

Alternative report

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

77^{ème} session of the Committee against Torture (CAT)
(July 10 to 28, 2023)



June 12, 2023

This report is submitted by the NGO Platform Human Rights ("the Platform"), which brings together over 90 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.

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A. List of abbreviations

AsylA	Asylum Act (SR 142.31)
ATS	Swiss Telegraphic Agency
CAT	Committee Against Torture
CCDJP	Conference of Cantonal Justice and Police Directors
CC-N	Control Committee of the National Council
CCPR	Human Rights Committee
CdC-GE	Cour des comptes du canton de Genève
CEC	Central Ethics Committee of the SAMS
CEDAW	Committee on the Elimination of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CF	Federal Council
Cf.	<i>Confer</i>
CFA	Centre federal pour requérants d'asile (Federal Asylum Center)
CFR	Commission fédérale contre le racisme (Federal Commission against Racism)
CGDM	Coordination genevoise pour le droit de manifester (Geneva Coordination for the Right to Demonstrate)
CHUV	Centre hospitalier universitaire vaudois (Vaud University Hospital Centre)
CNE	Commission nationale d'éthique dans le domaine de la médecine humaine (National Commission on Ethics in Human Medicine)
	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SR 0.105)
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRC	Committee on the Rights of the Child
CRPD	Committee on the Rights of Persons with Disabilities
Cst.	Federal Constitution of the Swiss Confederation (SR 101)
DPMIn	Droit penal des mineurs (Juvenile criminal law) (SR 311.1)
ECHR	European Convention on Human Rights (SR 0.101)
ECtHR	European Court of Human Rights
EFTA	European Free Trade Association
ENNHRI	European Network of National Human Rights Institutions
EU	European Union
FAC	Federal Administrative Court

FDFA	Federal Department of Foreign Affairs
FCR	Federal Commission against Racism
Fedpol	Federal Office of Police
ff	and following
FNIA	Federal Act on Foreign Nationals and Integration (SR 142.20)
FOJ	Federal Office of Justice
FOPH	Federal Office of Public Health
FSC	Federal Supreme Court
GREVIO	Expert group on combating violence against women and domestic violence
IGS	Inspection générale des services
ISDH	Institution Suisse des droits humains
LAC-N	Legal Affairs Committee of the National Council
LAC-S	Legal Affairs Committee of the Council of States
LAVI	Loi sur l'aide aux victimes d'infractions (Law on assistance to victims of crime) (SR 312.5)
MR	Mandela Rules
NCE	National Advisory Commission on Biomedical Ethics
NCPT	National Commission for the Prevention of Torture
NGO	Non-governmental organization
NPM	National Prevention Mechanism
OA1	Ordonnance 1 sur l'asile relative à la procédure (SR 142.311)
OLUsC	Ordonnance sur l'usage de la contrainte (Ordinance on the use of coercion) (SR 364.3)
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
PKS	Police crime statistics
Platform	NGO Platform Human Rights
Plateforme	Plateforme des ONG suisses pour les droits humains
RMNA	requérant d'asile mineur non accompagné (unaccompanied minor asylum seeker)
SAMS	Swiss Association of Medical Sciences
SCC	Swiss Civil Code (SR 210)
SCC	Swiss Criminal Code (SR 311.0)
SCCHR	Swiss Competence Center for Human Rights
SEM	Secrétariat d'État aux migrations (State Secretariat for Migration)
SHRI	Swiss Human Rights Institution
SPCP	Swiss Criminal Procedure Code (SR 312.0)

SPT	Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
SR	Systematic register of Swiss law
SRC	Swiss Refugee Council
SUS	Statistics for criminal convictions
TAF	Tribunal administratif
Tdh	Terre des hommes
UNHCR	United Nations High Commissioner for Refugees
UPR	Universal Periodic Review

B. Summary in English

I. Absence of a specific definition of torture in the Swiss Criminal Code (SCC)

Torture is only indirectly criminalized in the Swiss Criminal Code through the offences of crime against humanity ([art. 264a al. 1 let. f SCC](#)) and war crime ([art. 264c al. 1 let. c SCC](#)). Aside of these provisions, Switzerland does not have a criminal clause punishing torture as a specific offence. This absence raises issues regarding the intentionality of the offence, the severity of the sanctions in proportion to the seriousness of the crime concerned, the statute of limitations for criminal proceedings, international cooperation in criminal matters and the liability of superiors.

Faced with this legal vacuum, a parliamentary initiative was introduced on December 18, 2020 by National Councillor Beat Flach requesting the inclusion of torture as a specific offence in Swiss criminal law.¹ For reasons of opportunity, however, it is not certain that the Legal Affairs Committee of the National Council (LAC-N), which oversees the project, will deal with this file promptly, or even proceed with it.

The Platform recommends insisting on the need to make torture a specific criminal offence and that the Legal Affairs Committee of the National Council be urged to promptly address the parliamentary initiative 20.504, by drafting a legislation that introduces a provision against torture into the Criminal Code and respects the requirements of art. 1 and 4 CAT.

II. Institutions

1. National Human Rights Institution

On May 23, 2023, the Swiss Human Rights Institution (SHRI) has been established on the basis of the National Parliament's decision of 2021.²

The unilateral origin of federal contributions and the amount allocated to the new SHRI are problematic. The federal contributions are exclusively covered by the budget of the Federal Department of Foreign Affairs (FDFA). Thus, all other departments responsible for the implementation of human rights in Switzerland are not held accountable for additional budget contributions. Human rights organizations view the federal contribution of only CHF 1 million per year for the first four years (in addition to as-yet-undetermined infrastructure contributions of the cantons) adopted by the government and parliament as compromising from the outset the establishment and consolidation of the SHRI as well as the achievement of an A-status under the Paris Principles.

The Platform recommends that the Confederation and the cantons be asked to provide the Swiss human rights institution with sufficient resources, from different federal Departments, at a level similar to that of comparable states with A status under the Paris Principles, to enable the SHRI to work effectively and independently.

¹ Beat Flach Initiative, 20.504, [Inscrire la torture en tant que telle dans le catalogue des infractions du droit pénal suisse](#), 18.12.2020.

² ATS, [La Suisse aura une institution nationale des droits de l'homme](#), 14.09.2021.

2. Budget of the National Commission for the Prevention of Torture (NCPT)

In 2015, the NCPT had an annual budget of CHF 760'600.³ In 2021, this budget was CHF 1'113'413.⁴ However, this budgetary difference is due to additional funds for specific projects, limited to two or three years. This insecurity does not allow the NCPT to plan for the long term. Additional funds are still needed if it is to fully carry out its mandate as National Preventive Mechanism (NPM). According to a report published in November 2020, the NCPT believes that additional financial resources would allow it to visit a greater number of places of deprivation of liberty and to monitor in particular the situation of elderly persons, persons in need of care or persons with disabilities.⁵ The Platform calls for an alignment between Switzerland's pioneering role in the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), its external discourse and the insufficient funds allocated to its own preventive mechanism.

The Platform recommends that additional funds be allocated to the budget of the NCPT.

3. Implementation of the recommendations

Coordination and follow-up of international human rights reviews, including those of the CAT, are weak and ineffective. The so-called "light coordination" of the interdepartmental group for international human rights policy ("Kerngruppe internationale Menschenrechtspolitik") of the Confederation does not fulfill its mission and has no visible strategy to follow-up on recommendations at the level of the Confederation, the cantons and the municipalities. Although it is composed of representatives of most of the federal and cantonal authorities concerned, its functions are purely deliberative. There is no structured public reporting on the status of implementation, and there is no authority to require individual cantons to implement recommendations that fall within their jurisdiction.

The Platform recommends the creation of an institutionalized, interdepartmental, adequately resourced, and empowered coordination mechanism between the federal government, cantons, and civil society to implement and review international human rights obligations, including monitoring.

III. Non-refoulement

1. Risk assessment

The Platform believes that Switzerland does not sufficiently take into account the risks associated with the violation of [Art. 3 CAT](#), neither in the case of removal to a state party to the Dublin Convention, nor in the case of removal to a "safe third state". Switzerland has been condemned on several occasions for violating the principle of non-refoulement in safe third country cases due to the lack of individualized assessment, for example concerning families with children, single mothers with children or torture survivors.⁶ Since 2020, the Committee on the Elimination of Discrimination against

³ NCPT, [Rapport d'activité 2015](#), 2016.

⁴ NCPT, [Rapport d'activité 2021](#), 2022.

⁵ NCPT, [Réponses de la Commission nationale de prévention de la torture \(CNPT\) aux recommandations et observations qui lui ont été adressées par le Sous-Comité pour la prévention de la torture et autres peines ou traitements cruels, inhumains ou dégradants \(SPT\) suite à sa visite en Suisse du 27 janvier au 7 février 2019](#), 04.11.2020.

⁶ ECtHR, [Tarakhel c. Suisse](#), n° 29217/12, 4.11.2014 ; CAT, *A.N. c. Suisse*, n° 742/2016, 03.08.2018 ; CAT, *Harun c. Suisse*, requête n° 758/2016, 6.12.2018 ; CRC, *V.A. c. Suisse*, n° 56/2018, 28.09.2020 ; A.M. (*M.K.A.H*) *c. Suisse*, n° 95/2019, 6.10.2021.

Women (CEDAW) blocked at least seven removals from Switzerland to **Greece** on a provisional basis.⁷

Regarding Dublin Convention member states, both the State Secretariat for Migration (SEM) and the Federal Administrative Court (FAC) simply rely on the formal ratification of various human rights treaties and legal standards by the third country and do not conduct a thorough examination of the actual human rights practice in the country concerned, as well as the individual situation and concrete risks faced by vulnerable asylum seekers.

Swiss practice regarding "Dublin" removals to **Croatia** does not take into account the CPT report published in 2022,⁸ which points to miserable reception conditions and the serious risk of violations of [art. 3 of the European Convention on Human Rights \(ECHR\)](#), nor the case law of neighboring countries.⁹

In 2018, the CAT considered in two Dublin cases that Switzerland had not sufficiently established whether the appellants, as victims of torture, would receive access to adequate accommodation and medical treatment in **Italy**.¹⁰ In 2020, the CAT had to temporarily stop a Dublin repatriation from Switzerland to **Poland**.¹¹ In a case from October 2022, the FAC referred a case to the State Secretariat for Migration concerning an Afghan applicant, suffering from drug addiction, who was to be removed to **Bulgaria** under the Dublin Convention regulation. The Federal Administrative Court found that, given the protection quotas for Afghans in Bulgaria, it was doubtful whether the Bulgarian authorities were taking sufficient account of the non-refoulement requirement.¹²

Regarding the illegal practices of refoulement from Switzerland to **Italy** at the Swiss-Italian border, the Platform is very concerned that the border patrol has sent asylum seekers back to Italy without giving them the opportunity to apply for asylum. Access to the asylum procedure is therefore not guaranteed. Although largely undocumented, this practice appears to be common.¹³

In the case of a return to a state party to the Dublin Convention or a return to a "safe third State", it is urgent that Switzerland not only refers to the legal obligations to which the State concerned is bound, but also conducts an individualized risk assessment of the asylum seeker's actual situation, in order to respect the principle of non-refoulement of art. 3 CAT.

2. Legal assistance

Legal representation is provided until the asylum decision comes into force. It ends when a positive asylum decision has been rendered ([art. 102h al.3 of the Asylum Act \[AsylA\]](#)), or when the legal representatives terminate their mandate due to a lack of prospects of success in appealing a negative asylum decision ([art. 102h al.4 AsylA](#)). In such cases, the legal representatives must inform the applicant without delay that they do not intend to lodge an appeal and of their decision to terminate the representation mandate. In practice, it is almost impossible for the concerned persons to find a new representative within the appeal period of 5 to 7 working days, especially since the

⁷ See in particular, CEDAW, Communication n° 160/2020 / CEDAW/OP/CHE (8) ; Communication n° 169/2021 / CEDAW/OP/CHE (11) ; Communication n° 171/2021 / CEDAW/OP/CHE (12) ; Communication n° 180/2022 / CEDAW/OP/CHE (17) ; Communication n° 188/2022 / CEDAW/OP/CHE (22) ; CEDAW, [Lettre du 25.05.2021](#), 25.05.2021.

⁸ CPT, [Report to Croatian Government on the visit to Croatia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) from 10 to 14 August 2020](#), 3.12. 2021.

⁹ OSAR, [Jurisprudence concernant la Croatie, pays Dublin, 2022 – Analyse et recommandations de l'Organisation suisse d'aide aux réfugiés](#), 21.02.2023.

¹⁰ CAT, [Adam Harun c. Suisse](#), n° 758/2016, 6.12.2018 ; CAT, [A.N. c. Suisse](#), n° 724/2016, 03.08.2018.

¹¹ CEDAW, [lettre du 7.12.2020](#), 07.12.2020 ; TAF, [F-3666/2020](#), 23.07.2020.

¹² FAC, [F-2707/2022](#), 12.10.2022.

¹³ Cf. Annexe 1: AsyLex, Questionnaire of the Special Rapporteur on the human rights of migrants: Pushback practices and their impact on the human rights of migrants, 01.02.2021.

asylum seekers are usually accommodated in remote asylum centers and therefore cannot easily resort to another legal representative.

While the general right to a lawyer in the Swiss asylum procedure is commendable, its implementation remains very problematic. To prove that they are at risk of torture if they are deported or returned to another state in violation of [Art. 3 CAT](#), rejected asylum seekers require full legal representation to inform them of their rights and to advise them on possible legal remedies. However, due to the accelerated asylum procedure, it is not always possible for asylum seekers to establish a relationship of trust with their representatives, and representatives sometimes terminate their mandate at a crucial moment, such as before the appeal, perhaps due to the payment of a lump sum. This situation is concerning because failed asylum seekers then have no access to legal representation.

Therefore, the Platform recommends to:

- **Expand the scope of the state-funded mandate to include issues related to asylum seekers with a final negative decision, administrative detention, and other issues of concern during the asylum process, such as police violence, racial profiling, and domestic violence.**
- **Ensure access for administrative detainees to a legal representative in detention.**

3. Forensic and psychological assessments in asylum procedures

According to the Platform's information, the State Secretariat for Migration generally do not conduct additional investigations and renounces to obtain expert reports in accordance with the standards of the Istanbul Protocol when asylum seekers claim, during hearings or through medical reports, that they have been victims of torture or inhuman or degrading treatment. The costs of obtaining these expert reports may be a contributing factor to this. To date, there have been no known instances in which the State Secretariat for Migration or the Federal Administrative Court has offered or agreed to cover the costs of an expertise drawn up according to the standards of the Istanbul Protocol. Even in cases where asylum seekers manage to produce psychological or medico-legal reports, Swiss authorities often do not take them into account adequately, particularly with regard to the physical or psychological consequences of the ill-treatment endured. The Federal Administrative Court has repeatedly stressed that expert reports prepared according to the Istanbul Protocol and considered relevant to the asylum procedure are not in and of themselves sufficient to assess the credibility of the facts, but rather constitute one means of evidence among others.¹⁴ Furthermore, according to the Court, there is no obligation to obtain a report drawn up in accordance with the standards of the Istanbul Protocol, as the protocol only provides recommendations and does not imply any mandatory requirements.¹⁵ However, this practice has a very significant impact on the asylum claim, as it makes it very difficult for asylum seekers to establish the credibility of their claims.

The Platform recommends to:

- **Request the State Secretariat for Migration and the Federal Administrative Court to take into consideration the increased probative value of expert opinions carried out according to the standards of the Istanbul Protocol in the framework of asylum procedures.**
- **Cover the costs of forensic and psychological expertise carried out in asylum procedures when acts of torture or ill-treatment are recognized as credible by the State Secretariat for Migration or the Federal Administrative Court.**

¹⁴ FAC, [D-1939/2022](#) and [D-1947/2022](#), 19.07.2022.

¹⁵ FAC, [D-3714/2022](#), 07.02.2023.

IV. Administrative detention

1. Proportionality of detention

Due to Swiss federalism, the cantonal authorities are responsible for applying the principle of proportionality when assessing the appropriateness of administrative detention measures. However, some cantonal authorities seem to order the detention in a systematic manner without considering whether less restrictive measures could be taken to achieve the same objective.

The variations in detention practices between the different cantons are confirmed in the report by the Control Committee of the National Council (CC-N). According to this report, the canton of Geneva and the canton of Ticino have an administrative detention rate of 4 per cent, while the canton of Obwalden has an administrative detention rate of 20 per cent in the case of material negative asylum decisions or decisions of non-entry into the matter. In cases of non-entry into the matter decisions under the Dublin system, detention rates are higher, but the difference between cantons is still significant. The canton of Geneva, for example, detained 24 percent of the persons concerned while the canton of Obwalden detained 61 percent.¹⁶

The purpose of administrative detention, i.e. the execution of removal, is not apparent in all cantons. For instance, in the canton of Valais, the departure rate of detained persons is 52 per cent.¹⁷ Hence, the appropriateness of administrative detention is particularly questionable in this canton. Similarly, the practices of other cantons regarding the appropriateness of administrative detention raise significant concerns.

The Platform recommends that Switzerland be asked to take appropriate measures to systematically monitor administrative detention in order to determine whether cantons are complying with their obligation to apply the principle of proportionality when ordering administrative detention, in particular the obligation to assess alternatives to detention.

2. Conditions of detention

With regard to detention conditions, a separation rule has been in effect since June 1, 2019, which requires administrative and criminal detainees to be placed in different premises ([Art. 81 para. 2 of the Federal Act on Foreign Nationals and Integration \[FNIA\]](#)). Furthermore, a decision by the Federal Supreme Court of March 31, 2020 ruled that administrative detention must be carried out in facilities specially designed for this purpose.¹⁸ Only in case of capacity shortage may persons in administrative detention be held in prisons, but always in separate sections of the prison. Despite this, some Swiss courts have found that detention conditions still do not comply with federal and international law in all cantons.¹⁹ In 2018, the cantons estimated approximately 150 additional places were needed.²⁰

Regarding the duration of administrative detention, the law stipulates that detention in the preparatory phase, detention with a view to deportation as well as detention for insubordination "may not exceed six months in total" ([Art. 79 para. 1 LEI](#)). However, according to [art. 79 al. 2 LEI](#) the maximum duration can be extended by twelve months with the agreement of the cantonal judicial authority. Therefore, detention can last up to 18 months, which is disproportionate, given that the

¹⁶ CC-N, [Détection administrative de requérants d'asile. Rapport de la Commission de gestion du Conseil national](#), FF 2018 7481, p. 7500.

¹⁷ *Idem*, p. 7501.

¹⁸ FSC, [2C 447/2019](#), 31.03.2020, consid. 6.2.2; ATF [146 II 201](#).

¹⁹ Voir, par exemple : TF, [2C 781/2022](#), 08.11.2022, where the FSC ruled that the conditions of detention in an administrative detention facility in St. Gallen were illegal.

²⁰ OSAR, [AIDA – Country Report : Switzerland](#), 2022, p. 119.

purpose of administrative detention is not to punish but rather to ensure the removal of a foreigner without a valid residence permit, as we have seen above.

Moreover, although the Dublin III Regulation provides that Dublin detention should not exceed six weeks in total, some cantons have detained people for longer. AsylLex challenged this practice and the Federal Supreme Court ruled in its favor, confirming the maximum duration of 6 weeks in the context of Dublin detention.²¹

The Platform recommends that:

- **The cantons take appropriate measures to ensure that the places of deprivation of liberty for administrative detention differ in their design from the prison regime, in accordance with federal case law, and that persons placed in administrative detention are always separated from those under sentence.**

3. Administrative detention of children between 15 and 18 years old

In Switzerland, the detention of children is authorized for those between 15 and 18 years of age ([art. 80 al. 4 LEI](#)). The detention duration for this age group can last up to one year ([art. 79 para. 2 LEI](#)). Ten cantons (Aargau, Basel-Stadt, Bern, Glarus, St. Gallen, Solothurn, Uri, Valais, Zug, and Zurich) reported having placed minors in administrative detention between 2017 and 2018. Of note, the cantons of Aargau and Zurich reported no longer detaining children as of 2018.

The ten cantons mentioned above reported to the NCPT that they detained a total of 37 minors between the ages of 15 and 18 between 2017 and 2018. Of these, 23 were placed in administrative detention and 14 in detention. The length of stay for administrative detention placements ranged from 2 to 120 days. The Platform regrets the number of these detentions, especially since, in the majority of cases, the facilities in which the minors were placed were penitentiary or pretrial detention facilities. These are therefore wholly inappropriate for administrative detention. According to the Swiss Refugee Council, 9 minors were placed in administrative detention in 2021, including 1 unaccompanied minor, and 7 were placed in pretrial detention, including 3 unaccompanied minors.²²

The Platform recommends renouncing the administrative detention of accompanied or unaccompanied minors and favoring alternatives to detention that take into account the best interests of the child.

4. Administrative detention of children under the age of 15.

In a report published in 2019, the NCPT found that the cantons of Bern and Zurich had placed minors under the age of 15 along with their families in facilities for the deprivation of liberty.²³ This detention is unacceptable given the high vulnerability of this group and is a clear violation of national and international law. As of July 1, 2018, the canton of Zurich has indicated that it will no longer detain minors. In its response to the CC-N report of June 26, 2018, which specifically noted cases of detention of minors under the age of 15, the Federal Council indicated that the State Secretariat for Migration would ask the cantons not to place children under the age of 15 in administrative detention facilities.

²¹ FSC, [2C_610/2021](#), 05.04.2022.

²² In 2019, these numbers were 9 children in administrative detention, including 2 unaccompanied children, and 28 children in pretrial detention, including 9 unaccompanied. See : OSAR, [AIDA – Country Report : Switzerland](#), 2022, p. 115.

²³ NCPT, [Rapport au Département fédéral de justice et police \(DFJP\) et à la Conférence des directrices et directeurs des départements cantonaux de justice et police \(CCDJP\) relatif au contrôle des renvois en application du droit des étrangers, d'avril 2018 à mars 2019](#), 24.05.2019, p. 18 ss.

The Platform welcomes the Confederation's efforts. It stresses the importance of the cantons complying with this recommendation and asks the Confederation to update the figures concerning the administrative detention of minors since the period of the report.

The Platform recommends to immediately renounce the administrative detention of children under the age of 15 and use alternative measures that take into account the best interests of the child.

5. Violence in Federal asylum centers

In May 2021, Amnesty International published its findings following research the organisation conducted into concerns about ill-treatment including some cases which may amount to torture occurring in Swiss Federal Asylum centres.²⁴ The report documents incidents of torture or other ill-treatment by employees of the private security companies Securitas AG and Protectas AG, who are contracted by the State Secretariat for Migration (SEM), in the centres of Basel, Giffers, Boudry, Altstätten and Vallorbe.

Fourteen asylum seekers, including two unaccompanied minors, reported being subjected to abuse at the hands of security guards. This included beatings, sustained force used that restricted their breathing to an extent that led them to suffering an epileptic seizure or loss of consciousness, and difficulties of breathing through the use of pepper gel, being locked in a metal container resulting in hypothermia and other abuses. Six of the people harmed this way required hospital treatment for their injuries and two were denied medical treatment even though they requested assistance. The cases and information collected for this briefing point to abuses that the organisation believe constitute torture or other ill-treatment and violate Switzerland's obligations under international law.

Amnesty International is particularly alarmed by the lack of safeguards including robust and proactive monitoring and protection mechanisms by the SEM in federal asylum centres. According to accounts received by the organisation some guards write reports which are not accurate to the incidents of violence when they occur. The briefing found that the victims interviewed did not know where to turn to lodge a complaint, and that access to justice for victims of torture or other ill-treatment was fraught with obstacles. Moreover, no person who works or has worked in the centres was aware of any whistleblowing mechanisms.

The Platform recommends to:

- **Urgently enhance and strengthen independent safeguarding and proactive monitoring of federal asylum centres.**
- **Adopt an independent and effective complaint mechanism for people housed in the federal asylum centres and ensure that they are aware of what the complaint procedure is and how they can access it.**

6. Suicides in Federal and cantonal asylum centers

At the Federal level, the issue of suicide in asylum centers has been of renewed concern to authorities in 2019, with the entry into force of the revised [Asylum Act](#). It now provides for a maximum stay in the Federal Asylum Centers of 140 days, instead of 90 days previously. This change has resulted in increased psychological distress and psychiatric disorders among asylum seekers during the processing period. As a result, the State Secretariat for Migration commissioned the University Hospital of the canton of Vaud (CHUV) to carry out a study aimed at developing mental health care procedures for asylum seekers in the French-speaking part of Switzerland. The study was prompted

²⁴ Amnesty International, Press release, [Switzerland: Amnesty International sounds the alarm and urges action to put an end to human rights violations in federal asylum centres](#), 19.05.2021, last accessed on 06.06.2023 ; Amnesty International, Switzerland: ["I ask that they treat asylum seekers like human beings" – human rights violations in Swiss federal asylum centres](#), 19.05.2021.

by a significant number of self-harming incidents, including self-mutilation, attempted suicides and confirmed suicides. The study resulted in a series of priority recommendations, including the development of professional education, the reinforcement of the health team with nursing staff and the establishment of collaboration agreements with emergency health services and psychiatric institutions in the region.

In November 2022, Alireza, an Afghan asylum seeker, committed suicide at the Étoile shelter in Lancy in the canton of Geneva, at the age of 18. The decision of the State Secretariat for Migration to send him back to Greece, confirmed by the FAC, is said to have played a decisive role in the young Afghan's act. Both authorities were informed of the high risk of suicide for Alireza.²⁵

On January 9, 2023, a 33-year-old Nigerian asylum seeker ended his life in the Lagnon shelter for men in Bernex, in the canton of Geneva.²⁶ Once again, it was the decision of the State Secretariat for Migration to send him back to Greece, which was confirmed by the Federal Administrative Court, that caused the young asylum seeker to commit suicide. The authorities were aware of the high risk of suicide based on the Nigerian's medical certificate.

The Platform recommends that:

- **Specialized training in trauma identification be provided to SEM employees, legal representatives, counsellors and, in part, management staff.**
- **the competent authorities be asked to refrain from removing an asylum seeker if a high risk of suicide is established.**

V. Forced repatriations

The Platform is concerned about the institutionalization of inhuman treatment during forced repatriations. Depending on the willingness of the person concerned to cooperate with a forced removal, the removal is carried out at different levels, with level IV being the most restrictive ([Art. 28 para. 1 lit. d of the Ordinance on the use of coercion \[OLUsC\]](#)). In the case of Level IV removals, the person concerned is tied to a wheelchair with up to eight collars and a helmet is placed on his head. Level IV deportations use methods that fall under the category of internationally condemned inhumane treatment, in violation of [Article 16 CAT](#). Although Level IV deportations are – or at least are supposed to be – always accompanied by the NCPT, information on the exact situation is limited due to extensive redaction of their reports. What is even more worrying in this context is that in cases of Level II or III flights, coercive measures are applied, especially against vulnerable people. In these constellations, no independent monitoring takes place, leaving those affected totally exposed to the police and security personnel involved.

The Platform recommends to urgently cease Level IV deportations and ensure oversight of Level II and III deportations, in order to comply with Art. 16 CAT.

VI. Detention

1. Overcrowding in Champ-Dollon

In 2016, prison overcrowding at Champ-Dollon has been judged to be contrary to the prohibition of torture provided for in the Federal Constitution ([art. 10 para. 3 Cst.](#)) and the ECHR ([art. 3 ECHR](#)). The solution recommended by the canton of Geneva to comply with the case law of the Federal

²⁵ RTS, [Le milieu de l'asile sous le choc à Genève après le suicide d'un requérant afghan](#), 05.12.2022, last accessed on 27.04.2023

²⁶ Le Temps, [Un nouveau suicide d'un requérant d'asile a eu lieu à Genève](#), 08.01.2023.

Supreme Court of Justice (FSC) was the construction of the "Les Dardelles" sentence enforcement facility. Requiring an investment credit of 258.5 million francs for 450 places, this project was however rejected by the Geneva Grand Council in 2020 in favor of alternatives to detention.²⁷ Unfortunately, the Champ-Dollon prison is still chronically overcrowded, a situation that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) explicitly denounced in a report of June 2022.²⁸ In March 2020, the prison had 650 inmates, while its capacity was 398 places, including 40 places for women. In January 2022, the prison was still accommodating more than two hundred people beyond its capacity.²⁹

The Platform recommends that:

- **The canton of Geneva be asked to take all necessary measures to build or expand prisons in order to respect the maximum capacity of the prisons.**
- **The judicial authorities be asked to favorize alternative sentences and measures to detention.**

2. Prisoners with mental disorders

In Switzerland, the number of psychiatric institutions suitable for the execution of an institutional therapeutic measures is largely insufficient.³⁰ The increasing use of therapeutic measures leads to an increase in the placement of vulnerable persons in penitentiary institutions, where their mental disorder is not adequately treated, if at all. Worryingly, these individuals regularly have to wait months or even years in regional prisons before an appropriate facility is found. The risks of these delays in disposition include the worsening of pre-existing mental disorders and the development of new ones.³¹ According to a report by the Conference of Cantonal Directors of Justice and Police (CCDJP), at least 300 people were waiting for a place in a psychiatric facility for the execution of an institutional measure in 2016.³² There is no information to suggest that this situation has improved since then.

The Platform recommends that persons sentenced to a measure under Art. 59 of the Swiss Criminal Code be placed in an appropriate psychiatric facility or in a penitentiary facility where qualified staff provides necessary treatment, with utmost urgency.

3. Disciplinary law

The practice of "prolonged" solitary confinement, i.e. solitary confinement for more than 15 consecutive days ([Rule 44 of the Nelson Mandela Rules \[NMRI\]](#)), remains widespread in Switzerland. Some detainees are placed in solitary confinement for months or even years. In August 2021, the Special Rapporteur on Torture, Nils Melzer, severely criticized Switzerland for the unacceptable use of disciplinary isolation in the case of Brian K. Incarcerated in the prison of Pöschwies, in the canton of Zurich, he had been placed in almost total isolation since August 2018, without visits from his

²⁷ TdG, [Les Dardelles enterrées, Mauro Poggia veut foncer](#), 07.10.2020, consulté le 13.04.2023 ; For an explanation of the reasons for rejecting the Les Dardelles construction project, See: Secrétariat du Grand Conseil, [M 2666 – Proposition de motion pour une politique pénitentiaire humaine, cohérente et économique](#), 29.06.2020.

²⁸ Nau.ch, [Baufälliges Genfer Gefängnis Champ-Dollon soll Neubau weichen](#), 29.07.2022, last accessed on 13.04.2023.

²⁹ TdG, [Les détenus dénoncent leurs conditions dans une pétition](#), 15.09.2022.

³⁰ CPT, [Rapport au Conseil fédéral suisse relatif à la visite effectuée en Suisse par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants \(CPT\) du mars 22 au 1er avril 2021](#), 08.06.2022 ; NCPT, [Gesamtbericht über die schweizweite Überprüfung der Gesundheitsversorgung im Freiheitsentzug durch die Nationale Kommission zur Verhütung von Folter \(2019-2021\)](#), January 2022.

