

## Submission by the United Nations High Commissioner for Refugees

### For the Office of the High Commissioner for Human Rights' Compilation Report

#### Universal Periodic Review: 3rd Cycle, 28th Session

## SWITZERLAND

### I. BACKGROUND INFORMATION

Switzerland ratified the *1951 Convention relating to the Status of Refugees* in 1955 and acceded to its *1967 Protocol* in 1968 (hereinafter jointly referred to as the *1951 Convention*). Switzerland ratified the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*) in 1972 but is not a party to the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*).

The recent rise in the arrival of refugees and asylum-seekers in Europe also had effects on Switzerland. In 2015, the total number of applications reached 39,523 (27,207 applications in 2016). The main countries of origin in 2016 were Eritrea, Afghanistan, Syria, Somalia, Sri Lanka and Iraq. As of 31 December 2016, Switzerland hosted a total of 45,804 refugees, 36,877 persons with provisional admission<sup>1</sup> and 31,433 asylum-seekers.<sup>2</sup>

### II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

UNHCR commends the recent legislative and administrative efforts to enhance the fairness and efficiency of the asylum procedure, to be implemented as of 2019, including the provision of free legal assistance for asylum-seekers in the first instance of the asylum procedure.<sup>3</sup> UNHCR also welcomes a new provision in the *Asylum Act* that stipulates that the asylum applications of unaccompanied children shall be prioritized.

### III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

#### Issue 1: Access to a fair and efficient asylum procedure

The overall protection rate in Switzerland is rather high, but the country applies a restrictive refugee recognition policy. Many individuals who UNHCR considers to be refugees are either not recognized as such or are not granted asylum. This concerns, for example, individuals

---

<sup>1</sup> Individuals recognized as refugees under the *1951 Convention*, but not granted asylum, see Issue 1 below.

<sup>2</sup> See UNHCR, *Global Trends: Forced Displacement in 2015*, 20 June 2016, available at: <http://www.unhcr.org/global-trends-2015.html>; State Secretariat for Migration, *Commentaire sur la statistique en matière d'asile 2016*, available at: <https://www.sem.admin.ch/sem/f/home/publiservice/statistik/asylstatistik/archiv/2016/12.html>.

<sup>3</sup> The reorganization foresees an acceleration of the procedure, whereby all relevant actors (e.g. authorities, asylum-seekers, legal aid service) are acting together under one roof. In order to ensure a fair procedure, free legal aid will be granted to asylum-seekers during the first instance procedure throughout the accelerated phase.

fleeing persecution in the context of conflict, such as many asylum-seekers from Syria. Moreover, persons who became refugees “only by leaving their native country or country of origin or due to their conduct after their departure” are denied asylum (Art. 54 of the *Asylum Act*), and so are refugees deemed “unworthy” of asylum due to, i, serious misconduct, violating or endangering Switzerland’s internal or external security (Art. 53 of the *Asylum Act*). In both cases, they only receive provisional admission. This precarious non-status halts deportation but does not provide for a residence permit (Art. 44 of the *Asylum Act*; Art. 83 of the *Foreign Nationals Act*). Rights and benefits are restricted, including the right to family reunification, the right to work and freedom of movement. On this, the Committee on the Elimination of Racial Discrimination has encouraged Switzerland to remove disproportionate restrictions on the rights of provisionally admitted persons.<sup>4</sup> The quality of asylum decisions also varies and efforts are needed to strengthen quality assurance mechanisms and mechanisms to identify and address specific needs, including those of unaccompanied asylum-seeking children (UASC).<sup>5</sup>

During the summer of 2016, concerns were raised of individuals who wanted to seek asylum in Switzerland but were returned from the Swiss border to Italy, including UASC, some of whom had parents in Switzerland.<sup>6</sup>

### **Recommendations:**

UNHCR recommends that the Government of Switzerland:

- a) Ensure the full application of the *1951 Convention* concerning refugee status determination in line with current international standards, including with respect to persons fleeing persecution in the context of conflict and violence;
- b) Repeal the legislative restrictions that differentiate between “Convention refugees”, who are granted asylum, and those who are only provisionally admitted;
- c) Introduce a subsidiary protection status, with rights equivalent to those of refugees, for individuals in need of international protection who fall outside the scope of the *1951 Convention*;
- d) Ensure consistent quality of refugee status determination procedures and decision-making, including for unaccompanied asylum-seeking children and other groups with specific needs; and
- e) Continue to enhance protection-sensitive border management including through improved means of communication with arrivals and strengthened mechanisms for the identification and referral of persons with specific needs.

### **Challenges linked to outstanding 2nd cycle UPR recommendations**

#### **Issue 2: Family reunification and the right to family life**

**Linked to 2nd cycle UPR recommendations no. 123.7:** “Withdraw remaining reservations to the CRC (Slovenia)”; **and no. 123.8:** “Withdraw its reservations to article 10, paragraph 1, of CRC (Uruguay).”

---

<sup>4</sup> See, Committee on the Elimination of Racial Discrimination (CERD), *Concluding observations - Switzerland*, CERD/C/CHE/CO/7-9, 13 March 2014, para. 16, available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fCHE%2fCO%2f7-9&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fCHE%2fCO%2f7-9&Lang=en)

<sup>5</sup> See Committee on the Rights of the Child (CRC), *Concluding observations - Switzerland*, CRC/C/CHE/CO/2-4, 26 February 2015, paras. 68-69, available at: <http://www.refworld.org/docid/566e80214.html>.

