

Priority recommendations Swiss Coalition for the UPR

The Swiss Coalition for the UPR would like to reiterate its full support for the adoption by Switzerland of the following recommendations made under point 57 of the 'Draft Report of the Working Group on the Universal Periodic Review' (A/HRC/WG.6/2/L.7).

1. National Human Rights Institution

Current situation

Given the federalist structure of Switzerland, a national human rights institution for the promotion and protection of human rights that complies with the Paris Principles is an essential requirement to ensure effective implementation of international human rights obligations. In spite of the recommendations formulated by various UN treaty bodies¹, Switzerland's commitment to the implementation of the Declaration and the Programme of Action² adopted in Vienna in 1993, and of the parliamentary initiatives³ of the Swiss Federal Parliament, Switzerland has not to date set up a national human rights institution.

The Swiss Coalition therefore urges Switzerland to adopt the following recommendation:

1. To establish a national institution on human rights in accordance to Paris Principles

2. Asylum law and migration

Current situation

There are a series of problems, which the NGO Coalition has identified with respect to the new legislation on asylum:

- Asylum seekers whose applications have been rejected and who have been ordered to leave Switzerland are denied social assistance. While cantons are entitled to determine the amount of this assistance, the option is applied very unequally from canton to canton.
- The examination of requests for asylum is subject to especially severe conditions that in many cases harm the otherwise fair character of the procedure. This applies in particular to

¹ See the following comments on the issue: Para. 16, CRC/C/15/Add.182 (13 June 2002), Para. 13, CERD/C/60/CO/14 (21 May 2002), Para. 66, A/HRC/4/19/Add.2 (30 January 2007).

² [http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.Fr](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.Fr)

³ http://www.foerderverein-mri.ch/c_data/ParisPrinciples.french.pdf

the possibility of not proceeding to an in-depth examination of requests for asylum submitted by seekers without identity papers.

- In Switzerland, free and immediate judicial assistance financed by the State is not available in the case of negative decisions concerning asylum⁴.
- The five state centres for registration and procedures where asylum requests can be submitted are not sufficiently equipped to house the asylum seekers assigned to them. Medical care and checks are often insufficiently provided.
- Different forms of administrative detention can be applied in view of the very wide range of grounds that exist for having foreigners deported. Periods of detention can amount to up to two years, which is a serious contradiction of the principle of proportionality⁵.

Against this background, the Swiss Coalition urges Switzerland to adopt the following recommendation:

- **To foster internal analysis on the recently adopted law on asylum and its compatibility with international HR law.**

3. Racial discrimination

Current situation

There is no federal law forbidding discriminatory practices in general. Switzerland also maintains its reservation to article 26 of the International Covenant on Civil and Political Rights, thereby limiting the scope of the general principle of the prohibition of discrimination to those rights ensured by the Covenant. Neither is Switzerland party to the Optional Protocol to the International Covenant on Civil and Political Rights, which provides for the possibility for victims to initiate an individual complaint procedure.

The Swiss Coalition therefore urges Switzerland to adopt the following recommendation:

- **To accede to the First OP-ICCPR.**
- **To adopt measures to reinforce existing mechanisms on combating racial discrimination.**

⁴ Art. 17 al. 4 LAsi and Art. 7a de l'ordonnance 1 sur l'asile relative à la procédure.

⁵ Art. 75ss. LEtr ; sur la durée maximale de détention, voir l'art. 79 LEtr.

4. Migrant women

Current situation

Migrant women are often subject to double discrimination as a result of their gender and their status as foreigners and as women. This holds particularly true for women without legal status, with a precarious residence permit, or where their legal status is linked to the residence permit of the husband. Whereas the cantons apply different rules with regard to the protection of these women, there is little chance that their fundamental rights will be respected, and they risk deportation if they report acts of violence directed against them.

The Swiss Coalition therefore urges Switzerland to adopt the following recommendations:

- **To ensure that the revocation of resident permit for married women victims of conjugal violence are subject to review and done only after a full evaluation of impact on those women and their children**
- **To further address and enhance combating the root causes of discrimination, particularly of foreign migrant women, by removing legal and systematic obstacles to equal rights.**
- **To take measures to prevent that migrant woman who are being victims of sexual and domestic violence or trafficking and report on these are being at risk for deportation on such reporting.**

5. Rights of the Child

Current situation:

Switzerland made a number of reservations when it ratified the Convention on the Rights of the Child⁶, including to article 37, para 2, that forbids the detention of minors with adults⁷. The Convention further specifies that detention measures should only be used as measures of last resort and for the shortest period of time, a requirement that currently is not being fulfilled in the framework of the constraining measures that are being applied to minors.

The Swiss Coalition therefore urges Switzerland to adopt the following recommendation:

⁶ Child Rights Convention.

⁷ The cantons have a ten years' deadline to adapt detention centres. See on that subject the response of the Federal Council dated 16.05.2007 http://www.parlament.ch/D/Suche/Seiten/geschaefte.aspx?gesch_id=20073127

- **To treat offenders under the age of 18 in police custody and detention differently from adults.**

6. Rights of sexual minorities

Current situation:

Lesbians, gays, bisexuals and transsexuals⁸ have no recourse to institutional support to exercise their rights so that discrimination against them is quietly tolerated. Sexual orientation and gender identity are moreover not explicitly mentioned in the constitution as possible targets of discrimination. Currently, there is no law sanctioning acts of discrimination against this minority.

The Swiss Coalition therefore urges Switzerland to accept the following recommendations:

- **That federal legislation be strived for to provide protection against alls forms of discrimination, including on grounds of sexual orientation and gender identity.**
- **To take additional steps to ensure that same sex couples are not discriminated.**

Final note concerning strong voluntary pledges

The Swiss Coalition for the UPR firmly supports the adoption by the Swiss Authorities of strong voluntary pledges, in addition to the endorsement of recommendations formulated during the UPR session. These pledges will illustrate Switzerland's commitment to promote and protect human rights. In particular, it will ensure that the non endorsement of some recommendations, such as those included in § 58 of the Report of the Working Group, is not a denial of the human rights concerns expressed by some States, as well as by other stakeholders.

Switzerland must explicitly ground its voluntary pledges on its defense of the universality and indivisibility of human rights.

Concerning the protection of the rights of migrants, Switzerland must reaffirm by its pledges its commitment to respect the human dignity of migrants, notwithstanding the absence of the ratification of the International Convention on the rights of Migrant Persons. The fact that a

⁸ Lesbians, gays, bisexuels and transgender.

migrant person might not have fully complied with the legal provisions of Swiss law can not constitute a ground for any violation of the fundamental principles of human rights and of the respect of human dignity.

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