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Swiss Confederation

**OSCE**   
Switzerland 2014

# Self-Evaluation OSCE Chairmanship

Commentary by the Federal Authorities

Bern, November 2014

## Introduction

In the Astana Commemorative Declaration, the Heads of State or Government reaffirmed their commitment to the principles on which the OSCE is based. They also acknowledged that more had to be done to ensure full respect for, and implementation of, these principles and commitments. Switzerland and Serbia developed their joint work plan for their 2014-15 Chairmanship in the spirit of this declaration.

A focus on the implementation of existing commitments is the main priority in the human dimension of the Swiss Chairmanship of the OSCE in 2014. Over the past 40 years, the OSCE participating States have developed a solid body of commitments to promote human rights, democracy, and the rule of law. There is a need to strengthen their effective implementation, however. Chairing the OSCE implies responsibilities and accountability. That is why, in 2013 and throughout 2014, Switzerland has worked on improving the implementation of OSCE commitments in the OSCE area including in Switzerland itself. Switzerland has engaged in an inclusive dialogue with civil society, as the latter plays a crucial role in assisting participating States to ensure full respect for human rights, fundamental freedoms, and the rule of law.

Ensuring that the country chairing the Organisation respects the fundamental values of the Helsinki Final Act and other commitments – and leads by example – is key to the credibility of the OSCE. To improve implementation of commitments, and to improve follow-up on the related findings and recommendations by OSCE structures, Switzerland has accepted to voluntarily carry out a “self-assessment” of its performance. Switzerland is committed to assessing whether and to what extent it has implemented the relevant OSCE commitments in the human dimension. This initiative of Switzerland comes in response to long-standing calls from civil society and parliamentarians<sup>1</sup>. The implementation of commitments within the OSCE is monitored, but the existing monitoring mechanisms could be strengthened. New concepts that can be developed without consensus at the technical level, and which contribute to a better implementation should be trialled. In view of this, Switzerland has voluntarily embarked on a pilot project and review of its performance in implementation of commitments.

This self-assessment process involved three phases:

- The **first phase** involved the drafting of the report by the Swiss Centre of Expertise in Human Rights (SCHR), under the leadership of Professor Walter Kälin. It is based on the relevant OSCE commitments, and due to the large number of OSCE commitments limited to areas covered by OSCE reports that comment on the situation in Switzerland over the past five years. Based on this methodology, the SCHR identified the OSCE reports and topics relevant to the self-assessment. The five topics considered are Election Observation, Intolerance, Freedoms of Expression and Assembly, Trafficking in Human Beings, and Gender Equality. It does not, however, represent a comprehensive analysis of the human rights situation in Switzerland.
- The **second phase** corresponds to the report drawn up by the Swiss NGO working group OSCE on the report of the SCHR. Switzerland set the strengthening of the dialogue with civil society as one of the ten priorities of its OSCE Chairmanship. In view of this, and convinced that the development of an inclusive dialogue about the implementation of commitments is of value to all participating States, Switzerland invited NGOs to provide consolidated feedback on the SCHR report.
- The **third phase** is this present commentary by the Swiss authorities on both reports. The following pages contain the remarks of the authorities in charge of the five topics initially selected in the SCHR report: Election Observation (p. 3), Intolerance (p. 4-6), Freedoms of

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<sup>1</sup> Recommendations of the civil society conference that took place in parallel with the Ministerial Council meeting in Dublin in 2012. It is also included in the 2012 Monaco Declaration of the OSCE Parliamentary Assembly.

Expression and Assembly (p. 7-8), Trafficking in Human Beings (p. 9-14) and Gender Equality (p. 15-16).

All three reports are public, and will be presented in the framework of the OSCE to participating States and interested NGOs.

Developing the process of “self-assessment” was a new concept that required a methodology to be developed. As a pilot project, there is room for improvement. Thus, the Swiss Chairmanship has conducted extensive discussions with the Swiss Centre of Expertise in Human Rights (SCHR), as well as representatives of NGOs in Switzerland, on how this improvement might be achieved.

In brief, the main lessons learned include:

- **Timeframe:** It would be more strategic to have the actual process for self-assessment finalised before a participating State's Chairmanship begins. This was not possible in the Swiss case, because the pilot project itself involved developing the concept and methodology, as well as conducting the evaluation and completing the reports in close consultation with all stakeholders. To ensure the quality of the self-assessment, and anchor it as a learning tool, all stakeholders (relevant authorities, ombudspersons and NGOs) must be involved in planning, timing and methodology.
- **Topic selection:** This must be based on objective criteria, but must be sufficiently broad. This is a crucial but difficult issue, and a balancing act between the objectivity of selection, capacities and resources, the relevance of the topics and OSCE commitments, and the monitoring tools that are available.
- **Monitoring fatigue:** The fact that States report regularly to various Council of Europe and United Nations bodies (UPR and treaty bodies) does not make it any easier to introduce yet another process. Reports and analyses must capitalise on submissions made to other reporting bodies.
- **Stakeholder familiarity with the OSCE:** In Switzerland, the main stakeholders – both NGOs and state authorities – were unfamiliar with OSCE commitments and processes. It then takes more time to understand the framework set by these OSCE commitments, and to provide constructive feedback. The fact that the OSCE monitoring mechanisms are not clearly defined is an obstacle to this process.

