



Bern, 13 July 2022

Report of the National Commission for the Prevention of Torture on the forth Universal Periodic Review of Switzerland

The National Commission for the Prevention of Torture (NCPT) was constituted in 2009 as the National Preventive Mechanism (NPM) in accordance with article 17 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

The NCPT regularly visits places where persons are or could be deprived of their liberty and checks that the human rights and fundamental rights of persons deprived of their liberty are respected. The Commission has access to all information concerning the treatment of people deprived of their liberty and to all places of detention as defined in article 4 OPCAT. In continuous dialogue with the authorities and other relevant interlocutors, the NCPT develops concrete recommendations and contributes to the early detection of potential violations of fundamental rights of persons deprived of their liberty throughout Switzerland.

The NCPT is composed of twelve members appointed by the Federal Council for a four-year term. The work of the Commission is supported by a permanent Secretariat.

Since the last UPR of Switzerland in 2017¹, the NCPT has focused on access to health care in correctional facilities and the situation of asylum seekers in federal asylum centers. The NCPT has also continued its work on forced return operations. The NCTP has published several thematic reports on these areas of concern and relevance to fundamental rights.²

¹ Cf. Report of the National Commission for the Prevention of Torture (NCPT) on the third Universal Periodic Review of Switzerland of 28 March 2017.

² All reports and statements can be found on the website of the NCPT: <https://www.nkvf.admin.ch>.



I. Recommendations made by the UPR³

A45 National Human Rights Institution (NHRI)

Establish an independent national human rights institution⁴

1. The NCPT welcomes the approval by the Swiss Parliament of the project for the establishment of a National Human Rights Institution (NHRI) on 1 October 2021.
2. However, the NCPT notes with great concern that the proposed budget of one million Swiss francs for the work of the NHRI does not correspond to its comprehensive mandate to promote and protect human rights in Switzerland. With this budget, the NHRI will not be able to fulfil the tasks assigned to it by federal law. The NHRI will have to set priorities, which will severely limit the effective exercise of its mandate.

D25 Prohibition of torture and cruel, inhuman or degrading treatment

Definition of torture and establishment of torture as a criminal offence⁵

3. As mentioned in previously published statements⁶, the NCPT supports this recommendation and the inclusion of a new article in the Swiss Criminal Code⁷.

Establish an independent mechanism empowered to receive complaints relating to violence and ill-treatment by law enforcement officers and investigate cases of cruel treatment⁸

³ The numbering of the recommendations refers to the paragraph numbers as listed in the Report of the Working Group on the Universal Periodic Review – Switzerland of 29 December 2017, A/HRC/37/12.

⁴ 146.11, 146.12, 146.13, 146.14, 147.5, 147.6, 147.7, 147.8, 147.9, 147.11, 147.12, 147.13, 147.14, 147.15, 147.16, 147.17, 147.18, 147.19, 147.20, 147.21, 147.22, 147.24. All accepted by Switzerland.

⁵ 148.50 Establish torture as a criminal offence, in terms fully in line with article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Togo); 148.52 Include a definition of torture in its Criminal Code incorporating all elements contained in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (New Zealand); 148.51 Typify torture as a specific crime, with all the elements of the definition of article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; take measures to prevent police brutality, particularly against migrants, asylum seekers and foreigners; and adopt an effective and independent mechanism to address such complaints (Bolivarian Republic of Venezuela); 148.53 Incorporate in the criminal code and the military criminal code clear provisions that prohibit all forms of torture (Egypt). All rejected by Switzerland.

⁶ Cf. NCPT, *Einführung des Foltertatbestands im schweizerischen Strafgesetzbuch*; NCPT, *Prise de position de la Commission nationale de prévention de la torture (CNPT) au Comité des Nations unies contre la torture (CAT) concernant le 7ème rapport périodique de la Suisse*, 2015; NCPT, Report of the National Commission for the Prevention of Torture NCPT on the third Universal Periodic Review of Switzerland, 28th March 2017.

⁷ Swiss Criminal Code of 21 December 1937, SR 311.0.

