

**Universal Periodic Review of Switzerland**

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Joint submission by:

**SEXUAL HEALTH Switzerland**

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## Key Words

*Sexual and reproductive health and rights, discrimination, violence against women, human trafficking, discrimination against lesbian, gay, bisexual, transgender and intersex persons, human rights of transgender persons, human rights of intersex persons, comprehensive sexuality education, access to sexual and reproductive health services, migrant women, female refugees*

## Executive Summary

1. This report is submitted by SEXUAL HEALTH Switzerland<sup>1</sup> and the Sexual Rights Initiative<sup>2</sup>. It examines the human rights situation in Switzerland with a focus on sexual and reproductive health and rights (SRHR). Switzerland promotes SRHR through various laws, policies, programmes and measures. Human rights and several emanating sexual rights are also protected in the Swiss Constitution. However, in practice, several overall gaps exist in relation to the protection of sexual rights of individuals including:
  - a) Disparities in the implementation of existing laws and regulations with and among the cantons;
  - b) The human rights of certain marginalized groups such as migrants and lesbian, gay, bisexual, transgender and intersex (LGBTI) persons are not sufficiently protected;
  - c) The absence of a comprehensive strategy to promote sexual and reproductive health and rights;
2. As a result, human rights violations can be identified especially in the following areas of concern: discrimination against LGBTI persons, gender based violence against women, human trafficking and sexual exploitation, barriers to migrant women's access to sexual and reproductive health and inequalities in relation to access to comprehensive sexuality education for children and adolescents.

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<sup>1</sup> **SEXUAL HEALTH Switzerland** is the Swiss umbrella organization of the centers for sexual and reproductive health and of the related professional associations that are active in the areas formation and counseling. SEXUAL HEALTH Switzerland is promoting sexual and reproductive health and rights (SRHR) aiming at providing access for all people, including vulnerable groups, to SRHR information and services, improving the quality of the services and defending and promoting sexual rights both in Switzerland and on international level. SEXUAL HEALTH Switzerland is accredited member of the International Planned Parenthood Federation (IPPF) and partner of the Federal Office of Public Health for the implementation of the National Programme on HIV and other STI 2011-2017. The organization has submitted a report for the review of Switzerland at the 14<sup>th</sup> session of the UPR in October 2012 and also contributed with inputs to the new shadow report of the Swiss NGO-coalition for the 3<sup>rd</sup> review at the 28<sup>th</sup> session.

<sup>2</sup> Sexual Rights Initiative is a coalition of organisations including Action Canada for Population and Development (Canada), Akahata (Argentina), CREA (India), Coalition of African Lesbians (South Africa), Egyptian Initiative for Personal Rights (Egypt), Federation for Women and Family Planning (Poland). The SRI partners advocate together for the advancement of human rights related to sexuality, gender and reproduction at UN Human Rights Council.

## Progress and gaps in the implementation of recommendations from the 2<sup>nd</sup> cycle of the UPR

4. In its last Universal Periodic Review in 2012, Switzerland immediately accepted several recommendations inviting Switzerland to combat trafficking in human beings (7)<sup>3</sup>, the sale and sexual exploitation of women (1)<sup>4</sup>, and gender based violence (1)<sup>5</sup> including domestic violence (2)<sup>6</sup>. Switzerland has demonstrated progress in both areas. However, efforts must be maintained and increased, especially concerning victim support and the implementation in the cantons.
5. The topic of discrimination was a big area of concern from States in the last review. A large number of countries (12)<sup>7</sup> invited Switzerland to address discrimination by adopting comprehensive anti-discrimination legislation or strategies in order to provide effective protection against different forms of discrimination, including on the grounds of sexual orientation and gender identity (2)<sup>8</sup>. Switzerland rejected categorically all the recommendations for new comprehensive legislation and accepted those suggesting other strategies and non-legally binding measures. Switzerland argued that the constitution and federal legislation already provided protection from discrimination.<sup>9</sup> However, since Switzerland's last review, new important data has demonstrated that in spite of general provisions and federal legislation, protection from different forms of discrimination is still fragmentary and insufficient for some groups.

