



Berne, 28 March 2017

# **Report of the National Commission for the Prevention of Torture NCPT**

## **on the third Universal Periodic Review of Switzerland**

The National Commission for the Prevention of Torture (NCPT) was constituted in 2009 as the National Preventive Mechanism (NPM) in accordance with article 17 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT). Through regular visits and ongoing dialogue with the authorities the NCPT's aim is to ensure that the rights of persons deprived of their liberty are respected. The NCPT submits specific recommendations to the authorities, contributing significantly to preventing torture and inhuman and degrading treatment, thus attempting to ensure the protection of human rights for all forms of deprivation of liberty throughout Switzerland. It has access to all information concerning the treatment of people deprived of their liberty and to all places of detention as defined in article 4 OP-CAT.

The NCPT is composed of twelve members appointed by the Federal Council for a four-year term. Its members are experts in the fields of law enforcement and fundamental rights, execution of sentences and measures, medicine and psychiatry. Both sexes and all linguistic regions are adequately represented.

Since 2014 the Commission has specifically focused on vulnerable persons and published several thematic reports on areas of concern and relevance to fundamental rights. Visits were conducted in relation with an audit of specific subject areas. Some of the main findings of the in depth reviews will be outlined under section III.<sup>1</sup>

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<sup>1</sup> All reports can be found on: <https://www.nkvf.admin.ch> (24.02.2017).



## I. Recommendations<sup>2</sup> concerning the prevention of torture and other cruel, inhuman or degrading treatment or punishment accepted by Switzerland

### a. 123.17. – 123.23. Establish an independent national human rights institution in accordance with the Paris Principles (several States)

1. In 2011 the Federal Council established the Swiss Centre of Expertise in Human Rights (SCHR). The mandate of the SCHR was extended by the Federal Council on 1 July 2015 for a maximum of five years.<sup>3</sup>
2. The NCPT welcomes the extension of the mandate, nevertheless it invites Switzerland to take necessary steps towards a permanent institution in compliance with the Paris Principles.<sup>4</sup>
3. While access to the judicial defense system is guaranteed in Switzerland, the NCPT notes with concern that there is a general lack of access to judicial defense mechanisms, in particular for convicted persons serving long sentences.

### b. 123.78. Give consideration to incorporating the UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders, also known as the «Bangkok Rules», as part of its policy on the treatment of prisoners (Thailand)

4. During its inspection visits in institutions where women are deprived of their liberty, the NCPT regularly notes that the rights and specific needs of women are not being properly addressed by many institutions, in particular in pre-trial detention facilities. The Commission encourages the authorities to further prioritize the rights of women detainees and to take appropriate measures to address their specific needs.

### c. 123.47. Put in place independent inquiries on the use of excessive force during deportations (Cote d'Ivoire)

5. The NCPT was mandated in 2012 to monitor transfers to the airport as well as deportation/repatriation flights.<sup>5</sup>
6. The Commission addresses its findings and recommendations concerning deportation procedures to the relevant national and cantonal authorities in specialised dialogues and publishes an annual report<sup>6</sup>. While the NCPT engages into fact-finding with respect to individ-

<sup>2</sup> The numbering of the recommendations refers to the paragraph numbers in the Report of the Working Group on the Universal Periodic Review – Switzerland, 7 December 2012, A/HRC/22/11.

<sup>3</sup> Initially it was limited to a pilot phase from 2011 to 2015.

<sup>4</sup> Cf. <http://www.skmr.ch/de/skmr/geschaefsstelle/news/nationale-menschenrechtsinstitution.html> (01.03.2017).

<sup>5</sup> Please refer to Point III e for NCPTs observations and recommendations with regard to the application of coercive measures during the different phases of deportation procedures.

