

## **Main Recommendation**

1. *Develop and implement in cooperation with trans civil society organisations a comprehensive national strategy or an action plan to respect, protect and fulfil the human rights of all trans persons by all levels of the State.*

## **Summary**

2. Trans people are still a highly-stigmatized group at the margin of Swiss society. While at one point in their lives all trans people experience a violation of their rights, some groups are at an increased risk, namely asylum seekers, people of colour, sex workers, poor people, prisoners, children or people with disabilities. Being trans influences nearly all areas of one's life and human rights violations can also be found in any area of life. Therefore, the state can only fulfil its duties to respect, protect and fulfil the human rights of trans people by taking a comprehensive approach.

### **I. General / Structural Issues**

3. In general, trans people get only very little support from the Swiss state. Their **NGOs** are neither financially supported nor always consulted proactively when trans rights are discussed.
4. The Swiss Centre of Expertise in Human Rights (SCHR), the pilot project for a **National Human Rights Institute**, included trans in their work from the beginning, also consulting with trans NGOs. A Swiss NHRI taking this approach, independent and with the competence to support individual cases as well as tackling structural rights violations, would be an important partner for extremely marginalized minorities such as trans people.
5. To prevent human rights violations by state officials, to have a respecting, protecting and fulfilling legal system in place and to ensure the protection of human rights by the judicial system, all powers of the state need to be trained and sensitized. *We recommend **training and awareness raising** about trans people and their rights especially for decision-makers of all levels of the state.*
6. In a study on access to justice in cases of discrimination, the SCHR showed that there is a high level of discrimination and human rights violations.<sup>1</sup> However, as the Federal **Statistical** Office does not include trans people, in particular non-binary people, in their statistics, numbers are lacking in most areas. The CEDAW recommended that Switzerland "Include reference to, and documentation on, LGBTI persons in national health surveys and registers" (CEDAW, 4th&5th periodic reports, Concl. Obs. Switzerland, § 39(c)). So far, we have not learned about any steps being taken in this direction but *recommend the official statistics to include trans people.*

### **II. Non-binary People**

7. The gender identity of trans people can be female or male but also neither (exclusively) female nor (exclusively) male, people referenced to in this report as "non-binary". Non-binary people are becoming more and more visible, more vocal and claiming their human rights. In 2016, the TGNS legal advice service successfully

supported non-binary people in changing their legal first name. However, Swiss law and state organs do neither recognize nor protect non-binary peoples' human rights specifically. There is no legal gender recognized beside F and M and no option to forego voluntarily any legal gender, forcing non-binary people into an inappropriate category either way. Statistics, forms, gender-segregated infrastructure, etc. are all limited to the binary system and therefore silence the existence of non-binary people.

### III. Discrimination, Violence and Hate Speech

8. Protection against **discrimination** based on ones gender identity is limited to, on the one hand, discrimination by the state and on the other hand, discrimination in employment. Trans people who are discriminated against by private parties in other areas of life than employment enjoy no legal protection at all. Art. 8 Constitution and the Federal Equality Act, the legal basis offering these protections against discrimination, do not mention trans people, i.e. "gender identity", explicitly, resulting in legal uncertainty. We emphasize the fact that in 2016/17 the Federal Council, as well as parliament, spoke out against such protection.<sup>ii</sup> But this does not change the fact that trans people do experience discrimination and do lack protection.
9. Including protection against **hate speech and discrimination** in the criminal code (art. 261<sup>bis</sup>) is under debate in parliament. However, the current proposal uses a terminology not including trans people: "sexual orientation and sexual identity".<sup>iii</sup> *To sanction transphobic crimes as well, we recommend including the term "gender identity" in art. 261<sup>bis</sup> Criminal Code.*
10. Respectful treatment by police forces is a precondition for trans people to report incidents of hate crimes and hate speech. *To this end, we recommend all **police forces** to be trained and sensitized on how to support trans victims in a respectful manner.* Such trainings are included in the Zurich police school but not in all police schools.

