

**14<sup>th</sup> UNIVERSAL PERIODIC REVIEW 2012**

**SWISS NGO'S SUBMISSION**

**April 2012**

Swiss NGO Coalition for the UPR  
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In the frame of the second Universal Periodic Review of Switzerland by the UN Human Rights Council, forty-seven Swiss NGOs active in the field of human and fundamental rights as well as in other specialized domains have worked in a coalition to submit this joint report on the human rights situation in Switzerland.

The Report aims to identify the main priorities and key recommendations to enhance respect for the human rights in Switzerland.

The information contained in this report are the result of a wide consultation and reflects the various perspectives of the member organizations of the coalition<sup>1</sup>.

CODAP Geneva, humanrights.ch and the Swiss Section of Amnesty International form the steering committee which has edited the present report. The list of the organizations composing the Swiss NGO coalition is to be found in the appendix to the joint report.

The NGO report is structured into the following chapters:

- I. Legal framework / Institutional questions / Ratifications (Items 1-10)
- II. Protection against discrimination / Vulnerable minorities / Gender (Items 11-22)
- III. Foreigners' and Asylum Law (Items 23-35)
- IV. Police and judiciary (Items 36-37)
- V. Economy / Social rights (Items 38-41)

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<sup>1</sup>. Amnesty International has contributed information to the following sections: 1, 2, 3, 4, 5, 7, 11, 35, and 38 [or 37]

# SWISS NGO COALITION'S SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW

## I. Legal framework / Institutional issues / Ratifications

<p><b>1. Failure in the follow up to recommendations by international human rights bodies</b></p>	
<p>Switzerland's federal system poses special challenges as regards the implementation of international human rights obligations within the country. While the Confederation is responsible for the ratification of international human rights treaties, the 26 cantons are mainly responsible for the implementation of treaty obligations in core areas such as education, police, public health, social services and the penal system.</p> <p>In order to successfully implement the recommendations of international human rights bodies, including the UN treaty bodies and the UPR, a new platform must be created to coordinate efforts between the federal and the cantonal levels.</p> <p>Up to now, there has been no coordination of the follow-up to such recommendations at the level of federal government. No institutional provisions exist to ensure the systematic linkage of efforts made by different federal agencies in this regard, nor to raise awareness at the level of the cantons and facilitate their participation. There is no strategy, nor a clear designation of responsibility as regards follow-up and implementation.</p>	<p><b>Recommendation</b></p> <p>Switzerland should create appropriate institutions and mechanisms with the power to ensure the effective coordination between federal and cantonal levels of government and civil society in order to address and implement recommendations made by international human rights bodies.</p>
<p><b>2. Failure to follow-up on UPR recommendations and to continue to consult with stakeholders in this regard (cf. UPR recommendation 56.4)</b></p>	
<p>Because there is no coordination of follow-up to recommendations by international human rights bodies, efforts to ensure a systematic follow-up to the recommendations from Switzerland's first UPR were weak and petered out in the two years following the review. Although Switzerland had accepted a recommendation to continue to consult with stakeholders in the follow-up, only three meetings took place with the NGO coalition on this issue.</p>	<p><b>Recommendation</b></p> <p>Switzerland should guarantee the regular and effective consultation with civil society, including with regard to the implementation of recommendations from UN human rights mechanisms.</p>

