



Human Rights Council
Working Group on the Universal Periodic Review
Twenty-eighth session
6-17 November 2017

Summary of Stakeholders' submissions on Switzerland*

Report of the Office of the United Nations High Commissioner for Human Rights

I. Background

1. The present report was prepared pursuant to Human Rights Council resolutions 5/1 and 16/21, taking into consideration the periodicity of the universal periodic review. It is a summary of 17 stakeholders' submissions¹ to the universal periodic review, presented in a summarized manner owing to word-limit constraints.

II. Information provided by stakeholders

A. Scope of international obligations² and cooperation with international human rights mechanisms and bodies³

2. Regarding recommendations from the previous UPR cycle,⁴ Amnesty International (AI) indicated that Switzerland had ratified ICCPED, CRPD, OP-CRC-IC, and ILO Convention N° 189 concerning decent work for domestic workers.⁵

3. Switzerland was invited to become a party to ICCPR-OP 1,⁶ OP-ICESCR,⁷ OP-CRPD,⁸ and the 1961 Convention on the Reduction of Statelessness.⁹

4. JS2 noted that during the previous UPR, Switzerland had not supported recommendations to remove its reservations to Articles 10.1, 37(c) and 40 of the CRC and recommended that it adapt its legislation order for it to be able to do so.¹⁰

5. Council of Europe and AI indicated that Switzerland had started, in early 2017, the parliamentary process to ratify the Convention on preventing and combatting violence against women and domestic violence of the Council of Europe, (the Istanbul Convention).¹¹ JS1 stated that Switzerland should ratify the Istanbul Convention.¹²

6. AI noted that the federal government was not always in a position to efficiently transmit the relevant information to the cantons authorized to implement the recommendations.¹³ JS2 invited Switzerland to create adequate institutional conditions to

* The present document was not edited before being sent to United Nations translation services.



guarantee effective coordination between the Confederation, the cantons and civil society in relation to following up on UPR, treaty bodies and special procedures recommendations.¹⁴

B. National human rights framework¹⁵

7. AI noted that in 2012, Switzerland had not supported recommendations on popular initiatives that could violate its human rights commitments.¹⁶ Since then, an initiative affirming the supremacy of the Federal Constitution over international standards, including human rights standards with the exception of “compulsory international law”, had been launched and would be submitted to a popular referendum in 2018.¹⁷

8. The Commissioner for Human Rights of CoE (CoE-Commissioner) expressed his concern at the popular initiative launched in 2015, entitled “Swiss law instead of foreign judges” as it did not rule out the possibility of Switzerland leaving the European Convention on Human Rights.¹⁸

9. AI recommended that Switzerland propose and support a bill extending the list of grounds on which a popular initiative could be invalidated to its incompatibility with international human rights law to which Switzerland is party.¹⁹

10. JS2 noted that during the 2nd UPR cycle, Switzerland accepted several recommendations calling on it to create a National Human Rights Institution (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 development of a law introducing a NHRI.²⁰ JS2 invited the Federal Council to submit a bill of law to Parliament introducing an NHRI in line with the Paris Principles²¹ AI²², the National Commission for the Prevention of Torture (NCPT)²³ and JS4²⁴ made similar recommendations.

11. JS4 recommended that the authorities ensure that NCPT was allocated sufficient resources to fully carry out its mandate and guarantee it the independence necessary for its work.²⁵

C. Implementation of international human rights obligations, taking into account applicable international humanitarian law

1. Cross cutting issues

Equality and non-discrimination²⁶

12. JS2 stated that women remained seriously under-represented in numerous areas, particularly in key roles within politics, administration, justice, science and private enterprise.²⁷

13. JS1 noted that during the 2012 UPR, Switzerland had not supported recommendations²⁸ calling for new comprehensive legislation on discrimination.²⁹ It referred to a study indicating considerable gaps and deficits related to the legal protection from discrimination, especially in the context of private law and with regard to LGBTI persons.³⁰

14. The Office for Democratic Institutions and Human Rights (ODIHR) indicated that Switzerland’s Criminal Code does not contain hate crime provisions although such crimes are prosecuted under discrimination and hate speech provisions.³¹

15. JS1 recommended that Switzerland: close protection gaps by adopting new and/or adapting existing legislation at federal and cantonal level aimed at creating effective and comprehensive protection against discrimination with explicit provisions for vulnerable LGBTI persons³²; adapt criminal law in order to provide effective and explicit protection from hate speech against different groups including women, LGBTI, persons with disabilities, refugees and others.³³ AI and JS2 made related observations and recommendations.³⁴

16. JS2 highlighted the issue of ethnic profiling, and recommended that the Confederation work with the cantons to implement the recommendations of the European Commission against Racism and Intolerance.³⁵

17. AI noted that a bill, allowing marriage for homosexual couples, was under discussion in Parliament.³⁶ Moreover, though persons in same-sex relationships should soon be allowed to adopt the children of their partners, same-sex couples did not have access to adoption in general.³⁷ It recommended that Switzerland take the necessary steps to put an end to discrimination faced by same-sex couples, in particular, by ensuring that they can marry and adopt children.³⁸

18. Transgender Network Switzerland (TGNS) indicated that Trans people were still a highly-stigmatized group at the margin of Swiss society³⁹ and recommended training and awareness raising about trans people and their rights especially for decision-makers at all levels of the state.⁴⁰ JS1 was concerned that in many cases, the courts force transgender people to undergo medical interventions and to prove their infertility as a requirement for legal gender recognition, though there was no legal base for this⁴¹ and recommended ensuring that in legal gender recognition procedures, the civil courts do not force trans persons to undergo involuntary medical treatment.⁴²

19. JS1 noted measures recently initiated to ensure the respect of the human rights of persons with variations in sex characteristics but indicated that in practice, recommendations by the Swiss National Advisory Commission on Biomedical Ethics, endorsed by the Federal Council in 2016, were not yet implemented.⁴³ JS1 recommended that Switzerland take all necessary measures to protect the bodily integrity, autonomy and self-determination of intersex persons.⁴⁴

