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**Consideration of State Report — Switzerland (fourth
periodic report)**

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The NGO Platform Human Rights is a network of over 80 Swiss NGOs from both the German and French-speaking parts of Switzerland, and it represents a wide range of topics in the field of human rights. All organisations advocate the compliance with human rights in Switzerland and/or abroad (see for more information <http://www.humanrights.ch/en/switzerland/swiss-players/ngo-platform/>).

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Introduction

The report follows the order of the Human Rights Committee’s list of issues from 25 November 2014 (CCPR/C/CHE/QPR/4). We will limit ourselves to commenting on the issues where we feel extra or corrective information would be of use to the Human Rights Committee when evaluating the Fourth Periodic Report of Switzerland or where we believe the perspective of civil society to be of importance. A special focus will be on discrimination matters, the situation of prisoners and asylum seekers as well as the issue of access to justice.

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Constitutional and legal framework for the implementation of the Covenant (art. 2)

Ad par. 3

Switzerland's federal system poses a particular challenge for a systematic and coordinated implementation of human rights within the country. While the federal government is responsible for the ratification of international human rights treaties, it is largely the responsibility of the 26 cantons to ensure their implementation.

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 the cantonal courts.

Recommendation: Ask the state party what steps are taken into consideration in order to create institutional conditions which are appropriate and to ensure an effective coordination between the federal and cantonal authorities and civil society regarding the follow up of international human rights bodies's recommendations.

Ad par. 4

The mandate of the existing Swiss Centre of Expertise in Human Rights (SCHR) was initially limited to a pilot phase from 2011 to 2015. On 1 July 2015, the mandate was extended by the Federal Council until either a successor institution will be established or for a maximum period of up to five years from early 2016 onwards. The SCHR is not an independent human rights institution but "only" a service centre.¹ It receives a basic yearly funding from the Federal Government in return for which the SCHR provides services to the Confederation defined on a yearly basis. The Federal Council plans to provide a draft law for the establishment of a national human rights institution in line with the Paris Principles for public consultation in June 2017.

Recommendation: NGO-Platform Human Rights recommends that the Committee examine the proposed law in the light of the Paris Principles, particularly regarding the institution's independence, including financial, and to insist on its recommendation that Switzerland should establish a national human rights institution with a broad human rights mandate, and provide it with adequate financial and human resources, in conformity with the Paris Principles.

Non-discrimination and equality (arts. 2, paras. 1, 3, 26 and 27)

Ad par. 6 and 8

There is still no effective legal protection in Switzerland against discrimination in accordance with article 2 of the CCPR. Consequently, victims of discrimination in the different life areas, including in particular civil matters as work, rent and services offered by private actors, lack the tools to defend

¹ See <http://www.skmr.ch/en/about/about-schr.html>.

their rights effectively. Despite a number of recommendations by human rights bodies (including CEDAW, CERD, CESC, ECRI) the federal parliament and the federal government still have not taken any steps to close the gaps in legislation and to guarantee effective legal remedies against discrimination.

In regards of the situation of LGBTI people it should be noted that there is no institution, commission or administrative unit neither on the federal nor on the cantonal level which has the mandate to deal with discrimination based on gender or sexual orientation. Only in a few cities (e.g. Zurich and Geneva) the offices for gender equality have a mandate to do so. As a result, LGBTI-NGO have practically no access to public funds and are not financially supported for their consultancy work or for awareness-raising campaigns.

Recommendations of the SCHR to address discrimination

The federal government mandated the Swiss Centre of Expertise in Human Rights (SCHR) to conduct a study with the aim to verify whether the current legal framework is sufficient to combat discrimination, and in particular gender based discrimination, discrimination against LGBTI and disabled persons as well as racial discrimination.² The SCHR has presented a series of recommendations on how to strengthen the protection against discrimination in Switzerland, e.g.:

- the creation of a general law on discrimination supplementing [articles 27 et seq. Civil Code](#);
- the inclusion of nationality, resident status, hate against women, disabled persons and LGBTI persons into the definition of the criminal ban on hate speech according to [article 261^{bis} Criminal Code](#);
- general improvement of the legal situation of transgender people, government-backed support and advisory services for LGBTI persons;
- extension of the right for associations to bring collective action or their right of appeal;
- alleviation of the burden of proof for all cases of discrimination;
- new mechanisms for an out-of-court settlement of disputes in discrimination matters;
- legal reporting of multiple discrimination.³

The Federal Council, however, rejected the most important recommendations.⁴ As a result, only a few issues of importance remain listed in the “recommendations to be examined more closely”: The extension of the right for associations to bring collective action and the reduction of the costs for civil proceedings have been delegated to ongoing legal revisions. With respect to the awareness of legal

² You will find the study – in French – on the SCHR’s website under <http://www.skmr.ch/frz/domaines/genre/publications/etude-discrimination.html>.

³ See the findings and recommendations in: Walter Kälin/Reto Locher, *Accès à la justice en cas de discrimination - Rapport de synthèse*, Berne, juillet 2015, p. 95 ff.

⁴ See Report of the Federal Council, *Le droit à la protection contre la discrimination - Rapport du Conseil fédéral en réponse au postulat Naef 12.3543 du 14 juin 2012, du 25 mai 2016* – in French – under <https://www.ejpd.admin.ch/dam/data/bj/aktuell/news/2016/2016-05-25/ber-br-f.pdf> ; press release 25.05.2016 – in French - under. <https://www.ejpd.admin.ch/ejpd/fr/home/aktuell/news/2016/2016-05-25.html>

specialists and institutions for LGBTI issues, the Federal Council is prepared to assess how that could be achieved (cf. page 22). In addition it will assess a systematic data collection in the LGBTI area.⁵

One of SCHR's recommendations, to initiate an action plan to improve the law against discrimination, was discussed in the National Council but rejected with a majority of only one vote.⁶

Recommendation: Switzerland should

- **improve the law against discrimination for *all* discriminated groups and ensure effective court action especially in civil matters (work, rent, services etc.);**
- **implement as quickly as possible, the planned measures with regard to discrimination against LGBTI persons;**
- **collect data on the access to justice for different groups of the society.**

Ad par. 5: Gender equality

Traditional gender roles and stereotypes are widespread in Switzerland and are reflected in the low participation rate women in politics, decision making bodies and in wage inequality. Stereotypes are, among other things, one of the main causes of gender-based violence, which is one of the main forms of violence in Switzerland (see below ad par. 9). The advertising industry and the media play a decisive role in furthering and promoting gender stereotypes. Sexist hate speech is widespread in the social media but – contrary to other forms of hate speech – not recognised and not addressed in the political discussion (see above).

