

Submission to the Committee against Torture on the sixth periodic report of Switzerland

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Annex

Information on the deportation procedure of 17th March 2010 (Joseph Ndukaku Chiakwa)

Forewords

The Swiss NGOs appreciate this opportunity to provide its views to the Committee against Torture in advance of the Committee's consideration of the Sixth Periodic Report of Switzerland. We wish to draw the attention of the Committee to the following points and problems concerning the implementation of the CAT into the law and practice of Switzerland.

1 Article 2

1.1 National Human Rights Institution

The discussions about the establishment of a national human rights institution (NHRI) according to the Paris Principles exist for almost a decade. In July 2009 the Federal Council came to the conclusion that the creation of a NHRI would be «premature» and it decided to contract selected university institutes to provide certain services in the field of human rights for a pilot period of five years. In December 2009 it started a tendering process for Universities. At the moment, the procedure is still ongoing.

We appreciate the effort of the Federal Council to make a step further, but we want to draw the attention of the committee to the fact, that the so called «competence centre for human rights» will – according to the tender documents – not be in line with the Paris Principles: The centre is seen as a specialized service centre without e.g. a mandate to monitor independently the human rights situation.

2 Article 3

2.1 Deportation

The Swiss NGOs are concerned about the violations of the right to human dignity in deportation operations. The restraining techniques used by police during the deportations are inhuman and degrading and cause for the deportees pain and suffering, which in many case is, sufficient to constitute torture according to Art. 1 CAT and breach Art. 16 CAT. In two cases a death was caused because of use of disproportional force. The investigation concerning the third case is ongoing.

Following the death of a rejected Nigerian Asylum seeker during the deportation attempt of 17 March 2010 (see Annex), the concerns are focused on the deportation procedure implemented by the Federal Office of Migration and the Cantonal police of Zurich, in collaboration with other cantonal police units. The NGO coalition as well as Amnesty international are concerned that the execution of the deportation decisions led to three deaths since 1999.

2.1.1 Development of the legal situation

Following the death of two rejected asylum seekers during deportation procedure in 1999¹ and 2001², the working group «Passanger 2», a joint working group composed of representatives of cantonal and federal authorities proposed to organize a training cycle for cantonal police officers involved in deportation procedures, to examine the medical ethic guidelines for medicals present during deportation procedures and the elaboration of a law proposal. A group of cantonal and federal experts elaborated this law proposal. Medical, legal and human rights experts were not members of the group but they were invited for a hearing. In May 2004, a law proposal on the use of constraint measures were submitted the federal department of justice and police which elaborated a definitive law proposal. The government announced then that the new law was designed to ensure the appropriate use of force and the greatest possible protection of the physical and mental integrity of the affected persons. Following the protests of human rights organisations, different parties and cantons, the Department of justice and police withdrew the initial proposal to introduce the taser as type of weapons and auxiliary measures police officers could use during deportation procedure. However, the National council introduced it again following a proposal of a SVP-representative (Schweizerische Volkspartei – Swiss people’s party). As the second chamber of the Parliament did not agree with this proposal, the difference between the two chambers was an item of a special procedure of mediation between them. In spring 2008, the introduction of the taser and police dogs as a mean of constraint was accepted by the two chambers of the Parliament and law designed the taser as type of weapons and auxiliary measures police officers could use.

¹ *Khaled Abuzarifa*, a Palestinian, was one of those three persons who died during deportation operation. He died in March 1999 as a result of use of excessive force by police officers during the deportation in Zurich-Kloten airport. He was given a sedative tablet, his mouth was sealed with adhesive tape, his hands and feet were shackled and he was strapped into a wheelchair in preparation for deportation. He was only able to breathe through one nostril. A post-mortem report indicated that he died because of asphyxia as a result of the coercive measures. The escorting police officers were criticized for losing valuable time in removing the adhesive tape after observing that he was feeling unwell. It was also noted that the police officers had not received relevant training. Two police officers have been acquitted. The case of the third police officer has been returned to the prosecutor for additional inquiry, but was closed following the death of the police officer. The doctor, who had witnessed the taping of the mouth and approved its safety, was judged guilty for failing to provide relevant instructions to the officers and sentenced to 5 months conditional jail. In the meantime, Khaled Abuzarifas family received CHF 120'000 in compensation. The use of adhesive tape to cover deportee’s mouth to prevent shouting ceased to be an official restraining measure at Zurich airport in August 1999. Amnesty International has, however, expressed concern about a number of other dangerous restraining methods which could block the breathing of a deportee. A special-modified rubber boxing helmet was in use at Zurich airport in 1999. A 'chin-cup' forcibly closed the jaws and a cover could be placed across the mouth, containing a small aperture for a breathing tube. There are also reports about the restraining techniques which could lead to death because of positional asphyxia. Following the death of Khaled Abuzarifa, the helmet has been modified. Today, the aperture for breathing is bigger including the nose and the eyes and no breathing tube is used anymore. But it was reported to Amnesty International that the use of the new helmet continues to provoke an important restriction on the movement of the head generating agoraphobia and panic. Moreover, this measure is considered to be an assault to human dignity.

