Self-evaluation
Swiss OSCE Chairmanship

NGO Feedback

Swiss NGO Working Group OSCE

Bern/Switzerland, 22nd June 2014

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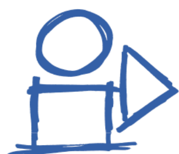

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Introduction

I.

The Swiss NGO Working Group OSCE and its affiliated organisations welcome Switzerland's decision to carry out a **self-evaluation on the state of the implementation of the OSCE commitments of the "human dimension" (human rights and democracy)**. With this approach Switzerland has taken up an issue voiced by the international civil society. In doing so it provides concrete steps in two key areas of its OSCE Chairmanship: the implementation of the commitments in the human dimension and the increased inclusion of the civil society.

By creating a model of self-evaluation Switzerland aims at making it a **"regular and standard tool" of OSCE chairmanships**. The Swiss NGOs as well as the organisations participating in the Civic Solidarity Platform from the OSCE countries fully support this aim and are prepared to do their share to achieve this goal.

The starting point for the present document is a **self-evaluation in five sub-studies** which was drawn up by the Swiss Centre of Expertise in Human Rights (SCHR) on behalf of the Federal Department of Foreign Affairs (FDFA).

The fact that the **self-evaluation is carried out by a scientific institution** and not by the administration is crucial for its credibility. Although the five sub-studies show various failings and deficiencies the NGOs assess them as intrinsically differentiated and rich. **Relevant topics** have been defined in spite of the narrow definition of the subject matter. They concern key aspects and concerns of many NGOs in Switzerland.

II.

The process of writing this self-evaluation took place in a system of rolling **content and temporal planning,** on the one hand because it was a pilot project with many contributors, on the other hand because the objectives of the different participants partly stood opposed to each other. The plane was fully assembled after it had already taken off.

The **methodology** of the self-evaluation has to be further developed and specified more exactly by future states holding the OSCE Chairmanship. We have learned that unclear and partially insufficiently defined methodological guidelines have unnecessarily complicated the cooperation with the NGOs.

The uncertainties and ambiguities begin with the **definition of the scope** of the self-evaluation. Who decides what belongs to which scope, and due to which criteria? The requirement that the self-evaluation should restrict itself to certain topics and individual subject matters that have recently been addressed in **OSCE monitoring reports** for the NGO working group is too strong a limitation. All super-ordinated and not country-specific OSCE commitments should also be taken into consideration. Although the narrow guidelines may

represent a simplification of practical work, we see no objective justification for it. The self-evaluation should not degenerate into an act of tokenism for states that want to give themselves a good assessment and want to marginalise voices of the opposition by a clever selection of subject areas and topics.

In addition, the **expectations regarding the contributions to the self-evaluation by the civil society** and their integration into the work process on an organisational level should be transparently defined in advance.

III.

The present document is a **compilation of feedbacks of various Swiss NGOs on various sub-studies of the self-evaluation**. It must not be seen as a comprehensive supplementary shadow report from a civil society perspective. The NGO feedbacks vary greatly in their claims, extent and form. They were compiled within a narrow time frame and with relatively modest capacities. This document is a puzzle of various reactions with major gaps and it is truly the result of improvisation. (For reasons of time it was not possible to draw up a feedback on sub-study 4 on human trafficking).

Some **NGO reactions** confirm and emphasise the recommendations by the self-evaluation. Other feedbacks criticise of fill gaps concerning the contents. Partially, topics are discussed that reach beyond the subject area of recently published OSCE reports on Switzerland – on purpose and wilfully disregarding the topical limitations of the self-evaluation.

The most significant fact that arises from reading the sub-studies and the respective reactions by the NGOs is that in our country we have a key area that dominates the analysis of grave implementation problems with the non-implementation of OSCE recommendations: **(non-) discrimination of foreign nationals / rights of migrants , refugees / xenophobia**. This superordinate view is supported by sub-study 1 on election monitoring (especially the widespread exclusion from the right to vote for foreign nationals and the high hurdles in connection with naturalisation, as well as the question of people's rights with human rights obligations particularly in the field of aliens law and asylum law), sub-study 2 on intolerance and racism (in particular the practice of granting asylum to homosexuals, the social exclusion of asylum seekers, lacking integration of Yeniche, Roma and Sinti, xenophobic discourse, anti-Gypsyism), sub-study 4 on human trafficking and sub-study 5 on gender (e.g. care work and migration, although the topic is not is not addressed as regards content).

Issues of key importance in the process of self-evaluation which have not yet been fully addressed neither in the SCHR report nor in the NGO feedbacks are the post-process work and review on follow up steps. What will happen to the recommendations stipulated in the self-evaluation? Is there an incentive or even a need for the country performing the self-evaluation to discuss the findings in detail?

The justification of expenses – also for the NGOs – and the credibility of the process largely depend on the evaluation of deficits found. Ideal would be a model in which the self-

evaluation would take place in the year before taking over the OSCE Chairmanship. In this way the country could give an account of the changes which have been planned and of the progress in their implementation. In this context the NGOs need to call for concrete results.

This laborious process of an examination of human rights and democratic institutions only makes sense if it can contribute in concrete to an improvement of the situation of persons suffering from human rights violations and discrimination in a country.

Matthias Hui, NGO Working Group OSCE Coordinator

1. Feedback on the sub-study 1 Election observation

Swiss Peace Council SPC

1.1. Preliminary remark

Since the signing of the OSCE Helsinki Final Act of 1975, the OSCE has been a focus of the SPC. On the one hand our focus lay on the absence of disarmament in the CSCE process and on the other hand on the issue of human rights. We protested in particular against the playing off of civil and political rights against economic and social rights and urged all parties to deal with their own human rights situation critically.

The structure of Swiss democracy is a key topic of the SPC. It is for this reason that we have accepted the challenge of compiling a critical opinion paper on the sub-study on election observation as part of the self-evaluation during the Swiss OSCE Chairmanship. Especially since the cliché of Switzerland as the world's oldest democracy and as a model for direct democracy elsewhere reflects a somewhat distorted view of reality, we consider a self-critical analysis of the situation indispensable.

1.2. Remarks on the methodology

In the self-evaluation report in the field of election observation, only one of the unresolved Swiss problems is addressed, namely party financing. There are two other unresolved key issues and numerous implementation problems. To us this is a central reason not to limit the topics to those recently listed in the monitoring reports.

Under point 3.4 (on p. 7), the relevant authorities are conceded an almost unlimited power of definition, which to us appears very problematic. The issues of federalism in the context of national elections, which are not considered a matter of concern (cf. fn. 3), are to us a troubling example of views taken on by the authorities without being first verified. The implementation problems that we portray are not trivial but can really and truly influence the outcome of a vote or election. In our view, this confirms that the relevant authorities should not be granted a practically absolute power to define evaluation topics. NGOs and international organisations (such as OHCHR, UNHCR, ILO, UNESCO, UNICEF, FAO, WFP, WHO) should be able to point out shortcomings or euphemistic descriptions, just as they can in connection with state reports on UN conventions and in the UPR procedure.

1.3. Transparency in the financing of parties and votes committees as well as a public funding of parties

We note with satisfaction that the evaluation report includes a chapter "Party and campaign financing". The chapter provides an overview of the non-implementation of the Swiss obligations arising from the ratification of the Criminal Law Convention on Corruption (SR 0.311.55) and of the UN Convention against Corruption (SR 0.311.56) as well as of the respective official justifications thereof. In its conclusions, the chapter addresses the Federal Council and calls for immediate action. We essentially support and agree with this position.

As party financing is a key concern of Transparency International and as this organisation itself provides respective data (cf. bibliography) that we generally support, we can limit ourselves to adding some details based on our experience with campaigning for initiatives and referendums.

a. Too many votes?

In the third round of evaluation of the assessment procedure with respect to GRECO (Groupe d'États contre la corruption), the Federal Council justifies its inactivity regarding disclosure of the financing of votes with the argument that Switzerland is a special case[1]. Switzerland with its system of a semi-direct democracy probably goes to the polls more often than any other country in the world. It is important to note that the political system would not be fair if transparency regulations applied only to political parties and not to referendum and initiative committees or to interest groups and associations supporting them.