*Development, the environment, and business and human rights*⁴⁵

20. JS5 indicated that despite accepting a recommendation to raise its development assistance to 0.7 per cent of its Gross National Income in the previous UPR cycle,⁴⁶ in line with SDG 17.2, Switzerland had limited its development assistance and encouraged Switzerland to present its plan to implement the UPR recommendation, including through new ways to raise funds for international cooperation.⁴⁷

21. JS2 invited Switzerland to conduct human rights impact assessments and to take their results into account before concluding new free trade agreements with partner states.⁴⁸

22. JS2 stated that Switzerland did not ensure that businesses respect human rights as set out in the UN Guiding Principles on Business and Human Rights and relied solely on voluntary self-regulation. Switzerland should establish a clear regulatory framework to govern the activities of businesses headquartered in the country, including by means of compulsory due diligence with regard to human rights and the environment.⁴⁹

2. Civil and Political Rights

*Right to life, liberty and security of person*⁵⁰

23. AI observed that the Criminal Code lacked a provision expressly prohibiting torture, noting that previous UPR recommendations⁵¹ on this issue were not supported.⁵² AI recommended that Switzerland introduce a provision specifically prohibiting torture in the Criminal Code and in the Military Criminal Code.⁵³ JS2⁵⁴ and JS4⁵⁵ made related observations and recommendations.

24. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CoE-CPT) indicated that while the vast majority of persons detained by the police stated that they had been correctly treated, it was extremely concerned by the phenomenon of police brutality which, it seemed, still existed in the Geneva canton, particularly by the members of the drugs task force.⁵⁶

25. NCPT observed that the pre-trial detention regime was often more restrictive than for convicted prisoners, particularly in terms of the restrictions imposed on liberty of movement. In most pretrial detention facilities, detainees were regularly locked up in their cells for 23 hours a day. Contact with the outside world was often restricted based on the

alleged danger of collusion but it had frequently found these restrictions to be disproportionate.⁵⁷ JS2 invited the Confederation to work with the cantons and to use targeted actions to ensure that detention conditions during pre-trial custody met human rights standards.⁵⁸

26. Regarding closed juvenile facilities, NCPT noted with concern that pre-trial detention conditions were generally too restrictive and unsuitable for juveniles.⁵⁹ NCPT also stated that the rights and specific needs of women were not being properly addressed by many institutions, in particular in pre-trial detention facilities and encouraged the authorities to further prioritize the rights of women detainees.⁶⁰

27. TGNS observed that Trans people in detention, whether because they were convicted for having committed a crime or asylum seekers pending deportation, were especially vulnerable.⁶¹

28. JS4 indicated that remand or convicted prisoners and administrative detainees were often held in the same institutions in separate sections. The facilities were often inadequate.⁶²

29. JS2 observed that different forms of administrative detention were applied pending the expulsion of aliens, which may last up to 18 months.⁶³ It stated that administrative detention must only be applied as a last resort. 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.⁶⁴

30. JS4 indicated that, by law, the maximum period of detention for minors aged from 15 to 18 years was 12 months.⁶⁵ NCPT noted that it had conducted a review of children detained for immigration purposes, which concluded that while only a few Cantons detained minors in exceptional circumstances and for a generally short period of time, detention conditions in some of the institutions were not suitable for minors, either because they were not adequately separated from adults, or because the detention regime was not adapted to their needs.⁶⁶

31. JS4 noted that Switzerland had not accepted a recommendation⁶⁷ to build or designate specific detention centres for unaccompanied minors seeking immigration protection.⁶⁸ JS4 recommended that the authorities abolish the administrative detention of minors and develop alternatives to detention.⁶⁹

32. JS4 noted that, during the second UPR cycle, Switzerland had rejected two recommendations⁷⁰ because it had entered a reservation to CRC. Regarding the separation of minors and adults, the Committee on the Rights of the Child had nonetheless given Switzerland a period of 10 years (2007 to 2017) to allow the cantons to implement that separation. It was important that that promise should now be kept. JS4 recommended that the authorities implement in all cantons and in all the country's detention facilities the strict and effective separation of men and women, as well as that of minors and adults, and that it withdraw its reservation to article 37 (c) of CRC.⁷¹

33. CoE-CPT stated that detention conditions were very good on the whole, with the exception of Champ-Dollon Prison which still suffered from a serious overcrowding problem. The Geneva authorities were called upon to take the necessary steps to definitively remedy this problem, in particular by developing alternatives to imprisonment.⁷²

34. JS4 indicated that prison overcrowding was particularly a problem in French-speaking Switzerland. In the canton of Vaud, given the lack of space in certain prisons, detainees were being held in police cells for longer than the maximum legal period.⁷³ JS4 recommended that the authorities make every effort to decrease the prison population in the country's prisons, particularly the Champ-Dollon prison, and ensure that no one was held in police cells for longer than the maximum legal period of 48 hours.⁷⁴

35. CoE-CPT recommended that the maximum period of disciplinary confinement be limited to 14 days in all Swiss cantons.⁷⁵ The NCPT noted with serious concern the use of solitary confinement for persons with mental disorders and urged the authorities to find appropriate solutions for their placement in a more adequate setting.⁷⁶

*Administration of justice, including impunity and the rule of law*⁷⁷

36. JS2 observed that complaints made against police representatives were generally handled by bodies that had a good relationship with the accused or which reported to the same managers. The Confederation and the cantons should take measures to ensure, in cases of criminal complaints against the police, that proceedings were systematically conducted by a special and independent inter-cantonal prosecutor.⁷⁸

37. JS4 noted the introduction of a provision on the immediate assistance of a lawyer in the event of custodial arrest, although the application of the provision varied across cantons. In the cantons of Geneva and Vaud, it seemed to work well. That was not the case in Fribourg, Neuchâtel or Valais where very few cases of individuals seeking legal counsel had been registered.⁷⁹ JS4 regretted that the entitlement to assistance had not been also introduced as part of the process of arrest and recommended that the authorities provide also for the assistance of a lawyer during that process.⁸⁰