⁸ 146.57 Establish an independent mechanism empowered to receive complaints relating to violence and ill-treatment by law enforcement officers, and conduct timely, impartial and exhaustive inquiries into such complaints (Ecuador); 146.56 Investigate cases of cruel treatment by law enforcement officers during the arrest, custody and interrogation of suspects and ensure that the perpetrators are brought to justice (Belarus); 146.59 Adopt appropriate measures against perpetrators of police brutality that affect some asylum seekers, migrants and others (Central African Republic). All accepted by Switzerland.



4. During its monitoring visits to police stations, the NCPT regularly notes that the possibility to launch a complaint with an *independent* mechanism following violence or ill-treatment by law enforcement officials is not guaranteed.
5. In its recommendations to the cantonal authorities⁹ the NCPT encourages them to establish an independent complaints body to which persons currently in custody or already released can turn to investigate allegations of disproportionate use of force by or discrimination by law enforcement officials. Furthermore, the Commission recommends them to publish statistics on the number and type of complaints and their status (resolution).¹⁰
6. In the course of its detention visits, the NCPT observed that the recording of indications of the use of violence is not carried out uniformly in Switzerland. They are only systematically recorded in the French and Italian speaking parts of Switzerland. Protocols are also only forwarded to the competent authorities or the management with the consent of the person concerned. In this context, the Commission is of the opinion that such cases should be systematically referred to an independent body for in-depth examination.

Independent inquiries on the excessive use of force during expulsions of persons from the territory¹¹

7. In 2012, the State Secretariat for Migration mandated the NCPT to monitor forced returns by air at enforcement level 4¹², i.e. the police-escorted removals, transfers to the airport, organisational measures taken at the airport and the flight.
8. The Commission addresses its findings and recommendations concerning forced returns by air to the relevant national and cantonal authorities in specialised dialogues and publishes an annual report¹³. While the NCPT engages into fact-finding with respect to individual cases by asking the authorities to explain their action, it has neither the role of an independent inquiry institution nor decision-making power regarding individual cases.¹⁴ The role of the observers involved in monitoring forced repatriations by air is limited to reporting the facts observed.
9. The NCPT repeatedly criticizes the systematic use of physical restraints (shackles) during transfers to the airport, preparations at the airport and during flights. The prac-

⁹ Police sovereignty lies with the cantons in Switzerland.

¹⁰ Cf. NCPT, *Bericht der Nationalen Kommission zur Verhütung von Folter an den Regierungsrat des Kantons Aargau über den Besuch des Polizeikommandos Aarau-Telli und der Polizeistützpunkte Aarau-Amtshaus und Schafisheim am 2. Juni 2021*, 31 January 2022 (Report to the authorities of canton Aarau following visits to several police stations), para. 50-53.

¹¹ 146.58 Open up independent inquiries on the excessive use of force during expulsions of persons from the territory of the Confederation (France, accepted by Switzerland).

¹² Article 28 para. 1 of Ordinance on the Use of Police Control and Restraint Techniques and Police Measures under Federal Jurisdiction (Use of Force Ordinance, UFO) of 12 November 2008, SR 364.3.

¹³ Cf. last report NCPT, *Rapport au Département fédéral de justice et police (DFJP) et à la Conférence des directrices et directeurs des départements cantonaux de justice et police (CCDJP) relatif au contrôle des renvois en application du droit des étrangers, d'avril 2020 à mars 2021*.

¹⁴ Cf. Article 2 of the Federal Law on the Commission for the prevention of torture of 20 March 2009, SR 150.1.



tice of using physical restraints remains very inconsistent in the cantons. The Commission recommends that the practice be harmonized throughout Switzerland.

10. Occasionally, the NCPT considers the use of force to be excessive.¹⁵
11. Occasionally, the NCPT observes that families are separated during the forced separation and one family member is being repatriated whilst the other stays in Switzerland. Occasionally, the Commission observes that children are interpreting between their parents and the authorities and that their parents are shackled in front of them. The NCPT urged the authorities to duly take into account the child's best interest.

