


# National Commission for the Prevention of Torture (NCPT)

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# 2017

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National commission for the prevention of torture (NCPT)



National Commission  
for the Prevention of  
Torture (NCPT)

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**2017**

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Foreword by the Chairman	1
<hr/>	
1. The NCPT: an overview	5
<hr/>	
2. Detention monitoring	11
<hr/>	
3. Other contacts and activities	23
<hr/>	
4. Independence of National Preventive Mechanisms (NPMs)	31
<hr/>	
Attachment	
Overview of Recommendations submitted by the Commission in 2017	47
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## Foreword by the Chairman

The Federal Act on the Commission for the Prevention of Torture gives the Commission a mandate to, among other things, inspect detention facilities and submit *recommendations* to the responsible authorities “with the objective of improving the treatment and living conditions of persons who have been deprived of their liberty”.

This mission appears unobjectionable at first glance. However, it has proved to be a major challenge in practice. The reports prepared by the NCPT following its inspections include, as the law requires, observations concerning the need for improvements at the facilities in question and recommendations on how this can be achieved. Inevitably, these observations contain an element of criticism, otherwise there would be no need for recommendations. These assessments can sometimes spark some irritation and annoyance. The Commission does not always succeed in formulating the recommendations in such a way as to make them understood not as negative judgments, but as well-intended encouragement to review possibilities for improvement.

Often, we are accused of having focused only on the negative rather than accentuating the positive. I can understand these ob-

jections very well. Nevertheless, I would like to draw attention to the following: during visits, the commission is represented by a team of three to five individuals, who spend one or two days in the detention facility. This is sufficient to observe certain deviations from standards or other deficiencies. However, after such a brief inspection, it would be daring to say that a facility is run in an exemplary manner or to certify the propriety of the manner in which detainees are treated. Certainly, we are often impressed by the warm-hearted interactions we witness when we visit the workshops or accompany staff members on their rounds. Nevertheless, it would be presumptuous on our part to take this as a basis for an overall assessment of the quality of a facility – something which the Commission avoids even in the opposite case where conditions are highly unsatisfactory – as it would entail the risk of giving a seal of approval without having identified deficiencies. It is thus not always possible to avoid offence being taken in some cases, despite the efforts of our delegations to stress also the positive observations they have made during their discussions with the administration and staff of the facilities.

A further difficulty regarding the task of issuing recommendations in reports to the responsible authorities lies in ensuring that they are being addressed to the right stakeholders, and that they strike a proper balance while remaining consistent with the facts. In its deliberations on the reports at the Commission's plenary meetings, discussions over the proper formulation of the recommendations often continue for hours. Should they better be addressed to the Parliament, to the Federal Council, or to the administration of the facility in question. How is criticism concerning individual cases to be presented? Are we applying the same standards to all facilities? Is it possible to implement the recommendations and, if not (due to financial reasons, for example), does it make sense to keep reiterating the same criticism, even if rapid improvements in the situation cannot be expected in the near future? Would it be understood as acceptance of the existing conditions if such criticism would be omitted? Furthermore, over the Commission's eight years in existence, its membership has changed, while the establishment of standards has remained an ongoing process. Thus, it is possible that new recommenda-



tions will be introduced at some point with regard to matters that did not elicit criticism in earlier years. This, too, gives rise to questions on the part of those to whom the recommendations are addressed – questions that also deserve answers.

Finally, the success or failure of our recommendations is decided through *dialogue with the people in positions of responsibility*. This is why dialogue is also the most important means at the Commission's disposal. Conditions will be improved only if we are able – through direct discussions with the administration of detention facilities, correctional justice authorities, and members of the government – to persuade them of the need to implement our recommendations. Dialogue is also an important means of self-examination for the Commission, of considering our own activities with a critical eye and for adjusting our perspective accordingly.

I am convinced that the NCPT has done an excellent job performing this difficult mission throughout the first eight years of its existence. I would like to thank all of my colleagues on the Commission for the open-minded and amiable atmosphere that prevails, making discussion possible even when there is disagreement. I would also like to express my gratitude to the Head of the Commission's Secretariat and to the entire staff for the professionalism they regularly display. Finally, my thanks also go to our partners in dialogue to whom our recommendations are addressed, both in the Federal Administration and in the cantonal governments, both for their frankness and for the understanding they demonstrate in dealing with criticism.



Alberto Achermann  
Chairman



# I. The NCPT: an overview

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## 1

## 1.1. Strategic priorities

The thematic focus during the 2017 reporting year was on monitoring the implementation of prior recommendations issued by the Commission with regard to administrative detention under the Foreign Nationals Act and the treatment of high-security detainees. To that end, the Commission conducted 18 inspection visits. Overall, the Commission noted that the public authorities regularly implemented its recommendations and that the facilities under review were making efforts to take appropriate measures.

With regard to the conditions of administrative detention under the Foreign Nationals Act, the Commission found that the restrictions of freedom of movement were nearly as strict as those imposed in pre-trial detention, which from a fundamental rights perspective is unacceptable. Furthermore, the material conditions of detention too closely resembled those of a prison, which is not consistent with the purpose of administrative detention. Nevertheless, improvements in the detention regime in individual facilities have been achieved and there has been an overall improvement in detention conditions.

The Commission found that the conditions of detention in the reviewed high-security units at the Thorberg and Lenzburg correctional facilities, had improved and noted with satisfaction that steps have been taken, in particular, with regard to the length of solitary confinement in those units and the periodic review of the decision-making process for such internment.

This past year the Commission for the first time devoted special attention to the detention conditions of female detainees held in pre-trial or pre-deportation detention. The Commission observed that there were serious shortcomings in this area, specifically with regard to awareness of international standards, and criticised the fact that detention conditions were primarily oriented towards the needs of male detainees.

A further priority was the monitoring of reception and procedure centres that were first inspected in 2012 and 2013, and of the new Federal Asylum Centres, which were included in May 2017

among the facilities subjected to regular oversight by the Commission. The main focus of the visits to those centres was the examination of living conditions and the monitoring of health care and treatment, the use of disciplinary measures, and the implementation of special protection measures for particularly vulnerable persons, such as women, children and unaccompanied minor asylum-seekers (UMAs).

The Commission also conducted four inspection visits to psychiatric facilities, focusing in particular on adult and geriatric psychiatry, and reviewed whether the measures of restraint, including such measures as mechanical restraint and seclusion comply with human rights standards; it also reviewed the implementation of prescriptions of involuntary placement. In particular, it conducted a review as to the existence of treatment plans and with regard to the conditions for ordering treatments without consent or restrictions of freedom of movement.

Furthermore, during the past year, the Commission held various meetings with relevant stakeholders in the area of healthcare in detention and initiated a pilot project for healthcare monitoring in detention facilities, which is funded by the Federal Office of Public Health (FOPH).

The Commission also conducted a study of border police measures for asylum seekers and suspected drug smugglers (body – packing), which included an unannounced inspection visit and various other investigations. It also requested responses from the Swiss Border Guard Corps and the cantons concerning the various legal and medical issues involved and held two meetings with senior officials from the Border Guard Corps.

During the reporting year, the Commission also devoted efforts to the clarification of various questions of administrative law relating to the matter of the NCPT's functional independence. To that end, it commissioned Prof. em. Walter Kälin and Prof. em. Manfred Nowak with the preparation of a legal opinion on this topic. In relation to that, the Commission also held various meetings with senior officials from the Federal Office of Justice.

Finally, during the reporting year, the Commission also undertook a study trip to Luxembourg, where it visited an internment facility for the administrative detention under immigration law.

## 1.2 Organisation

### 1.2.1 Members

The Commission is composed of 12 members, who are appointed by the Federal Council and chosen for their professional expertise in the fields of human rights, law, correctional and administrative detention, medicine, psychiatry and police work.

Members of the Commission:

- Prof. Dr. iur. Alberto Achermann, attorney, Chairman
- Lic. iur. Leo Näf, Vice-Chairman
- Lic. iur. Giorgio Battaglioni, attorney, Vice-Chairman
- Daniel Bolomey
- Dr. med. Corinne Devaud-Cornaz
- Dr. med. Philippe Gutmann
- Nadja Künzle
- Dr. med. Thomas Maier, Lecturer, psychiatrist
- Helena Neidhart
- Dr. iur., Esther Omlin, Chief Public Prosecutor
- Lic. iur., Franziska Plüss, attorney
- Prof. Dr. iur. Adriano Previtali

### 1.2.2 Observers

For the regular observation of police escorts and forced return flights, the Commission, in addition to deploying its own staff, also engages outside specialists for forced return monitoring. Specialists currently engaged for this purpose are:

- Prof. Martina Caroni, Professor of International Law, University of Lucerne
- Fred Hodel, Integration Officer, City of Thun
- Lea Juillerat, legal expert
- Barbara Yurkina-Zingg, Asylum Coordinator/  
Special Office BEST
- Thomas Mauer, former judge on the High Court of Bern

- Hans Studer, former director of the Wauwilermoos Correctional Facility
- Dr. med. Joseph Germann, physician
- Dr. iur Dieter von Blarer, consultant and mediator (as of May 2017)
- Magdalena Urrejola, migration law expert (as of May 2017)

### 1.2.3 Secretariat

The NCPT Secretariat is responsible for the operational planning and organisation of the Commission's monitoring activities. It is further responsible for the planning and preparation of the Commission's inspection visits in advance as well as for the postprocessing including the preparation of all reports and position papers addressed to federal or cantonal authorities. It maintains regular contact with other human rights bodies at both the UN and Council of Europe level and with partner organisations abroad. Within Switzerland it communicates with federal and cantonal authorities as well as with civil society organisations.

The NCPT secretariat currently employs five part-time employees, who fill the equivalent of 3.3 full-time positions, plus one graduate trainee. In addition, under a service agreement with the Swiss Centre of Expertise in Human Rights (SCHR), the Commission is assisted in its work by academic experts acting as consultants, to the equivalent of a 40% position.

- Sandra Imhof, Head of Secretariat
- Alexandra Kossin, Scientific Collaborator, Repatriation Monitoring, and Deputy Head of Secretariat
- Kelly Bishop, Scientific Collaborator, Federal Asylum Centres
- Tsedön Khangsar (as of October 2017), Scientific Collaborator, Healthcare Pilot Project
- Agnes Meister, (as of July 2017), Administrative Assistant
- Kevin Schori, Graduate Trainee
- Anja Eugster (until 30 September); Lukas Heim (as of October 2017), SCHR academic consultant

## 1.3 Budget

The NCPT was able to increase its overall annual budget from CHF 760,000 by CHF 200,000, beginning in 2018, to cover the costs of additional monitoring activities at Federal Asylum Centres and of the pilot project on healthcare in correctional facilities. The budget increase was made possible by the allocation of additional funds from the government offices and authorities concerned and is earmarked exclusively for additional monitoring activities and staff requirements over a limited period of time.

One third of the Commission's budget is used to cover the costs of inspection visits conducted by Commission members, observers and external experts hired to assist them. The personnel costs of the secretariat account for just under two-thirds of the total budget.