38. With reference to a recommendation that had been accepted inviting Switzerland to provide access for asylum and repatriation detainees to attorneys⁸¹, JS4 indicated that the amendments to the Asylum Act approved in 2016 would result in considerable improvements. However, the amendments would enter into force only after the date set by the Federal Council.⁸² JS4 recommended that Switzerland expedite the entry into force of the Asylum Act amendments and ensure that the Act also provided for the submission of review applications.⁸³

39. NCPT noted with concern that there was a general lack of access to judicial defense mechanisms, particularly for convicted persons serving long sentences.⁸⁴

40. JS2 stated that apart from access to a legal aid lawyer, persons deprived of their liberty had very limited possibility of obtaining legal advice from a competent person in whom they could place their trust.⁸⁵

*Fundamental freedoms*⁸⁶

41. International Fellowship of Reconciliation (IFOR) was concerned that the Law on Civilian Service set a duration for civilian service which appeared to be discriminatory and punitive by comparison with military service. Additionally, Switzerland retained a “military exemption tax” which was imposed on male citizens who did not perform military service, which was also discriminatory.⁸⁷ IFOR stated that Switzerland should end all discriminatory treatment of conscientious objectors who opt for alternative civilian service.⁸⁸ JS5 made related observations and recommendations.⁸⁹

42. Reporters Without Borders (RSF-RWB) indicated that Switzerland was ranked 7th out of 180 countries in RSF-RWB’s 2016 World Press Freedom Index, a notable increase from its 20th ranking the prior year.⁹⁰ It was concerned at media concentration, particularly print media in French speaking Switzerland.⁹¹ It was also concerned at collaboration of political personalities with media ownership endangering their editorial independence.⁹²

43. With regards to access to public information, RSF-RWB noted the existence of the Transparency Act (LTrans), indicating, however, that the frequently high cost for access to official documents and the slowness and length of the procedure were barriers to the implementation of the legislation.⁹³

44. RSF-RWB also highlighted issues regarding investigative journalism and whistleblowers. It indicated that the Swiss authorities tended to protect secrecy and avoid any potential embarrassment to public or private entities and that legislation didn’t explicitly address the issue of whistleblowers.⁹⁴ Moreover, publishing leaks concerning “confidential official discussions” — including banking regulation — was regarded as an offense punishable by a fine by Article 293 of the Penal Code.⁹⁵

45. RSF-RWB recommended that Switzerland: amend the LTrans to suppress fees and increase speed of the procedure; abrogate article 293 of the Penal Code; consider and adopt measures to strengthen the independence and pluralism of media; and establish measures to ensure the protection of whistleblowers and journalists’ sources.⁹⁶

*Prohibition of all forms of slavery*⁹⁷

46. ACT212 indicated that all recommendations⁹⁸ pertaining to human trafficking had been at least partially implemented.⁹⁹ It described various anti-trafficking measures adopted by Switzerland including on prevention,¹⁰⁰ protection,¹⁰¹ prosecution¹⁰², action at the cantonal level,¹⁰³ and international cooperation.¹⁰⁴ However, it highlighted that trafficking for forced begging and forced labor in the domestic service sector, agriculture, construction and tourism were problems and were on the rise.¹⁰⁵

47. ACT212 recommended that Switzerland: increase efforts to combat forced labour, by ensuring that law enforcement officials, labour inspectors, trade unions and other relevant actors adopt a more proactive approach;¹⁰⁶ increase the number of convicted traffickers by improving mechanisms to identify and support victims and the gravity of the sentences for perpetrators;¹⁰⁷ and increase the number of trainings for police officers, legal staff, judges, advocates in dealing with trafficking for forced labour, forced begging and forced criminal activities.¹⁰⁸

48. The Group of Experts on Action against Trafficking in Human Beings indicated that stating explicitly in the definition of trafficking in human beings, as contained in the Criminal Code, the notions of forced labour or services, slavery, practices similar to slavery, and servitude as types of exploitation could improve the implementation of this provision.¹⁰⁹

49. JS2 indicated that residence permits were not automatically granted to victims of trafficking, as there was only a provision in the law that enabled cantons to grant permits when the victim had cooperated with the criminal prosecution authorities, or because their personal situation did not permit a return to their country. Switzerland must ensure that all victims of trafficking are protected and supported in an appropriate manner.¹¹⁰

50. JS1 stated that there was still a big gap in implementation since the cantons were free to decide on measures to be taken¹¹¹ and recommended that Switzerland combat human trafficking in a comprehensive nationwide approach; and monitor the impact of the National Action Plan and ensure through compulsory standards that it is implemented uniformly across all cantons.¹¹²

Right to privacy and family life

51. JS2 indicated that Switzerland recently passed a law on intelligence services which, under certain conditions, authorised the mass monitoring of wired communications. Switzerland was invited not to authorise the intelligence services to exercise surveillance on the wired network and to specify the conditions under which secondary data (metadata) can or must be handed over to the criminal prosecution authorities or the intelligence services.¹¹³

3. Economic, Social and Cultural Rights*Right to work and to just and favourable conditions of work*¹¹⁴

52. JS2 indicated that the labour market was characterised by a strong segregation of the sexes. Women worked largely in so-called “female” professions, which were generally poorly paid. The salary differential increased markedly with level of training and hierarchical position, sometimes reaching up to 30%. In order to reconcile their professional and private lives, women often worked part-time or were faced with the phenomenon of “unpaid care”. Switzerland was 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.¹¹⁵

Right to social security

53. JS2 stated that according to the case law of the Federal Supreme Court, social welfare could be reduced or even removed when the person receiving it was in need of assistance through their own fault. Switzerland was invited to stop authorising restrictions

of social welfare, including as a disciplinary sanction, to below a minimum level of existence set by the law.¹¹⁶

54. JS2 also noted that rejected asylum seekers who had received an expulsion decision were excluded from social welfare and have a right only to the emergency aid guaranteed in the Constitution and that this rule included minors and families.¹¹⁷

55. JS2 noted that the lack of interpreters in all areas of social security benefits often formed an insurmountable obstacle for migrants. The Confederation was invited to encourage the cantons to take the necessary measures to ensure that interpreters were present during social, legal or medical consultations.¹¹⁸