### IV. Prison

11. Trans people in prison, whether because they were convicted for having committed a crime or asylum seekers in detention pending deportation, are especially vulnerable. Violations of their human rights include being **denied access to indicated gender affirming medical treatment and having their gender identity ignored completely**. The latter includes being housed and addressed according to the gender assigned at birth but not according to their gender identity, having their own clothes, make-up, etc. being taken away and forced to wear clothes of the other gender, etc. Especially for asylum seekers who fled from such treatment this is highly traumatizing. While there are examples of trainings being given showing positive effects, such trainings are limited to few detention facilities. *We strongly recommend to introduce, implement and monitor guidelines for all Cantons to ensure trans prisoners human rights.*

## V. Asylum

12. Trans people fleeing persecution in their countries of origin and asking for refugee status in Switzerland are at a high risk to suffer specific human rights violations.
13. If the **Dublin convention** is applicable to their claim in the sense of the asylum seeker having been registered by another state already, Swiss authorities often refrain from carefully evaluating the specific situation for trans people in this other state. This leads to non-entrée decisions with the most likely effect of the person being deprived of their human rights when deported to the respective other state. This equals protection being refused.
14. Often problematic is the balance between careful **evaluation of the risk for the trans asylum seeker if being** either **deported** to another Dublin state or to their country of origin and the **duration of the procedure**. On the one hand, procedures at first instance can take up to four years. A duration that is extremely hard to endure. On the other hand, decisions (including non-entrée decisions) taken after a very short time are at risk of being based on false assumptions about the situation for trans people in a state. As trans people are often victims of homicide and brutal violence in many places around the world, and cannot live a life in dignity and in accordance with their gender identity, such negative decisions can have extreme consequences. *We strongly recommend more careful evaluation of the specific situation trans people face.*
15. In **asylum camps**, trans people are at specific risk to experience transphobic violence from other asylum seekers without being protected by those responsible for the camp. In practice, a serious problem is the use of sanitary facilities which many trans asylum seekers avoid using out of fear from violence. These camps are usually located away from cities, increasing the difficulty to reach support from trans organisations – often the only support breaking trans asylum seekers' social isolation. The fact that the Cantons are in charge of accommodation (often delegated to private organizations) does not exempt the state from its responsibility to guarantee the safety of all trans asylum seekers. *We recommend that trans asylum seekers not be accommodated in such asylum camps.*
16. In 2016, the State Secretariat for Migration together with TGNS and Queeramnesty (LGBT branch of Amnesty Switzerland) organized a training on LGBT asylum seekers. As this is an important step in the right direction, *we recommend such trainings to be mandatory and given regularly as well as being combined with clear and binding policies.*

## VI. Legal Gender Recognition

17. Legal gender recognition is key for trans people to access many other fundamental rights. Without documents reflecting their gender identity, the state forces trans people to be constantly visible – a driver for stigmatisation, marginalisation, discrimination, humiliation and violence. In 2016, TGNS accompanied approx. 70 trans people in the process of legal gender recognition or name change. In the ten years before TGNS was founded, not more than 20 such applications were submitted per annum.<sup>iv</sup> Mainly because of TGNS constant volunteer work over the last years, the judicial practice has improved significantly. Nevertheless, countering human rights violations is first and foremost the state's duty.

18. The key barriers to legal gender recognition are the medical interventions that are often required as *conditio sine qua non*. Without any legal base for it, some courts require trans people to **prove their infertility, or that they have undergone gender affirming surgery, and/or hormonal therapy**. In the last UPR cycle, the Federal Council mentioned a case from the regional court of Bern-Mittelland in which neither hormonal nor surgical gender affirming treatment was required.<sup>v</sup> While this is a positive example, which more and more courts follow, it does not reflect the average practice of courts.
19. From all trans people claiming legal gender recognition a **medical diagnosis** of “*transsexualism*” is required. According to ICD-10, this diagnose stigmatises them as having a “mental and behavioural disorder”.
20. As many trans people have to survive on little economic means, the **high costs** for legal gender recognition (up to more than 1’000 CHF) and the often degrading and complicated process to apply for legal aid may as well bar trans people from having their gender identity recognized.
21. Specific problems arise for trans people who are **not (only) of Swiss nationality**. These problems include non-recognition of legal gender recognition issued by foreign embassies based in Switzerland and excessive formalism in the recognition of decisions issued in the state of origin.
22. *We recommend the courts refrain from requiring medical interventions, including diagnosis, for legal gender recognition (see also CEDAW, 4<sup>th</sup>&5<sup>th</sup> periodic reports, Concl. Obs. Switzerland, § 39(d)), the costs to be lifted or lowered significantly, and to recognize decisions issued by foreign embassies in Switzerland.*

