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Расизм, расовая дискриминация, ксенофобия и связанные с ними формы нетерпимости, последующие меры и осуществление Дурбанской декларации и Программы действий

Посещение Швейцарии

Доклад Рабочей группы экспертов по лицам африканского происхождения* **

Резюме

Настоящий доклад содержит выводы Рабочей группы экспертов по лицам африканского происхождения по итогам ее поездки в Швейцарию 17–26 января 2022 года. В настоящем докладе Рабочая группа представляет обзор существующих правовых, институциональных и политических рамок и мер, принятых в целях предотвращения расизма, расовой дискриминации, ксенофобии и связанной с ними нетерпимости, с которыми сталкиваются лица африканского происхождения в Швейцарии, отмечая позитивные события, а также пробелы в осуществлении. Рабочая группа описывает ситуацию, приводит примеры передовой практики и основные выявленные проблемы, а также выносит конкретные рекомендации.

* Настоящий доклад был представлен после установленного срока, с тем чтобы отразить в нем самую последнюю информацию.

** Резюме доклада распространяется на всех официальных языках. Сам доклад, который прилагается к резюме, распространяется только на том языке, на котором он представлен, и на французском языке.



Annex

Report of the Working Group of Experts on People of African Descent on its visit to Switzerland

I. Introduction

1. At the invitation of the Government, the Working Group of Experts on People of African Descent undertook a visit to Switzerland from 17 to 26 January 2022.¹ The delegation included , Dominique Day (Chair), Catherine S. Namakula (Vice-Chair) and Barbara Reynolds.²

2. During the visit, the Working Group assessed the human rights situation of people of African descent living in Switzerland, and gathered information on racism, racial discrimination, xenophobia, and related intolerance. The Working Group studied official measures and mechanisms aimed at preventing systemic racial discrimination and protecting victims of racism, as well as responses to multiple forms of discrimination.

3. The Working Group visited Bern, Geneva, Lausanne and Zurich and met with senior officials of the federal and cantonal governments, including from the Federal Department of Foreign Affairs, the Federal Department of Home Affairs, the Federal Department of Economic Affairs, Education and Research, the Federal Office of Public Health, the Federal Office for Customs and Border Security, the Federal Office of Justice, the Federal Statistical Office and the State Secretariat for Migration. It also met with representatives of the Conference of Cantonal Justice and Police Directors, parliamentarians of the Council of States, officials from the Federal Commission against Racism and the National Commission for the Prevention of Torture, and visited the Pöschwies Correctional Facility in Zurich and the Centre de la Blécherette, a cantonal police station in Lausanne.

4. The Working Group met with: local authorities in Zurich, including the public prosecutor and officials from the cantonal and municipal offices of integration; representatives of the Canton of Vaud and municipal authorities of the city of Lausanne, including police, integration, and anti-racism officials from the city and the canton; representatives of the Canton of Geneva, including a minister, representatives of the Office for the Integration of Foreigners, of the Department of Education, of the Office for the Promotion of Equality and Prevention of Violence, of the Centre-Écoute contre le racisme, of the judiciary and the office of the public prosecutor, of the General Inspection of police services, and of the Administrative Mediation Office; and representatives of the city of Geneva, including from the Executive Council and the Agenda 21–Sustainable City department, and municipal politicians of African descent. Through the Swiss Conference of Communal, Regional and Cantonal Integration Delegates, the Working Group also met with representatives of the municipal office for migration and racism issues of the city of Bern and the integration delegate of the city of Neuchâtel.

5. In each city, the Working Group met with many people of African descent, including families of victims, incarcerated people, human rights activists, lawyers, academics and representatives of non-governmental organizations. It received additional written input preceding, during and after the visit. The Working Group thanks contributors for their valuable testimonies, research and efforts to end anti-Black racism and to promote and protect the human rights of people of African descent in Switzerland.

6. The Working Group thanks the Government of Switzerland for accepting its request to visit and for its cooperation during the visit, and the federal, cantonal and municipal authorities in Bern, Geneva, Lausanne and Zurich for their cooperation. The Working Group

¹ The country visit took place during a surge in the COVID-19 pandemic. The Working Group appreciates safety protocols, vaccination requirements, and accommodations of the Government of Switzerland and civil society to ensure a comprehensive fact-finding could occur. All requested visits and meetings took place.

² Ms. Reynolds was unable to travel to Switzerland but participated virtually.

also thanks the representatives of the Federal Department of Foreign Affairs for organizing the visit and for their support during the visit. It expresses its appreciation to civil society organizations, including Carrefour de Réflexion et d'Action contre le Racisme Anti-Noir, the Université Populaire Africaine en Suisse, the Pan African Women's Association and the International Service for Human Rights, for their assistance in organizing virtual and physical meetings with people of African descent throughout the country.

II. Background

7. Switzerland is a federal republic, with three levels of government: the Confederation, the cantons and the municipalities.

8. People of African descent in Switzerland include those born as Swiss citizens; foreign migrants, asylum-seekers and refugees residing in the country; naturalized persons; and expatriates working for multinational corporations, diplomatic missions or United Nations entities. About 38 per cent of the people living in Switzerland have a migration background. Estimates suggest people of African descent may comprise 3 to 4 per cent of people living in Switzerland, although the lack of data disaggregated by race means that many migrants and Swiss people of African descent are less visible in available data.³

9. Although Switzerland was never a colonial power, it has a colonial past, having invested in, and profited from, its political, financial and commercial support for colonial powers. Switzerland also played a significant role in several aspects of the transatlantic triangular trade and trafficking in enslaved Africans, between the sixteenth and nineteenth centuries. Swiss government entities, including the cities of Bern and Zurich, and Swiss individuals directly purchased shares in the companies and individual expeditions involved in the trade and trafficking in enslaved Africans, including the South Sea Company, as reliable, interest-bearing investments.⁴ Swiss banks reportedly owned as much as a third of the Compagnie des Indes, a French company with a monopoly over the West African trade in enslaved Africans. Swiss trading houses financed and did business with slave traders. Highly popular human zoos, and their associated cultural devices, including the dissemination of colonial iconography, were set up in Switzerland in the nineteenth and twentieth centuries.⁵ Swiss merchants, bankers, insurers and military invested in colonial societies, engaged in the transatlantic trade and participated in expeditions and repression of revolts.

10. The Swiss also imported industrial quantities of cotton, coffee and cocoa, available at rates reflecting extractive colonial and slave labour conditions. Artificially favourable market conditions enabled developments wherein raw materials became luxury goods, through processes honed to a quality that continues to define the markets for chocolate, coffee and more. Switzerland built considerable wealth, opportunity and technological dominance while catalysing a transnational industrial revolution entirely reliant on extraction, exploitation and systematic violence, deceit and legalized racism. In a contrived global market where enslaved labour and ongoing monopolistic control of colonized natural resources was a policy priority, Switzerland, with its wealth and stability, leveraged favourable conditions to exploit escalating profit opportunities. Yet those conditions promoted instability in regions producing essential goods that persist today, and widened the gap between Europe and the global South. The asymmetric extraction of raw materials from colonized spaces, the adoption of monoculture and demand-driven policies, and the denial or suppression of technologies of production, refinement, marketing and sales in the global South were

³ Carrefour de Réflexion et d'Action contre le Racisme Anti-Noir, "Report on anti-Black racism in Switzerland" (1 December 2021).

⁴ Marcel Brengard, Frank Schubert and Lukas Zürcher, *Die Beteiligung der Stadt Zürich sowie der Zürcherinnen und Zürcher an Sklaverei und Sklavenhandel vom 17. bis ins 19. Jahrhundert* (Zurich, University of Zurich, 2020), pp. 17–18.