*Right to an adequate standard of living*¹¹⁹

56. JS5 indicated that though ranking amongst the highest countries in human development, Switzerland still had a relatively high poverty rate. Moreover, social systems were rather dispersed and had been tightening up in recent years resulting in many administrative complications for people in need of social protection.¹²⁰ Switzerland was encouraged to present its program to fulfill SDG 1 during the UPR.¹²¹

*Right to health*¹²²

57. JS1 indicated that health insurance was mandatory and covered a broad range of medical services, including abortion, and that Switzerland provided, in general, good quality and accessible sexual and reproductive health services.¹²³ It added, however, that not all persons living in Switzerland could equally attain health and referred to studies which found that the health condition of migrants was on average significantly poorer than the non-migrant population.¹²⁴

58. JS2 indicated that Switzerland should develop a national strategy that guaranteed that vulnerable groups such as adolescents and migrants had equal access to sexual and reproductive health, including family planning services.¹²⁵

59. JS1 was also concerned that contraceptives were not covered by health insurance and social benefits did not include the costs for contraception¹²⁶ and recommended that Switzerland review this situation.¹²⁷

60. JS5 stated that though declining, suicide was still an important issue and encouraged Switzerland to present its suicide prevention mechanisms and ways to improve them during the UPR session.¹²⁸ TGNS highlighted the high risk of suicide of trans people¹²⁹ and recommended including trans people in suicide prevention plans and actions.¹³⁰

61. Minnesota Citizens Concerned for Life (MCCL) reported on the issue of assisted suicide, which is legal in Switzerland under certain circumstances.¹³¹ MCCL stated that circumstances in which assisted suicide was deemed acceptable had expanded and reportedly could include patients who had no terminal illness.¹³² MCCL also stated that the practice of assisted suicide pointed to a failure, in some cases, to ensure proper palliative care.¹³³ ADF International made related observations.¹³⁴

4. Rights of specific persons or groups

*Women*¹³⁵

62. JS1 referred to official statistics demonstrating that gender-based violence and stalking were still issues and stated that efforts needed to be stepped up.¹³⁶ Additionally, studies revealed that there was still an unmet need for victim shelters.¹³⁷

63. JS1 also indicated that despite an amendment to the Federal Foreign Nationals Act, in practice, migrant women often still had to stay in their abusive marriages for fear of losing their residency permit due to a significantly high threshold of “severity” and “systematic violence” as the standard of proof before the courts.¹³⁸ JS2 stated that the authorities had no hesitation in using the significant margin of manoeuvre permitted them by the law to the detriment of the victims, demonstrating the need to introduce unified standards and better training of those involved.¹³⁹

64. JS1 recommended that Switzerland: adapt legislation including the Federal Law on victim support to ensure that all victims of gender-based violence, including migrant and refugee women, receive the assistance they need;¹⁴⁰ develop a national action plan to combat gender-based violence, including domestic and sexual violence and stalking with special attention to minority women.¹⁴¹ JS2 called on the Confederation to make the criteria for applying the Foreign Nationals Act more flexible and 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.¹⁴² AI made similar observations¹⁴³ and recommendations.¹⁴⁴

*Children*¹⁴⁵

65. The Global Initiative to End All Corporal Punishment of Children (GIEACPC) indicated that the Government had not supported a recommendation¹⁴⁶ to explicitly prohibit corporal punishment in the home.¹⁴⁷ In Switzerland, corporal punishment of children was not fully prohibited in the home and in all forms of alternative care.¹⁴⁸ GIEACPC noted that since the previous review, amendments had been passed, strengthening children's protection from assault, but that the "right of correction" confirmed by jurisprudence had not yet been explicitly repealed.¹⁴⁹ It hoped that a recommendation would be made that Switzerland immediately repeal the "right of correction" and clearly prohibit all corporal punishment of children in all settings, including the home.¹⁵⁰

66. According to JS4, the number of unaccompanied minors had soared over the past four years.¹⁵¹ Taking note of reports of cantonal disparities with regard to accommodation and the lack of training for persons of trust legally appointed to accompany such minors,¹⁵² JS4 recommended that the authorities take the necessary measures to train persons of trust responsible for unaccompanied minors and to ensure in practice that minors were not treated as adults.¹⁵³

67. JS2 stated that unaccompanied child asylum seekers were perceived first as aliens and only second as vulnerable individuals deserving of protection. When there was any doubt as to their age, the decision rarely went in their favour. Minors were granted no assistance in the registration and reception centres for asylum seekers, particularly during their first hearing. Nor did they benefit from free legal advice as specified by the CRC. Accommodation and access to education were insufficient. Switzerland was invited to put a specific asylum procedure in place for unaccompanied minors that will enable them to benefit from free legal advice from the moment of their first hearing, adequate social and psychological support and to guarantee access to education.¹⁵⁴

*Persons with disabilities*¹⁵⁵

68. The NCPT noted that psychiatric institutions made regular use of physical and chemical restraint measures, which were often insufficiently protocolled.¹⁵⁶

*Minorities*¹⁵⁷

69. JS2 indicated that the Yenish and Sinti groups had been officially recognised as a national minority within the meaning of the Council of Europe Framework Convention on National Minorities since 1998. Switzerland had undertaken, in the context of the new law on encouraging culture, to actively promote the culture of these minorities. Switzerland must respect its legal duties with regard to the Yenish and Sinti and examine the possibility of recognising 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.¹⁵⁸

70. CoE-Commissioner, when focusing on the crucial role of knowledge of Roma history in understanding their current situation, recalled that Roma and Yenish children had been forcibly removed from their families in Switzerland, on the grounds that their parents would not be able to educate them as good citizens. He noted as positive that the Government had since offered apologies to victims who had been forcibly placed as children and had recently expressed its readiness to provide them with reparation.¹⁵⁹

*Migrants, refugees and asylum seekers*¹⁶⁰

71. The Interprofessional Union of Workers (SIT) indicated that, according to a recent study, there were approximately 76,000 persons living in Switzerland without a valid permit.¹⁶¹ Such persons worked primarily in domestic labour, catering, building work and small businesses.¹⁶² Owing to their vulnerable situation, they were exposed to the most brutal forms of exploitation and ran a higher risk of being victims of criminal offences.¹⁶³ They were particularly at risk of falling prey to such offences as human trafficking, usury, threats, coercion, embezzlement of salary deductions, as well as violations of social insurance laws.¹⁶⁴

