Switzerland

Propositions of the Core Group of the NGO Platform Human Rights for the «List of Issues»

to be considered by the Committee Against Torture on its 62nd session

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Amnesty International Switzerland, humanrights.ch and Swiss Refugee Council (OSAR)

Endorsed by the following NGO's:

Alliance Sud; Amnesty International; Centre de conseils et d'appui pour les jeunes en matière de droits de l'Homme, CODAP; Centre international de formation à l'enseignement des droits de l'homme et de la paix, CIFEDHOP; Dialog EMRK; Hilfswerk der evangelischen Kirchen Schweiz, HEKS; humanrights.ch; Inclusion Handicap; National Coalition Building Institute, NCBI; Netzwerk Kinderrechte Schweiz; NGO-Koordination post Beijing Schweiz; Public Eye; Schweizerische Flüchtlingshilfe, SFH; Schweizerischer Friedensrat, SFR; Terre des Femmes Schweiz.

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The Core Group of the NGO Platform Human Rights recommend that the Committee Against Torture take into consideration the following topics:

Definition and criminalization of torture *Concluding observation 7 (2015)*	
Background There is still no explicit provision in the Swiss criminal law that allows to penalize torture.	Proposed question Considering the last concluding observations Para. 7: What steps does Switzerland take to explicitly integrate the criminalization of torture in the Penal Code in order to take action against such crimes?
National Human Rights Institution *Concluding Observation 9 (2015)*	
Background The work of the National Commission for the Prevention of Torture (NCPT) has significantly improved the dissemination of information on the implementation of the recommendations of the CAT. But the resources of the NCPT are limited and the responsibility for that task cannot be relying on the NCPT only. Especially with view to the complex federal structure in Switzerland, more efforts must be done in this regard.	Proposed questions Considering the last concluding observations Para. 9: How is the financing of the NCPT secured? Is Switzerland willing to extend the financing of the essential work that the NCPT is doing in the area of return monitoring and the visits to detention facilities?
Background The mandate of the existing Swiss Centre of Expertise in Human Rights (SCHR) was initially limited to a pilot phase from 2011 to 2015. On 1 July 2015, the mandate was extended by the Federal Council until either a successor institution will be established or for a maximum period of up to five years from early 2016 onwards. The SCHR is not an independent human rights institution but "only" a service center. It receives a basic yearly funding from the Federal Government in return for which the SCHR provides services to the Confederation defined on a yearly basis. On 29 June 2016, the Federal council has decided to establish a national human rights	Proposed questions Considering the last concluding observations Para. 9: What steps does Switzerland take within the law-making process in order to guarantee the conformity of the institution with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), particularly regarding the institution's independence, including financial? What steps will it take in order to assure its effectiveness regarding the implementation of Switzerland's international obligations?

institution in accordance with United Nations recommendations (Paris Principles of 1993), based on the evaluation of the pilot project launched in 2011. The idea is to establish an institution building on the existing set-up. The Federal Council has mandated the Federal Department of Foreign Affairs and the Federal Department of Justice and Police to prepare a draft for consultation by the end of June 2017.[1] A definitive decision from the parliament is not to be expected before 2019. The NGO Platform Human Rights does welcome the decision of the Federal Council. Nevertheless, it will be necessary to closely monitor the law-making process in order to assure the conformity of the institution with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) as well as its effectiveness regarding the implementation of Switzerland's international obligations.	
Fundamental legal safeguards	
Background Returns at the border are often ordered on the spot and were conducted in an informal way without a written decision and without access to interpreters and to legal assistance. If the return cannot be carried out on the spot, the person will be without access to legal remedies be held in an overnight detention facility that is ordered by the border guards. At the border of Domodossola/Brigue (VS), migrants intercepted after a certain hour in the evening, pass their night at the prison of Brigue where one room outside the prison but inside the prison areal was furnitured with 8 double beds (superimposed). If there are men and women, women use to be detained in the cells of the prison for one night. It isn't excluded that on weekends they are detained more than one night in order to be removed on Monday morning. A similar set-up applies to border controls at the border in Como/Chiasso. Persons controlled at Chiasso were in the past not informed about	Proposed questions Which steps does Switzerland take to ensure the control of these measures? How is the Swiss assessment of the acceptance and understanding of these measures by the persons concerned? Do these persons know what is happening to them and how is the access to legal remedies ensured?

[1] https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-62431.html

their rights and about the possibility to challenge a removal decision. Since the beginning of June 2017, information seems to be given at the border of Chiasso where most of the entries are registered. On three televisions, information is available in 25 languages. They get information about the place they are in, the procedure followed and the possible issues. There are posters of EASO and the UNHCR with information in English about the possibility to ask for asylum. They are informed that they can ask for a decision which can be challenged. More than 40 persons were trained for the interviews and women are questioned by women. Up to June, there were regular accounts of persons asking for international protection who were not transferred to the FOM, responsible for asylum claims, but have been denied entry by the border guards because the asylum application was not credible (i.e. the persons did not really want to apply for asylum despite the fact that they asked for protection..	
Police violence *Concluding observation 10 (2015)*	
<u>Background</u> In the case of police violence, few legal procedures have resulted in a conviction.	<u>Proposed question</u> Considering the last concluding observations para. 10: What steps does Switzerland take in order to improve the protection against police violence through the creation of an independent mechanism in all cantons, including the competence to receive and investigate all complaints about the use of excessive force, torture, ill-treatment or other abuses by the police?
<u>Background</u> A national database for complaints filed against the police is lacking.	<u>Proposed question</u> Considering the last concluding observations para. 10: What concrete steps does Switzerland take in order to improve the data collection in this regard?
<u>Background</u> There still exists no independent complaint body for all cantons, empowered to receive complaints relating to violence or ill-treatment by law enforcement officers and to conduct, except the offices of the Ombudsman/woman	<u>Proposed question</u> Considering the last concluding observations para. 10: What steps does Switzerland take to create the institutionalized independent complaint bodies as recommended in the 7th periodic report?

