

Alternative Report on Racial Profiling practices of the Swiss Police and Border Guard authorities

Addressing the fourth periodic report of the Government of Switzerland to the Human Rights Committee of the United Nations

Concerning:

The International Covenant on Civil and Political Rights (ICCPR)

Submitted by the Alliance against Racial Profiling, Switzerland



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On the authors

This report by the *Alliance against Racial Profiling* concerning Switzerland's fourth periodic report to the Human Rights Committee of the International Covenant on Civil and Political Rights (ICCPR) was compiled and edited by a committee of the Alliance against Racial Profiling made up of the following participants:

Tarek Naguib, Dr. Tino Plümecke and Dr. des. Chris Young.

Contact: tarek.naguib@gmail.com, postal address: Tarek Naguib, Hohbühlstrasse 16, 9400 Rorschach, Switzerland.

The ad hoc working group of the Alliance against Racial Profiling is supported by the following individuals and organizations:

Mohamed Abdoullahi, Masha Adebayo, Wilson Adebayo, Melanie Aebli, Mithra Akhbari, Alternative Linke Bern, Anlaufstelle für Sans-Papiers Basel-Stadt, Autonome Schule Zürich (ASZ) Akim Bamigbokpa, Apiyo Brändle-Amolo, Jonathan Büchi, Heiner Busch, Anina Dalbert, Anna Dell Era, Demokratische Jurist_innen Schweiz (DJS), Auguste Essama, Roseli Ferreira, Gesellschaft für bedrohte Völker (GfbV), Andreas Geu, Yasmine Hashmi, Lamy Hennache, Gian Hernandez, Henry Hohmann, Andrea Holenstein, Ellen Höhne, Sarah Hübscher, Suhyene Iddrisu, Amanda Ioset, Danielle Isler, Annina Kuechenhoff, Tom Locher, Angela Mattli, Roland Mesidor, Stefanie Motz, Fatima Moumouni, David Mühlemann, Moustafa Naguib, Tarek Naguib, Tino Plümecke, Sarah Reid, Soelyla Salie, Sarah Schilliger, Solidarité sans frontières, Mohamed Wa Baile, Chris Young, Fanny de Weck, Claudia Sumirah Wilopo.

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Introduction and summary

a) Racial Profiling: defining the term and constitutional framework

In this report we use the term *racial profiling* as shorthand for a range of discriminatory police practices that are based on alleged ethnic or religious affiliation. When police operations involving identity checks, observation and/or stop-and-search (also called stop-and-frisk) are directed against people due to their physical appearance, religious symbols or other external aspects, rather than due to legally justifiable suspicions, we consider these practices to be discriminatory and an instance of racial profiling. In Switzerland, people often subjected to racial profiling are, amongst others, People of Colour (PoC) generally, people of Arabic, North-African or South-East European descent, members of the Roma, Sinti or Yenish communities, Muslim women who wear headscarves and others not generally perceived as «normal» Swiss citizens.

Racial Profiling is a breach of article 8 paragraph 2 and article 10 paragraph 2 of the Swiss Constitution (CC). According to art. 8 para. 2 CC, «no person may be discriminated against, in particular on grounds of origin, race, gender, age, language, social position, way of life, religious, ideological, or political convictions, or because of a physical, mental or psychological disability». According to art. 10 para. 2 CC, «every person has the right to personal liberty and in particular to physical and mental integrity and to freedom of movement». Restrictions on fundamental rights must have a legal basis, they must be justified in the public interest or for the protection of the fundamental rights of others. Any restrictions on fundamental rights must be proportionate (art. 36 CC). Fundamental rights must be upheld throughout the legal system. Whoever acts on behalf of the state is bound by fundamental rights and is under a duty to contribute to their implementation (art. 35 CC).

b) The current situation in Switzerland

- The social problem of racial profiling has intensified since Switzerland's third periodic report to the UNO Human Rights Committee in 2009 (see part 2a).
- Two sizeable civil society movements have recently emerged, the *Allianz gegen Racial Profiling* and the organization *A qui le Tour?*, both of which heavily criticize racial profiling by police forces.

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- 5 • Recent research shows that black people, People of Colour, Yenish and Roma in Switzerland are exposed to widespread, recurrent, and often humiliating police checks (see part 2b).
- 6 • Many people affected report serious effects from these recurrent police checks—like feelings of fear, shame, anger as well as loss of security and trust. Some report severe limitations in their ability to use public space (see part 2b).
- 7 • There is also increasing criticism from attorneys and legal scholars of systematic and deliberate racial profiling practices against Roma, Sinti and Yenish on Swiss territory as well as against black people and people with a North African or Slavic appearance at the Swiss border in Como/Chiasso.
- 8 • In the view of the Alliance, (the increase of) racial profiling is the consequence of historically developed «myths of supremacy» and a «culture of distinction and dominance», a current political crisis concerning refugees that has led to an attempt to increasingly control migration, insufficiently specified laws, ineffective access to justice, and the ongoing lack of recognition by police officers (up to the most senior leadership level) of racial profiling as a problem (see part 2c).
- 9 • Despite the obstacles to access to legal protection, there are at least eight criminal and one administrative legal cases pending which contest a violation of the bans on racial discrimination in international and constitutional law. This is a larger number than at any time since the ratification of the ICCPR by Switzerland in 1992. The cases illustrate the variety of racial profiling practices as well as the difficulties involved in challenging the legality of these practices.

c) Recommendations to Switzerland

- 10 • Take immediate action to ensure racial discrimination is recognised by all federal and cantonal authorities and organizations as a society-wide problem.
- 11 • Examine effectively the possible discriminatory effects of the routines, leadership styles as well as the distribution of resources and the communication activities of the police and the border patrol authorities.
- 12 • Develop and implement a system of an independent and ongoing monitoring.
- 13 • Introduce statutory prohibitions against racial profiling and discrimination in federal laws and require or encourage the introduction of such laws in cantonal and communal police laws.
- 14 • Enact and implement legislation or other measures to bring about transformation within the police and border patrol authorities.