### Problem identification for specific issues

#### Discrimination against LGBTI persons

6. The Federal Council<sup>10</sup> mandated the Swiss Centre of Expertise in Human Rights (SCHR) in 2012 to conduct a study on access to justice in cases of discrimination with focus on discrimination based on gender (including sexual orientation and gender identity), disabilities, race and ethnic background.<sup>11</sup> The SCHR identified considerable gaps and deficits related to the legal protection from discrimination,

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<sup>3</sup> Recommendations 122.27 ( Poland), 122.28 (Republic of Moldova), 122.29 (Greece), 122.30 (Libyan Arab Jamahiriya), 122.31 (Malaysia), 122.32 (Hungary), 122.33 (Canada)

<sup>4</sup> Recommendation 122.34 (Belarus)

<sup>5</sup> Recommendation 123.36 (Spain)

<sup>6</sup> Recommendation 123.37 (Russian Federation)

<sup>7</sup> Recommendations 123.24 (Australia), 123.27 (Brazil), 123.28 (France), 123.29 (Greece and India), 123.31 (Egypt), 123.32 (Costa Rica and Spain), 123.34 (Jordan), 123.35 (Cambodia), 123.37 (Indonesia), 123.39 (Australia)

<sup>8</sup> Recommendation 123.76 (Norway), 123.77 (Ireland)

<sup>9</sup> Answer of Switzerland to 123.24/123.27/123.28/123.29/123.35/123.39/123.76/123.77,...

<sup>10</sup> The Federal Council is the executive power of Switzerland. It's the highest Swiss executive authority, consisting of 7 ministers. Those 7 ministers together form the presidency of Switzerland. Each of them is "president" for one year, speaking as Primus inter Pares.

<sup>11</sup> Swiss centre of Expertise in Human Rights: Access to justice in cases of discrimination, Berne July 2015, available in German. The study served as a data basis for the report of the Federal Council to a parliamentary postulate of MP Martin Naef, on the right to protection against discrimination of 14 June 2012

especially in the context of private law<sup>12</sup> and related to LGBTI persons. The Federal Council shared this view in the final report published in 2016.<sup>13</sup>

7. The identified gaps include the lack of legal protection of LGBTI persons from discrimination and hate speech as well as insufficient implementation of existing provisions. The low number of legal cases taken on the grounds of discrimination indicates that only few victims of discrimination go to court. The reasons behind this include procedural barriers, the lack of legal knowledge and awareness, the high risk for the victim in relation to the burden of proof, potentially high costs and the risk of additional personal disadvantages. Moreover, the burden and stress of pursuing a lawsuit can disproportionately outweigh the potential remedy and the usually minimal sanctions for the perpetrator. The SCHR also notes that Swiss legislation does not provide legal protection from hate speech against women and LGBTI persons as groups since this is not considered in the criminal law at all. The Committee on the Rights of the Child has also expressed concerns about discrimination against different population groups and about incidents of hate speech against LGBTI persons and their impact on children belonging to these groups<sup>14</sup>.
8. The SCHR formulated specific recommendations for better protection of the human rights of LGBTI persons, which are also included in this shadow report. Unfortunately, the Federal Council only supported some of the recommendations, while refusing other substantial ones<sup>15</sup>, like for example the introduction of an anti-discrimination norm in private law or easing the burden of proof, in spite of agreeing to an urgent need for action in view of serious gaps related to the protection from discrimination especially against LGBTI persons.

**9. Recommendations to the Swiss Federal and cantonal authorities:**

- a) Develop and adopt a comprehensive action plan in order to effectively combat discrimination based on different grounds including sexual orientation and gender identity with the participation of persons and groups concerned.
- b) Close the gaps of legal protection from discrimination by adopting new and/or adapting existing legislation on federal and cantonal level aiming at creating a coherent, effective and comprehensive protection against discrimination with explicit provisions for vulnerable LGBTI persons whose human rights are not sufficiently respected and protected in the present situation.

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<sup>12</sup> Which is part of the civil legal system and involves relationships between individuals, including working and other contracting relationships (for example renting dwellings, etc)

<sup>13</sup> Federal Council: Right to protection against discrimination. Report of the Federal Council responding to the postulate Naef 12.3543, 25 May 2016, available in German, French and Italian

<sup>14</sup> Committee on the Rights of the Child: Concluding observations on the combined second to fourth periodic reports of Switzerland, February 2015, Art. 24

<sup>15</sup> The Federal Council refused for example to adapt an anti-discrimination norm in private law to prevent from discrimination, to deload the burden of proof, improved legislation to protect from hate-speech, etc