<sup>6</sup> See section *Ausländerrechtliches Vollzugsmonitoring* : <https://www.nkvf.admin.ch/nkvf/de/home/publiservice.html> (24.02.2017).



ual cases by asking the authorities to explain their action, it has neither the role of an independent inquiry institution nor decision making power regarding individual cases.<sup>7</sup>

## II. Recommendations concerning the prevention of torture and other cruel, inhuman or degrading treatment or punishment rejected by Switzerland

### a. 123.15. Include in its Criminal Code a definition of torture (South Africa)<sup>8</sup>

7. As mentioned in previously published statements<sup>9</sup>, the Commission supports this recommendation and is of the view that the current provisions in the Swiss Criminal Code<sup>10</sup> should be complemented accordingly.<sup>11</sup>

### b. 123.54. Provide adequate accommodation for refugees and asylum seekers and their children, away from unhealthy locations such as near airports (Namibia)

8. The Commission has visited reception and procedure centres for asylum seekers and has found that the facilities were not always adequately equipped for families. In some cases, asylum seekers stay in underground civil defence facilities, which provide little space for privacy. The Commission recommended that such facilities should only be used in exceptional circumstances and for the shortest period of time.<sup>12</sup>

### c. 123.79. Build or designate detention facilities for unaccompanied minors seeking immigration protection separate from adult facilities (United States of America)

9. The NCPT noted the presence of a substantial number of unaccompanied minors during its visits to reception and procedure centers for asylum seekers. The Commission noted

<sup>7</sup> Cf. Article 2 of the Federal Law on the Commission for the prevention of torture of 20 March 2009 (*Bundesgesetz über die Kommission zur Verhütung von Folter*, SR 150.1); Article 71a of the Federal Act on Foreign Nationals of 16 December 2005 (*Ausländergesetz, AuG*; SR 142.20); Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (2008/115/EG): <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:DE:PDF> (02.03.2017).

<sup>8</sup> See also 123.16. Include a definition of torture in its Criminal Code incorporating all elements contains in Article 1 of CAT (New Zealand), Introduce in the Penal Code a definition of torture that incorporates all the elements provided for in CAT (Costa Rica).

<sup>9</sup> NCPT, *Einführung des Folttertatbestands im schweizerischen Strafgesetzbuch*: [https://www.nkvf.admin.ch/dam/data/nkvf/Stellungnahmen/stn\\_folttertatbestand-d.pdf](https://www.nkvf.admin.ch/dam/data/nkvf/Stellungnahmen/stn_folttertatbestand-d.pdf) (20.02.2017); NCPT, Statement to the Committee against torture concerning the 7<sup>th</sup> periodic report of Switzerland, 2015 (*Prise de position de la Commission nationale de prévention de la torture (CNPT) au Comité des Nations unies contre la torture (CAT) concernant le 7ème rapport périodique de la Suisse*): [https://www.nkvf.admin.ch/dam/data/nkvf/Stellungnahmen/150303\\_stn\\_nkvf.pdf](https://www.nkvf.admin.ch/dam/data/nkvf/Stellungnahmen/150303_stn_nkvf.pdf) (20.02.2017).

<sup>10</sup> Swiss Criminal Code of 21 December 1937 (*Schweizerisches Strafgesetzbuch*, SR 311.0).

<sup>11</sup> Cf. CAT, Conclusions and recommendations of the Committee against Torture – Switzerland, CAT/C/CR/34/CHE, 21 June 2005, paras. 4(a) and 5(a); CAT, Concluding observations of the Committee against Torture – Switzerland, CAT/C/CHE/CO/6, 25 May 2010, para. 5.

<sup>12</sup> Cf. NCPT, Report on the visit to the *Bundesasylzentren*, 2013 (Federal asylum seekers centre in *Lucmagn/Medel, Bremgarten, Chatillon, Alpnach*), paras. 26 and 27: <https://www.nkvf.admin.ch/dam/data/nkvf/Berichte/2014/asylzentren/bericht-bfm-d.pdf> (22.02.2017); NCPT, Report on the visit to the reception and procedure centers, 2012 (*Kreuzlingen, Basel, Vallorbe* and Transitcentre Airport Geneva, *Chiasso* and underground civil defence facility in *Biasca*), paras. 36, 39, 43, 48, 59, 62, 63, 70: [https://www.nkvf.admin.ch/dam/data/nkvf/Berichte/2012/evz\\_bund/121123\\_ber\\_evz.pdf](https://www.nkvf.admin.ch/dam/data/nkvf/Berichte/2012/evz_bund/121123_ber_evz.pdf) (24.02.2017); ECOSOC, Consideration of reports submitted by States parties under article 16 and 17 of the Covenant, Concluding observations of the Committee on Economic, Social and Cultural Rights, Switzerland, E/C.12/CHE/CO/2-3, 26 November 2010, para. 18.