<p><b>3. Pending ratifications (cf. UPR recommendations 57.3 and 57.12)</b></p>	
<p>During its first UPR, Switzerland accepted recommendations to sign the Convention on the Rights of Persons with Disabilities and the International Convention for the Protection of All Persons from Enforced Disappearance. The political process has started in this respect, although ratification is still pending. Switzerland further committed to ratifying the first Optional Protocol to the International Covenant on Civil and Political Rights. Regrettably, no steps have been taken in this regard, and individuals subject to Swiss jurisdiction are therefore still unable to make a complaint to the Human Rights Committee about alleged violations of their civil and political rights.</p>	<p><b>Recommendation</b></p> <p>Switzerland should increase its efforts to sign and ratify any outstanding human rights treaties, and in particular those it committed to signing and ratifying during its previous UPR, including the first Optional Protocol to the International Covenant on Civil and Political Rights.</p>
<p><b>4. The justiciability of economic, social and cultural rights</b></p>	
<p>The Swiss Constitution accepts economic, social, and cultural rights merely as social objectives, but does not view them as justiciable human rights. Persons who allege their rights have been violated can therefore not file a complaint in federal courts based on the Federal Constitution or the International Covenant on Economic, Social and Cultural Rights (ICESCR). There is no evidence that Parliament, the Federal Council or the Federal Supreme Court will depart from this doctrine. The UN Committee on Economic, Social and Cultural Rights (CESCR) sharply criticized this position in its 2010 concluding observations on Switzerland. The fact that Switzerland has ratified neither the Optional Protocol to the ICESCR –and indeed rejected a recommendation to do so during its last UPR - nor the European Social Charter (ESC) is further evidence of Switzerland’s position on this issue.</p>	<p><b>Recommendation</b></p> <p>Switzerland should accept the justiciability of economic, social, and cultural rights in line with its obligations under the ICESCR, and should accede to the Optional Protocol to the ICESCR and the European Social Charter without delay.</p>
<p><b>5. Popular initiatives contrary to international human rights obligations</b></p>	
<p>Several popular initiatives over the last few years have exposed the danger to human rights protection stemming from the fact that there is no institutional mechanism to prevent voters from forcing a public vote on issues that are contrary to the Switzerland’s human rights obligations. The existing mechanism applies only in cases where the issue to be voted on contradicts what is defined as “mandatory international law”, a definition, which includes mainly the</p>	<p><b>Recommendation</b></p> <p>Switzerland should adopt legislative or other measures to ensure that human rights are taken into account during the elaboration of popular initiatives, and to guarantee their compliance with</p>

<p>prohibition of torture, prohibition of slavery and prohibition of genocide.</p> <p>For example, in 2009 a vote on an initiative to prohibit the construction of minarets in Switzerland was accepted by the electorate. The ban was subsequently integrated into the Federal Constitution, even though this violates the law against discrimination on religious grounds, as well as Switzerland's international human rights obligations.</p> <p>In December 2011, the National Council agreed two motions aimed at ensuring that popular initiatives are compatible with fundamental rights. The Federal Council has been mandated with drafting a proposal</p>	<p>international human rights obligations.</p>
<p><b>6. Poor establishment of human rights education</b></p>	
<p>Human rights education is largely absent in the public school system and quasi inexistent in the vocational training programs of key institutions such as cantonal administration, public institutions and justice</p>	<p><b>Recommendation</b></p> <p>Switzerland should develop a national action plan to firmly incorporate human rights education in the curriculums of all public education institutions.</p>
<p><b>7. Lack of definition of torture in the Swiss Criminal Code</b></p>	
<p>In compliance with Article 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Swiss legislation should allow lawsuits for torture. Although there are legal provisions covering most acts amounting to torture in the Swiss Criminal Code, there is no definition of torture in Swiss legislation in line with its obligations under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.</p> <p>The UN Committee against Torture has repeatedly expressed concern about this issue, most recently in its Concluding Observations on Switzerland of 25 May 2010.</p>	<p><b>Recommendation</b></p> <p>Switzerland should implement the recommendations of the UN Committee Against Torture to include a definition of torture in its Criminal Code incorporating all elements contained in article 1 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.</p>
<p><b>8. Fighting impunity</b></p>	
<p>Since 1 January 2011, crimes against humanity, is covered by the Swiss Criminal Code. However, several persons suspected of having committed such crimes are known to have travelled through or stayed in Switzerland since the entry into force of the law. This lack of efficiency in tracking investigating and prosecuting international</p>	<p><b>Recommendation</b></p> <p>Switzerland is invited to create a specialized unit for the investigation and prosecution of persons suspected of having</p>

<p>criminals is mainly due to the absence of a specialized war crimes unit at the federal level.</p>	<p>committed genocide, crimes against humanity or war crimes.</p>
<p><b>9. Wide spread of small arms</b></p>	
<p>Up to a third of Swiss households (2.4 million in total) are in possession of a firearm. 1.7 million of such arms are issued by the army. This represents one of the highest rates and a severe security problem. One homicide out of two affects women or children within the frame of conflicts within marriage or partnership, 35 per cent of these homicides involve a firearm. Moreover, 300 suicides a year are committed with firearms. Numerous efforts to legally ban military arms from private homes have failed.</p> <p>Although Switzerland will ratify the UN protocol on firearms, there is still no central arms register allowing for better control.</p>	<p><b>Recommendation</b></p> <p>Switzerland is asked to implement a central arms register.</p>
<p><b>10. National human rights institution (cf. UPR Recommendation 57.1)</b></p>	
<p>Pursuant to its decision of 1 July 2009, the Federal Council established a Swiss Centre of Expertise in Human Rights (SCHR). The SCHR however does not comply with the Paris Principles relating to the Status of National Institutions. A decision will be taken pertaining to the development of the SCHR and its future shape, at the end of the five-year pilot phase. A national human rights institution in compliance with the Paris Principles will therefore not be on the agenda until 2015.</p>	<p><b>Recommendation</b></p> <p>Switzerland is invited to take all necessary measures in order to convert the Swiss Centre of Expertise in Human Rights at the end of the pilot phase into a national human rights institution in compliance with the Paris Principles.</p>