- c) Adapt criminal law in order to provide comprehensive, effective and explicit protection from hate speech against different groups including women, LGBTI, people with disabilities, refugees and others.
- d) Expand the right for associations to take legal action and to appeal rulings on behalf of people subject to discrimination as an instrument to improve access to justice for LGBTI people
- e) Reduce procedural barriers including the high burden of proof of harm and prohibitive costs for legal procedures.
- f) Increase public support for LGTBI associations, NGOs, counseling centers and advising services by providing sufficient financial and human resources
- g) Provide awareness-raising programmes and training for public officials including police, judges, lawyers, teachers, social workers and the broader public to prevent discrimination
- h) Collect disaggregated data relevant to discrimination of LGTBI persons in order to monitor the situation and to track estimated numbers of unreported cases.
- i) The Federal Statistical office should adapt its approach to data collection to include data on non-binary gender identities.<sup>16</sup>

### **Transgender persons<sup>17</sup>**

10. In Swiss legislation, transgender persons are “invisible”, meaning that they are neither explicitly mentioned nor protected<sup>18</sup>. As a result, the situation of transgender persons in Switzerland is characterized by a high level of stigma and discrimination. This information is based on the daily experience of Transgender Network Switzerland, the umbrella organization working for the rights of trans people and offering advice services to several hundred clients a year<sup>19</sup>. Apart from the information collected by NGOs there is no comprehensive data on the situation and living conditions of trans persons in Switzerland available.
11. A frequent issue of concern resulting in human rights violations of trans people occurs in the process of legal gender recognition. Although there is no legal base for this, in many cases, the courts force transgender people<sup>20</sup> to undergo medical interventions and to prove their infertility either based on gender reassignment surgery or on hormonal treatment as a requirement for legal gender recognition.

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<sup>16</sup> Also the CEDAW Committee had expressed concerns in its concluding observations on the combined fourth and fifth periodic reports of Switzerland (November 2016, Art. 38c) in relation to the lack of inclusion of lesbian, bisexual and intersex persons in health surveys and registers

<sup>17</sup> Def.: A person whose gender identity differs from the gender that was assigned at birth based on biological sex characteristics

<sup>18</sup> Report of the centre of Expertise in Human Rights: Access to justice in cases of discrimination, Berne July 2015, available in German, page 22

<sup>19</sup> See: Transgender Network Switzerland, Alternative report CEDAW on the Situation of Trans People in Switzerland, February 2016; [www.transgender-network.ch](http://www.transgender-network.ch)

<sup>20</sup> Transgender Network: Alternative Report CEDAW on the situation of Trans People in Switzerland, 13 February 2016

The CEDAW Committee also raised concerns in relation to the persistence of gender reassignment treatment targeting transgender persons including involuntary medical treatment, such as hormonal or surgical sterilisation, and the costs associated with such treatment<sup>21</sup>.

## **12. Recommendations:**

- a) Include trans persons and advocates as experts from the beginning in all action affecting them, especially in regards to law and policy making.
- b) Ensure that in legal gender recognition procedures, the civil courts do not force trans persons to undergo involuntary medical treatment, including hormonal or surgical sterilization, i.e. that their right to bodily integrity as already stated in the Swiss constitution is fully respected.
- c) Include medically indicated and voluntary gender reassignment treatment in health insurance to assure reimbursement for all trans persons who need it and provide medical, esp. (genital) surgical, services of good quality.
- d) Collect data on the social and economic conditions of transgender people including, for example, their situation in schools and the workplace, their health including physical and mental wellbeing, their risk of STI infections and parenthood. Use this evidence base for further action plans to combat discrimination in different areas of social and economic life.
- e) Include reference to and documentation on trans persons in national health surveys and registers.
- f) Support specialized NGOs for transgender persons by providing adequate funding and human resources to facilitate the provision of professional and easily accessible services like counseling and legal support and involve them in participatory processes in the development of a national action plan to combat discrimination.

## **Intersex persons<sup>22</sup>**

13. Intersex persons also represent a blind spot for the Swiss Administration and legislation because they do not fit into binary sex categories. As a consequence, intersex persons are disregarded in Swiss legislation and therefore form a vulnerable group whose human rights are not effectively respected, protected and fulfilled<sup>23</sup>.

