Progress report

Concerning torture and cruel, inhuman or degrading treatment or punishment in Switzerland (Switzerland's eighth periodic report 2019)

77th session of the Committee against Torture (CAT)
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This report is submitted by the Swiss NGO Platform for Human Rights ("the Platform"), which brings together over 100 non-governmental organizations from French-, German- and Italian-speaking Switzerland. The Platform coordinates the work of NGOs active in the field of human rights, in particular the preparation of alternative reports for international committees and participation in the implementation of international recommendations made to Switzerland.

The aim of this progress report is to inform The United Nations Committee Against Torture ("the Committee") about the main developments concerning the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) by the Swiss authorities since the adoption of the Concluding observations on the eighth periodic report of Switzerland on July 24, 2023.

The following NGOs contributed to the report:

Platform members:

- ACAT-Switzerland (coordination)
- Amnesty International
- Association for the Prevention of Torture (APT)
- AsyLex
- Fachstelle Frauenhandel und Frauenmigration (FIZ)
- humanrights.ch
- InterAction
- Pink Cross
- Pro Mente Sana, association for French-speaking Switzerland
- Swiss Refugee Council (OSAR)

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A. List of abbreviations

ACAT	Christian Actions for the Abolition of Torture
AIDA	Asylum Information Database
AMIF	Asylum, Migration and Integration Fund
APT	Association for the Prevention of Torture
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SR 0.105)
CCDJP	Conference of Cantonal Justice and Police Directors
CEDAW	Committee on the Elimination of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CHF	Swiss franc
Committee	Committee against Torture
CRC	Committee on the Rights of the Child
CSDSC	Conference of Security Directors of Swiss Cities
ECHR	European Convention on Human Rights (SR 0.101)
ECRI	European Commission against Racism and Intolerance
ECtHR	European Court of Human Rights
FAC	Federal Administrative Court
FC	Federal Council
FDFA	Federal Department of Foreign Affairs
Fed. Cst.	Federal Constitution of the Swiss Confederation (SR 101)
Fedpol	Federal Office of Police
FIZ	Fachstelle Frauenhandel und Frauenmigration
FNIA	Foreign Nationals and Integration Act
FSC	Federal Supreme Court of Switzerland
GANHRI	Global Alliance of National Human Rights Institutions
HRC	Human Rights Council
Ibid.	Ibidem
LAC-N	Legal Affairs Committee of the National Council
LAC-S	Legal Affairs Committee of the Council of States
LOS	Lesbenorganisation Schweiz (Lesbian organization Switzerland)
MdM	Médecins du Monde
MoP	Members of Parliament
NC	National Council

NCE	National Advisory Commission on Biomedical Ethics
NCPT	National Commission for the Prevention of Torture
NGO	Non-governmental organization
Obs.	(Concluding) observation
OCA	Office de consultation sur l’asile (Asylum Consultation Office)
OMCT	Organisation mondiale contre la torture (World Organisation Against Torture)
Platform	Swiss NGO Platform for Human Rights
PTSD	Post-traumatic stress disorder
SAMS	Swiss Academy of Medical Sciences
SCC	Swiss Criminal Code (SR 311.0)
SEM	State Secretariat for Migration
SHRI	Swiss Human Rights Institution
SIHR	Swiss Institution for Human Rights
SLAPP	Strategic Lawsuit Against Public Participation
SR	Systematic register of Swiss law
SRC	Swiss Refugee Council
SVP	Schweizerische Volkspartei (Swiss People's Party)
TGNS	Transgender Network Switzerland
UN	United Nations

B. Progress report

1. Preliminary remarks

This progress report is based on the observations of the NGOs that are members of the Platform. Its purpose is to identify the main developments in the implementation of the CAT by the Swiss authorities since the adoption of the Concluding observations on the eighth periodic report of Switzerland on July 24, 2023.[1] The structure of the report follows the order of the recommendations made by the Committee.

2. Definition of torture

Recommendation 10: The Committee strongly encourages the State party to take all appropriate steps to ensure the adoption, by no later than 29 March 2024, of legislation providing for a definition of torture that is applicable in all situations and to ensure that the legislation ultimately adopted covers all forms of torture as described in the Convention.

Recommendation 12: The State party should ensure that the legislation referred to in paragraph 10 above complies with all relevant provisions of the Convention, including by ensuring:

(a) That the prohibition of torture is established as absolute and non-derogable in national legislation and that no exceptional circumstances, including a state of emergency or threat of war, can be used to justify the use of torture;

(b) That an order from a superior officer or public authority may not be invoked as a justification for torture and that there is no exception to the rule that an accused person may not claim that he or she was not aware that an act of torture was an offence;

(c) Minimum penalties for those responsible for the crime of torture that are commensurate with the gravity of the crime, as set out in article 4 (2) of the Convention, including by increasing the penalties imposed on superiors who are aware that a subordinate is carrying out or may carry out an act of torture but fails to take appropriate measures to prevent the act and for acts of torture that qualify as war crimes or crimes against humanity;

(d) That, since the prohibition of torture is absolute, there is no statute of limitations for acts of torture, such that persons who commit or are complicit in such crimes can be effectively investigated, prosecuted and punished;

(e) The application of criminal penalties not only to officials who directly perpetrate torture but also to those who act with the consent or acquiescence of a public official or other person acting in an official capacity, and the application of such penalties not only in respect of the direct perpetration of torture but also in respect of any acts that constitute complicity or participation in torture;

(f) The establishment of jurisdiction over the offence of torture in any situation in which the alleged offender is present in its territory, even if the conduct in question occurred outside the territory of the State party and neither the perpetrator nor any of the victims were nationals of the State party, and the adoption of provisions to ensure that, in any case in which a person alleged to have committed torture is found in its jurisdiction, the State party, if it does not

[1] CAT, CAT/C/CHE/CO/8, 24/07/2023.

extradite the person, is to submit the case to its competent authorities for the purpose of prosecution;

(g) That victims of acts of torture can obtain redress and have an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.

Obs. 10 – 12

The deadline for implementing this recommendation has been extended. Close monitoring of the legislative process is still required.

National Councillor Beat Flach submitted a parliamentary initiative on February 4, 2022, calling for the adoption of a specific provision against torture in the Criminal Code.[2] The deadline for dealing with this initiative was March 29, 2024. At the beginning of this year, the National Council voted in favour of an additional two-year processing period, which now runs until March 29, 2026.[3] The project first has to be drafted by the Legal Affairs Committee of the National Council (LAC-N). It will then be submitted to the plenary of the National Council and the Council of States for comment and approval. During each of these political steps, Members of Parliament (MoP) will decide whether, and to what extent, they intend to comply with the recommendations made by the Committee in its Concluding observations. The legislative process for the adoption of a legal definition of torture is therefore likely to be lengthy.

During the drafting process, specific attention will have to be paid to the wording of the provision. In addition to the requirements raised by the Committee, MoP will also have to consider issues that are specific to the Swiss legal system, such as the possibility of extending the scope of the law to members of private companies acting under a delegation of power from an authority, e.g. employees of the guarding companies 'Securitas AG' or 'Protectas AG' in federal asylum centres on behalf of the State Secretariat for Migration (SEM), the question of the division of competences between the cantonal Public Prosecutors' Offices and the Federal Public Prosecutor's Office in cases where the crime is committed abroad and neither the perpetrator nor the victim are Swiss nationals, or the possibility of holding members of non-state actors accountable.

To support its its work, the LAC-N has asked the Federal Office of Justice (FOJ) to submit two draft bills.[4] In this context, ACAT-Switzerland and the Swiss Section of Amnesty International met with the Head of the International Criminal Law Unit of the FOJ on November 9, 2023. We hope to be able to count on their understanding of the issues at stake in order to produce draft laws that fully comply with the Committee's recommendations.

3. Fundamental legal safeguards

Recommandation 14: Recalling the recommendation contained in its previous concluding observations,4 the Committee calls on the State party to take appropriate steps to ensure that persons who are deprived of their liberty have the benefit of all fundamental legal safeguards from the very outset of the deprivation of liberty, including the right to be assisted by an

[2] Parliamentary initiative Beat Flach, 20.504, "Inclusion of torture as such in the catalog of offences under Swiss criminal law", 18/12/2020.
[3] ACAT-Switzerland, TRIAL International, Amnesty International - Swiss section, OMCT, the APT, Notre Droit and humanrights.ch supported the vote in favor of extending the deadline for the process of the initiative Flach, in particular by drawing up and distributing the arguments set out in Annex 1. The vote was won by 123 votes to 64. The main opposition came from the Swiss People's Party.
[4] See: NC, 20.504 - Bericht der Kommission für Rechtsfragen vom 16. November 2023, 16/11/2023.

independent lawyer of their choice, and to have access to qualified, independent and free legal aid, if needed.

Obs. 13 - 14

The situation remains a cause for concerns.

Prisoners in pre-trial detention or in early execution of sentences and measures often tell NGOs providing legal assistance to people deprived of their liberty, such as humanrights.ch, that they do not trust their official defence and would like to change their legal representative. However, their request for an independent lawyer of their choice is often rejected by the prosecutor's office. The granting of free legal representation continues to be handled very differently from canton to canton.

Under article 429 and 430 of the Swiss Civil Code (SR 210), a person can still be forcibly hospitalized in a psychiatric institution by order of a doctor without immediate access to a legal representative.

4. National Human Rights Institution

Recommendation 16:

The State party should also ensure that the human, technical and financial resources necessary to enable the SIHR to discharge its mandate effectively and with full independence, in accordance with the Paris Principles, and strengthen the mandate of the SIHR to ensure that is able to receive and deal with individual complaints, including allegations of torture or ill-treatment.

Obs. 15 -16

Despite initial efforts to implement this recommendation, the lack of sufficient resources is likely to pose major difficulties in the future.

The Swiss Human Rights Institution (SHRI) was established by a revision of the Federal Act on Measures for Civil Peace Support and the Promotion of Human Rights (SR 193.9), which entered into force on January 1, 2023. The SHRI was officially founded on May 23, 2023. Its headquarters are now located in Fribourg.