## VII. Health

### a) Genital Surgery

23. Genital surgeries on trans people are highly complex and difficult. Therefore, only highly competent surgeons who are constantly trained and capable of reaching the highest internationally recognized standards should perform these surgeries. Otherwise, patients are at a high risk to suffer severe complications, lack of function and psychological problems including suicidal thoughts. Surgeons practicing these surgeries in Swiss hospitals do not have sufficient competence and experience.<sup>vi</sup> *Therefore we recommend making sure gender affirming surgery performed by specialists abroad is reimbursed by basic health insurance.*

### b) Health Insurance

24. According to several rulings issued by the Federal High Court, all gender affirming treatment that is medically indicated and meets the legal requirements “effective, expedient and economically” must be reimbursed by the basic health insurance. However, in many cases **health insurances refuse to cover medically indicated treatment**.
25. The reasons given vary but usually are either in conflict with health insurance law or with the medical standards for the treatment of trans people as defined in the World Professional Association for Transgender Health’ Standards of Care Version 7, and adapted for Switzerland.<sup>vii</sup>

26. One of the key problems behind this is the institute of **medical examiners** (“médecins-conseils”). These doctors advise health insurance companies whether the costs shall be reimbursed or not – without having any expertise or experience in treating trans people. As a result, they can overrule an indication from a specialist and bar trans people from highly needed treatment. It is not rare that trans people need more psychological care because of these negative decisions, are unable to work and even become suicidal.
27. In its Concluding observations on the combined fourth and fifth periodic reports of Switzerland, **CEDAW**, § 39(d), **recommended that Switzerland “ensure that the costs for [surgical and/or hormonal treatment] is reimbursed”**. So far, we have not heard of any steps being taken to implement this recommendation. *Additionally, we recommend exempting medical examiners from evaluating gender affirming treatment.*

c) Reproductive Medicine

28. Trans people who undergo hormonal or surgical gender affirming treatment often do not get information about options of reproductive medicine like e.g. preserving sperm cells for trans women or egg freezing for trans men. Especially young trans people who medically transition, either based on their own free will or forced by the court, are deprived of the option to become a biological parent if they are not informed about and have access to options of reproductive medicine.

d) Suicide Prevention

29. Many studies conducted in other countries show that about two thirds of trans people have suicidal thoughts.<sup>viii</sup> Based on the experience of TGNS advisors, the figures in Switzerland are most likely also alarmingly high. Especially at risk are trans people who are denied access to needed gender affirming treatment, children and youth, and those suffering from social exclusion and discrimination.
30. Despite these alarming facts, **suicide prevention work does not include trans people specifically**. *Therefore we recommend including trans people in suicide prevention plans and actions.*

e) HIV / Aids

31. Trans people are at an increased risk of being HIV-positive, as many studies conducted in other countries show. The National Program on HIV and other sexually transmitted infections (NPHS) 2011-2017 states that there is no evidence that trans people in Switzerland are at a higher risk of infection with HIV than the “heterosexual population”.<sup>ix</sup> In the implementation phase of the program, trans people and especially trans sex workers have been included.<sup>x</sup> In 2017, the Federal Council is expected to decide on the prolongation of the NPHS. *We recommend including trans people as specific group at risk and increase activities to protect them in the next National Program on HIV and other sexually transmitted infections.*

## VIII. Children, Youth and Education

32. Before puberty starts, trans people do not need trans-specific medical treatment. However, access to **hormones blocking physical puberty** before their body alters is crucial. Otherwise changes which cannot be undone but make trans people visible for the rest of their life will occur. Due to a very low number of doctors providing such treatment access is not granted for all trans children who need it.
33. At **school**, trans pupils are often confronted with a lack of understanding and/or the prohibition to live and be recognized in accordance with their gender identity. In single cases, pupils have even been kicked out of public high-school for wearing clothes matching their gender identity. Whether trans children and youth get the support and understanding they need depends on their teachers and the school; TGNS accompanied children in supportive schools but also in hostile environments.
34. Especially the use of **gender-segregated infrastructure** like toilets, changing rooms or showers according to their gender identity is often prohibited to them. As a reaction, several trans pupils/students do not eat and drink during the day to avoid having to go to the toilet and do not shower after sports classes – with detrimental effects on their health and their ability to concentrate and to learn. Similar problems caused by gendered infrastructure also affect adult trans students.
35. Furthermore, without **school certificates / diplomas** reflecting their gender identity trans people do not have equal chances in employment. Some universities, like the University of Lucerne, enacted guidelines stating the right of actual and former trans students and employees to get all documents reflecting their gender identity, independent of legal gender recognition. Other schools and (technical) universities (of applied sciences) refuse to (re-)issue certificates / diplomas and by this mark trans people as such.
36. *We recommend all Cantons enact guidelines ensuring the fundamental rights of trans pupils and students.*