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- Encourage and facilitate the introduction of a system of receipts or pilot programmes of such a system, which requires police officers to issue a receipt for every check of a person containing general information regarding the check. 15
- Improve access to justice in cases involving racial profiling. Permanent independent investigative bodies should be created at the federal and/or cantonal levels and in major cities. 16

Part 1) About the «Alliance against Racial Profiling»

a) The objectives of the alliance

17 The *Alliance against Racial Profiling* is a grassroots organization of a growing number of over 200 activists, scientists, artists, as well as human rights organizations and people who jointly fight institutional racism in the Swiss police and border patrol authorities and structural racism within Swiss society.

The objectives of the alliance are:

- 18 (1) To be a role model and empower people affected by racism to make a stand against racism, together with allies.
- 19 (2) Produce and teach critical knowledge on racial profiling and structural racism.
- 20 (3) Intervene in the public discourse and debates.
- 21 (4) Build up pressure on institutions (e.g. political authorities, justice, police and border patrol) to implement human-rights-based and effective countermeasures against racist police practices.

22 The *measures* with which the alliance strives to achieve the objectives are as diverse as the alliance itself. They range from scientific studies, observations of court cases, strategic litigation and interventions, through legal publications, media work on political and cultural events, to campaigns and public statements. Moreover, the alliance includes over 18 loose initiatives and working groups. Furthermore, the alliance is supported by local initiatives from Basel, Bern, Geneva, Lausanne, Lucerne, St. Gallen and Zürich. The alliance is also networked with foreign organizations such as *Kieberei was geht?!* from Vienna, Austria, the *Campaign for the victims of police violence (KOP)* in Berlin, Germany, and the *Initiative Schwarze Menschen in Deutschland ISD*, Germany.

b) The standpoints of the alliance

- 23 (1) The alliance understands racism as a societal problem that is based on historically developed «myths of supremacy» and on a «culture of distinction». Racism (e.g. Anti-Black Racism, Antigypsyism, Anti-Muslim Racism, Anti-Balkan Racism) is not primarily a problem of attitudes or behaviours of individuals, but rather has effect and is perpetuated by racist discourse, institutional(ized) actions, and an inferiority-

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superiority-complex of racialized individuals. It has to be taken seriously as such, investigated, and prevented with the appropriate measures.

- (2) The alliance observes that racist police checks are a recurrent experience of many people throughout Switzerland. Currently younger people of all genders with darker skin, of North African, Arabic, and South-East European descent as well as Roma, Sinti and Yenish are primarily affected. 24
- (3) The alliance finds that people affected by racial profiling are often, without any legal or objective motive, exposed to the suspicion of having committed a crime. In other cases, police officers conducting checks arbitrarily assume that a «foreign»-looking person probably is in Switzerland without any right of residence. Additionally, in places where crime and social conflicts frequently occur, checks and removal orders are enacted disproportionately against the groups previously mentioned, without any objective reason. 25
- (4) The alliance knows, as a matter of fact and on the basis of current research that discriminatory checks are humiliating and stigmatizing for the people affected. They lead to insecurity, are inefficient, and cause enduring damage to the relationship between the person subjected to a check, the migrant population and the police officers. 26
- (5) The alliance observes that the experiences of people subjected to checks and the research regarding racial profiling shows that the justice system is not capable of providing sufficient legal support for the people affected or fair treatment, and (precisely) thus contributes to the legitimization of structural racism. 27

The Alliance against Racial Profiling and the signatories of the present report support the general comments in the parallel report of the NGO coalition. We supplement them by contributing the additional information in Parts 2 to 4. 28

Part 2) Multiple evidence for a hidden structural and institutional problem

a) Increasing problematization

29 We note a number of developments which evidence the continuing gravity and possibly the intensification of the problem of racial profiling since Switzerland's third periodic report to the UNO Human Rights Committee in 2009.

30 Firstly, the downplay of Racial Profiling by the police (see part 2c) and the ineffective structures of the state authorities and the civil society to tackle the problem led to a recent and rapid emerge of new antiracist movements. In recent months the *Allianz gegen Racial Profiling*, which is active Switzerland-wide, and the organization *A qui le Tour?*, concentrated in the Lemanic Arc have emerged. These are two sizeable anti-racist movements that heavily criticize the denial and inactivity of the police force in regard to tackling racial profiling. Secondly, there has been increasing criticism from other organizations such as CRAN – Carrefour de Réflexion et d'Action Contre le Racisme Anti-Noir, the Society for Threatened People (STP) and Amnesty International, as well as from attorneys and legal scholars of systematic and voluntary racial profiling practices against specific groups.

31 The movement «Alliance against Racial Profiling» (In German: «Allianz gegen Racial Profiling») developed during 2016 in response to legal action taken by the Zurich City Police against Mohamed Wa Baile for his refusal to cooperate in a discriminatory police check (see the description of the case below in Part 3). Initially a small group who intended to support Wa Baile in his fight, the Alliance against Racial Profiling has now grown into a movement comprising approx. 200 people affected by racial profiling, legal professionals, scholars, activists and artists, some of Colour, many white. A number of pre-existing anti-racist NGOs or NGOs representing particular minority groups are associated with the Alliance, and at least four new organizations have emerged from it. This development has happened over approx. 18 months. The Alliance also seems to have become a point of reference for people acutely affected by racial profiling, as approx. a dozen people have turned to the movement for advice, support and with the aim of making their case publicly known. The reports of these people suggest that prior to the existence of the Alliance no other organization fulfilled this function. The individual members of the Alliance and the organizations closely associated with it are based mainly across the German-speaking areas of Switzerland, in Basel, Bern, Fribourg, St. Gallen, Zürich and other places, with connections to Italian- and French-speaking Switzerland. The rapid growth of the movement, the coming forward of peo-

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ple affected by racial profiling, and the echo its activities have had in the media suggest that there is a large and perhaps growing amount of unease and discontent in parts of the Swiss population regarding discriminatory police practices.

