

Federal office for migration (Office Federal des Migrations)
Federal Office for Migration
Quellenweg 6
CH-3003 Bern-Wabern
+41 31 325 11 11

14 March 2013

Request for Information on Immigration Related Detention

Dear Sir or Madam,

I am writing to request information and documents held by you or stored in archives accessible to you regarding immigration related detention. Specifically, under the [Federal Act on the Principle of Freedom of Information in Public Administration \(2004\)](#), I am requesting the following:

1) Please provide a complete list of the names and locations of all the facilities that currently are in use for the purpose of confining non-citizens in administrative detention for periods exceeding three days because of immigration-related reasons.¹

According to the Foreign Nationals legislation, detention of aliens legislation is ordered by the cantonal authorities (26 Swiss cantons), which are competent to enforce the removal or expulsion order. For this reason the Federal Office for Migration (FOM) doesn't know the exact number of detention facilities suitable for the detention of foreigners under aliens legislation. In this regard we would merely refer to the reply of the Swiss Federal Council to the interpellation 11.4082, which gives an overview of the number of detention **places** per canton:

http://www.parlament.ch/d/suche/seiten/geschaefte.aspx?gesch_id=20114082

Possibly also the catalogue of imprisonment institutions, maintained by the Federal Statistical Office (FSO) and available only in German or French, could be useful for your project:

<http://www.bfs.admin.ch/bfs/portal/de/index/infothek/nomenklaturen/blank/blank/anstalt/01.ht>

¹ The list should include any facility where an individual is prevented from freely leaving the facility at his or her will. In addition to long-term detention facilities used for the purposes of facilitating deportation (including both criminal prisons and specially designed immigration detention centers), this list should include any "reception centers" that prevent asylum seekers from freely exiting the premises; any shelters or juvenile centers that deprive minors, including both accompanied and unaccompanied minors, of their liberty; as well as any transit facilities or border guard stations located in airports or other ports of entry into the country that can hold people for more than three days to prevent entry into the country.

[ml](#)

Regarding reception centres, there are 5 FOM reception and procedure centres in Altstätten, Basel, Chiasso, Kreuzlingen and Vallorbe. Furthermore there is an accommodation in the transit area at the Zurich Airport. The FOM points out that these centres in Switzerland not by any means are detention facilities. Most of the time asylum seekers can move freely during their stay at the reception and procedure centres. Restrictions are adopted only to ensure the implementation of the asylum procedure.

2) Please provide the total number of people detained for immigration-related reasons during the years 2010, 2011, and 2012.²

Total number of arrest orders based on the Swiss Federal Act on Foreign Nationals:

2011: 7'540 arrest orders

2012: 6'806 arrest orders

The totals include **every** arrest order based on the Swiss Federal Act on Foreign Nationals, Articles 75-78. Further information:

<http://www.admin.ch/opc/en/classified-compilation/20020232/index.html>

Unfortunately the FOM doesn't keep the statistics before 2011. Only since 2011 the arrest orders are recorded systematically in the centralised migration information system ZEMIS.

3) Please provide the total number of asylum seekers who were placed in detention during the years 2010, 2011, and 2012.³

Total number of asylum applications submitted at the reception and procedure centres:

2010: 13'704 asylum applications

2011: 20'580 asylum applications

2012: 25'843 asylum applications

I kindly request you to provide this information and these documents in electronic format if at all possible, to the email addresses lydia@access-info.org and michael.flynn@graduateinstitute.ch.

² Please briefly explain who is included in these totals (for example, do they include unaccompanied minors, asylum seekers waiting for decisions on their claims, illegal immigrants in deportation proceedings, and/or non-citizens who have been placed in deportation proceedings after a criminal conviction?).

³ Please indicate if this list includes both people who have been detained after filing an asylum request either upon entry as well as those who filed a claim after being apprehended. Also, please indicate if this list includes asylum seekers who have been placed in secure reception centers for periods exceeding three days. If it does not, can you provide separate statistics indicating the numbers of asylum seekers placed in secure reception centers for periods exceeding three days for the years 2010, 2011, and 2012?

For responses including datasets I would be very grateful if you could send me the requested data in an Excel or other type of spreadsheet format.