with concern that sleeping quarters for minors were not always separated from adults. The NCPT therefore recommended in accordance with international standards to separately house unaccompanied minors, especially in sleeping areas and to draft a concept note taking into account the specific needs of unaccompanied migrant children.<sup>13</sup>

10. In addition to its monitoring visits, the Commission conducted a review in all 26 Cantons to determine how many minors were detained on immigration purposes. The analysis came to the conclusion that while only few Cantons<sup>14</sup> detain minors in exceptional circumstances and for a generally short period of time, detention conditions in some of the institutions are not suitable for minors, either because minors are not adequately separated from adults, or because the detention regime is not adapted to their specific needs.<sup>15</sup> The Commission therefore urged the authorities to refrain from detaining minors on immigration purposes.

**d. 123.9. Withdraw its reservations to Article 37 (c) of CRC (Uruguay)**  
**123.80. Protect minors and ensure that imprisonment of minors is separated from imprisonment of adults (Uzbekistan)**

11. With a view to withdrawing Switzerland's reserve to article 37 (c) CRC, the Cantons benefited from a transitional period until 1 January 2017 in order to adapt the institutional setting.<sup>16</sup> During its monitoring visits, the NCPT has specifically focused on the conditions of minor detainees. While most institutions separate minors from adults and, in some cases, house them in special units, the NCPT noted that in some places of detention, minors were not adequately separated from adults and detention conditions were deemed unacceptable.<sup>17</sup> The NCPT has further raised concerns about juveniles being held in their cells for up to 22 hours a day and urged the institutions to adapt the detention regime to the needs of children.<sup>18</sup>

12. As the transitional period has now come to an end, the Commission urges the authorities

<sup>13</sup> Article 20 and 37 (c) of the Convention on the Rights of the Child (CRC); Article 17 para. 3 and 4, Article 82 para. 3<sup>bis</sup> of the Asylum Act of 26 June 1998 (*Asylgesetz, AsylG*, SR 142.31). A separation of unaccompanied minors from adults is also envisaged in Article 4 para. 1 of the Regulation for the use of Federal installations and buildings to accommodate asylum seekers of 24 November 2007 (*Verordnung des EJPD zum Betrieb von Unterkünften des Bundes im Asylbereich*; SR 142.311.23).

<sup>14</sup> Cantons of *Basel-Landschaft, St. Gallen, Wallis* and *Zürich*.

<sup>15</sup> For example pre-trial detention facilities or administrative detention facilities in *Zürich, Granges* and *St. Gallen*; Cf. NCPT, Report on the visit to the airport prison in Zurich of 6 and 7 December 2010, para. 30: [https://www.nkvf.admin.ch/dam/data/nkvf/Berichte/2010/zuerich/110621\\_ber\\_rr\\_zh.pdf](https://www.nkvf.admin.ch/dam/data/nkvf/Berichte/2010/zuerich/110621_ber_rr_zh.pdf) (02.03.2017); NCPT, Report on the visit to the LMC Granges of 28 November 2012, para. 10, 13, 16: [https://www.nkvf.admin.ch/dam/data/nkvf/Berichte/2012/granges\\_followup/20130613\\_followup-VS-granges-d.pdf](https://www.nkvf.admin.ch/dam/data/nkvf/Berichte/2012/granges_followup/20130613_followup-VS-granges-d.pdf) (02.03.2017); NCPT, Report on the visit to the police prisons of the Cantonal police in St. Gallen of 5 and 6 October 2015, para. 25: <https://www.nkvf.admin.ch/dam/data/nkvf/Berichte/2015/st-gallen/bericht-kafo-st-gallen.pdf> (23.02.2017).