The movement «A qui le Tour?» emerged after two police interventions in the French-speaking area of Switzerland in late 2016. In one of the cases, a black 27 year-old man with a permanent Swiss residence permit, originally from the Republic of Congo, was shot and killed by police during an intervention at his place of residence. The second case involved a young black man checked by police in Lausanne with excessive use of force and on no apparent grounds. «A qui le Tour?» has brought together a large number of people, mainly from the black community in Switzerland's French-speaking areas, who are concerned by and partly subjected to racial profiling. Around 600 people attended a demonstration organized by the movement in November 2016 and regular meetings and activities have taken place since. The movement is also associated with a number of pre-existing anti-racist NGOs in the region. The emergence and rapid growth of «A qui le Tour?» in Lausanne provides evidence that there is substantial discontent among the population of this area about racial profiling by the police. The emergence of the two movements suggests (1) that racial profiling is more widespread right across Switzerland than commonly perceived, and (2) that there is substantial discontent in parts of the population (not only, but also among people affected) regarding the way existing (official) bodies deal with complaints of racial profiling.

The «Society for Threatened Peoples» (STP) Switzerland is making racial profiling a central focus, namely for people of «Roma, Sinti and Yenish background and so-called «Fahrende» (didicoy)» who «are highly exposed to racial profiling—if they are leading an itinerant lifestyle, they face arbitrary police checks on a daily basis. On transit sites, arbitrary police checks are part of the daily routine. As itinerant Yenish, Sinti and Roma live in their caravans, they consider caravans and the wider area of the transit sites where they cook and their social life takes place as their 'home' [...] Furthermore, Roma face racial profiling in public spaces – especially at train stations and inside trains. The STP has submitted a complaint against this ongoing practice with the responsible authorities. (Society for Threatened Peoples, 2017)

Refugee activists, critical scholars and non-governmental organizations such as Amnesty International have given reports on border control practices of a particularly acute discriminatory character which have been observed at the border in Chiasso, Ticino, between Switzerland and Italy over the last year. Activists have repeatedly visited the border and observed these practices in August, September, November and December of 2016 and in January, March and May of 2017. Black people or with a Slavic or North African appearance have practically no chance to cross this border into

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Switzerland without being asked for their identity documents. People who are perceived as white, however, are not subjected to these checks. In other words, the Swiss border patrol authorities are currently conducting systematic checks of people based only on external appearances. These checks are racist. The border control authorities in Ticino also regularly receive reports from the public that People of Colour have been sighted in certain places, and the border control authorities conduct checks based on these reports. All checks include body checks or body cavity checks, regardless of the age of the persons, i.e. including unaccompanied minors and elderly persons. After the check the people are given a wristband with a number and a colour according to gender. Then the people checked are handed over to the Italian border authorities, wearing these wristbands and then released. The Italian border authorities have been observed to retain these wristbands before releasing the persons checked.

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Furthermore, since the ratification of the ICCPR by Switzerland there have never been so many pending criminal (8) and administrative law (1) cases contesting a violation of the bans on racial discrimination in international and constitutional law¹. In the case of *Wilson Adebayo* (Zürich), who brought charges against one female and two male city police officers, a racially discriminatory police check put his life at risk. *Hervé K.* (Fribourg) took action against two police officers because he was physically manhandled at the police station for having criticized the police check as discriminatory. The case of *Claudio* (Lausanne) is a typical example of an inappropriate check of a black man who was mistakenly perceived as a drug dealer. In the cases of *Anna D.* (Basel), *Heba H.* (fictitious name) (Zürich Airport) and *Wilson A.* (Olten), discriminatory checks were instigated by members of the Swiss Border Guard or the Airport Police. The case of *Mohamed W.* (Zürich) is a typical example in which the person subjected to a check ended up in court for having resisted a discriminatory police check. In the case of *Mohamed A.* (Basel-Stadt) it escalated as far as a prosecution for obstructing officials in the course of their duty, since he took photographs of discriminatory police checks and the police attempted to destroy the evidence.

¹ *Mohamed W. / City of Zürich Police* (see below; cf. also <https://www.humanrights.ch/fr/droits-humains-suisse/interieure/poursuite/police/delit-facies-audience-judiciaire-precedent>); *David A. / Swiss Border Guard* (cf. XX); *Anna Dell Era / Schweizer Swiss Border Guard* (cf. XX); *Wilson Adebayo / City of Zürich Police* (see below; cf. also David Mühlemann/Tarek Naguib/Réka Piskoty, *Racial Profiling. Struktureller Rassismus, Plädoyer 2/2017* [Racial profiling. Structural racism, making the case, pp. 32 ff.]); *Mohamed A. / Basel-Stadt Cantonal Police* (see below; cf. also XX); *Claudio / City of Lausanne Police* and *Hervé K. / Fribourg Cantonal Police* (cf. <https://www.rts.ch/info/suisse/8526261--c-est-tres-difficile-de-porter-plainte-contre-la-police-pour-le-delit-de-facies-.html>).

b) Variants of racial profiling below the tip of the iceberg

Legal proceedings are just the tip of the iceberg, as the obstacles to legal proceedings prevent most instances of racial profiling from becoming legal cases, as current research findings from the *Racial Profiling Collaborative Research Group* show: 36

Current Research

The *Racial Profiling Collaborative Research Group*² is currently undertaking the first comprehensive and systematic study of racial profiling in Switzerland. Since May 2016 a group of eight social scientists, students and activists from Zürich, Bern and Basel has conducted 30 problem-centred interviews with people affected by racial profiling. The interviews were conducted with one or two members of the research collective in German, French or English. The aim was to document the diversity of experiences of a variety of people affected by racial profiling. The background of the study is the lack of systematic knowledge about the spectrum of experiences with racial profiling, the frequency of occurrence, and the impact on people affected by these police practices. Interviewees were found through the activist network of the Alliance against Racial Profiling, through a public appeal to different institutions and at events dealing with topics like migration, racism and xenophobia. 37

