Lastly, the Special Rapporteur questions, in this regard, the real meaning of the statement following his visit, made by the spokesman of the Swiss People’s Party/Centre Democratic Union, which is represented in the Government, who said: “I can accept that a United Nations representative can criticize us since we are now members of the United Nations, but it is a bit much when these comments are made by a Senegalese.” The Special Rapporteur welcomed the

³⁸ Tels que le rapport intitulé «Incitations individuelles et institutionnelles dans le domaine de l’asile, Rapport final du Groupe de travail sur le financement du domaine de l’asile à l’attention du Département fédéral de justice et police» dit rapport Fuhrer-Gerber du 9 mars 2000 et d’autres documents remis au Rapporteur spécial par les autorités suisses lors de sa visite.

³⁹ ODM, Rapport de monitoring NEM, premier trimestre 2005, Berne-Wabern, juillet 2005, p. II.

⁴⁰ «Incitations individuelles et institutionnelles dans le domaine de l’asile, Rapport final du Groupe de travail sur le financement du domaine de l’asile à l’attention du Département fédéral de justice et police» dit rapport Fuhrer-Gerber du 9 mars 2000, p. 10.

reactions of the Federal Department of Foreign Affairs, which deeply regretted the fact that the spokesman of a government party should challenge the authority of a Special Rapporteur of the United Nations, and of the Federal Department of the Interior, whose spokesman said that the comment, which was out of place, showed how ignorant the person was regarding the quality of African intellectuals. Similarly, the President of the Swiss Confederation, Mr. Moritz Leuenberger, said that he hoped that no such remark had ever been made but, if it had, it should be vigorously condemned.

85. Following his visit, the Special Rapporteur received various letters, some anonymous, from Swiss people, both denouncing situations of racism and the lack of action on the part of the authorities, and criticizing the Special Rapporteur's preliminary findings and telling him that Switzerland "had no lessons to learn from anyone". These documents and the content of certain articles and commentaries in the press that repeatedly refer to the Special Rapporteur's nationality demonstrate the disturbing emergence of a culture of xenophobia in certain segments of Swiss society, which can have a long-term damaging effect on the image of the country, which is the European headquarters of the United Nations and which is rightly respected throughout the world for the originality and vitality of its political system of participatory democracy.

V. RECOMMENDATIONS

86. **The Special Rapporteur recommends that the Swiss authorities prepare, as a matter of priority, a comprehensive political strategy to combat racism, racial discrimination and xenophobia, focusing on three main areas:**

- **The Government's public expression of its political will to combat all forms and manifestations of racism, racial discrimination and xenophobia;**
- **Opposition to and condemnation of all racist and xenophobic political platforms;**
- **Recognition of, respect for and promotion of cultural diversity, and commitment to promote, in the long term, a democratic, egalitarian and interactive multiculturalism.**

87. **The Special Rapporteur therefore recommends that the Government make available the appropriate means, mechanisms and institutions to implement this political will, in particular by:**

- **Drafting, in cooperation with all political parties and in consultation with civil society organizations and representatives of national, ethnic, cultural and religious minorities, of comprehensive national legislation and a national programme of action to combat racism, racial discrimination and xenophobia.**

At the institutional level, the Special Rapporteur recommends two measures:

- **In order to address the current rise in xenophobia, the Government should strengthen the Federal Commission for Foreigners and the Federal Commission**

against Racism with regard to material, budgetary and human resources and their authority and capacity for action and intervention. The Service for Combating Racism should also be strengthened;

- In order to ensure a holistic approach that takes account of common underlying sources and of the link between all forms of discrimination, the Government should establish a federal commission to promote human rights and combat all forms of discrimination relating to race, religious belief, gender, age, disability and sexual preference. Bearing in mind the urgency of questions relating to racism and xenophobia, the commission should attach high priority, at the initial stage, to combating racism and xenophobia. The commission’s mandate should incorporate the current mandates of the Federal Commission against Racism and the Federal Commission for Foreigners. The commission should be structured around subcommissions relating to each of these forms of discrimination and should be granted administrative, legal and normative powers of investigation, action and appeal with respect to all forms of discrimination, as well as the appropriate human, material and financial resources. Its budget should be allocated by the Federal Assembly. The president and members of the commission should be appointed by the Federal Assembly at the proposal of the Government, in consultation with political parties, civil society organizations and all cultural, religious and linguistic communities, in order to reflect the diversity of Swiss society and the necessary balances. The commission should submit an annual report to the Federal Assembly containing an assessment of the situation and action-oriented recommendations for ensuring the promotion of and respect for human rights, and for combating all forms of discrimination. The commission should be administered by a technical secretariat under its authority, either by the transfer, strengthening and transformation of the current Service for Combating Racism, reinforced with additional human, material and budgetary resources, or by a new mechanism. This service should be given the mandate of follow-up, collection of statistical data, and recording and analysing incidents, manifestations and expressions of discrimination, for the commission.**

88. The Special Rapporteur recommends that the resources provided to independent bodies that combat racism should be maintained, if not increased.

