



# Convention on the Rights of the Child

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Committee on the Rights of the Child

## Consideration of reports submitted by States parties under article 44 of the Convention

Second, third and fourth periodic reports of States  
parties due in 2007

**Switzerland\***

[19 July 2012]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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## Contents

	<i>Paragraphs</i>	<i>Page</i>
List of concluding observations of the Committee on the Rights of the Child of 7 June 2002 on the initial report of Switzerland on the implementation of the Convention on the Rights of the Child.....		4
List of concluding observations of the Committee on the Rights of the Child of 27 January 2006 on the initial report of Switzerland on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.....		5
Abbreviations .....		6
Introduction.....	1–4	7
General statistical data .....	5–12	7
I. General measures of implementation of the Convention (arts. 4, 42 and 44, para. 6, of the Convention).....	13–67	8
A. Reservations.....	13–18	8
B. Measures adopted under article 4 of the Convention.....	19–33	9
C. International cooperation .....	34–40	15
D. Existing mechanisms to ensure the implementation of the Convention on the Rights of the Child, coordinate policy relating to children and monitor the implementation of the Convention.....	41–51	16
E. Measures taken to make the principles and provisions of the Convention on the Rights of the Child widely known (art. 42).....	52–62	18
F. Dissemination of reports (art. 44, para. 6) .....	63–64	21
G. Collaboration with organizations such as NGOs or children's and adolescents' groups for the implementation of the provisions of the Convention on the Rights of the Child and the preparation of the periodic report.....	65–67	21
II. Definition of the child (art. 1) .....	68–71	22
III. General principles .....	72–119	23
A. Prohibition of all discrimination (art. 2) .....	72–91	23
B. Best interests of the child (art. 3).....	92–95	27
C. The right to life, survival and development (art. 6) .....	96–104	28
D. Respect for the views of the child (art. 12).....	105–119	29
IV. Civil rights and freedoms .....	120–164	33
A. Name and nationality (art. 7) .....	120–131	33
B. Preservation of identity (art. 8).....	132–133	36
C. Freedom of expression (art. 13).....	134	36
D. Freedom of thought, conscience and religion (art. 14) .....	135–137	37
E. Freedom of association and of peaceful assembly (art. 15).....	138	38
F. Protection of privacy (art. 16).....	139	38
G. Access to appropriate information (art. 17) .....	140–152	38
H. The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (art. 37 (a)) .....	153–164	41

V.	Family environment and alternative care .....	165–229	43
A.	Parental guidance (art. 5).....	165	43
B.	Parental responsibilities (art. 18, paras. 1 and 2) .....	166–175	44
C.	Separation from parents (art. 9).....	176–180	46
D.	Family reunification (art. 10).....	181–183	47
E.	Recovery of maintenance for the child (art. 27, para. 4).....	184–185	48
F.	Children deprived of a family environment (art. 20) .....	186	48
G.	Adoption (art. 21) .....	187–192	49
H.	Illicit transfer and non-return (art. 11) .....	193–197	50
I.	Maltreatment or neglect (art. 19), including physical and psychological recovery and social reintegration (art. 39) .....	198–228	51
J.	Periodic review of placement (art. 25).....	229	57
VI.	Basic health and welfare .....	230–310	57
A.	Survival and development of the child (art. 6, para. 2).....	231	57
B.	Children with disabilities (art. 23) .....	232–240	57
C.	Health and health services (art. 24).....	241–281	59
D.	Social security and childcare services and facilities (arts. 26 and 18, para. 3).....	282–303	68
E.	Standard of living (art. 27, paras. 1 to 3) .....	304–310	72
VII.	Education, leisure, recreation and cultural activities.....	311–388	73
A.	Education, including vocational training and guidance (art. 28) .....	311–369	73
B.	Aims and quality of education (art. 29) .....	370–381	84
C.	Rest, leisure, recreation and cultural and artistic activities (art. 31) .....	382–388	86
VIII.	Special protection measures .....	389–525	87
A.	Children in situations of emergency (arts. 22, 38 and 39) .....	389–403	87
B.	Children in conflict with the law (arts. 37, 39 and 40) .....	404–444	91
C.	Exploitation of children, including their physical and psychological recovery and social reintegration (arts. 32 to 36).....	445–513	100
D.	Children belonging to minorities (art. 30) .....	514–525	113
IX.	Optional Protocols to the Convention on the Rights of the Child .....	526–553	116
A.	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.....	528–550	116
B.	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.....	551–553	120
X.	Dissemination of documentation.....	554–556	120

## Annexes\*\*

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\*\* Annexes can be consulted in the files of the Secretariat.

**List of concluding observations of the Committee on the Rights of the Child of 7 June 2002 on the initial report of Switzerland on the implementation of the Convention on the Rights of the Child<sup>1</sup>**

<i>Nos. 7 and 8</i>	Reservations	Para. 13
<i>No. 10</i>	Legislation	Para. 20
<i>No. 12</i>	Coordination (national implementation mechanism)	Para. 41
<i>No. 14</i>	Coordination (national plan of action)	Paras. 45 and 47
<i>No. 16</i>	Monitoring structures	Para. 49
<i>No. 18</i>	Data collection	Para. 5
<i>No. 20</i>	Education/dissemination of the Convention	Para. 52
<i>Nos. 22 and 23</i>	Non-discrimination	Para. 72
<i>No. 25</i>	Best interests of the child	Para. 92
<i>No. 27</i>	Respect for the views of the child	Para. 105
<i>No. 29</i>	The right to know one's identity	Para. 126
<i>No. 31</i>	Torture and ill-treatment	Para. 153
<i>No. 33</i>	Corporal punishment	Para. 158
<i>No. 35</i>	Childcare services for children of working parents	Para. 286
<i>No. 37</i>	Adoption	Para. 187
<i>No. 39</i>	Abuse and neglect/violence	Para. 198
<i>No. 41</i>	Adolescent health	Para. 230
<i>No. 41 (a)</i>	HIV/AIDS	Para. 272
<i>No. 43</i>	Children with disabilities (data collection)	Para. 232
<i>Nos. 42 and 43</i>	Children with disabilities	Para. 356
<i>No. 45</i>	Health insurance	Para. 241
<i>No. 47</i>	Standard of living/social welfare	Para. 304
<i>No. 49</i>	Education	Para. 370
<i>No. 51</i>	Child refugees and asylum seekers and unaccompanied children	Para. 389
<i>No. 53</i>	Sexual exploitation and sexual abuse	Para. 474
<i>No. 55</i>	Drug addiction	Para. 455
<i>Nos. 57 and 58</i>	Administration of juvenile justice	Para. 404
<i>No. 60</i>	Children belonging to a minority group	Para. 514
<i>No. 61</i>	Optional Protocols	Para. 526
<i>No. 62</i>	Dissemination of documentation	Para. 554

<sup>1</sup> CRC/C/15/Add.182; the numbering of the Committee's concluding observations corresponds to the numbers in the present document. Only those paragraphs of the concluding observations in which the Committee encourages Switzerland to improve the implementation of the Convention are referred to; this is why the numbers are not sequential.

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**List of concluding observations of the Committee on the Rights of the Child of 27 January 2006 on the initial report of Switzerland on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict<sup>2</sup>**

<i>No. 8 (a)</i>	Para. 536
<i>No. 8 (b)</i>	Para. 538
<i>No. 8 (c)</i>	Para. 539
<i>No. 10</i>	Para. 540
<i>No. 11</i>	Para. 547
<i>No. 12</i>	Para. 548
<i>No. 13</i>	Para. 550

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<sup>2</sup> CRC/C/OPAC/CHE/CO/1; the numbering of the Committee's concluding observations corresponds to the numbers in the present document. Only those paragraphs of the concluding observations in which the Committee encourages Switzerland to improve the implementation of the Convention are referred to; this is why the numbers are not sequential.

## Abbreviations

ATF	<i>Arrêt du Tribunal Fédéral</i> (Decision of the Federal Supreme Court)
FF	<i>Feuille fédérale</i> (Federal Gazette)
RO	<i>Recueil officiel du droit fédéral</i> (Official Compilation of Federal Legislation)
RS	<i>Recueil systématique du droit fédéral</i> (Classified Compilation of Federal Legislation)

## Introduction

1. The Federal Council has the honour to submit to the United Nations Committee on the Rights of the Child (hereinafter referred to as “the Committee”) the combined second, third and fourth reports of Switzerland under article 44, paragraph 1 (b), of the Convention on the Rights of the Child,<sup>3</sup> hereinafter referred to as “the Convention”, and article 8, paragraph 2, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.<sup>4</sup> This consolidated report should be read in conjunction with the core document constituting the first part of the reports of Switzerland,<sup>5</sup> the relevant annexes and the initial reports of the Swiss Government of 1 November 2000<sup>6</sup> on the implementation of the Convention on the Rights of the Child and of 30 June 2004<sup>7</sup> on the implementation of the Optional Protocol on the involvement of children in armed conflict.

2. The present report includes a separate annex containing overviews and statistics relating to different thematic areas of the Convention on the Rights of the Child.

3. In the present report, the Swiss Government responds to the concluding observations of the Committee on the Rights of the Child on the initial report of Switzerland on the Convention on the Rights of the Child<sup>8</sup> and on the report on the Optional Protocol on the involvement of children in armed conflict.<sup>9</sup> It also describes the administrative, legislative, judicial and other measures taken by Switzerland since the publication of the initial reports with regard to the rights guaranteed by the Convention. As to its content, form and presentation, the report has been prepared in accordance with the guidelines issued by the Committee for the preparation of national reports on the Convention<sup>10</sup> and the compilation of guidelines on reports to be submitted by States parties to the international human rights treaties.<sup>11</sup>

4. The report was approved by the Federal Council on 4 July 2012. It has been published in French, German and Italian on the website of the Federal Department of Foreign Affairs (DFAE) so as to be accessible to a wide readership.

## General statistical data

5. *Response to paragraph 18 of the Committee’s concluding observations (CRC/C/15/Add.182).*

6. Statistics relating to children and adolescents in Switzerland are contained in a separate annex to the present report entitled “Thematic and statistical overviews”.

7. In general, further to the core document, it should be stated at this point that, according to the data from the most recent census, the resident population of Switzerland in

<sup>3</sup> RS 0.107.

<sup>4</sup> RS 0.107.1.

<sup>5</sup> HRI/CORE/1/Add.29/Rev.1.

<sup>6</sup> CRC/C/78/Add.3.

<sup>7</sup> CRC/C/OPAC/CHE/1.

<sup>8</sup> CRC/C/15/Add.182.

<sup>9</sup> CRC/C/OPAC/CHE/CO/1.

<sup>10</sup> CRC/C/58/Rev.1.

<sup>11</sup> HRI/GEN/2/Rev.6.

2010<sup>12</sup> was 7,940,969,<sup>13</sup> of whom 1,459,816 were children and adolescents aged under 18, a figure that represents 18 per cent of the total population. In 2000, the proportion of young people under 18 within the resident population of Switzerland was 21 per cent and, in 1970, 28 per cent.

8. Of the 1,459,816 children and adolescents living in Switzerland in 2010, 1,117,888 were of Swiss nationality. Most of the foreign children were Portuguese (52,304), Italian (37,576), German (34,822), Serbian (32,509) or Kosovar (19,365). In 2000, of the 1,495,356 children living in Switzerland, 1,145,410 were of Swiss nationality, while most of the foreign children at that time were Yugoslav (80,261), Italian (51,834), Portuguese (38,701), Turkish (27,226) or Macedonian (20,626).

9. In 2010, the number of young people living in Switzerland was made up of 749,145 boys (51.3 per cent) and 710,671 girls (48.7 per cent). In 2000, the distribution was 766,658 boys (51.3 per cent) and 728,698 girls (48.7 per cent). In 2010, there were 80,290 live births in Switzerland: 41,111 boys and 39,179 girls. Of these, 59,361 were Swiss and 20,929 of foreign nationality. In 2000, there were 78,458 live births: 40,402 boys and 38,056 girls, of whom 56,885 were Swiss and 21,573 were of foreign nationality.

10. In 2010, 71.6 per cent of children lived in towns and 28.4 per cent in rural areas. In 2000, 69.3 per cent lived in towns and 30.7 per cent in rural areas.

11. In 2000,<sup>14</sup> the main languages spoken by children living in Switzerland were as follows: German (64 per cent), French (22.2 per cent), Italian (4.9 per cent), Romansh (0.4 per cent) and other languages (8.5 per cent).

12. In 2000, 40.6 per cent of children living in Switzerland were Roman Catholic, 32.8 per cent Protestant, 7.3 per cent Muslim and 0.3 per cent Jewish. Some 2.4 per cent belonged to another Christian community and 0.9 per cent to another church or religious community. A total of 10 per cent of children did not belong to any faith group or religious community, while for 5.5 per cent no information was available.

## **I. General measures of implementation of the Convention (arts. 4, 42 and 44, para. 6, of the Convention)**

### **A. Reservations**

13. *Response to paragraphs 7 and 8 of the concluding observations.*

14. Since the Convention was ratified, the reservations formulated with regard to articles 5 (parental guidance) and 7 (right to acquire Swiss nationality) have been withdrawn. The reservations concerning the child's right to have the free assistance of an interpreter and to appeal a decision before a higher judicial authority, both relating to article 40, have also been withdrawn. The reservations still in place, therefore, are those concerning articles 10 (family reunification), 37 (separation of minors and adults in detention) and 40 (two reservations concerning the unconditional right to legal assistance and the guarantee of separation, in terms of personnel and organization, between examining authorities and sentencing authorities in juvenile criminal procedure).

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<sup>12</sup> Since 2010, the Federal Statistical Office (OFS) has been using a new definition of the permanent resident population that includes asylum seekers who remain in the country for at least 12 months. This should be taken into account when comparing the figures.

<sup>13</sup> All the figures in this section were provided by the Federal Statistical Office.

<sup>14</sup> Figures relating to language and religious affiliation for 2010 are not yet available.



15. With regard to family reunification (art. 10), the Federal Act on Foreign Nationals (Foreign Nationals Act),<sup>15</sup> which entered into force on 1 January 2008, authorizes holders of a residence permit of limited duration to bring their family to Switzerland, subject to certain conditions.<sup>16</sup> The Foreign Nationals Act even authorizes family reunification<sup>17</sup> for holders of a temporary residence permit, subject to certain conditions. However, the Asylum Act<sup>18</sup> does not provide for family reunification for asylum seekers.

16. The reservation concerning article 37 cannot be withdrawn for the moment because the transitional period<sup>19</sup> of 10 years granted to the cantons to establish the necessary institutions has not yet elapsed.

17. With regard to the unconditional right to assistance (art. 40), the Federal Council stated in its dispatch of 21 September 1998 concerning the amendment of the Swiss Criminal Code and the Military Criminal Code and also of the Federal Act on the Criminal Law applicable to Juveniles (Juvenile Criminal Law Act) “that Switzerland continued to interpret article 40, paragraph 2 (b) (ii), of the Convention as an obligation to designate an official defence counsel not in all cases but only where a defence is necessary”.<sup>20</sup> This position has not changed to date, and therefore the reservation in question cannot be withdrawn.<sup>21</sup>

18. Separation, in terms of personnel and organization, between examining authorities and sentencing authorities in juvenile criminal procedure (art. 40) is alien to the Swiss legal tradition. The Juvenile Criminal Procedure Code,<sup>22</sup> which entered into force on 1 January 2011, also does not provide for such separation; the reservation cannot, therefore, be withdrawn.

## B. Measures adopted under article 4 of the Convention

19. Article 4 places an obligation on States parties to undertake all appropriate legislative, administrative, and other measures for the implementation of the rights of the child.

20. *Response to paragraph 10 of the concluding observations.*

21. Since the initial report, a number of legislative amendments, which have been checked for compatibility with the Convention on the Rights of the Child, have entered into force at the federal level.

22. The main federal laws, new or revised, that have been implemented by the cantons are set out below in chronological order:

- Since 1 April 2002, the mere possession of child pornography<sup>23</sup> has been punishable under the Criminal Code.<sup>24</sup>

<sup>15</sup> RS 142.20.

<sup>16</sup> Foreign Nationals Act, art. 45.

<sup>17</sup> Foreign Nationals Act, art. 85, para. 7.

<sup>18</sup> RS 142.31.

<sup>19</sup> Juvenile Criminal Law Act, art. 48.

<sup>20</sup> FF 1999 2083.

<sup>21</sup> For more detail in this regard, see chapter VIII, section B.5 (Reservations).

<sup>22</sup> RS 312.1.

<sup>23</sup> Criminal Code, art. 197, para. 3 *bis*.

<sup>24</sup> RS 311.0.

- In addition, since 1 October 2002, the periods of statutory limitation<sup>25</sup> on criminal proceedings for sexual acts with children or dependent minors have been extended.
- The Federal Act on the Elimination of Discrimination against People with Disabilities (Disability Discrimination Act),<sup>26</sup> which entered into force on 1 January 2004, aims to increase the autonomy of persons with disabilities in their participation in society and to eliminate the *de jure* and *de facto* discrimination that they encounter.
- The revised Federal Act on Vocational and Professional Training and Education (Vocational Training Act)<sup>27</sup> also entered into force on 1 January 2004; its principal objectives are as follows. First, it enables individuals to develop professionally and personally and to integrate into society, particularly the workforce. Second, it aims to ensure equal opportunities for training across all social groups and regions, to achieve genuine equality between the sexes and to eliminate discrimination against persons with disabilities in vocational training. The third objective is flexibility in the types and branches of training offered both within vocational training and between vocational training and the other sectors of the education system.<sup>28</sup> In addition to these objectives, the Act requires training enterprises and vocational schools to afford trainees the right to be consulted.<sup>29</sup>
- The Federal Act on the Criminal Law applicable to Juveniles (Juvenile Criminal Law Act)<sup>30</sup> entered into force on 1 January 2007. Since then, juvenile criminal law has been governed not by the Criminal Code, as in the past, but by a separate Act. The purpose of the Act is to protect and educate young people.
- Under the Federal Act of 23 June 2006 amending the Civil Code (protection of the person in the event of violence, threats or harassment), a new article 28b entitled “Violence, threats or harassment” was added to the Civil Code on 1 July 2007. Although this new provision governs primarily relations between adults, it also protects children.<sup>31</sup>
- The Federal Decree of 3 October 2003 on the New System of Fiscal Equalization and Division of Tasks between the Confederation and the Cantons,<sup>32</sup> which entered into force on 1 January 2008, provides in particular for the addition of a new article 62, paragraph 3, to the Federal Constitution. Under this provision, the cantons provide for adequate special education for children and adolescents with disabilities until their twentieth birthday at the latest. A transitional provision has been established to that effect.<sup>33</sup>
- On 1 August 2008, the Ordinance on Protection Measures for Children and Young People and on Strengthening Children’s Rights<sup>34</sup> entered into force; it is based on article 386 of the Criminal Code (prevention of violence) and was promulgated pursuant to articles 19 and 34. On the basis of the Ordinance, the Confederation may carry out model programmes or projects throughout Switzerland. It may also grant

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<sup>25</sup> Criminal Code, art. 97, para. 2.

<sup>26</sup> RS 151.3.

<sup>27</sup> RS 412.10.

<sup>28</sup> Vocational Training Act, art. 3.

<sup>29</sup> Vocational Training Act, art. 10.

<sup>30</sup> RS 311.1.

<sup>31</sup> RO 2007 137; FF 2005 6437 6461.

<sup>32</sup> RO 2007 5765.

<sup>33</sup> Federal Constitution, art. 197, para. 2.