⁵ Mohamed Mahmoud Mohamedou and Davide Rodogno, *Temps, espaces et histoires – Monuments et héritage raciste et colonial dans l'espace public genevois: état des lieux historiques* (Geneva, Geneva Graduate Institute, 2022), p. 58.

normalized.⁶ Even after decolonization, unbalanced and extractive development cooperation aligned African development with Swiss priorities, nominally as development aid.⁷

11. Recognition of the wealth, power and profit associated with Swiss participation in the trade and trafficking of enslaved Africans – and of the cooperation of Swiss public institutions (including courts) and Swiss neutrality to gloss over ties to enslavement and exploitation of people of African descent⁸ – has grown. National and private archives reveal that, in every region of Switzerland, families accumulated fortune through the triangular trade⁹ and the sale of Black bodies. This includes the Escher family.¹⁰ Alfred Escher, considered the founder of modern Switzerland, had complex ties to racial slavery spanning three generations, including direct inheritance of over 1 million francs from a slavery profiteer uncle; direct involvement in the sale, profit and cover-up of the family's three-decade-long ownership of a plantation in Cuba;¹¹ financial investments in the trade and trafficking of enslaved Africans; profits directly tied to the use of enslaved labour to produce cotton, sugar, tobacco and coffee; and direct involvement in developing a modern credit economy, including maturing instruments such as financial leverage, insurance and credit market speculation, linked to the trade and trafficking in enslaved Africans.¹² Just as importantly, Alfred Escher was actively a creator of the culture of denial that continues to enable systemic racism today: despite affirmative engagement in the slavery economy and significant profits, he sought to hide his inheritance of the Cuba plantation, and its sale, seeking to conduct the transaction secretly.¹³ Alfred Escher also instrumentalized State institutions in developing a culture of denial; he used the courts to silence or penalize those who would draw attention to his connections to slavery, by suing for abuse, slander and insult at even the accusation of involvement in or profit from the trade and trafficking in enslaved Africans.¹⁴ Alfred Escher is a subject of an active discourse in Switzerland, including a call to visibilize these truths in the cityscape of Zurich.

12. Citizen concern about monuments and public recognition of persons involved in racial atrocities brought about some reform. In 2019, the city of Neuchâtel renamed a plaza to honour Tilo Frey, the first person of African descent elected to the National Council of Switzerland. The plaza had been named for Louis Agassiz, an eminent nineteenth-century scientist who leveraged his reputation in the area of glaciation into an advocacy platform for “scientific” racism,¹⁵ claiming people of African descent were different species (polygenism), conducting failed attempts to prove white supremacy (including by photographing enslaved people naked¹⁶) in Brazil and the United States of America, and maintaining support for the trade and trafficking in enslaved Africans, opposition to racial

⁶ Hans Fässler, *Une Suisse esclavagiste. Voyage dans un pays au-dessus de tout soupçon* (Editions Duboiris, 2007).

⁷ Marc Perrenoud, “Switzerland’s relationship with Africa during decolonisation and the beginnings of development cooperation”, *International Development Policy | Revue internationale de politique de développement*, No. 1 (2010).

⁸ The Working Group commends public and private fact-finding efforts in Switzerland, including rigorous examination of links between Swiss identity and colonialism and calls to revise the approach to colonial history. See, e.g., Nadine Ritzer, “Die koloniale Schweiz? Die postkoloniale Schweiz!”, *Didactica Historica* (2020), p. 3 (citing cooperation of Swiss public institutions in the trade and trafficking in enslaved Africans and a 2018 academic call for a revised approach to colonial history). See also Brengard, Schubert and Zürcher, *Die Beteiligung der Stadt Zürich*, pp. 12–13 and 38–39; Mohamedou and Rodogno, *Temps, espaces et histoires*, pp. 48–54.

⁹ See the database of Swiss people who were involved in the trade and trafficking in enslaved Africans, available at <https://www.cooperaxion.org/sklavenhandel/> (in German).

¹⁰ Brengard, Schubert and Zürcher, *Die Beteiligung der Stadt Zürich*, pp. 32–41.

¹¹ Buen Retiro, a coffee plantation reportedly belonging to Alfred Escher’s uncles, also exploited 87 enslaved Africans. See <https://www.tagesanzeiger.ch/alfred-eschers-erbe-gruendet-auf-sklavenarbeit-895926834157> (in German).

¹² Brengard, Schubert and Zürcher, *Die Beteiligung der Stadt Zürich*, p. 41.

¹³ *Ibid.*, pp. 38–39.

¹⁴ *Ibid.*

¹⁵ Presidential Committee on Harvard & the Legacy of Slavery, *Harvard & the Legacy of Slavery*, (2022), pp. 35–38.

¹⁶ Nate Raymond (Reuters), “Harvard must face lawsuit over ‘horrific’ slave photos – Massachusetts court”, 24 June 2022.

intermingling and denialism of Darwinian evolution. In a recent response to petitions to remove the statue of David de Pury, a banker whose fortune relied on the exploitation of enslaved Africans, Neuchâtel convened a working group, adopted a road map and, in the interim, marked the location with historical information acknowledging enslavement and current victims of racism.

13. Important longer-term initiatives in this area include a discourse-based trajectory to situate the contributions, philanthropy and wealth of Swiss founders within a context that acknowledges the subtext of the exploitation of people of African descent in the philanthropy and principles of public institution-building in Switzerland. Responding to public and political demand, the city of Geneva is reflecting upon its tributes to people involved in racism, colonialism or racial atrocities, including through a powerful study and report, published in March 2022, in which the authors note that the past is not synonymous with heritage, contemplate the nexus of race, public space and history as a permanent basis for reflection and action, acknowledge that, in the case of Switzerland overall, and Geneva specifically, there is a tendency to speak of racism without referring to racists,¹⁷ and define a range of potential action. In Neuchâtel and Zurich, the revision of public narratives has included plaques with historical context being added to public buildings. Other initiatives include tenders for monuments and public works of art; the creation of an educational itinerary of the historical past and modern links; a permanent exhibition on Neuchâtel citizens' involvement in the triangular trade; and a website to situate those truths within the official municipal history. In Zurich, an important study in 2020, conducted by the University of Zurich, may inform further efforts.¹⁸

14. The Working Group welcomes the emerging public discourse involving the State and civil society on the presence of racist and/or colonial monuments, statues, streets, cafes, squares and symbols, and the will to truthfully portray those valorized in the history of Switzerland. However, valuable municipal initiatives and important studies conducted in Geneva and Zurich are not necessarily mirrored by greater understanding. For example, despite the renaming in Neuchâtel, Louis Agassiz remains valorized in public nomenclature. For instance, after at least two inter-cantonal public reviews, the name of the Agassizhorn peak in the Alps remains unchanged.¹⁹ In this regard, the Working Group welcomes initiatives to teach the history of people of African descent in Switzerland through important sites of memory.²⁰ Including people of African descent at all stages of addressing and remembering legacy is essential.

III. Legal framework and steps taken for the protection of the human rights of people of African descent

A. Legal framework

15. Switzerland has ratified all major international human rights treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination. Switzerland has a monist tradition; international treaties ratified by the Federal Council are part of the Swiss legal order without any need to additionally transpose them into domestic law.

16. Switzerland maintains a strong federalist structure. A complex distribution of competencies between the Confederation and cantons governs Swiss life. Under article 3 of its Constitution, Swiss cantons may exercise all rights not delegated to the Confederation, that is, powers are delegated from below (the cantons) to above (the Confederation). This principle of subsidiarity is aimed at aligning public action with the citizenry. In this context,

¹⁷ Mohamedou and Rodogno, *Temps, espaces et histoires*, pp. 9 and 13.

¹⁸ Brengard, Schubert and Zürcher, *Die Beteiligung der Stadt Zürich*.

¹⁹ See, e.g., "Mountain linked to racist scientist Agassiz to keep its name", SWI swissinfo.ch, 9 July 2020.

²⁰ One site of memory in Valais, the oldest abbey in Europe, is dedicated to St. Maurice, a Black saint who prevented a genocide and was martyred with 6,500 Black men.

federalism allows cantons of differing sizes, populations, cultures and economies to find appropriate solutions to combat racism at all levels of State action.