Nonetheless, it is disingenuous to argue that the many elections and votes on a local and federal level speak against introducing transparency regulations. This applies in particular to smaller rural regions where the sums of money involved are generally not large. If problems arise there, they do not concern money but nepotism and the exchange of favours that would not come to light even if parties and election committees had to disclose their financing practices. It would therefore be necessary to create transparency regarding parties, voting committees and interest groups on a federal level first before focusing on the cantonal and municipal level.

b. The role of money

"Votes show that the money invested is differently distributed depending on topic and political camp though results show that the financial resources do not always correlate to the outcome. Indeed, some very expensive campaigns ended in fiasco while certain political parties have been very successful with very limited campaign budgets". (cf. no. 33)

This is one of the justifications that the Federal Council offers against introducing transparency regulations. The examples given are real. But what do they demonstrate? The SPC played a major part in the initiative to ban arms exports that was voted on in September 1972. With a percentage of yes votes of 49.7 the initiative achieved a resounding success

against the lobby consisting of the army and the arms industry. When the opponents realized that a victory for the initiative was possible, they changed their campaign strategy. They fought no longer for a popular majority but put their emphasis on 'swing' cantons in order to avoid the majority of the cantons – a strategy that paid off as 13 cantons and 4 half-cantons followed their call. The SPC had no means to counter this strategy; due to financial constraints it could not focus on certain regions. It had to wait for cantonal, regional and local committees to become active on their own.

The failure of expensive campaigns may also be because most people realize in view of the enormous ad spending that certain circles try everything in pursuit of their interests. In general, voting successes of small and poor parties and fiascos of expensive voting campaigns remain the exception proving the rule that the financial resources available to parties and voting committees have a great impact on the outcome of votes and elections. The best example for this is the rise of the Swiss People's Party (SPP). It has become the party with the biggest voter share since the beginning of the 1990s when the multimillionaire Blocher and some other very wealthy people bought the party and in effect privatized it. Pure transparency regulations would probably not have been able to prevent this development. There is also a need for regulations about donations to parties and election committees as well as for limitations on vote and election budgets. To this, the Federal Council responds:

c. Uncontrolled financing of political parties

"In Switzerland, great emphasis is put on private responsibility. The political system is mainly based on part-time public service and the professionalisation of the parties and therefore their financial requirements are clearly lower than those of parties in other countries. These requirements are mainly covered by private contributions; state funding of political parties in Switzerland has no tradition". (cf. no. 35)

Even the system of part-time public service – more fiction than reality on a federal level – does not justify non-disclosure of party finances. The amalgamation of political offices and jobs in particular creates dependencies and commitments that can influence the decision-making of office-holders. Thanks to regulations on the declaration of vested interests a first step has been taken.

It is a further fact that - with the exception of the SPP – Swiss parties are less professionalised than for example in Germany, where thanks to a system of institutionalised party financing all parties have more substantial means at their disposal. This does not mean, however, that the parties are more independent. The opposite is true: in particular due to the continuous campaigning they are dependent on financial resources from other sources – especially from associations – allowing these to influence discreetly party positions without having to appear in public themselves. This arrangement is diametrically opposed to the requirement for transparency, for the combination of involvement with and dependencies on associations and interest groups allows politics to be steered unobtrusively from behind the scenes and is decisive for the massive resistance to transparency in party finances and against institutionalised party funding.

1.4. How universal is the right to vote in Switzerland?

To the SPC, the inclusion of all parts of the population in the democratic processes is long overdue, especially the introduction of the right to vote and elect for all persons living in Switzerland.

In general, voter turnout in Switzerland is very low. Swiss statistics show that except in two years between 1990 and 2012 (1992 with 52.0% and 2005 with 51.2%) federal voter turnout was below fifty per cent. In seven years, it was below even 40% (1991*, 1995*, 1996, 1997, 1999*, 2003* and 2012, of which four were years with elections to the National Council [*]). In 1991, it dropped to 32.3%. Voter turnout for National Council elections has been below 50% ever since 1979, reaching a low of 42.2% in 1995. Nobody seems to mind that the majority of voters abstains from the polls (the proportion of the total population would be even lower). The question remains whether the political elite is content to conduct politics without the participation of the majority.

We support the self-evaluation's conclusion that the period for the dispatch of the information on voting should be extended for expatriates. But we find it incomprehensible that four pages of complicated statements are made about a technical problem[2]. This is wholly disproportionate, especially since there has for years been a fundamental problem in the field of the right to vote that has not been addressed in the evaluation.

With very few exceptions the Swiss right to elect and vote is contingent on Swiss citizenship[3]. This limitation is based on the principle of 'ius sanguinis'. Combined with an extremely restrictive or even prohibitive naturalisation policy, the result is that nowadays almost a quarter of the Swiss population is excluded from the political process. This situation is difficult to reconcile with the democratic ideal that people affected by decisions of the community should be able to participate in their making. Is the universal and equal right to vote still guaranteed in Switzerland in view of foreign citizens living here in the 3rd, 4th or 5th generation? The answer is no. It is not that the federal authorities are unaware of this situation. It was already aware in 1982, when the Federal Council stated:

"Thanks to their visiting Swiss schools, foreigners who have grown up here are familiar with local circumstances and are foreigners only on paper. Their full inclusion into Swiss society has to be promoted with all necessary means by furthering their political participation. This is the only way to avoid young foreigners being consigned to a human and political isolation that they do not want. Even when they try to behave just like their Swiss contemporaries, they still feel like a special group. This feeling is only enhanced when they are made to feel in this or any situation that they are foreigners. Their naturalisation and concomitant sense of belonging to Switzerland can help to prevent them from segregating from Swiss reality." (82.019 Dispatch on the Revision of the Regulation on Citizenship of 7 April 1982, BBI 1982 II 135)

Ten years after the ordinance on the facilitation of some naturalisations had been rejected by a clear majority of voters on 4 December 1983 (55.2% no), the Federal Council tried again.

The majority of cantons rejected the proposal on 12 June 1994, though 52.8% of voters approved. Even the third attempt to facilitate the naturalisation of young second-generation foreigners (56.8% no) and of third-generation foreigners (51.6% no) on 26 September 2004 stood no chance. The second bill would have by law granted Swiss citizenship upon birth to foreigners of the third generation. Referring to a report by the Federal Commission for Foreigners on the integration of migrants in Switzerland the bill states:

"In addition, the report shows that should naturalisation be handled very restrictively, a split in society between full citizens and so-called dependents (Hintersassen) looms. The latter group may even consist of persons whose families have lived in Switzerland for generations. Should this restrictive practice be continued, the statistics on foreigners would include as foreigners newborns in Switzerland whose parents or grandparents have been born here themselves. This renders the statistics on foreigners more and more out of touch with reality." (01.076 Dispatch on the Naturalisation of Young Foreigners and on the Revision of the Act on Citizenship of 21 November 2001, BBI 2002 1916).

As seen, the Federal Council has not lacked the will to change the untenable situation. No more of this will is now to be seen in its dispatch on the revision of the Swiss Citizenship Act of 4 March 2011 (11.022, BBI 2011 2825). The changes are more about adding obstacles to, than about facilitating, nationalisation:

"Naturalisation facilitations for foreigners of the third generation are based on the 'ius soli'. This principle has so far not been included in the present Federal Constitution, wherefore the Constitution would have to be extended and revised." (BBI 2011 2846)

Such a revision of the constitution could be considered irrespective of a revision of present law, as the Federal Council states, but a willingness to do so is nowhere to be seen. In particular, both the National Council and the Council of States have recently proposed to tighten the Swiss Citizenship Act. (N.B.: differences between the two chambers of Parliament have yet to be resolved and the final vote held.)

For years now, the SPC has been advocating both a change to the 'ius soli' with respect to citizenship and an extension of the right to vote to all inhabitants of Switzerland. We refer to

- our consultation on the complete revision of the Swiss Citizenship Act of 22 March 2010 (cf. pdf file in the annex);
- the Federal Commission on Migration's (FCM) publications from 2012 on the issue of citizenship: "Einbürgerungslandschaft Schweiz – Entwicklungen 1992 – 2010" and "Einbürgerung: Vorschläge und Empfehlungen für ein zeitgemässes Bürgerrecht" available at: www.ekm.admin.ch/content/ekm/de/home/themen/bueg.html;
- the position paper "Für eine umfassende und kohärente Migrationspolitik" by the Swiss Social Democratic Party (SP) adopted at the party congress on 9 September 2012, in particular paragraph 36 "Ausweitung der Bürgerrechte und politische

Teilhabe" on p. 46 et seq., available on the SP's website at: www.sp-ps.ch/ger/Positionen/Dossiers/Migration.

A comparison of the development of the right to vote for Swiss expatriates and the continuing exclusion of 2nd, 3rd or further generations of foreigners must lead to the conclusion that we are today dealing with an ethnicisation of the right of vote in Switzerland[4]. Many persons whose families have been resident in Switzerland for generations are excluded from exercising their political rights, while the participation of persons living anywhere in the world, maybe having even been born and grown up there without any connection to Switzerland, is supported by all means. Shouldn't the Federal Council be shocked by the use of the term dependents (Hintersassen) in the Dispatch on the Revision of the Act on Citizenship of 2001?

