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Switzerland: The 'Deportation Initiative' cannot override international human rights obligations

Amnesty International is deeply concerned by today's Swiss popular referendum, which amends the Swiss constitution to permit the "automatic" and immediate deportation of non-citizens convicted for certain criminal offences to their countries of origin. Media sources reported widely that the popular referendum, known as the "Deportation Initiative" (*die Ausschafungsinitiative* or *l'Initiative sur le renvoi*), has succeeded today with a 52.9% percentage vote in favour of the amendment.

The Deportation Initiative took place following a campaign launched by the populist Swiss People's Party (Schweizerische Volkspartei, SVP or Union Démocratique du Centre, UDC) that resorted to openly discriminatory and xenophobic publicity materials, including a poster with a slogan "Ivan S. – a rapist and soon Swiss?" and another with a cartoon graphic depicting a black sheep being kicked out of Switzerland by white sheep. In recent years, Switzerland has seen a number of referenda initiated by the Swiss People's Party and its supporters on populist issues relating to migration and security.

If translated into practice, the amendment to the constitution would violate Switzerland's obligations under international law, in particular the obligation not to return anyone to a country where they would be at risk of torture or other forms of persecution. This is a distinct risk since the new automatic deportation provisions would apply to asylum-seekers and recognized refugees, leaving them with no effective remedy. Furthermore, the provision fails to respect the right to family and private life of asylum-seekers, refugees and migrants.

The referendum amends the Swiss constitution such that foreign nationals convicted for a specified set of criminal offences can be immediately stripped of their residence permit and right to remain in the country. The specified offences include murder, rape or other serious sexual offences; other violent crimes such as (armed) robbery; trafficking in persons, drug trafficking, or burglary; and welfare benefit fraud. The amendment gives legislators a wide discretion with regard to what can constitute one of the specified criminal offences.

Non-nationals who lose their right to live in Switzerland, according to the amendment required by the referendum, are subject to deportation by the competent cantonal authority and will face an order excluding them from Switzerland ranging from five up to 15 years. A repeat offender may be subject to a 20-year exclusion order. An individual subject to such an exclusion order from Switzerland is liable to prosecution if he or she re-enters the country during the specified period.

Switzerland is obliged to ensure that nobody is returned to a country where they would face a real risk of being tortured, exposed to cruel, inhuman or degrading treatment or punishment, or other serious human rights violations. It is also obliged to respect the right to private and family life, under Article 8 of the European Convention on Human Rights and Fundamental Freedoms.

The prohibition of refoulement is firmly established under international and regional human rights conventions to which Switzerland is a state party: the UN Convention Against Torture (CAT), the International Covenant on Civil and Political Rights (ICCPR), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (the Refugee Convention), the European Convention on Human Rights and the Convention on the Rights of the Child (CRC). The European Court of Human Rights has ruled time and time again in cases involving Article 3 of the European Convention, which have clearly and unambiguously upheld the principle of non-refoulement.

The prohibition of refoulement encompasses the obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed. The principle applies to all persons in the jurisdiction of a state party, including asylum-seekers and refugees. It is non-derogable and applies in all circumstances. The prohibition against torture is absolute.

Many second and third generation migrants, whose parents were not Swiss citizens at the time of their birth, retain the nationality of their families' country of origin and have not become naturalized Swiss citizens. The automatic deportation provision of the Swiss constitutional amendment required by the Deportation Initiative, could potentially require the enforced return of a second or third generation migrant to his or her family's country of origin, where he or she may no longer have or never have had any social or family ties.

The amendment required by the referendum removes any possibility of appealing the deportation order, which would be made by the cantonal migration office where the person resides in Switzerland. The removal of the right to appeal, either at the cantonal or the federal level, would be in breach of the right to an effective remedy enshrined in several international instruments to which Switzerland is a state party.

Amnesty International urges the Swiss government to comply with its obligations under international human rights conventions and not enforce to the deportation of non-nationals where doing so would violate the principle of non-refoulement. Switzerland should also grant persons subject to deportation the opportunity to appeal with full procedural safeguards.

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