Drawing on these lessons, discussions have been held with the different stakeholders in the incoming Serbian Chairmanship (Task Force, NGOs and ombudsperson). This should help to improve the process in the years to come.

This endeavour of self-assessment was an excellent opportunity that allowed the Swiss OSCE Chairmanship to engage in an open and inclusive dialogue with civil society in its own country. This self-evaluation also contributes to strengthen Switzerland's regular, systematic engagement with OSCE institutions, as a follow-up to their recommendations or country visits. This comprehensive documentation will inform the further debates. Discussions will continue within OSCE (events, institutions, country visits) and within existing format in Switzerland.

In conclusion, Switzerland firmly believes that the launch of this new practice – which remains technical, constructive and not consensus-based – will help to improve implementation of OSCE commitments in Switzerland and beyond. Developed and initiated as part of the joint work plan of Switzerland and Serbia, the initiative is a clear example of continuity. Switzerland welcomes Serbia's decision to proceed with a self-assessment and hopes that future OSCE Chairmanship will engage in a similar process. Switzerland is committed to a coherent and consistent approach, to advance the human dimension of OSCE work during its Chairmanship and beyond.

## Sub-study 1: Election Observation

The report of the Swiss Centre of Expertise in Human Rights (SCHR) based its analysis on the 2007 and 2011 OSCE/ODIHR Election Assessment Mission reports<sup>2</sup>. It focuses on party and campaign financing, as well as on the right to vote of Swiss citizens residing abroad. The SCHR report makes two recommendations to the Swiss authorities, upon which the relevant authorities have commented below. The report submitted by the Swiss NGO working group OSCE comments on different issues, of which party and campaign financing is one. The relevant authorities have commented as follows:

*(1) The SCHR report recommends to the Swiss government to take concrete steps to adopt and implement the measures recommended by the OSCE/ODIHR EAM Reports and by GRECOs Third Evaluation Round in order to fully comply with international good practice in the field of party and campaign financing.*

The various Swiss authorities in charge of these issues have been actively discussing this topic internally. It continues to be worked on intensively with the Group of States against Corruption (GRECO).

*(2) The SCHR report recommends that Swiss authorities pay attention to ensure that the technical standards required by the OSCE/ODIHR Election Assessment Report 2011 in the field of internet voting are fully implemented when the new law on the expansion of internet voting will be applied.*

In 2013, the Federal Council defined its strategy on the expansion of electronic voting with the adoption of the third report on electronic voting. The Federal Council has decided to introduce electronic voting on a step-by-step basis, security being the priority. The recommendations of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) were incorporated into the third report to the Federal Council on electronic voting. The Federal Council considers that the ODIHR recommendations confirm its approach. The legal bases for the electronic voting channel were revised on this basis. The provisions of the Ordinance on Political Rights were adapted. A new Federal Chancellery Ordinance on Electronic Voting was drafted. The new legal bases entered into force on 15 January 2014. The cantons will now implement the newly-defined requirements on a step-by-step basis. Only once the tighter security requirements are met will the cantons be able to request that the Federal Council raise the limits that are currently in force.

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<sup>2</sup> <http://www.osce.org/odihr/elections/switzerland/31390>;  
<http://www.osce.org/odihr/87417?download=true>

## Sub-study 2: Intolerance

The report of the Swiss Centre of Expertise in Human Rights (SCHR) focuses its analysis on the annual hate crime reports published by the ODIHR, as well as the reports of the Personal Representatives of the OSCE Chairperson-in-Office on tolerance issues. It acknowledges that Switzerland has partially fulfilled OSCE commitments in several areas, and formulates recommendations in three principal fields: 1) monitoring hate crimes; 2) intolerance and discrimination against Muslims; 3) discriminatory public discourse. The federal Service for Combating Racism (SCRA) provides responses to the three issues below. The report submitted by the Swiss NGO working group OSCE comments on other issues related to intolerance and non-discrimination that are not enshrined in the OSCE commitments, or in the aforementioned report. Despite this fact, the SCRA also provided a response to one of the issues raised by the working group of Swiss NGOs.

### 1) Monitoring of hate crimes

*Combating and monitoring hate crimes constitutes a large gap in the implementation of commitments. Despite the fact that Switzerland has made a commitment to the OSCE to combat hate crimes, part of the legal basis for a complete implementation is missing. Although Switzerland generally refers to article 261bis of the Swiss Criminal Code in this context, it has to be stressed that this legal provision does not fulfil all of the OSCE's requirements regarding legislation against hate crimes. For example, Art. 261bis Swiss Criminal Code protects only a very restricted category of people, whereas the ODIHR's definition of hate crime includes a much wider range of protected characteristics like language and sexual orientation. The SCHR report recommends that the Swiss authorities adopt appropriate and more effective legislation.*

