

SWITZERLAND

SUBMISSION TO THE UN COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

105TH SESSION, 15 NOVEMBER – 3 DECEMBER 2021

Amnesty International submits this briefing in advance of the November 2021 examination of Switzerland's combined tenth to twelfth periodic reports in respect of its implementation of the UN International Convention on the Elimination of All Forms of Racial Discrimination (Convention). It sets out Amnesty International's concerns about Switzerland's compliance with its obligations under the Convention in relation to cases of ill-treatment of and racist abuse towards people seeking asylum who are housed in federal asylum centres as well as the implications of the new "law on police measures to counter terrorism". This briefing is not an exhaustive account of Amnesty International's concerns regarding the implementation of the Convention by Switzerland.

TORTURE OR OTHER ILL-TREATMENT OF AND RACIST ABUSE TOWARDS REFUGEES AND MIGRANTS

In May 2021, Amnesty International published its findings following research the organisation conducted into concerns about ill-treatment including some cases which may amount to torture occurring in Swiss Federal Asylum centres.¹ The briefing titled *"I ask that they treat asylum seekers like human beings". Human Rights Violations in Swiss Federal Asylum Centres*² documents incidents of torture or other ill-treatment by employees of the private security companies Securitas AG and Protectas AG, who are contracted by the State Secretariat for Migration (SEM).

Amnesty International conducted in-depth research into violence against people seeking asylum that occurred between January 2020 and April 2021 in the centres of Basel, Giffers, Boudry, Altstätten and Vallorbe. The information in the briefing is based on interviews with 32 people, including fourteen victims of human rights abuse, eighteen current and former security guards, lawyers, social care workers and social educators who had witnessed abuse, as well as medical reports, criminal complaints and other relevant information and documents.

Amnesty International has additionally received information from other organisations that indicates further concerning reports of abuse occurring in the Asylum Region Ticino and Central Switzerland. It is important to note that we have not conducted any interviews or investigation to corroborate those reports. However, it is worth noting that the incidents of abuse alleged in those centres are similar in nature to those Amnesty International has documented in Basel, Giffers, Boudry, Altstätten and Vallorbe.

Fourteen asylum seekers, including two unaccompanied minors, reported being subjected to abuse at the hands of security guards. This included beatings, sustained force used that restricted their breathing to an extent that led them to suffering an epileptic seizure or loss of consciousness, and difficulties of breathing through the use of pepper gel, being locked in a metal container resulting in hypothermia and other abuses. Six of the people harmed this way required hospital treatment for their injuries and two were denied medical treatment even though they requested assistance. The cases and information collected for this briefing point to abuses that the organisation believe constitute torture or other ill-treatment and violate Switzerland's obligations under international law.

Amnesty International is particularly alarmed by the lack of safeguards including robust and proactive monitoring and protection mechanisms by the SEM in federal asylum centres. According to accounts received by the organisation some guards write reports which are not accurate to the incidents of violence when they occur. The briefing found that the victims interviewed did not know where to turn to lodge a complaint, and that access to justice for victims of torture or other ill-treatment was fraught with obstacles. Moreover,

¹ Amnesty International, "Switzerland: Amnesty International sounds the alarm and urges action to put an end to human rights violations in federal asylum centres", Press release of 19 May 2021, available online: <https://www.amnesty.org/en/latest/news/2021/05/switzerland-amnesty-international-sounds-the-alarm-and-urges-action-to-put-an-end-to-human-rights-violations-in-federal-asylum-centres/>.

² Amnesty International, Switzerland: "I ask that they treat asylum seekers like human beings" – human rights violations in Swiss federal asylum centres, 19 May 2021, Index number: EUR 43/4226/2021, available online: <https://www.amnesty.org/en/wp-content/uploads/2021/06/EUR4342262021ENGLISH.pdf>.

no person who works or has worked in the centres was aware of any whistleblowing mechanisms. Some professionals, security staff and legal representatives working at the centres expressed their doubts about the transparency, impartiality, efficiency and thoroughness of the SEM's investigations into incidents of violence.

Although Amnesty International welcomes the State Secretariat for Migration's willingness to examine the possibility of creating a complaints mechanism, the conducting an internal audit and mandating of an independent investigation³, it, however, urges the government to go beyond thinking that these acts of torture or other ill-treatment are just the actions of a few individuals and instead act to address urgent systemic issues and immediately take measures to prevent ill-treatment, eradicate racist abuse and protect the human rights of people in federal asylum centres.

