

Switzerland

Propositions of Swiss NGOs for the "List of Issues" to be considered by the Human Rights Committee on its survey of the Swiss fourth periodic report to the ICCPR

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Endorsed by the following NGO's:

- Arbeitskreis Tourismus & Entwicklung / Working Group on Tourism and Development
- ACAT – Switzerland, Action by Christians for the Abolition of Torture
- Caritas Schweiz / Caritas Switzerland
- CODAP - Counseling center for young people in the field of human rights
- Gesellschaft für bedrohte Völker / Society for Threatened Peoples
- LOS - Lesbenorganisation Schweiz / Lesbian Organisation Switzerland
- Netzwerk Kinderrechte / Child Rights Network
- PINK CROSS
- Schweizerische Flüchtlingshilfe / Swiss Refugee Council
- Schweizerische Sektion der Internationalen Juristenkommission / Swiss section of the International Commission of Jurists
- Schweizerischer Friedensrat / Swiss Peace Council
- Schweizerisches Rotes Kreuz / Swiss Red Cross

The Swiss NGOs recommend that the Human Rights Committee take into consideration the following ten topics – “list of issues“:

1. Principal matters of concern

<p>Insufficient follow-up to the recommendations of the Human Rights Committee <i>Concluding observation 6 / Art. 50 ICCPR</i></p>	
<p><u>Background</u> Switzerland's federal system poses a particular challenge for a coordinated implementation of human rights within the country. While the federal government is responsible for the ratification of international human rights treaties, it is the responsibility of the 26 cantons to implement the commitments made in key areas such as education, police, health, social sphere and the penal system.</p> <p>To date, there is no federal coordination of the follow-up on the recommendations of human rights treaty bodies. There are no institutional arrangements for a participatory involvement and sensitization of the cantons. The authorities in the cantons and municipalities are often not aware of the rights set out in the Covenant and of their duty to effectively ensure their implementation, including in the cantonal courts.</p>	<p><u>Proposed questions</u> What steps does the Swiss government take to create institutional conditions which are appropriate to ensure an effective coordination of the follow up of recommendations of international human rights bodies between the federal and the cantonal authorities and civil society?</p>
<p>The reservation to Art. 26 <i>Concluding observation 4</i></p>	
<p><u>Background</u> The withdrawal of the reservation to Article 26 of the ICCPR has not been a topic in recent years in any manner neither for the federal parliament, nor for the federal government.</p>	<p><u>Proposed questions</u> What are the detailed reasons why Switzerland has not made any steps since 2009 to withdraw the reservation to Article 26 ICCPR? What steps does the government intend to take in order to withdraw the reservation?</p>
<p>The Optional Protocol 1966 to the Covenant <i>Concluding Observation 5</i></p>	
<p><u>Background</u> The ratification of the first Optional Protocol to the ICCPR has not been a topic in recent years in politics or for the government.</p>	<p><u>Proposed question</u> What are the detailed reasons why Switzerland has not yet made any steps to ratify the first Optional Protocol to the ICCPR since 2009?</p>

National Human Rights Institution

Concluding Observation 7

Background

Switzerland has still not established a national human rights institution. In 2015, there might be a transformation of the Swiss Centre of Expertise in Human Rights (SCHR) into a national human rights institution in accordance with the Paris Principles.

Proposed question

What steps is the Swiss government taking to establish a national human rights institution in line with the Paris Principles? Indicate in detail the plans of the Swiss government and the time table.

Protection against Discrimination

Art. 2, Art. 26 ICCPR

Background

There is still no effective legal protection in Switzerland against discrimination especially on the grounds of race, gender, sexual orientation, gender identity and transgender, age, national or social origin, physical, mental or psychological disability in accordance with article 2 of the CCPR. As a consequence, victims of discrimination in all fields of work, housing and services lack the tools to defend their rights.

For years and despite recommendations by several human rights bodies (such as CERD, CESCR, etc.) the federal parliament and the federal government refuse to close the loopholes in the anti-discrimination legislation and to guarantee effective legal remedies against discrimination. Such recommendations were last rejected by Switzerland on 14th March 2013 at the end of the second UPR procedure before the UN human rights Council.¹

A study has been launched and is currently undertaken by the Swiss Centre of Expertise in Human Rights (SCHR). Results are expected by the end of 2014.

Proposed questions

What steps has the Swiss government taken to improve the protection against discrimination especially in the fields of work, housing and services?

¹ See the rejected recommendations no. 123.27-123.29, 123.35-123.36, 123.38, 123.39, 123.49, 123.76, 123.77 in the document:

http://lib.ohchr.org/HRBodies/UPR/Documents/Session14/CH/A_HRC_22_11_Add.1_Switzerland_E_iDrits.doc.