<sup>34</sup> RS 311.039.1.

financial aid to private, non-profit-making organizations active throughout the country or in one of the linguistic regions. The Ordinance covers the subsidies granted by the Federal Social Insurance Office (OFAS) since 1996 in the area of child protection.

- On 30 November 2008, the people and the cantons accepted the popular initiative for the non-applicability of statutory limitations to acts of child pornography, which enabled the entry into force of the new article 123b of the Federal Constitution,<sup>35</sup> which reads as follows: “Criminal action and punishment for a punishable act of a sexual or pornographic nature against a prepubescent child shall not be subject to limitation.” In the interests of legal certainty and uniform application of the law, the indeterminate concepts “prepubescent child” and “punishable act of a sexual or pornographic nature” will have to be defined more precisely when the Criminal Code and the Military Criminal Code are revised.<sup>36</sup> The dispatch was approved by the Federal Council in June 2011.<sup>37</sup> Parliament adopted the bill in question on 15 June 2012.<sup>38</sup>
- The Federal Act on the Provision of Support to Victims of Crime (Victim Support Act)<sup>39</sup> has been completely revised and the new Act entered into force on 1 January 2009. The standard period within which victims may file a claim for compensation and non-pecuniary damages has been increased from two to five years; the period applicable to minors who are victims of serious offences causing bodily harm or serious sexual offences has been extended even further.<sup>40</sup> The confidentiality requirement placed on persons working in support centres has been relaxed in certain circumstances where this is in the interests of the child.<sup>41</sup> Provisions concerning the position of child victims in criminal proceedings are now found in the Criminal Procedure Code,<sup>42</sup> which entered into force on 1 January 2011, and in the Military Criminal Procedure Code.<sup>43</sup>
- The Federal Act on International Child Abduction and the Hague Conventions on the Protection of Children and Adults<sup>44</sup> entered into force on 1 July 2009. The purpose of the Act is to speed up court proceedings, establish an interdisciplinary network of experts capable of providing advice, assess the interests of the child in return proceedings and increase children’s involvement in proceedings. The Asylum Act<sup>45</sup> now provides that decisions concerning unaccompanied minor asylum seekers may also be taken at the registration centre and that removal orders may be enforced from there.<sup>46</sup> The competent cantonal authorities must also therefore immediately appoint a responsible adult for the duration of proceedings at the airport and at the registration centre.

<sup>35</sup> RS 101.

<sup>36</sup> RS 321.0.

<sup>37</sup> FF 2011 5565.

<sup>38</sup> FF 2012 5475.

<sup>39</sup> RS 312.5.

<sup>40</sup> Victim Support Act, art. 25.

<sup>41</sup> Victim Support Act, art. 11, para. 3.

<sup>42</sup> RS 312.0; Criminal Procedure Code, art. 154.

<sup>43</sup> RS 322.1; Military Criminal Procedure Code, art. 84h.

<sup>44</sup> RS 211.222.32.

<sup>45</sup> RS 142.31.

<sup>46</sup> Asylum Act, art. 17, para. 3, and Asylum Ordinance No. 1, art. 7.

- The consolidated Swiss Criminal Procedure Code<sup>47</sup> entered into force on 1 January 2011. Pre-existing federal provisions, such as those contained in the Victim Support Act, have been incorporated into the new Code. In that context, the provisions of the Act relating to confrontations between child victims and defendants and hearings of child victims in criminal proceedings have been reproduced in the Criminal Procedure Code and the Military Criminal Procedure Code.<sup>48</sup>
- On 1 January 2011 the new Juvenile Criminal Procedure Code,<sup>49</sup> which governs the prosecution and judgement of criminal offences committed by minors under juvenile criminal law and the enforcement of penalties ordered against them, entered into force. The protection and education of minors are paramount in the application of the Code. Juvenile criminal procedure must take due account of the age and degree of development of the minor.<sup>50</sup>
- Since 1 January 2011, the offence of recruitment or use of child soldiers<sup>51</sup> has been established in the Criminal Code and the Military Criminal Code,<sup>52</sup> in the chapter entitled “War crimes”.
- As part of the implementation of the return directive since 1 January 2011, certain provisions have been added to the Federal Act on Foreign Nationals<sup>53</sup> so as to take account of the particular needs of unaccompanied foreign minors who are being deported.<sup>54</sup>
- On 1 January 2011 the consolidated Civil Procedure Code<sup>55</sup> also entered into force. Part 2, Title 7 (arts. 295–304), contains the civil procedure provisions applicable to children in family law cases.<sup>56</sup> The corresponding provisions of the Civil Code have therefore been deleted.<sup>57</sup>
- On 1 January 2013, the amendment to the Civil Code<sup>58</sup> on the protection of adults, the law of persons and the law of filiation will enter into force. On its entry into force, the adult protection authority will become a specialized authority appointed by the cantons, which will also act as a child protection authority.<sup>59</sup>
- In addition, the new Advancement of Children and Young People Act<sup>60</sup> will enter into force on 1 January 2013. It governs support for private organizations that arrange extracurricular activities with children and young people; support from the cantons and communes for projects of limited duration relating to extracurricular activities; collaboration between the Confederation and the cantons on child and youth policy; encouragement of exchanges of information and experience; and skills development with regard to children and young people.

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<sup>47</sup> RS 312.0.

<sup>48</sup> RS 322.1.

<sup>49</sup> RS 312.1.

<sup>50</sup> Juvenile Criminal Procedure Code, art. 4, para. 1.

<sup>51</sup> Criminal Code, art. 264f, and Military Criminal Code, art. 112b.

<sup>52</sup> RS 321.0.

<sup>53</sup> RS 142.20.

<sup>54</sup> Foreign Nationals Act, art. 64, para. 4.

<sup>55</sup> RS 272.

<sup>56</sup> FF 2006 6841, ch. 5.21.

<sup>57</sup> Civil Code, arts. 144–147, 254 and 280–284.

<sup>58</sup> RS 210.

<sup>59</sup> New Civil Code, art. 440, paras. 1 and 3.

<sup>60</sup> FF 2010 6257; RS 446.1.

23. A list of all the amendments that have been made to cantonal laws would be beyond the scope of the present report. However, it may be mentioned that, after the revision of the Federal Constitution in 2000, which entailed a number of important amendments to policy relating to children and young people, several cantons adopted important laws in this area. To date, 10 cantons<sup>61</sup> have adopted specific legal frameworks relating to children and/or young people, and in several others the relevant provisions are contained in a superior general law or in the cantonal constitution. Moreover, many cantons and cities have established guidelines and frameworks setting out the long-term objectives of child and youth policy and specifying the strategies and measures necessary for their implementation.

24. The canton of Aargau, where an interdepartmental working group produced a report on the implementation of the Convention on the Rights of the Child in the canton, is a noteworthy example. On the basis of the report, the Cantonal Council decided in March 2010 to set up a Convention on the Rights of the Child project group for five years from 2011 with the task of implementing the proposed measures. The group's activities will essentially involve the networking of State services and private organizations; the consultation of children on important family matters; improvement of opportunities for the children of migrant parents or those from families with limited access to culture and education; the rights of children and their attendance at schools and special teaching institutions; and the coordination of child protection services and procedures.

25. Checks are also carried out at the cantonal level to ensure that the new sets of measures, legislative provisions, work tools and information are consistent with children's interests and rights. The principle of the best interests of the child is evident particularly in the laws that directly concern children or work carried out with them; the special protection afforded to them is often expressly provided for. Consideration of the interests of the child has even partly influenced compulsory school curricula. For example, the compulsory curriculum in the canton of Zurich stipulates that the primary objective of collaboration between parents and schools is to promote the interests of the child and of the class.

26. The Janiak parliamentary motion,<sup>62</sup> tabled in 2000, sought the adoption of a framework federal act giving the cantons responsibility for implementing a comprehensive policy on children and young people and advocated the establishment at the federal level of a central administrative body responsible for coordinating the different tasks associated in one way or another with the policy of advancement of children and young people. Two other parliamentary motions tabled by Wyss<sup>63</sup> in 2000 and 2001 sought the adoption of appropriate measures to promote the integration of children and young people into the political process and to grant them the right to make proposals at the Federal Youth Session. In response to these three motions, the Federal Council issued a report on 27 August 2008 entitled "Pour une politique suisse de l'enfance et de la jeunesse" (Plan for a Swiss policy on children and young people).<sup>64</sup> The cantons and communes had participated widely in the preparation of the report.

27. As part of this strategy, the Federal Council proposed a complete revision of the Act on the Promotion of Extracurricular Youth Activities (Youth Activities Act) and the preparation of an ordinance on information and awareness-raising measures with regard to

<sup>61</sup> Zurich, Bern, Obwalden, Fribourg, Ticino, Valais, Neuchâtel, Geneva and Jura. In the canton of Basel Stadt, the 1984 youth protection law in force is currently being revised.

<sup>62</sup> Janiak motion 00.3469: Framework act on a Swiss policy on children and young people.

<sup>63</sup> Wyss motion 00.3400: Improving the participation of young people in political life; and Wyss motion 01.3350: Federal Youth Session. Right to make proposals.

<sup>64</sup> The report can be downloaded on the Internet at [www.bsv.admin.ch/themen/kinder\\_jugend\\_alter/00067/02003/index.html?lang=fr](http://www.bsv.admin.ch/themen/kinder_jugend_alter/00067/02003/index.html?lang=fr), consulted on 15 February 2012.

children's rights and child protection. However, it considered it inappropriate to put in place a framework act as set out in the Janiak parliamentary motion, on the one hand because the Constitution did not grant the Confederation the competence to impose rules on the cantons with regard to child and youth policy and, on the other hand, because it considered that measures in that area should be tailored to the different situations in different cantons and communes and should be integrated into the structures already in place at that level. Lastly, the Federal Council stated that it was not necessary to establish a new federal administrative body, since the Federal Social Insurance Office already had responsibility for coordinating federal activities relating to the rights of children and young people.

28. Subsequently, in 2009, Parliament approved two parliamentary motions tabled by Amherd<sup>65</sup> in 2007. The first sought to fill the gaps in child and youth policy through a complete revision of the Youth Activities Act and of the Ordinance on Prevention Measures for Child Protection. The second sought the formulation of a comprehensive strategy for child and youth policy, based on the Federal Constitution, as a cross-cutting task of the Confederation, the cantons and the communes. Consideration of this parliamentary initiative was then suspended pending the complete revision of the Youth Activities Act.<sup>66</sup> It was not until September 2011, after the adoption of the new Advancement of Children and Young People Act,<sup>67</sup> that Parliament finally began to consider the parliamentary initiative, which it will follow up by preparing a proposal.

29. At the cantonal level, all the cantons and communes currently have a more or less extensive network of specialized services and agencies responsible for advising and supporting children, young people and their responsible adults in different situations and, where necessary, intervening. In comparison with the period covered by the initial report of Switzerland, the cantons have appreciably improved the coordination of the various measures relating to child and youth policy by establishing focal points: to date, almost two thirds of the cantons have established a special unit or appointed a delegate within their administration for issues affecting children and young people. In some cases, they have concluded service contracts with organizations outside the administration. One example is the canton of Zug, which has concluded a service contract with a private agency for the management of a cantonal centre of expertise on child and youth protection and the advancement of young people. The canton allocates an annual budget of 1.7 million francs to the centre. In addition, the Department of Internal Affairs of the canton of Zug has annual funding of 200,000 francs available for projects aimed at the advancement of young people.

30. Furthermore, many cantons and cities have established committees on children and young people to deal with strategic issues and to assist the specialized cantonal agencies.

31. In mid-2011, the Conference of Cantonal Ministers of Social Affairs (CDAS) established a special unit for child and youth issues. The cantonal delegates for the advancement of children and young people, who met in October 2003 at a special inter-cantonal conference of the Swiss Conference of Cantonal Ministers of Education (CDIP), have been attached to the Conference of Cantonal Ministers of Social Affairs since then. Similarly, the Swiss Conference of Cantonal Managers for the Protection of Children and Assistance to Young People (CPEAJ), hitherto relatively informal, is now attached to

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<sup>65</sup> Amherd motion 07.3033: Federal act for children and young people; Amherd parliamentary initiative 07.402: Federal act on the encouragement and protection of children and young people. Constitutional basis.

<sup>66</sup> RS 446.1.

<sup>67</sup> RS 446.1.

the child and youth unit of the Conference of Cantonal Ministers of Social Affairs. The Conference of Cantonal Delegates for the Advancement of Children and Young People (CPEJ)<sup>68</sup> and the Swiss Conference of Cantonal Managers for the Protection of Children and Assistance to Young People<sup>69</sup> are responsible for promoting information exchange, encouraging contact among the cantons and establishing inter-cantonal collaboration; they are also responsible for representing jointly the interests of children and young people and promoting the protection of children and assistance to young people. This represents an important step towards the improvement and development of coordination among the cantons with regard to children and young people.

32. The Conference of Cantonal Delegates for the Advancement of Children and Young People has drawn up standards for the advancement of children and young people in Switzerland. In January 2010, the Committee of the Swiss Conference of Cantonal Ministers of Education transmitted them, as “good practice” recommendations, to the cantons and communes. The standards are aimed at enabling all children living in Switzerland, not only those living in a canton that has institutionalized structures for the advancement of children and young people, to find an informal education opportunity suited to their needs. The standards are taken from the Convention on the Rights of the Child, the Federal Constitution, various cantonal laws and ordinances and delegates’ practice. They encompass the expertise and the priority areas of the three levels of the State.

33. The cantons have also undertaken international commitments with regard to the advancement of children and young people. The ch Foundation for Federal Cooperation, an inter-cantonal organization, is responsible for ensuring the cantons’ participation in the Lifelong Learning Programme and the Youth in Action Programme of the European Union and for contributing to knowledge development in Switzerland and exchanges with foreign countries. These measures will make a valuable contribution to the advancement of children and young people.

## **C. International cooperation**

### **1. General**

34. The Swiss Agency for Development and Cooperation (SDC) is responsible for implementing Swiss cooperation in development and humanitarian aid. One of the Agency’s objectives is to improve standards of living for future generations. With an average budget of 70 million francs, including its contribution to the United Nations Children’s Fund (UNICEF), the Agency endeavours to improve children’s living conditions. It achieves these objectives by promoting social, humanitarian and economic development, defending human rights and promoting *de jure* equality between men and women. In its activities relating both to cooperation for development and to humanitarian aid, the Agency does its utmost to take account of the specific needs of children.

35. The Agency contributes to the promotion and protection of children’s rights by forming partnerships with actors in a wide variety of areas.

### **2. Multilateral and humanitarian activities**

36. The Swiss Agency for Development and Cooperation represents Switzerland on the UNICEF Executive Board. Its involvement allows Switzerland to take part in the planning and monitoring of UNICEF activities.

<sup>68</sup> For further information, see [www.sodk.ch/fr/qui-est-la-cdas/cpej.html](http://www.sodk.ch/fr/qui-est-la-cdas/cpej.html), consulted on 11 April 2012.

<sup>69</sup> For further information, see [www.sodk.ch/fr/qui-est-la-cdas/cpeaj.html](http://www.sodk.ch/fr/qui-est-la-cdas/cpeaj.html), consulted on 11 April 2012.

37. Between 2001 and 2007, Switzerland made an annual general contribution to UNICEF of 18 million francs, a sum that was increased to 20 million francs in 2008.<sup>70</sup> The Agency also directly supports a number of UNICEF projects in various countries. For example, between 2001 and 2005, Switzerland made a significant contribution of 6.5 million francs to a project in Pakistan aimed at promoting children's legal and institutional rights and strengthening child protection. After the earthquake of October 2005 in South-East Asia, Switzerland supported UNICEF efforts to help children in Pakistan, among other interventions. Following the 2010 earthquake in Haiti, the Agency made available to UNICEF various experts on water, health and construction from the Swiss Humanitarian Aid Unit. These experts worked, *inter alia*, on producing plans for and subsequently constructing 200 semi-permanent schools. In the United Republic of Tanzania, the Agency contributed 3 million francs in 2011 to a programme to improve access for schools and families to water and sanitation. In response to the drought and the food crisis in the Horn of Africa, it supported the UNICEF drought response and recovery programme in south central Somalia with a contribution of 1.5 million francs in 2011.

38. Switzerland provides strategic and financial support not only to UNICEF but also to other multilateral organizations<sup>71</sup> whose programmes and activities directly or indirectly affect children's welfare, such as the United Nations Development Programme (UNDP), the United Nations Population Fund (UNFPA), the United Nations Development Fund for Women (UNIFEM), the Joint United Nations Programme on HIV/AIDS (UNAIDS), the World Health Organization (WHO), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the Global Fund to Fight AIDS, Tuberculosis and Malaria.

39. In humanitarian affairs, the Swiss Agency for Development and Cooperation collaborates in particular with the International Committee of the Red Cross (ICRC), the Office of the United Nations High Commissioner for Refugees (UNHCR) and the World Food Programme (WFP). These international organizations endeavour to provide assistance and protection to children affected by humanitarian crises. ICRC and UNHCR are also involved in combating the phenomenon of child soldiers.

40. Switzerland also supports various Swiss non-governmental organizations (NGOs) that work to defend children's rights, such as Terre des hommes, Enfants du monde, the Pestalozzi Children's Village Foundation and the International Institute for the Rights of the Child. There is also close collaboration with local partners, governments and civil society.

#### **D. Existing mechanisms to ensure the implementation of the Convention on the Rights of the Child, coordinate policy relating to children and monitor the implementation of the Convention**

41. *Response to paragraph 12 of the concluding observations.*

42. As already stated in our initial report,<sup>72</sup> under the federal system, the Convention on the Rights of the Child is implemented through a large number of both federal and cantonal mechanisms. Many areas of child and youth policy fall within the competence of the

<sup>70</sup> In addition to these annual sums, several projects benefited from aid worth 4.5 million francs in 2008, 5 million francs in 2009, 4.5 million francs in 2010 and 9.5 million francs in 2011 (rounded figures).

<sup>71</sup> See annex entitled "Thematic and statistical overviews" for a table setting out the contributions made by Switzerland to international organizations (fig. 1).

<sup>72</sup> See paragraphs 17–21 of the initial report on the Convention on the Rights of the Child.



cantons: compulsory schooling, sentence enforcement, certain aspects of health policy, the promotion of culture and important elements of social policy, such as the placement of children outside their family.

43. At the federal level, the coordination of activities relating to child protection, children's rights, child and youth issues, intergenerational relations, the family, and raising awareness of and promoting children's rights falls within the remit of the family, generations and society unit of the Federal Social Insurance Office, itself part of the Federal Department of Home Affairs. Since 2006, the Federal Social Insurance Office has also been involved in issues relating to young people, which previously fell within the remit of the Federal Office of Culture.

44. Since the publication of the initial report, there has also been a change of remit with regard to sport. Sporting activities, the Youth and Sport programme and the prevention of sexual abuse in sport are now the sole responsibility of the Federal Department of Defence, Civil Protection and Sport (DDPS).

45. *Response to paragraph 14 of the concluding observations.*

46. Switzerland has no plan of action as such. However, measures have been taken at the federal level to give the Confederation, in conformity with the federal system, greater prerogatives with regard to children's rights. Thus the strategy for a Swiss policy on children and young people has been developed. This has led to a complete revision of the Federal Act on the Promotion of Extracurricular Youth Activities and the promulgation of the Ordinance on Protection Measures for Children and Young People and on Strengthening Children's Rights.<sup>73</sup> Through service agreements or contributions to projects, the Confederation encourages collaboration between private and public entities pursuant to the Ordinance and is able to set priorities and objectives. The new Advancement of Children and Young People Act gives the Federal Social Insurance Office a mandate to establish a systematic exchange of information on child and youth policy at the federal level and an exchange of experience between the Confederation and the cantons. The Act will enter into force on 1 January 2013.