14. The Swiss National Advisory Commission on Biomedical Ethics published a statement on the situation of persons with variations in sex characteristics in

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<sup>21</sup> CEDAW-Committee: Concluding observations on the combined fourth and fifth periodic report of Switzerland, 18 November 2016, Art. 38d

<sup>22</sup> Intersex persons are born with sex characteristics that do not fit typical binary notions of male or female

<sup>23</sup> Also stated in the SCHR report on discrimination, 2012

2012<sup>24</sup>. The Commission noted that the longtime custom of subjecting babies and young children, who were born with varieties of sex characteristics, to surgical procedures in order to be able to assign them to either the male or female sex category caused much harm and violated their human rights to self-determination and bodily integrity. The Commission made several recommendations to ensure that the human rights of persons with variations in sex characteristics are respected<sup>25</sup>. The Federal Council agreed in a report published in 2016 to a majority of these conclusion of its advisory Commission and also initiated several measures. However, in practice, both in the medical and in the administrative settings, these guidelines are not yet implemented. In November 2016, the CEDAW-Committee raised in its concluding observations to Switzerland the issue of the *harmful practice of intersex mutilation*.<sup>26</sup>

## **15. Recommendations**

- a) Take all necessary legislative, administrative and other measures to protect the bodily integrity, autonomy and self-determination of intersex persons and implement consistently in all cantons the recommendations made by the Swiss National Advisory Commission on Biomedical Ethics
- b) Ensure that no child has to undergo unnecessary medical or surgical treatment during infancy or childhood and postpone unnecessary and irreversible surgery as long as decisions can be made with the judicious and informed consent of the person concerned
- c) Ensure participation of people concerned by involving them in the process of developing and implementing measures to better protect the human rights of intersex people and by supporting specialized NGOs and support groups
- d) Provide professional support for intersex persons and their parents including free psychosocial counseling services in order to support their decision-making process and informing them about their rights and putting their self-determination and bodily integrity at the center.
- e) Develop medical guidelines for treatment of intersex persons that respect the human rights of the person concerned and respond to the recommendations formulated by the Swiss National Advisory Commission on Biomedical Ethics.
- f) Provide training for medical staff to raise awareness for the human rights of intersex people and to make sure, that the medical guidelines and the recommendations raised by the Swiss National Advisory Commission on Biomedical Ethics are implemented properly and in all hospitals.

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<sup>24</sup> The Swiss National Advisory Commission on Biomedical Ethics uses the term *persons with variations in sexual anatomy* instead of *intersex people*

<sup>25</sup> Also the Committee on the Right of the Child supported the recommendations of the Commission. See: Concluding observations on the combined second to fourth periodic reports of Switzerland, February 2015. Art. 42b; Also the UN Committee against Torture invited Switzerland in 2015 to accelerate efforts to protect the human rights of intersex persons and to make sure that the recommendations of the National Advisory Commission on Biomedical Ethics are implemented. See: Concluding observations of the CAT Committee of Sept 2015, Art. 20

<sup>26</sup> CEDAW-Committee: Concluding observations on the combined fourth and fifth periodic report of Switzerland, 18 November 2016

- g) Provide redress and adequate compensation for those persons who underwent non-consensual irreversible treatment and are suffering from the consequences.

### **Gender-based violence against women**

16. Switzerland agreed in the last Universal Periodic Review to take action to combat gender-based violence against women by accepting all the respective recommendations. However, official statistics demonstrate that gender based violence including domestic violence and stalking is still an issue in Switzerland and efforts therefore have to be stepped up.
17. In 2015, the police registered 17'297 offences in the domestic area<sup>27</sup> 28. In comparison with the average of the years 2009-2014, this is an increase of 10 % (+1'548 cases), and in comparison with 2014, an increase of 11% (+1'647 cases). 40% of the increase can be explained by reorganization of the registration system. Almost 80% of the persons accused of domestic violence were men. In 2015, 75% of all resolved homicides, 45,6 % of cases of rape and 49,7% of assaults occurred in the domestic area<sup>29</sup>. In 2015, 36 persons died of domestic violence.
18. In 2015, recognized Swiss victim counseling services provided counseling services in 33'783 cases<sup>30</sup>. 72,6 % of the clients were female victims. In 72,5% of the cases, there was a family relation between the victim and the perpetrator.
19. A 2014 study<sup>31</sup> mandated by the Federal Office for Gender equality and the Swiss Conference of the cantonal social governors revealed that there is still an unmet need for victim shelters. Based on the results of an inventory in 2013, 18 victims shelters existed all over Switzerland, providing 128 rooms and 299 beds for women and their children who needed support and immediate protection due to experienced or imminent violence. There were significant differences in the regions in relation to the supply, for example there are some cantons, who don't have any shelters at all. The shelters provided support in a total of 1048 cases. Due to a shortage of space, the shelters couldn't accommodate approximately 600 women. In 300 of these cases, there was no place available in other shelters at the time. Another problem identified in the study concerns the instable financial situation of the shelters that rely on various sources of financial support and substantially on donations.