Amnesty International would particularly like to draw the Committee's attention to the xenophobic and racist attitude displayed by certain security guards which may strengthen their readiness to commit violence against asylum seekers. A security guard told Amnesty: "The problem is that some security guards don't understand that this is not a prison. Some guards are disgusted by the asylum seekers and treat them all like criminals. There is racism and xenophobia. This behaviour is known to colleagues and superiors. I don't understand why these people continue to work in a social centre to help people who have been through difficult things."⁴ Further, three social care workers who regularly worked in the centres⁵ and one legal representative⁶ also expressed their specific concern that particular hostility was shown by security guards to people of North African descent housed in the centres. One social care worker stressed that xenophobic attitudes were very common among security guards: "I have observed discriminatory behaviour against North Africans in particular. There is a real prejudice. This everyday racism is then also reflected in the work."⁷ Another social care worker stated: "I was once told by a superior that these asylum seekers from North Africa must not be treated like normal people."⁸ A legal representative interviewed by Amnesty International expressed her specific concern about the particularly violent treatment of minors from North Africa: "Several unaccompanied minors from Maghreb countries have told me that the previous security company was very rough with the them. We have the feeling that these young people are targeted because they are perceived as more temperamental and have also experienced a lot of bad things and are not easy to deal with. My impression is that the attitude of the security guards contributes to this. These youths are considered delinquent and drug addicts from the start ...(...)... It's a self-fulfilling prophecy. If you treat them like that, they become what you make them. With unaccompanied minors, however, in any case, the authorities have to take special measures with due regard to the best interest of the child, regardless of their behaviour."⁹ An asylum seeker described a situation, where he pointed out certain inconsistencies regarding the sanitary rules to a security guard while he was in quarantine: "he replied: 'you don't have the right to ask, you stay here and shut up'. I told him that he should avoid insulting behaviour and behave in a professional manner. He replied: 'I don't care, I have more rights than you. My word is worth ten times yours'. "¹⁰ An asylum seeker from Cameroon told Amnesty International about what happened to him in May 2020 when he was recovering from Covid-19 and after having been in quarantine for three weeks. On the doctor's orders he went for a walk outside, but still felt very weak. When he arrived back at the centre, he waited for almost 30 minutes to be permitted entry. He knocked on the reception window and requested the security guards to conduct the body search in order for him to go back to his room and lay down in bed. The situation quickly escalated. As the victim himself explains: "They said: 'If you talk like that, we'll throw you out'. I told them that I had not insulted anyone and that I had not fought with another asylum seeker. 'Why do you want to throw me out?', I asked. They pushed me three times against the wall ...(...)... They jumped on me and started to abuse me. They continued to hit me with their fists on my head when I was on the ground. I had wounds on my head and I was bleeding. Then they kicked me hard in the knee. They took me and threw me out by force ...(...)... They told me that there was nothing I could do against them because they were European and I was an illegal immigrant."¹¹

A young asylum seeker reported he and others were subjected to insults including about their ethnic origin, particularly connected to them being of North African descent. The individual, who shared their experience of abuse with Amnesty International, said that after several incidents of abuse, he asked why people from the Maghreb like him were treated so badly. He was told by the guard that it was "because you are all troublemakers".¹² Connectedly, Amnesty International is also concerned about the reports by the human rights defender and activist Brahim Daouadji. He was arbitrarily detained, tortured and ill-treated and subsequently criminalised in his country of origin,¹³ and is currently seeking safety and asylum in Switzerland. Brahim was not aware that Amnesty International was investigating the situation in federal asylum centres when he reached out to share his concerns with Amnesty International about the treatment of asylum seekers by security guards. Brahim found that the prayer room was only open for evening prayer, and that he was treated with hostility and disrespect when trying to pray in the morning, which is particularly important during the holy month of

³ State Secretary for Migration, "Le SEM commande une enquête sur des allégations de violence", Press release of 5 May 2021, available online: <https://www.admin.ch/gov/fr/accueil/documentation/communiques.msg-id-83389.html>.

⁴ Interview conducted by Amnesty International with "Charlie", 18 October 2020 (name has been changed to protect the interviewee's anonymity).

⁵ Interviews conducted by Amnesty International with "Alex", 22 August 2020, "Gabriel", 22 September 2020 and "Jonathan", 9 April 2021 (names have been changed to protect the interviewees' anonymity).

⁶ Interview conducted by Amnesty International with "Françoise", 21 October 2020 (name has been changed to protect the interviewee's anonymity).

⁷ Interview with "Jonathan", 9 April 2021.