Freedom of expression for the Federal Commission against racism

Concluding Observation 10 / Art. 2, 20, 26 ICCPR

Background

Switzerland has not reinforced the mandate of the Federal Commission against Racism as the HRC has recommended 2009. To the contrary, on June 2, 2014 the National Council has approved a parliamentary initiative requesting that all extra-parliamentary commissions no longer are allowed to communicate externally.

Several of these expert commissions are important to the field of human rights, in particular the Federal Commission against Racism (FCR). Especially because Switzerland is lacking a NHRI it is crucial for the FCR to not only play a consultative role but to be able to speak out.

To promote tolerance and cultural dialogue among the population the FCR must be enabled to put forward its expert opinion to a broad public.

Proposed questions

How does Switzerland ensure that there are human rights bodies (as e.g. the Federal Commission against Racism) which have the authority to act independently, express their opinion freely and are allowed to communicate externally without restrictions?

2. Concerns regarding the situation of women in Switzerland

Women in Decision Making Bodies

Art. 3, 25, 26 ICCPR

Background

Women are still underrepresented in decision-making bodies. The number of female national councillors is stagnating at around 29 %; in the states council the number of women has steadily decreased since 2003 and now amounts to 19,6%.

Furthermore women are only taking up one third of all management positions.² In 2014 the 100 biggest companies in Switzerland had only 13% women on their board of directors; on the Executive Board only 13 % and only 3 % as CEO's. Up to today the government and parliament rely on a voluntary approach.

Proposed questions

What steps is the government taking to address the underrepresentation of women in decision-making bodies?

What measures is the government taking to increase the participation of women in political parties?

Ask the Swiss Government to provide detailed statistics concerning the participation of women on all levels (federation, cantons, communities) and in all relevant bodies in government, parliaments, courts and other relevant bodies in the public and private sphere.

² Statistik BFS, Siehe:

www.bfs.admin.ch/bfs/portal/de/index/themen/20/05/blank/key/erwerbstaetigkeit/berufliche_stellung.html, (11.06.2014).

Wage discrimination

Art. 2, 3, 26 ICCPR

Background

According to the Federal Statistical Office (BfS) the wage gap between men and women is located at 23.6 percent (2010). The Federal Statistic Office itself speaks of wage discrimination in the Swiss wage policy. "Discriminatory behavior accounts for about 40% of this difference. Women in managerial positions even earn up to 30% less than men. There are still typical female and male professions in the world of work. The pay level in typical male professions is considerably higher than that in female professions."³ According to an OECD study Switzerland rank on a precarious 24th place in terms of equal pay.

Proposed question

What steps/measure is Switzerland taking to ensure wage equality between men and women, particularly in private companies?

Women's poverty

Art. 2, 3, Art. 26 ICCPR

Background

The majority of people affected by poverty in Switzerland are women and children. The vast majority of unpaid household, education, care and maintenance work is done by women. Furthermore, many women are forced into low-wage industries, on-demand positions, and to work in a particularly unfortunate environment. As a consequence, women are additionally disadvantaged and indirectly discriminated with regard to social insurance and in case of separation or divorce.

Proposed questions

What measures is the Swiss government taking to ensure that women are not being forced into poverty due to an unfavorable legal framework?

Ask the Swiss government to provide detailed statistics on the situation of women, men and children especially concerning the situation of families in case of separation and divorce.

³ See Federal office for gender equality
(<http://www.ebg.admin.ch/themen/00008/00072/index.html?lang=en>)

3. Regulations for Popular Initiatives

<p>Rule of proportionality <i>Art. 2 ICCPR</i></p>	
<p><u>Background</u> Recently some popular initiatives were approved by the voters even though they violate the rule of proportionality and prevent judges to assess cases on an individual basis. These provisions often place the national constitution in non-compliance with Switzerland's obligations under the covenant.</p> <p>Among those initiatives is the initiative "for the expulsion of criminal foreigners" as well as the Popular initiatives on "preventive detention" and the "pedophile's initiative".</p>	<p><u>Proposed questions</u> What steps is the government taking to establish a new legal framework for popular initiatives which guarantees that initiatives, which do not conform to the rule of proportionality, will be declared invalid in advance?</p>