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<sup>27</sup> The data is based on the police crime statistics for Switzerland in 2015

<sup>28</sup> The Federal Office for Gender Equality is tracking data on gender based-violence against women including domestic violence. Data from Informationsblatt 9, Zahlen zu häuslicher Gewalt in der Schweiz, Dezember 2016

<sup>29</sup> Federal Statistical Office. Data on domestic violence, June 2016, see website

<sup>30</sup> Federal office for gender equality and Swiss Conference of the cantonal social governors (editors): Ist- und Bedarfsanalyse Frauenhäuser Schweiz- Grundlagenbericht, Zürich, November 2014 and statistics of the Federal Statistical Office on the assistance to victims of criminal offences

<sup>31</sup> Federal office for gender equality and Swiss Conference of the cantonal social governors (editors): Ist- und Bedarfsanalyse Frauenhäuser Schweiz- Grundlagenbericht, Zürich, November 2014



20. In 2016, the CEDAW Committee raised concerns regarding violence against women in Switzerland including the underreporting of gender based violence, the low prosecution and conviction rate of perpetrators<sup>32</sup>, the lack of an national action plan to combat violence against women and disparities between the cantons in addressing the problem as well as the negative impact of the high prevalence of uncontrolled firearms in private possession. In addition, the CEDAW Committee expressed concerns in relation to harmful practices such as female genital mutilation and child marriage. It agreed with the Committee on the Rights of the Child<sup>33</sup> that in spite of positive initiatives such as the adoption of specific legislation<sup>34</sup>, prevention and protection measures for girls at risk had to be continued.
21. Another area of concern remains the situation of migrant women who are victims of domestic violence.<sup>35</sup> In spite of an amendment of the Federal Foreign Nationals Act<sup>36</sup>, the situation is still precarious for these women, as a study published in 2016 demonstrates<sup>37</sup>. In practice, migrant women often still have to stay in their abusive marriages for fear of losing their residency permit due to a significantly high threshold of “severity” and “systematic violence” as the standard of proof before the courts. There are also cases of deportation of migrant women who have been recognised as victims of domestic violence only due to their lack of financial independence<sup>38</sup>.
22. Also the protection of female asylum seekers and refugee women from gender-based violence is insufficient in Switzerland. First of all, there are no gender-sensitive standards at all in relation to accommodation of women during the asylum process. In addition, refugee women, who have been victims of gender-based violence, do not get the support they need due to a lack and shortage of specific services and due to the fact that in many cases they are excluded from provisions based on the law on victim support which only provide support to victims of crimes committed in Switzerland or perpetrated on Swiss citizens abroad<sup>39</sup>.

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<sup>32</sup> Also the UN-Committee against Torture raised in its concluding observations towards Switzerland in September 2015 its concerns about the high number of prosecutions for domestic violence that were dropped and that, where convictions were handed down for domestic violence, the penalties incurred were light

<sup>33</sup> Committee on the Right of the Child: Concluding observations on the combined second to fourth periodic reports of Switzerland, February 2015

<sup>34</sup> Explicit article in Criminal law prohibiting FGM since 2012, and Federal Act on Measures against Forced Marriage in 2013

<sup>35</sup> This concern has been raised in several UN human rights monitoring processes: CEDAW-Committee, Concluding Observations 2016, Art. 46,b+c; ICCPR, List of Issues human rights Council, 2014 Art. 9; ICESCR, Concluding observations 2010, Art 10; CAT, Concluding observations, sept 2015, Art. 12

<sup>36</sup> Art. 50 states, that foreigner has to be married at least year in order to be able to keep the residence permit in case of divorce. Amendments say, that this rule doesn't apply in hardship cases, including cases of domestic violence

<sup>37</sup> Observatoire romande du droit d'asyle et des étrangères: Femmes étrangères victimes de violences conjugales. Obstacles au renouvellement du titre de séjour en cas de séparation, Genève, 2016

<sup>38</sup> Committee on the Elimination of Discrimination against Women: Concluding observations on the combined fourth and fifth periodic reports of Switzerland, advanced unedited version, 18 November 2016, Art. 47c

<sup>39</sup> The provisions are in most of the cases only applicable if the crime has happened in Switzerland

