



Fédération internationale de l'Action des chrétiens pour l'abolition de la torture  
International Federation of Action by Christians for the Abolition of Torture  
Federación Internacional de la Acción de los Cristianos para la Abolición de la Tortura

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Action des chrétiens pour l'abolition de la torture – Suisse



## **FIACAT and ACAT Switzerland**

### **Contribution to the third Universal Periodic Review of Switzerland**

#### **Third cycle of the Universal Periodic Review of the Human Rights Council**

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## Authors of the report

### **FIACAT**

*The International Federation of Action by Christians for the Abolition of Torture, FIACAT, is an international non-governmental human rights organisation, set up in 1987, which works towards the abolition of torture and the death penalty. The Federation brings together some thirty national associations, the ACATs, present in four continents.*

#### **FIACAT – representing its members in international and regional organisations**

It enjoys Consultative Status with the United Nations (UN), Participative Status with the Council of Europe and Observer Status with the African Commission on Human and Peoples' Rights (ACHPR). FIACAT is also accredited to the International Organisation of *la Francophonie* (OIF).

By referring the concerns of its members working on the ground to international bodies, FIACAT's aim is to encourage the adoption of relevant recommendations and their implementation by governments. FIACAT works towards the application of international human rights conventions, the prevention of torture in places of detention, and an end to enforced disappearances and impunity. It also takes part in the campaign against the death penalty by calling on states to abolish capital punishment in their legal systems.

To give added impact to these efforts, FIACAT is a founding member of several campaigning coalitions, in particular the World Coalition against the Death Penalty (WCADP), the International Coalition against Enforced Disappearances (ICAED) and the Human Rights and Democracy Network (HRDN).

#### **FIACAT – building up the capacities of the ACAT network in thirty countries**

FIACAT assists its member associations in organising themselves, supporting them so that they can become important players in civil society, capable of raising public awareness and having an impact on the authorities in their country.

It coordinates the network by promoting exchanges, proposing regional and international training events and joint campaigns, thus supporting the activities of the ACATs and providing them with exposure on the international scene.

#### **FIACAT – an independent network of Christians united in fighting torture and the death penalty**

FIACAT's mission is to awaken Churches and Christian organisations to the scandal of torture and the death penalty and convince them to act.

#### **ACAT Switzerland**

ACAT Switzerland is a human rights organisation created in 1981 under the name “Action by Christians for the abolition of torture”. It currently fights for the abolition of torture and the death penalty in the whole world through the following actions: campaigns, intervention letters, awareness raising activities. The organisation bases its action on article 5 of the Universal Declaration of Human Rights adopted by the United Nations in 1948 : No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. ACAT Switzerland also acts on cases of arbitrary detention, enforced disappearances, extrajudicial killings, unfair trial and inhuman detention conditions. It supports the work

of two other organisations working abroad: one fighting for the victims of torture in Turkey and the other one working for underage detainees in Cameroon.

## Follow up of UPR recommendations in Switzerland

### I. Institutional and Legislative Framework

1. In the latest UPR cycle, two States Parties recommended that Switzerland establish institutional safeguards around popular initiatives<sup>1</sup>.
2. On 12 August 2016, the Swiss People's Party (or UDC) proposed an initiative entitled "*Swiss Law, not Foreign Judges (initiative for self-determination)*"<sup>2</sup>. This initiative<sup>3</sup> seeks to ensure the pre-eminence of the Federal Constitution over international law. The text proposes that in cases of conflict between international legal obligations and constitutional provisions, the Constitution should take precedence and steps should be taken to adapt international legal obligations and denounce the relevant treaty if necessary.
3. The initiative also seeks to modify the Constitution such that the Federal Court and authorities are no longer bound to implement those treaties not yet approved by referendum. This text would affect in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which was not put to a referendum, as this was not yet provided for in the Constitution at the time. If the initiative is accepted, the provisions of the ECHR would no longer be applied in Switzerland, while the Convention would still be in force until it was formally denounced by Switzerland. One could therefore still have recourse to the European Court of Human Rights (ECrHR), while the Swiss courts could no longer apply its provisions<sup>4</sup>.
4. This popular initiative, like many others<sup>5</sup>, clearly illustrates the risks which come with freely contravening Switzerland's international commitments, including its commitment to human rights.

#### **FIACAT and ACAT-Switzerland once again recommend that the Swiss authorities:**

- ***Swiftly establish constitutional safeguards to prevent popular initiatives from contravening Switzerland's commitments in matters of human rights.***

### II. Asylum and migration

#### A. Legal aid for asylum seekers

5. The United States addressed a recommendation to Switzerland in 2012 that it should guarantee access to a lawyer to asylum seekers and to those in detention awaiting repatriation<sup>6</sup>.
6. Swiss asylum law (LAsi)<sup>7</sup> provides free legal aid (since 2014) only on demand for indigents, and only in certain cases. Legal recourse in *Dublin* procedure, requests for a re-examination, review, or multiple requests do not qualify for legal representation, similarly to procedures of the first instance.

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<sup>1</sup> Report of the UPR Working Group, A/HRC/22/11, December 2012, para 123.59 and 123.60, recommendations from Egypt and Norway.

