

**Universal Periodic Review**

**Report of the Swiss Coalition of NGOs for the 2nd UPR session**

**5 - 16 May 2008**

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**I. Introduction and methodology**

A large number of Swiss NGOs and associations active in the field of fundamental rights decided to form a coalition<sup>1</sup> to draft a joint report on the human rights situation in Switzerland. The Report aims to provide information on the Universal Periodic Review (UPR) and, within the widest possible consultation process, compile a list of problem areas and identify the main priorities with respect to the human rights situation in Switzerland. This report is a summary of this consultation process, and the information it contains reflects the perspective of the member organisations of the coalition.

The human rights problems in Switzerland mentioned in this report should be read in the light of the two following important factors, one structural, the other political:

- Switzerland's federal system creates major challenges for the coordinated and coherent implementation of human rights. Although the Confederation is responsible for ratifying international human rights treaties, it is primarily the job of the cantons to implement them, in particular in the fields of education, police, health care and the administration of penal sentences. This structurally complex situation would therefore justify the need to take specific measures at the national level to ensure that treaties are properly implemented. However, the political authorities are very reluctant to acknowledge the need to take such measures - a situation which has hindered the emergence of a genuine national human rights policy. Although human rights is one of the five pillars of Switzerland's foreign policy, a number of measures will have to be taken to ensure that human rights enjoy the same status in Swiss domestic policy.
- Due to an unprecedented hardening in migration policy in recent years, the rights of migrants have been subjected to restrictions that in some cases are incompatible with Switzerland's international human rights commitments. This tightening is primarily due to the instrumentalisation, through racist and xenophobic political campaigning, of public insecurity and mistrust for electoral purposes.

## II. Normative and institutional framework

1. In Switzerland, the Federal Supreme Court does not scrutinise federal laws to determine whether or not they are constitutional<sup>2</sup>. For example, the Federal Act on export risk insurance contains no explicit provision whatever to ensure that checks exist for compliance with human rights obligations in the sense of article 54, para 2 (promotion of human rights in foreign policy) of the Federal Constitution.
2. The Swiss constitution recognises most economic, social and cultural rights<sup>3</sup> as social goals but not as justiciable fundamental rights. This means that people who consider themselves to be victims of a violation of these rights cannot take their case to a court. On numerous occasions, the Federal Supreme Court has determined that the International Covenant on Economic, Social and Cultural Rights is not directly applicable and that the victims of violations of rights recognised by the Covenant are not entitled to reparation<sup>4</sup>. This position also explains why Switzerland is not party to the amended<sup>5</sup> European Social Charter, which enshrines in particular the right to housing and the right to protection against poverty and social exclusion. In the negotiations on the adoption of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights<sup>6</sup>, moreover, Switzerland defends an “à la carte” position which would allow States to exclude from the complaints procedure whichever rights they choose. This stands in complete contradiction with principles of universality, interdependence and the indivisibility of human rights.
3. In spite of the recommendations formulated by various UN treaty bodies<sup>7</sup>, Switzerland’s commitment to the implementation of the Declaration and the Programme of Action adopted in Vienna in 1993<sup>8</sup>, and of the parliamentary initiatives<sup>9</sup> of the Swiss Federal Parliament, Switzerland has not to date set up a national human rights institution in compliance with the demands of the Paris Principles<sup>10</sup>.
4. The judicial framework with regard to discrimination remains weak. Not only is there no federal law forbidding discriminatory practices in general, but Switzerland also maintains its reservation to article 26 of the International Covenant on Civil and Political Rights, thereby limiting the scope of the general principle of the prohibition of discrimination to those rights ensured by the Covenant. Neither is Switzerland party to the Optional Protocol to the International Covenant on Civil and Political Rights, which provides for the possibility for victims to initiate an individual complaint procedure. Finally, Switzerland

maintains its reservations on articles 2.1.a<sup>11</sup> and 4<sup>12</sup> of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)<sup>13</sup>.