### **23. Recommendations**

- a) Adapt Swiss legislation including the Federal law on victim support in order to make sure that all victims of gender-based violence including migrant and refugee women get the assistance they need
- b) Develop and implement a national action plan to combat gender-based violence against women including domestic and sexual violence and stalking with special attention to minority women and ensure that adequate human, technical and financial resources are allocated
- c) Combat gender-based violence against women in a comprehensive approach by addressing gender stereotypes, power-relations and sexism in public campaigns towards society at large and targeted specific groups including young people, minority groups.
- d) Provide awareness-raising and training to professional groups like the police, judges, medical staff and to the judiciary and law enforcement officials in order to make sure that all measures to combat gender-based violence against women are implemented properly and monitor compliance.
- e) Provide support and adequate funding to specialized women's organisations and shelters that combat gender-based violence and provide victim support and involve them in the development of relevant programmes.
- f) Review the legal framework including Art. 50 of the Federal Foreign Nationals Act and monitor its implementation in relation to procedures concerning gender-based violence against migrant women. Adapt the provisions in order to make sure that foreign victims of domestic violence can remain in Switzerland in case of separation from their violent husband.
- g) Provide a framework and action plan to meet the unmet needs of victim support shelters all over Switzerland. Strengthen existing services and establish additional shelters in order ensure that sufficient and adequate victim support services are available. They have to respond to the needs of the victims and their children in relation to accommodation, support and counseling with special attention to the needs of groups like girls, migrants, victims of human trafficking. The cantons are accountable and have to implement the action plans and ensure provision of sufficient and adequate victim support shelters. The implementation of the action plans of the cantons has to be monitored.
- h) Ensure that all cases of violence against women are automatically subject to effective and impartial proceedings, meaning that they can not be suspended and that perpetrators are prosecuted and punished in accordance with the serious nature of their acts;
- i) Implement an action plan to protect girls and young women from harmful practices like female genital mutilation and child and forced marriage and provide support to victims. The action plan should include awareness-raising

and prevention campaigns to protect girls at risk and the provision of training to professionals like teachers, medical staff and social workers.

- j) Switzerland should ratify the Convention on preventing and combatting violence against women and domestic violence of the Council of Europe, (the Istanbul Convention).
- k) Respond to the precarious situation of foreign women engaged in sex work, who are exposed to structural violence and exclusion. Review their situation in order to protect them from violence, ensure provision of health and social services without discrimination and strengthen assistance to women and girls who wish to leave sex work, including by providing exit programmes and alternative income-generating opportunities.

### **Human Trafficking**

24. Human trafficking and sexual exploitation are serious human rights violations. In the last Universal Periodic Review, Switzerland accepted all the recommendations concerning Human Trafficking (12). In spite of many efforts of Switzerland to combat human trafficking such as the adoption of a national action plan against trafficking in human beings (2012 - 2014) there is still a big gap in the implementation since the cantons are free to decide on the measures. Also the organization FIZ who provides advocacy and support for migrant women and victims of trafficking raised concerns in 2016 in relation to cantonal differences in the protection of victims and victim support and insufficient funding for existing specialized services<sup>40</sup>. The CEDAW Committee raised additional concerns in its concluding observations towards Switzerland in 2016 in relation to the low rates of prosecution and conviction in cases of trafficking in women and girls and the lack of available disaggregated data on victims of trafficking. Moreover, the CEDAW Committee criticized the lack of a comprehensive victim protection programme that also offers accommodation, rehabilitation and reintegration measures, a missing unified approach across cantons to identify victims and refer them to the appropriate protection services as well as inadequate human and financial resources allocated to victim protection services. For migrant women who are victims of human trafficking the protection is very weak because there are disparities between cantons in relation to granting residence permits, with the consequence, that some victims are deported.

### **25. Recommendations:**

- a) Combat human trafficking in a comprehensive nationwide approach. Monitor the impact of the National Action Plan and ensure with compulsory standards that it is implemented uniformly across all cantons.
- b) Develop and implement a comprehensive victim protection programme that provides support, rehabilitation and integration to all victims of human trafficking. Residence permits must be granted in order to enable all victims of

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<sup>40</sup> FIZ-Advocacy and Support for Migrant Women and Victims of Trafficking. Alternative report on the 4<sup>th</sup>/5<sup>th</sup> report from Switzerland on the implementation of CEDAW, Zürich 2016

trafficking to avail themselves of protective and rehabilitation measures, irrespective of their willingness to cooperate with police authorities.