72. According to SIT, the above-mentioned problems were the direct consequence of the criminalization of persons without legal status in Switzerland under the Foreign Nationals Act.¹⁶⁵ SIT invited the Human Rights Council to make the following recommendations to the Swiss authorities: repeal article 115 of the Foreign Nationals Act, which provided for a prison term of 1 year for anyone residing or working in Switzerland without a permit; ensure that victims who reported criminal offences to the authorities were not prosecuted because of their administrative status.¹⁶⁶

73. JS4 observed that, since the summer of 2016, a large number of migrants had appeared at the border post of Chiasso (Ticino) in an attempt to enter Switzerland in order to find refuge there, to seek asylum or to travel through it on their journey to other countries. Such migrants were often returned to a third country by Swiss border guard officers without being duly informed of the asylum procedure and without being able to submit an application for asylum if they so desired.¹⁶⁷

74. JS3 indicated that detention of migrants was within the responsibility of the cantons which is why the Federal state did not make data on administrative detention of migrants publicly available. Furthermore, the existing discretion of cantonal authorities in such matters could result in largely differing practices among the cantons.¹⁶⁸

75. JS2 indicated that the infrastructure of the five registration and processing centres at which an asylum request can be submitted were currently insufficient to adequately accommodate all asylum seekers. The situation was particularly problematic for vulnerable individuals and children.¹⁶⁹ AI was also concerned that the accommodation facilities provided to families and women traveling alone were inadequate in a number of cantons.¹⁷⁰ JS2 indicated that Switzerland must guarantee asylum seekers living conditions in line with international standards.¹⁷¹

76. AI indicated that asylum procedures did not always provide sufficient protection and had sometimes led to Switzerland returning rejected asylum-seekers to their country of origin without sufficiently assessing the risks they could be facing and noted the case of a rejected asylum-seeker who was arrested and tortured on his return.¹⁷² AI recommended that Switzerland take all necessary measures to ensure an exhaustive analysis of the risk of human rights violations a rejected asylum-seeker could be exposed to before deciding to return them.¹⁷³

77. AI was also concerned that Switzerland applied the Dublin Convention very strictly and rarely made use of the exception clause whereby a State party is permitted to register applications in cases of family reunification or unaccompanied minors.¹⁷⁴ JS2 indicated that 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.¹⁷⁵

78. AI recommended guaranteeing that persecution based on sexual orientation or gender identity was recognised as a valid asylum ground.¹⁷⁶ TGNS highlighted the situation of trans people seeking asylum and difficulties faced in their asylum procedures¹⁷⁷ and recommended a more careful evaluation of their specific situation.¹⁷⁸

79. IFOR indicated that revisions to the Asylum Law had debarred from its provisions conscientious objectors who were seeking asylum¹⁷⁹ indicating that Switzerland should carefully examine whether the provisions of the law were in compliance with the 1951 Convention relating to the Status of Refugees.¹⁸⁰

Stateless persons

80. JS3 noted that Swiss law did not protect against statelessness at birth. Under Swiss law, a stateless child can only acquire Swiss citizenship by means of a “simplified” naturalisation if he or she has five years of legal residence.¹⁸¹ It recommended that Switzerland put in place safeguards to ensure that all children born in Switzerland who would otherwise be stateless acquire Swiss nationality automatically at birth in accordance with Switzerland’s obligations under the CRC.¹⁸²

81. JS3 noted that Switzerland did not have a specific procedure and legal framework for the determination of statelessness.¹⁸³ Swiss authorities applied a narrow interpretation of the definition of statelessness and it was often assumed that applicants would have the possibility to — in the future — acquire the nationality of their country of origin resulting in a rejection of the application. Swiss practice also required that a person had lost their former nationality through no fault of their own, in contradiction to the 1954 Convention relating to the Status of Stateless Persons.¹⁸⁴

82. JS3 recommended that Switzerland: formalise the statelessness determination procedure and ensure that the procedure is fair, effective and accessible to all persons in Switzerland regardless of their legal status; ensure that the definition of “stateless person” is fully consistent with the definition provided in the 1954 Convention relating to the Status of Stateless Persons; introduce a facilitated naturalisation procedure for all stateless persons in accordance with Switzerland’s obligations under that Convention.¹⁸⁵

Notes

¹ The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: www.ohchr.org.

*Civil society**Individual submissions:*

AI	Amnesty International, London (United Kingdom);
ACT212	ACT212, Bern (Switzerland);
ADF International	ADF International, Geneva (Switzerland);
GIEACPC	Global Initiative to End All Corporal Punishment of Children, London (United Kingdom);
IFOR	International Fellowship of Reconciliation, Grand Lancy (Switzerland);
MCCL	Minnesota Citizens Concerned for Life Inc. Education Fund, Minneapolis (United States of America);
NCPT	National Commission for the Prevention of Torture, Bern (Switzerland);
RSF-RWB	Reporters Without Borders International, Paris (France);
SIT	Syndicat interprofessionnel des travailleuses et des travailleurs, Geneva (Switzerland);
TGNS	Transgender Network Switzerland, Bern (Switzerland).