47. *In response to paragraph 14 of the concluding observations, Switzerland would also like to provide the following information.*

48. When legislative measures, budgets and major policy frameworks are drawn up, the impact on children is assessed and taken into consideration. The Federal Commission for Child and Youth Affairs (CFEJ), which, in accordance with its mandate, monitors the situation of children and young people in Switzerland, assesses the potential impact on children and young people of planned measures and significant legislative provisions. As a rule, similar monitoring is also carried out at the cantonal level. Switzerland also endeavours to ensure equal treatment of all children through the prohibition of all forms of discrimination.

49. *Response to paragraph 16 of the concluding observations.*

50. On 1 July 2009, the Federal Council decided to launch a five-year pilot project for the purchase of services from a university centre of expertise in human rights. The Swiss Centre of Expertise in Human Rights (CSDH), which was set up at that time, is a service centre responsible for promoting and facilitating the implementation of the international human rights obligations of Switzerland at all levels of the State.<sup>74</sup> The project participants are the universities of Bern, Neuchâtel, Fribourg and Zurich and, as partners, the Kurt

<sup>73</sup> RS 311.039.1.

<sup>74</sup> See [www.skmr.ch/frz/home.html](http://www.skmr.ch/frz/home.html), consulted on 15 February 2012.

Bösch University Institute, the Human Rights Education Centre at the University of Teacher Education Lucerne and the organization [humanrights.ch/MERS](http://humanrights.ch/MERS). Each of these institutions is assigned a particular area of expertise. The children and young people unit receives expert support from the Kurt Bösch University Institute and the International Institute for the Rights of the Child, both based in Sion.

51. Lastly, with regard to policy on children, a number of cantonal measures are in place. In most of the cantons, one or more departments, such as the youth department, are responsible for implementing policy on children. In the canton of Lucerne, for example, the Cantonal Parliament tabled a parliamentary motion in 2009 seeking the adoption of cantonal guidelines for the advancement of children and young people. The law on the promotion of social cohesion provides the legal basis for cantonal social policy guidelines. This will be the new basis for the development of child and youth policy in the canton of Lucerne.

### **E. Measures taken to make the principles and provisions of the Convention on the Rights of the Child widely known (art. 42)**

52. *Response to paragraph 20 of the concluding observations.*

53. Since the publication of the initial report of Switzerland, the Confederation has adopted various measures for the continued dissemination of the principles and provisions of the Convention on the Rights of the Child. The family, generations and society unit of the Federal Social Insurance Office, which is responsible for disseminating and implementing the Convention on the Rights of the Child at the national level, has since 2006 received “children’s rights” funding, which allows it to support projects and regular activities<sup>75</sup> carried out by NGOs<sup>76</sup> relating to the dissemination of information on the Convention.

54. The Human Security Division (DSH)<sup>77</sup> of the Federal Department of Foreign Affairs funds specific projects run by NGOs and United Nations agencies which, in accordance with article 42 of the Convention on the Rights of the Child, raise awareness of the principles and provisions of the Convention not only among adults but also among children. The following examples illustrate this commitment:

- In 2001, financial support was provided for a world summit for children coordinated by the Swiss Committee for UNICEF.

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<sup>75</sup> Some of these projects are planned for Universal Children’s Day and the National Day for Parent Education. These two days offer an ideal platform for disseminating the principles and content of the Convention on the Rights of the Child to a broad audience. They also provide an opportunity to discuss specific topics that are of particular concern to children.

<sup>76</sup> For example, the Child Rights Network Switzerland has received support for its efforts to coordinate the activities of the various national NGOs dealing with children’s rights and to promote the implementation of the Convention. The Foundation for Education and Development has received a contribution for its annual action programme in schools, which it aims to use to improve knowledge of the Convention. Other NGOs, such as Defence for Children International, the Coalition to Stop the Use of Child Soldiers, International Social Service and the NGO Group for the Convention on the Rights of the Child, also receive financial support.

<sup>77</sup> On 1 February 2012, the names of the divisions of the Directorate of Political Affairs were changed. The Human Security Division was previously called Political Affairs Division (DP) IV.

- In November 2003, the ECPAT<sup>78</sup> Switzerland network, which comes under the control of the Swiss Foundation for Child Protection, launched a pilot project in conjunction with Hotelplan SA aimed at protecting children from sexual exploitation in the context of tourism. Through a financial contribution, the Confederation supported the promotion and implementation of a code of conduct.
- Since 2004, the NGO Group for the Convention on the Rights of the Child has received substantial financial assistance. The network of civil society representatives creates a unique link between NGOs throughout the world and the Committee.

55. The Federal Commission for Child and Youth Affairs and the Federal Coordination Commission for Family Affairs (COFF) organize seminars and regularly publish reports and opinions on topics that directly affect children and their rights, such as the child's right to be heard, poverty, care outside the family and custody following a divorce. The Convention on the Rights of the Child serves as a reference for them. The seminars and reports are directed at a large expert audience, while the accompanying media coverage is aimed at a broader audience.

56. The rights of the child are also addressed in basic and further training. One innovation in this sector has come from the Kurt Bösch University Institute in Sion, which, in conjunction with the University of Fribourg, offers a postgraduate degree: the Master of Advanced Studies in Children's Rights. In conjunction with various partners, including the University of Luxembourg, the Kurt Bösch University Institute also offers a summer school on children's rights. Children's rights are also addressed within normal university curricula: during the 2007 summer semester, the University of Fribourg had on its curriculum a course entitled "10 years of the Convention on the Rights of the Child in Switzerland". These courses are aimed at people who may be called upon to work directly with children in their future professional life.

57. A number of Internet sites<sup>79</sup> that receive financial support from the Confederation publish information on the Convention on the Rights of the Child for children and young people and responses to a large number of questions. The family, generations and society unit of the Federal Social Insurance Office, through a service contract, supports the monitoring of children's rights by NGOs belonging to the Child Rights Network Switzerland, also accessible to the public on the Internet.

58. In 2007, Switzerland celebrated the tenth anniversary of the ratification of the Convention on the Rights of the Child. Various events focusing on children's rights and their implementation were organized to mark the occasion:

- For example, on 26 March 2007 the Child Rights Network Switzerland invited 26 classes from 26 cantons to attend a major meeting in Bern to debate the rights of the child with representatives of the cantons, the Confederation and NGOs. The Federal Social Insurance Office funded the event and published, in hard copy and on the Internet, a document on the background and perspectives of the Convention on the Rights of the Child.
- The cantons organized other events to mark the anniversary; they also produced and distributed various teaching materials.
- In addition, the fourth International Human Rights Forum, held on 24 and 25 May 2007 in Lucerne, focused on the theme "Human Rights and Children".

<sup>78</sup> End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT).

<sup>79</sup> See, for example, [www.tschau.ch](http://www.tschau.ch) and [www.ciao.ch](http://www.ciao.ch), consulted on 11 February 2010.

- Lastly, on Universal Children's Day in 2007, the symposium "Realizing the Rights of the Child" took place in Lucerne; during the symposium, the second volume of the Swiss Human Rights Book, entitled "Realizing the Rights of the Child", was presented.

59. Explicit and implicit references to the Convention on the Rights of the Child at the cantonal level are also many and varied, as shown by the following examples:

- In the canton of Ticino, most prevention and awareness-raising projects concerning children are based on one or more articles of the Convention. In addition, teachers are trained and made aware of the subject during further training courses.
- In the canton of Zurich, the Department of Education has, for example, provided financial and practical support for a project aimed at familiarizing children with their rights. In total, 37 classes have taken part in the project by actively discussing the rights enshrined in the Convention. Furthermore, the canton of Zurich has participated in the publication in German of the "Exploring Children's Rights" teaching material produced by the Council of Europe and in the translation and distribution of posters for the Council's children's rights campaign.
- A campaign to raise awareness of children's rights is under way in the canton of Aargau for the period 2011–2015. The canton is also planning further training for teachers, head teachers and therapeutic and social educators.
- To mark the twentieth anniversary of the Convention on the Rights of the Child in 2009, the canton of Jura organized a competition in schools aimed at raising pupils' awareness of the issue and educating them about it.
- Also to mark the twentieth anniversary of the Convention, the canton of Valais organized a two-day event, led by the Kurt Bösch University Institute and other participants, attended by children and representatives of business, education and culture.
- In the canton of Geneva, sessions on special education were held in 2008, during which various participants spoke about the Convention on the Rights of the Child.
- In the canton of Lucerne, the Human Rights Education Centre at the University of Teacher Education Lucerne organized the Year of Children's Rights in 2007 in conjunction with the cantonal primary education department. Numerous events provided the public with an opportunity to debate the topic of human rights and children. Public awareness of children's rights and human rights was raised by means of a chain of lights installed in the city of Lucerne on Human Rights Day, a week of cinema, an exhibition of photographs and posters, the aforementioned symposium "Realizing the Rights of the Child", benefit concerts, school drama days, a race in the city in aid of children's rights, and many other events.

60. In addition to these examples from the cantons, many campaigns and events are organized by the communes on 20 November each year, Universal Children's Day, with a view to raising public awareness of children's rights.

61. Since 1938, Romansh has been included in the Constitution as one of the national languages, along with German, French and Italian. However, it is only a semi-official language, because it is used only in relations between the Confederation and Romansh speakers. Not all federal legislative acts are published in Romansh, only those that are particularly important. Pursuant to article 11 of the Federal Act on the National Languages

and Understanding among the Linguistic Communities (Languages Act),<sup>80</sup> those laws that are to be published in Romansh are designated by the Federal Chancellery in consultation with the State chancellery of the canton of Graubünden.

62. In spring 2012, the Federal Chancellery, in agreement with the Federal Department of Foreign Affairs and the Cantonal Chancellery of Graubünden, decided to translate the Convention on the Rights of the Child into Romansh. Publication is scheduled for summer 2012. Several events will be organized to celebrate and disseminate the Romansh version of the Convention and to raise awareness of it in the Romansh-speaking regions.

#### **F. Dissemination of reports (art. 44, para. 6)**

63. In addition to the federal offices whose activities relate to children's rights and which belong to different federal departments, the Federal Commission for Child and Youth Affairs and the Federal Coordination Commission for Family Affairs were also consulted during the preparation of the present report. The cantons and NGOs were also invited to give their views on the report and to provide additional information during technical consultations.

64. The present report, like the initial report, will be translated into French, German and Italian and published on various Internet sites of the Confederation,<sup>81</sup> cantonal administrations and several NGOs.<sup>82</sup> The report and the concluding observations will also be published on the Committee's website.

#### **G. Collaboration with organizations such as NGOs or children's and adolescents' groups for the implementation of the provisions of the Convention on the Rights of the Child and the preparation of the periodic report**

65. Annual information meetings are held between the Federal Social Insurance Office and the Child Rights Network Switzerland, an association with which some 50 NGOs working to protect children's rights are affiliated, with a view to strengthening cooperation between NGOs and the federal administration. In 2008, the Federal Social Insurance Office and the Child Rights Network Switzerland concluded an initial service contract for a period of one year. It was extended in 2009 and 2011 and sets the following objectives for the Child Rights Network Switzerland:

- To coordinate civil society activities carried out under the auspices of the Child Rights Network Switzerland — both within the Network and with other civil society organizations in Switzerland;
- To coordinate with children's rights organizations in Switzerland on their concerns and represent them in dialogue with the Confederation and the cantons, particularly in the process of producing the report;

<sup>80</sup> RS 441.1.

<sup>81</sup> See [www.eda.admin.ch/eda/fr/home/topics/intla/humri/humtr/humrep/childr.html](http://www.eda.admin.ch/eda/fr/home/topics/intla/humri/humtr/humrep/childr.html) (Human rights; International Human Rights Treaties of the United Nations; State reports; Convention on the Rights of the Child), consulted on 1 February 2012.

<sup>82</sup> See, for example, [www.netzwerk-kinderrechte.ch/index.php?id=3&L=1](http://www.netzwerk-kinderrechte.ch/index.php?id=3&L=1) (report of Switzerland) or [www.humanrights.ch/fr/Accueil/index.html](http://www.humanrights.ch/fr/Accueil/index.html) (Focus Switzerland; UN Conventions: Implementation; Convention children's rights), visited on 15 February 2012.

- To lead dialogue among specialized organizations in Switzerland.

66. During the preparation of the report, contact was established at various levels with the Child Rights Network Switzerland, which coordinated the work on the shadow report. In 2011 and 2012, the Federal Department of Foreign Affairs met representatives of civil society, including the Child Rights Network Switzerland. The Network also presented its views during the technical consultations on the report.

67. The Swiss National Science Foundation provided funding of 12 million francs for its project 52, “Childhood, Youth and Intergenerational Relationships in a Changing Society”.<sup>83</sup> Between 2003 and 2007, 29 research projects were carried out, during which children and adolescents were able to express themselves directly. The objective was to gather information on the living standards and current and future needs of children and adolescents in Switzerland and thus determine the action required on the part of political forces and the administration. The questions asked were divided into six modules aimed at acquiring new data on the living conditions of children, adolescents and families in Switzerland, a number of legal and economic issues, generational issues in social and migration policy, families as the centre of intergenerational relations, psychosocial health and aspects of daily life such as school and leisure. The study showed that parents’ approach to bringing up their children and their sociocultural origin were determining factors in children’s school and professional careers and thus in their lives as a whole. In order to improve equal opportunities, project 52 proposed that the cost of childcare outside the family should be reduced for parents of limited means and that social segregation in the school system should be reduced by delaying separation into different branches of study, increasing mobility between them and facilitating the transition between school and the world of work. These measures are aimed at preventing certain young people from becoming marginalized and falling into a precarious situation.

## II. Definition of the child (art. 1)

68. As explained in the initial report,<sup>84</sup> the definition of the child in Swiss law coincides with the definition in the Convention on the Rights of the Child. Under article 14 of the Civil Code, the age of majority is 18. Before the age of 18 — that is, before attaining majority — every individual is considered a child. For further information on this issue, please refer to the initial report.<sup>85</sup> Specific changes that have occurred since the preparation of the initial report are set out below.

69. On 20 June 2003,<sup>86</sup> Parliament adopted the Federal Act on the Criminal Law applicable to Juveniles (Juvenile Criminal Law Act),<sup>87</sup> which entered into force on 1 January 2007. The new Act raised the age of criminal responsibility from 7 to 10 years.<sup>88</sup>

70. Under the general part of the Criminal Code,<sup>89</sup> the revised version of which was adopted by Parliament on 13 December 2002 and which entered into force on 1 January

<sup>83</sup> See [www.snf.ch/F/rechercheorientee/pnr/acheves/Pages/\\_xc\\_nfp52.aspx](http://www.snf.ch/F/rechercheorientee/pnr/acheves/Pages/_xc_nfp52.aspx), consulted on 2 March 2012.

<sup>84</sup> Initial report of Switzerland on the Convention on the Rights of the Child, paras. 45–59.

<sup>85</sup> Initial report of Switzerland on the Convention on the Rights of the Child, paras. 46–59.

<sup>86</sup> FF 2003 3990.

<sup>87</sup> RS 311.1.

<sup>88</sup> Juvenile Criminal Law Act, art. 3, para. 1; FF 2003 3990.

<sup>89</sup> RS 311.0.

2007, a minor or a prohibited person has the right to lodge complaints if he or she is capable of forming his or her own views.<sup>90</sup>

71. On 1 January 2008, an amendment<sup>91</sup> to the special protection provisions of the Federal Act on Employment in Business, Trade and Industry (Employment Act)<sup>92</sup> entered into force. The age of protection, which had been 19 for young workers and 20 for apprentices, was lowered to 18. Thus it now corresponds to the age of majority under civil law and also conforms to European and international legal standards. Under the new regime, protection measures can be more rigorous and targeted, since the group of people to which they apply has been restricted.<sup>93</sup>

### III. General principles

#### A. Prohibition of all discrimination (art. 2)

72. *Response to paragraphs 22 and 23 of the concluding observations.*

##### 1. Measures taken and projects implemented

73. Following the World Conference against Racism held in Durban in 2001, the Federal Council adopted several measures:

- By establishing the Fund for Anti-Racism and Human Rights Projects, it adopted a clear and consistent stance against racism, anti-Semitism and xenophobia and in favour of respect for human rights. During the period 2001 to 2005, it allocated 15 million francs to support 529 training, awareness-raising and prevention projects and to fund centres for the provision of advice to victims of discrimination and assistance in the event of conflict. Many projects were submitted by vulnerable persons. One sixth of the Fund's total budget was earmarked for projects in schools. Furthermore, the invitation to tender in 2002 was for projects launched by and with young people and children as part of their extracurricular activities, particularly cultural and sporting activities. The aim was to encourage children and young people and organizations working with them to address the issue in question. Over a period of five years, 298 projects, or 57 per cent of activities organized, were aimed at children and young people of all ages and at schools. The amount allocated for children and young people therefore increased to more than 6 million francs.
- Other projects were also launched to promote public tolerance and understanding towards minorities, such as asylum seekers and Travellers. The wide range of projects made it possible to reach and inform a very broad audience, restore the confidence of potential victims and diversify prevention measures. Efforts were also made to ensure that contributions were distributed equitably among the linguistic regions. The experience and information gathered through the Fund provided a solid basis for the Confederation's anti-racism strategy from 2006.

74. In addition, the Service for Combating Racism (SLR) was established in 2001. It is responsible for coordinating activities to prevent racism, anti-Semitism and xenophobia at the federal, cantonal and communal levels. It makes its special expertise available to the

<sup>90</sup> FF 2002 7658.

<sup>91</sup> Employment Act, art. 29, para. 1; RO 2007 4957 4958; FF 2004 6367.

<sup>92</sup> RS 822.11.

<sup>93</sup> RO 2007 4957 4958; FF 2004 6367.

authorities, institutions, NGOs and individuals. Since its establishment, the Service has issued many publications that are also relevant to children and adolescents and emphasize the importance of being aware of the need to combat racism at all ages. Some of these publications have been produced in conjunction with other departments of the federal administration and are often published in two or three languages. The Service works in close cooperation with cantonal and communal integration organizations or delegates with responsibility for protection against discrimination and racism in certain cantons, cities and communes.

75. For their part, the cantons and communes have established support units and centres dealing with discrimination<sup>94</sup> and committees on the issues of integration,<sup>95</sup> discrimination and racism. Some support centres have been set up at the initiative of individuals. Furthermore, the cities of Winterthur, Geneva, Lausanne, Zurich and Bern have joined the International Coalition of Cities against Racism launched by UNESCO in 2004. Other cities have also expressed interest in the Coalition.

76. Between June 2006 and December 2007, Switzerland<sup>96</sup> took part in the second Council of Europe All Different – All Equal campaign, which emphasized diversity, human rights and tolerance. The aim of the campaign was to raise awareness, particularly among young people, of the issues of discrimination, racism and human rights and to encourage them to take part in group activities. In all, more than 100 projects, including events and workshops, were carried out in the different linguistic regions, some of them on a modest scale and others more wide-ranging. Courses were also organized for the leaders of youth organizations to equip them to deal with the problems of discrimination and racism and to encourage them to initiate projects in this area.