⁸ Interview with "Alex", 22 August 2020.

⁹ Interview with "Françoise", 21 October 2020.

¹⁰ Interview conducted by Amnesty International with Brahim Daouadji, 4 mai 2021.

¹¹ Interview conducted by Amnesty International with "Oumarou", 30 October 2020 (name has been changed to protect the interviewee's anonymity).

¹² Interview conducted by Amnesty International with "Kamel", 22 July 2020 (name has been changed to protect the interviewee's anonymity).

¹³ Amnesty International, déclaration publique, *Répression de la liberté d'expression et du droit de réunion : les militant-e-s du Hirak en Algérie*, 22 février 2021, MDE 28/3707/2021, available online : <https://www.amnesty.org/fr/wp-content/uploads/sites/8/2021/05/MDE2837072021FRENCH.pdf>.

Ramadan. He shared a concerning interaction with a security guard who unnecessarily, aggressively and deliberately interrupted his morning prayer. As Brahim explains in his own words: “Normally we are supposed to leave the room for cleaning at 8:30. I started to pray at 8:05 and it was going to take me 5 to 10 minutes. Around 8:10 a security guard interrupted me while I was praying in the room. Other people were still asleep. Since I could not answer as I was praying. I was going to finish just a few minutes later. He started to shout in my ear: ‘this is not a mosque’, then touching my shoulder he called out: ‘hey I’m talking to you!’. Then he went out to tell his colleague that I was doing my prayer. There is a prayer room in the building, but it is accessible during Ramadan only for the collective evening prayer. When I asked the director of the centre about the incident, he told me that the officer could not have known how long the prayer would take. I got the impression that he always wanted to justify the actions of his staff.”¹⁴

These allegations indicate a concerning pattern of discrimination on the basis of race, colour, descent, religion, national or ethnic origin. This is in contravention of the international legal obligations of the Swiss state according to the International Convention on the Elimination of All Forms of Racial Discrimination which requires that States take action to eradicate racism, and that it prevents, investigates, prosecutes and provides effective remedies for racist or xenophobic incidents. Equality before the law and equal treatment before the tribunals and all other organs administering justice should also be guaranteed.¹⁵

RECOMMENDATIONS

Amnesty International therefore recommends that the Swiss authorities:

- a) Ensure accountability for abuses by thoroughly, promptly and impartially investigating allegations of torture or other ill-treatment of asylum seekers housed in the federal asylum centres and where evidence is found bringing perpetrators to account through the justice system and, guarantee victims right to reparation when violations of their human rights are found to have occurred.
- b) Immediately take measures to protect and uphold the rights of people housed in federal asylum centres, including by reviewing the rules and practice of locking people in ‘reflection rooms’.
- c) Urgently enhance and strengthen independent safeguarding and proactive monitoring of federal asylum centres.
- d) Adopt an independent and effective complaint mechanism for people housed in the federal asylum centres and ensure that they are aware of what the complaint procedure is and how they can access it.
- e) Ensure an independent, secure, confidential, safe and effective whistle-blower mechanism is established and that security guards and other staff in the centres are aware of its existence as well as how to access it.
- f) Take measures to tackle and eradicate racist attitudes and negative and harmful stereotypes about racialised people, particularly seeking to dismantle prejudices towards people of North African descent. This should not only take the form of reforming the recruitment process, training or other pertinent programmes for security guards, but also in the development of systems of accountability with anyone breaching rules disciplined and if a crime is suspected of occurring, referred to the criminal justice system for investigation.

THE NEW ANTI-TERRORISM LAWS

Amnesty International would like to further draw your attention to the recently voted anti-terrorism bill¹⁶ that gives the Federal Office of Police (fedpol) exhaustive powers to target “potential terrorist offenders”, including children as young as 12, by ordering preventive administrative measures, such as house arrest, travel bans, obligations to report at the police station, prohibition of contact with specific persons, and electronic surveillance. The “Federal Act on Police Measures to Combat Terrorism”¹⁷ pre-emptively restricts a person’s liberty without charge or trial and includes a vague and overly broad definition of “terrorism”.

Amnesty International has repeatedly criticized the law¹⁸ and warned that it would unlawfully limit a person’s liberty, movement, expression, association, privacy, family life and right to work simply based on a vague notion that they might - in the future - pose a threat to national security. The law introduces a vaguely worded definition of terrorism that means anyone deemed by the authorities to be ‘spreading fear’ with political intentions could be targeted, even if they have not made any threat of violence or committed any criminal

¹⁴ Interview with Brahim, 4 May 2021.

