

**4th Swiss examination on the implementation of the International
Covenant on Economic, Social and Cultural Rights**

**Civil society's parallel report ("Platform of Swiss NGOs for
Human Rights") on the Swiss Government's obligations to
respect and protect economic, social and cultural rights (ESC
Rights)**

September 2019

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Preamble

All recommendations are intended to include all citizens regardless of their sexual orientation, gender identity, gender expression and sex characteristics.

Recommendations and observations related to women are to be applied to all persons who partly or fully identify as women regardless of the gender they were assigned at birth as well as every person who is (or was, if appropriate) considered to be female.

Recommendations and observations relating to relationships or parenthood are to be applied to all couples regardless of the partners' sexual orientation, gender identity, gender expression and sex characteristics.

Recommendations and observations relating to "pregnant women" are to be applied to all expectant people regardless of their gender identity.

Furthermore, wherever used herein, a pronoun in the masculine gender shall be considered as including all genders unless the context clearly indicates otherwise and a pronoun in the feminine gender shall be considered as including all persons identifying as women regardless of the gender they were assigned at birth as well as every person who is (or was, if appropriate) considered to be female.

Introduction

In order to respond to regional specificities in the implementation of economic, social and cultural rights, a working group within the "Platform of Swiss NGOs for Human Rights" which brings together more than 80 non-governmental organizations (NGOs) from French-speaking Switzerland and German-speaking Switzerland has been set up. It is coordinated by FIAN Switzerland for the right to food.

Methodology

Civil society organizations were asked to respond to the assertions made in the 4th Swiss report on the implementation of the Covenant by pointing out the shortcomings relevant to their knowledge of the situation of respect for ESC rights and by writing pertinent recommendations. These contributions have been included in French and in English.

This document was developed with the help of the following associations:

- Aînées pour la protection du climat - ainees-climat.ch
- Aktionskomitees gegen Mittelschulgelder
- Alliance Sud - www.alliancesud.ch
- Association Back to the Roots - backtotheroots.net
- ATD Quart Monde - www.quart-monde.ch
- AvenirSocial - Association professionnelle suisse du travail social - www.avenirsocial.ch
- Centre de conseils et d'appui pour les jeunes en matière de droits de l'Homme (Codap) - www.codap.org
- CLAFG - Centre de Liaison des Associations Féminines Genevoises - www.clafg.ch
- Conseil Suisse pour la Paix (SFR) - www.friedensrat.ch
- Coordination asile.ge (projet Asile LGBT Genève) - coordination-asile-ge.ch
- Fédération Suisse des Sourds (SGB-FSS) - www.sgb-fss.ch
- FIAN Suisse - www.fian-ch.org
- humanrights.ch - www.humanrights.ch
- Inclusion Handicap - www.inclusion-handicap.ch
- Ligue Suisse des droits de l'Homme – Genève (LSDH) – www.lsdh.ch
- NGO Coordination post Beijing Switzerland - www.postbeijing.ch
- Observatoire de la diversité et des droits culturels - droitsculturels.org/observatoire
- Observatoire romand du droit d'asile et des étrangers (ODAE romand) – odae-romand.ch
- Organisation suisse d'aide aux réfugiés - www.osar.ch
- Public Eye - www.publiceye.ch
- SANTÉ SEXUELLE Suisse - www.sexuelle-gesundheit.ch
- Société pour les peuples menacés - www.gfbv.ch
- Syndicat des Services Publics (vpod-ssp) - ssp-vpod.ch
- TERRE DES FEMMES Suisse - www.terre-des-femmes.ch
- Transgender Network Switzerland (TGNS) - www.tgns.ch
- Union syndicale suisse (SGB-USS) - www.uss.ch
- Unisourds
- Verein Kinderrechte Ostschweiz, St. Gall

Special thanks go to Matthias Hui, Evelyne Schmid, Caroline Dommen, Selim Neffah and Ruedi Tobler for their careful review.

Preparation of the document and contact

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This document was translated by a wonderful team of volunteer translators. Huge thanks to Amandine Amamena, Emily E. Bailey, Lisa Cavanagh, Charlotte Ford, Kshipra Jawdekar, Candice Elizabeth Jones, Nermina Nalic, and Emilie Ferreira for the translation's coordination.

Article 2 – Implementation of guaranteed rights

Regarding the justiciability of DESC (Loi §1)

1. Switzerland continues to view ESCR as a programmatic provision, does not condemn the regressive measures inherent in ESC rights and refuses to ratify the optional protocol. While individual human rights remedies may be brought before the European Court of Human Rights or before UN committees against torture, racial discrimination or discrimination against women or before the Committee on the Rights of the Child, this is not the case for ICESCR although many ESCR are included in other conventions.

2. The Convention on the Rights of Persons with Disabilities (CRPD), which came into force in Switzerland in 2014, makes it clear that ESC rights hold immediate obligations. By ratifying this convention, the Federal Council has also recognized the three types of obligations (respect, protect and give effect). In addition, the Swiss civil society expressly welcomes the fact that Switzerland, in its report (para. 42), finds that the prohibition of discrimination under art. 5 al. 1 CRPD is directly justiciable, and the refusal of reasonable accommodation constitutes a prohibited form of discrimination.

Recommendations:

3. Sign and ratify the Optional Protocol related to ICESCR, the CRPD and ICCPR, as well as European Social Charter

4. Judges at cantonal and national jurisdictions shall recognise direct applicability of the Covenant.

5. Education for the judges at cantonal and federal level at comparative international law related to justiciability of ESCR and direct applicability of the Covenant must be in place.

Regarding national institutions for human rights (Loi §2)

6. The lack of coherence in the application of the guaranteed rights is notable different among cantons. While a national human rights institution could help Switzerland fulfill its obligation to ensure consistent implementation of ESC rights at the national level to be the connector between the authorities and the civil society and to facilitate the monitoring and coordination among the respective actors Switzerland still does not have one. As mentioned in the report, the lack of formal independence of the Swiss Centre for Jurisdiction for Human Rights (CSDH) is an issue (para. 20). The extension of the pilot project for another 5 years, as decided in 2015, does not satisfy the Swiss civil society organizations.

7. In 2017, a draft bill that will serve as a basis for the creation of an independent National Human Rights Institution in Switzerland (NHRI) was submitted for consultation. While the draft law explicitly refers to the Paris Principles, it is imperative that certain aspects of the law be amended to ensure that the future national human rights institution gains status A. At the Swiss UPR in 2017, the Federal Council reaffirmed its commitment to establish a national human rights institution in accordance with the Paris Principles (UN recommendation 147.5 A/HRC/37/12/Add.1). Nevertheless a Federal Council decision (message) on the creation of the institution was expected in summer 2018 but it was postponed to an indefinite date.

Recommendation:

8. Create as soon as possible a national institution for human rights in accordance with Paris Principles (statute A).

Regarding the dissemination of information on the CDESCR

9. In March 2013, a report was published on the measures to be taken to implement the 2010 CDESCR recommendations to Switzerland, following a seminar organized with the support of the authorities and the participation of a member of the CDESCR¹. Civil society is surprised not to see this document

¹ La Suisse et les droits économiques, sociaux et culturels, mars 2013.

https://www.skmr.ch/cms/upload/pdf/130618_Rapport_La_Suisse_et_les_droits_economiques_sociaux_et_culturels.pdf

mentioned in Switzerland's report and that it was not taken into account by the authorities

Recommendations:

10. The concluding observations of the Committee must be implemented in connection with the cantons and communities with a schedule and action plan.

11. The federal and cantonal authorities must ensure a dialogue and monitoring continue between interlocutors on regular and permanent basis within the federal government and civil society when the Covenant is implemented between different cycles of examination before the CESCR. To do so, inspiration can be drawn from the Agenda 2030 for which the monitoring process is already in place.

Regarding free trade agreements (FTA)

12. In its concluding observations of 2010, the Committee made a recommendation to Switzerland (No. 24), in which it listed examples of how such agreements can lead to impairment of the right to health and the right to food and called on Switzerland to carry out impact assessments. The Federal Council rejects this by including a reference to the complexity of the issues (§27 4th CH report).

