

## Universal Periodic Review

Review of Switzerland at the 14<sup>th</sup> UPR session in October 2012

Joint submission by:

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**KEY WORDS:** *Sexual rights; access to sexual and reproductive health and rights; non-discrimination of people living with HIV, LGBTI persons, people living with a disability and migrants; access to comprehensive sexuality education; protection against sexual violence and human trafficking.*

## **Executive Summary**

This report is submitted by SEXUAL HEALTH Switzerland<sup>1</sup>, accredited member of the International Planned Parenthood Federation (IPPF), and the Sexual Rights Initiative<sup>2</sup> and contains recommendations for Switzerland to comply with its international human rights obligations related to sexual and reproductive health and rights. It focuses on the following four areas of sexual rights, which are an integral part of human rights:

1. Right to non-discrimination, specifically protection from discrimination based on HIV status, sexuality orientation, gender identity and/or disability;
2. Access to reproductive health, including guaranteed access to contraception for vulnerable groups such as migrants and young people;
3. Access to comprehensive sexuality education including through the development and implementation of a national strategy to reach all children;
4. Protection against sexual violence and human trafficking

### **1. Right to Non-Discrimination**

Legal protection against discrimination is still fragmentary in Switzerland. In spite of article 8 of the Federal Constitution of the Swiss Confederation, which prohibits discrimination<sup>3</sup>, individuals and specific groups are exposed to discrimination because they are not explicitly protected and do not have the specific legal instruments to claim their rights. Moreover, there are only few cantons that have anti-discrimination laws.

**1.1 Discrimination of People living with HIV at work** - The Swiss Aids Federation has been assigned by the Swiss government to monitor cases of discrimination due to HIV/Aids and to transfer the data every six months to the Federal Commission for Sexual Health. In many cases, they also offer legal advice. The most recent data for the period of May 2011 to November 2011 provides **44 cases of discrimination or violation of data protection due to HIV/Aids**<sup>4</sup>. Half of the 44 reported cases were related to discrimination at work. The Swiss Aids Federation stated that the cases of discrimination in the context of employment were on the rise. There were various types of discrimination including questionnaires being used in job interviews with inquiries on HIV status,

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<sup>1</sup> SEXUAL HEALTH Switzerland is the national umbrella organization of the Swiss family planning centres and the professionals in Sexual and Reproductive Health and Rights and accredited member of the International Planned Parenthood Federation. As a Non-Governmental Organization (NGO), SEXUAL HEALTH Switzerland is promoting and Sexual and Reproductive Health and Rights (SRHR) in Switzerland and on international level. The organization is also providing the secretariat of the Swiss parliamentary group CAIRE+. SEXUAL HEALTH Switzerland is partner of the Swiss administration for the implementation of the national programme for HIV and other sexually transmitted infections 2011-2017.

<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).

<sup>3</sup> Article 8 of the **Federal Constitution of the Swiss Confederation: 2)** No one may be discriminated against, in particular on grounds of origin, race, gender, age, language, social position, way of life, religious, ideological, or political convictions, or because of a physical, mental or psychological disability.

<sup>4</sup> [http://www.aids.ch/d/medien/pdf/dis\\_meldungen/Diskriminierungsmeldungen\\_02\\_2011.pdf](http://www.aids.ch/d/medien/pdf/dis_meldungen/Diskriminierungsmeldungen_02_2011.pdf)

mobbing and stigmatization of employees living with HIV, layoff due to HIV/Aids, discrimination regarding social insurance linked to the job.

The cases of discrimination at work demonstrate that the legal grounds are insufficient in Switzerland to fight discrimination of people living with HIV and that different steps are necessary to prevent discrimination of people living with HIV and to make sure that they have efficient possibilities to claim their rights.

### **Recommendations:**

- 1.1.1** Switzerland should introduce a new federal law that explicitly prevents and combats discrimination and that protects different groups from discrimination.
- 1.1.2** The anti-discrimination law also has to protect explicitly people living with chronic diseases.
- 1.1.3** Switzerland has to ensure that this anti-discrimination law is implemented in all the cantons adequately and is monitored.
- 1.1.4** To prevent discrimination at work, in court hearings the employers should be the ones who have to prove that they do not discriminate.
- 1.1.5** Workplace policies have to be developed which promote anti-discrimination

**1.2 Discrimination of People living with HIV in the context of penal law legislation** - According to the penal code (Arts. 122 & 231), persons living with HIV may be prosecuted after having had unprotected sex, regardless of the concrete situation. A person living with HIV can for example be prosecuted even if their sexual partner was fully informed of their serostatus. This legal practice works against HIV prevention strategies. Also the Special Rapporteur on the Right to Health has explicitly stated, that criminalization of HIV transmission is ineffective in preventing the spread of HIV and only serves to stigmatise people living with HIV and deter people from accessing testing and treatment<sup>5</sup>.