According to article 10*b*, paragraph 1 of the aforementioned law, the institution's tasks are a) information and documentation, b) research, c) advice, d) promotion of dialogue and cooperation, e) human rights education and awareness-raising, and f) international exchanges. As intended by the legislator, the SHRI will not be competent to receive and process individual complaints.

The SHRI is not yet operational. Its committee is chaired by Raphaela Cueni and has five other members. Its director, Stefan Schlegel, took up his post on February 1, 2024. The secretariat, which will be responsible for the day-to-day running of operations, currently has only three employees. At this stage, the institution is in the process of assessing its most pressing areas of concern in the field of human rights in Switzerland. It is likely to expand its team once its priorities have been defined.

The federal contribution of only CHF 1 million per year, renewable after four years, as well as its sole source of funding (the Federal Department of Foreign Affairs, FDFA), remain highly

problematic. It is to be feared that, with such limited financial resources, the SHRI will not be able to carry out the tasks assigned to it by the Principles relating to the Status of National Institutions (The Paris Principles). The prospect of being accredited with the A Status of the Global Alliance of National Human Rights Institutions (GANHRI) is not guaranteed at all. Since the adoption of the Concluding observations by the Committee last year, there has been no sign of political will to increase this budget.

On a more positive note, exchanges are taking place between key players in the Swiss human rights field, notably the SHRI, the National Commission for the Prevention of torture (NCPT) and civil society. Discussions focus in particular on the SHRI's involvement in the drafting of treaty body reports, possible support for strategic litigation and possible forms of cooperation between SHRI, NCPT and civil society, in the light of limited resources.

5. National Preventive Mechanism

Recommendation 18:

a) Take all appropriate steps to ensure that sufficient funding and other resources are allocated to ensure that the National Commission for the Prevention of Torture can effectively and independently fulfil its mandate, in accordance with article 18 (1) and (3) of the Optional Protocol

b) Ensure that effective mechanisms are put in place to ensure that recommendations of the National Commission are fully and properly addressed by all relevant recipients of those recommendations; and ensure that any needed revisions are made to law and policy to assure appropriate confidentiality will be maintained for the Commission's records.

Obs. 17 - 18

a) The funding of the National Commission for the Prevention of Torture (NCPT) is likely to be reduced over the next years. The NCPT currently receives a fixed budget from the Swiss authorities. For some projects, it receives additional funding limited to two, three or four years, depending on the project. The budget for 2022, which included funding for specific projects, amounted to CHF 1,228,400. However, it is possible that some of these projects will not be continued, and that the NCPT will have to significantly reduce certain activities.

b) This recommendation has not been implemented.

6. Non-refoulement

Recommendation 20:

(a) Ensure that no person may be expelled, returned or extradited to another State where there are substantial grounds for believing that the individual concerned would run a personal and foreseeable risk of being subjected to torture;

(b) Guarantee that all asylum seekers have the opportunity of an individual review and are effectively protected from any such return;

(c) Ensure consistent and full use of the Istanbul Protocol in asylum evaluations.

Obs. 19 - 20

Concerning cases of non-refoulement related to human trafficking, please refer to section 16 of the report (Trafficking in persons).

a) and b) Serious violations principle of non-refoulement were observed.

General observation:

Official data provided by Swiss authorities indicates that the number of deportations in Switzerland have increased dramatically since the Committee issued its recommendations. The number of returns of asylum seekers, both towards countries of origin and Dublin States, have skyrocketed, making Switzerland one of the European countries with the highest deportation implementation rates.[5] In total, 5,742 rejected asylum seekers left Switzerland, 19,6% more than in 2022 (excluding the data on Ukrainian asylum seekers). This increase goes hand in hand with the heightened risk of expulsions contrary to the principle of non-refoulement. Most concerningly, 64,8% of these returns were forcibly carried out to destinations such as Turkey, Iraq, Georgia and Algeria. The SEM increased its cooperation with some of these countries to establish return-agreements and to organize special flights to forcibly return rejected asylum seekers.[6]

Country-specific examples

Croatia:

The observations concerning the violation of the principle of non-refoulement in the context of forced returns to Croatia are particularly worrying and illustrates a failure to comply with the Committee's recommendations.

Lack of access to safe medical treatment: Médecins du Monde (MdM), the only organisation providing medical and psychological assistance in asylum centres in Croatia, had to cease its services in May 2023 due to lack of funds to maintain its activities. As a result, MdM was not able to provide medical assistance in the asylum centers from May to August 2023. The SEM is providing funding to bridge the gap until MdM can reapply for funding from the Croatian government through the European Asylum, Migration and Integration Fund (AMIF), but this situation is extremely fragile. Initially, Swiss funding was only expected to run until the end of 2023. As the Croatian government did not re-allocate the medical mandate by then, the SEM then extended its commitment until the end of February 2024, and then again until the end of March 2024. To date, the situation has not changed and there is still no official funding from the Croatian government. The dependence on the constant renewal of this financial support makes the situation highly unpredictable. The lack of official funding in the form of a reallocated mandate from the Croatian government is still missing. It highlights the volatile and uncertain situation regarding the ability of Croatian asylum centers to provide medical care to asylum seekers. Accordingly, MdM stated in September 2023 that the funding granted by the SEM to this project underscores the shortcomings of the Croatian healthcare system.[7] This situation is all the more absurd, as the beneficiary organisation MdM itself clearly warns against Dublin transfers, stating that this solution does not take into account the whole system but is nothing more than a patchwork solution. Moreover, Switzerland only covers the costs of medical treatment for asylum seekers returning from Switzerland to Croatia under the Dublin agreement. MdM thus further added in its statement that the SEM's decision was a strategic decision to use MdM as an instrument to carry out deportations to Croatia. Even with the

[5] More rejected asylum seekers left Switzerland in 2023 than in the previous year. See: SEM, Personnes frappées d'une décision de renvoi : hausse des départs en 2023, 30/01/2024.
[6] Ibid.
[7] MdM, Médecins du Monde soigne et témoigne en toute indépendance et réaffirme son opposition aux renvois vers la Croatiev, 15/09/2023, accessed on 12/03/2024.

temporary funding, the actual situation on the ground regarding medical care is clearly insufficient. MdM, which is closely observing the realities, stated in September 2023 that the system falls short of ensuring adequate healthcare access and fails to transform Croatia into a “safe” return destination.[8] This is particularly detrimental to persons suffering from severe health conditions and in need of a stable therapeutic environment.

Lack of access to the asylum system: The very low number of people recognized as refugees in Croatia is shocking: In 2022, out of 12,872 asylum applications, only 21 persons were recognized as refugees, while 82 asylum requests were rejected.[9] This apparent contrast with other states in the Common European Asylum System, clearly indicates Croatia's unwillingness to fulfil its responsibilities under national, European and international law. Since the Committee’s recommendations, there has been another highly concerning development: AsyLex observed that Croatian authorities were issuing so-called 7-day letters to people seeking asylum in Croatia. These letters stipulate that migrants must leave Croatia within 7 days without ever being given the opportunity to submit an asylum application or have their grounds for asylum heard. Consequently, this demonstrates a lack of access to the asylum system in Croatia, as migrants are not even able to submit asylum requests.

In light of the above, Switzerland's current practice of returning asylum seekers to Croatia may violate the principle of non-refoulement.

Greece:

Despite the Federal Administrative Court (FAC)'s decision on 28 March 2022, that vulnerable persons, such as children and the severely ill, with refugee status should only be deported to Greece under favorable circumstances,[10] and the Committee's instructions to Switzerland to implement its recommendations in the context of protection against refoulement, AsyLex continues to observe highly problematic deportations of persons with protection status to Greece. Due to the dysfunctional support mechanisms in Greece, refugees are exposed to extreme poverty, sexual violence, trafficking, homelessness and lack of access to health care, legal remedies and state protection upon their return to Greece.

AsyLex has witnessed the deportation to Greece of extremely vulnerable women asylum-seekers suffering from post-traumatic stress disorder (PTSD) and victims of severe gender-based sexual violence in Greece, which is incompatible with the principle of non-refoulement.

Additionally, in one particularly tragic case, one of the clients of AsyLex committed suicide in a psychiatric hospital last summer due to the threat of deportation to Greece, despite the fact that his vulnerability was known to the authorities.

This practice is another example of Switzerland's failure to implement the Committee’s recommendations.

Eritrea:

In the Eritrean context, Switzerland's practice remains worrying, despite the relevant recommendations of the Committee in the context of non-refoulement. Switzerland does not

[8] Ibid.
[9] Aida, Country Report: Croatia, 19/06/2023.
[10] FAC, E-3427/2021, E-3431/2021, 28/03/2022.

have a readmission agreement with Eritrea, which means that it is not possible to forcibly return rejected asylum seekers to the country. Nevertheless, Switzerland pursues a policy of forcing rejected asylum seekers from Eritrea to return "voluntarily". This strategy, often referred to as 'constructive refoulement', involves various measures aimed at pressuring Eritreans to return to their home country against their will. These include placing individuals in shelters with inadequate living conditions, prohibiting them from working, threatening not to renew rental contracts for privately housed individuals, providing personal information to the Eritrean government, and considering the fact that a "diaspora tax" has to be paid or a "letter of regret" has to be signed in order to obtain identity documents as reasonable.[11, 12, 13]

This group of rejected asylum seekers, numbering between 200 and 300 Eritreans, is also the target of a series of parliamentary acts launched by the Swiss People's Party and the 'Liberals' (Party) to deport them.[14]

The UN Special Rapporteur on the situation of human rights in Eritrea stressed that Eritreans without exit visas are considered by the Eritrean government to be draft dodgers or deserters, and political dissidents are viewed as traitors. Those returned in these categories face detention in inhumane conditions and are likely to be forced into military training and service, which amounts to enslavement and forced labour.[15]

In light of the fact that all returnees to Eritrea may be at risk of torture, this practice violates the principle of non-refoulement and demonstrates Switzerland's failure to implement the Committee's recommendations in this context as well.

Colombia:

Another worrying practice has been observed: Switzerland is failing to adequately assess the situation of human rights defenders in Colombia, in spite of a recent communication from the Committee.[16] Despite its findings, Switzerland continues to return Colombian human rights defenders and lawyers to Colombia, notwithstanding Colombia's apparent unwillingness or inability to ensure adequate protection mechanisms for human rights defenders or lawyers in Colombia, in violation of the principle of non-refoulement.

