

## ADVANCED UNEDITED VERSION

### Conclusions and recommendations of the Committee against Torture

#### SWITZERLAND

1. The Committee considered the fourth periodic report of Switzerland (CAT/C/55/Add.9) at its 645<sup>th</sup> and 648<sup>th</sup> meetings, held on 6 and 9 May 2005 (CAT/C/SR.645 and 648), and adopted, at its 661<sup>st</sup> meeting, the following conclusions and recommendations.

#### A. Introduction

2. The Committee welcomes the fourth periodic report of Switzerland, which was prepared in accordance with the Committee's guidelines. It notes, however, that the report was submitted with a two-year delay. The Committee appreciates the constructive dialogue with the delegation and commends the comprehensive written responses provided to the list of issues, as well as the meticulous responses provided to all oral questions posed.

#### B. Positive aspects

3. The Committee notes the following positive aspects :

(a) The ban proposed by the draft federal law regulating the use of force by police during deportations and during the transport of detainees ordered by a federal authority on all restraint methods which restrict breathing as well as on the use of irritant or incapacitating sprays;

(b) The elaboration of "guidelines relating to forcible deportations by air" (*directives relatives aux rapatriements sous contrainte par voie aérienne*), which include, inter alia, a provision that forced medication can be administered exclusively by medical indication. It also notes that the Swiss Academy for Medical Sciences (*Académie Suisse pour les sciences médicales*) was consulted in the process of their elaboration;

(c) The new draft federal code of criminal procedure on the rights of persons detained in police custody prohibits incommunicado detention (*mise au secret*);

(d) The measures contained within the revised law on asylum as well as those taken by the Federal Office for Migration to address cases of gender-based persecution;

(e) The publication of the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on its third and fourth visits to Switzerland and the Government's response thereto, as well as the work being carried out by the State party's authorities to implement recommendations contained within, such as those concerning removals by air of foreign nationals and integration into the general police training programme of information concerning the risk of positional asphyxia during the these deportations;

- (f) The signature of the Optional Protocol to the Convention in June 2004 and the measures being undertaken to seek its ratification;
- (g) The ratification of the Rome Statute of the International Criminal Court on 12 October 2001.

### **C. Subjects of concern**

4. The Committee expresses concern that:

(a) Although torture is prohibited by the Federal Constitution, no specific definition of torture exists in criminal law covering all constituent elements contained in article 1 of the Convention;

(b) The draft federal law regulating the use of force by police during deportations and during the transport of detainees ordered by a federal authority:

- i. authorizes the use of electro-shock instruments, including tasers, which can sometimes be used as instruments of torture;
- ii. does not make any provision for independent monitors to be present during the deportation;

(c) The Federal Act on Administrative Procedure does not explicitly include the findings of this Committee in respect of an individual complaint concerning a violation of article 3 of the Convention as constituting, in itself, grounds for a review of a case. The Committee, however, notes that the finding will provide the basis for reappraisal when new facts or evidence are adduced during the proceedings;

(d) In order for a person to invoke article 3 of the Convention, the Committee notes that the standards of proof required by the State party exceed those standards required by the Convention. The Committee wishes to draw the attention of the State party to its General Comment No. 1 where the risk of torture “must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable”;

(e) No complete, nor disaggregated statistical information exists, encompassing all cantons, as to the number of:

- i. complaints received of cases of torture and other cruel, inhuman or degrading treatment or punishment and ill-treatment;
- ii. persons granted asylum on the basis of having been victims of, or in danger of being subjected to, torture;
- iii. persons (victims or their families) having received compensation for cases of torture or cruel, inhuman or degrading treatment;

(f) In spite of the increase in number of complaints filed against the police, often by persons of foreign origin, for ill-treatment, only a minority of these complaints result in prosecutions or indictments, and even fewer cases result in compensation for the victims or their families;

(g) All but one canton have failed to establish machinery to receive complaints against members of the police regarding allegations of torture or ill-treatment during arrest, questioning and police custody, in spite of a previous recommendation of the Committee in this regard;

(h) Changes have been introduced by the revised law on asylum which restrict or aggravate asylum seekers' access to legal counsel and the length and conditions of detention in "preparatory" or pre-deportation detention. The Committee is also concerned that in cases of non-entry decisions (*décision de non-entrée en matière*) the social benefits of asylum seekers are being curtailed significantly;

(i) Asylum seekers retained at airports are not consistently being informed of their right to walk and exercise regularly in the fresh air as well as to request medical assistance;

(j) The "guidelines relating to forcible deportations by air" do not contain an explicit ban on the wearing of masks or hoods by officers involved in the deportations.

#### **D. Recommendations**

5. The Committee recommends that the State party:

(a) Include an explicit definition of torture in the Criminal Code, incorporating all elements contained in article 1 of the Convention;

(b) Undertake efforts to encourage the successful outcome of the ongoing consultations on the draft federal law regulating the use of force by police during deportations and during the transport of detainees ordered by a federal authority regarding the ban the use of electro-shock instruments. The State party should also ensure that independent human rights observers and/or doctors be present during all forced removals by air. It should also offer, as a routine practice, medical examinations both before forced removals by air and, in the case of abortive attempts, thereafter;

(c) Take measures to ensure that a finding of this Committee of a violation of article 3 be considered as sufficient grounds to review a case;

(d) Ensure compliance with the requirements of article 3, including the proper test of proof, or the risk of torture, when determining whether to expel, return or extradite a person to another State;

(e) Take measures to compile, at national level, disaggregated data relating to the cases of alleged torture or ill-treatment, in particular in the context of the application of the law on asylum and the law on foreigners, as well as to the outcomes of any investigations and prosecutions that might be pursued;

(f) Ensure that all complaints for acts of ill-treatment are properly and effectively investigated and that the alleged perpetrators are prosecuted and if found guilty sanctioned accordingly. Victims and their families should be informed of their right to pursue compensation and procedures should be made more transparent. In this regard, the State party should provide written information to the Committee on the steps taken to compensate the families of the two victims of the two recent cases of death caused during forcible deportation;

(g) Encourage all cantons to establish independent mechanisms entrusted to receive complaints against members of the police regarding cases of torture or ill-treatment;

(h) Ensure that asylum seekers are granted full respect of their right to a fair hearing, to an effective remedy and to social and economic rights during all procedures established by the revised law on asylum.

- (i) Take measures to effectively inform all asylum seekers retained at airports of all their rights, and in particular the right to regularly access fresh air and access to a doctor;
- (j) Inform the Committee whether there have been complaints in the State party against the use of “diplomatic assurances” as a way to circumvent the absolute prohibition of non-refoulement established in article 3 of the Convention;
- (k) Continue to contribute to the United Nations Voluntary Fund for the Victims of Torture, as the State party has done since 1984.

6. The Committee recommends that the State party disseminate widely the Committee’s conclusions and recommendations, in appropriate languages, through official web sites, the media and non-governmental organizations.

7. The Committee requests the State party to provide, within one year, information on its response to the Committee’s recommendations contained in paragraph, 5 subparagraphs b, f, g and i above.

8. The State party is invited to submit its next periodic report, which will be considered as the combined fifth and sixth report, by 25 June 2008, the due date of the sixth periodic report.

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