Recommendations:

13. Implement the conclusion and recommendations contained in the report of the Independent Expert on the effects of foreign debt and other related financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, on his visit to Switzerland (see par. 87-93)².

14. Reconsider implementing the Final observation n°24 of the Committee after the last examination of Switzerland in 2010.

15. Conduct the study of the continued and wide range impact, especially of the potential impact on human rights in Switzerland and in the third countries, upstream all the activities of the country susceptible to be at risk for human rights, especially the conclusion of the future FTA.

16. Put in place a monitoring system and ensure an access to remedies to all the persons affected by the (measures taken in the frame of) FTA.

Regarding due diligence and access to remedies (LoI §3)

17. MONITORING: In 2018, the Swiss government commissioned two initial studies on corporate practices regarding human rights. The first study³ found that out of the 500 largest Swiss businesses, 36% report publicly on sustainability, 5% refer to the UNGP and 2% to the OECD Guidelines. While not providing representative results, the second study⁴ found that even for very large companies, only a minority of companies participating in the study have continuing due diligence processes in place. The government refused the study's recommendation to clearly define the conditions and indicators under which it would revert to legislation⁵.

18. JUDICIAL REMEDIES: In September 2018 the Swiss government acknowledged a currently «fragmented framework for access to judicial remedies» but it explicitly decided against filling the gaps.⁶ Despite frequent allegations for harmful practices by Swiss companies⁷, only very few civil and

² Report of the Independent Expert on the effects of foreign debt and other related financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, on his visit to Switzerland <https://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/CountryVisits.aspx>

³ Study commissioned by SECO: Importance and significance of the OECD Guidelines for Multinational Enterprises in Switzerland (May 2018; German, p. 27).

⁴ Study commissioned by FDFA: Stocktaking on the implementation of the UN Guiding Principles for Business and Human Rights by the Confederation and by Swiss companies (Dec. 2018, German, p. 51 and 96)

⁵ Federal Council, Review of NAP implementation (Dec. 2018, French, p. 11). See also the recommendation of the Expert on due diligence <https://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/CountryVisits.aspx>

⁶ Federal Council, Comparative analysis of access to judicial and non-judicial remedies, (Sept. 2018, French, p.9)

⁷ Menno T. Kamminga: Company Responses to Human Rights Reports: An Empirical Analysis (Feb. 2015, p. 6); Gregory Jackson and Julia Bartosch: Corporate Responsibility in Different Varieties of Capitalism – Exploring the

criminal cases have been filed and not a single one has been successful.⁸

19. POPULAR INITIATIVE: Over 110 Swiss civil society organizations, supported by over 130 representatives from the business community, filed a popular initiative, the «Responsible Business Initiative (RBI)»⁹. The text intends to introduce mandatory human rights due diligence (mHRDD) for Swiss companies regarding their activities abroad in order to prevent negative impacts. In addition, it defines to what extent parent companies should be held liable for harm caused by entities under their control in cases where appropriate due diligence was missing. In September 2017, the Swiss government issued its recommendation to dismiss the RBI without any counter-proposal and to remain focused on voluntary measures. In August 2019, it restated that it only commits to limited legislation (limited to reporting). Since 2018 parliament is examining a counter-proposal at the statutory level that has been confirmed twice by the Swiss National Council but so far rejected by the Council of States. If parliamentary attempts prove unsuccessful the RBI will be subject to a binding popular referendum in 2020.

Recommendations:

20. It is noted with concern, that systematic corporate implementation of the UN Guiding Principles remains limited to frontrunning companies and that specific legislation addressing this phenomenon is absent. Referring to its General Comment No. 24, para. 16 and 44, it is therefore recommended that the State party not only expects, but actually legally requires respect, also abroad, for human rights and international environmental standards by companies based in Switzerland, including by legislating for mandatory human rights due diligence. It is also recommended that the State party clarify the conditions for parent company liability as proposed by the pending popular initiative for responsible business. Additionally, it is recommended that the State party to remove procedural barriers to remedies.

21. Take into account conclusions of the Committee in their General Observation no 24, para. 35, it was recommended to the State Party to actively contribute and in a constructive manner to the elaboration of an international juridical instrument binding to regulate, in the frame of the international human rights, activities of the transnational companies and other companies in the centre of the working group of the Council for Human Rights.

Regarding development aid (LoI §4)

22. The countries of the OECD, which Switzerland has been a member of since 1970, approved the objective of contributing 0.7% of GNI to Swiss development aid. Switzerland has also accepted in the Universal Periodic review 2017/2018 the recommendation concerning the increase of ODA to 0.7% of GNI. However, in the response of the list of issues, the Federal Council declared envisaging an objective of 0,5%, moreover not realised in 2017.

Recommendation:

23. Switzerland has made commitments at the international level and it has to comply by increasing its ODA to 0.7% during to period of its next message on the international cooperation (2021-2024).

Regarding the national objectives of emissions and the contribution to the Green Fund (LoI §5)

24. The measures taken by the confederation for climate protection are very insufficient, violate the federal constitution and the obligations undertaken within the framework of the ICESCR because these measures put our health at risk. The government thus fails in its duty of protection with regards to the population. Reducing emissions abroad does not effectively compensate for the absence of an adequate domestic emissions reduction target. In addition, the targets of CO2 emission reduction will not be met by 2030.

Role of National Institutions (June 2016, p. 25).

⁸ civil: GIRCA v. IBM (2006), Alam v. FIFA (2017); criminal: Nestlé (2014), Argor (2015).

⁹ <https://initiative-multinationales.ch>

25. Switzerland, a rich and industrialized country, must bring to the southern countries, that have contributed little to global warming, but that have particularly suffered by it, necessary financial aid as specified in the Paris Agreement.¹⁰

26. Climate justice means that Switzerland helps these countries to better overcome the consequences of global warming and to develop in a sustainable manner for the climate. These necessary funds of up to at least 1 million per year, must in no way be compensated for cuts in development cooperation.

27. It is also imperative to guarantee that the funds intended for measures of adaptation and of climate protection in Switzerland and in a global scale, are financed according to the polluter pays principle. Which is not the case yet in Switzerland.

Recommendations:

28. Reduction of 40% its emissions of CO₂ by 2020, 60% by 2030 (in comparison to 1990) and attain zero emission net zero by 2038. The current annual reduction rate must increase from 2% to 4% per year (instead of being slowed down to 1%) in line with IPCC recommendations.

29. To move away from fossil fuels, including powered mobility by these fuels, to preserve the climate and to prevent global warming from exceeding the particularly dangerous threshold of a 1.5°C temperature increase.

30. Adequately and urgently regulate activities generated by the Swiss financial center that have an equivalent impact to 20 times Switzerland's green house gas emissions. For that reason, investments from the National bank, from banks, from insurance policies and from pension funds must be climate compatible.

Regarding the obligation to act to the maximum of available resources (Loi §6 et 7)

31. According to the independent expert Juan-Pablo Bohoslavsky, the financial and fiscal policy of the Switzerland, whose financial centers manage 25% offshore assets of the world and offers fiscal conditions attractive for the installation of the head offices of multinational companies, is largely responsible for fiscal deficit in the developing countries.¹¹ Losses due to the tax evasion of the companies, which represent several billions of dollars a year, prevent the developing countries to develop or to maintain the nature of public service to guarantee the economic, social and cultural rights of their populations – such as the right to education, health of alimentation. In the scope of the fiscal reforms of the companies in Switzerland adopted on 19 May 2019, the Federal Council will suppress existing fiscal privileges, but will replace them with measures that have the same final effect (patents, general corporate tax reductions, etc.). In other terms: for the international companies, profit remittances realized in the South towards the Switzerland will stay an advantage.

32. Regarding Switzerland's obligations to not undermine other States' capacity to fulfil their Covenant obligations, it is worth noting that loopholes in the Swiss legislation on the export of war material and the application of this legislation risk severely reducing this capacity.¹²

Recommendations:

33. Implement the recommendations of the Financial Action Group (GAFI) intended to improve the anti-money laundering defence.