D26 Conditions of detention

Reduce overcrowding and improve health facilities in prisons¹⁶

12. In December 2020, the NCPT conducted a monitoring visit to the prison of Champ-Dollon in canton of Geneva in the context of the Covid-19-pandemic.
13. On the day of the visit (17 December 2020), Champ-Dollon prison had an occupancy rate of more than 150%, i.e. 602 prisoners for an official capacity of 398. The Commission was concerned that the chronic overcrowding of Champ-Dollon prison makes an effective management of the pandemic and implementation of public health measures impossible. The Commission recommended to the cantonal authorities to put an end to the chronic problem of overcrowding in this particular prison. In addition it recommended that immediate and urgent measures are taken to reduce the number of people detained in the facility in view of other infection waves of the ongoing Covid-19-pandemic.
14. From 2017 on the NCPT has conducted monitoring visits to places of detention focusing on the availability of and access to health services in these facilities.¹⁷
15. In general terms, the NCPT rates the quality of health care in the visited places of detention as correct. Regarding the epidemiological legal requirements, the NCPT finds considerable differences with regard to the modalities of the medical entry examination. For instance, the NCPT finds the current basic psychiatric care to be insufficient. There is a need for action in suicide prevention. The NCPT finds that in small and

¹⁵ Once the NCPT reminded authorities not to handcuff children (in one particular case an 11 years old child). Occasionally, the Commission also observes the handcuffing of pregnant women.

¹⁶ 147.43 Increase resources to reduce overcrowding and improve health facilities in prisons, and follow the National Commission for the Prevention of Torture recommendations on youths and juveniles in pretrial detention (United States of America, accepted by Switzerland); 146.60 Take necessary steps to find a final solution to the problem of overcrowding in some prisons in Switzerland (Russian Federation, accepted by Switzerland); 148.55 Take measures to reduce prison overcrowding in the country, particularly in the Champ-Dollon prison, and ensure that no one is detained preventively beyond 48 hours (Bolivarian Republic of Venezuela, rejected by Switzerland).

¹⁷ Monitoring the availability of and access to health services in detention facilities has been an essential component of the monitoring activities since the establishment of the Swiss Preventive Mechanism in 2010. Additional financial support allowed the NCPT to put a greater focus on this issue.



mixed-gender detention facilities, the recognition of and response to women's specific health needs were taken into account to a limited extent.

Administrative detention of minors¹⁸

16. In June 2019, the NCPT was informed by the prison management during its visit to the regional prison of Moutier in the canton of Bern that women and minors over the age of 15 years could also be placed in administrative detention in the prison.¹⁹ According to the statistics reviewed by the Commission, one minor (17 years old) was held in administrative detention for 11 days (2018) and again for 34 days (2019). On the day of the visit, the delegation did not encounter any minors. The NCPT is of the view that juveniles should not be detained for immigration law purposes.

G4 Migrants²⁰

Protection of the human rights of migrants²¹

17. The NCPT regularly conducts monitoring visits to all federal asylum centers and publishes a thematic report summarizing observations and recommendations.²² The NCPT refers in its last report 2019-2020 to several situations in which the security staff intervened with physical restraints and pepper gel. Several people who observed such situations assessed that the actions of the security staff seemed excessive in some cases. Moreover, several criminal proceedings against security staff were initiated on the basis of criminal complaints filed by asylum seekers. The allegations are of disproportionate or arbitrary violence and abuse of authority.
18. According to the NCPT, there is considerable potential for improvement in dealing with conflicts, violence prevention and allegations of violence, namely through the introduction of a low-threshold and systematic complaints management. The NCPT acknowledges that a more proactive approach to the issues of management and violence has been put in places since the external overview (Oberholzer investigation report²³). The creation of an external reporting office was postponed because of the influx of Ukrainian refugees.

¹⁸ 147.45 Put an end and abolish the administrative detention of minors and separate them from adults in detention (Syrian Arab Republic, rejected by Switzerland).

¹⁹ Cf. Article 79.2 Swiss Criminal Code of 21 December 1937, SR 311.0.

²⁰ Please refer also to para 28-31.

²¹ 147.60 Strengthen measures to improve the protection of the human rights of all migrants (Plurinational State of Bolivia);

146.116 Protect effectively the rights of refugees and migrants and adopt concrete measures to combat and prevent xenophobic violence (China). Both accepted by Switzerland.