² In May 2001 *Samson Chukwu*, a Nigerian, died at the start of a deportation operation in Canton of Valais, Switzerland. A post-mortem report indicated that he died because of asphyxia as a result of the restraining measures. He was put face down on the floor with his arms bound on his back. A police officer was sitting on his back, which blocked his breathing. During the following penal procedure, the involved police officers were not found guilty because of lack of relevant training. In September 2001 the case was closed without indictment by the judge charged with the inquiry. No penal procedure has been opened against his supervisor. The appeal of the family has been rejected. Although, the lawyer of the family addressed different letters to the authorities of the canton Valais, his family has not received financial compensation up to now.

In May 2008, the federal department of justice and police submitted the application regulation to consultation. According to this regulation, the use of tasers and dogs is allowed in some circumstances but prohibited during deportation of persons via aircraft. NGOs welcomed this fact. In January 2009, this law and the definitive application regulation entered into force (loi sur l'usage de la contrainte, Zwangsanwendungsgesetz, ZAG³).

As it was not very clear whether the taser could be used during deportation procedure on the way from the prison to the airport, this question was submitted to the government by National council Ricardo Lumengo in September 2009. According to the answer of the government in November 2009, the application of the taser is excluded during the whole deportation procedure. According to the answer of the Federal council, this prohibition should be mentioned in the new guidelines.

Following the entry in force of the law and the application regulations, the working group composed of federal and cantonal representatives elaborated new guidelines having been accepted by the KKJPD (Conference of cantonal directors of justice and police) on 8th April 2010. Following the death of rejected Nigerian asylum seeker *Joseph Ndukaku Chiakwa* during deportation operations at Zurich airport, on 17th March 2010 (see information in Annex 1), the Federal Migration Office announced that these new guidelines might be revised by the working group according to the result of the post-mortem report.

The NGO coalition and Amnesty International welcome this decision. However, the human rights organizations underline the necessity that these guidelines are reviewed together with experts with experience in medical consequences of restraint measures, human rights and de-escalation measures. Additional measures as the introduction of the presence of independent observers during the whole deportation operation should guarantee that physical integrity and the dignity of all removed persons are respected all along the deportation procedure and that this procedure is in line with international human rights laws.

2.1.2 Deportation practices

According to article 28 of these rules, Switzerland uses different levels of constraint in forcible deportation procedures.⁴ Whereas the first and the second levels do not represent any risk of torture or ill-treatment for the concerned irregular migrants and rejected asylum seekers, particularly the fourth level represents an important risk of excessive use of force leading to ill-treatment that may amount to torture, the right to be treated with dignity when deprived of liberty and even the right to life of the concerned persons. These levels correspond to deportation practices used by Switzerland over years.

³ RS 364 (<http://www.admin.ch/ch/f/rs/c364.html>).

⁴ *Level 1*: The removed person accepted his/her removal. The removed person is brought to the aircraft by a police officer. The deportee flies back to his country by himself/herself. (The maximum constraints are handcuffs. They are lifted in the plane.)

Level 2: The removed person did not accept his removal. The removed person is brought to the airplane by police officers. He or she is usually cuffed and takes place in the aircraft before the arrival of other travelers. No force is used. Two police officers travel with the person.

Level 3: The removed person is brought back to his or her country by two police officers. The person is handcuffed and is sitting between the two police officers in the back of a regular airplane. Force can be used by the police officers.

Level 4: The removed person is sent back by a special flight together with other rejected asylum seekers or irregular migrants. Every person is escorted by two to three police officers and the removed persons bear ties at the hands, the upper arms, the ankles, the knees, the hips. Their head is covered by a helmet. Their hands are fixed at a body cuff and they are fixed to the chair of the airplane by the ties fixed at the upper arms. If a lower number of migrants are in the aircraft, some constraint measures may be lifted, as for example the helmet. Police officers have to accompany deportees to the toilets and to "help" them urinate.