Switzerland has a monist legal tradition, meaning that once the state party ratifies an international treaty, its provisions become immediately binding upon all state bodies. In Switzerland, the principle of subsidiarity applies. This bottom-up approach means that cantons have delegated responsibilities to the Confederation, and citizens have a greater say in state activities. Switzerland ratified the International Convention on the Elimination of all Forms of Racism in 1994. While it is true that Switzerland does not have comprehensive federal legislation to fight racial discrimination, all levels of government must respect the provisions of the Convention and other relevant international instruments. Some cantons go over and above the minimum requirements requested by the Convention and other international instruments. Switzerland does not have a general anti-discrimination law at the federal level, but a general ban on discrimination is provided for in the Constitution, which prescribes that federal and cantonal authorities must respect international law, which makes it the law of the land in Switzerland. The Federal Assembly must ensure that cantonal constitutions and their amendments are in line with accepted international norms. The new Criminal Procedure Code adopted in January 2011 harmonised the right to defence across the country, and guarantees greater rights for victims, as well as their protection. The definition of the victim in criminal proceedings is quite broad. A public prosecutor can institute a case without anyone submitting a formal complaint. There is no constitutional obstacle to a federal law against racial discrimination.

Private law has several provisions which can be invoked in discrimination cases. To help the victims of discrimination in their proceedings, a handbook has been published with advice on protecting oneself and supporting one's case. A 2012 report from the federal Service for Combating Racism (SCRA) summarised efforts in this regard, and the next report will focus on the outcomes of cantonal and commune activities.

In January 2014, a first four-year integration programme was launched jointly by the Federal Office for Migration and the cantons. All cantons now have advisory services for victims of racial discrimination in place. Integration is regarded as a task for society as a whole, and a process is underway to revise the Federal Foreign Nationals Act.

Since January 2014, all 26 cantons have been implementing their first four-year cantonal integration programmes which include provisions against discrimination. Inventories in eight areas have been prepared to identify the shortcomings and prepare remedies. They include, for example, education, employability, social integration and training in order to combat discrimination. For the first time, it is now mandatory to protect citizens against discrimination. Cantonal integration programmes are not aimed at assimilating foreign nationals. All institutions that provide the relevant services must ensure that they engage in awareness-raising among their own staff, media and young people. Considerable progress has been achieved on integration and the fight against discrimination across the 26 cantons, but more work remains to be done.

## 2) Intolerance and discrimination against Muslims

*In the course of his country visits in 2011, the OSCE Personal Representative criticised the increasingly intolerant and discriminatory climate regarding Muslims and other minorities in Switzerland. The anti-minaret initiative, which had been perceived as discriminatory against Muslims internationally, was mentioned in particular. On a positive note, as a consequence of the anti-minaret initiative, the federal government has been seeking to increase dialogue with the Muslim community. This dialogue was closed, however, before any real outcomes were achieved. It is important that the federal and cantonal authorities continue their efforts and do not try to shirk their responsibilities by pointing to the distribution of powers and duties in the federal state.*

According to Art. 72 of the Federal Constitution of the Swiss Confederation, authority for relations between church/religious communities and the state lies with the cantons. The Confederation can take measures to ensure public order within its particular area of responsibility. It is important to emphasise that these authorities are not conferred by the Confederation on the cantons, but vice-versa, from the cantons to the Confederation. In its relations with the cantons, the Confederation cannot give advice, still less prescribe anything. The aforementioned dialogue with the Muslim community in Switzerland came about at the initiative of the Confederation, as a result of a passage to this effect being added to Art. 72 of the Constitution after the popular anti-minaret initiative had been adopted. The aim of the Confederation was to discuss the situation with Muslims with a view to ensuring public peace. Following intensive and successful talks, which led to the drafting of a joint key report, the dialogue was subsequently, and in joint agreement, returned to the competent authorities at the cantonal and commune levels. Within the scope of its authority, the Confederation's activities were successful. The situation with regard to Muslim members of the armed forces could be discussed in depth, and joint guidelines were developed and published. Thanks to intensive negotiations, the Centre for Islam and Society at the University of Fribourg will be opened in 2015.

## 3) Discriminatory public discourse

*The OSCE is fundamentally concerned about the nature of political discourse in Switzerland. Particularly in times of federal popular votes, referendums or elections the discourses risk turning discriminatory. Swiss courts tend to regard protection of the freedom of expression as more important than protection against discrimination during political discourse. While political discourse must be allowed to be robust, effectively combating discrimination and defamation in electoral campaigns [is essential], as required in OSCE commitments. The SCHR report recommends further clarifying the precise limits of the freedom of expression and, if necessary, developing tools that include positive measures such as sensitisation campaigns or the development of codes of conduct by political parties as well as prohibitions and sanctions where adequate.*

In 1995, the Federal Council has created the extra-parliamentary Federal Commission against Racism (FCR). Among other things, this largely independent institution has the task of organising awareness-raising and prevention activities in areas of society in which the

government's hands are tied, i.e. in activities in connection with NGOs, the media and politics. Consequently, the FCR – also in collaboration with partners from civil society – has already sought contact with political parties on several occasions in the run-up to federal votes and elections to discuss binding general rules on ethics. The federal Service for Combating Racism, which as an administrative agency cannot itself become active in this area, can still provide financial support for relevant awareness-raising and prevention projects organised by civil society.

The Swiss NGO working group OSCE in its report raise the issue of anti-tsiganism. Below is the commentary of the federal Service for Combating Racism (SCRA).

