

UNIVERSAL PERIODIC REVIEW OF SWITZERLAND, 3RD CYCLE: CONTRIBUTION OF THE PLATFORM OF SWISS HUMAN RIGHTS NGOS

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1. Background and Framework

A. Scope of international obligations

1	<p>Ratifications pending with the UN</p> <p>While Switzerland has ratified the vast majority of international human rights texts, it has failed to ratify the optional protocols to the ICCPR and ICESCR, to the Convention on the Rights of Persons with Disabilities and to the Convention on the Rights of the Child.</p>	<p>Switzerland is invited to intensify its efforts to ratify the optional protocols, which anticipate individual communication mechanisms for reporting violations of the covenants.</p>
2	<p>Ratifications pending with the Council of Europe</p> <p>Switzerland has not yet ratified the revised European Social Charter, which it signed in 1976. It thus remains one of the few Member States of the Council of Europe not to have done so despite a study¹ demonstrating this charter's compatibility with national law. Switzerland has further not ratified the Istanbul Convention on preventing and combatting violence against women and domestic violence, which it signed in 2014.</p>	<p>Switzerland is invited to ratify the European Social Charter (revised) and the Istanbul Convention on preventing and combatting violence against women and domestic violence without reservations.</p>
3	<p>Reservations to the CRC</p> <p>During the 2012 UPR, Switzerland rejected a recommendation to remove the reservations expressed with regard to Articles 10.1, 37(c) and 40 of the CRC. The Committee on the Rights of the Child regretted these reservations and also recommended their removal.</p>	<p>Switzerland is called upon to adapt its legislation in order to be able to gradually ratify the reservations made to Articles 10.1, 37(c) and 40 of the CRC.</p>
4	<p>Reservations to the CEDAW</p> <p>The CEDAW reservations concern the right to matrimonial regimes. Switzerland, which has just indicated to the CEDAW Committee that these reservations will not be removed before 2050, clearly has no intention of doing so.</p>	<p>Switzerland is invited to remove its reservations to Articles 15.2 and 16.1(h) of the CEDAW.</p>
5	<p>Analysis of free trade agreements from a human rights perspective</p> <p>With regard to human rights, States have duties that extend beyond their borders. Switzerland has a legal obligation to ensure that the bilateral free trade agreements it concludes do not encourage human rights violations in the partner states.</p> <p>Switzerland must therefore carefully examine the consequences of such agreements for human rights by undertaking prior assessments (Human Rights Impact Assessments).</p>	<p>Switzerland is invited to conduct human rights impact assessments and to take their results into account before concluding new free trade agreements.</p>

B. Constitutional and legislative framework

6	<p>Review of the compatibility of Swiss law with international law and the constitutionality of federal laws</p> <p>Switzerland has no institutional mechanism to prevent voters from forcing a public vote on is-</p>	<p>The Swiss government is invited to continue its efforts to reach a convincing solution aimed at ensuring the compatibility of popular initiatives with international human rights standards and the fundamental rights con-</p>
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¹ Report dated 2.7.2014 <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20103004>

<p>sues that are contrary to human rights. An initiative has thus been tabled which, if adopted, would assert the supremacy of national law over international law, with the exception of mandatory international law.</p>	<p>tained in the Constitution.</p>
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C. Institutional infrastructure and human rights policy measures