¹⁰ Report to the UN General Assembly by the Special Rapporteur on human rights and the environment concerning the right to a safe climate (August 2019), UN Doc. A/74/161.

¹¹ Juan Pablo Bohoslavsky: Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, on his visit to Switzerland - Advanced Edited Version, ohchr, 15. mars 2018.

¹² E.g. State-owned company planning to export a mortar through Finland to Qatar to bypass controls with a risk of use in the armed conflict in Yemen. Rapport d'audit du Contrôle fédéral des finances, Contrôle du transfert de matériel de guerre, septembre 2018, <https://www.efk.admin.ch/fr/publications/economie-administration/economie-et-agriculture/3384-controle-du-transfert-de-materiel-de-guerre-secretariat-d-etat-a-l-economie.html>; with an English overview of the uncensored report available at https://www.swissinfo.ch/eng/weapons_uncensored-report-on-arms-exports-highlights-loopholes/44377958

34. Reinforce regulations of transparency applicable on banks in the domain of the management of assets of foreign origin. For example, the distinction between the tax evasion and fiscal fraud, which is prescribed by the law currently, should be revoked, and legal proceedings against whistle-blowers in the financial sector should be discontinued.

34bis. Communicate in complete transparency with the progressive forces in the South regarding the Swiss bank accounts belonging to the persons originating from these countries.

35. Put in place a corporate tax, which will allow generating a substantial portion of tax revenues other than by transferring unrealised profits to Switzerland.

36. We recommend that the Committee call upon the federal assembly to strengthen legislation to ensure that war material exports do not undermine Covenant rights in other States, and that the Committee calls upon Swiss authorities to improve due diligence, monitoring and accountability procedures in this regard.

Concerning obligation of non discrimination (Lol §8)

37. Despite the recommendation made by the CESCR in 2010, Switzerland still does not have a comprehensive anti-discrimination law uniformly applied throughout the Confederation. Protection against discrimination and the access to justice remain inadequate. Contrary to the reply of Switzerland to the Lol 8, the civil society thinks that one global law would allow combating more efficiently all the discriminations, which should not be prioritized. This law would focus great attention to multiple discriminations affecting marginalized persons.

Recommendations:

38. A global law for combating discrimination applied uniformly in all the Federation must come to force.

39. Poverty and extreme poverty must be addressed in a systemic manner along the criteria of discrimination. The information concerning discrimination in these situations as well as multiple discriminations must be unified. Tools must be created in order to prevent, combat and sanction.

40. Implement recommendations of the report CSDH¹³ related to access to justice in the cases of discrimination.

Discrimination based on sexual orientation and gender identity (Lol §9)

41. The conclusions of the report regarding the right of protection against discrimination in 2016 indicated which are the most important shortcomings in the domain of LGBTIQ. In December 2018, the Parliament voted a broader interpretation of criminal standard against racism which would allow sanctioning persons denigrating or belittling publicly other persons on grounds of sexual orientation (art. 261bis CP). Although it was proposed, the question of the gender identity, considered as 'too vague' was not integrated in this reform. A religious Swiss-German party (UDF) collected necessary signatures and a referendum took place against this partial reform.

42. In May 2018, the Federal Council presented a preliminary draft of a law concerning sex change in civil registry. In contradiction with the answers to the CESCR's list of issues, this preliminary draft does not exclude medical certificates and treatments as preconditions but leaves them to the discretion of civil registrars (see Explanatory Report of 23.5.2018, p.11: "The submission of a declaration of change in sex registration should be made in person before the civil registrar. In case of doubt, the latter will have to carry out further investigations, for example by requiring the production of a medical certificate.") The specialised associations consider that this project is still too restrictive for the people concerned and constitutes a step backwards in terms of the rights of minors capable of discernment currently in force.¹⁴

¹³ CSDH, Study related to access to justice in cases of discrimination, 2014-2015.

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

¹⁴ See press release TGNS, August 2018. <https://www.tgns.ch/fr/2018/08/communique-sur-changement-de-sexe->

43. Since January 1, 2018¹⁵, the common law spouses who are homosexuals or lesbians are considered authorised to adopt the children of their spouse. However, the joint adoption remains forbidden.

44. In June 2018, the legal commission of the Council of State ruled on the marriage 'for all' in Switzerland. In August 2019, the Legal Affairs Committee of the National Council ruled in favour of marriage for same-sex couples, but against sperm donation for female couples.

Recommendations:

45. Include protection against discrimination based on sexual orientation, gender identity, gender expression and sex characteristics in the law. Such anti-discrimination clause must include discrimination by all private parties and be open to every victim of discrimination without the financial risk that nowadays prevents from claiming rights in a civil procedure.

46. Make sure that, if legal gender recognition is being included in the civil code, it is explicitly based on self-determination, accessible for all transgender people and a quick and transparent procedure.

47. Create a registration system and monitor incidents implying homo-or transphobic nature in order to obtain the statistics regarding their extent..

48. Put in place measures to guarantee equal rights for couples of the same sex facing the adoption and assisted medical procreation.

49. Include teachers education in order to encourage inclusive education and that teachers are aware of gender issues to better assist students.

Discrimination regarding Yenish, Sintis and Roma (LoI §10)

50. Despite the fact that the Federal Council has agreed to elaborate an action plan to enhance the situation of Yenish, Sinti and Roma in Switzerland and implement measures against the structural discrimination against these three minorities, the planned measures have not been implemented so far. No monitoring mechanisms are in place and there is no additional budget to accompany the adopted measures. The situation has hardly improved and antidiscrimination work has been delegated to civil society organisations.

Recommendations:

51. Entrust managing hospitality areas in Switzerland to private persons rather than to the police.

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

53. Recognise Swiss Roma as a national minority in the sense of the European Council Convention on protection of National Minorities.

Social integration of foreigners (LoI §11)

54. The revision of the Law on Foreigners (LEI RS 142.20) dedicated integration as a measuring and constraining instrument. The criteria which have to be met for foreigners to be considered as integrated' are too rigid and restrictive. They fail to sufficiently take into consideration the specificities and individual situations. The changes harden the access to a stable legal status or restrict the possibilities for family reunification.

55. The civil society welcomes the efforts related to the '« Integration Agenda » (AIS) aimed at integration of persons provisionally admitted and refugees. However, they regret that measures of integration do not intervene in the asylum procedure (periods spent in Federal asylum centers and the extended procedure; and that these measures are not being applied on foreigners outside asylum domain.

officiel/

¹⁵ <https://www.admin.ch/opc/fr/official-compilation/2017/3699.pdf>

56. The status of provisional admission is stigmatising, disadvantage the persons on labour market, limiting access to family reunification and welfare. It makes a real integration very difficult, if not impossible.
57. Asylum seekers whose applications are found inadmissible are not guaranteed a fair procedure, especially in the “Dublin” cases where the requests for protection are not examined. Therefore their integration is rendered impossible
58. Emergency aid granted to persons denied of asylum and the aid allocated to asylum seekers and persons provisionally admitted are insufficient for adequate social and professional integration.
59. Tens of thousands of people (including many minors) live in Switzerland with no legal status. They are denied many of their fundamental rights (access to education, health services, right to marry and others) and there are many cases of exploitation (see §118-121).
60. The LGBTIQ persons remain exposed to a great risk of violence LGBTIQ-phobic in federal centres for asylum seekers (CFA), places where they are supposed to effectively present their needs of protection. This is reflected in their capacities to expose, in full security, their persecution and their motivation for asylum. They do not have a necessary sense of security in those places, and this is an obstacle to access to a just and fair procedure and to their right they must be protected.

Recommendations:

61. Objective and measurable criteria in integration matters which takes into consideration specificities and individual situations must be adopted, according to AIS model, for the entirety of the population and as soon as possible.
62. Although it has been largely demonstrated that the status of the provisional admission and the conditions attached to it do not allow a good integration, that the majority of persons under this status are forced to stay in Switzerland for many years, this status has to be removed and the persons received have to be able to exercise their rights in the same manner as the rest of the population (family reunification, access to labour market, possibility to travel abroad, possibility to use public aid etc.).
63. All persons have to be able to see their demand for protection examined by the Swiss authorities.
64. The persons without a legal status who live in Switzerland for years have to have their status regularised. For that, the lesson from the Operation Papyrus in Geneva has to be learned, so it can be conducted in other cantons.