The Federal Council is committed to developing specific measures to enable travelling minorities to live a lifestyle that reflects their culture. To this end, it has set up a working group under the auspices of the Federal Department of Home Affairs, the composition and working methods will be more precisely determined in its first session at the end of 2014.

The Federal Office of Culture has already held a number of meetings with organisations supported by the Confederation ("*Stiftung Zukunft für Schweizer Fahrende*" [Foundation for the Future of Swiss Travellers], "*Radgenossenschaft der Landstrasse*" [Wheel Association]) as well as other representatives of the Yeniche, Sinti and Roma peoples ("*Bewegung Schweizer Reisender*" [Swiss Travellers' Movement], "*Gesellschaft für bedrohte Völker*" [Society for Threatened Peoples]) to gain an overview of needs and possible solutions. The process showed that the organisations agree that the key issue is that of permanent and temporary camp sites. It also showed that other day-to-day problems must be addressed, especially in the areas of social security and education. The authorities and tasks of organisations financed by the Confederation will also be evaluated in the immediate future.

### Sub-study 3: Freedoms of Expression and Assembly

This sub-study on the freedoms of expression and assembly considers four aspects of peaceful protests: (1) authorisation for and notification of demonstrations; (2) unauthorised demonstrations; (3) demonstrations in relation to high-level events; and (4) journalist access to demonstrations. In addition, one recommendation considers access to official documents. Most of the recommendations of the Swiss Centre of Expertise in Human Rights (SCHR) are supported by the report of the Swiss NGO working group OSCE, which is why the response from the relevant Swiss authorities relates mainly to the recommendations stemming from the SCHR report. As rightly mentioned in the SCHR report, most of these issues are dealt with at cantonal and commune levels. Some of the issues have also been decided by cantonal legislators. In view of this, the federal authorities take note of the recommendations mentioned by the report.

It is important to underline that, following the publication of the ODIHR<sup>3</sup> monitoring report, ongoing dialogue was established with the competent local and municipal authorities of the cities of Davos, Bern and Geneva. Each responsible entity has provided a response and comments on the recommendations of the ODIHR report. This dialogue also led to the participation of Mr. Hans Peter Michel, then *Landammann* (mayor) of Davos, in a side event organised during the 2012 Supplementary Human Dimension Meeting (SHDM) on Freedom of Assembly in Vienna. This local authority commitment under the aegis of the OSCE led to constructive exchange with the OSCE and other participating States.

#### (1) Authorisation and notification of demonstrations

*The SCHR report encourages authorities to consider the introduction of a notification system for at least for some types of demonstrations beyond spontaneous assemblies, and if prior authorization is required, legislation should contain „a legal presumption that the authorization will be issued and that any refusal of authorization will be based on clearly defined criteria”.*

Switzerland has no federal regulation on public protest or assembly. The governance and administration of public space fall within the authority of the cities and municipalities. Municipalities govern the use of public space, while at the same time having always to respect the fundamental rights of freedom of expression and freedom of peaceful assembly (as guaranteed in the Constitution). The guarantee of these fundamental freedoms creates a contingent claim to the use of public space. The relevant authorities have some room for manoeuvre in organising public space, and for ensuring safety and security in this respect. They must allow for demonstrations, however. The cities and municipalities must provide public space for assemblies and protests, as long as there is no compelling reason to refuse. The authorisation process has been enforced to permit the use of public space to be coordinated according to specific rules, valid for all. The authorisation procedure and decisions are never based on the object of the demonstration.

#### (2) Unauthorised demonstrations

*The SCHR report recommends making the principle of allowing peaceful, but unauthorized demonstrations to go ahead, to not punish participants of such demonstrations and to deal with potentially or actually violent protesters individually (including arrest, prosecution and punishment), the standard rule of police engagement, if not already done so. This principle also should apply if prior permission for the demonstration was sought and rejected, but people, nevertheless, took to the streets, as long as protests are (mostly) peaceful.*

The practice with respect to unauthorised demonstrations varies between canton, and within cantons between municipalities. There are different types of unauthorised demonstration. In the city of Bern, for example, "spontaneous demonstrations" are permitted on the basis that

<sup>3</sup> Report Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States, <http://www.osce.org/odhr/97055>



being able immediately to express an opinion is part of freedom of expression. The only condition for this kind of demonstration is that it is carried out within 48 hours after the event that triggers the protest, and that the relevant authorities are informed (so that they can regulate traffic and public transport). Another type of unauthorised demonstration is that for which the authorities have not been requested for any authorisation. This does not happen regularly. The city of Bern aims to reach out to organisers and to establish trust and a minimum basis of cooperation. The city does not aim to cancel public assemblies and protests, but rather to direct them to locations that are acceptable for them and for the rest of the city.

### (3) Demonstrations in relation to high-level events

*The SCHR report encourages all concerned actors to seek solutions regarding the location of protests that give sufficient weight to the sight-and-sound principle.*

This is discussed directly at the local level by the responsible authorities and the protest organisers. For example, during the SHDM in Vienna, Mr. Hans Peter Michel, then *Landammann* (mayor) of Davos, gave examples of his discussions with the organisers of the protests to identify a place for the demonstration.