5. The Federal Act on equality of treatment for persons with disabilities handicapped people<sup>14</sup> displays many weaknesses which encourage discriminatory practices. For instance, it recommends to the cantonal authorities to promote the integration of children with disabilities in normal schools, but most cantons continue to favour special schools for these children. It contains no provision whatever for protecting persons with disabilities from discrimination at the work place; private service providers are not required to adapt their services to the needs of these people even when this is possible at reasonable cost. Finally, the requirement of financial independence demanded by some municipalities excludes some persons with mental disabilities of a foreign nationality from any possibility of naturalisation.
6. In Switzerland, lesbians, gays, bisexuals and transsexuals<sup>15</sup> have no recourse to institutional support to exercise their rights so that discrimination against them is quietly tolerated. Sexual orientation and gender identity are moreover not explicitly mentioned in the constitution as possible targets of discrimination. Currently, there is no law sanctioning acts of discrimination against this minority.
7. Concerning the rights of children, Switzerland made a number of reservations when it ratified the Convention on the Rights of the Child<sup>16</sup>, including to article 37, para 2, that forbids the detention of minors with adults<sup>17</sup>; and to article 10, para 2, because Swiss law does not guarantee family reunification for certain categories of person, in particular those holding 'B', 'F' or short-term resident permits, as well as for minors more than 12 years old<sup>18</sup>. In these cases, family reunification is left entirely to the discretion of the authority concerned. Contrary to the requirements of this convention, corporal punishment inflicted on children within the family is not formally forbidden in all cases in Switzerland<sup>19</sup>.
8. The Foreign Nationals Act, which entered into force in 2008, discriminates on the basis of nationality in the issue of work permits.<sup>20</sup> This discrimination affects in particular people from countries that are not members of the European Union or EFTA<sup>21</sup> and those not considered highly qualified. More than 90,000 people are living and working in Switzerland without any legal status – people known as the “sans-papiers” [without papers]. Moreover, the Swiss Federal Parliament has refused to consider the length of time a person has lived illegally in Switzerland as a valid criterion when assessing borderline cases and in the evaluation of applications for humanitarian permits.<sup>22</sup>

9. The right to marry<sup>23</sup> has been subjected to many restrictions in the context of marriages between people of different nationalities. The new Foreign Nationals Act has introduced new provisions to the Civil Code to combat arranged marriages<sup>24</sup>. These provisions give enormous freedom of discretion to civil law officers. Even in the case of marriage, if they are considered to be arranged the right of residence is refused to the spouse even if the couple is living together<sup>25</sup>.
10. Pursuant to article 4 of the Convention Against Torture (CAT), Swiss law should be adapted to make incrimination of torture possible in domestic law. There is no explicit mention of any ban of this kind in the Swiss Penal Code<sup>26</sup>.
11. As the result of a successful constitutional initiative put before the people and the cantons, at the end of 2007, the Swiss Federal Parliament adopted a law on life imprisonment which could turn out to be in contravention to the European Convention on Human Rights because it only offers the possibility to detainees to have their sentences regularly reviewed under extremely restricted conditions.

### **III. Implementation and efficiency of the normative and institutional framework**

12. Institutional mechanisms ensuring the efficient implementation of international human rights instruments are lacking to a large extent. There is no national action plan that is accessible to the public to implement the conventions Switzerland has ratified (Convention on the Rights of the Child (CRC), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ICERD<sup>27</sup> etc.).<sup>28</sup> As a result the division of roles and responsibilities between the different federal departments and cantonal authorities are seriously lacking in clarity, and are incoherent in places.
13. The recommendations of the UN treaty bodies are not officially communicated by the authorities. As regards statistics on various human rights issues, the gaps are so large that it is difficult to create a coherent picture of the human rights situation in Switzerland and of the efforts being undertaken to improve the situation.
14. A recent survey on the rights of the child<sup>29</sup> showed that the level of knowledge among the Swiss public about human rights is quite weak. This lack of awareness can be explained by several factors: education on human rights is not systematically included as a basic part of school curricula and is not an integral part of professional training in key sectors such as cantonal administration and public institutions, in particular hospitals and socio-

medical establishments (old-age homes). The absence of a specialised authority in the judicial body to address questions from the perspective of human rights law is to be deplored in general and has clear repercussions on the importance given to these issues by the public. Furthermore, inadequate training and a lack of awareness among men of gender issues is a decisive factor with regard to violence against women.

15. The promotion of equality between men and women at the institutional level remains insufficient. There are serious budgetary restrictions and a lack of qualified personnel assigned to specialist capacities (equal opportunities offices) in administrative structures both at the federal and cantonal levels. Attempts to introduce gender mainstreaming at the administrative and political levels has at times had perverse effects such as the suppression of particular in favour of women.
16. Discrimination against women persists on a daily basis in particular with regard to their chances in the job market, which is partly the result of discrimination in professional training but also the result of direct discrimination. Women continue to be under-represented in high-level positions of responsibility. Concerning salary discrimination, Switzerland ranks 40th in the world<sup>30</sup> with salaries for the same work being up to 23% lower for women than for men<sup>31</sup>.
17. Migrant women are often subject to double discrimination as a result of their gender and their status as foreigners and as women. This holds particularly true for women without legal status, with a precarious residence permit, or where their legal status is linked to the residence permit of the husband. There is little chance that their fundamental rights will be respected, and they risk deportation if they report acts of violence directed against them (sexual, trafficking in women, domestic violence). Furthermore, the cantons apply different rules with regard to the protection of these women. From a human rights perspective, it is problematical that the Foreign Nationals Act takes precedence over the protection of victims of violence.
18. The police continue to be implicated in human rights violations in spite of major progress in particular in the training of police officers. A recent report<sup>32</sup> highlighted several cases of excessive use of force, of the use of dangerous methods and equipment, e.g. resort to the postural asphyxia which has led to several deaths in the past few years, the use of tear gas in enclosed spaces and target marking bullets. In addition, there are reports of racist and discriminatory conduct in particular against migrants involved in deportation procedures. Police officers who commit human rights violations often go unpunished, in

particular because of the absence, in the majority of cantons, of an independent office for depositing and investigating complaints against police conduct<sup>33</sup>.