If you should require any further information, or a clarification of any part of this request, please do not hesitate to contact me. Thank you.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Lydia Medland', with a long horizontal flourish extending to the right.

Lydia Medland
Access Info Europe
Lydia@access-info.org

Michael Flynn
Global Detention Project
michael.flynn@graduateinstitute.ch

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Dear Sir or Madam,

I am writing to request information and documents held by you or stored in archives accessible to you regarding immigration related detention. Specifically, under the [Federal Act on the Principle of Freedom of Information in Public Administration \(2004\)](#), I am requesting the following:

1) Please indicate how many minors (anyone under the age of 18) were placed in any form of immigration-related detention (including specialized detention centers, secure shelters, secure reception centers, juvenile offender facilities) during the years 2010, 2011, and 2012.

Total number of arrest orders against minors:

2011: 176 arrest orders

2012: 177 arrest orders

Please note that according to the Swiss Federal Act on Foreign Nationals, a detention order may only be issued against a minor who has reached the 15 years of age.

Unfortunately the FOM doesn't keep the statistics before 2011. Only since 2011 the arrest orders are recorded systematically in the centralised migration information system ZEMIS.

2) Of the total number of minors placed in immigration-related detention during 2010, 2011, and 2012, how many were accompanied minors and how many were unaccompanied minors?

The FOM doesn't keep statistics which show separately arrest orders against accompanied and unaccompanied minors.

Basically, to ensure the enforcement of the removal of families, arrest is ordered against the father of a family, while the rest of the family is be placed in a shelter.

I kindly request you to provide this information and these documents in electronic format if at all possible, to the email addresses lydia@access-info.org and michael.flynn@graduateinstitute.ch.

For responses including datasets I would be very grateful if you could send me the requested data in an Excel or other type of spreadsheet format.

If you should require any further information, or a clarification of any part of this request, please do not hesitate to contact me. Thank you.

Yours sincerely,

Lydia Medland
Access Info Europe
Lydia@access-info.org

Michael Flynn
Global Detention Project
michael.flynn@graduateinstitute.ch

Von: yammish@gmail.com [<mailto:yammish@gmail.com>] **Im Auftrag von** Michael Flynn
Gesendet: Donnerstag, 24. Oktober 2013 14:43
An: Feliser Philippe BFM
Cc: Michael Flynn; Rittener-Ruff Odile EDA RTO; Kim Netzell; Victoria Anderica
Betreff: Re: seeking assistance (immigration detention in Switzerland)

Philippe,

Thank you for sending us the completed questionnaires, we appreciate the effort that has been made to do this. However, we are a little confused by some of the answers and thus I was hoping you or a colleague could provide brief clarifications on the following:

1) With respect to the 401 places for administrative detention mentioned on this website http://www.parlament.ch/d/suche/seiten/geschaefte.aspx?gesch_id=20114082

Are all these places used only for administrative detention of migrants or also for other forms of administrative detention? Also, can these places of detention be located in any prison/police facility or only dedicate administrative detention facilities?

Generally, these places are used only for the detention of foreigners under aliens legislation. As mentioned in the reply of the Swiss Federal Council to the interpellation 11.4082, some cantons have detention facilities with flexible partitioning, which allows to vary the number of places used for the detention of foreigners under aliens legislation within a relatively short term.

What does the label “Ausserkantonale Haftplätze” stand for?

Some cantons don't have detention facilities used for the detention of foreigners under aliens legislation. These cantons therefore “rent” places from other cantons; it is mentioned in the reply, in which cantons the places are located.

With respect to the 121 additional places mentioned on that website: In what premises are they located? According to the website, these 121 places are for short confinement. What is the maximum length of detention permitted in these places? Is this regulated by a specific law?

The 121 additional places are located for example in regional prisons or remand prisons. The maximum length of detention permitted in these places depends on the cantonal legislation and in particular jurisprudence (Court of Coercive Measures).

2) In your answer to question two of the first questionnaire, you mention the number of people "arrested" for violations of the foreign nationals act. Should we assume that all these people were placed in immigration detention? Also, we have found that most countries in Western Europe provide statistics on what specific violations of their foreigners act people were detained/arrested. Can you provide statistics on which specific violations of the act people were arrested.