There is an urgent need for measures that would bring the system in conformity with the Convention and the new guidelines have to be reviewed with specialists of international law, de-escalation and medics before publication. Cantonal and federal authorities should press forward with the review and reform of deportation operations as an urgent priority. Unless cantonal and federal governments enact regulations to provide safeguards which ensure that a deportee's physical safety and inherent dignity are respected, there is no guarantee that tragic deaths like those of recent years will not recur. In view of the deaths which have occurred during forcible deportation operations in recent years, and the persistent allegations of excessive use of force and ill-treatment, the NGOs believes that it is essential for the federal government and all cantonal governments to review police restraint techniques and relevant guidelines and training for police and medical personnel involved in deportation operations in their cantons.

During the last 11 years, Swiss authorities have reacted to every new death with partial measures taking into account the reasons of death in the specific cases and certain recommendations of the CAT and Amnesty International. They never charged external experts to make a complete evaluation of the whole deportation procedure. Three deaths in 11 years are enough and it's time to act.

2.1.3 A need for independent human rights observers during forced removals

Since years the Swiss NGOs demand the involvement of independent human rights observers in the deportation processes. The death of the Nigerian asylum seeker, *Joseph Ndukaku Chiakwa*, who died on 17 March 2010 while being deported, brought the need for independent observers again into the discussions. The NGOs underline the importance of the presence of independent observers and medical personal during the whole deportation procedure up from the moment the deportees are taken out of their cells until the moment they arrive at their home country.

The Federal Council is arguing against independent observers with reference to the will of the Federal Parliament. The parliament discussed the question in March 2008 in the context of the creation of the Law on Use of Force (loi sur l'usage de la contrainte, Zwangsangwendungsgesetz, ZAG2⁵) and rejected it. At the moment, the parliament has to decide about the implementation of the Directive 2008/115/EG of 16 December 2008⁶ on common standards and procedures in Member States for returning illegally staying third-country into the Aliens Act. According to the directive, the Member States must provide an effective forced-return monitoring system (see art. 8 par. 6.). The draft of the Federal Council however provides only a vague clause, which gives the Federal Council the competence to create a mechanism of any kind whatsoever (see draft art. 71a Asylum Act: «Le Conseil fédéral règle le contrôle du renvoi ou de l'expulsion selon l'art. 8, al. 6, de la directive sur le retour.»)^{7/8}

⁵ RS 364 (<http://www.admin.ch/ch/f/rs/c364.html>).

⁶ <http://www.admin.ch/ch/d/gg/pc/documents/1724/AmtsblattEU.pdf>

⁷ See the related documents (in French) under http://www.bfm.admin.ch/bfm/fr/home/dokumentation/rechtsgrundlagen/laufende_gesetzgebungsprojekte/uebernahme_rueckfuehrungsrichtlinie.html.

⁸ See the position of the Council of Refugee « Prise de position (pdf) sur la mise en œuvre de la directive sur le retour, 17 août 2009 » (p. 4, in French : <http://www.fluechtlingshilfe.ch/droit-d-asile/prises-de-positions/prise-de-position-sur-la-mise-en-oeuvre-de-la-directive-sur-le-retour-du-17-aout-2009>).

2.2 Adolescents in detention

Swiss legislation enables the detention of foreign minors from age 15 to 18 pending a final decision, enforcement of expulsion or deportation or when they are refusing to cooperate. Such detention can last up to as many as twelve months.

The practice of different cantons for placing minors in deportation custody is not in line with the human rights obligations of Switzerland. According to the Aliens Act in force, adolescents aged 15 can remain in custody pending deportation up to 12 months, as long as there is a reason for the detention, for example as a precautionary measure in case of flight risk. The National Council Control Committee has published a report in 2006⁹ which brought out, that minors are held in detention on average longer than adults; although according to arrangement about the rights of the child the detention of minors may be used only as a last resort and only «for the shortest possible time». The Committee also determined that there are great differences in the executive code of practice between the cantons. While in some cantons detention of minors is forbidden, in other cantons they are treated with same standards than adults. There are glaring discrepancies in the practices of the different cantons. In fact, 162 out of the 355 cases at that time came from the canton of Zurich alone, followed by Basle-Land with 42 and Berne with 39 cases. In contrast with this, the cantons of Geneva, Neuchâtel and Vaud have enacted internal administrative provisions banning detention pending deportation for minors.