1.5. Compatibility of peoples' rights and human rights

The need for human rights is defined in the Universal Declaration of Human Rights:

"Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind (…), whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law (…)."

a. Popular initiatives violating basic and human rights

One party in the Federal Council has repeatedly made the overweening claim that Swiss plebiscites are to be superior to human rights. The SPP has already managed to enshrine the popular initiatives "Against the Construction of Minarets" (2009), "For the Expulsion of Criminal Foreigners without consideration of the circumstances" (2010) and "Against Mass Immigration without concern for human rights guarantees" (February 2014) in the Constitution. Previously, in 2004, the preventive life detention of certain delinquents without review of the grounds had been adopted in the Constitution. Recently, in May 2014, the so-called "Pedophile's Initiative", which also violates basic rights and constitutional guarantees, was accepted. But the SPP is not content with what it has managed so far and submitted its "Enforcement Initiative" in 2012 with the aim of implementing the initiative "For the Expulsion of Criminal Foreigners" without any consideration of human rights principles.

Right-wing extremism and parties exist in many OSCE countries, and it remains to be seen whether or not a ban is a valid solution for this issue. What is shocking in Switzerland is that the other parties still deem the SPP not only a party of the political middle but also a valid partner in the Federal Council.

b. Parliamentary discussions

Due to parliamentary interpellations the Federal Council adopted a report in 2010 on the compatibility of international law and national law (BBI 2010 2263) and in 2011 an additional report (BBI 2011 3613). Motions by the Political Institutions Committees (11.3468 and 11.3751) mandated the Federal Council to work out a bill for a preliminary examination of popular initiatives and the extension of reasons for their annulment. The finished bill then entered a consultation phase between 15 March and 28 June 2013 whose results were so controversial that the Federal Council decided on 13 December 2013 that the proposed bill was not going to be followed up by the proposal for an act. All the same, the Federal Council mandated the Federal Department of Justice and Police (FDJP), together with the Federal Department of Foreign Affairs (FDFA) and the Federal Chancellery, to reflect upon a better compatibility of national and international law, and decided to recommend the adoption of postulate 13.3805 (Clear relationship between international law and national law).

On 15 May, the association "Verein Menschenrechte schützen" and the working group "Dialogue ECHR" presented a study entitled "Schweizer Recht bricht Völkerrecht? Szenarien eines Konfliktes mit dem Europarat im Falle eines beanspruchten Vorrangs des Landesrechts vor der EMRK" by Walter Kälin and Stefan Schlegel.

c. Human rights bodies

The problem of popular initiatives violating human rights has also been addressed by human rights bodies.

1. Committee Against Torture

In its recommendations on the fifth reporting cycle of 15 May 2010, the Committee against Torture (CAT) stated on the issue of the initiative "For the Expulsion of Criminal Foreigners", which was still pending then:

"11. As the CAT writes, the popular initiative "For the Expulsion of Criminal Foreigners" currently under debate in parliament aims to deny to foreigners irrespective of their legal status their right of residence and all legal claims for a stay in Switzerland, should they have been convicted by a final judgment for premeditated murder, rape or any other serious sexual offence, crimes of serious violence such as robbery, human and drug trafficking or have committed a burglary or have illegally drawn benefits of the social insurance system or social welfare. The Committee also notes that the respective persons are to be expelled from Switzerland and are to face a ban on entering Switzerland of between 5 – 15 years and that the margin of discretion is to be abolished. Furthermore the CAT takes note of the fact that the Federal Council submitted a counter-proposal and recommended that the voters reject the initiative after concluding that it is not in line with international law and the Swiss constitution. All the same, the Committee remains concerned that the implementation of this initiative, which is subject to a facultative referendum, would seriously endanger the principle of non-refoulement (art. 3).

Switzerland has to continue to ensure that the popular initiative “For the Expulsion of Criminal Foreigners” does not violate its international obligations, in particular the Convention against Torture, and art. 25 of the Swiss Constitution, which enshrines non-refoulement. ”

2. Universal Periodic Review (UPR)

During the second iteration of the review procedure, Switzerland was presented with three recommendations on dealing with popular initiatives that contradict international law:

- 123.59 Quickly adopt a constitutional or legal measure ensuring that popular initiatives do not violate the human rights of certain persons or groups (Egypt).

- 123.60 Create institutional guarantees that protect the human rights obligations of Switzerland from popular initiatives that could violate such obligations (Norway).

Both these recommendations were rejected by Switzerland on the grounds that:

“Swiss citizens are capable of amending their constitution through popular initiative. This capability represents a key element of Swiss democracy. Although there is at the moment a debate on the legal means by which the conformity of popular initiatives could be ensured, a parliamentary decision remains a long way off.”

- 124.3. Lift the ban on the construction of minarets that the High Commissioner for Human Rights and the United Nations Special Rapporteur on Freedom of Religion or Belief classified as clearly discriminatory (Turkey).

In its fourth reporting cycle, the CAT states the following in its recommendations of 21 February 2014:

“8. While noting the unique system of direct democracy in the State party, the Committee expresses deep concern at the lack of sufficient safeguards to ensure that popular initiatives proposed by citizens do not contradict the obligations of the State party under the Convention (art. 2). The Committee urges the State party to intensify its efforts to introduce an effective and independent mechanism to review the compatibility of popular initiatives with the State party’s obligations under international human rights law, including the Convention. The Committee also recommends that the State party urgently and systematically strengthen its efforts at all levels to publicize and raise awareness among the general public about any conflict between a proposed initiative and the State party’s international human rights obligations, as well as about the ensuing consequences.“

The NGO platform Humanrights has compiled a list of popular initiatives that are unsatisfactory from a human rights perspective for the attention of the Committee on the Elimination of Racial Discrimination. The list contains not only the respective constitutional and popular initiative texts but also the considerations in the Federal Council’s dispatches

regarding the relationship of these initiatives to international law. The extensive file "initiatives populaires et droit international" can be found at: www.humanrights.ch/en/Switzerland/UN-Conventions/Racism/report_2014/index.html

We cannot comprehend why this topic, which has been the subject of controversy and debate not only within Switzerland, has not been included in the self-evaluation.

1.6. Problems with the implementation of the right to vote

It is a cliché that in Switzerland the democratic system is implemented everywhere, from the local to the federal level. The truth is that various unresolved problems and open questions exist on different levels.

a. Requirements for democratic elections in legislative structures

Over the past few years, there has been an increase in court cases about the validity of electoral results or the legitimacy of electoral procedures. Today, a lawsuit is pending in the canton of Grisons against the validity of the results of the cantonal parliamentary elections of 18 May 2014[5]. In addition, the Swiss Federal Supreme Court has repeatedly forced municipalities and cantons to amend their election system. So in Switzerland too, democracy is a building site.

"The political rights in accordance with art.34 of the Federal Constitution (Cst) are guaranteed; the guaranteeing of these rights protects the freedom of the citizen to form an opinion and allows the voter to give genuine expression to his or her own will. Art. 51para. 1 Cst, according to which each canton has to give itself a democratic constitution, and art. 8 Cst, which provides legal equality also in the field of political rights are closely connected to this. Art. 34 Cst is of a basic nature since it only guarantees the most fundamental principles of democratic participation. The further design of political rights and duties and of the proceedings is in the hands of the federal lawmaker and the legislative organs of the cantons."

This is a quote from the article "Das neue Zürcher Zuteilungsverfahren für Parlamentswahlen" (in AJP 5/2004) by Friedrich Pukelsheim and Christian Schuhmacher. In the same text, the authors draw up a number of legal postulates:

"From the Federal Supreme Court's decisions and from the literature, the following postulates can be derived:

1. The equality of count values is to be ensured. All voters in the same electoral district are to receive the same number of votes. The voters must be able to cast their votes and the votes must be also taken into consideration in the counting procedures and in the distribution of seats.

2. The equality of voting power or weight is to be ensured. The relation between total population of an electoral district and the number of seats assigned to this district must be as equal as possible for all electoral districts of the constituency.

3. The equality of success rates is to be ensured as regards the whole electoral territory. All votes should contribute similarly if not in the same way to the election result, i.e. they should influence the composition of the parliament as equally as possible. Or in the words of the German Federal Constitutional Court on art. 38 of the Basic Law, which states that members of the Bundestag are to be elected according to an identical voting procedure: "All voters should have the same influence with their vote on the outcome of the election". The equality of success rates is to be respected "both within an individual electoral district and across electoral districts", meaning within the whole electoral territory.

4. Minority parties with stable support in the population should be represented in parliament. This postulate is to be seen in the context of direct or natural quorums. In view of the danger of a fragmentation of powers, the Federal Supreme Court accepts in principle the introduction of a direct quorum. Whereas it accepted a legal quorum of 10 per cent as just compatible with proportional representation, a quorum of 12.4 per cent was no longer considered compatible. With the natural quorum, the percentage can be higher if special motives of historical, federalist, cultural, linguistic, ethnic or religious nature are present. Surprisingly, it seems that the Federal Supreme Court has to date only had to assess cases in which such special motives were not present. In these cases, natural quorums of 33.3 per cent, 20 per cent and 16.6 per cent were deemed inadmissible.