put in place by the Parliament in a certain number of cantons and Swiss cities.	
Background Discriminatory, disrespectful and prone to violent inspections based on racial profiling by police and – increasingly – by border guard bodies and airport police are a serious problem in Switzerland. Recent research (2017) shows that large groups of individuals are affected: amongst others, People of Colour generally, people of Arabic, North-African or South-East European descent (mainly former Yugoslavia, Albania; Bulgaria, Rumania), members of the Roma, Sinti or Yenish communities, Muslim women who wear headscarves and others not generally perceived as "normal" Swiss citizens. At the border, migrants with these origins are systematically submitted to identity controls. If they don't have documents, they are introduced to the procedure mentioned above. All persons, independently of their age – Including minors – are submitted to a body check and have to take off their clothes. Border police pretends that these body controls are made in two times and the migrants are never completely naked, but migrants interviewed say the opposite. However, in every case, this proceeding is disproportionate and attends the dignity of the migrants who are often very affected by this way of proceeding. Access to justice for the victims of racial profiling is not guaranteed. Until now, racial profiling is confirmed by court in no case (see for further information regarding the situation in Switzerland the «Alternative Report on Racial Profiling» issued by the «Alliance against Racial Profiling» and there the documented cases Mohamed W. B.,[2] David A. Wilson A., Mohamed A. Hervé K.[3], Claudio).	Proposed questions What action does Switzerland take to ensure racial discrimination is recognised as a widespread phenomenon? Does Switzerland examine the routines, leadership styles as well as the distribution of resources and the communication activities of the police and the border patrol authorities in order to grasp and counter the phenomenon? Is there a system of an independent and ongoing monitoring planned in the near future? What legal actions are planned to introduce statutory prohibitions against racial profiling and discrimination in federal laws and to require or encourage the introduction of such laws in cantonal and communal police laws? Are there plans to introduce a system of receipts or pilot programmes of such a system, which requires police officers to issue a receipt for every check of a person containing general information regarding the check? What steps are taken to improve access to justice in cases involving racial profiling? Are there plans to create permanent independent investigative bodies at the federal or cantonal levels or in major cities?

[2] See – in French - http://www.humanrights.ch/fr/droits-humains-suisse/interieure/poursuite/police/delit-facies-audience-judiciaire-precedent.
[3] https://www.rts.ch/info/suisse/8526261--c-est-tres-difficile-de-porter-plainte-contre-la-police-pour-le-delit-de-facies-.html.

Violence against women *Concluding observation 11 (2015)*	
Background A lot has been done in awareness-raising activities and information campaigns – by the federal administration, cantons and various municipalities. Nevertheless, the rate of violence against women, especially domestic violence, is still high. Impunity is widespread. Only 22 per cent of cases of domestic violence were reported to the police. In the process of the ratification of the Istanbul-Convention the Federal Council proposed 2015 various amendments to civil and criminal law for a better protection of the victims of domestic violence and harassment. To enhance the effectiveness of the regulation on protection against violence established in article 28b of the Civil Code the Federal Council proposes to abolish certain procedural constraints identified in the evaluation of that regulation. It is also expected to no longer charge procedural expenses to the victims, and to abolish reconciliation procedures in all cases. In addition, the regulation governing the closure of criminal proceedings in cases of simple bodily harm, repeated violence, threats, or constraints in couple relationships is expected to be revised (Art. 55a Criminal Code).	Proposed question What measures takes Switzerland to fight impunity and to ensure access to justice for all victims of violence especially domestic violence?
Background The prosecution and punishment of perpetrators in accordance with the serious nature of their acts must not be assured only in cases of domestic violence, but also in cases of human trafficking as well as for other persons who are victims of violence. Concerning migrant women, one of the main obstacle to the access to effective and impartial proceedings – and as a consequence also to the persecution and punishment of perpetrators – is the risk of losing the right of stay for the victim. If there is a legal base for the possibility of the maintenance of the right of stay, the practice remains extremely restrictive and the burden of proof required is high. In addition, sensitization of migrant communities would be necessary in order to improve effectiveness.	Proposed questions Considering the last Concluding observations para. 11 b: What measures have been taken to ensure that women victims of non-domestic violence may find appropriate assistance and care? What measures have been taken by the Swiss authorities in order to improve the access to effective and impartial proceedings for migrant women?

Background The Swiss government has made certain efforts regarding the sensitization and training of judiciary and law enforcement officials on different groups of victims of violence. The NGO Platform Human Rights welcomes these efforts and underlines that there is still a lot of work to be done. Nevertheless, the participation in training is, usually, not mandatory, and it has been observed, that part of the judiciary staff and law enforcement officials are particularly reticent about these subjects.	Proposed questions Considering the last concluding observations para. 11 c: What measures have been taken by the Swiss authorities in order to sensitize and train the judiciary and law enforcement officials on all kinds of violence against women as well as other particular group of victims of violence as especially young persons, migrant persons, LGBTI persons, victims of human trafficking and other vulnerable groups? What measures are foreseen in this regard and how do the Swiss authorities plan to include more reticent judiciary staff and law enforcement officials?
Background The NGO Platform Human Rights welcomes the different measures Switzerland has taken to raise public awareness regarding violence against women. What is lacking from our point of view are measures targeting other particular groups of victims such as especially young persons, migrant persons, LGBTI persons, victims of human trafficking and other vulnerable groups	Proposed question Considering the last concluding observations para. 11 d : What steps have been taken in order to ensure to raise public awareness, particularly among young people, not only regarding domestic violence and gender stereotyping, but also regarding other particular groups of victims, especially young persons, migrant persons, LGBTI persons, victims of human trafficking and other vulnerable groups?
Background Data are available on domestic violence offences registered by the police (without distinction as to the sex of the victim), on measures in support to victims and on criminal convictions. In contrast, there are no statistical data on cases brought to the court by victims (relating the legislation against violence in the Criminal Code, in the Civil Code or in the Swiss Victim Assistance Act).	Proposed question What steps will Switzerland undertake in order to improve the data collection?
Background The insufficient availability of women's shelters is another issue we would like to point at. We seriously doubt the government's perception that there are enough places in shelters available. There is a need of *specialised* shelters guaranteeing adequate care and support for victims and affected children.	Proposed question What steps will Switzerland take in order to establish and support additional shelters for victims in all cantons or regions?