## II. Protection against discrimination / Vulnerable minorities / Gender

<p><b>11. Law on Discrimination (cf. UPR Recommendation 57.16)</b></p>	
<p>Although Switzerland accepted a recommendation during its first UPR to address “the root causes of discrimination... by removing legal and systemic obstacles”, there has been little progress as regards legal protection against discrimination</p> <p>Article 8.2 in the Swiss Federal Constitution enshrines the principle of equality and the prohibition of discrimination on several grounds including race, religious beliefs and lifestyle. Similarly, the right to freedom of religion or belief is protected by Article 15 of the Constitution.</p>	<p><b>Recommendation</b></p> <p>Switzerland should implement recommendations from the UN treaty bodies on introducing domestic anti-discrimination legislation. This should forbid all forms of discrimination in employment as well in other areas and provide for shared burden of proof.</p>

<p>However, Switzerland has not adopted comprehensive anti-discrimination legislation. Some provisions, which may be used to combat discrimination, are included in different codes, such as the Civil Code and the Code of Obligations.</p>	
<p><b>12. Fight against racism (cf. UPR Recommendations 56.1 &amp; 57.6)</b></p>	
<p>The efforts made towards the implementation of a racism monitoring system at the national level are highly welcome. However, a strategy to deal with racist components emanating from populist actors in the political debate is still lacking. Switzerland has also failed to take the appropriate measures against "racial and ethnic profiling" by the police and other security forces.</p>	<p><b>Recommendation</b></p> <p>Switzerland should elaborate an action plan to deal with the main problems regarding racism, on the basis of a systematic monitoring of racism.</p>
<p><b>13. Temporary and permanent places for travelers</b></p>	
<p>The lack of temporary and permanent places to stay for travelers, Swiss Yenish or foreigners, is still blatant despite declarations of intent from the Swiss authorities. Legal measures to compel cantons and municipalities to assume their obligations and to take the necessary measures are still lacking.</p>	<p><b>Recommendation</b></p> <p>Swiss cantons and municipalities should create a sufficient number of temporary and permanent places to stay for travelers.</p>
<p><b>14. Persons with disabilities</b></p>	
<p>The Law on the Equality of Persons with Disabilities contains several flaws, one of which is the lack of protection against discrimination at work in the private sector. Private service providers do not have the obligation to adapt their services to the needs of persons with disabilities, even though these adjustments are financially viable. Furthermore, persons with disabilities still face discrimination in the field of naturalization.</p> <p>On the cantonal level, laws on equality of persons with disabilities are lacking as well as specialized agencies. Encouragement measures for persons with disabilities fail to exist at all levels.</p>	<p><b>Recommendation</b></p> <p>The Confederation and the cantons are invited to close the gaps in the legislation on the equality of persons with disabilities.</p>