Interviewees consisted of a variety of different people who have experienced discriminatory police practices: Black people, People of Colour, Yenish, Sinti and Roma, Muslims, refugees, and migrants with different residence statuses—including sans-papiers (people with no legal residential status)—living in different places in Switzerland. Within this group of interviewees, individuals differ therefore in their nationalities, skin colours, gender, age, place of residence, religious affiliations, family situation, employment and income status, education, and mother tongue. Based on comparative analysis, the individual narratives of people affected were analysed through interpretation frames valid for several cases. Interviewees are informed about the use and dissemination of their interview data. Their personal details and the interview data are anonymized and, if desired, reviewed by the interviewees themselves. 38

Broad spectrum of experiences with racial profiling

The diversity of interviewees offered a wide range of different encounters with the police. Despite the fact that the crucial features of people affected are physical traits—in particular skin colour—that can be perceived as an indication of belonging to an ethnic, racial, and/or religious minority group living in Switzerland, there are also often further aspects involved in the concrete setting. According to the context more features are 39

² See www.stop-racial-profiling.ch (reports/studies); Höhne/Schilliger/Wilopo (2017); Vock 2017.

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implicated in action, such as age, gender, religion, language skills, outfit style, hair-style, assumed social-economic status, citizenship status, and where the interaction take place. In a general view there are some difference categories which lead to a specific vulnerability for being particularly often in the focus of police stop and search practices.

Intersectional dimensions of difference

40 The most reported interdependencies that structured the experiences with the police are related to citizen status, gender and language. The interviewees in the study note that conversation with the police predominately takes place in standard German. People who told the police that they don't speak German and prefer English were often ignored. Besides language, aspects such as presumed class and income were defined by the interviewees as elements that change the police's treatment of people.

41 **Citizenship Status:** Significant differences in the occurrence of police checks were reported by people with pending asylum proceedings and sans-papiers. Many of them reported direct racist statements by police officers as well as physical searches of their persons, their personal belongings or baggage.

42 *«I believe that the police thinks that if you are a sans-papier, you have limited rights, and that she can do anything with you. They do all with you what they want.» (Ahmed Abdullah)³*

43 *«Because it depends on the quality of your ID, if you have an N or F or B status that even changes the reaction of the police towards you.» (Tahar Baznani)*

44 **Gender:** Black men are affected by stigmatizations as criminal, <illegal> and/or violent more often than other people. They also experience more physical violence, while black women are often addressed by the police as sex workers.

45 *«They put me in handcuffs, and they pushed me into the car and hit me in the chest. In the barracks they hit me in the belly. Then they told me, 'You can get dressed and go home'.» (Danab Geele)*

46 *«Le policier fait des choses qu'il normalement n'a pas le droit de le faire.» (Lucie Cluzet, Black sex worker)*

47 **Language:** People who speak Swiss dialect report changes in interactions with the police. Speaking in dialect partly made check situations easier and faster.

48 *«For me it is often that—also in other situations—where I am treated weirdly or differently, as soon as I start to speak Berndeutsch [the local dialect; the authors] and they notice this, there's like a click and then everything is different.» (Ebony Amer)*

³ All translations of the interview parts (if not conducted in English) are by the authors.

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Social status: The presumed class affiliation, apparent socioeconomic status and social capital also play an important role in some situations—for instance, some people who have student status report receiving more respect from the police. 49

«If you say that you are a student, then they are quite different. When I say I'm coming from university, you'll be treated differently.» (Audrey Happy). 50

The research participants encountered unique and individual practices of policing, but there are aspects of the way police checks proceed that have consistent features: 51

Symptomatic experiences

Despite the broad spectrum of differences, the reports also contain many overlaps and similarities. Racial profiling incidents are not single, unique, or universal experiences, but experiences that can occur for some parts of the population who are not assumed to be normal Swiss citizens at nearly any time and place. However, the different narratives indicate that police checks often proceed along similar lines. People are approached in their daily lives by two or more police officers requesting them to identify themselves and give reasons for their presence. People who are not native German speakers and people with a refugee or no residence status have reported that they are faced with various personal questions such as their address, their destination, and their living situation. Many people are also requested to show or empty their bags and pockets, or to undergo a public pat-down. Individuals with refugee status, people without residency, as well as people who refuse to identify themselves, experience handcuffing and arrests and even being detained for a certain amount of time. Many checked people reported that they were not given an explanation for the check procedure. If asked by the controlled person, police officers often say «routine control». Patterns identified in almost all the interviewees' reports are described in the following: 52

Racial targeting: Almost all interviewees describe situations in which they are in a crowd and the police focus their attention on them, probably only due to their physical appearance, mainly because of their skin colour. They are subjected to an interruption of their everyday lives and feel unfairly treated. Omar Zaman (who was an asylum seeker during this specific encounter) was jogging with white friends along the river in Zürich, when they were followed and stopped by the police and asked to identify themselves. Although Omar Zaman wasn't the only one who didn't have his identity card on him, he was the only one handcuffed and taken to the police station: 53

«If I had been alone, I would have accepted the fact that they took me to the police station. But I was not the only one without identification. They [the police] believed the ones with a 'normal' appearance but they don't believe an African person.» (Omar Zaman) 54

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55 Tara Wiga, a forty-year-old woman who has lived in Switzerland for sixteen years, re-
counts many instances of being stopped by the police on public transport:

56 *«I'm sitting in a train and then the police enter the train carriage and they walk through
the whole train carriage full of people. As I'm often the only black woman on a train, they
look at me from the very beginning and it seems that they don't see the other people.
They come directly towards me and then they say the usual sentence: <we would like to
check your papers>. They never approach anyone else but me. After I give them my
identity card, the next question is (...) 'do you have a train ticket? They check all
documents and then they do not control anyone else and on the next occasion they just
get off.» (Tara Wiga)*

57 **Being the object of a gaze:** Many interviewees reported that they have felt <exhibited>
during the police checks, as if they were <in a circus>, <second-class people>, or people
with <limited rights>. In particular, checks in public spaces, before the eyes of the
(mostly white) passers-by, exacerbate the situation and the effect on those checked.
Even after the situation, they often experience strange or humiliating looks from other
people. Almost none of the interviewees had experienced interventions or help from
bystanders. Being forced to undergo a physical check involving pat-downs or bag
checks in front of other people is especially described as a particularly intense crimi-
nalising and humiliating situation.

