



# International Convention on the Elimination of All Forms of Racial Discrimination

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## Committee on the Elimination of Racial Discrimination Eighty-fourth session

### Summary record of the 2283rd meeting

Held at the Palais Wilson, Geneva, on Friday, 14 February 2014, at 3 p.m.

*Chairperson:* Mr. Calí Tzay

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article 9 of the Convention (*continued*)

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*The meeting was called to order at 3 p.m.*

**Consideration of reports, comments and information submitted by States parties under article 9 of the Convention** (*continued*)

*Seventh to ninth periodic reports of Switzerland* (CERD/C/CHE/7-9; CERD/C/CHE/Q/7-9; HRI/CORE/1/Add.29/Rev.1)

1. *At the invitation of the Chairperson, the delegation of Switzerland took places at the Committee table.*
2. **Mr. Lindenmann** (Switzerland) said that, in keeping with monistic tradition, norms of international law adopted by Switzerland formed an integral part of the domestic legal order and were binding. As a federal State, Switzerland applied the principle of subsidiarity, under which the cantons exercised all rights that had not been delegated to the Confederation. Some areas, such as education and the police, were thus within the sole competence of the cantons. Although Switzerland had not enacted comprehensive legislation to combat discrimination at the federal level, the International Convention on the Elimination of All Forms of Racial Discrimination had the status of a framework law. Furthermore, all levels of government (Confederation, cantons and municipalities) were obliged to respect minimum human rights standards, and experience had shown that Switzerland did not need to harmonize its cantonal legislation or implementation mechanisms in order to meet its international obligations. Furthermore, most cantons had introduced a human rights protection system that went beyond the minimum requirements of international law. In early 2014, the Federal Office for Migration and the cantons had launched four-year integration programmes to strengthen protection against discrimination at the national level, under which all cantons were to set up counselling services for victims of racial discrimination. Under the federal bill on foreign nationals and integration amending the Foreign Nationals Act, promoting integration and combating discrimination fell within the competence of the State. In view of the very worrying number of racially motivated incidents in recent years, the Federal Government had introduced the obligation to systematically collect all data on racial discrimination.
3. The issue of the compatibility of popular initiatives with the State party's obligations under international human rights law was highly topical. By accepting the popular initiative "Against mass immigration", Swiss citizens had voted in favour of limiting the number of residence permits issued annually to foreign nationals. There was a risk that the new provisions would conflict with the agreement on the free movement of persons concluded between Switzerland and the European Union in 1999. The Swiss Government planned to hold discussions with its European partners in order to jointly establish the way forward, bearing in mind that the initiative was to be implemented within three years. The budget of the Federal Commission against Racism had been increased in 2010 to CHF 200,000. The Federal Council, the Conference of Cantonal Governments, the Association of Swiss Municipalities and the Union of Swiss Cities had engaged in a dialogue in 2012 on the issue of discrimination in the workplace, which was still a fact of life. They had defined objectives for the integration of persons admitted provisionally and recognized refugees into the labour market. In a democracy, it was essential that each individual could express his or her opinion. Thus, article 261 bis of the Criminal Code on the prohibition of racial discrimination had to be applied in a measured and circumspect manner. Under a 2011 legislative amendment, members of the Federal Assembly and the Federal Council who had committed a criminal offence were granted immunity only if the offence was directly linked to their duties or official activities.
4. In order to combat right-wing extremism in the army, the Swiss Government had adopted a punitive approach providing for investigative measures and disciplinary and criminal sanctions. It had also introduced a preventive mechanism based on identifying

potentially extremist characteristics in future members of the military, consulting the police records of all new recruits, setting up advisory services for military personnel of all ranks, the authorities, the media and citizens, and raising awareness among senior military. The approximately 30,000 travellers living in Switzerland were almost all members of the Yeniche indigenous ethnic group, and between two and three thousand of them still had a nomadic lifestyle in summer. The 50,000 Roma living in Switzerland were settled and well integrated for the most part. Since the Swiss authorities did not make any distinction by ethnic group in respect of integration, the number of Roma migrants who received integration support was not known. In any event, the Swiss Government attached great importance to the problems faced by travellers and ensured that they were able to live in a way that was in keeping with their culture. Accordingly, settled members of the Yeniche community were treated in the same way as other Swiss citizens and the Government endeavoured to break down the prejudices they had faced in the past. Nonetheless, it must be acknowledged that the situation of the Yeniche was not ideal, despite the establishment of stopping sites in several cantons. Their dependence on social welfare, which was above the national average, was attributable to the fact that children in that community did not always finish their compulsory education.