# Detention monitoring

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# 2

## 2.1 Overview of monitoring activities

During the past year, the NCPT carried out a total of 18 inspection visits to detention facilities. In relation to that, it also reviewed the implementation of the applicable provisions of the Criminal Procedure Code, the Criminal Code, the Civil Code and the statutes on asylum and immigration.

**The Commission inspected one pre-trial detention facility, one correctional facility, two high-security units, five facilities for the administrative detention under Foreign Nationals Act, five Federal centres for the accommodation of asylum seekers, one forensic psychiatry clinic, and four adult and geriatric psychiatry clinics.**

In the follow-up to those inspection visits, it also conducted six feedback meetings, in order to personally inform the authorities about its findings.

Furthermore, the Commission accompanied a total of **63 forced return flights and the transfer to the airport of 79 persons, from 18 cantons, whose repatriation had been ordered.**<sup>1</sup> All forced return flights accompanied by the Commission were level-4 repatriations.<sup>2</sup> 12 forced return flights were carried out under the Dublin Association Agreement.<sup>3</sup> Seven of the forced return flights were carried out on group flights organised jointly with the EU. In five cases the Commission requested a written response from the authorities for explanations concerning the police interventions observed. The Commission's observations will be summarised in a report and submitted to the Special Committee on Repatriation and Expulsion Enforcement for response.

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<sup>1</sup> The transfer procedure includes the taking into custody and transport of one or more persons to the airport.

<sup>2</sup> Art. 28, para. 1 of the Ordinance of 20 March 2008 on the Use of Police Control and Restraint Techniques and Police Measures under Federal Jurisdiction (Use of Force Ordinance, UFO) [Zwangsanwendungsverordnung, ZAV, SR 364.3].

<sup>3</sup> Agreement of 26 October 2004 between the Swiss Confederation and the European Community concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland (with Final Act), SR 0.142.392.68. These repatriations are carried out under Art. 64a of the Federal Act on Foreign Nationals (FNA) of 16 December 2005, SR 142.20.

During the past year, the Commission had to conduct further investigations regarding individual cases, often brought to its attention by civil society organisations. Several incidents with regard to matters of asylum and immigration law, which raised serious concerns, were further examined. Although the Commission's mandate does not include the examination of individual cases and the secretariat has no resources to do so, the NCPT reached out to the competent authorities with requests for clarifications on certain individual cases. The Commission is not able, however, to conduct case-by-case investigations on a routine basis.

## 2.2 Detention monitoring

The Commission's inspection visits comprise the qualitative monitoring of living conditions and examination of the treatment of detainees from a fundamental rights perspective. The inspections are carried out with or without prior notice. The composition of the delegations differs from case to case, with the members being chosen according to their area of expertise, respectively. In the course of the inspection visits, they conduct interviews with detainees and persons subjected to measures of restraint, as well as with the administration and staffs of the respective facilities. They further review all records and documents which are relevant to their monitoring mandate from a human rights point of view, i.e. house rules and internal regulations, orders for the imposition of disciplinary and security measures, orders for medical treatments without consent or restrictions of freedom of movement, and plans for the enforcement of correctional, administrative and treatment measures.

Following each inspection, the administration of the facility visited first receives an oral feedback, in which the delegation summarises its initial findings and provides the facility with a first opportunity to respond. The delegation's observations and findings are then summarised in a written report, and the recommendations are submitted to the responsible authorities for a response.

Below, the NCPT summarises its main observations and findings from inspections conducted in the past year. The facilities are listed by category.<sup>4</sup>

**a. Pre-trial detention facilities**

**Zurich Prison**<sup>5</sup>

In August 2017, the Commission visited Zurich Prison, where men and women are accommodated in separate units for the enforcement of pre-trial, security and pre-deportation detention orders. The Commission assessed mainly the conditions of detention for women, and overall found that insufficient consideration was given to their specific needs. The Commission criticised in particular, the extended confinement periods, the limited showering opportunities, the availability of only a rather limited range of leisure activities, such as sewing and cooking. Furthermore, and in contrast to male detainees, women were not offered opportunities for further education. The Commission stressed that female detainees should have access to meaningful leisure activities and suggested further that mainly female wardens should be deployed and that the staff should be trained in order to have a greater awareness of the needs of women in detention.

**b. Correctional detention facilities**

**High Security Unit of the Thorberg Correctional Facility (Bern)**<sup>6</sup>

On its follow-up visit in March 2017, the Commission reviewed the implementation of its recommendations concerning the prisons' high security units. Overall, the Commission welcomed the various measures that had been implemented at the facility since its last visit in 2012. A new unit for long-term detainees has been constructed and detailed concepts of detention regime policy in the high secu-

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<sup>4</sup> The reports on the facilities visited can be accessed at: <https://www.nkvf.admin.ch/nkvf/de/home/publiservice.html> (in German).

<sup>5</sup> Report to the Government Council of the Canton of Zurich on the visit of the National Commission for the Prevention of Torture to the Zurich Prison on 25 August 2017, available online at: <https://www.nkvf.admin.ch/nkvf/de/home/publiservice/news/2018/2018-04-23.html> (in German)

<sup>6</sup> Report to the Government Council of the Canton of Bern on the follow-up visit of the National Commission for the Prevention of Torture to the high security units of the Thorberg Correctional Facility, 15 March 2017, available online at: <https://www.nkvf.admin.ch/dam/data/nkvf/Berichte/2017/thorberg/bericht-thorberg.pdf> (in German).

rity units have been prepared. The Commission was nevertheless critical of the practice of using additional restraints for highly agitated individuals in security cells. The Commission requested that the facility ceases the use of such – in its view unnecessary – restraining measures and that, without exception, any further use thereof be officially recorded and accompanied by medical surveillance. Lastly, the Commission expressed its regret that no privacy room had been set up for long-term detainees.

### High Security Unit of the Lenzburg Correctional Facility (Aargau)<sup>7</sup>

During its follow-up visit in August 2017 at the Lenzburg Correctional Facility, the Commission put particular attention to the detention conditions of detainees held in high security units. The Commission specifically assessed the criteria for ordering a placement in such units as well as the procedural aspects. Taking into consideration its previous recommendations, the Commission reiterated its position that the ordering of solitary confinement should be discontinued in cases where it is grounded solely on a risk of flight.<sup>8</sup> With regard to the review of continued detention in solitary confinement, the Commission recommended that the measure should be reviewed at least every three months in accordance with international law. Lastly, the Commission found that the internal regulations on access to the telephone remained too restrictive in the facility. The Commission thus suggested that the rules in question be eased.

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<sup>7</sup> Letter to the Government Council of the Canton of Aargau on the follow-up visit of the National Commission for the Prevention of Torture to the Lenzburg Correctional Facility, 29 August 2017, available online at: <https://www.nkvf.admin.ch/dam/data/nkvf/Berichte/2017/lenzburg/feedbackschreiben-lenzburg.pdf> (in German).

<sup>8</sup> NCPT Activity Report 2013, pp. 44ff.

### Bellechasse Correctional Facilities (Fribourg)<sup>9</sup>

The Commission rated the material conditions of detention for the enforcement of custodial sentences as correct and welcomed the wide range of work opportunities and leisure pursuits on offer. Conversely, the Commission recommended that the development of plans for the enforcement of correctional and administrative measures be expedited so as to provide the inmates with a useful information resource. It further suggested that rules be established for the use of security cells and reiterated the need to record every use of security cells without exception in a special register designed specifically for that purpose.

#### c. Psychiatric institutions

### University Psychiatric Clinics of Basel (UPC) (Basel-City)<sup>10</sup>

In June 2017, the Commission visited the UPC in Basel. The focus of the visit was on involuntary placements in the adult and geriatric psychiatric clinics. The Commission welcomed the living conditions and the psychiatric care provided in the facility. It also noted with satisfaction that the clinic refrains, as a rule, from the use of mechanical restraint. However, it regrets that in some individual cases, seclusion measures have been used on patients suffering from dementia. It further assessed a need for action with regard to the formalisation of procedures for the ordering of restrictions of freedom of movement and with regard to issuing treatment plans.

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<sup>9</sup> Report to the Government Council of the Canton of Fribourg on the visit of the National Commission for the Prevention of Torture to the Bellechasse Correctional Facilities on 9 and 10 May 2017 (not yet published at the time of publication of the Activity Report).

<sup>10</sup> Report to the Government Council of the Canton of Basel-City on the visit of the National Commission for the Prevention of Torture to the University Psychiatric Clinics (UPC) of Basel, 6 and 7 June 2017, available online at: <https://www.nkvf.admin.ch/dam/data/nkvf/Berichte/2017/basel-stadt/bericht-basel.pdf> (in German).

### Cantonal Psychiatric Clinic of Mendrisio (Ticino)<sup>11</sup>

During its visit in August 2017, the Commission welcomed the accommodation and psychotherapeutic care offered at the facility. The Commission rated the measures that had been introduced since 2014 as alternatives to restrictions on freedom of movement such as seclusion and mechanical restraint as positive. The Commission also acknowledged the counselling services offered to patients in the clinic by the Pro Mente Sana Foundation. However, the mixed accommodation of minors with adults was deemed to be inappropriate. The Commission accordingly recommended that proper accommodation and care for minors be provided. Furthermore, the drafting of treatment plans as well as the documentation of treatments without consent which have to be formally ordered should be improved.

### Königsfelden Psychiatric Clinic (Aargau)<sup>12</sup>

During its visit in August 2017, the Commission welcomed the accommodation and psychotherapeutic care offered at the facility. The Commission rated the measures that had been introduced since 2014 as alternatives to restrictions on freedom of movement such as seclusion and mechanical restraint as positive. The Commission also acknowledged the counselling services offered to patients in the clinic by the Pro Mente Sana Foundation. However, the mixed accommodation of minors with adults was deemed to be inappropriate. The Commission accordingly recommended that proper accommodation and care for minors be provided. Furthermore, the drafting of treatment plans as well as the documentation of treatments without consent which have to be formally ordered should be improved.

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<sup>11</sup> Report to the Government Council of the Canton of Ticino on the visit of the National Commission for the Prevention of Torture to the Cantonal Psychiatric Clinic of Mendrisio on 31 August and 1 September 2017 (not yet published at the time of publication of the Activity Report).

<sup>12</sup> Report to the Government Council of the Canton of Aargau on the visit of the National Commission for the Prevention of Torture to the Königsfelden Psychiatric Clinic, 5 and 6 September 2017 (not yet published at the time of publication of the Activity Report).

### Rheinau Clinic for Forensic Psychiatry (Zurich)<sup>13</sup>

In December 2017, the Commission visited the Rheinau Clinic for Forensic Psychiatry. It welcomed the measures that had been introduced since its first visit in 2012 and, in particular, the fact that the policy of requiring patients entering the clinic to bathe in the presence of a staff member has been discontinued. The Commission also noted with satisfaction that all measures of restraint had been properly documented without exception. The Commission nevertheless continues to see a need for action concerning the lack of privacy and personal space in patient rooms due to the possible visibility from outside. A broader spectrum of possibilities for exercise and leisure pursuits should also be offered. Finally, the Commission criticised the design of the walking yard and noted that the planned construction of an additional wing will improve the situation.