### **Recommendations:**

- 1.2.1** Penal legislation has to be changed in order to repeal the articles that criminalize non-deliberate and non-maleficent HIV transmission in the context of the prevention of epidemics. The revised articles of the penal law have to be implemented consistently.

**1.3. Discrimination of Lesbian, Gay, Bisexual, Transgender, Intersex (LGBTI)** – Sexual rights being an integral part of human rights have to be guaranteed to everybody regardless of sexual orientation or gender identity. In daily life, however, LGBTI persons are still exposed to discrimination for example at work or through social stigma. Although the Federal Constitution<sup>6</sup> prohibits discrimination, in general it is hard to invoke discrimination due to sexual orientation and gender identity before tribunal because these rights are not specifically and explicitly protected. Moreover, intersexuality is a fact that is still a taboo. When children are born whose sex cannot clearly be determined, the parents are often under pressure to deliver them to rushed surgery with the risk, that irreversible and wrong decisions are taken. There is a lack of information and help for people and families concerned and the medical staff is insufficiently trained, prepared and linked to support groups in order to be better able to meet the needs of the people concerned.

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<sup>5</sup> A/HRC/14/20

<sup>6</sup> Article 8 of the **Federal Constitution of the Swiss Confederation**

### **Recommendations:**

**1.3.1** When creating an anti-discrimination law, Switzerland should take specific steps to guarantee the rights LGBTI persons and include paragraphs that prevent discrimination based on sexual orientation or gender identity.

**1.3.2** The administration has to develop procedures regarding official documents that protect individuals from discrimination on the basis of transsexuality or intersexuality.

**1.3.3** For medical staff, guidelines should be developed and procedures adapted in order to guarantee non-discriminating communication with LGBTI persons.

**1.3.4** Regarding transsexuality, specific guidelines should be developed and medical doctors should be trained in order to better meet the needs of people concerned and to guarantee that nobody is under pressure to take rushed decisions to undergo surgery without informed consent.

**1.4 Discrimination of People living with a disability** - Sexuality of people living with a disability is very much a taboo and in many institutions there is still no open discussion on that topic. This means that people living with disabilities are very restricted in their sexual rights, which very often are completely denied. With a standardized and restricted approach in institutions, their individual needs and possibilities are neglected. In 2010 several cases of sexual abuse of people living with disabilities in institutions went public in Switzerland.

### **Recommendations:**

**1.4.1** Sexual rights of people living with disabilities have to be better protected.

**1.4.2** Guidelines regarding the sexual rights of people living with a disability have to be developed for institutions for people living with a disability.

**1.4.3** Those guidelines have to be implemented in all accredited and publicly financed institutions.

**1.4.4** Special guidelines have to be developed and implemented to protect people living with disabilities from sexual abuse in institutions.

**1.4.5** Sexual rights of people living with disability should be included in the training of professionals and teachers working in institutions with people living with a disability.

**1.4.6** Children and young people living with a disability should have access to appropriate, rights-based, comprehensive sexuality education

## **2. Access to Reproductive Health**

Sexual and reproductive health is an integral part of the right of everybody to enjoy the highest attainable standard of physical and mental health. Switzerland has signed up to the Programme of Action of the International Conference on Population and Development of 1994, which emphasizes the importance of access to reproductive health and rights including family planning. On a national level, Switzerland created in 1981 a federal law on family planning centers<sup>7</sup> that guarantees free access to counseling and help in matters concerning pregnancies and family planning throughout Switzerland. The free services cover counseling and do not include free access to contraceptive supplies.

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<sup>7</sup> Bundesgesetz vom 9. Oktober 1981 über die Schwangerschaftsberatungsstellen

**2.1 Limited access to family planning for vulnerable groups** - In Switzerland, contraception is privately paid and there are groups of women who have limited access to contraception and to the prevention of unwanted pregnancies out of social or financial reasons. The family planning centers are regularly confronted with women, who can't afford contraception. In many of these cases the family planning centers help out with money from help funds they have established themselves. Among the groups most in need are migrants and young women. Studies<sup>8</sup> demonstrate that migrants have restricted access to reproductive health services because of difficulties regarding their right of residence, because of communication problems due to limited language knowledge and insufficient translation resources and because of social and financial problems. The most recent data of the Federal Office for Statistics demonstrate that the abortion rate of migrants in Switzerland is much higher than for Swiss women.<sup>9</sup>

The Federal Council of Switzerland stated in an answer to an interpellation of a Swiss member of parliament, that prevention activities targeting migrants have to be implemented to make sure that they have equal access to sexual health services. Moreover, for specific target groups like migrants and young people who have limited access to contraception out of financial reasons, contraception should be subsidized.