The period of detention for minors was during the period of the study generally longer than that of adults. As the deportation of minors is more difficult to organise than that of adults, as accompanying measures are required, some cantons extend the detention until the minors in question have reached eighteen and special measures are no longer required. Furthermore, the majority of the cantons do not separate minors and adults, or, however, they do separate minors from their families, if they are detained as well.

Three years after the report of the National Council Control Committee the Federal Council passed on 16 December 2009 a new survey which comes to the conclusion, that the guaranties of the Convention of the rights of the child are respected during their detention pending deportation. The new report reveals following facts: Between 1 January 2008 and 30 June 2009 there were 71 persons from age 15 to 18 in detentions. One minor was detained as long as 376 days, another 297 days; both of them reached the age of 18 during detention. The length of the detention of the remaining 69 minors ranged between 1 and 116 days.¹⁰

The human rights organisations insist that no child should be detained because of their status in the immigration procedure. Every child has the right to freedom. When it is absolutely necessary to detain a minor, all the safeguards to protect a child has to be fulfilled and the detention of children must be as short as possible. The minors must be separated from adults but not from their families, when the family is also detained. A special support for the minors should be guaranteed during the whole detention. The standards of detention of minors, which take into account the best interest of a child, should apply in every canton similarly.

Almost exclusively the unaccompanied minors, mostly male minors, are detained pending deportation. Normally they do not receive free legal assistance to help their situation. The appointment of a, so called, «trusted third party» is only foreseen by the law and he/she does not necessarily has to be familiar with legal matters (see also pt. 2.3 hereinafter).

⁹ See website of the parliament under http://www.parlament.ch/f/mm/2006/pages/mm_2006-11-07_999_01.aspx (in French).

¹⁰ See details under http://humanrights.ch/home/fr/Suisse/DH-et-politique-interieure/Groupes/Enfants/idcatart_9527-content.html (in French).

The case of sixteen years old Tunisian *Amen K.* shows that the conditions in the detention centres do not respect the best interest of the child and that the employees of the detention centres are often overwhelmingly confronted with minors like reported by the Basle Journal on 13. March 2010:

12 years old Aymen K. flow his mentally ill mother from a small town to Tunis, where he found work. He was tempted of a better life in Europe. A trafficker brought him with a robber dinghy to Italy in 2008. In Italy he was caught by a police and brought to asylum housing. But Aymen flew again. He was stopped, again, by the border officers in Denmark, but they left him go. Also in Norway he was controlled but left free. He found himself in Oslo, where he stayed eight months living in the streets. He decides to travel back to Italy but is caught in train in Basle. 16 years old Aymen was detained because of the flight risk in the same detention centre with adults.

From December 2009 Aymen commit some small crimes because of his desperate situation. The authority of the detention centre reacts with disciplinary measures and he was isolated without a day light. As a result the situation was escalated on 24 February he ravaged his cell and tried to strangle with help of his clothes. All of his clothes and the bed were taken away and he had to spend the night without any clothing in a cold floor and was observed by video. For the next night he received paper clothes. On the third day he was given his clothes back. His treatment, and ongoing detention, amount to cruel, inhuman and degrading treatment in terms of Article 16 CAT.

2.3 The right to an effective remedy during all asylum procedures into question

In its recommendation 2005 the Committee asked Switzerland to ensure, that asylum-seekers are granted full respect of their right to a fair hearing and to an effective remedy and to social and economic rights during all procedures established by the revised law on asylum (Para 5 h).

Free legal assistance is fundamentally guaranteed by the Federal Constitution (Article 29) under certain conditions (the party's lack of necessary means, that the case appears to have a chance of success, the need for legal representation). In the case of asylum seekers, this guarantee is interpreted restrictively and requests in this vein fail regularly at the hurdle of the likelihood of the case to success and the need for legal counsel. So before this guarantee can be made use of, it is first necessary to enable asylum seekers to access initial legal advice in the first place.