## Sub-study 4: Trafficking in Human Beings

The sub-study submitted by the Swiss Centre of Expertise in Human Rights (SCHR) is based on a report from the OSCE<sup>4</sup>, and focuses on the laws, practices and institutional arrangements that aim to combat and prevent trafficking in human beings in Switzerland. It assesses six aspects:

(1) coordination and cooperation between different actors, and monitoring of anti-trafficking responses; (2) collection and availability of data, and research about trafficking in human beings; (3) identification of trafficking victims; (4) protection of and support for trafficking victims; (5) criminalization of traffickers and non-punishment of trafficking victims; and (6) trafficking for labour exploitation.

In this framework, the Swiss authorities have commented on the following recommendations contained in the report by the Swiss Centre of Expertise in Human Rights (SCHR).

### 1) Coordination, cooperation and monitoring

*(R1) National Coordination Mechanism (NCM) membership: In line with the internationally agreed definition, Switzerland recently added human trafficking for labour exploitation and organ removal to the list of trafficking crimes. To combat these forms of trafficking effectively, relevant actors should be represented in the NCM. The KSMM/SCOTT, therefore, may invite the Cantonal Conference for the Protection of Adults and Children (KOKES/COPMA), an intercantonal coordination mechanism, and the Association of the Swiss Labour Market Agencies (VSAA/AOST) to join the KSMM/SCOTT as members. The KSMM/SCOTT also may invite the Swiss Conference for Social Aid (SKOS/CSIAS) to become a member (currently only the expert body of the SKOS/CSIAS for victim protection and support, the SVK-OGH/CSOL-LAVI, participates in the KSMM/SCOTT).*

Independent of membership in the National Coordination Mechanism (NCM), all of these entities already have the possibility to collaborate in the framework of the Swiss Coordination Unit against the Trafficking in Persons and Smuggling of Migrants (KSMM). When the KSMM was created, the relevant cantonal conferences were consulted about their participation in the KSMM. Since then, they have been involved in accordance with their particular interest in the issues discussed. The KSMM invites them to join the mechanism at expert and working group level. This set-up meets the cantons' expectations. It is also important to note that three NGOs – FIZ, ECPAT and Coeur des Grottes – are currently part of the KSMM, not two as mentioned in the report.

*(R2) Coordination among cantonal actors: According to the KSMM/SCOTT as per October 2013, 10 out of 26 cantons had not yet established a roundtable (or any other cantonal coordination mechanism) which would bring together cantonal prosecutors, migration authorities, social workers, labour inspectors, civil society representatives and other actors. It is recommended to the cantons still lacking a coordination mechanism to initiate the creation of such a forum. The KSMM/SCOTT guidelines on coordination and cooperation can provide valuable guidance*

The Swiss authorities recognise the value of organising round-tables that bring together the main stakeholders in all 26 cantons. However, some cantons are very small and affected to a lesser extent than the urban contexts. Some small cantons are reflecting about establishing a close coordination with other (larger) neighbouring cantons.

<sup>4</sup> OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings; <http://www.osce.org/cthb/36159?download=true>

## 2) Collection, availability of data, and research

*(R4) Much data from the conviction statistics including about human trafficking are open to a small circle of experts only. Given that much of these data reveal little or no information about convicted individuals, authorities should consider allowing much more statistical information about convictions for human trafficking to be made regularly and systematically available to the public.*

*(R5) Authorities should include information about the country of origin of suspected traffickers (crime statistics and victim support statistics if they contain information about supposed offenders) and of convicted traffickers (conviction statistics) in their statistics and share this information with relevant actors, namely KSMM/SCOTT, so that anti-trafficking efforts can be more targeted.*

All of the statistical data used by the KSMM is publicly available. The KSMM receives data from the Swiss Federal Statistical Office. Statistics of the Swiss Federal Statistical Office are in the public domain. Statistics disaggregated into traffickers' and victims' countries of origin can be requested.

*(R6) Currently, most official statistics do not distinguish between different forms of human trafficking. It is recommended that police, prosecutors, courts and victim protection centers are compiling data about human trafficking cases by distinguishing between sexual exploitation, labour exploitation, and organ removal, as well as by indicating if the trafficking victim has been a child.*

Since the basis of the statistics and the gathering at technical level is the relevant article in the Swiss Criminal Code, it is impossible to distinguish between different forms of human trafficking. However the main trends – still minor cases of labour exploitation, none of organ removal – are known to the relevant actors, even though no detailed statistics are available. The cases related to labour exploitation can also be gathered from the court decisions.

*(R7) The crime, conviction and victim support statistics, each only capture cases registered for one or another purpose and merely represented the tip of the iceberg. The real numbers mostly remain in the dark. Therefore, support for current research about human trafficking is needed and commendable, and further research should be carried out or commissioned.*

Such researches have recently been commissioned.

