

Switzerland's UPR 2023

Contribution of the working group "Pact I" (ICESCR) of the Swiss NGO Platform for Human Rights (NGOP)

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This document was prepared by: **The working group "Pact I" (ICESCR) of the Swiss NGO Platform for Human Rights (NGOP)**. The Platform brings together around 100 non-governmental organizations (NGOs) from French-speaking Switzerland and German-speaking Switzerland.

The working group "Pact I" (ICESCR), established in autumn 2018, prepared the joint NGO parallel report for Switzerland's review before the UN Committee on Economic, Social and Cultural Rights (CESCR) in 2019. The group has since been committed to follow-up the implementation of the recommendations of the Committee by Switzerland. This document is a summarised and updated version of the parallel report submitted to the CESCR in September 2019.¹ It is also important to look at the Committee's Concluding Observations of November 2019 (E/C.12/CHE/CO/4).² In December 2021, the working group sent a contribution regarding the Swiss follow-up and implementation of CESCR's concluding observations No. 9, No. 11 and No. 41 (NHRI; Business & HR; Childcare)³. In April 2022, the CESCR sent a follow-up letter to Switzerland assessing the limited progress made on these three recommendations.⁴

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¹ 4th Swiss examination on the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) - Civil society's parallel report ("Platform of Swiss NGOs for Human Rights") on the Swiss Government's obligations to respect, protect and fulfil ESC Rights, September 2019
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fICESCR%2fNHS%2fCHE%2f37041&Lang=fr

² https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fCHE%2fCO%2f4&Lang=fr

³ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fICESCR%2fNGS%2fCHE%2f47528&Lang=fr

⁴ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2019%2fSR.35&Lang=fr

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- Transgender Network Switzerland (TGNS) - www.tgns.ch
- Travail.Suisse – www.travailsuisse.ch
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See annexe I for contact information.

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Article 2 – Implementation of guaranteed rights

Regarding the justiciability of ESCR

1. Switzerland continues to attribute to ESCR a merely programmatic character and to deny their justiciability. It refuses to ratify various optional protocols.

Recommendations:

2. Sign and ratify the Optional Protocols related to ICESCR, the CRPD and ICCPR, as well as the European Social Charter
3. Judges at cantonal and national levels shall recognise the direct applicability of the ICESCR.
4. Judges at cantonal and federal levels must receive training relating to comparative international law, justiciability of ESCR, and direct applicability of the ICESCR.

Regarding the national institution for human rights

5. The Federal Council announced in December 2019 the decision to create a permanent NHRI, with a legal basis, probably in 2023. However, it appears that the planned NHRI will not have sufficient resources to carry out its mission. Furthermore, Switzerland has not taken into account the CESCR's recommendation to "examine the possibility of endowing the said institution with the capacity to receive and examine complaints and requests concerning individual situations". It also confirmed that the NHRI will not deal with individual cases. These shortcomings are of concern to civil society, which considers it unlikely that the Swiss NHRI will get status A, i.e., be in full compliance with the Paris Principles.⁵

Recommendations:

6. Guarantee a sufficient budget to ensure that the mandate of the planned national human rights institution is fully in compliance with the Paris Principles (status A).
7. Create state-funded ombudsperson institutions at all federal levels for a wide variety of sectors (such as children's rights, police work and others), if the future NHRI is not enabled to consider individual cases.

Regarding trade agreements

Recommendation:

8. Systematically conduct human rights impact assessment of future trade agreements (TA) in regard of their impacts both in Switzerland and in partner and affected third countries prior to engaging in negotiations for these trade agreements. Ensure that the impact assessment's findings are reflected in the planned TA.

Regarding due diligence and access to remedies (Business & Human Rights)

9. In 2020, the majority of voters approved the Federal Initiative for Responsible Multinationals despite the recommendation of the Federal Council to reject the initiative. However, as it did not obtain a majority of the cantons, this initiative did not enter into force.

10. The Federal Council's alternative proposals (national action plan 2020-23 and counter-proposal to the initiative) are completely insufficient. The action plan does not contain binding measures and the counter-proposal does not take into account all the human rights concerned.⁶

Recommendations:

⁵ Civil society contribution regarding the Swiss follow-up and implementation of CESCR's concluding observations No. 9, No. 11 and No. 41 (E/C.12/CHE/CO/4), December 2021.

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fNGS%2fCHE%2f47528&Lang=fr

⁶ Ibid

11. Establish legal liability of Swiss corporations for human rights abuses and environmental damage caused abroad by themselves and by companies under their control.