Additional recommendations concerning asylum seekers as LGBTIQ:

65. Establish detailed statistics regarding the asylum demands for motives related to the sexual orientation, identity and gender expression, and sexual characteristics (SOGIECS).
66. Put in place measures to identify LGBTIQ asylum seekers and show them their fundamental right to live openly and under complete security of their identity.¹⁶
67. Put in place conditions of permitting reception to ensure their protection and their access to a just and fair procedure.
68. In federal centres (CFA): a. Educate in a regular and obligatory manner, entirety of personnel at CFA regarding specificities of demands for motives related SOGIECS; b. All LGBTIQ people to be systematically accommodated in safe and individual accommodation (as oppose to the collective accommodation); c. Guarantee access to care unconditionally and without a delay, especially to psychological care and care related to the transition; d. Guarantee access of asylum seekers to LGBTIQ associations and community.

¹⁶ Multiplication of tools allowing facilitation of identification of LGBTIQ: information oral, visual signs, list of LGBTIQ resources etc., and in particular visible and readable in the languages of origin regarding the LGBTIQ people rights.

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

70. For the reasons tied sometimes to the conditions of expression of real motives of asylum and to need for treatment and evaluation of credibility, these asylum demands for motives related to SOGIECS are complex cases that need time and particular competencies. As a consequence, it is necessary: a. Educate in a regular and obligatory manner, entirety of personnel in charge of asylum seekers treatment (persons in charge of interviews and decisions), as well as interpreters, regarding the specificities related to SOGIECS; b. Treat these demands in extended procedure, except in clear cases of refugee determination, after one person reveals these motives or if we can legitimately suppose these motives exist.

Discrimination against persons with disabilities

71. As the committee notes in their general observation (GO) n° 5, it is essential that «the private employers, private suppliers of goods and services (...) must be subjected to non-discrimination norms such as norms of equality regarding the persons suffering of a disability » (para. 11). That is not the case in Switzerland.¹⁷

Recommendation:

72. Create expeditiously a committee in charge of examining in detail all the recommendations of CSDH in the domain of the equality of disabled persons and to prepare an action plan for implementation, particularly concerning the legal protection in cases of discrimination against persons with disabilities by private employers¹⁸ and private service providers.

Police training

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

74. Police training includes very little focus on relationships between the police and migrant populations. Instead, new recruits are initially trained in ethno-national stereotypes, fostering a suspicious view of migrants. Only 3% of the total class time is spent on human rights (psychology and social skills 7%

Recommendations:

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

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

77. Police training must examine the particular situations of refugee women victims of multiple discriminations, those against sexworkers, as well as the question of racial profiling.

¹⁷ For more details, see the report of the civil society presented at the occasion of the first procedure of the report of States before the UN Committee related to persons with disabilities («alternative report CRPD») of 16 June 2017, https://www.inclusion-handicap.ch/admin/data/files/asset/file_fr/424/rapport_alternatif_cdph_inclusion_handicap_1_0_23082017_f.pdf?l=1528210534%20,%20art.%205%20CDPH

¹⁸ Concerning incorrect information in this context in the report of Party State see para. 94 of contribution to the «list of issues» of the civil society.

Article 3 – Equality between men and women

Reconciliation of professional and family life (LoI §12 and 13)

78. In Switzerland, salary models and career plans, the lack of external childcare availability, and even the non-recognition of the work of caregivers prevent parents from reconciling their professional and family lives, and in particular prevent women from being employed in managerial or political positions.

79. Although regulations imposing quotas have been adopted in some cities and cantons, this has not yet occurred at the national level. Voluntary efforts to increase the representation of women on boards of directors and in general management have not achieved the expected results.

80. Women often work part-time in order to take on their majority share of unpaid work, which entails an increased risk of impoverishment during old age. Single mothers who work part-time often do not receive an income that they can live off. There is practically no paid paternity leave or leave for adoption. Paid parental leave does not exist anywhere.¹⁹

Recommendations:

81. To increase the number of women in decision-making bodies adopt and implement measures, either as temporary special measures or as permanent measures, aimed at achieving substantive equality of women and men in all areas and ensure the allocation of resources and the creation of incentives, targeted recruitment and the setting of time-bound goals and quotas, in areas where women are underrepresented or disadvantaged in both the public and private sectors.

82. To introduce parental leave of a minimum of 38 weeks, which will strongly encourage equality²⁰. In addition, maternity leave should be for a minimum of 18 weeks and a new paternity leave, which does not exist at the moment, should be introduced and should last for a minimum of 8 weeks.

83. The Confederation and the cantons must offer framework conditions that encourage the fair distribution of unpaid work between men and women, (in particular flexible working hours and organisation models) which take into account the needs of employees with caregiving responsibilities (children, ailing parents).

84. The State must strengthen its participation in the funding of crèches and implement a general allowance for full-time childcare.

85. Unpaid work must be fairly taken into account in the calculations performed for the payment of annuities. In the case of caregivers, the federal Council needs to explore the possibility of using the support contribution to pay these, at least partially.

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

Article 6 – Right to work

Young people and the labour market (LoI §14)

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

Recommendations:

88. The number of specialised professions requiring specific apprenticeship should be reduced. A broad basic education should enable young people to become independent and able to work in a team. Support courses must be developed and learning monitoring must become more effective.

¹⁹ For more information, see the alternative report of the Post-Beijing Coordination of Swiss NGOs at CEDAW, September 2016. In particular § 10.3.

https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CHE/INT_CEDAW_NGO_CHE_25167_E.pdf

²⁰ According to the recommendations of the Federal Commission for Family Matters COFF, 2018

<https://www.newsd.admin.ch/newsd/message/attachments/53291.pdf>

89. Facilitate professionals' access to professional development schools and the opportunity to acquire a second professional training. For further training, the law must provide for paid training leave. Thanks to more generous scholarship regulations, it consolidates the acquisition of knowledge over a lifetime.

89bis. The wages of apprentices must be improved in collective labour agreements (CLAs) and at the legal level. In the first year of apprenticeship, these salaries must be at least CHF 480 and in the fourth year at least CHF 960 (1994 figures). In addition, all apprentices must be entitled to the 13th salary.

Elderly employees and the labour market

90. Workers who are 55 or older even at the age of 50 in some sectors, are more often dismissed than before. These persons have much more difficulties to find a job than younger people. They are victims of discrimination because of their age and often must resort to take more vulnerable short term employment or use welfare assistance after the end of the entitlement, which lead to a considerable loss in terms of their retirement. The long term unemployment rates are much higher for the elderly employees than in other categories.

Recommendations:

91. Implement rapidly pre-retirement 'bridge benefit' in order to prevent poverty of the elderly persons as soon as this reform is accepted by the parliament.

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

Foreigners and the labour market (Lol §14)

93. Foreigners face hiring discrimination, especially those who are granted an "F foreigner" temporary residence permit theoretically granting them the right to work. According to civil society, employers are reluctant to hire these permit holders although figures have shown that the majority of foreigners on temporary residence permits remain in Switzerland and furthermore are integrated into Swiss society, especially young people having been through the Swiss education system. The situation of the young, arriving as unaccompanied minors when they become adults is especially difficult, because the accompanying measures stop abruptly when they become adults.