<b>15. Discrimination of LGBTI minorities</b>	
<p>The rights of sexual and gender identity and self-determination are integral parts of human rights. In Switzerland, LGBTI minorities do not have an explicit legal basis to assert their rights in the field of protection from discrimination. For example, many transgender people lose their employment as a reaction to their coming out and face difficulties in finding a new employment due to direct and open discrimination as well as administrative obstacles.</p> <p>Sexual orientation and gender identity are not explicitly mentioned as motives of discrimination in the Constitution. There is no law that penalizes discrimination and defamation against these minorities, nor are there any governmental institutions or agencies addressing the specific issues faced by LGBTI minorities. .</p>	<p><b>Recommendation</b></p> <p>Switzerland should explicitly consider the issues and violations faced by the LGBTI minorities when creating a general act on equal treatment.</p>
<b>16. Abolition of the ban on adoption for couples living in same-sex union</b>	
<p>The ban on adoption enshrined in the Federal Registered Partnerships Act implies serious disadvantages for children growing up in same-sex partnerships. They are, by law, only protected by one parental unit, even when another person is already carrying out parental. These children find themselves discriminated solely due to their parents' sexual orientation, especially with regard to custody, as well as with regard to inheritance law and orphan's pension. This is a clear infringement of the prohibition of discrimination enshrined in the United Nations Convention on the Rights of the Child.</p>	<p><b>Recommendation</b></p> <p>The Swiss parliament should lift the ban on adoption enshrined in the Federal Registered Partnerships Act without substitution.</p>
<b>17. Change of name and gender of transgender people</b>	
<p>Under Swiss law, in order for one to change its gender in public documents, infecundity is a prerequisite. In general, this requires the surgical and therefore irreversible removal of reproductive organs and hormonal treatment. Transgender persons find themselves in the dilemma of having either to undergo a serious and irreversible surgical intervention and hormonal treatment or deny themselves an official identity in line with their lived gender. This practice severely infringes the right to physical and psychological integrity of these persons.</p>	<p><b>Recommendation</b></p> <p>Switzerland should modify the regulations for the administrative change of gender in public documents in order to protect the right to self-determination and of gender identity of those affected.</p>



<b>18. Cosmetic genital surgery performed on children</b>	
<p>About 1 child in 1000 is born with “inconclusive“ physical sexual characteristics (hermaphroditism, intersex, disorders of sex development). Such children are very frequently operated on “for cosmetic reasons” at a baby age. Those affected often see these operations as unwanted surgery without medical necessity and evidence. Furthermore, such interventions represent an infringement to the right to physical integrity and self-determination.</p>	<p><b>Recommendation</b></p> <p>Switzerland should establish a commission to deal with the issues of those affected by the consequences of cosmetic genital surgery in an unbiased and fair manner.</p>
<b>19. Right to sexual health</b>	
<p>All children and adolescents have the right to a pedagogical education delivered by professionals concerning sexuality and sexual health, regardless of their place of residency and origin. Switzerland is still far away from the comprehensive implementation of this right.</p>	<p><b>Recommendation</b></p> <p>Switzerland should systematically include sexual education in the curriculums and to implement it in a comprehensive manner.</p>
<b>20. Ban on corporal punishment of children</b>	
<p>Although the Federal Court has declared repeated acts of violence as being incompatible with children’s rights, this legal norm remains unknown to the general public. In addition, the Federal Court does not systematically exclude corporal punishment as a disciplinary measure. Surveys have shown an alarmingly high percentage of acceptance of corporal punishment of children in a family environment. In December 2008, the National Council definitely rejected a parliamentary initiative that called for a law on the protection of children from corporal punishment. No public position or initiative has been launched since by federal or cantonal executives aiming at banning corporal punishment against children or a right to a non-violent education. .</p>	<p><b>Recommendation</b></p> <p>Switzerland should step up its efforts in establishing an explicit ban on corporal punishment of children.</p>
<b>21. Discrimination of women on the labour market</b>	
<p>No major progress has been made in this respect, since women are still extremely under-represented, especially in key positions in politics, administration, judiciary, science and in the private sector. The labor market is clearly divided along gender lines, since women mostly work in so-called “women’s jobs” which are usually less remunerated. The wage differential grows strikingly in</p>	<p><b>Recommendation</b></p> <p>Switzerland should to adopt the appropriate measures in public and private sectors in order to reduce the wage differential between women and men.</p>

<p>parallel with the level of education and the professional position: in the private sector, women with a university degree earn 24% and in top executive positions even 29% less than their male counterparts. In addition, measurably more women than men have to get through life on a very low salary.</p>	
<p><b>22. Strategy against women trafficking and sexual exploitation (cf. UPR Recommendation 57.22)</b></p>	
<p>Even though a national legal basis for fighting women trafficking exists, it is left to the cantons to decide on how they implement which measures with respect to victim protection, prevention and criminal prosecution. Women concerned do not receive the same protection and rights in all cantons, with every second canton lacking specialized assistance for victims.</p> <p>Furthermore, a comprehensive strategy for the protection of victims is lacking, regardless of whether or not they participate in criminal investigation proceedings or not. This strategy must provide mandatory standards to all cantons. Just as important is further training and sensitisation with the police forces, the judiciary and the migration authorities with regard to the identification of potential victims.</p>	<p><b>Recommendation</b></p> <p>Switzerland should compile a national strategy against women trafficking and sexual exploitation that takes into account the protection of victims and is carried out by the cantons.</p>

