

United Nations High Commissioner for Refugees

Switzerland

We would like to bring your attention to the following excerpts from Treaty Body Concluding Observations and Special Procedure reports, relating to issues of interest and concern to UNHCR with regards to Switzerland.

Treaty Body Concluding Observations and Recommendations

**CRC/C/OPAC/CHE/CO/1, 41st session
17 March, 2006**

9. The Committee notes that the State party is a country of destination of asylum-seeking and migrant children coming from war-torn countries. In light of the fact that many of these children may have been victims of traumatic experiences, the Committee notes with concern that authorities who interview children applying for asylum receive no special training for dealing appropriately with children affected by military activities and armed conflicts. It regrets the lack of systematic data collection on asylum seekers under the age of 18 who were involved in armed conflict. Furthermore, it is also concerned about the lack of specific integration programmes or activities for former child soldiers.

10. The Committee recommends that the State party pay particular attention to asylum-seeking, refugee and migrant children entering Switzerland who may have been involved in armed conflicts and provide them with immediate, culturally sensitive multidisciplinary assistance for their physical and psychological recovery and for their social reintegration. It also recommends that they be provided with specific accommodation facilities designed for minors. It further recommends that the State party systematically train authorities working for and with asylum-seeking and migrant children coming from war-torn countries and collect data on refugee, asylum-seeking and migrant children within its jurisdiction who may have been involved in hostilities in their home country. In this regard the Committee recommends that the State party take note of the Committee's general comment No. 6 (CRC/GC/2005/6) on the treatment of unaccompanied and separated children outside their country of origin.

**CAT/C/CR/34/CHE, 34th session
21 June 2005**

4. The Committee expresses concern regarding the following:

...

(h) Changes have been introduced by the revised law on asylum which restrict or aggravate asylum-seekers' access to legal counsel and the length and conditions of detention in "preparatory" or pre-deportation detention. The Committee is also concerned that in cases of non-entry decisions (décision de

non-entrée en matière) the social benefits of asylum-seekers are being curtailed significantly;

(i) Asylum-seekers retained at airports are not consistently being informed of assistance;

(j) The “guidelines relating to forcible deportations by air” do not contain an explicit ban on the wearing of masks or hoods by officers involved in the deportations.

5. *The Committee recommends that the State party:*

...

h) Ensure that asylum-seekers are granted full respect of their right to a fair hearing, to an effective remedy and to social and economic rights during all procedures established by the revised law on asylum;

(e) Take measures to compile, at national level, disaggregated data relating to the cases of alleged torture or ill-treatment, in particular in the context of the application of the law on asylum and the law on foreigners, as well as to the outcomes of any investigations and prosecutions that might be pursued;

(i) Take measures to effectively inform all asylum-seekers retained at and access to a doctor;

(j) Inform the Committee whether there have been complaints in the State party prohibition of non-refoulement established in article 3 of the Convention;

**CERD/C/60/CO/14, 60th session
4-22 March, 2002**

9. *The Committee is concerned about the persistence of hostile attitudes towards black people, Muslims and asylum-seekers in Switzerland.*

The Committee recommends that the State party continue its efforts to prevent and combat such attitudes, including through information campaigns and education of the general public. Further, in the light of its general recommendation XIX, the Committee encourages the State party to continue monitoring all tendencies which may give rise to racial or ethnic segregation and endeavour to combat the negative consequences of such tendencies.

10. *The Committee is concerned at expressions of xenophobic and racist attitudes in naturalization procedures, particularly those subject to popular vote. It is also concerned that according to legislation still in force decisions taken in accordance with such procedures are not subject to legal review. The Committee is of the view that the right to appeal against decisions, in particular arbitrary or discriminatory ones, in matters relating to naturalization has to be made an integral part of the policy on naturalization, currently in the process of being amended. Further, the State party should endeavour to avoid statelessness, particularly of children, on its*

territory, bearing in mind article 38 (3) of the new Federal Constitution, which stipulates that the Confederation "shall facilitate the naturalization of stateless children".

14. Noting that the former "three-circle" immigration policy of Switzerland which classified foreigners according to categories of national origin and capacity for integration was abandoned and replaced by a binary admissions system and in view of the dialogue held with the Swiss delegation in this respect, the Committee invites the State party to consider if the reservation to article 2 (1) (a) of the Convention is still necessary or may be withdrawn.

**CESCR, E/C.12/1/Add.30, 19th session
7 December, 1998**

33. The Committee recommends that the State party play a more active role in promoting equal access to higher education for women, immigrants and ethnic minorities.

Special Procedure Reports

**Report by Mr. Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance
Mission to Switzerland**

**A/HRC/4/19/Add.2, 4th session
30 January, 2007**

25. On 24 September 2006, two issues were submitted for a vote in Switzerland concerning the amendment of the Asylum Act and the Federal Act on Foreign Nationals. During his mission, the Special Rapporteur followed with great interest the various debates on these votes, which involve matters directly related to his mandate.