<sup>2</sup> Swiss People's Party (or UDC), Federal Popular Initiative [Le droit suisse au lieu de juges étrangers \(initiative pour l'autodétermination\)](#) (Swiss Law, Not Foreign Judges (initiative for self-determination)), presented 12 August 2016

<sup>3</sup> This initiative was validated in September 2016 and will be voted on by the people in 2018 or 2019

<sup>4</sup> Protection Factor D, [The Anti-Human Rights Initiative, 10 reasons why the popular initiative "Swiss Law, Not Foreign Judges" is harmful to Switzerland](#), June 2016

<sup>5</sup> See for example: the initiatives against mass immigration or the building of minarets, both approved by a popular vote

<sup>6</sup> Report of the UPR Working Group, A/HRC/22/11, December 2012, para 122.11

<sup>7</sup> Law on Asylum, LAsi, [RS 142.31](#)

7. Modifications to the LAsi, approved on 5 June 2016 by popular vote, have considerably improved it (legal representation included in first instance and in *Dublin* procedure)<sup>8</sup>. However these modifications will only come into force from a date decided by the Federal Council. Requests for reexamination, review and multiple requests still do not qualify for legal aid.

**FIACAT and ACAT-Switzerland recommend that the Swiss authorities:**

- ***Bring forward the date of implementation of the modifications to LAsi regarding legal aid, and ensure that it is provided also in cases of reexamination, review and multiple requests, as well as during all summary hearings for unaccompanied minors (UM).***

#### **B. Inadmissibility of action, requests for reexamination or review**

8. There is another problem which prevents many applicants from seeing through their requests for asylum. In ordinary cases, the Federal Administrative Court<sup>9</sup> charges a proceedings fee to be paid in advance to the authority. If this is not paid, the case risks being declared inadmissible. In cases of indigence, it is up to the appellant to prove their lack of means. If they succeed in this, they will receive a dispensation, but only if the conclusions of their appeal do not seem bound to fail from the outset<sup>10</sup>. There is a great risk that the authorities merely skim the appeal, consider it bound to fail and declare it inadmissible, since so many appellants cannot afford to pay this relatively high advance fee<sup>11</sup>. Quite possibly their serious grounds for recourse, re-examination or review have not been taken into consideration, and they now face the possibility of being sent back to a country where they risk being tortured or submitted to other cruel, inhuman or degrading treatments or punishments.

**FIACAT and ACAT-Switzerland recommend that the Swiss authorities:**

- ***Ensure all appeals in cases of asylum are examined in detail.***

#### **C. Situation in the Ticino canton**

9. Since the summer of 2016, a large number of migrants has arrived at the border post of Chiasso (Ticino) in an attempt to enter Switzerland and find refuge there, request asylum or transit to other countries. These migrants are often returned back to Italy by the Swiss border guards without receiving the information they are entitled to about asylum procedures, or the opportunity to submit an application for asylum, should they so wish, to the relevant authorities. They include many unaccompanied minors who find themselves on their own once they have been turned back. A number of them end up in makeshift camps in front of Come Station, in very precarious conditions<sup>12</sup>. At the beginning of August, there were over 500 camping there<sup>13</sup>. Others disappear into the surrounding countryside and try again to cross the border, often with the help of smugglers.

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<sup>8</sup> LAsi, modification of 25 September 2015, [RO 2016 3101](#)

<sup>9</sup> Law on Federal Administrative Court, LTAF, RS 173.32

<sup>10</sup> Article 65 of the Federal Law on administrative procedure, PA, [RS 172.021](#)

<sup>11</sup> 600 francs for an ordinary action or appeal, 1200 francs for a revision

<sup>12</sup> Dussault Andrée-Marie, [A migrant camp with appalling living conditions springs up at the Swiss border](#), in *Le Temps*, 5 August 2016

<sup>13</sup> Dussault Andrée-Marie, [Hundreds of migrants still being turned back at Chiasso Station](#), in *Le Temps*, 10 August 2016

10. This situation has been observed and documented by several NGOs<sup>14</sup>. Their reports say that in the past year, thousands of migrants have been turned back in this way to Italy. In July 2016 alone, of the 7500 migrants who reached Switzerland via Ticino, nearly two thirds were returned back<sup>15</sup>.

11. By returning people back and because of the methods used, the Swiss authorities prevent or dissuade many persons from entering Switzerland and requesting asylum there. These are illegal practices, contravening Switzerland's international commitments, especially with regard to the principle of non-refoulement<sup>16</sup>. Switzerland has a duty to inform these persons of current procedure, if necessary to direct or refer them to the centre for registration and procedure of the State Secretariat for Migration, and to give them access to the procedure. Finally, before returning back a migrant, Switzerland has a duty to take account of each migrant's individual situation with regard to the risks they face in Italy (either because of the shortage of official accommodation, or inadequate living conditions, or because there is a risk that Italy might send them back to a country where they risk being tortured).

#### **FIACAT and ACAT-Switzerland recommend that the Swiss authorities:**

- *Ensure migrants arriving in Ticino are duly informed of asylum procedures and are given access to them.*

#### **D. Unaccompanied Minors (UM)**

12. In Switzerland, the number of UM has soared over these last four years: 795 in 2014, 2736 in 2015 and 1997 in 2016. These figures represent, respectively, 3.3 %, 6.9% and 7.3 % of the total number of applications for asylum in Switzerland<sup>17</sup>.