In accordance with the Asylum Act or the Asylum Ordinance ¹¹ on procedural matters, consequently access to legal advice and legal representation must also be ensured. The «cost-free nature» of this advice, however, is guaranteed by charities and other non-governmental organizations, which exercise their activities for the most part without public funding and which they attempt – as a result of the increasingly xenophobic atmosphere in society and politics in recent years – with ever greater difficulty, to finance through donations. More and more NGOs are having problems to finance the free legal aid for asylum seekers which has meant some shortcuts in their financial support for advice centres. This has meant and will in next years mean more costs to bear for other organisations, which are still financing the centres. In the long run such development might cause serious problems to provide free legal aid for asylum seekers and other migrants in need of protection. It is a State obligation to protect the persons against gross, flagrant or mass violations of human rights and guarantee that no one is returned to a state where there are substantial grounds for believing that he would be in danger of being subjected to torture. Currently providing this state responsibility lies on the shoulder of the NGOs.

In practice, access to legal aid is not always guaranteed, for example, because advice centres are too far away from the reception and procedure centres (legal advice is not permitted in the centres) or the asylum seekers are not permitted to leave the centres in the

¹¹ RS 142.311 (http://www.admin.ch/ch/f/rs/c142_311.html).

first place or because the finances of the centres are too limited to provide better accessibility in their opening hours.

For asylum seekers, as for other foreign nationals (for example those in detention awaiting deportation) even an access to legal counsel proves to be very difficult in many cases. The fact that in Switzerland there exists only one appellate level in asylum law, in comparison to other branches of law and other European states, the lack of sufficient legal counselling constitutes a huge problem and often leads to insufficient outcome, because the asylum seeker simply does not reach the legal councillor timely. Because of the fact that there exists only one appellate level, it should be obvious that the right to appeal, right to legal counselling and effective remedy should be more effectively provided by the State. This in case of Switzerland would simply mean more public financial means available to legal aid in the matters of refugee and migration law.

The Swiss Refugee Council and other relevant NGOs have therefore, for a long time, called for free legal aid for asylum seekers. Within the frame of the actual reformulation of the Swiss Asylum Act, it is provided, that an appeal has to be send within 15 days instead of 30 days. In reverse the federal council propose a new provision, which aims to a certain extent, to guarantee access to legal aid. Planed is to mandate organisations to provide consultation about «the asylum procedures and the chances of success» of the asylum request (see draft art. 17 par. 4 Asylum Act)¹². When this law revision will be implemented by the government, it means for the asylum seekers even more difficult access to legal aid, because the already severely limited advice centres will be crowded by the asylum claims with more limited appeal time.

With the power structures that currently prevail in the Federal Parliament, extending legal and human rights protection does prove extremely difficult. Two parties and e.g. the government of Canton Grisons are opposing strictly measures to ensure all asylum seekers the right of an effective remedy. Their demand is only, to accelerate the procedure as fast as possible. Legal aid is seen simply as a disturbing element that is to be avoided. In this sense, the Swiss People's Party (SVP) e.g. wrote in its consultation to the draft:

«Il n'est pas acceptable non plus que cette réforme introduise des mesures supplémentaires pour renforcer les droits de défense des requérants d'asile. Le projet suggère à ce propos des consultations juridiques sur la procédure et les chances que celle-ci a d'aboutir. Ces mesures annihilent en bonne partie les effets de l'accélération de la procédure d'asile décrite plus haut. L'industrie des recours en matière d'asile y trouvera un nouveau et fructueux champ d'activité.»¹³

2.4 No change concerning social help to persons without permission to stay – especially asylum seekers

The NGOs are still disturbed about the treatment of asylum seekers who are excluded from social help on account of a rejection decision or a negative asylum decision. The authorities as well as a part of the population are only partly aware of that human rights count for all people, thus also for the rejected asylum seekers. According to article 12 of the Federal

¹² See (in French) : « projet de modification de la loi sur l'asile et de la loi fédérale sur les étrangers concernant le remplacement des décisions de non-entrée en matière »

(http://www.bfm.admin.ch/etc/medialib/data/migration/rechtsgrundlagen/gesetzgebung/asyl-und_auslaenderrecht/vernehmlassung_asyl.Par.0037.File.tmp/20091216-vn-entw-asylg-f.pdf);

Overview :

http://www.bfm.admin.ch/bfm/fr/home/dokumentation/rechtsgrundlagen/laufende_gesetzgebungsprojekte/asyl-und_auslaendergesetz.html.

¹³ See under

http://www.svp.ch/g3.cms/s_page/79530/s_name/consultations/news_newsContractor_display_type/detail/news_id/1989/news_newsContractor_year/2010.