Joint submissions:

JS1	Joint submission 1 submitted by: The Sexual Rights Initiative, Sexual Health Switzerland, Ottawa (Canada);
JS2	Joint submission 2 submitted by: ACT212, AGILE Behinderten-Selbsthilfe Schweiz, Aids-Hilfe Schweiz, Aktion der Christen für die Abschaffung der Folter, Alliance Sud, Amnesty International, Arbeitsgruppe Schweiz – Kolumbien, Arbeitskreis tourismus & entwicklung, Arbeitskreis tourismus & entwicklung, Association for the Prevention of Torture, Association Mondiale pour l’Ecole Instrument de Paix, Association Regard, Augenauf, AvenirSocial, Bahá’í Switzerland, Bereich OeME-Migration Reformierte Kirchen Bern-Jura-Solothurn, Brot für alle, Brücke - Le pont, Caritas, Centre de conseils et d’appui pour les jeunes en matière de droits de l’Homme, Centre de Contact Suisses-Immigrés, Centre international de formation à l’enseignement des droits de l’homme et de la paix, Centre international de formation à l’enseignement des droits de l’homme et de la paix,

Dachverband Regenbogenfamilien, Demokratische Juristinnen und Juristen Schweiz, Dialog EMRK, Dialogai, Fachstelle Frauenhandel und Frauenmigration, Fachstelle für die Beratung und Integration von Ausländerinnen und Ausländern, Fastenopfer, Feministische Friedensorganisation, FoodFirst Information and Action Network, Forum Aussenpolitik, Frauen für den Frieden Schweiz, Freidenker-Vereinigung der Schweiz, Freikirche der Siebenten-Tags-Adventisten, Genève pour les Droits de l'Homme - Formation Internationale, Gesellschaft für bedrohte Völker, Gesellschaft Minderheiten in der Schweiz, grundrechte.ch, Gruppe für eine Schweiz ohne Armee, Hilfswerk der evangelischen Kirchen Schweiz, Humanrights.ch, Inclusion Handicap, Indigenous Peoples' Center for Documentation, Research and Information, Informationsstelle für Ausländerinnen- und Ausländerfragen, Internationalen Vereinigung zur Verteidigung und Förderung der Religionsfreiheit, Kinderlobby Schweiz, Lesbenorganisation Schweiz, Ligue Internationale Contre le Racisme et l'Antisémitisme, Ligue suisse des droits de l'Homme - Section de Genève, Migration & Menschenrechte, Multiwatch, National Coalition Building Institute, Netzwerk Kinderrechte Schweiz, NGO-Koordination post Beijing Schweiz, Observatoire suisse du droit d'asile et des étrangers, Peace Brigades International Schweiz, Peace Watch Switzerland, Pink Cross, PSYCHEX, Public eye, Sans-Papiers Anlaufstelle Zürich, Santé Sexuelle Suisse, SAPI international, Schweizerische Beobachtungsstelle für Asyl- und Ausländerrecht, Schweizerische Evangelische Allianz, Schweizerische Flüchtlingshilfe, Schweizerische Gesellschaft für Völkerstrafrecht, Schweizerische Sektion der Internationalen Juristenkommission, Schweizerische Stiftung des Internationalen Sozialdienstes, Schweizerischer Friedensrat, Schweizerischer Verband des Personals öffentlicher Dienste, Schweizerisches Komitee für UNICEF, Schweizerisches Rotes Kreuz, Service d'Aide Juridique aux Exilé-e-s, Solidarité sans frontières, sozialinfo.ch, Stiftung gegen Rassismus und Antisemitismus, Terre des Femmes, Transgender Network Switzerland, Unisourds, United Nations Association Switzerland Gesellschaft Schweiz-Uno, Unser Recht, Verein für soziale und kulturelle Arbeit / Projekt ggfon Vivre ensemble - Service d'information et de documentation sur le droit d'asile, Bern (Switzerland);

JS3 **Joint submission 3 submitted by:** Institute on Statelessness and Inclusion, Humanrights.ch Institute on Statelessness and Inclusion European Network on Statelessness Terre des hommes Foundation, Eindhoven (Netherlands);

JS4 **Joint submission 4 submitted by:** Fédération Internationale de l'Action des Chrétiens pour l'Abolition de la Torture, ACAT Suisse, Paris (France);

JS5 **Joint submission 5 submitted by:** Center for Global Nonkilling, Conscience and Peace Tax International, Honolulu (United States of America).

Regional intergovernmental organization(s):

CoE

The Council of Europe, Strasbourg (France);

Attachments:

(CoE-Commissioner's Human Rights Comment 2016) Nils Muižnieks, Human Rights Comment, Non-implementation of the Court's judgments: our shared responsibility, 23 August 2016;

(CoE-Commissioner's Human Rights Comment 2015) Nils Muižnieks, Human Rights Comment, Time to cure amnesia about the history of Roma in Europe, 30 July 2015;

(CoE-GRETA) Report concerning the implementation of the

OSCE-ODIHR Council of Europe Convention on Action against Trafficking in Human Beings by Switzerland, First evaluation round, 3 July 2015; GRETA (2015)18; (CoE-CPT) Rapport au Conseil fédéral suisse relatif à la visite effectuée en Suisse par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 13 au 24 avril 2015, CPT/Inf (2016) 18; Office for Democratic Institutions and Human Rights of the Organisation for Security and Co-operation in Europe, Warsaw, Poland.

² The following abbreviations are used in UPR documents:

ICERD	International Convention on the Elimination of All Forms of Racial Discrimination;
ICESCR	International Covenant on Economic, Social and Cultural Rights;
OP-ICESCR	Optional Protocol to ICESCR;
ICCPR	International Covenant on Civil and Political Rights;
ICCPR-OP 1	Optional Protocol to ICCPR;
ICCPR-OP 2	Second Optional Protocol to ICCPR, aiming at the abolition of the death penalty;
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women;
OP-CEDAW	Optional Protocol to CEDAW;
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
OP-CAT	Optional Protocol to CAT;
CRC	Convention on the Rights of the Child;
OP-CRC-AC	Optional Protocol to CRC on the involvement of children in armed conflict;
OP-CRC-SC	Optional Protocol to CRC on the sale of children, child prostitution and child pornography;
OP-CRC-IC	Optional Protocol to CRC on a communications procedure;
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
CRPD	Convention on the Rights of Persons with Disabilities;
OP-CRPD	Optional Protocol to CRPD;
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearance.

³ For relevant recommendations see A/HRC/22/11, paras. 122.1-122.4, 122.47-122.49, 123.1-123.14, 123.61, 123.86 and 124.1.

⁴ For relevant recommendations see A/HRC/22/11, paras. 122.1 (Paraguay) (Argentina), 122.2 (Spain) (France) (India) (Hungary) (Greece) (Slovakia) (Iraq) (Chile) (Egypt) (Mexico) (Rwanda) (Paraguay) (China), 123.4 (Slovakia) (Lichtenstein), 123.6 (Philippines).

⁵ AI, p. 1.