#### **d. Facilities for the enforcement of measures ordered under asylum law and Foreign Nationals Act**

##### **i. Federal Asylum Centres**

In 2017, the Commission visited three reception and procedures centres (RCPs) in the cantons of Basel-City (RCP Basel), St. Gallen (RCP Altstätten) and Ticino (RCP Chiasso), and two Federal Asylum Centres (FACs) in the cantons of Neuchâtel (FAC Perreux in Boudry) and Zurich (Zurich Test Facility, Juch Centre). The purpose of the inspection visits was to monitor the treatment of the asylum-seekers accommodated there and to review the conformity with regard to human rights standards of the limitations imposed on their freedom of movement in particular, due to the restricted daytime leave hours. The Commission specifically focusses on the use of disciplinary, security and preventive measures from a human and

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<sup>13</sup> Report to the Government Council of the Canton of Zurich on the follow-up visit of the National Commission for the Prevention of Torture to the Rheinau Clinic for Forensic Psychiatry on 21 December 2017 (unpublished report).



fundamental rights perspective. The Commission's findings and recommendations will be summarised in a consolidated report to the attention of the State Secretariat for Migration (SEM) and will be published in 2019.

## **ii. Facilities for the administrative detention orders issued under Foreign Nationals Act**

### **Frambois and Favra (Geneva) Intercantonal Facilities for administrative detention of foreign nationals<sup>14</sup>**

During its February 2017 follow-up visit, the Commission noted with satisfaction that many of the recommendations it issued in 2012 had already been implemented at the Frambois facility. All cases of security-related placements are now recorded in a register and various internal procedures have been formalised. The Commission also welcomed the detention regime in place at the Frambois facility, in particular because it does not create a prison-like environment and thus reflects the nature of administrative detention under Foreign Nationals Act. The Commission was nevertheless of the view that the facility should ease its policy on the use of mobile telephones and the internet.

Based on its visit in February 2017, the Commission considered that the Favra facility, despite its open detention regime, is outdated and regretted that due to infrastructural issues the access to outdoor activities is restricted. The Commission thus recommended measures in order to provide unrestricted access to outdoor facilities. The Commission noted, however, that there are medium term plans for closure of the Favra facility.

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<sup>14</sup> Letter to the Government Council of the Canton of Geneva on the follow-up visit of the National Commission for the Prevention of Torture to the Frambois Intercantonal Facility, 13 February 2017, available in French, online at: <https://www.nkvf.admin.ch/dam/data/nkvf/Berichte/2017/favras-frambois/bericht-frambois.pdf>, and Report to the Government Council of the Canton of Geneva on the follow-up visit of the National Commission for the Prevention of Torture to the confined Favra Facility, 13 February 2017, available in French, online at: <https://www.nkvf.admin.ch/dam/data/nkvf/Berichte/2017/favras-frambois/bericht-favra.pdf>.

### Realta Correctional Facility (Grisons)<sup>15</sup>

On its July 2017 follow-up visit, the Commission devoted particular attention to the administrative detention unit. In 2011 it had criticised the extended confinement periods, the limited opportunities for free movement, and the strictness of the visiting rules. The Commission noted that the regime currently applied is still overly restrictive. It further criticised the cell confinement periods, which remain too lengthy. It also drew attention to the fact that the walking yard does not meet the statutory requirements and recommended that an alternative solution be found for daily walks. In addition, the Commission encouraged the authorities to ease the visiting rules and to allow visits also on weekends, and that the possibilities for allowing free internet access and the limited use of mobile telephones be reviewed.

### Realta Correctional Facility (Grisons)<sup>16</sup>

On its July 2017 follow-up visit, the Commission devoted particular attention to the administrative detention unit. In 2011 it had criticised the extended confinement periods, the limited opportunities for free movement, and the strictness of the visiting rules. The Commission noted that the regime currently applied is still overly restrictive. It further criticised the cell confinement periods, which remain too lengthy. It also drew attention to the fact that the walking yard does not meet the statutory requirements and recommended that an alternative solution be found for daily walks. In addition, the Commission encouraged the authorities to ease the visiting rules and to allow visits also on weekends, and that the possibilities for allowing free internet access and the limited use of mobile telephones be reviewed.

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<sup>15</sup> Letter to the Government Council of the Canton of Basel-City on the follow-up visit of the National Commission for the Prevention of Torture to the Bässlergut Prison, 24 May 2017, available online at: <https://www.nkvf.admin.ch/dam/data/nkvf/Berichte/2017/bs-baesslergut/bericht-baesslergut.pdf>.

<sup>16</sup> Report to the Government Council of the Canton of Grisons on the visit of the National Commission for the Prevention of Torture to the Realta Correctional Facility on 4 July 2017 (not yet published at the time of publication of the Activity Report).

## Granges administrative detention Centre (Valais)<sup>17</sup>

In December 2017, the Commission conducted its fourth follow-up visit and criticised the detention conditions in the administrative detention centre. In the Commission's view, conditions of detention are not in line with international standards. Despite the fact that spaces for leisure activities and recreation have been created, detainees in administrative detention continue to be subjected to excessively restrictive detention regime. In the Commission's view, the accommodation of women and, in particular, of pregnant women in this facility, is unacceptable, as the facility does not have adequate material conditions nor a separate unit for women. Due to the limited space available and the infrastructural limitations the Commission strongly urged the competent authorities to seek an alternative solution for the accommodation of women.

### 2.3 Position papers

#### a. International human rights bodies

##### i. Human Rights Council – Universal Periodic Review<sup>18</sup>

For the Universal Periodic Review (UPR) of Switzerland in November 2017, the Commission submitted a position paper in which it drew attention to various issues regarding human and fundamental rights based on its findings during visits. Specifically, the Commission raised concerns with regard to the detention of minors, to the use of solitary confinement in high security units, and to the use of force during deportation.

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<sup>17</sup> Report to the Government Council of the Canton of Valais on the visit of the National Commission for the Prevention of Torture to the Granges pre-deportation Centre on 19 December 2017 (not yet published at the time of publication of the Activity Report).

<sup>18</sup> Position paper by the National Commission for the Prevention of Torture at the third Universal Periodic Review of Switzerland, 28 March 2017, available online, in English, at: [https://www.nkvf.admin.ch/dam/data/nkvf/Stellungnahmen/170328\\_NPM\\_Report.pdf](https://www.nkvf.admin.ch/dam/data/nkvf/Stellungnahmen/170328_NPM_Report.pdf).

**b. Legislative work**

**i. Position paper on the amendment of the FDJP Ordinance on the Operation of Federal Housing for Asylum-Seekers**<sup>19</sup>

In its position paper of 26 April 2017, addressed to the SEM, the Commission reviewed the proposed amendments to the provisions on disciplinary measures in the light of its earlier recommendations. The Commission recommended specifically that all disciplinary measures be formally issued and registered. Furthermore, it suggested that they be clearly distinguished from security measures, for which rules must also be established in a separate section of the Ordinance.

**ii. Position paper on the preliminary draft of the Federal Act on the Funding of the National Human Rights Institution**<sup>20</sup>

The Commission drafted a position paper concerning the preliminary draft of the Federal Act on the Funding of the National Human Rights Institution and welcomed the fact that with the planned establishment of such an institution, Switzerland will be in compliance with recommendations made by international human rights bodies to the Swiss government. The Commission pointed out that the future institution will fill a significant gap in the current institutional framework for the protection of human rights. At the same time, the Commission emphasised that only an institution established in conformity with the Paris Principles,<sup>21</sup> and whose mandate takes into account existing national mechanisms, can play a central role in promoting the protection of human rights.

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<sup>19</sup> Stellungnahme der Nationalen Kommission zur Verhütung von Folter zur Änderung der Verordnung des EJPD über den Betrieb von Unterkünften des Bundes im Asylbereich, 26. April 2017] available online (in German) at: <https://www.nkvf.admin.ch/dam/data/nkvf/Stellungnahmen/170426-stn-ejpd-vo-asyl.pdf>.

<sup>20</sup> Stellungnahme der Nationalen Kommission zur Verhütung von Folter zum Erlassentwurf über die Unterstützung der nationalen Menschenrechtsinstitution, 11. Oktober 2017, available online (in German) at: <https://www.nkvf.admin.ch/dam/data/nkvf/Stellungnahmen/171012-stn-mrig.pdf>.

<sup>21</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N94/116/24/PDF/N9411624.pdf?OpenElement>.

## Other contacts and activities

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### 3.1 Contacts with Federal Authorities

#### a. Federal Department of Justice and Police (FDJP)

As part of its efforts to assure the functional independence of the NCPT, the Commission held talks with representatives of the Federal Office of Justice (FOJ) regarding its position under administrative law. In connection therewith, it also discussed the findings set forth in a legal opinion commissioned for the purpose of clarifying the notion of functional independence.<sup>22</sup>

In the course of a regular inspection visit to the Zurich Prison and in relation to a prominent individual case, the Commission examined the detention regime of persons placed in pre-deportation detention and requested the FOJ to clarify issues concerning the detention regime. The Commission noted that orders for pre-deportation detention are issued under § 128, para. 2, of the Zurich Ordinance on Criminal Justice (*Zürcher Justizvollzugsverordnung [JVV]*), based on the provisions governing pre-trial and security detention. Based on art. 20, para. 1 of the Federal Ordinance on International Mutual Legal Assistance in Criminal Matters (*Verordnung über internationale Rechtshilfe in Strafsachen, IRSV*), it recommended that the Federal Office of Justice – as the competent authority – establish clear procedures for the enforcement of such orders, taking into consideration both the detention purpose and the principle of proportionality; the Commission further recalled that enforcement procedures may restrict the fundamental rights of the persons concerned only to the extent required for achieving the detention purpose or for preserving security and order in the detention facility.

#### b. Federal Department of Foreign Affairs (FDFA)

The Commission attended a national consultation meeting for the Universal Periodic Review of Switzerland with representatives of all relevant human rights organisations. With regard to the UPR proceedings, the Commission prepared a position paper, addressed

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<sup>22</sup> Cf. sect 4, p. 22.

to the attention of the UN Human Rights Council, in which it highlighted the problematic human rights issues in relation to deprivation of liberty.

**c. Federal Department of Home Affairs (FDHA)**

The Commission held various talks with the senior management of the Federal Office of Public Health (FOPH) concerning the launch of a pilot project for assessing the healthcare in correctional facilities. The pilot project, which will initially be conducted for two years, will be assessing the conformity of healthcare in various detention facilities throughout Switzerland with human rights as well as national healthcare provisions of federal law. The pilot project will be guided by a working group composed of healthcare professionals with wide-ranging expertise, who will discuss the findings gathered by the Commission and contribute to the drafting of recommendations to the public authorities. Upon conclusion of the pilot project, the Commission will write a final report with recommendations, which will be submitted to the Head of the FDFA and the Swiss Public Health Directors Conference.