12. Actively contribute to the elaboration of an international legally binding instrument to regulate activities of transnational corporations and other business enterprises in the Human Rights Council's intergovernmental working group.

Regarding development aid

13. In the UPR 2017/2018 Switzerland accepted the recommendation concerning the increase of ODA to 0.7% of GNI. However, in 2021, it was only at 0,51% of GNI.⁷

Recommendation:

14. Switzerland should increase its ODA to 0.7%.

Regarding national CO2 emission targets and contribution to the Green Fund

15. The measures taken by the confederation for climate protection are insufficient. Reducing emissions abroad does not compensate for the absence of an adequate domestic emissions-reduction target.

16. Switzerland must bring necessary financial aid to the countries in the global South, without compensating this with cuts in other development cooperation activities from which they benefit.⁸ The funds intended for adaptation measures and for climate protection need to be financed according to the polluter pays principle.

Recommendations:

17. Reduce its emissions of CO₂ by 60% by 2030 (in comparison to 1990) and attain net zero emissions by 2038.

18. Urgently regulate activities generated by the Swiss financial sector that has a huge environmental impact.

Regarding the obligation to act to the maximum of available resources

19. According to many observers, the financial and fiscal policies of Switzerland contribute significantly to fiscal deficits in developing countries. This prevents them from developing or maintaining public services to guarantee the ESCR of their populations.⁹ With fiscal reforms for companies (adopted in Switzerland on 19 May 2019), the Federal Council abolished existing fiscal privileges, but replaced them with measures that have the same final effect.

20. Regarding Switzerland's obligations to not undermine other States' capacity to fulfil their ICESCR's obligations, it is worth noting that loopholes in Swiss legislation on the export of war material and the weak application of this legislation risk severely reducing this capacity.¹⁰

Recommendations:

⁷ <https://www.alliancesud.ch/fr/politique/politique-de-developpement/financement-du-developpement/la-suisse-dope-ses-dependances-de>

⁸ Report to the UN General Assembly by the Special Rapporteur on human rights and the environment concerning the right to a safe climate (August 2019), UN Doc. A/74/161.

⁹ See e.g. Juan Pablo Bohoslavsky: Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, on his visit to Switzerland - Advanced Edited Version, ohchr, 15. mars 2018.

¹⁰ E.g. State-owned company planning to export a mortar through Finland to Qatar to bypass controls with a risk of use in the armed conflict in Yemen. Rapport d'audit du Contrôle fédéral des finances, Contrôle du transfert de matériel de guerre, septembre 2018, <https://www.efk.admin.ch/fr/publications/economie-administration/economie-et-agriculture/3384-controle-du-transfert-de-materiel-de-guerre-secretariat-d-etat-a-l-economie.html>; with an English overview of the uncensored report available at https://www.swissinfo.ch/eng/weapons_uncensored-report-on-arms-exports-highlights-loopholes/44377958

21. Implement the recommendations of the Financial Action Group (GAFI) intended to reduce money laundering.
22. Reinforce transparency regulations applicable to banks managing assets of foreign origin.
23. Communicate in complete transparency with progressive forces in the South regarding Swiss bank accounts belonging to persons originating from these countries.
24. Put in place a corporate tax, which will allow generating a substantial portion of tax revenues other than by transferring unrealised profits to Switzerland.
25. Strengthen legislation to ensure that exports of war materials do not undermine ESCR in other States, and improve due diligence, monitoring and accountability procedures in this regard.

Concerning the obligation of non-discrimination

26. Despite the recommendation made by the CESCR in 2010, Switzerland still does not have a comprehensive anti-discrimination law which applies uniformly throughout the Confederation. Protection against discrimination and access to justice remain inadequate. A national law would allow combating more efficiently all types of discrimination.

Recommendations:

27. Adopt a national law for combating all types of discrimination.
28. Poverty and extreme poverty must be addressed in a systemic manner to ensure non-discrimination in practice. Information about discrimination must be unified. Tools must be created in order to prevent, combat and sanction discrimination.
29. Implement the recommendations of the report of the Swiss Centre of Competence on Human Rights (CSDH)¹¹ related to access to justice in cases of discrimination.

Discrimination based on sexual orientation and gender identity

30. In December 2018, the broader interpretation of criminal standard against racism which would allow sanctioning persons denigrating or belittling publicly other persons on grounds of sexual orientation (art. 261bis of the Criminal Code) did not include the question of the gender identity, considered as 'too vague'.