4. Regularisation of "Sans-Papiers"

<p>Procedural guarantees for long-time "Sans-Papiers" <i>Art 2 ICCPR</i></p>	
<p><u>Background</u> "Sans-papiers" have often been living in Switzerland for many years, are well integrated, partly with children, and are born and raised in Switzerland.</p> <p>The hardship provision in its current form is not an appropriate instrument: The difference of their application between the cantons is too large and the willingness of some large cantons to make use of their scope to recognise hardship cases as such is too small.</p>	<p><u>Proposed questions</u> What steps is the government taking to establish clear legal federal requirements with regard to hardship cases and to grant the applicants legal standing and legal means to appeal negative decisions before a federal court.</p>

5. Prohibition of torture and cruel, inhuman or degrading treatment

Art. 2,6,7 ICCPR

<p>Independent mechanism to investigate complaints of police brutality <i>Concluding observation 14</i></p>	
<p><u>Background</u> Most cantons lack independent mechanisms to investigate complaints lodged against the police on the reason of excessive use of force. Often the investigations are examined by authorities which themselves are dependent on a good cooperation with the police corps in everyday work. Often accused police members systematically protect themselves against complaints and/or criminal proceedings by filing a counter complaint against the resisting victims. So, fallible police officers are [still] practically never punished.</p>	<p><u>Proposed questions</u> How does Switzerland ensure that all cantons create an independent mechanism with the authority to receive and effectively investigate all complaints of excessive use of force, ill-treatment or other abuses by the police? What steps is the government taking to ensure that all perpetrators are prosecuted and punished, and victims compensated and a national statistical database on complaints lodged against the police is established?</p>
<p>More prisoners / overcrowded prisons <i>Concluding observation 17</i></p>	
<p><u>Background</u> Since 1999 the number of detainees has increased by 35%. As a consequence in 2013 more than 100% of all officially available prison beds were occupied.⁴ The most problematic prison is the Champ-Dollon Prison in Geneva with a temporary overcrowding rate of 170%. For many detainees the cohabitation in a very confined space (especially in the multiple cells) is hardly bearable.</p>	<p><u>Proposed questions</u> What are the reasons for the increasing prison rate? What measures are the cantonal governments taking to increase the capacity of the prison system and to reduce the number of prisoners? How much money is Switzerland willing to invest to improve the situation and how?</p>
<p>Mentally ill detainees</p>	
<p><u>Background</u> Switzerland is lacking appropriate institutions for the increasing number of mentally ill offenders. This is particularly a problem with regard to solitary confinement in high security prisons; this kind of detention is almost exclusively composed of mental (some seriously) ill detainees who have proven to be unsustainable in a regular</p>	<p><u>Proposed questions</u> What steps is the government taking to survey and to arrange the situation of the mentally ill detainees in an appropriate way?</p>

⁴ See Federal Statistical Office (FSO), http://www.bfs.admin.ch/bfs/portal/de/index/themen/19/03/05/key/ueberblick/wichtigsten_zahlen.html

penal institution or closed psychiatric wards. Instead of providing these persons with an appropriate medical treatment, they are often kept in the high-security prisons for many years.⁵

A larger group of mentally ill mental detainees is subject to the "measure 59" (Art. 59 Swiss Criminal Code) which is usually ordered parallel to an imprisonment, or before lifelong custody is pronounced. The duration of this measure is a maximum of 5 years and it may be extended by a further maximum of 5 years. In reality people in this situation are rarely ever released and the confinement is extended for many years.

6. Asylum procedures / proceedings under the law on foreign nationals

Concluding Observation 18 / Art. 14 ICCPR

Violation of the principle of „equality before the law“

Art. 2, 7, 12, 13, 17, 23, 24, 26 ICCPR

Background

The Swiss asylum policy (resp. the proceedings under the law on foreign nationals) denies asylum seekers and temporarily admitted persons fundamental rights and violates the principle of "equality before the law":

- a) Asylum procedures do not correspond to the usual administrative procedures
- b) Asylum seekers get, even if they are housed in apartments, much less social assistance
- c) Asylum seekers are not allowed to work at the beginning
- d) Asylum seekers can be put into prison because of a stay without a valid residence permit
- e) Asylum seekers cannot always evoke their right to marriage
- f) Often Asylum seekers cannot participate in integration measures, even after a long stay
- g) In some regions with refugee centres, forbidden zones for asylum seekers are established.

Proposed questions

What steps is Switzerland taking to ensure that the Swiss asylum policy is compatible with the Covenant?

And how does the government ensure that the cantons and authorities implement the rights set out in the covenant?