Iraq:

Finally, AsyLex is also alarmed by the fact that two people were forcibly returned to Iraq in 2023, despite the Committee's recommendation on non-refoulement. Given Iraqi authorities' position, Iraqi nationals cannot be forcibly deported, as confirmed by the decision of the

[11] E.g. CESCR, E/C.12/CHE/CO/2-3, 26/11/2010, para. 12; CERD, CERD/C/CHE/CO/6, 23/09/2008, para. 17.
[12] NCPT, Report of the National Commission for the Prevention of Torture on the forth Universal Periodic Review, 13/07/2022, para. 28 and 29.
[13] Humanrights.ch, La détention administrative en application du droit des personnes étrangères: critiques et alternatives, 07/10/2020; OCA, Bestrafung wegen illegalen Aufenthalts, June 2020.
[14] Interpellation Andrea Martina Geissbühler, 22.3399, "Take up negotiations with Eritrean Government", 09/05/2022; Motion Petra Gössi, 23.4440, "Conclude a transit agreement with a third country to send Eritreans whose asylum application has been rejected", 21/12/2023; Motion Damian Müller, 23.3176, "Repatriation of rejected Eritrean asylum seekers. Launch of a pilot project in a third country", 15/03/2023.
[15] UN Special Rapporteur on the situation of human rights in Eritrea, A/HRC/35/39, 24/07/2017, para. 41.
[16] CAT, CAT/C/76/D/1077/2021, 02/11/2023; CAT/C/COL/CO/6, 07/06/2023.

Administrative Court of the Canton of Zurich on April 13, 2017.[17] There is no indication that this policy is about to change. As a result, the return of individuals to Iraq is only possible on a voluntary basis or in cases where individuals have committed criminal offences. Recently, however, we have witnessed a forced return to Iraq, even though the person had no criminal record.

c) Case law concerning the use of the Istanbul Protocol continues to be deeply concerning.

On November 10, 2023, the Federal Administrative Court (FAC) handed down a ruling confirming its previous case law, according to which expert reports drawn up in accordance with the standards of the Istanbul Protocol can certainly be accorded significant evidentiary value, but the question of whether and to what extent the evidence provided actually contributes to a relevant determination of the facts remains subject to the principle of 'free assessment of the evidence'.[18] Despite the opinions of international bodies to the contrary, the Court continues to consider expert reports under the Istanbul Protocol as one of several pieces of evidence to be taken into account without having conclusive evidentiary value.

Another problematic legal practice concerns the coverage of the costs of expertise by authorities. When an expert opinion under the Istanbul Protocol is presented as evidence in an asylum procedure, the migration authorities have never accepted to pay for it, even when they recognize traces of torture on the basis of this opinion. In such cases, the reasons given by the authorities is that a less costly expert opinion would have allowed to detect the alleged torture. This case law forces legal representatives to make a difficult choice: Either they do not commission an expert opinion in accordance with the Istanbul Protocol, and risk not having sufficient evidence of torture, or they commission an expert opinion in accordance with the Istanbul Protocol, at the risk of the costs not being covered by the authorities.

a) b) and c) Other concerns: the introduction of a 24-hour asylum procedure

Since November 2023, the SEM has been running a pilot project in Zurich's federal asylum center, aimed at fast-tracking - i.e. within 24 hours - the asylum procedures for people from the Maghreb region, whose chances of a successful application are considered to be very low.[19] The countries of origin involved in this pilot project are Algeria, Libya, Morocco and Tunisia. After a four-month test phase, the authorities believe that the results of the pilot project have made it possible to effectively decongest asylum centers by making Switzerland “less attractive”.[20] According to the SEM, the number of Maghreb nationals staying at the Zurich center has dropped by more than half, while the number staying at the other federal asylum centers has only fallen slightly over the same period.[21] According to Miriam Behrens, Director of the Swiss Refugee Council (OSAR), the number of asylum applications has also fallen sharply as a result of “seasonal fluctuations”, and this also applies to people from other countries.[22]

[17] Administrative Court of the Canton of Zurich, VB.2016.00754, 12/04/2017, para. 2.4.
[18] FAC, D-2112/2022, 10/11/2023. See also: D-1939/2022 and D-1947/2022, 19/07/2022.
[19] SEM, Procédure d’asile en 24 heures, 01/03/2024.
[20] RTS, Testée à Zurich, la procédure d'asile en 24 heures pourrait avoir un effet sur le nombre de demandes, 31/03/2024, accessed: 27/07/2024.
[21] SEM, Fiche d’information - Procédure en 24 heures visant à délester le système de l’asile, 01/03/2024.
[22] RTS, Testée à Zurich, la procédure d'asile en 24 heures pourrait avoir un effet sur le nombre de demandes, 31/03/2024, accessed: 27/07/2024.

On February 20, 2024, Justice Minister Beat Jans announced his intention to extend the 24-hour asylum procedure to all federal asylum centers in Switzerland by the end of April.[23] The package of measures also includes tougher criminal and immigration law measures against repeat offenders, including administrative detention. Lastly, it is planned that applications will no longer be accepted at weekends, to prevent accommodation centers from being used as "dormitories".

These measures are designed to prevent illegal migration and address security concerns about applicants who commit offenses. In practical terms, however, they have been widely criticized by civil society. Several NGOs denounce the increased risk of errors in the processing of asylum applications within 24 hours. Applicants' state of health and alleged persecution would not be checked in good time, and their rights might therefore not be respected.[24] The unrealistic nature of this policy is also pointed out: according to the NZZ newspaper, the pilot project procedures in the center of Zurich lasted an average of 12 days, not 24 hours.[25] This glaring discrepancy has prompted Amnesty to declare that this is primarily a "strategy of deterrence".[26] Finally, it should be remembered that it is contrary to the principle of non-discrimination to treat people differently because of their origin or because of the negative behavior of some of their compatriots.

a) b) and c) Other concerns: federal popular initiative for "border protection"

On May 25, 2024 the right-wing Swiss People's Party (SVP) announced the launch of the federal popular initiative "Stop the abuse of asylum! (Border Protection Initiative)".[27]

According to the initiative, people arriving from a "safe third country" and lodging an application in Switzerland would be denied asylum and entry into the country. 'Temporary admission' (art. 83 FNIA) would also be eliminated. This status is granted when, for example, the asylum seeker's removal is not required due to war, civil war, widespread violence in the country of origin, or medical force majeure. What's more, only a maximum of 5,000 people would be granted asylum each year. Finally, people wishing to enter Switzerland would be systematically subject to border controls. Foreigners would not be able to continue their journey without a valid residence permit or other entry authorization.

This initiative clearly violates the Schengen/Dublin cooperation Acts.[28] The SVP is thus implicitly hopes to withdraw from the agreements.

For a popular initiative to be successfully submitted to the vote of the people and the cantons, the party needs 100,000 signatures from citizens entitled to vote within 18 months (art. 139 Fed. Cst). This should be no more than a formality for this party, which is the largest in the Federal Parliament. The Swiss population will therefore be likely to vote on this initiative by approximatively 2026-2027. The consequences of a vote in favor of the initiative would be catastrophic. Although it is part of a recurrent rhetoric against international treaties on

[23] RTS, Le conseiller fédéral Beat Jans annonce des mesures dans le domaine de l'asile, 20/02/2024, acessed: 27/05/2024.
[24] Asile.ch, Le Courrier | Des procédures expéditives, 18/04/2024, accessed: 27/05/2024.
[25] NZZ, Alles bloss ein «Marketing-Gag»? Beat Jans' 24-Stunden-Verfahren dauern deutlich länger als 24 Stunden, 04/05/2024, accessed: 27/05/2024.
[26] Ibid.
[27] SVP, Oui au lancement de l'initiative populaire fédérale « Stop aux abus de l'asile ! (Initiative pour la protection des frontières) », 25/05/2024, accessed: 29/05/2024.
[28] For legal references to the Schengen/Dublin Association Acts, see: FDFA, Schengen/Dublin, 07/03/2024, accessed: 29/05/2024.

migration, the current political climate does not exclude the adoption of this initiative by the majority of the population and the cantons.[29]

7. Use of Force in Conducting Expulsions

Recommendation 22:

The State party should eliminate any uses of force or other practices beyond those that are strictly necessary and proportionate, including shackling of parents in the presence of their minor children, provide interpreters to ensure that minor children are not in a position of needing to interpret for their parents, clearly limit the use of force or use of constraints to cases where there is an imminent threat to the safety of the officer or other persons, sharply limit the use of complete immobilization to the shortest possible time, and renounce the use of handcuffing of pregnant women and breast-feeding mothers, in accordance with the recommendations of the National Commission for the Prevention of Torture.

Obs. 21 - 22

The deportations of refugees to Croatia under the Dublin III Regulation are particularly alarming. Deportations are categorised into four levels based on their degree of coercion, with Level 4 being the most restrictive and severe in terms of coercive measures. When it comes to deportations to Croatia, only Level 4 deportations are carried out. This is because Croatia only accepts Dublin returnees who are deported to the country on special flights. Consequently, asylum seekers are deprived of the possibility to return in a less restrictive manner, leading to traumatising expulsions, including family separations and night operations. Highly vulnerable individuals are all forcibly returned directly to Croatia. They are often apprehended by the police at their accommodation, usually very early in the morning, detained, and then transported to the airport on a special flight to Croatia. This deeply troubling practice persisted throughout 2023, demonstrating That Switzerland has not implemented the Committee's recommendation.

Another deeply disturbing practice that has continued is the forcible removal of highly vulnerable rejected asylum seekers directly from psychiatric clinics, thereby interrupting their emergency treatment.

8. Legal assistance for asylum seekers

Recommendation 24: The State party should ensure that free legal representation is available to asylum seekers who need to appeal decisions made against them, and that such representation is also provided for important matters that asylum seekers may frequently encounter, such as issues related to violence used against them by officials, domestic violence and racial profiling.