The Federal Council and the Parliament rely solely on voluntary measures to ensure equal participation of women in politics and society.

2015 the Federal Council announced a law requiring employers with more than 50 employees to conduct review of average salaries paid within the company every four years and to have such review overseen by a third party.⁷ Sanctions for those who do not achieve the objective are not provided. In addition, the proposal for a revision of the shareholder law proposes a target of 30 per cent for women's representation in top management positions and on the boards of directors of major listed companies to be achieved within five years.⁸ The proposal is based on the principle of "comply or explain" and does also not envisage the imposition of penalties for non-compliance. Both initiatives are controversial and their destiny is therefore very uncertain.

⁵ See "Disappointing Federal Council report on protection against discrimination", Article on humanrights.ch, 08.06.2016, under <http://www.humanrights.ch/en/switzerland/internal-affairs/national/disappointing-federal-council-report-protection-discrimination>.

⁶ See Motion du Commission des affaires juridiques CN, Un plan d'action concret pour la protection contre la discrimination, 18.08.2016 (<https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20163626>).

⁷ See the documents in Federal Council's press release – in french – « Egalité salariale: obligation pour les employeurs d'analyser régulièrement les salaires », 18.11.2015 under <https://www.ejpd.admin.ch/ejpd/fr/home/aktuell/news/2015/2015-11-180.html> .

⁸ See draft Civil Code, article 734f – in French – under <https://www.admin.ch/opc/fr/federal-gazette/2017/625.pdf> (FF 2017 625).

Recommendations: Switzerland should

- **strengthen its efforts to achieve a better and equal representation of women and men in political and public life;**
- **take binding measures to reduce the Gender Pay Gap in all areas and strengthen the responsibility of the employers and companies to ensure equal pay and equal opportunities for women and men in the labour market.**

Ad par. 6: Implementation of the Federal Act on elimination of inequalities affecting persons with disabilities

Switzerland is still lacking a strategy developed by the Swiss Confederation, the cantons and organisations for persons with disabilities to implement the 2002 Federal Act on Equal Rights for Persons with Disabilities (BehiG)⁹, which entered into force on 1 January 2004. Overall, there is a significant lack of disability policies aiming at realising the goals and responsibilities of both BehiG and the UN-Convention on the Rights of Persons with Disabilities (CRPD).¹⁰ The CRPD has entered into force in Switzerland in 2014.¹¹

An assessment of BehiG's implementation ordered by the Federal Bureau for the Equality of Persons with Disabilities FBED has found that there has been progress since its entry into force on 1 January 2004. However, the assessment also found that many disadvantages still exist despite the BehiG. Some areas lack an adequate legal basis for protection from discrimination. The implementation is held back by many government agency's insufficient knowledge concerning BehiG, as well as affected persons' insufficient knowledge about their own rights and lack of political intent on a federal and cantonal level.

Implementation Problems in Different Areas

Public transportation:

The deadline set in BehiG Art. 22 to establish accessibility in public transportation (10 and 20 years) has not been met and is not being met respectively. Consequently, 65% of all train stations and railway stops are still not accessible for persons with disabilities¹², bus stops are even worse¹³. Persons with disabilities who cannot use public transportation or with limited use only have to rely on shuttle services for persons with disabilities. However, there are very few shuttle services, and they cannot

⁹ Loi fédérale sur l'élimination des inégalités frappant les personnes handicapées (Loi sur l'égalité pour les handicapés, LHand) du 13 décembre 2002 (SR 151.3).

¹⁰ Entry into force for Switzerland: 15 May 2014.

¹¹ The 2017 report on disability policies in Switzerland does not fulfill the goals and responsibilities of CRPD's the legal basis. The report is available in German, French and Italian: <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-65220.html>. Hereinafter referred to as „Report on Disability Policies“.

¹² The first report by the Swiss government about the Convention on the Rights of Persons with Disabilities, published on 29 June 2016, marginal note 47, mistakenly says 50%. Hereinafter referred to as: Initial state report, marginal note 47.

¹³ Currently less than 5% of bus stops in the canton of Berne are accessible for persons with disabilities.

Bus stops are the least accessible infrastructure, especially those outside of the cities, according to the initial state report, marginal note 47.

provide the mobility demanded by the CRPD. The prices are too high compared to public transportation and financing for the existing services is not guaranteed.

Buildings and facilities

Building and facilities only have to be accessible if they are new or rebuilt. Additionally, the BehiG did not set a deadline for accessibility. Implementation is further held back by building authorities' limited knowledge about the BehiG's demands, as well as the fact that there is no systematic inspection on whether the regulation was adhered to after the building project is finished¹⁴. Generally, there is a shortage of accessible housing for persons with disabilities¹⁵. In addition, the options for accessible housing are often not affordable for persons with disabilities.

Public service

The BehiG obliges all levels of government to make their services accessible. Realizing the legal requirement for accessibility of Information and Communication Technologies (ICTs) by the Swiss Confederation, the cantons and municipalities proves to be difficult.¹⁶ Publicly accessible services provided by private organizations do not have to provide those services in an accessible way. They only have to adhere to the prohibition of discrimination, which the Federal Court interprets very narrowly.¹⁷

Work

The BehiG only contains highly limited¹⁸ regulations for the Swiss Confederation as an employer. It does not offer protection from employment discrimination against persons with disabilities by employers from the private sector. Additionally, social security law lacks the obligations, incentives and long-term support for employers employing persons with disabilities. Therefore, persons with disabilities – especially mental or physical disabilities – often find themselves at a disadvantage in accessing the labour market.¹⁹ They often work in the so-called secondary labour market and experience segregation as a result.