13. The Committee on the Rights of the Child was therefore alarmed in 2015 by the disparities between cantons and inequalities in provision of accommodation and access to formation, and is now calling for basic reception requirements to be established. The Committee says it is also preoccupied by the lack of training for "trusted persons" as designated by the law on asylum (LAsi)<sup>18</sup> to advise and guide UMs<sup>19</sup>. The fact that proof of age lies with the applicant is itself another problem. Some minors who are unable to prove their age are considered adults and, as such, are immediately stripped of the specific safeguards for UMs<sup>20</sup>. Add to this the cases of UMs who disappear in Switzerland following a negative outcome to their application for asylum or because of the poor living conditions and guidance, who could then turn to criminal gangs for help<sup>21</sup>, or become victims of human trafficking. In its observations to Switzerland in August 2015, the Committee Against Torture mentions 44 asylum applications which were closed in 2014 because the minor living in reception centres had disappeared.

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<sup>14</sup> Including Firdaus, the Swiss section of Amnesty International (AI), and OSAR, the Swiss Organisation of Help to Refugees

<sup>15</sup> OSAR, Situation of refugees at the Swiss-Italian border, 9 August 2016 - Amnesty International Switzerland, Switzerland infringes the rights of minors, 31 August 2016 – See also Brenna Hughes Neghawi, Steven Scherer, Danielle Rouquié with Reuters, [Concerns about migrants blocked at the Swiss-Italian border](#), in Nouvelobs.com, 10 August 2016

<sup>16</sup> ATS/NXP, [Migrants in Côme: Amnesty denounces Switzerland](#), in 24 heures, 22 February 2017

<sup>17</sup> Knopf Barbara, [Numbers of young asylum seekers grow in Ticino](#), in Le Temps, 30 September 2015  
[Asile.ch, information platform on asylum, Asylum statistics/RMNA, 2016 figures](#)

<sup>18</sup> Asylum law, LAsi, [RS 142.31](#)

<sup>19</sup> UN Committee on the Rights of the Child, CRC, [Concluding Observations on the Second to Fourth Periodic Reviews for Switzerland](#), 30 January 2015

<sup>20</sup> French-Swiss Observatory of Foreign Nationals' and Asylum Rights ODAE, 88th annual observation report – Rights of children and family unity forfeited for the sake of a restrictive migration policy, 2015-2016, [p. 15](#)

<sup>21</sup> Gaudreau Julie, Implementation of Human Rights in Switzerland, Unaccompanied Minors, in: SCHR (ed.). Implementation of Human Rights in Switzerland, p. 81 ss. Berne 2013

**FIACAT and ACAT-Switzerland recommend that the Swiss authorities:**

- *Take the necessary steps to train “trusted persons” to whom unaccompanied minors may be referred, ensure that minors are not treated as adults, and improve the level of provision around these minors to make sure they do not disappear.*

**E. Principle of non-refoulement**

**1) Procedure for return by the State Secretariat for Migration (SSM) and for extradition by the Federal Office of Justice (FOJ)**

14. Switzerland is bound to apply the principle of non-refoulement found in many international instruments of which it is a part and which it has included in its Constitution<sup>22</sup>. Sometimes, however, foreign nationals are sent back or extradited without Switzerland carrying out the necessary safeguards to ensure they are at no risk in their countries of origin. Recently Switzerland was censured for this by the ECtHR<sup>23</sup>.

15. For its review by the Committee Against Torture (CAT) in 2015, Switzerland re-stated the conditions applied by the FOJ in the extradition of one individual, conditions which vary over three categories of country<sup>24</sup>. The first category is made up of countries with a tradition of democracy which present no problems regarding respect of human rights and for which extradition is not subject to any condition. The second category includes countries where there is a risk of human rights violations but where this risk can be eliminated or greatly reduced through diplomatic safeguards (mainly the countries of the Council of Europe). Finally, the third category comprises countries which present substantial grounds to believe there is a risk of torture and for which extradition *ab initio* is excluded. In the second category, the conditions for extradition appear incomplete, since formal guarantees are not always required, and if they are, they are not always satisfactory (eg Hungary, Russia, Turkey, Greece). There is also a problem with the third category of countries, as practices seem to differ between the services of the FOJ (extradition is excluded from the outset) and those of the SSM, in cases of return of an asylum applicant, for whom extradition is not systematically excluded but who check beforehand for the possibility of a risk of torture for that person. However, this check is not always satisfactory. ACAT-Switzerland is aware of several cases of Iranian Christian asylum seekers who were refused asylum and will have to be returned to Iran. Having witnessed the Iranian authorities' treatment of such persons, ACAT-Switzerland has serious concerns about the safety of these persons when they are sent back and estimates that Switzerland is unable to offer solid safeguards that these persons will not be harassed, arrested, imprisoned or tortured, possibly even executed.

**FIACAT and ACAT-Switzerland recommend that the Swiss authorities:**

- *Actively ensure respect for the principle of non refoulement*
- 2) Suspending power of appeal over return**

16. In principle, in the case of an ordinary asylum procedure, an appeal (against a negative decision on asylum, or a decision of non-entry in the case of non Dublin procedure, see LAsi art. 104 ss and 107a LAsi) automatically suspends the procedure (regulated by art. 55 PA). The relevant authority will therefore analyse the reasons for appeal, and suspend the return of the appellant. However, by virtue of article 126

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<sup>22</sup> Federal Constitution of the Swiss Confederation, [RS 101](#), art. 25

<sup>23</sup> Ruling of the ECtHR, [case of X v. Switzerland](#), application n° 16744/14, 26 January 2017

<sup>24</sup> [Statement from Switzerland following adoption of Concluding Observations by CAT](#), 6 July 2016

of the Federal Court Law (LTF), suspension is not automatic in cases of appeal against decisions of non-entry for Dublin cases, requests for re-examination<sup>25</sup> and review<sup>26</sup>.

