



**Optional Protocol to the
Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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**Subcommittee on Prevention of Torture and Other Cruel,
Inhuman or Degrading Treatment or Punishment**

**Comments of the national preventive mechanism on the
recommendations and observations addressed to it in
connection with the Subcommittee visit to Switzerland
undertaken from 27 January to 7 February 2019*, ****

[Date received: 5 March 2021]

* The present document is being issued without formal editing.
** On 5 March 2021, the national preventive mechanism requested the Subcommittee to publish its replies, in accordance with article 16 (2) of the Optional Protocol.



I. Replies to recommendations relating to legal, institutional and structural issues

1. The National Commission for the Prevention of Torture welcomes the Subcommittee's recommendations and observations¹ concerning its operational independence and the need to mobilize additional financial and human resources to enable it to carry out its mandate effectively. However, it considers that these recommendations should also be addressed to the Swiss federal authorities, which are primarily responsible for their implementation.

A. Replies to the issues raised in paragraphs 19–25

2. As mentioned in paragraphs 23 and 42 of the Subcommittee's report, the Commission ordered an expert opinion² in 2016 to consider the question of its financial independence and to determine whether its administrative ties to the General Secretariat of the Federal Department of Justice and Police are sufficiently compliant with international requirements on operational independence, given the General Secretariat's supervisory role. The two experts concluded in their opinion that the Commission's administrative ties to the General Secretariat of the Federal Department of Justice and Police were a serious impediment to its operational independence and did not comply sufficiently with international requirements.³ On this basis, the Commission conducted consultations with the Federal Department of Justice and Police, including the Federal Office of Justice, in 2017 and 2018. The lack of a tangible outcome from these consultations prompted the Commission to reconsider the relative importance of this issue and invest its limited resources elsewhere.

3. Linking the Commission to a national human rights institution would seem to be an effective and judicious solution from both a material and a financial perspective. In late 2019, the Swiss Federal Council approved a proposal to establish a national human rights institution. Developments in this regard are being closely followed by the Chair of the Commission, who sits on the advisory board of the Swiss Centre of Expertise in Human Rights. (The latter body was founded as a pilot project by the Swiss Confederation in 2011 with a view to establishing a national human rights institution).

4. For the time being, the Commission's attachment to the General Secretariat of the Federal Department of Justice and Police gives it access to administrative, financial, linguistic and human resources for which it does not currently have its own budget. This synergy makes it possible for the Commission's secretariat to maintain a lean structure, which, in view of the limited financial resources available to the Commission, is undoubtedly an effective temporary solution (see sections B and C below).

5. The Commission wishes to emphasize that, in practice, the Commission's commitment and independence have not been questioned by the managers of the detention facilities visited or by the competent federal and cantonal authorities, civil society or the media. Nevertheless, the issue of operational independence and its eventual realization remains important for the Commission.

B. Replies to the issues raised in paragraphs 26–35

6. With regard to the Subcommittee's recommendations concerning the Commission's financial resources, it should be noted that the Commission is currently unable fully to

¹ Visit report of the Subcommittee (CAT/OP/CHE/ROPNM/R.1), dated 26 May 2020.

² Kälin & Nowak, 2017, *Rechtliche Aspekte der Unabhängigkeit der Nationalen Kommission zur Verhütung von Folter (NKVF)*, (internal document).

³ In particular the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), General Assembly resolution 48/134 of 20 December 1993.

perform the tasks entrusted to it under federal law.⁴ The Commission therefore has to prioritize its activities, which severely restricts its ability to exercise its mandate effectively.

7. The large number of places of detention in Switzerland, the country's federal structure and the complexity to which this structure gives rise put a strain on the Commission's limited financial resources. The fact that powers relating to deprivation of liberty are decentralized in Switzerland makes monitoring more complex from the point of view of analysing statutory provisions, preparing for visits and following up on the implementation of recommendations. In addition, the Commission must engage with a large number of interlocutors and stakeholders, who vary depending on the thematic area concerned, in order to promote the implementation of its recommendations. In this respect, the Commission maintains a regular dialogue with the Conference of Cantonal Justice and Police Directors in order to ensure that its recommendations are implemented, not only in the specific institution that has been visited but also at the cantonal and, more broadly, the national level. Conducting dialogues at the national level also makes it possible to optimize the use of resources.