The question two of the first questionnaire was about **administrative detention** and not penal incarceration. Generally, administrative detention of foreigners under aliens legislation is not ordered on the basis of a criminal conviction due to a violation

(exceptions: art. 75 (1) g/h, art. 76 (1) b,1) . Administrative detention is ordered to facilitate the conduct of removal proceedings (art. 75), to ensure the enforcement of the removal decision (art. 76, art. 77) or to ensure the obligation to leave Switzerland, if the expulsion order cannot be enforced due to the personal conduct of a person (art. 78).

Detailed Statistics of detention orders (*maybe a better term to “arrest orders”*):

2011:

7'540 detention orders: 294 (art. 75), 7'122 (art. 76, art. 77), 124 (art. 78).

Average duration of detention: 23 days

2012:

6'806 detention orders: 260 (art. 75), 6'519 (art. 76, art. 77), 27 (art. 78).

Average duration of detention: 20 days

Regarding statistical data on **penal incarcerations** due to violations of the Foreign Nationals Act (for example art. 115, art. 119), the FOM is not competent. Further information on convictions to imprisonment (including Federal Act on Foreign Nationals) can be found in the attached statistical data from the Federal Statistical Office (FSO).

3) Question 3 of the first questionnaire asks for the number of asylum seekers placed in detention, but you have provided us with the number of applications per year. Should we assume that all these asylum seekers were detained?

According to Footnote III of the first questionnaire, I should also provide “*the numbers of asylum seekers places in secure reception centers...*”. Therefore, in addition to the number of detention orders, I also sent you the number of of asylum applications submitted at the reception and procedure centres. As I already clarified in the questionnaire, these centres in Switzerland are not by any means detention facilities. Generally, most asylum applications are filed directly at one of the reception and procedure centres, operated by the FOM (“normal process” of the Swiss asylum procedure).

According to Article 22 of the Swiss Asylum Act, “Asylum seekers may be held at the airport or exceptionally at another location for a maximum of 60 days. On the issue of a legally enforceable removal order, asylum seekers may be transferred to a prison specifically for deportees.” Do you have statistics on the number of asylum seekers detained under this provision?

No. The number of persons detained under this provision is covered by the statistics of detention orders.

Additionally, the the foreigners law provides for detention measures in cases were asylum requests are rejected; if asylum seekers refuse to cooperate with authorities; if

their application is considered to be abusive; if they have committed a criminal offence; or if there is evidence to suggest that they will refuse to comply with being returned to their home country (Articles 73-81 of the Federal Law for Foreigners). Can you provide statistics on the numbers of asylum seekers detained under any of these provisions.

see Answer 2.

4) Last question: We understand the explanation given regarding the federal government's apparent lack of knowledge of detention centres used in the country for immigration reasons. However, although the cantons are responsible for enforcing detention and removal, ultimately it is the federal government that would be held responsible for any violations of the rights of these people, including for instance in front of the European Court of Human Rights. Thus, we find it surprising that the federal government would not provide some kind of oversight of this activity to ensure that the nation is abiding by fundamental rights. As far as we are aware, there is only one other country in Europe, Germany, where the federal government provides a similar explanation for not having comprehensive knowledge of the treatment of foreign nationals on its territory. Thus, our question to you is whether Swiss federal government intends at any time to develop an oversight mechanism over this policy and keep track of where people are being detained?

Compared to most of the other European countries, Germany and Switzerland are federalist states. This implies, that the federal states dispose of a certain degree of autonomy (also in some parts of legislation or jurisprudence). Nevertheless, it should be noted that the cantons are bound by the Foreign Nationals Acts regulations regarding the conditions of detention (art. 81) and the jurisprudence of the Swiss Federal Supreme Court concerning this matter.

The FOM considers, that the existing statistics and data (as well as the existing exchange platforms) are adequate to get an overview over the policy of administrative detention and the treatment of foreigners under aliens legislation, which are detained.

Philippe, thanks again for all your assistance, and apologies for the additional questions. We just want to make sure we have as clear of a picture as possible regarding Swiss detention policies. You've been a big help so far.

Cordially,

Mike