**d. Federal Department of Finance (FDF), Swiss Border Guards Corps**

The Commission submitted two requests to the senior management of the Swiss Border Guards Corps for a response regarding the application of border police measures to foreign nationals without residency status in Switzerland. In particular, during a number of talks, it asked the Directorate of the Swiss Border Guards Corps to clarify the procedures as well as the treatment of suspected drug smugglers. The Commission had received information from civil society organisations which caused concern and therefore, sought clarifications in accordance with its legal mandate.

## 3.2 Contacts with cantonal authorities.

### a. Conference of Cantonal Justice and Police

At the annual meeting of the Committee of Nine of the Conference of Cantonal Justice and Police Department Heads in September 2017, the Commission presented its report on facilities for the enforcement of administrative measures, which was published in May 2017. It also introduced the pilot project regarding the assessment of healthcare in detention which was launched in the autumn of 2017.

### b. Dialogue with the Special Committee on Repatriation and Expulsion Enforcement

The Commission held one meeting last year with representatives of the Special Committee on Repatriation and Expulsion Enforcement, at which it discussed its observations and recommendations relating to the monitoring of forced return flights.<sup>23</sup> Over the course of the year, the Commission was in regular contact with representatives of the Special Committee seeking clarifications concerning individual incidents in the follow-up to its observation of repatriation flights.

### c. Bilateral meetings

The Commission held a meeting in February 2017 with the Government Council of the Canton of Zug and representatives of the cantonal Office of Migration and asked for clarifications concerning the forced repatriation of a family from Afghanistan.<sup>24</sup> It informed the authorities about its concerns regarding the detention of a mother and her infant child in a Canton of Zurich facility that the Commission views as not suitable and examined other possible measures for her detention. Referring to international

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<sup>23</sup> For further information see the NCPT report on immigration law enforcement monitoring.

<sup>24</sup> Federal Supreme Court Judgement 2C\_1052/2016, 2C\_1053/2016, 26 April 2017



standards, it urged the authorities to refrain, as a matter of principle, from separating small children and their parents before repatriation, except in situations where there is an immediate danger to the children.<sup>25</sup>

In May 2017, the Commission had a bilateral meeting with representatives of the Bern Cantonal Police due to the placement of a mother with five children in the Thun Regional Prison prior to their scheduled deportation. After being restrained due to physical resistance, the mother was placed in a security cell. The incident was considered to be a matter of concern in terms of fundamental rights.

#### d. Participation in ongoing police training

During the reporting year, at the invitation of the police forces of the cantons of Geneva, Bern and Zurich, the Commission participated in ongoing police training courses. The Commission presented the methods and procedures it follows when accompanying forced return flights.

### 3.3 Dialogue with civil society organisations

#### a. Forum on the monitoring of immigration law enforcement

In July 2017 the NCPT held its annual forum with representatives of public authorities and civil society organisations in order to discuss the Commission's conclusions and recommendations on the enforcement of orders issued in application of immigration law. The main subject of this year's forum was the procedures for the preparatory meetings required by law prior to repatriation. The discussion focused on the different procedures followed by the cantons and possibilities of improvements.

<sup>25</sup> UN Committee on the Rights of the Child, General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration [art. 3, para. 1], 29 May 2013, CRC/C/GC/14 (cit. CRC, GC 14), at 61.

**b. Other contacts**

In January 2017, the Commission, acting in its capacity as an observer member, participated in the Conference of Swiss Correctional Physicians.

In May 2017, the NCPT gave a lecture at an ongoing training event sponsored by the Office for Refugee Counselling (Kirchliche Kontaktstelle für Flüchtlingsfragen, KKF / Office de consultation sur l'asile, OCA). Representatives of the Commission provided an overview of its monitoring activities at federal asylum centres and in connection with repatriations by air.

In September 2017, the Paulus Akademie in Zurich held a conference on the enforcement of in-patient medical treatment measures. At that event, the Commission presented its report on facilities for the enforcement of administrative measures, which was published in May 2017.

At the Bern University Conference on Migration Rights, the Commission held a presentation on its activities regarding migrant rights monitoring.

The Commission was represented at the celebration of the 40th anniversary of the founding of the Association for the Prevention of Torture (APT) in Geneva. It also participated in an ongoing training event organised by APT in relation to the Mandela Rules, which took place in Bristol.

As a member of the advisory committee of the Swiss Centre of Expertise in Human Rights (SCHR), the Commission attended two SCHR meetings during the past year.

### 3.4 International contacts

#### a. European National Preventive Mechanism (NPM) Forum

Commission representatives participated in the annual exchange meeting of the European NPM Forum, which was held in May and June of last year in Strasbourg. The main discussions focused on developing criteria for evaluating the methodology of the NPMs. To that end, a new initiative was launched in which individual NPMs are involved. In June, the Commission attended an advisory meeting of the European Council on the rules for administrative detention under immigration law, which are currently undergoing revision.

#### b. Exchanges with National Preventive Mechanisms (NPM)

In October, a delegation from the Commission and the Secretariat met with their German and Austrian counterparts for an exchange of views in Berlin. The main focus of this year's meetings were the monitoring of repatriations by air and other police monitoring activities including the monitoring of large-scale police operations. Such operations have not yet been the subject of an NCPT review.



# Independence of National Preventive Mechanisms (NPMs)

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# 4

## 4.1 Introduction

The National Commission on the Prevention of Torture (NCPT) is a National Preventive Mechanism (NPM) for preventing the use of torture. It was established by the Swiss government pursuant to the ratification of the Optional Protocol to the UN Convention against Torture (OPCAT). These independent monitoring bodies play a unique role with regard to preventing torture, deriving primarily from their mandate to review detention conditions at the national level for conformity with human rights standards. The goal is to ensure that detained persons are treated with dignity and, if necessary, to issue recommendations for improving the conditions of their detention. In order for the NPMs to properly fulfil their mission, and to be able to objectively review the situation of detained persons, it is essential that they be independent from governmental institutions and that they be vested with the appropriate powers. Independence is thus a crucial requirement for them to work effectively and maintain their credibility. The manner in which such independence is assured under the national laws of the different countries, and incorporated into the respective legal and institutional frameworks is left to each of the States Party to determine on its own. However, the legal and institutional design of the NPMs remain subject to the so-called Paris Principles<sup>26</sup>, as adopted by the UN General Assembly, which serve as guiding principles for the States Party when implementing the OPCAT at the national level.

With the entry into effect of the Federal Act on the Commission for the Prevention of Torture<sup>27</sup> (FANCPT) the NCPT was assigned administratively to the General Secretariat of the FDJP (FDJP-GS) with the status of a decentralised unit, as defined under administrative law. Although the NCPT is not subordinated to the direction of the FDJP-GS, in financial matters it is subject to the national regulations. At the same time, the Commission reviews, from a fundamental rights perspective, measures involving the deprivation of liberty in federal asylum centres, during deportation flights, and with respect to pre-deportation detention, areas that all fall within

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<sup>26</sup> National institutions for the promotion and protection of human rights, UN General Assembly Resolution of 4 March 1994, A/RES/48/134, p. 4.

<sup>27</sup> Federal Act of 20 March 2009 on the Commission for the Prevention of Torture, SR 150.1.

FDJP's scope of responsibility. The NCPT commissioned a legal opinion for further clarifications concerning both the issue of financial independence and that of whether its position in the administrative hierarchy, based on the nature of the NCPT's activities, adequately takes into account the requirement of functional independence, as defined in international law.<sup>28</sup> In the following, we will discuss the conclusions set forth in that legal opinion.

In this chapter we discuss the significance of the principle of independence as a prerequisite for the effective functioning of NPMs and address the question as to the legal and institutional conditions that must be fulfilled under the prescriptions of international law in order to best ensure the effectiveness of the NPMs at the national level.

## 4.2 Legal bases

### a. International law

Upon ratifying the OPCAT, each State Party is obliged to establish, one or more national preventive mechanisms for the prevention of torture at the national level within one year. State Parties have no further obligations with regard to the model of the preventive mechanisms, or to the legal or institutional conditions that must be fulfilled in order to ensure conformity with the principle of independence.

The OPCAT merely states in Article 18 that the States Party must guarantee "the functional independence of the national preventive mechanisms as well as the independence of their personnel" (para. 1), and that they must "undertake to make available the necessary resources for the functioning of the national preventive mechanisms" (para. 3). In doing so, States Parties are called upon to give

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<sup>28</sup> Prof. em. Walter Kälin (University of Bern), Prof. Manfred Nowak (University of Vienna), Legal Aspects of the Independence of the National Commission on the Prevention of Torture (NCPT). Legal Opinion to the Attention of the NCPT, 31 July 2017.

“due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights”, the so-called Paris Principles.<sup>29</sup>

Functional independence, as prescribed in Art. 18, para. 1, constitutes a fundamental prerequisite for the effective functioning of a preventive mechanism and is indispensable to its credibility. At issue is not only de jure independence, but also de facto independence from all government bodies vested with executive powers<sup>30</sup> who are responsible for the enforcement of measures involving deprivation of liberty in facilities inspected and monitored by the NPMs. These include, in particular, not only detention facilities and similar establishments maintained by the police or other security forces, but also all other locations where measures taken by public authorities result in de facto restrictions on the freedom of movement of individuals. The question of functional and structural independence of NPMs is thus also seen in the legal literature as a cornerstone of for their effectiveness.<sup>31</sup>

What is the meaning of functional independence in concrete terms, and how does it influence the effectiveness of an NPM?

With their mandate to review the conformity of measures involving the deprivation of liberty, NPMs enter a sphere where they access information that is not publicly available, and enter into areas with a direct bearing on the monopoly on power of the government. As a new actor within domestic political power structures, they pose new challenges to the government authorities. In order for the NPMs to effectively perform their monitoring activities, a number of conditions must be fulfilled. Specifically, the govern-

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<sup>29</sup> Optional Protocol to the UN Convention against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment. Adopted in New York on 18 December 2002. In force in Switzerland as of 24 October 2009. English version: <http://www.ohchr.org/Documents/ProfessionalInterest/cat-one.pdf> (Status as of 8 February 2018), <https://www.admin.ch/opc/de/classified-compilation/20060831/index.html>.

<sup>30</sup> Kälin/Nowak, p. 4.