<sup>6</sup> Amnesty International, *Die Schweiz missachtet die Rechte von Minderjährigen*, 31 August 2016, available at: <https://www.amnesty.ch/de/laender/europa-zentralasien/schweiz/dok/2016/missachtete-rechte-von-minderjaehrigen>.

In 2012, family reunification for persons granted refugee status under the *Asylum Act* was restricted to only cover an individual's spouse and minor children.<sup>7</sup> Furthermore parents cannot apply to reunite with children who have been granted refugee status in Switzerland (Art. 51 of *Asylum Act*) and Switzerland maintains its reservation to Art. 10(1) of the *Convention on the Rights of the Child (CRC)*.<sup>8</sup> Provisionally admitted persons can only apply for family reunification after a 3-year waiting period, and only if they fulfil additional requirements under the *Foreign Nationals Act*.<sup>9</sup> A time-bound humanitarian admission programme exempts Syrians with provisional admission from these requirements. Asylum-seekers have no right to be reunified with their family. Alternatively, family members who are in imminent and serious danger of bodily harm may apply for a humanitarian visa but, due to onerous requirements to obtain them, such visas are rarely granted.<sup>10</sup>

### **Recommendations:**

UNHCR recommends that the Government of Switzerland:

- a) Withdraw its reservation to Article 10(1) of the *CRC*;
- b) Ensure effective access to family reunification for all persons in need of international protection by amending existing laws and removing administrative obstacles; and
- c) Increase access to humanitarian visas by applying the existing legal provisions less restrictively.

### **Issue 3: Local integration of refugees and asylum-seekers**

**Linked to 2nd cycle UPR recommendations no. 122.19:** “Ensure protection of refugees, migrants and members of their families, including their social integration in line with international standards (Belarus)”; **no. 123.39:** “Adopt further anti-discrimination measures, including implementing the Council of Europe’s recommendation for Switzerland to adopt comprehensive anti-discrimination legislation and prohibit discrimination regarding employment and accommodation in civil matters (Australia)” **and no. 122.7:** “Complement the efforts in the field of the integration of foreigners with an active commitment to fighting discrimination (Ecuador).”

The importance of integrating refugees is increasingly recognized in Switzerland. Thus, the Federal Parliament recently agreed to enhance integration of refugees, provisionally admitted persons and asylum seekers by abolishing the special charge on earned income and by replacing the complicated approval procedure by a mere reporting procedure for employers who want to employ refugees and provisionally admitted persons. However, obstacles to the integration continue to exist, particularly for persons with a provisional admission. Standards vary widely across Switzerland as the cantons are responsible for many aspects of integration.

Practical obstacles impeding access to the labour market and to education, including tertiary education remain. Refugees often face difficulties such as language barriers, non-recognition of qualifications obtained abroad, lack of financial support, and a tendency in the market to

---

<sup>7</sup> See revision of the *Asylum Act* of 2012, in force as of 2014 ([AS 2013 4375](#) 5357; [BBI 2010 4455](#), 2011 325).

<sup>8</sup> See *CRC*, supra note 5, at paras. 6-7.

<sup>9</sup> Arts. 85(7) and 88a of the *Foreign Nationals Act* require that suitable housing is available and the family does not depend on social assistance; see also, CERD, supra note 4, at para. 16.

<sup>10</sup> UNHCR is, for example, aware of numerous cases of unaccompanied Eritrean children in difficult conditions in Sudan and Ethiopia who cannot reunite with their parents or other family in Switzerland, sometimes forcing them to revert to dangerous irregular travel.

refer qualified candidates to unskilled work. Furthermore, freedom of movement of provisionally admitted persons within Switzerland is severely restricted.

Moreover, refugees and stateless persons face obstacles in obtaining Swiss citizenship. Neither the current<sup>11</sup> nor the revised *Swiss Citizenship Act* (entering into force in 2018) provide for facilitated naturalization for refugees or stateless persons, as provided under Art. 34 of the *1951 Convention* and Art. 32 of the *1954 Convention*. The revised *Swiss Citizenship Act* will lower the minimum residence requirement from 12 to 10 years, but only applicants with a permanent residence permit will be eligible, making the possibility of naturalization even more difficult.<sup>12</sup>

Switzerland does not have comprehensive anti-discrimination legislation, on the basis of which discriminatory practices or xenophobic discourses against refugees, asylum-seekers and other often targeted groups could be challenged.<sup>13</sup>

### **Recommendations:**

UNHCR recommends that the Government of Switzerland:

- a) Facilitate the access of refugees, asylum-seekers and provisionally admitted persons to the labour market, by removing practical obstacles such as language barriers, non-recognition of foreign qualifications, and restrictions on freedom of movement;
- b) Ensure access for refugees, provisionally admitted persons, asylum-seekers and stateless persons to higher education;
- c) Facilitate the naturalization of refugees and stateless persons by amending the legal framework so those without permanent residence permits may be eligible to apply; and
- d) Develop and adopt comprehensive anti-discrimination legislation.