89. The Special Rapporteur is aware of the challenges arising from Switzerland’s federal structure and the division of powers between the Confederation and the cantons. He nevertheless considers that the authorities should establish appropriate mechanisms to address the shortcomings in the area of protecting individuals against racism and racial discrimination. In this regard, he endorses the recommendations made by the Committee on the Elimination of Racial Discrimination in 2002, particularly the assertion that “the Federal Government has the responsibility of ensuring the implementation of the Convention on its entire territory and must ensure that cantonal authorities are aware of the rights set out in the Convention and take the necessary measures in order to respect them” (CERD/C/60/CO/14, para. 8).

90. With regard to incidents of police violence, the Special Rapporteur wishes to remind the federal and cantonal authorities of their obligations under international norms for the protection of human rights, which apply to everyone without distinction. In this regard, he strongly recommends, pending the establishment of the aforementioned federal commission, the creation of independent mechanisms to investigate allegations of racism, racial discrimination, xenophobia and related intolerance by various bodies and administrations at the federal, cantonal and communal levels.

91. The Special Rapporteur, having noted the weakness of Swiss administrative and civil legislation regarding protection against discrimination, particularly in the areas of housing, employment and access to public places, considers that Swiss legislation in these areas should explicitly incorporate effective anti-discriminatory and anti-racist norms. Swiss law should also provide for legislation for the implementation of anti-racist norms, and provide for compensation or reparation.

92. The Special Rapporteur supports the planned adoption by the Swiss authorities of two articles to supplement article 261 dealing with distinctive symbols of a discriminatory attitude based on race or the public use of slogans, gestures or forms of salutation with a racist meaning, and with the criminalization of the creation of, or participation in, groups that intend to commit acts prohibited under article 261 bis.

93. He also recommends that Swiss legislation introduce the right of associations and non-governmental organizations to appear in court and act on behalf of victims, since this would provide better protection for persons who are reluctant or unable to take their cases to the courts.

94. The Special Rapporteur encourages the Swiss authorities to withdraw the reservations to article 2, paragraph 1 (a), and article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination.

95. The Special Rapporteur is aware that the legal strategy alone cannot combat prejudices which, in Switzerland as elsewhere, are deeply rooted in history and culture. He therefore recommends that the political and legal strategy be supplemented by a cultural and ethical strategy with the aim - in order to overcome the deadlocks and tensions of an ideological and partisan management of de facto uncontrolled multiculturalization - of the voluntary, gradual and long-term construction of a democratic, egalitarian, non-discriminatory and interactive multiculturalism centred around two related areas: the promotion of reciprocal knowledge among communities reflecting the diversity of Swiss society and the promotion of interaction and cross-fertilization among these communities. Action must be taken, here and now, to promote fruitful and non-antagonistic coexistence, the dialectic of unity and diversity, the founding principle of Swiss federalism, bearing in mind the current twofold challenge of the growing complexity of diversity as a result of non-European and non-Christian immigration, and of the dynamic of attempts to defend identity, which is exploited for political ends.

96. The Special Rapporteur considers that certain awareness-raising and training initiatives undertaken within State bodies, such as the training of the Basel City police force, are very positive, and recommends that they be undertaken in all cantons. He also recommends that the Government increase, to the extent possible, the recruitment, at all State levels, of staff from among the immigrant population and the various foreign communities, and promote comprehensive intercultural training in all State services and institutions that deal with immigration and the situation of foreigners, in particular the police and border authorities, airports, stations, etc.

97. The Special Rapporteur strongly recommends that civil society organizations make use of the United Nations mechanisms available to them, both treaty body mechanisms, such as the Committee on the Elimination of Racial Discrimination, and the special procedures, and transmit to these bodies relevant information concerning possible human rights violations as a result of the application of laws such as the Act on Foreign Nationals or the Asylum Act. In this regard, he encourages civil society to record and document acts of racism, racial discrimination and xenophobia. He wishes to commend the non-governmental organizations that have already taken steps in this regard.⁴¹

⁴¹ On peut citer entre autres les documents fournis au CRAN, à l'ACOR et l'Association des minorités de Suisse (GMS) et la Fondation contre le racisme et l'antisémitisme (GRA).

ANNEXE

Liste des objets de votations fédérales ayant eu trait aux étrangers ou au droit d'asile