Constitution¹⁴, these people have a right to be helped, to be cared of and to the means that are essential to a humane existence. Nevertheless, despite critique from human rights institutions, the assistance provided in many cases, does not allow for a humane life. In some cantons the money allocated for the everyday survival are barely enough for sufficient food. Swiss Refugee Council published in December 2008 a profound study¹⁵ about the situation in the different cantons. According to the Council and the Swiss Observatory for Asylum and Migration Rights, a NGO monitoring the practice in the field of Asylum and Alien's Law, there is no change until today:

- Canton Ticino e.g. denied still urgent assistance in general for persons, who are not seen as vulnerable. Affected people are living on the streets and are left on their own. (Swiss Refugee Council study; updated 3 Nov. 09).
- One family with an infant and one school aged child have to survive with the urgent assistance of CHF 420 per day. This should cover wood, hygiene products and clothes. (Canton St. Gall).¹⁶
- A mother with an infant receives CHF 6 per day and person in form of material including food, baby-food and diapers. (Canton Berne).¹⁷
- Mental ill persons are living in underground civil defence facility without a daylight and cooking possibilities. (Canton St. Gall).¹⁸

3 Article 10

3.1 Reviewing of the training of the police officers – especially those who are involved in forcible deportation procedures

It is to underline, that de-escalation measures and detailed information on all kind of risks of restraining measures including very detailed information on all kind of positional asphyxia risks and human right standards, particularly regarding the respect of human dignity, should be a part of this training which should absolutely be given by persons who are not a part of the police or administration but by human rights and medical experts, for example the members of the new constituted OPCAT-Commission.

4 Article 12 and 13

4.1 Lack of independent complaint and investigative mechanisms for possible excessive use of force, ill-treatment, degrading treatment and torture

Numerous reports of alleged acts of racial discrimination by the police during police operations show that the situation has not improved over the last years. Based on many years of research, Amnesty International published a report in 2007 documented with numerous cases, in which the degree of disproportionate use of violence, the use of

¹⁴ <http://www.admin.ch/ch/e/rs/101/a12.html>.

¹⁵ See (in French) http://www.fluechtlingshilfe.ch/droit-d-asile/aide-durgence/aide-durgence?set_language=fr.

¹⁶ <http://www.beobachtungsstelle.ch/fileadmin/pdf/Case34.pdf>.

¹⁷ <http://www.beobachtungsstelle.ch/fileadmin/pdf/Case103.pdf>.

¹⁸ <http://www.beobachtungsstelle.ch/fileadmin/pdf/Case77.pdf>.

dangerous means and methods – face-down position, taser guns, life-threatening stranglehold for the purpose of confiscating heroin balloons – as well as racist and discriminating behaviour against people who are not European looking. Based on reported and verified incidents the Amnesty report concluded that, in particular, Black people as well as asylum-seekers and female asylum-seekers face arbitrary treatment by police officers. Black people are stopped and checked up more often by police due to their appearance. The fact, that those checks were performed by private security firms, was also examined critically in the report.

Amnesty International assesses in its report that the fallible police officers were practically never punished, because there either was hardly any or there was not a thorough and impartial investigation.

The report shows also the mechanisms how the accused police members systematically protect themselves against complaints and/or criminal proceedings. A counter complaint, for example, was regularly filed by the police against the resisting victims.

Switzerland meanwhile has standardised criminal law proceedings. The new code of criminal procedure law replaces the 26 different cantonal codes of criminal procedure in effect today. According to the new law criminal offences should be pursued and judged throughout Switzerland along to the same rules. The law stipulates – which is to be mentioned positively – among other things, the introduction of a so-called «lawyer of the first hour» which must already be present at the first examination of a suspect. It is incomprehensible, however, that the demand of the CAT as well as other international bodies, to establish an independent investigation authority or a special public prosecutor's office which should become automatically active in cases of police brutality, could not be implemented.

4.2 Lack of independent complaint and investigative mechanisms against excessive use of force during forced removals

Although different international human rights bodies insist since years the necessity to create an independent complaint mechanism to inquire complaints against police officers for possible excessive use of force, ill-treatment, degrading treatment and torture or even attempts to the right of life. Although the human rights NGO requested in all three cases, where asylum seekers came to death during forced removals, an independent inquiry, political authorities have never charged an independent body to examine the police intervention that have lead to death in an appropriate way.

