Global Information Society Watch 2015
Sexual rights and the internet

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Financial support provided by
Humanist Institute for Cooperation with Developing Countries (Hivos)

APC and Hivos would like to thank the Swedish International Development Cooperation Agency (Sida) for its support for Global Information Society Watch 2015.

Published by APC and Hivos
2015

Printed in USA

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APC-201510-CIPP-R-EN-P-232
SWITZERLAND

SEXUAL RIGHTS: STILL A LONG WAY TO GO

Introduction
Switzerland is known as a multilingual and multicultural country trying its best to organise the differences between cultures under a coherent national framework – “coherence” in this context is a key word in Swiss modern history. The word refers to the inclusion of different languages and cultures – German, French, Italian and Romansh speakers – but also signifies respect for minorities in general. There are not many countries in the world with comparable records of respect for their diverse minorities.

On the other hand, Switzerland is also primarily a Christian society with around 39% Catholics and 27% Protestants and dominated by their corresponding traditional values1 – nowadays more in rural areas than in cities. In this hegemonic culture marked by Christian beliefs and traditions, sexual orientations, behaviours and rights – other than heteronormative sexual relationships – are a relatively new phenomenon, face various prejudices and common misunderstandings and are frequently rejected. This dynamic creates an ongoing quarrel between traditional (mainly rural) and more liberal (mainly urban) parts of the Swiss society.

Policy and political background
The legal framework that guarantees sexual rights in Switzerland is clear, starting with the Federal Constitution and the European and international human rights treaties. These include: the Federal Constitution, Article 8 (Equality before the law),2 the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 14 (Prohibition of discrimination on any grounds),3 Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, the Universal Declaration of Human Rights, Article 2,4 the International Covenant on Economic, Social and Cultural Rights (Part II), Article 25 and the International Covenant on Civil and Political Rights (Part II), Article 2 and 26.5 Because of this it is clear that the problem is not the lack of legal standards and guarantees, but is more a question of the enforcement of these standards.

Registered partnerships are relatively recent in Switzerland. In a nationwide referendum in June 2005,7 58% of the population approved a law allowing registered partnerships. This grants same-sex couples the same rights and protections as opposite-sex couples. However, they may not adopt children, seek fertility treatment and use the registered partnership to facilitate the Swiss naturalisation of a foreign partner. The law became effective in January 2007.8

Finally, despite the legislative guarantees, the European branch of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe)9 has analysed legal standards for LGBT people across Europe, and in this ranking Switzerland was placed 31st out of 49 countries, fulfilling only 28% of the criteria for full equality.10

Loopholes in the law
The history of lesbian, gay, bisexual and transgender (LGBT) people is similar in neighbouring European countries.11 Regarding legal frameworks, human rights violations and the unequal treatment of LGBT people should be a matter of the past in Switzerland. This is the position of the Lesbian Organisation Switzerland (LOS),12 the Pink Cross,13

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2 https://www.admin.ch/ch/e/rs/1/101.en.pdf
3 conventions.coe.int/Treaty/en/Treaties/.../005.htm
4 www.un.org/Overview/rights.html
5 www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx
8 https://en.wikipedia.org/wiki/Registered_partnership_in_Switzerland
9 www.ilga-europe.org
10 www.pinkcross.ch/recht/rainbowmap#
11 https://de.wikipedia.org/wiki/Geschichte_der_LGBT#Das_21._Jahrhundert
12 www.los.ch/de
13 www.pinkcross.ch
which could be “easily fixed”. Similarly, LOS has
tect the people concerned from discrimination, and
to “rifts and loopholes in the laws” that do not pro-
other important concern.

rights in the fields of adoption and family law is an-
reason for seeking asylum. The lack of equality of
or even condemned to death, when this is used a
countries where gays and lesbians are prosecuted

A spokesperson for the Pink Cross has referred
to “rifts and loopholes in the laws” that do not pro-
tect the people concerned from discrimination, and
which could be “easily fixed”. Similarly, LOS has complained that Switzerland is not implementing
the respective recommendations of the UN Human
Rights Council Universal Periodical Review regarding
human rights. An ongoing concern of these
communities is the denial of the right to raise chil-
dren, which is inscribed in the Swiss constitution,
Article 14. However, adoptions are still legally
denied adoption to a woman living in a registered
partnership law. In a ruling of the
Federal Court in May 2011, the supreme judges
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18 Human Rights for All, media release by LOS, the
Pink Cross, the

19 https://www.admin.ch/ch/e/rs/1/101.en.pdf


21 Bundesgericht bestätigt Adoptionsverbot für gleichgeschlechtliche
Paare, Schweizerisches Kompetenzzentrum für Menschenrechte
(SKMR), July 2011, www.skmr.ch/de/themenbereiche/
geschlechterpolitik/artikel/bge_adoptionsverbot.html