17. Racial discrimination is prohibited under article 8 of the Constitution. Under article 261bis of the Criminal Code, it is a crime to publicly incite hatred or discrimination on the basis of, among other things, race.

18. Nevertheless, as the Committee on the Elimination of Racial Discrimination has stated, the country's existing legal framework is not adequate to combat racial discrimination.²¹ There is an absence of legislation that would clearly prohibit direct and indirect racial discrimination in public and private life and a lack of effective and accessible remedies for victims under, inter alia, the civil and administrative legal regimes and in the areas of education, employment and housing. The Committee has called on Switzerland to adopt a federal law setting out a definition of direct and indirect racial discrimination that is fully in accordance with article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination.²² In addition, although courts in Switzerland may choose to recognize racist motives under article 47 of the Criminal Code, the Committee reiterated its concern at absence of a specific classification for racist motives as an aggravating circumstance in Swiss law.

B. Institutional and policy measures

19. The general policy on combating racial discrimination in Switzerland provides protection largely within the framework of cantonal integration programmes. In addition, the Service for Combating Racism is a federal body tasked with preventing racism. It develops and coordinates relevant activities at federal, cantonal and municipal levels, including awareness-raising, prevention measures, legal protection, reporting, and financial support for projects aimed at combating racism, largely within the annual week against racism. The Federal Commission against Racism is an extra-parliamentary commission established following Switzerland's accession to the International Convention on the Elimination of All Forms of Racial Discrimination in 1994.

20. The Working Group appreciated the open discussion by public officials on racial discrimination and the Government's acknowledgement of the Durban Declaration and Programme of Action as a foundation for the fight against racism. It welcomes the launch, at the canton level, of the International Decade for People of African Descent in Zurich in 2020.

21. The Working Group welcomes the October 2021 amendment to the federal act on measures pertaining to civilian peacebuilding and the strengthening of human rights, allowing for the establishment of a national human rights institution. Nevertheless, full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris principles) requires a mandate to adjudicate complaints, absent from the national human rights institution as contemplated, and adequate resources for its work.

22. The planned working group to assess the implementation of the 2021 recommendations of the Committee on the Elimination of Racial Discrimination could address pressing concerns of people of African descent.

23. The State supports relevant civil society initiatives combating racism, racial discrimination, xenophobia and related intolerance, including the annual week against racism in several cantons and cities. Laudable programmes give rise to new possibilities, including those of the Solidarité Afrique Farafina association in Vaud.

24. Since 2016, the canton and city of Geneva have recognized anti-Black racism as a particular form of human rights violation.²³ The Working Group welcomes this example and

²¹ CERD/C/CHE/CO/10-12, para. 13.

²² Ibid., paras. 5–6.

²³ In 2016, the Office for the Integration of Foreigners shifted the implementation of its racism prevention efforts to specifically target anti-Black racism (which was the most prevalent) in tenders.

good practices that could be replicated in other cities and cantons. The Geneva Municipal Council approved a budget line for the prevention of and the fight against anti-Black racism, supplementary budget lines for the Université Populaire Africaine en Suisse and the Festival Couleur Café, and other initiatives.²⁴ A recent study,²⁵ commissioned by the city of Geneva, offers a nuanced, comprehensive interrogation of the country's heritage of racism, colonialism and enslavement as reflected in public spaces today, a model that should be replicated throughout Switzerland. The cantonal human rights commission is examining legislation addressing anti-Black racism and links to colonialism and the trade in enslaved Africans. The Centre-Écoute contre le racisme offers a space for dialogue, support and advice. Perhaps most significant, consultations convened in 2020 by the Canton of Geneva and with the participation of the city of Geneva, comprised exclusively of people of African descent from across the diaspora, amid public demand for change and the Black Lives Matter protests in 2020, led to the formulation of 12 measures to inform anti-racism activities by the Canton and the City.

25. The Federal Commission against Racism and the cantonal integration programmes, overseen by the State Secretariat for Migration and the Conference of Cantonal Governments, improve access to justice for people of African descent. Addressing discrimination in the promotion of integration on a nationwide basis, including through a separate funding instrument, has facilitated regional and national counselling services and contact points for racism throughout Switzerland.

26. A motion on racial profiling was submitted in the national parliament on 15 December 2021, seeking independent federal ombudsperson centres for law enforcement. It seeks independent conciliation bodies to be established in the Border Guard Corps, the Federal Police and the Transport Police, a complaint mechanism for cases of racial and ethnic profiling, and consideration of a receipt system to retrospectively identify officers involved in misconduct.²⁶

IV. Manifestations of racial discrimination

27. In Switzerland, public awareness of systemic racism and racial discrimination is growing. Reporting mechanisms, civil society advocacy and individual stories are creating awareness. Nearly 60 per cent of the Swiss population indicated that they believed racism was a serious social problem.²⁷ About 30 per cent of the population indicated that the State should take action against racism. The violence adjacent to racism is well-understood by the public. About 80 per cent of the Swiss would sign petitions, report racist speech or share anti-racist information on social media, but only 8 per cent would intervene in concrete situations, such as racially profiling by police, racism on public transport, or racist jokes at work.²⁸

28. The Working Group heard many reports of pervasive forms of systemic racism, interwoven throughout Swiss life across cantons, and tolerated by mainstream Swiss society. People of African descent experience racism in school, work, travel and their communities. Everyday life involves navigating everyday racism, including in cantons with robust anti-racism initiatives and from highly educated medical and education personnel. Asylum-seekers and refugees of African descent reported intersectional racism and xenophobia, including a lack of translation facilities, persistent, shifting barriers to opportunity, and harsh,

Since 2017, the city of Geneva has partnered with the Afro-Swiss Collective to conduct interventions on anti-Black racism.

²⁴ See <https://conseil-municipal.geneve.ch/conseil-municipal/objets-interventions/detail-objet/objet-cm/1446-177e> and <https://www.geneve.ch/fr/themes/developpement-durable/municipalite/engagements-societe/egalite-diversite/diversite/appel-projets> (in French).

²⁵ Mohamedou and Rodogno, *Temps, espaces et histoires*.

²⁶ See motion 21.4462. Although ombudspersons exist in five cantons and five cities, and there is an independent complaints office in the Canton of Geneva, there is no federal equivalent.

²⁷ Switzerland, Federal Statistics Office, "Attitudes towards diversity and commitment to anti-racism—Survey on diversity and coexistence in Switzerland: results of the 2021 diversity module" (Neuchâtel, 2022), p. 5.

²⁸ Ibid., pp. 5–7.

racialized treatment by police and prison personnel, sometimes with impunity. People of African descent reported racialized misconduct in public administration, including in driver's licence enforcement and regularization of residency. Residency officials encouraged people of African descent to join Swiss churches, and to eschew traditional religious practices, to promote regularization of residency status, violating human rights and freedom of religion.

29. Credibility in Switzerland was reportedly highly racialized. Applicants lacking a white "sponsor" faced barriers in civic leadership, for example, to register a football club or a church. Credible complaints of racism required a white witness or a non-white aggressor. Persistent racial harassment by neighbours, colleagues or supervisors was dismissed by public officials. One man in Ticino faced a racial harassment campaign when he refused to leave the community with his infant child after his wife died. Yet repeated racist spamming through the post, car keying and animal carcasses left at his home were dismissed by police.

30. The network of counselling centres for victims of racism, a one-stop location for advice and support,²⁹ recorded 630 complaints of racial discrimination in 2021, a figure that it considered underrepresentative yet enlightening.³⁰ Complaints of racial discrimination occurred most often in the workplace or in school, other education or childcare environments, most often involving unequal treatment or insults. Anti-Black racism (207 cases) was only surpassed by xenophobia (218 cases). Anti-Black racism was reported in kindergarten or other education environments (40 cases), in the workplace (37 cases), in public spaces and in neighbourhoods (26 cases each), and in policing (23 cases). Intersectional discrimination comprised one third of complaints, most often involving race and residency status, gender and social status.