77. Anti-discrimination measures and programmes are an integral part of Swiss integration policy. The Confederation, cantons, cities and communes agreed on this common approach as part of a wide-ranging discussion process.<sup>97</sup> Accordingly, the development of Swiss integration policy centres on measures to eliminate obstacles to integration, to ensure protection against discrimination and to combat racism, all of which help to promote equal opportunities. Under article 53 of the Foreign Nationals Act,<sup>98</sup> which entered into force in 2008, the Confederation, cantons and communes are required to be mindful of the particular need to integrate children and adolescents. Education has an essential contribution to make in that regard. The Swiss Conference of Cantonal Ministers of Education issued guidelines in 1991 stating that all children of foreign mother tongue living in Switzerland must be integrated into State schools; that all discrimination must be avoided; and that the child's right to maintain the language and culture of his or her country of origin must be respected in the integration process.<sup>99</sup> Consideration of specific topics

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<sup>94</sup> See list of all contact points and support centres in Switzerland at [www.edi.admin.ch/frb/index.html?lang=fr](http://www.edi.admin.ch/frb/index.html?lang=fr), see FAQ; consulted on 15 February 2012.

<sup>95</sup> According to an inventory based on 2008 figures, a total of 30 million francs is available in the cantons and communes for projects to promote integration.

<sup>96</sup> The competent entities at the federal level were the Youth Service of the Federal Social Insurance Office and the Service for Combating Racism. The campaign was run jointly by Infoclic (Promotion of Children and Young People in Switzerland) and the Swiss National Youth Council (CSAJ).

<sup>97</sup> Tripartite Conference on Urban Areas (2009): pursuit of Swiss integration policy. Report and recommendations of the Conference of 30 June 2009.

<sup>98</sup> RS 142.20.

<sup>99</sup> Recommendations of the Swiss Conference of Cantonal Ministers of Education of 24 October 1991 on the education of children of foreign mother tongue. See also the Conference's statement of 6 June 1991 on the accession of Switzerland to the International Convention on the Elimination of All Forms of Racial Discrimination, which can be downloaded at [http://edudoc.ch/record/25489/files/EDK-Erklarung\\_f.pdf?ln=fr](http://edudoc.ch/record/25489/files/EDK-Erklarung_f.pdf?ln=fr), consulted on 15 February 2012.



relating to migration is an ongoing task of the Swiss Conference of Cantonal Ministers of Education. To that end it has established a permanent Education and Migration Committee.

78. Specifically, adolescents who are recent immigrants and mothers with children who are not accustomed to school are the main target groups for the specific measures to promote integration currently being taken by the cantons and communes. Many projects are directed at these target groups, for example the “Interface” project, which addresses the period of transition between compulsory education and vocational training or higher education, a period which is often problematic for young people. Other projects focus on children’s leisure.<sup>100</sup> With regard to the 0 to 4 age group,<sup>101</sup> many cantons and communes carry out specific projects aimed at providing children from immigrant backgrounds with good-quality education and care from an early age, with a view to ensuring equality of treatment.<sup>102</sup> In order that teachers can help preschool children to progress in accordance with their abilities, the University of Teacher Education in St. Gallen organizes intercultural training seminars for teachers specializing in early-years education.

79. Many other education reforms covering specific aspects of integration are under way, including systematic efforts to consider the problems associated with migration when measures are taken to improve the quality of education systems, the translation of important documents into foreign languages, the training of pupils to be “peacemakers” at school and in the playground, and efforts to identify simple and effective solutions for the transition from compulsory education to vocational training.

80. The introduction of vocational training case management in 2008 should enable the greatest possible number of young people and young adults to have access to initial vocational training. The long-term aim of these efforts is to increase the proportion of young people entering the upper level of secondary education from 90 per cent to 95 per cent by 2015. Personalized case management with regard to vocational training is a structured process: cases are followed up across institutional boundaries with a view to planning, coordinating and monitoring the process during the phases of selection of vocational training and education. This approach is aimed chiefly at encouraging a sense of responsibility in vulnerable young people and strengthening the efficiency and effectiveness of the measures adopted through effective design and management of the processes involved. From 2008 to 2011, the Confederation provided a budget of 20 million francs to support the establishment in the cantons of vocational training case management services. The cantons are responsible for putting these services in place.

81. In addition, with the publication of the Programme for International Student Assessment (PISA) studies, activities aimed at integrating pupils from immigrant

<sup>100</sup> For example, the “Sport-verein-t” project in the canton of St. Gallen and the Caritas “Teamplay” project of the Central Switzerland Football Association/canton of Lucerne. The aim of these projects is to recruit people of diverse origins with different strong and weak points to sports clubs so as to ensure that they participate actively in the life of the club.

<sup>101</sup> See also the projects supported by the Federal Office for Migration (ODM) and the Federal Commission on Migration (CFM) as part of the model project on encouraging integration in preschools.

<sup>102</sup> See, for example, the “FemmesTISCHE” project (training for mothers, meetings for women in their mother tongue on issues such as childcare, education, health, etc.) or the “MigesBalù” project in the canton of St. Gallen, which aims to give infants and young children from immigrant backgrounds the best possible chance of growing into healthy children in accordance with the Ottawa Charter for Health Promotion, establishing healthy eating habits and engaging in adequate physical activity. Another example is the framework established by the canton of Zurich for setting up “playgroups plus” with a focus on promoting language.

backgrounds have been stepped up. More than half of the cantons have launched projects<sup>103</sup> aimed at integrating children of foreign mother tongue. One example is the programme for quality in multicultural schools implemented by the Department of Education of the canton of Zurich to promote success at school, equal opportunities and integration, under which additional funds have been released.

82. In 2009, with a view to raising children's awareness of racism at an early age, the canton of Jura carried out a *kamishibai* project in 173 classes of pupils aged 4 to 8. Using a *kamishibai*, a type of miniature theatre consisting of a wooden frame through which a series of images passes, children were told 19 traditional stories from different countries. The project, which presents the topics of integration and racism to a very young audience, was judged to be very positive, both by children themselves and by teachers.

83. In addition to measures to combat racial discrimination, progress has also been made with regard to sexual discrimination. Under the slogan "Gender-sensitive Teaching", the authorities have funded many studies relating, for example, to gender-specific differences in school results, school-leaving statistics and social behaviour. The results have led to the development of many projects aimed at combating discrimination in this area. The cantons and communes have been attaching increasing importance not only to education but also to gender-specific work with young people and children. These activities have been supported in different ways. At the federal level, mention should be made of the work done by the Federal Office for Gender Equality (BFEG), which aims to promote gender equality in all aspects of life, that is, the elimination of all forms of discrimination, direct and indirect. The Office is involved in particular in promoting family-friendly workplaces and combating domestic violence, which also affects children.

84. More generally, several measures have been taken in the cantons, including the establishment of specific structures. These benefit everyone, including children. In some schools, there are pilot programmes to prevent harassment and discrimination.

## 2. Institutional measures taken

85. In 2005, the Federal Council decided to maintain its support for the Service for Combating Racism and to provide it with annual funding of 1.1 million francs. As well as its awareness-raising and prevention work, the Service's collaboration with other Confederation departments and with the cantons will be stepped up.

86. In response to the concerns of the 2001 Durban Conference, the Federal Commission against Racism (CFR) proposed a five-point strategy for a common policy against racism. Furthermore, the National Research Programme entitled "Right-wing Extremism – Causes and Countermeasures" (PNR 40+)<sup>104</sup> is aimed at identifying the keys to effective action against right-wing extremism. Following the Durban Review Conference, which took place in Geneva in 2009, an outcome document that constitutes real progress was adopted. The document affirms the conviction that every individual is entitled to the enjoyment of all human rights by virtue of his or her status as a human being, irrespective of skin colour, nationality, political or religious beliefs, social status, sex or age.

<sup>103</sup> Other comments and information on measures taken with regard to the development of Swiss integration policy are to be found in the documentation published by the Tripartite Conference on Urban Areas; see [www.tak-cta.ch/french/politique-des-etranagers-et-d-integration/themes/politique-des-etranagers-et-d-integration/menu-id-69.html](http://www.tak-cta.ch/french/politique-des-etranagers-et-d-integration/themes/politique-des-etranagers-et-d-integration/menu-id-69.html), consulted on 15 February 2012.

<sup>104</sup> For further information, see [www.snf.ch/F/rechercheoriente/pnr/acheves/Pages/\\_xc\\_nfp40p.aspx](http://www.snf.ch/F/rechercheoriente/pnr/acheves/Pages/_xc_nfp40p.aspx), consulted on 2 March 2012.

87. In addition, in 2004, the Confederation decided to establish the Federal Office for the Equality of People with Disabilities (BFEH) in order to promote the implementation of the Federal Act on the Elimination of Discrimination against People with Disabilities.<sup>105</sup>

### 3. Legislative and judicial measures taken

88. The Federal Act on the Elimination of Discrimination against People with Disabilities,<sup>106</sup> which entered into force on 1 January 2004, is a concrete expression of article 8 of the Constitution, which enshrines the principle of non-discrimination against persons with disabilities. The purpose of the Act is to prevent, reduce or eliminate discrimination against persons with disabilities.

89. The Vocational Training Act,<sup>107</sup> which entered into force on 1 January 2004, promotes and develops equal opportunities for training across all social groups and regions, genuine equality between the sexes and the elimination of discrimination against persons with disabilities.<sup>108</sup>

90. Several cantons<sup>109</sup> have promulgated specific laws containing provisions on combating racism and discrimination.

91. In addition to criminal laws to combat racism (art. 261 *bis* of the Criminal Code and art. 171c of the Military Criminal Code), the Federal Commission against Racism has established a database of legal cases, which is regularly updated and which allows interested members of the public to retrieve specific cases and legal experts to keep abreast of case law.

## B. Best interests of the child (art. 3)

92. *Response to paragraph 25 of the concluding observations.*

93. The legislative amendments listed in the section on article 4 are improving the situation of children nationwide and take account of the principle of the best interests of the child. For example, an amendment has been made to the Swiss Civil Code relating to parental authority; the Federal Council adopted the corresponding dispatch on 16 November 2011. The best interests of the child are a key element of the provision. Jointly exercised parental authority will now be the norm, irrespective of the parents' civil status. Only where it is necessary to protect the interests of the child may one of the parents be deprived of parental authority.<sup>110</sup> Furthermore, many cantons and communes have enshrined the principle of the best interests of the child explicitly or implicitly in laws directly concerning children and young people or work carried out with them.

94. Also welcome in this context is the UNICEF "Child-friendly Commune" initiative, which enables Swiss communes to review the environment they provide for children and attempt to obtain an award. The initiative thus helps communes to implement the Convention on the Rights of the Child at the commune level.

<sup>105</sup> RS 151.3.

<sup>106</sup> RS 151.3.

<sup>107</sup> RS 412.10.

<sup>108</sup> Vocational Training Act, art. 3.

<sup>109</sup> For example, Zug, Fribourg, Ticino, Vaud, Valais, Neuchâtel and Geneva. The integration policy master plan of the canton of Bern refers directly to efforts to combat discrimination.

<sup>110</sup> See [www.bj.admin.ch/content/bj/fr/home/themen/gesellschaft/gesetzgebung/elterlichesorge.html](http://www.bj.admin.ch/content/bj/fr/home/themen/gesellschaft/gesetzgebung/elterlichesorge.html), consulted on 15 February 2012.

95. The principle of the best interests of the child is also established in case law. The Federal Supreme Court recently granted a foreign mother the right to obtain a residence permit by virtue of her relationship with her child, who is of Swiss nationality.<sup>111</sup> In its reasoning, the Court expressly referred to the Convention on the Rights of the Child and stated that the best interests of the child prevailed in the weighing-up of the interests at stake.

## **C. The right to life, survival and development (art. 6)**

### **1. The right to life**

96. On 1 July 2003, Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances,<sup>112</sup> entered into force, having been ratified by Switzerland on 3 May 2002. Its provisions supplement the laws and treaties on the prohibition of the death penalty mentioned in the initial report<sup>113</sup> of Switzerland.

### **2. The right to survival**

97. Violations of the law on foreign nationals are not sufficient grounds for non-application of the fundamental right to assistance in situations of distress under article 12 of the Constitution. Even if foreign nationals fail to fulfil their obligation to cooperate, they may not be deprived of the means necessary to allow them to live with dignity. According to the Federal Supreme Court,<sup>114</sup> the prohibition of all forms of discrimination does not, however, prevent a degree of differentiation in the amount of social assistance granted, depending on whether or not the foreign national's legal status will culminate in his or her settling in Switzerland.

98. Under article 82 of the Asylum Act,<sup>115</sup> persons who have been served enforceable removal orders and whose departure deadlines have been set may request emergency assistance. The competent cantonal authorities must respect the principles affirmed by the Federal Supreme Court and take due account of the situation of children and other vulnerable persons.

### **3. Guarantee of healthy development of the child**

99. In addition to the information provided in the initial report,<sup>116</sup> it may be mentioned that article 62, paragraph 3, of the Constitution, in conjunction with article 19 of the Constitution, guarantees children and young persons with disabilities special education that is adequate for their advancement and best suited to their needs.

### **4. Registration of deaths of children**

100. Pursuant to the Ordinance on Civil Status<sup>117</sup> of 28 April 2004, a child is considered stillborn if it shows no sign of life at birth and if its weight is at least 500 g or if gestation

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<sup>111</sup> ATF 136 I 285, in particular ground 5.2.

<sup>112</sup> RS 0.101.093.

<sup>113</sup> See the initial report of Switzerland on the Convention on the Rights of the Child, para. 83 *et seq.*

<sup>114</sup> ATF 131 I 166.

<sup>115</sup> RS 142.31.

<sup>116</sup> See the initial report of Switzerland on the Convention on the Rights of the Child, para. 97 *et seq.*

<sup>117</sup> RS 211.112.2.

lasted at least 22 full weeks.<sup>118</sup> The surname and forenames of a stillborn child may be recorded if the persons entitled to choose the forenames so wish.<sup>119</sup>

## 5. Child mortality

101. Generally speaking, the health of children in Switzerland is excellent. Since 1993, perinatal mortality has remained stable at 6.7 deaths per 100,000 births, as has early neonatal mortality (before the end of the first week of life), at approximately 2.9 deaths per 100,000 births.

102. Children aged 1 to 14 have the lowest mortality rate in Switzerland. In this age group, the main causes of death are accidents, deformities and diseases.

103. In the 15 to 19 age group, the most common causes of death are traffic accidents and accidents that occur during recreational activities, followed by suicide. The incidence of suicide has, however, fallen markedly. It is currently 2.3 times higher among boys than among girls.<sup>120</sup>

104. Life expectancy at birth has increased continuously over the past 30 years. In 1981, it stood at 79.2 years for girls and 72.4 for boys; in 2004, it was 83.7 and 78.6 respectively and, in 2010, 84.6 and 80.2.

## D. Respect for the views of the child (art. 12)

105. *Response to paragraph 27 of the concluding observations.*

### 1. The right of the child to be heard

#### 1.1 *In civil proceedings*

106. With regard to children's hearings under article 144, paragraph 2, of the old Civil Code, the Federal Supreme Court<sup>121</sup> ruled that the provision must be applied to all court proceedings affecting children. Furthermore, in accordance with the guidelines followed by the Court, children may in general be heard from the age of 6. On this point, Swiss law goes further than article 12 in that children who are not capable of forming their own views also have the right to be heard.

107. An overview of practice in the Confederation in 2005 showed that children's hearings were not yet systematic in all cantons and that the courts were making broad use of their discretion to make exceptions to the rule. In November 2002, the Conference of Cantonal Justice and Police Directors (CCDJP) made recommendations to its members in this regard. During the plenary meeting of November 2005, it recommended to them — despite the fact that judges' independence is guaranteed by the Constitution and that there is no corollary power of investigation — that they request the courts in their canton to ensure the consistent application of the right of the child to be heard in divorce, guardianship and civil status proceedings. In November 2010, the Federal Commission for Child and Youth Affairs organized a two-day seminar entitled "Listening to children: the right of children to express their views and be heard (art. 12)". The purpose of the seminar was to encourage experts from the fields of politics, the courts, social work and psychology to discuss their activities, exchange their respective experiences and draw together new ideas. The report,

<sup>118</sup> Ordinance on Civil Status, art. 9, para. 2.

<sup>119</sup> Ordinance on Civil Status, art. 9, para. 3.

<sup>120</sup> See also VI.C.2 (Child and adolescent mortality in Switzerland).

<sup>121</sup> ATF 131 III 553.

“À l’écoute de l’enfant” (Listening to Children),<sup>122</sup> which summarizes the outcome of the seminar, the experts’ analysis and the minimum requirements of the Federal Commission for Child and Youth Affairs, was published in November 2011. It also includes the views of children and adolescents.

108. As part of the Swiss National Science Foundation’s National Research Programme 52, one project was entitled “Children and divorce: influence of legal practice on family transitions”.<sup>123</sup> The study was limited to divorces granted in 2002 and 2003 with a view to examining the changes introduced under the revised version of the divorce law that entered into force in 2000. The outcome of the study showed that, two to three years after a divorce, the majority of children and parents were satisfied with their situation overall. Parents who had joint parental authority and shared custody of the children were the most satisfied. At the time, the authors noted that the right of children to be heard was scarcely enforced, and they issued recommendations in that regard.

109. The Marie Meierhofer Institute for the Child, National Research Programme 52, the University of Zurich and UNICEF Switzerland have each published an information brochure on the right to be heard, for children aged 6, 9, 12 and 15 whose parents are divorcing. The brochures are accompanied by a practical guide for parents who are in the process of separation or divorce. The brochures, which list various information and support services, have been widely circulated to the competent departments.

110. The Civil Procedure Code entered into force on 1 January 2011.<sup>124</sup> The provisions of Title 7, which relates to the procedure applicable to children in family law cases, reproduce in large part the old legal provisions (see art. 144 *et seq.* of the old Civil Code). Under article 298 of the Civil Procedure Code, every child must be heard in family law proceedings that directly affect him or her, such as protection of the marital union, divorce and amendment proceedings. As shown by the examples below, practice in this regard varies widely between and sometimes even within cantons:

- In the canton of Geneva, hearings are systematically held for children aged 6 and upwards. In 2009, 137 hearings took place. They are generally arranged by the youth protection service, which is staffed by fully trained social workers. New staff of the youth protection service receive appropriate further training. Where a hearing of a child aged under 6 is necessary, it is usually carried out by a child psychiatrist.
- In the canton of Zurich, the courts regularly take the opportunity to hear children from the age of 6 and, more rarely, younger children. The number of hearings held is not known. Judges carry them out in person. They receive regular training for this purpose.
- In the canton of St. Gallen, hearings of children from the age of 7 are regularly held. In some cases, younger children may be summoned with their older siblings. The primary responsibility for children’s hearings lies with judges who specialize in family cases, who are periodically trained in the conduct of children’s hearings and their evaluation, which takes place in the presence of the parents. The St. Gallen Cantonal Court generally regards failure to include a child in proceedings as a form of denial of the right to be heard and, as far as possible, refers such cases to the previous court so that the child can be heard and a fresh decision handed down.

<sup>122</sup> The report can be consulted on the Internet at [www.ekkj.admin.ch/c\\_data/f\\_11\\_ekkj\\_rap\\_kinder.pdf](http://www.ekkj.admin.ch/c_data/f_11_ekkj_rap_kinder.pdf), consulted on 15 February 2012.

<sup>123</sup> Project of Andrea Büchler and Heidi Simoni. For further information, see [www.nfp52.ch/d\\_dieprojekte.cfm?Projects.Command=details&get=33](http://www.nfp52.ch/d_dieprojekte.cfm?Projects.Command=details&get=33), consulted on 2 March 2012.