Amnesty International that investigated the incidents is concerned that in the recent case of *Joseph Ndukaku Chiakwa*, Nigerian testimonies, present during the deportation attempt of March 17th, have been questioned by police officers of Zurich police (city) very soon after the incident. This might influence there deposition because two testimonies questioned by Amnesty International related on very harsh police intervention in the night of 17th March in a shed of Zurich airport, and attempt on their dignity and their physical integrity by officers of Zurich cantonal police. The concerned persons cannot see the difference between officers of the cantonal and the communal police units and they might be intimidated by the presence of police officers during their interrogation

It is important not only to examine the death of Joseph Ndukaku Chiakwa but the whole intervention mechanism during deportation procedure. It has been reported that police escorts have subjected some deportees to physical assault and racist abuse some other unconfirmed reports that resisting deportees have in some occasions been subjected to threat with a taser and that a number of deportees have been deprived of food, water and access to a lavatory for many hours, until they reached their destination. During deportation attempt of 17 March 2010, especially the tights on the knees and the hips of the two Nigerians

questioned by Amnesty International have been tightened very strongly by officers of the cantonal police of Zurich. Members of the cantonal police of Vaud considered the shackles were too tight and loosened them behind the back of their colleagues from Zurich.

4.3 Lack of statistics

The NGOs are worried that there is still no complete statistics and analysis of complaints brought against the police. Only very few cantons keep detailed statistics.

5 Article 14

5.1 Compensation

Families of the rejected asylum seekers and irregular migrants, who die during deportation attempts, have to get compensation for the loss of their beloved. Nevertheless, according to the lawyer of *Samson Chukwu* (see note 2), the family of his client did not get any compensation by the canton of Valais up to now. It is not known whether the family of *Josepf Ndukaku Chiakwa* (see above p. 3 and 6) has been informed about their rights and whether a legal defence has been proposed to them.

6 Article 16

6.1 The disappeared unaccompanied minor asylum seekers

The NGOs are concerned with unaccompanied minor asylum seekers who disappear during or even before entering the asylum procedure. Nobody knows the amount and the fate of these children. According to the statistic of the federal migration office there were 631 unaccompanied minors in the asylum procedure in 2008. The number decreased 2009 to 427¹⁹. Experts consider that the majority of unaccompanied children disappear shortly after their arrival «without leaving a trace». No official investigations will be ordered in order to find these young people. Swiss authorities rather consider them first as foreigners than as children, and treat them with repression measures rather than special protection. This is revealed by a study presented in January 2010 by Terre des hommes – Child Relief (Tdh), after twelve months of investigations carried out in four European countries among professionals in charge of these minors.²⁰

The Swiss Refugee Council, Humanrights.ch, as well as other human rights NGOs are concerned, that those children are exposed to a particular risks to be involved in drug trafficking and forced delinquency or they are exposed to be victims of labour exploitation, sexual exploitation, human trafficking and physical and psychological deterioration. They

¹⁹ See on the website of the Federal migration office under http://www.bfm.admin.ch/bfm/fr/home/dokumentation/zahlen_und_fakten/asylstatistik/statistik_uma.html (in French).

²⁰ See on the website of the Foundation Terre des hommes under http://www.tdh.ch/website/tdhch.nsf/pages/20100128_tdh_study_unwanted_children_in_europeE or the information of Humanrights.ch under http://humanrights.ch/home/en/Switzerland/Internal-Affairs/Asylum/Implementation/idcatart_9629-content.html (in French: http://humanrights.ch/home/fr/Suisse/DH-et-politique-interieure/Politique-et-loi-dasile/Application-de-la-loi-dasile/idcatart_9629-content.html).

recommend an intensive analysis of the facts and measures to guarantee those children their rights and their well-being.

7 Other topics

7.1 Lack of information about the procedure and the achievements of the Committee's work

The Committee recommended 2007 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» (par. 6).

In what extent and by which means the Federal Council informs the Federal Assembly, cantonal administrations and parliaments as well as the administration and justice authorities on the different levels (federal, cantonal, district, commune) about their human rights duties is not publicly known. According to our knowledge, the authorities responsible have made no efforts to publicize the recommendation – at least to a broader public.

As far as we know, the recommendations were not translated into German, Italian and Rhaeto-Romanic. The recommendations are only available in French on the website of the Federal Office of Justice (Federal Department of Justice and Police, FDJP).