Human trafficking	
Background Despite a national action plan to combat human trafficking, the cantons (which are responsible for the plan's implementation) are free to decide what measures to take regarding victim protection, the prevention of trafficking and its criminal prosecution. Different application of the rules leads to inequalities, a lack of legal security and, finally, discrimination. The competent authorities of some cantons have still not received any training nor specific awareness raising on the problem of trafficking. Victims of trafficking (VoT) are often not identified in Switzerland as first points of contact lack training and experience. In many cases, authorities act too late and potential victim often abscond. Assistance to VoT is only paid for if the person concerned has been exploited in Switzerland. In the asylum area the asylum procedure (including Dublin) is applied without sufficiently taking into account the rights and needs of VoT under international law. Thus, VoT are often unable to enjoy protection from criminalization and/or immediate deportation, or from reprisals by perpetrators. The rate of convictions is still very low.	Proposed questions Will Switzerland establish and implement binding rules, based on the principle of non-punishment that would be applicable throughout the whole national territory in order to identify and protect victims and prosecute criminals? What does Switzerland do to sensitize authorities and civil society actors that may be in contact with VoT? How is victim protection and the access to assistance organized in practice? How will Switzerland ensure proper financing of victim support and a professional structure for victim identification? How does Switzerland support VoT who have not been exploited in Switzerland?
Background Prevention and training are largely based around human trafficking for purposes of sexual exploitation, while trafficking for the purposes of labour exploitation is almost completely ignored. Work inspectors have no explicit legal mandate to monitor or denounce violations of Article 182 of the Criminal Code. In this context, it should further be noted that Switzerland's Criminal Code knows no specific prohibition of slavery. It is therefore questionable whether slavery-like practices, e.g. in the context of households work and care work, can be punished according to the seriousness of the offence.	Proposed questions What measures does Switzerland take to fight human trafficking for the purposes of labour exploitation and adequately protect and support its victims? Will Switzerland make slavery and slavery-like practices a criminal offence?

Non-refoulement *Concluding observation 13 (2015)*	
Background The statistics of the State Secretariat for Migration do not fulfill the requirements of the CAT. They are not sufficiently precise and do not provide information about parameters as the minority background (ethnic and religious minorities, LGBT etc.) of asylum seekers, persons with asylum, refugees or temporary admission. Also, no information is provided about the reason for granting refugee status or temporary admission (impossibility, unreasonableness or inadmissibility). Neither is it possible, from the statistic, to obtain information on the number of persons who allege to be victim of torture or ill-treatment, respectively to have a well-founded fear of becoming subject or how many persons have been granted asylum for this reason. It isn't possible neither to know on which criteria a person is or isn't sent back to another Schengen country. It is impossible to know whether the principle of equality is respected or not.	Proposed question Switzerland should provide data on the number of asylum claims registered, the number of claims accepted and the number of claims accepted of persons alleging being victim of torture or fearing to become subject of torture as well as the number of expulsions disaggregated by age, sex and ethnic origin since the seventh rapport of Switzerland. What steps does it undertake in order to provide data fulfilling the requirements of the CAT?
Background The Swiss authorities to proceed – with certain restrictions due to formal requirements (see below) – to an assessment of the risk of violation of the principle of non-refoulement in each case. Nevertheless, the assessment by the Swiss authorities has proofed to be insufficient in certain regards. a) country of origin information The assessment does often not take proper account of information concerning the situation in the country of origin, as the CAT had already noted in the last concluding observations. This has again been confirmed by the European Court of Human Rights (ECHR) regarding Sri Lanka as well as lately regarding Eritrea[4]. Also, the Administrative Federal Court (AFC) has confirmed two decisions of removal to Syria[5] since the beginning of 2017, which goes against the recent law case of the ECHR[6]. The same can be said, among other examples, with regard to	Proposed questions Considering the latest observations para. 13: What measures does Switzerland undertake in order to sufficiently take into account the information concerning the situation in the country of origin?

[4] ECHR, M.O. v. Switzerland, No. 41282/16, decision from 20.6.20171 (not definitive).
[5] AFC, F-177/2016, decision from 07.02.2017, and D-1105/2017, decision from 31.05.2017.
[6] ECHR, S. K. v. Russia, No. 52722/15, decision from 14.2.2017; ECHR, L. M. a.o. v. Russia, No. 40081/14, 40088/14 and 40127/14, decision from 15.10.2015.

the assessment of the situation in Spain concerning the asylum claim of Nekane Txapartegi, who risks to be extradited to Spain where she was convinced on behalf of torture evidences.[7] (Regarding the assessment of the situation in Dublin member states and so-called safe third countries, especially Greece and Italy, see comments further down). NGO's intervene on a regular base on cases where there is an important risk of breach of the non-refoulement principle, particularly concerning cases from Chechenia, Ethiopia, Libanon and other countries. Only very determined interventions with much pressure are followed by a serious re-examination.	
b) Medical reports Medical reports are not being taken into account in cases of alleged torture or ill-treatment. What concerns ordinary medical reports, they are usually dismissed by the Swiss authorities with the argument that the link between alleged torture and physical or mental evidence cannot be established in a sufficient manner. Medical reports established according to the standards of the Istanbul Protocol are not taken into account sufficiently neither by the Swiss authorities. This can be explained on the one hand with the lack of sensitization and of training of judiciary and law enforcement officials. On the other hand, neither the probative value of such reports nor the question of the burden of proof have yet been assessed in Swiss law case. This is extremely worrying as this constitutes in many cases the only mean for victims of torture or ill-treatment to credibly demonstrate their allegations. This practice is clearly in contradiction with the opinion of the CAT according to which the «practice of not using the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) as a means for establishing a link between the asserted ill-treatment in the asylum application and the findings of actual physical examination is not in conformity with the requirements set out in the Istanbul Protocol (arts. 3 and 10)»	What measures are in place in order to take into consideration medical reports – especially medical reports established according to the standards of the Istanbul Protocol – in a correct manner within the assessment of the risk of a violation of the principle of non-refoulement? What special measures to identify and protect victims of torture or ill-treatment and generally traumatized persons does Switzerland plan to implement, especially with a view to the acceleration of the asylum procedure?

