



# **Contribution of the Swiss NGO Platform for Human Rights**

Universal Periodic Review of Switzerland, 4th Cycle

July 2022

## Impressum

This report is submitted to the Office of the United Nations High Commissioner for Human Rights by the Swiss NGO Platform for Human Rights with regards to the Universal Periodic Review (UPR) of Switzerland in 2023. The report was compiled by humanrights.ch and Amnesty International (Swiss section) on behalf of the Platform and is supported by all its members and several non-members who contributed.

The following organizations participated with their inputs:

- ACAT-Suisse
- Action de Carême
- Amnesty International (section suisse)
- Asylex
- Back to the Roots
- Centre d'assistance aux migrantes et aux victimes de la traite des femmes FIZ
- Coordination post Beijing des ONG Suisses
- FIAN Suisse
- humanrights.ch
- Inclusion Handicap
- InterAction
- Reporters sans frontières
- Réseau suisse des droits de l'enfant
- Robert F. Kennedy Human Rights Switzerland
- Société pour les peuples menacés SPM
- Solidarité sans frontières SOSF
- Swiss Refugee Council
- Transgender Network Switzerland TGNS

A list of all participating organizations and organizations in support of the report can be found in the Annex.

For a list of the member organizations and further information about the Swiss NGO Platform for Human Rights see: <https://www.humanrights.ch/fr/plateforme-ong/membres/>.

## Contact

Swiss NGO Platform for Human Rights  
c/o humanrights.ch  
Hallerstrasse 23  
CH-3012 Bern  
Phone +41 31 302 01 06  
E-mail: [ngo-plattform@humanrights.ch](mailto:ngo-plattform@humanrights.ch)  
Webpage: <https://www.humanrights.ch/fr/plateforme-ong/>

## **Abstract**

This submission was prepared for the Universal Periodic Review (UPR) of Switzerland in 2023. It indicates the approximate state of implementation of recommendations made to Switzerland during previous UPR cycles. It then captures the state of play for each theme and formulates recommendations for next steps to be taken by the authorities.


Among the priority areas of action, there are a series of recommendations dedicated on tackling discrimination in all its forms. Further, the report assesses the national human rights framework regarding issues such as the police and justice system and raises concern about the situation of vulnerable groups including migrants, asylum seekers and refugees, children, victims of trafficking and stateless persons, as well as the right to an adequate standard of living and the right to life, liberty, and security.


Taking account of Switzerland's role and responsibility regarding policy questions of global relevance, the submission also recommends Switzerland stepping up on tackling climate change, ensuring corporate accountability for its companies, and playing a positive role in combating the COVID19 and other pandemics.

## **Legend**

For the perceived level of implementation of recommendations, the following color scheme is used:

 = not implemented yet

 = in the process of implementation

 = partially implemented

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# 1 Ratifications

No./ Status	State of affairs	Recommendation
<b>1</b>	<p><b>Optional Protocols</b></p> <p>Switzerland has still failed to ratify the optional protocols to the ICCPR, the ICESCR, and the CRPD.</p>	Swiftly ratify the remaining optional protocols, allowing for individual communications.
<b>2</b>	<p><b>Indigenous and Tribal Peoples Convention ILO 169</b></p> <p>Despite hosting many multinational companies in the banking, mining, trading, pharmaceutical, agriculture and food sector, Switzerland has yet to ratify the ILO Convention 169.</p>	Ratify the ILO Convention 169.
<b>3</b>	<p><b>Convention on the Rights of the Child</b></p> <p>During the last UPR (2012), Switzerland rejected a recommendation to remove the reservations expressed regarding Articles 10.1, 37(c) and 40 of the CRC.<sup>1</sup></p>	Adapt its legislation to be able to remove the reservations made to Articles 10.1, 37(c) and 40 of the CRC.
<b>4</b>	<p><b>1961 Convention on the Reduction of Statelessness</b></p> <p>Switzerland has repeatedly stated its intention to ratify the Convention, which would improve the rights of stateless persons and persons at risk of statelessness on its territory.<sup>2</sup></p>	Accede to and fully implement the 1961 Convention on the Reduction of Statelessness.

<sup>1</sup> The CRC regretted these reservations and recommended their removal. In its state report to the CRC in 2018, the federal council declared to conduct a status report to decide whether the reservation to Art. 37c UN-CRC can be lifted. The report is still pending.

<sup>2</sup> Masshardt Nadine, Convention sur la réduction des cas d'apatridie, Postulat in the National Council, 21 September 2015, 15.3269, <https://www.parlament.ch/fr/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=35283> (visited 2 June 2022).

## 2 Institutional Reforms

<p><b>5</b></p> 	<p><b>Compatibility of Swiss law with international law and constitutionality of federal laws</b></p> <p>There is no institutional mechanism to prevent a public vote on issues that are contrary to human rights.<sup>3</sup></p>	<p>Pass a law declaring a popular initiative invalid in case of incompatibility with international human rights law and standards and the fundamental rights contained in the Constitution.</p>
<p><b>6</b></p> 	<p><b>National Human Rights Institution</b></p> <p>In October 2021 the Swiss Parliament passed the bill for a NHRI. However, the lack of sufficient funding and the absence of an explicit protection mandate mean it is unlikely that the NHRI will be able to function in full independence.<sup>4</sup></p>	<p>Increase the funding made available to the future NHRI to ensure its independence and enable it to comply with its mandate and the Paris Principles.</p>
<p><b>7</b></p> 	<p><b>Ombuds Offices</b></p> <p>There are only few out-of-court settlements at the level of the cantons and municipalities that can resolve human rights conflicts between citizens and state representatives.<sup>5</sup></p>	<p>Ensure that extrajudicial, independent and low-threshold Ombuds Offices are established at all federal levels for a wide variety of sectors.</p>
<p><b>8</b></p>	<p><b>Implementation of recommendations</b></p> <p>Coordination and follow-up to international human rights reviews are weak and ineffective. The “Coordination light” of the KIM<sup>6</sup> is not fulfilling its task and has no</p>	<p>Create an institutionalized, interdepartmental, and adequately resourced coordination mechanism between the confederation, the cantons and civil society to implement and review international human rights obligations including follow-up.</p>

<sup>3</sup> Several popular initiatives have been put to the vote and adopted that violate human right provisions. For instance, the initiative to ban wearing of full-face veils in public, or the ban on minarets; cf. UN News, UN rights chief says Swiss ban on minarets ‘clearly discriminatory’, 1 November 2009, <https://news.un.org/en/story/2009/12/322892-un-rights-chief-says-swiss-ban-minarets-clearly-discriminatory> (visited 2 June 2022).

<sup>4</sup> cf. Recommendations of the CCPR, CCPR/C/132/2/Add.4.

<sup>5</sup> To date there are only thirteen parliamentary Ombuds Offices and nine private law Ombuds Offices at the level of the cantons and municipalities, cf. Association des Ombudsmans Parlementaires Suisses, Adresses, <https://www.ombudsstellen.ch/fr/adresses/> (visited 2 June 2022).

<sup>6</sup> International Human Rights Policy Core Group of the Confederation, cf. Federal Department of Foreign Affairs (FDFA), Guidelines on Human Rights 2021-24, Coordination, 5.3, p. 21, <https://www.news.admin.ch/news/message/attachments/67117.pdf> (visited 12 July 2022).

	<p>strategy for the follow-up of recommendations at the level of the confederation, the cantons, and the municipalities.</p>	
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### 3 Climate Change and Human Rights

<b>9</b>	<p><b>More climate and development finance</b></p> <p>Switzerland has set insufficient reduction targets and is not meeting its commitments in either climate or development finance regarding the Paris Climate Agreement. Some of the climate finance is at the expense of development finance.</p>	<p>Review the 2030 emission reduction target and ensure it is fully aligned with the 1.5°C imperative and with Switzerland's level of capacity and responsibility.</p> <p>Substantially increase to at least 1 billion USD the climate finance to less wealthy countries for human rights-consistent mitigation and adaptation measures<sup>7</sup> and allocate new and additional funding for loss and damage.</p>
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### 4 Covid-19

<b>10</b>	<p>The COVID-19 pandemic has highlighted the importance of the right to health, to protect individuals and in the public interest. It also exacerbated existing inequalities in access to health.</p>	<p>Respect, protect and fulfil the right to the highest attainable standard of physical and mental health, starting by the legal recognition of the right to health as an individual, enforceable human right<sup>8</sup>, and by striving for equity in health.</p>
<b>11</b>	<p>Despite support from more than 100 States, Switzerland - along with a small group of wealthy States - has resisted efforts before the WTO to</p>	<p>Support the temporary lifting of intellectual property rights at the WTO and beyond - to promote</p>

<sup>7</sup> This should be in addition to the promised 0.7% of GDP for development financing.