- c) Strengthen measures to identify and provide support to women at risk of trafficking, in particular migrant women and unaccompanied girls.
- d) Provide sustainable public funding for NGOs who offer specialized services for victim protection and for victims of human trafficking
- e) Develop awareness raising programmes and training for police authorities, judges, advocates, migration officers and social workers at the federal and cantonal level and ensure that they adopt a victim-centered approach.
- f) Investigate, prosecute and adequately punish all cases of human trafficking

### **Access to reproductive health services of vulnerable groups**

26. The right to sexual and reproductive health is an integral part of the right to health.<sup>41</sup> Switzerland provides, in general, good quality and accessible SRHR services. Health insurance is mandatory for everybody and covers a broad range of medical services including abortion. In addition, all the cantons offer free counseling services in relation to pregnancy, contraception and family planning, based on a federal law<sup>42</sup>.

27. However, studies and data reveal that not all persons living in Switzerland can equally attain health and that common services and health promotion programs are not equally accessible for all population groups. A survey of the Federal Office of Public Health<sup>43</sup> found that the health condition of migrants is on average significantly poorer than the non-migrant population. This especially concerns the health of migrant women in relation to maternal mortality, infant mortality, birth complication and abortion<sup>44</sup>. For example the maternal mortality rate of Swiss women in 2014 was 5.1 per 100'000 births, while it was 6.4 per 100'000 births of foreign women in Switzerland.<sup>45</sup> The CEDAW Committee expressed concern in 2016 that language barriers and lack of awareness are preventing migrant women in Switzerland from accessing health care facilities, including reproductive health services<sup>46</sup>.

28. Communication is essential to improve the access of migrant women to health services and also to attain the highest attainable standard of health. Every person has the right to be informed about her health status and available medical services and has to be able to understand the information, if needed, with the support of a translator. In some medical and counseling settings, especially in bigger clinics,

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<sup>41</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 22, May 2016

<sup>42</sup> Federal Law on the counselling centers on pregnancy and family planning of 1981

<sup>43</sup> Federal Office for Public Health: Migrationsgerechte Angebote im Bereich reproduktive Gesundheit und frühe Gesundheit in der Schweiz, 2013

<sup>44</sup> Federal Statistical Office, 2014

<sup>45</sup> Bundesamt für Statistik: Gesundheit von Müttern und Neugeborenen in der Migrationsbevölkerung, September 2014

<sup>46</sup> CEDAW-Committee, Concluding observations on the combined fourth and fifth periodic reports of Switzerland, November 2016, Art. 38a

professional translators are available, while in others communication is still a barrier to health. The availability and financing of translators in such settings is not ensured.

29. Another area of concern is access to contraception. While information on contraception is free, contraceptive supplies are not covered by health insurance and social benefits do not include the costs for contraception. For the cantonal family planning centers, this is a challenge in their daily work because they regularly have clients who cannot afford contraception. In such cases, the centers often have to rely on social and private funds and donations. The insecurity in relation to supply and availability of contraception produces unnecessary stress in already difficult situations and increases the risk of unwanted pregnancies. A limited private donation, which was managed by the Swiss umbrella organization of the family planning center from autumn 2016 till February 2017 revealed precarious cases and the urgent need for sustainable funding for contraception. The Federal Council of Switzerland had agreed in an answer to an interpellation of a Swiss member of parliament<sup>47</sup> that for specific target groups like migrants and young people who have limited access to contraception out of financial reasons, contraception should be subsidized – which is still not the case in Switzerland, because the cantons are responsible to take action. This is in contradiction to the guidance from the ESCR-Committee that requires public or private sexual and reproductive health services to be affordable for all.

30. Another area of concern is access of refugee women to SHRR services including counseling. Many of the cantonal family planning centers in the cantons reported, that in the past months, they had an increase of refugee women visiting the centers. In order to ensure that the needs and the rights of these women are met, the cantons would have to provide adequate resources and funding, which is not assured.

### **31. Recommendations:**

- a) Adopt a comprehensive national strategy on sexual health and rights in order to promote sexual health in a comprehensive way in Switzerland in accordance with international standards.
- b) Adopt a national action plan that ensures availability, accessibility, affordability and acceptability of sexual and reproductive health services for different population groups including young people, migrants and refugees.
- c) Provide training for professionals in medical and counselling settings on cultural sensitive and gender sensitive work with their clients. Ensure that medical professionals are aware of the cultural and linguistic barriers migrant women face when accessing health care. Ensure the availability of female medical staff if requested.