5. Minimisation of the share of "weightless" votes? Repeatedly the Federal Supreme Court called for the number of voting persons who are not represented in parliament to be minimized. The number of votes without weight is to be kept as low as possible. A situation in which 34 per cent of those voting were to remain without parliamentary representation would no longer be compatible with the equality of success rates. This postulate in itself makes sense and is justified. However, as the Federal Supreme Court rightly elaborated, the share of "weightless" votes depends not only on the size of the electoral district but also on the varying number of candidate lists and on the distribution of the votes to these lists. A maximum share of "weightless" votes cannot therefore be fixed.

For example: in a voting district, 10 seats are to be distributed, which would be accepted by the Federal Supreme Court as a natural quorum. A total of 25 candidate lists participate in this election. The first ten lists each receive 4.5 per cent of votes, the remaining 15 lists receive an equal share of 3.67 per cent of votes. It is probably undisputed that the ten seats go to the first ten lists. This means, however, that votes of the fifteen remaining lists are "weightless", which corresponds to 55 per cent of all votes cast.

In addition, there exists the problem of under-representation of nearly "weightless" votes in view of candidate lists that have won one or several mandates. Here, the votes are not completely "weightless" but they may not be sufficiently weighted. This problem also occurs

in the other direction. It is not only unacceptable if one vote has little to no weight, but it is also if one vote is "over-weighted". The Federal Supreme Court's postulate therefore tries to generalize: the vote of the individual voter is not to be over- or underweighted in the allocation of seats. The case of the "weightless" votes therefore arises only as an issue in the case of extreme underweighting. The postulate of "just weighting" thus is included in the claim for equal chances.

In the same article, several references to court decisions are provided, as is a bibliography for interested parties. We would also like to refer to the report by the Cantonal Council of the Canton of Schwyz: "Wahlverfahren für den Kantonsrat. Grundlagen, Anforderungen und Modelle", May 2013.

Since Switzerland does not have a constitutional jurisdiction, there are no analogous court cases on the elections to the National Council. If one compares the different sizes of the cantons, the conclusion is unavoidable that neither equality of vote nor the same weighting of the vote and certainly not the principle of equal chances are given. The drawing of electoral districts cannot be explained factually, only historically. Yet do historical and federalist reasons suffice to justify the unfair electoral system? In our opinion, they do not, in particular since the Council of States takes into sufficient account both history (cantons and half cantons) as well as federalism. An electoral law reform is overdue.

b. The majority of the cantons has had its day

To our mind, the majority of the cantons provided for in art. 140 para. 1 Cst is no longer justified. The different requirements in art. 140 para. 1 (majority of cantons) and para. 2 as well as art. 141 Cst (no majority of cantons) to effect constitutional and legal changes as well as to validate international treaties cannot be objectively justified. They are the result of historical developments and political disputes and in some cases are far from objective. The majority of the cantons provisions violate severely the equality of vote, the same weighting of votes and the principle of equal chances. There is urgent need for action here, too.

The illustration in section 4 (cf. vote on facilitated naturalisation in 1994) proves that this situation has helped to block fundamental changes. As a list on the Confederation website shows, this is no special case: www.admin.ch/ch/d/pore/va/vab_2_2_4_4.html.

c. Massive differences in the number of invalid votes

In their article "Kantönligeist bei politischen Rechten"in the NZZ newspaper (22 November 2013, no. 272, p. 23), Maximilian Schubiger and Marc Bühlmann explain the related problems. The differing percentage of invalid votes "has the potential to overturn the cantonal majority and for this reason is of major importance." A critical self-evaluation should not ignore such problems, especially since, according to the same article, it was the Federal Chancellery that noted the problem of invalid votes after the 2011 federal parliamentary elections. But its examination of the problem has been only very reluctantly supported by the cantons (if at all) and has so far come to nothing.

d. Election monitoring

A comprehensive monitoring of all votes and elections in Switzerland by the OSCE would require an enormous effort that would not be justified. However, it would be meaningful from a domestic point of view to monitor elections and votes on a regular basis. Various incidents over the last few years have proven that serious problems can arise during the counting of votes. This might encourage a public perception that Switzerland is just one democracy among others and not an absolute model country.

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2. Feedback on the sub-study 2 Intolerance

Swiss Refugee Council OSAR

This statement concerns the sub-study on intolerance. The Swiss Refugee Council (OSAR) in principle welcomes the implementation of a self-evaluation, but its limitation to topics that have been addressed in the last OSCE monitoring reports is, from OSAR's perspective, too restrictive. OSAR emphasizes the following issues:

2.1.1. Problematic practices in the asylum system with regard to homosexuality

From OSAR's perspective, homosexual asylum seekers are frequently discriminated by Swiss authorities in the asylum procedures. The authorities in principle recognize that persons who are prosecuted in their home country due to their homosexuality belong to a particular social group and that persecution for homosexuality can be grounds for asylum. However, there is in practice little chance of receiving asylum on these grounds. The main problem lies with people who have not "outed themselves" and thus have yet to be persecuted, but who fear that they will be so in future. They are therefore forced to live out their sexual orientation covertly. From a human rights perspective, this situation is indefensible and does not fulfil the requirements of case law internationally[6]. The requirement for discretion discriminates homosexuals compared to heterosexuals.

The argumentation is usually the same irrespective of the person's country of origin. If a homosexual from Iran was not already persecuted before leaving Iran, the chances of a successful application in Switzerland are very low. Swiss authorities take the position that despite penal provisions homosexuality in Iran is tolerated in practice "if it is not publicly displayed in a manner that violates public decency". Besides, people are rarely prosecuted in practice and no court case is known in which a person was sentenced solely due to homosexuality. This argumentation is very problematic, especially since human rights reports point out the danger for homosexuals in their country of origin. In addition, the requirement that they be discrete is indefensible because it concerns not only being able to live out the sexual orientation in public, but also being able to talk about the partner, to live together and the like. Those affected have to spin a complete web of lies about their daily lives[7].

2.1.2. Social exclusion of asylum seekers

OSAR has followed with apprehension recent developments that result in the social exclusion of asylum seekers. Swiss asylum authorities resort frequently to old and very remote military

accommodation as centres for asylum seekers where these have no contact with the Swiss population. From an impartial perspective, such barriers to integration are to be avoided, just as are strategies of separating asylum seekers off from the rest of the population. In addition, 2013 saw the "designation of off-limit areas" for asylum seekers in villages where an asylum centre is located. The quarters for asylum seekers in Bremgarten/AG generated great media interest. The general exclusion of persons from a certain area or a ban on entering certain areas without prior reproachable behaviour lacks any legal basis, is not proportional and discriminates[8] .

2.1.3. Levy for provisionally admitted persons and asylum seekers

In OSAR's view, these levies are discriminatory. In addition to the other taxes, asylum seekers and provisionally admitted persons who are gainfully employed have to pay an extra tax of 10 per cent of their income. This tax only ends if ten years have passed or a total contribution of CHF 15,000 has been reached; if the asylum seeker or provisionally admitted person is definitively accepted as refugee; or if the provisionally admitted person had this status for three years, and at the very latest seven years after arriving in Switzerland[9] .

The Geneva Convention on Refugees (art. 29, para. 1) forbids states from levying more fees, charges or taxes from accepted refugees than from their own nationals. Refugees fulfil their refugee status right from the beginning of their asylum procedure; it is not only determined by the positive asylum decision. In the case of asylum seekers who are accepted as refugees later on, the lump sum that has to be paid during the asylum procedure is not justified in view of the Convention on Refugees. When the status as refugee is recognized, the costs should be individually calculated and the special charge refunded to the asylum seeker. But this is not the actual case[10] .

The duty to pay a special charge applies only to asylum seekers and provisionally admitted persons. This represents an unequal treatment compared to Swiss nationals because these have to reimburse their social benefits and procedural costs only once they have found employment again. The special charge is in contrast fixed on a flat-rate basis and not calculated according to actual benefits[11] .

This special charge is to help to cover the total costs incurred by these persons and the relatives supported by them (social security, departure and enforcement costs as well as costs from federal appeal proceedings). Whether or not this is justified in the individual case is open to question, because it is exactly those persons who work that are affected – and not persons living off social welfare. Furthermore, no calculation of the costs effectively incurred is made. With the provisionally admitted persons a special need for protection has been recognized, therefore the departure and enforcement costs are not incurred and the costs of the (justified) appeal proceedings are not to be imposed on the people concerned.