[7] See for example: http://www.tagesanzeiger.ch/ausland/europa/Folter-stinkt-nach-Erbrochenem/story/20594666

and who recommends (in this case the Dutch government) «[t]o apply the Istanbul Protocol in the asylum procedures and to provide training thereon for concerned professionals to facilitate monitoring, documenting and investigating torture and ill-treatment, focusing on both physical and psychological traces, with a view to providing redress to the victims.»[8] The need to effectively use medical reports established according to the standards of the Istanbul Protocol as outlined above in asylum procedures is even increased in the context of accelerated asylum procedures as applied within the processing center in Zurich for instance and as it will be applied throughout Switzerland under the revised Asylum Act. For instance, this is not the case in Zurich and the NGO Platform Human Rights is not aware of any special measures foreseen with regard to the entry into force of the revised Asylum Act. The NGO Platform Human Rights welcomes in this context the recent statement of the Federal Council has lately according to which « On peut (…) attribuer une valeur scientifique accrue aux expertises établies sur la base des normes du protocole d'Istanbul»[9] – that can at least be considered as a positive sign.	
c) Formal requirements In practice, formal requirements – notably in the case of Re-examination (Art. 11b Asylum Act) or multiple (asylum) applications (Art. 111c Asylum Act) – do often constitute obstacles to the effective assessment of the risk of violation of the principle of non-refoulement. This is especially problematic in the case of traumatized persons, as they do often show difficulty in credibly demonstrate or substantiate their allegations and as they are often identified only after a certain amount of time. (Concerning the risk of an insufficient assessment of the risk of violation of the principle of non-refoulement due to problems	What procedural and practical guarantees are in place to avoid that formal requirements hinder access to an effective legal remedy in potential refoulement-cases?

[8] CAT/C/NLD/CO/5-6

[9] Interpellation Glättli 17.3193, *Reconnaissance du Protocole d'Istanbul par la Confédération,* 16 mars 2017 ; réponse du Conseil fédéral, 10 mai 2017.

of access to legal assistance, see commentaries further down.)	
Background The Federal Office of Justice, which is dealing with extradition demands, regularly asks for diplomatic assurances to the countries of origin. This is even the case with countries like Turkey where the human rights record is getting poorer and poorer since 2012 and where all powers are almost concentrated in the hands of the president who has the full power about the police, the army, the justice and the Parliament. We are very concerned about the case of the Kurdish activist H.Y. (CAT 767/2016), who is supposed to be extradited to Turkey for having been tried on behalf of torture evidences of his brother. The complainant himself was also submitted to torture. His case is actually pending with the CAT. The Swiss authorities did not take in account that torture was very widespread in Turkey in the moment of the detention of the complainant and his brother. They did not take in account the political closeness of the family of the complainant to the Kurdish leader Abdullah Öcalan. Also in the case of Nekane Txapartegi, a bask activist who was convinced on behalf of torture evidences, Switzerland did not even take in account the examinations made according to the Istanbul Protocol by two well-known physicians with big experience with torture victims. Also in Spain, torture was widespread in the moment of the arrest of Nekane Txapartegi.	Proposed question Considering the latest observations para. 13: Swiss authorities should take in account country of origin information on the moment of the detention of persons wanted to be extradited and respect the principle not to extradite persons who were convinced on behalf of torture evidences. What steps are taken by Switzerland in this regard?
Background Dublin and risk of violation of Art. 3 ECHR. Switzerland is using a more restrictive standard for the risk assessment in case of returns to a Dublin country as compared to other return decisions. This standard leads to the effect that often the individual circumstances of the persons concerned are not looked at because of the assumed general obligation under European and international law of the country of destination. This has led to Switzerland returning persons to e.g. Hungary, Bulgaria and Italy without an individual risk assessment. Also special vulnerabilities of returnees are often not taken into account or are outweighed by the Swiss states' interest in returning persons under the Dublin scheme. Since February 2014, the	Proposed questions Why does Switzerland use a differential risk test for Dublin returns and returns to the home country? How are vulnerabilities taken into account in Dublin decision and Dublin returns in practice?

Federal Administrative Court does not have the power to rule on the reasonableness of the use of the sovereignty clause by the authorities. This has led to a more restrictive practice of Dublin returns by the authorities. Severely ill persons have been transferred as well as families with young children. With regard to families, family separation is exercised often without the necessary taking into account of the humanitarian clause if the strict application of the criteria allows for a separation (e.g. in cases where the status in Switzerland is not a status of international protection or because the family was formed outside the country of origin. Also persons that have been travelling in a family constellation but have reached the age of majority are regularly separated from their families.	How does Switzerland secure access to health care, and other necessary assistance in the responsible country in case of Dublin returns? What are the prerequisites of the use of the sovereignty clause in Dublin cases? How many cases of family separations (including young adults separated from their families have been taking place in the reporting period?
<u>Background</u> Dublin detention is often ordered without any assessment of the individual circumstances or the use of so-called alternatives to detention. The placement into administrative detention or in accommodation centers in remote areas also may lead to difficulties for the applicant to access legal representation. As the regular time limit for an appeal against a Dublin decision is five days, the access to an effective legal remedy is not secured in all cases. This might be illustrated by the fact that in 2017, ten persons have been transferred to Hungary under the Dublin scheme despite the fact that the Swiss federal Administrative Court had suspended decisions on Dublin returns to Hungary pending a precedent setting judgement (which was given on 31 May 2017).	<u>Proposed question</u> How does Switzerland secure access to legal representation in remote areas of the country, where the accommodation regime is very strict and in administrative detention?
<u>Background</u> Third country cases: Switzerland is using safe third country agreements to return persons that have been granted protection in other Dublin states to return these persons. The return often takes place without an individual assurance that the person may still benefit from the status upon return. Switzerland has also returned persons to Greece under these arrangements including families and single mothers.	<u>Proposed questions</u> What are the rules and the time limits for returns under bilateral return agreements of persons granted protection in another Dublin state? How is the assessment conducted that persons do actually in practice have access to the protection status granted and to basic social rights in the country of return?
<u>Background</u> A new asylum procedure was voted upon in June 2016 and may be implemented from 2019	<u>Proposed question</u> Considering the last observations para. 15: What measures does Switzerland take in order