<p>7</p>	<p>National Human Rights Institution (NHRI) During the 2nd cycle of the UPR, Switzerland accepted several recommendations calling on it to create an NHRI in line with the Paris Principles. The Swiss Centre of Expertise in Human Rights (SCHR) was set up for a pilot phase, which was then extended for a further five years to allow for the production of a law introducing a NHRI.</p>	<p>The Federal Council is invited to submit a bill of law to parliament introducing an NHRI in line with the Paris Principles, particularly with regard to the institution's independence, including financial.</p>
<p>8</p>	<p>Creation of Ombudsmen at canton level The duties of a cantonal Ombudsman consist of providing out-of-court settlement of conflicts between citizens and State representatives, particularly the police, in relation to human rights issues.²</p>	<p>The Confederation is invited to raise awareness among those cantons that do not yet have an Ombudsman so that they establish such an institution.</p>
<p>9</p>	<p>Accountability of transnational companies Despite repeated undertakings, Switzerland does not ensure that businesses respect human rights as set out in the UN Guiding Principles on Business and Human Rights and CoE recommendations. It relies solely on voluntary self-regulation and provides no regulatory framework explicitly establishing the obligations of companies nor any monitoring of respect for human rights in the context of activities conducted abroad by Swiss companies.</p>	<p>Switzerland should establish a clear regulatory framework to govern the activities of businesses headquartered in Switzerland - including by means of compulsory due diligence with regard to human rights and the environment - in order to ensure that activities undertaken in the context of or directly related to their business do not have a negative impact on human rights and are not in violation of environmental standards. Switzerland should ensure that businesses operating within, or from headquarters based inside, the country can be legally held accountable for all human rights violations.</p>

2. Cooperation with human rights mechanisms

<p>10</p>	<p>Implementation of UPR recommendations Switzerland's federal system calls for particular requirements in terms of a coordinated implementation of human rights. A coordinating body that could serve as a point of contact for the cantons has still not been established within the Confederation.</p>	<p>Switzerland is invited to create adequate institutional conditions to guarantee effective coordination between the Confederation, the cantons and civil society in relation to following up the UPR recommendations and those of the treaty bodies and special procedure systems.</p>
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² To date, only five cantons and a number of towns have such a body, cf. <http://ombudsman-ch.ch/content-de/adressen.html>

3. Implementation of international obligations

A. Equality and non-discrimination

a) General

11	<p>Law on discrimination</p> <p>A general law on discrimination is sorely lacking, with the consequence that Switzerland can neither remove the reservation to Art. 26 of the ICCPR nor ratify optional protocol no. 12 to the ECHR. This lack of a legal provision means, in particular, that migrants and people belonging to vulnerable groups often lack protection from informal discrimination, especially from private individuals.</p>	<p>Switzerland is encouraged to produce policy proposals with a view to adopting a general law on equal treatment. In this context, it must take into explicit consideration the interests of LGBTI minorities, the disabled, the migrants and vulnerable groups.</p>
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b) Racism

12	<p>Ethnic profiling</p> <p>The negative consequences of ethnic profiling have long been described in numerous international studies.³ This practice not only violates the dignity of the individuals concerned but also encourages xenophobic attitudes among the population.</p> <p>The phenomenon of ethnic profiling, which has formed the object of a number of recommendations to Switzerland⁴ is, as a rule, contested by the competent authorities and administrations. The experience of NGOs, Ombudsmen and the people concerned shows, however, that people of colour are regularly checked or searched for no objective reason.</p>	<p>The Confederation should work with the cantons to implement the ECRI's recommendations so that targeted measures are taken against ethnic profiling.</p>
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c) Sexual orientation and gender identity

13	<p>Ban on adoption for couples living in same-sex unions</p> <p>The ban on adoption enshrined in Art. 28 of the LPart⁵ unnecessarily imposes serious difficulties on children growing up in same-sex unions. They are legally only protected by one parent, even if another person is carrying out parental duties and would be willing to take responsibility in all areas, including financial.</p>	<p>The Swiss Parliament is invited to continue its work with a view to a total abolition of the ban on adoption given in the law on same-sex unions.</p>
14	<p>Change of name and gender for transgender persons</p> <p>In Switzerland, reproductive incapacity is still often a precondition for being able to change one's sex in official documents. This requires</p>	<p>Switzerland is invited to modify its practice with regard to officially changing one's gender indication so that the right to self-determination, such as the right to gender identity on the part of those concerned, is</p>

³ Cf. Le délit de faciès ("Racial Profiling"): <http://www.humanrights.ch/fr/dossiers-droits-humains/racisme/delit-de-facies/>

In 2009, the European Commission against Racism and Intolerance (ECRI) thus recommended that Switzerland incorporate the issue of racial profiling into its police training, establish structures enabling an exchange of good practices to take place, and conduct research into the issue. It also called for the introduction into law of a clear definition of racial profiling and its prohibition.

