



# Human Rights Watch

## UPR Submission

### **Switzerland**

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Switzerland has a long tradition of support for international human rights and humanitarian law. Switzerland is hosting on its soil most of the UN's human rights bodies, as well as various international human rights organizations and humanitarian agencies. It played a key role in the creation of the United Nations Human Rights Council.

Nonetheless Human Rights Watch is concerned about a number of practices which in Switzerland have led to serious instances of human rights violations that erode the implementation of international standards of human rights protection in the country. Human Rights Watch is particularly concerned about the use of "diplomatic assurances" against torture and ill-treatment and the recently adopted Law on Asylum.

#### **I. The Use of Diplomatic Assurances**

In recent years, the government of Switzerland has sought and secured diplomatic assurances against torture and other ill-treatment from Georgia, Kazakhstan, Russia, Tunisia, and Turkey, among others, in its effort to extradite foreign nationals, some of whom faced terrorism charges in the requesting country. Diplomatic assurances are promises given by a government receiving a person ("receiving state") to a sending government that a person returned will not be ill-treated. Diplomatic assurances of humane treatment from countries where torture and other ill-treatment are serious problems, or where certain categories of people are at risk of such abuse, are inherently unreliable and

unenforceable in practice. Their growing use across the globe threatens to undermine the international ban on torture.

The prohibition on torture and transferring a person to a country where she or he is at risk of torture is absolute, applying to all persons regardless of their status or alleged crimes, or the nature of the transfer. The prohibition applies to all forms of transfer, including expulsion, deportation and rendition. Article 3 of the Convention against Torture, which prohibits transfers where there are substantial grounds for believing that a person would be in danger of being tortured, *expressly* applies to extraditions. Existing bilateral or multilateral extradition treaties, and other agreements providing for mutual legal assistance between or among countries, do not displace a state's multilateral human rights treaty obligations.

The Swiss government, which is party to the Convention against Torture, has nonetheless argued that assurances against ill-treatment secured in the extradition context can be distinguished because the receiving state has incentive to abide by diplomatic assurances in order for mutual cooperation in criminal and judicial matters to continue. However, courts in Canada, Germany, Netherlands, and the United Kingdom have stayed or halted extraditions because diplomatic assurances were determined to be unreliable and insufficient to mitigate the acknowledged risk of abuse. These courts have concluded that there is in fact little added incentive for a government to abide by its promises simply because the transfer occurs via an extradition process.

The extradition context offers no more protection than transfers by deportation or other forced removal. Indeed, an extradited person would almost certainly go directly into the receiving state's criminal justice or internal security systems, the very locales where clandestine, acts of torture and other ill-treatment, which are almost invariably denied, are most likely to occur. Moreover, it is precisely because a government providing assurances would desire continuing cooperation that it has little, if any, incentive to acknowledge a possible breach of the assurances, initiate an independent and impartial investigation, and hold those responsible for abuses accountable.

### ***Switzerland's Position on Diplomatic Assurances***

The use of diplomatic assurances is at odds with previous declarations made by Switzerland in international and regional human rights bodies about the ineffectiveness of diplomatic assurances as a safeguard against torture and ill-treatment. The Swiss government took a vocal and

principled position opposing diplomatic assurances in the deportation and expulsion context during deliberations in 2005-2006 on this issue in the Council of Europe.

During the September 2006 session of the newly established UN Human Rights Council, Manfred Nowak, the UN special rapporteur on torture, expressed the view that diplomatic assurances undermined the prohibition against torture. The Swiss government representative echoed the special rapporteur's concerns and cautioned the Council about the use of diplomatic assurances, particularly in the context of the global effort to combat terrorism. This concern has been expressed by other international actors, including the UN High Commissioner for Human Rights Louise Arbour who stated in March 2006: "I strongly share the view that diplomatic assurances do not work as they do not provide adequate protection against torture and ill-treatment."

The vast majority of states offering diplomatic assurances have failed to comply with their existing international obligations with respect to the torture prohibition. States that secure diplomatic assurances explicitly acknowledge by seeking these guarantees that a person subject to transfer is at risk of torture and ill-treatment upon return. Unenforceable, bilateral political agreements against torture and ill-treatment do not mitigate that risk.

Moreover, these agreements do not require a receiving state to commit to any system-wide reform required by their obligations under international law. Instead of seeking unenforceable guarantees of humane treatment in individual cases, the Swiss government should promote concerted efforts by the global community to eradicate torture through wide-ranging systemic reforms that, if implemented in full, would protect all persons from torture and thus make the use of diplomatic assurances against torture redundant.