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<sup>47</sup> Interpellation of Yvonne Gilli, 10.3104, submitted in 2010

- d) Develop awareness raising campaigns, in relevant languages, among migrant communities on how to access health care services, including sexual and reproductive health services.
- e) Collect disaggregated data on sexual and reproductive health of different groups as an evidence base for targeted SRHR programmes and intervention
- f) Develop an action plan and provide adequate human and financial resources for gender-sensitive SRHR-services for refugee women which also cover the provision of counseling services and contraception and psychological therapies for victims of gender-based violence
- g) Provide human and financial resources for translation services
- h) Review the situation in relation to access to contraception. Collect disaggregated data on access to contraception and develop a strategy that ensures that contraception accessible and affordable for everybody. Provide subsidized contraception for vulnerable groups in all the cantons

### **Sexuality education**

32. Children have a right to education<sup>48</sup> which supports their development and empowers them to claim their human rights. The right to education also includes the right to sexuality education, which must be comprehensive, rights-based, age-appropriate, evidence-based and empowers children and young people to develop the skills needed to attain their right to enjoy the highest attainable standard of health and make informed, self-determined choices regarding their sexual life, free of free of coercion, discrimination and violence. The UN-Committee on Economic, Social and Cultural rights (CESCR) criticized Switzerland in its November 2010 concluding observations that sexuality education and measures to promote sexual and reproductive health were inadequate in Switzerland and recommended that Switzerland should adopt concrete programmes on sexuality education as well as on sexual and reproductive health including in school curricula. <sup>49</sup> , <sup>50</sup> . Also the CEDAW-Committee expressed concerns towards Switzerland in 2016 in relation to “disparities in the teaching of age-appropriate sexual education across cantons and the resulting risk of teenage pregnancies.”<sup>51</sup>

33. In Switzerland, access for all children to standardized comprehensive sexuality education is not assured. There are still gaps and disparities in the quality of sexuality education varying from canton to canton. While some cantons introduced years ago excellent programmes that are based on quality standards,

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<sup>48</sup> Switzerland has ratified the UN Convention on the rights of the Child in 1989

<sup>49</sup> Committee on Economic, Social and Cultural Rights, Forty-fifth session : Consideration of reports submitted by States parties under Articles 16 and 17 of the covenant, Concluding Observations on Switzerland, November 2010

<sup>50</sup> Also consider: Committee on Economic, Social and Cultural Rights, General Comment No.22 (2016) on the right to sexual and reproductive health, Art. 9 and Art 18: ...”All individuals and groups, including adolescents and youth, have the right to evidence-based information on all aspects of sexual and reproductive health, including maternal health, contraceptives, family planning, sexually transmitted infections, HIV prevention, safe abortion and post-abortion care, infertility and fertility options, and reproductive cancer.”

<sup>51</sup> CEDAW-Committee, Concluding observations on the combined fourth and fifth periodic reports of Switzerland, November 2016, Art. 38c

especially in the Latin cantons of Switzerland, in other cantons the programmes are still basic and rudimentary and do not correspond to the quality standards of comprehensive sexuality education that includes a human rights based approach. Also, there exists disparities within the cantons. The existing framework for sexuality education is still weak and based on an inter-cantonal agreement on harmonizing mandatory school education<sup>52</sup>. Only basic information on sexual functions, sexuality, sexual development and sexually transmitted infections are included in these shared educational goals as part of natural science. In practice many schools and teachers provide more comprehensive programmes, involving professionals for special session. However, as a whole, Switzerland faces disparities and inequalities in relation to access to sexuality education.

34. In 2015, the “Alliance to promote sexuality education in Switzerland” was launched. The alliance aims to assemble all Swiss civil society organizations that promote comprehensive sexuality education based on WHO-standards in Switzerland<sup>53</sup>. Almost 80 organizations have joined the alliance including youth and family organizations like Pro Juventute and Profamilia, the Swiss alliance of youth organizations, the Swiss Society of Pediatrics and the Swiss teacher’s umbrella organization.

35. **Recommendations:**

- a) Ensure that all children in Switzerland have equal access to comprehensive sexuality education based on WHO-standards
- b) Develop together with professional associations and educational institutions and the cantons a strategy and a national action plan to implement comprehensive sexuality education programmes based on WHO standards all over Switzerland
- c) Ensure that comprehensive sexuality education is included in the school curricula in all cantons
- d) Adapt quality standards based on the WHO-standards and monitor their implementation
- e) Provide training to professionals and monitor and improve the quality of the programmes

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<sup>52</sup> the so-called HarmoS-Konkordat

<sup>53</sup> <http://www.allianz-sexualaufklaerung.ch/>