<http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Switzerland/CHE-CbC-IV-2009-032-ENG.pdf>, No. 136-140

⁵ Loi fédérale sur le partenariat enregistré entre personnes du même sexe (Loi sur le partenariat, LPart)

	the surgical and therefore irreversible removal of reproductive organs or hormonal treatment (not always effective). Transgender persons find themselves in the dilemma of either having to undergo an irreversible violation of their physical integrity - which not all are ready to endure - or having to deny themselves an official identity in line with their lived gender. This practice is in serious violation of the right to physical integrity.	preserved.
15	<p>Cosmetic genital operations practised on intersex children</p> <p>UN committees have repeatedly stated that unwanted, medically unnecessary, and irreversible genital operations conducted on intersex children for cosmetic reasons constitute inhuman treatment⁶ or harmful practice.⁷ In 2015, the CAT⁸ and the CRC⁹ called on Switzerland to take effective legislative, administrative or judicial measures to guarantee the physical integrity and self-determination of intersex persons and to grant reparations to victims of intersex genital mutilation (IGM). Free legal assistance and appropriate psychosocial support must also be guaranteed to victims and their families. The recommendations of the CNE¹⁰ must be implemented.</p>	Switzerland is called upon to implement the recommendations of the CAT and the CRC as rapidly as possible by taking the necessary legislative and administrative measures to guarantee respect for the physical integrity and autonomy of intersex persons.

B. The right to life, freedom and security of the person

16	<p>Provision prohibiting torture in the Criminal Code</p> <p>Not only has Switzerland not classified torture as a crime within its Criminal Code, it has also rejected the recommendations made by the UPR, CAT and HRC in this regard. And yet, as a State Party to the CAT, it is required to do so.</p>	The Federal Council must undertake to commence a legislative process aimed at introducing provisions punishing the crime of torture into its Criminal Code, in accordance with the CAT. ¹¹
17	<p>Prohibition on corporal punishment</p> <p>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. It does not, moreover, categorically exclude corporal punishment as an educational measure.¹²</p>	Switzerland is invited to resume a legislative procedure aimed at banning corporal punishment.

⁶CAT/C/DEU/CO/5, CRPD/C/DEU/CO/1, CAT/C/CHE/CO/7, CAT/C/AUT/CO/6, CAT/C/DNK/CO/6-7, CAT/C/CHN-HKG/CO/4-5

⁷CRC/C/CHE/CO/2-4, CRC/C/CHL/CO/4-5, CRC/C/IRL/CO/3-4, CRC/C/FRA/CO/5

⁸www.humanrights.ch/upload/pdf/160128_CAT_fr.pdf

⁹

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRICAqhKb7yhskw6ZHISJLETdRqI6Pfo3d19Gofwi7ZPZdEOVKAQgeqWKogXziXEvcG5O%2bzGktEo1nvnVtG%2fXYEnmWa47plmDxnHEFWZ34zt96jYJHgY3fb5>

¹⁰<http://www.nek-cne.ch/index.php?id=169&L=1>

¹¹ Article 4.1 CAT

¹² The National Council rejected a parliamentary motion calling for a ban on corporal punishment on 17 June 2014.

<https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20133156>

18	<p>Detention pending expulsion</p> <p>Different forms of administrative detention are applied pending the expulsion of aliens. Detention may last up to 18 months, which is totally disproportionate. On the basis of the LEtr,¹³ minors under the age of 15 can be held in detention for up to a year, as can pregnant women. There are known cases where a mother has been detained separately from her children and a father separately from his. Given the lack of detention centres appropriate to the specific conditions of administrative detention, the system of detention pending expulsion is, in many cases, far too strict.</p>	<p>Administrative detention must only be applied as a last resort and must always respect the principle of proportionality. It must not be imposed on vulnerable persons (minors, pregnant women, single mothers) or families.</p> <p>If it is nonetheless imposed then this must be in special facilities and according to a system that is clearly distinct from that of criminal detention.</p>
19	<p>Violence against women</p> <p>The roots of gender violence must be sought in the inequality between the sexes, which continues to reproduce generally accepted norms and stereotypes. The image of the traditional role of each sex is still influential in Swiss society. It is reproduced in the media and thus present in everyday life, contributing in a subtle but effective way to a perpetuation of power relations between men and women.</p>	<p>Switzerland is invited to take measures to eliminate the stereotypical images and attitudes relating to male and female roles in the family and in society. There is a need to adopt a global approach to preventing and combatting violence and sexism.</p>