8. Acting on the recommendations contained in the Subcommittee's report, the Commission has been conducting bilateral discussions on its financial and human resources with the relevant federal authorities since August 2020. However, the Commission believes that it would not be appropriate to present a budget forecast at this stage. The Commission would like to point out that similar consultations have taken place in the past without producing concrete results.

9. In the light of the pioneering role played by Switzerland in the field covered by the Optional Protocol,⁵ the Commission hopes that an appropriate institutional solution will be found that meets the requirements of international law⁶ and puts an end to the Commission's chronic lack of resources. The Commission would like to see greater alignment between external pronouncements⁷ and the actual situation in Switzerland, particularly with regard to the funds allocated to the country's own preventive mechanism.

10. The Commission would like to point out that, thanks to its networking efforts, it has been allocated additional resources and posts to enable it to conduct new monitoring activities related to repatriation by air, federal centres for asylum seekers and medical care in detention facilities. However, the Commission considers that such ad hoc, project-specific funding is not sustainable in the long term and does not allow the Commission to operate effectively and independently.

11. The system of part-time public service (*milice*), which is specific to the Swiss tradition, allows the members of the Commission to continue working in fields related to the Commission's mandate while providing the expertise that it needs to operate properly. However, the Commission has already taken concrete action in connection with the availability of its members: in the context of current efforts to recruit a new member, it has increased the percentage of time that should be devoted to the Commission's work each week. The Commission is of the view that, if its members are more available and properly paid, it will be able to undertake more frequent monitoring visits to places of detention in Switzerland.

12. Given that any change in the composition of the Commission, or in the number of members, would require an amendment to be made to the Federal Act on the Commission for the Prevention of Torture,⁸ the Commission does not consider such a change to be a priority at this stage. For this reason, the Commission decided, at its plenary meeting in

⁴ Federal Act of 20 March 2009 on the Commission for the Prevention of Torture, RS 150.1.

⁵ See the Action Plan against Torture of the Federal Department of Foreign Affairs, 2018, page 7: "In the 1990s Switzerland assisted with the drafting of the Optional Protocol to the UN Convention against Torture. ... Switzerland had already demonstrated its support for the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. In the 1990s Switzerland explicitly made the fight against torture a priority of its human rights policy."

⁶ Including the Paris Principles.

⁷ See the Action Plan against Torture of the Federal Department of Foreign Affairs, 2018, page 13: "NPMs must be professionally staffed and managed. They must also have sufficient funding and have access to all places of detention."

⁸ RS 150.1, art. 5: "The Commission shall have twelve members."

September 2020, to abandon the idea of increasing the number of members beyond 12 and to enhance its effectiveness by other means.

C. Replies to the issues raised in paragraphs 36–39

13. The Commission agrees with the Subcommittee's view that it is necessary to significantly increase the staff of the secretariat. The Commission's current level of funding allows for 3.4 full-time posts, of which 1.3 are financed from funding for specific projects in the areas of medical care in detention facilities and assessment of conditions and treatment in federal centres for asylum seekers.

14. In line with its three-year strategy,⁹ the Commission intends to extend its monitoring visits to medical and social care institutions, including homes for older persons, so that it can examine more closely whether measures restricting freedom of movement are in compliance with fundamental rights. Such monitoring visits are important given the current situation, in which some homes for older persons have taken steps to restrict freedom of movement in response to the coronavirus disease (COVID-19) pandemic. Establishing a permanent system of visits to such establishments would require a level of financial and human resources that the Commission does not currently possess. As stated above, the Commission plans to consult with the federal departments concerned with a view to significantly increasing the secretariat's human resources.

15. The Commission wishes to correct three observations made by the Subcommittee. The secretariat has the equivalent of 3.4 full-time positions divided among five staff members, including the head of the secretariat, who also works part-time. It is true that the rules for the hiring of the secretariat's staff are the same as those for federal officials. However, it is important to note that the secretariat's staff work exclusively for the Commission, albeit on a part-time basis, and do not perform any other duties within the Federal Department of Justice and Police.