A. Deprioritization of anti-racism treaty and policy commitments

31. Although Switzerland has a robust human rights framework, and is a signatory to relevant human rights instruments, several officials cited the country's federalist system as a barrier to addressing systemic racism that people of African descent experience in everyday life, particularly in policing, education and areas of cantonal responsibility. In this regard, and despite international treaty obligations, federalism may be inappropriately instrumentalized to accept inaction and to excuse the wide gap between anti-racist policy and implementation. Decentralization was cited as a constraint limiting State action against certain violations of human rights at the federal level, including against a culture of denial at the cantonal level. Notably, in Switzerland, federalism has not prevented a centralized police training system nor a centralized approach to migration decision-making. Nor would it bar deterrence, incentive-driven or voluntary anti-racism initiatives.

32. The distance between the everyday operations in the local administration of justice in Switzerland and its seat as the home of the United Nations human rights apparatus was evident. In the housing markets, despite awareness of racial discrimination and unequal access to housing, the State is not conducting specific efforts to address known housing discrimination by private actors (property lessors). In the prison system, at two facilities visited, detention personnel resisted the Working Group's request to meet confidentially with people who were incarcerated, and, at one facility, the request for an in person visit with one person was subject to intense negotiations and objections.³¹ The negotiations included statements intended to deter the Working Group from fulfilling its mandate and the expectation of impunity in the administration of detention facilities, raising concerns.

33. During the Working Group's visit, ground-breaking guidance, prepared by the Switzerland-based United Nations High Commissioner for Human Rights, issued over six months prior to the visit and widely covered by the media, was unknown to police leadership, including the Conference of Cantonal Police Commanders. The guidance was contained in the report of the High Commissioner on the promotion and protection of the human rights

²⁹ See <https://network-racism.ch/fr/accueil.html> (in French).

³⁰ See https://network-racism.ch/cms/upload/220502_humanrights_Rassismusbericht_2021_fr_online.pdf (in French).

³¹ By monitoring COVID-19 levels, Swiss authorities facilitated the Working Group's visits to requested facilities.

and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers.³² Similarly, the December 2021 concluding observations of the Committee on the Elimination of Racial Discrimination on Switzerland were unknown to police who met with the Working Group, although the Government referenced a relevant working group planned for 2022.

34. Given their primary responsibility for human rights, claims by Swiss authorities that they lack the ability to address systemic racism suggests a shallow commitment to anti-racism. That is, it is a struggle for acts of systemic racism and individual complaints that do not fall squarely within the parameters of article 261bis of the Criminal Code, or certain other exceptions,³³ to be recognized in law, policy or practice. Some federal officials claimed that only outside authorities, such as the European Court of Human Rights, could de facto compel attention to racial profiling and other forms of systemic racism. The case of *Wa Baile v. Switzerland*, currently before the European Court of Human Rights, is relevant, but Switzerland need not make fulfilling its anti-racism commitments contingent on the issuance of a judgment. The suggestion of powerlessness by several State officials in the face of systemic racism in policing, education and elsewhere raises concern that there is a lack of political will to fight racism as it actually exists in the lives of people of African descent in Switzerland.

B. Racial stereotypes, racist political campaigns and “racial humour”

35. In Switzerland, anti-Black racism is still downplayed or attributed to the susceptibilities of its victims. Even Swiss-born/naturalized people of African descent are presumed to be “other”.³⁴ A survey carried out in 2020 indicated that 6 to 11 per cent of the Swiss population reflected hostile attitudes towards Muslim, Black, and Jewish people.³⁵ In addition, negative stereotypes persist, portraying people of African descent as criminals, lesser or non-humans, social parasites, unwelcome asylum-seekers and more.³⁶ These images are reinforced by political campaigns, social conditioning in schools and in the media, racial profiling, and abuse of authority, including by police and State institutions.³⁷

36. Legacies of racial hierarchy, supported by “humour”, creates an enabling environment for racial harassment and violence. The use of humour to whitewash the everyday violence of racialized misconduct is systemic.³⁸ People of African descent reported public strip-searches by police invoking racist tropes to ridicule people of African descent’s genitalia, blackface traditions, and racial slurs as names of sweets. Racial humour perpetuates negative racial stereotypes and feeds a culture of denial where racism is tacitly acceptable. In each case cited above, the use of humour, banter or gameplay licensed scepticism, surveillance, and control of Black bodies, diffusing anti-racism norms, and implicitly reinforcing racial hierarchy.

³² A/HRC/47/53. See also the conference room paper, available at https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/A_HRC_47_CRP_1.pdf.

³³ See European Court of Human Rights, *Lingurar v. Romania*, Application No. 48474/14, Judgment of 16 April 2019, p. 80, in which the Court stated: “Where there is evidence of patterns of violence and intolerance against an ethnic minority, the positive obligations incumbent on member States require a higher standard of response to alleged bias-motivated incidents.”

³⁴ About 21 per cent of people living in Switzerland believed they were not perceived as “Swiss”, including 12 per cent with Swiss nationality. Yet, 91 per cent of Swiss residents, irrespective of nationality, identified with Swiss culture. Switzerland, Federal Statistics Office, “Attitudes towards diversity”, p. 2. See also Denise Efionayi-Mäder and Didier Ruedin, “État des lieux du racisme anti-Noir-e en Suisse: Étude exploratoire à l’attention du Service de lutte contre le racisme (SLR)”, *SFM Studies*, No. 67f (2017), sects. 4.5 and 6.3.

³⁵ Switzerland, Federal Statistics Office, “Attitudes towards diversity”.

³⁶ Efionayi-Mäder and Ruedin, “État des lieux du racisme anti-Noir-e en Suisse”, sects. 4.1–4.5.

³⁷ *Ibid.*, sects. 4.2–4.3 and 5.1.

³⁸ See, e.g., Efionayi-Mäder and Ruedin, “État des lieux du racisme anti-Noir-e en Suisse”, sect. 4.4.

37. Racial humour and gameplay also undermine recognition of racial discrimination “in effect”. Interpreting gameplay (or children) as inherently racially innocent³⁹ drives denial of the ordinary, ubiquitous use of terminology. For example, citing its origin in the Middle Ages and the plague, the Government of Switzerland denied the racialized context surrounding the game entitled “Who is afraid of the Black man?”, a form of tag where children “flee the Black man” to avoid “catching Blackness”. Student and parent concerns were dismissed by officials.⁴⁰ Yet, even if true, the plague-based origin story of the game is unknown, long-lost and irrelevant to gameplay today. This origin story cannot neutralize the present-day implications of the plain language, “Black man”, or the obvious inferences at the fingertips of children and adults. Even if “Black man” was not racialized in the Middle Ages in Europe, the intervening event of the trade and trafficking in enslaved Africans irrevocably reshaped language, mindset and interpretations globally. Today, “Black man” is a racialized concept, even among young children.⁴¹ Eradicating the game’s racialized context, born of systemic racism’s persistent reinforcement of racial hierarchy, is not achieved by a history lesson on the plague. Instead, defending a game grounded in fearing contamination by Blackness, and avoiding Blackness to win, involves an unreasonable expectation that children can suspend awareness of the plain language of everyday racism, in favour of archaic framings of ordinary language. Words have power, often beyond their original intent, and remain rooted in the context of today. The game’s actual effect, to reinforce racial hierarchy, particularly where introduced by teachers and authorities, is a racially discriminatory effect within the definition set out in the International Convention on the Elimination of All Forms of Racial Discrimination.

38. People of African descent are underrepresented in many sectors of Swiss society, even in mechanisms established to address racism where they could offer leadership informed by their lived experience. This may grossly affect the competence, expertise and creativity of these mechanisms and the effectiveness of how they deal with racism,⁴² even feeding a culture of denial of, for example, the social conditioning that teaches children racial hierarchy from young ages. People achieving high status in Swiss society still experience racism. Also, as one adolescent noted: “To grow up as a child and not see yourself in [significant] positions has an impact”.