<sup>124</sup> RS 272.

Where a long period has elapsed since the child last had the opportunity to participate in proceedings, the Cantonal Court holds another hearing during the appeal proceedings.

- In the canton of Ticino, hearings of children aged 6 to 11 are conducted by experts, while those aged 12 to 18 are heard by the judge directly. The canton of Solothurn makes the same distinction. In the canton of Ticino, when a hearing is exceptionally not possible, the authorities try to ascertain the child's views through his or her school, paediatrician or any other responsible adult. Persons who carry out hearings are trained accordingly.
- In the canton of Valais, children's hearings are conducted by the courts, the Centre for Child and Adolescent Development and Therapy or the cantonal youth department. Hearings relating to guardianship are systematically arranged by one of these two bodies.
- In the cantons of Lucerne, Vaud and Zug, a distinction is made between contentious cases and cases in which the parents have reached agreement on the custody of the children and visitation rights. Where there is agreement between the parents, the children are invited to sign and return a waiver, and then the hearing is cancelled. In contentious cases, hearings are automatically held.
- In the canton of Aargau, hearings are not yet systematically held in divorce proceedings, but in May 2010 the Cantonal Council adopted measures to improve the situation, and an ad hoc working group is currently developing solutions and working to implement them.

111. Hearings are held by judges but may also be delegated to specialized departments. In some exceptional cases, the court may appoint a representative for the child if the child cannot express his or her own views or if the relationship between the parents is too confrontational. To date, limited use has been made of this option. In 2008, in the 14,000 proceedings instituted throughout Switzerland, only 120 children were allocated representatives.<sup>125</sup> For this reason, the unit for child and youth issues supported a project of the Children's Lawyers Switzerland association in 2011 aimed at raising judges' and authorities' awareness of children's right to be heard.

112. The same applies to hearings held by the guardianship authorities prior to adopting child protection measures under article 314, paragraph 1, of the Civil Code. It is not currently guaranteed in all cases that persons who hold hearings have the required training. The entry into force on 1 January 2013 of the revised Civil Code (protection of adults, law of persons and law on children) should rectify that situation. One of the major components of the complete revision of the law on guardianship is an improvement in the professionalism of the authorities responsible for the protection of children and adults through the appointment of specialized interdisciplinary authorities (art. 440, paras. 1 and 3, of the new Civil Code). The cantonal supervisory authorities responsible for the protection of minors and adults in civil cases have come together in the Conference of the Cantons on Protection of Minors and Adults (COPMA).<sup>126</sup> The Conference encourages coordination and cooperation among the cantons, produces reports and recommendations (for example, on whether there is a need to appoint a specialized interdisciplinary authority), organizes seminars and training courses and publishes a special newsletter. Training courses are also

<sup>125</sup> 2008 statistics from the Conference of Cantonal Guardianship Authorities (CAT) (now the Conference of the Cantons on Protection of Minors and Adults (COPMA)): [www.kokes.ch/fr/04-dokumentation/01-statistik.php?navid=12](http://www.kokes.ch/fr/04-dokumentation/01-statistik.php?navid=12), consulted on 15 February 2012.

<sup>126</sup> See [www.kokes.ch/fr/willkommen.php](http://www.kokes.ch/fr/willkommen.php), consulted on 2 April 2012.

offered to members of child protection authorities by specialized higher education institutions, such as the Lucerne School of Social Work.

113. In the canton of Aargau, the right to be heard has been incorporated into the new legislation on the protection of minors and adults. It will influence the future approach to placement by school and guardianship authorities.

## 1.2 *In criminal proceedings*

114. Hearings of adolescents accused of committing a crime are conducted by persons who are properly informed and trained. Up to the end of 2010, hearings were held in accordance with cantonal juvenile criminal procedure. On 1 January 2011 the Juvenile Criminal Procedure Code entered into force.<sup>127</sup>

115. In criminal proceedings against an adult, minors aged under 15 are heard not as witnesses but for information purposes.<sup>128</sup> Therefore, they may not be punished for false testimony.<sup>129</sup> Special rules apply to hearings in order to protect child victims. On 1 October 2002, these rules were incorporated into the Victim Support Act<sup>130</sup> and were retained when the Act was completely revised in 2007. On 1 January 2011, these provisions, slightly amended, were transferred to the new Criminal Procedure Code<sup>131</sup> and the Military Criminal Procedure Code.<sup>132</sup> These special rules apply where the hearing or a confrontation with the defendant risks placing too great a mental burden on the child. In such cases, the child may not generally be heard more than twice during the proceedings. Where no confrontation is ordered, hearings are recorded on video. Pursuant to the Victim Support Act, the Confederation takes part in organizing initial and further training courses on assistance to victims, focusing on children.

116. Pursuant to the revised provisions of the general part of the Criminal Code,<sup>133</sup> which entered into force on 1 January 2007, minors capable of forming their own views now have the right to lodge a criminal complaint.<sup>134</sup>

## 2. **Direct participation of children in school and in democratic life**<sup>135</sup>

117. Progress has been made over the past 10 years with regard to the active participation of minors in political and social affairs. For example, the Vocational Training Act,<sup>136</sup> which entered into force on 1 January 2004, grants apprentices the right to be consulted both in the training enterprise that employs them and in the vocational school that they attend.<sup>137</sup> At the cantonal level, respect for the views of the child is partially enshrined in the law. Zurich's law on compulsory schooling, for example, requires pupils to participate actively in the running of the school.<sup>138</sup> Many Swiss schools have also introduced pupils' councils or

<sup>127</sup> RS 312.1.

<sup>128</sup> Criminal Procedure Code, art. 178 (b).

<sup>129</sup> Criminal Code, art. 307.

<sup>130</sup> RS 312.5.

<sup>131</sup> RS 312.0; Criminal Procedure Code, art. 154.

<sup>132</sup> RS 322.1; Military Criminal Procedure Code, art. 84h.

<sup>133</sup> RS 311.0.

<sup>134</sup> Criminal Code, art. 30, para. 3.

<sup>135</sup> With regard to services offered by organizations relating to non-institutional youth activities and community activities, see the annex "Thematic and statistical overviews" (fig. 2).

<sup>136</sup> RS 412.10.

<sup>137</sup> Vocational Training Act, art. 10.

<sup>138</sup> Article 50 of Zurich's law on compulsory schooling stipulates: "Children shall participate in the taking of decisions that concern them unless their age or any other major grounds dictate otherwise. School statutes and the school curriculum shall provide for joint responsibility and the right to a say



school parliaments. A number of establishments also offer an independent support service and a social service where pupils may freely express their opinion. In the canton of Vaud, all State schools have a health service, a social mediator and experts in psychology, psychomotor skills and speech therapy. In the canton of Obwalden, in addition to the school social service, the psychology and speech therapy services and the psychomotor treatment centre are independent and available to all pupils. The canton of Aargau is currently working on recommendations for schools and sociopedagogical institutions concerning children's rights and participation and is preparing a proposal for specific further training. Under a cantonal outline concept, special schools in the canton of Aargau are required to put in place a training and advancement plan and to discuss it with parents or guardians and pupils or to involve them in its preparation. In the canton of Lucerne, social work in schools is provided for by law. Since 1 January 2012, all secondary schools have had to introduce a social service. The purpose of this measure is to improve pupils' personal, school and social welfare and to support and relieve teachers in their work. There is a plan to extend the measure to kindergartens and primary schools.

118. There are many opportunities for participation in political life in the cantons and communes. They are often institutionalized in the form of young people's councils or parliaments. Some cities and communes offer young people under the age of 18 other tools for participation, such as "Youth Advance" in St. Gallen, which gives young people the opportunity to table a motion, and the right of youth parliaments to petition at the communal level. In the canton of Glarus, the voting age has been lowered from 18 to 16.

119. Many cantons actively encourage the establishment and development of work by young people outside school and support projects aimed at boosting young people's involvement in the community. Participatory projects of this kind and increased integration of young people into the process of developing projects have led to a significant improvement in the representation of minors' interests at the cantonal and communal levels. Some examples are the Dialogue Foundation's "Youth Debate" project,<sup>139</sup> supported by the Swiss Conference of Cantonal Ministers of Education and 20 cantons; the "Youth Engaged" project, in which several cantons are also involved; the "Peopletalk" project in the canton of Aargau and the "Mega!phon" project in the city of Zurich, which encourages children and young people to defend their interests.

## IV. Civil rights and freedoms

### A. Name and nationality (art. 7)

#### 1. Registration and name

120. Under the revised version of the Ordinance on Civil Status,<sup>140</sup> as mentioned previously, not only live-born children are registered, but also stillborn children<sup>141</sup> if their weight was at least 500 g or if gestation lasted at least 22 full weeks. The Ordinance on Civil Status also contains provisions on surnames and forenames,<sup>142</sup> on the obligation of

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in decision-making appropriate to pupils' age and level of development. This shall apply particularly to decisions concerning school career, special teaching measures and disciplinary measures."

<sup>139</sup> The purpose of the project is to ensure that the largest possible number of young people learn to debate and to enjoy exchanges of opinion for fun.

<sup>140</sup> RS 211.112.2.

<sup>141</sup> Ordinance on Civil Status, arts. 8 and 9.

<sup>142</sup> Ordinance on Civil Status, art. 8 (c) and art. 37; Civil Code, art. 270. See also ATF 122 III 414.

hospitals, family members, aircraft captains, etc., to declare<sup>143</sup> a birth, and rules applicable to foundlings.<sup>144</sup>

121. There have been cases in which parents who were unable to provide identity documents had to establish their identity through the courts before registering their child. On the basis of a parliamentary motion<sup>145</sup> in 2006, the Federal Council instructed the Federal Civil Status Office to consider whether and how children whose parents were not in a position to provide proof of identity could be registered after their birth at the country's civil status offices. The report<sup>146</sup> on the question found that all births in Switzerland were officially registered in accordance with existing laws, even if the parents' identity was not established to the satisfaction of the law. A directive<sup>147</sup> and a circular<sup>148</sup> from the Federal Civil Status Office, both dated 1 October 2008, set out detailed regulations covering the birth of a child to foreign parents. These documents have provided the necessary legal tools and precise instructions for registering a birth and establishing filiation, even in cases where the parents are not in a position to prove their own civil status or can provide only inadequate proof. Civil status may be confirmed where even the minimum amount of information needed to register the identity of the child's mother or father is not available. The staff of cantonal civil status offices have been trained to implement these new rules. Furthermore, a new provision concerning the registration of children has been added to the Ordinance on Civil Status, effective from 1 January 2011. It states that, in certain exceptional cases and in order to expedite processing, the requirement to record certain elements of the father's and mother's civil status data when registering a child's filiation may be waived.<sup>149</sup>

122. On 27 September 2001, the European Court of Human Rights<sup>150</sup> unanimously rejected an appeal lodged by a married couple who wanted to register their child in the mother's maiden name rather than in the couple's surname. The Court found that there was no violation of article 8 of the European Convention on Human Rights if the parents were prohibited from registering their child in a name other than the family surname. By giving the couple the option of choosing the wife's name as their surname, the Swiss system was, according to the Court, sufficiently flexible and respected the principle of family unity.

123. Since the entry into force on 22 June 2001 of the Federal Act on Identity Documents for Swiss Nationals (Identity Documents Act)<sup>151</sup> and the introduction of the new passport<sup>152</sup> on 1 January 2003, every Swiss national has been entitled to his or her own identity document.<sup>153</sup> Since then, it has not been possible to include children in a parent's passport. The validity of the old passports, in which children could still be included, was set to expire

<sup>143</sup> Ordinance on Civil Status, art. 34.

<sup>144</sup> Ordinance on Civil Status, art. 7, para. 2, and art. 10.

<sup>145</sup> Vermot-Mangold motion 06.3861: Children living in Switzerland without identity documents, 20 December 2006.

<sup>146</sup> "Enregistrement de la naissance des enfants étrangers" (Registration of the birth of foreign children), report of the Federal Council of 6 March 2009 in response to Vermot-Mangold motion 06.3861: Children living in Switzerland without identity documents, 20 December 2006.

<sup>147</sup> Directive No. 10.08.10.01 of the Federal Civil Status Office of 1 October 2008: "Registration of foreign nationals."

<sup>148</sup> Circular No. 20.08.10.01 of the Federal Civil Status Office of 1 October 2008: "Registration of the birth of a child of foreign parents whose personal data are not available in the civil register."

<sup>149</sup> Ordinance on Civil Status, art. 15a, para. 4.

<sup>150</sup> European Court of Human Rights, *G.M.B. and K.M. v. Switzerland*, No. 36797/97, decision of 27 September 2001.

<sup>151</sup> RS 143.1.

<sup>152</sup> Known as passport 03.

<sup>153</sup> Identity Documents Act, art. 1, para. 1.

on 31 December 2007. The principle of “one person, one passport”, and hence the right to one’s own identity document, are thus guaranteed. In order to ensure that parents and guardians do not encounter any problems at the borders when they are travelling with their children and to ensure that children do not cross the border with other persons, the names of a minor’s legal guardians may be mentioned in his or her identity documents.<sup>154</sup>

124. The issuance of an identity document for a person aged under 18 is subject to the permission of a legal guardian.<sup>155</sup> If circumstances are such that the consent of both<sup>156</sup> parents cannot be presumed, the consent of each must be obtained individually. The recommendations of the International Civil Aviation Organization (ICAO) in this regard are followed.

125. On 30 September 2011, Parliament adopted an amendment to the Swiss Civil Code enshrining the equality of spouses with regard to name and cantonal citizenship, which therefore has implications for the children’s surname. A child of married parents is given either the joint surname or, if the parents have different names, the pre-marriage name chosen as the family surname by the parents at the time of marriage. If the parents are not married, the child takes the mother’s maiden name. Where both parents have parental authority, they may declare that the child will take the father’s pre-marriage name. The new provision on name and cantonal citizenship is due to enter into force on 1 January 2013.

## 2. The right to know one’s parents

126. *Response to paragraph 29 of the concluding observations.*

127. Pursuant to the Federal Act of 22 June 2001 on the Hague Convention on Adoption and on Measures to Protect Children in Intercountry Adoption Cases,<sup>157</sup> article 268c of the Civil Code entered into force on 1 January 2003. Under the article, an adopted child may, from the age of 18 onwards, obtain information about the identity of his or her biological parents. In a carefully reasoned decision,<sup>158</sup> the Federal Supreme Court ruled that the right of the child to know his or her biological origin prevailed in all cases over the mother’s possible wish to maintain confidentiality. In public law, this unconditional right derives, according to the Court, from article 10, paragraph 2, of the Constitution, article 8 of the European Convention on Human Rights and article 7 of the Convention on the Rights of the Child.

128. As mentioned above, the Federal Civil Status Office, through a directive and a circular issued in 2008 and through the training of staff in cantonal civil status offices, has implemented registration practices that are in conformity with the Convention and that cover information on filiation.<sup>159</sup> The registration of filiation on the basis of minimum information or, where applicable, on receipt of an acknowledgement of paternity by a father who is not on the register is now also expressly permitted.<sup>160</sup> This provision guarantees the child’s right to know his or her natural filiation.

<sup>154</sup> Identity Documents Act, art. 2, para. 5.

<sup>155</sup> Art. 11, para. 1, of the Ordinance on Identity Documents of Swiss Nationals of 20 September 2002; RS 143.11.

<sup>156</sup> Provided that parental authority is exercised jointly.

<sup>157</sup> RS 211.221.31.

<sup>158</sup> ATF 128 I 63 *et seq.*

<sup>159</sup> See chapter IV: Civil rights and freedoms, A. Name and nationality (art. 7), 1. Registration and name.

<sup>160</sup> See 3.2.1, 3.3.2 and 3.3.3 of directive No. 10.08.10.01 of the Federal Civil Status Office of 1 October 2008, “Registration of foreign nationals”.

### 3. Nationality

129. Since 1 January 2006, a child born to a Swiss father who is not married to the child's mother has automatically acquired Swiss citizenship through the establishment of filiation with the father and is therefore not subject to the facilitated naturalization procedure.<sup>161</sup>

130. Since 1 January 2006, stateless children who are minors have had the right to apply for facilitated naturalization if they have lived in Switzerland for a total of five years including the year preceding the submission of the application.<sup>162</sup> Switzerland was thus able, on 1 May 2007, to withdraw the reservation that it formulated with regard to article 7 when it ratified the Convention.<sup>163</sup>

131. On 26 September 2004, a referendum was held on the subject of facilitated naturalization for young people. The constitutional bill and the related draft laws provided for young second-generation foreigners to be granted the right to naturalization, subject to certain conditions. With respect to third-generation foreigners, it was proposed that they should acquire Swiss citizenship at birth. The people and the cantons decisively rejected the bill. Despite the negative result, two important revisions to the Citizenship Act were retained: the first concerns the cost of naturalization, which, since 1 January 2006, has had to be limited to procedural fees; and the second relates to foreign children born to a Swiss father who is not married to the children's mother: since 1 January 2006, such children have acquired Swiss citizenship through the establishment of filiation with the father, that is, as if they had acquired it at birth.

### B. Preservation of identity (art. 8)

132. The provision governing the registration of a child's name and cantonal citizenship or nationality is now found in article 24 *et seq.* of the Ordinance on Civil Status.

133. In the Jäggi case, the Geneva Court and the Federal Supreme Court refused to undertake the necessary research — DNA sampling of the body of a man who had died in 1976, claimed by the applicant to be his father — in order to determine the applicant's biological origin. The European Court of Human Rights ruled on 13 July 2006<sup>164</sup> that the refusal constituted a violation of the right to respect for private and family life (European Convention on Human Rights, art. 8). According to the European Court, the preservation of legal certainty did not suffice as a ground for depriving the applicant of his right to ascertain his origins.

### C. Freedom of expression (art. 13)

134. Please refer to paragraph 145 *et seq.* of the initial report of Switzerland to the Committee.

<sup>161</sup> Federal Act on the Acquisition and Loss of Swiss Citizenship (RS 141.0), art. 1, para. 2.

<sup>162</sup> Federal Act on the Acquisition and Loss of Swiss Citizenship (RS 141.0), art. 30.

<sup>163</sup> On this point, see also the Federal Council opinion of 13 March 2000 on the Berberat motion 99.3627: Convention on the Rights of the Child. Withdrawal of reservations.

<sup>164</sup> European Court of Human Rights, *Jäggi v. Switzerland*, No. 58757/00, judgement of 13 July 2006.

## D. Freedom of thought, conscience and religion (art. 14)

### 1. Case law

135. In its decision of 15 February 2001<sup>165</sup> on the denominational neutrality of the school system and the freedom of thought and conscience of a teacher, the European Court of Human Rights upheld a decision of the Federal Supreme Court<sup>166</sup> and rejected the appeal lodged. The European Court ruled that prohibiting a teacher who was working in a State school from covering herself in accordance with what she considered to be the requirements of the Koran<sup>167</sup> was not contrary to article 9 of the European Convention on Human Rights on freedom of thought and conscience or article 14, which prohibits discrimination. The European Court noted in particular the influence that a teacher may have on his or her pupils, especially if the pupils are young. It held that, in a democratic society, a teacher must also teach pupils respect for fundamental values such as tolerance, respect, equality before the law and non-discrimination. Ruling that the teaching of these fundamental values was difficult to reconcile with the wearing of an Islamic headscarf, the European Court upheld the decision of the Federal Supreme Court.