¹⁵ Articles 5(a) and 6 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

¹⁶ Amnesty International, “Switzerland: Dangerous ‘Yes’ vote gives police sweeping powers to target people including children without charge or trial, Press release of 13 June 2021, available online: <https://www.amnesty.org/en/latest/news/2021/06/switzerland-dangerous-yes-vote-gives-police-sweeping-powers-to-target-people-including-children-without-charge-or-trial/>.

¹⁷ Loi fédérale sur les mesures policières de lutte contre le terrorisme (MPT) du 25 septembre 2020, FF 2020 7499, available online: <https://www.fedlex.admin.ch/eli/fga/2020/2004/fr>.

¹⁸ Amnesty International, “Switzerland: Draconian counter-terrorism laws would target people without charge or trial”, Press release of 16 January 2020, available online: <https://www.amnistia.org/en/news/2020/01/13227/draconian-counter-terrorism-laws-would-target-people-without-charge-or-trial>; Amnesty International, “Une coalition d’ONG dit «Non» à la loi sur les mesures policières, Presse release of 25 March 2021”, available online: <https://www.amnesty.ch/fr/pays/europe-asie-centrale/suisse/docs/2021/coalition-ong-dit-non-loi-mesures-policieres>, Amnesty International, Loi sur les mesures policières, available online: <https://www.amnesty.ch/fr/pays/europe-asie-centrale/suisse/mesures-policieres-de-lutte-contre-le-terrorisme-mpt>

offence. The Federal Office of Police enjoys a high degree of discretion when issuing administrative control orders, without effective safeguards. Preventive measures are ordered on the basis of assumptions about a person's intentions and future actions - and will inevitably also affect people who only allegedly pose a danger. Amnesty International is concerned that the police will use administrative measures as a way of circumventing regular criminal justice, its principles and procedural safeguards. Except for house arrest, the police will not need prior judicial authorization, but could simply base the decision on vague evidence that might indicate a person could pose a threat to national security at some future date. This threshold is contrary to the principle of legal certainty and is rife for misuse. Such discretion coupled with the absence of certain safeguards, including the right to an adversarial hearing before a court enabling the suspect to contest the reasonableness of the suspicion and ensuring their access to materials necessary for effectively challenging the measure, will put any person subject to a control order at a distinct disadvantage. The law flouts the principle that a suspect should have "equality of arms" to challenge any accusations against them and the «presumption of innocence». In order to challenge the measures, the person concerned will have to prove that they will not be dangerous in the future, which is an impossible task. The law thus creates a legally untenable «presumption of danger». Moreover, although it is possible to appeal against a measure once it is in force, the appeal has no suspensive effect.

Amnesty International is also concerned by the severity of the measures, in particular house arrest. According to the case law of the European Court of Human Rights, this measure is tantamount to deprivation of liberty. The house arrest provided for in the law thus is comparable to a custodial sentence without charge, without criminal proceedings and without conviction – and could violate the European Convention on Human Rights (ECHR).

The law's broad definition of a "terrorist activity" risks prosecuting actions that are legitimate in terms of the right to freedom of expression. Thus, the law may create a climate of fear that would have a chilling effect on freedom of expression and freedom of the press, pushing many people, including political activists or journalists, to self-censor. The law also bears the danger that suspicion is no longer directed against individuals, but as a general suspicion against entire groups in which "potential terrorists" are suspected and thus will disproportionately affect certain already discriminated against groups.

In a letter addressed to the Swiss government the European Human Rights Commissioner expressed her concern regarding the lack of sufficient legal safeguards as to the scope of the administrative measures which may be imposed by the Federal Office of Police, outside the context of criminal proceedings. She pointed out that the absence of a clear and precise definition opens the way to a broad interpretation that runs the risk of excessive and arbitrary interference with human rights and that the very term "potential terrorist" is liable to create stigma. The Commissioner also underlined that a severe measure, such as house arrest, potentially lasting up to nine months, could hardly be considered "proportionate and necessary in a democratic society" from a human rights perspective. In her view, it is particularly problematic that these measures can be imposed by a decision outside the criminal justice system and without a suspensive legal remedy.¹⁹

Several UN Special Rapporteurs²⁰ also warned in a letter²¹ that Switzerland's anti-terrorism legislation violates international human rights standards by expanding the definition of terrorist that could set a dangerous precedent for the suppression of political dissent worldwide. The experts expressed concern that the law's new definition of "terrorist activity" no longer requires the prospect of any crime at all.²²

Amnesty International is particularly worried that these counter-terrorism measures will lead to greater surveillance and policing of racialised groups and to disproportionate restriction of their exercise of fundamental rights and freedoms. Furthermore, Amnesty International is concerned about the potential effects of stigmatisation of certain ethnic and religious groups, due to their possible designation as 'potential terrorists', and the negative implications that could result from this, including further marginalisation and discriminatory treatment in different social contexts.

