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## U.S. Department of State

### Switzerland Country Report on Human Rights Practices for 1998

Released by the Bureau of Democracy, Human Rights, and Labor, February 26, 1999.

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#### SWITZERLAND

Switzerland is a constitutional democracy with a federal structure and an independent judiciary. The bicameral Parliament elects the seven members of the Federal Council, the highest executive body, whose presidency rotates annually. Because of the nation's linguistic and religious diversity, the Swiss political system emphasizes local and national political consensus and grants considerable autonomy to individual cantons.

The Swiss armed forces are a civilian-controlled militia based on universal military service for able-bodied males. There is virtually no standing army apart from training cadres and a few essential headquarters staff. Police duties are primarily a responsibility of the individual cantons, which have their own distinct police forces that are kept under effective control. The National Police Authority has a coordinating role and relies on the cantons for actual law enforcement. There were allegations of occasional abuses by police.

Switzerland has a highly developed free enterprise, industrial, and service economy strongly dependent on international trade. The standard of living is very high.

The Government generally respects human rights, and the law and judiciary provide effective means of dealing with individual instances of abuse. There continue to be allegations by nongovernmental organizations (NGO's) of occasional police harassment directed against foreigners, particularly asylum seekers, and reports of verbal abuse against foreigners by private citizens. Some laws still tend to discriminate against women. The Government is continuing to take serious steps to address violence

against women.

## **RESPECT FOR HUMAN RIGHTS**

### **Section 1 Respect for the Integrity of the Person, Including**

Freedom From:

#### **a. Political and Other Extrajudicial Killing**

There were no reports of political or other extrajudicial killings.

#### **b. Disappearance**

There were no reports of politically motivated disappearances.

#### **c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**

The Constitution proscribes such practices, and there were no reports of violations. There were allegations by NGO's and some individuals of occasional police harassment of foreigners, particularly asylum seekers (see Section 2.d.).

Prison conditions meet minimum international standards, although some NGOs complain of prison overcrowding. The Government has taken measures to improve prison conditions and address overcrowding.

Brazilian national Luis Felipe Lourenco was living illegally in the country and was arrested in June by police in Geneva on charges of theft of a credit card. He allegedly was beaten by prison guards while in custody. The guards reportedly waited 2 hours before transporting Lourenco to the hospital, where he was diagnosed with a perforated lung and damage to his spinal cord. The Brazilian Embassy reportedly asked the authorities to look into the incident.

The 1997 case of Nigerian human rights activist Clement Nwankwo, who was arrested in Geneva and allegedly abused by police, is still pending. Nwankwo was convicted initially of shoplifting and disturbing the peace, and sentenced to 4 days' imprisonment (which he had already served in pretrial custody) as well as expulsion from the country. A lower court subsequently dropped the shoplifting conviction and lifted the sentence of expulsion. However, the Supreme Court rejected Nwankwo's subsequent appeal of his conviction for disturbing the peace. Nwankwo reportedly intends to file a further appeal to the European Human Rights Court in Strasbourg.

Swiss NGOs believe that the Nwankwo case underscores overall problems with police treatment of foreigners, especially asylum seekers in Geneva and perhaps elsewhere. The cantonal government took measures in response to the incident, including launching an administrative inquiry into the conduct of the three police officers involved. The police successfully appealed the reprimand and warning that were imposed as a result of the inquiry. In 1998 the NGO Association for the Prevention of Torture organized a special seminar for police officers in Geneva. The Federal Government and the Canton of Geneva are expected to finance publication of a special brochure aimed at increasing respect for and awareness of the rights of all persons in custody. The brochure will be distributed throughout Switzerland.

In 1997, following its examination of Switzerland's third periodic report, the United Nations

Committee Against Torture expressed concern about "frequent allegations of

ill-treatment" inflicted in the course of arrests and police custody and a lack of independent mechanisms in the cantons of certain legal guarantees such as the possibility, "especially for foreigners," to contact their family or a lawyer in case of arrest, and to be examined by an independent doctor on entering police custody, after each interrogation, and before being brought before an investigating magistrate or being released. The Committee recommended the introduction of mechanisms to receive complaints of mistreatment by police officers against suspects and for the harmonization of the 26 different cantonal codes of penal procedure, "particularly with regard to the granting of fundamental guarantees in the course of police custody." In addition the Committee recommended that the Swiss authorities pay "the greatest possible attention" to the handling of cases of violence attributed to police officers in order to ensure the opening of investigations and, in proven cases, the imposition of possible sanctions. The Federal Government invited cantonal police directors to a special meeting during the year to discuss these recommendations. However, the cantons have primary responsibility for these matters, and it is not clear the extent to which each canton has implemented these recommendations.