Obs. 23 - 24

AsyLex has observed that NGOs are increasingly having to step in due to the overburdened legal representatives in asylum centres. The time and human resource constraints make the work of legal representation very stressful and in some cases prevent legal representatives

[29] The double majority of the people and the cantons is a requirement for federal popular initiatives to be adopted. See: art. 139 al. 5 Fed. Cst.

from performing their role in the most effective way.[30] This is evidenced by the fact that other NGOs are increasingly having to take over the task of assisting asylum seekers.[31]

In general, some of the legal issues faced by asylum seekers, such as racial profiling, reunification with family members or applying for a hardship permit, are not included in the mandate of the legal representatives paid by the state, which means that NGOs also have to fill this gap.[32] This, combined with the fact that the caseload of NGOs has increased dramatically, has resulted in some NGOs having to stop accepting new cases due to an overwhelming workload. Thus, asylum seekers risk losing access to legal representation.

To make matters worse, NGO representatives like AsyLex are increasingly facing so-called strategic lawsuits against public participation (SLAPP) proceedings. In other words, while AsyLex provides legal support to refugees and migrants, it increasingly faces resistance and criminalization from state actors. The following examples illustrate the consequences of such practices.

- Courts refuse compensation for legal services, often alleging AsyLex's pro bono status to financially harm the NGO, risking the organization's inability to continue its work.
- Various courts threaten or report AsyLex lawyers to the bar association to hinder legal support.
- Prosecutors threaten to investigate AsyLex for "supporting illegal stay or entry" when representing clients charged with immigration offences.
- AsyLex is denied access to asylum centers despite legal provisions, hindering client support and verification of living conditions.
- A push-back case against Swiss border guards has been stalled for three years, indicating judicial disinterest.
- AsyLex faces harassment and threats from state actors, including unfounded disciplinary threats and mistreatment in court proceedings.

Since the Swiss legal framework lacks adequate protection against SLAPP-proceedings,[33] there was a parliamentary initiative proposing SLAPP regulation inspired by the EU Anti-SLAPP Directive in 2022.[34] However, Swiss legislators decided not to follow up on it on March 7, 2023. We continue to observe this legal practice with growing concern.

Given the skyrocketing number of cases being handled by NGOs, such SLAPP lawsuits prevent NGOs from working effectively and providing legal representation and advice to asylum-seekers, and ultimately risking to leave (vulnerable) asylum seekers unrepresented in proceedings such as detention, asylum appeals or criminal proceedings. This development is very worrying and leads to a lack of access to justice for asylum seekers. In light of the sheer amount of deportations performed in 2023[35] this may have serious consequences, including violations of the principle of non-refoulement.

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[30] Le Temps, «Faute de moyens», la Suisse prive des requérants d'asile de représentant juridique, 10/06/2023, accessed: 10/04/2024.
[31] NZZ, Ohne Rechtsvertretung ans Gespräch: Hilfswerk lässt Asylsuchende allein, 03/06/2023, accessed: 10/04/2024.
[32] Swissinfo, Asile: une protection juridique gratuite et controversée, 24/02/2019, accessed: 10/04/2024.
[33] Humanrights.ch, Missbräuchliche Klagen gegen Journalist*innen und NGOs im Aufwind, 12/01/2023, accessed: 23/05/2024.
[34] Parliamentary initiative Raphaël Mahaim, 22.429, "SLAPPING trials in Switzerland. For regulations that better protect freedom of the press", 11/05/2022.
[35] More rejected asylum seekers left Switzerland in 2023 than in the previous year. See: SEM, Personnes frappées d'une décision de renvoi : hausse des départs en 2023, 30/01/2024.l

9. Conditions of detention

Recommendation 26: The State party should:

(a) Continue to ensure that conditions of detention are in full compliance with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and seek to eliminate overcrowding in penitentiary institutions and other detention facilities, especially in the cantons of Geneva and Vaud, including through the application of non-custodial measures. In that connection, the Committee draws the State party's attention to the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);

(b) Ensure a sufficient number of psychiatrists in the prison health care system in all cantons and that detainees are guaranteed regular, rapid and low-threshold access to basic psychiatric care by qualified staff with experience in providing care for persons being deprived of liberty;

(c) Bring its legislation and practice regarding solitary confinement in line with international standards, particularly rules 43 to 46 of the Nelson Mandela Rules.

Obs. 25 – 26

a) A new instance of inhuman and degrading treatment has been observed.

On December 6, 2023, the NCPT has called for the closure of the Porrentruy prison in the canton of Jura.[36] Particularly shocked by the poorly ventilated cells, the lack of natural light and above all the lack of access to fresh air (no promenade yard), the Commission qualified the conditions of detention as inhuman and degrading treatment within the meaning of art. 3 ECHR. The NCPT also denounced the inaction of the Jura government, which had made aware of this unacceptable situation ten years ago.

On March 24, 2024, the government replied that it was "fully aware that the conditions of detention are unsatisfactory", pointed out that the detention center was a protected historic castle that could not be converted, emphasized that a construction project was being drawn up and concluded that "immediate closure is not an option".[37] However, according to the daily 'Le Temps', a new prison will not be completed before 2035.[38]

b) The situation regarding this recommendation continues to be deeply concerning.

On February 20, 2024, Switzerland was condemned by the European Court of Human Rights for having detained an individual subject to an institutional therapeutic measure under art. 59 SCC in an ordinary prison.[39] For three years and seven months, this man, who suffered from a serious mental disorder, did not receive adequate treatment and was even placed in solitary confinement on several occasions. The Swiss government justified his detention on the grounds that there were "no places available in appropriate psychiatric institutions". In the Court's view, this constituted inhuman and degrading treatment in breach of art. 3 ECHR.

c) No significant developments have been observed.

[36] NCPT, Lettre de visite de la CNPT sur la prison de Porrentruy le 16 août 2023, 21/05/2024, para. 12.
[37] Governement of the canton of Jura, Prise de position du gouvernement du Jura, 26/03/2024.
[38] Le Temps, La pression s'accentue sur la prison de Porrentruy avec ses conditions de détention jugées inhumaines et dégradantes, 21/05/2024, accessed: 27/05/2024.
[39] ECtHR, *I.L. v. Switzerland (No. 2)*, 36609/16, 20/02/2024.

10. Administrative detention of undocumented migrants

Recommendation 28: The State party should:

(a) Strictly limit the use of administrative detention to that which is necessary and proportionate, including by reducing the length of administrative detention of asylum seekers authorized under the Asylum Act for as short a period as possible, taking all the measures to avoid the detention of children placed in migration detention facilities, including by using alternative measures to detention and in no case imposing measures or conditions designed to induce persons at the centres from taking any steps that would jeopardize their rights or interests;

(b) Ensure the reform of the reportedly prison-like environment of administrative detention, including limitations on visitation rights and confiscation of personal belongings;

(c) Guarantee administrative detainees access to legal representatives in detention;

(d) Ensure consistent application by all cantons when ordering administrative detention.

Obs. 27 – 28

Regarding recommendation c), it is important to highlight that in several cantons where there is no state-funded legal representation, organizations such as AsyLex have stepped in to provide legal assistance. However, the courts in these areas have begun to refuse compensation for AsyLex lawyers involved in legal proceedings. This raises significant concerns about the ability of NGOs to sustain their work, particularly in cases where state-funded legal representation is not available for individuals in administrative detention. Due to limited financial resources, this situation leaves those deprived of their liberty without access to justice.

Concerning recommendation d), the table in the appendices (Annex 2) illustrates the continuing disparity between the Swiss cantons in the use of administrative detention.[40] This stark inconsistency raises significant concerns about the uniformity and fairness of this practice across regions.

11. Federal Asylum Centres

Recommendation 30:

(a) Ensure that all instances of alleged ill-treatment in federal asylum centres are promptly investigated in an independent and impartial manner and that the suspected perpetrators are duly tried and, if found guilty, punished in a manner commensurate with the gravity of their acts, and that victims obtain adequate redress and compensation;

(b) Enhance and strengthen independent safeguarding and proactive monitoring of federal asylum centres;

(c) Establish independent, confidential and effective complaints mechanisms in all federal asylum centres;

(d) Review the practice of locking individuals held in federal asylum centres in 'reflection rooms', including by prohibiting the placing of minors in isolation;

(e) If the State party intends for private security contractors to continue to play a role in federal asylum centres, eliminate their use in sensitive security tasks, integrate stricter requirements concerning quality standards and training into their contracts and ensure that the security

[40] SEM, Statistique en matière de migration 2023, 15/02/2024.

contractors recruit experienced and skilled security personnel and train them specifically for assignments in the federal asylum centres.

Obs. 29 -30

Pilot project "External Reporting Office"

The pilot project "External Reporting Office" ("Externe Meldestelle") was set up by the SEM in November 2022 in the Basel and Zurich federal asylum centers.[41] Both structures are part of the measures announced by the SEM in 2021 to prevent violence within asylum centers. An interim report was published in March 2024.[42] The reliability of this report is somewhat mixed, in the sense that, according to observers, these external reporting offices in their current structure cannot guarantee the independence and transparency necessary to improve accommodation. The SEM nevertheless decided to extend the project by six months to October 31, 2024, and to extend the offer of external reporting offices to new structures in the Northwestern Switzerland and Zurich regions, as well as to other groups of people.

Violence at the asylum center of the Rochat

On May 5, 2024, the Swiss news channel RTS reported serious allegations of violence against independent unaccompanied minor asylum seekers aged between 16 and 17 who were housed in the military barracks of the 'Rochat'.[43] Between March and May 2023, six children claimed to have been subjected to violence by a handful of guards from the security company 'Protectas AG', under contract to the SEM. They were allegedly arm-locked, thrown to the ground, pepper-sprayed and arbitrarily detained in "temporary accommodation rooms".

In view of the seriousness of the incidents, the six teenagers have each decided to lodge a complaint against the company, for 'false imprisonment' (art. 183 SCC), 'coercion' (art. 181 SCC), 'common assault' (art. 123 SCC) and 'abuse of public office' (art. 312 SCC). These complaints are currently being investigated, according to the public prosecutor's office.