**FIACAT and ACAT-Switzerland recommend that the Swiss authorities:**

- *Take all necessary steps to ensure that appeals against decisions of non-entry under the Dublin procedure and requests for re-examination have a suspensive effect.*

### **3) Administrative Detention**

#### a. General situation

17. Swiss law on Foreign Nationals (LEtr)<sup>27</sup> provides for the administrative detention of foreign nationals not entitled to a residence permit in Switzerland, especially in cases of asylum (where a request for asylum has been refused or in the case of a non-entry decision under Dublin procedure, specifically art. 75, 76 and 76a LEtr), in order to guarantee their return. The new article 76a<sup>28</sup> now allows for detention while awaiting a Dublin return if there is substantial reason to believe that the person concerned might try to abscond, if the detention is proportionate and if it is not possible to employ less coercive measures.

18. According to SSM, 5935 detentions were ordered in 2015 linked to immigration, with an average length of detention of 23 days (compared to 5417 cases and 21 days in 2014). Five to ten percent of cases were women. And there have been 769 cases related to art. 76a since it came into force in 2015<sup>29</sup>. This number of detentions has fallen since 2011 (7540 cases). However administrative detention in Switzerland remains problematic. Pre-trial or sentenced detainees and “administrative detainees” are often held in separate sections of the same establishment. Premises are often inadequate. Moreover, “administrative detainees” often receive the same treatment as other prisoners. Possibilities for movement and social interaction especially are too limited. The diversity of cantons (there are around 30 prisons in Switzerland) does not help coordinate regulations. So for these detainees whose only “crime” is not to have right of residence in Switzerland, conditions of detention often turn out to be harder than for other prisoners. The National Commission for the Prevention of Torture (NCPT) has also often concluded that the practical application of administrative detention is in some centres of detention excessively restrictive and that it does not always conform to the legal norms and jurisprudence of the Federal Court<sup>30</sup>.

19. Lastly, despite several improvements, proposals for future development in Switzerland are perplexing: one administrative detention centre in Geneva canton proposing to become the French-speaking nerve centre for detention before return would hold a number of cells for families with children, a measure which would seem illegal and has already been condemned by many NGOs and lawyers<sup>31</sup>.

#### b. Cases of minors

20. The above comments apply all the more to cases of detention of minors whether accompanied or not. According to LEtr, the detention of children under 15 is prohibited and the maximum detention period for minors aged 15-18 is 12 months. In practice, the average is around 21 days. According to SSM, 142

<sup>25</sup> Art. 111b LAsi, [RS 142.31](#) and 66 to 68 Federal Law on Administrative Procedure, [RS 172.021](#)

<sup>26</sup> Art 121 ss of Law of Federal Court, [RS 173.110](#)

<sup>27</sup> art. 73 to 82 LEtr, [RS 142.20](#)

<sup>28</sup> Came into force 1st July 2015

<sup>29</sup> [Report on Migration 2015](#), Migration Secretariat SSM, 2015

<sup>30</sup> Cf. among others the "[Report on activities of the National Commission for the Prevention of Torture \(NCPT\), 2011](#)" and "[Statement by NCPT to the UN Committee Against Torture \(CAT\) regarding the 7th Periodic Review of Switzerland](#)", (2015), in particular §49 and §139

<sup>31</sup> Le Courrier, "[Cells for the detention of families](#)", 27 November 2013 and "[Family Cells could be Illegal](#)", 21 January 2014



minors aged over 15 (of which 12 UM) were held in administrative detention in Switzerland in 2015. Since cantons are responsible for managing this sector, precise data on locations and length of detention are various and incomplete. Nevertheless, the NGO “Terre des hommes” managed to produce a fairly realistic assessment of administrative detention of minors in Switzerland<sup>32</sup>. As far as the Convention on the Rights of the Child is concerned, administrative detention of under-18s is illegal. More particularly, it is bad for health, causing serious clinical symptoms (severe depression, anxiety, post-traumatic disorders, self-harming). No minor should be put into administrative detention. On this point, it is concerning to note that Switzerland rejected a recommendation<sup>33</sup> that it should build or designate detention centres specifically for unaccompanied minors requesting immigration status.

**FIACAT and ACAT-Switzerland recommend that the Swiss authorities:**

- *Take all necessary steps to ensure in practice that administrative detention be used only as a last resort and that persons being detained in this way should not be placed in centres intended for pre-trial or sentenced detainees;*
- *Abolish administrative detention of minors and develop alternative measures for detention.*

### III. Torture and ill-treatment

#### A. Fundamental legal safeguards

21. In its Concluding Observations dated August 2015, CAT hailed Switzerland’s adoption of the *Code of Criminal Procedure*<sup>34</sup>, and especially the introduction of “immediate assistance of a lawyer” during a “provisional arrest”. The person arrested should, among others, be told their rights<sup>35</sup>, including their right to call a lawyer or to request a court-appointed defence<sup>36</sup>, that they are entitled to the presence of a lawyer and to be able to communicate freely with him or her<sup>37</sup>. The application of this provision varies between cantons<sup>38</sup>. It appears to work well in Geneva and Vaud cantons, where the immediate assistance of a lawyer is frequently requested. Less so in Fribourg, Neuchâtel or the Valais where very few instances are recorded of a lawyer being requested. This does not mean that the person has not been informed of their rights, since the cost of having a lawyer restricts many detainees. The situation in Germanic Switzerland appears fairly satisfactory in a number of cantons (Zürich, St-Gall, Argovie, Lucerne, Berne), however the number of requests placed by detainees via the police seems to have fallen.