<sup>8</sup> Among other things by recognising the direct applicability of the ICESCR and ratifying the optional protocol. See also the repeatedly expressed concern by the CESCR about Switzerland's "persistent position" that most of the provisions of the ICESCR "merely constitute programmatic objectives and social goals rather than legal obligations."; cf. Recommendations of the CESCR. E/C.12/CHE/CO/4, Rec. No. 4 and E/C.12/CHE/CO/2-3, Rec. No. 5.

	temporarily waive intellectual property rights on COVID-19-medical products. <sup>9</sup>	equitable global access to COVID-19 health products.
<b>12</b>	Pandemic measures have exacerbated gender inequalities in Switzerland. <sup>10</sup>	Implement all 9 recommendations of the Federal Commission for Women's Issues (FCWI) on this issue. <sup>11</sup>

## 5 Business and Human Rights

<b>13</b>	<p><b>Law on Corporate Accountability</b></p> <p>During the last UPR Switzerland accepted to increase oversight over Swiss companies operating abroad.<sup>12</sup> However, the law enacted in 2022 limits due diligence to child labor and certain conflict minerals, and non-compliance has no legal consequences. Only few companies are covered by the new provisions.<sup>13</sup></p>	<p>Enact a stand-alone corporate accountability law aligning with the UNGPs and corresponding to at least the standards of the foreseen EU Directive on Corporate Sustainability Due Diligence. It should provide for due diligence in relation to the company's own operations, its business relationships and throughout the value chain, as well as for effective enforcement mechanisms, appropriate remedies, and a supervisory authority to ensure compliance.</p>
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<sup>9</sup> World Trade Organization, Waiver from certain provisions of the tripartite agreement for the prevention, Containment and treatment of covid-19, 2 October 2020, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/W669.pdf&Open=True> (visited 13 July 2022).

<sup>10</sup> For instance, the closure of care and education facilities reinforced the gendered division of labor and low-income households in particular and thus an above-average number of women, earned less. Gender-segregated data was not collected from the very beginning; cf. Aggravation des inégalités entre les genres durant la pandémie: Étude et recommandations de la Commission fédérale pour les questions féminines CFQF, 23 May 2022, <https://www.admin.ch/gov/fr/accueil/documentation/communiqués.msg-id-88935.html> (visited 2 June 2022).

<sup>11</sup> The Recommendations are: (1) Expand family and school supplementary childcare as well as its financing by the public sector and maintain operations in crises, (2) Define framework conditions for home office and distribute care work equally, (3) Strengthen the integration of women into the workforce and introduce the right for parents to reduce their workload after the birth of a child, with the right to return to their original workload, (4) Targeted promotion of post-qualification for women; Upgrading of low-wage work and better wage protection in the event of a crisis, (5) Take into account the needs of small businesses in sectors typically dominated by women, (6) Offer specific support for employees in private households, (7) Collect and evaluate gender-specific data, (8) Make crisis intervention measures gender-responsive, (9) Strengthening the resilience of the economy and society with more equality; cf. Commission fédérale pour les questions féminines CFQF, Effets sexospécifiques des mesures étatiques de lutte contre le COVID-19, Recommandations de la Commission fédérale pour les questions féminines CFQF, May 2022, <https://www.news.admin.ch/newsd/message/attachments/71605.pdf> (visited 3 June 2022).

<sup>12</sup> cf. Report of the Working Group on the Universal Periodic Review - Switzerland, A/HRC/37/12, Rec. No. 147.39.

<sup>13</sup> The lack of progress has been confirmed by the CESCR in its Follow-up letter sent to the State party in April 2022, cf. Follow-up letter sent to the State party, CESCR, 2022-18/CESCR/FU, 14 April 2022.



<p><b>14</b></p>	<p><b>UN-Binding Treaty</b></p> <p>Switzerland attended all seven sessions of the OEIGWG<sup>14</sup> only as an observer.<sup>15</sup></p>	<p>Provide negotiation mandates to participate actively, substantively, and constructively in the OEIGWG, both during the sessions and the intersessional activities.</p>
<p><b>15</b></p>	<p><b>Anti-SLAPP regulation</b></p> <p>Since 2016, at least seven Swiss NGOs have been hit with 12 strategic lawsuits against public participation (SLAPPs).<sup>16</sup></p>	<p>Adopt an anti-SLAPP regulation to prevent or limit such lawsuits at an early stage.<sup>17</sup></p>

## 6 Equality and Non-Discrimination

### 6.1 General Measures

<p><b>16</b></p>	<p><b>Law on Discrimination</b></p> <p>Legal instruments to provide justice to victims of discrimination are insufficient, since there is no general anti-discrimination law, the government still holds on to its reservation to Art. 26 ICCPR and has yet to ratify optional protocol no. 12 to the ECHR.<sup>18</sup></p>	<p>Strengthen protection against all forms of discrimination, including discrimination caused by private actors, through appropriate laws, policies, and funding.</p> <p>Combat structural discrimination and promote equity for all persons.</p> <p>Consult with all groups affected by discrimination in all matters concerning them.</p>
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<sup>14</sup> Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights.




<sup>15</sup> This passivity contradicts both the ICESCR's Articles 2.1 and the government's Foreign economic policy strategy: "Global challenges should primarily be tackled through international approaches, with the priority on the multilateral approach. Through representation in numerous international organizations and alliances, such as [...] the UN, Switzerland can play an active part. It also [...] contributes to international agreements", cf. Federal Department of Economic Affairs, Education and Research EAER, Switzerland's Foreign economic policy strategy, 24 November 2021, p. 29, <https://www.news.admin.ch/news/message/attachments/69222.pdf> (visited 2 June 2022).

<sup>16</sup> Such lawsuits are often used by corporations and potentates to intimidate, silence, and harass critics by forcing them to spend money and time to defend themselves in court. These damaging and increasingly occurring lawsuits directed against civil society chill free speech and healthy debate.

<sup>17</sup> The regulation should include a mechanism for obtaining the early dismissal, providing security for costs and damages, and ensuring free legal aid to address any imbalance of power.

<sup>18</sup> This lack of legal provisions, adapted policies and funding means that people belonging to vulnerable groups are often not protected from discrimination, especially by private actors.

## 6.2 Measures Against Racial Discrimination and Discrimination because of Ethnic Origin

<p><b>17</b></p> 	<p><b>Ethnic and Racial profiling</b></p> <p>It is very difficult to fight back against racial motivated controls or even police violence for the victims.<sup>19</sup> Police violence based on racial profiling is not properly investigated nor managed.<sup>20</sup></p>	<p>Legislate against racial and ethnic profiling in federal, cantonal, and communal police laws.</p> <p>Improve access to justice for victims of racial profiling and set up an independent monitoring mechanism and a commission of independent experts to investigate all deaths related to police operations.</p>
<p><b>18</b></p> 	<p><b>National Action Plan</b></p> <p>Switzerland lacks a National Action Plan to combat racism, racial discrimination, xenophobia, and related intolerance.<sup>21</sup></p>	<p>Develop a comprehensive National Action Plan that sets and ensures implementation of standards of action for the cantons.</p>
<p><b>19</b></p> 	<p><b>Definition of racial discrimination</b></p> <p>There is no clear and comprehensive definition of racial discrimination in the constitutional, administrative, or civil law. Existing provisions to combat racial discrimination are inadequate.</p>	<p>Introduce a definition of racial discrimination, put in place appropriate provisions in its civil and administrative law, as specified the CERD-Committee, eliminate legal procedural obstacles, provide a relief fund to meet the procedural costs for victims and make sure that they receive a fair compensation.<sup>22</sup></p>

<sup>19</sup> Among other things because of a lack of access to legal protection, the non-existence of an independent complaint mechanism, excessive financial costs, and the psychologically straining nature of legal proceedings; Several international committees have made recommendations to Switzerland in this regard, cf. Recommendations of the CERD (CERD/C/CHE/CO/10-12, Rec. No. 19-22) and the ECRI (Sixth ECRI-Report on Switzerland, Rec. No. I 10-112).

<sup>20</sup> United Nations Working Group of Experts on People of African Descent, Statement to the media on the conclusion of its official visit to Switzerland, 26 January 2022, <https://www.ohchr.org/en/statements/2022/01/statement-media-United-nations-working-group-experts-people-african-descent?LangID=E&NewsID=28060> (visited 8 July 2022).