⁵ See SCHR, Gutachten: Einzelhaft in Hochsicherheitsabteilungen, http://www.skmr.ch/cms/upload/pdf/140602_Gutachten_Hochsicherheitshaft.pdf

Free legal assistance and effective legal protection

Concluding Observation 18 / (Art. 2, 7, 9, 13, 14, 26) ICCPR

Background

Free legal assistance is fundamentally guaranteed by the Federal Constitution (Article 29) under certain conditions, but in the case of asylum seekers, this guarantee is still interpreted restrictively and requests in this vein fail regularly because of the prerequisite of likelihood of the case to succeed and the need for legal counsel.

Furthermore the Swiss Asylum Act explicitly excludes appeals from free legal aid if they are related to Dublin Proceedings.⁶

In fact, without the assistance by charities and other nongovernmental organizations most asylum seekers could not appeal against a negative decision. For asylum seekers, as for other foreign nationals (for example those in detention awaiting deportation) even access to legal counsel proves to be very difficult in many cases.

Exclusion of Dublin Cases: Access to effective legal remedies is practically impossible for certain groups of asylum seekers (Dublin cases, multiple applications etc.) due to the short time limits for appeal of five working days (Article 108, paragraph 2 of the Asylum Act) as well as time limits for amendments of the appeal of three days (Article 110, paragraph 1 of the Asylum Act) and short treatment periods (eg Article 107, paragraph 3 of the Asylum Act).

Detention pending deportation: Furthermore the cantons are increasingly turning to detention pending deportation to prevent submersion of asylum seekers. However, the detention makes it difficult to contact a legal representative and to bring an appeal before the Federal Administrative Court. There are prisons where detained asylum seekers do not receive a list of addresses of lawyers and legal advice centers, but only the phone number of the Federal Office for Migration. An effective legal protection is therefore not guaranteed.

Proposed Questions

Is the right to an effective remedy ensured in the asylum procedure?

Why are appeals related to Dublin proceedings excluded from the right to free legal aid and how does Switzerland make sure that the principle of non-refoulement is being respected in all cases?

Why does Switzerland only have one appellate level in asylum law cases which, furthermore, is not empowered to investigate the adequacy of an asylum order? How is the adequacy of asylum orders ensured in all cases?

⁶ Asylum Act, Art. 110a, <http://www.admin.ch/opc/en/classified-compilation/19995092/index.html>

<p><i>Only one appellation level and no judicial adequacy investigation:</i> The fact that there exists only one appellation level in asylum law in Switzerland constitutes a huge problem and often leads to insufficient outcomes, because the asylum seeker simply does not reach the legal councillor on time. Furthermore, since 1 February 2014, the adequacy of asylum orders cannot be examined anymore by the Federal Administrative Court (FAC). This limits the legal protection of asylum seekers. To alleviate the problem, either a second instance must be established or the discretionary power must be reintroduced for the FAC.</p>	
<p>Administrative detention Art. 9 ICCPR</p>	
<p><u>Background</u> The Swiss Foreign Nationals Act allows the authorities to take asylum seekers into custody if a different state that is bound by one of the Dublin Association Agreements is responsible for conducting an asylum procedure (“Dublin-Detention”). This contradicts the Dublin III regulations which regard detention as a measure of a last resort only.</p> <p>There is also a lack of information for detained persons regarding their legal remedies. They are e.g. often not informed that they have to submit their appeal regarding the detention to the judicial authority whereas the appeal regarding the Dublin transfer has to be submitted with the Federal Administrative Court. As a consequence people are often brought back to the responsible state, without even realizing that no one considered their appeal against the Dublin transfer.</p>	<p><u>Proposed Questions</u> How does the federal government ensure that the cantons apply detention as a measure of a last resort only?</p> <p>Is Switzerland planning to revise Art. 76 Abs. 1 lit. b Ziff. 6 FNA, which allows detentions for the only reason that another Dublin-State is responsible for the Asylum procedure?</p> <p>Are the people subject to the Dublin-procedure well informed to which institution they have to submit their appeals regarding the detention order or the Dublin-Transfer decision?</p>
<p>Separation of families and the best interest of the child Art. 17, 23, 24 ICCPR</p>	
<p><u>Background</u> The right to family and in particular the best interest of the child is not always taken into account in asylum procedures and under the law of foreign nationals respectively.</p> <p>If e.g. parents are being detained to prepare for the transfer to another Dublin-State (Dublin-Detention) or to their home country (Detention pending deportation), they are sometimes</p>	<p><u>Proposed question</u> Indicate in detail if and how often children are separated from their families during the asylum procedure or during proceedings under the law of foreign nationals.</p>

separated from their children, who are placed in special institutions. This practice leads to traumatic experiences for the children.	
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7. Right of peaceful assembly