136. In a 2008 decision,<sup>168</sup> the Federal Supreme Court amended its case law concerning exemption from compulsory mixed swimming lessons on religious grounds and ruled that refusal to grant such exemption did not constitute unacceptable interference with religious freedom.<sup>169</sup> The Federal Supreme Court also ruled, in a 2008 decision,<sup>170</sup> that the wearing of an Islamic headscarf could not, in itself, constitute valid grounds for refusing a Muslim woman a Swiss passport.

### 2. Religious minorities

137. In 2006, the Federal Commission against Racism published a report entitled *Les relations avec la minorité musulmane en Suisse. Prise de position de la CFR sur l'évolution actuelle* (Relations with the Muslim minority in Switzerland: position of the Federal Commission against Racism on the current situation).<sup>171</sup> The purpose of the publication was to report on relations between the majority social group and the Muslim minority in Switzerland. The topics explored, in particular discrimination relating to the wearing of headscarves in school, holidays associated with religious festivals and participation in swimming lessons, are relevant to children and young people from both groups. Furthermore, from a demographic point of view, immigrants are a young group. The Commission's goal was to encourage the majority to show understanding towards the minority by analysing public debate, reforming mechanisms that excluded and discriminated against Muslims and making proposals for action and recommendations.

<sup>165</sup> European Court of Human Rights, *Dahlab v. Switzerland*, No. 42393/98, decision of 15 February 2001.

<sup>166</sup> ATF 123 I 296.

<sup>167</sup> European Court of Human Rights, *Dahlab v. Switzerland*, No. 42393/98, decision of 15 February 2001.

<sup>168</sup> ATF 135 I 79.

<sup>169</sup> In ATF 119 Ia 178, of 1993, it took the opposite view.

<sup>170</sup> ATF 134 I 49; see also, on the same subject, ATF 134 I 56.

<sup>171</sup> See [www.ekr-cfr.ch](http://www.ekr-cfr.ch), consulted on 11 February 2010.

**E. Freedom of association and of peaceful assembly (art. 15)**

138. On this topic, please refer to paragraph 191 *et seq.* of the initial report of Switzerland.

**F. Protection of privacy (art. 16)**

139. The comments in paragraph 198 *et seq.* of the initial report of Switzerland still apply.

**G. Access to appropriate information (art. 17)****1. Books and electronic media for children and young people<sup>172</sup>**

140. With a view to providing all primary and secondary school pupils in the country with easy and quick access to new information and communications technology, the cantons, the Confederation and the private sector implemented the “PPP-ésn” programme, a public-private partnership to connect schools to the Net, between December 2000 and July 2007. Private companies were involved in providing infrastructure and the authorities invested in teacher training and the development and use of teaching material. The programme enabled schools to improve their equipment significantly: on average, the number of pupils per computer fell from 12.8 in 2001 to 8.4 in 2007. Of the 5,300 schools (school buildings) in Switzerland, the proportion connected to the Internet increased from 65.8 per cent to 95.4 per cent over the same period.

141. Since the adoption of the new articles of the Constitution on education, the Confederation has been more involved in guiding and developing the education system in general. With regard to information and communications technology, the Swiss Coordination Conference on Information and Communications Technology and Education (CCTF)<sup>173</sup> has since October 2005 been coordinating the activities of the Confederation and cantons aimed at integrating information and communications technology into schools and education at all levels and in all fields.

142. The Confederation provides 970,000 to 980,000 francs per year to support the promotion of literature for children and young people. It also allocates an annual budget of around 2 million francs to the public foundation Bibliomedia, which works to develop libraries and to encourage reading.

143. The national “Born to Read” project is aimed at early language development and encourages the first encounters between children and books. The objective is to give all children the opportunity to grow up with books from the youngest age. A free gift of a book encourages parents to communicate actively with their child and to familiarize him or her with illustrated books from the age of six months. These books not only represent a valuable aid to language acquisition but also encourage a culture of dialogue within the family and foster feelings of comfort and security.

144. Between 1991 and 2006, the Federal Office for Gender Equality awarded the “Zora la rousse” prize, worth 10,000 francs, to media projects aimed at children and young people that addressed the subject of parity.

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<sup>172</sup> There are many libraries available to children and adolescents, as indicated in the annex “Thematic and statistical overviews” (fig. 3).

<sup>173</sup> See [www.educa.coop/dyn/9.asp?url=81026%2Ehtm](http://www.educa.coop/dyn/9.asp?url=81026%2Ehtm), consulted on 16 February 2012.

145. A project on the role of the media in constructing identity<sup>174</sup> was launched as part of the National Research Programme entitled “Childhood, Youth and Intergenerational Relationships in a Changing Society”. Its aim was to study the role and function, firstly of traditional media, and then more specifically of modern media such as the Internet, in the lives of young people from immigrant backgrounds and particularly in the construction of their identity. The authors were interested primarily in the way in which pupils from immigrant backgrounds used the media with regard to integration issues and maintaining links with their culture of origin. The study concluded that, with the exception of television and satellite television, Swiss families generally had better and more comprehensive media equipment than immigrant families, particularly with regard to the written press. With regard to media use, young Swiss listened to the radio and read books more frequently and for longer periods than young people from immigrant backgrounds. The latter watched television for longer periods, but no more frequently, than their Swiss counterparts and on average they made greater use of new media, such as computers and the Internet. While young Swiss used primarily Swiss and international media services, young people from immigrant families also made extensive use of services from their country of origin. However, unlike their parents, these children readily sought access to international media. Lastly, in terms of media preferences, it was found that young people from immigrant families were highly individual and diverse, and that they did not form a homogeneous community.

## 2. Radio, television and written press

146. On 21 December 2007, the Federal Office of Communications (OFCOM) for the first time granted a concession for a radio station for young people in the Zurich region. The station, named “105”, is responsible for broadcasting a daily news programme for young people aged 15 to 24. Weekly analysis and discussion programmes involving young people and specific youth groups account for a significant proportion of the schedule. 105 employs mainly young people, so that the target group is also responsible for preparing the editorial content.

147. By a decision of 10 November 2010, the Federal Office of Communications placed an obligation on network operators to include the “joiz” television channel free of charge in their networks as a “must-carry” service. Joiz broadcasts interactive multimedia entertainment programmes aimed at young people. Since it offered a platform for young adults aged 15 to 29 and there were hardly any other formats of that type, it was authorized to broadcast. The Federal Office of Communications considered it positive that the platform, which is dedicated to young people, had a broad involvement in culture, with a focus on music. One network operator contested the Office’s decision before the Federal Supreme Court. On 22 March 2012, the Court rejected the appeal.<sup>175</sup> The channel should therefore soon be offering its programmes also in analog mode.

## 3. Protection measures

148. On 1 April 2007, the revised version of the Federal Act on Radio and Television (Radio and Television Act)<sup>176</sup> and the Ordinance on Radio and Television<sup>177</sup> entered into force. These instruments contain stricter provisions on the protection of minors and

<sup>174</sup> Project of Mr. Heinz Moser and Mr. Heinz Bonfadelli. For further information, see [www.nfp52.ch/d\\_dieprojekte.cfm?Projects.Command=details&get=23](http://www.nfp52.ch/d_dieprojekte.cfm?Projects.Command=details&get=23), consulted on 16 February 2012.

<sup>175</sup> Federal Supreme Court decision 2C-790/2011 of 23 March 2012.

<sup>176</sup> RS 784.40.

<sup>177</sup> Ordinance on Radio and Television, RS 784.401.

reproduce, in substance, certain provisions of the European Convention on Transfrontier Television<sup>178</sup> relating to programmes that are detrimental to minors. For example, the Radio and Television Act requires broadcasters to “ensure that minors are not exposed to programmes that are likely to impair their physical, mental, moral or social development by scheduling them appropriately or by taking other measures”.<sup>179</sup> It also contains several protection provisions relating to advertising: “Advertising aimed at minors or in which minors appear shall not exploit their lack of experience or prejudice their physical or mental development.”<sup>180</sup> Furthermore, programmes for children must not be interrupted by advertising, and sales offers must not be directed at minors. Certain forms of sponsorship of programmes for children are also prohibited. Lastly, the Ordinance on Radio and Television provides that television broadcasters must flag programmes likely to be detrimental to minors for their entire duration.<sup>181</sup> Subscription television broadcasters must give their subscribers the option, through appropriate technical measures, of preventing minors from accessing programmes likely to be detrimental to them.

149. Compared with that of our European neighbours, Swiss law on the protection of young people in relation to radio and television takes a “light-touch” approach. The Confederation takes action only in the event of abuses. The Independent Complaints Authority for Radio and Television (AIEP) may intervene only when a complaint is lodged against a programme detrimental to minors. The competence of the Federal Office of Communications with regard to monitoring is restricted to advertising that is detrimental to children, but it may refer an administrative complaint to the Authority. Since the Swiss legislation on broadcasting entered into force, the protection of minors has been mentioned only in a few isolated cases. In the few known cases, the distribution of competences between the Authority and the Federal Office of Communications has not had a negative impact on the monitoring carried out.

150. The previous report mentioned the decisions handed down by the Independent Complaints Authority for Radio and Television and the Federal Supreme Court<sup>182</sup> against Star TV. The channel was broadcasting advertisements during its night-time programmes for pornographic videos that could be downloaded to a mobile phone. The broadcasters had to take steps to rectify the situation and also to prevent further violations of the law. By a decision of 20 February 2009, the Authority ruled that an offence against decency had been committed by a television programme. In an erotic programme broadcast in the evening, the “Schweiz 5” (Switzerland 5) channel showed a scene from a film recounting child abuse, illustrated by particularly shocking images. The Authority stated that, in the context of the programme, the boy and girl appeared in the offending scenes as purely sexual objects for adults with certain tendencies.

151. Since 2003, it has been possible to report material found on the Internet that violates the Criminal Code to the Cybercrime Coordination Unit Switzerland (SCOCI).<sup>183</sup> A number of private initiatives, such as “security4kids” and “netcity.org”, developed by education partners, departments and organizations that combat cybercrime and several private companies, help to raise children’s and parents’ awareness of the dangers of the Internet. In addition, with regard to the protection of minors in the media, a number of specialized

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<sup>178</sup> RS 0.784.405. These provisions state that programme items likely to impair the physical, mental or moral development of children or adolescents must be restricted through transmission times and other measures.

<sup>179</sup> Radio and Television Act, art. 5.

<sup>180</sup> Radio and Television Act, art. 13.

<sup>181</sup> Ordinance on Radio and Television, art. 4.

<sup>182</sup> ATF 133 II 136.

<sup>183</sup> See [www.cybercrime.admin.ch](http://www.cybercrime.admin.ch), consulted on 15 February 2012.



websites and brochures, such as Swisscom's "enter online"<sup>184</sup> or Swiss Crime Prevention's "click it",<sup>185</sup> are available to children and parents.

152. The Galladé parliamentary motion,<sup>186</sup> tabled in 2007, tasked the Federal Council with developing, in conjunction with the cantons, uniform legislation to protect children and adolescents against violence in the entertainment media. In its report entitled "Les jeunes et la violence. Pour une prévention efficace dans la famille, l'école, l'espace social et les médias" (Young people and violence: effective prevention in the family, schools, social spaces and the media), published in May 2009, the Federal Council drew up a detailed inventory of existing provisions on the protection of young people in Switzerland and identified possible improvements. The Confederation has thus undertaken to increase its efforts to raise awareness among children, young people and responsible adults of potential dangers in the media. In particular, it will take greater responsibility for coordinating the adoption of generally applicable principles in Switzerland. It is working with the media to improve the provision of information and education about the media. The cantons, which broadly contributed to various aspects of the substantive work involved in the preparation of the report, must ensure that the necessary provisions are put in place to support the self-regulation measures adopted by certain media outlets. For its part, the Confederation will have to be responsible for monitoring and take regulatory measures if necessary. It plans to carry out more extensive checks, particularly with regard to the regulatory and protection measures required to shelter children and young people from violence and pornography in online media.

## H. The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (art. 37 (a))

153. *Response to paragraph 31 of the concluding observations.*

154. Education on human rights, including children's rights, is now an integral part of training in Swiss police schools. Specifically, the training provided in the cantons of Solothurn and Geneva takes the following form:

- The canton of Solothurn systematically provides police forces with training on the subject of professional ethics and human rights, which is one of the key elements of basic training for all members of the police force and accounts for a significant proportion of the marks in the professional examinations.<sup>187</sup> All police personnel in the canton of Solothurn, including civilian staff, have taken a course in policing and migration in order to strengthen their intercultural skills. The course also deals with human rights and their implementation in the daily work of the police. In addition, personnel have been made expressly aware of the Convention on the Rights of the Child and its implications for police work. All participants have received a document summarizing the most important provisions of the Convention. Moreover, personnel working on the ground have taken part in an additional workshop, during

<sup>184</sup> See [www.swisscom.com/de/ghq/verantwortung/kommunikation-fuer-alle/jugendmedienschutz/enter-online-jugendmedienschutz.html](http://www.swisscom.com/de/ghq/verantwortung/kommunikation-fuer-alle/jugendmedienschutz/enter-online-jugendmedienschutz.html), consulted on 15 February 2012.

<sup>185</sup> These brochures are available on the Internet; see [www.skppsc.ch/1/downloads/de/click\\_it\\_fuer\\_kids\\_10005.pdf](http://www.skppsc.ch/1/downloads/de/click_it_fuer_kids_10005.pdf) (for children) and [www.skppsc.ch/1/downloads/de/chlick\\_it\\_fuer\\_eltern\\_10004.pdf](http://www.skppsc.ch/1/downloads/de/chlick_it_fuer_eltern_10004.pdf) (for parents), consulted on 15 February 2012.

<sup>186</sup> Galladé motion 07.3665: Entertainment media. Protecting children and adolescents from violence.

<sup>187</sup> The remarks on police training also apply to the following cantons: Aargau, Basel Landschaft, Basel Stadt, Bern, Lucerne, Nidwalden, Obwalden, Schwyz, Uri and Zug, which, like the canton of Solothurn, send their police officers to the Inter-cantonal Police School in Hitzkirch for training.

which they received training in the practical implementation of the human rights treaties in force, including the Convention on the Rights of the Child.

- The canton of Geneva provides its police officers with comprehensive training in human rights. The subjects addressed are human rights in general, the rights of the child, professional ethics, codes of practice, legislation on migrants, etc. Human rights is one area of discussion.

155. Various support services are available to children who are victims of violence, whether committed by private individuals or by representatives of authority. These include “Advice + Assistance 147”, run by the Pro Juventute foundation.<sup>188</sup> Children may also contact cantonal victim support services, cantonal and communal mediation services and the criminal prosecution authorities, which are independent of the political and administrative authorities.

156. The following example from the canton of Solothurn demonstrates that the authorities have to adapt constantly in order to ensure even better protection of children’s rights. The police department issued a new directive on the treatment of minors after a number of parents lodged a complaint because they had not been informed when their children were held in a police station at night for verification of their identity. The new directive states expressly that police custody should be ordered only as a last resort and that as a rule young people should not be handcuffed. It also stipulates that, if a minor has to be taken to a police station, his or her legal guardian must be informed immediately.

157. Switzerland signed the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 25 June 2004 and ratified it on 24 September 2009.<sup>189</sup>

158. *Response to paragraph 33 of the concluding observations.*

159. The Swiss Criminal Code<sup>190</sup> establishes penalties for bodily harm<sup>191</sup> and assault.<sup>192</sup> These provisions of criminal law also protect children. “Assault” means any act inflicted on a human being that does not cause bodily harm or harm to health but that nonetheless exceeds what is generally tolerated by society. Slaps, punches, kicks, violent shoves and the throwing of projectiles should be classified as assault. The offence of assault is prosecuted on the basis of a complaint; however, if it is committed repeatedly against a person in the perpetrator’s custody or care, such as a child,<sup>193</sup> the perpetrator is prosecuted ex officio and punished with a fine.

160. Corporal punishment in schools and education institutions has long been viewed as taboo by the teaching profession and is prohibited under the regulations of schools and institutions. There is no unified set of ad hoc cantonal provisions. Prohibitions are sometimes contained in laws on schools, such as that of the canton of Aargau, which expressly prohibits corporal punishment, detention and collective punishment in the context of compulsory schooling. In the canton of Vaud, the law on the protection of minors, which entered into force in 2004, places an obligation on the youth protection service to report to the criminal authorities all offences being prosecuted ex officio of which it is aware. This

<sup>188</sup> “Advice + Assistance 147” is an assistance service offered free of charge to children and adolescents, who can contact specially trained counsellors in complete confidence 24 hours a day by telephone, text or “chat”. If necessary, young people may be referred to local or regional specialized services.

<sup>189</sup> RS 0.105.1.

<sup>190</sup> RS 311.0.

<sup>191</sup> Criminal Code, arts. 122, 123 and 125.

<sup>192</sup> Criminal Code, art. 126.

<sup>193</sup> See Criminal Code, art. 126, para. 2, which mentions other persons in need of particular protection.

includes aggravated assault and ordinary bodily harm. At the federal level, there is still no such provision in the Civil Code, although repeated requests to introduce one have been made. In practice, corporal punishment will probably continue to exist in isolated cases. Furthermore, the line between corporal punishment and security measures such as detention is not clearly defined. The right of children and their parents to lodge a complaint and the preventive effect of monitoring activities carried out by the competent authorities should therefore be recalled here.

161. The Federal Supreme Court has considered the issue of corporal punishment. In a decision of 5 June 2003,<sup>194</sup> it ruled that “the perpetrator, who struck his girlfriend’s children a dozen times in the space of three years and who regularly boxed their ears was committing repeated assault under article 126, paragraph 2, of the Criminal Code and was thereby exceeding what was admissible in accordance with the possible right to inflict corporal punishment”.

162. The draft amendment to the Civil Code on parental authority, adopted by the Federal Council on 16 November 2011, places an additional limit on the possible right of parents to inflict corporal punishment. The amended text stipulates expressly that parental authority may be removed from parents who are violent towards their children if other, less rigorous, protection measures fail. It does not distinguish in this context between a child who is a direct victim of domestic violence and a child who suffers indirectly because of violence committed by one parent against the other (art. 311, para. 1, of the Civil Code).<sup>195</sup>

163. The issue of corporal punishment by parents has also been addressed as part of National Research Programme 52. The Zurich pilot project for children’s social development (“z-proso”) links a longitudinal study with the implementation of two programmes aimed at preventing problem behaviour in children.<sup>196</sup>

164. Many training opportunities are available to parents, and campaigns are organized by the cantons and communes<sup>197</sup> with a view to developing parenting skills and highlighting possible alternatives to corporal punishment.

## V. Family environment and alternative care

### A. Parental guidance (art. 5)

165. The reservation formulated by Switzerland with regard to article 5 was withdrawn on 8 April 2004.

<sup>194</sup> ATF 129 IV 216.

<sup>195</sup> See [www.bj.admin.ch/content/bj/de/home/themen/gesellschaft/gesetzgebung/elterlichesorge.html](http://www.bj.admin.ch/content/bj/de/home/themen/gesellschaft/gesetzgebung/elterlichesorge.html), consulted on 16 February 2012.

<sup>196</sup> Project of Professor Manuel Eisner. For further information, see [www.nfp52.ch/d\\_dieprojekte.cfm?Projects.Command=details&get=18](http://www.nfp52.ch/d_dieprojekte.cfm?Projects.Command=details&get=18), consulted on 16 February 2012.