#### **Recommendations:**

- 2.1.1** Switzerland should develop a national strategy to guarantee that vulnerable groups have access to sexual and reproductive health and rights including family planning.
- 2.1.2** A special strategy should be developed for migrants in order to guarantee access to sexual and reproductive health and rights.
- 2.1.3** The needed services like for example for translation should be financed by the cantons.
- 2.1.4** The strategy has to be implemented and monitored in all Swiss cantons equally.
- 2.1.5** For those groups who can't afford contraception, contraception has to be subsidized
- 2.1.6** Subsidized contraception has to be available in every canton.
- 2.1.7** Prevention programmes for vulnerable groups have to be developed and need to be implemented in every canton to guarantee access to sexual and reproductive health and rights for all persons living in Switzerland.

### **3. Access to sexuality education**

Switzerland ratified the UN Convention on the Rights of the Child in 1989, which protects the specific needs of children. Children have the right to access education, which supports their development and empowers them in their development to claim their human rights. This right to education also includes the right to sexuality education, as it is a fundamental part of humanity. Comprehensive sexuality education, which must be rights-based, age-appropriate and evidence-based, provides children with the skills needed to attain sexual health and to enable them to make

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<sup>8</sup> Migration and sexual and reproductive health: Survey made among the family planning centres made by PLANeS, 2009

<sup>9</sup> Statistics on Abortion in Switzerland in 2010 of the Federal Office Statistik des Schwangerschaftsabbruchs 2010 Bestandesaufnahme der Schwangerschaftsabbrüche in der Schweiz

informed, self-determined choices regarding their sexual life, free of coercion, discrimination and violence<sup>10</sup>.

**3.1 Unequal access to comprehensive sexuality education in Switzerland** - There is no national strategy in Switzerland that guarantees access for all children and adolescents to comprehensive sexuality education at school. There are also no quality standards implemented nationwide. Types of sexuality education vary from canton to canton and even from school to school. In some schools teachers transfer just basic information while at other schools professionals in sexuality education – sometimes in cooperation with teachers – provide comprehensive sexuality education. Depending on the model, sensitive topics such as sexual orientation, gender norms, relationship, gender identity and abortion are often not discussed at all.

The Federal Commission for Children and Youth has recommended in its report in 2009 that all children must have access to comprehensive sexuality education regularly throughout compulsory education. Moreover, comprehensive sexuality education should be anchored by law and specific curricula have to be developed and implemented nationwide by professionals. Also the Committee on Economic, Social and Cultural Rights notes in its concluding observations to Switzerland in November 2010 that sex education and measures to promote sexual and reproductive health in the State party are inadequate. The Committee recommends that Switzerland adopt concrete programmes on sex education as well as on sexual and reproductive health including in school curricula<sup>11</sup>.

#### **Recommendations:**

**3.1.1** Switzerland has to guarantee equal access to comprehensive sexuality education to all children and adolescents and to make sure that no one is discriminated in their right to have access to adequate education.

**3.1.2** Switzerland should develop, together with professional associations and educational institutions, a strategy to implement efficiently existing models and standards to guarantee comprehensive sexuality education nationwide.

**3.1.3** Comprehensive sexuality education has to be anchored in the legislation and specific curricula for comprehensive sexuality education have to be developed.

**3.1.4** The implementation of these laws in the cantons has to be enforced and monitored.

#### **4. Protection against sexual violence and human trafficking**

Trafficking of women to Switzerland, who are sexually exploited, represent a severe violation of human rights. In such cases, basic rights protected by the Swiss constitution are violated, such as the right to liberty and physical integrity. In 2012, the Swiss parliament has approved the ratification of the Council of Europe Convention on Action against Trafficking in Human Beings. Moreover, Switzerland has taken action to follow the recommendations to fight sexual exploitation of women and children at the UPR 2008.

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<sup>10</sup> World Health Organisation WHO: “Sexual health is a state of physical, mental and social well-being in relation to sexuality. It requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence”.

<sup>11</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

**4.1 Sexual exploitation of victims of human trafficking** - Switzerland is still a destination and transit country for human trafficking. The Swiss advocacy and support organization for migrant women and victims of trafficking (FIZ), which offers special counseling and support to victims of human trafficking, was consulted in 2010 by 131 victims of trafficking. This number of women who were able to reach out for help is contrasted by a large number of unreported cases. Victims of human trafficking often do not have access to help, which should be provided based on the right to protection for victims of crime. It is in the responsibility of the cantons, to protect and help these victims. The already existing strategies, which followed the recommendations from UPR 2008, were not all implemented in the cantons.

**Recommendations:**

- 4.1.1** Human trafficking has to be prosecuted and stopped and the victims of trafficking have to be protected.
- 4.1.2** The Council of Europe Convention on Action against Trafficking in Human Beings has to be ratified and implemented.
- 4.1.3** Victims of human trafficking have to be protected. For this, a comprehensive strategy has to be developed and implemented in all the cantons.
- 4.1.4** The protection act has to be implemented in all the cantons, which have to establish special services for victim support.
- 4.1.5** The police, justice and migration authorities have to be trained in order to be better able to identify victims of trafficking and support them in their rights.
- 4.1.6** Victims of human trafficking should have the right to stay in Switzerland if this is needed for their protection and the protection of their rights.