## IX. Employment and Poverty

37. Two studies undertaken by TGNS reveal that the **unemployment rate** of trans people in Switzerland is at 20%, i.e. five to six times higher than the average in Switzerland.<sup>xi</sup> As a result, trans people are disproportionately affected by poverty and exclusion from social life.
38. Several trans people reported that in reaction to their coming-out at the workplace they experienced **mobbing and/or got dismissed**. Several apprentices were forced to refrain from medically indicated gender affirming surgery during their apprenticeship. Also refusal to grant **sickness allowances** when undergoing gender affirming treatment has been reported several times. Gender affirming surgery qualifies as sickness under Swiss social insurance law and the law grants these allowances to every employee in case of sickness.
39. As a temporary special measure, the Federal Office for Gender Equality supports the project “Trans-Fair” implemented by TGNS which aims to combat discrimination of trans people in employment.

## Endnotes

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- <sup>i</sup> <<http://skmr.ch/frz/domaines/genre/publications/etude-discrimination.html>> (visited: 30.3.2017).
- <sup>ii</sup> <<https://www.ejpd.admin.ch/dam/data/bj/aktuell/news/2016/2016-05-25/ber-br-f.pdf>> (visited: 30.3.2017); 16.3626 Motion, Un plan d'action concret pour la protection contre la discrimination, rejected by the National Council on 15.03.2017.
- <sup>iii</sup> 13.407 Initiative parlementaire, Lutter contre les discriminations basées sur l'orientation sexuelle.
- <sup>iv</sup> <<https://www.transgender-network.ch/wp-content/uploads/2011/09/Masterarbeit-Recher-Alecs-def1.pdf>> (visited: 30.3.2017), p. 47.
- <sup>v</sup> Regionalgericht Bern-Mittelland, decision from 27.7.2012, CIV 12 1217, published in FamPra.ch 1 (2015) No. 2, p. 196–200.
- <sup>vi</sup> See e.g. for the University Hospital of Zurich: <[https://www.transgender-network.ch/2016/11/ergebnisse-der-umfrage-zur-patient\\_innenzufriedenheit-am-us/#more-9445](https://www.transgender-network.ch/2016/11/ergebnisse-der-umfrage-zur-patient_innenzufriedenheit-am-us/#more-9445)> (visited: 30.3.2017).
- <sup>vii</sup> WPATH, Standards of Care, V7: <[http://www.wpath.org/site\\_page.cfm?pk\\_association\\_webpage\\_menu=1351&pk\\_association\\_webpage=4655](http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1351&pk_association_webpage=4655)> (visited: 30.3.2017); adaptation for Switzerland: GARCIA NUÑEZ, David et al: De la transsexualité à la dysphorie de genre, Forum Med Suisse 2014;14(19):382-387.
- <sup>viii</sup> See e.g.: European Union Agency for Fundamental Rights: Being Trans in the European Union, Comparative Analysis of EU LGBT survey data, 2014, Fn. 73; HAAS, Ann P./RODGERS, Philip L./HERMAN, Jody L.: Suicide Attempts among Transgender and Gender Non-Conforming Adults, Findings of the National Transgender Discrimination Survey, 2014; McNEIL, Jay et al.: Trans Mental Health Study 2012, 2012.
- <sup>ix</sup> <<https://www.bag.admin.ch/bag/en/home/themen/strategien-politik/nationale-gesundheitsstrategien/nationales-programm-hiv-und-andere-sexuell-uebertragbare-infektionen/strategie.html>> Quote in fn. 81 (visited: 30.3.2017).
- <sup>x</sup> <<https://www.bag.admin.ch/bag/en/home/themen/strategien-politik/nationale-gesundheitsstrategien/nationales-programm-hiv-und-andere-sexuell-uebertragbare-infektionen/zielgruppe-mit-erhoehtem-expositionsrisiko-achse2/transmenschen.html>> (visited: 30.3.2017).
- <sup>xi</sup> <[https://www.transgender-network.ch/wp-content/uploads/2013/09/Factsheet\\_Transfair\\_FR.pdf](https://www.transgender-network.ch/wp-content/uploads/2013/09/Factsheet_Transfair_FR.pdf)> (visited: 30.3.2017).