<sup>31</sup> Kälin/Nowak, p.4, with references to Rachel Murray/Elina Steinerte/Malcolm Evans/ Antenor Hallo de Wolf, *The Optional Protocol to the UN Convention against Torture*, Oxford University Press, Oxford/New York 2011, 119: “The linchpin for assessing the appropriateness of the choice of a particular institution as an NPM as well as what is seen as a factor in their effectiveness is independence”. See also, Instituto Interamericano de Derechos Humanos (IIDH) and Association for the Prevention of Torture (APT), *Optional Protocol to the UN Convention Against Torture: Implementation Manual*, Geneva 2010, 89; Nowak/McArthur, 1075; Elina Steinerte, “The Jewel in the Crown and its Three Guardians: Independence of National Preventive Mechanisms Under the Optional Protocol to the UN Torture Convention”, *Human Rights Law Review* 14 (2014), 6; Elina Steinerte/Rachel Murray, “Same but Different? National Human Rights Commissions and Ombudsman Institutions as National Preventive Mechanisms under the Optional Protocol to the UN Convention Against Torture”, *Netherlands Quarterly of Human Rights* 25 (2009), 54.



ment must grant the NPM unrestricted access to all information<sup>32</sup> relating to the situation of individuals deprived of their liberty. In this sense, the NPM is thus given a status that is the de facto equivalent of a government body whose activities are nevertheless not subject to government control. The greater the degree of independence with which these preventive mechanisms are able to operate, the greater also is the likelihood that they will prove effective in terms of human rights protection.<sup>33</sup> It is thus only to be expected that governments could be inclined to oppose an overly broad interpretation of the notion of functional independence, in order to justify curbing the influence of the NPMs through imposition of legal or institutional restrictions. The extent to which a given State is willing to grant the NPM unrestricted functional independence is directly connected with the degree to which a State has enshrined the fundamental principles of the rule of law and democracy.

Although the OPCAT does not contain any specific prescriptions with regard to the institutional structure of NPMs, Article 18, para. 4, refers directly to the “Principles relating to the status of national institutions”.<sup>34</sup> These principles, also known as the “Paris Principles”, provide the guidelines for the establishment of the institutions in question, and compliance with them is considered imperative for ensuring the effectiveness of the NPMs.<sup>35</sup>

NPMs can be described, in principle, as National Human Rights Institutions (NHRIs) with a specific mandate in relation to the prevention of torture.<sup>36</sup> In order to fulfil their mandate, they must be able to act completely independently of control by the public authorities, so that they can properly function and address all issues relating to the treatment of individuals who have been deprived of their liberty. In a broader sense, this means that the NPMs must be able to act as structurally and financially autonomous bodies and to use their resources according to their own priorities.<sup>37</sup>

<sup>32</sup> Cf. OPCAT Art. 26 and FANCP Art. 8 and Art. 10, para. 1.

<sup>33</sup> See, inter alia. Sonia Cardenas, *Chains of Justice: The Global Rise of State Institutions for Human Rights*, University of Pennsylvania Press, 2014; Katrien Meuwissen, *Human Rights Law Review* 15, 2015, 441–484.

<sup>34</sup> Paris Principles, p. 4

<sup>35</sup> Kälín/Nowak, p. 8.

<sup>36</sup> Cf. de Beco Gauthier, *Human Rights Law Review* 7:2 (2007), p. 331.

<sup>37</sup> See, e.g., Murray et al., 123ff; Nowak/McArthur, 1075.

In terms of their institutional structure, the NPMs must accordingly be clearly distinct from government bodies and maintain a sufficient degree of distance from them. The Subcommittee on Prevention of Torture (SPT), which serves as the OPCAT oversight body, taking reference to Italy, the Netherlands and Senegal, has specifically criticised the attachment of NPMs to existing government institutions.<sup>38</sup> Kälin und Nowak point out in this regard that even the mere appearance of structural dependency resulting from NPM's being organisationally attached to the government administration should be avoided.<sup>39</sup>

The Paris Principles expressly state that the national institutions must have "an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding". They go on to explain that the "purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence". In their legal opinion, Nowak und Kälin further stress that only genuinely professional, independent and properly funded NPMs are capable of fulfilling the purpose of the OPCAT.<sup>40</sup> The SPT's 2010 NPM-Guidelines emphasise that the NPMs must enjoy complete financial and operational autonomy in order to perform their activities in accordance with the OPCAT.<sup>41</sup> For this reason, the financial resources of NPMs should appear separately in a government budget, so that the NPMs may dispose of those funds at their own discretion.<sup>42</sup> With regard to the size of the budget, the SPT has regularly stressed the fact that the budget must in any case be sufficient to allow for comprehensive visits to all facilities where persons are deprived of their liberty.<sup>43</sup>

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<sup>38</sup> UN Doc. CAT/OP/SEN/2, para 15; CAT/OP/ITA/1, para 13.

<sup>39</sup> Kälin/Nowak, p. 7.

<sup>40</sup> Cf. Nowak/McArthur, 1075: "First, any NPM shall be based in a clear constitutional or at least legislative framework which guarantees the structural independence from all branches of government, above all from the executive branch, including the police, military and other security forces."

<sup>41</sup> UN Doc CAT/OP/12/5, para 12: "... the NPM should enjoy complete financial and operational autonomy when carrying out its functions under the Optional Protocol".

<sup>42</sup> Cf., e.g., UN Doc CAT/OP/ARM/1, para 27; CAT/OP/BRA/R.3, para 86; CAT/OP/NLD/1, para 27.

<sup>43</sup> See Kälin/Nowak, pp. 9 and 13.

A further criterion for guaranteeing the structural independence of NPMs is the procedure for the appointment or selection of their members.<sup>44</sup> The appointment of members or hiring of staff should thus be carried out by means of an open and transparent selection process in which all stakeholders, including civil society representatives, are included.<sup>45</sup> The reason for this is to ensure, among other things, that the members present the required professional expertise and personal independence. Finally, the NPMs must be capable of choosing their own staffs and should not be supplied with personnel by the government.<sup>46</sup>

### **b. National legal basis**

The Federal Act on the Commission for the Prevention of Torture (FANCPT)<sup>47</sup> provides in Art. 4, para. 1 that the Commission is to “perform its mission independently”. Pursuant to Art. 7, paras. 1 and 2, the Commission is self-constituting and establishes the rules governing its organisational structure and working methods in bylaws.<sup>48</sup>

In addition, the Act prescribes that the Commission must have at its disposal the financial means it requires for its activities, for the purpose of which it may also establish a permanent secretariat.<sup>49</sup> This provision thus implements two essential elements of the Optional Protocol.

However, the issue of the Commission’s institutional structure is left open by the FANCPT, which also lacks provisions requiring the formal attachment of the Commission to any existing government department or other centralised or decentralised unit of the Federal Administration. As far as can be determined, no concrete suggestions were made during the parliamentary deliberations on the

<sup>44</sup> UN Doc. CAT/OP/12/5, para 16: “... the NPM should be identified by an open, transparent and inclusive process which involves a wide range of stakeholders, including civil society. This should also apply to the process for the selection and appointment of members of the NPM, which should be in accordance with published criteria.” See also the revised SPT Assessment Tool, published in 2016 in UN Doc CAT/OP/1/Rev.1, para 13.

<sup>45</sup> UN Doc. CAT/OP/12/5, para 16: “... the NPM should be identified by an open, transparent and inclusive process which involves a wide range of stakeholders, including civil society. This should also apply to the process for the selection and appointment of members of the NPM, which should be in accordance with published criteria.” See also the revised SPT Assessment Tool, published in 2016 in UN Doc CAT/OP/1/Rev.1, para 13.

<sup>46</sup> UN Doc. CAT/OP/SEN/2, para 17.

<sup>47</sup> Federal Act of 20 March 2009 on the Commission for the Prevention of Torture, SR 150.1.

<sup>48</sup> FANCPT Art. 4, para. 1, and Art. 7, paras. 1 and 2.

<sup>49</sup> FANCPT art. 12, para. 1

FANCPT as to the appropriate institutional form for the Commission or as to the government department to which it should be attached.<sup>50</sup> In view of the fact that the domestic implementation of international human rights obligations falls largely within the responsibility of the FDJP, attachment of the NCPT to that department appeared at the time to be the most reasonable solution. The Commission's establishment and structure as conceived in the draft version of the Act were largely based on the model of existing non-parliamentary commissions<sup>51</sup>.

The principle of independence was anchored in Art. 4 of the FANCPT and given concrete expression by description of the NCPT as a fully independent commission. As a result of this independence and the nature of its responsibilities and mission, which does not include any advisory function, the NCPT must be categorised as a commission *sui generis*, of a nature distinct from that of non-parliamentary commissions.<sup>52</sup>

In terms of administrative law, the NCPT is designated under the Ordinance on Government and Administration Organisation [Regierungs- und Verwaltungsorganisationsverordnung] (RVOV) as an "organisationally independent administrative unit without legal personality", that is, as a body whose organisational independence is established by statute, but which is nevertheless not an independent legal entity. In addition to the NCPT, the Swiss Federal Audit Office, the Federal Office for the Oversight of Intelligence Activities, and the Federal Office for Oversight of the Office of the Attorney General also have a similar status under administrative law.<sup>53</sup>

The NCPT was attached administratively to the General Secretariat of the FDJP<sup>54</sup> and thus belongs to the decentralised Federal Administration. In the performance of its mandate, the Commission is "not subordinated to direction, unless otherwise provided by

<sup>50</sup> Cf. AB 2007 S 1088 / BO 2007 E 1088; AB 2008 N 1940 / BO 2008 N 1940 und AB 2009 S 97 / BO 2009 E 97.

<sup>51</sup> Cf. Art. 7a, para. 1 (a), of the Regierungs- und Verwaltungsorganisationsverordnung (RVOV) vom 25. November 1998 [Federal Ordinance of 25 November 1998 on Government and Administration Organisation], SR 172.010.1

<sup>52</sup> Notes to the Appendix to the RVOV, p. 20.

<sup>53</sup> RVOV, Appendix 1, sect. III, 2.1.3 RVOV.

<sup>54</sup> Cf. the draft E-RVOV Art. 7b, para. 2 (b); implemented in Art. 4 para. 4 of the Organisational Ordinance of the Federal Department of Justice and Police [Organisationsverordnung für das Eidgenössische Justiz- und Polizeidepartement (OVEJPD)] of 17 November 1999, SR 172.213.1.

law”<sup>55</sup>, but is nevertheless subject to various norms and directives that are binding on the central Federal Administration.<sup>56</sup>

In financial matters it is subject – like all other units of the Federal Administration – to the provisions of federal legislation on human resources and budgeting. Personnel costs must thus be approved by the competent department, which is also responsible for the classification of staff positions and for all hiring and employer decisions. The NCPT staff is employed under the same rules as apply to all Federal Administration personnel.<sup>57</sup>

Because it is attached to the General Secretariat of the FDJP, the NCPT is able to avail itself of existing administrative, financial, linguistic and human resource services, for which the Commission does not at present have its own budget. The administrative attachment to the FDJP makes it possible for the NCPT, by leveraging existing synergies, to maintain a lean structure, which, given the limited financial resources available to the Commission, is doubtless an efficient solution in terms of business management.

### 4.3 Assessment in the light of the OPCAT

The legal opinion commissioned by the NCPT focused, in particular, on the issue of the administrative realisation of functional independence and examined, specifically, the question of whether the model applied to the NCPT, under which it is an organisationally independent administrative unit without legal personality conforms adequately to the prescriptions of international law.