## 3) Identification of trafficking victims

*(R8) Existing efforts, such as the creation of specialized units at some cantonal police forces and the training module about human trafficking at the Swiss Police Institute, the national police institution responsible for the education of higher ranking, non-commissioned and commissioned police officers, should be maintained and enhanced.*

*(R9) Given the nature of their work, police officers are among the most likely authorities to encounter a human trafficking victim, at times without realizing it. To avoid that potential trafficking victims are falling through the cracks and to improve prospects that traffickers are prosecuted and punished, every member of the police force should have a basic understanding of the problem of human trafficking. It is, therefore, recommended making a brief module about human trafficking part of the ten months basic training for police recruits at one of the five police academies in Switzerland.*

Action 12 of the Swiss NAP emphasises that raising awareness of human trafficking among uniformed police in the cantonal police corps will help to ensure that possible victims are identified on initial contact, and that police officers can initiate the appropriate measures. Such modules are offered by police training centres, such as Hitzkirch. Basic and advanced training on human trafficking is regularly organised for law-enforcement officers, according to Action 10 of the Swiss NAP. In addition, members of the security police and other police services are informed on the phenomenon through modules in their basic training and in

advanced training courses. This enables them to identify instances of human trafficking and possible victims, and forward such cases to specialist crime units. At cantonal level, awareness-raising measures are incorporated in to ongoing training for police officers, and police recruits receive basic training at some of Switzerland's police academies.

*(R10) Asylum-seekers and refugees can be trafficking victims. To ensure their identification, protection and assistance, it is recommended that a module about human trafficking is part of the refugee status determination training for staff from the Federal Office for Migration (FOM) and the Federal Administrative Court. It is also recommended putting a referral system with the relevant anti-trafficking actors in place.*

The Federal Office for Migration has sensitised its staff working in reception centres in Switzerland. A special training course for staff in charge of the asylum procedure will take place in spring 2015. Further training and awareness-raising programmes for FOM staff are being developed.

*(R11) It is recommended to make a brief module about human trafficking part of the basic training consular staff receives before their first deployment. Consular staff to be deployed to countries where particularly many trafficking victims come from should receive more extensive training.*

The next round of basic training (January 2015) which consular staff receive before their first deployment will include a brief module on human trafficking and human smuggling, aimed at raising awareness among staff working in visa sections. Consular staff in countries from which particular numbers of trafficking victims originate engage locally with counterparts from different countries, in the context of Schengen cooperation, to address visa-related issues, including human trafficking. This cooperation may also include further training on specific issues.

*(R12) Staff of victim protection centers often help victims of different sorts of serious crimes not only victims who have been trafficked. To increase understanding about human trafficking, it can be useful to make existing trainings about human trafficking also available to staff from victim protection centers or to conduct separate trainings.*

Training for the staff of victim advisory centres is paramount. The Swiss NAP includes specialist training for these officers, as well as those working in victim advisory centers and social services. Continuing and expanding specialist training courses for these groups will facilitate the identification of victims and ensure their better care (Action 16), because experience shows that human trafficking victims come into contact with social services for a variety of reasons. It is therefore important that victim advisory centres and social services are able to identify victims and take appropriate measures. Over the past year, several training courses have taken place for these staff and for social workers assisting victims of crime in the French-speaking part of Switzerland. This initiative was completed thanks to the necessary cooperation with the NGOs in the French part of Switzerland. Switzerland will continue its efforts to ensure that staff throughout Switzerland are sensitized.

#### 4) Protection of and support for trafficking victims

*(R15) Currently, the six spaces at the safe house of the NGO FIZ are the only offering tailored to the specific situation and needs of trafficking victims. Other safe houses exist and often are open to trafficking victims too. However, demand may outstrip supply. Therefore, public contributions and programs, and private initiatives to fund and create additional places for trafficking victims are strongly encouraged, including support for existing programs such as the FIZ safe house.*

The range of ways in which victims can be supported should be broadened. However, FIZ is not the only NGO active in this field. Coeur des Grottes in Geneva and May day in Ticino also offer specific assistance tailored to the needs of victims of trafficking.

*(R16) Currently, the federal victim protection programme is only available to trafficking victims if they cooperate with prosecutors, are considered to be a main witness in the criminal proceedings and if the victims/witness faces a threat to life. It is understandable that the federal witness protection program is restricted to a few cases per year, given the significant costs some of the witness protection measures imply. On the other hand, some of the program's protection tools can at times be the only effective method to protect a trafficking victim also if she or he is not part of criminal proceedings, not deemed an important witness or if the risks are not a threat to life but while still serious are more subtle. It is recommended to amend the Federal Criminal Procedure Code and/or the Federal Victim Assistance Act to enhance the set of measures available to crime victims including of human trafficking and to include specifically of the possibility an identity change if no other effective protection is available.*

The federal witness protection programme is a law enforcement measure, and extends protection to witnesses and victims if they cooperate with law enforcement. In addition, victims have the same access as any other citizen to protection by cantonal police if there are threats to their personal security and safety. The specialist victims' protection organisations assess the special protection needs of these individuals, and communicate the appropriate safety measures to the cantonal police.

*(R17) At times, the involvement of several cantons in a trafficking case has created confusion about which cantonal migration authority should and can issue a resident permit to a trafficking victim. Thus, the recommendation contained in the NAP to "[c]arry out specialised training courses for members of the migration authorities" for them to "be able to correctly apply on a case-by-case basis the provisions regarding the stay of victims" is reiterated.*

In cases in which more than one canton is involved, Art. 36 para. 2 of the Ordinance on Admission, Stay and Gainful Employment (VZAE), provides the basis for the responsible migration authorities. A specialist training course was conducted on 17 October 2014.