Recommendation:

94. Discriminatory status of provisional admission must be abolished.

Persons with disabilities and the labour market (Lol §14)

95. Switzerland does not give a response to §13 Lol concerning the persons with disabilities. In 2015, the proportion of persons who do not participate in workforce («non active») is two times higher with persons with disabilities (27% vs. 12.1%), and it is particularly higher with women with disabilities. It has reached 50,7% for persons severely limited, after having dropped since 2007 (45,2%). At the same time, the number of people with disabilities (currently around 25 000) who work at the protected workshops has constantly grown between 2007 and 2013 (GO no. 5, para. 21).²¹ The lines of action defined in 2017 in the scope of three « national conferences on integration of persons with disabilities on the labour market », as well as the program « equality and work »,²² are only envisaging ad hoc

²¹ For this statistic, cf. <https://www.bfs.admin.ch/bfs/fr/home/statistiques/situation-economique-sociale-population/egalite-personnes-handicapees/activite-professionnelle/participation-marche-travail.assetdetail.3962809.html>; <https://www.bfs.admin.ch/bfs/fr/home/statistiques/situation-economique-sociale-population/egalite-personnes-handicapees/activite-professionnelle/emploi-protege.assetdetail.275275.html> (chiffres de 2013); <https://www.insos.ch/themes/domaines/domaine-monde-du-travail/>

²² See number 4.2.1 of the report on one national policy in favor of persons with disabilities, access here

measures. Switzerland until today does not have a strategy for even implementing obligations arising from Art. 27 CRPD nor sufficient legal basis including currently on-going revisions of the Disability Insurance Act. Professional education often takes place in an environment that is not integrated nor inclusive, and does not take sufficiently into consideration needs of the persons concerned (GO no. 5, para. 24).

Recommendations: (in analogy with the recommendation of the committee addressed to Germany²³; see also GO no. 23, para. 47.c)

96. Elaborate a strategy independently uniform and coordinated by implementing art. 27 CRPD in the domain of professional education and employment, aimed at the creation of an inclusive labour market which offers employment also to persons whose productivity is substantially restrained.

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

98. Examine incentive schemes (e.g. as given by the committed in para. 72) promoting engagement of persons with disabilities on the labour market, as binding targets and financial incentives.

Article 7 – Right to fair and favourable working conditions

Minimum wage (Loi §15)

99. Switzerland does not have a minimum wage legal system at the federal level. Until now, only two cantons introduced a minimum cantonal wage. These are based on subsistence minimum and do not necessarily provide a sufficient standard of living.

100. Many collective labour agreements (CLA) do not mention minimum wage because the employers refuse to do that. There where they are mentioned in CLA they are too low and employees run the risk of falling in the trap of poorly paid workers.

101. The cantonal controls are carried out by tripartite commissions. However, they cannot do it because the wage dumping has already been admitted. There is not sufficient control of the respective cantonal authorities, especially by labour inspections, because they lack personnel.

102. Furthermore, the situation of poorly paid workers is not improving does not result in targeted measures.

Recommendations:

103. Establish a general minimum wage applicable in the entire Switzerland.

104. Reinforce the place of provision principle because the working conditions and wages in force in the place of provision will be respected and thus fight against wage underbid.

105. Augment the number of controls in companies by the labour inspection.

Equal pay (Loi §16)

106. Voluntary efforts to reduce unequal pay are clearly insufficient (see initial contribution).

Recommendations:

107. Put in place binding measures that include sanctions for non-compliance to eliminate the gender wage gap, in particular the « unexplainable » wage difference for the public as well as private sector.

108. Put in place measures to ensure equal opportunities for women and men in the labour market, including through the use of temporary special measures, with time-bound targets to intervene in « explainable » wage differences.

<https://www.edi.admin.ch/edi/fr/home/fachstellen/bfeh/politique-nationale-du-handicap.html>

²³ Committee for Economic, Social and Cultural Rights, Final Observations concerning the sixth periodic report on Germany, UN Doc. E/C.12/DEU/CO/6 du 27 nov. 2018, paras. 34, 35.

109. Put in place measures to eliminate wage gaps due to intersectional discrimination and lower wages for “female” and “migrant” jobs, with the aim to achieve equality and transparency on the job market.

Harassment and unfair dismissals

110. Cases of unfair dismissals due to pregnancies, sexual orientation, gender identity, gender expression and sex characteristics, sexual harassment, sexism and/or violence continue to be listed (see initial contribution).

111. A study conducted by the Office for studies of labour and social politics (Bass) on behalf of the Federal Office for Social Insurance shows that one in seven women lost her job because of pregnancy. Actually, 15% of women stop working against their will after childbirth, either for being dismissed or for refusing to reduce their working hours. The period of protection against dismissal, which expires 16 weeks after childbirth, is proved to be inefficient. According to the study of Bass, 71% of women return to work later, minimum after 22 weeks, notably because nurseries do not accept babies younger than 6 months. The majority of mothers are not protected against dismissal when they return to work.²⁴

Recommendations:

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

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

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

Working conditions for persons with disabilities

115. Concerning this right, which is applied equal to persons with disabilities who work on the labour market and shelter workshops (GO no. 5, para. 25), it is well established that the latter are paid not more than several hundreds Swiss francs a month and depend on social insurance in order to attain minimum living standard. The persons with disabilities who work on the labour market are not safe from discrimination.²⁵

Recommendations:

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

117. Ensure reasonable adjustment for example interpretation in sign language should be introduced in all workplaces (see also GO no. 23, para. 47.c).

Working conditions for foreigners (LoI §17)

118. The persons without a legal status mostly work without being registered for social welfare and without any type of control over their working conditions or protection. The abuse and cases of exploitation are numerous.

²⁴ Beiträge zur Sozialen Sicherheit, Forschungsbericht Nr. 2/18, Bundesamt für Sozialversicherungen BSV 2018. https://www.bsv.admin.ch/bsv/de/home/publikationen-und-service/forschung/forschungspublikationen/_jcr_content/par/externalcontent.external.exturl.pdf/aHR0cHM6Ly9mb3JzY2h1bmcuc296aWFsZS1zaWN0ZXJoZWl0LW/Noc3MuY2gvd3AtY29udGVudC91cGxvYWRzLzlwMTgvMDMvMI8x/OGRfZUJlcmlijaHQucGRm.pdf

²⁵ See statistiques <https://www.bfs.admin.ch/bfsstatic/dam/assets/1646355/master> et <https://www.bfs.admin.ch/bfsstatic/dam/assets/1560222/master>

Recommendations:

119. The persons without legal status who live in Switzerland for years must be regularised (see Operation papyrus in Geneva).

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

121. Perpetrators of grave violations of the labour rights detected during the regularisations procedure (e.g. situations of exploitation) must be prosecuted and sanctioned.

Article 8 – Union Rights

Right to strike and protection against anti-union dismissals (Loi §18)

122. The study requested by the Federal Office for Justice and the SECO²⁶, mentioned in the response from the federal authorities, shows that Swiss law on employment protection does not comply with international law (Pact I, ILO Conventions and the ECHR). Switzerland does not observe ILO Conventions 87 and 98 on the Right to Organise and Collective Bargaining, and it has refused to include in its legislation the principle of the right to the reinstatement of victims of anti-union dismissals. Moreover, the compensation awarded by the courts is too low to guarantee effective protection against anti-union dismissals. Article 336a paragraph 2 of the Swiss Code of Obligations (CO) provides for a maximum compensation of six months' salary, which can be awarded as compensation in cases of non-union-related unfair dismissal, and in particular, if the employee took part in a legal strike. This article has still not been amended. Furthermore, generally speaking, in practice the courts only award compensation that equates to two or three months' salary. For firms with a high growth potential, the granting of six month's salary as compensation to victims of discrimination, who have been dismissed due to their union activity, does not act as a deterrent. The ILO's Committee of Experts on Application of Standards and Recommendations (CEACR)/Committee on Freedom of Association has criticised this lack of reinstatement.

Recommendations:

123. Observe and enforce the CEACR recommendations on implementing ILO Conventions 87 and 98, to which Switzerland is a signatory.²⁷

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

²⁶ Please see study by Jean Philippe Dunand/Pascal Mahon et al., *Etude sur la protection accordée aux représentants des travailleurs (Study on protection granted to employee representatives)*, 2015 – original in French. *Etude sur la protection en cas de grève licite (Study on protection granted in cases of legal strike)*, UniNe, 2016 – original in French; https://www.seco.admin.ch/dam/seco/de/dokumente/Arbeit/Internationale%20Arbeitsfragen/studie_schutz_arbeite_rvertreter.pdf.download.pdf/15+rapport+UNINE+plainte+2003+final.pdf ; <https://www.bj.admin.ch/dam/data/bj/wirtschaft/gesetzgebung/whistleblowing/studie-streik-cert-f.pdf>

²⁷ L'OIT a traité la plainte de l'USS à l'OIT et a donné le 15 novembre 2006 à la Suisse la recommandation suivante : "Le comité prie le gouvernement de prendre des mesures pour prévoir le même type de protection pour les représentants syndicaux victimes de licenciements antisyndicaux que pour ceux victimes de licenciements violant le principe d'égalité de traitement entre hommes et femmes, y compris la possibilité d'une réintégration, eu égard aux principes fondamentaux mentionnés plus haut et conformément aux conventions nos 87 et 98 ratifiées par la Suisse....".