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<sup>55</sup> RVOV Art. 7a, para. 1 (b) und RVOV Art. 2

<sup>56</sup> Directive of 1 January 2018 on Translation Services in the FDJP [Weisungen über das Übersetzungswesen im EJPD vom 1. Januar 2018], under which the NCPT is required to use the translation services of the FDJP for the translation of its reports into the official languages; the relevant ordinances, directives and guidelines on archiving services; the FDJP regulations on internal audits; the FDJP Directive on Implementation of Data Protection and Information Security [Weisung des EJPD über die Umsetzung des Datenschutzes und der Informationssicherheit (DSIS-Weisung EJPD)] of 1 October 2017; and the directives and guidelines on the EJPD information technology systems.

<sup>57</sup> Ordinance of 3 July 2001 on Federal Personnel [Bundespersonalverordnung (BPV)], (SR 172.220.111.3) Art. 1, para.1 (b) and Art. 2, para. 4.

a. **Administrative attachment and functional independence**

The NCPT is the third European NPM, in addition to those of Italy and the Netherlands that is administratively attached to a government ministry. Switzerland thus stands relatively alone in choosing this solution, as compared with the majority of European countries. The SPT has described this ministerial attachment as a source of concern in the cases both of the Netherlands and of Italy, noting in that respect that such proximity to the government could impair the functional independence of the NPMs or, at the least, have a detrimental impact on their credibility.<sup>59</sup> Both in Italy and in the Netherlands, facilities for the deprivation of liberty are directly subordinated to the respective ministries, which severely compromises the appearance of independence.

Because of the federalist division of powers<sup>60</sup> in Switzerland, that circumstance is somewhat mitigated. This notwithstanding, the FDJP, to which the NCPT is subordinated, holds authority in matters of migration and the enforcement of correctional and administrative measures. The scope of the FDJP's authority extends to both operational and financial matters and it also acts as the ordering authority in cases of deprivation of liberty. The question must thus be addressed as to what extent the substantive authority of the Federal Administration in connection with the ordering or enforcement of deprivation of liberty measures could compromise the appearance of the NCPT as an independent body.

i. **Competence of the Confederation in matters of deprivation of liberty**

Although the enforcement of deprivation of liberty measures lies, in principle, with the cantons, the Confederation is nevertheless competent for various matters which also fall within the scope of the NCPT's mandate.<sup>61</sup> Thus, for example, the Confederation

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<sup>58</sup> Cf. Kálin/Nowak, p.10.

<sup>59</sup> Report on the visit made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Italy (fn. 24, above), para 13.

<sup>60</sup> Federal Constitution of Switzerland, Art. 123, para. 2

<sup>61</sup> Cf. Kálin/Nowak, p. 11.

maintains custodial arrest cells at the Federal Criminal Court in Bellinzona<sup>62</sup> and is also responsible for the enforcement of custodial arrest orders in the military services<sup>63</sup>. The Federal Office of Police, which is attached to the FDJP operates the Confederation's interrogation centre,<sup>64</sup> where detainees from throughout Switzerland are brought for interrogation and where security measures and other police interventions may be ordered.<sup>65</sup>

For the operation of reception and processing centres, where limitations are imposed on the freedom of movement of asylum-seekers, responsibility lies with the State Secretariat for Migration (SEM) which is attached to the FDJP. This includes the centres for detention of the recalcitrant asylum – seekers to be constructed under the new Asylum Act.<sup>66</sup>

The Federal Office of Justice (FOJ) exercises direct influence over facilities for the deprivation of liberty even when they are not directly operated by the Confederation. Through the funding contributions for the construction, renovation and extension of facilities for the enforcement of correctional and administrative measures against adults, young adults, children and juveniles, the FOJ has an influence on the material conditions of detention in those facilities.<sup>67</sup> The Confederation also grants funding for the operation of reform schools and facilities for the enforcement of administrative measures against young adults and regularly monitors those facilities to verify implementation of policy guidelines. The FOJ is thus also closely involved in the drafting of the policy framework, giving it substantial influence on detention procedures in this area. The FOJ also provides funding for the construction and equipping of facilities Foreign Nationals Act. In addition, through funding contri-

<sup>62</sup> See the Federal Council Dispatch on Federal Department of Finance (FDF) Properties for the year 2009 [Botschaft über die Immobilien des EFD für das Jahr 2009 (Immobilienbotschaft EFD 2009)], of 29 May 2009, Federal Gazette 2009, pp. 4294 and 4299f.

<sup>63</sup> Enforcement of disciplinary custodial arrest orders within the military pursuant to Art. 191 of the Military Criminal Code.

<sup>64</sup> Organisational Ordinance of the Federal Department of Justice and Police [Organisationsverordnung für das Eidgenössische Justiz- und Polizeidepartement (OVEJPD)] of 17 November 1999 (SR 172.213.1), Art. 10, para. 1 (f).

<sup>65</sup> As described on the FDJP website, see: <https://www.fedpol.admin.ch/fedpol/en/home/ueberuns/organisation/bundessicherheitsdienst.html> (consulted 17 July 2017).

<sup>66</sup> Cf. Asylum Act (AsylA) of 26 June 1988 (SR 142.31) Art. 26, para. 1bis.

<sup>67</sup> Federal Act of 5 October 1984 on Confederation Funding for Enforcement of Correctional and Administrative Measures [Bundesgesetz über die Leistungen des Bundes für den Straf- und Massnahmenvollzug vom 5. Oktober 1984] (SR 341).

butions to the cantons for parts of the operational costs, in the form of per diem allowances for the detention of asylum-seekers, it is also able to exert de facto influence on detention conditions.<sup>68</sup>

Various other services within the FDJP are involved in other related areas and in their capacity as the ordering authority are authorized to arrest individuals, detain them, and to order other forms of deprivation of liberty. Specifically, the FOJ is responsible for the ordering of pre-deportation detention<sup>69</sup> and in that capacity is also responsible for the enforcement procedures applied in such cases.

Similarly, the SEM is responsible in certain cases for issuing pre-deportation detention orders and detention orders within the framework of the Dublin procedure.<sup>70</sup> The SEM also shares responsibility with the cantons for air repatriations, in the course of which the application of measures of restraint is a regular occurrence.<sup>71</sup>

The foregoing list of examples amply demonstrates that the Confederation and, in particular, the FDJP holds authority in various areas that also fall within the scope of the NCPT's mandate<sup>72</sup> and over which it exercises oversight within the framework of its monitoring activities. This also means that the NCPT addresses a portion of its recommendations in the areas mentioned directly to the Head of the FDJP or to the directors of the respective FDJP services and is in direct and regular dialogue with them. Although the risk of substantive interference with the work of the Commission presently appears to be low, the potential for interest conflicts together with the Commission's administrative proximity to the FDJP could be seen by outside observers as impairing its appearance of independence and have an impact on its credibility.

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<sup>68</sup> Cf. Federal Act of 16 December 2004 on Foreign Nationals (Foreign Nationals Act, FNA) (SR 142.20) Art. 82.

<sup>69</sup> Federal Act of 20 March 1981 on International Mutual Assistance in Criminal Matters (Mutual Assistance Act, IMAC) (SR 351.1), Art. 47.

<sup>70</sup> Cf. AsyLA Art. 111 (d), in conjunction with FNA Art. 76, para. 1 (b) (5) and FNA Art. 76a.

<sup>71</sup> Cf. Art. of the Federal Act of 20 March 2008 on the Use of Police Control and Restraint Techniques and Police Measures under Federal Jurisdiction (Use of Force Act, UFA) [Zwanganwendungsgesetz, ZAG], UFO, Ordinance of 11 August 1999 on the Enforcement of the Refusal of Admission to and Deportation of Foreign Nationals (ERADO) [Verordnung vom 11. August 1999 über den Vollzug der Weg- und Ausweisung von ausländischen Personen, VVWA].

<sup>72</sup> FANCP Art. 2



## b. Financial independence

As noted earlier, the financial autonomy of an NPM constitutes an important criterion for guaranteeing its functional independence, as required under OPCAT Art. 18. By ratifying the OPCAT, the States Party undertake to provide the NPMs with the requisite financial means for the effective performance of their activities.<sup>73</sup>

In the Federal Council's Dispatch on the FANCPPT it is assumed that the NCPT will conduct approximately 30 inspection visits to detention facilities annually.<sup>74</sup> The costs for the conduct of such visits were estimated at that time to be low, for which reason a cost ceiling of CHF 184,000.– was adopted. A source of debate was the costs of the secretariat, with the result that only 1.3 full-time positions were budgeted for.<sup>75</sup> The basic funding for the NCPT was provided in equal parts by the FDFA and the FDJP, whereas the FDFA transferred its share to the FDJP. International review bodies have already voiced criticism with regard to the size of the NCPT's budget.<sup>76</sup>

The Commission is currently included in the overall budget of the FDJP-GS and is thus not listed anywhere as an autonomous unit.<sup>77</sup> For outside observers it is consequently not apparent that the NCPT is a decentralised administrative unit, separate from the EJPD Secretariat General, which is clearly an impediment to transparency and comprehensibility. Budget sovereignty lies with the General Secretariat, which exercises financial control.

<sup>73</sup> See Kälín/Nowak, pp. 9 and 13.

<sup>74</sup> Botschaft vom 8. Dezember 2006 zum Bundesbeschluss über die Genehmigung und die Umsetzung des Fakultativprotokolls zum Übereinkommen der Vereinten Nationen gegen Folter und andere grausame, unmenschliche oder erniedrigende Behandlung oder Strafe, BBl 2007 278.

<sup>75</sup> Cf. AB 2007 S 1088 / BO 2007 E 1088.

<sup>76</sup> See the CPT report CPT/Inf (2012) 26, at 7; UPR, Approach of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment regarding the rights of persons institutionalized and treated medically without informed consent (SPT), 26 January 2016, CAT/OP/27/2.

<sup>77</sup> Cf. the 2018 budget proposal, Voranschlag, vol. 2A, p. 199.

Within the framework of the overall budget allocated to it, the Commission has only a limited degree of flexibility for its operational expenses. This compelled the Commission to strictly prioritise its activities, which limited its ability to effectively perform the statutory tasks with which it is charged. As a result, in recent years the Commission was able to carry out only an average of 15 inspection visits to detention facilities annually, which is far below the objective set forth in the Federal Council Dispatch prior to the establishment of the NCPT.<sup>78</sup> It is true that the Commission was granted additional resources in recent years for the performance of additional monitoring tasks in connection with forced removals by air and the federal asylum centres. Its capacities nevertheless remain extremely limited with only 3.3 full-time positions, for 1.3 of which the funding is subject to a temporal limit. In view of the fact that there exist an estimated 700 detention facilities that would, in principle, fall within the scope of the NCPT's mandate, the resources available to the Commission are quite simply insufficient if it is to perform all of the tasks assigned to it by law.

From the perspective of the OPCAT, it may be noted that the financial autonomy of the NCPT, given manner in which it is attached to the Federal Administration, is clearly limited, thereby reducing the latitude available to it for performance of its activities. **In the view of the authors of the legal opinion that was commissioned, the independence of the NCPT is seriously impaired through its administrative attachment to the FDJP-GS<sup>79</sup> so that insufficient consideration is given to the prescriptions of international law.**

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<sup>78</sup> Cf. Kälín/Nowak, p. 14.