### **Issue 4: Reception conditions for refugees and asylum-seekers**

**Linked to 2nd cycle UPR recommendations no. 123.54:** “Provide adequate accommodation for refugees and asylum seekers and their children, away from unhealthy locations such as near airports (Namibia).”

Reception standards for asylum-seekers vary widely across Switzerland. Some give rise to concern, such as the use of nuclear bunkers as reception centres.<sup>14</sup> One particular concern is the lack of mechanisms to address the specific needs of refugees and asylum-seekers, including those of unaccompanied or separated children (UASC). UNHCR welcomes the increased attention this issue has received from the Swiss authorities. For instance, at cantonal level, the Conference of Directors Responsible for Social Affairs (CDAS) adopted recommendations

---

<sup>11</sup> *Federal Act on the Acquisition and Loss of Swiss Citizenship (Status as of 1 January 2013)*, SR. 141.0.

<sup>12</sup> See UNHCR Office for Switzerland and Liechtenstein, *UNHCR Stellungnahme zum Entwurf einer „Verordnung über das Schweizer Bürgerrecht (Bürgerrechtsverordnung, BüV)“*, November 2015, available at: [http://www.unhcr.ch/fileadmin/rechtsinfos/fluechtlingsrecht/5\\_schweiz/5\\_4\\_unhcr\\_positionen/FR\\_CH\\_Position\\_en\\_2016-Buergerrechtsverordnung.pdf](http://www.unhcr.ch/fileadmin/rechtsinfos/fluechtlingsrecht/5_schweiz/5_4_unhcr_positionen/FR_CH_Position_en_2016-Buergerrechtsverordnung.pdf).

<sup>13</sup> See CERD, supra note 4, at para. 6; CRC, supra note 5, at para. 25; European Commission against Racism and Intolerance, *ECRI Report on Switzerland*, 16 September 2014, p.9, available at: <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Switzerland/CHE-CbC-V-2014-039-ENG.pdf>.

<sup>14</sup> See European Council on Refugees and Exiles, *AIDA – Asylum Information Database: Wrong counts and closing doors: The reception of refugees and asylum seekers in Europe*, March 2016, p.32, available at: [http://www.asylumineurope.org/sites/default/files/shadow-reports/aida\\_wrong\\_counts\\_and\\_closing\\_doors.pdf](http://www.asylumineurope.org/sites/default/files/shadow-reports/aida_wrong_counts_and_closing_doors.pdf).

regarding, inter alia, reception, legal representation and access to education for UASC.<sup>15</sup> However, the recommendations are not legally binding and need to be effectively implemented.

Asylum-seekers are generally not detained, but their freedom of movement is restricted as they are allocated a place to stay, where they are obliged make themselves available to the authorities. Detention is frequently used, however, to facilitate deportation, including for asylum-seekers to be returned to other States under the *Dublin III Regulation*.<sup>16</sup> Alternatives to detention are only partially foreseen in the law and are not sufficiently applied in practice. Switzerland also continues to detain children aged between 15 and 18 for immigration purposes.<sup>17</sup> Children accompanied by both parents are impacted when they face the detention of one parent prior to deportation in order to put pressure on the whole family to cooperate.

### **Recommendations:**

UNHCR recommends that the Government of Switzerland:

- a) Ensure minimum reception standards in federal and cantonal reception centres across the country, taking into account the specific needs of refugees and asylum-seekers, including UASC; and
- b) Enact legislation and adopt policies to effectively apply alternatives to detention for asylum-seekers, in particular where families and children are concerned.

### **Issue 5: Statelessness**

**Linked to 2nd cycle UPR recommendations no. 123.5:** “Ratify the 1961 Convention on the Reduction of Statelessness (Slovakia).”

Switzerland committed to reduce statelessness and defend the rights of stateless persons during the 2nd cycle of the UPR,<sup>18</sup> however, it has not yet acceded to three Conventions relating to the prevention of statelessness: the *1961 Convention*, the *European Convention on Nationality* and the *Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession*.<sup>19</sup> Although Switzerland is a party to the *1954 Convention* and individuals can apply for recognition as stateless persons, there is no formalized statelessness determination procedure in the country. Moreover, the definition of a stateless person, as set out in the *1954 Convention*, is interpreted narrowly by the authorities and the judiciary.

### **Recommendations:**

- a) Accede to the 1961 Convention, the European Convention on Nationality and the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession;
- b) Establish a formal statelessness determination procedure including procedural safeguards; and

---

<sup>15</sup> CDAS, *Recommandations de la CDAS relatives aux enfants et aux jeunes mineurs non accompagnés dans le domaine de l’asile*, 20 May 2016, available at :

[http://www.sodk.ch/fileadmin/user\\_upload/Aktuell/Empfehlungen/2016.05.20\\_MNA-Empf\\_farbig\\_f.pdf](http://www.sodk.ch/fileadmin/user_upload/Aktuell/Empfehlungen/2016.05.20_MNA-Empf_farbig_f.pdf).

<sup>16</sup> European Union: Council of the European Union, *Regulation (EU) No 604/2013*, 29 June 2013, OJ L. 180/31-180/59; 29.6.2013, available at: <http://www.refworld.org/docid/51d298f04.html>.

<sup>17</sup> See Terre des hommes, *Illegal detention of migrant children in Switzerland: a status report*, June 2016, p.24, available at: [https://www.tdh.ch/sites/default/files/tdh\\_plaidoyer-ch\\_en\\_web\\_1.pdf](https://www.tdh.ch/sites/default/files/tdh_plaidoyer-ch_en_web_1.pdf).