Education

Because of the division of jurisdiction between the Confederation and the cantons, the BehiG only applies to educational opportunities provided by the Confederation. The 'Evaluation BehiG' (2015) integral version only provides limited information of its effect in this field.²⁰

¹⁴ For the UN-committee, the lack control mechanisms is one of the biggest obstacles hindering the implementation of CRPD Art. 9 in construction. For more information, see general comment No. 2 (2014), Article 9 Accessibility, CRPD/C/GC/2, marginal note 10.

¹⁵ Evaluation BehiG (2015) integral version, p. 34.

¹⁶ See: Swiss Accessibility Study 2016, evaluation of accessibility to important Swiss websites, available in German and French: <http://www.access-for-all.ch/ch/77-aktuell/518-schweizer-accessibility-studie-2016.html>, The Swiss Accessibility Study 2016 states, among other things, that many important promotional offers are still lacking accessibility, e.g. news sites and webshops which are inaccessible to a great extent: Swiss Accessibility Study 2016, p. 135

¹⁷ For more information: MARKUS SCHEFER/CAROLINE HESS-KLEIN, Behindertengleichstellungsrecht, Bern 2014, p. 298ff; BGE 138 I 475 E3.3.1 and 3.3.2, p. 480f. In this case, a complaint is in progress with the ECHR.

¹⁸ Evaluation BehiG (2015) integral version, p. 191; MARKUS SCHEFER/CAROLINE HESS-KLEIN, Behindertengleichstellungsrecht, Bern 2014, p. 413ff.

¹⁹ Initial state report, marginal note. 165; Evaluation BehiG (2015) integral version, p. 191.

²⁰ Evaluation BehiG (2015) integral version, p. 143ff. The Initial state report, marginal note 130ff. does not offer any information either.

One thing is clear: Switzerland does not have an inclusive education system, as it is demanded in CRPD Art. 24. Clear regulations for securing and financing the necessary support to ensure compensations of disadvantages are lacking, particularly on the cantonal level. As a result, children and adolescents are often placed in special needs schools, while they could easily visit a regular school with the appropriate support.

Obstacles in access to justice for persons with disabilities

The Fourth Periodic Report of Switzerland (CCPR/C/CHE/4, par. 51) mentions that between 2004 and 2014, 320 programs based of BehiG Art. 16-18 have been carried out. They do not include educating persons with disabilities about their rights.

The above mentioned study published in 2015 by the Swiss Centre of Expertise in Human Rights (SCHR) concerning accessibility to judiciary cases of victims of discrimination found that persons with disabilities know too little about their rights.²¹ Furthermore, law experts, internal legal authorities, law adviser, information centres and organisations for persons with disabilities as well as members of authorities need to be better educated about the needs and legal protection of persons with disabilities. According to the SCHR study, more resources are needed in the information centres, in order to have more staff with a legal background and to support persons with disabilities in enforcing their rights according to the BehiG.²²

Persons with disabilities make seldom use of their right in accordance with the BehiG. This is due to the lack of information, but also out of fear of the financial burden. Additionally, organisations for persons with disabilities have used their associative right of appeal in accordance with BehiG Art.9 in very few cases. Only 60 cases have been decided based on this rule, according to the SCHR study. It is indicative that a court of first instance has found discrimination against a person with disability by a private service provider for the first time in 2017 – 13 years after the BehiG has entered into force.²³

Recommendation: Switzerland should

- **strengthen its efforts to fully implement the Federal Act on Equal Rights for People Persons with Disabilities;**
- **take measures to promote legal literacy regarding the rights of disabled persons and to ensure disabled person's access to justice.**

Ad par. 7

Discriminatory, disrespectful and prone to violent inspections based on racial profiling by police and – increasingly – by border guard bodies and airport police are a serious problem in Switzerland. Recent

A strategy for implementing CRPD Art. 24 is not offered in the 2017 report on disability policies in Switzerland either.

²¹ Swiss Centre of Expertise in Human Rights (SCHR), Der Zugang zur Justiz in Diskriminierungsfällen, Synthesebericht, authored by WALTER KÄLIN/RETO LOCHER, Bern 2015, p. 33; as well as the Evaluation BehiG (2015), integral version, p. 375.

²² Ibid, p. 33. Also: Evaluation BehiG (2015), integral version, p. 29 und 375.

²³ The court of appeal Appenzell Ausserrhoden, verdict from 20 March 2017, VefahrensNr. K3Z 13 42: Students with physical and mental disabilities was denied entry to the spa, reasoning that the students would disturb the other spa visitors to an unacceptable extent. In this case, the court of appeal Appenzell Ausserrhoden ruled discrimination against persons with disabilities by a private service provider. See «Schweiz aktuell» aired on 21.03.2017, in German: <https://www.srf.ch/news/regional/ostschweiz/heilbad-unterrechtestein-hat-behinderte-diskriminiert> .

research (2017) shows that large groups of individuals are affected: amongst others, People of Colour generally, people of Arabic, North-African or South-East European descent (mainly former Yugoslavia, Albania; Bulgaria, Rumania), members of the Roma, Sinti or Yenish communities, muslim women who wear headscarves and others not generally perceived as “normal” Swiss citizens.

Access to justice for the victims of racial profiling is not guaranteed. Until now, racial profiling has never been confirmed by a court (see for further information regarding the situation in Switzerland the «Alternative Report on Racial Profiling» issued by the «Alliance against Racial Profiling» and there the documented cases Mohamed W. B.,²⁴ David A. Wilson A., Mohamed A. Hervé K.²⁵, Claudio).