*(R18) While each case needs to be considered on its own merits, as a rule, trafficking victims who are cooperating with law enforcement officials should be granted residence permits for longer periods than three or six months. Many criminal proceedings take longer, and the issuance of a long-term residence permit gives the trafficking victim often much needed security and stability.*

The necessary stay for a victim of trafficking to cooperate during the criminal proceeding has been discussed during the specialized training organized on 17 October with the migration authorities. It was decided how the regulation should be interpreted.

*(R19) In addition, migration authorities should issue temporary resident permits also to trafficking victims who are not involved in criminal proceedings (beyond the typically short reflection and resting period) if after considering all the circumstances this appears necessary for the time being for the protection and support of the victim. Migration authorities also should consider issuing long-term resident permits to trafficking victims if, after assessing all circumstances, this appears to be the only sustainable, durable solution for the effective protection of the trafficking victim.*

The legal basis is very clear: Residence permits may be granted for personal reasons even if the victim is not cooperating with the law enforcement authorities. Specialist training courses for the migration authorities addressing this issue have taken place recently. These standards apply to the whole territory of Switzerland. Victims may be granted a residence permit on the grounds of serious personal hardship under the provisions of both Article 30 of the Foreign Nationals Act and Article 31 of the Ordinance on Admission, Stay and Gainful Employment, regardless of whether or not they decide to cooperate with law enforcement authorities. These residence permits may be granted in cases in which the applications are

sufficiently substantiated. However, migration authorities may not issue such permits if the supporting evidence is insufficient. Actors supporting victims of human trafficking can play an important role in providing victims with appropriate information on access to their rights including access to legal aid.

#### 5) Criminalization of traffickers and non-punishment of trafficking victims

*(R21) Prosecutors of different cantons should strengthen coordination and cooperation when investigating and prosecuting individual trafficking cases. Specialized prosecutors from different cantons are encouraged to have regular exchanges and joint trainings.*

This is current practice. Agreements have been concluded recently in order to strengthen coordination between the Confederation and the cantons. A list of specialist cantonal prosecutors also exists.

*(R22) While judges have wide discretion in the sentencing of a convicted trafficker (within the prescribed range), they always should be aware of the seriousness of this crime.*

Human trafficking convictions are often criticised for the leniency of sentences and the number of suspended sentences imposed. It must be noted, however, that sentencing is the sole responsibility of the court trying the case and that Swiss law allows for custodial sentences of up to 20 years. The severity of penalties depends on the crimes that can be proven and the degree of intent/fault. There has been a recent increase in the severity of punishments. One judgment from Canton Zurich in July 2012 sentenced a trafficker to 14 years in prison, showing that Swiss law does indeed provide for harsh penalties. This is why the National Action Plan does not contain any measures on sentencing. The KSMM will continue to monitor the situation.

*(R23) Both prosecutors and judges should respect the non-punishment principle for victims of human trafficking.*

The non-punishment principle for victims of human trafficking always applies throughout Swiss territory. Non-punishment for persons being forced to commit an offence is legal standard in Switzerland.

*(R24) The KSMM/SCOTT may consider carrying out or commission a review of the existing practice by federal and cantonal authorities in light of the non-punishment principle of trafficking victims.*

The non-punishment principle for victims of human trafficking always applies throughout Swiss territory. In addition, it is not easy to conduct a meaningful review, considering that a victim may not be convicted because he/she is a victim of trafficking, but for other reasons about which the KSMM is not informed. As it is related only to rare and single cases, it is not necessary to establish a monitoring system.

#### 6) Trafficking for labour exploitation

*(R27) To get a sound understanding of the scope and nature of labour exploitation, research in that area should be commissioned and facilitated, and ongoing research should be disseminated to relevant actors once finalized.*

To promote a deeper mutual understanding of labour exploitation, the Human Security Division of the Federal Office of Foreign Affairs organised an international round-table (in September 2014). This provided a platform for information-sharing and multidisciplinary exchange between relevant national and international actors. The aim of the round-table was to identify challenges and potential best practices in combating human trafficking for labour exploitation. In addition, research on the extent and dimension of the issue was conducted as part of preparations for a national campaign by the KSMM.

*(R28) It is recommended to involve cantonal labour inspection authorities much more in anti-trafficking efforts, namely by becoming a member of KSMM/SCOTT and cantonal coordination mechanisms, as well as through a short training module about human trafficking for all labour inspection officials and more comprehensive training for selected labour authorities.*

Relevant actors, such as trades unions, have been invited to join the KSMM at working group level. Their decision on whether or not to collaborate is still pending. Cantonal labour inspection officials were the main target group for the aforementioned international round-table on human trafficking for labour exploitation. The challenge of identifying potential victims of labour exploitation was discussed during the Round Table, and a tool presented. A list of indicators, aiming at more effectively identification of potential victims of trafficking in the restaurant industry was presented.