<sup>18</sup> See HRC, *Report of the Working Group on the Universal Periodic Review: Switzerland: Addendum*, A/HRC/22/11/Add. 1, 5 March 2013, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/CHSession14.aspx>.

<sup>19</sup> See also CERD, supra note 4, at para. 19; CRC, supra note 5, at para. 31.

- c) Apply an inclusive interpretation of the term stateless person, in line with the 1954 Convention and existing international standards.

**Human Rights Liaison Unit**  
**Division of International Protection**  
**UNHCR**  
**March 2017**

## ANNEX

### Excerpts of relevant Recommendations from the 2nd cycle Universal Periodic Review, Concluding Observations from UN Treaty Bodies and Recommendations of Special Procedures mandate holders

#### SWITZERLAND

We would like to bring your attention to the following excerpts from the 2nd cycle UPR recommendations, UN Treaty Monitoring Bodies' Concluding Observations, and recommendations from UN Special Procedures mandate holders' reports relating to issues of interest and persons of concern to UNHCR with regards to Switzerland. Please note that no relevant reports by UN Special Procedures mandate holders have been conducted since the 2<sup>nd</sup> UPR cycle.

#### I. Universal Periodic Review (Second Cycle – 2012)

| Recommendation <sup>20</sup>   | Recommending State/s | Position <sup>21</sup> |
|--|----------------------|------------------------|
| <b>Refugees and asylum-seekers</b>   |                      |                        |
| 122.10. Intensify its efforts to fight discrimination and intolerance, mainly towards asylum seekers, migrants and persons of African origin;  | Tunisia              | Supported              |
| 122.11. Provide access for all asylum and repatriation detainees to attorneys, as well as consular notification and access consistent with applicable international legal obligations, including Article 36 of the Vienna Convention on Consular Relations, to detained foreign nationals; | United States        | Supported              |
| 122.19. Ensure protection of refugees, migrants and members of their families, including their social integration in line with international standards;  | Belarus              | Supported              |
| 123.46. Continue to take the necessary steps to prevent incidents of acts of violence with racist and xenophobic reasons by security agents against foreigners, immigrants and asylum seekers and to bring to justice the perpetrators of such acts;                                       | Brazil               | Supported              |

<sup>20</sup> All recommendations made to Switzerland during its 2st cycle UPR can be found in: "Report of the Working Group on the Universal Periodic Review of Switzerland" (07 December 2012) A/HRC/21/11, available at: <http://ohchr.org/EN/HRBodies/UPR/Pages/CHSession14.aspx>.

<sup>21</sup> Switzerland's views and replies can be found in: *Addendum* (05 March 2013) A/HRC/22/11/Add.1, available at: <http://ohchr.org/EN/HRBodies/UPR/Pages/CHSession14.aspx>.



|   |                    |                     |
|---|--------------------|---------------------|
| 123.54. Provide adequate accommodation for refugees and asylum seekers and their children, away from unhealthy locations such as near airports.                                       | Namibia            | Noted <sup>22</sup> |
| <b>Right to family unity</b>  |                    |                     |
| 123.7. Withdraw remaining reservations to the CRC’;   | Slovenia           | Noted <sup>23</sup> |
| 123.8. Withdraw its reservations to article 10, paragraph 1, of CRC;  | Uruguay            | Noted <sup>24</sup> |
| <b>Discrimination against minorities, racism and xenophobia</b>   |                    |                     |
| 122.5. Take effective measures and step up its efforts to combat xenophobia and racism so as to promote harmonious co-existence among ethnic and religious communities;               | China              | Supported           |
| 122.6. Continue to implement programmes and measures to combat and prevent racism, racial discrimination and xenophobia, and ensure further progress in terms of equal opportunities; | Cuba               | Supported           |
| 122.7. Complement the efforts in the field of the integration of foreigners with an active commitment to fighting discrimination;   | Ecuador            | Supported           |
| 122.8. Take further measures to combat racial discrimination, xenophobia and other forms of intolerance;  | Sri Lanka          | Supported           |
| 122.9. Continue to work to prevent and combat incidents of racist and anti-semitic and extremist expressions and actions which have occurred in Switzerland in recent times;          | Russian Federation | Supported           |
| 123.27. Reinforce its efforts to combat racism by taking measures to adopt comprehensive anti-discrimination legislation;   | Canada, Brazil     | Noted <sup>25</sup> |

<sup>22</sup> **Addendum:** “The responsible authorities do their best to provide suitable accommodation for all asylum seekers. However, in view of the large number of asylum seekers the decisions of authorities where to situate accommodations are subject to certain constraints.”

<sup>23</sup> **Addendum:** “See 123.8/9./10.”

<sup>24</sup> **Addendum:** “Family reunification for all foreign citizens will continue not to be guaranteed also after the amendments to the legislation in question. While family reunification for provisionally accepted persons is subject to a waiting period of three years, it is not foreseen for asylum seekers. For this reason, the reservation to Art. 10 CRC cannot be withdrawn at this point in time.”