The Government permits prison visits by human rights monitors.

#### d. Arbitrary Arrest, Detention, or Exile

The legal prohibitions on arbitrary arrest, detention, or exile are fully respected at all levels of government. The cantons are responsible for handling most criminal matters, and their procedures vary somewhat from canton to canton. In general a suspect may not be held longer than 48 hours without a warrant of arrest issued by an investigative magistrate. However, asylum seekers and foreigners without valid documents may be held for up to 96 hours without an arrest warrant. Some NGO's alleged that the authorities arbitrarily detained asylum seekers (see Section 2.d.). A suspect has the right to choose and contact an attorney as soon as the warrant is issued; the State provides free counsel for indigents in most situations. Investigations are generally prompt, even if in some cases investigative detention may exceed the length of sentence. Release on personal recognizance or bail is granted unless the magistrate believes the person is dangerous or will not appear for trial. Any lengthy detention is subject to review by higher judicial authorities. In 1997 about one-third of all prisoners were in pretrial detention, and the average length of such detention was 1 week.

It appears that Nigerian human rights activist Clement Nwankwo was--at least initially--tried without full due process (see Section 1.c.).

The Government does not use forced exile.

#### e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary, and the Government respects this provision in practice. The judiciary provides citizens with a fair and efficient judicial process.

All courts of first instance are local or cantonal courts. Citizens have the right to appeal to a higher instance court and ultimately to the Federal Court.

Minor cases are tried by a single judge, difficult cases by a panel of judges, and murder (or other serious cases) by a public jury. Trials usually are held expeditiously. The Constitution provides for public trials in which the defendant's rights are fully respected, including the right to challenge and to present witnesses or evidence.

There were no reports of political prisoners.

f. Arbitrary Interference with Privacy, Family, Home,  
or Correspondence

Cantonal laws regulate police entry into private premises. These regulations differ widely from canton to canton, but all prohibit such practices without a warrant. All government authorities respect these provisions, and violations are subject to effective legal sanction.

## **Section 2 Respect for Civil Liberties, Including:**

a. Freedom of Speech and Press

The Constitution provides for freedom of speech and of the press, and the Government respects these rights in practice. An independent press, an effective judiciary, and a functioning democratic political system combine to ensure freedom of speech and of the press, including academic freedom. The authorities may legally restrict these freedoms for groups deemed to be a threat to the State, but no groups were restricted during the year. In addition, an article of the Penal Code criminalizes racist or anti-Semitic expression, whether in public speech or in printed material.

The nationwide broadcast media are government-funded but possess editorial autonomy. Private and foreign broadcast media operate freely.

b. Freedom of Peaceful Assembly and Association

The Constitution provides for these rights, and the Government respects them in practice.

c. Freedom of Religion

The Constitution provides for complete freedom of religion, and the Government respects this right in practice. There is no single state church, but most cantons support one or several churches with public funds. In all cantons, an individual may choose not to contribute to church funding. In some cantons, however, private companies are unable to avoid payment of the church tax.

Due to increasing public concern over certain groups, especially Scientology, the Government in 1997 asked an advisory commission to examine Scientology. The commission published its findings in August. According to the report, there is no basis at present for special monitoring of Scientology, since it does not represent any direct or immediate threat to the security of the country. However, the report stated that Scientology had characteristics of a totalitarian organization and had its own intelligence network. The commission also warned of the significant financial burden imposed on Scientology members and recommended reexamining the issue at a later date.

d. Freedom of Movement Within the Country, Foreign

Travel, Emigration, and Repatriation

Under the Constitution and the law, citizens are free to travel in or outside the country, to emigrate, and to repatriate. Non-Swiss convicted of crimes may receive sentences that include denial of reentry for a specific period following completion of a prison sentence.

Switzerland traditionally has been a haven for refugees, but public concern over the high number of asylum seekers generated pressure on the Government to tighten its policy. During the year, Parliament considered a new asylum law.

However, due to increased numbers of asylum seekers, the Government decided in July to implement emergency measures to avoid alleged abuse of the asylum procedure and to control the influx of refugees. Under these measures, authorities no longer consider asylum requests from individuals who do not have identification papers (unless there is clear evidence of persecution), or from individuals already residing "illegally" in the country. NGOs expressed concern over these emergency measures, but authorities reportedly insist that their actions are consistent with international law.

