

the other considerable powers of the institution should also not be lost sight of.

Updated on [].

## Switzerland

Population:	7,523,934
Area (sq km):	41,290
Prison population:	6111
Number of prisons:	122
Police stations:	?
Psychiatric institutions:	?
Immigration detention centres:	?
Military detention facilities:	?

### *Background*

Switzerland is a federal state composed of 26 cantons that retain attributes of sovereignty, such as fiscal autonomy and the right to manage internal cantonal affairs. Under the 2000 Constitution, cantons hold all powers not specifically delegated to the federation. The administration of justice is primarily a cantonal function. The cantons regulate local government. The basic unit of local government, which administers a village, town, or city, is the commune or municipality. Cantons are subordinate to federal authority but keep autonomy in implementing federal law.

The cantons are responsible for handling most criminal matters, and procedures vary. The federal police office has a coordinating role but relies on the cantons for actual law enforcement. The federal attorney general in Bern oversees intercantonal and international crimes.

### *NPM Process*

Switzerland signed the OPCAT in June 2004 but ratification will occur only once legislation setting up the NPM has been adopted. The process for the adoption of this law has been very slow.

A first draft project on possible options for NPMs was drafted by a federal inter-departmental Working Group, led by the Federal Office of Justice. This first draft was submitted to an initial round of unofficial consultation.

Almost all of the twenty-six Cantonal governments agreed at all times that Switzerland should ratify OPCAT. At the outset, all but three Cantons preferred a single federal entity rather than a multiplicity of cantonal authorities. Faced with the prospect of having themselves to pay for cantonal NPMs, the three Cantons ultimately decided that recognizing federal

jurisdiction would be preferable. In Switzerland it is theoretically possible for one Canton to block such an arrangement if Cantonal legislation is needed to implement the treaty.

Different options were examined by the Working Group.

In this case, however, the federal government believed it had sufficient legislative competency to enact a federal NPM: while the “execution” of civil and criminal law is a Cantonal prerogative, the federal government took the position that the NPM would not directly interfere with “execution” of criminal law, but will rather simply observe and make recommendations. Responsibility for execution of treaties falls to the Federal government under its Constitutional power over foreign relations and under public international law, and the Federal government is competent to “monitor” internal implementation or execution of treaties. Further, the Swiss Constitution specifically requires Cantons to respect Federal law, and this includes international law.

A draft law was officially presented for consultation to all interested actors with a deadline for feedback by the end of December 2005.

The draft law proposed to create a single national body under existing federal authority. This option was favoured based on the following factors:

- Cantonal support,
- efficiency,
- reduced costs,
- uniform standards / law, and
- speedier procedure towards ratification.

The draft law repeated some of the specific elements set out in the Optional Protocol itself, especially regarding powers and guarantees. The law adopted a broad definition of places of deprivation of liberty, as mandated by OPCAT, including prisons, police stations, asylum-seeker detention centres, psychiatric establishments, and old persons homes. The NPM would be empowered to undertake surprise visits, as the Swiss government takes this to be a requirement implicit in the OPCAT concept of “free access”.

The Federal government would appoint the 12 members, on recommendation of the Federal Office of Justice and the Department of Foreign Affairs. NGOs can propose candidates to these offices.

Unfortunately, financial considerations have led to a very minimalist approach where the members would not be remunerated (they would be unpaid volunteers), there will be no secretariat staff and no proper offices for the NPM.

This approach – seeking to have a “cost-free” body -- was the primary focus of criticisms during the consultation, not only from NGOs, but also from numerous cantons and political parties.

The results of the consultation process were considered by the Federal Office of Justice (results available <http://www.news-service.admin.ch/NSBSubscriber/message/attachments/5196.pdf>).

A new proposal (in Switzerland, referred to officially as “message”), on ratification and implementation was officially adopted by the Federal Council (Swiss Government) and transmitted to the Parliament on 4 December 2006. The message is available at: <http://www.news-service.admin.ch/NSBSubscriber/message/attachments/5193.pdf>.

The draft law proposed with the message (available at <http://www.news-service.admin.ch/NSBSubscriber/message/attachments/5195.pdf>) takes into account some of the comments made during the consultation process. It now includes the right for the Commission to have direct contacts with the Sub-Committee. The definition of deprivation of liberty has been revised to include the notions of “at instigation or with consent of the authorities”. The draft law now specifically mentions the possibility of unannounced visits. The article regarding the professional competences of the members has been slightly redrafted. A new article entitled “Duties of the authorities” has been included and provides for the obligation to publish and disseminate the annual report as well as to examine and take position on the proposals submitted by the Commission.

The most important change concerns the financing of the NPM: indemnities for the members of the Commission are now foreseen (300.- CHF/day; 20 days work/year for each member). However, the other main critic has not been taken into account and the Federal Council maintains its refusal to establish a permanent Secretariat, with offices, for the Commission.

The message has now to be considered by the Parliament, first by the Council of States (lower Chamber) and then by the National Council (higher Chamber). Discussions within the Committee on Legal Affairs of the Council of States have not started yet. As legislative elections are planned for October 2007, it is now feared that the consideration of the OPCAT message will be postponed to 2008.

Updated on 24.05.2007.