When questioned by the police following these complaints, several of the security guards involved claimed to have had careers in the army or the police. One had worked for the Belarusian law enforcement agencies, another for the French Foreign Legion and another for the Portuguese army. More disturbingly, none of the agents mentioned any specific training in the supervision of child migrants, nor did they refer to a SEM directive governing the use of restraint and detention measures. In a press interview, Amnesty International strongly condemned the acts of violence depicted in these allegations, should they prove to be true.[44] The organization also recalled similarities with the allegations of violence that involved employees of the private security companies 'Securitas AG' and 'Protectas AG' in the Basel, Giffers, Boudry, Altstätten and Vallorbe centers, which were denounced in a research briefing in May 2021.[45]

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[41] SEM, Projet pilote « Bureau de signalement externe », 01/05/2024, accessed: 24/05/2024.
[42] Team Consult, Evaluation des Pilotprojekts «Externe Meldestelle», March 2024.
[43] RTS, Des soupçons de violences contre des requérants mineurs au centre d'asile des Rochat, 05/05/2024, accessed: 26/05/2024.
[44] Ibid.
[45] Amnesty International, Violation des droits humains dans les centres fédéraux d'asile suisses, May 2021. This report led the SEM to commission former federal judge Niklaus Oberholzer to investigate allegations of violence in federal asylum centers. In his report, Oberholzer found that, while reprehensible acts had occurred, the violence did not have a systematic character. The reports issued numerous recommendations designed to further improve the security situation. See: Niklaus Oberholzer, Bericht über die Abklärung von Vorwürfen im Bereich der Sicherheit in den Bundesasylzentren, 30/09/2021.

Legal framework for the use of force by security personnel

Concerning recommendation e), the Federal Council has just adopted its dispatch on the amendment of the Asylum Act (SR 142.31) to define a precise legal framework for the use of force and disciplinary measures by security personnel.[46] OSAR has a mixed view of the draft, especially as children are not in principle excluded from searches and other disciplinary measures, including temporary detention in a room.[47]

12. Unaccompanied asylum-seeking children

Recommendation 32: The State party should ensure the best interest of the child in repatriation procedures; that all unaccompanied minors, especially girls, receive continuous care and protection; and, that reports of alleged disappearance of children during the asylum procedure are investigated.

Obs. 30 -32

There has been no significant development. The disappearance of children during the asylum procedure continues to raise concerns.

A postulate was introduced calling on the Federal Council to draw up a report assessing the extent to which the welfare of the child is guaranteed in the context of the law on asylum and foreigners, and whether any measures need to be taken in this area.[48] The study is underway.

13. Excessive use of force, including racially motivated violence

Recommendation 34: The State party should: *(a) Ensure that all allegations of excessive use of force and racially motivated misconduct by the police are investigated promptly, thoroughly and impartially, and that perpetrators are duly tried and, if found guilty, punished in a manner commensurate with the gravity of their acts;* *(b) Increase efforts to systematically provide training to all law enforcement officers on the use of force, taking into account the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.*

Ad. 33 -34

a) Access to justice for victims of racial profiling continues to be extremely problematic.

Case 'Nzoy':

After a two-year investigation, the prosecutor's office of the canton of Vaud announced his intent to issue a closure order on October 10, 2023.[49] He stated that the police officer who shot

[46] FC, Message concernant la modification de la loi sur l'asile (Sécurité et fonctionnement des centres de la Confédération), 24/04/2024.
[47] OSAR, Mesures de sécurité dans les centres fédéraux pour requérants d'asile : les droits de l'enfant doivent être respectés, 24/04/2024, accessed: 24/05/2024.
[48] Postulate Samira Marti, 20.4421, "Child welfare in the context of asylum and immigration law", 08/12/2020.
[49] RTS, Le procureur veut classer l'enquête contre le policier qui a tué Nzoy, 10/11/2023.

‘Nzoy’ acted in self-defence. He also claimed that there was insufficient suspicion to prosecute the four police officers for ‘failure to offer aid in an emergency’ (art. 128 SCC)

On August 30, 2021, Roger ‘Nzoy’ Wilhelm, a 37-year-old Swiss man and of South African descent from the region of Zurich, was shot three times by a police officer at Morges railway station, before succumbing to his injuries.

On January 26, 2022 the UN Working Group of Experts on People of African Descent issued a statement following its official visit to Switzerland January 17-26, 2022.[50] The experts said they had spoken to ‘Nzoy’s family. They outlined the similarities between this case and those of Mike Ben Peter, Lamin Fatty, Herve Mandundu, Mohammed Wa Baile and Omar Mussa AliIn.[51] Between 2018 and 2022, each of these people of African descent died as a result a police intervention. For the Working Group, some of these cases represent the “most tragic outcomes of racial profiling”. The families of the victims systemically encountered significant difficulties accessing to justice.

Worried that this case was not being investigated with sufficient independence, a commission of experts was set up on May 31, 2023 to investigate the circumstances surrounding ‘Nzoy’s death.[52] Dr. Martin Herrmann, one of the medical experts on the team, confirmed that the necessary first aid had not been administered, even though ‘Nzoy’ was lying on his stomach, posed no threat to the four police officers and was still breathing.

On November 10, 2023, at the request of the family of ‘Nzoy’ and in collaboration with the independent commission, the research agency ‘Border Forensics’ published an audio-video document based on several media, allowing precise analysis of the sequence of events.[53] Although the four police officers involved in the incident had received BLS-AED first-aid training, they did not provide first aid until the arrival of a nurse who witnessed the event. Instead, they prioritized security measures, such as a safety search and handcuffing behind the back. In total, 6.30 minutes elapsed between the 3rd shot and the first medical assistance. According to the victim's family lawyer, this video raises at least reasonable suspicion that the police failed in their duty to assist ‘Nzoy’. The public prosecutor must therefore open an investigation into this allegation.

Case ‘Wilson A.’:

On February 15, Wilson A., a Swiss citizen of Nigerian origin, lost his appeal before the High Court of the Canton of Zurich. The police officers who had been accused of abuse of public office (art. 312 SCC) and endangering life (art. 129 SCC) were acquitted again. The judge also rejected the allegations of racial profiling. According to the ruling, the police officers did not use disproportionate public force. Rather, Wilson A. caused the escalation through his own behavior.

On October 19, 2009 in Zurich, Wilson A. was stopped by three police officers around midnight on his way home by tram. He asked the policemen whether the control was related to the color of his skin. Things then got out of hand. According to Wilson A., the police put him in an arm-lock, sprayed him with pepper spray, called him a “dirty African”, chocked him and punched

[50] UN, Statement to the media by the United Nations Working Group of Experts on People of African Descent, on the conclusion of its official visit to Switzerland, 26/01/2022
[51] Roger 'Nzoy' Wilhelm, Mike Ben Peter, Lamin Fatty Herve Mandundu all died during police operations in the canton of Vaud, suggesting that the problem of racial profiling may be particularly significant in this canton.
[52] Independent Commission of Inquiry on the Death of Roger Nzoy Wilhelm, accessed on 06/05/2024.
[53] Border Forensics, Investigation on the death of Roger ‘Nzoy’ Wilhelm – Preliminary elements of analysis, 10/11/2023.

him several times, even though he declared having just undergone heart surgery. Doctors at the hospital later diagnosed bruises and contusions on his throat, neck and jaw, a spinal fracture, a groin strain and eye inflammation. The tissue around Wilson A.'s pacemaker was severely swollen and covered in bruises.

This case illustrates the difficulties arising from the institutional racism that still taints Switzerland's judicial institutions. Although Wilson A. filed a complaint, the public prosecutor never intended to bring these proceedings to trial. After two appeals lodged before the Federal Supreme Court, one of which resulted in a positive decision, the prosecutor finally started to investigate the case in 2016. After many other legal shuttles, a trial finally started in 2018 before the District Court of Zurich, which resulted in the complete acquittal of the police officers. Wilson A.'s representatives appealed the decision and, six years after the previous verdict, fifteen years after the events, the trial once again resulted in a complete acquittal of the police officers. Proceedings will now continue before the Federal Supreme Court. Wilson A.'s lawyers already announced their intention to take the case before the European Court of Human Rights if necessary.[54]

Case 'Wa Baile':

On February 20, 2024, Switzerland was condemned by the European Court of Human Rights (ECtHR) in the 'Wa Baile' case.[55] The Court found that the identity check to which this Swiss national was subjected by the municipal police at Zurich railway station in 2015 amounted to racial profiling. The ETHZ employee had refused submit to the check, believing that it was motivated solely by the color of skin. He was fined CHF 100 for refusing to submit to the police, and unsuccessfully appealed the decision. After five years of proceedings, the Administrative Court of the Canton of Zurich finally recognized that there was no objective reason for the interpellation. However, the judges did not specify that discrimination on the grounds of Mr. Wa Baile's skin color was involved, thus avoiding the problem of institutional racism. With the support of the Alliance Against Racial Profiling, a support group of activists, scientists and human rights organizations,[56] Mohamed Wa Baile took his case before the ECtHR in September 2018.

At the beginning of 2022, the judges designated the case as an "impact case", meaning that it raises issues of great importance to the applicant and the respondent state, or to the development of the Convention system in general. In its ruling of February 20, 2024, the Court unanimously found three violations of the Convention by Switzerland. It found that Switzerland had twice violated the prohibition of discrimination guaranteed by art. 14 ECHR in conjunction with art. 8 ECHR (right to respect for private life). On the one hand, taking into account the concrete circumstances of the identity check, it found that Mr. Wa Baile had been discriminated against on the basis of his skin color; on the other hand, it concluded that the Swiss courts had not effectively examined whether discriminatory motives had played a role in the check suffered by the applicant. The judges also found that Switzerland had violated art. 13 ECHR (right to an effective remedy), insofar as Mr. Wa Baile did not benefit from an effective remedy before the domestic courts.