31. In May 2018, the Federal Council presented a preliminary draft of a law concerning sex change in civil registry. The specialised associations consider that this project is still too restrictive and constitutes a step backwards in terms of the rights of minors capable of discernment currently in force.¹²

32. In September 2021, the Swiss population voted in favour of the marriage 'for all', which includes joint adoption for same-sex couples, as well as access to medically-assisted procreation and sperm donation for female couples.

Recommendations:

33. Include protection against discrimination based on gender identity, gender expression and sex characteristics in the law. Such anti-discrimination clause must include discrimination by all private parties and be open to every victim of discrimination without the financial risk that nowadays prevents from claiming rights in a civil procedure.
34. Make sure that, if legal gender recognition is being included in the civil code, it is explicitly based on self-determination, accessible for all transgender people and a quick and transparent procedure.
35. Create a registration system and monitor incidents implying homo-or transphobic nature in order to obtain the statistics regarding their extent.

¹¹ CSDH, Study related to access to justice in cases of discrimination, 2014-2015.

<https://www.skmr.ch/frz/domaines/genre/publications/etude-discrimination.html?search=1>

¹² See press release TGNS, August 2018. <https://www.tgns.ch/fr/2018/08/communiqué-sur-changement-de-sexe-officiel/>

36. Encourage inclusive education so that teachers are aware of gender issues to better assist students.

Discrimination regarding Yenish, Sintis and Roma

37. Planned measures against structural discrimination of Yenish, Sinti and Roma have not been implemented so far. No monitoring mechanisms are in place and there is no additional budget to accompany the adopted measures.

Recommendations:

38. Ensure a sufficient number of pitches and transit sites for minorities.

39. Establish concrete measures against racial profiling of Yenish, Sintis and Roma.

40. Recognise Swiss Roma as a national minority in the sense of the European Council Framework Convention on the Protection of National Minorities.

Social integration of foreigners

41. The revision of the Law on Foreigners (LEI RS 142.20) relegates integration as a measuring and constraining instrument. The criteria are too rigid and restrictive. They fail to sufficiently take into consideration the specificities and individual situations. The changes harden the access to a stable legal status or restrict the possibilities for family reunification.

42. The status of provisional admission is stigmatising, disadvantage the persons on labour market, limiting access to family reunification and welfare. It makes a real integration very difficult, if not impossible.

43. Asylum seekers whose applications are found inadmissible are not guaranteed a fair procedure, especially in the "Dublin" cases where the requests for protection are not examined.

44. Emergency aid granted to persons denied of asylum and the aid allocated to asylum seekers and persons provisionally admitted are insufficient for adequate social and professional integration.

45. Tens of thousands of people (including many minors) live in Switzerland with no legal status. They are denied many of their fundamental rights (i.e., the rights to education, to health, and to marry) and there are many cases of exploitation.

46. The LGBTIQ persons remain exposed to a great risk of violence and discrimination, including in federal centres for asylum seekers (CFA) and in collective accommodation center (CHC) in the cantons.

Recommendations:

47. Establish objective and measurable criteria in integration matters which takes into consideration specificities and individual situations, for the entire population.

48. As it has been largely demonstrated that the status of the provisional admission does not allow good integration, and that the majority of persons under this status are forced to stay in Switzerland for many years, this status has to be removed and the persons have to be able to exercise their rights in the same manner as the rest of the population (family reunification, access to labour market, possibility to travel abroad, possibility to use public aid etc.).

49. All persons shall have their demand for protection examined by the Swiss authorities.

50. The persons without a legal status who live in Switzerland for years shall have their status regularised, as it was done with the Operation Papyrus in Geneva.

Additional recommendations concerning asylum seekers as LGBTIQ:

51. Establish detailed statistics regarding the asylum demands for motives related to the sexual orientation, gender identity and expression, and sexual characteristics (SOGIECS).

52. Put in place measures to identify LGBTIQ asylum seekers and protect their fundamental right to

live openly and securely their identity, as well as their right to seek refugee status.¹³

53. Put in place guarantees for procedures ensuring their access to a just and fair procedure.

54. In federal centres (CFA): a. Train the all personnel at CFA regarding specificities of demands for motives related SOGIECS; b. All LGBTIQ people shall be systematically accommodated in safe and individual accommodation (as oppose to the collective accommodation); c. Guarantee access to care unconditionally and without a delay, especially to psychological care and care related to the transition; d. Guarantee access of asylum seekers to LGBTIQ associations and community.

55. Ensure that LGBTIQ asylum seekers enjoy their right to seek refugee status, without discrimination.

Police training

56. There is no body that is independent to the police to which complaints on police action can be filed. It is therefore difficult for citizens to make their voices heard when they are subject to discrimination (racial profiling in particular), improper use of police force or police authority.