³¹ humanrights.ch, [Zugang zum recht – für Gefangene versperrt](#), 23.11.2018.

³² CCDJP, [Kapazitätsmonitoring Freiheitsentzug 2016 – Ergänzender Bericht zur Unterbringung, Behandlung und Betreuung psychisch gestörter und kranker Straftäter](#), August 2017.

family or any interaction with other prisoners, and could only exercise limited physical activity while being handcuffed and shackled.³³ In January 2022, staff at the same facility were convicted of keeping another inmate in segregation for a year and a half.³⁴

The Platform recommends that the cantons be required to take appropriate measures to ensure that placement in segregation as a disciplinary measure never exceeds 14 days.

4. Injuries and deaths in custody

Between 2015 and 2021, there were 111 recorded deaths in custody. This represents 9 to 20 deaths per year in Swiss prisons. Nearly half of these were due to suicides.³⁵

On December 26, 2018, 20-year-old K.S. died alone in a Bernese police cell as a result of severe intoxication. In March 2019, the Prosecutor's Office decided not to prosecute the doctor who had assessed K.S.'s fitness for detention and closed the case. This decision was reversed by the Cantonal Court of the Canton of Bern on July 15, 2020,³⁶ and then by the Federal Supreme Court on June 13, 2022.³⁷ This case is now pending before the ECtHR.³⁸

Another documented case is that of R.K. who, despite a diagnosis of paranoid schizophrenia, was held in pre-trial detention in the regional prison of Bern for about six months, isolated in his cell for 23 hours a day. In early 2019, he was sent back to the Bern Regional Prison for various offenses. After seven months of isolation, the Prosecutor's Office ordered a psychological report. The psychiatrist concluded that an institutional therapeutic measure according to [art. 59 SCC](#) was necessary. However, before the detention regime was changed, R.K. hanged himself on August 4, 2019 in a hospital. He died at the age of 25. An investigation into his death is currently underway.³⁹

The cases of K.S. and R.K. are far from being isolated incidents. In 2020, Switzerland was condemned by the ECtHR in the case of *S.F. v. Switzerland*, because the officials involved had not taken effective measures to protect the right to life of S.F., who clearly and repeatedly threatened to commit suicide, and had failed in their duty to investigate.⁴⁰

There are significant gaps in suicide prevention in custodial settings. There is practically no mention of suicide prevention measures in the cantonal legislation. The only time it is mentioned is in the context of solitary confinement for security reasons.⁴¹ In a report of 2022, the CNPT considers that each institution of deprivation of liberty should have standardized measures or internal programs of suicide prevention and train the professionals accordingly. The entry assessment plays an important role in this regard.

The Platform recommends that the cantons be asked to establish clear and standardized suicide prevention procedures in detention facilities and train staff accordingly.

³³ UNHCR, press release, [Suisse : l'isolement de Brian K. viole la Convention contre la torture, selon un expert de l'ONU, 14.06.2021](#), last accessed on 16.04.2023.

³⁴ Tages-Anzeiger, [Pöschwies erneut am Pranger wegen zu langer Einzelhaft](#), 14.01.2022, last accessed on 16.04.2023.

³⁵ OFS, [Freiheitsentzug, Todesfälle und Suizide](#), last accessed on 17.04.2023.

³⁶ Cour suprême / BE, [BK 20 186](#), 16.07.2020.

³⁷ TF, [6B 1055/2020](#), 13.06.2022.

³⁸ humanrights.ch, [Kilian: Tod in Polizeizelle](#), 19.12.2022, last accessed on 20.02.2023.

³⁹ humanrights.ch, [Raphael K.: suicide en détention préventive](#), 09.03.2022, last accessed on 20.03.2023.

⁴⁰ CourEDH, [S.F. c. Suisse](#), n° 23405/16, 30.06.2020.

⁴¹ NCPT, [Gesamtbericht über die schweizweite Überprüfung der Gesundheitsversorgung im Freiheitsentzug durch die Nationale Kommission zur Verhütung von Folter \(2019 – 2021\)](#), janvier 2022, p. 52, par. 199.

5. Life imprisonment

One of the particularities of life imprisonment is that early release and discharge are excluded. A release can only be considered if new scientific knowledge establishes that the offender can be amended and that he or she is no longer a danger to the community. The chances of release are therefore almost nil.

The consideration of the behaviour of the person concerned is completely lacking in the case of the examination of life imprisonment. Indeed, [art. 64c SCC](#) does not provide for consideration of the progress made by the person in his rehabilitation. The conditions for the review of the release from life imprisonment therefore violate [art. 3 ECHR](#) and [art. 16 CAT](#). Insofar as this provision is contrary to higher law, it should be unenforceable.

In order to comply with art. 16 CAT, the Platform recommends that the judicial authorities be asked to renounce all measures of life imprisonment of art. 64 al. 1^{bis} and privilege the measures of imprisonment of art. 64 al. 1 CP.

6. Internment of children

On March 13, 2013, the Council of States accepted the proposal to allow for an imposition of a measure of internment against young people over 16 years of age who have been convicted of first degree murder and who present a serious risk of committing a new act at the end of their custodial sentence (maximum 4 years, according to current law) or their placement in a closed institution (a measure that ends at the latest at the age of 25).⁴² Currently, there are only five to seven juvenile offenders waiting to be released against, who may require subsequent security measures. A measure of internment would only apply in exceptional cases.

The Platform is formally opposed to the possibility of imposing internment measures on children. Not only have their brains and personalities not fully developed before adulthood, but internment measures are also extremely problematic for those affected and offer little, if any, prospect of development. Given the above-mentioned statistics, juvenile criminal law has proven to be effective in reducing the risk of re-offending. Therefore, this bill does not meet the principle of necessity.

The Platform recommends calling on the Federal Parliament not to proceed with motion 16.3142 and renouncing the possibility of imposing a measure of internment for children.

VII. Placements for assistance

When a doctor decides to place a person in a closed institution for assistance in accordance with [art. 429 of the Civil Code \(CC\)](#), patients are neither heard nor defended. It is very difficult for the concerned people to access the legal system and be represented by lawyers, who are too expensive.

Upon arrival at the hospital, patients and accompanying relatives are not given any useful information regarding the fact that the latter can be designated as trusted persons ([art. 432 CC](#)) and assist the patient during his stay, including in the elaboration of the treatment plan ([art. 433 CC](#)).

The Platform recommends that competent authorities fully inform patients and their relatives that they can be designated as trusted persons.

⁴² For the original draft, see : Motion Andrea Caroni, 16.3142, [Droit pénal des mineurs. Comblent une lacune en matière de sécurité](#), filed on 17.03.2016.

VIII. Excessive use of public force

1. Police violence

In the case of police violence, the generally applicable offence is abuse of authority ([art. 312 SCC](#)). In 2021, the Police Crime Statistics (PKS) recorded 140 complaints of abuse of authority in Switzerland,⁴³ while only 4 convictions for abuse of authority were listed by the Criminal Conviction Statistics (SUS).⁴⁴ In 2017, there were only 4 convictions per 105 complaints filed.⁴⁵ The ratio of convictions to the number of criminal complaints filed is therefore particularly low for this offense. However, the statistics from PKS and SUS do not correspond one with the other, making it impossible to determine how many complaints actually resulted in a conviction in 2021, or even in 2017. A comprehensive database of complaints against law enforcement officers has yet to be developed. In practice, this lack of monitoring is even more worrying because police forces do not systematically record complaints against police officers, nor do they make the data available to the public. This means that there can be no monitoring of police violence by the media and civil society.

With regard to ill-treatment by members of the police force, it should be noted that Switzerland has a problematic situation related to racial stereotyping by some police officers. In October 2022, the United Nations Working Group of Experts on People of African Descent denounced systemic racism in Switzerland and expressed concern about the human rights situation of people of African descent.⁴⁶

Another problem is the violent dispersal of demonstrations by the police. In Geneva, on February 9, 2023, several demonstrators claimed to have been beaten with batons by police as they dispersed a peaceful rally.⁴⁷ On March 8, 2023, on the occasion of International Women's Rights Day, police in Basel fired rubber bullets at peaceful demonstrators.⁴⁸

The Platform recommends that:

- **The cantonal and communal police forces as well as the Federal Office of Police (fedpol) systematically record complaints against members of law enforcement agencies, collect this information centrally, and make these statistics publicly available.**
- **The cantons take appropriate measures to eradicate racist behavior by members of the police force.**

2. Independent investigation mechanisms

Despite numerous recommendations from UN bodies,⁴⁹ there is still no independent body empowered to deal with complaints of police violence in all cantons. Only the canton of Geneva has created the Inspection générale des services (IGS), a body responsible for investigating cases

⁴³ OFS / PKS, [Prévenus enregistrés par la police selon le Code pénal et selon l'infraction, le canton, la catégorie de séjour, le sexe et la classe d'âge](#), last accessed on 16.01.2023.

⁴⁴ OFS / SUS, [Adultes : condamnations et personnes condamnées pour un délit ou un crime au sens des articles du code pénal \(CP\), selon l'année de condamnation \[dès 2008\]](#), last accessed on 16.01.2023.

⁴⁵ humanrights.ch, [Violences policières : à quand des instances indépendantes pour de vraies enquêtes ?](#) 24.10.2019, last accessed on 02.03.2023.

⁴⁶ Working Group of Experts on People of African Descent, press release, [Suisse : des experts de l'ONU dénoncent un profilage racial de la part des forces de l'ordre](#), 03.10.2022, last accessed on 11.04.2023.

⁴⁷ Amnesty International, press release, [Dispersion violente d'une manifestation à Genève: une enquête est nécessaire](#), 16.02.2023, last accessed on 24.04.2023.

⁴⁸ Amnesty International, press release, [La police bâloise disperse une manifestation pacifique avec des balles en caoutchouc](#), 17.03.2023, last accessed on 24.04.2023.

⁴⁹ CAT, [CAT/C/CHE/CO/7](#), 07.09.2015, par. 10 ; CDH, [CCPR/C/CHE/CO/4](#), 22.08.2017, par. 28 et 29 ; Working Group of Experts on People of African Descent, press release, [Suisse : des experts de l'ONU dénoncent un profilage racial de la part des forces de l'ordre](#), 03.10.2022, last accessed on 11.04.2023.

involving the use of coercion and other forms of abuse by Geneva police officers. In addition, there are mediation offices in the cantons of Vaud, Fribourg, Zug, Zurich, Basel-Stadt and Basel-Landschaft (six out of twenty-six cantons), as well as municipal ombudsman services.

In the case of a complaint against a member of the police force, the neutrality and independence necessary for the proper conduct of the investigation are often lacking, and the procedures are often considerably delayed. The practice of filing a counter-complaint is very often used against the complainant.⁵⁰ Moreover, according to the Code of Criminal Procedure (SCPC), members of the police force cooperate closely with representatives of the public Prosecutor's Office ([art. 306 and 307 SCPC](#)). Thus, accused police officers and investigating authorities often have personal relationships.⁵¹

The Platform recommends encouraging the establishment in all cantons of an independent mechanism empowered to receive and process complaints about police violence. Subsequently, the implementation in all cantons of a cantonal mediation office empowered to intervene in cases of complaints involving members of law enforcement agencies should be supported.

IX. Physical integrity of intersex persons

Several recommendations of the National Ethics Commission in the field of human medicine remain unfulfilled. The Platform considers that current legal situation does not guarantee the rights of intersex persons to prevent acts of torture ([art. 2 CAT](#))⁵² or other forms of cruel, inhuman or degrading treatment ([art. 16 CAT](#)) and the absence of binding guidelines in Swiss hospitals does not guarantee a uniform and consistent practice.

Parents of intersex children are pressured by society at large to give their consent to "medical procedures" justified by psychosocial indications. Intersex children and adults are often unaware of the procedures to which they have been subjected.

It should be noted that Switzerland has prohibited all forms of female genital mutilation ([art. 124 SCC](#)) but has not addressed the issue of modifications of sex characteristics performed on intersex children, yet. Therefore, various UN human rights committees recommend an explicit legal ban.⁵³

The Platform recommends supporting the current legislative process on Motion 22.3355 to criminally prohibit interventions to change the biological sex of intersex children.⁵⁴

⁵⁰ Alexandra Büchler, Jörg Künzli et Judith Wyttenbach, « Des pratiques policières conformes aux droits humains », in : CSDH, [Renforcer les droits humains en Suisse : Nouvelles idées pour la politique et la pratique](#), Tredition, 2022, p. 90.

⁵¹ CDH, [Observations finales concernant le quatrième rapport périodique de la Suisse](#), 22.08.2017, par. 28 et 29.

⁵² Voir aussi : CAT, [Observation générale n° 2 - Application de l'article 2 par les États parties](#), 24.01.2008, n^{os} 18 et 20.

⁵³ CRC, [Concluding observations on the combined fifth and sixth periodic reports of Switzerland](#), 22.10.2021, par. 29

(b) ; CEDAW, [Concluding observations on the sixth periodic report of Switzerland](#), 01.11.2022, par. 56 (d) ; Human Right's Council's Universal Periodic Review (UPR, 4th Review Switzerland), Draft report, n^{os} 39.291 ss.

⁵⁴ Motion Michel Matthias, 22.3355, [Interdiction pénale des interventions visant à modifier le sexe biologique des enfants nés avec une variation des caractéristiques sexuelles \(enfants intersexués\)](#), 18.03.2022.

C. Résumé en français

I. Remarque préliminaire

Pour des raisons de célérité, ce rapport n'a pas pu être rédigé dans un langage épique. Nous regrettons l'absence d'un langage plus inclusif et présentons nos excuses aux personnes qui se sentiraient discriminées par ce choix.

II. Absence de définition spécifique de la torture dans le code pénal

La torture n'est sanctionnée dans le code pénal qu'indirectement par les infractions de crime contre l'humanité ([art. 264a al. 1 let. f CP](#)) et de crime de guerre ([art. 264c al. 1 let. c CP](#)). En dehors de ces contextes, la Suisse n'a pas de disposition pénale réprimant la torture en tant qu'infraction spécifique. Cette absence pose problème sous l'angle de l'intentionnalité de l'infraction, de la sévérité des sanctions par rapport à la gravité du crime concerné, de la prescription de l'action pénale, de l'entraide internationale en matière pénale et de la responsabilité des supérieurs.

Face à ce vide juridique, une initiative parlementaire a été déposée le 18 décembre 2020 par le Conseiller national Beat Flach demandant l'inscription de la torture en tant que telle dans le catalogue des infractions du droit pénal en Suisse⁵⁵. Pour des raisons d'opportunité, il n'est toutefois pas certain que la Commission des affaires juridiques (CAJ-N), en charge du projet, traite promptement ce dossier, ni même n'aille de l'avant avec celui-ci.

La Plateforme recommande d'insister sur la nécessité d'ériger la torture en infraction pénale spécifique et de demander à la Commission des affaires juridiques du Conseil national de traiter l'initiative parlementaire 20.504 dans un délai raisonnable en élaborant un projet de loi qui introduise une disposition contre la torture dans le code pénal et respecte les exigences des art. 1 et 4 CAT.

III. Institutions

1. Institution nationale des droits humains

Le 23 mai 2023, l'institution suisse des droits de l'homme (ISDH) a été créée sur la base de la décision du Parlement national de 2021⁵⁶.

L'origine unilatérale et le montant des contributions fédérales à la nouvelle ISDH posent problème. Les contributions fédérales sont exclusivement couvertes par le budget du Département fédéral des affaires étrangères (DFAE). Ainsi, tous les autres départements responsables de la mise en œuvre des droits humains en Suisse ne sont pas tenus responsables. Du point de vue des organisations de défense des droits humains, la contribution fédérale de seulement 1 million de CHF par an pour les quatre premières années (en sus des contributions aux infrastructures des cantons d'un montant encore indéterminé), adoptée par le gouvernement et le Parlement, compromet d'emblée la mise en place et la consolidation de l'ISDH ainsi que l'obtention d'un statut A selon les Principes de Paris.

La Plateforme recommande de demander à la Confédération et aux cantons de doter l'institution suisse pour les droits humains de ressources suffisantes, d'un niveau similaire à celui des États comparables disposant du statut A selon les Principes de Paris, et

⁵⁵ Initiative Beat Flach, 20.504, [Inscrire la torture en tant que telle dans le catalogue des infractions du droit pénal suisse](#), 18.12.2020.

⁵⁶ ATS, [La Suisse aura une institution nationale des droits de l'homme](#), 14.09.2021.

provenant de différents départements fédéraux, pour permettre à l'ISDH de travailler efficacement et en toute indépendance.

2. Budget de la Commission nationale de prévention de la torture

En 2015, la Commission nationale de prévention de la torture (CNPT) disposait d'une enveloppe budgétaire annuelle de 760'600 francs⁵⁷. En 2021, l'enveloppe budgétaire annuelle de la CNPT était de 1'113'413 francs⁵⁸. Toutefois, cette différence budgétaire est due à des fonds additionnels pour des projets précis, limités à deux ou trois ans. Cette insécurité ne permet pas la CNPT de planifier au long terme. Des fonds supplémentaires lui sont encore nécessaires pour qu'elle puisse s'acquitter pleinement de son mandat de mécanisme national de prévention (MNP). Selon un rapport publié en novembre 2020, la CNPT estime que des ressources financières supplémentaires lui permettraient de visiter un plus grand nombre de lieux de privation de liberté et de contrôler en particulier la situation des personnes âgées, nécessitant des soins ou en situation de handicap⁵⁹. Un alignement entre le rôle précurseur de la Suisse dans le domaine de l'OPCAT, son discours externe et l'insuffisance des fonds alloués à son propre mécanisme de prévention est ainsi demandé.

La Plateforme recommande de consacrer des fonds supplémentaires au budget de la CNPT.

3. Implémentation des recommandations

La coordination et le suivi des examens internationaux en matière de droits humains, notamment ceux du CAT, sont faibles et inefficaces. La soi-disant « coordination *light* » du groupe interdépartemental de la politique internationale des droits de l'homme (« Kerngruppe internationale Menschenrechtspolitik ») de la Confédération ne remplit pas sa mission et n'a pas de stratégie visible pour le suivi des recommandations au niveau de la Confédération, des cantons et des communes. Bien qu'il soit composé de représentants de la plupart des autorités fédérales et cantonales concernées, ses fonctions sont purement délibératives. Il n'y a pas de rapport public structuré sur l'état de la mise en œuvre et il n'y a pas d'autorité pour exiger des cantons individuels qu'ils mettent en œuvre les recommandations qui relèvent de leur compétence.

La Plateforme recommande de créer un mécanisme de coordination institutionnalisé, interdépartemental, doté de ressources adéquates et de pouvoirs suffisants entre la Confédération, les cantons et la société civile pour mettre en œuvre et examiner les obligations internationales en matière de droits humains, y compris le suivi.

IV. Non-refoulement

1. Evaluation des risques

La Plateforme estime que la Suisse ne prend pas suffisamment en compte les risques liés à la violation de l'[art. 3 CAT](#), ni dans le cas d'un renvoi vers un État Dublin, ni dans le cas d'un renvoi vers un « État tiers sûr ». La Suisse a été condamnée à plusieurs reprises pour violation du principe de non-refoulement dans des affaires de pays tiers sûrs en raison de l'absence d'évaluation individualisée, par exemple concernant des familles avec enfants, des mères célibataires avec

⁵⁷ CNPT, [Rapport d'activité 2015](#), 2016.

⁵⁸ CNPT, [Rapport d'activité 2021](#), 2022.

⁵⁹ CNPT, [Réponses de la Commission nationale de prévention de la torture \(CNPT\) aux recommandations et observations qui lui ont été adressées par le Sous-Comité pour la prévention de la torture et autres peines ou traitements cruels, inhumains ou dégradants \(SPT\) suite à sa visite en Suisse du 27 janvier au 7 février 2019](#), 04.11.2020.

enfants ou des survivants de la torture⁶⁰. Depuis 2020, le Comité pour l'élimination de la discrimination à l'égard des femmes (CEDAW) a bloqué au moins sept renvois de la Suisse vers la **Grèce** à titre provisoire⁶¹.

En particulier en ce qui concerne les États membres de Dublin, le SEM et le TAF s'appuient simplement sur la ratification formelle de différents traités et normes juridiques en matière de droits humains par le pays tiers et ne procèdent pas à un examen approfondi de la pratique réelle en matière de droits humains dans le pays concerné ainsi que de la situation individuelle et des risques concrets auxquels sont confrontés les demandeurs d'asile vulnérables.

La pratique suisse concernant les renvois « Dublin » vers la **Croatie** ne tient pas compte du rapport du CPT publié en 2022⁶², ni de la jurisprudence des pays voisins⁶³, qui fait état de conditions d'accueil misérables et du risque sérieux de violations de [l'art. 3 de la Convention européenne des droits de l'homme \(CEDH\)](#).

En 2018, le CAT a considéré dans deux cas Dublin que la Suisse n'avait pas suffisamment établi si les recourants, en tant que victimes de torture, recevraient un accès à un hébergement et un traitement médical adéquats en **Italie**⁶⁴. En 2020, le CAT a dû interrompre temporairement un rapatriement Dublin de la Suisse vers la **Pologne**⁶⁵. Dans une affaire datant d'octobre 2022, Le TAF a renvoyé au SEM un dossier concernant un demandeur afghan, souffrant de toxicomanie, qui devait être éloigné vers la **Bulgarie** en vertu du règlement de Dublin. La Cour a constaté que, compte tenu des quotas de protection pour les Afghans en Bulgarie, il était douteux que les autorités bulgares tiennent suffisamment compte de l'exigence de non-refoulement⁶⁶.

En ce qui concerne les pratiques illégales de refoulement de la Suisse vers l'**Italie** à la frontière italo-suisse, la Plateforme est préoccupée par le fait que la patrouille frontalière a renvoyé des demandeurs d'asile vers l'Italie sans leur donner la possibilité de demander l'asile. L'accès à la procédure d'asile n'est donc pas garanti. Bien qu'en grande partie non documentée, cette pratique semble être fréquente⁶⁷.

La Plateforme considère que dans le cas d'un renvoi vers un État Dublin ou d'un renvoi vers un « État tiers sûr », il est urgent que la Suisse ne se contente pas de se référer aux obligations légales auxquelles l'État concerné est lié, mais procède à une évaluation individualisée du risque du demandeur d'asile, afin de respecter le principe de non-refoulement de l'art. 3 CAT.

2. Assistance juridique

La représentation juridique est assurée jusqu'à l'entrée en force de la décision d'asile. Elle prend fin lorsqu'une décision d'asile positive a été rendue ([art. 102h al. 3 de la loi sur l'asile \[LAsil\]](#)), ou lorsque

⁶⁰ CourEDH, [Tarakhel c. Suisse](#), n° 29217/12, 4.11.2014 ; CAT, *A.N. c. Suisse*, n° 742/2016, 03.08.2018 ; CAT, *Harun c. Suisse*, requête n° 758/2016, 6.12.2018 ; CRC, *V.A. c. Suisse*, n° 56/2018, 28.09.2020 ; *A.M. (M.K.A.H) c. Suisse*, n° 95/2019, 6.10.2021.

⁶¹ Voir, notamment : CEDAW, Communication no 160/2020 / CEDAW/OP/CHE (8) ; Communication no 169/2021 / CEDAW/OP/CHE (11) ; Communication no 171/2021 / CEDAW/OP/CHE (12) ; Communication no 180/2022 / CEDAW/OP/CHE (17) ; Communication no 188/2022 / CEDAW/OP/CHE (22) ; CEDAW, [Lettre du 25.05.2021](#).

⁶² CPT, [Report to Croatian Government on the visit to Croatia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) from 10 to 14 August 2020](#), 3.12. 2021.

⁶³ OSAR, [Jurisprudence concernant la Croatie, pays Dublin, 2022 – Analyse et recommandations de l'Organisation suisse d'aide aux réfugiés](#), 21.02.2023.

⁶⁴ CAT, [Adam Harun c. Suisse](#), n° 758/2016, 6.12.2018 ; CAT, [A.N. c. Suisse](#), n° 724/2016, 03.08.2018.

⁶⁵ CAT, [lettre du 7.12.2020](#), 07.12.2020 ; TAF, [F-3666/2020](#), 23.07.2020.

⁶⁶ TAF, [F-2707/2022](#), 12.10.2022.

⁶⁷ Cf. Annexe 1: AsyLex, Questionnaire of the Special Rapporteur on the human rights of migrants: Pushback practices and their impact on the human rights of migrants, 01.02.2021, p. 3.

le représentant légal met fin à son mandat parce qu'il a choisi de ne pas recourir contre la décision d'asile négative en raison de l'absence de perspectives de succès ([art. 102h al.4 LAsi](#)). Dans ce cas, le représentant juridique doit informer sans tarder le requérant de ce qu'il n'entend pas former de recours et de sa décision de mettre un terme au mandat de représentation. En pratique, il est presque impossible pour les personnes concernées de trouver un nouveau représentant dans le délai de recours de 5 à 7 jours ouvrables, d'autant que les demandeurs d'asile se trouvent généralement dans des centres d'asile éloignés et ne peuvent donc pas facilement recourir à un autre représentant légal.

Bien qu'il faille saluer le droit général à un avocat dans la procédure d'asile suisse, sa mise en œuvre demeure très problématique. Pour que les demandeurs d'asile puissent prouver qu'ils risquent d'être torturés s'ils sont expulsés ou renvoyés dans un autre État en violation de l'art. 3 CAT, une représentation juridique complète est nécessaire pour informer le demandeur d'asile débouté de ses droits et le conseiller sur les procédures juridiques possibles. Cependant, en raison de la procédure d'asile accélérée, il n'est pas toujours possible pour les demandeurs d'asile d'établir une relation de confiance avec leurs représentants et, peut-être en raison du paiement d'une somme forfaitaire, il arrive que les représentants mettent fin à leur mandat à un moment crucial, à savoir avant l'appel. Le fait que les demandeurs d'asile déboutés n'aient ensuite aucun accès à une représentation légale est donc inquiétant.

Par conséquent, la Plateforme recommande de :

- **Étendre le mandat rémunéré par l'État aux questions relatives aux demandeurs d'asile déboutés, à la détention administrative, ainsi qu'à d'autres sujets de préoccupation au cours de la procédure d'asile, tels que la violence policière, le profilage racial et la violence domestique.**
- **Garantir l'accès pour les détenus administratifs à un représentant légal en détention.**

3. Expertises médico-légales et psychologiques dans les procédures d'asile

D'après les informations de la Plateforme, il arrive régulièrement que le Secrétariat d'État aux migrations (SEM) ne procède pas à des investigations complémentaires et, en particulier, ne fasse pas établir des expertises conformes aux normes du Protocole d'Istanbul lorsque les requérants d'asile affirment, lors des auditions ou par le biais de rapports médicaux, qu'ils sont victimes de torture ou de traitements inhumains ou dégradants. Les coûts liés à la rédaction de ces expertises peuvent avoir une incidence sur ce point. Il n'existe à cet égard aucun cas connu à ce jour dans lequel le SEM ou le Tribunal administratif fédéral (TAF) a proposé ou accepté de prendre en charge les coûts d'une expertise établie selon les normes du Protocole d'Istanbul. Même lorsque les demandeurs d'asile parviennent à produire des rapports psychologiques ou médicaux-légaux dans des cas individuels, les autorités suisses ne les prennent souvent pas en compte de manière adéquate, notamment en ce qui concerne les conséquences physiques ou psychologiques des mauvais traitements subis. Le TAF a souligné à plusieurs reprises que les expertises réalisées conformément au Protocole d'Istanbul et considérées comme pertinentes pour la procédure d'asile ne permettent pas en soi d'évaluer la crédibilité des éléments de fait invoqués dans une procédure, mais constituent au plus un moyen de preuve parmi autres⁶⁸. Par ailleurs, selon le Tribunal, il n'existe pas d'obligation d'obtenir un rapport rédigé selon les normes du Protocole d'Istanbul, puisque le protocole énonce des recommandations qui n'impliquent aucune obligation juridique de mise en œuvre⁶⁹. Cette pratique a un impact très important sur la demande d'asile, car il est alors très difficile pour les demandeurs d'asile de rendre leur demande crédible.

⁶⁸ TAF, [D-1939/2022](#) et [D-1947/2022](#), 19.07.2022.

⁶⁹ TAF, [D-3714/2022](#), 07.02.2023.

La Plateforme recommande de :

- **Demander au SEM et au TAF de prendre en considération la valeur probante accrue des expertises réalisées selon les normes du Protocole d'Istanbul dans le cadre des procédures d'asile.**
- **Prendre en charge les coûts des expertises médico-légales et psychologiques réalisées dans les procédures d'asile lorsque des actes de torture ou des mauvais traitements sont reconnus comme crédibles par le SEM ou le TAF.**

V. Détention administrative

1. Proportionnalité de la détention

En raison du fédéralisme suisse, les autorités cantonales sont responsables de l'application du principe de proportionnalité au moment d'apprécier l'opportunité d'une mesure de détention administrative. Pourtant, certaines autorités cantonales semblent ordonner la détention d'une personne de manière systématique sans examiner si des mesures moins restrictives pourraient être prises pour atteindre le même objectif.

Les variations des pratiques de détention entre les différents cantons sont confirmées par le rapport de la Commission de gestion du Conseil national (CDG-N). Selon ce rapport, le canton de Genève et le canton du Tessin ont un taux de détention administrative de 4 %, tandis que le canton d'Obwald a un taux de détention administrative de 20 % dans le cas de décisions matérielles négatives en matière d'asile ou de non-entrée en matière. Dans le cas des décisions de non-entrée en matière dans le cadre du système de Dublin, les taux de détention sont plus élevés, mais la différence reste importante. Le canton de Genève, par exemple, a mis en détention 24 % des personnes concernées et le canton d'Obwald 61 %⁷⁰.

Le but recherché par la détention administrative, à savoir l'exécution du renvoi, n'est pas perceptible dans tous les cantons. Si l'on considère les taux de sortie après l'emprisonnement, dans le canton du Valais, par exemple, le taux de départ des personnes détenues est de 52%⁷¹. Par conséquent, l'opportunité de la détention administrative est particulièrement douteuse dans ce canton. En outre, les pratiques d'autres cantons en ce qui concerne l'opportunité de la détention administrative sont très discutables.

La Plateforme recommande de demander à la Suisse de prendre les mesures appropriées pour contrôler systématiquement la détention administrative afin de déterminer si les cantons respectent leur obligation d'appliquer le principe de la proportionnalité lorsqu'ils ordonnent la détention administrative, en particulier l'obligation de vérifier s'il existe des solutions alternatives à la détention.

2. Conditions de détention

En ce qui concerne les conditions de détention, depuis le 1er juin 2019, une règle de séparation est en vigueur, selon laquelle les détenus administratifs et pénaux doivent être placés dans des locaux différents ([art. 81 al. 2 LEI](#)). En outre, un arrêt du Tribunal fédéral (TF) du 31 mars 2020 a statué que la détention administrative doit être effectuée dans des établissements spécialement conçus pour la détention administrative⁷². Ce n'est qu'en cas de manque de capacité que les personnes en

⁷⁰ CDG-N, [Détention administrative de requérants d'asile. Rapport de la Commission de gestion du Conseil national](#), FF 2018 7481, p. 7500.