On April 4, 2024, the coordinator of the Platform met with a delegation of the Conference of Cantonal Directors of Justice and Police (CCDJP) to discuss the concrete implications of the 'Wa Baile' ruling on the functioning of the police and judicial authorities in Switzerland, which are primarily the responsibility of the cantons. Following this exchange, the coordinator sent

[54] Le Temps, Wilson A.: un cas de «profilage racial» qui n'en est pas un, juge le Tribunal cantonal de Zurich, 15/02/2024, accessed: 27/05/2024.
[55] ECtHR, *Wa Baile c. Suisse*, 43868/18 et 25883/21, 20/02/2024.
[56] Alliance Against Racial Profiling, accessed on 06/05/2024.

letters to the Minister of Justice Beat Jans, the Conference of Security Directors of Swiss Cities (CSDSC) and the CCDJP, calling for the establishment of a permanent dialogue between the authorities in charge of security at all levels of government (communes, cantons, Confederation). The Platform, which brings together over 90 NGOs, is intended to support the reflection process with its expertise. The measures to be taken to implement the 'Wa Baile' case are significant, and require both legislative (Criminal Procedure, Foreign Nationals and Integration Act (FNIA), Customs law, Police legislation, Data Protection Acts, service instructions) and administrative adaptations (division of responsibilities, independent complaints mechanisms, human resources and training). The Platform attaches great importance to the development and adoption of these reforms.

b) No significant development concerning the training of law enforcement officers on the use of force has been observed.

14. Independent Complaints Mechanism

Recommendation 36: The State party should consider the establishment in all cantons of investigative mechanism that carry out independent and effective criminal investigations and prosecutions of allegations of police violence, and violence against persons deprived of their liberty, and operates independently, without any institutional or hierarchical relationship between that body's investigators and the suspected perpetrators of such acts. The Committee also recommends ensuring updated, centralized and disaggregated statistical data on all complaints, prosecutions and convictions related to police violence and violence against persons deprived of liberty.

Obs. 35 - 36

Despite the recent ruling by the European Court of Human Rights in the "Wa Baile" case, handed down on February 20, 2024, there has been no political discussion, at cantonal level, of setting up independent mechanisms empowered to receive and investigate complaints against members of the public forces who abuse their public authority. Geneva remains the only canton to have a body exclusively responsible for handling complaints against members of the police force. Mediation procedures are still available in the cantons of Vaud, Geneva, Fribourg, Zug, Zurich, Basel-Stadt and Basel-Landschaft (7 out of 26 cantons), as well as in certain municipal ombudsman's offices. In most cases, victims of abuse of public authority who wish to lodge a complaint still have no choice but to go directly to the police – whom they incriminate through their statements. Many victims are still dissuaded from doing so because of the cost and length of proceedings, the fear of a counter-complaint from police officers or the concern that the proceedings will affect their residency status.

More disturbingly, there is still no political will to ensure centralized, disaggregated collection of data on complaints lodged against members of law enforcement agencies.

The example of the canton of Berne:

Since 2001, the Grand Council of the canton of Berne has on five occasions rejected a bill to set up a cantonal mediation service for complaints relating to police action.[57] To prevent racial profiling, the City of Berne refers to the "Dialogue" project, which is financed with CHF 10,000 per year. The project provides a reporting office for people who feel discriminated against during checks. At the request of those affected, the possibility to discuss individual cases with the police has been implemented since 2019. However, this has no legal consequences and

[57] In 2001, 2006, 2010 et 2017/2018 and 2019.

is only possible once the case has been legally closed. In 2023, 10 reports in connection with racial profiling concerned the cantonal police. Based on these reports, two discussions have been scheduled. This system remains insufficient. To identify a structural problem, cases need to be made visible. However, there is no political will to do so. On the contrary, in 2028, a promising project to introduce statistical recording of checks and a receipt system, which is common practice in England, was rejected by the cantonal Parliament.

15. Intersex Persons

Recommendation 38: The State party should ensure that:

(a) No one is subjected during infancy or childhood to unnecessary medical or surgical procedures intended to decide the sex of the child without the informed consent;

(b) The parents or guardians of intersex children receive professional counselling services and psychological and social support, including information on the possibility of deferring any decision on unnecessary medical or surgical treatment until they can be carried out with the full, free and informed consent of the person concerned;

(c) Medical records can be consulted and investigations initiated in all cases where intersex persons were treated or operated on without effective consent;

(d) Adequate redress is provided for the physical and psychological suffering caused by such practices to intersex persons;

(e) Legislative and policy measures are taken to protect the rights of the intersex persons, especially children; and

(f) Trainings are provided to persons working with or for the intersex persons, especially children.

Obs. 37 - 38

In Swiss Criminal law, Art. 124 SCC prohibits female genital mutilation/circumcision, which is comparable to medical or surgical procedures intended to determine the sex of the child without the informed consent, particularly regarding the health consequences.

The European Commission against Racism and Intolerance (ECRI) recommended in 2019 that medically unnecessary sex-"normalising" surgery and other treatments be prohibited until such time as the child is able to participate in the decision, based on the right to self-determination and on the principle of free and informed consent.[58] Various UN-Committees since recommended the same. In 2021, the Committee on the Rights of the Child (CRC) recommended Switzerland to prohibit unnecessary medical or surgical treatment of intersex children when such treatment can be safely withheld;[59] the Committee on the Elimination of Discrimination against Women (CEDAW) recommended that Switzerland specifically criminalize the modification of sexual characteristics of the children concerned, unless medically necessary.[60] Finally, during the 4th cycle of the Universal Periodic Review (UPR), several States recommended similar measures to Switzerland.[61]

Recently, the Human Rights Council expressed its grave concern about the violence and harmful practices that persons with innate variations in sex characteristics face, including

[58] ECRI, Sixth Report on Switzerland, 10/12/2019, para. 22 s.
[59] CRC, CRC/C/CHE/CO/5-6, 24/09/2021, para. 29.
[60] CEDAW, CEDAW/C/CHE/CO/6, 01/11/2022, para. 56.
[61] UPR, A/HRC/53/12, 31/03/2023.

children, performed without the full, free and informed consent.[62] This first-ever UN resolution was not supported by Switzerland.

On May 25, 2024 the Federal Council rejected a motion by the Federal Parliament requesting in a nuanced manner criminal prohibition of interventions aimed at changing or modifying the biological sex of children born with a variation in sex characteristics.[63] Another motion submitted by the Legal Affairs Committee of the Council of States (LAC-S) was adopted on November 15, 2023, under the influence of the Swiss government. However, it does not provide for the introduction of legally binding provisions, and leaves it to the Swiss Academy of Medical Sciences (SAMS) to issue medical ethics guidelines for the diagnosis and treatment of variations in sexual development (Intersex).[64] All child protection organizations and civil society in Switzerland considered this approach insufficient. Some of them proposed that the motion be rejected.[65]

16. Trafficking in persons

Recommendation 40: The Committee recommends the State party enhance its efforts to combat trafficking in persons by taking legislative steps to ensure that the definition of trafficking in persons is fully in accordance with international standards and by prosecuting and punishing perpetrators and providing adequate protection and redress to the victims, including compensation and rehabilitation. The Committee also recommends providing continuous capacity building on the prevention and identification of trafficking, including judicial and law enforcement officials and immigration and border control officers. Finally, the State party should also promote and conduct nationwide awareness-raising campaigns, with a particular focus on victim identification.

Obs. 39 - 40

With regard to capacity-building, the federal government is developing a training concept to raise awareness among specialists who (may) come into contact with victims of human trafficking. The concept is being developed as part of the previous and current National Action Plan against Human Trafficking (2017-2020 and 2023-2027).[66] This training concept is currently being finalised and, according to the Federal Office of Police (fedpol), should be officially approved by the end of 2024. However, it remains unclear to date what budget and financial resources will be used to implement the training concept and it is therefore unclear whether it will actually be implemented.

In October 2023, the Federal Supreme Court published a landmark decision regarding the state's obligation *to pay* outstanding wages to victims of human trafficking.[67] According to the ruling, the victim was not entitled to compensation via victim assistance, as the salary was a material loss and therefore not a “loss to the person themselves”. The question of how the victim should be compensated for the outstanding wages to which they are entitled remained unresolved**.** It can therefore be assumed that there is a gap in the law regarding the favor of

[62] HRC, A/HRC/55/L.9, 21/03/2024.
[63] Motion Matthias Michel, 22.3355, “Criminal prohibition of interventions aimed at changing the biological sex of children born with a variation in sex characteristics (intersex children)”, 18/03/2022. The National Advisory Commission on Biomedical Ethics (NCE) also called for a nuanced prohibition in 2012 and 2020: Opinion No. 20/2012, e.g. Rec. 3; Opinion No. 36/2020, p. 16.
[64] LAC-S, 23.3967, “Improved treatment of children born with Differences of sexual development (DSD)”, 15/08/2023.
[65] E.g.: Protection de l’enfance Suisse, Conclusion intermédiaire Session de printemps 2024 – Bilan de la première semaine de la session de printemps, 06/03/2024.
[66] Federal Council, National Action Plan to Combat Human Trafficking 2023–2027, 16/12/2022.
[67] FSC, 1C_19/2023, 11/10/2024.

the victim. The Supreme Court's decision was challenged before the ECtHR, whose decision is still pending.

In practice, the right to remain in Switzerland for victims of human trafficking who cannot return to their country of origin for humanitarian reasons, is still very specific and varies from canton to canton. The Federal Supreme Court's decision of December 14, 2021 could provide a little more legal certainty, as it established that art. 14 para. 1 let. a of the Council of Europe Convention on Action against Trafficking in Human Beings is directly applicable.[68] This means that the appeal process for victims of human trafficking does not end at the cantonal level, but can be referred to the Federal Supreme Court and, if necessary, to an international court. The Federal Supreme Court has not yet issued any rulings based on the new situation.

Nothing has happened since the last report with regard to the revision of the incomplete criminal law article on human trafficking (art. 182 SCC). Nor have there been any developments concerning the introduction of a criminal article on labor exploitation, as requested by a motion still pending before the Federal Parliament.[69]

Since the last report, the practice of the courts with regard to judgements on human trafficking has been very mixed, and some decisions show regression rather than progress in the interpretation of human trafficking. For example, in a case involving two child-care workers, the Zurich High Court overturned the lower court's conviction for human trafficking and acquitted the accused couple. One of the reasons given was that the victim had migrated several times from Switzerland to her country of origin and back on her own and therefore had the possibility to escape from the exploitative situation. As stated in a ruling of the European Court of Human Rights issued in 2017, this may constitute human trafficking despite the victim's freedom of movement.[70] The case is now pending before the Federal Supreme Court.

The situation for victims of human trafficking in the asylum sector has not improved since the last report was submitted, but rather worsened: victims of human trafficking continue to be sent back to inhumane conditions in Dublin countries such as Croatia, where they are known to be unprotected there and without the necessary support. In other cases, it is knowingly accepted that they will become victims again because the perpetrators are located in that Dublin country and the exploitation took place there.