### III. Asylum and Migration Law

<p><b>23. Right of residence for victims of human trafficking (cf. UPR Recommendation 57.17)</b></p>	
<p>To date, victims of human trafficking are not guaranteed a residence permit.</p> <p>If they are considered as victims, they are first given a 30-days' time for consideration during which they have to decide whether or not they want to cooperate with the authorities. Should they decide to cooperate with the authorities, they are granted a short-term residence permit for the duration of police investigations and legal proceedings.</p> <p>In addition, the cantonal authorities have the possibility to grant long-term permits in case of serious personal hardship. This option is applied differently depending on the canton and does not provide the victims with legal certainty. Furthermore, authorities are not made aware and not trained to deal with the issue of trafficking</p>	<p><b>Recommendation</b></p> <p>Switzerland should specify the conditions for granting residence permits in case of serious personal hardship for the victims of human trafficking in a way that the cantons can apply in a standardized and fair manner.</p>

<p>women. Potential victims are often not recognised as such and are therefore not protected against imminent threat of criminalization, instant deportation and reprisals by the perpetrators.</p>	
<p><b>24. Right of residence for victims of domestic violence (cf. UPR Recommendation 57.8)</b></p>	
<p>Although the procedure for victims of domestic violence who have a residence permit according to Art. 50 Para. 2 of the Federal Act on Foreign Nationals on the basis of family reunification was improved following a decision by the Federal Supreme Court, the cantonal immigration authorities and the Federal Office for Migrations still hold a wide margin of discretion. This margin is frequently used to the detriment of those affected. Homogenous standards and obligatory training of the responsible administrative and legal authorities are essential so as to process the cases carefully and fairly. Evidence and expert assessments by psychologists, women’s shelters, victim support and doctors should be given the highest consideration.</p>	<p><b>Recommendation</b></p> <p>Switzerland should specify the criteria applied to the consideration of evidence of violence when prolonging residence permits for victims of domestic violence who have left their partners, in order to make it possible for cantonal and federal authorities to apply rules in a standardized and fair manner.</p>
<p><b>25. Regularization possibilities for undocumented migrants</b></p>	
<p>The Federal Act on Foreign Nationals applies discriminatory standards to migrants, depending on their nationality, when granting them a residence or work permits. Migrants coming from a non-EU or EFTA country or not considered as highly qualified are particularly discriminated. Therefore at least 100,000 migrants are currently living and working in Switzerland without legal status. They cannot claim their fundamental and human rights for fear of being deported.</p> <p>The granting of residence permit in cases of serious personal hardship is very restrictive even after a long stay in the country and is almost inexistent depending on the canton. The criteria and application of the procedure are imprecise and inconsistent. In addition, the guarantees formulated in the United Nations Convention on the Rights of the Child are poorly respected when assessing a case of personal hardship. .</p>	<p><b>Recommendation</b></p> <p>Switzerland should clearly define the criteria for granting undocumented migrants residence permits in cases of serious personal hardship in compliance with the Convention of the Rights of the Child, to assure a coherent and fair application of standards at the cantonal level.</p>
<p><b>26. Post-compulsory education for juvenile undocumented migrants</b></p>	
<p>Juvenile undocumented migrants are not entitled to complete an apprenticeship or other education on secondary level II, which represents a clear infringement to</p>	<p><b>Recommendation</b></p> <p>Switzerland should continue its efforts to allow juvenile</p>