⁷¹ *Idem*, p. 7501.

⁷² TF, [2C 447/2019](#), 31.03.2020, consid. 6.2.2; ATF [146 II 201](#).

détention administrative peuvent être détenues dans des prisons, mais toujours dans des sections séparées de la prison. Pourtant, certains tribunaux suisses ont estimé que les conditions de détention n'étaient pas encore conformes au droit fédéral et international dans tous les cantons⁷³. En 2018, les cantons ont estimé qu'il existait un besoin d'environ 150 places supplémentaires⁷⁴.

En ce qui concerne la durée de la détention administrative, la loi prévoit que la détention en phase préparatoire, la détention en vue du renvoi ainsi que la détention pour insoumission « ne peuvent excéder six mois au total » ([art. 79 al.1 LEI](#)). Cependant, selon l'[art. 79 al. 2 LEI](#) la durée maximale peut être prolongée de douze mois avec l'accord de l'autorité judiciaire cantonale. Par conséquent, la détention peut durer jusqu'à 18 mois, ce qui est totalement disproportionné, étant donné que la détention administrative n'a pas pour but de punir mais plutôt d'assurer le renvoi d'une personne étrangère sans séjour valable, comme nous l'avons vu plus haut.

De plus, alors qu'en vertu du règlement Dublin III, la détention Dublin ne doit pas être ordonnée pour une durée totale de plus de six semaines, certains cantons n'ont pas respecté cette obligation et ont détenu des personnes plus longtemps. AsyLex a contesté cette pratique et le TF a statué en sa faveur, confirmant la durée maximale de 6 semaines dans le cadre de la détention Dublin⁷⁵.

La Plateforme recommande de :

- **Veiller à ce que les cantons prennent les mesures appropriées pour que les lieux de privation de liberté dévolus à la détention administrative diffèrent dans leur conception du régime pénitentiaire, conformément à la jurisprudence fédérale, et que les personnes placées en détention administrative soient toujours séparées des détenus en exécution de peine.**
- **Veiller à ce que la détention administrative ne soit ordonnée que dans des cas exceptionnels et en dernier recours, et considérer systématiquement des mesures plus douces comme alternatives à la détention (mesures de restriction et d'exclusion et obligation de se présenter) avant d'ordonner la détention.**

3. Détention administrative de mineurs entre 15 et 18 ans

En Suisse, la détention des mineurs est autorisée pour les mineurs âgés entre 15 et 18 ans ([art. 80 al. 4 LEI](#)). La durée de détention pour ce groupe peut durer jusqu'à un an ([art. 79 al. 2 LEI](#)). Dix cantons (Argovie, Bâle-Ville, Berne, Glaris, St-Gall, Soleure, Uri, Valais, Zoug et Zurich) ont indiqué avoir placé des mineurs en détention administrative entre 2017 et 2018. À noter que les cantons d'Argovie et de Zurich ont indiqué ne plus détenir de mineurs depuis 2018.

Les dix cantons susmentionnés ont indiqué à la CNPT avoir détenu au total 37 mineurs âgés de 15 à 18 ans entre 2017 et 2018, dont 23 ont été placés en détention administrative et 14 en rétention. La durée de séjour pour les placements en détention administrative variait entre 2 et 120 jours. La Plateforme est choquée par le nombre de ces détentions, d'autant que, dans la majorité des cas, les établissements dans lesquels les mineurs ont été placés étaient des établissements pénitentiaires ou de détention avant jugement. Ceux-ci sont donc totalement inappropriés pour la détention administrative. Selon l'OSAR, 9 mineurs ont été placés en détention administrative en

⁷³ Voir, par exemple : TF, [2C 781/2022](#), 08.11.2022, où le TF a jugé que les conditions de détention dans un établissement de détention administrative à Saint-Gall étaient illégales.

⁷⁴ OSAR, [AIDA – Country Report : Switzerland](#), 2022, p. 119.

⁷⁵ TF, [2C 610/2021](#), 05.04.2022.

2021 dont 1 mineur non accompagné, et 7 ont été placés en détention provisoire dont 3 mineurs non accompagnés⁷⁶.

La Plateforme recommande de renoncer à la détention administrative de mineurs accompagnés ou non-accompagnés et privilégier les alternatives à la détention qui tiennent compte de l'intérêt supérieur de l'enfant.

4. Détention administrative de mineurs de moins de 15 ans

Dans un rapport publié en 2019, la CNPT a constaté que les cantons de Berne et de Zurich avaient placé des mineurs de moins de 15 ans conjointement avec leur famille dans des établissements de privation de liberté⁷⁷. Cette détention est inacceptable compte tenu de la vulnérabilité particulièrement importante de ce groupe et constitue une violation flagrante du droit national et international. Depuis le 1^{er} juillet 2018, le canton de Zurich a indiqué ne plus placer de mineurs en détention. Dans sa réponse au rapport de la CDG-N du 26 juin 2018, qui relevait expressément des cas de détention de mineurs de moins de 15 ans, le Conseil fédéral a indiqué que le SEM demanderait aux cantons ne pas placer des mineurs de moins de 15 ans dans des établissements de détention administrative⁷⁸.

La Plateforme salue l'effort de la Confédération. Elle insiste sur la nécessité que les cantons se conforment à cette recommandation et demande à la Confédération de mettre à jour les informations chiffrées concernant la détention administrative de mineurs depuis la période du rapport.

La Plateforme recommande de renoncer immédiatement à la détention administrative de mineurs de moins de 15 ans et recourir à des mesures alternatives qui tiennent compte de l'intérêt supérieur de l'enfant.

5. Violences dans les centres de requérants d'asile

En mai 2021, Amnesty International a publié les résultats d'une recherche menée par l'organisation sur les préoccupations concernant les mauvais traitements, y compris certains cas pouvant s'apparenter à de la torture, dans les CFA⁷⁹. Le rapport documente des cas de torture ou d'autres mauvais traitements infligés par des employés des sociétés de sécurité privées Securitas AG et Protectas AG, sous contrat avec le SEM, dans les centres de Bâle, Giffers, Boudry, Altstätten et Vallorbe.

Quatorze demandeurs d'asile, dont deux mineurs non accompagnés, ont déclaré avoir été victimes d'abus de la part d'agents de sécurité. Ils ont notamment été battus, ont été soumis à une force soutenue qui les a empêchés de respirer au point de provoquer une crise d'épilepsie ou une perte de conscience, ont eu des difficultés à respirer en raison de l'utilisation de gel au poivre, ont été enfermés dans un conteneur métallique, ce qui a entraîné une hypothermie, et ont subi d'autres mauvais traitements. Six des personnes ainsi blessées ont dû être soignées à l'hôpital pour leurs

⁷⁶ En 2019, ces chiffres étaient de 9 mineurs en détention administrative, dont 2 mineurs non accompagnés, et 28 mineurs placés en détention provisoire, dont 9 non accompagnés. Voir : OSAR, [AIDA – Country Report : Switzerland](#), 2022, p. 115.

⁷⁷ CNPT, [Rapport au Département fédéral de justice et police \(DFJP\) et à la Conférence des directrices et directeurs des départements cantonaux de justice et police \(CCDJP\) relatif au contrôle des renvois en application du droit des étrangers](#), d'avril 2018 à mars 2019, 24.05.2019, p. 18 ss.

⁷⁸ *Ibid.*

⁷⁹ Amnesty International, communiqué de presse, [Switzerland: Amnesty International sounds the alarm and urges action to put an end to human rights violations in federal asylum centres](#), 19.05.2021, consulté le 06.06.2023 ; Amnesty International, Switzerland: ["I ask that they treat asylum seekers like human beings" – human rights violations in Swiss federal asylum centres](#), 19.05.2021.

blessures et deux se sont vu refuser un traitement médical alors qu'elles avaient demandé de l'aide. Les cas et les informations recueillis dans le cadre de ce rapport font état d'abus qui, selon l'organisation, constituent des actes de torture ou d'autres mauvais traitements et violent les obligations de la Suisse en vertu du droit international.

La Plateforme est particulièrement alarmée par l'absence de garanties, notamment de mécanismes robustes et proactifs de surveillance et de protection par le SEM dans les CFA. Selon les témoignages reçus par l'organisation, certains gardiens rédigent des rapports qui ne correspondent pas aux incidents de violence lorsqu'ils se produisent. La réunion d'information a révélé que les victimes interrogées ne savaient pas vers qui se tourner pour déposer une plainte et que l'accès à la justice pour les victimes de torture ou d'autres mauvais traitements était semé d'embûches. De plus, aucune personne travaillant ou ayant travaillé dans les centres n'avait connaissance de mécanismes de dénonciation.

La Plateforme recommande de :

- **Améliorer et renforcer d'urgence le contrôle indépendant et la surveillance proactive des CFA.**
- **Adopter un mécanisme de plainte indépendant et efficace pour les personnes hébergées dans les CFA et veiller à ce qu'elles soient informées de la procédure de plainte et de la manière dont elles peuvent y accéder.**

6. Suicides dans les centres de requérants d'asile

À l'échelon fédéral, la problématique du suicide dans les centres de requérants d'asile a suscité un regain de préoccupation de la part des autorités en 2019, avec l'entrée en vigueur de la version révisée de la [loi sur l'asile \(LAsi\)](#). Celle-ci prévoit désormais une durée maximale de séjour dans les CFA de 140 jours, au lieu de 90 jours précédemment. Ce changement a pour conséquence davantage de détresse psychologique et de troubles psychiatriques au sein des CFA durant la période de traitement de la demande d'asile, alors qu'auparavant le transfert plus rapide des requérants d'asile réduisait ce risque, qui se manifestait davantage sur les cantons. Le SEM a donc mandaté le Centre hospitalier universitaire vaudois (CHUV) pour mener une étude visant à développer les processus en vigueur quant à la prise en charge de la santé mentale des requérants d'asile dans les CFA romands, qui faisaient face à un nombre significatif de comportements auto-agressifs (automutilations, tentatives de suicides, suicides avérés)⁸⁰. L'étude a débouché sur une série de recommandations prioritaires, demandant notamment de développer un plan de formation pour l'ensemble des professionnels, de renforcer l'équipe sanitaire avec du personnel soignant et de développer davantage de conventions de collaboration avec les services sanitaires d'urgence et les institutions psychiatriques de la région⁸¹.

En novembre 2022, Alireza, un requérant d'asile afghan, s'est suicidé au foyer de l'Étoile à Lancy dans le canton de Genève, à l'âge de 18 ans. Ce serait la décision de renvoi vers la Grèce du SEM, confirmée par le TAF, qui aurait joué un rôle décisif dans l'acte du jeune Afghan. Les deux autorités étaient pourtant informées du risque élevé de suicide d'Alireza⁸².

⁸⁰ CHUV, [Prévention du suicide dans les centres fédéraux pour requérants d'asile de la région suisse romande](#), décembre 2021, p. 6.

⁸¹ Pour un aperçu exhaustif des recommandations, voir : *Idem*, p. 50.

⁸² RTS, [Le milieu de l'asile sous le choc à Genève après le suicide d'un requérant afghan](#), 05.12.2022, consulté le 27.04.2023

Le 9 janvier 2023, un requérant d'asile nigérian de 33 ans a mis fin à ses jours dans le centre d'hébergement pour hommes du Lagnon, à Bernex, dans le canton de Genève⁸³. À nouveau, c'est la décision de renvoi vers la Grèce, rendue par le SEM et confirmée par le TAF, qui a provoqué le suicide du jeune requérant d'asile. Sur le vu du certificat médical du Nigérian, les autorités étaient pourtant informées du risque élevé de passage à l'acte pour ce dernier.

La Plateforme recommande de :

- **Dispenser des formations spécialisées sur l'identification des personnes traumatisées aux employés du SEM, à la représentation juridique, aux conseillers et en partie au personnel d'encadrement.**
- **Demander aux autorités compétentes de renoncer au renvoi d'un requérant d'asile lorsqu'un risque élevé de passage à l'acte suicidaire est établi chez ce dernier.**

VI. Rapatriements forcés

La Plateforme est préoccupée par l'institutionnalisation des traitements inhumains lors des rapatriements forcés. En fonction de la volonté de la personne concernée de coopérer à une expulsion forcée, l'expulsion est effectuée selon différents niveaux, le niveau IV étant le plus restrictif ([art. 28 al. 1 lit. d de l'ordonnance sur l'usage de la contrainte \[OLUsC\]](#)). Dans le cas des expulsions de niveau IV, la personne concernée est attachée à une chaise roulante avec jusqu'à huit colliers de serrage, et un casque lui est posé sur la tête. Les rapatriements de niveau IV utilisent des méthodes qui relèvent de la catégorie des traitements inhumains internationalement condamnés, en violation de l'[art. 16 CAT](#). Même si les déportations de niveau IV sont – ou du moins sont censées être – toujours accompagnées par la CNPT, les informations sur la situation exacte sont limitées en raison du caviardage important de leurs rapports. Ce qui est encore plus préoccupant dans ce contexte, c'est que dans les cas de vols de niveau II ou III, des mesures coercitives sont appliquées, notamment à l'encontre de personnes vulnérables et que, dans ces constellations, aucune surveillance indépendante n'a lieu, laissant les personnes concernées totalement exposées aux policiers et au personnel de sécurité impliqués.

La Plateforme recommande de cesser urgemment les expulsions de niveau IV et assurer la surveillance des expulsions de niveau II et III, afin de respecter l'art. 16 CAT.

VII. Détention

1. Surpopulation carcérale à Champ-Dollon

S'agissant des mesures prises ou envisagées pour réduire la surpopulation carcérale à Champ-Dollon, jugée en 2016 contraire à l'interdiction de la torture prévue par la Constitution fédérale ([art. 10 al. 3 Cst.](#)) et la CEDH ([art. 3 CEDH](#)), la solution préconisée par le canton de Genève pour se conformer à la jurisprudence du TF était la construction de l'établissement d'exécution des peines « Les Dardelles ». Nécessitant un crédit d'investissement de 258,5 millions de francs pour 450 places, ce projet a toutefois été rejeté par le Grand Conseil genevois en 2020 pour privilégier le recours à des alternatives à la détention⁸⁴. Malheureusement, la prison de Champ-Dollon est toujours chroniquement surpeuplée, une situation que le CPT a explicitement dénoncée dans un

⁸³ Le Temps, [Un nouveau suicide d'un requérant d'asile a eu lieu à Genève](#), 08.01.2023.

⁸⁴ TdG, [Les Dardelles enterrées, Mauro Poggia veut foncer](#), 07.10.2020, consulté le 13.04.2023 ; Pour un exposé des motifs liés au rejet du projet de construction Les Dardelles, voir: Secrétariat du Grand Conseil, [M 2666 – Proposition de motion pour une politique pénitentiaire humaine, cohérente et économique](#), 29.06.2020.

rapport de juin 2022⁸⁵. En mars 2020, l'établissement compatibilisait 650 détenus, alors que sa capacité d'occupation est de 398 places, dont 40 dévolues aux femmes⁸⁶. En janvier 2022, la prison accueillait encore plus de deux cents personnes au-delà de sa capacité⁸⁷.

La Plateforme recommande de :

- **Demander au canton de Genève de prendre toutes les mesures nécessaires pour construire ou agrandir des établissements pénitentiaires, afin de respecter la capacité maximale des prisons ;**
- **Demander aux autorités judiciaires de privilégier les peines et mesures alternatives à la détention.**

2. Détenus souffrant de troubles mentaux

En Suisse, le nombre d'établissements psychiatriques appropriés pour l'exécution d'une mesure thérapeutique institutionnelle est largement insuffisant⁸⁸. Le prononcé croissant de mesures thérapeutiques entraîne une augmentation du placement de personnes vulnérables dans des établissements pénitentiaires, où leur trouble mental n'est pas traité convenablement, voire pas du tout. De façon préoccupante, ces personnes doivent régulièrement attendre des mois, voire des années dans des prisons régionales avant de trouver un établissement approprié. Les risques de ces retards dans l'exécution de la mesure sont l'aggravation des troubles mentaux préexistants et l'apparition de nouveaux troubles⁸⁹. Selon un rapport de la Conférence des directeurs cantonaux de justice et police (CCDJP), au moins 300 personnes attendaient une place dans un établissement psychiatrique pour l'exécution d'une mesure institutionnelle en 2016⁹⁰. Aucune information ne laisse penser que cette situation n'ait connu d'amélioration depuis.

La Plateforme recommande de veiller impérativement à ce que les personnes condamnées à une mesure au titre de l'art. 59 CP soient placées dans un établissement psychiatrique approprié ou dans un établissement pénitentiaire où le traitement nécessaire est assuré par du personnel qualifié.

3. Droit disciplinaire

La pratique de l'isolement cellulaire « prolongé », soit un isolement cellulaire dont la durée excéderait 15 jours consécutifs ([Règle 44 RNM](#)), reste une pratique répandue en Suisse. Certains détenus sont ainsi placés pendant des mois, voire des années en isolement. En août 2021, le Rapporteur spécial sur la torture, Nils Melzer, avait sévèrement critiqué la Suisse pour le recours inacceptable à l'isolement disciplinaire dans le cas Brian K. Incarcéré à la prison de Pöschwies, dans le canton de Zurich, ce dernier avait été placé depuis août 2018 dans un isolement presque total, sans visites de sa famille ni aucune interaction avec d'autres prisonniers, et ne pouvait exercer

⁸⁵ CPT, [Résumé exécutif du Rapport au Conseil fédéral suisse relatif à la visite effectuée en Suisse par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants \(CPT\) du 22 mars au 1^{er} avril](#), 8.06.2022.

⁸⁶ Nau.ch, [Baufälliges Genfer Gefängnis Champ-Dollon soll Neubau weichen](#), 29.07.2022, consulté le 13.04.2023.

⁸⁷ TdG, [Les détenus dénoncent leurs conditions dans une pétition](#), 15.09.2022.

⁸⁸ CPT, [Rapport au Conseil fédéral suisse relatif à la visite effectuée en Suisse par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants \(CPT\) du mars 22 au 1er avril 2021](#), 08.06.2022 ; CNPT, [Gesamtbericht über die schweizweite Überprüfung der Gesundheitsversorgung im Freiheitsentzug durch die Nationale Kommission zur Verhütung von Folter \(2019-2021\)](#), janvier 2022.

⁸⁹ humanrights.ch, [Zugang zum recht – für Gefangene versperrt](#), 23.11.2018.

⁹⁰ CCDJP, [Kapazitätsmonitoring Freiheitsentzug 2016 – Ergänzender Bericht zur Unterbringung, Behandlung und Betreuung psychisch gestörter und kranker Straftäter](#), août 2017.

qu'une activité physique très limitée pendant laquelle il était menotté et enchaîné⁹¹. En janvier 2022, le personnel du même établissement a fait l'objet d'une condamnation pour avoir maintenu un autre détenu en isolement pendant un an et demi⁹².

La Plateforme recommande de demander aux cantons de prendre les mesures appropriées pour que le placement en cellule d'isolement à titre disciplinaire ne dépasse jamais 14 jours.

4. Blessures et décès en détention

Entre 2015 et 2021, il y a eu 111 décès enregistrés en détention. Cela représente 9 à 20 décès par an dans les établissements pénitentiaires de Suisse. Près de la moitié d'entre eux sont dus à des suicides⁹³.

Le 26 décembre 2018, K.S., âgé de 20 ans, est mort seul dans une cellule de la police bernoise à la suite d'une forte intoxication. En mars 2019, le bureau du procureur a décidé de ne pas engager de poursuites contre le médecin qui avait évalué l'aptitude de K.S. à être détenu et a clos le dossier. Cette décision a été renversée par le Tribunal cantonal du canton de Berne le 15 juillet 2020⁹⁴, puis par le TF le 13 juin 2022⁹⁵. Cette affaire est maintenant pendante devant la CourEDH⁹⁶.

Un autre cas documenté est celui de R.K. Malgré un diagnostic de schizophrénie paranoïde, R.K. a été placé en détention avant jugement à la prison régionale de Berne pendant environ six mois, isolé dans sa cellule pendant 23 heures par jour. Au début de l'année 2019, il est renvoyé à la prison régionale de Berne pour divers délits. Après sept mois d'isolement, le Ministère public a ordonné un rapport psychologique. Le psychiatre a conclu qu'une mesure thérapeutique institutionnelle selon [l'art. 59 du code pénal \(CP\)](#) était nécessaire. Toutefois, avant que le régime de détention ne soit modifié, R.K. s'est pendu le 4 août 2019 dans un hôpital. Il est mort à l'âge de 25 ans. Une enquête sur son décès est actuellement en cours⁹⁷.

Les cas de K.S. et de R.K. sont loin d'être isolés. En 2020, la Suisse a été condamnée par la CourEDH dans l'affaire *S.F. c. Suisse*, car les fonctionnaires impliqués n'avaient pas pris des mesures efficaces pour protéger le droit à la vie de S.F., qui menaçait de façon claire et répétée de se suicider, et avait manqué à son devoir d'enquête⁹⁸.

Il existe d'importantes lacunes en matière de prévention du suicide dans les établissements de privation de liberté. Il n'y a pratiquement aucune mention des mesures de prévention du suicide dans les législations cantonales. Le seul moment où elle est mentionnée est dans le cadre de l'enfermement solitaire pour des raisons de sûreté⁹⁹. Dans un rapport de 2022, la CNPT considère que chaque établissement de privation de liberté devrait avoir des mesures standardisées ou des programmes internes de prévention du suicide et former les professionnels en conséquence. L'évaluation d'entrée joue un rôle important à cet égard. Si R.K. ou K.S. avaient été correctement évalués avant leur entrée, il y a de fortes chances qu'ils soient encore en vie.

⁹¹ Haut-Commissariat des Nations Unies, Communiqué de presse, [Suisse : l'isolement de Brian K. viole la Convention contre la torture, selon un expert de l'ONU, 14.06.2021](#), consulté le 16.04.2023.

⁹² Tages-Anzeiger, [Pöschwies erneut am Pranger wegen zu langer Einzelhaft](#), 14.01.2022, consulté le 16.04.2023.

⁹³ OFS, [Freiheitsentzug, Todesfälle und Suizide](#), consulté le 17.04.2023.

⁹⁴ Cour suprême / BE, [BK 20 186](#), 16.07.2020.

⁹⁵ TF, [6B 1055/2020](#), 13.06.2022.

⁹⁶ humanrights.ch, [Kilian: Tod in Polizeizelle](#), 19.12.2022, consulté le 20.02.2023.

⁹⁷ humanrights.ch, [Raphael K.: suicide en détention préventive](#), 09.03.2022, consulté le 20.03.2023.

⁹⁸ CourEDH, *S.F. c. Suisse*, n° 23405/16, 30.06.2020.

⁹⁹ CNPT, [Gesamtbericht über die schweizweite Überprüfung der Gesundheitsversorgung im Freiheitsentzug durch die Nationale Kommission zur Verhütung von Folter \(2019 – 2021\)](#), janvier 2022, p. 52, par. 199.

La Plateforme recommande de demander aux cantons d'établir des procédures claires et standardisées de prévention du suicide dans les établissements de détention et former le personnel en conséquence.

5. Internement à vie

Une des particularités de la mesure d'internement à vie est que toute libération anticipée et tout congé sont exclus. Une libération ne peut être envisagée que si de nouvelles connaissances scientifiques permettent d'établir que le délinquant peut être amendé et qu'il ne représente dès lors plus de danger pour la collectivité. Les chances de remise en liberté sont donc quasi nulles.

La considération du comportement de la personne concernée fait complètement défaut dans le cas de l'examen de l'internement à vie. En effet, l'[art. 64c CP](#) ne prévoit pas de considérer les progrès réalisés par la personne dans sa réadaptation. Les conditions d'examen de la libération de l'internement à vie violent par conséquent les art. [3 CEDH](#) et [16 CAT](#). Dans la mesure où cette disposition est contraire au droit supérieur, elle devrait être inapplicable.

Afin de respecter l'art. 16 CAT, La Plateforme recommande de demander aux autorités judiciaires de renoncer à prononcer toutes mesures d'internement à vie de l'art. 64 al. 1^{bis} et privilégier les mesures d'internement de l'art. 64 al. 1 CP.

6. Internement des mineurs

Le 13 mars 2013, le Conseil des États a accepté le projet de pouvoir prononcer une mesure d'internement contre des jeunes de plus de 16 ans qui ont été condamnés pour assassinat et qui présentent un risque sérieux de commettre un nouvel acte à la fin de leur peine privative de liberté (4 ans au maximum, selon le droit en vigueur) ou de leur placement dans un établissement fermé (une mesure qui prend fin au plus tard à 25 ans)¹⁰⁰. Il n'y a actuellement que cinq à sept délinquants mineurs qui attendent d'être libérés et à l'encontre desquels il serait nécessaire de prendre une mesure de sécurité ultérieure. Le taux de récidive est très bas chez les mineurs. Une mesure d'internement ne ciblerait que des cas exceptionnels, qui pourraient de surcroît être effectivement encadrés par des mesures de droit civil¹⁰¹.

La Plateforme est formellement opposée à la possibilité de prononcer des mesures d'internement à l'encontre de mineurs. Non seulement le cerveau et la personnalité n'ont pas encore fini de se développer avant l'âge adulte, mais les mesures d'internement sont extrêmement problématiques pour les personnes concernées et n'offrent que peu, si ce n'est pas de perspectives d'évolution. Au vu des statistiques susmentionnées, le [droit pénal des mineurs \(DPMIn\)](#) a fait la preuve de son efficacité s'agissant de la diminution des risques de récidive. Ce projet de loi ne répond par conséquent pas au principe de la nécessité.

La Plateforme recommande de demander au Parlement fédéral de ne pas aller de l'avant avec la motion 16.3142 et de renoncer à la possibilité de prononcer une mesure d'internement pour des mineurs.

¹⁰⁰ Pour le projet de loi originel, voir : Motion Andrea Caroni, 16.3142, [Droit pénal des mineurs. Comblant une lacune en matière de sécurité](#), déposée le 17.03.2016.

¹⁰¹ Plaidoyer 2/2023, Loïc Parein, [L'internement des mineurs – L'aberration du bambino delinquente](#), date inconnue, consulté le 25.04.2023.

7. Placements à des fins d'assistance (PAFA)

Lorsque la décision de placement est prise par un médecin au sens de l'[art. 429 du Code civil \(CC\)](#), les patients ne sont ni entendus ni défendus. Les personnes concernées ont de grandes difficultés à accéder aux voies de droit et à être défendues par des avocats, qui coûtent trop cher.

À l'arrivée à l'hôpital, aucune information utilisable n'est donnée aux patients et aux proches qui les accompagnent sur le fait que ces derniers peuvent être désignés personnes de confiance ([art. 432 CC](#)) et assister le patient durant son séjour, y compris dans l'élaboration du plan de traitement ([art. 433 CC](#)).

Par conséquent, la Plateforme recommande de :

- **Informers pleinement les patients et leurs proches sur le fait que ces derniers peuvent être désignés personnes de confiance.**
- **Garantir le droit à l'information des patients et de leurs proches concernant le fait que ces derniers peuvent être désignés comme personnes de confiance et assister le patient dans l'élaboration du plan de traitement.**

VIII. Usage excessif de la force publique

1. Violences policières

En cas de violence policière, l'infraction généralement applicable est l'abus d'autorité ([art. 312 CP](#)). En 2021, 140 plaintes pour abus d'autorité ont été enregistrées en Suisse par la Statistique policière en matière de criminalité (PKS)¹⁰², alors que seulement 4 condamnations pour abus d'autorité ont été répertoriées par la Statistique en matière de condamnations pénales (SUS)¹⁰³. En 2017, ces chiffres étaient de 4 condamnations pour 105 plaintes déposées¹⁰⁴. Le ratio de condamnations par rapport au nombre de plaintes pénales déposées est donc particulièrement bas pour cette infraction. Ces statistiques ne sont toutefois pas liées, de sorte qu'il est impossible de définir combien de plaintes ont réellement abouti à une condamnation en 2021, ni même en 2017. Une véritable banque de données relative aux plaintes déposées contre les membres de la force publique n'a toujours pas vu le jour. En pratique, cette absence de suivi est d'autant plus préoccupante que les corps de police n'enregistrent pas systématiquement les plaintes déposées à l'encontre des policiers et ne mettent pas non plus les données à disposition du public. Aucune surveillance de la violence policière par les médias et la société civile n'est dès lors possible.

En ce qui concerne les mauvais traitements commis par les membres de la force publique, il convient de relever que la Suisse connaît une situation problématique liée aux stéréotypes raciaux de certains agents de police. En octobre 2022, le Groupe de travail d'experts des Nations Unies sur les personnes d'ascendance africaine a dénoncé un racisme systémique en Suisse et s'est inquiété de la situation des droits humains des personnes d'ascendance africaine¹⁰⁵.

¹⁰² OFS / PKS, [Prévenus enregistrés par la police selon le Code pénal et selon l'infraction, le canton, la catégorie de séjour, le sexe et la classe d'âge](#), consulté le 16.01.2023.

¹⁰³ OFS / SUS, [Adultes : condamnations et personnes condamnées pour un délit ou un crime au sens des articles du code pénal \(CP\), selon l'année de condamnation \[dès 2008\]](#), consulté le 16.01.2023.

¹⁰⁴ humanrights.ch, [Violences policières : à quand des instances indépendantes pour de vraies enquêtes ?](#) 24.10.2019, consulté le 02.03.2023.

¹⁰⁵ Groupe de travail d'experts sur les personnes d'ascendance africaine, communiqué de presse, [Suisse : des experts de l'ONU dénoncent un profilage racial de la part des forces de l'ordre](#), 03.10.2022, consulté le 11.04.2023.

Un autre problème concerne la dispersion violente des manifestations par les forces de l'ordre. À Genève, le 9 février 2023, plusieurs manifestants ont affirmé avoir reçu des coups de matraque par la police alors que celle-ci dispersait un rassemblement pacifique¹⁰⁶. Le 8 mars 2023, à l'occasion de la Journée internationale des droits des femmes, la police bâloise a tiré des balles en caoutchouc sur des manifestants pacifiques¹⁰⁷.

La Plateforme recommande de :

- **Veiller à l'enregistrement systématique, par les polices cantonales et communales ainsi que l'Office fédéral de la police (fedpol), des plaintes déposées à l'encontre des membres des forces de l'ordre, collecter ces informations de manière centralisée, et rendre ces statistiques accessibles au public.**
- **Demander aux cantons de prendre les mesures appropriées pour éradiquer les comportements racistes de la part des membres de la force publique.**

2. Mécanismes indépendants d'enquête

Malgré un nombre important de recommandations des organes des Nations Unies¹⁰⁸, il n'existe toujours pas d'instance indépendante habilitée à traiter les plaintes en matière de violences policières dans l'ensemble des cantons. Seul le canton de Genève a créé l'Inspection générale des services (IGS), un organisme chargé d'enquêter sur les affaires impliquant le recours à la contrainte et les autres formes d'abus commis par les policiers genevois. En outre, il faut citer les bureaux de médiation institués dans les cantons de Vaud, Fribourg, Zoug, Zurich, Bâle-Ville et Bâle-Campagne, soit six cantons sur vingt-six, ainsi que les services d'ombudsman communaux.