<sup>25</sup> **Addendum:** “Switzerland will reinforce its efforts to combat racism, but an additional anti-discrimination law is not foreseen. Switzerland punishes discrimination under the Federal Constitution, the Penal Code and the Civil Code. Switzerland prefers to proceed in a targeted manner, sector by sector, for instance in the Gender Equality Act, in the Disability Discrimination Act or the antiracism criminal provision. Switzerland undertakes numerous measures to counter discrimination. In 2012, the SCHR was mandated to prepare a study on access to justice in cases of discrimination. This study is currently in preparation. Furthermore, following the recommendation of the Federal Council, Parliament invited the latter, in December 2012, to submit a report to it on the current law and preventive measures against discrimination.”



|  |                              |                     |
|--|------------------------------|---------------------|
| 123.28. Adopt national legislation against discrimination;   | France                       | Noted <sup>26</sup> |
| 123.29. Adopt a comprehensive anti-discrimination law enforced uniformly throughout the Confederation; Enact a comprehensive anti-discrimination law enforced uniformly throughout the Confederation; Adopt a comprehensive anti-discrimination law aimed at preventing racial discrimination, and ensure that it is applied to the whole territory of the Swiss Federation. | Greece, India and Uzbekistan | Noted               |
| 123.39 Adopt further anti-discrimination measures, including implementing the Council of Europe's recommendation for Switzerland to adopt comprehensive anti-discrimination legislation and prohibit discrimination regarding employment and accommodation in civil matters;   | Australia                    | Noted <sup>27</sup> |
| <b>Trafficking in persons</b>  |                              |                     |
| 122.27. Consider developing a comprehensive plan to combat trafficking in human beings;  | Poland                       | Supported           |
| 122.28. In the fight against trafficking in human beings, step up cooperation with countries of origin, protect victims, and prosecute and punish those responsible;   | Republic of Moldova          | Supported           |
| 122.29. Adopt a strategy to combat trafficking in persons, particularly women and children, improve the protection of victims and prosecute and punish perpetrators;   | Greece                       | Supported           |
| 122.30. Step up national efforts to prevent trafficking in persons.  | Libya                        | Supported           |
| <b>Statelessness</b>   |                              |                     |
| 123.5. Ratify the 1961 Convention on the Reduction of Statelessness.   | Slovakia                     | Noted <sup>28</sup> |

## II. Treaty Bodies

### Committee on the Rights of the Child

Concluding Observations, (26 February 2015), [CRC/C/CHE/CO/2-4](#)

<sup>26</sup> *Addendum:* "See 123.27."

<sup>27</sup> *Addendum:* "See 123.27."

<sup>28</sup> *Addendum:* "Ratification of the Convention on the reduction of statelessness is not foreseen at the moment. Nevertheless, Switzerland will continue to fight resolutely and effectively, within the realms of possibility, to reduce the phenomenon of statelessness and defend the legal rights of stateless persons. On the occasion of the review of the Swiss Citizenship Act, Switzerland intends to accede to the European Convention on Nationality of 1997 and to the Convention of 2006 of the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession."

## **Reservations**

6. While welcoming the withdrawal of the State party's reservation to articles 5, 7 and 40 (2) (b) (v) and (vi) of the Convention, the Committee regrets that the State party still maintains its reservations to articles 10 (1), 37 (c) and 40 (2) (b) (ii) and (iii).

**7. The Committee reiterates its previous recommendations (CRC/C/15/Add.182, para. 7) and in light of the 1993 Vienna Declaration and Programme of Action, urges the State party to consider withdrawing the remaining reservations to the Convention.**

## **Non-discrimination**

24. While welcoming the anti-discrimination measures adopted by the State party, particularly those aimed at promoting the integration of migrants, the Committee remains concerned that discrimination continues to be prevalent against children in marginalized and disadvantaged situations, including migrant, refugee and asylum-seeking children, children with disabilities and *sans papier* children. Moreover, the Committee is concerned about incidents of hate speech against LGBTI persons and the impact on children belonging to these groups, as well as that they do not enjoy the protection afforded by Article 261bis of the Criminal Code relating to racial discrimination.

**25. The Committee recommends that the State party intensify its efforts to eliminate discrimination against children in marginalized and disadvantaged situations, in particular migrant, refugee and asylum-seeking children, children with disabilities and *sans papier* children. The Committee further recommends that the State party strengthen its efforts to foster a culture of tolerance and mutual respect and adopt comprehensive legislation against discrimination on the grounds of sexual orientation and gender identity and to include these grounds in Article 261bis of the Criminal Code.**

## **Birth registration / Name and nationality**

30. While welcoming the various legal and policy measures taken by the State party to ensure the registration of all children, the Committee is concerned about reports on delays in registering children of foreign nationals. Moreover, the Committee is concerned that children born in the State party, who would otherwise be stateless, are not guaranteed the right to acquire a nationality.

**31. The Committee recommends that the State party ensure that birth registration is available as soon as possible for all children, regardless of their parents' legal status and/or origin. The Committee further recommends that the State party ensure that all children born in its territory acquire Swiss nationality irrespective of the legal status of their parents, if otherwise they will be stateless, and ratify the 1961 Convention on the Reduction of Statelessness the 1997 European Convention on Nationality and the 2009 Council of Europe Convention on the avoidance of statelessness in relation to State succession.**

## **Family environment**

46. The Committee notes that the State party's law prohibits surrogate motherhood and aims at not encouraging surrogate motherhood arrangements made abroad. The Committee is nevertheless concerned about the uncertainty of the legal status of the child during the one year period of assessment of possible adoption.