19. In the context of Swiss migration policy, an unaccompanied minor is considered first of all to be a foreigner before being seen as a child in need of protection<sup>34</sup>. Moreover, some provisions of the laws on asylum and on foreign nationals do not comply with the requirements of the CRC<sup>35</sup>. In addition, minors do not benefit from adequate measures of guardianship in registration and procedural centres nor of free legal support as provided for in the CRC. Guardianship measures differ from one canton to another.
20. Asylum seekers whose applications have been rejected and who have been ordered to leave Switzerland are denied social assistance. This rule also applies to minors. They only have the right to emergency aid, which is guaranteed to them in the Federal Constitution<sup>36</sup>, but which, in practice, is frequently only granted on dissuasive conditions, which are incompatible with the exercise of the right<sup>37</sup>. Moreover, it is the responsibility of the cantons to allow for exceptions to the rule regarding the exclusion of especially vulnerable individuals from ordinary social assistance. This option, however, is applied very unequally from canton to canton. It is also worrying that according to the law, individuals under extraordinary procedures are excluded, without exception, from ordinary social assistance regardless of the duration of the procedure.
21. The examination of requests for asylum is subject to especially severe conditions that in many cases harm the otherwise fair character of the procedure. This applies in particular to the possibility of not proceeding to an in-depth examination of requests for asylum submitted by seekers without identity papers. The practice of the authorities in this respect does not ensure respect of the Convention Relating to the Status of Refugees and for this reason has been criticised by the HCR<sup>38</sup> on several occasions<sup>39</sup>. The Committee Against Torture<sup>40</sup> considered, in a decision on 16 November 2007<sup>41</sup>, that by refusing to consider such requests for asylum, the Swiss authorities risk violating article 3 of the CAT.
22. In Switzerland, free and immediate judicial assistance financed by the State is not available in the case of negative decisions concerning asylum<sup>42</sup>. The activity of charity associations is not enough to fill this gap due to their limited resources. This situation is very worrying in view of the magnitude of the legal issues potentially at stake: the life, physical and psychological integrity as well as the freedom of the asylum seekers involved.

23. The five state centres for registration and procedures where asylum requests can be submitted are not sufficiently equipped to house the asylum seekers assigned to them, and who can be required to live there for periods lasting several weeks under semi-prison-like conditions<sup>43</sup>. There is inadequate provision of medical care and checks since systematic medical visits were stopped for budgetary reasons.
24. Different forms of administrative detention can be applied in view of the very wide range of grounds that exist for having foreigners deported. Periods of detention can amount to up to two years, which is a serious contradiction of the principle of proportionality<sup>44</sup>. Even minors can be detained for periods of up to one year within the framework of constraining measures. Under the previous law on asylum, a total of 355 individuals were detained between 2002 and 2004. A report by the Parliamentary Control Committee cited some cases where the period of detention was longer for minors than for adults<sup>45</sup>.
25. Problems of overcrowding exist in a number of prisons. In Champ-Dollon Prison in Geneva<sup>46</sup>, for example, the problem is chronic. In 2006, the prison recorded an average occupation rate of 175%, corresponding to an average daily detention volume of 472 prisoners.<sup>47</sup> This situation has clear consequences for the living conditions of the detainees, in particular in terms of sanitary conditions, access to care and to legal counsel, as well as on security at the places of detention and at work places<sup>48</sup>.
26. Suicide continues to be the main cause of death among young people in Switzerland<sup>49</sup>, but the responsible state offices and services of the Confederation have taken no preventive measures<sup>50</sup>. Moreover, the lack of reliable data on the situation regarding suicide in Switzerland makes initiatives by private entities and the cantons more difficult.
27. In spite of the generally high standard of living in Switzerland, one person in seven cannot assure their existence by their own means<sup>51</sup>. Furthermore, the absence of coherent statistical data on the extent of poverty in Switzerland testifies to the lack of importance accorded to this problem by the authorities. The number of people falling under the category of the “working poor”, i.e. those in paid employment but unable to rise above the poverty line, was estimated at 250,000 in 2001<sup>52</sup>. This rate rises to 17% in households with three or more children.<sup>53</sup> It is estimated that one single-parent family in four is affected by poverty of which the majority is headed by a single woman. Almost 45% of all social beneficiaries are less than 25 years old, representing 100,000 young people, of which 70,000 are minors<sup>54</sup>. Moreover, NGOs in the field report that for many administrative reasons, some families in difficulty can experience problems accessing social services to which they are entitled.