En cas de plainte contre un membre des forces de l'ordre, la neutralité et l'indépendance nécessaires à la bonne marche de l'enquête font souvent défaut et les procédures accusent régulièrement un retard considérable. La pratique du dépôt d'une contre-plainte est très souvent utilisée à l'encontre du plaignant¹⁰⁹. De plus, selon le code de procédure pénale, les membres des forces de l'ordre collaborent étroitement avec les représentants du Ministère public ([art. 306 CPP](#) et [art. 307 CPP](#)). Les policiers accusés et les autorités d'enquête entretiennent ainsi fréquemment des liens personnels¹¹⁰.

La Plateforme recommande d'encourager l'implémentation dans tous les cantons d'un mécanisme indépendant habilité à recevoir et traiter les plaintes en matière de violences policières ; subsidiairement, de soutenir l'implémentation dans tous les cantons d'un bureau cantonal de médiation habilité à intervenir dans les cas de plaintes impliquant des membres des forces de l'ordre.

IX. Intégrité physique des personnes intersexuées

Plusieurs recommandations de la Commission nationale d'éthique dans le domaine de la médecine humaine (CNE) ne sont toujours pas remplies. La plateforme estime que la situation légale actuelle

¹⁰⁶ Amnesty International, Communiqué de presse, [Dispersion violente d'une manifestation à Genève: une enquête est nécessaire](#), 16.02.2023, consulté le 24.04.2023.

¹⁰⁷ Amnesty International, Communiqué de presse, [La police bâloise disperse une manifestation pacifique avec des balles en caoutchouc](#), 17.03.2023, consulté le 24.04.2023.

¹⁰⁸ CAT, [CAT/C/CHE/CO/7](#), 07.09.2015, par. 10 ; CDH, [CCPR/C/CHE/CO/4](#), 22.08.2017, par. 28 et 29 ; Groupe de travail d'experts sur les personnes d'ascendance africaine, communiqué de presse, [Suisse : des experts de l'ONU dénoncent un profilage racial de la part des forces de l'ordre](#), 03.10.2022, consulté le 11.04.2023.

¹⁰⁹ Alexandra Büchler, Jörg Künzli et Judith Wytenbach, « Des pratiques policières conformes aux droits humains », in : CSDH, [Renforcer les droits humains en Suisse : Nouvelles idées pour la politique et la pratique](#), Tredition, 2022, p. 90.

¹¹⁰ CDH, [Observations finales concernant le quatrième rapport périodique de la Suisse](#), 22.08.2017, par. 28 et 29.

ne respecte pas les droits des personnes intersexuées pour prévenir les actes de torture ([art. 2 CAT](#))¹¹¹ ou d'autres formes de traitements cruels, inhumains ou dégradants ([art. 16 CAT](#)) et que l'absence de directive contraignante dans les hôpitaux suisses ne permet pas de garantir une pratique uniforme et cohérente.

Les parents d'enfants intersexués subissent des pressions de la société en général pour qu'ils donnent leur consentement à des « procédures médicales » justifiées par des indications psychosociales. Les enfants et les adultes intersexués ne sont souvent pas conscients des procédures auxquelles ils ont été soumis.

Il convient de noter que la Suisse a interdit toutes les formes de mutilation génitale féminine ([art. 124 CP](#)), mais n'a pas encore abordé la question des modifications des caractéristiques sexuelles pratiquées sur les enfants intersexués. C'est pourquoi plusieurs comités des droits de l'homme des Nations unies recommandent une interdiction légale explicite¹¹².

La Plateforme recommande de soutenir la procédure législative actuelle relative à la motion 22.3355 pour interdire pénalement les interventions visant à modifier le sexe biologique des enfants intersexués¹¹³.

¹¹¹ Voir aussi : CAT, [Observation générale n° 2 - Application de l'article 2 par les États parties](#), 24.01.2008, n^{os} 18 et 20.

¹¹² CRC, [Observations finales concernant le rapport de la Suisse valant cinquième et sixième rapports périodiques](#), 22.10.2021, par. 29 (b) ; CEDAW, [Observations finales sur le sixième rapport périodique de la Suisse](#), 01.11.2022, par. 56 (d) ; Conseil des droits de l'homme (UPR, 4^{ème} examen de la Suisse), Draft report, n^{os} 39.291 ss.

¹¹³ Motion Michel Matthias, 22.3355, [Interdiction pénale des interventions visant à modifier le sexe biologique des enfants nés avec une variation des caractéristiques sexuelles \(enfants intersexués\)](#), 18.03.2022.

D. Alternative report

I. Preliminary remarks

In this alternative report, the Platform follows the list of issues addressed by Switzerland in its eighth periodic report. It is therefore structured and written in the form of comments on the Swiss government's responses to its eighth periodic report, and follows the structure and numbering of the latter.

For reasons of time, this report could not be written in a gender neutral language. We regret the absence of more inclusive language and apologize to those who may feel discriminated against by this choice.

II. Articles 1 and 4

1. No specific definition of torture in the penal code

Question 2: In light of the Committee's previous concluding observations (see CAT/C/CHE/CO/7, para.7, CAT/C/CHE/CO/6, para.5, and CAT/C/CR/34/CHE, paras.4(a) and 5(a)), please provide updated information on measures taken or envisaged to criminalize torture in domestic law, in terms fully consistent with article 1, and ensure that penalties for acts of torture are proportionate to the gravity of the crime.

1. Ad 2. - 9.

The Platform does not share the opinion expressed by the Swiss government.

Torture is only indirectly punishable under the Swiss Criminal Code (SCC) by the offences of crimes against humanity ([art. 264a para. 1 let. f SCC](#)) and war crimes ([art. 264c para. 1 let. c SCC](#)). Outside these contexts, Switzerland does not have any criminal provision punishing torture as a specific offence. To punish an act of torture, the authorities have to resort to numerous other provisions, in particular offences against physical integrity, honour or freedom. However, the specific intent of the act of torture is not covered by the above-mentioned norms, as stipulated in [art. 1 CAT](#).¹¹⁴

Furthermore, acts of torture punishable as crimes against humanity or war crimes carry a custodial sentence of at least five years, whereas acts of torture committed in any other context are generally punishable by a custodial sentence of up to three years or a pecuniary penalty, which does not comply with [art. 4 CAT](#).¹¹⁵

Acts of torture committed as part of a crime against humanity or a war crime are not subject to the statute of limitations ([art. 101 let. b and c SCC](#)), whereas the statute of limitations for criminal proceedings is fifteen years if the maximum penalty is deprivation of liberty for more than three years ([art. 97 al. 1 SCC](#)), as in the case of grievous bodily harm ([art. 122 SCC](#)), ten years if the maximum penalty is deprivation of liberty for three years, as in the case of simple bodily harm ([art. 123 SCC](#)), threats ([art. 180 SCC](#)) and duress ([art. 181 SCC](#)), and seven years if the maximum penalty is any other penalty. The statute of limitations for criminal proceedings therefore differs according to whether the act of torture was committed as part of a war crime or a crime against humanity.

¹¹⁴ CNPT, [Einführung des Foltortatbestandes im schweizerischen Strafgesetzbuch](#), 02.05.2022.

¹¹⁵ With the exception of grievous bodily harm, which is punishable by a custodial sentence of up to ten years ([art. 122 PC](#)).

With regard to acts of torture committed abroad, Switzerland's jurisdiction is governed by the Criminal Code ([art. 6 SCC](#) and [art. 7 SCC](#)).¹¹⁶ The latter stipulates that the prosecution of an act of torture committed abroad must necessarily meet the condition of double incrimination, i.e. the act must be punished in Switzerland as well as in the State where it was committed.

With regard to international mutual assistance in criminal matters, and again in accordance with the principle of double criminality, when executing a request for mutual assistance, it is only possible to use the coercion of procedural law (searches, seizure of evidence, summons under penalty of execution, hearing of witnesses, telephone checks, lifting of secrets protected by criminal law) if the state of affairs set out in the request from the requesting state corresponds to the constituent elements of an offence punishable under Swiss law.¹¹⁷ Again, given that Swiss law does not specifically penalize acts of torture, legal aid can only be granted for acts of torture committed as part of a crime against humanity or a war crime, or for offences for which the punishment is less severe than acts of torture, such as the offences mentioned above (bodily harm, coercion, threats, etc.).

As regards the liability of superiors who have ordered acts of torture and the exclusion of the defense of having acted on the orders of a superior, these are only provided for in the case of acts of torture committed during a crime against humanity or a war crime, in accordance with art. [264k to 264n SCC](#).

Faced with this legal vacuum, a parliamentary initiative was tabled on December 18, 2020 by National Councillor Beat Flach calling for the inclusion of torture as such in the catalogue of criminal law offenses in Switzerland.¹¹⁸ This was approved by the Legal Affairs Committee of the National Council (LAC-N) on February 4, 2022, and by the Legal Affairs Committee of the Council of States (LAC-S) on March 29, 2022. The LAC-N now has 2 years, until March 29, 2024, to present a draft bill to the National Council, after which, subject to acceptance in the vote on the introduction of the bill and the overall vote, the text can be submitted to the Council of States for consideration under the ordinary procedure. For reasons of expediency, however, it is not certain that the LAC-N, which is in charge of the project, will deal with it promptly, or even go ahead with it at all.

The Platform recommends insisting on the need to make torture a specific criminal offence, and asking the National Council's Legal Affairs Committee to deal with parliamentary initiative 20.504 within a reasonable timeframe, by drafting a bill that introduces a provision against torture into the penal code and complies with the requirements of art. 1 and 4 CAT.

III. Article 2

2. Procedural guarantees

Question 3: With reference to the previous concluding observations (para.8), please provide information on the procedures in place to ensure that all persons deprived of their liberty are, in practice, informed of their rights from the outset of the deprivation of liberty, namely: (a) the right to have access to a lawyer, including in the context of the "apprehension" procedure; (b) the right to

¹¹⁶ [Art. 6 of the Swiss Penal Code](#) covers crimes which Switzerland has undertaken to prosecute under an international agreement. [Art. 7 of the Swiss Penal Code](#) deals with crimes committed abroad without fulfilling the conditions of art. 4, 5 or 6 of the Swiss Penal Code ([art. 7 of the Swiss Penal Code](#)).

¹¹⁷ FOJ, [International Mutual Assistance in Criminal Matters - Guidelines](#), p. 25.

¹¹⁸ Beat Flach initiative, 20.504, [Inclusion of torture as such in the catalog of offences under Swiss criminal law](#), 18.12.2020.

inform their relatives or other persons of their choice of their situation; and (c) the right to request and receive a medical examination by an independent doctor, or a doctor of their choice.

2. Ad 10 - 15

ACCESS TO A LAWYER

The Platform has no comments to make on the procedure put in place to ensure that all persons deprived of their liberty are informed of their right of access to a lawyer from the outset of their deprivation of liberty.

On the other hand, when it comes to free legal aid, as provided for in [art. 29 para. 3 of the Federal Constitution \(Cst.\)](#), the restrictive conditions deriving from criminal and administrative law, as well as the high court and lawyer fees, constitute a barrier to access to justice, particularly for Swiss middle-class citizens.¹¹⁹ Moreover, for legal representatives, such mandates generally appear to be a losing proposition. As a result, there are fewer and fewer lawyers available for legal aid.¹²⁰ Finally, prisoners have no right to free legal aid. In many cases, prisoners do not have sufficient financial means to hire a private lawyer.

In the criminal field, where particularly important fundamental rights are restricted in the event of conviction, the people concerned are often unable to defend themselves.¹²¹ Where the law permits, the Platform believes that parties to criminal proceedings should be able to benefit from the assistance of a legal advisor, whose task would be to inform them about the applicable laws and procedure. This person need not be a lawyer. It would be sufficient for the person to have legal training. This form of consultation would not only benefit detainees, but also parties at the beginning of proceedings. At this stage, defendants often appear before the police without legal representation.

The Platform therefore recommends to:

- **Adequately pay legal assistance lawyers for their services.**
- **Pay greater attention to the plaintiff's personal financial situation, and reduce procedural costs proportionately.**
- **Provide parties to criminal proceedings with the free assistance of a legally trained counsellor who informs them about the applicable law and procedure.**

MEDICAL EXAMINATION

In many years of providing legal advice to people deprived of their liberty and their families, humanrights.ch has never come across a case where a person in pre-trial detention has been able to freely choose his or her doctor.

In the Federal Supreme Court's (FSC) view, a general prohibition on being examined and treated by the doctor of one's choice while in pre-trial detention cannot be justified by the purpose of pre-trial detention.¹²² The intervention of a doctor from outside the institution may, however, be prohibited if there are "indications of fear that inadmissible links may be established between a detainee and the outside world". Consequently, while in some cases treatment by a freely chosen doctor may be

¹¹⁹ Legal aid is only granted if the party does not have sufficient resources to bear the costs of the proceedings without being deprived of the necessities of life for himself and his family, and if the case does not appear to be doomed to failure from the outset (see [art. 136 CPP](#) and, e.g., [art. 142 CPJA](#)).

¹²⁰ humanrights.ch, <https://www.humanrights.ch/de/ipf/menschenrechte/zugang-zum-recht/zugang-justiz-reiche-gewaehrleistet>, 13.09.2016, accessed 21.02.2023.

¹²¹ advocacy, <https://www.plaedoyer.ch/artikel/artikeldetail/die-unentgeltliche-vertretung-ist-klarere-zu-regeln/>, 03.12.2011, p. 33 and 38.

¹²² [ATF 102 Ia 302](#), para. 2.

refused on the basis of security considerations and the risk of collusion, a general ban on the free choice of doctor for detainees, particularly in cases of pre-trial detention, is illegal. However, in some cantons (Berne, St. Gallen, Basel-Stadt), it is explicitly stated that there is no right to free choice of doctor for detainees.¹²³

The Platform recommends ensuring that cantons comply with federal case law, which states that a general prohibition on being examined and treated by the doctor of one's choice can only be justified by evidence of inadmissible links between a prisoner and the outside world.

3. National Human Rights Institution

Question 4: Given the previous concluding observations (para.9) and the Federal Council's favourable opinion of 29 June 2016 on the proposal to establish a national human rights institution, please provide updated information on: a) developments in the process of establishing this institution; b) the measures envisaged to ensure the institution's compliance with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (Paris Principles); c) the resources allocated to ensure that the institution can fulfil its mandate.

3. Ad 16 - 23

On May 23, 2023, the Swiss Institution for Human Rights (SIHR) was created on the basis of the National Parliament's decision of 2021.¹²⁴ Preparations for the creation of this public-law entity were the responsibility of a working group set up by the Confederation, in which civil society, and in particular human rights organizations, were adequately represented. The law and statutes of the new institution refer to the Paris Principles. This provides a basis for independence, a broad mandate and a pluralist composition of members and bodies.

The unilateral origin and amount of federal contributions to the new SIHR are problematic. Federal contributions are covered exclusively by the budget of the Federal Department of Foreign Affairs (FDFA). This means that all other departments responsible for implementing human rights in Switzerland are not held accountable. The federal contribution of just CHF 1 million per year for the first four years (in addition to infrastructure contributions from the cantons of an as yet undetermined amount), adopted by the government and parliament, compromises from the outset the establishment and consolidation of SIHR, as well as the achievement of A status under the Paris Principles, from the point of view of human rights organizations. SIHR's financial and human resources will therefore be much weaker than in comparable states, which also have lower salary levels and fewer challenges in the face of multilingualism and federalism.

The Human Rights Committee (CCPR),¹²⁵ the Committee on the Elimination of Racial Discrimination (CERD),¹²⁶ the Committee on the Rights of the Child (CRC),¹²⁷ the Committee on the Rights of Persons with Disabilities (CRPD),¹²⁸ the Committee on Economic, Social and Cultural Rights,¹²⁹ a high number of State recommendations in the context of Switzerland's Universal Periodic Review (UPR) within the UN Human Rights Council¹³⁰ and the European Network of National Human Rights

¹²³ [Art. 42\(1\) SMVG-BE](#); [Art. 61\(4\) JVV-Be](#), § 10.2.1 Ho2019-RegGef-BE; Art. 35(2) GEfV-SG; [§ 36\(6\) JVV-BS](#); § 65(2) HO2022-Waaghof.

¹²⁴ ATS, [La Suisse aura une institution nationale des droits de l'homme](#), 14.09.2021.

¹²⁵ CCPR, [Report on follow-up to the concluding observations of the Human Rights Committee](#), 06.08.2021.

¹²⁶ CERD, [Concluding observations on Switzerland's tenth to twelfth periodic reports](#), 27.12.2021.

¹²⁷ CRC, [Concluding observations on the fifth and sixth periodic reports of Switzerland](#), 22.10.2021.

¹²⁸ CRPD, [Concluding observations on Switzerland's initial report](#), 13.04.2022.

¹²⁹ Committee on Economic, Social and Cultural Rights, [Letter of April 14](#), 14.04.2022.

¹³⁰ EPU, [Examen périodique universel - Suisse](#), consulted on 13.04.2023.

Institutions (ENNHRI)¹³¹ have recently expressed their concern about the need for Switzerland to provide SIHR with sufficient human and financial resources to enable it to fulfil its mandate.

The Platform recommends that the Swiss Confederation and cantons be asked to provide the Swiss human rights institution with sufficient resources, at a level similar to that of comparable states with A status under the Paris Principles, and drawn from various federal departments, to enable SIHR to work effectively and independently.

4. Budget of the National Commission for the Prevention of Torture

Question 5: Please provide information on any measures planned to increase the resources allocated to the National Commission for the Prevention of Torture, to enable it to carry out its tasks effectively. Please provide information on the State party's implementation of the recommendations made by this Commission since 2015, indicating which recommendations have not yet been implemented and for what reason.

4. Ad 24 - 26

In 2015, the National Commission for the Prevention of Torture (NCPT) had an annual budget of CHF 760,600.¹³² In its annual report, the NCPT stated that this amount did not allow it to inspect an average of more than twelve prisons per year, which was far from the 20-30 prisons initially hoped for by the Federal Council.¹³³ In 2021, the NCPT's annual budget was CHF 1,113,413.¹³⁴ However, this budgetary difference is due to additional funds for specific projects, limited to two or three years. This insecurity does not allow the NCPT to plan for the long term. Additional funds are still needed if it is to fully carry out its mandate as an NPM.

Following its visit to Swiss prisons from January 27 to February 7, 2019, the UN Subcommittee on Prevention of Torture (SPT) produced two reports, one of which was addressed exclusively to the NCPT.¹³⁵ As part of this review, the SPT considered that the NCPT was not in a position to fully carry out its task in all the areas in which it is competent. In a response published on November 4, 2020, the NCPT concurred with the SPT and welcomed the latter's recommendation to strengthen the commission's work by allocating more resources.¹³⁶ According to the report, the NCPT believes that additional financial resources would enable it to visit a greater number of places of deprivation of liberty, and to monitor in particular the situation of elderly people, those in need of care or those with disabilities. It therefore calls for an alignment between Switzerland's pioneering role in the OPCAT, its external discourse and the allocation of sufficient funds to its own preventive mechanism.

Switzerland argues that federalism means that the cantons are responsible for implementing the NCPT's recommendations. Federalism makes the NCPT's task all the more onerous, as its work is made all the more complex in terms of analyzing the legal bases, preparing visits and monitoring the implementation of recommendations. Added to this is the large number of interlocutors and

¹³¹ ENNHRI, [Déclaration sur la nécessité d'assurer des ressources adéquates pour une future INDH de la Suisse](#), accessed 07.03.2023.

¹³² CNPT, [Activity report 2015](#), 2016.

¹³³ CF, Message relative à un projet d'arrêté fédéral portant approbation et mise en œuvre du Protocole facultatif se rapportant à la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants of December 8, 2006, p. 267.

¹³⁴ CNPT, [Rapport d'activité 2021](#), 2022.

¹³⁵ SPT, [Visit to Switzerland from January 27 to February 7, 2019: recommendations and observations addressed to the NPM](#), 26.05.2020.

¹³⁶ CNPT, [Réponses de la Commission nationale de prévention de la torture \(CNPT\) aux recommandations et observations qui lui ont été adressées par le Sous-Comité pour la prévention de la torture et autres peines ou traitements cruels, inhumains ou dégradants \(SPT\) suite à sa visite en Suisse du 27 janvier au 7 février 2019](#), 04.11.2020.

stakeholders with whom the commission interacts, not least to ensure that recommendations are implemented. To enable the NCPT to cope with the difficulties posed by federalism, Switzerland is obliged to support the NCPT in its mission.

The Platform recommends allocating additional funds to the NCPT's budget.

IV. Article 3

5. Non-return

Question 6: With reference to the previous concluding observations (para. 13) and the judgments of the European Court of Human Rights in X v. Switzerland and A.I. v. Switzerland, please indicate what measures are envisaged to improve the system for assessing the risk of violation of the principle of non-refoulement. In particular, please indicate the measures taken to take greater account of: a) information on the situation in the country of origin; b) medical reports, in particular those drawn up on the basis of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

5. Ad 27 - 40

In the case of disputed allegations of torture, the establishment of expertise in line with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) is advocated by many UN bodies. In 2017, the UN Human Rights Committee called on Switzerland to ensure that all staff working in the field of asylum receive systematic and practical training on the Istanbul Protocol.¹³⁷ In 2018, the UN Special Rapporteur on Torture, Nils Melzer, stated that an expert opinion in line with the standards of the Istanbul Protocol should be requested when a person claims to have been subjected to torture or other cruel, inhuman or degrading treatment in the context of an asylum procedure.¹³⁸ Finally, in response to an interpellation submitted in 2017, the Federal Council referred to the possibility of relying on an expertise carried out in accordance with the standards of the Istanbul Protocol in the case of controversial allegations of torture.¹³⁹

According to the Platform's information, the State Secretariat for Migration (SEM) regularly fails to carry out further investigations and, in particular, to commission expert reports in line with Istanbul Protocol standards when asylum seekers claim, during hearings or through medical reports, that they are victims of torture or inhuman or degrading treatment. The costs involved in drawing up such expert reports may have an impact on this point. There are no known cases to date in which the SEM or the Federal Administrative Court (FAC) has offered or agreed to cover the costs of an expert report drawn up in accordance with the Istanbul Protocol. Even when asylum seekers manage to produce psychological or forensic reports in individual cases, the Swiss authorities often fail to take them into account adequately, particularly with regards to the physical or psychological consequences of the ill-treatment suffered. The FAC has stressed on several occasions that expert reports carried out in accordance with the Istanbul Protocol and considered relevant to asylum proceedings do not in themselves enable the credibility of the facts invoked in the proceedings to be assessed, but are at most one means of proof among others.¹⁴⁰ The Platform is aware of a number of cases where asylum applications have been rejected despite the fact that expert reports drawn

¹³⁷ CCPR, [Concluding observations on the fourth periodic report of Switzerland](#), 24.07.2017, par. 32 f.

¹³⁸ Human Rights Council, [Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer](#), 23.11.2018, paras. 40 and 75.

¹³⁹ Interpellation Balthasar Glättli, 17.3193, [Reconnaissance du Protocole d'Istanbul par la Confédération - Avis du Conseil fédéral du 10.05.2017](#), 10.05.2017, accessed 20.03.2023.

¹⁴⁰ TAF, [D-1939/2022 and D-1947/2022](#), 19.07.2022.

up in accordance with the standards of the Istanbul Protocol demonstrated that the allegations of torture made were particularly credible. Furthermore, according to the Tribunal, there is no obligation to obtain a report drawn up in accordance with the standards of the Istanbul Protocol, since the protocol sets out recommendations which do not imply any legal obligation to implement.¹⁴¹ This practice has a major impact on asylum applications, as it makes it very difficult for asylum seekers to make their claims credible. Finally, recognition of torture by the SEM or TAF does not automatically lead to the granting of refugee status, as such recognition does not necessarily mean for the authorities that the risk of being subjected to torture or ill-treatment again is still present.

For cases of violations of the principle of non-refoulement in the context of removal to a Dublin state or a "safe third state", please refer to the section on risk assessment below (see question 9, p. 41 ff).

The Platform therefore recommends:

- **Ask the SEM and the FAC to take into account the increased probative value of expert appraisals carried out according to Istanbul Protocol standards in asylum procedures.**
- **Cover the costs of forensic and psychological examinations carried out in asylum procedures when acts of torture or ill-treatment are recognized as credible by the SEM or FAC.**
- **Ensure that the system for assessing the risk of violation of the principle of non-refoulement takes sufficient account of the psychological vulnerability of the person being examined, as well as the actual capacity of States to deal with mental disorders.**

6. Diplomatic assurances

Question 7: Please specify the measures taken to avoid extraditions whose sole legal basis is diplomatic assurances provided by countries of origin, where there are substantial grounds for believing that a person would be in danger of being subjected to torture. List, for the period since 2015, all cases in which the State party has received diplomatic assurances from another State, specifying which State provided the assurances, the content of the assurances and any mechanisms put in place to monitor the situation of the persons concerned after their return and to ensure the protection, return and reparation of persons subjected to torture and ill-treatment as a result of return or extradition decisions.

6. Ad 41 - 51

The Platform has no comment to make.

7. Suspension of referrals

Question 8: Please provide information on the measures taken or envisaged to provide a judicial remedy having the effect of automatically suspending removal decisions issued in accordance with articles 64, 64 a), 64 c), 64 d) and 68 of the Federal Aliens Act. Please also specify whether the accelerated procedure for refusing entry to the territory at the airport under article 65 is subject to a thorough individual examination of the risks of violation of the principle of non-refoulement.

7. Ad 52 - 56

The Platform has no comment to make.

¹⁴¹ TAF, [D-3714/2022](#), 07.02.2023.

8. Risk assessment

Question 9: Please indicate the measures taken by the State party to ensure that, even under the Dublin system, the country of destination offers adequate reception conditions or sufficient guarantees in the application of its asylum policy to prevent the person concerned from being deported to his or her country of origin without an assessment of the risks involved. Please comment on reports that the Swiss authorities have carried out illegal forced returns to Italy.

8. Ad 57 - 60

As Switzerland is part of the Schengen/Dublin system, the [Dublin-III regulation](#) applies, in accordance with [art. 26b of the Asylum Act \(AsylA\)](#). The Dublin-III regulation designates which European country is responsible for assessing an asylum application, on the basis of a complex allocation system that mainly refers to the first country of arrival. Given Switzerland's landlocked position, in many cases Switzerland is not considered to be the responsible country. Consequently, the person concerned will be returned to another European country, unless this would be illegal due to Switzerland's international commitments. Swiss law provides for a legal procedure which is supposed to guarantee the right to be heard regarding the potential transfer, the right to remain during the procedure and the right to challenge the potential transfer before a court. The other Dublin member state is obliged to accept the applicant's return if certain conditions are met. The readmission procedure is fairly rapid, normally taking a few weeks or months.

In accordance with [Art. 31a para. 1 AsylA](#), the SEM generally issues a decision of non-entry into the matter if the applicant can be transferred to a Dublin country or a safe third country. To define a safe third country, the Swiss authorities must take into account political stability, respect for human rights, the assessment of other EU/EFTA member states and the Office of the United Nations High Commissioner for Refugees (UNHCR), as well as other country-specific criteria, in accordance with [art. 2 para. 1 of Asylum Ordinance 1 \(OA 1\)](#). On the basis of a six-monthly assessment, the list of safe third countries is defined and amended in OA 1.¹⁴² This list currently contains around 45 countries, including EU/EFTA member states as well as other countries such as Albania, Northern Macedonia, Bosnia-Herzegovina, Senegal, Georgia, Ghana, India, Kosovo, Moldavia, Mongolia and Montenegro.

[Art. 31a para. 2 AsylA](#) does not allow for a decision of non-entry into the matter in cases where there are indications that the country concerned does not offer effective protection against refoulement.

The Platform believes that Switzerland does not take sufficient account of the risks associated with violating [art. 3 CAT](#), either in the case of removal to a Dublin state, or in the case of removal to a safe third state. Switzerland has been condemned on several occasions for violating the principle of non-refoulement in safe third country cases due to the lack of individualized assessment, for example concerning families with children, single mothers with children or torture survivors.¹⁴³ Particularly where Dublin member states are concerned, the SEM and FAC simply rely on the third country's formal ratification of various human rights treaties and legal standards, and fail to carry out a thorough examination of actual human rights practice in the country concerned, as well as the individual situation and concrete risks faced by vulnerable asylum seekers. AsyLex's legal representatives have been confronted with several cases of clients who were allegedly exposed to a real risk of serious human rights violations upon return, whereas the SEM and FAC simply referred to the legal obligations to which the state concerned was bound. These theoretical obligations are considered sufficient by these authorities, without any detailed assessment of the applicant's individual risk.

¹⁴² See Appendix 2 of OA 1, [persecution-free states of origin or](#) provenance.

¹⁴³ ECtHR, [Tarakhel v. Switzerland](#), no.° 29217/12, 4.11.2014; CAT, *A.N. v. Switzerland*, no.° 742/2016, 03.08.2018; CAT, *Harun v. Switzerland*, application no.° 758/2016, 6.12.2018; CRC, *V.A. v. Switzerland*, no. 56/2018, 28.09.2020; *A.M. (M.K.A.H) v. Switzerland*, no. 95/2019, 6.10.2021.

The Swiss practice regarding "Dublin" removals to **Croatia** does not take into account the CPT report published in 2022,¹⁴⁴ nor the jurisprudence of neighboring countries,¹⁴⁵ which points to miserable reception conditions and the serious risk of violations of [art. 3 of the European Convention on Human Rights \(ECHR\)](#). In many of its rulings, the FAC mentions that the applicants in question were victims of serious human rights violations in Croatia: beatings, threats of rape, rape, detention in unsanitary cells, separation of young children from their parents during a three-day detention period, with the placement of two children aged 7 and 11 in an orphanage where no one spoke their language and without giving them any possibility of communicating with their parents. In March 2023, the FAC issued a ruling of principle to the effect that, notwithstanding the well-known problem of forced removals at the border ("*push back*"), asylum seekers can be transferred to Croatia under the Dublin III Regulation as they have access to the asylum procedure in that country.¹⁴⁶

In 2018, the CAT considered in two Dublin cases that Switzerland had not sufficiently established whether the appellants, as victims of torture, would receive access to adequate accommodation and medical treatment in **Italy**.¹⁴⁷ In 2020, the CAT had to temporarily halt a Dublin repatriation from Switzerland to **Poland**.¹⁴⁸ In a case from October 2022, the FAC referred to the SEM a case concerning an Afghan applicant, suffering from drug addiction, who was to be removed to **Bulgaria** under the Dublin Regulation. The Court found that, given the protection quotas for Afghans in Bulgaria, it was doubtful whether the Bulgarian authorities were taking sufficient account of the non-refoulement requirement.¹⁴⁹

SEM and TAF assessments of conditions in safe third countries for holders of international protection are often superficial. This has led UN committees to intervene on several occasions to prevent transfers that could have resulted in a violation of the prohibition on torture and inhuman or degrading treatment. Since 2020, the Committee on the Elimination of Discrimination against Women (CEDAW) has blocked at least seven deportations from Switzerland to **Greece** on a provisional basis.¹⁵⁰ Two of these cases concerned women who had been sexually assaulted in Greece.¹⁵¹ A possible violation of [art. 14 CAT](#) was also invoked by analogy. In 2020, the CAT also intervened in the case of a torture survivor, whom Switzerland wanted to send back to Greece, where he had been recognized as a refugee.¹⁵²

With regard to the illegal practice of refoulement from Switzerland to **Italy** at the Italian-Swiss border, the Platform is concerned that the border patrol has sent asylum seekers back to Italy without giving them the opportunity to apply for asylum. Access to the asylum procedure is therefore not guaranteed. Although largely undocumented, this practice appears to be frequent.¹⁵³

In the case of a return to a Dublin state or a return to a "safe third state", it is urgent that Switzerland does not simply refer to the legal obligations to which the state concerned is

¹⁴⁴ CPT, [Report to Croatian Government on the visit to Croatia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) from 10 to 14 August 2020](#), 3.12. 2021.