<sup>21</sup> General policies to combat racial discrimination, racism, xenophobia, and related intolerance remain only at a cantonal and municipal level within the framework of the cantonal integration programs (KIP).

<sup>22</sup> As recommended by CERD and ECRI: CERD/C/CHE/CO/10-12, Rec. No. 20(a), Sixth ECRI-Report on Switzerland, Rec. No. 109.

### 6.3 Measures Against Discrimination of LGBTQIA+ People

<p><b>20</b></p>	<p><b>Children of same-sex couples</b></p> <p>Since July 2022 female same-sex couples have access to medically assisted reproduction. However, the non-carrying mother only becomes a legal mother at birth if the child is conceived through MAR in Switzerland; not if the couple uses private sperm donation or reproductive medicine abroad. Further, the legal ties that a child has with its same-sex Swiss parents under the law of its foreign birth country are not recognized in every case.</p>	<p>Continue efforts to provide full equality for all couples and for the full recognition and protection of children's rights with same-sex parents, irrespective of the country of their birth and the parents' marital status.</p>
<p><b>21</b></p>	<p><b>Change of name and gender</b></p> <p>The newly introduced procedure on legal gender recognition does allow to change one's gender marker and name in the civil registry, however it discriminates against persons under 16 and those living with a disability.<sup>23</sup></p>	<p>Grant every person capable of judgement, irrespective of their age or guardianship status, the equal right to have their gender identity officially recognized and protected.</p>
<p><b>22</b></p>	<p><b>Recognition of non-binary gender identities</b></p> <p>Switzerland legally only recognizes "male" and "female" gender markers and consequently also forces non-binary persons to be registered with one of these two genders.<sup>24</sup></p>	<p>Officially recognize non-binary gender identities.</p>

<sup>23</sup> It states that every person under the age of 16, or subject to a general guardianship, or upon order by the adult protection authority must get their legal representative's consent – irrespective of their capacity of judgment. This contrasts with Swiss personality rights which grant everyone capable of judgment the right to exercise their personal rights independently; cf. Office fédéral de la justice, Modification de l'indication du sexe dans le registre de l'état civil, 27 October 2021, <https://www.bj.admin.ch/bj/fr/home/gesellschaft/gesetzgebung/geschlechteraenderung.html> (visited 2 June 2022).

<sup>24</sup> With that Non-binary persons are deprived of their right to be recognized as who they are and are constantly forced to provide false information about themselves.

<p><b>23</b></p>	<p><b>Access to gender-affirming treatment</b></p> <p>Health insurances often refuse to cover medically indicated treatment for trans people resulting in unequal access to necessary gender affirmative healthcare and exacerbating problems such as depression and suicidal behavior.<sup>25</sup></p>	<p>Guarantee equal access to gender affirmative health care through primary health care providers and reimbursement of gender affirming treatment, also if it is provided abroad.</p>
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#### 6.4 Measures Against Discrimination of Women<sup>26</sup>

<p><b>24</b></p>	<p><b>Implementation of the Istanbul Convention</b></p> <p>Although Switzerland has ratified the Istanbul Convention. Its implementation must be carried out in relation to and in interaction with other multilateral treaties and obligations<sup>27</sup> that Switzerland has entered.</p>	<p>All measures to implement the IC must be inclusive and without discrimination (art. 4 CI), sustainable and with sufficient resources.</p>
<p><b>25</b></p>	<p><b>Revision of the Sexual Criminal Law</b></p> <p>The current definition of rape in the Criminal Code is not in line with international law, as it relies on coercion in its constitutive element of the offense.<sup>28</sup> A reform is ongoing.</p>	<p>Reform the current sexual criminal law to ensure a consent-based definition of rape and sexual offenses.</p>
<p><b>26</b></p>	<p><b>Violence against Women</b></p> <p>The roots of gender violence must be sought in the inequality between the sexes. The image of the traditional role of each sex is reproduced in the media and thus present in everyday life, contributing in a subtle but</p>	<p>Take measures to eliminate the stereotypical images and attitudes, norms and roles relating to gender.</p> <p>Adopt an intersectional national strategy to prevent and combat violence, sexism, and inequality for the benefit of all those affected</p>

<sup>25</sup> At the beginning of puberty, it is crucial to get access to puberty blockers before puberty leads to lifelong stigmatizing secondary sex characteristics.

<sup>26</sup> Our perspective is an inclusive and intersectional one: by the term “women” we refer to persons who identify fully or partially as female, are always or sometimes read by others as female, and/or have been/are raised as girls/women. By this definition we explicitly include trans persons as well as intersex and cisgender women. We read the term women in an intersectional way. Furthermore, intersectionality is understood to be transversal in relation to all the issues raised.

<sup>27</sup> CEDAW, CRPD, ECM, CRC, and the Lanzarote Convention.

<sup>28</sup> The Istanbul Convention states that rape and any sexual act with another person without mutual consent should be punished as a criminal offense (Istanbul Convention, Art. 36).

	effective way to a perpetuation of power relations between men and women.	
<b>27</b>	<p><b>Labor Market</b></p> <p>Women remain particularly underrepresented in key roles politics, administration, justice, science, and private companies. To date there remains a gender pay gap as well as a pension gap.<sup>29</sup></p>	<p>Take binding measures to reduce the gender pay gap between women and men in all areas, to promote a better representation of women in key roles and to increase the availability of affordable childcare facilities.</p>

## 6.5 Measures Against Discrimination of Persons with Disabilities

<b>28</b>	<p><b>National policies</b></p> <p>Despite the elaboration of a Disability Policy Report in 2018, there is no comprehensive, coherent strategy and action plan to implement the CRPD commitments.</p>	<p>Adopt a comprehensive disability strategy and action plan for implementing all Convention rights across all sectors of government and on all federal levels, with specific and measurable targets, responsibilities, timelines und budgets.</p>
<b>29</b>	<p><b>Inclusive education</b></p> <p>To date, not a single canton has developed a plan for the far-reaching legal and systemic reforms required under Art. 24 CRPD to build an inclusive education system. Across Switzerland, 50% of pupils with increased special educational measures are still educated separately or do not get inclusive education adapted to their special needs in separate schooling.</p>	<p>Introduce a constitutional right to inclusive education and develop an action plan to build an inclusive education system for all children and youth with disabilities, including access to inclusive certified vocational training, standards for bilingual education for deaf children, or the transfer of resources from special to inclusive structures with attention to their respective special needs.</p>
<b>30</b>	<p><b>Private sector</b></p> <p>Persons with disabilities still face discrimination and numerous barriers</p>	<p>Tighten protection against discrimination by private actors in the Disability Discrimination Act and introduce quotas for private employers for employing or creating jobs for persons with disabilities.</p>

<sup>29</sup> The labor market is characterized by a strong segregation of the sexes based on gender stereotypes. Women work largely in so-called “female” professions, which are generally poorly paid areas of work. The salary differential can reach up to 30%. To reconcile their professional and private lives, women often work part-time or are faced with the phenomenon of “unpaid care”, which ultimately results in a pension gap. The number of women struggling to get by on low salaries is higher than the number of men in a similar situation. The risk of poverty is also higher; cf. Federal Statistical Office, Wage Gap, 2022, <https://www.bfs.admin.ch/bfs/en/home/statistics/work-income/wages-income-employment-labour-costs/wage-levels-switzerland/wage-gap.html> (visited 2 June 2022).

	in accessing private services and jobs in the open labor market. <sup>30</sup>	
<b>31</b>	<p><b>Migrants, refugees and asylum-seeking persons with disabilities and special needs</b></p> <p>Migrants, refugees, and asylum-seeking persons with disabilities in Switzerland are confronted with numerous, sometimes serious grievances regarding accommodation, care and support, procedural rights, and integration measures.</p>	Develop and adequately fund programs to guarantee equal treatment and inclusion of all asylum-seeking and refugee persons with disabilities, during all stages of the asylum procedure up to long-term integration.
<b>32</b>	<p><b>Independent living and inclusion</b></p> <p>There is still a high number of persons with disabilities segregated from the community. The Confederation, cantons and intercantonal bodies have not developed any systematic plans for successive deinstitutionalization.</p>	Promptly develop a concrete action plan for successive deinstitutionalization of residential homes and sheltered workshops and for the systematic development of comprehensive personal assistance and community-based support services to enable all persons with disabilities to live independently and be included in the community.
<b>33</b>	<p><b>Supported decision-making</b></p> <p>In the framework of its “protection measures”, the Swiss Civil Code still heavily relies on substitute decision-making instead of supported decision-making, although Switzerland has recognized the incompatibility of its system with CRPD.<sup>31</sup></p>	Amend the Swiss Civil Code to ensure compatibility with the CRPD, revoke general guardianship and develop a nationally consistent supported decision-making framework.