39. Racialized hate speech in political rhetoric is a particularly toxic form of racism, and is sometimes tolerated as protected political speech or partisan activity, rather than racism requiring remedial action. Openly xenophobic language and degrading, racist imagery has characterized certain political campaigns. The “Black sheep” campaign (“*Schäfchenplakat*”) in 2007, offers a powerful example of mobilizing negative racial stereotypes. Notably, this imagery was replicated in other European campaigns, that is, the renegotiation of political speech to normalize racism crosses national borders.

C. Law enforcement, racial profiling and impunity

40. The Working Group is deeply concerned about the treatment of people of African descent by law enforcement and the justice system in Switzerland. Despite overrepresentation as the objects of enforcement activity, there is a clear lack of representation of persons of African descent in policing and the judiciary and among prison staff, which sustains a cultural competence gap in the system. Racial profiling and impunity for racialized misconduct remains a significant challenge.

³⁹ See, e.g., Sophie Goodchild and Dana Gloger, “When four-year-olds were asked to pick a troublemaker from a set of pictures, guess who they chose?”, *Independent*, 2 January 2005.

⁴⁰ See, e.g., <https://www.20min.ch/story/streit-um-kinderspiel-793393691795> (in German) (Federal Commission against Racism president dismissed parent concerns); and Meritxell Mir, “Parents slam school over ‘racist’ game”, *The Local*, 17 October 2011 (Valais education chief labels game harmless, disparages political correctness).

⁴¹ Jessica Sullivan, Leigh Wilton and Evan P. Apfelbaum, “Adults delay conversations about race because they underestimate children’s processing of race”, *Journal of Experimental Psychology: General*, August 2020.

⁴² See, e.g., Efionayi-Mäder and Ruedin, “État des lieux du racisme anti-Noir-e en Suisse”.

41. During its visit, the Working Group heard testimonies of lesser liberty experienced by people of African descent.⁴³ Boys and men of African descent not facing criminal charges or individualized suspicion consistently reported experiences of police reinforcing negative racial stereotypes in the public realm. Rampant racial profiling, police controls, invasive searches in the street, public strip-searches, cavity searches, racist slurs and “humour”, violence and the expectation of impunity was described as routine. For many, complex negotiations to minimize ubiquitous racialized harassment and police misconduct are a part of life. Roger “Nzoy” Wilhelm, shot and killed by police on a train platform in Morges, Canton of Vaud, in 2021, adopted routine strategies to minimize police harassment, as he was frequently subjected to stops and searches. These included never meeting anyone at the Zurich train station, a frequent place for racialized police stops. He carried his Swiss passport at all times and extra backpacks so he would appear to be a tourist. In his own country, he constantly navigated racialized truths, including the conditional nature of his liberty as a young, Black man – a conditionality evident when he was killed at a distance by police who claimed self-defence, until a video belying this claim emerged. Police misconduct reported throughout Switzerland indicates that liberty looks different for people of African descent.

42. The Working Group spoke with the family of Mr. Wilhelm. The Government indicates that the criminal investigation is still under way; the investigation is being carried out by the Public Prosecutor’s Office in Vaud with investigators from the detachment of special police investigations, a special unit for criminal investigations relating to police activity. The police officers remain in active service. The Working Group has also followed closely the cases of Mike Ben Peter, asphyxiated by police in Lausanne; Lamin Fatty, found dead in a police cell at the Centre de la Blécherette; Hervé Mandundu, killed by police in Bex; Mohammed Wa Baile, seeking justice for unlawful racial profiling in Zurich; and Omar Mussa Ali, shot several times by the police in Zurich. Each of these cases represents the violence of racial profiling, and families’ quests for justice in a system that is sluggish and unwelcoming. Notably, these examples have not prompted an investigation of systemic racism in law enforcement by either cantonal or confederation authorities.

43. The Working Group has serious concerns about excessive use of force and the expectation of impunity by the police. In Vaud, several men of African descent have been killed by the police in the past five years. There, despite persistent allegations of police brutality, misconduct and abuse of authority, police questioned the validity of claims of racial profiling and police misconduct and suggested that citizens should record police encounters, although citizen recordings of police encounters have also triggered arrests and prosecutions. In other cantons, police denied that racial profiling was pervasive or systemic and in multiple cantons introduced proxy variables for race, including “hip hop culture”. In policing contexts, violence against people of African descent has sometimes been attributed to individual misconduct, although training has mitigated neither citizen concerns nor abuse of authority. The Working Group was informed that there were no official statistics on deaths in police custody. Yet, the State must fulfil its obligation to prevent racial discrimination in intent or effect under the International Convention on the Elimination of All Forms of Racial Discrimination.

44. In addition, obstacles to access to justice persist. Victims’ families reported pervasive disregard, including refusal to conduct rigorous investigations, premature conclusions of self-defence or suicide in advance of an investigation, and requiring families to navigate significant barriers to compel investigations to pursue justice. Families report the need to retain expensive counsel and experts to have evidence considered or to develop a case for the court,⁴⁴ and navigate significant barriers to prove their right of claim. Testimonies and

⁴³ Although Switzerland heralds its diversity, many people of African descent do not experience inclusiveness or belonging. Consistent with this, the Federal Office of Statistics notes Swiss recognition that racial and ethnic diversity may inspire discomfort. In addition, 38 per cent of people who believe they cause discomfort in Switzerland report that they do not look “Swiss”. A total of 21 per cent of this same group reported experiencing discrimination. See Switzerland, Federal Statistics Office, “Attitudes towards diversity”, p. 5.

⁴⁴ Reports indicate that Mr. Wa Baile spent nearly SwF 100,000 in the racial profiling case pending before the European Court of Human Rights. Julia Crawford, “Why Switzerland should be doing more to fight racism”, SWI swissinfo.ch, 27 December 2021.

procedural histories in these cases raised concerns regarding independence and the chilling effect on the victims' rights to due process. Financially prohibitive citizen litigation is not viable as a primary means of defending human rights against racism.

45. People of African descent frequently reported reprisals, counter-charges and a lack of redress for police misconduct. Members of civil society claim that State institutions, including the courts, are complicit in excusing police abuse of authority, refusing to acknowledge systemic racism in law enforcement, and legitimizing police misconduct.⁴⁵ The Working Group also heard direct reports of arrests and prosecutions for filming police misconduct. One man of African descent reported court fines of SwF 4,000 after filming police strip-search people of African descent in Basel and publicly display them naked, on the basis of the claim of interference with police.⁴⁶ Notably, the Government could not identify any convictions, and acknowledged that there were, at most, very few prosecutions, internal investigations or disciplinary proceedings of police officers involved racialized violence or misconduct against people of African descent.

46. Few cantons have adopted the use of body-worn cameras. They are currently or imminently in use in only three police corps. Pilot projects for body-worn cameras were carried out in Zurich (2015) and Vaud (2019). The city of Zurich will introduce body-worn cameras in 2022. A 2020 evaluation in Vaud and Lausanne recommended the adoption of such cameras, as helpful to professional development, training, forensic activity and collaboration.⁴⁷ Yet, despite engaging in preparatory activities, Vaud has not publicized any timeline of adoption. Local restrictions may also limit cameras' utility. For example, cantonal police in Bern carry cameras, but may record only certain crimes. To promote accountability, body-worn cameras must be active for all police-civilian encounters, including but not limited to street stops that do not result in arrest.

Prisons

47. The Working Group met with people of African descent incarcerated at Justizvollzugsanstalt Pöschwies, a correctional facility in Zurich, and at the Centre de la Blécherette in Vaud. At the Pöschwies facility, multiple people in detention reported verbal harassment, violence and frequent acts of provocation by prison and security personnel, including the use of racial slurs and negative racial stereotypes with impunity. Centre de la Blécherette has been the subject of complaints of brutality and abuse of authority, and serious concerns have been raised at the length and condition of detention in police cells there.