Accommodation in the asylum structures has not improved: there is still no budget for specialized accommodation for victims of human trafficking. This also applies to the sensitization and training of support staff in asylum shelters. Access to specialized psychological counselling remains very difficult.

In addition, a change in the practice of the SEM, introduced on January 1, 2024, curtails the fundamental rights of victims of human trafficking: only potential victims of human trafficking with a certain constellation of country of origin and Dublin country will be invited to an in-depth hearing on the matter of human trafficking. Exploitation and human trafficking that has taken place in Libya, for example, are therefore not considered relevant.

A new Federal Administrative Court's ruling from February 29, 2024 regarding Nigeria as a country of return for victims of human trafficking also sets out a practice in which Nigeria is assessed as a "safe" country of return for victims of human trafficking.[71] This is shocking and unacceptable as several reports and international network organizations have raised serious concerns for the safety of returning victims of human trafficking to Nigeria.

[68] FSC, 2C_483/2021, 14/12/2021.
[69] Motion Marianne Streiff-Feller, 20.3630, "Penalizing labor exploitation", 16/06/2020.
[70] ECtHR, *Chowdury and others v. Greece*, 21884/15, 30/04/2017.
[71] FAC, D-3116/2021, 29/02/2024.

17. Training

Recommendation 42: The Committee reiterates its previous recommendation to continue to strengthen its efforts to provide training for all officials concerned on its obligations under the Convention, as well as systematic training and practice in applying the Istanbul Protocol (as revised). It should also develop specific methodologies to evaluate the training programmes provided on the absolute prohibition of torture and ill-treatment to police, prison and staff in federal asylum centres.

Obs. 41 - 42

In Switzerland, the detection of torture by experts under the Istanbul Protocol takes place almost exclusively in the context of asylum procedures, to attest to ill-treatment suffered in the country of origin and prevent possible deportation. Employees of the SEM and other organizations active in asylum centers normally receive training on the Istanbul Protocol. However, according to our information, the content of these training courses remains relatively superficial.

Furthermore, the introduction of a 24-hour procedure for asylum seekers from the Maghreb region aggravated the challenges posed by the detection of torture or other ill-treatment during asylum procedures. For more information on this topic, refer to section 6 of the report (Non-refoulement).

18. Redress

Recommendation 44: The State party should ensure implementation of measures to ensure the right of all victims of torture and ill-treatment obtain redress, including an enforceable right to fair and adequate compensation and the means for as full rehabilitation as possible. The State party should encourage, support and facilitate the involvement of and contribution from non-governmental organizations for rehabilitation of the victims. The State party should compile and provide to the Committee information on redress and on compensation measures, including means of rehabilitation, ordered by the courts or other State bodies and actually provided to victims of torture or ill-treatment.

Obs. 43 - 44

The has been no significant improvement.

Access to redress is still severely hampered by the difficulties faced by victims of ill-treatment in obtaining justice. Judicial procedures suffer from a lack of independence. Minor initiatives can be reported at communal or cantonal level. For more information on this topic, please refer to section 13 (Excessive use of force, including racially motivated violence) and 14 (Independent Complaints Mechanisms) of the report.

People with mental disabilities, who have been committed to an appropriate institution under article 426 of the Swiss civil code (SR 210) because the required treatment could not be provided elsewhere cannot obtain a review of the legality of their detention by a judge once the measure has been lifted. The procedure is too complicated and therefore not available to this population.[72]

[72] FSC, 5A_352/2023, 04/07/2023.

19. Data collection

Recommendation 46: The State party should intensify its efforts to strengthen its capacity to compile, disaggregate and analyse statistical data relevant to the monitoring of the implementation of the Convention in a more targeted and coordinated manner, including with regard to complaints filed, investigations and prosecutions conducted and convictions handed down in cases of torture and ill-treatment, trafficking in persons and gender-based violence, as well as on remedies, including compensation and rehabilitation, provided to victims, and other maters on which such data were requested by the Committee in its list of issues prior to reporting.

Obs. 45 -46

This recommendation has not been implemented.

To our knowledge, there is no political will to strengthen Switzerland's capacity to collect centralized and disaggregated data relating on implementation of the Convention. This lack of statistics is especially problematic, as it prevents any assessment of the structural problems leading to violations of the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, such as acts of violence committed by the police, in detention facilities or in asylum seekers centers. Nor does it make it possible to assess the extent or the systematic nature of practices such as racial profiling, that may hamper the operation of law enforcement agencies.

20. Follow-up procedure

Recommendation 47: The Committee requests the State party to provide, by 28 July 2024, information on follow-up to the Committee's recommendations on: the definition of torture, the national preventive mechanism, an independent complaints mechanism and data collection (see paras. 9, 17, 35 and 45 above). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the present concluding observations.

Obs. 47

These follow-up recommendations were designated as such by the Committee when it adopted its Concluding observations on Switzerland's eighth periodic report on July 24, 2023. Interestingly, they correspond in several respects to the Platform's own strategic priorities, which were adopted on International Human Rights Day, December 10, 2023.[73] These objectives are the following:

- A strong legal framework, notably through the adoption of a legal definition of torture in criminal law;
- A coherent overall strategy for implementing human rights at cantonal and federal level; this objective implies setting up an intersectional coordination service to implement the recommendations of international bodies;
- A facilitated access to justice for victims of human rights violations, which implies setting up independent complaints mechanisms.

[73] Humanrights.ch, Pour une politique des droits humains 2023-2027 forte, 07/12/2023, accessed: 24/05/2024.

We hope that the Federal Office of Justice (FOJ) will soon submit to the Legal Affairs Committee of the National Council (LAC-N) a satisfactory draft law to introduce a legal definition of torture into the Swiss Criminal Code. The further legislative process will then lay in the hands of the Federal Parliament. For more on this topic, refer to section 2 of the report (Definition of torture).

Apart from this issue, and to our great concern, the Swiss government has so far shown no intention of implementing the follow-up recommendations adopted by the Committee:

- The funding of the NCPT is likely to be reduced in the coming years (see section 5, National Preventive Mechanism).
- There are still no plans, at cantonal levels, to introduce an independent complaints mechanism for victims of acts of abuse or violence committed by law enforcement officers (see section 14, Independent Complaints Mechanism).
- Finally, there has been no discussion, at cantonal or federal level, about collecting data on the implementation of the CAT (see section 19, Data collection).

We hope that this report will shed light on the level of implementation of the recommendations issued by the Committee in its Concluding observations on the eighth periodic report of Switzerland of July 24, 2023, and that the Swiss government will be able to provide further information on the latter.

C. Other topics not covered by the Concluding observations on Switzerland's eighth periodic report

21. Violence against LGBTIQ people

The annual joint report by TGNS, LOS, and Pink Cross documented 134 cases of violence and discrimination against LGBTQ people in 2022, the highest number to date.[74] Almost a third of the victims were trans people and among them most were non-binary.

The perpetrator of a homophobic attack in Lausanne in 2022 was sentenced to 80 days in prison.[75]

A district tribunal in the canton of Valais fined one perpetrator of verbal and physical homophobic violence, citing physical injury, discrimination and hate speech, and another one who spread online hate messages in relation to the first perpetrator's attack. Together, the two had to pay additional 2,500 CHF to the victims for reparation.[76]

Under the new sexual criminal law, enacted in June 2024, the gender and sex of perpetrators and victims in a case of rape will no longer be relevant. Under current legislation, only forced vaginal penetration of a woman is considered rape (art. 190 SCC). The definition of rape now also explicitly takes into account the victim's state of shock as a manifestation of her non-consent to a sexual act.[77]

[74] TGNS/LOS/Pink Cross, Hate Crime Bericht 2023, 17/05/2023.
[75] 20 Minutes, Il aperçoit deux gays en couple et les tabasse: 80 jours de prison, 02/07/2023, accessed: 30/005/2024.
[76] Le Nouvelliste, Première en Valais: deux condamnations pour homophobie prononcées, 29/06/2023, accessed: 30/05/2024.
[77] Federal Parliament, Le Parlement dépoussière la notion de viol, 07/06/2023, accessed: 30/05/2024.

D. Appendices

Annex 1 – Arguments in support of parliamentary initiative 20.504

To whom it may concern,
Bern, March 13, 2024

Arguments in support of parliamentary initiative 20.504 - Inclusion of torture as such in the catalog of offences under Swiss criminal law

The undersigned non-governmental organizations share the following positions regarding the adoption of a specific provision against torture in the penal code.

1. No clear definition and inadequate legal framework

Under the Swiss Penal Code (SPC; SR 311), torture is punishable as a war crime (art. 264c para. 1 let. c SPC) or a crime against humanity (art. 264a para. 1 let. f SPC). Outside these contexts, there are no criminal provisions defining and punishing torture as a specific offence. To punish torture, prosecuting authorities have to draw on a long list of highly diverse provisions: from bodily harm to assault, including threats, coercion, insults and endangerment of health.

This legislative context is inadequate. The penalties attached to these offences do not reflect the seriousness of the offences against human dignity represented by acts of torture. Many acts are either difficult to punish, or are not punishable at all, or are punished only very lightly. For example, practices such as sleep deprivation, prolonged hooding, persistent exposure to excessively bright light or music, and other modern techniques are often used in conjunction with each other without leaving any trace. In the absence of a clear definition of torture, a victim of the above acts could at best only see his torturer convicted of coercion or threats, offences

punishable by up to three years' imprisonment. These penalties are not severe enough in view of the seriousness of these crimes[78] .

Finally, the perpetrators are able to invoke the statute of limitations for their acts, whereas the crime of torture, because of its seriousness, should not be subject to any statute of limitations.

A strong message against crime: Only by specifically criminalizing torture will Switzerland be able to send a sufficiently strong and dissuasive signal to those likely to commit such crimes.

2. An obligation under the United Nations Convention against Torture

Article 4, paragraph 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (RS 0.105), ratified by Switzerland in 1986, states that: "Each State Party shall ensure that all acts of torture constitute offences under its criminal law". Although June 26, 2022 marked the 35th anniversary of the Convention's entry into force, Switzerland has yet to put this obligation into practice.