Asylum seekers are banned for between three and six months from working. This constitutes a disproportionate interference in their personal freedom and is not justified if the social welfare costs incurred during the ban have to be repaid through a special charge

2.1.4. The public discourse on asylum seekers and foreign nationals is characterised by intolerance and xenophobia

For years now, the issue of asylum and migration has been on the public agenda, and the discussion has been distinctly xenophobic. This is the case even though asylum seekers make up but two percent of the foreign population. Public perception does not correspond to this reality at all.
This distorted perception is mainly due to the media coverage as well as to the rhetoric of right-wing parties such the Swiss People's Party (SPP). The extent of the media coverage is disproportionate considering the very low percentage of asylum seekers. In addition, reports in the media frequently are not objective and differentiated enough. By constantly emphasising the "asylum problem", the impression is created in a wide readership that a huge wave of refugees is overwhelming Switzerland. The media had literally and hysterically warned of such a wave during the Arab spring in 2011. Instead of a positive reaction to the transformation of dictatorial regimes in northern Africa the news was dominated by fears of refugees. This hysteria (which showed itself to have been excessive) was replaced by widespread reporting about problems in the asylum system, especially about the shortage in accommodation and the excessive duration of the proceedings.

The population tends to react vehemently if asylum seekers are to be placed in their vicinity. The massive resistance the creation of a refugee centre in Bettwil has shown this tendency clearly. In that case, a village community quickly developed an aggressive attitude marked by racist rhetoric that was displayed in repeated protests and loud demonstrations. Another example is the resistance to a planned asylum centre in Aarburg, which should have been ready for occupation in May 2014. The media also focused on criminal and trouble-causing Tunisian asylum seekers. The problem is that the public does not differentiate between criminal individuals and all other asylum seekers who are law-abiding. Politicians of various parties have of late only encouraged this tendency with different remarks and postulates[12].

Generalising and biased statements by official representatives have contributed to the picture conveyed by the media, as in the case of a Nigerian asylum seeker. In an interview around the same time, the former Director of the Federal Office for Migration (FOM), Alard du Bois-Reymond, stated that 99.5 per cent of Nigerian asylum seekers came to Switzerland "to make illegal business"[13]. The approach of the current head of the Federal Department of Justice and Police, Simonetta Sommaruga, is in contrast very welcome, as it is more factual and proportionate[14].

Public perception tends to put all foreign persons into one basket irrespective of status of residence or reason for immigration. Persons who have no experience with the issue other

than through reading the headlines get the general impression that a great horde of foreigners who are mainly criminals and have no right to stay is threatening Switzerland. This impression can develop even more easily if latent fears of "strangers" already are extant. In such a climate, the willingness to restrict fundamental rights improperly, such as in violation of the principle of family unity or even the principle of non-refoulement emerges readily. Swiss Federal authorities should make a greater effort to explain to the Swiss population that more than 60 per cent of asylum seekers for whose claim Switzerland is substantively responsible receive a protective status in Switzerland (asylum/provisional admittance)[15]. This stands in contrast to the perception of various actors that a majority of asylum seekers in Switzerland make a claim for protection unjustly.

Cheap propaganda-making against foreigners was particularly apparent during the federal popular initiatives with a xenophobic undertone ("Against the Construction of Minarets", "Expulsion Initiative" and "Against Mass Immigration"). The SPP thereby exploits diffuse fears in the population and uses them as campaign tools[16]. It was characteristic for the minarets-initiative that the supporters argued that their initiative was not primarily about these "towers" but about "wanting to make a mark". Posters with minarets looking like missiles or posters with white sheep kicking a black sheep off the Swiss flag have attracted international attention. The biased, emotional campaigns have led to a generally xenophobic attitude in the population. This prevailing mood is sustained by the current news coverage of asylum issues.

The increasing number of xenophobic and defamatory readers' commentaries in online media regarding articles about the asylum system or migrants is not to be underestimated either. These readers can spread their views widely by virtue of online media's broadcasting nationally[17]. According to scientific surveys, the influence of such commentaries on the opinions of the readership is considerable[18].

In the report by the Federal Service for Combating Racism of 2012, this problem is highlighted as well: "The Federal Commission on Migration (FCM) assesses with great concern the way in which people talk about foreign nationals in public, in the media and in politics. Xenophobic tendencies appear in many debates on the issue of migration. Mostly it is forgotten that problems stated in these contexts arise not only due to migration, but are mainly problems arising from growth. It would be desirable if the local, cantonal and federal authorities took this into account more than hitherto and if they would design and implement corresponding communication concepts"[19].

(Continuation Feedback on the sub-study 2 Intolerance)

Gesellschaft für bedrohte Völker GfbV

2.2. Yeniche, Sinti and Roma in Switzerland

35,000 Yeniche live in Switzerland, among them 3,000 to 5,000 Travellers as well as several hundred Sinti who travel. In addition, a community of 50,000 Roma that now belongs to the resident population is assumed to be living in Switzerland.

In sub-study 2 on hate crimes, racism and intolerance, the discrimination of Yeniche, Sinti and Roma in Switzerland was ignored despite numerous related OSCE commitments. The Society for Threatened Peoples (GfbV) seeks to fill this gap with the following commentary.

2.2.1. Ratification of the European Framework Convention for the Protection of National Minorities

In connection with the European Framework Convention for the Protection of National Minorities (FCNM), the Travellers have been officially accepted as a national minority since 1998. In this convention, Switzerland commits itself to the promotion of general conditions that allow this minority to maintain and develop their culture. This commitment applies namely for their nomadic lifestyle and the Yeniche language, which has been accepted by the Confederation as an official minority language with the ratification of the European Charter for Regional or Minority Languages (ECRML). With the entry into force of the Culture Promotion Act (CuPA) in 2012, there exists a formal legal foundation that allows the Confederation to support the interests of the Yeniche population more actively and more comprehensively.

a) Situation of camp and transit sites in Switzerland

Between 1998 and 2012, the Federal Council adopted three reports on the implementation of the FCNM. The reports document that the minority group called Travellers is facing severe difficulties. A concern remains the lack of sufficient camping places, passageways, and transit sites for Yeniche, Sinti and Roma with a travelling lifestyle. Despite numerous awareness-raising campaigns organised by the Confederation in several cantons, the situation has not improved.

- Although the number of camping places for their caravans increased from 11 to 15 between 2001 and 2014, only half of travelling Swiss Yeniche, Sinti and Roma can find a place. In the meantime, the number of passageways in Switzerland dropped from 51 to 45. These meet but 60% of the demand, and three quarters feature insufficient infrastructure.

- Over the past few years, the Confederation has tried to create financial incentives for cantons and municipalities by offering former military bases from the disposable inventory at a preferential price. However, new facilities are not established generally due to the lack of acceptance in the respective municipalities.

- The past few years have also seen this situation exacerbated by the foreign Travellers passing through Switzerland in summer, often in larger groups of several dozen caravans. Due to the lack of large transit sites frictions with parts of the local population frequently arise.

The European authorities have voiced their concern about the situation of travelling Yeniche, Sinti and Roma in Switzerland. In view of the lack of progress they recommend that solutions to the problem of camping places, passageways and transit sites be quickly found and that the phenomena of intolerance and hostility be decisively countered[20].

b) Promotion of Yeniche, Sinti and Roma culture and language in Switzerland

Further endeavours to promote the culture and identity of Yeniche, Sinti and Roma are essential. On 11 December 2011, the Swiss parliament adopted the new Culture Promotion Act (CuPA). Article 17 CuPA states: "The Confederation can take measures in order to enable the Travellers a way of life that corresponds to their culture". This provision is very broadly formulated and in its present form focuses exclusively on the travelling minority of Yeniche and Sinti in Switzerland.

c) Recognition and equality of Yeniche, Sinti and Roma as national minorities

In connection with the FCNM, the group "Travellers" has been officially accepted as a national minority as of 1998 and since then, has been a standing term in the federal administration. This designation does not, however, do justice to the reality of the minorities concerned since it confuses lifestyle and ethnicity. The official acceptance of "Travellers" as national minority is therefore not of much help for the affected members of various minorities since it suppresses their own designations and plays off the particular interests of various minorities against each other.