on. The procedure will be significantly shortened and (as a compensation) asylum seekers will receive free advice and legal representation from the beginning of the procedure on. This is an important and positive step that can resolve a certain number of shortcomings concerning procedural guarantees. However, the impact of that measure will depend to an important extent to how this measure will be implemented in practice (quality of the legal representation, role of the legal representation, financing, independence). Also, free advice and legal representation is restricted in different regards. It is granted fully (including the whole appeal procedure) only for certain types of procedures that are concluded within 140 days. For the rest of the procedures do not fall under that new regime, including notably ordinary procedures not concluded within 140 (no free legal representation in appeal procedure) as well as extraordinary procedures (no free legal assistance granted in eventual hearings and in appeal procedures). Therefore, the problems regarding access to free legal representation – and therefore to an effective remedy – will remain the same in these cases. Also, the law foresees that the legal representative resigns to lodge an appeal if it does not seem to have any chance of success.	to assure that access to legal assistance is granted in all procedures including extraordinary procedures?
<u>Background</u> In 2016, nearly 56 % of the asylum seekers entered the Dublin procedure. If Swiss authorities discover that they passed by another Dublin country, they are displaced to a remoted accommodation in the mountains where there is very poor contact with the local population. Glaubenberg is one of these accommodations. Until May 2017, there were very restricted possibilities to receive legal information and consultation by an independent body for persons accommodated in Glaubenberg. In some cases, asylum seekers could therefore not challenge the decisions and have been transferred to to countries with a poor human rights record in the asylum area like Hungary or Greece. 10 persons were sent back to Hungary since January 1st, at least two of them after the UNHCR called on all countries not to send back migrants to Hungary. The SEM	<u>Proposed question</u> What steps does Switzerland undertake in order to avoid such restrictions to the access to effective remedy?

told Amnesty International that they wouldn't do any monitoring on these cases. However, the Federal Administrative Court decided in June 2017 that the SEM should examine the situation in Hungary and sent back some 200 cases to the SEM.	
Background Return decisions in case of border procedure in application of readmissions agreements (art 64c al. 1 let. a FAA) were taken without a formal decision. Since June, migrants intercepted at the border seem to be informed that they can ask for a formal decision they can challenge at a court. After the information, the legal right to be heard seem to be granted. There is a form which is followed by the interviewer. Migrants are asked about the reasons for their attempt to enter Switzerland. Return decisions in case of border procedure in application of readmissions agreements (art 64c al. 1 let. a FAA) do not distinguish between aliens who have already applied for asylum in another Dublin country and aliens not asking for protection Until June, NGO's collected regularly information about migrants who claimed having ask for international protection without being admitted to the Swiss asylum procedure. As the measures taken are new, NGO's have to monitor the actual situation in order to evaluate whether things changed since June 1st.	Proposed question Which steps does Switzerland take to ensure the access to the asylum procedure for these persons? Which steps does Switzerland take to ensure the effectiveness of the remedy of art. 64 abs. 3 FAA (Letr), including the right to be heard, the access to the service of a lawyer free of charge and the examination by case of the necessity of immediate execution of the return measure, in case of asylum seekers who were not granted access to the asylum procedure? How does Switzerland verify the status of persons controlled at the Swiss borders?
Background The new measures on the expulsion of foreigners who have committed a criminal offence in Switzerland have entered into force on 1 October 2016. The expulsion order is part of the criminal judgement and therefore also given by criminal courts who do not have a lot of experience in asylum cases. Also, an explicit exception for the expulsion order is only foreseen in cases involving the (nuclear) family. After an expulsion order it is legally impossible to be granted residence permit.	Proposed question How does Switzerland apply the new law on the expulsions? How is it in practice secured that the principle of non-refoulement is upheld? Where do persons with an expulsion order for criminal offences live? How many of these persons may not be deported for reasons of the principle of non-refoulement?

<table>
<tr><td colspan="2">Forced repatriation
Concluding observation 16 (2015)</td></tr>
<tr><td>Background
Even though the observation of return flights has been institutionalized for some years now and is secured by the NCPT, this monitoring does not cover all deportation measures. For lack of resources not all returns and not all steps of the returns procedure are fully monitored. The practice of cantons in this regard varies considerably. Especially the use of force by the cantonal police responsible for the first phase between the canton and the airport has been of particular concern to the NCPT over the last years.</td><td>Proposed questions
Considering the concluding observation para. 16: How does Switzerland guarantee the attendance of observers from the National Commission for the Prevention of Torture at all forcible removals of foreigners?
Are deportations to home always carried out by air? If no, what other measures does Switzerland use in this regard?</td></tr>
<tr><td>Background
The newest report of the NCPT on the monitoring of deportations on special flights shows that most of the human rights issues arise on the way to the airport.
In particular, the NGO Platform Human Rights has observed a rise of reports on human rights violations and the excessive use of coercive measures under the Law on Foreign Nationals in different cantons (notably, but not exhaustively: Valais, Schaffhausen, Neuchâtel, Zug).
This evolution seems to have been further intensified with the entry into force of article 89 b al. 2 Asylum Act, which gives the Federal government the possibility to hold back federal funds for cantons that do not enforce the deportation of foreigners that have been ordered to leave the country.[10]</td><td>Proposed questions
Is the Federal Government aware of the issue that the use of force has become more common during the first phase of deportation proceedings? Does the Federal Government know of any evidence on the effect of the newly introduced possibility to cut funds for cantons that do not fulfill their obligation to deport certain persons?</td></tr>
<tr><td>Background
Due to new practical guidance for the medical assistance on return flights, the treatment as well as the assessment of medical indications prior and during forced returns has significantly improved. However, there is still room for improvement especially with regard of the transmission of medical data between the cantonal/communal and the Federal level.</td><td>Proposed question
What processes does Switzerland foresee to ensure full coverage of all medical issues during forced returns?</td></tr>
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[10] Art. 89 b al. 2 Asylum Act: «If the non-fulfilment or inadequate fulfilment of enforcement tasks in accordance with Article 46 leads to the person concerned staying longer in Switzerland, the Confederation may decline to make flat-rate compensatory payments under Article 88 of this Act and under Articles 55 and 87 FNA in respect of the related costs incurred by the canton.» (official translation)