<sup>16</sup> The Federal Supreme Court ruled that the transition period in Article 48 of the Federal Law of 20 June 2003 on the Criminal Law applicable to Juveniles (*Bundesgesetz über das Jugendstrafrecht*, SR 311.1) is not applicable regarding pre-trial detention; see BGE 133 I 286, N 4.6 and 5.1. In addition Switzerland has already retracted its reserve to article 10 para. 2 (b) of the International Covenant on Civil and Political Rights (ICCPR), which foresees the separation of accused juvenile persons from adults.

<sup>17</sup> Cf. NCPT, Report on the visit to the police prisons of the Cantonal police in St. Gallen of 5 and 6 October 2015, para. 25; NCPT, Report on the Police Prison Zürich of 22 and 23 April and 22 October 2014, paras. 17, 25, 35, 38: [https://www.nkvf.admin.ch/dam/data/nkvf/Berichte/2014/polizeigeftaengnis\\_zuerich/150721\\_ber.pdf](https://www.nkvf.admin.ch/dam/data/nkvf/Berichte/2014/polizeigeftaengnis_zuerich/150721_ber.pdf) (20.02.2017); NCPT, Report on the visit to the LMC Granges of 28 November 2012, para. 13; CAT, Concluding observations on the seventh periodic report of Switzerland, CAT/CHE/CO/7, 7 September 2015, para. 19.

<sup>18</sup> Cf. NCPT, Report on the visit to the police prisons of the Cantonal police in St. Gallen of 5 and 6 October 2015, para. 25; NCPT, Report on the Police Prison Zürich of 22 and 23 April and 22 October 2014, para. 25; NCPT, Report on the visit to the regional prison Thun of 27 and 28 January 2014 in respect to juvenile pre-trial detention, paras. 14, 23, 25, 26: [https://www.nkvf.admin.ch/dam/data/nkvf/Berichte/2014/thun/140708\\_ber\\_rqthun.pdf](https://www.nkvf.admin.ch/dam/data/nkvf/Berichte/2014/thun/140708_ber_rqthun.pdf) (20.02.2017).



to take all the necessary steps in order to allow for proper separation of all minors in detention and to ensure conditions of detention respective of minors' specific needs.<sup>19</sup>

### III. Concerns of the NCPT not covered by the UPR recommendations

#### a. Measures of physical and chemical restraint in psychiatric institutions

13. In 2016 and 2017, the Commission conducted monitoring visits to psychiatric institutions.<sup>20</sup>

14. The NCPT noted that psychiatric institutions make regular use of physical and chemical restraint measures, which were most often insufficiently protocolled.<sup>21</sup> In some cases, the Commission concluded that the duration of physical restraint measures was excessive. It further recommends to refrain from applying seven-point restraints. While the Swiss Civil Code<sup>22</sup> foresees the drafting of a treatment plan in consultation with the patient<sup>23</sup>, the NCPT noticed their frequent absence and urged the institutions to draw up such plans accordingly.

#### b. Solitary confinement

15. In 2013, the Commission published a report on the solitary confinement and the conditions of detention in high security detention units.<sup>24</sup>

16. The NCPT recommended to take steps to ensure that the placement be reviewed by an independent authority on a three month basis.<sup>25</sup> The Commission further recommended not to order a placement on the ground of "risk of flight" or "disturbance of order" in the facility, highlighting that solitary confinement measures must not be 'hidden' disciplinary measures but are to be strictly limited to situations where people pose a severe threat to

<sup>19</sup> Article 37 (c) CRC; Article 10 para. 2 (b) ICCPR; United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), Rule 8 (d).

<sup>20</sup> The reports of the visits are not yet published.

<sup>21</sup> Cf. European Court of Human Rights (ECtHR), *Bures v. Czech Republic*, application no. 37679/08, paras. 102-105; ECtHR, *Keenan v. the United Kingdom*, application no. 27229/95, para. 114; CPT Standards, Means of restraint in psychiatric establishments for adults, Extract from the 16<sup>th</sup> General Report [CPT/Inf (2006) 35], para. 52; WHO QualityRights tool kit, World Health Organization, 2012, p. 83, [http://www.who.int/mental\\_health/publications/QualityRights\\_toolkit/en/](http://www.who.int/mental_health/publications/QualityRights_toolkit/en/) (01.03.2017).

