

UPR 28: SWITZERLAND November 2017

FACTSHEET

PROHIBITION OF TORTURE

BACKGROUND

Switzerland ratified both the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT) in 1986 and its Optional Protocol (OPCAT) in 2009. A National Preventive Mechanism was created in 2009 and has been functioning since 2010.

THE PROBLEM

Art 2 of the CAT demands that all State Parties takes “effective, legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.” This has constantly been interpreted as an injunction to introduce in the national legislation (Criminal Code) a disposition formally prohibiting torture.

Despite strong recommendations by the UN Committee against torture in its concluding observations to the 7th periodic report of Switzerland in 2015¹, the Swiss government still considers that behaviours that could be characterized as acts of torture are already punishable under various articles of the Criminal Code and that there is no need for a specific disposition.

UPR CONCERN

During UPR 14 in 2012, Costa Rica, New Zealand, and Spain invited Switzerland to introduce a disposition prohibiting torture in its Criminal Code. All three recommendations were “noted” and nothing changed in the legislation.

The fact that there is no definition of torture as a specific criminal offence, covering all the elements of the definition in article 1 of the UN Convention against torture, creates a legal vacuum that may open up a door to impunity.

It is time to once again recall Switzerland to its commitments and UPR 28 is an excellent opportunity in this respect.

PROPOSED RECOMMENDATION

The Federal Council should initiate a procedure in order to make torture a criminal offence, in terms that fully reflect article 1 of the Convention against torture, and ensure that penalties for torture are commensurate with the gravity of the crime.

¹ CAT/C/CHE/CO/7 para.7 : The Committee remains concerned that the State party does not consider it necessary to define torture as a specific crime under ordinary law, despite the Committee’s repeated recommendation in its previous concluding observations (see CAT/C/CR/34/CHE, paras. 4 (a) and 5 (a), and CAT/C/CHE/CO/6, para. 5)