D. Replies to the issues raised in paragraphs 40–42

16. As regards international cooperation with other mechanisms, the Commission regularly meets with its German and Austrian counterparts in order to exchange information on various subjects. In October 2019, the Commission hosted representatives of the German and Austrian mechanisms for a two-day meeting on deprivation of liberty under legislation on foreign nationals. Particular attention was paid to differences between the enforcement and removal arrangements in the three countries. In April 2019, the Commission signed a cooperation agreement with the national mediation body of Kosovo on the monitoring of repatriations by air. The signing of this agreement allowed for the fulfilment of a long-standing wish of the Commission concerning repatriation and the establishment of a system of follow-up from the point when persons to be repatriated arrive in Kosovo.

17. The Commission also engages regularly with other European national preventive mechanisms through the Council of Europe's network of national preventive mechanisms. In addition, the Commission periodically receives requests for the exchange of information from other national preventive mechanisms or through the Federal Department of Foreign Affairs or the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe. The Commission is unable to respond to all such requests owing to its lack of financial and human resources.

18. The Commission believes that it has responded, in sections A, B and C above, to the recommendation concerning the conclusions reached by Kälin and Nowak and the usefulness of drawing on their expert opinion in consultations with the competent authorities.

⁹ The latest strategy covers the period from 2019 to 2021.

E. Replies to the issues raised in paragraphs 43–46

19. The Commission believes that it has addressed, in section A, the recommendation that it urge the Federal Government and other stakeholders to ensure recognition of the Commission's independence.

20. In the review conducted by the Commission in 2019, 10 years after it was founded, the Commission concluded that it had succeeded in establishing its legitimacy as a preventive mechanism in Switzerland while gaining the trust of the authorities that it is tasked with overseeing. It also believes that it has become a key actor in the field of deprivation of liberty. It is regularly called on by the relevant authorities and civil society to provide advisory support in connection with any issue related to detention or removals by air. The Commission is also in regular contact with civil society organizations working in the area of human rights and migration. Given that the interlocutors concerned are aware of the Commission's mandate and activities, it is not necessary to conduct awareness-raising campaigns. Furthermore, the Commission currently has neither the financial nor the human resources required to carry out such campaigns.

21. Mobilizing additional financial resources to fulfil its mandate and carry out its duties under federal law¹⁰ remains a priority for the Commission. Moreover, given the pioneering role played by the Swiss federal authorities in this field, the Commission believes that they too have an interest in ensuring that the national preventive mechanism has sufficient funding and staff to fulfil its mandate.

II. Replies to the recommendations on visit methodology

A. Replies to the issues raised in paragraphs 47 and 48

22. Most of the recommendations issued by the Commission following a monitoring visit concern matters that require additional financial and human resources. The implementation of these recommendations therefore depends on political decisions (relating to, inter alia, the approval of budgetary allocations, the expansion or improvement of infrastructure, and staff training), which take time. Follow-up visits are therefore conducted after a certain period has passed. Furthermore, owing to its limited resources, the Commission has to establish priorities for follow-up visits. Priority is often given to the follow-up of recommendations contained in thematic reports.

23. As mentioned above, the Commission regularly meets with representatives of the Conference of Cantonal Justice and Police Directors and, more specifically, the secretaries of the three Swiss intercantonal agreements (*concordats*) on the enforcement of sentences and measures, with a view to improving the implementation of its recommendations at the national level. The exchanges on the issue of pretrial detention have been particularly constructive.

24. The Commission's three-year strategy sets out its strategic objectives and thematic priorities. Every year, on this basis, the Commission defines the thematic priorities for the coming year in order to ensure optimal use of its limited resources. The secretariat then draws up a provisional annual plan identifying the places of detention that will be visited for monitoring purposes. This plan remains flexible and may be adjusted in line with information provided by external sources, including prisoners, prisoners' relatives, prison staff and interest groups. The Commission decides on a case-by-case basis, depending on the focus of the visit concerned, whether that visit should be announced in advance. Nevertheless, unannounced visits remain important.

¹⁰ RS 150.1.