22. Moreover, it is regrettable that Switzerland has not also introduced this right to the assistance of a lawyer during the “apprehension” procedure<sup>39</sup>. And yet it is during this first period of deprivation of liberty that abuses are often observed and that it is important that the detainees be informed of their rights and be able to exercise them.

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<sup>32</sup> "[Illegal Detention of Migrant Minors in Switzerland: a current assessment](#)", June 2016, Terre des hommes Switzerland

<sup>33</sup> Report by the UPR Working Group, A/HRC/22/11, December 2012, para 123.79, recommendation by the USA.

<sup>34</sup> Came into force 1st January 2011, unifying Criminal Procedure on a Federal level, [RS 312.0](#),

<sup>35</sup> Art. 219 al. 1 of Code of Criminal Procedure

<sup>36</sup> Art.158 al.1 let c of Code of Criminal Procedure

<sup>37</sup> Art. 159 al. 1 and 2 of Code of Criminal Procedure

<sup>38</sup> Plaidoyer, Sylvie Fischer, [Les inconnues de l’avocat de la première heure](#) [Hidden Pitfalls for Immediate Assistance Lawyers], 6 October 2013

<sup>39</sup> This procedure allows the police to apprehend a person for a maximum of three hours in order to establish their identity, question them briefly to establish whether they have committed an offence, check their vehicle or objects in their possession, and also to apprehend persons at a location where offences are being committed (art. 215 CCP)

**FIACAT and ACAT-Switzerland recommend that the Swiss authorities:**

- *Provide the immediate assistance of a lawyer during the procedure known as apprehension.*

**B. Domestic and Sexist Violence**

23. In the latest Universal Periodic Review of Switzerland, South Africa made a recommendation with regard to domestic violence<sup>40</sup>.

24. There is a number of problems for victims of domestic violence in families which have come from non-EU countries and obtained a right of residence as a family group. The former article 50 of LEtr stated that in cases of separation, the duration of a right of residence could be extended if a couple had been married at least three years (and had successfully integrated), if the spouse was a victim of domestic violence, and if reintegration into the country of origin was most likely to be compromised. The modified version of this article<sup>41</sup> relaxes these conditions: apart from the requirement for three years of marriage, only one of the other two conditions is alternatively required (status of victim of domestic violence or compromised reintegration).

25. This legislative modification is an important plus point. A problem remains, however, with the implementation of article 50 LEtr by administrative and legislative authorities, which enjoy considerable powers of discretion. The authorities may require concrete evidence of the domestic violence endured<sup>42</sup>, or of problems of reintegration in the country of origin. Also, a circular<sup>43</sup> and precise guidelines from the SSM<sup>44</sup> together with the recent legislation<sup>45</sup> all require “a degree of intensity” of the violence experienced, as well as a systematic element in the maltreatment inflicted to illustrate the superiority of the violent spouse and his or her desire to control the victim. It is extremely difficult from a practical and psychological point of view for a victim to produce such evidence, even more to determine their intensity and systematic nature<sup>46</sup>.

**FIACAT and ACAT-Switzerland recommend that the Swiss authorities:**

- *Cancel discretionary powers requiring too high a level of intensity of violence in the implementation of art. 50 LEtr (and court order), when considering an extension of right of residence for a person separated from their spouse for reasons of domestic violence.*

**C. Police Violence**

26. For its last review in 2012, several States Parties produced recommendations to Switzerland on the matter of police violence<sup>47</sup>. Switzerland rejected one of these.

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<sup>40</sup> [Report of UPR Working Group](#), A/HRC/22/11, December 2012, para 123.70 Recommendation from South Africa.

<sup>41</sup> Came into force 1st July 2013

<sup>42</sup> Article 77 al 5 of Court Order on admission, residence and gainful employment [RS 142.201](#)

<sup>43</sup> Circular “Cases of Domestic Violence”, Federal Office for Migration, 12 April 2013

<sup>44</sup> “LEtr Guidelines”, number 6.15.3, State Secretariat for Migration, October 2013 (updated 6.03.2016)

<sup>45</sup> [ATF 2C 1125/2015](#) 18 January 2016, consid. 4.1

<sup>46</sup> See especially: French-Swiss Observatory of Foreign Nationals’ and Asylum Rights ODAE, [Femmes étrangères victimes de violences conjugales – obstacles au renouvellement du titre de séjour en cas de séparation](#) [Non-Swiss Female Victims of Domestic Violence – obstacles to the renewal of right of residence in cases of separation], 3rd edn, Geneva, March 2016

<sup>47</sup> [Report of UPR Working Group](#), A/HRC/22/11, December 2012, para 123.45 and 123.46 Recommendations from Uzbekistan and Brazil

27. In Switzerland, cases of police violence by the police and immigration services have increased since 2015, especially against asylum applicants<sup>48</sup>. This information is not systematically brought to the attention of the authorities, even where there are medical reports of lesions, and those responsible for such acts and behaviour are rarely brought to justice. Sometimes also inquiries into these cases are slow and inefficient<sup>49</sup>. Such incidents, however, are difficult to quantify despite some cases receiving publicity<sup>50</sup>. There is not always an independent body available to look into these cases at a canton level. Victims of police violence are very reluctant to register a complaint with official bodies or with those from whom they have experienced violence. The Network of Advice Centres for Victims of Racism recorded only 17 instances of police violence in 2013, 19 in 2014 and 23 in 2015<sup>51</sup>.