Administrative detention and accommodation in asylum centers *Concluding observation 17 (2015)*	
Background The Swiss federal court has found in two decisions in May 2016 and April 2017 that so-called Dublin detention is ordered without an assessment of the serious risk of absconding and without an assessment of so-called alternatives to detention. This practice is widespread on the cantonal level where persons are often even held in pre-deportation detention if they have lodged an appeal against the transfer decision and have been granted an injunction preventing the transfer during the court procedure. Child detention or the detention of parents and the placement of children in an orphanage or a separate accommodation arrangement are taking place on a regular basis in Switzerland. The federal Court has highlighted in its decision 2C_1052/2016; 2C_1053/2016 that the best interests of the child are of paramount importance in detention decision of both parents and children. In this case, three children at the age of 3, 6 and 8 were separated by the cantonal authorities of Zug during three weeks from their parents and their younger brother, who were imprisoned in two separate administrative detention centers, the father in Zug and the mother and the baby (7 months) at Zürich Airport without having any possibility to contact themselves for the parents and two contacts of 10 minutes by phone hardly challenged by the lawyer. When the cantonal counsellor responsible for security matters in the canton of Zurich ordered the mothers and the baby's release, the authorities of Zug brought her and her baby to the prison of Zug, where they were reunited with the father for the last 4 days of detention, but still separated from their other children.	Proposed questions What measures does Switzerland take in order to always take into account the proportionality of a detention decision (including an assessment of alternatives to detention) and only use administrative detention as a last resort? What steps does it undertake in order to end Child detention and the placement of children in alternative accommodation in order to detain parents should in its Administrative practice?
Background In practice, the conditions in administrative detention of migrants are very often close to conditions in criminal detention, or even worse, despite the fact that case law and doctrine make a clear difference between immigration detention and criminal detention regimes. Unlike other forms of detention, migrant detainees are neither suspected of, nor charged with, criminal	Proposed question The administrative detention regime should be completely different of the detention regime for criminal offences. It should not be a prison-like environment with limitations on visitation rights or confiscation of personal belongings. What steps do the Swiss authorities undertake in order to realize this?

offences, and their mere presence in Switzerland represents no threat to public health, safety or security. Migration is not a crime per se and should never be criminalized or subject to other punitive measures. In the canton of Valais for example, administrative detainees are detained in their cells 21/24 hours with a possibility to have access to the fitness room twice per week. Also in other small police prisons in the canton of St. Gallen, Thurgau or Aargau for example administrative detention is administered like a criminal detention. The best practice is actually the one at the prison of Frambois in Geneva where detainees can freely move inside the detention facility from the morning until 9 pm, cook their own food, go to their cells and exchange with other detainees in the common rooms or their own cells, make music and so on. They have access to a working room where they can work. The salary for this work is given to them in the moment of their release.	
<u>Background</u> Medical care is not always available to administrative detainees. Psychological care is very rare. In the canton of Valais, psychological care was asked by detainees very affected by the very strict administrative detention regime, but they could not get access to a psychiatrist due to the fact that no agreement was made with the relevant unit of the hospital for administrative detainees. No psychological support was ever given to the detainees even after a fire break out at Eastern 2017 in the cell of another detainee who was seriously injured.	<u>Proposed question</u> What steps does Switzerland undertake in order to grant medical and psychological care to administrative detainees?
<u>Background</u> As already several UN processes including the last UPR cycle have highlighted, the access to legal counseling is not always secured if the person concerned is in administrative detention. Switzerland's answer that this access is foreseen in the Constitution does not change the practical problem that access to detention centers is very much restricted so that a potential lawyer may only access the facilities if the person concerned has already signed a power of attorney for the lawyer. Not all detention decision are subject to automatic court review including an oral hearing before the court (i.e. Dublin detention decisions are reviewed upon request only)	<u>Proposed question</u> What steps does Switzerland undertake in order to assure that persons in administrative detention do have an automatic review of the detention decision (including an oral court hearing) and are represented in the court hearing by a lawyer free of charge?