**47. The Committee recommends that the State party:**

- (a) Accelerate the assessment procedure and ensure that the child is not stateless or discriminated against during the waiting period between his or her arrival in the State party and formal adoption; and**
- (b) Ensure that the best interests of the child is the paramount consideration in the decision concerning adoption.**

**Standard of living**

64. While welcoming the entry into force of the Federal Act on Family Allowances in 2009 and other measures taken to address poverty, including the adoption of the Comprehensive Anti-Poverty Strategy for Switzerland and the National Programme for Prevention and Fight against Poverty 2014-2018, the Committee is concerned that supplementary benefits for families, including social assistance, remain low in some cantons.

**65. The Committee recommends that the State party further strengthen its system of family allowances and benefits with a view to ensuring that all children, including children of refugee, asylum-seeking and migrant parents, have an adequate standard of living throughout its territory.**

**Asylum-seeking, refugee and *sans papier* children**

68. While welcoming the entry into force of the revision of the Asylum Act in 2014 which requires the priority treatment of the asylum applications from unaccompanied children, the Committee remains concerned that the asylum procedure for unaccompanied children is not always guided by their best interests and that, in relation to the reservation made to article 10 of the Convention, the right to family reunification for persons granted provisional admission is too restricted. Moreover, the Committee is concerned that:

- (a) Considerable cantonal disparities exist in relation to reception conditions, integration support and welfare for asylum-seeking and refugee children, with children for instance being placed in military or nuclear bunkers;
- (b) “Persons of trust” for unaccompanied asylum-seeking children are not required to be experienced in childcare or child-rights matters;
- (c) Asylum-seeking children face difficulties in accessing secondary education and there is no harmonized practice in granting authorisations to take up vocational training;
- (d) The accelerated asylum procedure, which is also carried out at airports, may be applied to children;
- (e) A considerable number of *sans papier* children (children without legal residence status) live in the State party and that these children face many difficulties in accessing inter alia health care, education, in particular secondary education, and vocational training and the lack of strategies on how to address these issues.

**69. The Committee recommends that the State party:**

- (a) Ensure that the asylum procedure fully respects the special needs and requirements of children and is always guided by their best interests;**
- (b) Review its system for family reunification, in particular for persons granted provisional admission;**
- (c) Apply minimum standards for reception conditions, integration support and welfare for asylum seekers and refugees, in particular children, throughout its territory and that all reception and care centres for asylum-seeking and**

refugee children are child-friendly and conform to applicable United Nations standards;

- (d) Ensure that “persons of trust” are properly trained to work with unaccompanied asylum-seeking children;
- (e) Ensure that asylum-seeking children have effective and non-discriminatory access to education and vocational training;
- (f) Exempt unaccompanied asylum-seeking children from the accelerated asylum procedure and establish safeguards to ensure that the right of the child to have his or her best interests taken as primary consideration is always ensured; and
- (g) Develop policies and programmes to prevent social exclusion and discrimination of *sans papier* children and to allow these children to fully enjoy their rights, including ensuring access to education, health care and welfare services in practice.

#### **Administration of juvenile justice**

72. The Committee notes the entry into force of the new Juvenile Criminal Law Act in 2007 and the Juvenile Criminal Procedure Code in 2011, which inter alia raise the minimum age of criminal responsibility from 7 to 10 and provide for the separation of children from adults in pre-trial detention and imprisonment. However, the Committee is concerned that:

- (a) The minimum age of criminal responsibility still remains below internationally acceptable standards;
- (b) Free legal aid for children is not always ensured;
- (c) Still only a few defence lawyers are specialized in juvenile criminal law and procedures; and
- (d) Children are still not separated from adults in detention centres.

73. **In the light of its general comment No. 10 (2007) on children’s rights in juvenile justice, the Committee urges the State party to bring its juvenile justice system fully into line with the Convention and other relevant standards. In particular, the Committee urges the State party:**

- (a) **Raise the minimum age of criminal responsibility to an internationally acceptable level;**
- (b) **Ensure that children have access to free legal or other appropriate assistance;**
- (c) **Ensure that all persons involved in the administration of juvenile justice, including defence lawyers, receive appropriate training;**
- (d) **Expedite the process of establishing adequate detention facilities in order to ensure that children are not detained together with adults.**

#### **Committee on the Elimination of Racial Discrimination**

Concluding Observations, (13 March 2014), [CERD/C/CHE/CO/7-9](#)

#### **B. Positive aspects**

4. The Committee notes with appreciation the legislative and policy developments in the State party since its last report to combat racial discrimination, including:

- (a) The establishment of the Swiss Centre for Expertise in Human Rights in 2010 as a five-year pilot project to facilitate the implementation of the State party’s international human rights obligations; and

- (b) The launch of a four-year integration programme by the Federal Office of Migration and the cantons in January 2014, which will lead, inter alia, to the establishment of advisory services for victims of racial discrimination in all cantons.