28. In its response to CAT's recommendations on this subject in 2015<sup>52</sup>, Switzerland hid behind federalism (legal structure and legal administration are the responsibility of each canton), medical confidentiality (prohibiting consulting doctors from reporting their findings), and current procedures for registering a complaint and seeking compensation<sup>53</sup>.

29. These are unsatisfactory responses: the systems currently in place are too disparate and do not cover all of Switzerland. Until an independent complaints body is established in each canton and/or at a federal level, victims of police violence will continue to remain unwilling to lodge a complaint.

**FIACAT and ACAT-Switzerland recommend that the Swiss authorities:**

- *Establish in each canton and at federal level an independent complaints body for victims of police violence, as well as a register of statistics drawn from these complaints.*

#### **D. Police training**

30. In 2012, Nicaragua recommended to Switzerland that it should give particular support to ongoing training for police officers in human rights<sup>54</sup>. Similar recommendations were made by CAT in 2015<sup>55</sup>.

31. In its statement of July 2016, Switzerland did not respond to this recommendation. This does not mean, however, that it remained inactive on this matter. The cantons provide many courses and training sessions for their police and prison officers. However, there is no centralised and systematic source of information on these courses and their intended participants. Also, the Istanbul Protocol has not yet been adopted by the Swiss authorities and Swiss specialists and authorities know very little about it when faced with denunciations of torture.

**FIACAT and ACAT-Switzerland recommend that the Swiss authorities:**

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<sup>48</sup> [Interview with Frédéric Maillard](#), RTS info, "L'invité de la rédaction", 16 February 2017

See also [political statement "Profiling racial ethnique"](#), 7 November 2016 by "l'Allianz gegen Racial Profiling"

<sup>49</sup> See [Concluding Observations by CAT on the 7th Periodic Review of Switzerland](#), August 2015, § 10

<sup>50</sup> Eg condemnation of Switzerland by ECtHR in the Dembele / [Wa Baile](#) / Hervé cases, Congolese man killed at Bex, Le Temps, "[Are the Swiss Police targeting Blacks?](#)", 7 December 2016

<sup>51</sup> See <http://www.network-racism.ch/accueil.html?changelang=2>. This monitoring, awareness and mediation centre is not equipped to register criminal complaints. It is supposed to cover the whole of Switzerland, has 18 centres but only in 13 cantons.

<sup>52</sup> [Concluding Observations on the 7th Periodic Review of Switzerland](#), September 2015, para 10

<sup>53</sup> [Statement by Switzerland following Adoption of Concluding Observations by CAT](#), § 10

<sup>54</sup> [Report of the UPR Working Group](#), A/HRC/22/11, December 2012, para 123.44

<sup>55</sup> See [Concluding Observations by CAT on the 7th Periodic Review of Switzerland](#), August 2015, § 21

- *Augment the provision of human rights training for authorities which have to deal with victims of torture, especially by recognising and including training on the Istanbul Protocol.*

#### **E. Criminalisation of torture**

32. In 2012, New Zealand had recommended that Switzerland criminalise torture within its own legislation and to conform with the Convention Against Torture<sup>56</sup>. Although it is a party to this Convention, Switzerland has yet to include a specific definition of torture in its own Criminal Code.

33. Switzerland justifies the absence of criminalisation by the fact that the Swiss Criminal Code already punishes all acts of torture and it is therefore not necessary to introduce a specific provision. These include offences against life and body, crimes and offences against liberty and sexual offences. Acts of torture may also fall under the categories of crimes against humanity or war crimes<sup>57</sup>, but without a definition and not in some other contexts (eg in police violence). This represents a major legal loophole, for Swiss criminal standards in this matter do not cover all aspects of the notion of torture as defined in the Convention Against Torture, especially the appearance of psychological damage sustained by victims. Also, the statutes of limitation set in the provisions of the Criminal Code are relatively short and the sentences available do not match the seriousness of the crime of torture.

34. The loophole could be plugged by criminalisation within the Criminal Code, allowing acts of torture to be prosecuted even when they do not come under any criminal provisions, wherever they may have been committed, and whatever the nationality of the perpetrator or victim. This would give victims guaranteed access to justice and advance the fight against impunity. It would also present many more advantages to Switzerland: a simpler and clearer criminal complaints procedure; a preventive effect on perpetrators; and a lower risk of Switzerland being condemned by ECtHR.

**FIACAT and ACAT-Switzerland recommend that the Swiss authorities:**

- *Promptly include in the Swiss Criminal Code a precise definition of torture, in line with the provisions of the Convention Against Torture.*

### **IV. Conditions of Detention**

#### **A. Prison Overcrowding**

35. In its Concluding Observations dated August 2015, CAT expressed concern over prison overcrowding at Champ-Dollon<sup>58</sup>. The Federal Court (FC) recently issued several rulings condemning the detention authorities at this prison (February 2014, October 2015 and March 2016) for violation of art. 3 ECHR<sup>59</sup>.