¹⁴⁵ OSAR, [Jurisprudence concernant la Croatie, pays Dublin, 2022 - Analyse et recommandations de l'Organisation suisse d'aide aux réfugiés](#), 21.02.2023.

¹⁴⁶ TAF, [E-1488/2020](#), 22.03.2023.

¹⁴⁷ CAT, [Adam Harun v. Switzerland](#), n° 758/2016, 6.12.2018; CAT, [A.N. v. Switzerland](#), n° 724/2016, 03.08.2018.

¹⁴⁸ CAT, [letter of 7.12.2020](#), 07.12.2020; TAF, [F-3666/2020](#), 23.07.2020.

¹⁴⁹ TAF, [F-2707/2022](#), 12.10.2022.

¹⁵⁰ See, in particular: CEDAW, Communication n° 160/2020 / CEDAW/OP/CHE (8) ; Communication n° 169/2021 / CEDAW/OP/CHE (11) ; Communication n° 171/2021 / CEDAW/OP/CHE (12) ; Communication n° 180/2022 / CEDAW/OP/CHE (17) ; Communication n° 188/2022 / CEDAW/OP/CHE (22) ; CEDAW, [Letter of 25.05.2021](#).

¹⁵¹ Moria, for the published case, TAF, [E-1353/2021](#), 07.04.2021; the other case, TAF E-1714/2021, was not published, but the violence in Greece was confirmed.

¹⁵² CAT, [Letter of 15.07.2020](#), 15.07.2020; TAF, [E-2714/2020](#), 09.06.2020.

¹⁵³ Cf. Appendix 1: AsyLex, Questionnaire of the Special Rapporteur on the human rights of migrants: Pushback practices and their impact on the human rights of migrants, 01.02.2021.

bound, but carries out an individualized risk assessment of the asylum seeker, in order to comply with the non-refoulement principle of art. 3 CAT.

9. Free legal assistance

Question 10: Taking into account the previous concluding observations (para.15), as well as the entry into force in 2015 of the legislative amendment to the Asylum Act, please indicate the criteria for granting the free legal assistance to asylum-seekers provided for by law and whether free access to a qualified and independent lawyer applies to all appeal procedures.

9. Ad 61 - 62

Under the revised Asylum Act, all persons whose applications are processed at a Federal Asylum Center (CFA), at the airport or under the extended procedure are entitled to free legal advice and representation. Legal protection is governed by art. [102ff of the AsyLA](#) and [art. 52a ff of the Federal Asylum Ordinance \(OA 1\)](#). On the basis of these provisions, every asylum seeker is granted full legal representation from the start of the preparatory phase, without having to request it. The legal representative attends the hearings, responds to the draft negative decision and, if he or she considers it necessary, can appeal against the negative asylum decision. The legal representative's mandate is remunerated on a flat-rate basis ([art. 102k para. 2 of the Asylum Act](#)), irrespective of the workload involved.

Legal representation is provided until the asylum decision comes into force. It ends when a positive asylum decision has been rendered ([art. 102h al.3 AsyLA](#)), or when the legal representative terminates his mandate because he has chosen not to appeal against the negative asylum decision due to the lack of prospects of success ([art. 102h al.4 AsyLA](#)). In this case, the legal representative must inform the applicant without delay that he or she does not intend to lodge an appeal, and of his or her decision to terminate the representation mandate. Prompt communication is of paramount importance, as the claimant must have the opportunity to lodge an appeal. However, in a report published in 2021 by the Swiss Competence Center for Human Rights (SCCHR), and commissioned by the SEM, researchers "[noted] the difficulties encountered by asylum seekers due to the time allowed to find an external representative to lodge an appeal against the SEM's decision. This is evidenced by the fact that in most regions, the time remaining until expiry of the appeal deadline is very short when an asylum seeker reaches an organization or external agent with the necessary skills to draft the appeal".¹⁵⁴ In practice, it is very complex for those concerned to find a new representative within the 5-7 working days appeal period, especially as asylum seekers are generally in remote asylum centers and therefore cannot easily have recourse to another legal representative.

Looking at the statistics between January 2020 and November 2022,¹⁵⁵ it is clear that state-paid legal representatives sometimes terminate their mandate too early. It should be noted that appeals lodged by state-paid legal representatives and those lodged by another representative or by the individuals themselves each have a 3% chance of a positive outcome. Yet between May 2020 and November 2022, only 53% of all appeals were lodged by state-paid legal representation. 10% were filed by representatives who took over the mandate after state-paid legal representation ended, and 37% filed appeals without legal representation.

Regional differences in the lodging of appeals are striking. With 412 appeals lodged between May 2020 and November 2022, French-speaking Switzerland is the region with the highest number of appeals against non-admission decisions or materially negative decisions. By comparison, 117 appeals were lodged during the same period in the canton of Berne. And yet, the figures show that

¹⁵⁴ CSDH, Evaluation PERU - Rechtsschutz und Entscheidungsqualität - Schlussbericht, 16.08.2021, p.104.

¹⁵⁵ See Appendix 2: TAF, Statistiques du Tribunal administratif fédéral ("TAF"), 2022.

filing an appeal is well worth the effort. Of the 412 appeals lodged, 277 were rejected. However, 19 were admitted, 51 were referred back to the lower court and 65 were subject of a formal decision.¹⁵⁶

As far as the independence of state-paid legal representatives is concerned, asylum seekers often find it difficult to understand the difference between SEM employees and their own legal representatives, due to the fact that both authorities and representatives are present in CFAs. As a result, they struggle to establish a relationship of trust with their legal representatives, particularly in light of accelerated asylum procedures.¹⁵⁷

In other areas - notably in cases of violence against asylum seekers by police or security personnel, racial profiling, domestic violence, when rejected asylum seekers have to file a readmission or hardship application or have marriage problems, or when coercive measures, including detention, are ordered - access to justice is even more problematic, as the legal representative's mandate does not extend to these issues, including administrative detention or criminal law.

In Switzerland, the decision whether or not to grant legal assistance to a prisoner is a cantonal matter. There are huge disparities between the various cantons. Whereas in Geneva a lawyer is appointed if the person concerned has no lawyer or representative, in Zurich no lawyer is appointed.¹⁵⁸ As a result, very few people in administrative detention have access to free legal representation, which is highly problematic. All the more so as there are forms of administrative detention in Switzerland pending deportation which do not systematically pass through the hands of a judge ([art. 80a para. 3 FNIA](#)). This type of detention - also known as "Dublin detention" - is particularly worrying, as many detainees are not even aware of their right to be brought before a court, or are simply too afraid to approach the authorities, whose language they do not speak.

In autumn 2022, the SEM informed the Legal Advice Offices (LAOs), responsible for the legal representation of asylum seekers assigned to the extended procedure, that they would also be responsible for asylum applications submitted by applicants in detention. The concrete implications of this new development in practice are not yet clear.

In conclusion, while the general right to counsel in Swiss asylum procedure is to be welcomed, its practical implementation remains highly problematic. For asylum seekers to prove that they are at risk of torture if deported or returned to another state in violation of [art. 3 CAT](#), full legal representation is necessary to ensure that they are informed of their rights and advised on possible legal procedures. However, due to the accelerated asylum procedure, it is not always possible for asylum seekers to establish a relationship of trust with their representatives and, perhaps due to the payment of a lump sum, representatives sometimes terminate their mandate at a crucial moment, namely before the appeal. The fact that rejected asylum seekers then have no access to legal representation is therefore worrying.

Finally, the fact that not all administrative detainees have access to a legal representative in detention is also worrying and problematic in terms of [art. 11 CAT](#). In the absence of a legal representative, detainees have no possibility of seeking redress if the reason for or conditions of detention are unlawful, or of reminding the State party of its obligation to systematically review detention, particularly with regard to detention under the Dublin procedure, where no automatic review is provided for ([art. 80a para. 3 LEI](#)).

The Platform therefore recommends:

¹⁵⁶ *Ibid.*

¹⁵⁷ Coalition des juristes indépendants-e-s pour le droit d'asile, [Bilan de la première année de mise en œuvre](#), p. 8-9.

¹⁵⁸ See in particular the comparison between [art. 12 para. 2 of the Federal Implementing Law on Foreign Nationals \(LaLEtr\)](#) in the canton of Geneva and [art. 6 para. 1 of the Verordnung über den Vollzug der Zwangsmassnahmen im Ausländerrecht](#) in the canton of Zurich.

- Adequately pay state-appointed legal representatives to prevent them from terminating their mandate before appealing against a negative decision in asylum procedures.
- Adopt appropriate measures to reduce the difficulties encountered by asylum seekers who still wish to appeal the SEM's decision in the event of termination of the mandate of the *ex officio* legal representative, by facilitating contacts with non-governmental organizations that provide legal advice and support to asylum seekers outside the federal mandate.
- Extend the state-funded mandate to issues relating to failed asylum seekers, administrative detention and other concerns during the asylum process, such as police violence, racial profiling and domestic violence.
- Guarantee administrative detainees access to a legal representative in detention.

10. Victims of torture

Question 11: Please provide annual statistics, for the period since 2015, disaggregated by sex, country of origin, ethnic origin and age group of persons seeking asylum, on the number: (a) Asylum applications registered; (b) Applications for asylum, refugee status or other forms of humanitarian protection that have been granted, indicating, where appropriate, the number of cases in which protection has been granted in application of the principle of non-refoulement; (c) Victims of torture identified among asylum-seekers as a proportion of the total number of applicants and the measures taken on behalf of persons identified as victims of torture. In this connection, please provide information on the mechanism in place for identifying victims of torture; d) Persons extradited, expelled or returned, and the countries to which they were extradited, expelled or returned; e) Appeals against expulsion or extradition decisions lodged on the grounds that the applicants would be in danger of being subjected to torture in the countries of destination, and the outcome of such appeals.

10. Ad 63 - 67

The Platform is aware of several cases of asylum seekers who have alleged torture, but whose evidence has been deemed insufficiently credible by the SEM or FAC. In these cases, the authorities in question generally failed to provide further clarification by requiring the production of psychological or forensic expertise. Even when the alleged torture is recognized by the authorities, a negative asylum decision is issued in most cases. While the existence of post-traumatic stress disorder is generally considered credible, the authorities nevertheless deduce that this condition may result from causes other than the alleged experience of torture.

The Platform is aware of four cases where the request for re-examination accompanied by an expert opinion in accordance with the Istanbul Protocol was rejected by the SEM. Appeals to the FAC are still pending. In another case, the FAC did not wait for the announced medical report, which would have been an expertise according to the Istanbul Protocol, to render a negative asylum decision¹⁵⁹. A complaint accompanied by the said expert report was sent to the CAT, which has yet to issue its decision. Finally, the Platform is aware of the case of a person who has been ordered deported to his country of origin, despite a complaint lodged with the CAT.¹⁶⁰

All the expert reports drawn up in accordance with the Istanbul Protocol of which the Platform is aware were requested by the legal representative and financed by the asylum seekers themselves or by donations. The Platform is aware of two cases where asylum seekers were granted asylum by the SEM after submitting a request for reconsideration accompanied by an expert opinion drawn up

¹⁵⁹ TAF, D-3841/2021, 06.10.2021. The expulsion took place before the CAT could take up the case.

¹⁶⁰ TAF, D-675/2020, date unknown.

in accordance with the standards of the Istanbul Protocol. In the first case, the SEM rejected the request to cover costs. The argument was that a request for an expert opinion should have been drawn up at the start of the procedure, and that this was not decisive for the outcome. In practice, however, it would have been a delicate matter to apply to the SEM for costs to be covered in advance, since if this had been refused, there would not have been enough time to draw up an expert report in accordance with the Istanbul Protocol at the applicant's expense until the FAC had issued its decision. In this case, an appeal was lodged with the FAC concerning the assumption of costs. The procedure is still underway. In the second case mentioned above, the SEM has not yet ruled on the request to cover the costs of the expert opinion.

With regard to the recommendations, the Platform reiterates the proposals it made in the section on non-refoulement (see question 6, p. 39 ff), namely:

- **Ask the SEM and the FAC to take into account the increased probative value of expert appraisals carried out according to Istanbul Protocol standards in asylum procedures.**
- **Cover the costs of forensic and psychological examinations carried out in asylum procedures when acts of torture or ill-treatment are recognized as credible by the SEM or FAC.**
- **Ensure that the system for assessing the risk of violation of the principle of non-refoulement takes sufficient account of the psychological vulnerability of the person being examined, as well as the actual capacity of States to deal with mental disorders.**

V. Articles 5, 7 and 8

11. Extradition requests

Question 12: Please indicate whether, since the consideration of the previous report, the State party has rejected, for any reason, any request for extradition by a third State for an individual suspected of having committed acts of torture, and has taken the necessary steps to initiate criminal proceedings itself.

11. Ad 68

The Platform is not aware of any extradition requests to Switzerland for an individual suspected of having committed acts of torture.

The problem remains that, in principle, Switzerland is not empowered to process extradition requests relating to the commission of acts of torture, with the exception of acts committed as part of a crime against humanity or a war crime. This impossibility stems from the fact that torture is still not specifically criminalized under criminal law, and that the condition of double incrimination, which prevails in matters of mutual legal assistance and implies that the act be punished not only in the requesting state but also in the requested state, is therefore not met. In addition, the Platform refers to its comments on the need to criminalize torture and to continue legislative work in this direction (see question 2, p. 34 ff).

VI. Article 10

12. Staff training

Question 13: Further to the Committee's previous concluding observations (para. 21), please provide information - indicating the total number of persons concerned and the percentage of beneficiaries,

as well as the frequency of training - on the training programmes provided for all State officials involved in the custody, interrogation or treatment of persons deprived of their liberty in the following areas: (a) The provisions of the Convention; (b) Guidelines for detecting and documenting signs of torture and ill-treatment, in accordance with the Istanbul Protocol.

12. Ad. 69 - 78

In December 2022, a delegation from the Platform, comprising several recognized Istanbul Protocol experts, met with SEM representatives to discuss the detection and documentation of torture in asylum procedures. The authorities expressed an interest in the issues of identifying and supporting torture victims, which is to be welcomed.¹⁶¹ For the time being, however, there appear to be no plans for the opinions of the Platform's experts to be taken into account in the development of training programs for staff working in the field of asylum, which remains regrettable. At the time of publication, no decision had been taken by the authorities.

The Platform recommends that SEM continue its dialogue with civil society to define the content of training programs for public officials working in the field of asylum, and to establish collaboration in the field of support for victims of torture.

13. Evaluating effectiveness of trainings

Question 14: Please specify whether the State party has put in place specific methods to assess the effectiveness and impact of such training on the prevention of torture and respect for the principle of the absolute prohibition of torture.

13. Ad 82 - 84

The Platform takes note of the specific methods introduced by Switzerland to assess the effectiveness and impact of training on the prevention of torture, and has no comments to make.

VII. Article 11

14. Criteria for administrative detention

Question 15: Please indicate, for each canton, the criteria and procedure used to examine the necessity and proportionality of detaining irregular migrants, and what alternative measures to detention exist.

14. Ad 85 - 88

For reasons of clarity, the answers to this question have been grouped together with those to the next question (see question 16, p. 48 ff).

15. Criteria for administrative detention (continued)

Question 16: In the light of the previous concluding observations (para. 17) and the Federal Court's decisions of May 2016 and April 2017, confirming that alternatives to detention are not applied to asylum seekers who are the subject of a decision taken under the Dublin Regulation, please indicate, for each canton, according to which criteria and procedure the necessity and proportionality of

¹⁶¹ On the structures in place to support victims of torture, see question 25, p. 68.

resorting to the detention of irregular migrants are examined, and what are the existing alternatives to detention.

15. Ad 89 - 93

PROPORTIONALITY OF ADMINISTRATIVE DETENTION

Because of Switzerland's federal system, the cantonal authorities are responsible for applying the principle of proportionality. Detention practices vary considerably across Switzerland. This leads to the conclusion that the application and interpretation of the principles of necessity and proportionality, in particular, appear to differ between cantonal authorities.¹⁶² It is inherent in the principle of necessity and proportionality to leave the authorities sufficient room for discretion. However, we note that some cantons do not seem to examine the principle of necessity and proportionality at all when ordering detention. In other words, some cantonal authorities appear to be systematically ordering the detention of a person without examining whether less restrictive measures could be taken to achieve the same objective, in violation of international law. Generally speaking, it is to be feared that this legal principle is often not strictly and consistently observed, increasing the risk of arbitrary decisions.

Variations in detention practices between the various cantons are confirmed by a report from the Control Committee of the National Council (CC-N). According to this report, the canton of Geneva and the canton of Ticino have an administrative detention rate of 4%, while the canton of Obwalden has an administrative detention rate of 20% in the case of material negative asylum decisions or a decision of non-consideration. Detention rates are higher for decisions of non-considerations under the Dublin system, but the difference is still significant. The canton of Geneva, for example, detained 24% of those concerned, while the canton of Obwalden detained 61%.¹⁶³

It should be noted that the sole purpose of administrative detention is to ensure enforcement of the deportation order. If this objective cannot be achieved for legal or factual reasons, detention may neither be ordered nor prolonged. The principle of proportionality therefore applies to the order, conditions and duration of administrative detention.

However, the purpose of administrative detention, i.e. to enforce deportation, is not apparent in all cantons. If we look at departure rates after imprisonment, in the canton of Valais, for example, the departure rate for detainees is 52%.¹⁶⁴ Consequently, the appropriateness of administrative detention is particularly questionable in this canton. Moreover, the practices of other cantons with regard to the appropriateness of administrative detention are highly questionable.

Swiss law provides for alternative measures to detention.¹⁶⁵ These include, for example, the obligation to report regularly to the authorities ([art. 64e FNIA](#)) or the restriction and exclusion orders provided for in [art. 74 FNIA](#), which prevent rejected asylum seekers from leaving or entering a designated area. Although provided for by law, in practice rejected asylum seekers are often detained without any real consideration being given to less restrictive measures.

As far as conditions of detention are concerned, since June 1, 2019, a separation rule has been in force, according to which administrative and criminal detainees must be placed in separate premises ([art. 81 al. 2 FNIA](#)). In addition, a FSC ruling of March 31, 2020 ruled that administrative detention must be carried out in facilities specially designed for administrative detention.¹⁶⁶ Only in the event

¹⁶² CDG-N, [Administrative detention of asylum seekers. Report by the Management Committee of the National Council](#), FF 2018 7481, p. 7501.

¹⁶³ *Idem*, p. 7500.

¹⁶⁴ *Idem*, p. 7501.

¹⁶⁵ [Art. 64e LEI](#), resp. [art. 74 LEI](#).

¹⁶⁶ TF, [2C 447/2019](#), 31.03.2020, consid. 6.2.2; ATF [146 II 201](#).

of a lack of capacity can administrative detainees be held in prisons, but always in separate sections of the prison. According to the Supreme Court, the design of administrative detention facilities must avoid resembling prisons. Yet some Swiss courts have found that detention conditions still do not comply with federal and international law in all cantons.¹⁶⁷ In 2018, the cantons estimated that there was a need for around 150 additional places.¹⁶⁸

With regard to the duration of administrative detention, the law stipulates that detention in the preparatory phase, detention with a view to deportation and detention for insubordination "may not exceed a total of six months" ([art. 79 al.1 FNIA](#)). However, according to [art. 79 al. 2 FNIA](#), the maximum duration may be extended by twelve months with the agreement of the cantonal judicial authority. As a result, detention can last up to 18 months, which is totally disproportionate, given that the purpose of administrative detention is not to punish, but rather to ensure the removal of a foreigner without a valid residence permit, as we saw above.

Furthermore, while under the Dublin III regulation, Dublin detention must not be ordered for a total duration of more than six weeks, some cantons did not comply with this obligation and detained people for longer. AsylLex challenged this practice, and the Federal Court ruled in its favor, confirming the maximum duration of 6 weeks for Dublin detention.¹⁶⁹

The Platform therefore recommends:

- **Call on Switzerland to take appropriate measures to systematically monitor administrative detention in order to determine whether cantons are complying with their obligation to apply the principle of proportionality when ordering administrative detention, in particular the obligation to check whether alternatives to detention exist.**
- **Ensure that the cantons take appropriate measures to ensure that places of deprivation of liberty used for administrative detention differ in design from the prison system, in accordance with federal case law, and that people in administrative detention are always kept separate from those serving sentences.**
- **Ensure that administrative detention is only ordered in exceptional cases and as a last resort, and systematically consider milder measures as alternatives to detention (restraint and exclusion measures and reporting obligations) before ordering detention.**
- **Repeal art. 79 al. 2 FNIA in order to respect the *ratio legis* of administrative detention, which is to guarantee the removal of a foreigner without a valid residence permit.**
- **Ensure that cantons do not contravene the Dublin III regulation by ordering administrative detention for longer than six weeks.**

THE FAVRA CASE

On April 20, 2023, the Administrative Court of the Canton of Geneva ruled in favor of two persons detained at the Favra administrative detention facility, finding that their conditions of detention were contrary to the prohibition of torture and ill-treatment laid down in [art. 3 ECHR](#).¹⁷⁰ However, the applicants' lawyer deplored the fact that the Court held that only the specific conditions of the two detainees rendered the detention unlawful, whereas it was the conditions of detention at Favra "as such" that were problematic, i.e. for the detainees as a whole. Among the problems raised during the first-instance hearing, particular mention should be made of the largely inadequate psychiatric, social and legal follow-up, and the absence of any possible contact with the outside world (ban on

¹⁶⁷ See, for example: TF, [2C 781/2022](#), 08.11.2022, where the TF ruled that conditions of detention in an administrative detention facility in St. Gallen were illegal.

¹⁶⁸ OSAR, [AIDA - Country Report: Switzerland](#), 2022, p. 119.

¹⁶⁹ TF, [2C 610/2021](#), 05.04.2022.

¹⁷⁰ TdG, [Les deux détenus de la prison de Favra seront transférés](#), 20.04.2023, accessed 24.04.2023.

cell phones, computers or the Internet), with the exception of calls from a payphone, the fact that Favra was initially set up for the execution of short penal sanctions, whereas the two detainees had been administratively incarcerated there for four and eleven months respectively, and above all access to the outside, which, according to one of the detainees,¹⁷¹ consisted of a very small concrete "cage". The CPT called for the closure of the facility.

In 2020 and 2021, the NCPT had already ruled that the Favra facility was unsuitable for administrative detention, and asked the Geneva authorities to transfer administrative detainees to a facility designed for this purpose.¹⁷²

The Platform recommends asking the canton of Geneva to close the Favra administrative detention facility.

16. Detention of families of irregular migrants

Question 17: In view of the Federal Court's decision condemning the detention of a family of Afghan refugees in the canton of Zug, please indicate what measures are envisaged to ensure that families of irregular migrants accompanied by children are not detained or, if they are, that this is only a measure of last resort, applied for the shortest possible time, when placement in shared accommodation proves impossible.

16. 94 - 97

DETENTION OF MIGRANT MINORS AGED 15 TO 18

According to [art. 37 let. b of the Convention on the Rights of the Child \(CRC\)](#), the imprisonment of children must be in conformity with the law, be a measure of last resort and be as brief as possible. In the context of migration, the detention of minors, whether accompanied or unaccompanied by an adult, is deemed inadmissible in view of the principle of the best interests of the child.¹⁷³ Administrative detention can harm children and adolescents, particularly if separation from adults is not respected, and lead to serious clinical symptoms such as severe depression, anxiety, post-traumatic disorders and self-harm.¹⁷⁴

In Switzerland, juvenile detention is authorized for minors aged between 15 and 18 ([art. 80 al. 4 FNIA](#)). The duration of detention for this group can last up to one year ([art. 79 al. 2 FNIA](#)). The following findings emerge from a report published by the NCPT in 2019.¹⁷⁵

- Two cantons (Geneva and Neuchâtel) have banned the detention of minors with a view to deportation.¹⁷⁶
- Five cantons do not, as a matter of principle, impose administrative detention on minors (Basel-Country, Jura, Obwalden, Nidwalden and Vaud).
- Five cantons placed no minors in administrative detention between 2017 and 2018 (Appenzell Ausserrhoden, Appenzell Innerrhoden, Fribourg, Lucerne and Ticino).

¹⁷¹ TdG, "[Without decent detention conditions, no detention](#)", 18.04.2023, accessed 24.04.2023.

¹⁷² CNPT, [Letter to the Conseil d'Etat following the CNPT's visit to Champ-Dollon prison and its surroundings](#), [l'établissement de détention administrative de Favra](#), 01.03.2021, p. 5 f. ; CNPT, [Visite de suivi de la CNPT dans l'établissement de détention administrative de Favra](#), 08.04.2020, p.2, ch. 4.

¹⁷³ CRC, [Joint General Comment respectively n° 4 and n° 23 on States' obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return](#), 16.11.2017, ch. 5 ff.

¹⁷⁴ Tdh, [État des lieux sur la détention administrative des mineurs.e.s migrant.e.s en Suisse](#), 07.12.2018.

¹⁷⁵ CNPT, [Rapport au Département fédéral de justice et police \(DFJP\) et à la Conférence des directrices et directeurs des départements cantonaux de justice et police \(CCDJP\) relatif au contrôle des renvois en application du droit des étrangers, d'avril 2018 à mars 2019](#), 24.05.2019, p. 13 ff.

¹⁷⁶ [Art. 6 para. 4 LaLEtr-GE](#), resp. [9 LILSEE-NE](#).

- Four cantons recorded no minors detained between 2017 and 2018 (Grisons, Schaffhausen, Schwyz and Thurgau). These cantons could, however, resort to administrative detention as a last resort under the conditions laid down by law.
- Ten cantons (Aargau, Basel-Stadt, Bern, Glarus, St. Gallen, Solothurn, Uri, Valais, Zug and Zurich) reported holding minors in administrative detention and/or custody between 2017 and 2018. It should be noted that the cantons of Aargau and Zurich reported that they no longer detained minors as of 2018.

The ten cantons mentioned above reported to the NCPT that they had detained a total of 37 minors aged between 15 and 18 between 2017 and 2018, of whom 23 were placed in administrative detention and 14 in retention. The length of stay for administrative detention placements varied between 2 and 120 days. The Platform is shocked by the number of these detentions, especially as, in the majority of cases, the facilities in which the minors were placed were prisons or pre-trial detention facilities. These are therefore totally unsuitable for administrative detention. According to a report published in 2018 by Terre des hommes (Tdh), "children are imprisoned in some cantons with adults with whom they have no connection and who partly come from a criminal environment".¹⁷⁷ According to the Swiss Refugee Council, 9 minors were placed in administrative detention in 2021, including 1 unaccompanied minor, and 7 were placed in pre-trial detention, including 3 unaccompanied minors.¹⁷⁸

The obligation to examine the possibilities of alternatives derives from the principle of proportionality, which must imperatively take into account the best interests of the child. CC-N noted in a report published in 2018 that the use of administrative detention was not necessary in all cases, since a number of people would also have left Switzerland or could have been repatriated without first being placed in detention.¹⁷⁹ In view of the practice of cantons that do not detain minors, there are many tried and tested alternatives to detention, in particular the obligation to report regularly to an authority and the assignment of a place of residence.¹⁸⁰

The Platform recommends renouncing the administrative detention of accompanied or unaccompanied minors, and favouring alternatives to detention that take into account the best interests of the child.

DETENTION OF MINORS UNDER 15 YEARS OF AGE

According to [art. 80 para. 4 FNIA](#), detention in the preparatory phase, detention with a view to enforcing removal or expulsion and detention for insubordination are excluded for children under the age of 15.¹⁸¹ In a report published in 2019, however, the NCPT found that the cantons of Bern and Zurich had placed minors under the age of 15 jointly with their families in custodial facilities.¹⁸² Such detention is unacceptable given the particularly high level of vulnerability of this group, and constitutes a flagrant violation of national and international law. In the canton of Berne, the case concerned a 12-year-old girl who was placed with her mother for 24 hours in Thun regional prison, prior to her removal in March 2018. In the canton of Zurich, the NCPT observed that, as a general

¹⁷⁷ Tdh, État des lieux sur la détention administrative des mineurs.e.s migrant.e.s en Suisse, 07.12.2018.

¹⁷⁸ In 2019, these figures were 9 minors in administrative detention, including 2 unaccompanied minors, and 28 minors in pre-trial detention, including 9 unaccompanied minors. See: OSAR, [AIDA - Country Report: Switzerland](#), 2022, p. 115.

¹⁷⁹ CdG-N, [Détention administrative de requérants d'asile : Rapport de la Commission de gestion du Conseil national du 26 juin 2018](#), p. 7502.

¹⁸⁰ FC, [Détention administrative de requérants d'asile - Rapport de la Commission de gestion du Conseil national \(CdG-N\) du 26 juin 2018 - Avis du Conseil fédéral](#), 2018, p. 8.

¹⁸¹ The cantons of Vaud and Zurich have included in their legislation a ban, in principle, on the detention of mothers accompanied by their children under the age of 15 (Vaud; [art. 29 LVEtr-VD](#)), or on the detention of families with minors (Geneva; [art. 6 al. 4 LaLEtr-GE](#)).

¹⁸² CNPT, [Rapport au Département fédéral de justice et police \(DFJP\) et à la Conférence des directrices et directeurs des départements cantonaux de justice et police \(CCDJP\) relatif au contrôle des renvois en application du droit des étrangers](#), d'avril 2018 à mars 2019, 24.05.2019, p. 18 ff.

rule, between three and five mothers with young children were detained each year until 2018 at the airport prison with the aim of preventing mother-child separation. However, the canton has no figures on this.¹⁸³ In April 2017, the Federal Supreme Court ruled in favour of an Afghan family whose mother had been detained with her four-month-old child at Zurich airport prison, separated from her three other children. The Court found that there had been a violation of the right to respect for family life ([art. 8 ECHR](#)) and that the situation almost amounted to torture ([art. 3 ECHR](#)).¹⁸⁴ Since July 1^{er} 2018, the canton has indicated that it no longer holds minors in detention, a measure that is to be welcomed, even if it would have been preferable to have quantified data about previous cases. In its response to the CC-N report of June 26, 2018, which specifically noted cases of detention of minors under the age of 15, the Federal Council indicated that the SEM would ask the cantons not to place minors under the age of 15 in administrative detention facilities.¹⁸⁵

The Platform welcomes the Confederation's request to the cantons not to detain minors under the age of 15. It hopes that this recommendation will be followed by the cantons, and asks the Confederation to update the figures for the administrative detention of minors since the time of the report.