<sup>22</sup> Cf. Article 360 of the Swiss Civil Code of 10 December 1907 (*Schweizerisches Zivilgesetzbuch*, SR 210).

<sup>23</sup> Cf. Article 433 Swiss Civil Code; Articles 15, 16, 17, 25 of the Convention on the Rights of Persons with Disabilities (CRPD); CRPD, General comment No. 1 (2014), CRPD/C/GC/1, 19 May 2014, para. 42; Recommendation Rec(2003)23 of the Committee of Ministers to member States on the management by prison administrations of life sentence and other long-term prisoners, 9 October 2003, paras. 9 and 11; Recommendation Rec(2004)10 of the Committee of Ministers to member States concerning the protection of the human rights and dignity of persons with mental disorder, 22 September 2004, Article 12 para. 1; Explanatory Memorandum to Recommendation Rec(2004)10 of the Committee of Ministers to member States concerning the protection of the human rights and dignity of persons with mental disorder, 22 September 2004, Article 12, paras. 90 and 91, Article 19, paras. 2 and 146. The treatment plan serves as a basis for treatment without consent (cf. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/22/53, 1 February 2013, para. 66; The Istanbul Statement on the Use and Effects of Solitary Confinement, adopted on 9 December 2007 at the International Psychological Trauma Symposium, Annex to the Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/63/175, 28 July 2008, para. 44).

<sup>24</sup> Cf. NCPT, Activity report 2013, p. 33: [https://www.nkvf.admin.ch/dam/data/nkvf/Berichte/taetigkeitsberichte/140918\\_ber-e.pdf](https://www.nkvf.admin.ch/dam/data/nkvf/Berichte/taetigkeitsberichte/140918_ber-e.pdf) (09.03.2017).

<sup>25</sup> BGE 134 I 221, grounds 3.3.2.



third parties or to themselves.<sup>26</sup>

17. The NCPT further noted with serious concern the use of solitary confinement for persons with mental disorders and urged the authorities to find appropriate solutions for the placement in a more adequate psychiatric setting.<sup>27</sup>
18. With regard to detention conditions<sup>28</sup>, it appeared that the individual needs of these most often vulnerable detainees were not adequately met and restrictions were sometimes imposed categorically. In at least two cases, the Commission considered the duration of solitary confinement to be excessive and urged the authorities to take immediate action to progressively open up the detention regime.

### **c. In-patient therapeutic measures in places of detention**

19. Between 2013 and 2016 the Commission conducted a nationwide review of establishments for the execution of in-patient therapeutic measures<sup>29</sup> and drafted a report with recommendations addressed to the authorities for statement.<sup>30</sup>
20. The Commission notes that due to a lack of sufficient places, therapeutic needs of detainees were inadequately met in regular prisons while they were waiting for long periods before being transferred to a suitable establishment. The NCPT observed in particular that the detention regime in regular detention centres was most often inadequate and that disciplinary sanctions did not take due consideration of the specific needs of persons suffering from mental disorder.<sup>31</sup>
21. The Commission further highlighted the importance of progressively introducing relaxation measures in order to allow detainees to train for future resocialisation and noted with regret that these were often not granted on security reasons.<sup>32</sup>

<sup>26</sup> Cf. NCPT, Activity report 2013, p. 46; CPT Standards, Solitary confinement of prisoners, Extract of the 21st General Report of the CPT [CPT/Inf(2011)28], 16 para. 57 (c); ECtHR, Ramirez Sanchez v. France, application no. 59450/00, para. 157; ECtHR, Babar Ahmad and Others v. The United Kingdom, application no. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09, para. 212; Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment and punishment, A/63/175, 28 July 2008, para. 80.