28. Foreigners and marginalised persons (in particular unemployed people and social assistance beneficiaries) are regular targets of stigmatisation campaigns conducted by certain political parties to denounce abuses. The government, which is responsible for preventing such campaigns, is taking no concrete steps whatever to prevent such behaviour.
29. The Jeni, Roma and Sinti, of which about 30,000 are living in Switzerland and about 2,500 are part of the travelling community<sup>55</sup>, continue to be victims of various kinds of discrimination, in particular in the context of living areas. In a report<sup>56</sup>, the Federal Council mentions the need for 29 areas for the Travellers to stay for extended periods and for 38 transit areas. However, the legal means to oblige the cantons to take adequate measures are currently lacking because the Confederation is unwilling to commit further resources for this purpose even though it acknowledges the need to act in compliance with its international<sup>57</sup> and constitutional obligations.
30. Switzerland has one of the highest rates (35.7%) of firearms kept in private homes<sup>58</sup>. One reason for this is the relatively loose regulatory framework in Switzerland governing the acquisition and possession of firearms. There are large gaps in legislation on weapons; in particular, it is still possible for minors to bring weapons home<sup>59</sup>. Nevertheless, firearms are frequently used in cases of violence within couples and in families. One out of two cases of homicide happens within marriages, and firearms are involved in about 35% of cases<sup>60</sup>. Moreover, about 240 suicides each year are committed with a firearm<sup>61</sup>. At the international level, Switzerland has not signed the Protocol against the manufacture and illicit trade in firearms (2001).
31. Trade relations, both bilateral and multilateral<sup>62</sup>, cannot evade either the obligation, provided for in article 54 para 2 of the Federal Constitution<sup>63</sup> to “promote human rights”, or the general principles of international human rights law. However, in the bilateral agreements on free trade negotiated with other countries, Switzerland includes clauses obliging its negotiating partners to adopt provisions that go beyond the requirements of the WTO<sup>64</sup>, in particular with regard to intellectual property<sup>65</sup>. These can hinder access to generic drugs and health care<sup>66</sup>, to the right to information, access to scientific and educational resources and to the traditional use of seeds and natural resources provided for in the right to food. Such clauses limit the capacities of states to fulfil their own human rights obligations.



#### **IV. Cooperation between Switzerland and the human rights mechanisms**

32. At the international level, Switzerland is deeply involved in the promotion and protection of human rights, and it is very active in efforts to improve the international institutional framework, in particular in creating and ensuring the establishment of the Human Rights Council and in the creation of the International Criminal Court. However, its domestic commitment has been less strong.
33. There is little transparency with regard to the responsibility for carrying out the recommendations of the UN treaty bodies. While the bulk of them directly concern the cantonal authorities, both the exchange of information and coordination between the Confederation and the cantons remains insufficient and somewhat opaque. This applies in particular to the follow-up to the recommendations of the treaty bodies - follow-up which one do not know how it is carried out. No less than four federal departments are responsible for reporting on progress achieved and the measures taken to apply human rights conventions and treaties. As result there is a lack of transparency in the allocation of responsibilities, and there have been considerable delays in submitting most of the reports, in particular the second report to the Committee on Economic, Social and Cultural Rights, which should have been submitted in 1999.

#### **V. Progress, better practices, challenges and problems encountered by Switzerland**

34. The revision to the Civil Code, dated 23 June 2006, which foresees specific provisions concerning the protection of personal data in the event violence, threats or harassment, made clear improvements to the rights of women. The measures provided for, and which have been in effect since 1 July 2007, include among others things the expulsion of the perpetrator of acts of violence committed in a place of communal residence; the prohibition on physically approaching the plaintiff; and the prohibition on contacting that person. Some cantons have already applied these protection measures.
35. With the introduction of the law on the Federal Supreme Court and the Federal Administrative Court, it is now possible to take penal judgements to a higher level, and it has been possible to withdraw the reservations to article 14, para 5 of the UN Covenant on Civil and Political Rights and to article 40, para 2b (v) of the CRC.<sup>67</sup>
36. The amendments introduced to the Federal Law on the acquisition and loss of Swiss nationality now allow stateless children who have been living in Switzerland for five years

to submit a request for facilitated naturalisation, regardless of their place of birth. This provision permitted the withdrawal of the reservation formulated in article 7 para 2 of the CRC.

37. With the entry into force of the Federal Act governing the conditions of penal detention of minors, which provides for the separation of children from adults in detention, it was also possible to lift the reservation to article 10, para 2b of the UN Covenant on Civil and Political Rights<sup>68</sup>.

38. The Optional Protocol to the CRC, concerning the sale of children, child prostitution and pornography was ratified on 19 September 2006, and entered in force on 19 October 2006.

39. The Swiss Federal Parliament is currently in the process of approving the Optional Protocols to CEDAW and to CAT.

## **VI. Priorities for human rights and the principal recommendations**

40. Switzerland could substantially improve the domestic human rights situation if it were to establish a genuine national human rights institution that is independent and adequately resourced to fill the major gaps in the existing institutional framework for implementing human rights. Such an institution would ensure that the human rights situation is monitored and that there is better coordination between the different institutional levels and it would contribute to promoting a coherent and credible approach to policy on human rights in Switzerland.