<sup>79</sup> Kälín/Nowak, p. 14.

## 4.4 Conclusions

Having reviewed the relevant legal bases and the manner in which the NCPT functions, the authors of the legal opinion conclude that the administrative status of the Commission, as the Swiss NPM, does not fulfil the criteria required for functional independence within the meaning of OPCAT Art. 18(1). **They view this as evidence of a structural disregard for the principle of functional independence, which is causally linked to the attachment of the NCPT to the FDJP-GS.**<sup>80</sup> Notwithstanding the fact that the Commission's independence is anchored in administrative law and the fact that it is accordingly not subordinate to direction, it is evident that administrative attachment to the FDJP-GS is prejudicial to the NCPT's appearance of independence, in particular with regard to its monitoring activities in connection with deprivation of liberty measures for which the Confederation and, in particular, the FDJP are responsible. The situation is further aggravated by the difficulties mentioned in connection with the Commission's financial autonomy. There is no doubt that the NCPT, as a national preventive mechanism, must be institutionally embedded. The manner in which it is institutionally embedded, however, must be largely consistent with the prescriptions of the OPCAT and ensure, to the greatest extent possible, that the NCPT remains functionally independent, so that its efficacy and effectiveness are not impaired. However practical the administrative attachment of the NCPT to the FDJP-GS may appear from the Swiss perspective, the current situation is likely to meet with criticism internationally. In view of the expansion of the NCPT's monitoring activities, this could in the long run become problematic. Were the SPT to visit Switzerland, it must be assumed that the administrative attachment of the NCPT would meet with censure.<sup>81</sup> In exchanges with NPMs from other countries, with whom the NCPT maintains regular contacts, this question raises critical issues particularly in connection with fragile states. The prevention of torture is ranked by the FDFA as a matter of strategic priority in Switzerland's foreign policy<sup>82</sup> and the responsible directorate at the FDFA is actively

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<sup>80</sup> Kälin/Nowak, p. 16.

<sup>81</sup> See also Kälin/Nowak, p. 10.

<sup>82</sup> FDFA Human Rights Strategy 2016-2019, p. 19.

involved in the promotion and establishment of National Preventive Mechanisms in various countries. This being the case, Switzerland has a direct foreign policy interest – in terms of policy consistency – in finding more suitable institutional solutions for assuring the NCPT’s functional independence.

A number of institutional solutions for resolving this issue merit consideration. One of the possible means for lending substance to the Commission’s functional independence would be to endow it with its own legal personality, which would enhance its status under administrative law. The legislative procedures required for such a step would not be overly cumbersome, as no amendment of the FANCPT would be necessary.

Another possible solution would be to attach the Commission to a different department of the government, or to a different administrative unit whose activities do not fall within the scope of those covered by the NCPT’s mandate.

Finally, the legislative proceedings currently in progress for the establishment of a National Human Rights Institution (NHRI) can be seen as an opportunity for bringing together all actors and commissions working in the area of human rights within a single institution, giving due consideration to their respective mandates. This would be an efficient and effective solution in both substantive and financial terms. Given the fact that the establishment of the NHRI is imminent, it is a possibility that should, at the least, be examined. The NCPT’s experiences in connection with the issue of functional independence will be a subject for serious discussion also for the future NHRI. In a period where financial resources are limited and where there is a political demand for greater transparency in public spending, it is all the more incumbent on the government to seek appropriate institutional solutions to guarantee the maintenance of a consistent and effective human rights policy.<sup>83</sup>

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<sup>83</sup> See also Kälin/Nowak, p. 17.

# Attachment

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Overview of Recommendations  
submitted by the Commission  
in 2017

## I. Judicial and Police Measures

### a. Strip searches

- The Commission encourages consistent implementation of the two-phase strip search method and the keeping of written records thereof in the high security units of the Thorberg Correctional Facility (NCPT Report, Thorberg 2017, p. 5), the Lenzburg Correctional Facility (NCPT Report, Lenzburg, p. 2) and Zurich Prison (NCPT Report, Zurich 2017, p. 4).

### b. Material conditions of detention

- The cells in the women's unit of the Zurich Prison, which measure 7 m<sup>2</sup>, are too small for double occupancy. It is vital that appropriate measures be taken to ensure that the detainees' right to privacy is respected. Wherever possible, the cells should be used only for single occupancy. (NCPT Report, Zurich 2017, p. 4)
- The conditions of custodial arrest (daylight, fresh air supply, access to warm meals, free choice of reading material) in the Zurich Prison are ranked by the Commission as inappropriate. The Commission accordingly recommends an urgent change in current policy with regard to the conditions of custodial arrest and that the individuals in question be transferred after four days in custodial arrest. (NCPT Report, Zurich 2017, p. 5)
- In view of the particular hygienic needs of women, the Commission considers it as unsatisfactory that women detainees are permitted to use the three available showers only twice weekly and recommends that the prison administration permit daily access to showers (NCPT Report, Zurich 2017, p. 4).
- Further, the Commission urgently recommends that the statutorily prescribed imperative of holding women in pre-trial detention separately from women serving criminal sentences be properly adhered to (NCPT Report, Zurich 2017, p. 6).
- The Commission recommends that the administration of the Zurich Prison take steps to ensure that meetings between detainees and medical professionals take place in a confidential

- setting and not in the detention cells. For the conduct of medical examinations, the examination rooms located at the basement level should be used (NCPT Report, Zurich 2017, p. 6).
- The Commission recommends that the enforcement authorities adapt detention conditions to suit the special needs of pregnant women and that women be transferred, where possible, to a more appropriate facility, as the physical conditions of detention and the absence of opportunities for pregnant women to exercise have proved to be problematic. Wherever possible, alternatives to the placement of pregnant women should be examined (NCPT Report, Zurich 2017, p. 7).
  - The Commission accordingly recommends that the prison administration review the dietary requirements of women, taking into account their daily calorie needs and, where necessary, take the appropriate steps (NCPT Report, Zurich 2017, p. 7).
  - The Commission recommends that the administration of the Zurich Prison take steps to ensure that a female staff member is present on night shifts and on weekends in order to guarantee that detained women are at all times, without exception, under female supervision (NCPT Report, Zurich 2017, p. 8).

### c. Use of measures of restraint

- The Commission recommends that the administration of the Thorberg Correctional Facility refrain, wherever possible, from the use of additional restraints on highly agitated individuals and that it examine the possibility of employing less severe measures and of constructing a suitable security cell for such cases. Where in exceptional cases the use of additional restraints proves necessary, an order is to be correctly issued in writing, including the date, type of restraint to be employed, and the pertinent grounds; in addition, the presence of medical surveillance is to be assured and a record is to be kept of each use of such measures, without exception (NCPT Report, Thorberg 2017, p. 6).

**d. Disciplinary regimes and sanctions**

- The Commission is of the opinion, based on considerations of principle, that the term of custodial arrest should be limited to a maximum of 14 days and recommends that legislators in the cantons of Aargau (NCPT Report, Lenzburg 2017, p. 4), Grisons (NCPT Report, Realta 2017, p. 7) and Fribourg (NCPT Report, Bellechasse 2017, p. 7), make provision for a shorter term of arrest.
- The Commission recommends that formal regulations be established regarding the disciplinary measures employed in the facilities of Bellechasse (NCPT Report, Bellechasse 2017, p. 8) and the Zurich Prison (NCPT Report, Zurich 2017, p. 5), that detailed procedures for their use be established, that they be made subject to a formal order, and that they be properly documented.

**e. Security and preventive measures**

- The Commission recommends that the Thorberg Correctional Facility review its security and preventive measures at frequent intervals to determine whether they continue to be necessary (NCPT Report, Thorberg 2017, pp. 6-7).
- The Commission further recommends that the Bellechasse Facilities provide adequate psychiatric treatment for individuals at risk of suicide and that they be accommodated in appropriate facilities (NCPT Report, Bellechasse 2017, p. 8).
- The Commission recommends that the Bellechasse Facilities limit the maximum term of security detention and that use of this measure be subject to a formal written order mentioning the pertinent grounds and the term of such detention (NCPT Report, Bellechasse 2017, p. 8). The Commission recommends, in general, that all cases of this nature, without exception, be fully documented.
- The Commission recommends that the Bellechasse Facilities take special precautionary measures in cells where persons at risk of suicide are detained (NCPT Report, Bellechasse 2017, p. 8).
- The Commission recommends that the Zurich Prison administration issue formal orders in all cases where safety and



security measures are imposed. Such measures should be clearly distinguished from disciplinary measures and recorded in a separate register (NCPT Report, Zurich 2017, p. 5).

- The Commission recommends that the Lenzburg Correctional Facility administration transfer detainees to the crisis intervention cell only upon the medical order of a physician and that in each case a formal written order be issued from the first day, including a mention of the available avenues of appeal (NCPT Report, Lenzburg 2017, pp. 4–5).

#### **f. Opportunities for exercise and leisure pursuits**

- In the Commission’s opinion, the individuals detained in both of the security units of the Thorberg Correctional Facility should be provided with opportunities to engage in exercise and sports and social contact should be encouraged (NCPT Report, Thorberg 2017, p. 9).
- It recommends that the administration of the Zurich Prison – where female detainees may be confined to their cells for 23 hours per day, particularly on weekends – take measures to reduce the weekend cell confinement periods (NCPT Report, Zurich 2017, p. 6).
- The Commission recommends that the administration of the Zurich Prison take steps to expand the opportunities for women to engage in meaningful leisure pursuits and that a minimum range of opportunities for engaging in such pursuits be made available also on weekends (NCPT Report, Zurich 2017, p. 7).

#### **g. Medical care**

- The Commission noted the absence of clear procedural rules for the examination of arriving detainees and recommends that such rules be included (NCPT Report, Zürich 2017, S. 6).
- The Commission recommends to ensure that medications subject to prescription are distributed only by a medical professional (NCPT Report, Zurich 2017, p. 6).

#### **h. Information for detainees**

- The Commission recommends that the house rules, internal brochures and information on the rights and obligations of detainees be made available in all requisite languages at the Thorberg Correctional Facility (NCPT Report, Thorberg 2017, p. 9) and the Bellechasse Facilities (NCPT Report, Bellechasse 2017, p. 9).