2.2.2. Anti-Gipsyism in Switzerland

a) Anti-Gipsyism in the media

The study "Quality of the reporting on Roma in key media in Switzerland", published by the Federal Commission against Racism (FCR), analyses Swiss media reporting on Roma and Yeniche between 2005 and 2012. The study finds, for example, that Roma presence in the media is mainly linked to conspicuous or criminal behaviour. The study comes to the disillusioning conclusion that one quarter of the contributions analysed conveyed negative stereotypes and that one out of eight journalistic contributions was openly discriminatory.

b) Anti-Gipsyism in the administration

Several cantonal concepts and court decisions cement stereotypes and prejudices against Roma and Yeniche in Switzerland. Current examples include:

- Following an illegal Roma wedding in summer 2012, the canton of Valais adopted a so-called “Gypsy concept” in June 2013. This term is extremely pejorative, stereotyping and discriminatory.
- The Agora Project of the Swiss Union of Cities: in 2009, the city of Berne started the Agora Project. The project’s aim was to limit organized begging. Its best-known measure was the placement of minors in institutions whence they were then sent to their homeland. The immigration authority in Berne stated recently that since the start of the Agora Project, no child beggars have been picked up in the city. According to Alexander Ott, the authority’s head, this shows the Project’s efficacy. This course of action brings back, however, bad memories of the “Kinder der Landstrasse”-project. From 1929 to 1972, children of Swiss Travelling families were taken away from their parents and placed in institutions or other families. The justification given was the protection of the best interests of the child.
- Reasoning of the judgment in the Ardita M. case in canton Valais: Ardita M., a Roma from Kosovo, lost her residence permit after separating from her husband. At the same time, she lost the right of custody for their child in common. The child, the court reasoned, would be in danger of being sold or forced into marriage in Kosovo should the child remain with the mother. This practice is, it stated, not uncommon with Roma.

By virtue of the adoption of the Action Plan on Improving the Situation of Sinti and Roma within the OSCE in 2003 and the Plan’s verification by the OSCE Ministerial Council in 2013, Switzerland is required to take decisive action against anti-Gipsyism and to arrange for related prevention and awareness-raising campaigns.

3. Feedback on the sub-study 3: Freedoms of Expression and Assembly

humanrights.ch

Due to resource constraints our contribution is limited to highlighting some of the SCHR's recommendations.

3.1. Freedom of assembly: demonstrations

a. Authorization and notification (p. 76 et seq.)

Paragraph 1.2, "Achievements and remaining gaps", reflects our analysis and we support the recommendations derived from it. The following recommendations made in the SCHR report should be emphasized and elaborated:

- Cantons and municipalities are encouraged to change from a system of permits to a system of notification, at least for certain categories of demonstrations besides spontaneous demonstrations to which this system already applies (p. 78, cf. R1 p. 90).
- In our view, the SCHR report does not make sufficiently clear that in Swiss cities, a system of permits, contrary to the OSCE recommendations, is not only the rule, but that over the past years, there has been a trend to limit the freedom of assembly on a cantonal level by law even more (e.g. Canton of Geneva, cf. article on humanrights.ch in French) or to be increasingly restrictive in granting permits for demonstrations (e.g. city of Berne, cf. SCHR newsletter of 12 March 2014 in German).
- In addition, the SCHR report does little to clarify the role of the Confederation in the implementation of the OSCE recommendations. Its institutions are entrusted with the task of actively communicating the aforementioned OSCE recommendation to cantons and municipalities. In doing so, the Confederation should refer to good practices from other OSCE states.
- In line with the OSCE standards, the SCHR report stipulates that laws on all levels that foresee a system of permits for demonstrations, have to assume that a demonstration is generally permitted and that each refusal of permission has to be based on explicit criteria and has to be individually justified (p. 78, cf. R3 p. 90).
- In view of a system change for certain types of demonstrations in Switzerland, the SCHR report calls for a study on the legal framework and the current practice of granting permits as well as on the identification of exemplary systems of notification in other OSCE countries (p. 79, cf. R4 p. 90).

- We support this call. However, such a study should extend beyond the existing data from Geneva, Bern and Davos and cover all cities and cantons in which political manifestations take place. A mandate from the Confederation for the SCHR or another suitable institution to conduct such a study would be very welcome.
- The SCHR report also calls for a statistical recording of data on authorised, prohibited, unauthorised and permitted spontaneous demonstrations in Switzerland and a publication of this data by Swiss Statistics (p. 79, cf. R5 p. 90).

This recommendation is of great importance. Its implementation is in the competence of the Confederation, seems feasible and provides an indispensable basis for a monitoring of the freedom of assembly in Switzerland.

b. <u>Unauthorized demonstrations (p. 79 et seq.)</u>

Paragraph 2.2, "Achievements and remaining gaps", matches our analysis. It seems particularly important to highlight the OSCE's rule that the authorities generally have to protect and facilitate a demonstration, irrespective of whether it is authorized, unauthorized or prohibited, for as long as it remains peaceful (cf. R6 and R7 p. 91).

Whether Swiss authorities have respected this rule, as suggested in the SCHR report on p. 81, in the years 2013 and 2014 – with the exception of the case of prohibited demonstrations – is difficult for us to say since a sure empirical basis is lacking.

c. <u>Demonstrations in relation to high-level events (p. 82 et seq.)</u>

According to OSCE standards demonstrations must be able to take place within sight and hearing of their addressees. The practice to date of granting permits for the World Economic Forum in Davos has not met this standard for safety reasons. The Federal Council is asked to remind the Davos Municipal Council to keep to this OSCE standard (cf. R8 p. 91).

3.2. Freedom of information

- Principle of openness – access to official documents (p. 86 et seq.)
- The SCHR report calls for official statistics on the authorised and unauthorised applications to inspect files, including a list of reasons for the latter cf. R12. p. 92). From NGO perspective, this is a welcome stipulation.
- The few cantons (AI, GL, GR, NW) that retain the confidentiality requirement are asked to implement the principle of public access (cf. R16 p .92). We support this demand.

4. Feedback on the sub-study 5 Gender Equality

NGO coordination post-Beijing Switzerland und swisspeace/KOFF

4.1. Introduction

In decision 14/04 taken by the Ministerial Council in Sofia in 2004, the OSCE defined an action plan for the promotion of Gender Equality. The OSCE shall support participating States in implementing relevant commitments to promote equality between women and men. This should occur through six policy priorities that are also listed in sub-study 5:

a) Protection against discrimination;

b) Prevention of violence against women;

c) Promotion of women's participation in the political and public sphere;

d) Promotion of women's participation in conflict prevention and resolution;

e) Enhancement of equal opportunities for women in the economic sphere; and

f) Creation of national mechanisms to promote the advancement of women.

Sub-study 5 on Gender Equality of the Swiss Centre of Expertise in Human Rights (SCHR) is based on the report of the OSCE Senior Adviser on Gender Issues, Ambassador Miroslava Beham, and the OSCE Special Representative on Gender Issues, June Zeitlin, after their country visit in December 2013. The visit focused on three major topics:

a) The implementation of the Swiss Gender Equality Law (which addresses in particular non-discrimination of women in the economic sphere);

b) The National Action Plan regarding UN Security Council Resolution 1325 (addressing in particular issues of women, peace and security); and

c) The efforts of the Swiss authorities to prevent domestic violence.

Topics a) and c) represent the two working areas of the Federal Office for Gender Equality (FOGE). Current legislation and resources limit FOGE's work to these areas. The analysis of these topics is welcome, and civil society can support it.

Swiss civil society is quite positive about the work of FOGE. However, we question some of its options, e.g. in the dialogue with business to ensure wage equality and in the support of men's association when women's association cannot benefit from the same subventions. Concerning

the present sub-study, we regret that this self-evaluation, which is supposed to be a model for the next chairmanships, has not been elaborated according to the six priorities listed above.

There are still other gaps in Swiss society, gaps that have been also identified by other international instances such as the Committee on the Elimination of Discrimination against Women and the Human Rights Council through the Universal Periodical Review. In 2014, Switzerland will report to UN Women about the implementation of the Beijing Declaration and Program for Action.

In these few pages, we would like to highlight three points in order to complete the self-evaluation of the OSCE Chairmanship.

4.2. Promotion of women's participation in the political and public life

There are different ways to promote women's participation. It is possible on one hand to adapt structures and processes and on the other to conduct a true and deep reflection on gender stereotypes and men's and women's roles.

Women are under-represented in elected office, be it in the municipalities, the cantons or the Confederation. This has been documented in several studies. The Federal Statistical Office (FSO) provides all figures, even disaggregated by political parties.

The gap is almost the same at every level, be it in the executive or legislative bodies. The percentage of women in the most recently elected legislative bodies on cantonal level ranges from 11.7 % in Glarus to 35.6 % in Basel-Land. The two national chambers have the following percentages: 19.6% in the States' Council and 29.0% in the National Council.

In 2014, for the first time in Swiss history, each and every canton had at least one woman elected to the executive body. Two thirds of cantons have only one woman on 5 to 7 members and only one canton has a majority of women (Vaud) since the last elections in 2012. The Federal Council, the federal executive body, consists today of three woman and four men. For a short period, it had a majority of women.

Women are also under-represented in economic life, be it on supervisory or executive boards. In 2010, 75 % of Swiss companies had at least one woman on their supervisory board. Women represented 8.83 % of total members, which means that the average number of women on the supervisory board was 1.2. The situation of women in the top positions is presented in the SCHR sub-study.

Finally, the under-representation of women in the media is documented on several levels. Even on the day that the Parliament elected a woman as head of state and two women to chair its chambers, women were clearly under-represented in the media, whatever the linguistic area or the socio-economic status of the persons speaking. Women are called on for their

expertise in social questions, culture and family issues and men are preferred for the more "central issues".