41. The recommendations of the treaty bodies to which Switzerland is party should become the object of national action plans and regular follow-up that are made public.

42. Switzerland must ratify the Convention on the protection of the rights of migrant workers, the Optional Protocol to the International Covenant on Civil and Political Rights (and that to the International Covenant on Economic, Social and Cultural Rights as soon as it is adopted), the International Convention for the Protection of all Persons against Enforced Disappearance and the Convention on the Rights of Disabled Persons. At the regional level, it must sign the revised European Social Charter and ratify the Convention of the Council of Europe on Action against Trafficking in Human Beings.

43. It must recognise economic, social and cultural rights as justiciable rights and not merely as social goals, and it must take the necessary judicial measures to make them applicable.
44. In the framework of the ratification of the Optional Protocol to CAT (OPCAT), Switzerland must create a national prevention mechanism that is both credible and sufficiently resourced to be able to fulfil its mandate.
45. The body of laws adopted by Parliament must be reviewed for their constitutionality with a view to verifying their conformity with Switzerland's international commitments in the sense of art. 190 of the Federal Constitution.
46. Legislation concerning discrimination must be strengthened by means of a new federal law against discriminatory practices. National action programmes and strategies must be developed to combat racism and xenophobia, as well as discrimination and stigmatisation, in particular to guarantee the effective implementation of ICERD, CEDAW and CRC.
47. Measures must be taken to ensure that the provisions concerning the protection of human rights are disseminated more effectively throughout Switzerland and to integrate human rights education on a systematic basis in school curricula and professional training programmes.
48. In the discussion on human rights standards in the context of the responsibilities of companies<sup>69</sup> Switzerland should support all initiatives that aim to establish a binding normative framework governing the activities of private sector enterprises.

**For any questions concerning this report, please contact the Coalition Coordination Office:** E-mail [Swiss-UPRcoalition@amnesty.ch](mailto:Swiss-UPRcoalition@amnesty.ch) or at the following address: Amnesty International, Section for Switzerland, Speichergasse 33, 3001 Bern.

**07/04/2008**

## VI. Notes

<sup>1</sup> The following organisations are members of the Swiss Coalition for the UPR : ACOR SOS Racisme, Action by Christians for the Abolition of Torture (ACAT), Action de Carême, Alliance sud, Amnesty International Swiss Section, Association for the Prevention of Torture (APT), Association for the promotion of a Swiss National Human Rights Institution, ATD Quart-Monde, Bern Declaration, Caritas, Child Rights Network, Coalition Post-Beijing, Youth resource center on Human Rights (CODAP), Collectif de soutien aux sans-papiers, Egalité Handicap, Femmes Juristes Suisse, Fighting Hunger with human rights (FIAN Suisse), humanrights.ch/Mers, International Federation for Human Rights (FIDH), PLANeS - Fondation suisse pour la santé sexuelle et reproductive, Pink Cross, School Instrument for Peace (Ecole Instrument de Paix), Society for threatened Peoples, Stop Suicide, Swissaid, Swiss Foundation of the International Social Service, Swiss League for Human Rights (Ligue suisse des droits de l'homme), Swiss Lesbian Organisation (LOS), Swiss Refugee Council (OSAR), Terre des Hommes – aide à l'enfance, Women's Information Centre for women from Africa, Asia, Latin America and Eastern Europe (FIZ), World Organisation Against Torture (OMCT).

<sup>2</sup> See notably Art. 190 Swiss Federal Constitution <http://www.admin.ch/ch/f/rs/101/a190.html>

<sup>3</sup> Economic, Social and Cultural Rights.

<sup>4</sup> Access to housing is one such example that is being considered a « social goal » (art. 41 al. 1 let. Fed. Cst.). With the exception of Geneva, which formally integrated the right to housing in its constitution, most Swiss cantons regard it as a social goal. The Federal Court applies the same reasoning to Art. 11 ICESCR and generally speaking, is very reluctant regarding the direct applicability of human rights obligations.

<sup>5</sup> [http://www.humanrights.ch/home/de/Instrumente/Euoparats-Abkommen/Sozialcharta/idart\\_66-content.html#revsoz](http://www.humanrights.ch/home/de/Instrumente/Euoparats-Abkommen/Sozialcharta/idart_66-content.html#revsoz)

<sup>6</sup> IESCR.

<sup>7</sup> See the following comments on the issue: Para. 16, CRC/C/15/Add.182 (13 June 2002), Para. 13, CERD/C/60/CO/14 (21 May 2002), Para. 66, A/HRC/4/19/Add.2 (30 January 2007).