Article 9 – Right to social security

Social assistance (LoI §19)

125. Trying to acquire social assistance is often an uphill battle. People who attempt to acquire social assistance have to overcome a number of obstacles, including stigmas, penalties and never-ending procedures that often prove to contradict one another. Such obstacles mean that a wide variety of people, including families with children and single parents, have to do without the benefits to which they are entitled²⁸. According to the LEI criteria for integration, if you request social assistance, you may have your residence permit withdrawn. Not receiving social assistance is also a condition for family reunification. It is therefore particularly concerning that many people in need, in particular victims of domestic violence, do not seek help from specialised institutions (e.g. refuges) because it would be considered that they have requested social assistance.

What is more, the lack of common rules across the country leads to discriminatory practice.

126. The Federal Council has not implemented Recommendation 12 on social/emergency assistance, drawn up in 2010. The different levels of social assistance granted to people reveal a clear discriminatory practice. The level of assistance varies depending on whether it is assistance granted to citizens who were born in Switzerland, assistance awarded to provisionally admitted foreigners, and emergency assistance awarded to foreigners. Moreover, the level of 'minimum subsistence' that you may receive varies, depending on your legal status.

Recommendations:

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

128. Set minimum shared criteria for the level of social assistance for every person and their family living in the Swiss territory (regardless of their legal status), so that they can enjoy a decent quality of life. Such criteria should be enshrined in the constitution, legislation and jurisprudence (by changing the official position on the justiciability of Economic, Social and Cultural Rights (ESCR)) in order to standardise the social benefit systems across all cantons and to prevent people from receiving substandard levels of help.

129. Provide social assistance – instead of emergency assistance – to every person living in Switzerland.

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

Article 10 – Protection of the family, mother and children

Childcare services (LoI §20)

131. The offer of childcare services remains insufficient. The cost of the services remains prohibitively high even for the middle class, in absence of sufficient subsidies, and it is often discouraging employment of the parent with the lowest income (mother in the majority of families), when the choice of childcare should be made regardless of the financial consideration. This situation is contributing to the discrimination of women in labour market.

²⁸ See study carried out in Geneva: Research study 'Le non-recours aux prestations sociales à Genève. Quelles adaptations de la protection sociale aux attentes des familles en situation de précarité ? ('The non-take up of social assistance in Geneva. What amendments can be made to meet the needs of families in need?') March 2019 – original in French.

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

Recommendations:

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

133. Increasing public financing of nurseries and instituting a general allocation for full time childcare, in a way that will not discourage employment.

Protection of the family

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

The protection of the family, the protection of children and adolescents and the protection of particularly vulnerable persons are questioned in practice in Switzerland, when it comes to forced removals (please see initial contribution §117-126).

Recommendations:

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

135. Waive all types of constraints during the transport to the airport (ties, shackling, using the wheelchairs)

136. Stay of execution of removal for vulnerability reasons (health, pregnant women, age or traumatism), and waive the phased removal or causing the separation of families.

Family reunification (LoI §21)

137. Law concerning migrations represent considerable impediments against the right to family life for migrant persons. Duty lawyer services are regularly noticing persons whose willingness to reunite with their family is restrained or denied by the authorities.

138. The legal obstacles for family reunification temporarily admitted in Switzerland still exist. In fact, from the angle of the right to family and protection of the family, it is extremely worrisome that for the persons temporarily admitted, including refugees temporarily admitted (refugee permit F), the reunification is possible not sooner than 3 years after issuance of the temporary admission, and only under very strict conditions, especially of economic nature.

139. The strict limitation of the definition of a family (nuclear) is equal in contradiction with the right to family life; it is rendering particularly impossible family reunification of the unaccompanied minors under protection status in Switzerland.

140. Furthermore, the law in force do not resolve the competences conflict between the authorities in charge of the children protection (APE) on one side, and the asylum authorities and the Law on Foreigners (RS 142.31 resp. 142.20) on the other side. The federal tribunal has refused to resolve the conflict (see judgment 5A_618/2016 of 26 June 2017, c. 2.1/page 6s.), which is increasing risk of contradictory judgments and protecting practice of the administrative federal tribunal, which is practically denying CDE (see judgement of administrative D-4097/2017 of 31 July 2017 concerning exactly the same child). APE authorities always lack resources and refuse explicitly occasionally to process a notice regarding a minor at the same time recognising the need for assistance.

Recommendations:

141. The persons admitted temporarily (permit F and F refugee) have to be able to enjoy the same right to family reunification as the refugees benefiting asylum (permit B refugee).

142. The definition of the family, regardless of the partners' sexual orientation, gender identity, gender expression and sex characteristics, has to be extended so that reverse family reunification is applied for unaccompanied minors.

143. To guarantee that all the children (including children who fall under the asylum procedure or the rights of foreigners) receive the same protection without discrimination, and that the authorities specialized in children protection clarify the situation of risk, order the protection measures and, if necessary, transfer them to the third countries.

Domestic and gender-based violence (LoI §22)

144. The marital violence, rape, sexual harassment and other gender-based violence are common in Switzerland. Financing awareness raising and prevention of gender-based violence activities is lacking, as well as the reception centres/safe houses for victims. For migrants, the situation is even worse (see initial report §67-69).

Recommendations:

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

146. Expeditiously adopt a national action plan, in consultation with civil society organizations, to combat gender-based violence against women, girls, transgender and intersex people, and ensure that adequate human, technical and financial resources are allocated for its implementation, monitoring and assessment. Resources to combat gender-based violence must be allocated without reducing the funds already to victims' aid.

147. The State party is called upon to make the criteria for applying Art. 50 of the LEtr more flexible and to ensure that the provisions on cases of hardship when granting a residence permit are specifically detailed so that the cantons can apply them in a fair and unified manner. Temporary residence permits must be granted to migrant people who have been recognised as victims of domestic violence but are at risk of being expelled due to their lack of financial independence.

148. Strengthen services for victims of gender-based violence, including by establishing additional shelters to ensure that adequate victim centred services are available in all cantons, and ensure the availability of psychosocial rehabilitation and reintegration programmes. Shelters must be equipped to accommodate women with children, as well as women of particularly vulnerable groups, including transgender and intersex persons, and special shelters must be available for girls. All victims of gender-based violence must have access to victims' assistance services independent of the place where the violence took place and independent of their residency status.

149. Establish an action plan to eliminate discriminatory stereotypes regarding the roles and responsibilities of women and men in the family and in society, including through awareness-raising throughout the population, and guidelines and monitoring mechanisms for media coverage, in particular in view of negative stereotypes of vulnerable groups and intersectional discrimination.

149bis. Develop a comprehensive national gender strategy, policy and action plan that addresses the structural factors causing persistent inequalities, including intersecting forms of discrimination against women, girls, transgender and intersex people.

Out-of-home placement (LoI §23)

150. The families in situation of insecurity and extreme poverty are often confronted and for years their children are placed in the institution or with the foster care families. For some of them, this type of placement is observed in several generations.

151. The recent studies conducted by historians regarding forced placements for purposes of assistance revealed connections between poverty and children placement. In this regard, complementary researches will be conducted in scope of the National research program PNR77, to fine tune analysis.

152. Regarding guarantees provisioned in Article 10 of Covenant II, the guarantee of respect of the family unit, the need to encourage measures of educational assistance to families instead of placing children in institutions is imposed as urgent, and different recommendations are formulated to direct

attention to be extended henceforth to this fundamental aspect of the superior interest of the child regarding its connection with parents.