N° de la votation ¹	Date	Objet	Genre ²	Participation en %	Blancs	OUI	NON	OUI en % ³	Accepté (A) Rejeté (R)	Cantons acceptants ⁴	Cantons rejetants ⁴
524 p	24.09.2006	Loi fédérale sur les étrangers	Fac.	...	...	...	...	68,0	A	*	*
525 p	24.09.2006	Modification de la loi sur l'asile	Fac.	...	...	...	...	67,8	A	*	*
510	26.09.2004	Arrêté fédéral sur la naturalisation ordinaire et sur la naturalisation facilitée des jeunes étrangers de la deuxième génération	Obl.	53,8	20 188	1 106 529	1 452 453	43,2	R	5 1/2	15 5/2
511	26.09.2004	Arrêté fédéral sur l'acquisition de la nationalité par les étrangers de la troisième génération	Obl.	53,8	18 214	1 238 912	1 322 587	48,4	R	6 1/2	14 5/2
491	24.11.2002	Initiative populaire «contre les abus dans le droit d'asile»	I.	47,9	62 974	1 119 342	1 123 550	49,9	R	19 2/2	17 4/2
455	13.06.1999	Arrêté fédéral sur les mesures d'urgence dans le domaine de l'asile et des étrangers (AMU)	Fac.	45,6	68 695	1 447 984	595 908	70,8	A		
454	13.06.1999	Loi sur l'asile (LAsi)	Fac.	45,6	66 156	1 443 137	601 389	70,6	A		
432	01.12.1996	Initiative populaire «contre l'immigration clandestine»	I.	46,7	28 657	982 867	1 138 301	46,3	R	10 2/2	10 4/2
424	25.06.1995	Loi fédérale sur l'acquisition d'immeubles par des personnes à l'étranger (LFAIE). Modification du 7 octobre 1994	Fac.	40,3	48 577	834 673	962 702	46,4	R		
417	04.12.1994	Loi fédérale sur les mesures de contrainte en matière de droit des étrangers du 18 mars 1994	Fac.	44,0	42 333	1 435 040	533 297	72,9	A		
355	04.12.1988	Initiative populaire «pour la limitation de l'immigration»	I.	52,8	23 752	731 929	1 506 492	32,7	R		20 6/2
345	05.04.1987	Loi fédérale sur le séjour et l'établissement des étrangers. Modification du 20 juin 1986	Fac.	42,2	73 532	1 122 027	585 460	65,7	A		
344	05.04.1987	Loi sur l'asile. Modification du 20 juin 1986	Fac.	42,4	35 021	1 180 082	572 330	67,3	A		
320	20.05.1984	Initiative populaire «contre le bradage du sol national»	I.	42,5	25 824	837 997	874 954	48,9	R	7 3/2	13 3/2
315	04.12.1983	Arrêté fédéral tendant à faciliter certaines naturalisations du 24 juin 1983	Obl.	35,9	21 687	644 669	793 253	44,8	R	4 2/2	16 4/2
310	06.06.1982	Loi sur les étrangers (LEtr) du 19 juin 1981	Fac.	35,2	34 425	680 404	690 268	49,6	R		
305	05.04.1981	Initiative populaire «être solidaires en faveur d'une nouvelle politique à l'égard des étrangers» du 10 octobre 1980	I.	39,9	15 524	252 531	1 304 153	16,2	R		20 6/2

N° de la votation ¹	Date	Objet	Genre ²	Participation en %	Blancs	OUI	NON	OUI en % ³	Accepté (A) Rejeté (R)	Cantons acceptants ⁴	Cantons rejetants ⁴
266	13.03.1977	Initiative populaire «pour une limitation du nombre annuel des naturalisations» (cinquième initiative contre l'emprise étrangère)	I.	45,2	24 673	568 867	1 116 188	33,8	R		19 6/2
265	13.03.1977	Initiative populaire du Parti républicain «pour la protection de la Suisse» (quatrième initiative contre l'emprise étrangère)	I.	45,2	29 949	495 904	1 182 820	29,5	R		19 6/2
252	07.12.1975	Arrêté fédéral modifiant la Constitution (liberté d'établissement et réglementation de l'assistance)	Obl.	30,9	39 934	842 165	271 563	75,6	A	19 6/2	
242	20.10.1974	Initiative populaire contre l'emprise étrangère et le surpeuplement de la Suisse	I.	70,3	28 338	878 891	1 691 632	34,2	R		19 6/2
220	07.06.1970	Initiative populaire contre l'emprise étrangère	I.	74,7	11 740	557 517	654 844	46,0	R	6 2/2	13 4/2

À ce tableau, il faut ajouter les votations sur les bilatérales I et la libre circulation avec l'UE du 21 mai 2000 (acceptée avec 67 %), la votation du 25 septembre 2005 sur l'élargissement de la libre circulation (acceptée avec 56 %) et la votation sur l'initiative visant à abaisser le taux d'étrangers en Suisse à 18 % du 24 septembre 2000 (rejetée avec 64 %).

¹ Les initiatives populaires avec contre-projet sont comptées comme une seule votation. Les voix «sans réponse» ne figurent pas dans le tableau.

² Obl. = Projets constitutionnels émanant de l'Assemblée fédérale soumis au référendum obligatoire.

Fac. = Lois fédérales et arrêtés fédéraux contre lesquels le référendum facultatif a abouti.

I. = Projets constitutionnels émanant de l'initiative populaire.

³ Par rapport aux bulletins valables.

⁴ 23 cantons au total (jusqu'en 1978: 22 cantons). Lors des référendums facultatifs, la majorité du peuple suffit.

p: résultats provisoires.

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