48. There was also concern about the influence that prison personnel had on the determination and extension of measures, and about the nature of judicial oversight. Repeated or long-term use of solitary confinement for punishment and/or administrative segregation presents concerns of inhumane conditions of confinement. Under article 64 of the Criminal Code, certain people may remain incarcerated indefinitely for serious crimes, where "personality traits", "general personal circumstances" and circumstances of the offence suggest a likelihood of recidivism, raising, inter alia, a serious concern that racial stereotypes or bias could influence the broadly licensed exercise of discretion in such matters.

Emblematic case of racial injustice

49. The Working Group has closely followed the case of Brian K., a "twice exceptional" child apparently penalized for his special needs. The deprivation of his rights under the Convention on the Rights of the Child, and other treaties, was adequately comprehensive to

⁴⁵ Alliance against Racial Profiling, "Alternative report on racial profiling practices of the Swiss police and border guard authorities", submitted in the context of the review of the State's fourth periodic report for the Human Rights Committee. Available at https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/CHE/INT_CCPR_CSS_CHE_27501_E.pdf.

⁴⁶ According to the Government, these prosecutions involve charges of "obstruction of an official act", "violence and threats against officers" or "failure to comply with a police order".

⁴⁷ See https://www.vd.ch/fileadmin/user_upload/organisation/dse/polcant/fichiers_pdf/2020/Polcant/Rapport_d_%C3%A9valuation_bodycams_.pdf (in French).

have engendered a stolen childhood and a superimposed adult identity. The Working Group met with Brian K. in person at the Pöschwies correctional facility. Racial discrimination and injustice are evident at every stage, including in the forms of denial of childhood, of access to family and of education. Continued orders of incarceration, often in facilities unsuitable for his young age, and years of solitary confinement suggest the State's strong reliance on negative racial stereotypes and racialized beliefs about Black men and boys. Brian K.'s situation presents a stark example of systemic racism, and legally sanctioned torture, in Switzerland. Deconstructing the decision-making at each stage of his case could yield valuable feedback for the State. In 2021, communications to the State by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Working Group on Arbitrary Detention outlined key concerns. Since then, a federal decision mandated improved detention conditions and a review of whether Brian K.'s actions, dating back to his earliest arrest at age 11 (on charges later dismissed), were provoked or legally justifiable.

D. Structural discrimination

50. People of African descent experience significant structural racial discrimination, and anti-Black racism, which have serious impacts on their economic, social, cultural, civil and political rights.

Employment

51. Racism in the workplace is a widespread concern. Significant research confirms that racial and ethnic discrimination in employment is a persistent problem in Switzerland.⁴⁸ These concerns were also raised by people of African descent facing racial discrimination on the basis of their name, skin colour, race, hair or other related grounds. Certain normalized practices, including the routine use of photos in job applications, may fuel less transparent racial discrimination at the selection stage. People of African descent further report racial discrimination, microaggressions, sexual harassment, humiliation, unequal treatment and disparaging behaviour.

52. The Government cited actions taken in response to concerns at discrimination in the workplace, including recommendations adopted in 2020 to deter misconduct towards highly qualified migrants.⁴⁹ In 2018, Neuchâtel adopted a road map for equality and diversity. Nevertheless, some national frameworks, such as the country's national action plan on business and human rights, do not contain standards on racial or ethnic diversity.

Family regulation

53. The Working Group heard several reports of family policing and regulation by child protection officials, and the involuntary removal of children from parents of African descent. Racialized rationales were offered to justify these extraordinary decisions. Mediation was often not offered to parents of African descent. In some cases, caseworkers or guardians made decisions without speaking to children, questioned the provenance of parents' clothes and property, and interpreted school difficulties as parenting failures, even where no communication with parents had occurred. Racial tropes, like the hypersexualization of Black women and girls, were inappropriately instrumentalized to interpret misconduct and devalue Black parenting. Characteristics of Swiss culture, rather than child development, determined parenting adequacy, to the disadvantage of parents of African descent.

⁴⁸ See, e.g., Daniel Auer and others, "The matching hierarchies model: evidence from a survey experiment on employers' hiring intent regarding immigrant applicants", *International Migration Review*, vol. 53, No. 1 (May 2018); Dominik Hangartner, Daniel Kopp and Michael Siegenthaler, "Monitoring hiring discrimination through online recruitment platforms", *Nature* (January 2021); and Rosita Fibbi and others, *Discrimination des personnes hautement qualifiées issues de la migration dans le domaine social?* (Université de Neuchâtel, 2018). See also Lincoln Quillian, John J. Lee and Mariana Oliver, "Evidence from field experiments in hiring shows substantial additional racial discrimination after the callback", *Social Forces*, vol. 99, No. 2 (April 2020).

⁴⁹ Available from https://www.ekr.admin.ch/pdf/HQM_CFR_Recommandations.pdf (in French).

54. Conversely, some calls for child protection by people of African descent are deprioritized. In the case of one 9-year-old child of African descent experiencing many years of sexual abuse by a white parent, persistent delays and postponements and a lack of urgency characterized the proceedings in the case filed by her mother, a woman of African descent, in the Swiss courts. Delays in interventions to address the trauma the child has experienced persist. In another example, asylum-seekers of African descent found their status as children disputed or disregarded in asylum decisions, including in evaluating their trauma.

55. At the same time, the racialized experiences and survival skills of children of African descent are underestimated. A psychologist of African descent reported important work with families comprising Black children with a white parent, to dismantle racism in private spaces. The Service for Combating Racism reported the existence of programmes such as the “Racism in family systems” project focused on transracial adoption.

Education

56. The Working Group heard reports of racial discrimination at all levels of education from nearly every person of African descent it encountered. Discrimination in schools included bullying, racial slurs and erroneous inferences by students and teachers that children of African descent, even native Swiss-German speakers, lacked language fluency. Students, advocates and parents reported racialized decision-making by school personnel that revealed a parallel education track for students of African descent. Black children experienced harsh racial disparities in discipline, teacher engagement, “benefit of the doubt”, and a lack of recognition of the trauma of racist incidents. Students of African descent were channelled routinely into “special needs” classes and deterred from mathematics and science education. One ambidextrous child was made to see a psychologist for years by State authorities, when the school claimed using both hands required a mental health intervention. One student seeking to study science was deterred by the following statement by a teacher: “There will be no one to translate the official documents your mother receives if you go to university.” Another was told: “You don’t need to work so hard; you just need the grades for an apprenticeship.”

57. Attempts to address the racialized steering of students was met by a pervasive culture of denial that places students at risk. Teachers reportedly denied the possibility that children could express racism (see para. 37 above). The Working Group reviewed classroom materials depicting people of African descent in racially degrading positions, including a woman on her knees in a short, tight dress and a boy throwing a stone through a glass window, initially defended by the school despite racialized reactions of students. Parents of African descent who raised concerns were ostracized and excluded from school communications. The Conference of Cantonal Ministers of Education questioned the validity and the significance of the reports of racism in schools received by the Working Group, instead of acknowledging an urgent need to address the problem. Throughout Switzerland, children of African descent are subjected to harmful racial stereotypes and assumptions about their ability, their potential and their proper place in society as adults.⁵⁰

58. Authors of African descent are largely absent from the Swiss curriculum. Swiss students enter university without understanding the historical or analytical contributions of people of African descent. Although some curricula embed historical context relating to colonialism and transatlantic trade in enslaved Africans, false or inaccurate narratives are common. Graduate students centring the work of Black academics faced criticism and penalties directly linked to the lack of white representation. Implicitly and explicitly, students learned that credibility and success required situating analyses within existing oeuvres of white academics, rather than the entire body of work in their field. Persistent reports of racist conduct at multiple universities point to a systemic racism that has a direct impact on undergraduate and graduate students of African descent, who are subjected to diminished expectations and racial disparities in grading, mentorship and opportunity, which can be minimized by anonymous grading or similar measures. Another concerning inference of

⁵⁰ See, e.g., Efionayi-Mäder and Ruedin, “État des lieux du racisme anti-Noir-e en Suisse”, sect. 5.3.

systemic racism arises, namely, that white European academics may reflexively or defensively devalue the academic work of researchers of African descent.