14 www.transgender-network.ch

ma-z-details?detail=299

16 www.humanrights.ch/en/switzerland/
internal-affairs/groups/gays-lesbians/
human-rights-gays-lesbians-bisexual-transgender-people

17 Ibid.

18 Human Rights for All, media release by LOS, the Pink Cross, the
Umbrella Organisation for Rainbow Families and the Transgender
Network Switzerland, April 2012 (in German). www.humanrights.
ch/upload/pdf/120426_Medienmitteilung_LGBT.pdf

19 https://www.admin.ch/ch/e/rs/1/101.en.pdf

22 www.blick.ch

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including the death penalty.\textsuperscript{23} Even worse, there was no murmuring of surprise in his congregation, but applause. The Pink Cross was “shocked and upset” about the statements and demanded a public apology from the bishop. Furthermore, the Pink Cross announced that it would consult lawyers to see if what the Bishop said amounted to hate speech, underlining that “no church representative lives in a legal vacuum.”\textsuperscript{24}

When confronted with media and consternated public responses to his statement, the bishop quickly talked about “misunderstandings” and said that he “didn’t mean it” – of course.\textsuperscript{25} A few days later Catholic Church associations clearly distanced themselves from the bishop’s viewpoint and called it “irresponsible and cruel”, while referring to situations in some countries where “homosexuals are fearing for their lives, may be flayed, stoned or even killed.”\textsuperscript{26} While organised Swiss Catholics expressed their outrage and their solidarity with the LGBT community, the Swiss Bishops Conference\textsuperscript{27} pussyfooted around again and called their fellow minister “difficult”, underlining that “the church welcomes all people unconditionally, independent from their sexual orientation.”\textsuperscript{28} Meanwhile, three law suits were filed by two individuals and the Pink Cross,\textsuperscript{29} – the potential outcome of these actions hovering between uncertain or predictable. Within weeks, the Huonder case received so much public attention that more members of the church hierarchy publicly expressed their disagreement by admitting that “he crossed a red line.”\textsuperscript{30}

### The reverse side

At the end of August 2015 – a month of contrasts indeed – the 24th Zurich Street Parade\textsuperscript{31} attracted around a million people. The Street Parade became the most attended technoparade\textsuperscript{32} in Europe since the end of the Love Parade in 2010. Comparable to Berlin’s Love Parade, the Street Parade has, since 2001, been one of the largest techno parties in the world, and the largest annual event in Zurich.\textsuperscript{33} Originally it was thought of as a demonstration for freedom, love and tolerance. As it became more and more commercially viable for the Swiss metropolis, the key messages of the festival became more and more diluted. Nevertheless, the Street Parade can be understood as a statement against the Swiss Biedermeier – the traditionalist’s world view – mobilising around one eighth of the Swiss population. For Swiss conservatives and religious fundamentalists it must look like an annual provocation and nightmare.

### Conclusions

My conclusions on the issue of sexual rights in Switzerland are informed by personal experiences and references. Changes of norms, traditions, values, prejudices and stereotypes take time, and generations. During my study years in Heidelberg, Germany, I lived in a gay commune, the only “heterosexual” there. This was just as the German law that criminalised homosexuality in the early 1970s was being reconsidered (specifically paragraph 175 of the German Criminal Law).\textsuperscript{34} Switzerland had officially abolished the criminalisation of homosexuality in 1942, provided that the actors involved were over 20 years of age.\textsuperscript{35} Germany and Austria only followed decades later – Germany in 1994, and Austria in 2002.\textsuperscript{36}

In the early 1970s I had the privilege and honour to meet elderly people and gay friends who had survived German concentration camps between 1933 and 1945 (the Nazi period and barbarity). They had been accused of being “Jews”, “socialists”, “communists”, or “homosexuals”, or all together – usually a sure death verdict in Nazi Germany. From their testimonials I learned that being gay or sexually “irregular” was not considered “abnormal” in the educated and artist scenes in Berlin or Paris (leading metropolitan areas) up until the 1920s – in Germany until the takeover of Nazi power in 1933. The cultural impact of anti-gay and “abnormal sexual