## 6.6 Measures Against Discrimination of Religious and National Minorities

<b>34</b>	<p><b>Recognition of Romani people</b></p> <p>To date the Roma people have not been recognized as a national minority in the state’s reporting to</p>	Recognize the Roma as a national minority according to the FCNM.
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<sup>30</sup> According to Swiss law, there is no obligation for private service providers to ensure comprehensive accessibility of their services within the meaning of Article 9 CRPD. Private employers are not covered by the prohibition of discrimination and do not have any obligation to employ persons with disabilities.

<sup>31</sup> Article 12 CRPD; Under general guardianship, legal capacity of persons considered “incapable of judgement” can even be withdrawn.

	the Council of Europe under the Framework Convention on National Minorities.	
<b>35</b>	<p><b>Parking Sites</b></p> <p>Since 2000 the already few parking sites for the Roma, Sinti and Yenish people have further decreased. Some towns and cantons adopted legal provisions that violate the rights of these minorities.<sup>32</sup></p>	<p>Create more parking sites for people with a nomadic lifestyle.</p> <p>Reverse and prevent discriminatory prohibitions for begging, spontaneous halts and economic activities.</p>
<b>36</b>	<p><b>Discrimination and Observation</b></p> <p>During the Covid pandemic hate speech and discrimination against religious minorities (Jewish and Muslim peoples) as well as national minorities (Persons of Chinese descent) has increased significantly. National minorities of other countries such as the Uyghur and Tibetan peoples are under more aggressive supervision and observation by the Chinese embassy.</p>	<p>Adopt more measures to protect religious and national minorities. Take steps against the intimidation and observation through representatives of third states such as China against Uyghur and Tibet communities.</p>

## 7 Right to Social Security and an Adequate Standard of Living

<b>37</b>	<p><b>Social welfare for rejected asylum-seeking persons</b></p> <p>Rejected asylum-seeking persons who have received an expulsion decision are excluded from social welfare. They only receive the emergency aid guaranteed by the Constitution, often</p>	<p>Provide appropriate levels of social security and assistance, in line with the right to social security, to every person living in Switzerland regardless of their legal status.</p> <p>Establish minimum shared criteria for the level of social assistance.<sup>33</sup></p>
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<sup>32</sup> Such as prohibitions für begging, spontaneous halts and economic activities.

<sup>33</sup> cf. Recommendations of the CESCR, CESCR E/C.12/CHE/CO/4, Rec. No. §47.

	only granted under highly dissuasive conditions.	Apply the rules of the Swiss Conference of Social Assistance Institutions (CISAS) in every canton and to all people.
<b>38</b>	<p><b>Reductions in social welfare as a disciplinary measure</b></p> <p>Social welfare may be reduced or even removed as a disciplinary sanction when a person in need is not complying with administrative deadlines or requirements.<sup>34</sup></p>	Stop authorizing reductions of and restrictions on social welfare, including as a disciplinary sanction, that result in people not being able to access an adequate standard of living.
<b>39</b>	<p><b>Childcare</b></p> <p>Childcare services remain insufficient. The costs of the services remain prohibitively high and are often discouraging employment of the parent with the lowest income – in most families the mother.</p>	<p>Create affordable and quality day-care structures during and after regular working hours as a public service for the first years of life, preschool and school years of children.<sup>35</sup></p> <p>Increase public financing of nurseries and institute a general allocation for full time childcare, in a way that will not discourage employment.</p> <p>Introduce a prenatal leave and an adequately paid parental leave policy of sufficient length for both parents.</p>
<b>40</b>	<p><b>Out-of-home placement</b></p> <p>Children of families living in situations of extreme poverty are often placed in institutions or with foster families. After the age of 18 or the completion of the education, the children concerned are often left to fend for themselves without any government support.</p>	<p>Expand assistance to families and ensure that children are separated from their families only if necessary for their best interest. Make sure that poverty is never the justification for removing a child from parental care.</p> <p>Maintain statistical data related to out-of-home placements.</p> <p>Develop after care solutions and support young adults leaving care on their way to adult life.</p>

<sup>34</sup> For example, by refusing to participate in integration actions or to accept underpaid work. Exclusion from social welfare may amount to a violation of Art. 11 of the ICESCR.

<sup>35</sup> cf. Concluding observations on the 4th periodic report of Switzerland of the CESCR, CESCR E/C.12/CHE/CO/4 Rec. No. §41;

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://fian-ch.org/content/uploads/2022\\_Platform\\_Follow\\_up\\_report\\_CESCR\\_final.pdf](https://fian.ch.org/content/uploads/2022_Platform_Follow_up_report_CESCR_final.pdf) (visited 8 June 2022).



<p><b>41</b></p>	<p><b>Right to Food</b></p> <p>Many people in Switzerland have to resort to charity organizations to get enough food for themselves and their families.<sup>36</sup> This situation has been aggravated by COVID.</p>	<p>Guarantee the right to food for all people in the country by adopting policies that allow people to feed themselves through access to affordable and adequate amounts of safe, nutritious, and culturally acceptable food without stigmatization.<sup>37</sup></p>
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## 8 Children’s Rights and Right to Education

<p><b>42</b></p>	<p><b>Prohibition on corporal punishment</b></p> <p>Swiss law and jurisprudence do not categorically exclude corporal punishment as an educational measure.<sup>38</sup> A parliamentary motion calling for a right to non-violent education is still pending.<sup>39</sup></p>	<p>Explicitly prohibit all practices of corporal punishment and other forms of cruel or degrading punishment of children and allocate sufficient resources to awareness-raising campaigns aimed at promoting positive, non-violent, and participatory forms of child-rearing.</p>
<p><b>43</b></p>	<p><b>Human rights education (HRE)</b></p> <p>There is no obligation to provide HRE in all Swiss schools and by professionals working with children.</p>	<p>Ensure that students at all levels of the education system (compulsory and post-compulsory) receive standard obligatory HRE.</p> <p>Include HRE in the training of teachers and education professionals.</p>
<p><b>44</b></p>	<p><b>Equal access to education</b></p>	<p>Ensure equal access to education and develop policies and awareness-</p>

<sup>36</sup> These people are more exposed to potentially inadequate nutrition than others. Furthermore, food aid does not guarantee the realisation of the right to food: It creates humiliation and discrimination between beneficiaries and others and does not allow people to feed themselves or their families in dignity. In addition, people dependent on food aid do not always have the opportunity to choose food that is adequate, especially from a nutritional or cultural point of view; cf. Regard, Independent Periodic Evaluation (IPR) of Fundamental Rights in Geneva - Contribution of Civil Society, March 2019, p. 99-103, [https://fian-ch.org/content/uploads/EPI\\_A4.pdf](https://fian-ch.org/content/uploads/EPI_A4.pdf) (visited 2 June 2022).

<sup>37</sup> OHCHR, Guiding principles on extreme poverty and human rights, 2012, Para. 75-76, [https://www.ohchr.org/Documents/Publications/OHCHR\\_ExtremePovertyandHumanRights\\_EN.pdf](https://www.ohchr.org/Documents/Publications/OHCHR_ExtremePovertyandHumanRights_EN.pdf) (visited 2 June 2022).

<sup>38</sup> The Federal Court has declared numerous acts of violence incompatible with the rights of the child, but its case law remains virtually unknown to the wider public; cf. Le News, Swiss canton rejects smacking ban, 6 May 2022, <https://lenews.ch/2022/05/06/swiss-canton-rejects-smacking-ban/> (visited 2 June 2022).

<sup>39</sup> The National Council has requested a report on how the protection of children against violence in upbringing can be anchored in the civil code (20.3185). The report is still pending. Another parliamentary motion calling for a right to non-violent education is also still pending (19.4632).