### **C. Concerns and recommendations**

#### **Absence of reliable data on discrimination**

9. Despite allegations of discrimination on the basis of a person's race, colour, descent, or national or ethnic origin in various fields of public and private life, particularly in access to housing, access to the labour market, and treatment at work and school, the Committee expresses concern at the absence of reliable and comprehensive data on such incidents, including court cases. Moreover, while noting that the DoSyRa documentation and monitoring system has been established in 2008 to record cases of racism registered by the counselling services affiliated to the Counselling Network for Victims of Racism and that the Federal Commission against Racism is mandated to collect statistics of cases under article 261bis of the Criminal Code, the Committee is concerned that there is no nationwide established reporting practice (arts. 2 and 6).

**The Committee recommends that the State party establish an effective data collection system, using various indicators of ethnic diversity on the basis of anonymity and self-identification of persons and groups, to provide an adequate empirical basis for policies to enhance the equal enjoyment by all of the rights enshrined in the Convention and facilitate the monitoring thereof, as set out in the Committee's revised reporting guidelines (CERD/C/2007/1, paras. 10 and 12), bearing in mind the Committee's general recommendation no. 24 (1999) on reporting of persons belonging to different races, national/ethnic groups, or indigenous peoples. The Committee also urges the State party to ensure that everyone within its jurisdiction enjoys the right to effective protection and remedies against discrimination in all areas of public and private life, including in access to housing, access to the labour market, and treatment at work and school, with adequate reparation or satisfaction for any damage suffered as a result of such discrimination, in accordance with article 6 of the Convention.**

#### **National human rights institution**

10. While welcoming the issuance of a new appointment order by the Federal Council to strengthen the independence of the Federal Commission against Racism (FCR) in May 2013 and the establishment of the Swiss Centre of Expertise in Human Rights in 2010, the Committee reiterates its concern at the lack of a national human rights institution in accordance with the Paris Principles. It also notes that the FCR has been granted "C" status by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (art. 2).

**The Committee reiterates its previous recommendation that the State party consider establishing a national human rights institution in accordance with the Paris Principles (Annex to General Assembly resolution 48/134), taking into account the Committee's general recommendation no. 17 (1993) on the establishment of national institutions to facilitate implementation of the Convention. It also recommends that the Federal Commission against Racism be provided with adequate funding and resources to effectively and independently carry out its mandate to combat racial discrimination.**

### **Racism and xenophobia in politics and media**

12. The Committee is deeply concerned at racist stereotypes promoted by members of right-wing populist parties and sections of the media, in particular against people from Africa and South-eastern Europe, Muslims, Travellers/Yenish, Roma, asylum-seekers and immigrants. It is also concerned at displays of political posters with racist and/or xenophobic content, and of racist symbols and behaviour, and the lack of prosecution in such cases. The Committee is further concerned at the xenophobic tone of popular initiatives targeting non-citizens, such as the “initiative against the construction of minarets” adopted in November 2009, the “initiative on the expulsion of foreign criminals” adopted in November 2010, and the “initiative against mass immigration” adopted in February 2014. The Committee notes that such initiatives have led to a sense of unease among the affected communities and in Swiss society generally (arts. 2, 4 and 6).

#### **The Committee recommends that the State party:**

- (a) Undertake extensive and systematic awareness raising activities at all levels in the public and political spheres to combat stigmatization, generalizations, stereotyping and prejudice against non-citizens with a clear message concerning the abhorrence of racial discrimination, which seeks to degrade the standing of individuals and groups in the estimation of society, taking into account the Committee’s general recommendation no. 30 (2004) on discrimination against non-citizens;**
- (b) Take appropriate measures towards ensuring that media representations of ethnic groups are based on principles of respect, fairness and the avoidance of stereotyping, and that media avoid referring unnecessarily to race, ethnicity, religion and other group characteristics in a manner that may promote intolerance;**
- (c) Sensitize the legal personnel, including the judiciary, to international norms protecting freedom of opinion and expression and norms protecting against racist hate speech as set out in the Committee’s general recommendation no. 35 (2013) on combating racist hate speech;**
- (d) Take swift measures, in addition to prosecution, to respond to instances of racist remarks or acts, including formal rejection by high-level public officials and condemnation of hateful ideas expressed, as set out in the Committee’s general recommendation no. 35 (2013) on combating racist hate speech.**

#### **Naturalization**

13. While noting that the Swiss Citizenship Act is currently being revised, the Committee expresses concern at initiatives calling for stricter criteria for naturalization, including the popular initiative in Bern adopted in November 2013, which stipulates that recipients of welfare benefits cannot become naturalized citizens. While the Committee is aware that this initiative is currently being reviewed by the Parliamentary Assembly, it is concerned that the general political climate in the State party may lead to a more discriminatory system of naturalization (arts. 1 and 5).

**The Committee recommends that the State party ensure that any revision to the Swiss Citizenship Act does not have a disproportionate and discriminatory impact on certain groups. It also reiterates its previous recommendation to adopt uniform standards on integration for the naturalization process in conformity with the Convention, and to take all effective and adequate measures to ensure that naturalization applications are not**

**rejected on discriminatory grounds throughout the territory of the State party, including by establishing an independent and uniform appeals procedure in all cantons.**

#### **Racial profiling and excessive use of force**

14. The Committee reiterates its previous concern at the use of racial profiling by law enforcement officials and at the lack of related statistics. It is also concerned at reports of excessive use of force during police checks, harassment by the police of Roma and people of African origin, and the lack of an independent mechanism throughout the State party to receive and investigate complaints of mistreatment by the police (arts. 2 and 5).