5. The popular initiative approved by Ticino voters on 22 September 2013 concerned concealment of the face in general, whether by wearing a hood during demonstrations or wearing a veil for religious reasons. The initiative did not explicitly target any religion. However, that provision of the Ticino Constitution would not enter into force until the Federal Assembly had made sure that it was compatible with the fundamental rights guaranteed under the Federal Constitution, such as freedom of conscience. The Asylum Act did not contain any provisions unduly restricting freedom of movement or access to public places for asylum seekers. House arrest or the prohibition to travel to a particular region could only be ordered on the basis of a formal decision, taken on a case-by-case basis and subject to appeal, issued if the asylum seeker was a threat to security or public order. The fundamental rights of asylum seekers were guaranteed at all times. All victims of police ill-treatment could lodge a criminal complaint; furthermore, law enforcement officers who were guilty of wrongful acts were subject to disciplinary sanctions. The new Act on the use of force and police measures in areas under the jurisdiction of the Confederation established the conditions for the proportionate use of force and police measures, including in the context of the return of asylum seekers and migrants, and provided that the use of physical force should be appropriate to the circumstances and should cause as little damage as possible to the physical integrity of the persons concerned. The provision of emergency assistance was primarily the responsibility of the cantons, which must respect the requirements of international law and the Constitution. As part of such assistance, with a view to protecting children and adolescents, families with minor children were accommodated in apartments rather than in group housing. The Constitution established compulsory schooling for all children, regardless of their residence status, which also included undocumented children.

6. **Ms. Crickley** (Country Rapporteur) noted the legislative and political progress made since the consideration of the previous periodic report, but expressed concern about the situation of victims of domestic violence and forced marriage who were not Swiss citizens. It was commendable that, under the amendment to the Foreign Nationals Act of July 2013, such victims were now entitled to remain in Switzerland even if the marriage had lasted less than three years. However, in the light of the jurisprudence of the Federal Supreme Court, that provision appeared to apply only to victims who were subjected to a severe level of violence. She would welcome additional information on that point.

7. The lack of federal legislation providing a definition of racial discrimination, including direct and indirect discrimination, in accordance with article 1 of the Convention, was a matter for concern, particularly as several treaty bodies and many States in the

context of the universal periodic review had called on Switzerland on numerous occasions to remedy that shortcoming. Although it was true that it was not sufficient to legislate against racist tendencies in a multicultural society, as noted in paragraph 253 of the report, the fact remained that, without legislation, no actions or measures could achieve tangible and lasting results to curb the phenomenon of racism and xenophobia. The State party should, as a matter of urgency, adopt such legislation and set up a national human rights institution in line with the Paris Principles without delay; a proper national plan to combat racism should also be adopted. She asked the delegation to provide additional information on the 2008 amendments to the Asylum Act and to explain what was meant by the expression “well-integrated foreigners” in paragraph 47 of the report. The delegation might also provide further details on the system of provisional admission of asylum seekers (F permit), which appeared to give rise to considerable restrictions on the right to freedom of movement, including within the country, thus preventing the persons concerned from gaining employment.

8. She expressed concern with regard to the consequences of the referendum of 9 February 2014 on the initiative against “mass” immigration, particularly for undocumented migrants and the members of their families living in Switzerland, and recommended that the State party should ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Labour Organization Domestic Workers Convention, 2011 (No. 189). The delegation could perhaps indicate the measures taken or planned to combat the practice of racial profiling, frequently used by the police against Roma, Sintis and asylum seekers, and clarify whether police officers had to undergo training on human rights standards in the course of their career. What measures did the State party plan to take to challenge stereotypes perpetuated by the media and political parties about coloured persons and Muslims or those presumed to be Muslims? The Swiss federal authorities must ensure that the delicate balance between freedom of expression and prohibition of racial discrimination was respected and should not give priority to the former to the detriment of the latter. Lastly, she asked whether the State party intended to take measures to guarantee that activities conducted abroad by Swiss corporations were not in violation of the Convention.

9. **Mr. Bossuyt**, referring to the referendum on the initiative against “mass immigration”, said that, although the right of the Swiss people to express themselves in a sovereign manner must be respected, the result was hardly encouraging given the great risk that it would lead to the introduction of a system of quotas that would be very bureaucratic and costly, ineffective and inadequate, and not sufficiently flexible and nuanced. The referendum once again showed that issues related to immigration were complex and sensitive. It might lead the European Union to reflect on the implementation of its freedom of movement policy. In any event, relations between Switzerland and the European Union would go through a period of turbulence, but it was to be hoped that through sustained dialogue it would be possible to reach reasonable and mutually acceptable solutions, with due regard for the fundamental rights of all persons concerned.

10. **Mr. Kemal** noted that the Government had made significant efforts over the past four years to modify its legal framework and clamp down on racially motivated crime, but in his view it now needed to take steps to bring about a profound change in the attitude of Swiss people towards foreigners, particularly minorities, so that they understood that hate speech was contrary to Swiss values. The courts should also take a stronger stance in punishing discrimination in the private sphere, particularly in the area of housing. In addition, the Government should make more of an effort to improve the legal status of asylum seekers and simplify the naturalization process.

11. **Mr. Avtonomov** said it was regrettable that Switzerland, which prided itself on the precision of its watchmaking, had been so late in submitting its periodic report. Noting that

less than 0.5 per cent of Swiss people spoke Romansh, he asked what the authorities planned to do to prevent that national language from disappearing. On an altogether different subject, he wished to know what measures were being taken to ensure that the rights of persons of African descent were respected.