<sup>197</sup> See, for example, the “Strength through Parenting” campaign, supported by the majority of cantons, which is currently being implemented in all the linguistic regions: [www.e-e-e.ch](http://www.e-e-e.ch). The eight campaign messages are explained in a brochure that is available in 16 languages; more than 100,000 copies have already been distributed in the canton of Zurich. The child protection centre in St. Gallen has launched an awareness-raising campaign entitled “Effective without Force”.

## B. Parental responsibilities (art. 18, paras. 1 and 2)

### 1. Responsibility of parents

166. Several studies and projects have been carried out in recent years on the distribution of roles within the family and on work-life balance. A study under National Research Programme 52<sup>198</sup> focused on equal distribution of roles in the long term and from the point of view of children. Furthermore, the Federal Office for Gender Equality has organized two joint awareness-raising campaigns<sup>199</sup> aimed at challenging stereotypes in the distribution of family and work responsibilities.<sup>200</sup> The Federal Department of Economic Affairs, as the body responsible for economic policy and the labour market, has conducted various information and awareness-raising campaigns to promote work-life balance: the State Secretariat for Economic Affairs (SECO) has published a study presenting a cost-benefit analysis of a family-friendly business policy<sup>201</sup> and a handbook to support small and medium-sized enterprises in the implementation of measures to facilitate work-life balance.<sup>202</sup>

167. The Federal Council, as mentioned above, adopted the dispatch concerning the amendment of the Swiss Civil Code (parental authority) on 16 November 2011. The purpose of the proposed amendment is to make joint parental authority the rule, irrespective of the parents' civil status, and thus to achieve equality between the sexes. The joint parental authority rule requires that account be taken not only of the distribution of roles as it stood during the marriage but also of how that distribution might change after divorce.

### 2. State aid and assistance to parents<sup>203</sup>

168. The family guidance and parent education services mentioned in the initial report of the Swiss Government still offer support in various forms and in different situations. Through funding for umbrella organizations for the family, the Federal Social Insurance Office supports organizations that coordinate work nationwide or that serve as forums for the exchange of information on family matters, such as Pro Familia, Parent Education CH and the Swiss Federation for Advice to Parents.

169. The cantons offer parents various assistance and support services, such as marriage guidance and personal counselling, advice services for young people and families, early-years education based on therapeutic teaching measures, educational psychology, speech therapy, etc. Courses aimed specifically at parents are also organized in various

<sup>198</sup> Project of Margret Bürgisser, sociologist: "Equal distribution of roles within the family: the children's point of view." For further information, see [www.nfp52.ch/f\\_dieprojekte.cfm?0=0&kati=0&Projects.Command=details&get=12](http://www.nfp52.ch/f_dieprojekte.cfm?0=0&kati=0&Projects.Command=details&get=12), consulted on 16 February 2012.

<sup>199</sup> For information on the "Fairplay-at-home" and "Fairplay-at-work" campaigns, see [www.ebg.admin.ch/themen/00008/00486/00488/index.html?lang=fr](http://www.ebg.admin.ch/themen/00008/00486/00488/index.html?lang=fr), consulted on 17 February 2012.

<sup>200</sup> See also the section entitled "Childcare services and facilities (art. 18, para. 3)".

<sup>201</sup> Prognos, *Étude auprès d'un échantillon d'entreprises suisses: Analyse coûts-bénéfices d'une politique d'entreprise favorable à la famille* (Study of a sample of Swiss companies: cost-benefit analysis of a family-friendly business policy), October 2005 (joint project of the State Secretariat for Economic Affairs and of "Travail et famille" (Work and family), private initiative — Migros, La Poste, Novartis, Raiffeisen Group).

<sup>202</sup> State Secretariat for Economic Affairs, *Manuel PME Travail et famille: Mesures visant à concilier vie professionnelle et vie familiale dans les petites et moyennes entreprises* (Work and family handbook for SMEs: measures to achieve work-life balance in small and medium-sized enterprises), February 2007.

<sup>203</sup> Examples of various cantonal services can be found in the annex "Thematic and statistical overviews" (fig. 4).

cantons. The canton of Solothurn, for example, launched a course in 2011 entitled “Strong Parents – Strong Children”, offered to parents throughout the canton on preferential terms. Courses for parents of children in specific age groups are also offered. Parents who take these courses thus have the opportunity for contact with qualified persons who can advise them on educational problems or crisis situations.

170. Various cantons also organize learning and play programmes for selected at-risk families with a view to improving their prospects, in particular those of the children:

- The Federal Social Insurance Office has supported the a:primo association, which is involved in providing early support to socially disadvantaged children of preschool age; for example, it has launched the “step-by-step” programme, which provides parenting assistance to disadvantaged families and parents who are struggling to cope, while supporting children in their development before they start nursery school.
- The Swiss Federation for Parent Education (FSFP), an umbrella organization supported by the Federal Social Insurance Office, launched a major national campaign in 2006 entitled “Strength through Parenting”, the aims of which were to support parents in bringing up their children and inform them about the advice and training available to them, taking a positive approach to daily parenting challenges but also placing the subject of parenting at the centre of public debate. The campaign, which also received funding from the Federal Social Insurance Office, was supported and taken up by several Swiss cantons.
- The national campaign “Strength through Bonding”, launched in 2010 under a partnership between Parent Education CH and the Jacobs Foundation, is aimed at supporting and encouraging parents of young children in building a solid relationship from the start. Up to 2013, parents of newborns will receive a brochure free of charge in their mother tongue (14 languages available) during a meeting with an early-childhood nurse or a midwife. The brochure details the key elements in parent-child bonding that will be conducive to future learning. The campaign will reach around 220,000 parents between 2010 and 2013. It is receiving funding from the Federal Office for Migration (ODM).
- The “Family Education” project set up in the canton of Fribourg is worthy of note. The purpose of the project is to strengthen families’ capacities in the upbringing of their children aged 0 to 7. It is based on the skills that every family possesses and employs the ownership approach, which consists in supporting the parents in their personal analysis and encouraging them to draw on their own resources. The project has been supported as a model project by the Federal Social Insurance Office as part of an effort to produce a compendium of good practice in the prevention of youth violence. The Association for Family Education also receives support from the Federal Office for Migration.

171. The canton of Ticino also has a cantonal law on the family aimed at the promotion, strengthening and social integration of families, the development of child protection, the promotion of training services for parents, aid to families in difficulty, etc.

172. The Ordinance on Maternity Protection<sup>204</sup> entered into force in 2001. It sets out clearly defined criteria for classifying work as dangerous under labour law so that women are protected during pregnancy and maternity.

<sup>204</sup> Ordinance on Dangerous or Difficult Work in Pregnancy and Maternity; RS 822.111.52.

173. Since 1 July 2005, working women have been entitled to 14 weeks' paid maternity leave.<sup>205</sup>

174. The revised version of the Federal Unemployment Insurance Act<sup>206</sup> enables women who have to interrupt their career when they have children to resume working life more easily.

175. The courts may, at the request of persons affected by acts of violence and in order to protect the victims, order a violent person to leave the family home and not to return there for a given period of time. This measure allows children to remain in their home environment with one of their parents. The courts may also prohibit a perpetrator of violence from coming within a certain distance of the home and the victim and from contacting the victim.<sup>207</sup> The law also places an obligation on the cantons to introduce a procedure for the immediate expulsion of a threatening person in the event of a crisis. The relevant provisions are found in the laws on the police and protection from violence.

### C. Separation from parents (art. 9)<sup>208</sup>

176. As part of judicial reform, final appeals in cases involving the withdrawal of custody from the father and mother<sup>209</sup> or the removal of parental authority<sup>210</sup> are now heard by the civil courts rather than the Federal Supreme Court.<sup>211</sup>

177. Cantonal laws often provide for supervisory authorities that monitor the work of the guardianship authorities. In the canton of Lucerne, for example, the most restrictive child protection measures<sup>212</sup> are taken not by the guardianship authorities but by the supervisory authorities. The supervisory authorities also carry out checks every four years relating to filiation issues and the interests of the child. The Conference of the Cantons on Protection of Minors and Adults is again worthy of mention in this context.<sup>213</sup>

178. One of the responsibilities of the Conference of Cantonal Ministers of Social Affairs is to implement the Inter-cantonal Agreement on Social Institutions, which applies to some 700 youth organizations active throughout the country. The Conference works to find placements for children that meet current quality requirements, particularly in relation to children's rights. It has therefore recommended to the cantons that they apply the "Quality4Children" standards,<sup>214</sup> which were developed as part of a European project in conjunction with the children and adolescents concerned, families of origin, foster families and foster parents, and education heads from 26 countries. The Quality4Children Switzerland community has concluded service contracts with a number of cantons, such as St. Gallen, for a three-year pilot project known as "Children Take Part". The aim of the project is to develop and institute appropriate tools to encourage the participation of

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<sup>205</sup> See also chapter VI, section D.1 (The nine branches of social security).

<sup>206</sup> RS 837.0.

<sup>207</sup> Civil Code, art. 28b.

<sup>208</sup> Information on the various institutions in the cantons for the care of children living separately from their parents can be found in the annex "Thematic and statistical overviews" (fig. 5).

<sup>209</sup> Civil Code, art. 310.

<sup>210</sup> Civil Code, art. 310.

<sup>211</sup> Federal Supreme Court Act, art. 72, para. 2 (b) (7).

<sup>212</sup> Statistics from the canton of Ticino on the number and type of child protection measures taken between 2001 and 2009 can be found in the annex "Thematic and statistical overviews" (fig. 10).

<sup>213</sup> See note 105.

<sup>214</sup> See [www.quality4children.info](http://www.quality4children.info), in German and English, consulted on 16 February 2012.

children who are on continuing placements in homes for children and adolescents or in foster families and to integrate these models into cantonal services.

179. Within the Swiss National Science Foundation's National Research Programme 52, one project focuses on the protection of children under civil law. Entitled "Guardianship of children: standards, processes and outcome",<sup>215</sup> it analyses the way in which the various cantonal child protection institutions specifically influence the perception of the problem and organize and implement measures. According to the annual statistics from the cantonal guardianship authorities, 23,000 children were under legal guardianship and 3,300 children had been removed from the care of their parents in 2005. The type and frequency of measures vary widely from one canton to another, and the study concludes that a significant proportion of the protection measures established by the Civil Code are imposed in cases of parental conflict. In 70 per cent of cases, the children's interests are not directly threatened, but the purpose of guardianship is to remove them from exposure to such conflict. In 15 per cent of cases, children are neglected by their parents; in 6 per cent of cases, they are victims of physical abuse and, in 3 per cent of cases, sexual abuse. The study shows that the authorities in small communes, which deal with fewer cases, impose protection measures that are more radical and more restrictive of parents' rights than those imposed by large communes, which have to deal with many cases. The number of guardianship cases in which professionals are involved varies depending on the organization, but is quite high: professionals are involved in 50 per cent of the cases studied. Lastly, the authors state that, once measures are taken, they often continue throughout childhood, and they consider that, too often, formal hearings of parents and children are neglected.

180. The revised version of the general part of the Criminal Code<sup>216</sup> provides expressly for exceptions to the rules in force for the serving of sentences by women who are pregnant or who have recently given birth so as to ensure that mothers are not separated from their babies, provided that such a measure is in the child's interests. The canton of Zurich, for example, has established a unit in which mother and child can be accommodated together; the interests of the child are served through the use of a local nursery and childcare centre.

#### **D. Family reunification (art. 10)**

181. The Foreign Nationals Act<sup>217</sup> entered into force on 1 January 2008. On the same date, the Federal Act on the Residence and Permanent Settlement of Foreign Nationals, which had been in force until that time, was repealed.

182. Under the Foreign Nationals Act, family reunification<sup>218</sup> is subject to new rules: foreign family members of a Swiss national are now entitled to receive a residence permit and to have the permit extended<sup>219</sup> if they hold a permanent residence permit issued by a State with which Switzerland has concluded an agreement on the free circulation of persons. The spouse and unmarried children aged under 18 of foreigners who hold a permanent residence permit are entitled to receive a residence permit and to have it extended if they live in a shared household. Children under 12 are entitled to a permanent residence permit in both cases. The spouse and unmarried children aged under 18 of a

<sup>215</sup> Project of Peter Voll, Christoph Häfeli and Martin Stettler. For further information, see [www.nfp52.ch/f\\_dieprojekte.cfm?0=0&kati=0&Projects.Command=details&get=5](http://www.nfp52.ch/f_dieprojekte.cfm?0=0&kati=0&Projects.Command=details&get=5), consulted on 16 February 2012.

<sup>216</sup> Criminal Code, art. 80.

<sup>217</sup> RS 142.20.

<sup>218</sup> Foreign Nationals Act, arts. 42 to 52.

<sup>219</sup> Foreign Nationals Act, arts. 42 to 52.

holder of a residence permit or a short-stay permit may also, subject to certain conditions, obtain a residence permit or a short-stay permit. As a general rule, applications for family reunification must be made within five years of receipt of a residence permit or permanent residence permit or of the establishment of a family link, subject to the transitional provision that the five-year period begins on the date of entry into force of the Act if the person entered Switzerland or the family link was established before that date. For children over 12, the period is reduced to 12 months. Once the relevant period has elapsed, family reunification is permitted only for significant family reasons. Hearings may be conducted for children over 14.<sup>220</sup>

183. The revised legislation does not entitle all foreign nationals living in Switzerland to family reunification. It is subject to a waiting period of three years in the case of persons provisionally admitted, and, as in the past, asylum seekers are not entitled to it. For that reason, the reservation formulated with regard to article 10 of the Convention on the Rights of the Child cannot be withdrawn for the moment.

#### **E. Recovery of maintenance for the child (art. 27, para. 4)**

184. Please refer here to paragraphs 314 to 319 of the initial report of Switzerland. Mention should also be made of the report of the Federal Council of 4 May 2011 on the harmonization of legislation on advance payment and recovery of maintenance.<sup>221</sup> The report gives an account of developments in the provision of assistance for the recovery and advance payment of maintenance contributions and the forms and purposes of such assistance. It analyses the problems encountered and proposes solutions. The report also sets out the position of the Conference of Cantonal Ministers of Social Affairs on the analysis and the proposed solutions.

185. The central authority for the international recovery of maintenance, attached to the Federal Office of Justice (OFJ), informs the Swiss and foreign authorities and the legal guardians of the persons concerned of the means of enforcing the right to the recovery abroad of maintenance. Its main task is to receive and transmit applications, in accordance with the Convention on the Recovery Abroad of Maintenance of 20 June 1956.<sup>222</sup> Switzerland, pursuant to various other conventions on the recovery of maintenance and the Federal Act on Private International Law,<sup>223</sup> facilitates the exercise of the right to the recovery abroad of maintenance.

#### **F. Children deprived of a family environment (art. 20)**

186. An expert report on the placement of children in Switzerland, drawn up in June 2005, was submitted to the cantons for consultation. As two thirds of the cantons accepted the need to revise the existing Ordinance on the Placement of Children for the Purposes of Maintenance and Adoption, a consultation process on a draft new ordinance on the care of children outside the family was launched in summer 2009. The regulations proposed regarding the full-time placement of children were virtually uncontested. However, the provisions on day care outside the family were sharply criticized, in particular the large

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<sup>220</sup> Foreign Nationals Act, arts. 42 to 52.

<sup>221</sup> Report of the Federal Council in response to motion 06.3003 of the National Council Social Security and Health Committee (CSSS-N) of 13 January 2006.

<sup>222</sup> New York Convention, RS 0.274.15; see [www.bj.admin.ch/content/bj/fr/home/themen/gesellschaft/internationale\\_alimentensache.html](http://www.bj.admin.ch/content/bj/fr/home/themen/gesellschaft/internationale_alimentensache.html), consulted on 16 February 2012.

<sup>223</sup> RS 291.



number of persons who would have had to obtain a childcare licence and the excessive amount of detail in the draft. A revised draft was therefore sent for consultation in late 2010, but it too was widely criticized. The Federal Council is currently considering ways of getting the draft back on track.

## **G. Adoption (art. 21)<sup>224</sup>**

187. *Response to paragraph 37 of the concluding observations.*

### **1. Measures taken**

188. The ratification of the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (Hague Convention on Adoption)<sup>225</sup> and the entry into force of the Federal Act on the Convention and on Measures to Protect Children in Intercountry Adoption Cases<sup>226</sup> have led to a number of improvements. For example, the placement of a child with his or her future adoptive parents, a prerequisite for adoption, has been reduced in duration from two years to one year.<sup>227</sup> This change has made it possible to minimize discrimination relating to integration under the terms of invalidity insurance. In addition, the provisions relating to the licensing and monitoring of mediation for the purposes of adoption have been revised.<sup>228</sup>

189. Following the adoption of the Federal Act on the Hague Convention on Adoption and on Measures to Protect Children in Intercountry Adoption Cases, the Convention on Protection of Children and Cooperation in respect of Intercountry Adoption<sup>229</sup> entered into force on 1 January 2003. Its object is to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child, in particular to prevent the abduction or sale of, or traffic in, children. The States parties agree to cooperate to ensure that these protection measures are respected.

190. At the bilateral level, Switzerland has signed a cooperation agreement on adoption with the Socialist Republic of Viet Nam.<sup>230</sup> Under the agreement, which entered into force for Switzerland on 9 April 2006, the terms of cooperation with Viet Nam are analogous to those governing cooperation with the States parties to the Hague Convention.

### **2. Statistical data**

191. In 2010, 580 children were adopted in Switzerland: 290 boys and 290 girls. Of these, 189 were of Swiss nationality, 80 originated from European countries, 153 were from Africa, 58 from America and 96 from Asia, while 4 were stateless. At the time of their

<sup>224</sup> The annex "Thematic and statistical overviews" includes various statistics relating to adoptions in Switzerland (figs. 6, 7 and 8).

<sup>225</sup> RS 0.211.221.311.

<sup>226</sup> RS 211.221.31.

<sup>227</sup> Civil Code, art. 264.

<sup>228</sup> Civil Code, art. 269c; Ordinance of 29 June 2011 on Adoption (RS 211.221.36), which entered into force on 1 January 2012.

<sup>229</sup> RS 0.211.221.311.

<sup>230</sup> Agreement of 20 December 2005 between the Swiss Confederation and the Socialist Republic of Viet Nam on cooperation with regard to the adoption of children, RS 0.211.221.319.789.

adoption, 263 of the children were aged 0 to 4, 63 were aged 5 to 9, 111 were aged 10 to 14, 90 were aged 15 to 19 and 53 were over 19.<sup>231</sup>

192. There were 255 intrafamily adoptions, 254 children having been adopted by their stepfather and one by the stepmother. There were 325 adoptions in which the child was not previously known to the adoptive parents; of these children, 312 were adopted by a couple and 13 by a single parent.

## H. Illicit transfer and non-return (art. 11)

193. The Federal Supreme Court has ruled<sup>232</sup> that the Convention must also be respected in the context of enforcement of a decision to return a child pursuant to the Convention on the Civil Aspects of International Child Abduction.<sup>233</sup>

194. In addition to various multilateral treaties,<sup>234</sup> Switzerland has signed an agreement with the Lebanese Republic concerning cooperation on certain family matters,<sup>235</sup> based specifically on article 11. Its implementation is, however, hampered by the fact that Lebanon has not yet established the commission necessary for that purpose.

195. In 2010, the Central Authority for the Handling of International Child Abductions dealt with a total of 234 cases.

196. The Federal Act of 21 December 2007 on International Child Abduction and the Hague Conventions on the Protection of Children and Adults,<sup>236</sup> which entered into force on 1 July 2009, is aimed at ensuring that returns better serve children's interests and at shortening procedures by simplifying them and promoting the amicable settlement of disputes. The child is provided with a legal guardian and a hearing is usually held for the child. Where necessary, the court orders protection measures and considers whether the child's return can reasonably be ordered and enforced. The Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children<sup>237</sup> also entered into force on 1 July 2009. The purpose of the Convention is to avoid conflicts between the signatory States in the enforcement of measures for the protection of children or their property. To that end, it includes provisions for the sustainable expansion and development of international cooperation and mutual legal assistance.