\textsuperscript{23} Huonder quoted Leviticus 20:13: “If a man also lie with mankind, as he lieth with a woman, both of them have committed an abomination: they shall surely be put to death; their blood shall be upon them.” www.blick.ch/news/swiss/mit-dem-tod-bestraft-boese-schulen-attacke-von-bischof-huonder-id4034615.html
\textsuperscript{27} The coordinating body of the Roman Catholic dioceses in Switzerland.
\textsuperscript{29} Ibid.
\textsuperscript{31} www.streetparade.com
\textsuperscript{32} https://en.wikipedia.org/wiki/Technoparade
\textsuperscript{33} https://en.wikipedia.org/wiki/Street_Parade and www.tagesanzeiger.ch/29573065/print.html
\textsuperscript{34} https://en.wikipedia.org/wiki/Paragraph_175
\textsuperscript{35} https://de.wikipedia.org/wiki/Geschichte_der_LGBT#Das_20._Jahrhundert
\textsuperscript{36} Ibid.
orientation” campaigns must have been enormous across Europe until the 1970s.37 But values and public perceptions have changed considerably over recent decades. Just as an example: the “coming out” of a homosexual person until the 1970s or 1980s usually had severe consequences for his or her professional life, career and economic existence. When the German minister of foreign affairs, Guido Westerwelle (2009-2013), came out as a homosexual living in a same-sex partnership, it was just an issue for the gossipy yellow press. Over the last 20 years the internet and social media have supported and illustrated sexual diversities by including marginal realities and identities. They have strengthened emancipatory processes of all those who have not always been the focus of old media. Discriminated groups who lived in the shade of societies and had no voice are all using the internet to express their sexual identities, to find support, and for advocacy.

Anti-LGBT propaganda campaigns are still mainly the work of religious fundamentalists from the Roman Catholic, orthodox or Islamist persuasions. Gay friends and observers who have struggled for multicultural rights in European societies for most of their political life confess that they are rattled and scared about recent developments. They say that for some time the fundamentalist Catholic fraction has been losing more and more influence in modern and educated Western societies. But recently we are confronted with a younger migrant generation with a Middle Eastern background who have strongly expressed and revitalised anti-gay stereotypes and propaganda by ignoring constitutional basics.38 Their anti-modern ideas, merely based on religious bias, are considered a dangerous force against the rights of LGBT people, or anybody not corresponding to traditional or archaic norms.

Transformation processes in societies are usually not linear, but broken or interrupted by backlashes – as can be seen by the story of the bishop discussed above. Decades ago religious fundamentalists could have counted on the silent approval of the public, but nowadays these church representatives are seen more as a dying species. But there is still a long way to go – in Swiss society and abroad – until LGBT people are considered just as “normal” and equal as usual heterosexuals.

37 Various personal conversations with gay friends in the early 1970s, where they told me about their personal histories and sufferings. None of them wanted to record their personal stories in public because they were still afraid.

38 Talks and discussions with people from the gay community who do not want to be personally quoted.

Action steps

Some of the demands of LGBT organisations are:

• To finally remove the exclusion of gay people from donating blood, allegedly because of higher risks of HIV transmission. The Pink Cross considers this practice discriminatory. The Federal Council already agreed and called upon blood services to change such rules.

• To introduce a particular anti-discrimination article to prohibit hate speech against LGBT people. More coherence between different legislation is needed.

• As the right to marriage is inscribed in the Federal Constitution, equal rights and standards for gays and lesbians are overdue. Similar demands for gay people to adopt children are still on the advocacy agenda (the revision of Article 28 of the registered partnership law is necessary).

• LGBT people are still confronted with discrimination at the workplace. Regulation is needed to stop and change these practices.

• LGBT communities and organisations should step out of their closed circles by creating broader alliances with like-minded citizens. They should use internet-based campaigning tools and platforms (such as Avaaz and Campact)39 to mobilise solidarity. The internet offers this chance and opportunity.

39 https://www.campact.de/gleichstellung/appell/empfehlen
Sexual rights and the internet

The theme for this edition of Global Information Society Watch (GISWatch) is sexual rights and the online world. The eight thematic reports introduce the theme from different perspectives, including the global policy landscape for sexual rights and the internet, the privatisation of spaces for free expression and engagement, the need to create a feminist internet, how to think about children and their vulnerabilities online, and consent and pornography online.

These thematic reports frame the 57 country reports that follow. The topics of the country reports are diverse, ranging from the challenges and possibilities that the internet offers lesbian, gay, bisexual, transgender and queer (LGBTQ) communities, to the active role of religious, cultural and patriarchal establishments in suppressing sexual rights, such as same-sex marriage and the right to legal abortion, to the rights of sex workers, violence against women online, and sex education in schools. Each country report includes a list of action steps for future advocacy.

The timing of this publication is critical: many across the globe are denied their sexual rights, some facing direct persecution for their sexuality (in several countries, homosexuality is a crime). While these reports seem to indicate that the internet does help in the expression and defence of sexual rights, they also show that in some contexts this potential is under threat – whether through the active use of the internet by conservative and reactionary groups, or through threats of harassment and violence.

The reports suggest that a radical revisiting of policy, legislation and practice is needed in many contexts to protect and promote the possibilities of the internet for ensuring that sexual rights are realised all over the world.