Several international and regional bodies have also repeatedly affirmed the need for counter-terrorism measures to comply with the principle of equality and non-discrimination. The UN Office of the High Commissioner for Human Rights (OHCHR) has noted that: "The principle of non-discrimination must always be respected and special effort made to safeguard the rights of vulnerable groups. Counterterrorism measures targeting specific ethnic or religious groups are contrary to human rights and would carry the additional risk of an upsurge of discrimination and racism."²³ OHCHR has also called for 'due care' to ensure that programs to prevent or counter violent extremism 'have no direct or incidental effects that would result in discrimination, stigmatization and racial or religious profiling.'²⁴ This Committee has underlined the obligation of states to "ensure that measures taken in the struggle against terrorism do not discriminate in

¹⁹ Council of Europe, "Letter, Swiss lawmakers should review draft legislation on police counterterrorism measures to ensure respect for human rights", Press release of 13 May 2020, <https://www.coe.int/en/web/commissioner/-/swiss-lawmakers-should-review-draft-legislation-on-police-counterterrorism-measures-to-ensure-respect-for-human-rights>.

²⁰ Ms. Fionnuala Ni Aoláin, Special Rapporteur on the promotion and protection of human rights while countering terrorism; Mr. Nils Melzer, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Ms. Agnes Callamard, Special Rapporteur on extrajudicial, summary or arbitrary executions; Ms. Irene Khan, Special Rapporteur on the Right to Freedom of Opinion and Expression and Mr. Ahmed Shaheed, Special Rapporteur on freedom of religion or belief.

²¹ UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Comments on the proposed Anti-Terrorism Police Measures Law (Commentaires à propos du projet de loi intitulé "Loi fédérale sur les mesures policières de lutte contre le terrorisme"), 26 May 2020, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25305>.

²² Office of the United Nations High Commissioner for Human Rights, "Switzerland's new 'terrorism' definition sets a dangerous precedent worldwide, UN human rights experts warn", Press release of 11 September 2020, available online: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26224>.

²³ OHCHR, 'Digest of Jurisprudence of the UN and Regional Organizations on the Protection of Human Rights While Countering Terrorism', p. 5.

²⁴ OHCHR, 'Report on best practices and lessons learned on how protecting and promoting human rights contribute to preventing and countering violent extremism' (2016), A/HRC/33/29, para. 30.

purpose or effect on grounds of race, colour, descent, or national or ethnic origin.”²⁵ The UN Special Rapporteur on counter-terrorism and human rights has criticised discriminatory counter-terrorism measures in many countries and expressed concern that counter-extremism policies “have discriminately targeted certain groups and communities, particularly based on religious grounds.”²⁶

The Swiss draft law could target in particular Muslims or persons of Arab descent – as has been the case with other counter-terrorism measures – and could lead to an environment of suspicion around Muslim communities and encourage the rise of stigmatizing or discriminatory acts. Furthermore, this law could severely restrict their fundamental rights in violation of Switzerland’s international human rights obligations.

RECOMMENDATIONS

Amnesty International therefore recommends that the Swiss authorities:

- Urgently reform counter terrorism provisions so that all measures are compliant with international human rights law and ensure that the application of any counter-terrorism law will not lead to negative consequences for ethnic and religious groups, refugees, and asylum seekers, particularly as a result of racial profiling.
- Ensure that the human rights of ethnic and religious groups, refugees, and asylum seekers, including the right to liberty, movement, expression, association, privacy, freedom of religion, family life and to education are protected, respected and fulfilled in the context of counterterrorism.

²⁵ CERD, ‘Report of the Committee on the Elimination of Racial Discrimination’, Sixtieth session (4-22 March 2002), Sixty-first session (5-23 August 2002) (2002), UN Doc. A/57/18, p. 107, para. XI(C(5)).

²⁶ UN Special Rapporteur on counter-terrorism and human rights, ‘Human rights impact of policies and practices aimed at preventing and countering violent extremism’ (2020), UN Doc. A/HRC/43/46, p. 11, para. 28