Recommendation: Switzerland should

- **take immediate action to ensure racial discrimination is recognised by all federal and cantonal authorities and organizations as a society-wide problem;**
- **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;**
- **develop and implement a system of an independent and ongoing monitoring.**
- **introduce statutory prohibitions against racial profiling and discrimination in federal laws and require or encourage the introduction of such laws in cantonal and municipal police laws;**
- **enact and implement legislation or other measures to bring about transformation within the police and border patrol authorities;**
- **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;**
- **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.**

Protection of women against violence (arts. 3 and 7)

Ad par. 9

A lot has been done in awareness-raising activities and information campaigns – by the federal administration, cantons and various municipalities. Nevertheless, the rate of violence against women, especially domestic violence, is still high.

Impunity is widespread. The Fourth Periodic Report of Switzerland (CCPR/C/CHE/4, par. 95) mentions that only 22 per cent of cases of domestic violence were reported to the police. In the process of the ratification of the Istanbul-Convention the Federal Council proposed 2015 various amendments to civil and criminal law for a better protection of the victims of domestic violence and harassment. To enhance the effectiveness of the regulation on protection against violence established in [article 28b](#)

²⁴ See – in French - <http://www.humanrights.ch/fr/droits-humains-suisse/interieure/poursuite/police/delit-facies-audience-judiciaire-precedent> .

²⁵ <https://www.rts.ch/info/suisse/8526261--c-est-tres-difficile-de-porter-plainte-contre-la-police-pour-le-delit-de-facies-.html> .

[of the Civil Code](#) the Federal Council proposes to abolish certain procedural constraints identified in the evaluation of that regulation. It is also expected to no longer charge procedural expenses to the victims, and to abolish reconciliation procedures in all cases. In addition the regulation governing the closure of criminal proceedings in cases of simple bodily harm, repeated violence, threats, or constraints in couple relationships is expected to be revised ([Art. 55a Criminal Code](#)).²⁶ This project is not mentioned in the Fourth Periodic Report of Switzerland and there is currently no information available about the scope and content of the planned revision.

Data are available on domestic violence offences registered by the police (without distinction as to the sex of the victim), on measures in support to victims and on criminal convictions. In contrast there are no statistical data on cases brought to the court by victims (relating the legislation against violence in the Criminal Code, in the Civil Code or in the Swiss Victim Assistance Act).

The insufficient availability of women's shelters is another issue we would like to point at. We seriously doubt the government's perception that there are enough places in shelters available. There is a need of *specialised* shelters guaranteeing adequate care and support for victims and affected children.

Migrant women

Regarding the situation of migrant women in Switzerland please see the « Information note concerning discrimination and marital violence against women in precarious status in Switzerland» issued by the « Working Group 'Migrant Women & Marital Violence' ».

Female genital mutilation

Regarding the prohibition of Female genital mutilation ([Art. 124 Criminal Code](#)) there are no convictions reported so far and there is also no systematic collection of disaggregated data on harmful practices in Switzerland.

Recommendation: Switzerland should

- **take measures to fight impunity and to ensure access to justice for all victims of violence especially domestic violence;**
- **establish and support additional shelters for victims in all cantons or regions;**
- **systematically collect disaggregated data on harmful practices in the State party and continue to strengthen preventive and protection measures to eliminate female genital mutilation, child marriage and forced marriage.**

[The right to life and the prohibition of torture and of cruel, inhuman or degrading treatment \(arts. 6 and 7\)](#)

Ad par. 10

Switzerland still has not made torture a criminal offence, in terms that fully reflect article 1 of the Convention against Torture, and that ensure that penalties for torture are commensurate with the gravity of the crime. Existing provisions in the [Criminal Code](#) (assault, coercion, false imprisonment and abduction, abuse of public office etc.) do not cover the particular wrongfulness of torture. In particular,

²⁶ See Federal Council, Press Release « Le Conseil fédéral veut améliorer la protection des victimes de violence domestique », 07.10.2015 – in French – under https://www.bj.admin.ch/bj/fr/home/aktuell/news/2015/ref_2015-10-07.html.

psychological acts of torture (as e.g. “waterboarding” or mock execution) cannot adequately be captured by existing prohibitions.²⁷

Furthermore, there is still no independent complaint mechanism on federal level and only a few Ombudsman positions with limited powers in some cantons.

It is still impossible to get detailed statistical data of most cantonal authorities on the number of complaints of torture and ill-treatment by law enforcement officials and prison staff, about the investigations and prosecutions carried out and the convictions obtained, and about the sanctions imposed and the compensation awarded. There is no information about the percentage of complaints lodged by foreign nationals, including by asylum seekers when placed in prisons or administrative detention centres or during deportation. In the police crime statistics 2016, there is no mention of the number of acts of assault committed by police officers. No official data are available on police websites and in the reports of police deontology institutions.

According to the Geneva police, in Geneva, 37 penal procedures were opened against police officers in 2013 for ill-treatment, 32 in 2014 comparing to 22'000 police interventions, and 57 in 2015. In 2015, 29 disciplinary measures were taken against police officers, some of them for assault offences. However, the police were not able to give detailed information about the outcome of the penal procedures.

In the absence of statistics, it is not known whether in other cantons except Geneva there was an increase in police violence or not in the last years. Many victims are also afraid to take legal measures and do not even inform NGO's, especially migrants and asylum seekers.

Contrary to observations in previous years, where nearly all penal procedures against police officers ended with a dismissal of the procedure, during 2016, several police officers were convicted mostly to conditional fines in Geneva, Bern, Winterthur and Bremgarten (AG). In Bern, the police officers were also dismissed of their duty by the police. Administrative sanctions have also been taken in Geneva. However, details are not known.