⁶ JS2, para. 1, JS4, para. 49.

⁷ JS2, para. 1.

⁸ JS2, para. 1.

⁹ JS3, para. 34.

¹⁰ JS2, para. 3. See also JS4, para. 39.

¹¹ CoE, p. 5, AI, p. 2.

¹² JS1, para. 23 (j). See also CoE, pp. 4-5.

¹³ AI, p. 6.

¹⁴ JS2, para. 10.

¹⁵ For relevant recommendations see A/HRC/22/11, paras. 123.17-123.26, 123.59-123.60, 123.74.

¹⁶ For relevant recommendations see A/HRC/22/11, paras. 123.59 (Egypt), 123.60 (Norway).

¹⁷ AI, p. 2. See also JS2, para. 6.

¹⁸ CoE, p. 2. See also CoE-Commissioner's Human Rights Comment 2016.

¹⁹ AI, p. 6. See also JS2, para. 6, JS4, para. 4.

²⁰ JS2, para. 7.

²¹ JS2, para. 7.

²² AI, p. 6.

²³ NCPT, para. 2.

²⁴ JS4, para. 48.

- ²⁵ JS4, para. 43.
- ²⁶ For relevant recommendations see, A/HRC/22/11, paras. 122.5-122.10, 122.12-122.17, 122.19, 122.21-122.26, 122.41, 123.24-123.43, 122.46, 123.48-123.53, 123.58, 123.72-123.77, and 124.2-124.3.
- ²⁷ JS2, para. 26.
- ²⁸ For relevant recommendations see A/HRC/22/11, paras. 123.27 (Canada) (Brazil), 123.28 (France), 123.29 (Greece) (India) (Uzbekistan), 123.35 (Cambodia), 123.36 (Iran (Islamic Republic of)), 123.37 (Indonesia), 123.39 (Australia), 123.76 (Norway), 123.77 (Ireland).
- ²⁹ JS1, para. 5.
- ³⁰ JS1, para. 6.
- ³¹ ODIHR, pp. 3.
- ³² JS1, para. 9 (b).
- ³³ JS1, para. 9 (c).
- ³⁴ AI, pp. 2 and 6, JS2, para. 11.
- ³⁵ JS2, para. 12. See also ECRI Report on Switzerland (fifth monitoring cycle), Adopted on 19 June 2014, Published on 16 September 2014.
- ³⁶ AI, p. 1. See also JS2, para. 13.
- ³⁷ AI, p. 5.
- ³⁸ AI, p. 7.
- ³⁹ TGNS, para. 2.
- ⁴⁰ TGNS, para. 5.
- ⁴¹ JS1, para. 11.
- ⁴² JS1, para. 12 (b). See also JS2, para. 14.
- ⁴³ JS1, para. 14.
- ⁴⁴ JS1, para. 15 (a). See also JS2, para. 15.
- ⁴⁵ For relevant recommendations see, A/HRC/22/11, paras. 123.83-123.123.86.
- ⁴⁶ For relevant recommendations see A/HRC/22/11, para. 123.84 (Kuwait) (Bangladesh).
- ⁴⁷ JS5, p. 6.
- ⁴⁸ JS2, para. 5.
- ⁴⁹ JS2, para. 9.
- ⁵⁰ For relevant recommendations see A/HRC/22/11, paras. 122.39, 123.15-123.16, 123.45-123.47, 123.78-123.80.
- ⁵¹ For relevant recommendations see A/HRC/22/11, paras. 123.15 (South Africa), 123.16 (New Zealand) (Costa Rica).
- ⁵² AI, p. 2.
- ⁵³ AI, p. 6. See also JS2, para. 16.
- ⁵⁴ JS2, para. 16.
- ⁵⁵ JS4, paras. 32-34.
- ⁵⁶ Council of Europe anti-torture Committee publishes report on Switzerland. See also Rapport au Conseil fédéral suisse relatif à la visite effectuée en Suisse par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 13 au 24 avril 2015, CPT/Inf (2016) 18, p. 5.
- ⁵⁷ NCPT, para. 23. See also JS2, para. 23 and Council of Europe anti-torture Committee publishes report on Switzerland.
- ⁵⁸ JS2, para. 23.
- ⁵⁹ NCPT, para. 24.
- ⁶⁰ NCPT, para. 4.
- ⁶¹ TGNS, para. 11.
- ⁶² JS4, para. 18.
- ⁶³ JS2, para. 18. See also AI, p. 7, JS4, para. 20.
- ⁶⁴ JS2, para. 18. See also AI, p. 7, JS4, para. 20.
- ⁶⁵ JS4, para. 20.
- ⁶⁶ NCPT, para. 10.
- ⁶⁷ For relevant recommendations see A/HRC/22/11, para. 123.79 (United States of America).
- ⁶⁸ JS4, para. 20.
- ⁶⁹ JS4, para. 20. See also AI, p. 7, NCPT, para. 10.
- ⁷⁰ For relevant recommendations see A/HRC/22/11, paras. 123.8 (Uruguay) and 123.9 (Uruguay).
- ⁷¹ JS4, para. 39.
- ⁷² Council of Europe anti-torture Committee publishes report on Switzerland, at <http://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-publishes-report-on-switzerland>. See also Rapport au Conseil fédéral suisse relatif à la visite effectuée en Suisse par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 13 au 24 avril 2015, p. 6 and JS4, para. 37.