²² Cf. also point G5 Refugees & asylum seekers.

²³ Following accusations by non-governmental organisations and the media, former federal judge Niklaus Oberholzer was commissioned by SEM to investigate whether violence is being systematically used in federal asylum centres.



G5 Refugees & asylum seekers

Minimum/Unified reception standards in Federal and Cantonal reception centres²⁴

19. The NCPT regularly conducts monitoring visits to all federal asylum centers. Since January 2021, the Commission has been focusing on the treatment and accommodation of unaccompanied minors (UAM).
20. In its last thematic report the NCPT found that efforts were needed to better identify vulnerable persons, handle conflicts and to introduce violence and complaints management. The Commission criticized the handling of physical searches and disciplinary measures, and, in some cases, the infrastructure. The NCPT also concluded that the psychiatric care for asylum-seekers accommodated in the federal asylum centers is generally limited to emergencies.

Continue to examine all potential risks of human rights violations, which rejected asylum seekers may face when they are deported to other countries.²⁵

21. As mentioned above²⁶ the NCPT monitors forced returns by air at enforcement level 4. The NCPT's monitoring mandate ends when the forced returnee leaves the aircraft. Knowing that the arrival phase can also be sensitive, the NCPT has concluded a Memorandum of Understanding with the NPM of Kosovo in 2019. The Kosovo NPM systematically observes the arrival of the forced returnees upon arrival in Kosovo. The NCPT is interested in concluding further agreements with NPMs in countries to which forced returns are directed.

²⁴ 147.62 Ensure minimum reception standards in Federal and Cantonal reception centres across the country (Afghanistan, accepted by Switzerland); 148.66 Provide cantons with unified standards for housing and living conditions for asylum seekers and refugees (Canada, rejected by Switzerland).

²⁵ 146.117 Continue to examine all potential risks of human rights violations, which rejected asylum seekers, may face when they are deported to other countries, especially in cases where asylum seekers' children are concerned (Republic of Korea, accepted by Switzerland).

²⁶ Cf. Para 7-11 and 31+32.



II. Concerns of the NCPT not covered by the UPR recommendations

22. The NCPT wishes to draw the attention to following issues which are not covered by the UPR recommendations.

A. Federal Act on Police Measures to Combat Terrorism (PMT Act)

23. On 1 June 2022 the Federal Act on Police Measures to Combat Terrorism (PMT) has entered into force.

24. In a formal letter to the Swiss authorities²⁷, five UN Special Rapporteurs expressed their concerns about the draft law as it violates human rights and fundamental freedoms, including the right to liberty and fundamental freedoms, including the right to liberty and security of the person, freedom of movement, freedom of association and peaceful assembly, freedom of religion, the right to work, the right to education and the right to private and family life.

25. The NCPT rejected in a published opinion²⁸ the introduction of a new ground for detention with a view to forced returns under the Federal Act on Foreign Nationals (FNA)²⁹ and the introduction of a new reason for ordering solitary confinement in the Swiss Criminal Code. The addition to the grounds is intended "to prevent other prison inmates from being influenced by ideas that may encourage them to carry out terrorist activities".³⁰ The NCPT is of the opinion that solitary confinement is by no means an efficient measure for combating terrorist ideas and recommends to the authorities that social, integrative or therapeutic measures be introduced instead. If, in individual cases, solitary confinement is nevertheless ordered on the basis of the existing grounds for the order, it must always be proportionate, lawful, justified, necessary and non-discriminatory.

B. Administrative detention of foreign nationals

26. The NCPT has expressed its concern to the cantonal authorities about the material conditions of administrative detention (often prison-like establishments instead of specialized establishments) and the excessive restrictions to which this category of detainees is subjected, particularly with regard to freedom of movement within the detention center (i.e. time outside the cell, access to and time in a prison yard) and con-

²⁷ Cf. *Mandats de la Rapporteuse spécial sur la promotion et la protection des droits de l'homme et des libertés fondamentales dans la lutte antiterroriste; de la Rapporteuse spéciale sur les exécutions extrajudiciaires, sommaires ou arbitraires; du Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression; du Rapporteur spécial sur la liberté de religion ou de conviction; et du Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants*, 26 May 2020.