**Recalling its general recommendation no. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee calls upon the State party to take effective measures to ensure that individuals are not targeted for identity checks, searches and other police operations on the grounds of race or ethnicity, and to take appropriate legal measures against law enforcement officials for unlawful conduct based on racially discriminatory grounds. It also recommends that the State party establish an independent mechanism to receive and investigate complaints concerning misconduct by police officials in each canton, and to ensure that human rights training for police officers is conducted in all cantons, in accordance with general recommendation no.13 (1993) on the training of law enforcement officials in the protection of human rights.**

#### **National minorities**

15. While welcoming the efforts made by the State party to guarantee the rights of national minorities, the Committee remains concerned that Traveller communities and the Yenish, Manush, Sinti and Roma continue to face obstacles in accessing education and preserving their language and lifestyle. The Committee expresses concern that they may face indirect discrimination as a result of seemingly neutral laws and policies, particularly with regard to land-use planning and police regulations on trading activity and regulations on the stationing of caravans. It also notes that these communities are frequently subjected to generalizations and stereotypes in the media, which can lead to stigmatization (art. 5).

**The Committee recommends that the State party strengthen its efforts to promote and protect the rights of national minorities, particularly with regard to access to education and preservation of their language and lifestyle. It calls upon the State party to ensure that laws and policies which may be seemingly neutral do not have any discriminatory impact on the rights of members of national minorities. The Committee also encourages the State party to raise awareness among the public about the history and characteristics of different national minorities and to take appropriate and effective measures to avoid generalizations and stereotypes in the media.**

#### **Persons granted temporary admission (“F” permit)**

16. While welcoming the humanitarian basis of the provisional admission status granted to persons who have fled conflict and generalized violence and cannot return to their home countries (“F” permit), the Committee expresses deep concern at the undue hardship faced by persons who are granted such status if they remain in the State party for a long period of time. It notes with concern that this status is not linked with a residence permit, and imposes restrictions on “F” permit holders in most areas of their life, which could give rise to de facto discrimination against such vulnerable non-citizens, including: (a) restrictions to freedom of movement, including from one canton to another within the State party as well as travel abroad;



(b) de facto lack of access to employment due, inter alia, to perceived uncertainty of the provisional admission status; (c) lengthy waiting period of three years or more for family reunification, which also require an adequate level of income and suitable place of accommodation; and (d) limited access to educational and training opportunities as well as to healthcare (art. 5).

**The Committee urges the State party to eliminate any indirect discrimination and undue obstacles for persons granted provisional admission status to enjoy their basic human rights. In this regard, the Committee reminds the State party that differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim, as set out in the Committee's general recommendation no. 30 (2004) on discrimination against non-citizens. The Committee recommends that the State party eliminate disproportionate restrictions to the rights of provisionally admitted persons, in particular those who have been in the State party for a long period of time, by enabling them to move freely within the State party and facilitating the process of family unification and access to employment, educational opportunities, and healthcare.**

#### **Non-citizens**

17. The Committee remains concerned at the situation of asylum seekers and refugees, who are accommodated in remote reception centres with limited access to employment and training opportunities, and whose rights are at continuous risk of being further eroded. It expresses particular concern at the restriction of freedom of movement of asylum seekers in some public spaces in some municipalities. The Committee is also concerned about the situation of migrants and undocumented persons, in particular women, who are more vulnerable to poverty and violence and are at risk of multiple forms of discrimination in areas such as access to housing and employment. While welcoming the revision of the Federal Act on Foreign Nationals in July 2013, which provides for the right of victims of marital violence to remain in Switzerland, the Committee expresses concern that the level of violence must reach a certain threshold of severity for the benefits of this Act to apply (arts. 2 and 5).

**The Committee calls upon the State party to take effective measures to eliminate discrimination against non-citizens, in particular migrants, undocumented persons, asylum seekers and refugees, and to ensure that any restriction to their rights is based on a legitimate aim and is proportionate to the achievement of the aim, in accordance with the Committee's general recommendation no. 30 (2004) on discrimination against non-citizens. It also urges the State party to address particular risks and vulnerability faced by women belonging to these groups, and to ensure that victims of marital violence can remain in the State party without undue procedural obstacles. In this regard, the Committee draws the attention of the State party to its general recommendation no. 25 (2000) on gender related dimensions of racial discrimination.**

#### **Education and training on combating racial discrimination**

18. While noting various measures taken by the State party to promote integration of foreigners and ethnic and religious communities in the State party, the Committee expresses concern at the absence of campaigns directed at the public to combat racial discrimination throughout the State party. It also reiterates its concern at the lack of a National Action Plan to combat racial discrimination as set out in the Durban Declaration and Programme of Action (arts. 2 and 7).

**The Committee reminds the State party that integration is a two-way process involving both majority and minority communities, and recommends that the State party adopt additional measures targeting the majority community to combat racial discrimination. In this regard, the Committee reiterates its previous recommendation that the State party adopt a National Action Plan to combat racial discrimination, and carry out information campaigns to raise awareness among the public on the manifestations and harms of racial discrimination. It also encourages the State party to ensure that school curricula, textbooks and teaching materials be informed by and address human rights themes and seek to promote mutual respect and tolerance among nations and racial and ethnic groups.**