36. In response<sup>60</sup>, Switzerland mentioned a fall effectively in the number of detainees at Champ-Dollon, from 856 in 2014 to 584 in June 2016. The Geneva canton also plans to open a new centre for 450 detainees in 2020 (Dardelles Prison for those serving out their sentences). The State of Geneva also opened a new establishment for 90 inmates with psychological difficulties (Curabilis). And around 100 detainees

<sup>56</sup> [Report of the UPR Working Group](#), A/HRC/22/11, December 2012, para 123.16

<sup>57</sup> Titre 12 bis and 12 ter of the Swiss Criminal Code, [RS 311.0](#)

<sup>58</sup> See [Concluding Observations of CAT regarding the 7th Period Review for Switzerland](#), August 2015, § 19,

<sup>59</sup> [http://www.servat.unibe.ch/dfr/bger/140226\\_1B\\_369-2013.html](http://www.servat.unibe.ch/dfr/bger/140226_1B_369-2013.html)

[http://www.servat.unibe.ch/dfr/bger/150929\\_1B\\_152-2015.html](http://www.servat.unibe.ch/dfr/bger/150929_1B_152-2015.html)

[https://www.rwi.uzh.ch/dam/jcr:c91a6f4c-9543-4ea1-a2fc-2ea5b2471cd2/6b\\_0456\\_2015\\_2016\\_03\\_21\\_t.pdf](https://www.rwi.uzh.ch/dam/jcr:c91a6f4c-9543-4ea1-a2fc-2ea5b2471cd2/6b_0456_2015_2016_03_21_t.pdf)

<sup>60</sup> Statement by Switzerland following adoption of CAT's Concluding Observations, § 19

were transferred in June 2016 to another prison (Brenaz). Suicide attempts in Geneva prisons reportedly decreased from 89 to 34 in 2015<sup>61</sup>.

37. Despite these improvements, overcrowding in Champ-Dollon Prison stood at around 170% in 2016<sup>62</sup>. Over the whole territory for 2016, prison population levels were on average 92%<sup>63</sup>. Prisons are particularly overpopulated in French-speaking Switzerland. In Vaud canton, because of the shortage of prison spaces, some detainees are held in police cells beyond the legal maximum of 48 hours, and sometimes up to 22 days<sup>64</sup>. In fact, in July 2014 the Federal Court ordered Vaud Canton to compensate a detainee for this type of extended detention.<sup>65</sup>

**FIACAT and ACAT-Switzerland recommend that the Swiss authorities:**

- *Take every possible measure to reduce prison population of the various prisons around the country, especially Champ-Dollon Prison (Geneva);*
- *Ensure that no-one is detained in police cells beyond the maximum period of 48 hours.*

#### **B. Women and minors in detention**

38. In its 2015 Concluding Observations, CAT expressed concern over the absence of strict segregation of women and men in Champ-Dollon Prison, and similarly between minors and adults in most regional prisons. Switzerland responded by arguing that the relevant Canton authorities and the prison authorities guaranteed “that there is no possibility of female prisoners coming into contact with male”. This guarantee is purely theoretical and there are no indications in practice that this strict segregation is upheld.

39. As for the segregation of minors and adults, Switzerland refers to the Federal Law on procedure for minors (on pre-trial detention)<sup>66</sup> and to the Federal Law governing prison conditions for minors (for carrying out sentences)<sup>67</sup>. These two laws state that minors are to be detained in a separate space. In the second cycle of UPR, Switzerland had rejected two recommendations<sup>68</sup> on the grounds that it had expressed a reservation to the Convention on the Rights of the Child, a reservation which did not guarantee separation in every case<sup>69</sup>. The CRC gave Switzerland a ten-year extension (2007 to 2017) to allow the cantons to put this separation into practice. This extension has now expired and it is important that this promise now be honoured.

**FIACAT and ACAT-Switzerland recommend that the Swiss authorities:**

- *Bring into force in all cantons and all prisons around the country strict and effective segregation of women and men as well as minors and adults, and withdraw its reservation to article 37(c) of the Convention on the Rights of the Child.*

#### **C. Access to care**

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<sup>61</sup> <http://www.humanrights.ch/fr/droits-humains-suisse/interieure/poursuite/detention/champ-dollon-surpopulation-carcerale-preocupe-commission-contre-torture>

<sup>62</sup> Idem note 52

<sup>63</sup> <https://www.bfs.admin.ch/bfs/fr/home/statistiques/criminalite-droit-penal/execution-penale/personnes-placees-detenus.html#319306563>

<sup>64</sup> <http://www.humanrights.ch/fr/droits-humains-suisse/interieure/poursuite/detention/surpopulation-carcerale-tf>

<sup>65</sup> [http://www.servat.unibe.ch/dfr/bger/140701\\_6B\\_17-2014.html](http://www.servat.unibe.ch/dfr/bger/140701_6B_17-2014.html)

<sup>66</sup> RS 312.1 PPMIn art. 28

<sup>67</sup> RS 311.1 DPMIn, art. 27

<sup>68</sup> [Report of the UPR Working Group](#), A/HRC/22/11, December 2012, para 123.8 and 123.9 Recommendation from Uruguay

<sup>69</sup> [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&clang=fr#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=fr#EndDec)

40. It is estimated that around 2000 to 3000 detainees do not benefit from the healthcare cover provided by law (LAMal) because they were not domiciled in Switzerland at the time of their arrest. For the purposes of determining whether and to what degree these detainees can receive medical care, you have to refer to canton legislation. However, legislation varies enormously between cantons and they do not all guarantee access to care.

41. Given that different bodies are authorised to make financial decisions over care within the same canton, treatment can sometimes be delayed considerably, or even not authorised, even when it has been recommended by doctors.

42. On 15 March 2017, ACAT-Switzerland handed a petition with 3000 signatures to the Swiss Federal Council, demanding medical care for all detainees in Switzerland<sup>70</sup>.