Background Switzerland still practices coercive detention of persons that cannot be forcibly deported ("enforcement detention"). In combination with the rising number of criminal detention for reason of illegal stay this leads to a situation that persons that are "undeportable" for practical reasons are faced with prolonged periods of administrative and criminal detention.	Proposed question Switzerland should abandon Article 78 of the Aliens Act allowing for administrative detention of "undeportable" persons for coercive reasons as well as of Article 76a (4) of the Aliens Act allowing for administrative detention for disobedience. Furthermore, there should be a clear limit of criminal proceedings for illegal stay in order to avoid prolonged periods of detention for persons illegally staying in Switzerland. Is Switzerland planning to undertake any steps in this direction?
Background The reception conditions in Federal Centers, where asylum seekers may have to stay for up to a maximum of 90 days after having lodged an asylum claim, are problematic in different regards. It seems especially important to us to stress the related problems as in the near future, the maximum duration of the stay in federal centers will be increased from 90 to 140 days with the coming into force of the new Asylum Act (probably during the course of 2019). Recently, the Federal Administrative Court has decided in judgement F-4036/2016 of 9 March 2017 on the case of a young asylum seeker from Afghanistan in a Dublin procedure whose stay in the federal center in Les Rochats (an extremely remote satellite of the registration center Vallorbe) had lasted for 109 days in total – i.e. 19 days, or more than a fifth, over the maximum duration – constituted no violation of his fundamental rights. The Court reached the conclusion that the complainant had not succeeded to demonstrate in what way the prolongation (19 days) of the stay in the center would have violated his fundamental rights in his individual situation (consid. 3.2.2 in fine, p. 29). From our perspective, the maximum duration of stay as prescribed by law must be respected and the increase of the maximum duration of stay in a federal center (by 50 days) must imperatively be accompanied by the introduction of minimal standards regarding the housing conditions and the housing regime.[11] The housing regime in Federal centers is very strict and the question whether the current restriction of movement in this context	Proposed questions Which changes to the accommodation regime prescribed by the ordinance on Federal Centers are foreseen with regard to the prolonged periods of stay in Federal centers under the new asylum law? What measures has Switzerland taken to guarantee access to civil society, social welfare institutions and to "normal Switzerland" for persons accommodated in federal centers in general and in remote federal centers in particular? Why does Switzerland limit the exit of asylum seekers from centers to daytime hours (9.00 to 17.00 hrs) and why is it conditional upon a formal permission to exit the center? Is there a concept on how security and assistance for persons obliged to live in centers are guaranteed and that individual constraints and rights are observed and taken care off at all times?

[11] https://www.fluechtlingshilfe.ch/assets/publikationen/stellungnahmen/170505-sfh-stn-sachplan-asyl.pdf

amounts to detention and constitutes a disproportionate measure is not yet finally answered. Therefore, the ordinance regulating the rules for federal centers needs to be fundamentally reworked prior to the entry into force of the longer periods of stay in the federal centers enter into force. In practice, there is also a flagrant lack of privacy and no special measures are (usually) being taken regarding especially vulnerable persons (i.e. women, families, children, victims of human trafficking or persons with health problems). Measures are needed in order to address these shortages. In addition, more importance is attached to security measures than to social support. Finally, the access to medical care is often insufficient, especially in remote federal centers. Access to medical care – if necessary through specialists – must be guaranteed within the Federal centers.	
Unaccompanied asylum-seeking minors *Concluding observation 18 (2015)*	
Background In practice, border procedures do not make any difference between minors and adults in violation of the Swiss Foreigner Act (art. 64 and 69).	Proposed question Which steps does Switzerland take to guarantee the best interest of the unaccompanied child in returns procedures conducted at Swiss borders?
Background Recent reports and research showed that Switzerland is applying administrative detention on a regular basis. The federal Court has criticized this practice in a recent judgement of 26 April 2017 and has called for a primary consideration of the best interests of the child.	Proposed question What does Switzerland do to end child detention and to assess so-called alternatives to detention?
Background Children are absconding on a regular basis from asylum reception facilities and other centers.	Proposed question Which steps does Switzerland to secure an appropriate care and assistance for children?
Background In practice, guardianship is often established very late and in asylum procedures unaccompanied children are not represented from the beginning. Often the guardian is not a person with legal skills so that the quality of representation in legal proceedings is in some cases not secured.	Proposed question How is the legal and social assistance for unaccompanied children guaranteed throughout the administrative proceedings in asylum and in aliens law?

Under the revised Asylum Act, the assistance of unaccompanied children does comprise legal representation within the asylum procedure from the beginning on. This is a positive development. Nevertheless, it is not sufficient as the unaccompanied children do also need assistance by a legal guardian and social accompaniment.	What steps does Switzerland take in order to guarantee a comprehensive accompaniment of unaccompanied children who have filed an asylum claim, notably with view to the entry into force of the revised Asylum Act?
Prison conditions *Concluding observation 19 (2015)*	
Background Since 1999 the number of detainees has increased by 35%. As a consequence in 2013 more than 100% of all officially available prison beds were occupied.4 The most problematic prison is the Champ-Dollon Prison in Geneva with a temporary overcrowding rate of 170%. For many detainees the cohabitation in a very confined space (especially in the multiple cells) is hardly bearable.	Proposed questions What are the reasons for the increasing prison rate? What measures are the cantonal governments taking to increase the capacity of the prison system and to reduce the number of prisoners? How much money is Switzerland willing to invest to improve the situation and how?
Background The issues raised in concluding observation No. 19 have not improved since 2015. Prison conditions for pre-trial detainees especially in small prisons still amount to isolation and are generally quite severe. Due to a lack of conceptual and specialized psychiatric facilities persons with severe psychological illnesses are often kept in solitary confinement.	Proposed question Which measures did Switzerland undertake to solve the issues addressed in concluding observation No. 19?
Background Switzerland is lacking appropriate institutions for the increasing number of mentally ill offenders. This is particularly a problem with regard to solitary confinement in high security prisons; this kind of detention is almost exclusively composed of mentally (some seriously) ill detainees who have proven to be unsustainable in a regular penal institution or closed psychiatric wards. Instead of providing these persons with an appropriate medical treatment, they are often kept in the high-security prisons for many years.[12]	Proposed questions Will Switzerland build and provide additional therapeutic institutions to implement stationary measures? How will Switzerland address the growth in numbers in preventive incarceration in an adequate manner? Will Switzerland set an upper limit that can only be exceeded in very serious exceptional cases?