	<p>Especially children with a migration background are exposed to severe disadvantages when it comes to equal access to education.<sup>40</sup> Children with disabilities continue to be educated in special schools.</p>	<p>raising measures aimed at addressing the root causes of de facto discrimination, especially regarding children without identity documents, asylum-seeking, refugee and migrant children and children with disabilities.</p>
<b>45</b>	<p><b>Mental health and suicide prevention</b></p> <p>The financial resources for the implementation of the national action plan for suicide prevention (2016) are missing. The shortage of psychiatric-psychotherapeutic care for children and adolescents has worsened during the pandemic.</p>	<p>Ensure that the number of qualified medical professionals, including child psychologists and psychiatrists, is sufficient to meet children's mental-health needs in all cantons.</p>
<b>46</b>	<p><b>Combating violence against children</b></p> <p>There is no comprehensive national strategy for the protection of children from all forms of physical or mental violence and no conclusive and systematically collected data on forms of violence against children and on its prevalence.</p>	<p>Develop a federal strategy and action plan for preventing, combating, and monitoring all forms of physical and mental violence, negligent treatment, and abuse against children, including sexual violence, bullying and violence in the digital environment.</p>
<b>47</b>	<p><b>Female Genital Mutilation</b></p> <p>Around 22,400 women and girls were affected or at risk of female genital mutilation in Switzerland in 2022.<sup>41</sup></p>	<p>Strengthen actions to eliminate the practice of FGM, including implementing public awareness-raising campaigns to change the perceptions connected with it; provide education regarding the practice and adequate health services, counseling, and prevention services in different languages.</p>

<sup>40</sup> Disadvantages are already evident on entry to primary school, but also when pupils move on to higher school levels. Graduation rates also vary between foreign-born young people and you Swiss born.

<sup>41</sup> Federal Office of Public Health FOPH, Measures against female genital mutilation, <https://www.bag.admin.ch/bag/en/home/strategie-und-politik/nationale-gesundheitsstrategien/gesundheitsliche-chancengleichheit/chancengleichheit-in-der-gesundheitsversorgung/massnahmen-gegen-weibliche-genitalverstuemmelung.html> (visited 11 July 2022).

<p><b>48</b></p>	<p><b>Sex-modifying procedures for children with variations of sex characteristics</b></p> <p>Despite repeated criticism by UN Human Rights Bodies of harmful practices on children with variations of sex characteristics,<sup>42</sup> procedures modifying sex characteristics and other (medically) non-proportionate and irreversible treatments are carried out in Switzerland without free and full consent.</p>	<p>Explicitly prohibit non-emergency, invasive and irreversible surgery, or treatments with harmful effects on infants and children with variations in sex characteristics and ensure that these surgeries or treatments are postponed until the children can meaningfully participate in decision making and give their informed consent.<sup>43</sup></p> <p>Allocate sufficient resources to awareness-raising campaigns (action plan) aimed at promoting positive, and participatory forms of child-rearing</p>
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## 9 International Adoptions

<p><b>49</b></p>	<p><b>Impartial Investigations</b></p> <p>During the 1980s and 1990s numerous children from Sri Lanka have been adopted by Swiss parents. Of the adoption documents 90% were falsified and an illegal scheme persisted over years.<sup>44</sup> Conventional search of origin for the children is not possible or sufficient.</p>	<p>Conduct prompt and impartial investigations to determine whether children adopted from Sri Lanka may have been victims of enforced disappearance or wrongful removal.<sup>45</sup></p> <p>Take targeted measures to assist adopted person in finding their original families, together with Sri Lanka, incl. awareness campaigns, and DNA tests through a secure data bank.</p> <p>Guarantee reparations for any person who has suffered harm because of possible enforced disappearance.</p>
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<sup>42</sup> In 2021 the CRC demanded that Switzerland "prohibits the performance of unnecessary medical or surgical treatment on intersex children where those procedures may be safely deferred until children are able to provide their informed consent"; cf. Concluding observations on the combined fifth and sixth periodic reports of Switzerland, CRC/C/CHE/CO/5-6, no.29; Concluding observations on the combined second to fourth periodic reports of Switzerland, CRC/C/CHE/CO/2-4, No. 43b; Concluding observations on the seventh periodic report of Switzerland CAT/C/CHE/CO/7, No. 20a-b; Concluding observations on the combined fourth to fifth periodic reports of Switzerland CEDAW/C/CHE/CO/4-5, No. 25 c,d and e.

<sup>43</sup> In line with s.7.1.1 of Resolution 2191 of the Parliamentary Assembly of the Council of Europe.

<sup>44</sup> cf. dutch-core, Zembla: Adoption Fraud, 2017, <https://www.dutch-core.com/programs/documentary/zembla-adoption-fraud/4235#details> (visited 2 June 2022); ZHAW Zurich University of Applied Sciences, Adoptions of Children from Sri Lanka in Switzerland 1973-1997, On the practice of private placement agencies and the authorities, January 2020, [https://digitalcollection.zhaw.ch/bitstream/11475/19562/15/2020\\_Ramsauer\\_Adoptionen-Sri-Lanka-Schweiz\\_Zusammenfassung-EN.pdf](https://digitalcollection.zhaw.ch/bitstream/11475/19562/15/2020_Ramsauer_Adoptionen-Sri-Lanka-Schweiz_Zusammenfassung-EN.pdf) (visited 2 June 2022).

<sup>45</sup> cf. Recommendations of the CED, CED/C/CHE/CO/I.

<p><b>50</b></p>	<p><b>The child's right to know her or his origins</b></p> <p>Persons who have been internationally adopted are not sufficiently supported by cantonal authorities in their search of their origins.</p>	<p>Ensure that a project is established to allow access to information on adopted people's origins – regardless of the country they were adopted from, to ensure the implementation of their right to identity.</p> <p>Make sure that future adoptions correspond to the best interest of the child and that adequate safeguards and standards are in place.</p>
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## 10 Victims of trafficking

<p><b>51</b></p>	<p><b>Support for Victims of trafficking</b></p> <p>Due to a gap in the Swiss Victim Assistance Act,<sup>46</sup> VOTs who have been subjected to exploitation abroad will not receive any financial support from the State, leading to unequal treatment, especially for VOTs who have been exploited in another country or en route. These persons are regularly returned to the very country where the exploitation took place.</p>	<p>Ensure that – in line with the CoE Convention on Action against Trafficking in Human Beings – financial means are provided in all cases of potential VOTs, so that access to specialized accommodation, counselling, translation, material, and medical assistance is granted, regardless of where the exploitation took place.</p>
<p><b>52</b></p>	<p><b>Special needs throughout the asylum procedure</b></p> <p>There is no systematic triaging of VOTs to specialized services during the asylum process, hindering identification of VOTs and blocking their right to access specialized counseling services. Accommodation conditions in the federal reception centers remain inadequate. Measures such as the elaboration and implementation of a particular accommodation scheme for vulnerable asylum-seeking persons (which is due since 2019) have not been implemented.</p>	<p>Ensure that the needs of persons with specific needs such as VOTs are assessed and taken systematically into account during the whole asylum procedure.</p> <p>Provide accommodation infrastructure adapted to the specific needs of vulnerable persons and ensure relevant staff are trained and sensitized accordingly.</p>

<sup>46</sup> cf. Art. 17 in connection to Art. 3 of the Swiss Victim Aid Act, <https://www.fedlex.admin.ch/eli/cc/2008/232/fr> (visited, 13 July 2022).

<p><b>53</b></p>	<p><b>The application of the Dublin Regulation<sup>47</sup></b></p> <p>Around 80-90% of potential VOTs seeking asylum are denied access to the procedure in the Swiss asylum system due to the Dublin regulation.<sup>48</sup></p>	<p>Refrain from transferring VOTs to another country under the Dublin Regulation, where they are at risk of being re-subjected to inhumane living conditions and exploitation.</p>
<p><b>54</b></p>	<p><b>National standards</b></p> <p>Despite a national action plan to combat human trafficking, the cantons – which are responsible for the plan’s implementation – are free to decide what measures to take regarding victim protection, the prevention of trafficking, and its criminal prosecution, leading to discriminatory effects.<sup>49</sup></p>	<p>Establish binding regulations and effective national coordination mechanisms to ensure identification, assistance and protection of victims and prosecution of perpetrators in cases of trafficking in persons (TIP) follow victim-centered standards (such as the principle of non-punishment).</p> <p>Institutionalize coordination between the federal government, cantons, and specialized civil society organizations at the federal level.</p> <p>Require work inspectors to check for and denounce cases of trafficking.</p>
<p><b>55</b></p>	<p><b>Residence permits for victims of trafficking</b></p> <p>Residence permits are not automatically granted to VOTs – they are often conditional on cooperation with state authorities.<sup>50</sup> The periods for reflection and recovery are also at the discretion of the cantons and not applicable to victims who have also</p>	<p>Ensure that VOTs’ rights, in line with international provisions, are applied in an equitable manner across all cantons. Thus, VOTs are to be granted renewable residence permits regardless of cooperation with state authorities.</p>

<sup>47</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013, applicable in Switzerland through a dedicated „Dublin Association Agreement“.