<sup>8</sup> [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.Fr](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.Fr)

<sup>9</sup> [http://search.parlament.ch/f/homepage/cv-geschaefte.htm?gesch\\_id=20010461](http://search.parlament.ch/f/homepage/cv-geschaefte.htm?gesch_id=20010461)

<sup>10</sup> [http://www.foerderverein-mri.ch/c\\_data/ParisPrinciples.french.pdf](http://www.foerderverein-mri.ch/c_data/ParisPrinciples.french.pdf)

<sup>11</sup> See notably the following comments: Para. 16, CRC/C/15/Add.182 (13 June 2002), Para. 13, CERD/C/60/CO/14 (21 May 2002), Para. 66, A/HRC/4/19/Add.2 (30 January 2007).

<sup>12</sup> The reservation to article 4 aims to protect the freedom of association. Consequently however, any membership and participation in organisations with racist tendencies cannot be punished.

<sup>13</sup> Convention Against the Elimination of All Forms of Racial Discrimination.

<sup>14</sup> This law was adopted in 2002. [http://www.admin.ch/ch/f/rs/c151\\_3.html](http://www.admin.ch/ch/f/rs/c151_3.html)

<sup>15</sup> Lesbians, gays, bisexuels et transgender.

<sup>16</sup> Child Rights Convention.

<sup>17</sup> The cantons have a ten years' deadline to adapt detention centres. See on that subject the response of the Federal Council dated 16.05.2007 [http://www.parlament.ch/D/Suche/Seiten/geschaefte.aspx?gesch\\_id=20073127](http://www.parlament.ch/D/Suche/Seiten/geschaefte.aspx?gesch_id=20073127)

<sup>18</sup> Art. 44, 45 and 47 Foreign National Act.

<sup>19</sup> Committee on the Rights of the Child, General Comment No 8 The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (art. 19, 28 (par. 2) et 37, amongst others), CRC/C/GC/8, Geneva, 21 August 2006.

<sup>20</sup> Art. 23 LEtr. A study mandated by the Federal Office for Migration has estimated that approximately 90'000 individuals have no legal status in Switzerland while other sources mention 300'000 individuals. <http://www.bfm.admin.ch/bfm/fr/home/dokumentation/medienmitteilungen/2005/2006-04-26.html>

<sup>21</sup> European Free Trade Association.

<sup>22</sup> The Federal Court has commented the following : « *La longue durée d'un séjour en Suisse n'est pas, à elle seule, un élément constitutif d'un cas personnel d'extrême gravité dans la mesure où ce séjour est illégal. Sinon, l'obstination à violer la législation en vigueur serait en quelque sorte récompensée* » (arrêt du Tribunal fédéral (ATF) 130 II 39, consid. 3).

<sup>23</sup> Article 14 Federal Constitution.

<sup>24</sup> See art. 97a, 105 letters 4 and 109 al. 3 Swiss Civil Code (RS 210).

<sup>25</sup> See the circular of the Federal Migration Office dated 22 December 2005 « *Lutte contre les mariages de complaisance* ».

[http://www.bfm.admin.ch/etc/medialib/data/migration/rechtsgrundlagen/weisungen\\_und\\_kreisschreiben/weitere\\_weisungen.Par.0034.File.dat/F\\_scheinehen\\_f.pdf](http://www.bfm.admin.ch/etc/medialib/data/migration/rechtsgrundlagen/weisungen_und_kreisschreiben/weitere_weisungen.Par.0034.File.dat/F_scheinehen_f.pdf) »

<sup>26</sup> Penal Code of 21 December 1937 ; RS 311.

<sup>27</sup> Convention on the Elimination of All Forms of Discrimination Against Women.

<sup>28</sup> The lack of national action plans has been notably underlined by several treaty bodies, in particular the Committee on the Rights of the Child (recommendations 12 and 14) (CRC/C/15/Add.182), the Committee on the Elimination of Discrimination against Women (2003) <http://www.universalhumanrightsindex.org/documents/826/397/document/en/text.html>, the Human Rights Committee (2001), <http://www.universalhumanrightsindex.org/documents/825/576/document/en/text.html> and in the context of the report of the Special Rapporteur on Contemporary forms of racism <http://www.universalhumanrightsindex.org/documents/832/1075/document/en/text.html>