26. With regard to the amendment of the law on asylum, the Special Rapporteur's attention was drawn, in particular, to the position of certain NGOs that denounced the amendment of the law as incompatible with Switzerland's international obligations. Among other things, the NGOs criticized:

- *The refusal of the authorities to consider requests for asylum if the applicant cannot furnish, within 48 hours, a passport or an identity card (birth certificates or driving licences will no longer be recognized as valid);*
- *The systematic refoulement of all persons coming from neighbouring transit countries that are considered safe;*
- *The transmission of information to the State of origin of the person without ascertaining whether or not the person in question, or his or her family who remained in the State of origin, will be subject to any risk, as soon as the first decision is taken to deport the person;*
- *The exclusion of social assistance for all applicants who have been rejected;*
- *Incarceration for up to two years for persons resisting return.*

28. *The Office of the United Nations High Commissioner for Refugees (UNHCR) expressed serious concern at certain aspects of the law, particularly the provisions restricting access to asylum for persons without valid travel or identity documents. The 1951 Convention relating to the Status of Refugees specifically provides for refugees who may have had to flee their country without being able to obtain valid travel or identity documents. This Swiss legal provision, which has been called one of the “strictest in Europe”, seems to ignore the case of persons fleeing for their lives who have not been able to obtain such documents. The Special Rapporteur takes note of the fact that Swiss law provides for exceptions and hopes that courts take account of this in their jurisprudence.*

29. *With regard to the revision of the law on foreigners, the Special Rapporteur has taken note of the position of opponents to the amendment who have criticized the discriminatory treatment of foreigners who do not belong to a European country, the toughening of the rules on family reunification with regard to foreigners of non-European origin, the obligation to live together (and the possible effects on women of non-European origin) or the proliferation of measures making it possible to place foreigners who refuse to leave Switzerland in detention for up to two years.*

82. *The Special Rapporteur is particularly alarmed at the situation, often extremely precarious, of asylum-seekers whose applications have not been considered for formal reasons, and at the Government’s policy - characterized by criminalization, suspicion and rejection - towards such persons. Reports and official documents clearly indicate a reduction of social assistance for such persons. According to an official report, the measure excluding social assistance, which has been in force since 1 April 2004, has a twofold objective: “reduce by 10,000 persons staff involved in asylum matters in order to realize savings on the order 117 million over three years, and create a better basis for asylum policy by refusing access to social assistance to persons who clearly have no need to be protected by the Swiss authorities”. These “negative incentives” aimed at decisions not to consider requests for formal reasons will take the form of “a reduction to a minimum of the conditions of housing, food and health care provided, an obligation to renew on a regular basis requests for social benefits with the institutions stipulated by the authorities”. The Special Rapporteur would like to mention here his satisfaction with the decision of the Federal Tribunal of 18 March 2005, in which the Tribunal ruled that Solothurn canton’s withholding of all material assistance, including emergency assistance, from persons whose requests had not been considered and who refused to cooperate in their return, was unconstitutional (Federal Tribunal ruling 131 166).*

83. *The Special Rapporteur regrets that such measures are used by a democratic State in contravention of Switzerland’s international human rights obligations, and that they damage the dignity of the persons affected. In this regard, he wishes to remind the Swiss authorities of article 12 of the Federal Constitution, which states: “Persons in distress and incapable of looking after themselves have the right to be helped and assisted, and to receive the means that are indispensable for leading a life in human dignity.” It is in this spirit that the obligations contained in the Universal Declaration of Human Rights and other international instruments applicable to Switzerland must also be understood. Moreover, the publication of certain documents by the authorities, such as the report referred to in the previous paragraph, reflects a*

premise of suspicion: the asylum-seeker is a priori a false applicant whose only aim is to take advantage of Switzerland's wealth.

Recommendations

96. The Special Rapporteur considers that certain awareness-raising and training initiatives undertaken within State bodies, such as the training of the Basel City police force, are very positive, and recommends that they be undertaken in all cantons. He also recommends that the Government increase, to the extent possible, the recruitment, at all State levels, of staff from among the immigrant population and the various foreign communities, and promote comprehensive intercultural training in all State services and institutions that deal with immigration and the situation of foreigners, in particular the police and border authorities, airports, stations, etc.

97. The Special Rapporteur strongly recommends that civil society organizations make use of the United Nations mechanisms available to them, both treaty body mechanisms, as the Committee on the Elimination of Racial Discrimination, and the special procedures, and transmit to these bodies relevant information concerning possible human rights violations as a result of the application of laws such as the Act on Foreign Nationals or the Asylum Act. In this regard, he encourages civil society to record and document acts of racism, racial discrimination and xenophobia. He wishes to commend the non-governmental organizations that have already taken steps in this regard.

- End of excerpts -

**Protection Operation and Legal Advice Section
Division of International Protection Services
UNHCR
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