Recommendations:

57. The Swiss authorities must guarantee remedies in case of complaints related to police action.

58. The Swiss authorities must strengthen policed training, particularly in the matters related to human rights for combating ethno-national observed in actions.

59. Police training must examine the particular situations of refugee women who are victims of multiple discriminations, those of sex workers, as well as the question of racial profiling.

Article 3 – Equality between men and women

Reconciliation of professional and family life

Recommendations:

60. Adopt and implement measures aimed at achieving substantive equality between women and men in all areas, in order to increase the number of women in decision-making bodies.

61. To introduce parental leave of a minimum of 38 weeks, which will strongly encourage equality¹⁴. In addition, maternity leave should be raised to a minimum of 18 weeks.

62. The Confederation and the cantons must offer framework conditions that encourage the fair distribution of care work between men and women.

63. The State must strengthen its participation in the funding of crèches (pre-school childcare) and implement a general allowance for full-time childcare.

64. Unpaid work must be fairly taken into account in the calculations performed for the payment of annuities. In the case of caregivers, the Federal Council needs to explore the possibility of using the support contribution to pay these, at least partially. State must compensate the employer's share in case of reduced contributions to the occupational pension plan (2nd pillar) of the caregivers.

65. Single parent families must have adequate relief support available to them.

Article 6 – Right to work

¹³ Multiplication of tools allowing facilitation of identification of LGBTIQ: information oral, visual signs, list of LGBTIQ resources etc., and in particular visible and readable in the languages of origin regarding the LGBTIQ people rights.

¹⁴ According to the recommendations of the Federal Commission for Family Matters COFF, 2018 <https://www.newsd.admin.ch/newsd/message/attachments/53291.pdf>

Young people and the labour market

66. The new version of the Law on Unemployment Insurance is making the financial transition from education to the labour market extremely tough and adds a further stumbling block to new graduates accessing the job market.

Recommendations:

67. The number of specialised professions requiring specific apprenticeship should be reduced. A broad basic education should enable young people to become independent and be able to work in a team.

68. Facilitate professionals' access to professional development schools and the opportunity to acquire a second professional training.

69. The wages of apprentices must be increased in legislation and collective labour agreements (CLAs).

Elderly employees and the labour market

Recommendation:

71. In case of discriminatory dismissal based on age, a possibility has to be created for reintegration to a work place. Furthermore, the compensation in case of an abusive dismissal has to be increased to 24 months salary to become sufficiently dissuasive. The criminal code might also include a ban of discrimination based on age, as proposed by OECD.

Foreigners and the labour market

Recommendation:

72. Discriminatory status of provisional admission (F permit) must be abolished.

Persons with disabilities and the labour market

Recommendations:

73. Elaborate a national strategy in the domain of professional education and employment, aimed at the creation of an inclusive labour market which offers employment also to persons whose productivity is substantially restrained.

74. Increase crossing facilitation measures for protected workshops for first employment on the labour market.

75. Examine incentive schemes promoting engagement of persons with disabilities on the labour market, with binding targets and financial incentives.

Article 7 – Right to fair and favorable working conditions

Minimum wage

Recommendations:

76. Establish a general minimum wage applicable in the entire country.

77. Increase the number of labour inspection controls of companies.

Equal pay

78. Voluntary efforts to reduce unequal pay are clearly insufficient.

Recommendations:

79. Put in place binding measures that include sanctions for non-compliance to eliminate the gender

wage gap, in particular the « unexplainable » wage difference for the public as well as private sector.

80. Put in place measures to ensure equal opportunities for women and men in the labour market, including through the use of temporary special measures, with time-bound targets.

81. Put in place measures to eliminate wage gaps due to intersectional discrimination and lower wages for jobs perceived as female and/or migrant jobs.

Harassment and unfair dismissals

82. Cases of unfair dismissals due to pregnancies, sexual orientation, gender identity, gender expression and sex characteristics, sexual harassment, sexism and/or violence continue to be recorded.

Recommendations:

83. Introduce total reversal of the burden of proof in case of a presumed unfair dismissal based on pregnancy, sexual harassment, anti-union dismissals, sexism and/or violence as well as measures for protection of the victim during the procedure.

84. Extend the protection period against the dismissal after maternity leave or adopt a minimum of 22 weeks.

85. Create incentives to support and facilitate the Dual Earner/Dual Carer model and remove obstacles to part-time work for women and men.