- <sup>29</sup> « *De l'importance de diffuser et faire connaître la Convention relative aux droits de l'enfant et son contenu en Suisse: analyse basée sur les résultats d'une enquête menée auprès de 3'200 participants* » *Terre des hommes - aide à l'enfance, le Mont-sur-Lausanne, mars 2007.*  
[http://www.tdh.ch/website/doc\\_dnld.nsf/bf25ab0f47ba5dd785256499006b15a4/2e2268234b23eb1fc12571e300458c7a/\\$FILE/suisse\\_rapport\\_DDE\\_tdh\\_fr\\_260307.pdf](http://www.tdh.ch/website/doc_dnld.nsf/bf25ab0f47ba5dd785256499006b15a4/2e2268234b23eb1fc12571e300458c7a/$FILE/suisse_rapport_DDE_tdh_fr_260307.pdf)
- <sup>30</sup> <http://www.weforum.org/en/initiatives/gcp/Gender%20Gap/index.htm>
- <sup>31</sup> OFS, Swiss Investigation on the structure of salaries (2006) (Enquête suisse sur la structure des salaires).  
[http://www.bfs.admin.ch/bfs/portal/fr/index/themen/03/04/blank/key/lohnstruktur/nach\\_geschlecht.html](http://www.bfs.admin.ch/bfs/portal/fr/index/themen/03/04/blank/key/lohnstruktur/nach_geschlecht.html)
- <sup>32</sup> Police, justice and human rights, Police practices and human rights in Switzerland. Concerns and recommendations by Amnesty International, June 2007 (Police, justice et droits humains Pratiques policières et droits humains en Suisse. Préoccupations et recommandations d'Amnesty International, juin 2007).  
<http://www.amnesty.ch/fr/themes/les-violations-des-droits-humains-en-suisse/police-en-suisse/>
- <sup>33</sup> The recommendations in this report are consistent with the findings of other UN treaty bodies' reports. Committee against torture, Report 27.11.1997 and 21.6.2005, Committee on the Elimination of Racial Discrimination, Reports March 1998 and May 2002, Human Rights Committee, reports 8.11.1996, 12.11.2001. See also the preliminary observations of the ECPT after visiting Switzerland in September – October 2007, in particular p. 6 of the report. <http://www.cpt.coe.int/documents/che/2008-01-inf-fra.htm>
- <sup>34</sup> « *Les mineurs non accompagnés en Suisse : exposé du cadre légal et analyse de la situation sur le terrain* », Martine Lachat Clerc, *Terre des hommes – aide à l'enfance, Le Mont-sur-Lausanne, octobre 2007.*  
[http://www.tdh.ch/website/doc\\_dnld.nsf/bf25ab0f47ba5dd785256499006b15a4/2e2268234b23eb1fc12571e300458c7a/\\$FILE/tdh\\_rapport\\_mna\\_2007\\_fr.pdf](http://www.tdh.ch/website/doc_dnld.nsf/bf25ab0f47ba5dd785256499006b15a4/2e2268234b23eb1fc12571e300458c7a/$FILE/tdh_rapport_mna_2007_fr.pdf)
- <sup>35</sup> *La loi sur les étrangers et la loi sur l'asile révisée à la lumière de la Convention relative aux droits de l'enfant*, Sylvie Marguerat, Minh Son Nguyen, Jean Zermatten, *Terre des hommes – aide à l'enfance, Le Mont-sur-Lausanne, juin 2006.*
- <sup>36</sup> Art. 12 Federal Constitution.
- <sup>37</sup> Kathrin Buchmann/Silvana Kohler, *Organisation suisse d'aide aux réfugiés (OSAR), Nothilfe im Asylbereich, Einzelschicksale und Überblick über die kantonale Praxis, Berne, 17 août 2006*; Kathrin Buchmann/Silvana Kohler, *Organisation suisse d'aide aux réfugiés (OSAR), Verschärfungen vom 1. April 2004 im Asyl- und Ausländerbereich – Bilanz nach einem Jahr, Berne, 15 juillet 2005*; Kathrin Buchmann/Silvana Kohler, *Organisation suisse d'aide aux réfugiés (OSAR), Nothilfe für Personen mit rechtskräftigem Nichteintretensentscheid – Überblick über die kantonale Praxis – Stand vom 27.05.2004, Berne, 3 juin 2004.*
- <sup>38</sup> High-Commissioner for Refugees.
- <sup>39</sup> Susanne Bolz, *Organisation suisse d'aide aux réfugiés (OSAR), Nichteintreten wegen Papierlosigkeit – Die Anwendung von Art 32 Abs. 2 Bst. a AsylG durch das Bundesamt für Migration, Berne, 17 juillet 2007.*
- <sup>40</sup> Committee Against Torture.
- <sup>41</sup> CAT/C/39/D/299/2006.
- <sup>42</sup> Art. 17 al. 4 LAsi and Art. 7a de l'ordonnance 1 sur l'asile relative à la procédure.
- <sup>43</sup> Art. 26 LAsi et l'ordonnance du Département fédéral de justice et police relative à l'exploitation des centres d'enregistrement.
- <sup>44</sup> Art. 75ss. LEtr ; sur la durée maximale de détention, voir l'art. 79 LEtr.
- <sup>45</sup> Report of the National Council Commission on management dated 7 November 2006.  
[http://www.humanrights.ch/home/upload/pdf/061109\\_GPK\\_Zwangsmassnahmen.pdf](http://www.humanrights.ch/home/upload/pdf/061109_GPK_Zwangsmassnahmen.pdf)
- <sup>46</sup> See on that subject the preliminary observations of the CPT following its visit in Switzerland in September – October 2007, in particular p. 6 of the report. <http://www.cpt.coe.int/documents/che/2008-01-inf-fra.htm>
- <sup>47</sup> Report of the State Council to the Assembly on the motion of Mrs. Esther Alder, Véronique Schmied, Loly Bolay, Michel Ducret, Sophie Fisher, Renaud Gautier, Eric Ischi, Eric Stauffer et Alberto Velasco : *interrogations sur l'interface médecine-privation de liberté dans le cadre de la planification pénitentiaire, sur les outils de planification sanitaires correspondants, M 1675-A, 7 février 2007, p.2.*
- <sup>48</sup> See LSDH, A. Giselle Toledo Vera, *Rapport sur la situation des droits fondamentaux des personnes détenues à la prison de Champ-Dollon, Genève, 13 avril 2007.*
- <sup>49</sup> On average, 10.47 over 100'000 persons between 15 and 19 years old have committed suicide in Switzerland between 1969 and 2004 ; 23.82 over 100'000 persons between 20 and 24 years old have committed suicide in the same period (Federal Statistical Office, 2004).
- <sup>50</sup> The Federal Council does not consider this to be of federal competence, but does not as such encourage the cantons to further investigate this topic.
- <sup>51</sup> Christine Kehrl, Carlo Knöpfel, *Manuel sur la pauvreté en Suisse, Caritas, 2007.*
- <sup>52</sup> Based on the statistics of the Swiss Investigation on the active population (Enquête suisse sur la population active (ESPA)) of 2001.
- <sup>53</sup> Eric Crettaz, *Office fédéral de la statistique, La pauvreté des personnes en âge de travailler, mars 2007.*
- <sup>54</sup> « *Jeune et pauvre : un tabou à briser* », Berne, août 2007.  
[http://www.ekkj.admin.ch/c\\_data/f\\_07\\_rap\\_Armut.pdf](http://www.ekkj.admin.ch/c_data/f_07_rap_Armut.pdf)
- <sup>55</sup> [http://www.bak.admin.ch/bak/themen/sprachen\\_und\\_kulturelle\\_minderheiten/00507/00512/index.html?lang=de](http://www.bak.admin.ch/bak/themen/sprachen_und_kulturelle_minderheiten/00507/00512/index.html?lang=de)
- <sup>56</sup> *Office fédéral de la culture, Rapport sur la situation des gens du voyage en Suisse, octobre 2006, www.bak.admin.ch*
- <sup>57</sup> Since 1998, Switzerland is a State party to the Council of Europe Framework Convention for the Protection of National Minorities since 1998.