## **II. Newly adopted Asylum Law:**

At a time when asylum applications are falling worldwide, the Swiss government is seeking to raise the obstacles faced by people seeking a country of safe refuge from persecution at home. By rendering access to this landlocked country more difficult, Switzerland is failing not only those fleeing persecution and mortal danger, but is also shifting the burden of their initial reception to its Mediterranean neighbors on the periphery of the European Union. Switzerland was among the original signers of the 1951 Convention Relating to the Status of Refugees ("Refugee

Convention”), which it ratified in 1955. The country hosts the international headquarters of the United Nation’s refugee agency, the Office of the UN High Commissioner for Refugees, which oversees compliance with the convention. Switzerland projects itself as “the home of human rights and humanitarianism,” but this claim can only prove true if Switzerland lives up to its own commitments in abiding by the letter and spirit of the Refugee Convention.

On September 24, 2006 Swiss citizens adopted in a referendum amendments to the Law on Asylum. In brief, this law denies access to asylum procedures for asylum seekers who do not produce valid travel and identification documents upon arrival, or who do not submit their applications in time. Modifications to the national asylum law represent a dramatic retreat from the international standards Switzerland accepted when it ratified the Refugee Convention.

The Universal Declaration of Human Rights in article 14 states that “[e]veryone has the right to seek and to enjoy in other countries asylum from persecution.” Access to asylum procedures is a basic human right regardless of the asylum seeker’s legal status. The amendment to the Law on Asylum would bar from the asylum procedure persons declared “*non-entrée en matière*.” This is contrary to the Universal Declaration of Human Rights, which upholds as fundamental the right of everyone to seek and enjoy asylum from persecution.

Asylum seekers should not be denied access to procedures by reason of arbitrary and unreasonable procedural requirements. The Law on Asylum as amended requires that an asylum seeker produce his or her identity or travel documents within 48 hours, unless they can produce a plausible reason. People seeking refuge in Switzerland, however, do not necessarily speak a Swiss language, have access to information about asylum procedures immediately on arrival, or the ability to obtain the required documents from distant home countries within 48 hours of arrival. They may also be confused or traumatized. Switzerland is entitled to exclude those without a valid claim to asylum, but the only proper way to determine such claims is through fair procedures for refugee status determination based on careful, in-depth appraisal of the applicant’s claim. Such an essential and thorough fact-finding procedure should not be short-circuited because the asylum seeker cannot produce valid identity or travel documents within two days of arrival.

A meaningful right of appeal is an integral part of due process in any full and fair asylum procedure. The amendment to the Law on Asylum

requires that appeals be filed within five days of the first-instance denial of an asylum claim. The right to challenge an administrative decision in the courts is fundamental for all people, citizens or not, in any democratic society.

Confidentiality during the asylum procedure is fundamental both to the security of the applicant and to the integrity of the procedure. The Law on Asylum as amended allows for agreements with other states to help establish individual motives for flight. Contact with third-country governments could undermine the asylum procedure because of the risk that information about the asylum claimant would be discovered by the home government. The prospect of such information sharing could itself destroy the trust of the applicant, which is necessary in order for him or her to express and explain his or her fear of persecution. It could also, of course, alert those home authorities that their citizen is launching an asylum claim abroad, which could make them more likely to persecute that person upon return. In the case of successful asylum seekers, it could result in official retribution against their relatives or associates who remain at home.

Asylum seekers should not be deterred from their right to seek asylum through infringement of basic social and economic rights. The Law on Asylum as it now stands denies social assistance in terms of food, shelter, education and healthcare to applicants appealing against first-instance rejection of asylum claims. This is presumably to dissuade them from pursuing the right of appeal to which they are entitled. Moreover, adopting measures that will affect the very survival of those deemed to have failed at the first hurdle, while their appeal is still being heard, contributes to the social exclusion of particular groups, with all its attendant risks of alienation. [nb nope]

### **III. Recommendations.**

We recommend that the Swiss government use the opportunity of the Universal Periodic Review to unequivocally reject the use of diplomatic assurances in all transfer contexts where a person is at risk of torture and other ill-treatment, and commit to promoting system-wide efforts to eradicate torture throughout the world.

The Swiss authorities should refrain from any action that could place an individual at risk of torture or ill-treatment, and that would legitimize a practice that undermines the prohibition against torture and ill-treatment.

We recommend that the Swiss parliament launch an initiative to revisit the recently adopted Law on Asylum in compliance with international human rights standards, including the Universal Declaration of Human Rights and the Refugee Convention.