<sup>27</sup> Cf. NCPT, Activity report 2013, p. 48; 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 24 septembre au 5 octobre 2007, CPT/Inf (2008) 8, para. 138: <https://www.bj.admin.ch/dam/data/bj/staat/menschenrechte/folterpraevention/ber-cpt-besuch07.pdf> (09.03.2017); Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment and punishment, A/63/175, 28 July 2008, Annex, p. 25.

<sup>28</sup> Especially recreational activities, employment opportunity, physical exercise as well as social contact within the detention facility and to the outside world.

<sup>29</sup> Pursuant to Article 59 para. 3 of the Swiss Criminal Code, which allows the detention of people with a mental disorder in a secure institution under certain circumstances.

<sup>30</sup> The report is forthcoming in May 2017 and will be found on the Commissions' website: <https://www.nkvf.admin.ch/nkvf/en/home.html> (09.03.2017).

<sup>31</sup> Article 14 paras. 2 and 17, 25 CRPD; Nelson Mandela Rules, Rule 25 para. 2; The protection of persons with mental illness and the improvement of mental health care, resolution 46/119 adopted by the General Assembly, 17 December 1991, A/RES/46/119 (MI Principles), No. 14; CPT Standards, Health care services in prisons, Extract from the 3<sup>rd</sup> General Report [CPT/Inf (93) 12], para. 43; Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules (European Prison Rules), paras. 12.1, 12.2, 47.1 and 47.2; ECtHR, Bergmann v. Germany, application no. 23279/14, para. 118; ECtHR, Sławomir Musiał v. Poland, application no. 28300/06; ECtHR, Rivière v. France, application no. 33834/03; ECtHR, G. v. France, application no. 27244/09; ECtHR, Brand v. the Netherlands, application no. 49902/99.

<sup>32</sup> Cf. UN Human Rights Committee, General Comment No. 35 on Article 9 (Liberty and security of person), 16 December 2014, CCPR/C/GC/35, paras. 19 and 21; Recommendation CM/Rec(2014)3 of the Committee of Ministers to member States concerning



#### **d. Conditions in pre-trial detention**

22. In 2014 the NCPT conducted an in-depth review of the pre-trial detention conditions in Switzerland and addressed its recommendations to the authorities.<sup>33</sup>
23. During its monitoring visits, the NCPT observed that the pre-trial detention regime was often more restrictive than for convicted prisoners, particularly in terms of the restrictions imposed on the liberty of movement. In most pre-trial detention facilities, detainees regularly are locked up in their cells for 23 hours a day.<sup>34</sup> Contact with the outside world was often restricted based on the alleged danger of collusion. The Commission frequently found these restrictions to be disproportionate.
24. Regarding closed juvenile facilities, of which the NCPT conducted an in-depth review during 2014 and 2015<sup>35</sup>, the Commission noted with concern that pre-trial detention conditions were generally too restrictive and unsuitable for juveniles.<sup>36</sup> The Commission regularly pointed out in its recommendations that the detention regime was not fully consistent with international standards.<sup>37</sup>

#### **e. Forced removal transfers to airports and return flights**

25. The NCPT has been monitoring transfers to the airport and forced return flights (Level IV) since July 2012. In its most recent report<sup>38</sup> the Commission has welcomed, that no case of forced chemical restraint has been reported since 2015. The use of physical restraints during transfers to the airport was generally applied on a more differentiated basis than in previous years. Nevertheless, the practice regarding the use of physical restraints varies enormously among Cantons. In some cases, the NCPT considered the use of force to be excessive.<sup>39</sup>
26. Occasionally, the Commission observed a separation of children from their parents prior to

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dangerous offenders, 19 February 2014, para. 6; Recommendation Rec(2004)10, Article 9 para. 1.

<sup>33</sup> Cf. NCPT, Activity report 2014, p. 23: <https://www.nkvf.admin.ch/dam/data/nkvf/Berichte/taetigkeitsberichte/2014/activity-report-2014.pdf> (16.03.2017).