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<sup>58</sup> Quoted by the Stop Suicide Association. Changing Times : A Longitudinal Analysis of International Firearm Suicide Data, by Vladeta Ajdacic-Gross, Martin Killias, andt al., in American Journal of Public Health, October 2006, vol. 96, no 10, available on <http://www.stopsuicide.ch/Moins-d-armes-moins-de-suicides,159>

<sup>59</sup> New Art. 11a.

<sup>60</sup> Special investigation of the Federal Statistical Office (2006) on homicides and domestic violence.

<sup>61</sup> Federal Statistical Office (2006). See also <http://www.stopsuicide.ch/-Statistiques->

<sup>62</sup> Switzerland negotiates jointly with its partners of the European Free Trade Association (EFTA : Norway, Liechtenstein and Island). In view of the importance of its pharmaceutical industry, Switzerland is at the source of the demands on intellectual property of medicine. Lists of finalised or still in negotiation agreements on 28 November 2007: [http://www.evb.ch/cm\\_data/LISTE\\_Freihandelsabkommen\\_FHA\\_DER\\_SCHWEIZ\\_D.pdf](http://www.evb.ch/cm_data/LISTE_Freihandelsabkommen_FHA_DER_SCHWEIZ_D.pdf)

<sup>63</sup> « *La Confédération s'attache à préserver l'indépendance et la prospérité de la Suisse; elle contribue notamment à soulager les populations dans le besoin et à lutter contre la pauvreté ainsi qu'à promouvoir le respect des droits de l'homme, la démocratie, la coexistence pacifique des peuples et la préservation des ressources naturelles.* »

<sup>64</sup> World Trade Organization.

<sup>65</sup> For an analysis of the provisions requested by Switzerland, see the 2004 report of the Bern Declaration: [http://www.evb.ch/cm\\_data/public/Deprive\\_Doha.pdf](http://www.evb.ch/cm_data/public/Deprive_Doha.pdf)

<sup>66</sup> By strengthening the monopolistic rights of the pharma industry and by limiting the competition of generic drugs, these principles allow for high drug prices and thus reduce the economic accessibility to key drugs for many poor segments of the population in developing countries. In 2004, the Rapporteur of the UN for the right to health addressed this issue, which Switzerland so far has not commented.

<sup>67</sup> <http://www.news.admin.ch/message/index.html?lang=fr&msg-id=11958%20>

<sup>68</sup> See also item 4, p.2.

<sup>69</sup> Scheduled at the 2008 June session of the Human Rights Council.