58 *«Ils [les policiers] nous traitent comme des animaux!» (Salah Chant)*

59 *«[police] checked me, the other people look at me. What happened to my dignity?»
(Chandra Macasche)*

60 **Stigmatization and criminalization:** Almost all interviewees describe the checks as
unjustified and involving stereotypic attributions. Either openly or subtly, people
checked on discriminatory grounds are taught they are a <problem>, to be kept under
control, and that they are at least potential offenders.

61 *«I felt like a criminal. I've never been an offender to the police, but just because I exist. I
cannot help it that I'm born like that.» (Wakur Bari)*

62 *«I'm coming out of Migros [supermarket] with all my shopping, so what do they think? Do
think I'm selling drugs? What dangerous thing am I supposed to be doing? That's what I
told them. The policeman was harsh, a real SVP-policeman [SVP is a right-wing political
party]. They wanted me to take off my jacket and then they left me.» (Mamadu Abdallah)*

63 In a train Omar Zaman was ordered to open his mouth during a police check situation
with three officers (two men, one woman). When he questioned the order of a police
officer to open his mouth they instantly used physical violence, as Omar Zaman de-
scribes. In his opinion, he was considered to be a drug dealer:

64 *«She immediately grabbed my neck, choked me until I opened my mouth. And then she
said: <Ok, all right> (...). In this situation, I felt very bad. (...) I was extremely ashamed*

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that this happens to me while all people saw it and completely ignored it.» (Omar Zaman)

Affects: For almost all of the interviewed persons, the discriminatory check by the police was a humiliating and shameful experience. During these situations, there seem to be limited possibilities to react or engage with police. They describe, for example, massive fears and further emotions that were triggered in the situation and which also persisted long afterwards. Many people report a severe distrust of the police which they perceive not as security guards or as helpers against discrimination, but as people that cause them anxiety and strain. In addition to fears, persons affected also express anger or despair. But before that, many interviewees recount that they felt confused and their first reaction was to ask themselves if they had done something wrong. Some people even question their own behaviour, as one illustrates:

«I kept on asking myself: <what did I do wrong?>» (Tara Wiga)

Swallowing, silencing, and oppressing violent feelings – these are common reactions to shameful and hurtful experiences with police. Such frustrations are mostly not voiced by the persons affected due to fear of negative repercussions from police. The interviewee just quoted explains that she «learned» to keep calm:

«With time, I learned to wait very quietly and do everything they want me to do» (Tara Wiga)

«After being checked, I felt totally uncomfortable. ... Because the people, society looks differently.» (Chandra Macasche)

«The check situation happened eight months ago, but the fear and the experience is still deep inside me ... every time I see the police I'm afraid.» (Jamal Hussaini)

«So, I often experience situations in which I am due to my skin colour and actually always, whether it was with police checks or someone speaks to me in standard German or English, then I have on the one hand the feeling of defiance and anger. Then I often begin to tremble inwardly, too, because I want to defend myself.» (Zoe Hetti)

A huge step towards the personal recognition of injustice: Many interviewees report that they experienced the checks as shameful and/or humiliating, but it took some time to deal with feeling self-blame and the suppression of the experience before moving to an active engagement. As part of the experience of racism, many people affected made attempts to learn to live with the discriminating checks.

«I was asking myself, am I trouble, I had to talk to myself, am I really a trouble maker? Am I making problems? Is it only me that this is happening to? I had to figure out, maybe change my way of life or how I dress or where I go? Then I started to meet people, then I realized each person that I met had a story to tell. That gave me the picture, ah, it's not only me who had this.» (Jay Anderson)

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Coping strategies: The interviewees deal in various ways with the risk of being checked on a daily basis. Many report that if possible they always anticipate the checks, which means they leave earlier when they have appointments or always have their ID card on them, even on short errands. Some try to camouflage themselves so that they correspond as little as possible to the police's check criteria. Some avoid certain places or avoid going outside at night where they expect frequent checks or state they have accepted this as a norm in their everyday lives. Others consciously choose not to be restricted by the police checks in their freedom of movement. Still others are very active during discriminatory checks: they ask for the reason, discuss with the police officers, and, if necessary, refuse to display their identity card if they feel they are being treated this way on the basis of racist decisions.

75

«I am not trying to avoid it but I always expect it.» (Chandra Macasche)

76

«No, if you are a person of colour, you better keep your mouth shut and live as discreetly as possible.» (Lucie Cluzet)

77

«I always ask «Why are you stopping me? What is your first instinct that makes you stop me?» Of course, they never say, «Because you are black.» Often I say, «Look me in the eyes and tell me the truth.» And they never look me in the eyes.» (Chisu Chilongo)

78

Demands: The interviewees formulate general hopes in relation to the police, as well as other authorities and society in general, that they will fight against racism in concrete interactions as well as in structural and institutional settings. Specific demands concern the improved implementation of human rights and anti-discrimination legislation, as well as the issuing of receipts during checks which indicate the reason and the result of the checks. Furthermore, more members of minority groups and officers with wider language skills should be represented in the police corps. In addition to discriminatory police checks, many of the interviewees also had other experiences of racism in their daily lives, in the search for accommodation, in dealing with authorities, at work, etc. and emphasized that racism is not only a phenomenon of the police but a social problem which must be tackled on many levels.