B. Replies to the issues raised in paragraphs 49–65

25. The Commission wishes to emphasize that visits to places of detention are carried out in accordance with its guidelines on such visits.¹¹ The Commission is satisfied that the confidential and voluntary nature of interviews is respected at all times.

26. The guidelines on visits to places of detention specify that discussions with prisoners should never take place in the presence of staff of the institution being visited. Furthermore, conversations must be conducted only with the explicit consent of the persons concerned. The guidelines also specify that individual interviews must allow for sensitive issues to be discussed in a familiar setting and for issues raised in a group discussion to be explored in greater depth. The Commission shares the Subcommittee's view that the members conducting interviews should introduce themselves properly in order for a visit to be successful. Steps have been taken to remind members of this point and to include it in the guidelines.

27. Individual interviews take place in private, usually in cells, meeting rooms, visiting rooms or exercise yards, depending on the size of the establishment and the facilities available. The visiting delegation makes sure that staff cannot overhear the conversations in order to safeguard the confidentiality of interviews. It also ensures that any surveillance cameras are deactivated.

28. As regards the joint visit to the Bern regional prison, the Commission regrets that not enough time was devoted to this visit, which was shorter than such visits usually are. The joint visit did not take place in optimum conditions as the Commission had a very busy schedule at the time of the Subcommittee's visit.

29. Where reprisals are concerned, the Commission has been operating for 10 years but has never become aware of any case of harm being done to an individual as a result of an interview conducted during a monitoring visit. Nevertheless, the Commission will take steps to remind the staff in charge of the institutions visited that reprisals are unacceptable, particularly where it has observed that there are tensions between prisoners and staff. In addition, the issue of reprisals will be addressed in the Commission's guidelines on visits to places of detention.

30. The Commission is currently preparing a pamphlet containing key information on its work, for the benefit of prisoners. A reference to the issue of reprisals will be included. The pamphlet will be translated into the three official languages of Switzerland and other languages considered to be relevant, such as Arabic, English, Portuguese and Spanish. Since November 2019, a pamphlet containing information on the Commission's mandate and role has been available. This pamphlet has been translated into four languages and is aimed at a wider audience.

31. The Commission intends to give personalized badges to its members and the secretariat staff so that they can be easily identified during monitoring visits. These badges are in the process of being created.

32. In the time that it has been operating, the Commission has not encountered any major language difficulties that have prevented it from communicating with prisoners. The members of the Commission and the staff of the secretariat speak several languages, including languages other than the official languages of Switzerland. In certain situations, however, the Commission has used interpreters, particularly during visits to centres for asylum seekers. The Commission does not have the financial resources to pay for one or more interpreters for each monitoring visit.

33. Contrary to what is stated in paragraph 62 of the Subcommittee's report, the Commission believes that it allots sufficient time for discussions with the staff in charge of institutions and the cantonal authorities concerned. At the end of a visit, the visiting delegation gives initial feedback to the management of the institution. The findings and recommendations contained in the visit report are then presented to the management of the institution concerned and the relevant cantonal authorities, as part of a second discussion,

¹¹ Updated version, February 2018.

before the report is transmitted to the cantonal authorities. This process, which is intended to promote the acceptance of the recommendations, demonstrates the importance of holding regular dialogues with the authorities. Before publishing each report, the Commission gives the competent authorities the opportunity to comment in writing on the content of that report.¹²

34. With regard to the joint visit to the Bern regional prison, the Commission wishes to point out that the findings and recommendations contained in the visit report were presented in full to the prison management and the relevant cantonal authorities on 11 July 2019.

35. Ever since it was founded, the Commission has chosen to routinely publish all visit reports, in a spirit of transparency. In accordance with article 23 of its regulations, the Commission posts its reports, together with the response of the authority concerned, on its website.¹³ The findings and recommendations contained in thematic reports are presented and discussed at round-table meetings with representatives of the competent authorities at the cantonal and national levels and with relevant civil society organizations.

¹² Regulations of the National Commission for the Prevention of Torture (internal document), 1 March 2019, article 22.4: “The competent authority has 60 days to submit its response to the Commission. Proposals for amendments to factual content may be considered, if necessary.”

¹³ Ibid., art. 23.