12. **Mr. Diaconu**, noting that, according to paragraph 127 of the report, fundamental rights, including the prohibition of discrimination, could be restricted in the case of clear and present danger, recalled that the prohibition of racial discrimination was a peremptory norm of international law from which there could be no derogation, even in the case of exceptional danger. Noting that there was a lack of political will to introduce comprehensive legislation to combat discrimination at the national level, he asked the delegation to comment on whether it was not in fact the duty of the Government to remedy that problem by taking all necessary measures to move forward. He noted with surprise that the Swiss Centre of Expertise in Human Rights had stated in a 2012 report that the creation of a new legal definition and new criminal provision would not necessarily bring about an improvement and could even render the general prohibition on discrimination meaningless, and asked how the authors of that report had reached such a conclusion. In his view, article 261 bis of the Criminal Code, which made it an offence to publicly incite hatred or racial discrimination, disseminate a racist ideology, deny crimes against humanity and refuse to provide a public service, did not fully meet the requirements of article 4 of the Convention; that provision should be amended to make all acts of that kind offences punishable by law, whether they were committed in the public or private sphere.

13. The delegation could perhaps comment on the information received from non-governmental organizations according to which unsuccessful asylum seekers who had been granted provisional admission (F permit) were accommodated in reception centres far from urban areas and were prohibited from using certain roads, going into town or going out after 9 p.m. He asked whether the authorities planned to regularize the situation of the approximately 90,000 undocumented migrants living in the State party and to take measures to ensure that they could seek justice if they were the victims of racial discrimination. He enquired about initiatives to combat extreme right-wing ideologies and asked whether the State party might consider incorporating article 1 of the Convention not only into its criminal law, but also into civil and administrative law.

14. **Mr. Amir** expressed regret that the Federal Council had not sufficiently informed the public of the negative repercussions that the adoption of the initiative against “mass” immigration would have on the implementation of international agreements to which Switzerland was a party. He invited the delegation to comment in that regard and to provide information on cantonal laws prohibiting begging.

15. **Mr. Vázquez**, noting that, according to paragraph 28 of the report, under existing constitutional law, the Federal Assembly must declare invalid any popular initiative that violated the peremptory norms of international law, asked whether those “peremptory norms” should be taken to mean the norms of *jus cogens* and whether the State party considered that international norms prohibiting racial discrimination fell into that category. He also wished to know the status of the bill or draft constitutional provision under which the Parliament would be able to declare invalid any popular initiative that was contrary to the essence of fundamental rights. He asked what texts were used to check the compatibility of cantonal initiatives with fundamental human rights, particularly the initiative to ban the wearing of burkas in public places in Ticino, which was currently being examined. Was the compatibility of that initiative being considered in the light of the Federal Constitution or international law? Lastly, he would welcome additional details on the scope of the State party’s reservation to article 4 of the Convention and the reasons for which it was being maintained.

16. **Mr. Murillo Martínez** asked what were the “structural obstacles” to the integration of migrants which one of the projects mentioned in paragraph 103 of the report sought to eliminate, and requested the delegation to provide recent statistics on racist incidents during sporting events, criminal proceedings instituted for racial discrimination, the proportion of foreigners among the prison population, and cases of forced marriage identified in the country. He also invited the delegation to describe activities conducted during the International Year for People of African Descent and the initiatives planned in the context of the International Decade for People of African Descent.

17. **Mr. Lindgren Alves** noted that, according to the delegation’s oral presentation, the Yeniche people living in Switzerland were an “indigenous ethnic group”, and asked for an explanation in that regard. He asked whether Switzerland had acceded to the Council of Europe Convention on Cybercrime and the Additional Protocol thereto, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems. If so, he would welcome details on their implementation.

18. **Mr. Lahiri**, noting that on several occasions members of the Committee had had problems obtaining visas to come to Geneva, asked about the possible consequences of the approval of the initiative against “mass” immigration on the issuance of Schengen visas to citizens of third countries. He enquired about the progress of the discussions between the Office of the High Commissioner for Human Rights and the Swiss authorities on the need to facilitate the issuance of visas to the experts who came to participate in meetings at the United Nations Office at Geneva.

19. **Mr. Lindenmann** (Switzerland) said that the Swiss Government was well aware that the vote in favour of the initiative against “mass” immigration put the country in a difficult situation. It had warned the public of the risks involved well before the referendum. It was not yet possible to analyse the results, but it would certainly be wrong to conclude that more than 50 per cent of the Swiss population was xenophobic. The situation was more complex than it seemed: a part of the population was above all fearful of globalization and the changes it entailed, particularly the rapid growth and modernization of urban centres. It should be noted that, in 2013 alone, 80,000 foreigners, or the equivalent of the population of Lucerne, had come to live in the country, which created a feeling of insecurity among part of the population. The excessive length of the report and the delay in its submission were due to the fact that it had been prepared in cooperation with all relevant stakeholders, who had wanted to see their input reflected in the document. However, the delegation had duly noted the Committee’s comments and would pass them on to the relevant authorities for consideration. Lastly, a working group had met recently in Bern to discuss the issuance of Schengen visas and the needs of “international Geneva”.

*The meeting rose at 6 p.m.*