Health

59. Failure to interrogate medical personnel's racialized beliefs may endanger health and lives. Many people of African descent encountered disdain or disregard when presenting illness, pain or clinical symptoms to medical personnel. Inadequate translation facilities significantly affected health care. One psychologist reported persistent barriers to psychological or addiction services for patients lacking German fluency, obstructing access for people of African descent in the German-speaking region.

60. Women of African descent reported racialized misconceptions that they were built for childbirth, that they could endure more pain and that they exaggerated pain. Many reported having been denied pain medication during childbirth. In multiple cantons, women of African descent reported diagnoses of "Mediterranean mania", or "mamma mia syndrome", medical shorthand for melodramatic. Treatment for one woman with stage 4 fibroids was denied for one year, while her excruciating pain was dismissed by medical personnel.

61. Despite the country's pluralism, medical protocols used the white experience as a baseline, routinely failed to recognize how medical issues could present differently in dark-skinned persons and failed to serve diverse Swiss patients. Women of African descent were misdiagnosed (including as infertile), experienced treatment delays for conditions affecting reproductive health, including fibroids and endometriosis, and were subjected to invasive procedures without notice or consent. One pregnant woman's symptoms and crying out were dismissed as hysteria: doctors failed to screen for pre-eclampsia, leading to late-term pregnancy loss at five months. During the pandemic, one patient reported medical personnel ridiculing their concerns that pulse oximeters could overestimate oxygen levels for Black patients.⁵¹

62. Young lesbian, gay, bisexual, transgender and intersex persons of African descent report challenges in accessing appropriate health care and guidance for people with diverse sexual orientation or gender identity. One woman of African descent reported prurient interest, microaggressions and homophobic comments from seven doctors towards her and her wife throughout her high-risk pregnancy. Her race licensed bald curiosity and a different standard of care, including demands to justify the sperm donor's race, references to the donor as the "father" and to one of the women as a "surrogate", and medical procedures conducted without information or consent. Since delivery, paediatric personnel have continued to make racialized comments about "strong African babies" and criticize the infant's strong will. Others reported that intersectional violence occurred regularly in the health field.

63. Chronic racial stress was significant for people of African descent, exacerbated by health interventions characterizing racial tropes as medical advice. For example, a psychologist advised one woman, seeking assistance for stress occasioned by long-term workplace racial harassment, to shift from gold to silver jewellery and reconsider her workplace attire. His implication that her appearance, rather than racial misconduct, was driving the persistent racial harassment she experienced, was a racialized hypersexualization of his patient and a derogation from the duty of care.

64. Foreign doctors also experience xenophobia from Swiss patients refusing care. The Government indicated that, among other measures, it supported the Hospitals for Equity Network, which grew from a European Union initiative to support migrant populations.

Housing

65. Racial discrimination persists in the Swiss housing market. The Government identified three de facto barriers facing many people of African descent: lack of knowledge of the unwritten rules of the housing market; rental discrimination; and certain legislated

⁵¹ See, however, Ashraf Fawzy and others, "Racial and ethnic discrepancy in pulse oximetry and delayed identification of treatment eligibility among patients with COVID-19". *JAMA Internal Medicine*, vol. 182, No. 7 (2022).

exclusions. In Switzerland, only 37 per cent of Swiss people own their homes, and rent-to-income ratios are high. Many people in Switzerland gain housing security through cooperatives, whose memberships largely exclude non-European nationals, with certain exceptions. There is also discrimination in the rental market, particularly affecting Muslims and people of African descent. In addition, social and spatial racial segregation occurs in housing, irrespective of Swiss nationality, based on appearance or name.

66. Migrants and asylum-seekers of African descent face particular housing challenges, particularly those in limbo after denials of asylum despite fleeing war-torn homelands. Although all children are protected by the Convention on the Rights of the Child, the Working Group heard direct testimonies from Eritrean women, unable to return home, whose children live in precarious, substandard conditions, given restrictions imposed once asylum claims are denied.

67. Private landlords' use of racist stereotypes and tropes as a proxy for risk assessment for tenants, and the Government's minimizing of this misconduct, is a serious but common form of systemic racism, involving both abuses and violations of human rights.⁵² The claim that a greater housing supply would remove persistent barriers faced by people of African descent fails to engage the reality of systemic racism, which affects housing for people of African descent throughout the global North.

V. Conclusions and recommendations

A. Conclusions

68. **The Working Group welcomes good practices and positive steps taken to guarantee the human rights of people of African descent, including:**

- (a) **Steps towards establishing a national human rights institution;**
- (b) **Acknowledgement of the Durban Declaration and Programme of Action as a comprehensive framework for the fight against racism;**
- (c) **The launch in Zurich of the International Decade for People of African Descent, in 2020;**
- (d) **The planned working group on the December 2021 recommendations of the Committee on the Elimination of Racial Discrimination;**
- (e) **Prosecutions, including of public officials, for incitement of racial hatred;**
- (f) **State support for civil society anti-racism initiatives, particularly those led by people of African descent;**
- (g) **Emerging public discourse on racist and/or colonial symbols in public spaces;**
- (h) **In Geneva, the focus on anti-Black racism as a specific form of human rights violation; financial support for the fight against anti-Black racism, including for the Université Populaire Africaine en Suisse and the Festival Couleur Café, and the important work of the Centre-Écoute contre le racism;**
- (i) **Recursive and data-driven processes to improve anti-racism interventions, in particular the 2016 shift in Geneva by the Office for the Integration of Foreigners in its racism-prevention policy, specifically recognizing anti-Black racism, which facilitated a process of refining of tenders over time, to improve outcomes; and the cantonal integration programme approach to non-discrimination, which includes a separate funding mechanism, counselling centres in each canton, and contact points for racism throughout Switzerland. Further refinement would enhance impact, but an evidence-based approach is laudable;**

⁵² See, e.g., Efonayi-Mäder and Ruedin, "État des lieux du racisme anti-Noir-e en Suisse", sect. 5.4.

(j) Consultations convened in Geneva, composed of people of African descent from across the diaspora, amid public demands for change in 2020, and 12 measures formulated to inform anti-racism activities, partial implementation of which is under way.

69. Despite the positive measures referred to above, the Working Group is concerned about the prevalence of racial discrimination and the human rights situation of people of African descent in Switzerland. Notably, the racial discrimination cited throughout the present report are not outlier incidents. The ubiquity and impunity of this misconduct indicates that a serious systemic problem exists.

70. Although Switzerland has ratified relevant international human rights instruments, this was sometimes not recognized at cantonal levels, including the affirmative obligation to prevent and combat racial discrimination in intent or effect. Cantonal independence, and the distance between cantonal operations and the primarily federal competence for human rights, was cited as a structural barrier to racial justice, even though matters of national priority, such as police training and asylum determinations, operate centrally and are effectively federalized.

71. The specific experiences of racial discrimination that women, migrants, children and lesbian, gay, bisexual, transgender and intersex people of African descent experience should inform a complex and nuanced understanding of systemic racism and relevant interventions. Intersectionality involves distinct racialized experiences, at the extremes of violence and vulnerability.

72. Racialized mistreatment of people of African descent is not mitigated by Swiss nationality. Even Swiss-born people of African descent report discrimination and presumptions they are migrants or refugees, that is, “other”.

73. The framework to address racialized acts and omissions is inadequate. Many existing mechanisms lack binding authority. Courts cannot offer a meaningful remedy for many.