- In April 2016, the district court of Bremgarten convicted two police officers of the special unit Argus to a conditional fine for having fired on a riotous drunken man in his flat, who was not dangerous for others, in 2009.
- In Mai 2016, a police officer of the town police of Winterthur was convicted by the Public prosecutor to a fine of 500 francs and the costs of the procedure for having beaten a detainee on his head with a pocket lamp as big as a pencil.
- In June 2016, the Upper Court of Bern convicted two police officers for having pushed an alcoholised man on the floor and pulled him through his urine, because he first refused to clean it up and cleaned too slowly afterwards.
- In December 2016, a police officer from Geneva was convicted to a conditional fine for disproportionate use of force against a minor who committed a theft in his private car in front

²⁷ See more closely Swiss Centre of Expertise in Human Rights (SCHR), *Toujours pas de norme pénale contre la torture en Suisse - La recommandation du Comité contre la torture de l'ONU relance le débat*, SCHR-Newsletter 15 Septembre 2015 (<http://www.skmr.ch/frz/domaines/police/nouvelles/absence-norme-penale-torture.html>).

of his house. The public prosecutor asked for a prison term because of the dangerous character of the intervention against a minor who was not dangerous.

- On November 6th 2016, a Congolese man was killed during a police intervention in Bex (VD). He was hit by three bullets, one in his heart, one on the shoulder and the third one on the hip. A police officer used his fire-arm when the Congolese man threatened him with a knife. An investigation is underway.

Other cases of police violence against persons of colour were reported during the last four years.

During several demonstrations, disproportionate force led to injuries. A pacifist demonstrator lost 80% of her sight due to the impact of a plastic bullet fired by the Winterthur police. The investigation was closed by the public prosecutor, because the injury could have been caused by an elbow or something else than a bullet. The appeal of the victim was accepted and the case had to be reinvestigated. In July 2016, the procedure was closed again because there was no evidence that her injury was due to a bullet. The lawyer complained about uncompleted instruction measures and unequal appreciation of the witness depositions, but no appeal was launched with the Federal court.

Recommendation: Switzerland should

- **make torture a criminal offence, in terms that fully reflect article 1 of the Convention against Torture**
- **ensure that all cantons create an independent mechanism with authority to receive and effectively investigate all complaints of excessive use of force, ill-treatment or other abuses by the police;**
- **ensure that all perpetrators are prosecuted and punished, and victims compensated;**
- **create a national statistical database on complaints lodged against the police.**

Ad par. 11

In its recent report, the NCPT, the national prevention mechanism concluded that coercive measures continued to be applied too often and that they were disproportionate in several cases during forced repatriation and return.²⁸ Police forces of Zug and Basel-Stadt were armed with a taser. In Neuchâtel, Geneva, Vaud and Valais, police forces were *masked* when taking in charge detainees in detention centres - or affected persons in general - and even during transportation. Parents were immobilized without a valid reason in the presence of their children. Only in 30% of the cases, no immobilisation measures were made. However, contrary to previous observations, no forced administration of tranquillisers has been observed from April 2014 to April 2015.

Even though new rules were adopted by the Conference of Cantonal Directors of Justice and Police in April 2015, according to the NCPT, progress must be made in the implementation of these rules, particularly because an important difference of the level of application of constraint measures is observed between persons repatriated by European flights and those repatriated by national flights.

²⁸ See NCPT, Rapport au Département fédéral de justice et police (DFJP) et à la Conférence des directrices et directeurs des départements cantonaux de justice et police (CCDJ) relatif au contrôle des renvois en application du droit des étrangers, d'avril 2015 à avril 2016 (<https://www.nkvf.admin.ch/dam/data/nkvf/Berichte/2016/vollzusmonitoring/rapport-contrôle-des-renvois.pdf>).

Despite less coercive measures on European flights, no problems could be observed due to this lack of constraint measures.

Even if there is an adequate monitoring mechanism for forced removals and repatriation of foreign nationals, due to a lack of finances, this mechanism cannot observe all steps of deportation of the various police forces. It is however on this level that the most human rights violations are taking place.

Detention conditions are still very preoccupying in the canton of Valais, where an administrative detainee set his cell on fire in April 2017. Detainees are locked in their cells 21/24 hours without any activity. Only restricted sport and collective (4 persons) activities are possible for two hours per day and psychological health care is inexistent, despite the very bad psychological situation of the detainees due to the important restrictions on their freedom of movement and their social contacts. Also some other administrative detention centres are not in line with international standards. Except in Frambois (GE), administrative detention conditions are commonly too strict in Switzerland. Detainees are often kept in special units of pre-trial detention facilities, which, from the architectural point of view, are prisons.

The inquiry into the death of Joseph Ndukaku Chiakwa, a Nigerian national, during the deportation of a group of persons at Zurich airport, on 17 March 2010, is still on-going. In January 2012, the Public prosecutor of Zurich closed the procedure, arguing that according to two expert opinions, the reason for his death was a congenital heart disease. The lawyer of the family launched an appeal arguing that the two expert reports made different conclusions. A third expert concluded that the life of Chiakwa could have been saved if appropriate measures had been taken in time. The two experts contracted by the state did not examine the question of an eventual lack of appropriate life saving measures. The appeal was accepted. Since then, some additional hearings of witnesses were made, the last one in August 2015.

The investigation into the brutal treatment by Zurich cantonal police officers of a Nigerian national during the deportation of 19 Nigerians on 7 July 2011 was closed.

Recommendation: Switzerland should ensure that forced repatriation is conducted by all cantons in line with the international human rights obligation in all steps of deportation.

Treatment of asylum seekers (arts. 2, 9, 12, 13, 14, 24 and 26)

Ad par. 12

Access to free legal assistance in detention

Even though access to free legal assistance in detention is technically guaranteed by law it proves to be very difficult in practice to gain access to free legal assistance as it is only guaranteed if the lawyer is formally mandated prior to his or her visit in the detention center. There is a lack of information for asylum seekers and migrants in administrative detention about their right to (free) legal assistance.