Working conditions for persons with disabilities

Recommendations:

86. Make sure that all persons with disabilities, particularly those working in sheltered workshops, have good working conditions, including a decent wage corresponding to fixed wages established in collective labour agreements, while wage subventions are introduced.

87. Ensure reasonable adjustment, such as interpretation in sign language in all workplaces.

Working conditions for foreigners

88. Persons without a legal status in Switzerland mostly work without being registered for social welfare and without any type of control over their working conditions or protection. There are numerous cases of abuse and exploitation.

Recommendations:

89. Persons without legal status who have lived in Switzerland for several years must be regularised, as was done with “Operation papyrus” in Geneva.

90. Employees of domestic sector (employees in private households) must be protected in terms of health in accordance with the Labour Law.

Article 8 – Union Rights

Right to strike and protection against anti-union dismissals

91. The study requested by the Federal Office for Justice and the SECO¹⁵, mentioned in the response

¹⁵ Please see study by Jean Philippe Dunand/Pascal Mahon et al., Etude sur la protection accordée aux représentants des travailleurs (*Study on protection granted to employee representatives*), 2015 – original in French. Etude sur la protection en cas de grève licite (*Study on protection granted in cases of legal strike*), UniNe, 2016 – original in French; https://www.seco.admin.ch/dam/seco/de/dokumente/Arbeit/Internationale%20Arbeitsfragen/studie_schutz_arbeite_rvertreter.pdf.download.pdf/15+rapport+UNINE+plainte+2003+final.pdf ;

from the federal authorities to CESCR, shows that Swiss law on employment protection does not comply with international law (ICESCR, ILO Conventions and the ECHR). Switzerland does not observe ILO Conventions 87 and 98 on the Right to Organise and Collective Bargaining, and it has refused to include in its legislation the principle of the right to the reinstatement of victims of anti-union dismissals. Moreover, the compensation awarded by the courts is too low to guarantee effective protection against anti-union dismissals.

Recommendations:

92. Observe and enforce the CESCR recommendations on implementing ILO Conventions 87 and 98, to which Switzerland is a party.¹⁶

93. Implement the recommendations outlined in the study on protection in cases of legal strikes and on protection for employee representatives in firms. At the very least, it is recommended that there is a need to speed up the process to issue harsher penalties in cases of unfair dismissal, to increase the level compensation from 6 to 24 months' salary, and to create the possibility of reintegration into the workplace.

Article 9 – Right to social security

Social assistance

94. Persons seeking to benefit from social assistance often face an uphill battle. The numerous obstacles lead many people to survive without the benefits to which they are entitled¹⁷. According to the Law on Foreigners criteria for integration, if you request social assistance, you may have your residence permit withdrawn. Not receiving social assistance is also a condition for family reunification. It is therefore particularly concerning that many people in need, in particular victims of domestic violence, do not seek help from specialised institutions (e.g., shelter) because it would be considered that they have requested social assistance. The lack of common rules across the country leads to discriminatory practice.

95. The Federal Council has not implemented CESCR recommendation on social/emergency assistance, drawn up in 2010. The different levels of social assistance granted to people reveal a clear discriminatory practice. The level of assistance varies depending on whether it is assistance granted to citizens who were born in Switzerland, assistance awarded to provisionally admitted foreigners, and emergency assistance awarded to foreigners. Moreover, the level of 'minimum subsistence' that you may receive varies, depending on your legal status.

Recommendations:

96. In order to standardise the level of social assistance between the cantons, the Swiss Conference of Social Assistance Institutions (CISAS) rules must be compulsory in every canton.

97. Set minimum shared criteria for the level of social assistance for every person and their family living in the Swiss territory (regardless of their legal status), so that they can enjoy an adequate

<https://www.bj.admin.ch/dam/data/bj/wirtschaft/gesetzgebung/whistleblowing/studie-streik-cert-f.pdf>

¹⁶ L'OIT a traité la plainte de l'USS à l'OIT et a donné le 15 novembre 2006 à la Suisse la recommandation suivante : "Le comité prie le gouvernement de prendre des mesures pour prévoir le même type de protection pour les représentants syndicaux victimes de licenciements antisyndicaux que pour ceux victimes de licenciements violant le principe d'égalité de traitement entre hommes et femmes, y compris la possibilité d'une réintégration, eu égard aux principes fondamentaux mentionnés plus haut et conformément aux conventions nos 87 et 98 ratifiées par la Suisse....".