The Platform recommends that the administrative detention of minors under the age of 15 be abandoned immediately, and that alternative measures be used which take into account the best interests of the child.

17. Unaccompanied minor asylum seekers (RMNA)

Question 18: With reference to the previous concluding observations (para.18), please provide information, for the period since 2015 and by canton, on: a) The percentage of asylum-seeking children who have been detained and the average length of detention; b) The measures taken to ensure that reception conditions are appropriate to their needs and age; c) The measures taken to thoroughly investigate disappearances of unaccompanied minors, accommodated in reception centers. Please describe the progress of these investigations and their current results.

17. Ad 98 - 101

The Swiss Refugee Council is closely monitoring the situation of unaccompanied minors in federal reception centers. According to information received, minors are disappearing from the centers. It would appear that there are no standard protocols in place to ensure coordination and communication between the actors dealing with unaccompanied minors. Most of the time, minors who disappear are not found, unless they spontaneously return to the center.

The Platform recommends that Switzerland be asked to develop and adopt standardized protocols to ensure coordination and communication between all those involved in the care of unaccompanied minors.

18. Places of detention

Question 19: Taking into account the previous concluding observations (para.19), please provide : (a) Annual statistical data, for the period since 2015, disaggregated by place of detention, on the capacity and occupancy rate of all places of detention, indicating the number of remand and convicted prisoners; (b) Information on the measures taken or envisaged to reduce prison overcrowding at Champ-Dollon, in view of the Federal Supreme Court's decision of March 21, 2016, concluding that the conditions of detention violated article 3 of the European Convention on Human

¹⁸³ Only the mother's detention, which was the subject of the decision, was statistically documented. See, *idem*, p. 19.

¹⁸⁴ TF, [2C 1052/2016](#) and [2C 1053/2016](#), 26.04.2017.

¹⁸⁵ *Ibid.*

Rights ; c) Information on measures taken to ensure that prisoners suffering from serious mental disorders are cared for in a properly equipped environment and by qualified staff; d) Information on measures taken to provide an opportunity for review of the decision placing convicts on life imprisonment, under article 64, 1bis, of the Penal Code.

18. Ad 102 - 110

OVERCROWDING AT CHAMP-DOLLON

In 2016, prison overcrowding at Champ-Dollon has been judged to be contrary to the prohibition of torture provided for in the Federal Constitution ([art. 10 para. 3 Cst.](#)) and the ECHR ([art. 3 ECHR](#)). The solution recommended by the canton of Geneva to comply with the case law of the FSC was the construction of the "Les Dardelles" sentence enforcement facility. Requiring an investment credit of 258.5 million francs for 450 places, this project was however rejected by the Geneva Grand Council in 2020 in favor of alternatives to detention.¹⁸⁶ Unfortunately, Champ-Dollon prison remains chronically overcrowded, a situation that the CPT explicitly denounced in a report of June 2022.¹⁸⁷ In March 2020, the prison had 650 inmates, while its capacity was 398 places, including 40 places for women.¹⁸⁸ In January 2022, the prison was still accommodating more than two hundred people beyond its capacity.¹⁸⁹ Due to the large number of people accommodated and poor ventilation, the CPT also noted that temperatures in some cells were unacceptably high.¹⁹⁰ Furthermore, the prison's infrastructure is not suited to the execution of sentences. Champ-Dollon, for example, has three telephone booths for all inmates, while the La Brenaz closed prison, also in the canton of Geneva, has sixteen telephones for 168 inmates.¹⁹¹ Overall, the situation in Champ-Dollon prison remains extremely worrying and has not seen any significant progress since 2015. In a report published in 2023, the Court des comptes of the Canton of Geneva (CdC-GE) reiterated the need for sufficient infrastructures to guarantee the quality of care and supervision of inmates.¹⁹²

The Platform recommends :

- **Ask the judicial authorities to favorize alternative sentences and measures to detention.**
- **Request the canton of Geneva to take all appropriate measures to ensure that the infrastructure of Champ-Dollon prison complies with the requirements applicable to facilities for the execution of sentences.**
- **Ask the canton of Geneva to take all necessary measures to build or expand prisons in order to respect the maximum capacity of the prisons.**

¹⁸⁶ TdG, [Les Dardelles enterrées, Mauro Poggia veut foncer](#), 07.10.2020, accessed 13.04.2023; For an explanation of the reasons behind the rejection of the Les Dardelles construction project, see: Secrétariat du Grand Conseil, [M 2666 - Proposition de motion pour une politique pénitentiaire humaine, cohérente et économique](#), 29.06.2020.

¹⁸⁷ CPT, [Executive Summary of the Report to the Swiss Federal Council on the visit to Switzerland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) from March 22 to April 1^{er}](#), 8.06.2022.

¹⁸⁸ Nau.ch, [Baufälliges Genfer Gefängnis Champ-Dollon soll Neubau weichen](#), 29.07.2022, accessed 13.04.2023.

¹⁸⁹ TdG, [Prisoners denounce conditions in petition](#), 15.09.2022.

¹⁹⁰ CPT, [Executive Summary of the Report to the Swiss Federal Council on the visit to Switzerland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) from 22 March to 1^{er} April](#), 08.06.2022

¹⁹¹ CdC-GE, [Report summary](#), p. 5.

¹⁹² For a comprehensive overview of the recommendations, see : CdC-GE, Report n° 177, [Evaluation - Les mesures de réinsertion proposées en prison](#), January 2023, p. 5 ff.

INMATES WITH MENTAL DISORDERS

In Switzerland, the number of psychiatric facilities suitable for the execution of an institutional therapeutic measure is largely insufficient.¹⁹³ Even if one adopts a broad interpretation of the concept of "appropriate psychiatric facility" within the meaning of [art. 59 para. 2 SCC](#), the forensic psychiatric departments of prisons cannot meet the practical requirements for institutional treatment. As a result, the increasing use of therapeutic measures leads to an increase in the placement of vulnerable people in penitentiary institutions, where their mental disorder is not treated properly, if at all. Worryingly, these individuals regularly have to wait months or even years in regional prisons before an appropriate facility is found. The risks of such delays are the aggravation of pre-existing mental disorders and the appearance of new ones.¹⁹⁴ According to a report by the Conference of Cantonal Directors of Justice and Police (CCDJP), at least 300 people were waiting for a place in a psychiatric facility for the execution of an institutional measure in 2016.¹⁹⁵ There is no information to suggest that this situation has improved since then. In a report published in June 2022, the CPT deplored the fact that [art. 59 para. 4 SCC](#) allows for the extension of the measure for five years at a time, enabling the long-term detention of mentally ill people in the penal system.¹⁹⁶

The mental health of prisoners represents a particular challenge for deprivation of liberty. The lack of training for prison staff in this area, the insufficient number of psychologists and psychiatrists, and the lack of time available per prisoner are risk factors. There is a great need for collaboration with specialists in psychiatry or psychology, which is not currently being met.¹⁹⁷

The Platform therefore recommends :

- **Establish and publish a list of criteria for defining the terms "appropriate psychiatric facility" in Art. 59 para. 2 SCC, and "necessary therapeutic treatment" and "qualified personnel" in Art. 59 para. 3 SCC.**
- **Ensure that persons sentenced to a measure under Art. 59 SCC are placed in an appropriate psychiatric facility or in a prison where the necessary treatment is provided by qualified staff.**
- **Repeal or amend art. 59 para. 4, 2nd sentence SCC¹⁹⁸ to ensure that people suffering from serious mental disorders are not deprived of their liberty indefinitely.**

LIFE IMPRISONMENT

Life imprisonment is provided for in [art. 123a of the Swiss Constitution \(Cst.\)](#) and enshrined in criminal law in [art. 64 para. 1^{bis} SCC](#), and is the most severe measure in the SCC. This measure was introduced in Switzerland following a popular initiative.¹⁹⁹ It can only be imposed on a sexual or violent offender who has been qualified as extremely dangerous and unamendable in the expert opinions necessary for trial ([art. 123a para. 1 Cst.](#)). Life imprisonment is determined according to the

¹⁹³ CPT, [Report to the Swiss Federal Council on the visit to Switzerland by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) from March 22 to April 1, 2021](#), 08.06.2022; CNPT, [Gesamtbericht über die schweizweite Überprüfung der Gesundheitsversorgung im Freiheitsentzug durch die Nationale Kommission zur Verhütung von Folter \(2019-2021\)](#), January 2022.

¹⁹⁴ humanrights.ch, [Zugang zum recht - für Gefangene versperrt](#), 23.11.2018.

¹⁹⁵ CCDJP, [Kapazitätsmonitoring Freiheitsentzug 2016 - Ergänzender Bericht zur Unterbringung, Behandlung und Betreuung psychisch gestörter und kranker Straftäter](#), August 2017.

¹⁹⁶ CPT, [Report to the Swiss Federal Council on the visit to Switzerland by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) from March 22 to April 1, 2021](#), 08.06.2022

¹⁹⁷ NCPT, [Gesamtbericht über die schweizweite Überprüfung der Gesundheitsversorgung im Freiheitsentzug durch die Nationale Kommission zur Verhütung von Folter \(2018-2019\)](#), 14.11.2019.

¹⁹⁸ "If the conditions for conditional release are not met after five years, and it is foreseeable that maintaining the measure will divert the perpetrator from new crimes or offenses related to his mental disorder, the judge may, at the request of the enforcement authority, order the extension of the measure for a maximum of five years each time" ([art. 59 al. 4, 2^{ème} phrase SCC](#)).

¹⁹⁹ Popular initiative, 01.025, [Life imprisonment for sexual or violent offenders deemed highly dangerous and not amenable to amendment](#), accepted in the vote on 08.02.2004.

dangerousness attributed to the offender, rather than in proportion to the offence committed. The risk of recidivism must therefore be considered to be very high until the offender's death.²⁰⁰

One of the particularities of life imprisonment is that early release and discharge are excluded. A release can only be considered if new scientific knowledge establishes that the offender can be amended and that he or she is no longer a danger to the community. The chances of release are therefore almost nil. Moreover, the authority responsible for lifting the life sentence is liable in the event of recidivism ([art. 123a para. 2 Cst.](#)), thereby reducing the chances of a favorable decision, given the pressure on those responsible for the assessment. Finally, any expert opinion concerning the offender must be drawn up by at least two independent experts who take into consideration all the relevant elements ([art. 123a para. 3 Cst.](#) and [64c para. 5 SCC](#)). In this context, it cannot be considered that there is any real chance of release.

According to the jurisprudence of the ECtHR, a life sentence complies with [art. 3 ECHR](#) if there is a legal and effective possibility of mitigating it.²⁰¹ In the case of ordinary imprisonment, this possibility manifests itself through the annual parole review, which assesses whether there has been a change in the person's behavior, so that it is to be expected that "he or she will behave correctly on release" ([art. 64a para. 1 SCC](#)). In any event, statistics show that the rate of release from ordinary detention is only around 2%.²⁰² However, the consideration of the behavior of the person concerned is completely lacking in the case of life imprisonment. Indeed, [art. 64c SCC](#) does not provide for consideration of the progress made by the person in his rehabilitation. The conditions for the review of release from life imprisonment therefore violate [art. 3 ECHR](#) and [art. 16 CAT](#). Consequently, insofar as this provision is contrary to higher law, it should be unenforceable.

In order to comply with art. 16 CAT, the Platform recommends that the judicial authorities be asked to renounce all measures of life imprisonment of art. 64 para. 1^{bis} and privilege the measures of imprisonment of art. 64 para. 1 SCC.

INTERNMENT OF CHILDREN

On March 13, 2013, the Council of States accepted the proposal to allow for an imposition of a measure of internment against young people over 16 years of age who have been convicted of first degree murder and who present a serious risk of committing a new act at the end of their custodial sentence (maximum of 4 years, according to current law) or their placement in a closed institution (a measure that ends at the latest at the age of 25).²⁰³ In the case of children sentenced only to a custodial sentence (which must be at least 3 years), the need for internment must be included as a reservation in the final judgment, and its necessity must be re-examined by means of an expert opinion, before it is enforced, which could take place from the age of 19 and therefore always when they reach the age of majority. Finally, for those who have been interned, the measure could simply be changed at the end of the internment if there is a risk of a new homicidal act at the time of release.²⁰⁴ The bill has now been referred to the LAC-S for detailed examination.²⁰⁵

According to the Federal Office of Justice (FOJ), it is rare for a young offender to slip through the cracks of all the safety nets of juvenile criminal law (DPMIn).²⁰⁶ Between 2010 and 2020, twelve young people were convicted of murder. Most of them were placed in an open environment, which

²⁰⁰ [ATF 140 IV 1.](#)

²⁰¹ ECtHR, [Vinter and others v. United Kingdom](#), n° 66069/09, 09.07.2013.

²⁰² Le Temps, [Faits et chiffres de la libération conditionnelle](#), 08.03.2018.

²⁰³ For the original bill, see: Motion Andrea Caroni, 16.3142, [Droit pénal des mineurs. Filling a security gap](#), filed on 17.03.2016.

²⁰⁴ Le Temps, [Internement des mineurs : le projet du Conseil fédéral n'a pas été tué dans l'œuf par les sénateurs](#), 13.03.2023.

²⁰⁵ ATS, Dépêche, [L'internement des assassins mineurs accept par les sénateurs](#), 13.03.2023, accessed 24.04.2023.

²⁰⁶ FOJ, [Explanatory report - Preliminary draft 2: amendment of the DPMIn](#), p. 7.

is a positive trend. Only four cases resulted in sentences of 3 to 4 years, but none of them required outpatient treatment at the end of their sentence. Currently, there are only five to seven juvenile offenders waiting to be released against, who may require subsequent security measures. The recidivism rate among minors is very low. A measure of internment would only apply in exceptional cases, which could be effectively supervised by civil law measures.²⁰⁷

The Platform is formally opposed to the possibility of imposing internment measures on children. Not only have their brains and personalities not fully developed before adulthood, but internment measures are also extremely problematic for those affected and offer little, if any, prospect of development. Given the above-mentioned statistics, the DPMIn has proved its effectiveness in reducing the risk of re-offending. This bill therefore does not meet the principle of necessity. Such a severe restriction on the freedom of children, based on such an unreliable prognosis of dangerousness, clearly runs counter to the aim of the DPMIn, which is to protect and educate. From the point of view of the Convention, therefore, the imposition of a measure of internment is likely to be incompatible with [art. 2](#) and art. [16 CAT](#).

The Platform recommends calling on the Federal Parliament not to proceed with motion 16.3142 and renouncing the possibility of imposing a measure of internment for children.

19. Disciplinary law

Question 20: Please provide the following information on the disciplinary regime in detention centers by canton: (a) Measures taken to amend the law applicable to disciplinary isolation, in order to reduce the maximum duration of placement provided, which is twenty and thirty days in some cantons; (b) Measures taken to ensure that the isolation regime is never applied to minors or persons suffering from psychosocial disabilities, and that prisoners subject to the isolation regime are not automatically deprived of contact with the outside world and can benefit from at least one hour of outdoor exercise. Indicate how often a prisoner's physical and mental health is monitored during solitary confinement and whether solitary confinement has been interrupted due to health problems. Please provide annual statistical data since 2015 indicating the average length of time spent in solitary confinement; c) The measures taken to ensure that prisoners are heard in person by the ruling authority, may be allowed to call witnesses and cross-examine the evidence against them, and receive a fully reasoned decision explaining the reasons for the sanction and how to appeal; d) The measures envisaged to set up a register of disciplinary sanctions in all cantons.

2. Ad 111 - 127

Any cantonal regulation which provides that detention (isolation as a disciplinary sanction) may exceed 15 days is contrary to the Nelson Mandela Rules ([Rules 43 f. MR](#)).²⁰⁸ In the SPT's view, this maximum duration should be 14 days and should not include restrictions on contact with relatives, unless the offence involves them.²⁰⁹ Similarly, the CPT has recommended that the provisions on the maximum duration of disciplinary isolation in the canton of Vaud and the canton of Zurich be revised,

²⁰⁷ Plaidoyer 2/2023, Loïc Parein, « L'internement des mineurs - L'aberration du *bambino delinquente* », date unknown, accessed 25.04.2023.

²⁰⁸ For a detailed analysis of the legal value of the Nelson Mandela Rules, see: SCCHR, [Les Règles Nelson Mandela - Le corpus de règles des Nations Unies concernant le traitement des détenus et son importance pour la Suisse](#), 17.06.2020.

²⁰⁹ SPT, [Visit to Switzerland from January 27 to February 7, 2019: recommendations and observations addressed to the State party](#), 22.03.2021.

so that the maximum duration does not exceed 14 days.²¹⁰ The Platform is not aware of any measures taken to reduce the maximum legal duration of disciplinary isolation in the cantons.

The practice of "prolonged" solitary confinement, i.e. solitary confinement for more than 15 consecutive days ([rule 44 MR](#)), remains widespread in Switzerland. Some detainees are placed in solitary confinement for months or even years. In August 2021, the Special Rapporteur on Torture, Nils Melzer, severely criticized Switzerland for the unacceptable use of disciplinary isolation in the case of Brian K. Incarcerated in the prison of Pöschwies, in the canton of Zurich. He had been placed in almost total isolation since August 2018, without visits from his family or any interaction with other prisoners, and could only exercise limited physical activity while being handcuffed and shackled.²¹¹ In January 2022, staff at the same facility were convicted of keeping another inmate in segregation for a year and a half.²¹²

Solitary confinement, whether as a disciplinary measure or for security reasons, must never be imposed on vulnerable persons, and must always be assessed in the light of the detainee's current state of health.²¹³ In a report published in January 2022, the NCPT noted that a mentally ill person had been placed in a security cell for several days on the grounds that there was no space available in a psychiatric clinic.²¹⁴ The Commission also noted that the boundaries between placement under arrest and placement in a security cell were sometimes blurred, and that prisoners were not always aware of the regime under which they were placed in isolation.²¹⁵

The disciplinary procedure is regulated by the cantons as follows. After a hearing with the person concerned, a written order is issued, which can be appealed within 3 to 10 days, depending on the canton of the prison.²¹⁶ This time limit is particularly problematic – especially if it is 3 days – as the persons concerned often do not have the necessary skills to lodge an appeal, nor do they have the financial means to seek legal advice. It is important for detainees to be informed of the appeal possibilities available to them, especially as two cantons – the one that accepts the request and the one that executes it – are sometimes responsible for the same person, and cantonal procedures are not harmonised.²¹⁷ Another obstacle to lodging an appeal is the language barrier, which may confront detainees with a procedural language they do not master.

The Platform therefore recommends that:

- **The cantons be required to take appropriate measures to ensure that placement in segregation as a disciplinary measure never exceeds 14 days.**
- **The cantons introduce clear distinctions in prison regulations between placement in disciplinary isolation and placement in a security cell.**
- **The cantons be required to introduce an appeal period of at least 10 days against disciplinary measures.**

²¹⁰ CPT, [Report to the Swiss Federal Council on the visit to Switzerland by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) from March 22 to April 1^{er} 2021](#), 08.06.2022, ch. 112.

²¹¹ Office of the United Nations High Commissioner for Human Rights, Press release, [Switzerland: Brian K.'s isolation violates the Convention against Torture, according to a UN expert, 14.06.2021](#), accessed 16.04.2023.

²¹² Tages-Anzeiger, [Pöschwies erneut am Pranger wegen zu langer Einzelhaft](#), 14.01.2022, accessed 16.04.2023.

²¹³ European Prison Rules (note 28), ch.6.a.f.

²¹⁴ NCPT, [Gesamtbericht über die schweizweite Überprüfung der Gesundheitsversorgung im Freiheitsentzug durch die Nationale Kommission zur Verhütung von Folter \(2019 - 2021\)](#), January 2022, p. 21-22, par. 53.

²¹⁵ Idem, par. 54.

²¹⁶ See, for example, [art. 80 al. 2 LEPM-BE](#), which stipulates a 3-day appeal period, [art. 79 LPMA-NE](#), which stipulates a 3-day period, and [art. 47 LEPM-FR](#), which stipulates a 10-day appeal period.

²¹⁷ SCCHR, [Rechtsschutz und Freiheitsentzug - Juristische Studie zuhanden des Schweizerischen Ausbildungszentrums für das Strafvollzugspersonal SAZ](#), 31.07.2014.

20. Injuries and deaths in custody

Question 21: Please provide the following information: a) Annual statistics since 2015, disaggregated by place of deprivation of liberty and by ethnicity or nationality of the victim, on: i) the number of deaths in custody, indicating the cause of death; ii) the number of persons injured or killed as a result of acts of violence committed in places of detention, indicating whether the perpetrator was an official or a detainee, or as a result of negligence resulting in death or injury. Please also provide detailed information on the outcome of investigations into such deaths or violence, and on the penalties imposed on persons found guilty of torture, ill-treatment or negligence resulting in death or injury. (b) Measures taken to combat the problem of inter-prisoner violence, to improve the monitoring and identification of at-risk prisoners and to prevent suicides.

3. Ad 122 -127

Between 2015 and 2021, there were 111 recorded deaths in custody. This represents 9 to 20 deaths per year in Swiss prisons. Nearly half of these were due to suicides.²¹⁸ It should be added that the state of psychological crisis in which pre-trial detainees generally find themselves has a significant impact on the suicide rate in Switzerland. Between 2015 and 2021, 29 people took their own lives in pre-trial detention, while 17 suicides took place during the execution of a criminal sentence.²¹⁹

The State has a responsibility to protect the life and physical integrity of persons deprived of their liberty. If a detainee dies in exceptional circumstances, the authorities obliged by the right to life ([art. 2 ECHR](#)) to investigate the death and take appropriate measures to prevent similar deaths in the future. In practice, however, it is not uncommon for no criminal investigation to take place. This is because the police and the Prosecutor's Office have a wide discretion in determining whether there is evidence of a suspicious death ([art. 253 SCPC](#)). Moreover, the Prosecutor's Office can suspend the investigation at any time if there is no evidence of a criminal act, which is regularly considered to be the case in suicide cases. As a result, criminal proceedings against staff and institutions are rare and are generally only initiated when a complaint is filed or when there is a clear breach of duty on the part of the authorities.²²⁰

On December 26, 2018, 20-year-old K.S. died alone in a Bernese police cell as a result of severe intoxication. In March 2019, the Prosecutor's Office decided not to prosecute the doctor who had assessed K.S.'s fitness for detention and closed the case. This decision was reversed by the Cantonal Court of the Canton of Berne on July 15, 2020,²²¹ and then by the Federal Supreme Court on June 13, 2022.²²² The case is now pending before the ECtHR.²²³

Another documented case is that of R.K. who, despite a diagnosis of paranoid schizophrenia, was held in pre-trial detention in the regional prison of Bern for around six months, isolated in his cell for 23 hours a day. In early 2019, he was sent back to the Berne regional prison for various offenses. After seven months of isolation, the Prosecutor's Office ordered a psychological report. The psychiatrist concluded that an institutional therapeutic measure according to [art. 59 SCC](#) was necessary. However, before the detention regime was changed, R.K. hanged himself on August 4, 2019 in a hospital. He died at the age of 25. An investigation into his death is currently underway.²²⁴

²¹⁸ OFS, [Freiheitsentzug, Todesfälle und Suizide](#), consulted on 17.04.2023.

²¹⁹ *Ibid.*

²²⁰ For further information, see: humanrights.ch, [The right to life for people in detention](#), 30.05.2022, accessed 17.04.2023.

²²¹ Supreme Court / BE, [BK 20 186](#), 16.07.2020.

²²² TF, [6B 1055/2020](#), 13.06.2022.

²²³ humanrights.ch, [Kilian: Tod in Polizeizelle](#), 19.12.2022, accessed 20.02.2023.

²²⁴ humanrights.ch, [Raphael K.: suicide in custody](#), 09.03.2022, accessed 20.03.2023.

The cases of K.S. and R.K. are far from being isolated incidents. In 2020, Switzerland was condemned by the ECtHR in the case of *S.F. v. Switzerland*, because the officials involved had not taken effective measures to protect the right to life of S.F., who clearly and repeatedly threatened to commit suicide, and had failed in their duty to investigate.²²⁵

Another obstacle to a successful investigation is that next of kin of the deceased are generally not recognised as parties. This was the case, for example, with R.K. and K.S. The FSC eventually ruled that R.K.'s parents and K.S.'s mother could participate as parties to the proceedings. In the case of *S.F. v. Switzerland*, the ECtHR held that the involvement of the relatives of the deceased in the investigation was an important parameter for an effective investigation.²²⁶

The scope of the criminal investigation is also problematic. In essence, the investigation aims to establish whether or not a particular person intentionally committed a criminal act and directly caused the death. However, it does not address the structural and institutional conditions that may have contributed to the death. An effective investigation within the meaning of [art. 2 ECHR](#) must necessarily provide an overview of all the relevant elements that may be associated with a death by suicide. The more closely the conditions that ultimately led to the death or injury of a detainee are examined, the more likely it is that similar cases can be avoided in the future.

There are significant gaps in suicide prevention in custodial settings. There is practically no mention of suicide prevention measures in cantonal legislation. The only time it is mentioned is in the context of solitary confinement for security reasons.²²⁷ In a report of 2022, the CNPT considers that every institution for the deprivation of liberty should have standardized measures or internal programs of suicide prevention and train professionals accordingly. The entry assessment plays an important role in this regard. If R.K. or K.S. had been properly assessed prior to admission, chances are they would still be alive. The suffering and needs of people in detention should be assessed both at admission and throughout their stay.²²⁸

In the absence of any studies on violence between inmates or between inmates and guards in Switzerland, it is not possible to draw any reliable conclusions about violence occurring in Swiss prisons.²²⁹

The Platform therefore recommends :

- **The cantonal Prosecutor's Offices be asked to pay particular attention to evidence of suspicious death when considering whether to open a criminal investigation into the cause of death.**
- **Ensure compliance with the case law of the ECtHR *S.F. v. Switzerland*, which states that relatives of the deceased must be able to participate as parties in criminal proceedings.**
- **Conduct a study to shed light on structural prison conditions that may contribute to injuries and deaths in detention facilities.**
- **The cantons be asked to establish clear and standardized suicide prevention procedures in detention facilities and train staff accordingly; as well as to pay particular attention to suicide prevention in pre-trial detention.**

²²⁵ ECtHR, *S.F. v. Switzerland*, n° 23405/16, 30.06.2020.

²²⁶ *Ibid.*

²²⁷ NCPT, [Gesamtbericht über die schweizweite Überprüfung der Gesundheitsversorgung im Freiheitsentzug durch die Nationale Kommission zur Verhütung von Folter \(2019 - 2021\)](#), January 2022, p. 52, par. 199.

²²⁸ For a detailed overview of the NCPT's recommendations on suicide prevention in institutions, see: NCPT, [Gesamtbericht über die schweizweite Überprüfung der Gesundheitsversorgung im Freiheitsentzug durch die Nationale Kommission zur Verhütung von Folter \(2019 - 2021\)](#), January 2022, p. 39, par. 143 ff.

²²⁹ Such a study exists, for example, in Austria: Universität Innsbruck, [Strafvollzug: 72 Prozent berichten von Gewalt in der Haft](#), 30.03.2021, consulted on 17.04.2023

VIII. Article 12 and 13

21. Independent investigation mechanisms

Question 22: With reference to the Committee's previous concluding observations (para. 10) and the State party's follow-up replies, please indicate how the process of establishing an independent mechanism to receive and investigate all complaints of violence or ill-treatment by law enforcement officials is progressing.

4. Ad 128 - 133

The Platform reiterates 2015's grievances.

Despite numerous recommendations from UN bodies,²³⁰ there is still no independent body empowered to deal with complaints of police violence in all cantons. The Swiss government continues to justify this absence on the grounds of the country's federal structure. Only the canton of Geneva has created the Inspection générale des services (IGS), a body responsible for investigating cases involving the use of coercion and other forms of abuse committed by Geneva police officers. The Platform welcomes the existence of the IGS, but regrets that this institution is administratively attached to the Geneva cantonal police. In addition, there are mediation offices in the cantons of Vaud, Fribourg, Zug, Zurich, Basel-Stadt and Basel-Landschaft (six out of twenty-six cantons), as well as municipal ombudsman services. Although they are not responsible for investigating the alleged offences, they can put victims in contact with the perpetrators and provide information on the legal steps to be taken. However, such mechanisms are insufficiently represented in Switzerland.

In the case of a complaint against a member of the police force, the neutrality and independence necessary for the proper investigation are often lacking and procedures are often considerably delayed. The practice of filing a counter-complaint is very often used against the complainant.²³¹ Moreover, according to the SCPC, members of the police force cooperate closely with representatives of the public Prosecutor's Office ([art. 306](#) and [art. 307 SCPC](#)). Thus, accused police officers and investigating authorities often have personal relationships.²³² Finally, administrative law procedures or actions for state liability are rarely used.²³³ NGOs advise against filing a criminal complaint in cases of police violence, due to the high financial and legal risks involved and the almost non-existent chances of success.

In the event of an investigation by the public Prosecutor's Office, jurisdiction may lie with the Prosecutor's Office of the canton in which the abuse occurred, with a specific department of the public Prosecutor's Office, or with another canton. However, the latter, which offers the best guarantees of independence, is insufficiently represented in Switzerland.

The ECtHR has recently ruled on the question of respect for human rights in the context of police work in Switzerland. On two occasions, it concluded that there had been no effective investigation. In *Dembele v. Switzerland*, the Court ruled that the use of a truncheon by the Geneva police was disproportionate and had not been investigated with due diligence.²³⁴ In *Scavuzzo-Hager et al. v.*

²³⁰ CAT, [CAT/C/CHE/CO/7](#), 07.09.2015, para. 10; CDH, [CCPR/C/CHE/CO/4](#), 22.08.2017, paras. 28 and 29; Working Group of Experts on People of African Descent, press release, [Suisse: des experts de l'ONU dénoncent un profilage racial de la part des forces de l'ordre](#), 03.10.2022, accessed 11.04.2023.

²³¹ Alexandra Büchler, Jörg Künzli and Judith Wytenbach, "Des pratiques policières conformes aux droits humains", in: CSDH, [Renforcer les droits humains en Suisse: Nouvelles idées pour la politique et la pratique](#), Tredition, 2022, p. 90.

²³² CCPR, [Concluding observations on the fourth periodic report of Switzerland](#), 22.08.2017, paras. 28 and 29.