C. Administration of justice, including impunity and the rule of law

20	<p>Independent police complaints body</p> <p>A complaint made against police representatives is generally handled by bodies that have a good relationship with the accused or which report to the same line managers.</p> <p>While, in some cantons, this kind of case is handled by a Public Prosecutor from another commune or, in extreme cases, another canton, this is the exception rather than the rule. Complaints are all too often doomed to failure in the early stages of proceedings. This assessment is based particularly on an SCHR study.¹⁴</p>	<p>The Confederation and the cantons should take the necessary measures to ensure that, in cases of criminal complaints made against the police, all proceedings are systematically conducted by a special and independent inter-cantonal prosecutor.</p>
21	<p>Standards for victim protection and criminal proceedings in human trafficking</p> <p>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, discrimina-</p>	<p>Switzerland is invited to 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. Work inspectors must be explicitly required to check for and denounce cases of trafficking.</p>

¹³, Federal Law on Aliens, Art. 75 and 76 <https://www.admin.ch/opc/fr/classified-compilation/20020232/index.html#a75>

¹⁴ Rechtsschutz gegen polizeiliche Übergriffe - Eine Darstellung der Beschwerdemechanismen in der Schweiz. Jörg Künzli, Evelyne Sturm, Vijitha Veerakatty, February 2014 (pdf, 230 S.)

http://www.skmr.ch/cms/upload/pdf/150319_SKMR_Studie_Rechtsschutz_Polizei.pdf

	<p>tion.</p> <p>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 and are thus unable to enjoy protection from criminalization and/or immediate deportation, or from reprisals by perpetrators. 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.</p>	
22	<p>Access to legal assistance for persons deprived of their liberty (PDL)</p> <p>According to Article 23.1 of the European Prison Rules,¹⁵ “<i>All prisoners are entitled to legal advice, and the prison authorities shall provide them with reasonable facilities for gaining access to such advice.</i>” This standard is not met in Switzerland. Apart from access to a legal aid lawyer, PDLs have only very limited possibility of obtaining legal advice from a competent person in whom they can place their trust.</p>	<p>The cantons and the concordats (inter-cantonal treaties) on execution of sentences are invited to promote the free provision of independent legal assistance for PDL and to support all initiatives in this direction.</p>
23	<p>Detention conditions during pre-trial custody</p> <p>A study by the SCHR dated May 2015¹⁶ shows that, in most cantons, human rights directives on conditions during pre-trial custody are systematically and sometimes massively violated, as is the requirement to speed up the process. Restrictions placed on freedom during the period of pre-trial custody should serve only to prevent the risk of escape or collusion. In some cantons, however, detainees’ contact with the outside world is systematically and severely restricted, solely because of the risk of escape. This also applies to life inside prison and detainees in pre-trial custody are often confined for up to 23 hours a day in their cell, which is only lawful in exceptional circumstances.</p>	<p>The Confederation is invited to work with the cantons and use targeted actions to ensure that the detention conditions during pre-trial custody meet human rights standards.</p>

D. The right to a private life, marriage and family life

24	<p>Protection of privacy</p> <p>Switzerland recently passed a law on intelligence services¹⁷ which, under certain condi-</p>	<p>Switzerland is invited not to authorize the intelligence services to exercise surveillance on the wired network and to specify</p>
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¹⁵ <https://book.coe.int/eur/fr/droit-penal-et-criminologie/3677-regles-penitentiaires-europeennes.html>