¹⁷ See study carried out in Geneva: Research study 'Le non-recours aux prestations sociales à Genève. Quelles adaptations de la protection sociale aux attentes des familles en situation de précarité ? ('*The non-take up of social assistance in Geneva. What amendments can be made to meet the needs of families in need?*') March 2019 – original in French.

https://www.hesge.ch/hets/sites/default/files/contribution/rapport_non_recours_final2.pdf

standard of living.

98. Increase the level of social assistance granted to asylum seekers (N permit) and that awarded to provisionally admitted foreigners (F permit) to the same level as that received by refugees (B permit).

Article 10 – Protection of the family, mother and children

Childcare services

99. The offer of childcare services remains insufficient. The cost of the services remains prohibitively high even for the middle class, in absence of sufficient subsidies, and it often discourages labour market participation by the parent with the lowest income (mother in the majority of families).¹⁸

Recommendations:

100. Create throughout the territory quality and affordable day-care structures starting with first years of the child's life, preschool and school years, as well as after regular working hours.

101. Increase public financing of nurseries and institute a general allocation for full time childcare, in a way that will not discourage labour market participation.

Protection of the family

102. Civil society criticised the practice of detention of minors under the Law on Foreigners (LEI RS 142.20), which persists in some cantons, and the fact that the cantons do not indicate in a systemic manner how many minors are affected.

103. The protection of the family, of children, of adolescents and of particularly vulnerable persons are questioned in practice in Switzerland, when it comes to forced removals.

Recommendations:

104. Prohibit keeping into custody minor migrants and improve the system of data collection concerning this practice.

105. Waive all types of constrain during the transport to the airport in cases of forced removals.

106. Stay of execution of removal for vulnerability reasons, and waive phased removal or those causing the separation of families.

Family reunification

107. Law on migration represents considerable impediments against the right to family life for migrants. For the persons temporarily admitted (refugee permit F), the reunification is possible not sooner than 3 years after issuance of the temporary admission, and only under very strict conditions, especially of economic nature.

Recommendations:

108. Persons admitted temporarily (permit F and F refugee) shall enjoy the same right to family reunification as the refugees benefiting asylum (permit B refugee).

109. The definition of the family, regardless of the partners' sexual orientation, gender identity,

¹⁸ 4th Swiss examination on the implementation of the International Covenant on Economic, Social and Cultural Rights - Civil society's parallel report ("Platform of Swiss NGOs for Human Rights") on the Swiss Government's obligations to respect and protect economic, social and cultural rights (ESC Rights, September 2019
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fNHS%2fCHE%2f37041&Lang=fr

gender expression and sex characteristics, has to be extended so that reverse family reunification is applied for unaccompanied minors.

Domestic and gender-based violence

110. Marital violence, rape, sexual harassment and other gender-based violence are common in Switzerland. Financing awareness-raising and prevention of gender-based violence activities is lacking, as well as the reception centres/safe houses for victims. For migrants, the situation is even worse.

Recommendations:

111. The Istanbul Convention must be implemented in full and without discrimination. All reservations shall be withdrawn. Adequate financial resources must be allocated to the implementation of the convention.

112. Expediently adopt a national action plan, in consultation with civil society organizations, to combat gender-based violence against women, girls, transgender and intersex people, and ensure that adequate human, technical and financial resources are allocated for its implementation, monitoring and assessment.

113. 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. Temporary residence permits must be granted to migrant people who have been recognised as victims of domestic violence.

114. Strengthen services for victims of gender-based violence, including by establishing additional shelters to ensure that adequate victim centred services are available in all cantons, and ensure the availability of psychosocial rehabilitation and reintegration programmes.

115. Establish an action plan to eliminate discriminatory stereotypes regarding the roles and responsibilities of women and men in the family and in society.

116. Develop a comprehensive national gender strategy, policy and action plan that addresses the structural factors causing persistent inequalities, including intersecting forms of discrimination against women, girls, transgender and intersex people.

Out-of-home placement

117. Families in situation of insecurity and extreme poverty are often broken and for years their children are placed in the institution or with the foster care families.

Recommendations:

118. Maintaining statistical data related to out-of-home placements, which must be accompanied with a global evaluation of life path of placed persons.

119. Conduct a specific study regarding the connection between out-of-home placements and conditions of poverty in which the families live.

120. Better involve the relatives in all phases of the procedure and in accordance with all decisions of the Authority for Protection of Children and Adults.

121. Guarantee that all the written files related to monitoring are prepared with ethical respect of the dignity of the persons concerned. The latter shall be consulted.

122. Connect persons who lived through coercive measures for purpose of assistance in different efforts of the country (research, documentation, compensation) because they can bring their knowledge and expertise.

