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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the human rights of migrants and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

REFERENCE: AL G/SO 214 (106-10) G/SO 214 (78-15)
CHE 2/2013

22 August 2013

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the human rights of migrants and Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance pursuant to Human Rights Council resolutions 17/12 and 16/33.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the **rules prohibiting asylum seekers from using public spaces**.

According to the information received:

A new federal asylum seeker reception centre opened in Bremgarten, in the canton of Aargau, on 5 August 2013. It is reported that this is the first of nine new federal asylum seeker reception centres in the country. An agreement between the migration ministry and the municipality of Bremgarten allegedly allows local officials to issue rules limiting or prohibiting asylum seekers' use of swimming pools, other public sports facilities, and schools. Reportedly, the rules are intended to secure an "ordered" and "conflict-free" relationship between asylum seekers and locals, and aim to avoid "friction and resentment". It is reported that there are currently 23 asylum seekers living in Bremgarten.

Under the rules in Bremgarten, an asylum seeker wishing to use school or local sports facilities on weekdays would need to ask the private security company running the reception centre to get permission from local community representatives. Local community representatives are reportedly entitled to refuse purely on the basis of the person's asylum seeker status. Repeated breaches can result in an asylum seeker being prohibited from leaving the centre altogether, or seeing a reduction in pocket money, in line with the asylum centre's "house rules".

It is reported that the second federal asylum seeker reception centre opened on 19 August 2013, in the town of Alpnach in the canton of Obwalden. This town will allegedly also prohibit asylum seekers from accessing certain public spaces. Furthermore, it is reported that in Menzingen, a village in the canton of Zug, where an asylum seeker reception center is to open in 2015, asylum seekers will also be banned from “sensitive areas” such as near schools.

The Zurich Federal Councillor has reportedly stated that these rules restricting the freedom of movement for asylum seekers would breach Switzerland’s constitutional laws if implemented.

It is further reported that children in Eigenthal reception centre, which was closed in December 2012, were denied access to public schools, and that they did not even have access to any formal, regular education inside the reception centres.

Concern is expressed that the restrictions on the movement of asylum seekers, who are legally residing in Switzerland, have no legitimate aim, and are thus arbitrary and discriminatory. Concern is further expressed that the children in these centres may not have access to public schools.

Without in any way implying any conclusion as to the facts, we should like to appeal to your Excellency’s Government to seek clarification of the circumstances regarding these cases. We would like to recall that the International Covenant on Civil and Political Rights (ICCPR), which the Government of Switzerland acceded to on 18 June 1992, provides that everyone lawfully within the territory of a State shall have the right to liberty of movement within that territory (article 12). The only permissible restrictions must be provided by law, necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and be consistent with the other rights recognized in the Covenant. Article 2 guarantees the application of the rights recognized in the Covenant to all individuals within a State’s territory, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Human Rights Committee has stated that the enjoyment of the rights guaranteed in the ICCPR is not limited to citizens of States parties but “must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party” (CCPR/C/21/Rev.1/Add. 13 (2004), para. 10).

Additionally, the International Convention on the Elimination of All Forms of Racial Discrimination, acceded to by Switzerland on 29 November 1994, provides in its article 5 an obligation for States parties to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, including in relation to freedom of movement.

We also wish to refer your Excellency's Government to the Committee on the Elimination of Racial Discrimination's general recommendation XXX, which states that "differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim."

Concerning access to public schools for the children in the reception centres, we would like to refer to the Convention on the Rights of the Child, ratified by Switzerland on 24 February 1997, which provides the right to education, including compulsory primary education, available free to all, as well as an obligation on States to make secondary education accessible to every child (article 28). Furthermore, article 2 provides that the rights set forth in the Convention shall be respected and ensured to each child within a country's jurisdiction, without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

As it is our responsibility under the mandates provided to us by the Human Rights Council to seek to clarify all cases brought to our attention, and as we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the summary of the case accurate?
2. Please indicate if a complaint has been received.
3. Please provide details on the agreement between the migration ministry and the municipality of Bremgarten, including whether the agreement has already been implemented. Please also provide information on the existence of any other similar agreements with other municipalities.
4. Please provide information on the number of children housed in the asylum reception centres in Bremgarten and Alpnach, and please indicate if they have access to attend schools.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible for the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

François Crépeau
Special Rapporteur on the human rights of migrants

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discrimination, xenophobia and related intolerance