¹⁶ Untersuchungshaft - Menschenrechtliche Standards und ihre Umsetzung in der Schweiz, Jörg Künzli, Nula Frei, Maria Schultheiss, Mai 2015, (pdf, 84 S.), http://www.skmr.ch/cms/upload/pdf/150619_Studie_Untersuchungshaft_web.pdf

¹⁷ <https://www.admin.ch/gov/fr/accueil/documentation/votations/20160925/loi-renseignement.html>

	<p>tions, authorizes the mass and indiscriminate monitoring of wired communications (surveillance). For its part, the law on surveillance of postal and telecommunications traffic¹⁸ authorizes the storage of metadata for a six-month period and establishes an obligation on communication companies to pass on this data to the criminal prosecution authorities and intelligence services on demand. These measures form serious intrusions into the private lives of millions of innocent people.</p>	<p>the conditions under which secondary data (metadata) can or must be handed over to the criminal prosecution authorities or intelligence services.</p>
25	<p>The right to family life The rules on family reunification vary in Switzerland depending on legal status, and the right to reunification is only partial. The cantons have a very wide margin for manoeuvre in this regard. The practical conditions required of migrants (adequate housing and financial independence) are very difficult to meet and the very short deadlines difficult to adhere to. Single mothers with children in receipt of temporary admission are particularly disadvantaged. As soon as they attempt to improve themselves educationally, they find it very difficult to remain independent of social welfare.</p>	<p>Switzerland must ensure that the right to family life (Art. 8 of the ECHR and 13 of Constitution) and to the child's welfare (Art. 3.1 CRC) are not restricted by the provisions of migration law. It must also ensure that a uniform practice is established across the cantons with regard to family reunification.</p>

E. The right to work and to decent and equal working conditions

26	<p>Discrimination of women in the labour market Women remain seriously under-represented in numerous areas, particularly in key roles within politics, administration, justice, science and private enterprise. The labour market is characterized by a strong segregation of the sexes based on gender stereotypes. Women work largely in so-called "female" professions, which are generally poorly paid areas of work. The salary differential increases markedly with level of training and hierarchical position, sometimes reaching up to 30%. In order to reconcile their professional and private lives, women often work part-time or are faced with the phenomenon of "unpaid care", something that is still disadvantaging them by the time they retire. The number of women struggling to get by on low salaries is clearly higher than the number of men in a similar situation.</p>	<p>Switzerland is invited to take binding measures to reduce salary differentials between women and men in all areas and to promote a better representation of women in key roles.</p>
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F. The right to social security and an adequate standard of living

27	<p>Exclusion from social welfare for rejected asylum seekers</p>	<p>The cantons are called upon to put the</p>
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¹⁸ <https://www.admin.ch/opc/fr/classified-compilation/20002162/index.html>

	<p>Rejected asylum seekers who have received an expulsion decision are excluded from social welfare. This rule includes minors, families and single-parent families. The people in question have the right only to the emergency aid guaranteed by the Constitution. In practice, this emergency aid is often only granted under highly dissuasive conditions. The main aim of the cantons remains to obtain the “voluntary” departure of the people in question. Certain fundamental human rights such as freedom of movement, human dignity, the right to food or even the right to education are heavily restricted in this context. This is particularly true for people who have to live on emergency aid for several years.</p> <p>The cantons can make exceptions for particularly vulnerable people but make use of this possibility rarely, if at all.</p>	<p>emergency aid system into practice in such a way as to ensure decent living conditions. They must take particular account of respect for fundamental rights such as the right to health, education and freedom of movement.</p>
28	<p>Reductions in social welfare as a disciplinary measure</p> <p>According to the case law of the TF, social welfare may be reduced or even removed when the person receiving it is in need of assistance through their own fault, for example by refusing to participate in integration actions or to accept underpaid work. Exclusion from social welfare means a reduction in standard of living to the level of emergency aid and this is classified as a violation of Art. 11 of the ICESCR.</p>	<p>Switzerland is invited to stop authorizing restrictions of social welfare, including as a disciplinary sanction, to below a minimum level of existence set by the law.</p>
29	<p>Discriminatory reductions in social welfare for young adults</p> <p>The CSIAS is responsible for issuing guidelines on social welfare provision. The CSIAS has, in some cantons, restricted the basic amount paid to young adults under the age of 25 who are living at home by almost 20%. This reduction in basic payments is an inadmissible form of age-based discrimination.</p>	<p>Switzerland is invited to ensure that young adults are able to obtain non-discriminatory access to social welfare and benefits.</p>