<sup>48</sup> Switzerland applies the provisions of the Dublin regulation extremely strictly, even in cases the exploitation of a person seeking asylum in Switzerland has been taking place in the respective Dublin country. Even though the risk of re-exploitation upon transfer to another country under the Dublin regulation is extremely high in these cases, it takes an appeal to the Federal Administrative Court and the reference to the legal guarantees of OMH, for a case to be processed in the Swiss asylum system potentially. To ensure that the rights of vulnerable persons, such as VOTs, in the asylum procedure are adhered to, Dublin-returns must be refrained from in a systematic manner in these cases (cf. UPR-report 2016, Nr. 37).

<sup>49</sup> Different application of the rules leads to inequalities, a lack of legal certainty and, finally, discrimination. The competent authorities of some cantons have still not received any training nor specific awareness raising on the problem of trafficking. Potential victims are often not recognized as such and are thus unable to enjoy protection from criminalization and/or immediate deportation, or from reprisals by perpetrators. Prevention and training are largely based around human trafficking for purposes of sexual exploitation, while trafficking for the purposes of labour exploitation is almost completely ignored. Work inspectors have no explicit legal mandate to monitor or denounce violations of Article 182 of the Criminal Code.

<sup>50</sup>The Foreign Nationals Act only states a discretionary provision which enables cantons to grant a temporary residence permit when the victim is cooperating with the criminal prosecution authorities or because their personal situation does not permit a return to their country (humanitarian permit based on personal hardship).

	submitted a concomitant request for asylum.	
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## 11 Refugees, migrants, and asylum-seeking persons

<b>56</b>	<p><b>Administrative Detention</b></p> <p>Different forms of administrative detention are applied pending the expulsion of persons. Prolonged detention may last up to 18 months. Not all types of detention are judicially reviewed.<sup>51</sup></p>	<p>Amend legislation to only permit administrative detention as a last resort, respecting the principles of necessity, proportionality, and lawfulness of detention. Prohibit administrative detention of people with specific needs, including children and families, persons with disabilities, and victims of trafficking. Ensure judicial reviews of all migration-related detentions, both at the beginning of detention and at regular intervals. Detention should always be for the shortest possible time.</p>
<b>57</b>	<p><b>The right to family life</b></p> <p>The right to family reunification is granted only partially and varies depending on legal status, with Cantons having a wide margin of discretion. The conditions and deadlines required for family reunification are difficult to meet.</p>	<p>Ensure that the right to family life<sup>52</sup> and the best interests of the child are not restricted by legal provisions on asylum and migration.</p> <p>Prevent all forms of discrimination regarding family reunification between cantons.</p>
<b>58</b>	<p><b>Asylum-seeking children</b></p> <p>There is no separate procedure for assessing and integrating the best interests of the child into asylum procedures. Reception standards for accompanied and unaccompanied asylum-seeking children continue to vary widely between cantons. While the asylum procedure foresees both a person of trust and a legal</p>	<p>Develop and apply a procedure for assessing and determining the best interests of the child in all asylum procedures and ensure that all cantonal reception centers conform to minimum standards for reception conditions, integration support, welfare, and education for children. Improve the safeguards for unaccompanied children in the asylum</p>

<sup>51</sup> The so-called “detention under Dublin procedure” is highly problematic, since many detainees are not aware of their right to appeal to a court, or are just too afraid to ask the authorities, with whom they do not share the language.




<sup>52</sup> cf. Art. 8 of the ECHR and Art. 13 of the Swiss Constitution.

	<p>representative for unaccompanied minors, the person of trust is often simultaneously the legal representative. SEM<sup>53</sup> employees conducting the hearings are not sufficiently trained. Accommodation and access to education are insufficient and the supervisory measures vary greatly from one canton to another.</p>	<p>procedure to ensure that the best interest of the child is guaranteed.</p> <p>Ensure adequate social and psychological support and guarantee access to education until age 18 and in public/regular schools in both federal and cantonal centers.</p> <p>Refrain from placing children in remote centers.<sup>54</sup></p>
<p><b>59</b></p>	<p><b>Federal Asylum Centers</b></p> <p>Accommodation facilities and the support provided in Federal Asylum Centers remain inadequate. Access to basic medical care and the possibility of early detection of illness or specific vulnerabilities cannot be satisfactorily guaranteed, Reports document violence by security personnel in asylum centers. <sup>55</sup></p>	<p>Design and operate Federal asylum centers and cantonal reception centers in line with international standards.</p> <p>Improve the timely and systematic detection of people with specific needs (inter alia victims of torture, human trafficking, sexual violence, etc.), including via the help of translators, and the consequent access to medical care.</p> <p>Establish more robust and pro-active protection and monitoring to prevent violence in the centers, strengthen effective and adequate complaints systems ensuring they are secure for staff and victims alike,</p> <p>Ensure accountability for perpetrators of abuses.</p> <p>Tackle and dismantle pre-existing negative and harmful stereotypes and racist views against all people, and particularly against people from North Africa.</p>

<sup>53</sup> State Secretariat on Migration.

<sup>54</sup> For both federal and cantonal, including those for rejected asylum seekers. It leads to children and adults living isolated from the local community.

<sup>55</sup> Amnesty International, Switzerland: "I ask that they treat asylum seekers like human beings" – Human rights violations in Swiss federal asylum centres, 19 May 2021, <https://www.amnesty.org/en/documents/EUR43/4226/2021/en/> (visited 2 June 2022).

<p><b>60</b></p> 	<p><b>Access to health and social services</b></p> <p>In numerous contacts between foreign speakers and health care specialists or public authorities, translation specialists are not available. With that, migrants may be denied access to benefits in the health or social sector to which they are entitled to.</p>	<p>Guarantee a translation where state action assumes the character of a decree and sufficient communication is necessary for the determination of the facts.</p> <p>Ensure that information prior to a medical intervention is provided in a language that the patient can understand, so they can make a well-informed decision.</p> <p>Ensure that no one is deprived of a medically indicated treatment due to a lack of language skills.</p>
<p><b>61</b></p> 	<p><b>Post-compulsory education</b></p> <p>To enable basic education and apprenticeship, a residence permit can be issued to persons without regular migration status under the conditions of Art. 30a OASA.<sup>56</sup> However, the conditions are very restrictive and rarely fulfilled and do not correspond to the requirements of UN-CRC, in particular of Article 28.</p>	<p>Enable persons with a negative asylum decision to continue and complete basic education and apprenticeships without having to meet the restrictive requirements of Art. 30a OASA.</p>
<p><b>62</b></p> 	<p><b>Naturalization</b></p> <p>Due to the threefold federal naturalization system, naturalization requirements are restrictive, procedures arbitrary and the costs for applicants high, even for those born and raised in Switzerland.<sup>57</sup></p>	<p>Ensure that naturalization procedures are accessible for everyone, not arbitrary and do not discriminate<sup>58</sup>.</p> <p>Refrain from depriving individuals of their citizenship.</p>

<sup>56</sup> They must have followed a course of compulsory education for more than five years without interruption and submits an application for residence within twelve months after that, Article 30a of the Ordinance on the admission, residence, and exercise of a gainful activity (OASA).

<sup>57</sup> cf. Noemi Carrel, Nicole Wichmann, EUDO Citizenship Observatory, Naturalisation Procedures for Immigrants Switzerland, January 2013, <https://cadmus.eui.eu/handle/1814/29800> (visited 7 June 2022); swissinfo.ch, Becoming a citizen, 30 April 2022, <https://www.swissinfo.ch/eng/becoming-a-citizen/29288376> (visited 7 June 2022).

<sup>58</sup> In particular not on the basis of one's belief, ethnic or national origin, residence status, age or gender, and level of income or education.