<p>the Convention on the Rights of the Child. In 2010, the Parliament adopted motion to change the legislation in this regard, ordering the Federal Council to draft regulations.</p>	<p>undocumented migrants the right to professional education.</p>
<p><b>27. Right to marry</b></p>	
<p>The right to marry for bi-national couples was repeatedly restricted. The Federal Act on Foreign Nationals contains new regulations for fighting fictitious marriages, which leave registrars with a very wide scope of discretion. Even existing marriages can be considered as fictitious and the partner may be refused the right of residence. As of 2011, non-Swiss nationals engaged to be married must demonstrate the legality of their presence in Switzerland during the preparation procedure. Should one of the partners not dispose of a legal right of stay, the marriage will de facto be banned. Fortunately, in December 2011, the Federal Court established criteria for an application of the law that respects human rights.</p>	<p><b>Recommendation</b></p> <p>Switzerland should commission an independent study to determine if the current civil law is applied in accordance with human rights in the right to marry.</p>
<p><b>28. Analysis of the Asylum Law from a human rights perspective (cf. UPR Recommendation 57.2)</b></p>	
<p>To date the federal authorities have failed to show willingness to have an independent analysis of the Asylum Law carried out from a human rights perspective. There is also still no monitoring of the specific effects of the Asylum Law as it is applied that is independent and recognized by the Confederation. On the contrary, preparations for an even harsher Asylum Law are already well under way. This follows the same pattern of hasty reforms that has been going on for years: the authorities introduce further restrictions rather than first carrying out a serious analysis of the results of the tighter rules already introduced.</p>	<p><b>Recommendation</b></p> <p>Switzerland is invited to order an independent analysis of its asylum law from a human rights perspective, which also examines the specific effects it has had on asylum-seekers.</p>
<p><b>29. Accommodation centers for asylum seekers</b></p>	
<p>The infrastructure in the five asylum registration and procedure centers is clearly insufficient to adequately house the asylum seekers. Many of them are required to live in semi-prison-like conditions for several weeks. Due to the lack of infrastructure, civil defense and military facilities are used as accommodation for asylum seekers. These do not allow for adequate access to basic medical care and for the early detection of illnesses. The lack of occupational activities and day centers is particularly</p>	<p><b>Recommendation</b></p> <p>Switzerland should meet adequate housing standards with regard to centers for the infrastructure of the registration and procedure centers so as to respect adequate housing standards, even in situations of increase in</p>

<p>problematic for vulnerable persons, especially for victims of trauma, adolescents and children.</p>	<p>number of asylum seekers.</p>
<p><b>30. Non-entry decisions for asylum seekers.</b></p>	
<p>Since December 2008, Switzerland is part of the Dublin system of the European Union. Persons coming from a safe third country are issued with a non-entry decision and then returned to the respective country. In addition, affected asylum seekers are regularly detained before deportation.</p> <p>Reports from affected persons and NGOs also show, that in countries like Hungary or Malta, even asylum seekers who qualify for asylum do not receive refugee status. Moreover, most deported asylum seekers in these countries as well as in Italy live in extreme poverty and lack perspectives.</p> <p>Special humanitarian situations, which could lead to applicability of Swiss law, are not or insufficiently assessed. (The sole exceptions are deportations to Greece, which were considered unlawful according to the Federal supreme Court.)</p> <p>Swiss authorities should no longer apply the Dublin regulations mechanically, especially with regard to problematic countries. They should put an end to exposing deported asylum seekers to inhuman living conditions, in particular when these asylum seekers are vulnerable (for example: sick people, families with children, single women and unaccompanied minors.)</p>	<p><b>Recommendation</b></p> <p>Switzerland should put an end to deportations under the Dublin system when there is a probable risk for the affected persons to be exposed to unacceptable living conditions.</p>
<p><b>31. Exclusion from social benefits for rejected asylum seekers</b></p>	
<p>Rejected asylum seekers who have been ordered to leave Switzerland are excluded from social benefits. This regulation also applies to minors. Rejected asylum seekers only have a right, guaranteed by the Constitution, to emergency assistance for everyday survival. In practice, assistance is granted in daunting conditions, in clear contradiction of the right to a life in dignity. The organisation of assistance by cantons is generally guided by the aim of achieving a “voluntary” departure as soon as possible. This practice is a clear infringement to various fundamental human rights such as freedom of movement, human dignity or the right to food. This is valid particularly for persons, who have to live for years on this emergency assistance.</p>	<p><b>Recommendation</b></p> <p>Swiss cantons should respect the right to a life in dignity when applying the right to emergency assistance to rejected asylum seekers.</p>