[12] See SCHR, Gutachten: Einzelhaft in Hochsicherheitsabteilungen, http://www.skmr.ch/cms/upload/pdf/140602_Gutachten_Hochsicherheitshaft.pdf

More and more people are being sentenced to in-patient therapeutic measures because of serious mental disorders according to Art. 59 of the Swiss Criminal Code. In 2015, a total of 864 persons were in "small preventive incarceration", which normally means a maximum of five years' imprisonment that can be prolonged by authorities. Because they are seen as potential "threats," these people remain in custody for years with no guarantee they will ever be released again. The European Court for Human Rights has repeatedly stated that the possibility to be released from prison is a human right. The lack of a possible release violates Art. 3 of the ECHR, the prohibition of torture. What is particularly problematic is the lack of therapeutic measures. Sometimes, these persons have to wait in the ordinary penal system before being placed in an appropriate therapeutic institution. Due to the long and uncertain waiting period, the affected persons lose their motivation to undergo treatment. In addition, there is a danger that the illness will become chronic.	
<u>Background</u> In Switzerland, approximately 30 people live in solitary confinement in high security wards. A third of these people has been in prison for over one year and in some cases between five and twelve years. High security confinement as solitary confinement is the severest form of imprisonment. Some prisoners in high security confinement can be isolated from the outside world and fellow prisoners for several years. The key issue regarding high security confinement is that in high security wards, the population of inmates consists of people with mental disabilities, some of whom are severely disabled.	<u>Proposed question</u> Will Switzerland create additional specialised places in psychiatric institutions in order that people who are at high risk of harming others due to a psychological disorder could be placed in closed psychiatric wards and not in solitary confinement in prisons? Solitary confinement must be reassessed regularly (at least once every three months) and the choice to extend solitary confinement must be sufficiently backed up with evidence. The longer the solitary confinement, the stronger the justification and evidence for it must be. What measures does Switzerland take in order to guarantee this?
<u>Background</u> Imprisonment measures in practice repeatedly lead to conflicts on how and to what extent the fundamental rights of affected persons might be restricted. Persons imprisoned in Switzerland nowadays have no possibility to get free confidential legal advice by independent specialists. The only way to get counselling is by addressing paid lawyers.	<u>Proposed questions</u> What measures are planned to ensure the access to justice for all imprisoned persons in Switzerland?

The right to legal assistance for prisoners is enshrined in various human rights treaties. According to the European Prison Rules, all prisoners have the right to legal advice, and the prison authorities shall provide them with reasonable facilities for gaining access to such advice (Para. 23.1). The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) define the following in rule 61: "Prisoners shall be provided with adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice or a legal aid provider, without delay, interception or censorship and in full confidentiality, on any legal matter, in conformity with applicable domestic law".	
Corporal punishment of children	
Background Switzerland has received several recommendations concerning prohibition and elimination of corporal punishment of children. The Federal Court has declared numerous acts of violence incompatible with the rights of the child but its case law remains virtually unknown to the wider public. It does not, moreover, categorically exclude corporal punishment as an educational measure. Nevertheless, the parliament regularly rejects initiatives in this direction. Recently a parliamentary motion calling for a ban on corporal punishment was once again rejected.	Proposed questions Will Switzerland prohibit corporal punishment and other violations of a child's dignity in its legislation? Are there any public-awareness campaigns on the negative effects of violence against children, especially corporal punishment, planned?
Intersex persons *Concluding observation 20 (2015)*	
Background CRC, CEDAW and CAT voiced their concern that intersex persons are still affected by unnecessary, and irreversible genital operations for cosmetic reasons. The Federal Council declared that surgical procedures have been denounced at the political level and by the National Advisory Commission on Biomedical Ethics. However, it should be noted that	Proposed questions How will Switzerland implement the recommendations of the CRC, CAT and the CEDAW regarding Intersex persons? What legislative and administrative measures to guarantee respect for the physical integrity and autonomy and self-determination of intersex persons are being planned?

parents of intersex children are pressured by medical professionals, the media, and society at large, to give their consent for so-called "medical procedures" justified by psychosocial indications. Intersex children and adults are often unaware of the procedures they have been subjected to. Access to legal remedies for intersex persons affected by unnecessary medical procedures is extremely limited with the statute of limitations often expiring by the time intersex children reach adulthood. It should be noted, that Switzerland has prohibited any form of female mutilation in the Criminal Code (Art. 124), but in the same time has never addressed genital mutilations of intersex children. Free legal assistance and appropriate psychosocial support is not guaranteed to victims and their families.	
Insufficient follow-up to the recommendations of the Committee Against Torture	
<u>Background</u> Switzerland's federal system poses a particular challenge for a coordinated implementation of human rights within the country. While the federal government is responsible for the ratification of international human rights treaties, it is the responsibility of the 26 cantons to implement the commitments made in key areas such as education, police, health, social sphere and the penal system. To date, there is no federal coordination of the follow-up on the recommendations of human rights treaty bodies. There are no institutional arrangements for a participatory involvement and sensitization of the cantons. The authorities in the cantons and municipalities are often not aware of the rights set out in the Convention and of their duty to effectively ensure their implementation, including in the cantonal courts.	<u>Proposed questions</u> What steps does Switzerland take to create institutional conditions which are appropriate to ensure an effective coordination of the follow up of recommendations of international human rights bodies between the federal and the cantonal authorities and civil society?
<u>Background</u> Only the Concluding Observations 2009 were translated in the national languages German and Italian. The Concluding Observation 2014 were not translated and –as far as we can tell –	<u>Proposed questions</u> What importance does Switzerland attribute to the Concluding Observations?

not distributed adequately to the competent cantonal authorities, to the members of the parliament and to the wider public.	What steps does Switzerland take in order to distribute the Concluding Observations and to safeguard an adequate follow up?
Other Issues *Concluding Observation 23*	
<u>Background</u> Switzerland has still not ratified the Optional Protocol to the International Covenant on Civil and Political Rights. The ratification of the first Optional Protocol to the ICCPR has not been a topic in recent years in politics or for the government. Further on, Switzerland has not ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and to the Convention on the Rights of Persons with Disabilities.	<u>Proposed questions</u> What are the detailed reasons why Switzerland has not yet made any steps to ratify the first Optional Protocol to the ICCPR? Will Switzerland ratify the two Option Protocols? Are there any plans?