## 12 Stateless Persons

<p><b>63</b></p>	<p><b>Determination Procedure and Definition</b></p> <p>Switzerland does not have a formalized statelessness determination procedure.<sup>59</sup> Therefore, the actual number of stateless persons is roughly four times higher than the number of persons recognized as stateless.<sup>60</sup></p>	<p>Formalize the statelessness determination procedure and ensure it is fair, effective, and accessible to all persons regardless of their immigration status.</p> <p>Ensure that the definition of “stateless persons” is fully consistent with the definition provided in the 1954 Convention.<sup>61</sup></p>
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## 13 Freedom of assembly and expression

<p><b>64</b></p>	<p><b>The right to freedom of peaceful assembly</b></p> <p>The right to freedom of peaceful assembly faces certain restrictions, including the requirement to obtain prior authorization (often coupled with many conditions imposed) rather than having to simply notify authorities, certain police measures at unauthorized demonstrations and the threat of high (financial) risk for proceedings and fines.</p>	<p>Ensure that the right to freedom of peaceful assembly is protected, respected, and facilitated.</p> <p>Transition from the current “authorization regime” to a “notification regime” for assemblies, including by clarifying the needs of those organizing an assembly, and adopt a facilitative approach driven by dialogue, mediation and de-escalation.</p>
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<sup>59</sup> The procedure to be recognized as stateless is governed by the Administrative Procedure Act which requires that stateless persons demonstrate a legitimate legal interest in being recognized as stateless. They have no particular protection during the procedure, namely no reduced burden of proof and no legal status. In the statelessness determination procedure, Swiss authorities apply a restrictive definition of statelessness which violates its international legal obligations under Article I of the Convention relating to the status of stateless persons of 28 September 1954.

<sup>60</sup> cf. Switzerland, Statelessness-Index, March 2021, <https://index.statelessness.eu/country/switzerland> (visited 3 June 2022).

<sup>61</sup> 1954 Convention relating to the Status of Stateless Persons, [https://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons\\_ENG.pdf](https://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons_ENG.pdf) (visited 3 June 2022).

<p><b>65</b></p>	<p><b>Freedom of expression</b></p> <p>Two legislative revisions have unduly restricted the right to freedom of expression and freedom of press in recent years: Temporary blocking measures allow civil courts to prohibit a media outlet more easily from publishing information<sup>62</sup> and the Swiss Banking Act puts leaks containing bank data under penalty.<sup>63</sup></p>	<p>Take the necessary steps to amend these laws that unduly restrict the right to freedom of expression.</p> <p>Ensure that the publication of information in the public interest is not hindered in any way, including by removing penalties for whistleblowers who disclose information exposing wrongdoing.</p>
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## 14 Police and Justice System

<p><b>66</b></p>	<p><b>Prosecution of war crimes</b></p> <p>Only one trial of somewhat 70 cases of international war crimes has been conducted before the Federal Criminal Court to date.<sup>64</sup></p>	<p>Provide the necessary resources to the Attorney General's Office to effectively prosecute crimes under international law and prevent Switzerland from becoming a safe haven for perpetrators.</p>
<p><b>67</b></p>	<p><b>Prohibiting torture and other ill-treatment in the Criminal Code</b></p> <p>Switzerland started legislating to criminalize torture in its Criminal Code.<sup>65</sup></p>	<p>Continue the legislative process aimed at introducing the offense of torture into the Criminal Code in line with the definition provided in the CAT and include ill-treatment in the remit of the draft provisions.</p> <p>Ensure that torture is defined as a specific, separate offence in line with the Convention, and provide penalties</p>

<sup>62</sup> cf. Reporters sans Frontières Suisse, RSF Suisse s'élève contre le durcissement sans raison des mesures provisionnelles contre les médias, 10 May 2022, <https://rsf-ch.ch/rsf-suisse-seleve-contre-le-durcissement-sans-raison-des-mesures-provisionnelles-contre-les-medias/> (visited 2 June 2022).

<sup>63</sup> Since 2015, Swiss journalists risk a conviction if they write about stolen bank data. This became apparent in the context of a bank scandal in 2022. Swiss media had to give up investigating Credit Suisse clients, because the use of stolen bank data is prohibited by law; cf. Reporters sans Frontières Suisse, Le secret bancaire fait peser une menace inadmissible sur la liberté de la presse, 21 February 2022, <https://rsf-ch.ch/le-secret-bancaire-fait-peser-une-menace-inadmissible-sur-la-liberte-de-la-presse/> (visited 2 June 2022); European Federation of Journalists, Suisse Secrets: Swiss banking secrecy hinders media freedom, 20 February 2022, <https://europeanjournalists.org/blog/2022/02/20/suisse-secrets-swiss-banking-secrecy-hinders-media-freedom/> (visited 2 June 2022).

<sup>64</sup> swissinfo.ch, Swiss court jails Liberian commander in war crimes case, 18 June 2021, <https://www.swissinfo.ch/eng/swiss-court-jails-liberian-commander-in-war-crimes-case/46716424> (visited 2 June 2021).

<sup>65</sup> In accordance with its duties as a State Party to the CAT and the recommendations made by the UPR, CAT, CCPR and HRC. The Legal Affairs Committee of the National Council now needs to present a draft provision until 29 March 2024.

		that are proportionate to the grave nature of the act.
<b>68</b>	<p><b>Independent police complaints body</b></p> <p>There is still a lack of independent police complaints bodies, and the existing projects are often missing the necessary independence. The investigating authorities and the accused police officers often maintain personal relationships.<sup>66</sup></p>	<p>Systematically monitor complaints against police officers and make the statistics publicly accessible.</p> <p>Introduce independent complaint offices in all cantons.</p> <p>Conduct all proceedings by a special and independent prosecutor from another canton.</p> <p>Suspend officials under investigation from duty or transfer them to a position with no contact with the public or those conducting the investigation.</p>
<b>69</b>	<p><b>Access to justice for prisoners</b></p> <p>There is no systematic legal support for prisoners within the execution of sentences and measures and prisoners are left unprotected against the serious encroachments on their fundamental rights.<sup>67</sup></p>	<p>Adopt a legal basis to promote systematic, independent and low-threshold legal counseling for prisoners in all regions. Cooperate with and financially support NGOs that provide legal advice to prisoners.</p>
<b>70</b>	<p><b>Detention conditions during pre-trial</b></p> <p>During pre-trial detention human rights are still systematically violated in Switzerland.<sup>68</sup> The suicide rate is significantly higher in pre-trial detention than in the penal system.<sup>69</sup></p>	<p>Ensure that pre-trial detention is only used exceptionally and as a last resort. Alternative measures to detention<sup>70</sup> should not be the exception but the rule.</p> <p>Set a maximum duration for pre-trial detention, which may be exceeded</p>

<sup>66</sup> Report of the Working Group on the Universal Periodic Review - Switzerland, A/HRC/37/12, par. 146.56 to 146.59.

<sup>67</sup> Even though access to justice for prisoners is anchored in Article 23 of the European Prison Rules and the Nelson Mandela Rule No. 61. For lawyers, visits to detention facilities are time-consuming and the provision of free legal aid is often very uncertain.

<sup>68</sup> There is a lack of proportionality in the use of pre-trial detention and often an excessive duration (which can be extended without a maximum duration inscribed in law). Furthermore, the disproportionately harsh conditions of detention contradict the presumption of innocence. In contradiction to Nelson Mandela Rule No. 44In, prisoners are locked in cells for 23 hours a day in most cantons. In addition, they have only very limited rights of contact with their relatives – most visits take place behind cutting discs for no justifiable reason. This is particularly problematic regarding people with psychological problems; cf. swissinfo.ch, High use of remand punishment in Switzerland, says report, <https://www.swissinfo.ch/eng/high-use-of-remand-punishment-in-switzerland--says-report/47248380>, 9 January 2022 (visited 13 July 2022).

<sup>69</sup> Federal Statistical Office, Freiheitsentzug, Todesfälle und Suizide, 25 April 2022, <https://www.bfs.admin.ch/bfs/de/home/statistiken/kriminalitaet-strafrecht/justizvollzug.assetdetail.22344227.html> (visited 2 June 2022).

<sup>70</sup> cf. Article 237 of the Code of Criminal Procedure

		<p>only in exceptional cases and under specific criteria.</p> <p>Ensure that conditions during pre-trial detention meet human rights standards and the principle of proportionality.<sup>71</sup></p>
<b>71</b>	<p><b>Protection of privacy</b></p> <p>Mass and indiscriminate monitoring of wired communications is still allowed under certain conditions.<sup>72</sup> Furthermore, metadata can be stored for six months, and companies are compelled to provide the data to the criminal prosecution authorities and intelligence services.<sup>73</sup> These measures represent serious intrusions into the private lives of millions of innocent people.</p>	<p>Prevent intelligence services from surveilling the wired network and to specify the conditions under which secondary data (metadata) can or must be handed over to the criminal prosecution authorities or intelligence services.</p>
<b>72</b>	<p><b>Practices of the Federal Intelligence Service</b></p> <p>The FIS has recently been at the center of several scandals.<sup>74</sup> The Parliament's Control Committee concluded<sup>75</sup> that there are serious deficiencies in the data collection and processing by the FIS and in its disclosure practice, undermining the fundamental rights of people living in Switzerland.</p>	<p>Establish an independent and functioning supervisory body to ensure that the FIS conducts its monitoring activities in accordance with human rights.</p> <p>Improve access of individuals to the data collected about them and create a free, simpler and more citizen-oriented complaint procedure.</p>

<sup>71</sup> In addition to the material conditions of detention, this should apply to cell opening hours, contact rights with relatives, and work and employment opportunities.