Recommendations:

153. Maintaining statistical data related to out-of-home placements, which must be accompanied with a global evaluation of life path of placed persons (education, access to employment, family and social life etc.) in order to evaluate global consequences related to economic, social and cultural rights of these persons.

154. Conduct a specific study regarding the connection between out-of-home placements and conditions of poverty in which the families touched by the placements live. This will strengthen the deployment of real measures for combating poverty which will allow avoiding numerous out-of-home placements and improve processes in the case of necessary placement.

155. Better involve the relatives in all phases of the procedure and in accordance with all decisions of the Authority for Protection of Children and Adults, as it was announced in the communiqué of Federal Council 29 March 2017.²⁹ In too many observed cases where adult persons were subject to guardianship measures or placement for assistance purposes refused accompanying relatives or one person of confidence during administrative or legal procedures.

156. Guarantee that all the written files related to monitoring are prepared with ethical respect of dignity of the persons concerned. The latter have to have a possibility to be consulted.

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

158. Learn lessons from history for present and future when it comes to measures and practices of protection of the family, mother and child.

Adoption (Loi §24)

159. The adopted persons, particularly those with origin in the third countries, who want to find their origins and biological parents, are actually little supported. Often – for example in the case of persons coming from Sri Lanka – Swiss authorities send them to the country of origin even if the latter did not receive any psychological or practical support. In the case of the falsified adoption documentation, the Switzerland does not support the research, does not offer DNA test to facilitate reunification of families. All the deliverables, even the request for certificate of origin –often forged, are charged to the adopted person.

160. The implementation of the respective legislation is under cantonal competencies, so great differences exist according to canton regarding domicile and adopted persons. Even more, the cantonal departments in charge of supporting adopted persons are often the same those which validated the adoptions.

Recommendations:

161. Provide a free and complete support to the adopted persons from the third countries who are searching for their origins. Here psychological assistance should be included, recognising traumatism of the persons concerned and an onsite support (services of Swiss embassies, and if needed, use of private services) to take charge of DNA tests.

162. Put at disposal to persons adopted who are using cantonal administrations neutral persons to facilitate their efforts.

²⁹ <https://www.admin.ch/gov/fr/accueil/documentation/communiqués.msg-id-66185.html>

Article 11 - Right to an adequate standard of living

Standard of living and poverty (Lol §25)

163. Poverty and extreme poverty are sources and consequences of human rights violations and discrimination. According to civil society organisations, the National Poverty Prevention and Control Programme 2014-2018, with a budget of CHF 9 million, has mainly monitored poverty in Switzerland but has led to few actions to reduce poverty in Switzerland in practice. Poor workers have not benefited from any targeted measures under this program. The momentum driven at the national level in poverty prevention and alleviation policy is once again fading and legally binding targets are still missing. For example, the 2019-2024 anti-poverty platform will only have CHF 250,000 per year. Moreover, while the Federal Council explicitly acknowledges the poverty that affects people with disabilities in Switzerland, as well as the complexity of its causes,³⁰ its plan for the implementation of poverty prevention measures 2019-2024 apparently does not even mention them.³¹ This is clearly insufficient, as is the simple reference to the existence of DI and additional benefits (response to § 24 of the Act).

Recommendations:

164. Refer to the Guiding Principles on Extreme Poverty and Human Rights (2012), in particular para 36: "Poverty policies must aim to empower people affected by poverty. They must be based on the recognition of the right of these people to make their own decisions and respect their ability to develop their own potential, their sense of dignity and their right to participate in decisions that affect their lives."³² as well as the Manual for the Implementation of its Principles (2015) for Implementing an Anti-Poverty Policy that Respects Human Rights, in consultation with affected people.

165. Establish a coordinated federal policy to prevent and combat poverty (to avoid cantonal disparities) that guarantees each person sufficient financial resources to meet basic needs and participate in society in an appropriate way.

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

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

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

Right to food (Lol §26)

169. Food remains an "adjustment variable" in the limited budget of people in insecure situations. Many people (more than 13,000 per week in Geneva) have to resort to the charity of associations that provide food aid in kind.³³ These people are more exposed than others to potentially inadequate nutrition for themselves. It should be noted that food aid in kind does not guarantee the realisation of the right to food because it does not allow people to feed themselves or their families in dignity. Food aid creates humiliation and discrimination between beneficiaries and others. In addition, people who benefit from them do not always have the opportunity to choose food that is adequate, especially from a nutritional or cultural point of view.

³⁰ Schenker Silvia survey (17.3833), Alarming increase in the number of people with disabilities affected by poverty, <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaef?AffairId=20173833> Current statistics show that the risk of poverty is particularly high among people with severe disabilities, one third of whom receive disability benefits: FSO, Standard of living of people with and without disabilities, <https://www.bfs.admin.ch/bfsstatic/dam/assets/3962812/master>

³¹ FSIO, Plan for the implementation of the National Platform against Poverty: Poverty Prevention Measures 2019-2024, <https://www.news.admin.ch/news/message/attachments/53572.pdf>

³² Making Human Rights a Reality for People Living in Extreme Poverty, 2015, p. 13

³³ Independent Periodic Evaluation (IPR) of Fundamental Rights in Geneva - Contribution of Civil Society, Regard, Geneva, March 2019, pp. 99-103. https://fian-ch.org/content/uploads/EPI_A4.pdf

Recommendations:

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

171. Provide sustainable responses to growing food insecurity and rethink the forms of food aid and its modes of supply to ensure the population's right to food. Food aid should only be a transitional measure until medium- and long-term strategies are put in place to enable people to feed themselves, while respecting the obligation to fulfil.³⁴

172. Support dialogue between social services, farmers' associations and associations supporting vulnerable people in order to develop sustainable solutions and then implement measures to promote short and local food circuits, which constitute a new form of solidarity, as well as programmes to empower people in precarious situations. The implementation of the Declaration on the Rights of Peasants and Other Persons Working in Rural Areas (UNDRIIP) is a means of ensuring food resources that respect the planet, farmers and promote short food circuits.

173. Create sustainable food governance advisory boards at the cantonal level dedicated to strengthening the territory's agricultural food capacity, relocating sectors and encouraging short and local circuits, enabling everyone to exercise their right to sustainable and quality food and also combating food waste.

Article 12 – The Right to Health

Access to healthcare for vulnerable groups (Lol §27)

174. Foreign Nationals are, generally speaking, in poorer health than the Swiss population, and migrants, particularly those in detention centres, regularly experience violations of their right to healthcare (See initial submission §166–169).

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

176. Facing a shortage of accommodation, a large number of asylum seekers were housed in civil protection centres from 2015 to 2017. The accommodation was for an indefinite period, often lasting for several months. In some cases, people spent more than a year in underground accommodation leading to serious physical and psychological health issues.

Recommendations:

177. Implement a coordinated health policy at a federal level (to avoid differences between cantons) along with framework conditions that guarantee every person the right to health, access to care and health insurance cover, regardless of their status or situation.

178. In particular, guarantee free access to care for persons held in administrative detention taking into account their general health.

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

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

181. Allow foreign nationals, with or without official status, access to reduced insurance premiums (Swiss Health Insurance Act subsidies).

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

183. Manage fluctuations in the number of asylum applications in order to ban the use of civil

³⁴ OHCHR, Guiding principles on extreme poverty and human rights, 2012. Para. 75-76.
https://www.ohchr.org/Documents/Publications/OHCHR_ExtremePovertyandHumanRights_EN.pdf

protection centres.

184. Persons with disabilities: Although Switzerland does not provide data on persons with disabilities (Response § 27 Lol), statistics show that these people are more likely not to avail of medical services and people with severe disabilities consider it especially difficult to access basic medical services³⁵. In relation to mandatory health insurance, the criteria for adequacy, cost-effectiveness, and efficiency are a possible means of discrimination against persons with disabilities. Access to supplementary health and life insurance is often refused to persons with disabilities or is limited because of reservations about the risks associated with the disability.