G. The right to health

30	<p>The right to sexual health</p> <p>All children and adolescents have the right to sexuality and sexual health education, rights-based and provided by professionals, regardless of their place of residence or origin.</p>	<p>Switzerland is invited to develop and implement sex education and reproductive health programmes and to embed them in the school curriculum.</p>
31	<p>Access to reproductive health</p> <p>Despite the federal law on family planning centres, which guarantees free access to counselling and support for pregnancy, some vulnera-</p>	<p>Switzerland should develop a national strategy that guarantees vulnerable groups such as adolescents and migrants equal access to sexual and reproductive health,</p>

	ble groups continue to be unable to access these services and provisions. ¹⁹	including family planning services.
32	<p>Funding interpreters in the social and health sectors</p> <p>The lack of interpreters in all areas of social security benefits often forms an insurmountable obstacle. The right to health is thus seriously restricted for migrants with few financial resources.</p>	The Confederation is invited to encourage the cantons to take the necessary measures to ensure that interpreters are present during social, legal or medical consultations.

H. The right to education

33	<p>Equal access to human rights education (HRE) in Switzerland</p> <p>In order to ensure equal access to HRE of a similar quality for all Swiss students, in addition to setting specific human rights training objectives for all levels of education (compulsory, post-compulsory and vocational), it is essential that the teaching staff and people involved in education have the necessary skills and knowledge to be able to incorporate HRE into their teaching and their profession.</p>	Switzerland is invited to set specific training objectives related to human rights, ensuring that students receive standard obligatory HRE modules at all levels of the education system (compulsory and post-compulsory) and that these are also included in the educational training of teachers and education professionals.
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I. Cultural rights

34	<p>Recognition of Roma, Sinti and Yenish peoples</p> <p>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 Roma, Sinti and Yenish communities are regularly the victims of ethnic profiling by the police, and the authorities show only a limited understanding of these minorities. Confusion regarding their way of life and ethnic belonging, as well as repetitive stereotyping, is commonplace.</p>	Switzerland must respect its legal duties as regards the Yenish and Sinti and examine the possibility of recognizing the Roma as a minority. Authority and police representatives must be made aware of the situation of the three minorities through targeted awareness raising measures. Information on the culture and history of persecution of the Yenish, Sinti and Roma minorities must be actively disseminated.
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J. Migrants, refugees and asylum seekers

35	<p>Unaccompanied child asylum seekers</p> <p>Unaccompanied child asylum seekers are perceived first as aliens and only second as vul-</p>	Switzerland is invited to put a specific asylum procedure in place for unaccompanied minors that will enable them to benefit from
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¹⁹ Statistics and studies show that data on migrant women is poorer than that for Swiss nationals in the area of reproductive health and that there are even greater obstacles for asylum seekers, for whom access to such services is even more difficult.
<http://www.bfs.admin.ch/bfs/portal/de/index/news/publikationen.html?publicationID=5724>