In its concluding observations in 2009, the Committee on the Elimination of Discrimination against Women urged Switzerland to take sustained legal and other measures, with benchmarks and concrete timetables, in order to increase the representation of women in elected and appointed positions in public life, in political parties, in the diplomatic service and in the judiciary. The Committee also recommended that Switzerland introduce temporary special measures to achieve balanced representation of women and men. Special training and capacity-building programs should be more available. Awareness-raising campaigns on the importance of women's full and equal participation in political and public life should be enhanced. Finally, the Committee recommended that Switzerland continue to encourage the media to ensure equal visibility for both female and male candidates, especially during elections.

Although civil society and some political parties have raised some awareness on this topic, few new measures have been taken since then.

Concerning representation in the political sphere, nothing has been done on national level. Women's representation in both parliamentary chambers even decreased during the 2011 elections. In the cantons of Bern and Basel, a quota has been introduced for the executive body.

The percentage of women in the federal administration is around 40 %, but their representation is very limited in the top positions (15.6 % according to the FSO). The administration has sought to remedy this. The Federal Council also introduced a system of quotas for companies that are under the direction of the Confederation. (In Basel, the population similarly adopted a quota system in companies whose major shareholder is the canton.) Some interventions in this respect were also made in the Parliament. Unfortunately, and despite new studies showing that companies with women on their supervisory boards are better at coping with difficulties, the economic sphere in Switzerland is still slowing processes that would ensure a real equal access for women to top positions.

Civil society urges the OSCE to repeat its call to participating States to promote women in political and public life and hopes that the OSCE will be able to support the recommendation of the Committee on the Elimination of Discrimination of Women on introducing measures.

Concerning women's representation in political bodies, the next federal general elections will take place in October 2015. This means that candidates' nomination is already underway. Switzerland should be informed once more about the "Gender Equality in Elected Office: A Six-Step Action Plan" and be encouraged to implement it.

Concerning representation in the economic sphere, civil society underlines the points made in the SCHR sub-study about new working models, flexibility in employment that might better reconcile private and working life. Civil society welcomes the introduction of quotas for

companies close to the Confederation and the cantons. However, these measures should be extended to all companies listed on the Swiss stock exchange. Civil society is also urging the economic spheres and companies to proceed in a similar direction, introducing quota systems and flexibility in the choice of part-time job, even in top positions.

Finally, concerning stereotypes, we urge the Confederation and the cantons to continue to develop measures and regulations for women's representation in the media. We also call on the authorities to support campaigns to raise awareness on stereotypes at all ages and in all parts of society.

4.3. Promoting women's participation in conflict prevention, crisis management and post-conflict reconstruction

The participation of women in security teams and peace-building delegations is an important part of gender mainstreaming peace policy. Especially through recruitment, the deployment strategy aims to increase the number of women. The teams have to be composed of women and men, according to Resolution 1325's national action plan indicators, mainly focussing on civilian peace-building and military forces. Training for the persons selected for deployment is the other aspect of gender mainstreaming. Each has to pass a course on gender issues and Resolution 1325.

Our critical remarks on this topic will concern the education that can be provided and then the gender responsive policies that can be decided and implemented.

First, let us make the following remarks about training. For whom, why, when, who selects the target groups and how many resources are allocated? Is there follow-up on the impact and adjustment strategy? These are the questions that concern us in the next paragraphs of this report.

Quantitative indicators are important. However, there is a risk that concentrating on percentages of men and women might hamper the monitoring of the quality of training, of its impact on the work of the deployed and of the culture in the institutions as such. It also gives no information on the real changes that may occur in the society.

It is empirically well documented that the increased number of women in security forces etc. can provoke aggressive behaviour from men's part. Unfortunately, empirical documentation on this behaviour is difficult to obtain. It is nonetheless important to establish coaching, complaint points, an independent ombudsperson or other support for men or women as well as protection of whistle-blowers.

Training should be as tailor-made as possible, which means it should be based on the functions of those involved. Not only should the deployed be trained, but also mainly the heads of division even if these do not go into the field. Real mainstreaming can only occur

when every link in the chain of command is concerned. For some target groups awareness-raising might be a good approach; for others the courses should be more technical, operational and specific according to the fields and levels of intervention.

It would be important to check the target groups for training. As mentioned, the management / heads of division / decision-making units should be trained, not only so that they themselves understand the purpose of Resolution 1325, but also so that they are able to listen to possible victims of harassment inside the structure.

Another gap may be the domain of disarmament in which women should play an important role in the policy dialogue. There is no evidence that this domain is targeted when it comes to awareness-raising and capacity-building about gender, masculinities and femininities. The question is therefore whether Swiss policy-makers select the groups and levels where gender issues should and could be addressed. It is notable that when the Swiss population voted on an initiative to regulate more closely the presence of weapons at home, women accepted the initiative but men voted in an overwhelming number against. It was one of those rare occasions when women vote differently than men.

If peace-building policies are understood comprehensively, the State Secretariat for Economic Affairs (SECO) should be targeted, especially when it comes to bilateral trade agreements on war material. There is no training or awareness-raising for SECO about the impact on women's protection, security and well-being when the buying states are increasing their military budgets.

Private security firms play an increasingly important role in peace-building activities. Although a code of conduct for zero tolerance of sexual harassment and gender-based violence exists, there is considerable evidence of harassment in these firms. It would be extremely important to invest in the capacity-building of operational staff, the institutionalization of complaint points and even protection of whistle-blowers. This is particularly true for security staff working in registration centres for asylum-seekers. Many traumatised women, having suffered gender-based violence in their countries live in these centres.

A more comprehensive approach is needed. Gender responsive policies are good tools to achieve it.

Projects and activities for the prevention of gender-based violence have to be comprehensive, which means having resources in terms of time (e.g. for counselling, training, denouncement and reporting), personal capacities, infrastructure, a juridical system with expertise and the like.

Gender mainstreaming in security system reforms has to be also reflected in budgets. It is important to analyse how security budgets are allocated and spent and where financial resources are lacking.

Thematic approaches of Swiss security policy and protection are highly input driven (e.g. training, institution-building like justice rapid response, policy dialogue to mainstreaming gender in important strategy papers and resolutions, mediation activities and de-mining strategies). There is very little information about the respective impact of initiatives. It would be important to establish and promote mechanisms that report systematically on their consequences. It is extremely important that there be a careful and systematic monitoring of the changes in quantitative and qualitative terms (outputs and outcomes).

This critical observation of the initiative's (unintended) impact can be done by key actors such as Swiss NGOs and local civil society organisations. Hence, there is little transparency about the eligibility criteria of local NGOs to be empowered for peace-building.

Last but not least, an outstanding question is about where Resolution 1325 is not referred to in Swiss policy, such as in trade of war material. It is SECO that takes the final decision about exporting war material, but SECO is never mentioned in the context of women, security and protection.

State are also responsible for informing the population about gender-based violence in conflict areas, especially when media is only presenting masculinities and heroic behaviour. A campaign against the media's presentation of strong men may also obscure the discrimination by states of different forms of masculinities that are not necessarily based on violence, uniforms and weapons. Nonetheless, there is very little space where the discrimination of men in partner countries is taken up as a gender issue!

Finally, we would like to emphasize that Resolution 1325 is not only relevant for the foreign policy of Switzerland. It can also be used as an advocacy tool in Switzerland. As shown, some domestic policy issues are directly linked to this resolution (e.g. the legislation on small fire weapons, the prevention on violence as well as the protection of victims and whistle-blowers).

4.4. Creating national mechanisms for the advancement of women

The federal structure of Switzerland and its strong local, association-based civil society are obstacles to the creation of really effective national mechanisms. Education, health care systems, political rights (in part), taxes and security forces (like the police) are in essence cantonal competences. Taking measures on related issues would mean acting simultaneously in all 26 cantons and half-cantons.

However, Switzerland as a whole has signed UN documents like the Beijing Declaration and Platform for Action and the Convention on the Elimination of all Forms of Discrimination against Women, and it takes part actively in the UPR process of the Human Rights Council. The country also signed the Council of Europe's Istanbul Convention. The Federal Department of Foreign Affairs (FDFA) should focus its work only on foreign politics, and the other federal

departments should concern themselves with the implementation of these international conventions and texts. The reality is otherwise. Other departments often do not feel responsible, or they act without coordination. FDFA then takes subsidiary action in order to ensure coherence between domestic and foreign policies.

Civil society also urges Parliament to reform the legislation concerning the Federal Office for General Equality in order to enable it to extend its activity to other topics.