The current state-report is not available on an official websites – neither on the website of the Federal Department of Foreign Affairs nor on the website of the Federal Department of Justice and Police, FDJP (as part of the FDJP). The corresponding website was last updated on 15 July 2008 (last access: 16 April 2010)²¹.

Due to this situation, the NGO-Coalition got all its information about the ongoing reporting procedure concerning the sixth periodic report of Switzerland only on the website of the CAT. There was no press release or any other information about the actual procedure from the side of the Swiss Government and, the report was compiled without any contact whatsoever with civil society.

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²¹ See

http://www.ejpd.admin.ch/ejpd/fr/home/themen/staat_und_buerger/ref_menschenrechte2/ref_uno-antifolterkonvention.html.

ANNEX 1

Information on the deportation procedure of 17th March 2010 (Joseph Ndukaku Chiakwa)

In the evening of 17th March, 16 or 17 Nigerian nationals (at least in one case, the concerned person denies to be a Nigerian national) were supposed to be repatriated by a special flight with a plane of the aircraft agency Hello. An unknown number of persons were escorted to Zurich airport by different cantonal police forces. One part of the Nigerians had previously been detained at Zurich airport prison. All of the Nigerians were brought to a big hangar at Zurich airport. According to a testimony of two rejected asylum seekers present this night, who have been interviewed by Amnesty International, police officers of Zurich cantonal police prepared all deportees for the flight back to Lagos. All of them were prepared by police officers of Zurich cantonal police for a special flight to Nigeria.

According to the deposition of two deportees questioned by Amnesty International, all deportees have been tied without any previous dialogue on the question whether a person agreed to leave or not. Police officers of the cantonal police of Zurich approached the deportees without dialogue and tied them.

Amnesty International hasn't any concrete information about all of the constraint measures used against the person who died. The two eye witnesses we interviewed did not observe the circumstances having led to his death. According to the eye witnesses of the deportation procedure, all persons present in the hall of the airport were however submitted to the following constraint measures:

- Hands bound with plastic ties
- Ankles bound with plastic ties
- Knees bound with a larger tie
- Hips bound with a larger tie like a belt
- Hands fixed on this belt
- Upper arm fixed with a larger tie
- The upper arms are tied to the seat of the aircraft
- Helmet like a boxer helmet with an opening for the mouth, the nose and the eyes.

According to the two eye witnesses, these ties have been tightened very strongly and provoked difficulties for breathing. According to what Mister von Arx from FMO (Federal migration office), responsible for forced deportation, said in a documentary about forced deportation, a medical check-up is made at the last detention facility of the deported persons. In the case of *Joseph Ndukaku Chiakwa*, his last detention facility was the airport prison. Amnesty International does not know whether the check-up has been made or not in his case, and what indications have been given to the police and whether these indications have been followed. This is particularly important because according to a press release of Zurich police, the detainee who died was on hunger strike previous to the deportation attempt. Amnesty International does not know how long he was on hunger strike.

According to the press release of Zurich police of 18th March, he was opposing his deportation. That's why force has been used. In its communication, the police mention hand- and foot cuffs and no other constraint measures. According to witnesses, other restraint measures have been used. Amnesty International does not know whether the taser

has been used but the human rights organisation asked the investigation authority to investigate about this question. According to unconfirmed information given by press, following his opposition, the victim has been separated from the other persons having been prepared for the deportation and he has been brought to a closed room. If this is true, it is not known which constraint measures have been used in this room.

The director of the migration office, Mister Alard du Bois-Reymond, who was at the airport during this deportation operation, said on Thursday evening, 18th March, at the TV emission Forum that he, did not exclude a mistake by the police. Later on, he made different declarations and said that the whole deportation operation was very calm and correct.

According to the eye witnesses, the ties have been put by a unit of the cantonal police of Zurich and the escort is composed by other police officers, some of them of other cantons and some of them from Zurich canton, because escort police officers belong to the canton the asylum seekers have been living in. This was confirmed by Mister von Arx in the documentary mentioned above. According to the eye witnesses, no doctor has been present during tightening procedure. This is confirmed by the fact that the authorities mentioned in their information that the medical services called to the hangar, could not revive the death when they arrived at the hangar.

Christian Philipp, public procurator of Winterthur/Unterland is charged with the inquiry of the death. On 25 March 2010, Amnesty International addressed him a letter with numbers of questions. You find this letter enclosed.