74. The ties of Switzerland to colonialism and the trade and trafficking in enslaved Africans are relevant to modern manifestations of racial discrimination. The modern-day wealth of Switzerland is directly connected to legacies of enslavement. Swiss municipalities, banks and individuals invested heavily in the trade and trafficking in enslaved Africans and in the apartheid system. The textile, chocolate and coffee industries instrumentalized enslavement and colonialism.

75. Switzerland does not maintain racially disaggregated data, and therefore struggles to examine political decisions, law, policy and practice in terms of their impact on racial discrimination or the racialized violation of human rights, an ongoing, fundamental barrier to recognizing ongoing racial injustice across sectors.

76. The Working Group heard shocking reports of police brutality and the expectation of impunity. Global demand for policing reform in 2020 appears not to have affected policing practices. Instead, police operations include brutal arrests, racial profiling, degrading treatment and the reinforcement of negative racial stereotypes in public spaces.

77. Barriers in access to justice for victims of police brutality and their families persist. Families must surmount State-constructed barriers, retain expensive counsel and experts and prove “close relationships” to pursue justice.

78. Inadequate dialogue on systemic racism and the influence of negative racial stereotypes in decision-making by police, prosecutors or courts has facilitated a culture of denial that obstructs accountability and reforms.

79. Inadequate independence systematically jeopardizes the investigation of police misconduct and brutality. In practice, the proximity of the police, public prosecution and judiciary, their long-standing professional cooperation, and the exercise of prosecutorial discretion, limits independent investigations of misconduct and affects due process guarantees of fair treatment.

80. People of African descent reported racial discrimination through restrictions on natural hairstyles, such as braids and Afros, particularly in schools and workplaces. This constitutes an undue burden that polices Black identity and upholds white supremacy. Formal and informal “grooming” policies prohibiting natural hairstyles inappropriately justify exclusion of people of African descent from employment and advancement, a “racially discriminatory effect” under the International Convention on the Elimination of All Forms of Racial Discrimination.

81. Many people of African descent face legal barriers to cooperative ownership. They also experience significant difficulties in securing housing in the private market, given, according to officials, government unwillingness or inability to influence private landlords’ racial discrimination.

82. Many rejected asylum-seekers fled ongoing conflict, for example Eritreans, and live in precarious conditions that may violate human rights. Unfavourable treatment designed to encourage persons denied asylum to leave Swiss territory creates desperation and escalates harm to children.

B. Recommendations

83. The following recommendations are intended to assist Switzerland in its efforts to combat all forms of racism, racial discrimination, xenophobia and related intolerance. The Government should:

(a) Ensure implementation of the international anti-racism commitments of Switzerland at the cantonal level and below, as well as the recommendations of the Committee on the Elimination of Racial Discrimination, those emanating from the universal periodic review and other relevant recommendations;

(b) Strengthen the forthcoming national human rights institution, including by implementing a mandate to adjudicate individual complaints of racial discrimination, allocating human and financial resources adequate to the scope of its responsibilities, in full compliance with the Paris Principles, and ensuring effective coordination with the Federal Commission against Racism;

(c) Assess, replicate and scale effective local and international anti-racism initiatives in cantons in a nationwide reckoning with systemic racism and individual racial discrimination. Decentralization should not limit compliance with international treaty obligations, including the prohibition of racism in intent or effect and the affirmative obligation to address racial discrimination set out in the International Convention on the Elimination of All Forms of Racial Discrimination;

(d) Issue a specific country visit invitation to the International Independent Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement;

(e) Urgently review how the use of discretion feeds systemic racism across sectors (such as education, policing and housing), perpetuating racial inequity. Switzerland has an opportunity to dismantle systemic racism and the culture of denial. The State should engage relevant experts to conduct a nationwide racial equity audit across all institutions, centring experiences of people of African descent, defining key issues, and developing productive approaches. With respect to policing, Switzerland should implement the transformative agenda set out by the United Nations High Commissioner for Human Rights (see para. 33 above) and adopt relevant civil society recommendations;

(f) Revisit policies on racially disaggregated data, as Switzerland may fail in its human rights and anti-racism commitments without racially disaggregated data to illustrate areas of ongoing concern and to show trajectories of improvement. Where data exists, even informal data, racial disparities may reveal what and whose decisions drive persistent racial inequity. In parallel and in the interim, those with qualitative expertise in anti-Black racism and legacies of racialized policy may catalyse reform;

(g) Ensure that an independent, civilian complaint mechanism with oversight and disciplinary authority is established for police in every canton. It should be competent to review injuries and fatalities during police operations, in custody and in asylum centres. Its determinations should not be reversible by law enforcement leadership;

(h) Ensure genuine independence in investigations and prosecutions of public officials' misconduct. An independent prosecutor should be appointed for investigations of serious police misconduct. Police charged with violence should immediately be reassigned or suspended until the final determination;

(i) Recognize systemic racism in the many similar incidents of racial discrimination reported to and by the Working Group. Consistent with anti-racism obligations, and in partnership with people of African descent, broadly pilot remedies and reform initiatives;

(j) Ensure that body-worn cameras record all policing activity, including street encounters that do not result in arrest, and that recordings are publicly accessible and available;

(k) Increase oversight of detention facilities to ensure strict compliance with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and applicable law, including to investigate manifestations of systemic racism and racial discrimination. The use of solitary confinement, punitively and administratively, requires immediate review;

(l) Prohibit racial profiling legislatively;

(m) Adopt the racial profiling parliamentary motion seeking independent, federal ombudsperson centres for law enforcement agencies;

(n) Create conviction integrity units, with independent review of law enforcement interactions, from stops to sentencing, to check for racialized decision-making, inadequate evidence or disregard of human rights;

(o) Establish an ombudsperson at the federal level and in all cantons;

(p) Provide health-care personnel with specific guidance about systemic racism, including research demonstrating that doctors' decisions may implicitly reflect anti-Black bias, mechanisms to confront and mitigate individual bias, and education about racialized differences in health, risk and presentation of symptoms;

(q) Address the role of teachers, education leadership and students in the pervasive systemic racism apparent across all levels of education, including within the framework of performance evaluations. There should be compulsory anti-racism training, opportunities to confront and dismantle their own individual bias, and assessments of learning and impact for all education personnel and students. Data showing progress over time should be maintained;

(r) Revise school curricula to include cultural and knowledge production of people of African descent. Exemplary projects exist, such as library diversification in Vaud and use by Geneva of the children's book *Tichéri a les cheveux crépus*. Crèches and schools should provide positive, counter-stereotype examples of people of African descent;

(s) Adopt measures to increase representation by teachers and academics of African descent in educational institutions;

(t) Convene public conversations to revise and correct accepted historical narratives rooted in racial hierarchy. Renaming monuments, revising public recognition and longer-term initiatives may promote a truthful reckoning with history;

(u) Assess how negative racial stereotypes may drive child removals, parenting assessments and family separation in the courts. Ensure access to counsel and immediate judicial review of child removal decisions. The State should elaborate clear

measures to promote family reunification and children's return in each case with immediacy, State support and in the best interests of the child;

(v) Urgently address asylum-seekers' living conditions, employment restrictions and opportunities, and access to health, including after denials of asylum;

(w) Ensure lessors' rights, including liberty of contract, are not instrumentalized to license racial or xenophobic housing discrimination, or to prevent regulation or remediation in the private rental market. The State should take affirmative measures to raise awareness, incentivize rental equality, and confront bias among lessors;

(x) Provide multi-year funding for initiatives that centre lived experience as an important measure of credibility and legitimacy, including by recognizing key strengths of associations and projects led by people of African descent. Cantonal integration funding for host communities should include people of African descent in their design and selection processes;

84. The Working Group encourages the Government to fully implement the 12 proposals of the 2020/21 consultations in Geneva and elsewhere, as appropriate, and to engage other cantons in similar processes.

85. The Working Group reiterates its satisfaction with the Government's willingness to engage in dialogue, cooperation and action to combat racial discrimination. It expresses hope that the present report will support the process and stands ready to assist in this endeavour.