- ⁷³ JS4, para. 37.
- ⁷⁴ JS4, para. 37.
- ⁷⁵ Rapport au Conseil fédéral suisse relatif à la visite effectuée en Suisse par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 13 au 24 avril 2015, CPT/Inf (2016) 18, p. 7.
- ⁷⁶ NCPT, para. 17.
- ⁷⁷ For relevant recommendations see A/HRC/22/11, paras.122.11, 122.38-122.40, 122.42, 123.43-123.48, 123.53, 123.78-123.80.
- ⁷⁸ JS2, para. 20.
- ⁷⁹ JS4, para. 21.
- ⁸⁰ JS4, para. 22.
- ⁸¹ For relevant recommendations see A/HRC/22/11, para. 122.11 (United States of America).
- ⁸² JS4, paras. 5-8.
- ⁸³ JS4, para. 8.
- ⁸⁴ NCPT, para. 3.
- ⁸⁵ JS2, para. 22.
- ⁸⁶ For relevant recommendations see A/HRC/22/11, paras. 122.5, 122.17, 123.38, 123.40, 123.50-123.53, 123.62-123.65 and 124.3.
- ⁸⁷ IFOR, para. 2.
- ⁸⁸ IFOR, para. 30.
- ⁸⁹ JS5, p. 4.
- ⁹⁰ RSF-RWB, p. 1.
- ⁹¹ RSF-RWB, p. 1.
- ⁹² RSF-RWB, p. 2.
- ⁹³ RSF-RWB, p. 2.
- ⁹⁴ RSF-RWB, p. 3.
- ⁹⁵ RSF-RWB, p. 3.
- ⁹⁶ RSF-RWB, p. 4.
- ⁹⁷ For relevant recommendations see A/HRC/22/11, paras. 122.27-122.34, 123.66-123.69.
- ⁹⁸ For relevant recommendations see A/HRC/22/11, paras. 122.27 (Poland), 122.28 (Republic of Moldova), 122.29 (Greece), 122.30 (Libyan Arab Jamahiriya), 122.31 (Malaysia), 122.32 (Hungary), 122.33 (Canada) and 123.66 (Honduras), 123.67 (United Kingdom of Great Britain and Northern Ireland), 123.68 (Mexico), 123.69 (Maldives).
- ⁹⁹ ACT212, para. 4.
- ¹⁰⁰ ACT212, para. 7.
- ¹⁰¹ ACT212, para. 8.
- ¹⁰² ACT212, para. 9.
- ¹⁰³ ACT212, para. 12.
- ¹⁰⁴ ACT212, para. 13.
- ¹⁰⁵ ACT212, paras. 1 and 15.
- ¹⁰⁶ ACT212, para. 19. See also JS2, para. 21.
- ¹⁰⁷ ACT212, para. 17.
- ¹⁰⁸ ACT212, para. 18.
- ¹⁰⁹ The Group of Experts on Action against Trafficking in Human Beings (GRETA), Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Switzerland, First evaluation round, 3 July 2015; GRETA (2015) 18, p. 17.
- ¹¹⁰ JS2, para. 38.
- ¹¹¹ JS1, para. 24.
- ¹¹² JS1, para. 25 (a).
- ¹¹³ JS2, para. 24. See also CoE, p. 2.
- ¹¹⁴ For relevant recommendations see A/HRC/22/11, paras. 122.21-122.25, 123.55, 123.75.
- ¹¹⁵ JS2, para. 26.
- ¹¹⁶ JS2, para. 28.
- ¹¹⁷ JS2, para. 27.
- ¹¹⁸ JS2, para. 32. See also JS1, para. 31 (d).
- ¹¹⁹ For relevant recommendations see A/HRC/22/11, paras. 122.45, 123.54-123.55, 124.4.
- ¹²⁰ JS5, p. 3.
- ¹²¹ JS5, p. 3.
- ¹²² For relevant recommendations see A/HRC/22/11, para. 123.54, 123.82.
- ¹²³ JS1, para. 26.
- ¹²⁴ JS1, para. 27.
- ¹²⁵ JS2, para. 31.
- ¹²⁶ JS1, para. 29.

- 127 JS1, para. 31 (h).
128 JS5, p. 3.
129 TGNS, para. 29.
130 TGNS, para. 30.
131 MCCL, para. 2.
132 MCCL, para. 6.
133 MCCL, para. 22.
134 ADF International, paras. 3-18.
135 For relevant recommendations see A/HRC/22/11, paras. 122.21-122.26, 122.35-122.37, 122.43, 123.70-123.75.
136 JS1, paras. 16-17.
137 JS1, para. 19.
138 JS1, para. 21.
139 JS2, para. 39. See also JS4, paras. 23-25.
140 JS1, para. 23 (a).
141 JS1, para. 23 (b).
142 JS2, para. 39. See also JS1, para. 23 (f).
143 AI, p. 5.
144 AI, p. 7.
145 For relevant recommendations see A/HRC/22/11, paras. 122.43-122.44, 122.46, 123.54, 123.57, 123.75, 123.79-123.82.
146 For relevant recommendations see A/HRC/22/1, para. 123.81(Liechtenstein).
147 GIEACPC, para. 1.1.
148 GIEACPC, para. 2.
149 GIEACPC, para. 1.2. See also JS2, para. 17.
150 GIEACPC, para. 1.3.
151 JS4, para. 12.
152 JS4, para. 13.
153 JS4, para. 13.
154 JS2, para. 35.
155 For relevant recommendations see A/HRC/22/11, para. 123.49.
156 NCPT, para. 14.
157 For relevant recommendations see A/HRC/22/11, paras. 122.14, 122.17-122.18, 122.20, 123.40, 123.50-123.51, 123.62-123.63.
158 JS2, para. 34.
159 CoE, p. 2. See also CoE-Commissioner's Human Rights Comment 2015.
160 For relevant recommendations see A/HRC/22/11, paras.122.10-122.11, 122.16, 122.18-122.19, 123.40-123.42, 123.46, 123.50-123.52, 123.54-123.57, 123.79.
161 SIT, para. 5.
162 SIT, para. 8.
163 SIT, para. 9.
164 SIT, para. 10.
165 SIT, para. 17.
166 SIT, p. 6.
167 JS4, para. 9.
168 JS3, para. 32-33.
169 JS2, para. 36. AI, p. 7.
170 AI, p. 3.
171 JS2, para. 36. See also JS4, para. 15.
172 AI, p. 3. See also JS4, para. 15.
173 AI, p. 7.
174 AI, p. 4.
175 JS2, para. 37.
176 AI, p. 7.
177 TGNS, paras.12-14.
178 TGNS, para. 14.
179 IFOR, para. 2.
180 IFOR, para. 30.
181 JS3, para. 26.
182 JS3, para. 34.
183 JS3, para. 18.

¹⁸⁴ JS3, para. 19.

¹⁸⁵ JS3, para. 34.