#### **i. Outside contact**

- For individuals held in the unit for long-term detainees and in the integration unit of the Thorberg Correctional Facility, the commission recommends the referring authority to allow daytime leave and vacation permits for purposes of social integration of the detainees within reasonable limits and considering all security precautions as may be appropriate in each individual case (NCPT Report, Thorberg 2017, p. 10).
- Family visits take place in the Thorberg Correctional Facility (NCPT Report, Thorberg 2017, p. 9), in the Lenzburg Correctional Facility (NCPT Report, Lenzburg 2017, p. 4) and in the Zurich Prison (NCPT Report, Zurich 2017, p. 8) with detainees separated from their visitors by a glass partition. The Commission urges the administration of the respective facilities to adopt a case-by-case approach in this matter. Where security considerations permit, visits should routinely be permitted to take place without glass partitions.
- The Commission urges the administration of the Thorberg Correctional Facility (NCPT Report, Thorberg 2017, p. 10) and the Bellechasse Facilities (NCPT Report, Bellechasse 2017, p. 10) to arrange for the availability of a privacy room.
- The Commission recommends that the administration of the Zurich Prison permit visits, in particular, by family members, also on weekends (NCPT Report, Zurich 2017, p. 8).
- The Commission recommends that the restrictive regulations on the use of telephones in effect at Zurich Prison (NCPT Report, Zurich 2017, p. 8), at the Thorberg Correctional Facility (NCPT Report, Thorberg 2017, p. 4) and at the Lenzburg Correctional Facility (NCPT Report, Lenzburg 2017, p. 4) be eased.

**j. Enforcement of administrative measures**

- The Commission recommends that the Bellechasse Facilities timely prepare schedules for the enforcement of administrative measures in consultation with the detainees (NCPT Report, Bellechasse 2017, p. 6).

**k. High security detention**

- The Commission recommends that the necessity of continuing to hold of detainees in Security Unit A of the Thorberg Correctional Facility be reviewed on a quarterly basis. Any extension of security detention should be sufficiently grounded, whereby the criteria applied to the grounds cited should be increasingly strict the longer the term of such detention. With regard to persons considered capable of posing a threat to the safety of others based on a psychological disorder, the Commission reiterated that the placement of such individuals in Security Unit A should be avoided. It recommends that, wherever possible, the authority ordering detention consider the option of detention in a suitable psychiatric facility (NCPT Report, Thorberg 2017, p. 8).
- The Commission further calls on the referring authorities in relation to ordering detention in the high security units of the Thorberg and Lenzburg facilities to issue such orders only for the protection of the individuals subject to the orders or of third persons, and that they commission a review of the legality of issuing such orders based on grounds of “risk of flight” or “threat to peace and order inside or outside the facility” (NCPT Report, Thorberg 2017, pp. 7-8, NCPT Report, Lenzburg 2017, pp. 2-3).
- At the Lenzburg Correctional Facility, the Commission recalled its recommendation concerning the procedural safeguards applicable to high security detention and recommends that the authorities responsible for ordering detention issue orders for detention in high security units in writing and after the detainees’ rights to due process have been respected and including due mention of the available avenues of appeal.

Furthermore, the orders in question must be thoroughly documented, comprehensible, and available for consultation at any time accessible for the individual concerned (NCPT Report, Lenzburg 2017, p. 3).

### **I. Security**

- The Commission recommends that the administration of the Zurich Prison reviews its policy of not allowing the opening of cell doors in emergencies, at night, or where a reduced staff is on hand, prior to the arrival of the police or the emergency medical services (NCPT Report, Zurich 2017, p. 5).

### **m. Staffing**

- The Commission encourages the administration of Zurich Prison (women's unit) to arrange for further formation opportunities for with regard to the specific needs of women in detention (NCPT Report, Zurich 2017, p. 8).

## **II. Administrative detention under immigration law**

### **a. Infrastructure / accommodation**

- The Commission recommends that the leisure activities room at Bässlergut Prison (administrative detention under immigration law) be arranged in a friendlier manner and that the possibility of installing cooking facilities be examined. It further recommends that efforts for providing protection against passive smoke or for setting up a separate smoking room be reviewed (NCPT Report, Bässlergut 2017, pp. 5 and 8).
- The Commission recommends that the Realta Correctional Facility take urgent measures to improve the lighting in the cells, to arrange the leisure activities room in a friendlier manner and to again permit access to cooking facilities (NCPT Report, Realta 2017, p. 5).
- Due to the existing infrastructure and the general prevailing conditions, the Commission ranked the accommodation of

women in Granges as inappropriate. It described the accommodation of pregnant women as intolerable. The Commission recommends that the competent authorities at the Granges administrative detention centre take urgent measures for the transfer of women to another facility (NCPT Report, Granges 2017, pp. 5 and 6).

**b. Strip searches**

- The Commission encourages consistent use of two-phase body search method and to put this down in writing, where applied, the keeping of a written record thereof, in the Bässlergut Prison (NCPT Report, Bässlergut 2017, p. 4) and the Realta Correctional Facility (NCPT Report, Realta 2017, p. 4).
- The Commission recommends that the Realta Correctional Facility (administrative detention under immigration law), alter its policy removing the personal clothes of incoming detainees, and allow detainees to keep their personal clothing (NCPT Report, Realta 2017, p. 5-6).

**c. Security and preventive measures**

- The Commission recommends that the Favra Intercantonal Facility as well as the Realta Correctional Facility regularly conduct medical examinations of individuals held in solitary confinement (NCPT Report, Favra 2017, p. 5).
- The Commission recommends that the Bässlergut Prison provide adequate psychiatric treatment for individuals at risk of suicide and that such individuals be accommodated in suitable facilities (NCPT Report, Bässlergut 2017, p. 8).
- Security and preventive measures should be subject to frequent review as to whether they continue to be necessary (NCPT Report, Bässlergut 2017, p. 7).
- The Commission recommends that the Realta Correctional Facility make placement in solitary confinement subject in all cases to a formal order and that all security and preventive measures be properly documented (NCPT Report, Realta 2017, p. 7).

**d. Opportunities for exercise and leisure pursuits**

- For individuals being held in administrative detention under immigration law the commission recommends that all of the facilities visited (cf. NCPT Report, Bässlergut 2017, p. 6; NCPT Report, Realta 2017, p. 6; and NCPT Report, Granges 2017, p. 5) to implement open regimes that impose as few restrictions as possible on freedom of movement and under which detainees are confined to their cells only at night.
- The Commission recommends that the administration of the Favra Intercantonal Facility take urgent measures to allow unrestricted access to outdoor facilities (NCPT Report, Favra 2017, p. 4-5).
- The Commission urges the Favra Intercantonal Facility (NCPT Report, Favra 2017, p. 6) and the Realta Correctional Facility (NCPT Report, Realta 2017, p. 6) to make occupational activities and leisure pursuits available to individuals held in administrative detention under immigration law.
- The Commission recommends that the Realta Correctional Facility urgently seek a solution for allowing daily walks (NCPT Report, Realta 2017, p. 5).

**e. Medical care**

- The Commission recommends that the Favra Intercantonal Facility (NCPT Report, Favra 2017, p. 5) and the Frambois Intercantonal Facility (NCPT Report, Frambois 2017, p. 2) conduct medical examinations of all individuals held in administrative detention within the first 24 hours following their arrival.
- The Commission recommends that the Realta Correctional Facility provide equal access to health care in all units and conduct systematic medical screenings of individuals held in administrative detention under the Foreign Nationals Act upon their arrival (NKVF Report, Realta 2017, p. 8).
- The Commission recommends that the Favra Intercantonal Facility draft a suicide prevention concept (NCPT Report, Favra 2017, p. 8)

**f. Disciplinary measures and sanctions**

- The Commission is of the view that limiting the selection of books available to individuals held in custodial arrest to religious texts in the Bässlergut Prison (NCPT Report, Bässlergut 2017, p. 6) is excessively restrictive and recommends that this policy be changed.
- The Commission recommends that formal regulations be established for the disciplinary measures employed for administrative detainees in the Frambois Intercantonal Facility, (NCPT Report, Frambois 2017, p. 2) the Favra Intercantonal Facility (NCPT Report, Favra 2017, p. 5) and in the Realta Correctional Facility (NCPT Report, Realta 2017, p. 6), that detailed procedures for their use be established, that they be made subject to a formal order, and that they be properly documented.

**g. Access to information**

- The Commission recommends that the Favra Intercantonal Facility issue internal house rules and regulations and that they be translated into all common languages (NCPT Report, Favra 2017, pp. 4 and 6).
- The Commission recommends that the house rules, internal brochures and information on the rights and obligations of detainees be made available in all requisite languages at the Frambois Intercantonal Facility (NCPT Report, Frambois 2017, p. 3) and the Realta Correctional Facility (NCPT Report, Realta 2017, p. 9).

**h. Outside contact**

- The Commission recommends that the Favra Intercantonal Facility (NCPT Report, Favra 2017, p. 6), the Frambois Intercantonal Facility (NCPT Report, Frambois 2017, p. 4), the Bässlergut Prison (NCPT Report, Bässlergut 2017, p. 8) and the Realta Correctional Facility (NCPT Report, Realta 2017, p.

- 9) examine the possibility of providing internet access without charge and permit the limited use of mobile telephones.
- The Commission recommends that the Realta Correctional Facility arrange the visiting room for individuals held in administrative detention under Foreign Nationals Act in a more friendly manner and that the visiting rules be amended to allow for visits to take place also on weekends. In addition, the Commission recommends that steps be taken to ensure access to a legal counselling service (NCPT Report, Realta 2017, p. 8–9).

### III. Psychiatric facilities

#### a. Treatment

- The Commission recommends that the UPC Basel clinic take steps to ensure that all treatment plans are prepared in consultation with the individuals concerned and that they are presented to the patients for their consent (or refusal). Consent to the treatment plan should be confirmed by signature. In addition, the treatment plan, as an integral part of the therapy, should state objectives that are comprehensible to the patient and be periodically reviewed and adapted as appropriate (NCPT Report, Basel (UPC) 2017, p. 7).

#### b. Measures of restricting freedom of movement

- The Commission recommends that the Basel UPC adhere to the prescriptions concerning the maximum term of seclusion and the requirement of prior authorisation by the competent authority, as set forth in § 21, para. 5, of the Canton of Basel Act on the Treatment and Institutionalisation of the Mentally Ill. It further recommends that the follow-up procedure be formalised and that the use of such measures be recorded in a register (NCPT Report, Basel [UPC] 2017, p. 9).



- The Commission recommends, in addition, that the UPS make measures for restricting freedom of movement subject to the issuance of a formal order and that the use of such measures be consistently documented. A single treatment order by a physician, issued as a formal administrative order and subject to periodic review by the professional medical staff, should nevertheless be considered as sufficient in such cases (NCPT Report, Basel [UPC] 2017, p. 10).

**c. Security and preventive measures**

- The Commission recommends that the University Psychiatric Clinics of Basel (UPC) issue uniform regulations on the procedures to be followed and the records to be kept in unusual circumstances and that it establish a centralised documentation system, which should include an injury register (NCPT Report, Basel [UPC] 2017, p. 11).
- For the sake of clarity and transparency, the Commission recommends that the UPC take further steps for harmonising their data collection procedures and that they review their practice of maintaining paper and electronic files in parallel (NCPT Report, Basel [UPC] 2017, p. 4).

**d. Opportunities for exercise and leisure pursuits**

- The Commission recommends that the Basel UPC take urgent measures (as concerns the geriatric psychiatric unit) to ensure unrestricted access to outdoor facilities. It further recommends that the Clinic install covering over a part of the outdoor facilities in order to allow patients the possibility of spending time outdoors even in inclement weather (NCPT Report, Basel [UPC] 2017, p. 6).