The Committee against Torture (CAT), responsible for examining the implementation of the Convention, has repeatedly asked Switzerland (1997, 2005, 2010, 2015 and 2023) to criminalize torture. At the end of the recent interactive dialogue with the CAT on July 13, 2023, the Swiss delegation welcomed this recommendation, adding that **"the introduction of a specific norm would give rise to numerous benefits"**[79] . These benefits are explicitly detailed in the Committee's concluding observations[80] .

At the end of the fourth cycle of the Universal Periodic Review (UPR), on July 14, 2023, Switzerland accepted two recommendations to continue the legislative process aimed at adopting a provision against torture in the penal code, including one from the Ukrainian government[81] . The Ukrainian government took the view that, even if torture is already punishable in the context of war crimes and crimes against humanity, it is still necessary for Switzerland to equip itself with a legislative arsenal capable of punishing torture in all contexts. Not to hold a debate for purely formal reasons, linked to the deadline for processing the initiative, would be a regrettable failure to comply with these recommendations.

Finally, as was the case on two occasions for Italy[82] , Switzerland risks being condemned at any time by the European Court of Human Rights for failing to include a specific penal provision in its domestic law.

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[78] The severity of these penalties is incompatible with the requirements of the United Nations Convention against Torture (RS 0.105), which stipulates in article 4, paragraph 2 that "Each State Party shall make such offences punishable by appropriate penalties which take into account their grave nature".

[79] CAT, 77th session, interactive dialogue with Switzerland, 13 July 2023, 01:13

[80] CAT, 77ème session, CAT/C/CHE/CO/8, paras. 9 to 12. Among the advantages cited, the Committee against Torture noted in particular the possibility of incriminating superiors, the severity of the punishment in line with the seriousness of the crime, the imprescriptibility of torture and the possibility of prosecuting the perpetrators of crimes committed abroad when neither the perpetrator nor the victim are Swiss nationals.

[81] Human Rights Council, Report of the Working Group on the Universal Periodic Review, A/HRC/53/12, July 14, 2023 (rec. 39.116, Ukraine; 39.118, Luxembourg).

[82] Eur. D.H., case of *Cestaro v. Italy*, judgment of April 15, 2015, §§ 219-222, 242; case of *Bartesaghi Gallo and others v. Italy*, judgment of June 22, 2017. Since then, Italy has amended its legislation by introducing the crime of torture into its penal code.

3. A definition of torture that does not cover all forms of ill-treatment

The adoption of a criminal standard against torture is aimed exclusively at criminalizing acts by which "severe pain or suffering, whether physical or mental, is inflicted on a person" for the purpose of, among other things, obtaining "information or a confession" from him or her, "putting pressure on him or her" or "punishing him or her"[83] .

The aim is therefore to strictly limit the scope of the law to the definition given in Article 1 of the United Nations Convention against Torture.

There are no plans to extend the scope of torture to other cruel, inhuman or degrading treatment or punishment. The latter will continue to be punishable under the various current penal standards, and their detection will continue on the basis of available resources, notably through the work of the National Commission for the Prevention of Torture (CNPT).

4. No additional resources required

Responsibility for prosecuting acts of torture committed in Switzerland should lie with the cantonal public prosecutors' offices. In principle, they already have the human and financial resources to deal with such cases.

In principle, responsibility for prosecuting acts committed abroad should lie with the Federal Prosecutor's Office (MPC). For this purpose, the MPC has a unit responsible for offences under international criminal law. The unit's ability to effectively prosecute international crimes was recently illustrated by the criminal trials opened against former Liberian ULIMO commander Alieu Kosiah, former Gambian minister Ousman Sonko and former Syrian vice-president Rifaat al-Assad.

One of the ways in which the MPC pursues international crimes is through collaboration with the State Secretariat for Migration (SEM). Since 2017, the latter has been providing the MPC with information on any suspected perpetrators of international crimes. Collaboration between the two authorities is therefore well established.

5. Consistency between domestic and foreign policy

The fight against torture is one of Switzerland's foreign policy priorities, as outlined in Objective 5.4 of the Federal Council's Foreign Policy Strategy 2024-2027[84] . It is also one of the four thematic priorities of the FDFA's Human Rights Guidelines 2021-2024[85] . Finally, the FDFA's Action Plan against Torture also recalls that "Switzerland defends the absolute and universal prohibition of torture and ill-treatment and promotes its effective implementation"[86] .

Failure to comply with all the obligations arising from the Convention against Torture certainly weakens the very firm stance that Switzerland can and must take on the international stage regarding the absolute prohibition of torture. It is difficult when you are regularly called to order by the UN Committee against Torture and criticized by numerous NGOs to be able to credibly insist to other states on their own obligations arising from respect for international law. We saw

[83] Cf. art. 1, par. 1 CAT (RS 0.105).
[84] Federal Council, Foreign Policy Strategy 2024-2027, p. 35.
[85] FDFA, Human Rights Guidelines 2021-2024, p. 12.
[86] FDFA, FDFA Action Plan against Torture, p. 3.

this in June 2019 at an OSCE conference on the fight against torture sponsored by Switzerland: our country was publicly criticized for not having a specific standard for effectively combating torture.

In its Human Rights Guidelines 2021-2024, the FDFA stresses, among other things, that "Switzerland is committed to ensuring the coherence of its domestic and foreign policies in the promotion of human rights"[87] . Criminalizing torture in criminal law would make it possible to implement this objective within the framework of a priority theme for Switzerland.

6. Alignment with parliamentary practice

The Convention against Torture has been in force in Switzerland for over 35 years. While it is true that, at the time of ratification, it may have been considered that there was no urgent or fundamental need to adapt national law, since then the practice of the Federal Assembly regarding the implementation of Switzerland's obligations in respect of serious human rights violations has clearly evolved.

When Parliament approved the Rome Statute of the International Criminal Court (RS 0.312.1) or the International Convention for the Protection of All Persons from Enforced Disappearance (RS 0.103.3), for example, specific incriminations were promptly adopted, making it possible to define and effectively punish the crimes of genocide (art. 264 CPS), crimes against humanity (art. 264a CPS), war crimes (art. 264b ff CPS) and enforced disappearances (art. 185bis CPS). There is no valid argument for treating the crime of torture differently in the penal code.

7. Strengthening the rule of law and promoting liberal values

In our penal system, the most serious offences are those involving the excessive use of public power (crimes against humanity, war crimes, enforced disappearances). These crimes are the hallmark of authoritarian regimes. By adopting a standard against torture, Switzerland will reaffirm its commitment to democratic values and the rule of law, and send a strong signal to dictatorial regimes.

By the same token, torture is the most unacceptable form of interference by a state in the individual freedoms of its citizens. By adopting a penal norm against torture, Switzerland is demonstrating its commitment to strong liberal values, which do not tolerate the abuse of public power by the State.

8. An instrument of justice for women

Switzerland is strongly committed to combating violence against women on several levels. In 2017, it ratified the Istanbul Convention, which protects women against domestic violence between private individuals. With the adoption of a specific standard against torture, women will now also be protected against acts of torture committed by members of an authority.

Everywhere in the world, women are victims of systematic violence. In particular, they are victims of corporal punishment and sexual abuse, even in states where human rights are

[87] Human Rights Guidelines 2021-2024, p. 9

regularly violated. In some cases, these practices are recognized by the international community as forms of torture[88] .

Switzerland is currently unable to prosecute such crimes when neither the perpetrator nor the victim is of Swiss nationality. To assist foreign authorities in suppressing these crimes, mutual legal assistance can only be granted on the basis of offences such as bodily harm or rape, which are punishable by a custodial sentence of between one and ten years. However, such cases are still extremely rare.

The adoption of a criminal standard against torture would remedy this problem. On the basis of universal jurisdiction, which enshrines the possibility of prosecuting the perpetrators of offences committed abroad when neither the perpetrators nor the victims are Swiss nationals, the criminal prosecution authorities will henceforth be competent to prosecute the perpetrators of acts of torture committed abroad when they are on Swiss territory. **Women will thus benefit from additional protection against acts of violence committed against them.**

[88] On sexual abuse, see, among others, UNHCR, Experts recognize sexual and gender-based violence as torture, April 15, 2019.

Annex 2 – Asylum statistics 2023[89]

Tableau 21 : Nombre de détentions ordonnées, par canton, du 01.01.2023 – 31.12.2023[1]

Canton	Rétention (art. 73 LEI)[1]	Détention en phase préparatoire (art. 75 LEI)	Détention en vue du renvoi ou de l'expulsion (art. 76 LEI)	Détention en vue du renvoi dans le cadre de la procédure Dublin (art. 76a LEI)	Détention en vue du refoulement, non-collaboration à l'obtention des documents de voyage (art. 77 LEI)	Détention pour insoumission (art. 78 LEI)
Appenzell Rh.-ext.	0	0	6	3	0	0
Appenzell Rh.-int.	0	0	0	0	0	0
Argovie	3	1	45	13	5	5
Bâle-Campagne	1	2	16	23	0	0
Bâle-Ville	242	3	19	70	0	4
Berne	151	3	272	167	0	1
Fribourg	1	3	33	83	1	0
Genève	8	0	129	45	2	2
Glaris	1	0	15	0	0	2
Grisons	0	0	28	5	0	0
Jura	0	0	20	1	0	0
Lucerne	90	12	110	119	3	0
Neuchâtel	0	0	3	6	0	0
Nidwald	2	0	0	0	0	0
Obwald	0	0	0	0	0	0
Saint-Gall	2	4	145	41	1	0
Schaffhouse	0	0	6	0	0	0
Schwyz	3	0	13	16	0	0
Soleure	30	0	89	59	1	0
Tessin	1	8	14	27	0	0
Thurgovie	1	1	28	64	3	0
Uri	11	0	9	1	0	0
Valais	0	0	38	12	0	0
Vaud	1	5	115	73	0	0
Zoug	14	0	37	32	0	0
Zurich	0	2	61	110	2	5
Total	**562**	**44**	**1'251**	**970**	**18**	**22**
Total 2022	408	59	1'257	1'000	22	16

[89] SEM, Statistique en matière de migration 2023, 15/02/2024.