<p>The cantons can make exceptions for particularly vulnerable persons, but they barely make use of this possibility. Many children and adolescents receiving emergency assistance live in precarious conditions in contradiction of the guarantees set out by the Convention of the Rights of the Child.</p>	
<p><b>32. Unaccompanied minor asylum seekers</b></p>	
<p>Unaccompanied minor asylum seekers are first considered as foreigners before being seen as children in need of protection. Often, minors do not receive adequate free legal support as foreseen in the Convention on the Rights of the Child and receive no legal advisor during the first interviews. Housing and education possibilities are inadequate and guardianship measures differ between the cantons.</p>	<p><b>Recommendation</b></p> <p>Switzerland should design the asylum procedure for unaccompanied minor asylum seekers in a way to assure the provision of free legal aid in the first asylum interview and throughout the process.</p>
<p><b>33. Free legal counseling in the asylum procedure</b></p>	
<p>Switzerland fails to provide free and immediate legal assistance financed by the State for asylum seekers– be it during the asylum procedure or after the negative decision. Non-governmental organizations are unable to fill this gap due to limited resources. Almost a quarter of all appeal cases are successful, clearly suggesting a need of qualified legal aid and assistance.</p>	<p><b>Recommendation</b></p> <p>Switzerland should establish a system of state financed legal counselling for asylum seekers throughout the whole asylum procedure.</p>
<p><b>34. Detention pending forced expulsion</b></p>	
<p>Following a court order to forcibly expulse migrants, different forms of administrative detention are applied. Detention may last up to 18 months, which is a serious contradiction to the principle of proportionality. . Minors from age 15 may be detained for up to one year within the framework of constraining measures. The conditions of detention pending deportation are clearly too restrictive in many cases. The lack in occupational activities and communication is particularly blatant. There is also a lack of adequate support services for detainees, especially with regard to information and appropriate legal assistance.</p>	<p><b>Recommendation</b></p> <p>Switzerland should implement special detention conditions for pending deportation in a comprehensive manner and, especially with regard to minors. The conditions of detention pending deportation must clearly differ from ordinary confinement.</p>
<p><b>35. Treatment of prisoners during repatriation flights</b></p>	
<p>Up to October 2010, repatriation flights took place without independent monitoring. Switzerland’s practice of full-</p>	<p><b>Recommendation</b></p> <p>Switzerland must implement</p>

<p>body immobilization is among the strictest in Europe during so-called Level IV repatriation flights. In March 2010 a person died at Zurich airport. After 6 months interruption, repatriation flights were reintroduced without major procedures changes. Members of the National Commission for the Prevention of Torture (NCPT) have accompanied six such flights as observers between October 2010 and July 2011 and published their recommendations on 1 December 2011. The NCPT recommends that the methods applied during repatriations comply with international human rights standards, fundamental right and human dignity</p>	<p>the recommendations of the NCPT regarding repatriation flights, especially as regards proportionality when using coercive measures.</p>
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#### IV. Police and justice

<p><b>36. Conditions of detention for youths (cf. UPR Recommendation 57.10)</b></p>	
<p>Swiss authorities fail to consistently respect the principle of separated imprisonment of minors from adults. Five years after the entry into force of the new juvenile criminal law, there are still insufficient places. Clear figures on separated confinement in police custody are lacking. In its 2008 report, the National Council Control Committee stressed the need for clarification on the topic of the separation of adults and minors in detention pending deportation. Such a clarification has yet to be given. The execution of separated detention of minors – especially in detention pending deportation – depends on the cantonal practice and is therefore not ensured.</p>	<p><b>Recommendation</b></p> <p>The Confederation and the cantons are invited to translate into practice the principle of separated detention of minors – in particular with regard to detention pending deportation.</p>
<p><b>37. An independent complaints mechanism for victims of police violence (cf. UPR Recommendation 56.5)</b></p>	
<p>Switzerland has no comprehensive system of independent complaints mechanisms to deal with allegations of police violence, although a few cantons have their own mechanisms. Victims are usually forced to lodge their complaint by investigation authorities, which work hand in hand and on a daily basis with the police forces. Frequently, the police will lodge its own complaint, e.g. accuse the alleged victim of “violence or threat against officers”. Only few cantons benefit from having an ombudsman’s office without judicial function.</p>	<p><b>Recommendation</b></p> <p>Switzerland must ensure the creation in each canton of an independent mechanism empowered to receive any complaints of violence or mistreatment on the part of the police and to investigate them promptly, thoroughly and impartially.</p>

