

New Laws Clamp Down on Refugees

BY CAROLINE ZUERCHER



REUTERS/STEFAN WERNLICH

UPDATE

Swiss Justice and Police Minister Christoph Blocher answers questions from journalists after a cabinet meeting in Bern in April. His ministry is responsible for new laws tightening controls on refugees, which were approved in a plebiscite.

IN A REFERENDUM ON SEPTEMBER 24, 2006, the citizens of Switzerland voted in favour of a revised *Asylum Act* and the new *Foreign Nationals Act* (see box). The campaign leading up to the vote was tense. Those opposing the measures claimed they would violate basic human rights. Wrong, retorted the architects of change, citing abuses of the refugee system. After their defeat, those defending the rights of foreign nationals announced their plan to closely monitor the application of the new regulations – whose implementation among Switzerland’s 26 cantons tends to vary widely.

The first of the laws tightened restrictions on asylum seekers in Switzerland through a revision of the *Asylum Act*. The second came in the form of a new *Foreign Nationals Act*, replacing the one passed in 1931.

Switzerland is not the only country to face sharp criticism for its treatment of refugee claimants. In 2005, the World

Council of Churches denounced what it called a global trend “toward criminalizing refugees, asylum seekers and migrants.”

The Church body singled out Australia, the Bahamas, Canada, Italy, Malaysia, South Africa, the United States and unspecified European countries for their harsh and questionable practices.

In Switzerland, as in many federations, asylum recognition is a federal matter, which is carried out by the Federal Office for Migration.

Three years before the enactment of the controversial laws, the Swiss Parliament had already decided to cut expenditures by refusing welfare benefits to asylum seekers against whom non-admission rulings had been rendered. The rejected asylum seekers have access only to minimal aid: a subsistence-level emergency lump sum benefit designed to encourage them to leave Switzerland as quickly as

[PLEASE TURN TO PAGE 27]

After Two New Laws Came into Effect

Since the *Asylum Act* and the *Foreign Nationals Act* were approved in a referendum in September 2006, advocates of refugee rights in Switzerland have won a few small victories. A watchdog group was created in Geneva in April to document all the errors made by the federal refugee authorities. In its first report, it listed seven cases of alleged miscarriage of justice. And in the Canton of Vaud, a Bosnian refugee family was granted working papers after having been under deportation order since January 2005. A petition with 1,500 signatures helped persuade Bern to grant asylum to the family.

The row over refugee rights in Switzerland reached all the way to the federal cabinet. In May, Micheline Calmy-Rey, the Federal Minister of Foreign Affairs, challenged Christoph Blocher, the Minister of the Federal Department of Justice and Police, to grant asylum to 1,000 refugees from Iraq. Meanwhile, the Swiss government has been levying a special tax of 10 per cent on wages of refugee applicants, to recover the costs of the refugee claims process.

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possible. This system is managed by the cantons, which are funded by the federal government. But, instead of distributing the funds as it does welfare benefits, the federal government doles out one emergency assistance payment per person without considering the recipient's length of stay in the canton. Its critics claim that the federal government is "offloading its financial burdens onto the cantons and communes."

Bern vs the Cantons

As of January 1, 2008, the new Asylum Act will deny social assistance to claimants whose applications have been refused through normal and accelerated procedures alike, and who must leave Switzerland.

In a report dated August 2006, the Swiss Refugee Council claimed that the fate of people denied welfare differed from region to region. While certain regions offered repatriation advice, occupational programs, or, for the most vulnerable, separate reception infrastructures; other regions denied emergency assistance to those entitled to it – even though the Federal Supreme Court, Switzerland's highest tribunal, has ruled the practise unconstitutional. Since the assistance in question amounts to a one-time payment, the regions naturally want rejected asylum seekers to leave, and offer them unattractive schemes – a situation that sees urban areas shell out more than the regions to pay for the departures of the unwanted refugees.

There are also disparities in the so-called "coercive measures," the cantonal authority to imprison rejected asylum seekers who refuse to leave. Since Jan. 1, 2007, the new Foreign Nationals Act allows such deportees to be incarcerated for longer periods. A 2005 parliamentary report cited different practices across the country. In Zurich, for instance, 95 per cent of deportees are kept in custody before being taken to the airport, while in Geneva the rate is only 7 per cent.

Parliament has recently debated the disparities such as the detention of minors, a measure that was put into practice in 17 of the 26 cantons between 2002 and 2004, and avoided or banned by the others. Zurich accounted for nearly half of the approximately 350 cases of incarcerated minors. Deputies, worried that

such practices ran counter to the Convention on the Rights of the Child, and would lead to "manifest inequalities."

How will the new incarceration options be applied? "I don't think that we will witness many arrests," said Roger Schneeberger, the secretary general of the Conference of Cantonal Justice and Police Directors. "A few examples will be made."

High arrest levels are unlikely because prison stays are expensive (on average, 300 francs per day, or about \$240 U.S.) and the establishments themselves are overflowing. "To apply the law in the way the legislators intended it, we would require money for new prisons or the expansion of existing ones," said Giacomo Gemnetti, head of the Tessin

judicial authority. Due to lack of space, immigrants in his canton who are ordered to be detained are sent to Basel, at the other end of the country – at the expense of Tessin's authorities.

Luck of the Draw

There's nothing new about this. Certain regions clearly treat asylum seekers better than others. In this lottery, some are more fortunate than others. But this may change. Requests for asylum in Switzerland are decreasing. Processing time for these demands is thus accelerated and failed asylum seekers are spending less time in Switzerland, lightening the burden on the country's taxpayers. 

Some of the Changes

The Asylum Act changes came from a review that began in 1999.

- Documents: With certain exceptions, the law requires asylum seekers to produce a passport or identity card within 48 hours. Previously, the authorities would accept other forms of identification, such as a driver's licence.
- Provisional admission: This status is granted to persons who cannot be repatriated such as those arriving from war-torn countries. The new law promotes the integration of these migrants, who generally end up settling in Switzerland, through improvements to labour market access and family reunification.
- Cases of hardship: Cantons can grant residence permits to persons who have been in Switzerland for at least five years and have integrated well. What's new is that the article no longer applies only to those whose asylum hearings are pending, but also to those whose cases have been closed.

The New Foreign Nationals Act applies only to non-EU nationals and does not apply to those who fail to produce identity papers.

- Detention: Coercive measures have been reinforced. Persons who have been ordered to leave Switzerland and refuse to do so can be imprisoned. In future, foreign nationals could conceivably spend up to two years behind bars (one year for minors). Those who agree to leave the country are released.
- Work permits: Available only to qualified workers. Priority is given to Swiss and European nationals. Holders of long-term permits can change employment or canton of residence without permission.
- Settlement permits: Until now, settlement permits were issued almost automatically after 10 years. This has been reduced to five years; however, candidates must prove that they have made efforts to integrate.
- Family reunification: Children must join their parents in Switzerland within five years; those aged 12 and over must do so within one year.
- Marriages of convenience: Civil authorities can refuse to wed couples suspected of such an arrangement.
- Integration: Bound by legal provisions for the first time. The privilege of being granted a residence permit may be linked, for example, to taking language classes.