<sup>34</sup> Cf. NCPT, Report on visit to the regional prison of Bern of 3 and 4 November 2011, para. 11: <https://www.nkvf.admin.ch/dam/data/nkvf/Berichte/2011/bern/ber-regiogefaengnis-d.pdf> (02.03.2017); NCPT, Report on the regional prison of Thun of 27 and 28 January 2014, para. 11: [https://www.nkvf.admin.ch/dam/data/nkvf/Berichte/2014/thun/140708\\_ber\\_rgthun.pdf](https://www.nkvf.admin.ch/dam/data/nkvf/Berichte/2014/thun/140708_ber_rgthun.pdf) (02.03.2017); NCPT, Report on the pre-trial detention facilities of Sion and Martigny from 27 to 29 November 2012, paras. 28 and 36: [https://www.nkvf.admin.ch/dam/data/nkvf/Berichte/2012/sion\\_martigny/20131003\\_ber-VS-sion-martigny-d.pdf](https://www.nkvf.admin.ch/dam/data/nkvf/Berichte/2012/sion_martigny/20131003_ber-VS-sion-martigny-d.pdf) (02.03.2017).

<sup>35</sup> Cf. NCPT, Activity report 2015, p. 31: <https://www.nkvf.admin.ch/dam/data/nkvf/Berichte/taetigkeitsberichte/2015/activity-report-2015.pdf> (24.02.2017); Report on NCPTs review of closed juvenile facilities in Switzerland (*Gesamtbericht über die schweizweite Überprüfung der geschlossenen Jugendeinrichtungen 2014/2015*): <https://www.nkvf.admin.ch/dam/data/nkvf/Berichte/2015/schweiz/schwerpunktbericht-jugendeinrichtungen.pdf> (24.02.2017).

<sup>36</sup> In some cases, the period of confinement in cells is over 20 hours and in most facilities the amount of time allowed for outdoor or other exercise is limited to one hour a day. Cf. NCPTs review of closed juvenile facilities, para. 59; NCPT, Activity report 2015, p. 39.

<sup>37</sup> Article 37 (c) CRC; Article 10 para. 2 (b) ICCPR; United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), resolution 40/33 adopted by the General Assembly, 29 November 1985, A/RES/40/33, paras. 13.1 and 13.4; Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures, 5 November 2008, paras. 80.1, 81, 95.4.

<sup>38</sup> Cf. NCPT, Report on forced removal flights from April 2015 to April 2016: <https://www.nkvf.admin.ch/dam/data/nkvf/Berichte/2016/vollzugsmonitoring/bericht-vollzugsmonitoring.pdf> (23.02.2017).

<sup>39</sup> Cf. NCPT, Report on forced removal flights from April 2015 to April 2016, paras. 15 (police armed with tasers), 16 (masked police forces), 17 and 20 (shackles).



forced removals by air. The Commission urged the authorities to duly take into account the child's best interest and to use separation only as a measure of last resort in exceptional circumstances.<sup>40</sup>

27. According to federal regulations<sup>41</sup> and based on recommendations of the Committee for the Prevention of Torture (CPT)<sup>42</sup> prior notification about the pending removal should be given to the persons concerned. The Commission observed that despite adoption of rules in that respect<sup>43</sup>, the federal regulations are not being adequately implemented by all Cantons.

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<sup>40</sup> Cf. NCPT, Report on forced removal flights from April 2015 to April 2016, para. 32; Article 8 of the European Convention on Human Rights (Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms (ECHR)) and Article 9 CRC in combination with article 3 para. 1 CRC.

<sup>41</sup> Cf. Article 29 of the Regulation on the use of force and police measures under the competence of the Federation of 12 November 2008 (*Verordnung über die Anwendung polizeilichen Zwangs und polizeilicher Massnahmen im Zuständigkeitsbereich des Bundes*, ZAV; SR 364.3) envisages at least 72 hours.

<sup>42</sup> For example Report to the Government of the Netherlands on the visit to the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 16 to 18 October 2013, CPT/Inf (2015) 14, para. 17.

<sup>43</sup> Issued in April 2015 by the State Secretariat for Migration; Cf. *Rundschreiben über die Musterprozesse betreffend medizinischer Datenfluss und Zwangsmassnahmen bei der Anhaltung und Zuführung zum Flughafen*, Staatssekretariat für Migration (SEM), 6. Mai 2015, (not published).