**FIACAT and ACAT-Switzerland recommend that the Swiss authorities:**

- *Coordinate legislation and practice within and between cantons so as to ensure that all detainees in Switzerland are covered by medical insurance and have access to appropriate medical care.*

#### **D. National Mechanism for the Prevention of Torture**

43. The National Commission for the Prevention of Torture (NCPT)<sup>71</sup> is the Swiss national preventive mechanism (NPM). This body is independent of the Confederation and the cantons, and makes regular visits to and is in constant dialogue with the authorities to ensure that the rights of persons in detention are respected. Despite this independence written in law, it is financed by the Confederation<sup>72</sup>. Although the Commission in general does a good job, this is an unsatisfactory situation from the point of view of its strict independence. The Commission consists of twelve members and four administrative staff, including a trainee. The Commission and secretariat are supported on the ground by seven “observers”, all experts or specialists in various areas related to detention. The current budget for the Commission is 700 000 francs per annum, a limited sum, considering the extent of its work. Once members and observers have received their allowances, and the administrative expenses paid, there is only enough left for the Commission to inspect on average no more than a dozen prison establishments, as opposed to the twenty or thirty initially planned by the Federal Council<sup>73</sup>.

**FIACAT and ACAT-Switzerland recommend that the Swiss authorities:**

- *Ensure both sufficient resources for the NCPT to fully exercise its mandate and a guarantee of the strict independence it requires for its work.*

#### **V. Enforced Disappearances**

44. Several States Parties recommended that Switzerland ratify the International Convention for the Protection of all Persons from Enforced Disappearance<sup>74</sup>.

45. This was ratified by Switzerland on 2 December 2016. Moreover, Switzerland recognised the competence of the Committee on Enforced Disappearances to receive and consider inter-State or

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<sup>70</sup> [http://www.acat.ch/fr/medias/communiqu%C3%A9\\_campagne\\_10\\_decembre/](http://www.acat.ch/fr/medias/communiqu%C3%A9_campagne_10_decembre/)

<sup>71</sup> <https://www.nkvf.admin.ch/nkvf/fr/home.html>

<sup>72</sup> Federal Law on the Commission for the Prevention of Torture, art. 4 and art. 12, [RS 150.1](#)

<sup>73</sup> <https://www.nkvf.admin.ch/dam/data/nkvf/Berichte/taetigkeitsberichte/2015/rapport-d-activite-2015.pdf>

<sup>74</sup> [Report of the UPR Working Group](#), A/HRC/22/11, December 2012, para 122.1, recommendation from Spain, France, Paraguay and Argentina

individual communications<sup>75</sup>. The Convention and its law of implementation came into force on 1<sup>st</sup> January 2017, together with a specific crime and modifications, introduced into the Swiss Criminal Code<sup>76</sup>. In addition to these provisions, the Confederation must, in collaboration with the cantons, establish a network of information exchange and a coordination service in cases of suspected disappearance<sup>77</sup>.

**FIACAT and ACAT-Switzerland recommend that the Swiss authorities:**

- ***Quickly and efficiently establish the information network planned in the implementation law of the CED in Switzerland.***

## **VI. NHRI**

46. Several countries made recommendations to Switzerland that it should establish a National Human Rights Institution in accordance with the Paris Principles<sup>78</sup>.

47. In 2011 Switzerland set up the Swiss Centre of Expertise in Human Rights (SCHR)<sup>79</sup> as a pilot project. However, it does not yet fulfil all the criteria set out in the Paris Principles as it still lacks absolute independence.

48. At its session of 29 June 2016, the Federal Council (FC) decided to establish a legal basis for a national human rights institution, to replace the SCHR. The FC charged the Federal Department of Foreign Affairs (DFAE) and the Federal Department of Justice and Police (DFJP) with the task of developing by June 2017 a project for consultation. The FC proposes that an institution be set up at a university base, with untied financial support provided by the Confederation<sup>80</sup>. The Confederation will continue to contribute one million francs per annum to the financing of this Institute. Parliament will have the final say in this.

**FIACAT and ACAT-Switzerland recommend that the Swiss authorities:**

- ***Speed up the consultative and legislative processes to establish the future NHRI as soon as possible, in accordance with the Paris Principles.***

## **VII. Cooperation with UN mechanisms**

49. In 2012, a number of States Parties called on Switzerland to ratify the first Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). At the time of publication of this report, Switzerland has yet to ratify this Protocol.

**FIACAT and ACAT-Switzerland recommend that the Swiss authorities:**

- ***Ratify the first Optional Protocol to the ICCPR.***

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<sup>75</sup> [According to articles 31 and 32 of the Convention](#)

<sup>76</sup> [RS 311.0](#) art. 64 al. 1 bis, 185 bis, Art. 260bis, al. 1, let. Fbis,

The crime of enforced disappearance has existed in article 264a CPS since 1st January 2011 but in a non-specific way, as a sub-category of crimes against humanity. The definition of enforced disappearance is modelled on art. 7 al.2 let. i of the Statutes of the International Criminal Court (StCPI) and on art. 2 of the CED.

<sup>77</sup> Article 4 of the Federal Law relating to the International Convention for the Protection of All Persons from Enforced Disappearance, [RS 150.2](#)

<sup>78</sup> [Report of the UPR Working Group](#), A/HRC/22/11, December 2012, para 123.21 recommendations from the Russian Federation and Greece

<sup>79</sup> <http://www.skmr.ch/frz/home.html>

<sup>80</sup> A model for a Swiss NHRI was proposed by the NGO “Human Rights Platform”, cf [http://www.humanrights.ch/upload/pdf/140730\\_Modelle\\_INDH\\_Final.pdf](http://www.humanrights.ch/upload/pdf/140730_Modelle_INDH_Final.pdf)