Adoption

123. Adopted persons, particularly those with origin in the third countries, who want to find their origins and biological parents, receive little support.

Recommendation:

124. Provide a free and complete support to adopted persons from the third countries who are looking for their origins.

Article 11 - Right to an adequate standard of living

Standard of living and poverty

125. The 2019-2024 anti-poverty platform has only been allocated a budget of CHF 250,000 per year. This is clearly insufficient.

Recommendations:

126. Refer to the Guiding Principles on Extreme Poverty and Human Rights¹⁹ as well as the Manual for the Implementation of its Principles for Implementing an Anti-Poverty Policy that respects human rights, in consultation with affected people.

127. Establish a coordinated federal policy to prevent and combat poverty that guarantees each person sufficient financial resources to meet their basic needs and participate in society in an appropriate way.

128. Study and implement conditions for the effective participation of people experiencing poverty in anti-poverty programmes.

129. Evaluate all policies in terms of their impact on populations experiencing cumulative insecurity.

130. Complement the plan for the implementation of the National Platform against Poverty with measures specifically targeting people with disabilities.

Right to food

131. Food remains an "adjustment variable" in the limited budget of people in insecure situations. Many people have to resort to the charity of associations that provide food aid in kind.²⁰

Recommendations:

132. Guarantee the right to food in Switzerland for all people in the country by adopting policies that allow people to feed themselves through access to safe, nutritious and culturally acceptable food at all times, without stigmatisation. These policies concern access to productive resources, employment and social security as an enforceable right and not as a social benefit.

133. Rethink the forms of food aid and its modes of supply to ensure the population's right to food. Food aid should only be a transitional measure.²¹

134. Support dialogue between social services, farmers' associations and associations supporting vulnerable people in order to develop sustainable solutions.

135. Implement the UN Declaration on the Rights of Peasants and Other Persons Working in Rural Areas (UNDROP).

136. Create sustainable food governance advisory boards at the cantonal level dedicated to strengthening the territory's agricultural food capacity, relocating sectors and encouraging short and local circuits.

Article 12 – The Right to Health

¹⁹ Making Human Rights a Reality for People Living in Extreme Poverty, 2015, p. 13

²⁰ Independent Periodic Evaluation (IPR) of Fundamental Rights in Geneva - Contribution of Civil Society, Regard, Geneva, March 2019, pp. 99-103. https://fian-ch.org/content/uploads/EPI_A4.pdf

²¹ OHCHR, Guiding principles on extreme poverty and human rights, 2012. Para. 75-76.

https://www.ohchr.org/Documents/Publications/OHCHR_ExtremePovertyandHumanRights_EN.pdf

Access to healthcare for vulnerable groups

137. Foreign Nationals are, generally speaking, in poorer health than the Swiss population, and migrants, particularly those in detention centres, regularly experience violations of their right to health.

138. Emergency assistance has a marked impact on physical and psychological health. People don't have sufficient access to care, are isolated and are permanently worried about being arrested or undergoing an inspection.

139. A large number of asylum seekers were housed in civil protection centres from 2015 to 2017, often for several months, leading to serious physical and psychological health issues.

Recommendations:

140. Implement a coordinated health policy at the federal level along with framework conditions that guarantee every person the right to health, access to care and health insurance, regardless of their status or situation.

141. Guarantee free access to health care for persons held in administrative detention facilities.

142. Guarantee independent and transparent medical support to those affected by a removal order.

143. Guarantee access to quality health care in federal centres for asylum seekers.

144. Allow foreign nationals, with or without official status, access to reduced insurance premiums.

145. Provide social assistance to any person living in Switzerland, instead of emergency assistance.

146. Ban the use of civil protection centres.

147. Persons with disabilities: Persons with disabilities are more likely not to avail of medical services and people with severe disabilities consider especially difficult to access basic medical services²².

Recommendations:

148. Issue guidelines to doctors for non-discriminatory evaluation of criteria for adequacy, cost-effectiveness, and efficiency, as well as to private insurers to eliminate the differentiation of risks for persons with disabilities in relation to supplementary health insurance and life insurance.

149. Transgender people: According to several rulings issued by the Federal Tribunal (High Court), all gender affirming treatment that is medically indicated must be reimbursed by the basic health insurance. However, in many cases health insurances refuse to cover medically indicated treatment.

Recommendations:

150. Start a dialogue with civil society experts and develop measures to grant all transgender people de facto access to indicated gender affirming treatment as foreseen by the Federal Act on Health Insurance.

Mental Health

151. According to statistics, Switzerland has a very high rate of suicide. Among young people in the LGBTIQ community, the risk of attempting suicide is much higher than among young cisgender heterosexual people.