79

«Il faut qu'ils [les policiers] recevoir une meilleure éducation, un l'éducation moral. Il faut qu'ils savent qu'on des humaines, qu'on a des droits.» (Salah Chant)

80

«I would like that the police will have a clear approach to checks, which has to be respected by all policemen. For example bodycams. If someone complains, there is proof. Or also that the police as in London has to make a statement or receipt for the check.» (Omar Zaman)

81

«Everything you hear abroad about Switzerland is: Heidi, mountains, human rights, etc. I would never have thought that Switzerland is so unfair before I came here.» (Ahmed Abdu)

c) Structural causes of racial profiling

The reasons for the ongoing severity of racial profiling are structural and institutional in nature. Despite the available data and growing calls to combat racism, the existence of institutional racism is denied or played down by police at the most senior leadership level, claiming that discrimination is supposedly confined to a few exceptional cases of young, inexperienced police officers. Nor have the long-demanded and necessary measures to develop a police culture that proactively discusses racism been implemented, in spite of the fact that racial profiling is the consequence of historically evolved paradigms of racism and needs to be tackled especially responsibly. This weakens or undermines the trust of PoC and their communities in the police. Furthermore, no effective complaints mechanisms are available; instead, those affected find that access to the law is practically barred or only possible thanks to particularly determined and unpaid efforts by lawyers and activists, as in the cases described. 82

In addition to this, the regulations in immigration law, customs law and law of criminal procedure do not sufficiently specify the rules on the content, purpose and limits of identity checks. According to Article 215 of the Swiss Criminal Procedure Code (*Strafprozessordnung*, StPO) a concrete suspicion of a criminal offence is not a prerequisite. It may be sufficient that a connection with offences seems likely. Criteria named by the Swiss Federal Supreme Court are «objective grounds, particular circumstances, specific elements of suspicion» such as «presence close to the scene of an offence, similarity with a wanted person, elements of suspicion regarding a crime, and so on» (Decision BGE 139 IV 128, translated by the authors). In view of the absence – or near absence – of a threshold for intervention, the circle of potentially affected persons is very widely drawn. The greater the scope of police authority, the greater the danger of arbitrary police action. 83

d) No effective access to legal protection/remedy

Persons subjected to discriminatory checks have to overcome such great obstacles to access legal protection that the vast majority of them never reach a legal advice centre or a courtroom. Disciplinary procedures for racism are rarely initiated against police officers or members of the Border Guard. Complaints to an internal police contact centre or informal legal remedies are hardly known or little used options; moreover, they rarely lead to a satisfactory solution for the persons checked. Thus, the legal process is virtually irrelevant because of all the process-related, economic and psychological obstacles that impede access to justice. 84

Proceedings under criminal and administrative law take a long time and carry high cost-risks. Only a minority of those checked by the police resist, because they are 85

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afraid of drawing too much attention to themselves and risking further discrimination without protection. Police officers can easily use authoritarian behaviour to restrain the persons checked from taking any action against the injustice they have experienced. In addition to this, only recently the President of the Conference of Cantonal Police Commandants in Switzerland reiterated at a conference of the Swiss Competence Centre for Human Rights that «racial profiling is not an institutional problem» (Stefan Blätter, 1.12.2016⁴).

86

If a person decides to fight the issue legally, the accusations are investigated in preliminary proceedings by the public prosecutor and the police. That means a complaint about an offence committed by police officers will normally be dealt with by individuals and offices whose everyday work relies upon good cooperation with the accused or their superiors. There are strong reasons to assume that colleagues protect each other and collude on what to say or that the public prosecutor does not investigate systematically enough. Criminal proceedings are rarely, if ever, initiated following the preliminary proceedings. Furthermore, lawyers report that during interrogations the translation is frequently done by officials themselves and the written record is prepared in consultation with the police officers involved. Lawyers also say that in critical cases the statements made by officers are reworked by the internal police legal service, which practically gives the police the sole power of definition when it comes to assembling the facts of the case that form the basis for later proceedings.

⁴Dokumented on: www.humanrights.ch/de/menschenrechte-schweiz/inneres/strafen/polizei/fachtagung-diskriminierenden-personenkontrollen

Part 3) Legal cases as the tip of the iceberg

Despite the obstacles described, and precisely because the problem has intensified over the last few years, a rising number of legal actions have been brought thanks to the support of committed lawyers and activists. The legal cases described below illustrate different manifestations of racial profiling. 87

Case a) Wilson A. versus City of Zürich Police

On 13 June 2017, eight years after the event, one female and two male police officers were brought before Zürich District Court on charges of abuse of office and endangerment of life. The case shows how a racially motivated police check can escalate without cause because the police are clearly less inhibited about manhandling people who are black. According to the indictment, on 19 October 2009 in the course of an identity check, Wilson Adebayo was beaten, forced to the ground and pepper-sprayed at point-blank range by the accused police officers. This occurred although Wilson A. behaved cooperatively and had made the police officers aware that he had recently undergone heart surgery and they should not touch him. 88

In their individual reports, the accused police officers pleaded having seen a resemblance between Wilson A. and a wanted criminal. «In the course of our patrol duty with UNO 45, in the number 9 tram in the direction of Triemli our attention was caught by two black Africans. One of them, later identified as Adebayo Wilson, fitted the description of [...] We decided to carry out an identity check on both of them.» (translation by the authors) It was another six years before two photos were produced for the record in support of this claimed observation. These show a black man standing at a bank counter. The only obvious reason for the check is the similarity between Wilson A. and the man in the photo in terms of skin colour, male gender and estimated age; no other objective, individualised or convincing elements are present that match the description. 89

According to the official record, the subsequent physical struggle entailed very severe health risks because of the complainant's medical history. As a result of oral anticoagulant medication necessitated by his artificial heart valve, choke holds or blows to the torso, neck and head carried a very high risk of severe and potentially life-threatening bleeding complications, including severe internal bleeding in particular. Furthermore, blows to the thorax posed a major risk of pacemaker dysfunction and perhaps even breakage of the implanted pacemaker cable, which could trigger a life-threatening shock. Likewise, the use of pepper spray can also trigger a shock in a person fitted with a cardiac pacemaker. 90

Case b) City of Zürich Police versus Mohamed W.