## Sub-study 5: Gender equality

The report of the Swiss Centre of Expertise in Human Rights (SCHR) mentions the analysis and recommendations contained in the report of the OSCE gender equality delegation from the country visit of December 2013. The following comments on the recommendations provided in the OSCE report<sup>5</sup> have been provided by the Federal Office for Gender Equality (FOGE).

### 1) Women's economic empowerment

*Research has shown that women have the greatest potential for improving the Swiss economy. The government should take all possible steps to ensure that women have access to child care and other support services to access full time employment in greater numbers.*

The provision of child care services lies predominantly within the competence of cantons. The same is true of the state school system, in terms of curricula, school schedule, etc. However, there has been a great effort at the federal level since 2003 to provide financial support for childcare services and after-school programmes. Thanks to the program of providing financial aid to child care providers more than 40,000 childcare places have been created over the past 10 years. The programme was intended to run until the end of January 2015, but in September 2014 the Federal Assembly decided to extend it until the end of 2019. The competent federal authority in this field is the Federal Social Insurance Office.

*The Federal Office for Gender Equality should be given additional resources to review salary data from companies receiving federal procurement contracts to secure equal pay for women.*

As of 1 January 2014, the FOGE has been provided with additional resources (2 economists = 1.8 full-time positions). The appointments were made specifically to increase the number of reviews of salary data from companies receiving federal procurement contracts, as well as to develop new instruments to check salary practices in companies, and to provide training to private and public employers.

*Public education activities should be supported to challenge gender stereotypes about women's and men's roles in the work place and the family and policies advanced to promote more equitable sharing of family responsibilities by men and women.*

Gender stereotypes persist in family life, in state education, in the workplace and, in particular, in the (social) media. What is needed is thus a concerted effort by society as a whole, the private-sector economy, and political and public institutions to challenge these stereotypes. For example, the FOGE provides financial support to a project that promotes part-time work for men ("Der Teilzeitmann"), and thus challenges stereotypes about men and their role in the workplace and the family. Where the state school system is concerned, some cantons have targeted stereotypes by training teachers, and by their choice of teaching materials.

*The marriage tax penalty should be eliminated from the federal tax code.*

The Federal Council intends to eliminate the marriage tax penalty. It has therefore recommended accepting a popular initiative which aims to amend the Federal Constitution accordingly. The initiative will be submitted to a popular vote in 2015 or 2016. The competent federal authority for this issue is the Swiss Federal Tax Administration.

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<sup>5</sup> Visit to Switzerland by June Zeitlin, the Special Representative of the OSCE Chairperson-in-Office on Gender Issues, Miroslava Beham, Senior Gender Advisor, and Ana Lukatela, Gender Advisor, Gender Section 9-11 December 2013, CIO.GAL/195/13



## 2) Implementation of UN Security Council Resolution 1325

*Further monitor the implementation of the National Action Plan. Moreover, the gender balance in peace missions and other relevant bodies as well in domestic security and police services should further be improved, and the engagement for the protection of women and girls in conflict situations, for the integration of women in peace building processes and for combatting impunity of sexual violence should be pursued both on a bilateral and on a multilateral level. Finally, an increase of financial resources – for instance through gender sensitive budgeting – would give all the strategic commitments further credibility.*

Switzerland is implementing its National Action Plan 1325 (NAP 1325) to meet the obligations of UN Security Council Resolution 1325. The original plan, which was drawn up in 2007, has since been revised. On 6 November 2013, the Swiss Federal Council acknowledged the NAP 1325 for 2013–2016. It contains specific measures for the entire federal government to support women and girls and to reduce the impact of armed conflict on them. At the same time, NAP 1325 emphasises the important role of women in political processes.

## 3) Domestic violence

*The government should consider the adoption of comprehensive domestic violence legislation focused on preventing and combating violence against women, facilitating prosecutions where appropriate and providing necessary social services to its victims and their families.*

The ratification process for the Istanbul Convention is currently underway. This means that the Federal Council is examining whether or not the Swiss legal system is compatible with Switzerland's obligations under the Istanbul Convention, and whether or not to submit the Convention to the Federal Assembly for approval. In case the Istanbul Convention will be ratified there will be no need to adopt comprehensive domestic violence legislation as recommended by the OSCE, since the wide-ranging legal obligations (prevention, protection and prosecution) of the Convention will automatically become part of the Swiss system of law. The competent federal authorities here are the Federal Office of Justice and the FOGE.

*While there is some government support for shelters and other services for victims of domestic violence, minimum standards should be set and incentives provided to cantons to provide additional services and alleviate the overcrowding and inaccessibility of these shelters.*

The operation of shelters for victims of domestic violence lies within the competence of cantons. The Swiss Conference of Cantonal Directors of Social Affairs (SODK), in cooperation with FOGE, is currently analysing the situation and the associated needs with regard to women's shelters. The report is scheduled for publication in winter 2014/2015. This analysis will serve as a useful basis for the ratification process for the Istanbul Convention.

*Research should be undertaken on the use and effectiveness of existing programs for perpetrators.*

Research with regard to existing programmes for perpetrators has already been undertaken. Examples include the report commissioned by the FOGE in 2008 and the expert legal opinion also commissioned by the FOGE in 2012. In some cantons program evaluations have been conducted (Basel-Stadt: Gloor/Meier 2003, Zürich: Bächli 2006).