Recommendation:

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

186. Transgender people: According to several rulings issued by the Federal High Court, all gender affirming treatment that is medically indicated must be reimbursed by the basic health insurance. However, in many cases health insurances refuse to cover medically indicated treatment. The reasons given vary but usually are either in conflict with health insurance law or with the medical standards for the treatment of transgender people as defined in the World Professional Association for Transgender Health' Standards of Care Version 7, and adapted for Switzerland.

Recommendations:

187. Start a dialogue with civil society experts to understand the extent of the problem and to develop measures to grant all transgender people de facto access to indicated gender affirming treatment as foreseen by the Fed. Act on Health Insurance.

Mental Health (Lol §28)

188. Numerous studies and reports offer recommendations and conclusions aiming to improve the area of mental health (promotion and prevention but also medical treatment and management)³⁶ which partly relies on the Swiss Confederation but also on the cantons in particular.

Recommendations:

189. Immediately implement the recommendations and conclusions that appear in these relevant reports.

190. According to statistics, Switzerland has a very high rate of suicide. Among young people in the LGBTIQ community, the risk of attempting suicide is between five and ten times higher than among young cisgender heterosexual people. Also transgender people in detention are regularly accommodated in facilities for people of their gender assigned at birth and not according to their gender identity or needs. Such living conditions contradicting their gender identity, needs and situation have detrimental effects especially on their mental health.

191. Include LGBTIQ people, esp. young people, as groups especially at risk in the national plan on suicide prevention, develop and implement specific measures (including the resources needed) for suicide prevention.

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

Intersexed individuals (Lol §29)

193. Several UN treaty bodies, including CAT and CRC, recommended clearly and repeatedly that Switzerland shall ban surgeries on people with variations of sex characteristics, especially on children.

³⁵ See <https://www.bfs.admin.ch/bfs/fr/home/statistiques/situation-economique-sociale-population/egalite-personnes-handicapees/bien-etre-individuel/sante.html> and <https://goo.gl/R0dWV6>

³⁶ See the alternative CDPH report, footnotes 430–433.

So far, the Federal Council refuses to propose a respective article in the criminal code and even denies the fact that such surgeries are still performed in Swiss hospitals³⁷. However, specialized NGOs report that they learn from affected families that these practices are on-going³⁸.

Recommendations:

194. Update terminology and data related to intersex individuals.

195. Rapidly implement recommendations from the national ethics commission. (Opinion, No.20/2012).

Article 13 and 14 - Right to education

Access to education for children seeking asylum and unaccompanied minors seeking asylum in Federal centers for asylum seekers (LoI §30)

196. Civil society worries about children living in Federal Centers for Asylum Seekers being educated in these centers and that the quality of teaching (courses, number of hours) is insufficient.

197. Civil society denounces the fact that many young asylum seekers are obliged to stop their learning because their asylum application has been rejected, and are then placed in emergency help.

198. Support for Unaccompanied Minors Seeking Asylum (RMNA) is still incomplete and discriminatory. Generally, the rate of supervision is insufficient and supervision during the transition to adulthood does not even exist.

Recommendations:

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

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

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

201bis. Encourage awareness and appreciation of allophone children in the classroom and facilitate the development of their mother tongue skills.

Inclusive education (LoI §31)

202. In Switzerland there is no inclusive education system. There is neither legal bases nor strategies at the national level as at the (inter)cantonal level- insuring an inclusive educational system in line with article 24 of the Convention on Rights of Persons with Disabilities at all the levels³⁹. Since the agreement on specialized pedagogics (see answer to n°31 LoI) does not provide a right to, but a conditional priority⁴⁰ of integrative teaching, particularly children with mental disabilities or autistics troubles are usually schooling in specialized schools. Disabled children schooling in ordinary classes

³⁷ See: Explanatory report from 23 May 2018 relating to a former project about the revision of the Swiss Civil Code (changing gender and civil status) https://www.admin.ch/ch/f/gg/pc/documents/2958/Changement-de-sexe-a-l-etat-civil_Rapport-expl_fr.pdf

³⁸ See the press release from 23 July 2019 from InterAction <https://drive.google.com/file/d/1cbfkCdj0SlknqPnuo7CSkK2pDrIMTzfe/view>

³⁹ Concerning the scope of the article 24, CRPD, see the survey in Spain, UN Doc. CRPD/C/20/3 of 4th June 2018. Concerning the situation in Switzerland, see the alternative report CRPD art 24, CRPD.

⁴⁰ See article 2 lit. b: "Integrating solutions are preferred to separative solutions respecting, the well-being and development issues of the child or the youth concerned and by taking in consideration environment and school organization".

are regularly deprived from necessary support and also systematic reasonable accommodations, among other things because “integrative system” is seriously under financed. Moreover, the constitutional right for disabled children to a sufficient specialized training until their 20th birthday (see answer Lol) is often restricted. Finally, the Federal Court does not recognise the scope of obligations in line with Art. 24 CRPD.⁴¹

203. Children from poor families are massively sent in specialized classes which often do not enable them to access to a training or to an employment. These children have also the right to an inclusive education.⁴²

Recommendations:

204. Elaborate a strategy which implement an inclusive educational system in line with the Article 24 CRPD at the federal and inter cantonal level, including the change of legal basis (alignment of laws on cantonal education and also of “special education concepts” at all the levels of the Article 24 CRPD).

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

Higher education (Lol §32)

207. Tuition fees at the ETH or the cantonal universities have been increased repeatedly during these last 27 years. In addition, scholarships regulations is insufficient, and not everyone, can financially access higher education. For example, after 35 years old, you are ineligible for a scholarship.

Recommendation:

208. Implement the article 12 (2) b) et c) and allow access for every one to free higher education.

Education to human rights

Recommendation:

209. Encourage cantons to reinforce education to human rights, democracy and to the richness of cultural diversity in all the fields of study.

Article 15 - Right to participate in cultural life

Cultural participation

210. The right to participate in cultural life concerns not only the arts, leisure and heritage, but also the sciences, religions, participating in the life of the city and all the choices of values that give meaning to daily life (See GC21 of the CESCR). The enhancement of cultural heritage in all its social and ecological spheres is a sign of this inclusive approach to the right to participate in cultural life.

211. Finally, this right concerns all persons living on Swiss territory, regardless of their social condition and origin. The recognition and exercise of this right by all persons in difficult social situations and/or of foreign origin promotes their integration capacities and enriches Swiss culture in its diversity and its capacities for criticism and creativity.

⁴¹ In an order recently released, separative education of a child with Trisomy 21 is admitted, among others arguing that there is not a right to integrative education guaranteed by the Constitution, and that inclusive teaching in line with the Article 24 CRPD did not exceed the guaranties under the federal law. Cf. Federal Court (2017): Order 2C_154/2017, May 23rd 2017 (in German).

⁴² Gremion-Bucher, Lise Madeleine. Les coulisses de l'échec scolaire : étude sociologique de la production des décisions d'orientation de l'école enfantine et primaire vers l'enseignement spécialisé. Université de Genève. Thèse, 2012.

Recommendations:

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

213. Guarantee the right to cultural participation to all persons of foreign origin, regardless of the date of arrival of their families or themselves in Switzerland, by respecting their languages and cultures of origin, encouraging initiatives that enable them to be deepened, transmitted and openly debated. Special attention should be paid to migrants from countries where extreme violence is rife.

LGBTIQ asylum seekers

214. Collective camps where LGBTIQ asylum seekers are accommodated are usually located away from cities. Therefore LGBTIQ asylum seekers cannot reach easily the LGBTIQ community and the collective environment make them more vulnerable to harassment.

Recommendation:

215. Systematically accommodate LGBTIQ asylum seekers outside the CFAs, in safe and individual housing (vs. collective camps) in cities that provide access to LGBTIQ associations and the community.

Promotion of Yenish, Sinti and Roma culture (LoI §34)

216. There is still a lack of concrete measures to ensure that Roma, Sinti and Yenish are integrated in the school curriculum in Switzerland. Due to a lack of political will and despite the action plan, the history and culture of these communities are not an integral part of the school curriculum or mandatory teaching materials. This lack of knowledge evidently contributes towards the persistent prejudices and discrimination against these three minorities.

Recommendation:

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