	<p>nerable individuals deserving of protection. When there is any doubt as to their actual age, the decision very rarely goes in their favour. Minors are granted no assistance in the registration and reception centres for asylum seekers, particularly during their first hearing. Nor do they benefit from free legal advice as specified by the CRC. Accommodation and access to education are insufficient and the supervisory measures vary greatly from one canton to another.</p>	<p>free legal advice from the moment of their first hearing, adequate social and psychological support and guaranteed access to education.</p>
36	<p>Confederation centres for asylum seekers The infrastructure of the five registration and processing centres at which an asylum request can be submitted is currently insufficient to adequately accommodate all asylum seekers. The military or civil defence facilities used due to a lack of appropriate infrastructure are not appropriate for long stays. Access to basic medical care and the possibility of early detection of illness cannot be satisfactorily guaranteed. Both occupational programmes and day facilities are also lacking. The situation is particularly problematic for vulnerable individuals and children. In the cantons, asylum seekers continue to be housed in underground civil defence shelters with their freedom of movement often unreasonably restricted.</p>	<p>Switzerland must guarantee asylum seekers living conditions in line with international standards. To do this, it must ensure that the infrastructure of the Confederation's asylum centres and the cantons' reception centres are designed in such a way as to guarantee these standards, even if there is a significant increase in the number of asylum requests.</p>
37	<p>Dublin Returns Switzerland has been a part of the EU's "Dublin System" since 12 December 2008. A person who enters Switzerland from a third country considered "safe" will be issued with a no-entry decision and returned to the country in question. The asylum seekers concerned are systematically held in detention awaiting their return. Witnesses from and reports published by NGOs show that, in countries such as Hungary, Bulgaria, Italy and Greece, asylum seekers have very few opportunities to obtain asylum even if they meet the conditions for being recognized as refugees. Moreover, most of those who are returned find themselves in a desperate situation without any future prospects. Cases of humanitarian hardship that could result in the admission of Switzerland's competence to examine the asylum application are scarcely, if ever, considered. Some cases of returns to Greece have been declared unlawful by the TAF.</p>	<p>Switzerland must demonstrate more flexibility in its application of the Dublin Convention and waive returns when there is a risk that the people in question may be subjected to unacceptable living conditions, particularly when this relates to vulnerable people such as the sick, families with children, single mothers, unaccompanied children and LGBTI people.</p>
38	<p>Residence permits for victims of trafficking Residence permit are not automatically granted</p>	<p>Switzerland must ensure that all victims of trafficking are able to enjoy their rights as</p>

	<p>to victims of trafficking. There is only a discretionary provision in the law on aliens that enables cantons to grant a residence permit when the victim has cooperated with the criminal prosecution authorities, or because their personal situation does not permit a return to their country (hardship case). The deadlines for reflection and recovery are also at the discretion of the cantons and not applicable to victims who have also submitted a concomitant request for asylum. All this results in discrimination and is incompatible with international standards.</p>	<p>victims, to be protected and supported in an appropriate manner, and that this is in accordance with international law, applied in a unified and equitable manner across the cantons.</p>
39	<p>Right of residence for victims of domestic violence</p> <p>The situation for victims of domestic violence has been improved by parliament, which has amended Art. 50 of the LEtr, although the cantonal authorities and the SEM have no hesitation in using the significant margin of manoeuvre permitted them to the detriment of the victims. This demonstrates the need to introduce unified standards and better training of those involved. The criteria set in the federal directives implementing the LEtr with regard to the systematic nature of the violence suffered must be abandoned as they are too restrictive. The legislators' desire to protect migrant victims is not being respected, as many of them dare not leave a violent husband for fear of being deported.</p>	<p>The Confederation is called upon to make the criteria for applying Art. 50 of the LEtr more flexible and to ensure that the provisions on cases of hardship when granting a residence permit are specifically detailed so that the cantons can apply them in a fair and unified manner.</p>
40	<p>Possibility of regularization of undocumented migrants</p> <p>At least 100,000 people live in Switzerland illegally, as "undocumented" migrants. It is hard for them to claim their fundamental rights as this would expose them to immediate deportation.</p> <p>The granting of residence permits in cases of extreme hardship remains arbitrary, even after a long period of living in Switzerland. In some cantons, the procedure is simply doomed to failure. The criteria are too hazy and applied inconsistently. The guarantees offered by the CRC are only rarely considered when assessing these cases.</p>	<p>In order to harmonize the cantons' practices of regularizing undocumented migrants, the Confederation is invited to specify the criteria applicable in cases of extreme hardship, bearing in mind the requirements of the CRC. The Confederation is also invited to promote a legal solution for group regularization.</p>
41	<p>Post-compulsory education for young people with no defined legal status</p> <p>Young people without legal status who have followed a course of compulsory education for more than five years without interruption now have the legal possibility of completing their basic education. The provision in question (Art.</p>	<p>Switzerland is invited to strengthen its efforts with a view to enabling young "undocumented" adults the chance to complete a basic vocational training. It should, in particular, endeavour to make the temporal requirement more flexible and, in calculating the time, take into account all steps taken</p>