The same is true for the cantonal or inter-cantonal gender equality offices. Many cantons created such offices in the late 1990s or early 2000s with the primary intent of ensuring gender equality in the cantonal or local administration. Unfortunately, a real gender mainstreaming has not been effectively introduced. This failure and an ongoing backlash over women's human rights led conservative majorities in executive bodies to close these gender equality offices.

A strong gender mainstreaming has been supported by Switzerland in different multilateral conferences and in the Federal Council's declaration on the post-2015 development program. However, this gender mainstreaming is often missing in the federal administration itself. We welcome the commitment of the FDFA, which includes gender advisors in its General Secretariat and one in the Swiss Agency for Development and Cooperation. We regret that its good practice has not been followed in other federal departments.

Just after the 4th World Conference on Women in Beijing in 1995, women's organisations decided to create coordination in order to monitor together the implementation of the Conference's outcomes.

Women's organisations are also struggling with financial woes. The number of foundations and institutions that can support their work is very limited. At present, the FOGE is not legally authorised to financially support women's organisations on either the national or cantonal level.

The following measures could be taken for the advancement of women:

- In the Federal administration, a clear process should be established to coordinate the implementation of international norms and women's human rights.
- The Federal Gender Equality Office should have greater legal means in order to pursue further concerns.
- The legislation should be supplemented in order to allow greater support for civil society and women's organisations.
- A real mainstreaming and the nomination of gender advisors in the different federal departments and also on cantonal or inter-cantonal levels should be effected.

4.5. Conclusions

As in other European countries, the goal of gaining equal rights for all genders in Switzerland is still far off. Even if we see slight progress in some areas, we face a backlash in others. This derives mainly from the revival of conservative values. The backlash is manifest, for example, in the federal initiatives concerning the family or the abortion coming from the conservative political parties. Although some of these conservative initiatives were not accepted by the people, they show that women's human rights, sexual and reproductive health and rights are under pressure. Women are not making relevant progress on structural levels as well. For example, salary discrepancy is still close to 19%.

When it comes to the FDFA, civil society is particularly involved in negotiating and developing women's human rights. Unfortunately, the same cannot be said as regards the other departments responsible for domestic policy. One of the various reasons is that political interests in Switzerland are more conservative as regards internal affairs than foreign politics, especially when it comes to gender-based violence and women's human rights. On a structural level, we lack appropriate institutions, coordination, money, monitoring, responsibilities and a clear top-down commitment by the politicians and departments for equality and against gender-based violence.

Knowing and reviewing other countries' practice in implementing gender equality and fighting gender-based violence could be fruitful and offer inspiration for further OSCE action on this profoundly important issue.

Notes

[1] Third round of evaluation: Konformitätsbericht über die Schweiz, adopted by GRECO on its 61. plenum, 14.-18. October 2013. Both following citations of the Federal Council originate from that report.

[2] Wouldn`t it be enough to record the fact in the federal law about the political rights of the foreign Swiss (SR 161.5) or the accompanying order (SR 161.51), that the terms according to article.11 of the federal law about the political rights (SR 161.1) are also valid for the foreign Swiss?

[3] An overview of the status of the "foreign right to vote" in the cantons and municipalities is to be found on the website of the confederate commission for migration questions under: www.ekm.admin.ch/content/ekm/de/home/themen/Citoy/stimmrecht.html

[4] See: Zunehmende Ethnisierung – Wie universal ist das Stimmrecht in der Schweiz? By Ruedi Tobler, Friedenszeitung, Nr. 9, June 2014, page 8

[5] See: Der Majorz sorgt wieder für Unruhe. Nur noch Graubünden und die beiden Appenzell wählen ihre Kantonsparlamente nach dem Mehrheitswahlrecht, by Peter Jankovsky and Jörg Krummenacher, NZZ, 3 June 2014, Nr. 126, page 11

[6] Cf. Judgment of the European Court of Justice X, Y, Z, C-199/12, C-200/12, C-201/12, 07.11.2013, Judgment of the UK Supreme Court HJ (Iran) and HT (Cameroon) vs. Secretary of State for the Home Department (2010) UKSC31, 7 July 2010).

[7] Further examples of judgments with requirements for discretion: E-6128/2006, 1 October 2010 (Iran), E-2121/2010, 15 July 2010 (Iran), D-4564/2011, 24 August 2011 (Komoren), E-5228/2011, 14 December 2011 (Algerien). Comment to such an Iran-judgment: Seraina Nufer / Maximilian Lipp, Zulässigkeit der Wegweisung eines homosexuellen Iraners, in: Jusletter ,30 May 2011.

[8] Further resources: Richard Greiner, La politique d'éloignement des centres d'accueil pour requérants d'asile, Tangram 28. 12/2011 : www.ekr.admin.ch/dienstleistungen/d115/1082.html; SFH, Der «Fall Bremgarten» – so nicht! 6 August 2013: www.fluechtlingshilfe.ch/news/medienmitteilungen/der-abfall-bremgartenbb-2013-so-nicht/?searchterm=bremgarten; Humanrights.ch, Rayonverbote für Asylsuchende in der Gemeinde Bremgarten (AG) - eine Grundrechtsverletzung? www.humanrights.ch/de/Schweiz/Inneres/Asyl/Umsetzung/idart_10156-content.html; Human Rights Watch, Switzerland: Asylum Seekers? Stay out of the Pool, 7 August 2013: www.hrw.org/news/2013/08/07/switzerland-asylum-seekers-stay-out-pool.

[9] Legal Bases: Art. 80 Asylgesetz, Art. 88 Ausländergesetz, Art. 9-15 Asylverordnung 1.

[10] Cf. Prof. Dr. Walter Kälin, Rechtsfragen im Zusammenhang mit der geplanten Revision des Asylgesetzes, Gutachten zuhanden UNHCR (Verbindungsbüro für die Schweiz), ASYL 4/01, p. 18.

[11] Cf. Prof. Dr. Walter Kälin, Rechtsfragen im Zusammenhang mit der geplanten Revision des Asylgesetzes, Gutachten zuhanden UNHCR (Verbindungsbüro für die Schweiz), ASYL 4/01, p. 18.

[12] For example the motion «DNA-Test für bestimmte Asylsuchende» by C. Darbellay (CVP), 28.9.2012. See also Eidgenössische Kommission gegen Rassismus, Politische Agenda zu Rassismus und Antirassismus, Politische Agenda Herbstsession 2013, 9.1.2014, p. 61: www.ekr.admin.ch/pdf/131212_PolitischeAgenda_Aktuell_HS2013.pdf

[13] Interview with Alard du Bois Reymond «Wir sind zu attraktiv als Asyl-Land», NZZ am Sonntag, 11 April 2010, www.nzz.ch/nachrichten/politik/schweiz/wir_sind_zu_attraktiv_als_asyl-land_1.5416754.html.

[14] See interview with Simonetta Sommaruga «Wir sind sehr widersprüchlich», Zeit Online, 27 January 2012, www.zeit.de/2012/05/CH-Sommaruga/komplettansicht.

[15] Thus the protective rate of the executions of asylum requests by the trial court, which Switzerland had checked substantively for the escape reasons, amounted in 2013 to a total of 63 percent (33 percent asylum (3167 executions by the trial court), 30.46 percent provisional admittances (2916 executions by trial court) und 36.44 percent refusals without provisional admittances (3488 executions by trial court). Bundesamt für Migration, Asylstatistik 2013, p. 19: www.bfm.admin.ch/content/dam/data/migration/statistik/asylstatistik/jahr/2013/stat-jahr-2013-d.pdf.

[16] See also NZZ Online, Die SVP auf der Überholspur, 28 May 2011, www.nzz.ch/nachrichten/startseite/die_svp_auf_der_ueberholspur_1.10727673.html.

[17] Tages Woche, Online Debatten, Im Netz der rechten Maulhelden, 22 May 2014: www.tageswoche.ch/de/2014_21/schweiz/659008/

[18] SRF 4 News, Medientalk, Die Macht der Trolle, 24 May 2014, ab 12:55, report with Professor Dietram Scheufele: www.srf.ch/sendungen/medientalk/medientalk-die-macht-der-trolle; University of Wisconsin-Madison, Terry Devitt, Trolls win: Rude comments dim the allure of science online, 14. Februar 2013: www.news.wisc.edu/21506.

[19] Report of Fachstelle für Rassismusbekämpfung 2012, p. 74: www.edi.admin.ch/frb/02015/index.html?lang=de&download=NHzLpZeg7t,lnp6I0NTU042l2Z6ln1acy4Zn4Z2qZpnO2Yuq2Z6gpJCEen94f2ym162epYbg2c_JjKbNoKSn6A--

[20] Cf. report from April 2009 of the European Commission against Racism and Intolerance ECRI; third expertise about Switzerland from March 2013 of the Committee for the Framework Convention for the Protection of National Minorities; Recommendations of the UN-Committee on the Elimination of Racial Discrimination CERD from February 2014.