<sup>72</sup> Since the law on intelligence services from 2017 came into force.

<sup>73</sup> According to the law on surveillance of postal and telecommunications traffic; cf. Loi fédérale sur la surveillance de la correspondance par poste et télécommunication (LSCPT), 1 June 2022, <https://www.fedlex.admin.ch/eli/cc/2018/31/fr> (visited 2 June 2022).

<sup>74</sup> By name for the use of an unlawful facial recognition system, the undertaking of wiretapping operations without authorization of the Federal Administrative Court and the appointment of secret (political) advisers; cf. Autorité de surveillance indépendante des activités de renseignement, Rapport d'activités 2021 de l'Autorité de surveillance indépendante des activités de renseignement (AS-Rens), 31 March 2022, [https://www.ab-nd.admin.ch/content/ab-nd-internet/fr/jahresbericht-ab-nd/\\_jcr\\_content/contentPar/downloadlist/downloadItems/288\\_1648477615511.download/2022-03-31%20TB%20AB-ND%20Tätigkeitsbericht%202021%20FR.pdf](https://www.ab-nd.admin.ch/content/ab-nd-internet/fr/jahresbericht-ab-nd/_jcr_content/contentPar/downloadlist/downloadItems/288_1648477615511.download/2022-03-31%20TB%20AB-ND%20Tätigkeitsbericht%202021%20FR.pdf) (visited 2 June 2022); Conseil fédéral, Enquête administrative dans le domaine Cyber du SRC, 26 January 2022, <https://www.admin.ch/gov/fr/accueil/documentation/communiques.msg-id-86915.html> (visited 2 June 2022).

<sup>75</sup> Confédération Suisse, Rapport annuel 2019 des Commissions de gestion et de la Délégation des Commissions de gestion des Chambres fédérales, 28 January 2020, <https://www.parlament.ch/centers/documents/fr/jahresbericht-gpk-2019-f.pdf> (visited 2 June 2022).

<p><b>73</b></p>	<p><b>Police Measures to Combat Terrorism</b></p> <p>In June 2022 the Federal Act on Police Measures to Combat Terrorism (PMCT) entered into force. The implementation of the law poses a major risk to human rights enjoyment.<sup>76</sup></p>	<p>Urgently reform counter terrorism provisions so that all measures are compliant with HRL.</p> <p>Ensure that the application of any counter-terrorism law will not discriminate against ethnic and religious groups, refugees, and asylum-seeking persons, particularly through racial profiling.</p> <p>Ensure that the right to liberty, movement, expression, association, privacy, freedom of religion, family life and to education are protected, respected, and fulfilled in the context of counterterrorism.</p>
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<sup>76</sup> UN human rights experts and the CoE Commissioner for Human Rights warned against the human rights risks of the bill; cf. Council of Europe Commissioner for Human Rights, Swiss lawmakers should review draft legislation on police counterterrorism measures to ensure respect for human rights, 13 May 2020, <https://www.coe.int/en/web/commissioner/-/swiss-lawmakers-should-review-draft-legislation-on-police-counterterrorism-measures-to-ensure-respect-for-human-rights> (visited 2 June 2022); Mandats de plusieurs Rapporteuses spéciales, OL CHE 1/2020, 26 May 2020, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25305> (visited 2 June 2022); Press Release United Nations Human Rights Commissioner, Switzerland's new "terrorism" definition sets a dangerous precedent worldwide, UN human rights experts warn, 11 September 2022, <https://www.ohchr.org/en/press-releases/2020/09/switzerlands-new-terrorism-definition-sets-dangerous-precedent-worldwide-un?LangID=E&NewsID=26224> (visited 2 June 2022).

## 15 Annex

### Participating Organizations and Organizations in support of the Report

#### Main Participants

- ACAT-Suisse
- Action de Carême
- Amnesty International (section suisse)
- Asylex
- Back to the Roots\*
- Centre d'assistance aux migrantes et aux victimes de la traite des femmes FIZ
- Coordination post Beijing des ONG Suisses
- FIAN Suisse
- humanrights.ch
- Inclusion Handicap
- InterAction\*
- Reporters sans frontières\*
- Réseau suisse des droits de l'enfant
- Robert F. Kennedy Human Rights Switzerland\*
- Société pour les peuples menacés SPM
- Solidarité sans frontières SOSF
- Swiss Refugee Council
- Transgender Network Switzerland TGNS

#### Other organizations in support of the report

- ACT212
- Aide suisse contre le Sida
- Aînés pour la protection du climat
- AlgorithmWatch Switzerland
- Alliance Sud
- Assistance pour les personnes handicapées en Suisse
- Association internationale pour la défense des libertés religieuses
- Association Mondiale pour l'Ecole Instrument de Paix
- Association pour la prévention contre la torture
- Association pour le travail social et culturel, Juko / Projekt ggfon
- Association suisse de la Libre Pensée
- Association Suisse-ONU ASNU
- Athéistes humanistes
- Augenauf
- AvenirSocial
- Bahá'í Switzerland
- Body Respect Switzerland
- Brava
- Bruno Manser Fonds, OeTN-Migration des églises réformées Berne-Jura-Soleure
- Campax
- Caritas Suisse
- Centre de conseils et d'appui pour les jeunes en matière de droits de l'Homme
- Centre de Contact Suisses-Immigrés CCSI
- Centre de documentation, de recherche et d'information des peuples autochtones DoCip
- Centre pour le conseil et l'intégration des étrangères et étrangers FABIA
- CETIM
- cfd
- Croix-Rouge Suisse CRS
- Dialogai
- Société Numérique
- droitsfondamentaux.ch
- Économie pour le bien commun suisse
- Église Adventiste du Septième Jour
- EKdM
- Entraide Protestante Suisse EPER

- Fédération Suisse des Sourds FFS
- Femmes de Paix autour du monde
- Femmes Juristes Suisse
- Femmes pour la paix
- Fondation contre le racisme et l'antisémitisme
- Fondazione Diritti Umani
- Genève pour les Droits de l'Homme GDH - Formation Internationale
- Groupe de travail Suisse - Colombie, ask!
- Groupe de travail tourisme et développement
- Groupe pour une Suisse sans armée GssA
- Helvetas
- Human Rights Watch Committee Zurich
- Inclusion Handicap
- Informationsstelle für Ausländerinnen- und Ausländerfragen isa
- IRAS COTIS
- Jüdische Stimme für Demokratie und Gerechtigkeit in Israel/Palästina
- Juristes démocrates de suisse JDS
- Ligue Internationale Contre le Racisme et l'Antisémitisme LICRA Vaud
- Ligue suisse des droits de l'Homme LSDH – Section de Genève
- Lobby suisse de l'enfant
- Migration & Droits de l'homme
- Mission chrétienne pour les aveugles CBM
- Multiwatch
- National Coalition Building Institute
- Notre Droit
- Observatoire suisse du droit d'asile et des étrangers ODAE
- OMCT World Organisation Against Torture
- Organisation Suisse des lesbiennes LOS
- OSEO Suisse
- Peace Brigades International Schweiz PBI
- Peace Watch Switzerland PWS
- Pink Cross
- Plateforme Traite
- ProCoRe
- Protection de l'enfance Suisse
- PSYCHEX
- Public eye
- Réseau évangélique suisse RES
- Sans-Papiers Anlaufstelle Zürich SPAZ
- Santé Sexuelle Suisse
- SAPI international
- Section suisse de la Commission Internationale de Juristes ICJ-CH
- Service d'Aide Juridique aux Exilé-e-s SAJE
- Société pour les minorités en Suisse
- Solidarité sans frontières SOSF
- sozialinfo.ch
- Swiss Helsinki Association SHV
- Swiss Peace Council
- Syndicat des services publics SSP
- TRIAL International
- UNICEF Suisse et Lichtenstein
- Unisourds
- #Netzcourage

\* This organization is not a member of the Swiss NGO Platform for Human Rights