Some human rights organizations have charged the authorities with abuses in connection with the implementation of a 1995 law aimed at asylum seekers or foreigners living illegally in Switzerland who are suspected of disturbing the public order or avoiding repatriation. In particular, these groups have alleged instances of abuse, including arbitrary detention as well as denial of access to established asylum procedures, involving police at the two main airports. They also charge that police officers used the law to detain or harass asylum seekers who were not suspected of having disturbed public order. However, the allegations of these human rights organizations have never been substantiated, and these groups indicate that the situation has improved. Under the law, police actions are subject to judicial oversight, and the Federal Court has overturned many cases in which it believed that there was not sufficient regard for the rights of asylum seekers or other foreigners.

The Government cooperates with the office of the U.N. High Commissioner for Refugees and other humanitarian organizations in assisting refugees. The Government provides first asylum and provided it to 2,000 persons during the year. Refugees whose applications are rejected are allowed to stay temporarily, if their home country is experiencing war or insurrection. The Government denies having forced persons to return to countries where they have a well-founded fear of persecution. However, NGOs have charged the Government with expelling rejected asylum seekers even though conditions in their native country remain unfavorable. This has been true especially with respect to Bosnian refugees, although officials insist that very few people have been forcibly returned (around 200 in the last 3 years) and that each case is examined thoroughly.

### **Section 3 Respect for Political Rights: The Right of**

#### **Citizens to Change Their Government**

The Constitution provides citizens with the right to change their government peacefully (at local, cantonal, and federal levels), and citizens exercise this right in practice through periodic, free, and fair elections held on the basis of universal suffrage. In addition initiative and referendum procedures provide unusually intense popular involvement in the legislative process.

Women were disenfranchised until 1971 at the federal level, but since then their participation in politics has continued to expand. Women occupy 51 of the 246 seats in the Parliament, 1 of 7 seats in the Federal Council (Cabinet), a record one-fourth of the seats in the cantonal government executive bodies, and about one-fifth of the seats in communal executives. However, in 1995 and 1996 voters rejected two local initiatives designed to reserve a fixed percentage of elective seats for women. In 1997 the Federal Court declared invalid another local initiative with the same purpose. A vote on an initiative to mandate equal gender representation in all federal institutions is scheduled to take place no later than 2001.

### **Section 4 Governmental Attitude Regarding International and**

## **Nongovernmental Investigation of Alleged Violations of Human Rights**

A large number of international and domestic human rights groups operate without government restriction, investigating and publishing their findings on human rights cases. Government officials are cooperative and generally responsive to their views.

### **Section 5 Discrimination Based on Race, Sex, Religion,**

#### **Disability, Language, or Social Status**

The Constitution and laws prohibit discrimination on the basis of race, sex, religion, language, or social status. The Government generally enforces these prohibitions effectively, although a few laws tend to discriminate against women.

#### **Women**

Violence against women is a problem. According to a government-funded study on domestic violence, one-fifth of all women suffer in their lifetimes at least once from physical or sexual violence, and about 40 percent suffer from psychological or verbal abuse.

The law prohibits wife beating and similar offenses. Spousal rape is a crime in the Penal Code. Victims of violence can obtain help, counseling, and legal assistance from specialized agencies or from nearly a dozen hot lines sponsored privately or by local, cantonal, and national authorities. An estimated 680 women and nearly as many children took refuge in 14 women's shelters during the year. Those in charge of the shelters estimate that nearly as many were denied access due to a lack of space.

The difficulty in gathering information about the number of prosecuted, convicted, or punished spouse abusers stems in part from the fact that legal cases are handled by each canton and data are often not up-to-date. According to police criminal statistics, 318 men were suspected of having abused women in 1997, and in 1996, 58 men were sentenced for such abuse.

The Federation of Women's Organizations and numerous other women's NGOs have heightened public awareness of the problem of violence against women. Two government-supported women's organizations that fight for equal gender rights jointly conducted the first national campaign against violence in relationships. This campaign received extensive media coverage. No significant demonstrations or marches for women's rights took place during the year.

The Penal Code criminalizes sexual exploitation and trafficking in women. The authorities effectively enforce these laws. In order to confront modern forms of trafficking in women, especially via the Internet, the federal police have increased the number of their agents. In 1996 (the last year such conviction statistics were available) four persons were convicted of trafficking in women and eight were convicted of sexual exploitation.