Administrative detention²⁹

²⁹ See for explanation of the system the article "Fundamentals on administrative detention of foreigners" (2 November 2016) under <http://www.humanrights.ch/en/switzerland/internal-affairs/punishment/detention/fundamentals-administrative-detention-foreigners>.

Practice and legal provision for administrative detention are not in line with international standards as e.g. the Swiss law allows for coercive detention in [Article 78](#) of the Act on Foreign Nationals (FNA) and in [Article 76a](#) FNA (for Dublin cases). So-called “alternatives to detention” are not systematically taken into consideration prior to a detention order. Dublin detention orders are only examined by a judge upon request of the applicant.

There are known cases where a parents have been detained separately from her children or families separated. The Federal Court and the Federal Administrative Court have criticized the practice of cantonal and federal authorities in this regard. In a recent judgment, the Federal Court declared the treatment of family by the Canton of Zug be in violation of the Constitution as well as article 8 ECHR. A family from Afghanistan was separated: the father and the mother with her four month old baby were held in “Dublin-detention” in different locations and the three older children were placed in foster care in a children’s home.³⁰

Non-refoulement at the border: Illegal border controls

It has been brought to the attention of the Swiss Refugee Council (OSAR) and of other NGO’s that persons, including unaccompanied minors, have arbitrarily been prevented from applying for asylum at the Swiss southern border with Italy. Despite reports stating this coherently over a longer period, the responsible Swiss Border Guards have so far prevented any independent and transparent inquiry on these cases. They claim that these instances have not been proven.

Switzerland has – despite its participation in the Schengen area – conducted border controls throughout the reporting period and intensified these controls during the year 2016. In 2016, the Swiss border guards have ‘issued’ 26’644 informal return decisions, which 1) lack a legal basis in domestic law, 2) are leading to direct removals without a written decision and impede to a legal remedy, 3) are conducted without proper information of the persons concerned inter alia because there are no interpreters available, 4) with no assessment of the migration status of the person and are also 5) fully applied to unaccompanied minors and families without a guardian or any other assessment of the best interests of the child. Border controls are conducted with a full body check in each case and may also lead to overnight detention if the person arrives too late to be sent back the same day. The staff conducting the border controls is – as the Swiss Border Guards are despite the name a customs authority – not qualified for these controls. The Swiss Act on Foreign Nationals (FNA) contains a provision that allows for these returns without a formal procedure (Article 64c of the FNA). However, the competence for the border controls lies with the canton. There is no monitoring mechanism in place to monitor the work of the border guards, which lacks transparency at all levels. The legal basis for the cooperation between the canton (Ticino) and the border guards is not publicly available.

Recommendation: Switzerland should

- **ensure the right to an effective remedy and to free legal aid in all asylum and Dublin procedures;**
- **ensure that administrative detention is only applied as a last resort and always respect the principle of proportionality (including a systematic consideration of alternatives to detention). It must not be imposed on vulnerable persons (minors, pregnant women, single mother etc.) or families;**

³⁰ 2C_1052/2016, 2C_1053/2016, 26 April 2017.

- **ensure a systematic assessment of the best interests of the child and the right of the child to be heard in any judicial and administrative asylum proceeding affecting the child;**
- **ensure that removals on the border are always preceded by a written decision and an assessment of the best interests of children if applicable.**

Ad par. 13

The Swiss Commission for the Prevention of Racism has issued a report stating that the Swiss practice with regard to the restriction of free movement asylum seekers is violating the rights of asylum seekers. It especially mentions the general restrictions of the freedom of movement and the practice to ban asylum seekers from specific public areas.³¹

Generally, the freedom of movement of persons is heavily restricted in the asylum domain. Persons applying for asylum are obliged to stay in a Federal Accommodation and Procedures Centre for (initially) up to 90 days. The persons are obliged to stay in the centre between 5pm and 9am. They are searched every time they enter the centre and sanctions are applied if the persons arrive late.

If the person is granted protection only persons that have been granted full asylum may move freely within Switzerland. Moreover, persons that are granted protection on other grounds than the refugee definition of the 1951 Convention are as a rule not allowed to re-enter Switzerland. Only in rare cases of hardship there is a possibility to successfully apply for a re-entry visa that will allow for a travel abroad in accordance with the Ordinance on travel Documents as amended as of 2011. This restriction was introduced for all persons holding a so-called provisional admission after a policy debate on returns of 'refugees' to their country of origin. Despite the fact that cases of refugee returns are not even prevented by this measure (as 'refugees' are given a Convention Travel Document) and that the number of proven cases of return was and is very small, the full 'group' of 'persons provisionally admitted as a foreigner' is subject to this measure. The measure is clearly disproportionate regarding the scope of the challenge. However, the discussion has turned to a different direction with a new provision which was proposed by the Federal Council to allow for travel bans to neighbouring countries of the country of origin. The practical relevance is potentially minimal the symbolic relevance is harmful for persons in need of protection. The two main groups suffering from these restrictions are Eritreans and Syrians as they are not allowed to visit communities or families in other European countries or in neighbouring countries of their country of origin.

The access to the labour market of persons with a 'provisional admission' and for asylum seekers is severely restricted by the necessity to find labour opportunities in the canton they are assigned to by the Confederation. A change of the canton is only possible if both cantons agree, which is seldom the case.

Recommendation: Switzerland should

- **respect the right to liberty of movement and freedom to choose his residence of article 12 CCPR;**

³¹ [Requérants d'asile dans l'espace public](http://www.ekr.admin.ch/pdf/Asylsuchende_F_web.pdf), Avis de droit établi sur mandat de la CFR, février 2017. Available (in French) at: http://www.ekr.admin.ch/pdf/Asylsuchende_F_web.pdf.

- **facilitate the possibility to leave and re-enter the country for persons granted a provisional admission in Switzerland.**

Liberty and security of person and the treatment of persons deprived of their liberty (arts. 9 and 10)

Ad par. 14, 15

Pre-trial detention³²

The current design of pre-trial detention enforcement does not take basic human rights requirements into account with regard to the presumption of innocence.