Recommendations:

152. Include LGBTIQ people, esp. young people, as groups especially at risk in the national plan on suicide prevention, develop and implement specific measures for suicide prevention.

153. Develop, through close cooperation with civil society experts, guidelines on treating transgender people deprived of their liberty in order to guarantee their human rights.

²² See <https://www.bfs.admin.ch/bfs/fr/home/statistiques/situation-economique/https://goo.gl/MwdfiAque-sociale-population/egalite-personnes-handicapees/bien-etre-individuel/sante.html> and <https://goo.gl/R0dWV6>

Intersexed individuals

154. Several UN treaty bodies recommended clearly and repeatedly that Switzerland shall ban surgeries on people with variations of sex characteristics, especially on children. So far, the Federal Council refuses to propose a respective article in the criminal code and even denies the fact that such surgeries are still performed²³. However, specialized NGOs report that these practices are still ongoing²⁴.

Recommendations:

155. Update terminology and data related to intersex individuals.

156. Rapidly implement recommendations from the national ethics commission including on interdisciplinary care.²⁵

Article 13 and 14 - Right to education

Access to education for children seeking asylum and unaccompanied minors seeking asylum in Federal centers for asylum seekers

157. Children living in Federal Centers and being educated in these centers may suffer from an insufficient quality of teaching (courses, number of hours).

158. Many young asylum seekers are obliged to stop their education because their asylum application has been rejected.

159. Support for Unaccompanied Minors Seeking Asylum is incomplete and discriminatory. Generally, the rate of supervision is insufficient and supervision during the transition to adulthood does not even exit.

Recommendations:

160. Children living in Federal Centers for Asylum Seekers should attend public schools outside asylum centers.

161. Young strangers, though they are rejected asylum seekers, should be able to continue and complete their learning.

162. Reinforce the global support system of Unaccompanied Minors Asylum Seekers, and develop training measures adapted to the school background and competences of young migrants who arrived late.

163. Encourage awareness and appreciation of allophone children in the classroom and facilitate the development of their mother tongue skills.

Inclusive education

164. In Switzerland there is no inclusive education system. There is neither legal bases nor strategies at the national level as at the (inter)cantonal level insuring an inclusive educational system²⁶.

Recommendations:

²³ See: Explanatory report from 23 May 2018 relating to a former project about the revision of the Swiss Civil Code (changing gender and civil status) https://www.admin.ch/ch/f/gg/pc/documents/2958/Changement-de-sexe-a-l-etat-civil_Rapport-expl_fr.pdf

²⁴ See the press release from 23 July 2019 from InterAction <https://drive.google.com/file/d/1cbfkCdj0SlknqPnuo7CSkK2pDrIMTzfe/view>

²⁵ (Opinion, No.20/2012).

²⁶ Concerning the scope of the article 24, CRPD, see the survey in Spain, UN Doc. CRPD/C/20/3 of 4th June 2018. Concerning the situation in Switzerland, see the alternative report CRPD art 24, CRPD.

165. Elaborate a strategy which implement an inclusive educational system in line with the Article 24 CRPD at the federal and inter cantonal level, including the change of legal basis.

166. Systematically transfer the resources of separative structures to inclusive structures. In the meantime, insure the guarantee of integrative measures (individual support, compensation of disadvantages, etc.)

Human rights education

Recommendation:

167. Encourage cantons to reinforce human rights education, as well as, in all fields of study, education relating to democracy and cultural diversity.

Article 15 - Right to participate in cultural life

Cultural participation

168. The right to participate in cultural life concerns not only the arts, leisure and heritage, but also the sciences, religions, participating in public life and all the choices of values that give meaning to daily life. This right concerns all persons living on Swiss territory. The recognition and exercise of this right by all persons in difficult social situations and/or of foreign origin promotes their integration capacities and enriches Swiss culture in its diversity and its capacities for criticism and creativity.

Recommendations:

169. Guarantee the right to cultural and political participation of people living in conditions of poverty and extreme poverty in the country.

170. Guarantee the right to cultural participation to all persons of foreign origin, by respecting their languages and cultures of origin, encouraging initiatives that enable them to be transmitted and openly debated.

LGBTIQ asylum seekers

Recommendation:

171. Systematically accommodate LGBTIQ asylum seekers outside the federal centers in safe and individual housing in cities that provide access to LGBTIQ associations.

Promotion of Yenish, Sinti and Roma culture

Recommendation:

172. Integrate the history and culture of the Roma, Sinti and Yenish into school education.