Although the Constitution prohibits all types of discrimination, a few laws still tend to discriminate against women. However, in 1996 a new federal law on equal opportunity for women and men came into force. The law includes a general prohibition on gender-based discrimination and incorporates the principle of "equal wages for equal work." The law also includes provisions aimed at eliminating sexual harassment and facilitating access to legal remedies for those who claim discrimination or harassment.

At the aggregate level, men earn more than women, but it is not clear if this circumstance reflects overt

discrimination or other factors. Individual cases of denial of equal pay for equal work are subject to the new law.

Journalistic reports of pre-1970s instances of forced sterilization of women led parliamentarians in 1997 to ask the Federal Council to write a report on the practice as well as the legal, medical, historical, and social policy background of forced sterilization, in view of a projected tutelage law that is to include regulations concerning sterilization of mentally disabled persons. The Federal Government has not decided whether to issue such a report. Forced sterilization was not ordered by the Federal Government. However, one cantonal government adopted such a law in 1928, which was abrogated in the 1970s. Women's organizations apparently made no public statements about the reports.

In its December review of the Government's 1996 Report on the Implementation of the U.N. Covenant for Economic, Social, and Cultural Rights, the U.N. Committee for Human Rights criticized continuing discrimination against women in Switzerland. The Committee noted that despite the existence of legislation against discrimination, de facto discrimination against women and ethnic minorities continues to exist in various areas. This is especially true in the labor market, where a disproportionate number of women and minorities occupy lower paid and part-time jobs. As a result, women suffer from poverty more often than men. The Committee also expressed concern about the level of domestic violence against women, which authors of a Government study estimate at over 100,000 cases per year.

### Children

Despite the fact that the Government has no special program for children and that there is no special governmental office for children's matters, the Government demonstrates its strong commitment to children's rights and welfare through a well-funded public education system and medical care. The federal and cantonal governments, as well as about 80 NGO's that defend children's rights, have devoted considerable attention in recent years to child abuse, especially sexual abuse. For convicted perpetrators of the latter, the law provides for imprisonment for up to 15 years. In 1997 amendments to the federal Penal Code came into effect which provide for an increase in the statute of limitations in cases of child abuse from 5 to 10 years. To combat child pornography, the Federal Office for Police now provides on its worldwide web page a service called "Internet Monitoring." Individuals who find pornographic material involving children are asked to contact the Federal Office via electronic mail.

With respect to child abuse abroad, the law provides for prosecution only if the act is considered a crime in the country in which it took place. Experts have proposed making such acts punishable in Switzerland regardless of where the crime took place, but there was no action on the problem during the year.

Parliament's ratification of the U.N. Convention on Children's Rights included five reservations, the most important of which concerned children of migrant seasonal workers who are not automatically permitted to join their parents. Children of foreigners working as migrant laborers are only permitted to visit on tourist visas for a period of 3 months at a time. After 3 months, they must return to their homeland for 1 month. In February the Federal Council asked the Department of Justice and Police to reexamine the necessity of these reservations.

### People With Disabilities

There are strong legal prohibitions against discrimination directed at disabled persons in employment, education, and the provision of other state services. Advocates for the disabled have called for new measures to ensure greater protection for their rights, including easier access to buildings and public transportation. However, the Government has not mandated that building or transportation facilities be

made accessible. In 1996 a Member of Parliament proposed legislation to amend the Constitution to provide equality of opportunity for the disabled. The legislation has received broad support in Parliament, but it would be subject to a mandatory voter referendum. In 1998 advocates for the disabled also launched a separate initiative to amend the Constitution to provide equal rights for the disabled (and other minorities).

A 1995 law exempts disabled men from the tax imposed on those who have not fulfilled their military duty.

#### National/Racial/Ethnic Minorities

According to NGO statistics, there were 70 reported attacks against foreigners/minorities in the first half of the year, compared with 33 reported for the same period in 1997. These figures include instances of verbal and written "attacks", which are much more common than physical assaults. Investigations of these attacks are conducted effectively and lead, in most cases, to the arrest of the persons responsible. Persons convicted of racist crimes are commonly sentenced to from 3 days to 3 years imprisonment with a fine of up to approximately \$27,210 (40,000 Swiss francs).

In November Switzerland ratified the European Council's Convention on the Protection of National Minorities.