Stricter regulations apply to persons in pre-trial detention than to convicted offenders. The conditions of detention vary widely between cantons. The fact that prisoners in pre-trial detention are locked up for over 20 hours a day in most penal institutions is particularly problematic. Other problematic issues include the handling of outside contacts, especially with respect to family visits and access to telephones. Pre-trial detention prisoners are frequently denied visits with their children or, e.g. in the canton of Zurich, visits are only allowed if prisoners and their children are separated by glass panels. This restrictive prison regime is extremely stressful for the affected persons and blatantly violates the principle of proportionality in many cases.

From a human rights perspective, prisoners in pre-trial detention are frequently subjected to various systematic and targeted restrictions in order to influence their behaviour in the criminal proceedings pending against them. There is a justified suspicion that they are in a kind of forbidden coercive detention rather than in pre-trial detention.

Recommendation: Switzerland must take the following legal steps to address these failings:

- **The length of pre-trial detention must be limited in the Swiss Criminal Procedure Code.**
- **Imprisonment conditions, in particular regulations on confinement, receiving visitors, telephone use, and individual occupation opportunities should be based on the individual case and designed in a way that restricts the prisoner's personality as little as possible.**

Prison overcrowding³³

In the Champ-Dollon prison in Geneva severe and continued overcrowding has persisted for many years. On 21 March 2016, the Federal Court ruled that prison conditions in Geneva's largest prison

³² See Nationale Kommission zur Verhütung von Folter (NKVF), Fünfter Tätigkeitsbericht 2014; Schweizerisches Kompetenzzentrum für Menschenrechte, Untersuchungshaft: Menschenrechtliche Standards und ihre Umsetzung in der Schweiz, Bericht des Europäischen Ausschusses zur Verhütung von Folter und unmenschlicher oder erniedrigender Behandlung oder Strafe (CPT) über dessen Besuch in der Schweiz vom 13. bis 24. April 2015.

³³ Überbelegung in Champ-Dollon: Bundesgerichtsurteile und alarmierende medizinische Studie: <http://www.humanrights.ch/de/menschenrechte-schweiz/inneres/strafen/freiheitsentzug/bger-1b-335-2013-1b-336-2013-haftbedingungen-champ-dollon-verletzen-emrk>; Bericht des Europäischen Ausschusses zur Verhütung von Folter und unmenschlicher oder erniedrigender Behandlung oder Strafe (CPT) über dessen Besuch in der Schweiz vom 13. bis 24. April 2015.

violate Art. 3 of the Convention on Human Rights (ECHR). Federal Court judges have repeatedly criticised the deplorable detention standards in Champ-Dollon, specifically in February 2014 and October 2015.

Recommendation: Switzerland should immediately take steps to ensure that a maximum of two people is held in solitary cells and no more than five people are held in cells designed for three prisoners. Cantonal authorities are also urged to take the necessary measures (e.g. alternative forms of detention) to curb the ever-growing population in prisons.

Stationary measure according to Art. 59 of the Swiss Criminal Code

More and more people are being sentenced to in-patient therapeutic measures because of serious mental disorders according to Art. 59 of the Swiss Criminal Code. In 2015, a total of 864 persons were in “small preventive incarceration,” which normally means a maximum of five years’ imprisonment but can be prolonged by authorities. Because they are seen as potential “threats,” these people remain in custody for years with no guarantee they will ever be released again. The European Court for Human Rights has repeatedly stated that the possibility to be released from prison is a human right. The lack of a possible release violates Art. 3 of the ECHR, the prohibition of torture.

What is particularly problematic is the lack of therapeutic measures. Sometimes people have to wait in the ordinary penal system before being placed in an appropriate therapeutic institution. Due to the long and uncertain waiting period, the affected persons lose their motivation to undergo treatment. In addition, there is a danger that the illness will become chronic.

Recommendation: Build and provide additional therapeutic institutions to implement stationary measures. Authorities are requested to take necessary measures to counteract the rapid growth in numbers in preventive incarceration. Set a deadline that can only be exceeded in very serious exceptional cases.

High security detention³⁴

In Switzerland, approximately 30 people live in solitary confinement in high security wards. A third of these people have been in prison for over one year and in some cases between five and twelve years. High security confinement as solitary confinement is the severest form of imprisonment. Some prisoners in high security confinement can be isolated from the outside world and fellow prisoners for several years. The greatest issue with high security confinement is that in all high security wards, the population of inmates consists of people with mental disabilities, some of whom are severely disabled.

Recommendation: The cantons are strongly advised to create additional specialised places in psychiatric institutions. People who are at high risk of harming others due to a psychological disorder should be placed in closed psychiatric wards and not in solitary confinement in prisons.

³⁴ Vierter Tätigkeitsbericht 2013 der Nationalen Kommission zur Verhütung von Folter mit Schwerpunkt Hochsicherheitshaft; Die Menschenrechtskonformität der Hochsicherheitshaft in der Schweiz, Gutachten des SKMR, 26. Mai 2014; Bericht zuhanden des Bundesrates betreffend den Besuch in der Schweiz durch das CPT im Oktober 2011.

Solitary confinement must be reassessed regularly (at least once every three months) and the choice to prolong solitary confinement must be sufficiently backed up with evidence. The longer the solitary confinement, the stronger the justification and evidence for it must be.

Legal assistance in prison

Imprisonment measures in practice repeatedly lead to conflicts on how and to what extent the fundamental rights of affected persons might be restricted. Persons imprisoned in Switzerland nowadays have no possibility to get free confidential legal advice by independent specialists. The only way to get counselling is by addressing paid lawyers.

The right to legal assistance for prisoners is enshrined in various human rights treaties. According to the European Prison Rules, all prisoners have the right to legal advice, and the prison authorities shall provide them with reasonable facilities for gaining access to such advice (Para. 23.1).

The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) define the following in rule 61: “Prisoners shall be provided with adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice or a legal aid provider, without delay, interception or censorship and in full confidentiality, on any legal matter, in conformity with applicable domestic law”.