²³³ Alexandra Büchler, Jörg Künzli and Judith Wytenbach, "Des pratiques policières conformes aux droits humains", in: CSDH, [Renforcer les droits humains en Suisse: Nouvelles idées pour la politique et la pratique](#), Tredition, 2022, p. 91.

²³⁴ ECtHR, [Dembele v. Switzerland](#), no. 74010/11, 09.24.2013, para. 68.

Switzerland, the Court found that the police action which led to the death of a person in Ticino had not been effectively investigated.²³⁵

The Platform recommends encouraging the establishment in all cantons of an independent mechanism empowered to receive and process complaints about police violence. Subsequently the implementation in all cantons of a cantonal mediation office empowered to intervene in cases of complaints involving members of law enforcement agencies should be supported.

22. Excessive use of force

Question 23: Please provide annual statistics since 2015, disaggregated by offence and ethnicity or nationality, age group and sex of the victim, on: (a) The number of complaints lodged or police reports written concerning offences such as torture and ill-treatment, complicity or participation in such acts and excessive use of force allegedly committed by or with the express or tacit consent of law enforcement officials; b) The number of investigations opened following the lodging of these complaints and the authorities which opened them; c) The number of these investigations which were closed without follow-up; d) The number of these investigations which led to prosecution; e) The number of these prosecutions which resulted in a conviction; f) The penal and disciplinary sanctions applied, indicating the length of prison sentences; g) Officers suspected of having committed acts of torture and ill-treatment who are systematically suspended or transferred for the duration of the investigation; h) The number of ex officio investigations into cases of torture and ill-treatment which have led to prosecution; i) The number of cases of torture or ill-treatment reported by doctors following clinical examinations of detainees, and the action taken on their reports.

5. Ad 134 - 143

POLICE VIOLENCE

In the case of police violence, the generally applicable offence is abuse of authority ([art. 312 SCC](#)). However, this offence applies not only to members of the police, but to all members of the authorities and civil servants. Therefore, it does not provide an accurate picture of the number of criminal complaints filed against law enforcement officers.

There are many institutional and practical pitfalls associated with filing a criminal complaint for acts involving members of the police force (see question 22, p. 60 ff). In 2021, the Police Crime Statistics (PKS) recorded 140 complaints of abuse of authority were in Switzerland,²³⁶ while only 4 convictions for abuse of authority were listed by the Criminal Conviction Statistics (SUS).²³⁷ In 2017, there were only 4 convictions per 105 complaints filed.²³⁸ The ratio of convictions to the number of criminal complaints filed is therefore particularly low for this offense. However, the statistics from PKS and SUS do not correspond one with the other, making it impossible to determine how many complaints actually resulted in a conviction in 2021, or even in 2017. A comprehensive database of complaints against law enforcement officers has yet to be developed. In practice, this lack of monitoring is even more worrying because police forces do not systematically record complaints against police officers, nor do they make the data available to the public. This means that there can be no monitoring by the media and civil society.

²³⁵ ECtHR, [Scavuzzo-Hager et al. v. Switzerland](#), no. 41773/98, 07.02.2006, para. 85

²³⁶ OFS / PKS, [Prévenus enregistrés par la police selon le Code pénal et selon l'infraction, le canton, la catégorie de séjour, le sexe et la classe d'âge](#), consulted 16.01.2023.

²³⁷ OFS / SUS, [Adults: convictions and persons convicted of a misdemeanor or felony as defined by articles of the penal code \(PC\), by year of conviction \[as of 2008\]](#), accessed 16.01.2023.

²³⁸ humanrights.ch, [Violences policières : à quand des instances indépendantes pour de vraies enquêtes ?](#) 24.10.2019, accessed 02.03.2023.

With regard to ill-treatment by members of the police force, it should be noted that Switzerland has a problematic situation related to the racial stereotyping by some police officers. In October 2022, the United Nations Working Group of Experts on People of African Descent denounced systemic racism in Switzerland and expressed concern about the human rights situation of people of African descent.²³⁹ According to the working group, police operations include brutal arrests, racial profiling, degrading treatment and the reinforcement of negative racial stereotypes in public spaces. Widespread racial profiling, police stops, invasive street searches, public strip searches, anal searches, racist insults and humour, violence and the expectation of impunity were described as routine. Similarly, the annual report of the Federal Commission against Racism (FCR), which compiles racist incidents of all kinds reported to about 20 counselling centers in Switzerland, reported about 20 incidents of racial profiling in 2019.²⁴⁰ In the same year, there were almost a hundred cases of discrimination in the public sector, more than a third of them in the police force. No measures have been taken at federal level to combat the practice of racial profiling.

Another problem is the violent dispersal of demonstrations by the police. In Geneva, on February 9, 2023, several demonstrators claimed to have been beaten with batons by the police as they dispersed a peaceful rally.²⁴¹ Amnesty International and the Coordination genevoise pour le droit de manifester (CGFM) filed a complaint with the public Prosecutor's Office, requesting that any police officers suspected of criminal wrongdoing be prosecuted. An investigation has been opened by the IGS. On March 8, 2023, International Women's Rights Day, police in Basel fired rubber bullets at peaceful demonstrators.²⁴² An independent and effective investigation was also called for.

The Platform pays particular attention to cases of police-related deaths. During the period covered by this report, it took note of the following cases:

- November 6, 2016, Bex (Canton of Vaud): Hervé Mandundu, who had been spotted by police holding a knife, was shot dead. The police were acquitted.
- October 7, 2017, Brissago (Canton Ticino): An asylum seeker with an unknown name, allegedly carrying a knife, is shot dead by the police.
- October 22, 2017, Lausanne (Canton of Vaud): Lamine Fatty is arrested in a case of mistaken identity and dies two days later of an undisclosed medical condition. All those involved were acquitted.
- On February 28, 2018, in Lausanne (Canton of Vaud), Mike Ben Peter lost consciousness and died during a traffic stop. The case is still pending.
- August 30, 2021, Morges (Canton of Vaud): Roger "Nzoy" Wilhelm, in a state of acute psychosis, was shot dead while holding a knife. Legal proceedings are still ongoing.
- April 6, 2022, Wallisellen (Canton of Zurich): An armed German wanted by the police is shot dead in an exchange of fire during an attempted arrest.

The Platform therefore recommends that:

- **A provision is introduced in the SCC specifically punishing abuse of authority by law enforcement officers.**
- **The cantonal and communal police forces, as well as the Federal Office of Police (Fedpol), systematically record complaints against members of law enforcement agencies, collect this information centrally, and make these statistics available to the public.**

²³⁹ Working Group of Experts on People of African Descent, press release, [Suisse : des experts de l'ONU dénoncent un profilage racial de la part des forces de l'ordre](#), 03.10.2022, accessed 11.04.2023.

²⁴⁰ CFR, [Annual Report 2019](#), 2020.

²⁴¹ Amnesty International, Press release, [Dispersion violente d'une manifestation à Genève: une enquête est nécessaire](#), 16.02.2023, accessed 24.04.2023.

²⁴² Amnesty International, Press release, [Basel police disperse peaceful demonstration with rubber bullets](#), 17.03.2023, accessed 24.04.2023.

- **The cantons take appropriate measures to eradicate racist behavior by members of the police force.**
- **The cantonal police forces is called upon to ensure that the right to peaceful protest is respected; to strictly adhere to the principle of proportionality when dispersing a demonstration; and, in the event of a demonstration being dispersed, to open an independent and effective investigation whenever criminal behaviour is observed.**

VIOLENCE IN FEDERAL ASYLUM CENTERS (CFAs)

In May 2021, Amnesty International published the results of the organization's research into concerns about ill-treatment, including some cases that may amount to torture, in the CFA. The report documents cases of violence inflicted by employees of the private security companies Securitas AG and Protectas AG, under contract to the SEM, in the Basel, Giffers, Boudry, Altstätten and Vallorbe centers. Information on this subject was obtained through interviews with thirty-two people, including fourteen victims of abuse and eighteen current or former security guards, legal representatives, supervisory staff and social educators who had witnessed the same abuse. The report is also based on medical records, criminal complaints and other relevant sources of information.

Fourteen asylum seekers, including two minors, reported having been subjected to abuse by security guards. These abuses included beatings, the use of physical restraint to the point of restricting breathing and causing an epileptic seizure, fainting and breathing difficulties following inhalation of pepper spray, or detention in a metal container in a state of hypothermia. Six of these people required hospital treatment, while two others were refused medical treatment despite asking for help. The cases and information gathered for this report reveal abuses which, in some cases, could amount to torture or other ill-treatment, and could therefore violate Switzerland's obligations under international law.

Most of the security officers Amnesty International met questioned the training they had received. They expressed shock that their superiors had instructed them not to hesitate to use violence and coercive measures. Of particular concern to these professionals is the use of the "security room", in violation of the rights of people housed in the centers and of the center's rules. They deplore the fact that their superiors tolerate and even encourage the aggressive, provocative and contemptuous behavior of some of their colleagues towards people housed in federal asylum centers. For many center employees, the image of residents projected by the current system is highly problematic. The assumption is that they are potentially violent and inherently dangerous, an attitude that reinforces negative stereotypes and prejudices about them.

In its report, Amnesty International expresses particular concern about the lack of security arrangements, including reliable monitoring and control mechanisms that can be used preventively by the SEM in federal asylum centers. Almost all the security officers, legal representatives and supervisory staff interviewed by the human rights organization denounced the fact that some security officers write reports altering elements of the violent incidents that have occurred. Amnesty International found that the victims interviewed did not know who to contact to lodge a complaint, and that in cases of abuse, access to justice was fraught with obstacles that were difficult to overcome. Moreover, none of the people who worked or had worked in the centers were aware of any warning mechanism.

Amnesty International has also documented cases of mistreatment of children, particularly unaccompanied minors. It considers it very serious that some of them are housed with adults in the centers.

The Platform recommends to:

- Improve and strengthen independent monitoring and proactive surveillance of CFAs as a matter of urgency.
- Adopt an independent and effective complaints mechanism for people accommodated in CFAs as well as for staff working in CFAs, and ensure that they are informed of the complaints procedure and how they can access it.
- Reform existing supervision and protection mechanisms by designating one or more persons specifically responsible for monitoring and enforcing the rights of people in CFAs, and preventing abuses. Implement sustained, regular and proactive monitoring and mandate individuals to gather information on the state of human rights protection for people residing in CFAs.
- Review rules and practices relating to detention in "security rooms".
- Take measures to protect and ensure respect for children's rights, in particular by prohibiting the detention of minors in "security rooms".
- Ensure that the right to health and access to medical care of people living in the centers are respected, protected and guaranteed.
- Ensure that those responsible for abuses are held accountable for their actions, by carrying out rigorous and impartial investigations into allegations of mistreatment of people housed in CFAs, and in the event of proof of guilt, by bringing the perpetrators to justice. Finally, guarantee the right of victims to reparation when it has been proven that their human rights have been violated.
- Include strict requirements on quality standards and training, including on human rights, in contracts with security providers in CFAs, and ensure that companies recruit qualified security personnel and provide them with in-depth training specific to the tasks to be carried out in CFAs.

THE CASE OF M.Z

The case of M.Z. illustrates the lack of a prompt, thorough and impartial investigation into the disproportionate use of force by private security services against asylum seekers. In a criminal complaint, M.Z. alleged that he had been the victim of two serious assaults by Securitas agents while he was at the Basel CFA in November 2020. The available medical records showed serious injuries (including head trauma, a fractured jaw, injuries to the face, eye, hand, shoulder and teeth).

Despite clear suspicions against at least two of the main suspects, the Prosecutor's Office of the Canton of Basel-Stadt has so far failed to open proceedings against them, failed to collect the most important evidence (such as the questioning of these main suspects) and denied the victim and her legal representative all relevant party rights in the proceedings (participation rights, access to the file). In its decision of November 24, 2023, the Court of Appeal of the Canton of Basel-Stadt accepted an appeal for denial of justice/delay in the application of the law against this conduct of the proceedings and ordered the Prosecutor's Office to "immediately advance the criminal proceedings and conduct the necessary investigations".²⁴³ The Court also definitively acknowledged that "the Prosecutor's Office remained completely inactive for a total of eight months after the last procedural act at the beginning of July 2021 or approximately ten months".²⁴⁴ Despite this ruling, the Public Prosecutor's Office has not taken any concrete procedural steps, which means that since the beginning of July 2021, it has been inactive for approximately 20 months. As a result, the legal representation requested the recusal of the prosecutor in charge of the case and made the case

²⁴³ Ruling of the Cantonal Court of the Canton of Basel-Stadt, BES.2022.44, 24.11.2022.

²⁴⁴ *Idem*, recital 2.4.

public. Under the influence of numerous press articles, the Prosecutor's Office finally began to carry out concrete investigations in March 2023.²⁴⁵

However, as almost two and a half years after the violent incidents, the victim's asylum application has been rejected, and she does not have a residence permit in Switzerland. As a result of the behavior of the criminal prosecution authorities, the victim is no longer available to them. This is a structural problem: victims of violence in CFAs with precarious or non-existent residence permits find it extremely difficult to assert their rights, and risk seeing the perpetrators go unpunished.

The Platform recommends to:

- **Call on the relevant cantonal authorities to ensure that any violence perpetrated by CFA staff is promptly, impartially and effectively investigated.**
- **Ask the relevant cantonal authorities to ensure that victims of violence perpetrated by CFA staff are issued with a residence permit without delay.**

SEXUALIZED, DOMESTIC AND GENDER-BASED VIOLENCE IN CFAs

With regard to the protection of victims of sexualized, domestic and gender-based violence in asylum facilities, the Confederation published a report in 2019 proposing a series of prevention and support measures for CFA staff.²⁴⁶ However, the implementation of these measures remains very slow, if not non-existent. The cantons have still not managed to draw up guidelines or even measures in this area. Cases of sexualized violence perpetrated by asylum workers against refugees continue to occur. Further, the protection and support of refugees against violence when they are accommodated in asylum centers is not guaranteed. This is illustrated, for example, by the femicide that took place in April 2022 in Büren an der Aare, in the canton of Bern.²⁴⁷

According to the [LAVI](#), people who have suffered violence during their flight, on the way to migration or in their country of origin still do not have the right and access to specialized support in cases of violence ([art. 3](#) in conjunction with [art. 17 LAVI](#)).

The Platform recommends to:

- **Take the necessary measures to protect asylum seekers from all forms of sexualized, domestic and gender-based violence.**
- **Take effective measures to guarantee support for victims of violence, even if they were not resident in Switzerland at the time of the incident and the acts were committed abroad.**

23. Task Force

Question 24: Indicate the number of criminal investigations carried out since 2015 by the Inspectorate General of Services against police officers belonging to the Drug TaskForce; the number of these investigations that led to prosecution; the number of these prosecutions that resulted in conviction and the criminal and disciplinary sanctions that were applied, indicating the length of prison sentences.

6. Ad 144 - 149

²⁴⁵ See in particular: Le Courrier, [Une justice à la traîne](#), 20.02.2023; bz Basel, [Akte blieb liegen: Rüffel an die Adresse der Basler Staatsanwaltschaft](#), 13.03.2023.

²⁴⁶ FC, [Report on the situation of women and girls](#) in the asylum system, 18.10.2019, p. 14 ff.

²⁴⁷ BZ, [Opfer des Tötungsdelikts war eine 38-jährige Afghanin](#), 26.04.2022, accessed 05.06.2023.

Given that the figures provided by Switzerland in the report of May 2018, the Platform calls on the Confederation to update these figures and provide the relevant quantitative elements on criminal investigations carried out by the IGS against police officers belonging to the Drugs Task Force (figures on investigations, prosecutions, convictions, as well as criminal and disciplinary sanctions imposed) for the period running from May 2018 to July 2023.

IX. Article 14

24. Remedial measures

Question 25: With reference to the provisions of paragraph 46 of general comment No. 3 (2012) on the implementation of article 14 by States parties, please provide information on: a) Reparation measures granted by courts or other administrative bodies to victims of torture and ill-treatment and their families since 2015. Please specify the number of requests for compensation submitted, the number granted, the amounts awarded and the sums actually paid in each case; b) Any rehabilitation programmes for victims of torture and ill-treatment, specifying whether they include medical and psychological assistance.

7. Ad 150 - 154

In its report, Switzerland mentions compensation for the two cases of ill-treatment by law enforcement officials that occurred between 2015 and 2019. Apart from these two cases, the Platform is not aware of any compensation measures granted to victims of torture and ill-treatment or their families.

In Switzerland, anyone who has suffered direct physical, psychological or sexual harm as a result of a crime, and who has not received adequate compensation from the perpetrator, is entitled to the assistance under the LAVI ([art. 1](#) in conjunction with [art. 4 LAVI](#)). [Art. 3 LAVI](#) stipulates that assistance is granted if the offense was committed in Switzerland. If the offense was committed abroad, the victim had to be resident in Switzerland at the time of the offense and at the time of the application ([art. 17 al. 1 let. a LAVI](#)). As a result, the vast majority of asylum seekers who have been subjected to torture during their migration do not fall within the scope of the LAVI and do not benefit from the care services it provides.

With regard to rehabilitation programs for victims of torture and ill-treatment, the existence of the national "Support for Victims of Torture" network, co-financed by the SEM, is to be commended. It has five branches offering psychiatric, psychotherapeutic and socio-professional counselling and treatment, assisted by interpreters.²⁴⁸ The network provides just over 1,000 treatments a year. Treatment is mainly funded by compulsory health insurance, while services not covered by the National Health Insurance Scheme, such as the use of interpreters or social workers, are financed by subsidies. Conversely, this means that the vast majority of survivors of torture and other forms of ill-treatment are not treated in specialized centers, but by family doctors or general psychiatrists, in most cases without the benefit of an interpreter. Finally, an indetermined and potentially large proportion of survivors of torture and ill-treatment receive no treatment at all. However, there are no representative statistics on this issue. Finally, there is no standardized support program for torture victims in CFAs and administrative detention centers.

The Platform therefore recommends to:

- **Carry out a study on torture victims in Switzerland to establish their numbers and the extent to which they are cared for.**

²⁴⁸ Support for torture victims, <https://www.torturevictims.ch/>, accessed 12.04.2023.

- **Develop a standardized protocol to facilitate access to assistance and support for victims of torture in CFAs and administrative detention centers.**

X. Article 16

25. Forced repatriations

Question 26: With reference to the previous concluding observations (para. 16), please indicate whether observers from the National Commission for the Prevention of Torture are now present during forced repatriations by boat. Please explain the measures taken to ensure that the use of coercion in the context of forced repatriations is always justified in accordance with the principle of proportionality and, in particular, to renounce the use of partial immobilization, which would be systematic on special flights chartered by Switzerland. In this respect, please provide updated information on the progress of the investigation into the case of Joseph Ndukaku Chiakwa, who died during an attempted deportation in 2010.

8. Ad 155 - 162

The Platform is concerned about the institutionalization of inhumane treatment during forced repatriations. Decisions on a person's legal residence based on the Asylum Act ([AsylA](#)) or the Aliens and Integration Act ([FNIA](#)) are implemented by administrative measures. One such measure is forced removal, which takes place if the person who has received an expulsion order does not leave the country voluntarily within a given period. Depending on the willingness of the person concerned to cooperate with a forced removal, the removal is carried out at different levels, with level IV being the most restrictive ([art. 28 para. 1 lit. d of the ordinance on the use of coercion \[OLUsC\]](#)). Level IV removals are used when a person is considered so recalcitrant that they cannot travel on a normal scheduled flight, even if handcuffed. In this case, a special flight with increased restrictions is operated for that person. It should be noted that the authorities have a wide margin of discretion in determining the degree of resistance of the person to be repatriated, and that the use of this discretion varies greatly from canton to canton. Anyone who has once refused to take a flight can be considered recalcitrant. In the case of Level IV removals, the person concerned is tied to a wheelchair with up to eight collars and a helmet is placed on his or her head. AsyLex is aware of cases where families have been deported under the Level IV regime. The parents were treated as described above, while the children were separated from them and handed over to the police during the flight. This further traumatizes the children, who are usually already highly traumatized, and systematically violates the dignity and personal integrity of the parents concerned. Level IV deportations use methods that fall into the category of internationally condemned inhuman treatment, in violation of [art. 16 CAT](#). Although level IV deportations are - or at least are supposed to be - always accompanied by the NCPT, information on the exact situation is limited due to the extensive redaction of their reports. What is even more worrying in this context is that in cases of Level II or III flights, coercive measures are applied, especially against vulnerable people. In these constellations no independent monitoring takes place, leaving those affected totally exposed to the police and security personnel involved.

The Platform recommends to urgently cease Level IV expulsions, and ensure oversight of Level II and III deportations, in order to comply with art. 16 CAT.

26. Physical integrity and autonomy of intersex people

Question 27: With reference to the previous concluding observations (para. 20), please indicate what measures have been taken to guarantee respect for the physical integrity and autonomy of intersex

persons and to ensure that no one is subjected during childhood to medical or surgical treatment to determine the sex of a child that is not a medical emergency.

9. Ad 163 - 169

The Platform finds the Swiss government's response to be particularly disappointing and misleading.²⁴⁹

According to Switzerland's response, several recommendations of the National Advisory Commission on Biomedical Ethics (NCE) remain unfulfilled (n° 163).²⁵⁰ The Federal Council believes that current practice respects the rights of intersex people (n° 164) and that the current framework, according to experts, ensures that the best interests of the child are respected (n° 165). These claims are incorrect. Several of the NCE's recommendations have still not been implemented. Finally, and contrary to the Federal Council's position (n° 166), it should be noted that the Central Ethics Committee (CEC) of the Swiss Association for Medical Sciences (SAMS) has explicitly stated that "opinions differ within the medical profession and between specialists as to the necessity of medical interventions".²⁵¹ This is confirmed by the various recent medical and scientific opinions published since and before the Swiss report. The Platform considers that current legal situation does not guarantee the rights of intersex people to prevent acts of torture ([art. 2 CAT](#))²⁵² or other forms of cruel, inhuman or degrading treatment ([art. 16 CAT](#)) and that the absence of binding guidelines in Swiss hospitals does not guarantee a uniform and consistent practice.

On March 18, 2022, a motion for a criminal ban on interventions aimed at changing the biological sex of children born with a variation in sex characteristics was submitted.²⁵³ In its response, however, the Federal Council recommended that no further action be taken.

Parents of intersex children are under pressure from society at large to consent to "medical procedures" justified by psychosocial indications. Intersex children and adults are often unaware of the procedures to which they have been subjected. Access to legal remedies for intersex people is limited, with statutes of limitation often expiring by the time intersex children reach adulthood. Fair and adequate compensation, including the means for rehabilitation, is still lacking. Switzerland's measures taken by to train and inform medical personnel are inadequate or non-existent ([art. 10 CAT](#)).

Finally, it should be noted that Switzerland has banned all forms of female mutilation ([art. 124 SCC](#)) but has not addressed the issue of modifications of sex characteristics performed on intersex children, yet.

²⁴⁹ Numerous recommendations from human rights institutions have explicitly called for sexual "normalization" surgery without medical necessity and other treatments to be prohibited until the child is able to take part in this decision. See : CAT, [Concluding Observations on the seventh periodic report of Switzerland](#), 07.09.2015, para. 20; CRC, [Concluding Observations on the second to fourth periodic reports of Switzerland, submitted in one document](#), 26.02.2015, paras. 24 f., 43 (b); CRC, [Concluding Observations on the report of Switzerland valant cinquième et sixième rapports périodiques](#), 22.10.2021, para. 29 (b) ; CEDAW, [Concluding Observations on the combined fourth and fifth periodic report of Switzerland](#), 25.11.2016, para. 25 (c-e) ; CEDAW, [Concluding Observations on the sixth periodic report of Switzerland](#), 2022, par. 56 (d); CCPR, [Concluding observations on the fourth periodic report of Switzerland](#), 2017, para. 25; Human Rights Council, Draft report, n^{os} . 39.291 ff: Mexico, Netherlands, Iceland, Malta; ECRI, [ECRI report on Switzerland \(sixth monitoring cycle\)](#), 10.12.2019, rec. 5.

²⁵⁰ See: NEC, [Position paper no.° 20/2012](#), November 2012; CNE, [Position paper no.° 36/2020](#), 05.10.2020.

²⁵¹ CEC, [Position paper of the Central Ethical Commission of the SAMS concerning "variations in sexual development"](#), 16.12.2016.

²⁵² See also: CAT, [General Comment no.° 2 - Implementation of article 2 by States parties](#), 24.01.2008, n^{os} 18 and 20.

²⁵³ Motion Michel Matthias, 22.3355, [Criminal prohibition of interventions aimed at changing the biological sex of children born with a variation in sexual characteristics \(intersex children\)](#), 18.03.2022.

The Platform recommends to:

- Ask the Federal Council which experts were consulted and why the report did not take into account current international literature in the social and medical sciences in.
- Ensure the participation of intersex human rights organizations and parents of intersex children in multidisciplinary teams, as provided for in international medical opinions and studies.
- Explicitly prohibit in the SCC irreversible surgical interventions that are not urgent to life and health and that have adverse effects on children and adults with variations in sexual characteristics (intersex), thus ensuring that such interventions or treatments are postponed until the child can participate in decision-making and give fully informed consent.
- Support the current legislative process on Motion 22.3355 to criminally prohibit interventions to change the biological sex of intersex children.
- Allocate sufficient resources to awareness-raising campaigns (specific action plan for intersex) aimed, among other things, at promoting positive and participatory forms of education for children and adults with congenital variations in sexual characteristics.

XI. General information on the human rights situation in the country, including new measures and developments concerning the implementation of the Convention.

Question 28: Please provide detailed information on any relevant legislative, administrative, judicial or other measures taken to implement the provisions of the Convention or to give effect to the Committee's recommendations since the examination of the previous periodic report. This may also include institutional changes and plans or programs. Specify the resources allocated and provide statistical data or any other information the State party considers useful.

10. Ad 170 - 185

IMPLEMENTATION OF THE RECOMMENDATIONS

Coordination and follow-up of international human rights reviews, in particular those of the CAT, are weak and ineffective. The so-called "light coordination" of the interdepartmental group for international human rights policy ("Kerngruppe internationale Menschenrechtspolitik") does not fulfill its mission, and has no visible strategy for following up on recommendations at the level of the Confederation, cantons and municipalities. Although it is composed of representatives of most of the federal and cantonal authorities concerned, its functions are purely deliberative. There is no structured public reporting on the status of implementation, and there is no authority to require individual cantons to implement recommendations that fall within their jurisdiction.

The Platform recommends the creation of an institutionalized, interdepartmental, adequately resourced and empowered coordination mechanism between the federal government, cantons and civil society to implement and review international human rights obligations, including monitoring.

SUICIDES IN FEDERAL AND CANTONAL ASYLUM CENTERS

In Switzerland, there are no mechanisms in place to identify vulnerable people. Only recently has the obligation to identify victims of human trafficking been introduced into the asylum procedure. If vulnerable people are not identified, they run the risk of not receiving adequate treatment, especially if they suffer from serious mental disorders. An expert report by the Federal Office of Public Health (FOPH) on the mental health of asylum seekers shows that 50-60% of asylum seekers in Switzerland

suffer from post-traumatic stress disorder.²⁵⁴ However, center staff often do not have sufficient knowledge of mental health in general or of post-traumatic disorders to identify traumatized people properly. In order to be referred to a specialist doctor or hospital, asylum seekers have to undergo two assessments, first with the center's nurse and then with a doctor. As no doctor is present during the first examination, this screening process has very often proved to be flawed.

At federal level, the issue of suicide in CFAs has been of renewed concern to the authorities in 2019, with the entry into force of the revised version of the [AsylA](#). It now provides for a maximum stay in CFAs of 140 days, instead of 90 days previously. This change has resulted in increased psychological distress and psychiatric disorders among asylum seekers during the processing period. As a result, the SEM commissioned the University Hospital of the canton of Vaud (CHUV) to carry out a study aimed at developing mental health care procedures for asylum seekers in the French-speaking Switzerland's CFAs. The study was prompted by a significant number of self-harming incidents, including self-mutilation, attempted suicides and confirmed suicides.²⁵⁵ The study resulted in a series of priority recommendations, including the development of professional education, the reinforcement of the health team with nursing staff and the establishment of more collaboration agreements with emergency health services and psychiatric institutions in the region.²⁵⁶ The Platform welcomes these recommendations and hopes that similar studies will be carried out in the different regions of Switzerland.

The problem of suicide among asylum seekers is also of concern at cantonal level. In November 2022, Alireza, an Afghan asylum seeker, committed suicide at the Étoile shelter in Lancy in the canton of Geneva, at the age of 18. He had arrived in Switzerland a year earlier after a transit through Greece, where he had suffered terrible violence that left him with develop post-traumatic stress disorder. The decision by the SEM to send him back to Greece, confirmed by the FAC, is said to have played a decisive role in the young Afghan's act. Both authorities were informed of the high risk of suicide for Alireza.²⁵⁷ On March 28, 2023, Alireza's sister and brother filed a complaint to determine whether certain actions or omissions played a role in his death. The proceedings are still ongoing.²⁵⁸ This is not the first time a suicide has occurred in the Étoile home. On March 29, 2019, an 18-year-old Afghan boy with the same first name, Ali Reza, took his own life there. At the time, the CdC-GE report already noted that the Étoile center was not structurally suitable for housing unaccompanied minors and had not been designed to do so.²⁵⁹

On January 9, 2023, a 33-year-old Nigerian asylum seeker ended his life in the Lagon shelter for men in Bernex, in the Canton of Geneva.²⁶⁰ Once again, it was the decision to return the asylum seeker to Greece, issued by the SEM which was confirmed by the FAC, that caused the young asylum seeker to commit suicide. The authorities were aware of the high risk of suicide based on the Nigerian's medical certificate. On this occasion, Ariel Daniel Merkeblach, Director of Migrant Aid at the Hospice Général, who is responsible for running the center, pointed to the lack of staff available to supervise the migrants. When questioned by the press, the SEM also acknowledged a shortage of mental health professionals throughout Switzerland.²⁶¹

²⁵⁴ Müller/Roose et al, [Santé mentale des requérants d'asile traumatisés : état des lieux et recommandations](#), 04.06.2018.

²⁵⁵ CHUV, [Prévention du suicide dans les centres fédéraux pour requérants d'asile de la région suisse romande](#), December 2021, p. 6.

²⁵⁶ For a comprehensive overview of the recommendations, see: *Idem*, p. 50.

²⁵⁷ RTS, [Le milieu de l'asile sous le choc à Genève après le suicide d'un requérant afghan](#), 05.12.2022, accessed 27.04.2023

²⁵⁸ 20 Minutes, [Après le suicide d'un migrant, ses proches déposent plainte](#), 30.03.2023, accessed 27.04.2023.

²⁵⁹ CdC-GE, report n° 136, [Audit de gestion et de conformité - Requérants mineurs non accompagnés \(RMNA\)](#), February 2018, p. 49.

²⁶⁰ Le Temps, [Un nouveau suicide d'un requérant d'asile a eu lieu à Genève](#), 08.01.2023.

²⁶¹ RTS, [Après le suicide d'un deuxième requérant à Genève, les milieux de l'asile s'interrogent](#), 14.01.2023, accessed 27.04.2023.