	<p>30a OASA) does not, however, fully meet the requirements of the Convention on the Rights of the Child, which states that vocational training should be available for all children without distinction. The law sets overly strict conditions; the requirement for five years uninterrupted schooling is, in practice, often too high.</p>	<p>towards completing a basic education.</p>
42	<p>Implementation of the ban on communication of personal data Education authorities, social workers and insurance funds or hospitals are not, in principle, authorized to pass on the information in their possession on “undocumented” migrants in Switzerland to the migration authorities. In practice, however, this ban is often contravened. This leads to a further deterioration in the already precarious situation of “undocumented” migrants who find it even more difficult to claim their basic rights. “Undocumented” migrants must not, moreover, suffer inconvenience as a consequence of a violation of the ban on data communication. This means that this ban must be applied consistently.</p>	<p>The Confederation is invited to take the necessary measures to ensure that the ban on data transmission is respected.</p>

Annex 1: TABLE OF ABBREVIATIONS

APEA	Autorités de protection de l'enfant et de l'adulte <i>Children & Adults Protection Authorities</i>
CDE	Convention relative aux droits de l'enfant du 20 novembre 1989 <i>Convention on the Rights of the Child</i>
CdE	Conseil de l'Europe <i>Council of Europe</i>
CDPH	Convention relative aux droits des personnes handicapées du 13 décembre 2006 <i>Convention on the Rights of Persons with Disabilities</i>
CEDEF	Convention pour l'élimination de toute discrimination à l'égard des femmes <i>Convention on the Elimination of all Discrimination against Women</i>
CEDH	Convention Européenne des droits de l'homme et des libertés fondamentales <i>European Convention for the Protection of Human Rights and Fundamental Freedoms</i>
CERI	Commission européenne contre le racisme et l'intolérance <i>European Commission against Racism and Intolerance</i>
CNE	Commission nationale d'éthique <i>Ethic National Commission</i>
CoDE	Comité des droits de l'enfant <i>Committee on the Rights of the Child</i>
Convention d'Istanbul	Convention d'Istanbul sur la prévention et la lutte contre la violence à l'égard des femmes et la violence domestique. <i>Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence</i>
CP	Code penal <i>Criminal Code</i>
CSDH	Centre suisse de compétences pour les droits humains <i>Swiss Center of Expertise in Human Rights</i>
CSIAS	Conférence suisse des institutions d'aide sociale <i>Swiss Conference of Social Help Institutions</i>
EDH	Education aux droits humains <i>Human Rights Education</i>
EPU	Examen périodique universel <i>Universal Periodic Review</i>
INDH	Institution nationale des droits de l'homme <i>National Institution for Human Rights</i>
LEtr	Loi fédérale sur les Etrangers <i>Foreign Nationals Act</i>
LPart	Loi fédérale sur le partenariat enregistré entre personnes du même sexe <i>Registered Partnership between Same Sex People Act</i>
OASA	Ordonnance relative à l'admission, au séjour et à l'exercice d'une activité lucrative <i>Ordinance on Admission, Residence and Gainful Employment</i>
ONG	Organisations(s) non gouvernementale(s) <i>Non Governmental Organisation(s)</i>
PIDCP	Pacte International relatif aux droits civils et politiques <i>International Covenant on civil and Political Rights</i>
PIDESC	Pacte International relatif aux droits économiques sociaux et culturels. <i>International Covenant on Economical, Social and Cultural Rights</i>
RPE	Règles pénitentiaires européennes <i>European Penitentiary Rules</i>
SEM	Secrétariat d'État aux Migrations <i>State Secretariat for Migration</i>
TAF	Tribunal administratif fédéral

	<i>Federal Administrative Court</i>
TF	Tribunal fédéral <i>Federal Court</i>
UE	Union Européenne <i>European Union</i>