Recommendation: Measures need to be taken to grant the prisoners effective legal protection. This includes facilitated access of legal advisors to the places of detention as well as the financing of such offers.

Prohibition of slavery and forced labour (art. 8)

Ad par. 16

Despite a national action plan to combat human trafficking, the cantons (which are responsible for the plan’s implementation) are free to decide what measures to take regarding victim protection, the prevention of trafficking and its criminal prosecution. Different application of the rules leads to inequalities, a lack of legal security and, finally, discrimination. The competent authorities of some cantons have still not received any training nor specific awareness raising on the problem of trafficking.

Potential victims are often not recognized as such (e.g. also in the asylum and Dublin procedures) and are thus unable to enjoy protection from criminalization and/or immediate deportation, or from reprisals by perpetrators. The rate of convictions is still very low.

Prevention and training are largely based around human trafficking for purposes of sexual exploitation, while trafficking for the purposes of labour exploitation is almost completely ignored. Work inspectors have no explicit legal mandate to monitor or denounce violations of Article 182 of the Criminal Code. In this context, it should further one be noted that Switzerland’s Criminal Code knows no specific prohibition of slavery. It is therefore questionable whether slavery-like practices, e.g. in the context of households work and care work, can be punished according to the seriousness of the offence.

Specialized support is only guaranteed (and financed) if the exploitation has taken place in Switzerland. This leads in the migration context (including asylum procedures) to a situation where victim protection including the access to victim rights and to an adequate status is often not guaranteed.

Recommendation: Switzerland should

- **establish and implement binding rules, based on the principle of non-punishment that would be applicable throughout the whole national territory in order to identify and protect victims and prosecute criminals;**
- **make slavery and slavery-like practices a criminal offence;**
- **ensure proper financing of victim support and a professional structure for victim identification.**

Rights of the child (arts. 7 and 24)

Ad par. 21 - Punishment of children

Switzerland has received several recommendations concerning prohibition and elimination of corporal punishment of children (CRC, CAT). The Federal Court has declared numerous acts of violence incompatible with the rights of the child but its case law remains virtually unknown to the wider public.³⁵ It does not, moreover, categorically exclude corporal punishment as an educational measure. Nevertheless, the parliament regularly rejects initiatives in this direction (see Fourth Periodic Report of Switzerland, CCPR/C/CHE/4, par. 184). Recently a parliamentary motion calling for a ban on corporal punishment was once again rejected.³⁶

Ad par. 22 – Intersex children

CRC, CEDAW and CAT voiced their concern that intersex persons are still affected by unnecessary, and irreversible genital operations for cosmetic reasons. The Federal Council declared that surgical procedures have been denounced at the political level and also by the National Advisory Commission on Biomedical Ethics (see Fourth Periodic Report of Switzerland, CCPR/C/CHE/4, par. 188). However, it should be noted – in line with the Concluding Observations of CEDAW (par. 25) – that parents of intersex children are pressured by medical professionals, the media, and society at large, to give their consent for so-called “medical procedures” justified by psychosocial indications. Intersex children and adults are often unaware of the procedures they have been subjected to. Access to legal remedies for intersex persons affected by unnecessary medical procedures is extremely limited with the statute of limitations often expiring by the time intersex children reach adulthood. It should be noted, that Switzerland has prohibited *any* form of female mutilation in the Criminal Code ([Art. 124](#)), but in the same time has never addressed genital mutilations of intersex children.

Recommendation: Switzerland

³⁵ See preliminary results of an University of Fribourg’s study in : Protection de l’enfance Suisse, « Quelle est l’ampleur de la violence dans l’éducation? Qu’est-ce que les parents considèrent comme «violence» ? (<https://www.kinderschutz.ch/fr/actualite/quelle-est-lampleur-de-la-violence-dans-leducation-quest-ce-que-les-parents-considerent-comme-violence.html>).

³⁶ On 3 May 2017 the Motion Galladé Chantal, Suppression du châtime^{nt} corporel (<https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20153639>.)

- **should specifically prohibit corporal punishment and other violations of a child's dignity in its legislation.**
- **should carry out public-awareness campaigns on the negative effects of violence against children, especially corporal punishment.**
- **is called upon to implement the recommendations of the CRC, CAT and the CEDAW as rapidly as possible by taking the necessary legislative and administrative measures to guarantee respect for the physical integrity and autonomy and self-determination of intersex persons. Free legal assistance and appropriate psychosocial support must be guaranteed to victims and their families.**

Rights of persons belonging to minorities (art. 27)

Ad par. 23

Yenish and Sinti groups have been officially recognized as a national minority within the meaning of the Council of Europe Framework Convention on National Minorities since 1998. Switzerland has undertaken, in the context of the new law on encouraging culture and its corresponding message, to actively promote the culture of these minorities.

Only 50% of the need for parking sites is currently covered for communities that have chosen a nomadic life. The number of these sites has drastically reduced since the turn of the millennium.

The authorities show only a limited understanding of these minorities and the Roma, Sinti and Yenish communities are – as mentioned before - regularly the victims of ethnic profiling by the police. Confusion regarding their way of life and ethnic belonging, as well as repetitive stereotyping, is commonplace. As mentioned above, Yenish, Sinti and Roma are e.g. very often affected by discriminatory police controls.

Recommendation: Switzerland should

- **respect its legal duties as regards the Yenish and Sinti and examine the possibility of recognizing the Roma as a national minority;**
- **raise awareness of the situation of the three minorities through targeted awareness raising measures among authorities and police representatives;**
- **Information on the culture and history of persecution of the Yenish, Sinti and Roma minorities must be actively disseminated.**

Miscellaneous

The NGO-Platform recommends the Committee to request Switzerland

- **to ratify the first Optional Protocol to the ICCPR and withdraw the reservation to Article 26 of the ICCPR.**
- **to ratify the Optional Protocol to the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.**