

# SWITZERLAND

## UNIVERSAL PERIODIC REVIEW

### 42nd SESSION

January

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February

2023

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## CRIMINALIZATION OF TORTURE

*3rd round recommendations by Togo, Venezuela, New Zealand and Egypt.*

- In Switzerland, torture is punishable under the Criminal Code (CC) in the context of crimes against humanity (art. 264a CC) and war crimes (art. 264c CC). Outside of these contexts, there is no specific offence that punishes torture. In order to punish an act of torture, the authorities must resort to offences against physical integrity, sexual integrity, honor and freedom. Examples include bodily harm (Art. 123 CC), threats (Art. 180 CC) and coercion (Art. 181 CC).
- Most of the offences that the authorities should use to punish torture are punishable by a custodial sentence of at most three years. In contrast, in the context of crimes against humanity or war crimes, torture is punishable by a custodial sentence of at least five years (Art. 264a and 264c CC). This difference in treatment between similar acts is not compatible with art. 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), which provides that each State party must provide for offences punishable by appropriate penalties that take into account the gravity of the crime of torture.
- Moreover, the criminal action provided for an act of torture is not imprescriptible outside the framework of crimes against humanity and war crimes.
- In order to fill this legal void, National Councillor Beat Flach submitted a parliamentary initiative on December 18, 2020 to introduce the crime of torture autonomously into the catalog of offenses under criminal law. However, the Committee on Legal Affairs of the National Council may at any time decide not to continue the legislative process and not to draft a bill. Therefore, a recommendation in the context of the UPR could have a decisive influence on the process of criminalization of torture in Switzerland.

### Recommendations :

- ✓ *Pursue the legislative process to introduce the crime of torture as a specific and distinct offence in the Criminal Code and provide for penalties commensurate with the seriousness of the act, in accordance with the definition given by the Convention against Torture.*

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## COMPLAINTS REGARDING POLICE VIOLENCE

*Recommendations of the 3rd round by Belarus, Ecuador, France and Central African Republic.*

- Victims of police violence or racial profiling in Switzerland have little chance of seeing their complaints succeed. There is no independent investigative body or appeal mechanism. Despite a series of international recommendations, the situation in Switzerland has hardly changed in 20 years.
- The cantonal mediation office informs victims of the procedures to be followed, confronts the authorities with the facts reported and organizes mediations. This mechanism, which is independent of the executive power, is however only available in 6 out of 26 cantons.
- The criminal complaint, provided for in Article 301 of the Code of Criminal Procedure (CCP), is the main legal remedy for victims. The most frequently applicable offence is the abuse of authority, provided for in article 312 of the Criminal Code (CC).
- According to art. 306 and 307 CCP, police officers are obliged to collaborate with the public prosecutor. Accused police officers and the investigating authorities often have a personal relationship. As a result, of the 140 complaints of abuse of authority registered in Switzerland in 2021, only 4 were convicted.
- In the case of an investigation initiated by the Public Prosecutor's Office, jurisdiction may lie with the Public Prosecutor's Office of the canton where the abuse was committed, with a specific department of the Public Prosecutor's Office or with another canton. This last modality, which offers the best guarantees in terms of independence and impartiality, is insufficiently represented.
- Police forces do not systematically record complaints against police officers and do not make the data available to the public.

### Recommendations :

- ✓ *Combat police violence by introducing independent complaints offices in all cantons, systematically registering complaints against police officers and assigning the conduct of all police violence proceedings to an independent prosecutor from another canton.*
- ✓ *Make police violence statistics publicly available.*