²⁸ Cf. NCPT, *Stellungnahme der Nationalen Kommission zur Verhütung von Folter (NKVF) zum Bundesgesetz über polizeiliche Massnahmen zur Bekämpfung von Terrorismus (PMT)*, 26 March 2018.

²⁹ Article 75 para. 1 letter. i, Article 76 para. 1 letter. b item 1 and Article 76a paragraph 2 letter j Federal Act on Foreign Nationals (FNA) of 16 December 2005, SR 142.20.

³⁰ Article 78 letter d Swiss Criminal Code of 21 December 1937, SR 311.0. Entry into force on 1 June 2022.



tact with the outside world. With the exception of a few establishments offering a regime that fully complies with human rights standards, the vast majority of the establishments visited by the NCPT do not differentiate the detention regime according to the type of detention due to a lack of adequate premises and/or sufficient staff. These restrictions are also not in conformity with the recent case-law of the Federal Court.³¹

C. Police detention

27. With regard to police detention in the canton of Vaud, the Commission noted in 2014 and 2019 with concern that the material conditions of police detention, in particular the cramped conditions of the cells and the lack of access to daylight in view of the excessive length of stay of persons under provisional arrest or pretrial detention amounted to inhumane treatment.³² This was also confirmed in the last report of the CPT after its visit to Switzerland in 2021.³³

D. Cantonal centers for rejected asylum seekers

28. In 2021, the canton of Bern commissioned the NCPT to monitor three centers accommodating rejected asylum seekers with a legally binding removal decision.³⁴
29. The NCPT considered that the general housing situation in the two centers accommodating families with children was critical for all residents and inhumane for children and their families. The NCPT concluded that the cramped conditions and the lack of retreat and playing facilities for children and adolescents were not compatible with the UN Convention on the Rights of the Child³⁵, in particular with the right to adequate living conditions enshrined in article 27 and with the right of children to rest and leisure and to play and active recreation appropriate to their age enshrined in article 31.
30. Moreover, the NCPT recommended to the cantonal authorities that children of school age should generally be educated in the public school. In-center education must be objectively justified on a case-by-case basis and must not be provided for longer than is necessary and must follow the curriculum of the public school.

³¹ Cf. BGer 2C_447/2019 of 31 March 2020, E. 7.1. and 6.2.2: "The admissibility of separate detention in a special tract of a regional prison can only be in the range of a few hours or days" (translation NCPT).

³² Cf. NCPT, *Visite de suivi de la CNPT au Poste de police de la Blécherette*, 14 November 2019 ; "Eu égard à ces constats, la Commission est d'avis que toute détention allant au-delà de 48 heures continue à s'apparenter à un traitement inhumain au sens de l'article 3 de la Convention européenne des droits de l'homme (CEDH)".

³³ Cf. para 41 *Rapport au Conseil Fédéral suisse relatif à la visite effectuée en Suisse par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 22 mars au 1^{er} avril 2021*, 16 November 2021.

³⁴ Cf. Report *Überprüfung der Rückkehrzentren des Kantons Bern durch die Nationale Kommission zur Verhütung von Folter (NKVF) Mai - August 2021*, 30. November 2021.

³⁵ Convention on the Rights of the Child (CRC) of 20 November 1989, GA Res. 44/25.



E. Forced returns by air during the pandemic

31. In October 2021, the Swiss Parliament amended article 72 of the Federal Act on Foreign Nationals³⁶. According to the new article 72(2), the authority responsible for removal or expulsion may require a person to undergo a COVID-19 test against his or her will in order to ensure the enforcement of removal or expulsion.
32. The NCPT published an opinion stating that these forced tests could cause serious harm to the physical and psychological integrity of the persons concerned. The NCPT considers that it is disproportionate to carry out a forced test for COVID-19 under duress.

³⁶ Cf. Federal Act on Foreign Nationals (FNA) of 16 December 2005, SR 142.20.