#### Religious Minorities

In response to the issue of Holocaust era assets, the Government and private sector initiated a series of measures designed to shed light on the past, provide assistance to Holocaust victims, and address claims to dormant accounts in Swiss banks. These measures include: The Independent Commission of Experts under Professor Jean-Francois Bergier charged with examining the country's wartime history and its role as a financial center; the Independent Committee of Eminent Persons under Paul Volcker charged with resolving the issue of dormant World War II era accounts in Swiss banks; and the Swiss Special Fund for Needy Holocaust Victims which received approximately \$190 million (273 million Swiss francs) in contributions from the private sector and the Swiss National Bank. In August a \$1.25 billion settlement of the class action lawsuit filed in the U.S. against Swiss banks was announced.

In the context of the discussions over Nazi gold and Holocaust era assets, anti-Semitic slurs reportedly are increasing. Government officials, including the President, have spoken frequently and publicly against anti-Semitism. According to NGO statistics, about a dozen persons have been convicted so far based on the antiracism law. The heaviest penalty was a 15-month imprisonment and a fine of \$5,600 (8,000 Swiss Francs) against a person for denying the existence of the Holocaust. The case is pending appeal.

On November 5, the Federal Commission against Racism released a report on anti-Semitism in Switzerland, expressing concern that the recent controversy over the country's role during World War II had to some extent opened the door

to expressions of latent anti-Semitism. At the same time, the Commission described the emergence of strong public opposition to anti-Semitism, and credited the Federal Council with taking a "decisive stand" against anti-Semitism. The Commission also proposed various public and private measures to combat anti-Semitism and encourage greater tolerance and understanding. In its initial response to the report, the Federal Council pledged to facilitate implementation of the Commission's recommendations.

## Section 6 Worker Rights

### a. The Right of Association

All workers, including foreigners, have the freedom to associate freely, to join unions of their choice, and to select their own representatives. The Government does not hamper the exercise of these rights. About one-third of the work force is unionized.

The right to strike is legally recognized and freely exercised, but a unique labor peace under an informal agreement between unions and employers--in existence since the 1930's--has meant fewer than 10 strikes per year since 1975. There were no significant strikes during the year.

Unions are independent of the Government and political parties, and laws prohibit retribution against strikers or their leaders. Unions can associate freely with international organizations.

### b. The Right to Organize and Bargain Collectively

By law workers have the right to organize and bargain collectively, and the law protects them from acts of antiunion discrimination. The Government fully respects these provisions. Periodic negotiations between employer and worker organizations determine wages and settle other labor issues at the national and local levels. Nonunion firms generally adopt the terms and conditions fixed in the unions' collective bargaining.

There are no export processing zones.

### c. Prohibition of Forced or Compulsory Labor

Although there is no specific constitutional or statutory ban on forced or compulsory labor in general, and on child labor in particular, such practices are not known to occur.

### d. Status of Child Labor Practices and Minimum Age

#### for Employment

The minimum age for employment of children is 15 years, and children are in school up to this age. Children over 13 years of age may be employed in light duties for not more than 9 hours per week during the school year and 15 hours otherwise. The employment of youths between the ages of 15 and 20 is strictly regulated; they cannot work at night, on Sundays, or in hazardous or dangerous conditions. The Federal Office for Industry, Trade, and Labor effectively enforces the law on working conditions.

The Government does not specifically prohibit forced and bonded labor by children, although such prohibitions are implicitly included in the Labor Act. Such forms of labor are not believed to occur (see Section 6.c.).

Government officials inspect companies that employ children after having received complaints. Every year a few employers are fined or receive conditional imprisonment for violations of the law.

### e. Acceptable Conditions of Work

There is no national minimum wage. The lowest wages fixed in collective bargaining are always

adequate to provide a decent standard of living for workers and their families.

The 1964 Labor Act established a maximum 45-hour workweek for blue- and white-collar workers in industry, services, and retail trades, and a 50-hour workweek for all other workers. The law prescribes a rest period during the workweek. Overtime is limited by law to 260 hours annually for those working 45 hours per week and to 220 hours annually for those working 50 hours per week.

Legal and illegal foreign workers are protected by law. However, illegal foreign workers are not covered by mandatory health insurance in case of illness or accident. Wage discrimination against foreign workers is not permitted.

The Labor Act and the Federal Code of Obligations contain extensive regulations to protect worker health and safety. There have been no reports of lapses in the enforcement of these regulations, but the degree to which enforcement is effective is unclear. In a second vote in 2 years, voters approved in November a new labor law designed to increase flexibility in the workplace and to remove restrictions on women working at night. A worker may leave a dangerous assignment without penalty.

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