91 On 7 November 2016 Zürich District Court sentenced (GC160218-L/U) Mohamed W. to a fine of CHF 100 because he refused to comply with a police directive from a member of Zurich City Police force to produce his identity document. The basis for the court's decision were the following uncontested facts:

92 On Thursday 5 February 2015, Mohamed W. was travelling from his place of residence, Bern, to Zürich, where he worked as a librarian at the Swiss Federal Institute of Technology (ETH). Having alighted from the train at 7.00 in the morning, in the flow of other commuters he quickly proceeded from the platform through the main concourse of Zürich central station towards the exit. Whilst still in the concourse he was requested by a Zürich city police officer to identify himself. W. asked if a black person was wanted for an offence, and on hearing that this was not the case, refused to show the police officers his Swiss passport. Instead he informed the two male and one female police officers that he considered the check to be racial profiling, whereupon they fined him for refusing to identify himself. In the penalty order, the police officer justifies having stopped him as follows: «In the course of patrol duty ... the writer noticed a dark-skinned male who looked suspicious. This was based on the person's behaviour (M. W. turned his eyes away from me when he recognized me as a police officer and tried to walk past me). As this raised suspicions of an offence under the AuG [*Ausländergesetz*, Foreign Nationals Act], I decided to carry out an identity check on M. W.» (translation by the authors)

93 The accused has lodged an appeal against the first-instance judgement. He takes the view that his refusal to identify himself was justified. He argues that the motivation for the police check violates the ban on discrimination. Therefore it suffers from a serious substantive flaw, which makes the check null and void. In this case neither the police officer nor the judge of first instance could explain what was specifically suspicious about averting one's gaze, and whether the same behaviour by a man of «Western European appearance» of about the same age would have raised similar suspicions. In the end, all that remains is the discriminatory phrase «dark-skinned male who looked suspicious» from the police report.

Case c) David A. versus Swiss Border Guard

94 David A. is a black man from Ireland, living in Switzerland, who filed an informal complaint because he experienced racial profiling by the Swiss border patrol. In his own words, the case occurred as follows:

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«My name is David A., born 1974 and from Ireland. I have been working and living in Switzerland since 2013 and I have always observed all Swiss laws without breaking any. On a workday in December 2016 in the morning at the Olten train station while on my way to work, two men approached me from the back and popped in front of me stopping me. They told me that they were policemen though not wearing any uniform and demanded identification from me, I was so surprised and asked them why they stopped only me and was it because I am black, and one of them replied and said yes it was because I am black and they were stopping all the black people. I was dazed and felt so humiliated. I gave them my train pass as that was the only identification I had on me and they checked it. While this was going on I told them I had only 5 minutes to catch my train to work, otherwise I would be waiting for another 30 mins but they did not listen to me. They finished the check and told me everything was fine that I should go but by then my train had already gone. Afterwards I asked for their names because I was going to lodge a complaint against them. One of them gave me his business card and the name on it is XX. About 5 minutes later I met them again at platform 1 of the Olten train station and I complained to them that they made me miss my train to work and that I would be waiting for another 30 minutes, but they just ignored me and walked away. This is my experience with the Swiss Border Guard.»⁹⁵

No legal action has been taken in this case yet. With support from the Alliance against Racial Profiling David A. complained to the Swiss border patrol authorities in writing. Due to the obstacles to legal remedy in such cases, no formal legal action has yet been taken.⁹⁶

Case d) Heba H. versus Zürich Airport Police (Kantonspolizei Zürich)

In the case of Heba H., no legal action has been taken as yet either. The report illustrates, however, two problematic areas. Firstly, police and border practices at the airport should be examined closely, as it is likely that numerous similar cases of discriminatory checks go unreported in this environment. Secondly, the case shows how people identifiable as Muslim on sight are subject to discriminatory practices based on this classification. The details of the case are as follows.⁹⁷

«A man was waiting for his wife to arrive from Canada. He had extra time and decided to watch her plane land from the observation deck. He was approached by a member of the Kanton Polizei and asked for his permit. After scanning all his details, he was asked why he was at the observation deck. He answered that he wanted to see his wife's plane land. He was holding a bag of groceries and then was asked to let it be searched. The man remained calm and complied with the requests. The officer did not⁹⁸

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provide a reason. After 10 minutes his permit was returned and the officer let him go. In this time frame, the wife's flight arrived. While waiting in Arrival 2 there were two Kanton Polizei officers. They were not checking anyone else. The man's wife arrived and they headed out of the terminal. When they were outside, two officers stopped the couple and asked them for their permits. The wife was visibly shocked and complied with the request. They asked the wife for her passport and her boarding pass. When the wife opened her wallet they noticed she had a Canadian and British passport. They asked for these as well, and where she lived. He laughed. They asked the man again where he worked and he answered accordingly. One officer was scanning and checking documents, while the other was holding a machine gun watching the couple. After 15 minutes the documents were returned without explanation. The couple can be described as visibly Muslim. The man has a short beard and the wife wears hijab.»

Case e) Basel-Stadt Cantonal Police versus Mohamed A.

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On 22 May 2017, Mohamed A. appears before Basel Criminal Court charged with obstruction of officials in the course of their duty, because he took photographs of allegedly racially motivated discriminatory police checks on the bank of the Rhine in Basel, whereupon the situation escalated. He is also accused of false allegations and slander because he referred to the police officers carrying out the check as racist. What happened?

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Towards the early evening of 30 June 2016 the accused was sitting on the terrace of Buvette Dreirosen [a riverside restaurant in Basel]. This is when the accused happened to witness what he considered an unfair police check. A. observed how three police officers in uniform approached a few inconspicuous, dark-skinned men and very abruptly required them to undergo a police identity check. The dark-skinned men had to show their identity documents, have their jackets removed and searched, and submit to a brush-down body search by the police officers. The men cooperated without protesting in any way. Mr A., who had experienced a number of police checks himself, found it inappropriate that the police officers took action against these men rather than any other passers-by, so he took a few photos with his smartphone. One passer-by alerted the police officers carrying out the check by pointing a finger at Mr A. Immediately the three police officers abandoned the dark-skinned men, walked directly over to Mr A. and ordered him to hand over the smartphone and to show his identity document. He showed the police officers his residency permit B, but refused to hand over his mobile phone. Thereupon the police officers grabbed Mr A. very roughly by the shoulders, forced him to stand up, handcuffed him and led him away to the police car before the eyes of numerous curious onlookers.