On February 3, 2023, the Grand Council of the Canton of Geneva adopted a resolution calling on the Federal Assembly to protect unaccompanied asylum seekers minors up to the age of 25.²⁶² The aim is to provide unaccompanied minors who have reached the age of majority with social and educational support until they have completed their initial training and acquired the skills they need to lead an independent life.

The Platform recommends to :

- **Fill in questionnaires to identify any psychological problems, e.g. as part of the first interview with the counsellor.**
- **Ensure that asylum-seekers have access to a doctor at all stages of the procedure, including the initial triage process leading to referral to a specialist doctor or hospital.**
- **Provide specialized training in trauma identification to SEM employees, legal representatives, counsellors and, in part, management staff.**
- **Follow the recommendations of the CHUV study on suicide prevention in CFAs in French-speaking Switzerland.**
- **Conduct a similar study in the regions of Berne, North-Western Switzerland, Zurich, Eastern Switzerland, Ticino and Central Switzerland.**
- **Ask the competent authorities to refrain from removing an asylum seeker if a high risk of suicide is established.**
- **Increase the number of mental health professionals available at our shelters, particularly at L'Étoile and Lagnon.**
- **Call on the Federal Parliament to respond on cantonal initiative 23.301 on the protection of unaccompanied minors up to the age of 25, and to deal with the issue within a reasonable timeframe.**

PLACEMENTS FOR ASSISTANCE (PFA)

Note: The Platform would like to point out that the information contained in this section comes exclusively from Pro Mente Sana's legal department. It has therefore not been verified, but remains relevant in so far as it is recurrent.

If the placement decision is taken by a doctor under [Art. 429 CC](#), patients are neither heard nor defended. The people concerned have great difficulty in accessing the legal system and being defended by lawyers, who are particularly expensive. Although the medical examination is a deprivation of liberty, patients do not have the right to a compulsory defense, as is the case for arrested persons (right to a lawyer from the outset, in accordance with [art. 158 SCPC](#)). They also complain of being tied up or handcuffed during transport.

Upon arrival at the hospital, patients and accompanying relatives are not given any useful information about the fact that they can be appointed as a person of trust ([art. 432 CC](#)) and assist the patient during his or her stay, including in drawing up the treatment plan ([art. 433 CC](#)). Patients and their families are often unaware of this right throughout their stay.

When it comes to free choice of treatment, negotiating with the medical team is particularly complex. According to our information, patients are regularly pressured and blackmailed into accepting what is proposed to them, even if they agree to the treatment, but dispute the molecule or dosage. This process does not comply with [articles 12 and 17 of the Convention on the Rights of Persons with Disabilities \(CRPD\)](#). Moreover, they receive no information about the long-term side effects of the treatment. Although the treatment should be the subject of a treatment plan negotiated in the presence of the trusted support person ([art. 432 CC](#)), this is not the case. It even happens that a

²⁶² Initiative filed by a canton, 23.301, [Pour une protection renforcée des mineurs réfugiés non accompagnés jusqu'à l'âge de 25 ans](#), filed 03.02.2023

unilateral decision by the medical team replaces the treatment plan, which is admitted by the FSC. has²⁶³ Finally, the fact that the compulsory treatment provided for in [art. 434 CC](#) applies only to persons placed in psychiatric care is contrary to [art. 12 par. 4 and art. 17 CRPD](#), which prohibit such discrimination. Unfortunately, the Swiss Parliament refused to amend the Civil Code on this point in June 2022, despite a recommendation by the CRPD on April 13, 2022.²⁶⁴

Patients suffer from the fact that the maintenance of order is entrusted to private security companies whose teams are exclusively male. For example, a woman may be forcibly undressed by three men in a closed room, whereas if the search took place on police premises, it would be carried out by a person of the same sex (e.g. [art. 49 of the Geneva Police Act](#)).

Placement in a closed room, without the person's understanding of the need for it or receiving any form of assistance, makes this highly controversial treatment a mere disciplinary measure. Patients may remain isolated for the duration of their stay, with no support person provided by the hospital.

Despite the support of the care teams, it is difficult for people to understand their status (voluntary admission, PFA or penal measure) and therefore to know where to turn for redress. Relatives are not informed that they can lodge an appeal on behalf of patients ([art. 439 CC](#)). Finally, patients are often unaware that it is possible to appeal against a medical measure (forced treatment, coercion) without requesting discharge from the institution. As a result, discharge is refused without any decision being taken on the legality of the forced treatment or restraint that was the subject of the request. We also note that patients are sometimes encouraged by care teams to lodge and appeal in order to have their claims immediately settled, even though this appeal has no chance of success for formal reasons. In such cases, the appeal only serves no more than to defuse a claim by deceiving the patient.

The Platform therefore recommends that the cantons be asked to take appropriate measures to:

- **Guarantee the right of patients and their relatives to be informed that they can be appointed as trusted support persons.**
- **Increase the representation of women in security companies.**
- **Ensure that patients who are secluded are informed of their right to appoint a trusted support person, and that this person is informed of the measure.**
- **Inform patients of their right to appeal against a medical measure.**
- **Inform trusted third parties of their right to appeal on behalf of the patients they support.**

GENDER, DOMESTIC AND SEXUAL VIOLENCE

Despite the efforts of the Confederation, cantons and municipalities to combat gender-based violence, domestic violence and sexual violence have been stepped up in recent years, the prevalence and extent of the latter have not diminished. The exact number of offences remains unknown due to the lack of regular large-scale population surveys.

In Switzerland, the entry into force of the [Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence \(Istanbul Convention\)](#) on 1^{er} April 2018 has led to more and better coordinated work against violence. However, there are still fundamental gaps in the planning, design and implementation of its provisions. There is a lack of systematic application of the Convention. Too little attention is given to prevention, which addresses the root

²⁶³ TF, [5A 856/2013](#), 21.11.2013.

²⁶⁴ See : Postulat Laurence Fehlmann Rielle, 20.3657, [Pour un respect intégral des droits des personnes handicapées](#), 17.06.2020.

causes of violence, for example through education. In most cases, measures are not inclusive, i.e. non-discriminatory. Most importantly, there is a massive lack of financial, human and structural resources to effectively implement the Convention. The lack of political will at the national, cantonal and communal levels to obtain more resources prevents adequate regulations against violence. The online background report by the Group of Experts on Combating Violence against Women and Domestic Violence (GREVIO)²⁶⁵ and the Council of Europe's Committee of States on Switzerland's implementation of the Istanbul Convention²⁶⁶ lists a long list of shortcomings in preventing and combating violence.

The Platform recommends to:

- **Increase financial, human and structural resources to ensure effective implementation of the Istanbul Convention.**
- **Conduct regular, intersectional and inclusive surveys to determine the prevalence and extent of gender-based violence, domestic violence and sexualized violence in Switzerland.**

COMBATING HUMAN TRAFFICKING

The Federal Council has drawn up a third national action plan to combat human trafficking by the end of 2022.²⁶⁷ One of the main themes of this action plan is labor exploitation. Back in 2016, a study by the University of Neuchâtel, commissioned by the Federal Office of Police (Fedpol), showed an increase in cases of labour exploitation.²⁶⁸ The study did not provide exact figures, but noted that forced labor was particularly prevalent in domestic work, hotels, restaurants, construction and agriculture. However, convictions under [Art. 182 SCC](#) were rare. To be considered a case of trafficking, the victim must prove that she was subjected to the use of force or deception, or that her consent resulted from a situation of vulnerability. If these elements cannot be proven, cases involving exploitative working conditions fall outside the criminal definition of human trafficking. The same study also identified the need to train labor inspectors to identify potential victims of labor exploitation, and to broaden their mandate so that they can intervene in proven cases of labor exploitation.

Awareness of the loverboy scheme has increased since the last report was published. In total, the national helpline run by ACT212 has received 57 reports of suspected loverboy exploitation since 2017. The first two loverboy trials took place in 2022.²⁶⁹ However, the public and the authorities are still not sufficiently aware of the problem.

The Platform therefore recommends to:

- **Explicitly introduce human trafficking for labor exploitation as a criminal offence in the Swiss Criminal Code.**
- **Ask the Confederation to develop a training program for labor inspectors on how to identify cases of suspected labor exploitation.**
- **Extend the mandate of labor inspectors to intervene in suspected cases of suspected labor exploitation.**

²⁶⁵ GREVIO, [Baseline evaluation report - Istanbul Convention](#), 13.10.2022.

²⁶⁶ Comité des États, [Recommendation on the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence by Switzerland](#), 06.12.2022.

²⁶⁷ See: FC, [National Action Plan to Combat Human Trafficking 2023-2027 \(admin.ch\)](#), 16.12.2022.

²⁶⁸ Anne-Laurene Graf and Johanna Probst, *La répression pénale de la traite des êtres humains à des fins d'exploitation du travail en Suisse Difficultés, stratégies et recommandations*, April 2020.

²⁶⁹ ZüriToday, [Loverboy-Prozess in Winterthur: Haupttäter zu fast 9 Jahren Haft verurteilt | ZüriToday \(zueritoday.ch\)](#), 8.07.2022, accessed 16.05.2023; SRF, [16-Jährige zur Prostitution gezwungen: über zehn Jahre Haft](#), 20.12.2022, accessed 16.05.2023.

- **Ask the Swiss Confederation to take appropriate measures to raise awareness of the loverboy method among the Swiss population and authorities.**

E. Appendices

ANNEX 1 - OHCHR: QUESTIONNAIRE OF THE SPECIAL RAPPOREUR ON THE HUMAN RIGHTS OF MIGRANTS: PUSHBACK PRACTICES AND THEIR IMPACT ON THE HUMAN RIGHTS OF MIGRANTS

Commentary by AsyLex regarding Switzerland

Authors: Estelle Thuillard, Joëlle Spahni, Emirhan Darcan, Dr. Stephanie Motz and Lea Hungbühler

Date: 1 February 2021

A. About the commenting organization

AsyLex is an independent, Switzerland-based association providing legal assistance and representation to asylum seekers in Switzerland and beyond. Our work is performed primarily by volunteers, who provide legal counseling and court representation in cases involving Swiss asylum procedure and immigration detention.

We share the Special Rapporteur's concern about pushback practices. Given the fact that our legal advisors witnessed pushbacks at the southern Swiss border to Italy, and countless of our clients reported such incidents to us once they made it into the country, in combination with the repeated denial of such human rights violations by the Swiss authorities, we are of the view that it is crucial to bring this to the Special Rapporteur's attention.

B. Responses to Special Rapporteur's questions

1 Legislation on basic guarantees

In Switzerland, an asylum application can be lodged upon entry at an open border crossing, at a Swiss airport, or in a federal asylum center (Art. 19 AsyIA). Swiss authorities and courts are bound by the refoulement prohibition in Swiss law (Art. 25(2) FC; Art. 5(1) AsyIA) and in international law (Art. 5(4) FC). A person asking for asylum must in a first step be allocated to a federal asylum center, where their asylum claim gets assessed (Art. 24 AsyIA).

Since Switzerland is part of the Schengen / Dublin system, the Dublin-III-Regulation applies. The Dublin-III-Regulation defines which European country is responsible for the assessment of an asylum claim, based on a complex allocation scheme that mostly refers to the first country of arrival. Given the landlocked location of Switzerland, in many cases Switzerland is not deemed the country responsible according to the Dublin-III-Regulation. Therefore, the person concerned will get removed to another European country² - unless such return is unlawful due to Switzerland's international commitments. Swiss law provides for a legal procedure³, which guarantees the right to be heard about the potential transfer, the right to stay during the procedure and the right to challenge the potential transfer before court.

In Swiss law, "any statement a person makes indicating that they are seeking protection in Switzerland from persecution elsewhere" must be considered "as an application for asylum" (Art. 18 AsyIA). The border guards, who - in practice - are often the first authority to speak to asylum seekers, have no competence to decide whether an asylum application is credible or well-founded. Whenever there is any indication that a person seeks asylum, they are under a legal duty to hand them over to the asylum authorities (State Secretariat for Migration, "SEM").

Therefore, Swiss law - in theory - guarantees that each person seeking protection at the Swiss border or on Swiss territory has the right to ask for asylum in Switzerland, combined with the right to proper assessment of the asylum claim, of any potentially responsible other European country including any refoulement risks, within a procedure in accordance with the rule of law.

2. Best practices for detection of people in need of protection

The above-mentioned legal framework provides a good example of best practice. However, its proper implementation is lacking in practice. To our knowledge, no noteworthy best practices are being applied in Switzerland at the moment.

3. restrictions and limitations

Many asylum applicants reach Switzerland by land and coming from the south, i.e. from Italy. This is the border that is of most concern to AsyLex based on the reports we have received and examples of pushbacks we have witnessed.

There are various reports about the immediate expulsion of asylum seekers at the southern border of Switzerland, whose cases were never considered by the competent authority (SEM) and whose returns were executed directly by the border guards without involving or informing the SEM. The various reports from respectable NGOs, such as OSAR, ASGI, MSF, ProAsyl or Amnesty, are summarized in Annex II. This variety of sources must be evidence enough for the countless violations of basic human rights that have not only been tolerated, but actually actively committed by Swiss authorities - up to this day.

As a justification, Swiss authorities regularly refer to the fact that Italy is bound by the ECHR and other human rights treaties and therefore such returns do not constitute illegal pushbacks. Indeed, in a recent email exchange with AsyLex CEO Lea Hungerbühler, the State Secretary for Migration Gattiker stated that there are no pushbacks from Switzerland to Italy because there is no risk of refoulement in Italy:⁴

However, various international human rights bodies have found that the expulsion of applicants to Italy breaches fundamental human rights⁵, and also the latest leading cases of the Swiss Federal Administrative Court lay down various constellations, in which a return to Italy would violate international law⁶. Accordingly, it is established that the return of asylum seekers to Italy may well constitute an unlawful refoulement (pushback), in particular if vulnerable people (children, victims of human trafficking, torture or sexual violence, or persons with medical or mental health conditions) are concerned. As a result, preventing people who cross the southern Swiss border from asking for asylum, and failing to conduct any examination of their particular circumstances and applications, implies - in a large share of the cases - a violation of the refoulement prohibition.

As an intermediate conclusion, the evidence clearly shows that Switzerland, over many years already, has been violating the refoulement prohibition through pushbacks at its southern border.

4. Actual situations of pushbacks

While it is true that the number of people attempting to cross the Swiss-Italian border has decreased since 2016, the day-to-day border practice of pushing asylum seekers in need of protection back from Switzerland to Italy and denying them their right to asylum has not changed. To this day people trying to seek asylum in Switzerland are denied entry. The lack of transparency of border procedures involved on both sides, Italy and Switzerland, makes it further difficult to hold the relevant authorities accountable in Swiss legal proceedings.

AsyLex is aware of various cases of pushbacks, and closely monitored the following two, which are exemplary of what is regularly happening at the Swiss border:

-On 23 July 2020, a minor asylum applicant, originally from Afghanistan, took the train from Milano (Italy) to Bellinzona (Switzerland). Once arrived at the train station in Bellinzona, he was stopped by the transport police; he then clearly stated his wish to claim asylum in Switzerland. Despite his oral request for asylum, he was referred to and registered by the Ticino cantonal police at the border in Chiasso, as he had allegedly not applied for asylum, and was detained there for at least one day. Thereafter, he was forcibly removed back to Italy, without any examination of his application for asylum. Afterwards, the minor was staying in Bergamo (Italy) in a children's home and was sent to the hospital in Italy shortly after the return. On 16 September 2020, our client finally managed to cross the border into Switzerland where his brother lives. His brother accompanied the minor to the asylum center, where the client requested asylum again. AsyLex was mandated shortly after the first attempt to apply for asylum in Switzerland, and requested the issuance of files from several

authorities such as the SEM, the cantonal police of Ticino, the transport police and the border guards. Initially, all authorities claimed that no files of this client existed and referred us to other authorities. Only after intervention of the Federal Data Protection Officer, upon AsyLex's request, some of these authorities disclosed the files of the case. From these files it became obvious that it was falsely recorded that our client did not ask for asylum. Given the fact that the client's brother lives in Switzerland and that the client made another attempt to apply for asylum shortly afterwards, such record must be a simple lie to hide pushbacks. Additionally, the fact that the authorities involved all initially claimed to have no file at all, clearly shows that they intentionally tried to disguise and hide the unlawful behavior of the relevant authorities in the border region.

-On 13 January 2021, another client, being a political activist from Algeria who suffers from a serious medical condition and required medication on a regular basis, arrived by train at the Swiss-Italian border. He was arrested at the Chiasso train station, detained overnight and sent back to Italy the next day, where he was detained again. After several days without shelter, medication and food in Italy, he made another attempt to apply for asylum in Switzerland. This time, he managed to cross the Swiss border and went straight to an asylum camp, explicitly asking for asylum at the camp's entrance. Instead of launching the asylum procedure, the camp administration called the police, which took him into custody for three days. AsyLex was alerted by a person who by coincidence observed the situation - we tried for two days to get in touch with the client who was in custody for no valid reason. When interviewed by the police, our client again expressed his desire to apply for asylum, which is documented in the interview transcript. Our client was then told to go to another camp, based in Chiasso, to ask for asylum - which he did immediately. As soon as he arrived in Chiasso (notably not from Italy this time, but from another Swiss town), the border guards arrested him again and prevented him from reaching the asylum camp to finally ask for protection. Instead, they physically forced him onto the train which went straight to Milano (Italy) - where he arrived around midnight, without any medicine, food or access to shelter. It might be noteworthy that the client was, while being pushed onto the train, on the phone with his lawyer from AsyLex, and even upon the lawyer's request the border guards did not refrain from this illegal pushback. Upon alerting the Swiss State Secretary of Migration, State Secretary Gattiker, about this worrying series of events, he advised that the client should return to the Swiss border and ask for asylum again (notably for the third time) (see Annex III). Accordingly, on 25 January 2021 the client arrived in Chiasso again. It is of no surprise that, again, he was immediately stopped by the border guards, who intended to detain and hence return our client a third time. Thanks to the AsyLex lawyer who was present and could immediately intervene on the spot and provide evidence that State Secretary Gattiker had himself recommended the re-entry of the client, the border guards - after making some phone calls to verify the authenticity of the State Secretary's instruction - finally allowed the client to ask for asylum. The following snippets show the Whatsapp communication between the client and the AsyLex lawyer involved during the second pushback (18 January 2021):

These are only two events out of a countless number of similar circumstances which remain undocumented. In the above-mentioned cases the individuals could never voice their reasons for seeking asylum. No Swiss authority assessed whether these people are in need of protection. They were rather treated inhumanely, humiliated and insulted, even detained, and then forcibly removed. This constitutes a gross violation of the refoulement prohibition, which seems to happen very frequently at the border of a country, which is ironically enough oftentimes praised for its humanitarian tradition.

APPENDIX 2 - STATISTICS FOR THE FEDERAL ADMINISTRATIVE COURT 2022

Bundesverwaltungsgericht
Tribunal administratif fédéral
Tribunale amministrativo federale
Tribunal administrativ federal

12. DEZ. 2022



Der Generalsekretär a.i.
Geschäfts-Nr.: 2022-324

A-Post
AsyLex
z.Hd. Frau Joëlle Spahni
Gotthardstrasse 52
8002 Zürich

St. Gallen, 9. Dezember 2022 / kin

Ihre Anfrage vom 28. November 2022

Sehr geehrte Frau Spahni

Betreffend Ihre Anfrage vom 28. November 2022 via unser Kontaktformular übersenden wir in der Beilage die von Ihnen gewünschten Angaben.

Wir hoffen, Ihrem Anliegen mit der vorliegenden Zustellung zu entsprechen.

Freundliche Grüsse

Bernhard Fasel
Generalsekretär a.i.



Beilagen:

- Aufstellung Asylverfahren

Auswertung Asylverfahren nach neuem AslyG (zuhanden AsyLex)

(Periode vom 1. Mai 2020 bis 25. November 2022)
--- Auswertung mit Folgeverfahren ---

Inhalt:

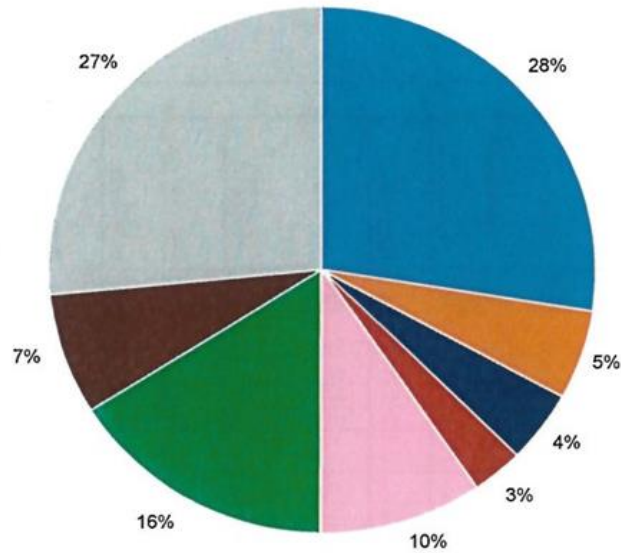
[Hauptübersicht Eingänge - Erledigungen - Pendenzen](#)

[Erledigungen nach Erledigungsart](#)

[Auswertung nach Vertretungsverhältnis](#)

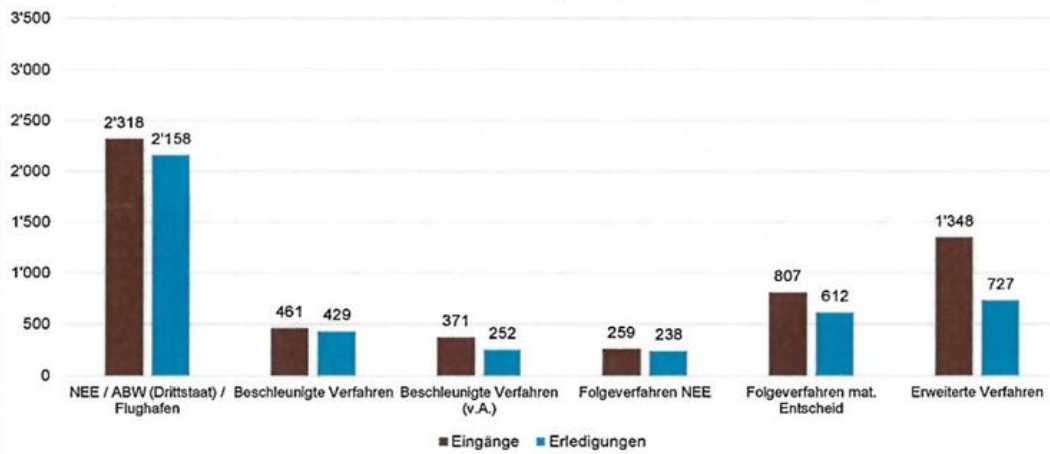
29.11.2022 / bup

Aufteilung der Eingänge Asylverfahren (01.05.20 - 25.11.22)



- NEE / ABW (Drittstaat) / Flughafen
- Beschleunigte Verfahren
- Beschleunigte Verfahren (v.A.)
- Folgeverfahren NEE
- Folgeverfahren mat. Entscheid
- Erweiterte Verfahren
- Spezielle Verfahren
- Altrechtliche Verfahren

Verfahren nach neuem AsylG (01.05.20 - 25.11.22)



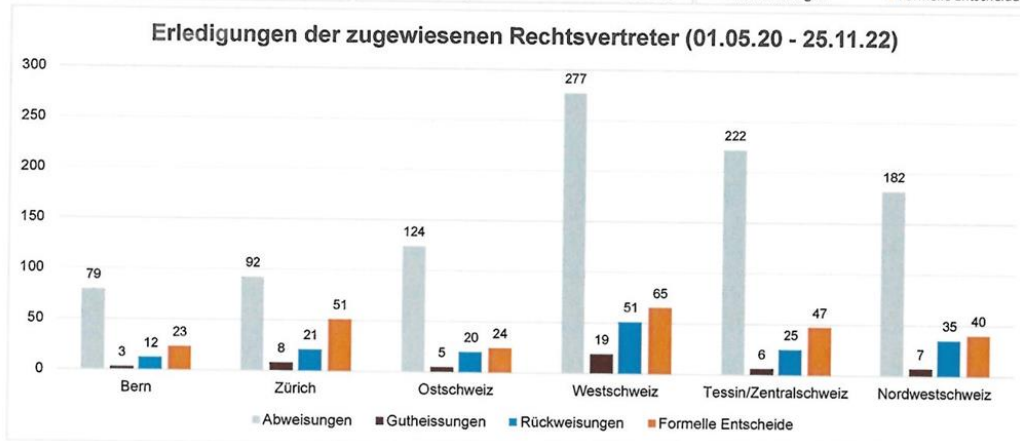
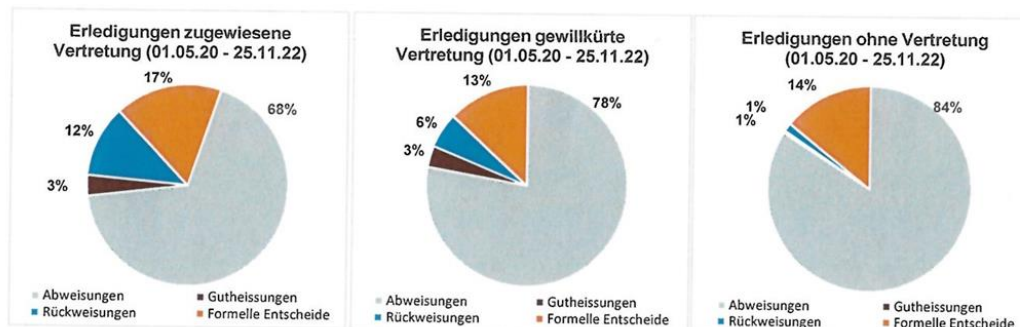
Neues Asylverfahren Erledigungen nach Vertretungsverhältnis

Statistik-Code TA-10_F_D

Periode von 01.05.2020
bis 25.11.2022

Datum 29.11.2022
Zeit 09:30:00

Unbereinigte Zahlen	Abweisungen	Gutheissungen	Rückweisungen	Formelle Entscheide	Total
Total Asylverfahren	5'538	583	622	2'186	8'929
Total nach neuem Asylrecht 2019	3'188	146	311	1'310	4'955
Total mit Verfahren in BAZ	2'137	61	194	447	2'839
zugewiesene Vertretung	976	48	164	250	1'438
<i>Bern</i>	79	3	12	23	117
<i>Zürich</i>	92	8	21	51	172
<i>Ostschweiz</i>	124	5	20	24	173
<i>Westschweiz</i>	277	19	51	65	412
<i>Tessin/Zentralschweiz</i>	222	6	25	47	300
<i>Nordwestschweiz</i>	182	7	35	40	264
gewillkürte Vertretung	207	9	15	35	266
ohne Vertretung	954	4	15	162	1'135



Neues Asylverfahren Hauptübersicht nach Vertretungsverhältnis

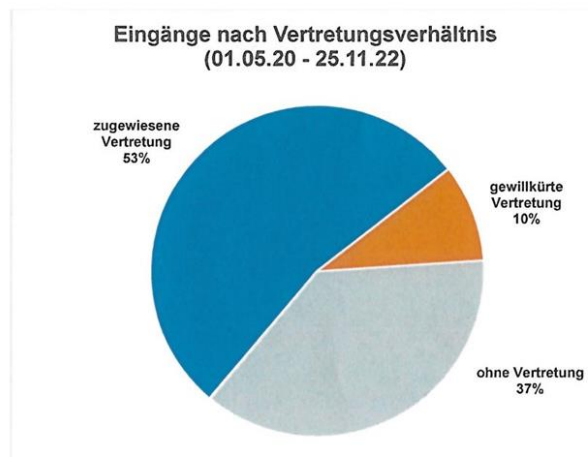


Statistik-Code TA-10_F_D

Periode von 01.05.2020
bis 25.11.2022

Datum 29.11.2022
Zeit 09:30:00

Unbereinigte Zahlen	Pendenzen vor dem 01.05.2020	Eingänge	Erledigungen	Pendenzen nach dem 25.11.2022
Total Asylverfahren	2'763	8'423	8'929	2'257
Total nach neuem Asylrecht 2019	190	6'190	4'955	1'425
Total mit Verfahren in BAZ	61	3'150	2'839	372
zugewiesene Vertretung	46	1'680	1'438	288
<i>Bern</i>	3	140	117	26
<i>Zürich</i>	6	195	172	29
<i>Ostschweiz</i>	5	197	173	29
<i>Westschweiz</i>	21	464	412	73
<i>Tessin/Zentralschweiz</i>	4	380	300	84
<i>Nordwestschweiz</i>	7	304	264	47
gewillkürte Vertretung	10	300	266	44
ohne Vertretung	5	1'170	1'135	40



Asylverfahren Hauptübersicht



Statistik-Code TA-10_A_D

Periode von 01.05.2020
bis 25.11.2022

Datum 29.11.2022
Zeit 09:30:00

Übersiege Zahlen	Pendenz vor dem 01.05.2020	Eingänge	Erläuterungen	Pendenz nach dem 25.11.2022
Total Asylverfahren	2 763	8 423	8 829	2 257
Beschwerden gegen Nichterkenntnisentscheide SEM und Abweisungsentscheide sicherer Drittstaat SEM	38	2 309	2 149	190
Abteilung IV	11	665	787	89
Abteilung V	7	659	609	67
Abteilung VI	12	785	753	34
Beschwerden im Rahmen Flughafenverfahren SEM	0	3	0	0
Abteilung IV	0	4	4	0
Abteilung V	0	5	6	0
Abteilung VI	0	0	0	0
Beschwerden im Rahmen beschleunigter Verfahren SEM	23	461	425	66
Abteilung IV	11	270	245	36
Abteilung V	12	191	184	19
Abteilung VI	0	0	0	0
Beschwerden im Rahmen beschleunigter Verfahren SEM mit vorläufiger Aufnahme	6	371	252	127
Abteilung IV	4	203	138	71
Abteilung V	4	168	116	56
Abteilung VI	0	0	0	0
Folgeverfahren Nichterkenntnisentscheide SEM	0	259	238	21
Abteilung IV	0	124	118	6
Abteilung V	0	121	106	15
Abteilung VI	0	14	14	0
Folgeverfahren materieller Entscheid SEM	0	897	612	195
Abteilung IV	0	411	319	82
Abteilung V	0	377	277	100
Abteilung VI	0	19	16	3
Beschwerden im Rahmen erweiterter Verfahren SEM	63	1 348	727	674
Abteilung IV	22	600	398	320
Abteilung V	31	652	329	354
Abteilung VI	0	0	0	0
Spezielle Verfahren	76	626	639	163
Abteilung IV	29	257	218	68
Abteilung V	46	340	299	95
Abteilung VI	1	21	22	0
Altrechtliche Verfahren	2 573	2 233	3 974	832
Abteilung IV	1 163	1 941	1 969	335
Abteilung V	1 401	1 165	2 070	498
Abteilung VI	0	26	35	0