## V. Economic/ Social rights

<p><b>38. Transnational companies: legislative gaps</b></p>	
<p>Switzerland lacks effective legislation to compel firms headquartered in Switzerland to respect human rights and the environment worldwide. It is time for the Federal Council and Parliament to lift the corporate veil-the legal separation between parent company and subsidiary-as it currently exists in the law. Parent companies should be required to perform a duty of care vis-à-vis their subsidiaries, joint ventures and subcontractors in order to ensure that they comply with human rights and environmental standards. Lastly, victims must be given the possibility to seek redress in Switzerland.</p>	<p><b>Recommendation</b></p> <p>Switzerland should create binding framework so as to impose strict due diligence on transnational companies headquartered in Switzerland vis-à-vis their subsidiaries, contract parties and supplier companies, and to remove the legal obstacles in order to allow victims of human rights violations the possibility to seek redress in Switzerland.</p>
<p><b>39. Human rights impact assessments of free trade agreements</b></p>	
<p>Up to now, the Confederation considers bilateral free-trade agreements and international human rights obligations as being separate entities with no connection. A study made by the Swiss Centre of Expertise in Human Rights concluded that Switzerland has a legal obligation to clarify the human rights implications of free trade agreements. In addition, Switzerland has an obligation to include such human rights-based risk and impact assessments in bilateral negotiations for future free-trade agreements.</p>	<p><b>Recommendation</b></p> <p>Switzerland should stringently include human rights-based risk and impact assessments in bilateral negotiations for new free-trade agreements.</p>
<p><b>40. Restriction and abolition of social benefits as a disciplinary measure</b></p>	
<p>Social assistance benefits guarantee an adequate standard of living. However, according to the Swiss Federal Court's practice, these benefits can be reduced or suppressed when the person in question has put himself/herself in a situation of distress, for example by refusing integration measures or a low income employment. The abolition of social benefits means a reduction of the standard of living to the vital minimum guaranteed by emergency assistance and must be considered as a violation of the right to an adequate standard of living as guaranteed by the United Nations Covenant on Social, Economic and Cultural rights.</p>	<p><b>Recommendation</b></p> <p>Switzerland should take the appropriate measures to prohibit the reduction of social benefits under a vital minimum fixed by law.</p>



## 41. Poverty

Today, numerous families in Switzerland live in severe poverty. The deprivations to which members of these families are confronted frequently pass unnoticed and exceed the element of a low income. Social exclusion and discrimination seem to be the main causes and effects of poverty.

In order to efficiently fight poverty, it is fundamental to acknowledge the universality, indivisibility and interrelationship of all human rights and place human dignity at the center of this fight. This transversal approach is the only one that avoids overlooking all those affected by poverty.

Although in Switzerland all people are guaranteed the protection of their fundamental rights, poor families are affected by important restrictions (access to lodging, education, health, etc.). This intensifies the vicious circle, which perpetuates poverty across generations. In order to improve this situation, Switzerland must urgently implement international obligations as set out by the United Nations Covenant on Social, Economic and Cultural rights.

### **Recommendation**

The Swiss Federal Council, Parliament and Federal Supreme Court should recognize the justiciability of Economic Social and Cultural rights in the national jurisdiction system.

## **Annex to the Swiss NGO Coalition to the UPR Report 2012**

The following 47 organizations build the Swiss NGO COalition to the UPR

- ACAT
- Alliance Sud
- Amnesty International, Section suisse
- ask Arbeitsgruppe Schweiz-Kolumbien
- Association mondiale pour l'Ecole instrument de paix, EIP
- Association pour la prévention de la torture apt
- Augenauf Zürich
- AvenirSocial
- Berner Beratungsstelle für Sans-Papiers
- cfd : L'ONG féministe pour la paix
- Centre international de formation à l'enseignement des droits de l'homme et de la paix CIFEDHOP
- CODAP
- Communauté Baha'i de Suisse
- Conseil suisse pour la paix
- Déclaration de Berne, DB
- DeutschSchweizer PEN Zentrum
- Egalité Handicap
- EPER, Entraide protestante suisse
- Famille arc-en-ciel
- Fédération genevoise de coopération
- FIAN Suisse
- FIZ Fachstelle Frauenhandel und Frauenmigration
- Groupe de travail Tourisme et Développement
- humanrights.ch – MERS
- IGA SOS Racisme
- Incomindios Schweiz
- Juristes démocrates de Suisse
- Commission internationale des juristes, Section suisse
- Ligue Suisse des Droits de l'Homme
- NCBI Suisse
- Coordination post Beijing des ONG suisses
- Observatoire romand du droit d'asile et des étrangers, ODAE
- Organisation Mondiale Contre la Torture, OMCT
- Organisation suisse d'aide aux réfugiés, OSAR
- Organisation suisse des lesbiennes, LOS
- Pink Cross
- Réseau suisse des droits de l'enfant
- Sans-Papiers Anlaufstelle Zürich, SPAZ
- Schweiz. Beobachtungsstelle für Ausländer- und Asylrecht, SBAA
- Santé sexuelle suisse
- Service Social International
- Société pour les peuples menacés
- Solidarité sans frontières, Sosf
- Syndicat des services publics, SSP
- Terre des Femmes.
- Transgender Network Switzerland RGNS
- Zwischengeschlecht.org