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A middle-aged bystander of typical Central European appearance protested vehemently and called out after the police that they were racist and unfair and should let [Mr A.] go and leave him in peace. The police did not react to that. They took A. to Claraplatz (Basel-Stadt) police station where they required him to take an alcohol test without any objective grounds. The accused refused to take the test because he justifiably felt it to be groundless and arbitrary. In response the police officers took the accused to Basel-Stadt Cantonal Hospital in order to subject him to a blood test. The doctor on duty, however, saw no reason to carry out the blood test. The police officers then brought the accused to another police station in the Wettstein district, and again without objective grounds, locked him in a prison cell until 9.30 the following morning. At this stage they confiscated his personal belongings including smartphone, wallet, all his identity documents and his house keys.

Throughout this time, Mohamed A. repeatedly tried to communicate to the police officers that his family (wife and three children) would be worried if he didn't come home. He asked permission to phone home, but this was denied.

This incident demonstrates a typical approach by police officers if they feel caught in the act of a racially motivated discriminatory check. Through abuse of office and the use of disproportionate means, they attempt to intimidate the individual in order to get hold of the evidence and dissuade the person from bringing any charges about police abuse of office. In addition they systematically resort to the strategy of bringing a counter-charge.

Case f) Basel-Stadt Cantonal Police versus Marc O.

A charge of obstructing officials in the course of their duty is another instrument used by the police against people who witness racially motivated police checks and ask the police officers critical questions. As a rule the factual account is presented in an extremely exaggerated way, as for example in the case of Marc O.:

According to the police account, «on 07.01.2017 at 20.35 on Klybeckstrasse in Basel opposite property no. 8, the accused together with his wife, Andrea Schubert, impeded officers of the Basel-Stadt Cantonal Police force from carrying out their duty as follows: when the police officers near the barracks site checked the identity of a dark-skinned male in order to establish his residency status, the accused and his wife accosted the police officers verbally from behind and approached them so that one police officer had to turn around to safeguard them from the rear; the accused and his wife berated the police, asking what they were doing and whether this check was a joke; they expressed that the police officers were only checking this person because he was black, and this is not the police's job; they accused the police officers of having no grounds

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whatever for checking this person and asked if he even knew his rights; despite repeated requests they refused to leave the vicinity of the check and continued to lambast the police officers; the accused pushed forward towards the person being checked and talked to him in English, so that a police officer had to physically hold back the accused; the accused stated that the police action was racist and this person was only being checked on the grounds of his black skin; the accused and his wife behaved intrusively and angrily, so that to maintain safety and order the police were forced to release the person checked before the police check was completed.» (translation by the authors)

106 In reality the incident played out quite differently: Marc O., accompanied by his partner, approached the check and spoke to the police officers in a normal tone of voice from approximately 3 metres away. He asked why the man was being checked. The police officers replied that he should go on his way as they had no intention of divulging any information in answer to his question. O. responded in a polite tone that they were only checking this person on the grounds of his dark skin colour, because in no way had the dark-skinned person done anything that gave the least occasion for a check. Therefore this was a racist practice, to quote O.'s words. O. said that in his opinion this check was not lawful and had only been carried out because of the man's skin colour. O.'s partner also asked why the police officers had not decided to check the couple. In response one of the police officers indignantly asked whether they meant to call them racist. O. and his partner said no, their concern was the method being applied. Again they asked why this man was being checked.

107 O. then tried speaking to the man in English, to ask if it was all right for him to intervene in the situation. A police officer stepped between them, blocking eye contact with the person being checked. The police officers verbally prevented further attempts by the couple to interact with him. After a while the second police officer ended the check and let the man go on his way. Now the police officers demanded identity papers from O. and his partner and recorded their personal data. Both were informed that they would face police charges since they had not complied with repeated requests to go on their way and had thus obstructed police work.

108 The Marc O. legal dispute is an example of the difficulty of observing (potentially) discriminatory police checks by peaceful means without risking being drawn into legal proceedings oneself.

Part 4) Recommendations

Based on the information presented in this report, on further research and our day-to-day experience, the Alliance against Racial Profiling urges Switzerland to 109

- 1) Take immediate action to ensure that racist discrimination is recognised by all federal and cantonal authorities and organizations as a society-wide problem, which needs responsible and sustained action on different levels of the legal system, training and administration of police force. 110
- 2) Examine and measure the discriminatory effects of institutional practices with the aim of preventing them. 111
- 3) Introduce statutory prohibitions against racial profiling and discrimination in federal laws and require or encourage the introduction of such laws in cantonal and communal police laws. 112
- 4) Introduce legislation to prohibit police checks which are not based on reasonable suspicion. This requires a revision of article 9, paragraph 1 of the Federal Act on Foreign Nationals (Bundesgesetz über die Ausländerinnen und Ausländer) stating: «Police checks not grounded in reasonable suspicion are prohibited.» In addition, article 215 of the Swiss Criminal Procedure Code should be amended with a paragraph 2^{bis} stating the same. 113
- 5) Enact legislation or other measures to bring about transformation within the police and border patrol authorities. These should include: 114
 - a. the internal scrutiny of police and border patrol practices regarding discriminatory practices and effects and the implementation of measures in training and personnel management to encourage this.
 - b. the implementation of measures which establish the prevention of racial profiling as a core issue in the mission statements, routines, leadership styles as well as in the distribution of resources and the communication activities of the police and the border patrol authorities.
 - c. the combating and prevention of discriminatory practices with appropriate and legally binding measures.
- 6) Encourage and facilitate the introduction of a system of receipts or pilot programmes of such a system, which requires police officers to issue a receipt for every check of a person containing general information regarding the check. 115
- 7) Improve access to justice in cases involving racial profiling. Permanent independent investigative bodies should be created at the federal and/or cantonal levels and in major cities. These bodies should be authorized to investigate im- 116

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partially all complaints concerning discriminatory experiences, mistreatment or racial profiling by the police or border patrol authorities, to launch mediation processes and, if necessary, to report an offence and file an administrative appeal. The procedures should be free of charge.

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