Art. 21 ICCPR

Authorization and notification of demonstrations	
<p><u>Background</u></p> <p>In Swiss cities a system of permits for demonstrations is not only the rule, there has also been an increasing trend to limit the freedom of assembly on a cantonal level and to handle the granting of authorizations for demonstrations in a restrictive manner.</p>	<p><u>Proposed questions</u></p> <p>What steps are the cantons and municipalities taking to change from a system of permits to a system of notification, at least for certain categories of demonstrations besides spontaneous demonstrations for which this system already applies?</p>
Demonstrations in relation to high-level events	
<p><u>Background</u></p> <p>Demonstrations have to take place within sight and sound of their addressees. The system of permit at the World Economic Forum in Davos currently ignores this standard for safety reasons.</p>	<p><u>Proposed questions</u></p> <p>What steps is the government taking to remind the Davos Municipal Council of allowing demonstrations in the context of the World Economic Forum in Davos within sight and sound of their addressees?</p>

8. Lack of political rights for foreign citizens

Art. 2, 25, 26 ICCPR

Right to vote for foreign citizens	
<p><u>Background</u></p> <p>It is a basic democratic principle that those who are subject to the political power must also have participation rights.</p> <p>With very few exceptions the Swiss right to elect and vote depends on having Swiss citizenship. This is linked to the principle of 'ius sanguinis'. In connection with an extremely restrictive or even prohibitive naturalization policy (<i>see next point</i>) this has led to a situation in which almost a quarter of the Swiss population is excluded from the political process.</p>	<p><u>Proposed questions</u></p> <p>What steps is the government taking to establish a legal framework in which all permanent residents of Switzerland have an active and passive voice at all political levels and in all democratically structured public institutions?</p>

<p>The universal and equal right to vote is therefore not guaranteed in regard to foreign citizens residing in Switzerland (even though they are often living here in the 3rd, 4th or even 5th generation).</p>	
<p>Restrictive naturalization policy <i>Art. 25, 26 ICCPR</i></p>	
<p>The requirements for naturalization are very restrictive in Switzerland. As political rights are connected to Swiss citizenship (<i>see point above</i>) this leads to the exclusion of almost a quarter of the population in Switzerland from the political process. Furthermore it counteracts a successful integration of these foreigners.</p> <p>The required duration of residency prior to an application for naturalization is 10 years. According to a recent revision of the Swiss Citizens Act, the years spent in Switzerland only count half for temporarily accepted persons. Another hurdle is the requirement of having obtained permanent residence status prior to making an application for naturalization.</p> <p>The cantons also made naturalization more difficult to achieve. On 24 November 2013 the canton of Berne adopted a popular initiative which restricts the naturalization of person receiving social welfare benefits. The high approval rates (56 %) led to the announcement of the Swiss People’s Party to launch similar initiatives in other cantons. The criterion of receiving social welfare benefit impacts negatively on the situation of refugees and temporarily accepted people as they face severe difficulties finding gainful employment and are thus dependent on receiving social welfare benefits.</p>	<p>What steps is the government taking to establish a legal framework which facilitates the naturalization of foreigners who live here permanently?</p>

9. Financing of national parties and votes committees

Art. 19 ICCPR

Transparency in the financing of parties and voting campaigns	
<u>Background</u> In Switzerland, the financing of political parties and election campaigns is largely non-transparent. While almost all European countries have laws which regulate the funding of political parties and election campaigns, Switzerland is missing such rules.	<u>Proposed questions</u> What steps is the government taking to increase transparency for the funding of political party and voting campaigns?

10. Protection of minorities

Concluding observation 11 / Art. 27 ICCPR

Protection of travellers	
<u>Background</u> The overall situation of Travellers is still a cause for concern. In particular Yenish, Roma and Sinti are, like before, affected by different kinds of discrimination particularly with regard to sites, zones and other places where they can live according to their traditions. In the last 10 years there has been no improvement of the situation. There is no effective inter-cantonal consultation process which ensures that the concerns of the travellers are brought to attention of the different local authorities which are in charge of minorities. In December 2013 the Federal Commission against Racism (FCR) published a study regarding anti-ziganism in the Swiss media. The study concludes that generalizations are used in about half of the analyzed reports. In every eighth contribution on Roma and Yenish the generalizations are clearly negative and thus discriminatory. ⁷	<u>Proposed questions</u> What steps is Switzerland taking to ensure that the authorities in the cantons fulfil their duties and establish a sufficient amount of zones and sites and other places where travellers can live according to their traditions? What measures is Switzerland taking to challenge the strong anti-ziganism in the media and in society?

⁷ http://www.gfbv.ch/de/kampagnen_projekte/stopp_antiziganismus.cfm