197. In a judgement of 6 July 2010,<sup>238</sup> the European Court of Human Rights stated that Switzerland had not exceeded its margin of appreciation by ordering the return of a child to Israel on 16 August 2007, the date of the Federal Supreme Court decision in question. The European Court of Human Rights nonetheless ruled that developments that had taken place since that decision must be taken into account when considering whether the return was compatible with the child's interests and with article 8 of the European Convention on Human Rights (the right to respect for private and family life) and that the time of

<sup>231</sup> These data, including those from the years 2006 to 2009, are available on the Internet at [www.bfs.admin.ch/bfs/portal/fr/index/themen/01/06/blank/key/03.html](http://www.bfs.admin.ch/bfs/portal/fr/index/themen/01/06/blank/key/03.html), consulted on 22 February 2012.

<sup>232</sup> ATF 130 III 533 C.2.

<sup>233</sup> RS 0.211.230.02.

<sup>234</sup> See initial report of Switzerland, para. 312 *et seq.*

<sup>235</sup> RS 0.211.230.489.

<sup>236</sup> RS 0.211.222.32.

<sup>237</sup> RS 0.211.231.011.

<sup>238</sup> European Court of Human Rights, *Neulinger and Shuruk v. Switzerland*, No. 41615/07, judgement of 6 July 2010.

enforcement was a decisive factor. The Federal Act on International Child Abduction and the Hague Conventions on the Protection of Children and Adults takes these considerations into account: it provides that the relevant court may amend or suspend the enforcement of its decision if the circumstances change significantly after the judgement is handed down.<sup>239</sup>

## **I. Maltreatment or neglect (art. 19), including physical and psychological recovery and social reintegration (art. 39)<sup>240</sup>**

198. *Response to paragraph 39 of the concluding observations.*

### **1. Studies and reports**

199. A 2004 study states that the use of corporal punishment, such as smacking, slapping or hitting with an object, declined in Switzerland between 1990 and 2004. Corporal punishment is, however, still used, particularly in the case of children aged between 2.5 and 4. Some 1 per cent of children under 2.5 are also beaten regularly. However, the number of adults who considered corporal punishment of young children to be an inappropriate disciplinary measure increased between 1990 and 2004.<sup>241</sup>

200. A report on the structure and organization of assistance to young people in Switzerland<sup>242</sup> was produced in 2004 at the request of the Swiss Conference of Cantonal Managers for the Protection of Children and Assistance to Young People.

201. In 2004, the canton of Geneva published a report aimed at evaluating the effectiveness of the existing structures for the protection of children who are victims of abuse and presented a number of recommendations. Practically all of these 13 recommendations have been implemented over the past few years. The University of Geneva also produced a report on child abuse in 2005.

202. In 2005, the Federal Social Insurance Office published a study entitled “Violence envers les enfants: concept pour une prévention globale” (Violence against children: a plan for comprehensive prevention). The report, to which the cantons made a vital contribution, was intended to contribute to public debate and to foster the coordinated application of prevention measures that would fill existing gaps. The recommendations presented by the experts focused on three areas of action:

- Greater attention at the political, legislative and administrative (federal, cantonal and communal) levels to violence-related problems and the difficulties of implementing prevention measures;

<sup>239</sup> Federal Act on International Child Abduction and the Hague Conventions on the Protection of Children and Adults, art. 13.

<sup>240</sup> Statistics from the canton of Ticino on the number and type of child protection measures taken between 2001 and 2009 can be found in the annex “Thematic and statistical overviews” (fig. 10).

<sup>241</sup> D. Schöbi and M. Perrez (2004), “Bestrafungsverhalten von Erziehungsberechtigten in der Schweiz. Eine vergleichende Analyse des Bestrafungsverhaltens von Erziehungsberechtigten 1990 und 2004” (Disciplinary measures used by legal guardians in Switzerland. A comparative analysis of disciplinary measures used by legal guardians in 1990 and 2004), University of Fribourg.

<sup>242</sup> Edith M. Piller (2003), *Struktur und Organisation der Jugendhilfe in der Schweiz. Eine Analyse der Angebote und Angebotsstrukturen des Jugendschutzes und der Jugendhilfe in den Kantonen der Schweiz (Schlussbericht)* (Structure and organization of assistance to young people in Switzerland. An analysis of services and structures for youth protection and assistance in the cantons of Switzerland (final report)), Brugg, University of Applied Sciences and Arts Northwestern Switzerland, Aargau.

- Initial and further training of persons who have contact with children;
- Measures to support families, children and parents, such as the provision of information in schools, the use of public and private assistance and advice organizations, the training of parents and the promotion of measures to achieve a better work-life balance.

203. The Fehr parliamentary motion<sup>243</sup> requested the Federal Council in 2007 to propose specific measures to give children better protection against acts of violence within the family. The report is being prepared by the Federal Social Insurance Office, which has secured the cooperation of a working group made up of federal and cantonal experts from various backgrounds, including NGOs. The report studies physical, psychological and sexual violence against children and young people within the family, the neglect they suffer and the impact on them of marital violence. It also addresses the issue of improving national coordination with regard to child protection.

## 2. Child protection

204. The Ordinance on Protection Measures for Children and Young People and on Strengthening Children's Rights,<sup>244</sup> which is based on article 386 of the Criminal Code (prevention of violence) and was issued pursuant to articles 19 and 34 of the Convention, entered into force on 1 August 2008. Under the Ordinance, the Confederation may implement model programmes and projects for the protection of children and young people across the country. It may also grant financial aid to individuals and non-profit-making organizations working within a linguistic region or nationwide. Since 1996, these provisions have covered subsidies for child protection from the Federal Social Insurance Office.

205. In 2008, the Federal Social Insurance Office, in conjunction with private partners, established an association known as the National Child Protection Programme, a public-private partnership. The purpose of the association is to develop a national child protection strategy, improve coordination among the various actors and avoid duplication of funding. In late 2009, the Federal Social Insurance Office and the association submitted a draft national child protection programme to the cantons for consultation. Although the cantons stated their support for improved national coordination, they were hesitant about the proposed structure — the public-private partnership — because they believed that sovereign matters of federal or cantonal law should not be delegated to private entities. The development of national coordination should be addressed within a working group made up of representatives of the Confederation and the cantons. The objective pursued by the Confederation and the cantons in conjunction with the major actors is to determine and implement a national child protection strategy in the longer term.

206. Switzerland signed the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) on 16 June 2010. The purpose of the Convention is to guarantee the normal sexual development of young people and children. States parties undertake to prosecute the sexual abuse of children, child prostitution and child pornography and the forced participation of children in pornographic performances. The accession of Switzerland, preparations for which are currently under way, necessitates various amendments to the Criminal Code.

207. In its concluding observations, the Committee on the Rights of the Child recommended, in accordance with article 19, that Switzerland should evaluate the work of

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<sup>243</sup> Fehr motion 07.3725: Violence within the family. Protection of children and young people.

<sup>244</sup> RS 311.039.1.

existing structures and provide specialized training to persons working in this area. This task is primarily the responsibility of the Conference of the Cantons on Protection of Minors and Adults.<sup>245</sup>

208. The cantons have made significant efforts with regard to child protection. Some of them<sup>246</sup> have established a child protection committee that collaborates with representatives of the guardianship authorities, child and adolescent psychiatry, paediatric hospitals, educational psychology, child protection services, the department of justice and other cantonal departments. The main tasks of these committees are to monitor the development of child protection, draw up recommendations for departments and governments, assess gaps in enforcement and coordinate the procedures, measures and services offered. Other cantons have expanded the competence of their youth committees to include tasks relating to the protection of children and adolescents or have set up a child protection network. Lastly, various cantons<sup>247</sup> have established interdisciplinary child protection bodies in order to support the work of experts, particularly in cases of suspected abuse, and to enable cross-sectoral exchange in the consideration of problematic cases.

209. In addition, the efforts of some cantons<sup>248</sup> have focused in recent years on the establishment of specialized child protection services. These services complement school and family support services and work particularly in the area of prevention. They often work closely with the interdisciplinary child protection bodies. In small cantons, the latter are also responsible for networking and coordination or the implementation of measures.

210. The vast majority of cantons are involved in the “My Body Belongs to Me” project<sup>249</sup> devised by the Swiss Foundation for Child Protection; some cantons are implementing it independently. Several cantons and communes have also taken part in the “Respect is a Must – for Everyone” campaign,<sup>250</sup> which works to prevent sexual, physical and psychological violence. It aims to be interactive and to actively strengthen the self-confidence of girls and young women. Several cantons have concluded service contracts for Advice + Assistance 147, run by the Pro Juventute foundation, and for [www.tschau.ch](http://www.tschau.ch), run by Infoclick (in German).<sup>251</sup> School teachers and head teachers have been informed about these services — systematically in some cantons — and many web portals for young people and school Internet sites refer to them. In the canton of Aargau, for example, various Internet sites and a flyer distributed to all schools inform the public about free telephone helplines for children, their responsible adults and persons who come into contact with them in school, and about the child protection services, emergency assistance for parents and support available. In the canton of Lucerne, cards are distributed to children

<sup>245</sup> See note 105.

<sup>246</sup> For example, the cantons of Valais, Zurich, Bern, Basel Landschaft, Graubünden and Aargau.

<sup>247</sup> For example, the cantons of Jura, Zurich, Bern, Lucerne, Uri, Schwyz, Obwalden, Nidwalden, Glarus, Zug, Solothurn, Basel Stadt, Schaffhausen, Appenzell Ausserrhoden, St. Gallen, Graubünden and Aargau.

<sup>248</sup> For example, Lucerne, Solothurn and Basel Landschaft.

<sup>249</sup> Under this project, experts introduce children in the second to fourth years of primary school to the principles of prevention through games and activities. They talk to children about sexual exploitation in age-appropriate terms and encourage them to develop their capability to protect themselves and to be aware of their rights. One component of the project covers further training for teachers and information targeted at parents. For further information (in German only), see <http://kinderschutz.ch/cmsn/de/category/rubriken/kampagnen/kampagne-%C2%ABkeine-sexuelle-gewalt-kindern%C2%BB/kampagnen-modul-%C2%ABmein-k%C3%B6rper-ge>, consulted on 21 February 2012.

<sup>250</sup> See [www.arip.ch/fr/actualite/](http://www.arip.ch/fr/actualite/), consulted on 21 February 2012.

<sup>251</sup> The [www.tschau.ch](http://www.tschau.ch) website is available in German only. It is a supra-regional Internet portal for young people. Through the site, adolescents can ask questions anonymously on matters such as training, work, relationships, leisure, society, welfare, health, the environment and multimedia.

with information about the 147 number and other support services. The cantons of Geneva and St. Gallen make particular use of posters to provide information about the 147 number and the child protection centre.

211. Swiss Crime Prevention (PSC), on the instructions of the Conference of Cantonal Justice and Police Directors, works to combat insecurity in society. It launches prevention campaigns on various themes, such as the dangers of the Internet, crimes against children, violence by and among children, and domestic violence. Swiss Crime Prevention is also responsible for networking, advice, documentation and training, in particular for police forces and their prevention services.

212. The cantons have improved their prevention and intervention plans in order to combat maltreatment and sexual abuse of children more effectively, but they have also taken steps to raise awareness among professionals of the problem of abuse during further training courses. Article 54 of the youth law in the canton of Valais provides, for example, that anyone who, through professional activities, responsibilities or functions relating to children, is aware of a situation in which a child's development is at risk and who cannot take action himself or herself to remedy the situation must inform his or her superior or, failing that, the guardianship authorities. The Bernese cantonal police have established a special department to combat trafficking in children. Police officers who carry out interventions are provided with specific information.

213. With regard to further training of those involved in child protection, the International Institute for the Rights of the Child, in conjunction with the Kurt Bösch University Institute, has been organizing training on the rights of the child, leading to a diploma, since 2005. The purpose of the training is to consolidate and develop the professional skills of the persons concerned. In addition, the Swiss Foundation for Child Protection,<sup>252</sup> an NGO that receives financial support from the Federal Social Insurance Office, offers guides explaining to various professionals, such as doctors, how to identify cases of child abuse at an early stage.

214. The canton of Solothurn provides a good example of the activities and measures in place in the cantons. In 2004, it established a child protection service, which deals with all issues relating to the maltreatment and abuse of children. The service provides advice, particularly to other bodies, organizes further training courses and runs prevention campaigns throughout the canton. For example, it has launched a campaign to improve child protection on the Internet, implemented the aforementioned "My Body Belongs to Me" project and initiated the "Kodex" project, which is aimed at introducing a code of conduct for the prevention of sexual abuse in institutions and associations. There is also a service dealing with domestic violence problems, which organizes further training courses and lectures to raise awareness and provide information. In addition, there are brochures providing information about emergency numbers and the various support services available to the public.

### 2.1 *Federal Act on the Provision of Support to Victims of Crime*

215. The Swiss Conference of Liaison Offices under the Federal Act on the Provision of Support to Victims of Crime (CSOL-LAVI), a specialized standing committee under the Conference of Cantonal Ministers of Social Affairs, ensures the uniform application of the Victim Support Act<sup>253</sup> and coordination between the Confederation and the cantons. The Swiss Conference of Liaison Offices under the Victim Support Act is establishing a list of

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<sup>252</sup> See [www.kinderschutz.ch](http://www.kinderschutz.ch), consulted on 21 February 2012.

<sup>253</sup> RS 312.5.

victim support centres; for some years, services aimed specifically at children and young people have been placed on a separate list.<sup>254</sup>

216. Since 2000, the Confederation, in conjunction with the cantons, has been producing statistics relating to the implementation of the Victim Support Act.<sup>255</sup> These data cover the support provided by specialized centres and pecuniary and non-pecuniary damages granted to victims. They indicate, for example, the number of children who have received support and the number of people concerned about sexual abuse of children who have received advice. The services of victim support centres can be accessed at any time, irrespective of when the act was committed; adults who were victims of abuse in their childhood may also, therefore, use them.

217. Police Crime Statistics (SPC)<sup>256</sup> recorded 170 reports of rape of a minor in 2005. Of the 3,491 victims of other forms of sexual abuse, 1,608 were aged under 16 and 441 were aged 16 to 20. The statistics on criminal convictions show that, in 2004, 438 individuals were convicted of sexual acts against children, in 2005, 408, and in 2006, 364.<sup>257</sup> According to the new police crime statistics, 115 minors were victims of rape under article 190 of the Criminal Code in 2010. Of the 3,761 victims of sexual abuse, 1,047 were under 15 and 903 were between 15 and 20. According to statistics on adult criminal convictions, there were 318 convictions for sexual acts with children (art. 187 of the Criminal Code) in 2010. The sexual abuse offences with the highest conviction rates after pornography offences are sexual acts with children. According to statistics on victim support, 81 per cent of victims who contacted a victim support centre in 2009 in connection with a sexual act with a child were female and 55 per cent were under 18.<sup>258</sup>

218. There are currently no comprehensive statistics on child abuse, apart from sexual abuse. Moreover, the crime statistics are not comprehensive because they include only reported cases of abuse. Some studies indicate that child abuse is much more widespread than might be thought.

219. The period of statutory limitation for the prosecution of sexual offences against children or dependent minors was extended as of 1 October 2002. Depending on the seriousness of the offence, the statute of limitations for prosecution lasts until the victim's twenty-fifth birthday.<sup>259</sup>

220. In the interests of children, the revised Victim Support Act, which entered into force on 1 January 2009, relaxed the confidentiality obligation placed on staff members of support centres so that they may inform the guardianship authorities or the criminal authorities if a child is in serious danger. Furthermore, the time limits for claiming pecuniary or non-pecuniary damages have been extended from two to five years and persons who have been victims of a serious offence may lodge a claim up to the age of 25.

<sup>254</sup> See [www.sodk.ch/fileadmin/user\\_upload/Fachbereiche/Opferhilfe/Adresslisten/Liste\\_Adressen\\_der\\_Opferhilfe\\_fuer\\_Kinder\\_und\\_Jugendliche.pdf](http://www.sodk.ch/fileadmin/user_upload/Fachbereiche/Opferhilfe/Adresslisten/Liste_Adressen_der_Opferhilfe_fuer_Kinder_und_Jugendliche.pdf), consulted on 22 May 2012.

<sup>255</sup> See [www.bfs.admin.ch/bfs/portal/fr/index.html](http://www.bfs.admin.ch/bfs/portal/fr/index.html), consulted on 11 February 2012.

<sup>256</sup> Police Crime Statistics collects cantonal police statistics and records certain types of offence reported to the police. Since 2009, the cantons have been producing their statistics in accordance with uniform criteria, which allows for a comparison of the figures.

<sup>257</sup> The statistics on convictions cover sentences handed down in Switzerland and included in the person's police record. Unlike other countries, Switzerland includes all offences in respect of which there has been a conviction, not only the most serious ones. If the statistics were limited to the most serious offences, the number of convictions for sexual offences would be one quarter lower.

<sup>258</sup> Police crime statistics for 2010 can be found at [www.bfs.admin.ch/bfs/portal/fr/index/news/publikationen.html?publicationID=4308](http://www.bfs.admin.ch/bfs/portal/fr/index/news/publikationen.html?publicationID=4308), consulted on 16 February 2012.

<sup>259</sup> Criminal Code, art. 97, para. 2; Military Criminal Code, art. 55, para. 2.

## 2.2 Domestic violence

221. Children and adolescents affected by interventions in domestic violence cases are now given greater attention. Around three quarters of the cantons have intervention services, which are grouped into a Latin Conference against Domestic Violence (CL) and its German-language counterpart, the Conference of Intervention Services and Projects against Domestic Violence in German-speaking Switzerland (KIFS), and which establish, for example, uniform standards for organizations and projects in this area. These inter-cantonal organizations attach great importance to collaboration with other relevant institutions, such as support services for perpetrators of domestic violence, victim support centres, women's shelters, child protection institutions, the guardianship authorities and the police. Many cantonal and communal equality offices have also held discussions on the subject at the local level.<sup>260</sup>

222. In the canton of Zurich, for example, the office of the public prosecutor has issued guidelines for domestic violence cases that also take account of the particular needs of children. The police must immediately inform the guardianship authorities of police interventions ordered under the cantonal law on protection against violence if children live in the household in question. Where an interview with a perpetrator of violence gives reason to believe that child protection measures are needed, the guardianship authorities are alerted. There are also directives providing that the protection of a child's interests may play a role in any decision not to suspend proceedings under article 55a of the Criminal Code.

223. In some cantons, such as Vaud, Zurich, Bern and Thurgau, children whose parents are involved in domestic violence have access to support services; for example, a meeting is held with the child promptly after the event.

224. In addition to interdisciplinary child protection groups and specialized services, other services such as drop-in educational psychology and therapeutic teaching services and school-based social services play a very important role in the prevention and detection of problems of violence and in the care of the children concerned.

225. The project entitled "Children and domestic violence: study of their views, coping strategies and needs" focused on domestic violence as part of National Research Programme 52.<sup>261</sup> 1,405 children aged 9 to 17 were questioned twice for a survey, and interviews were conducted in three cantons with 29 children affected by domestic violence, their mothers and staff of women's shelters and victim support centres. The study shows that children know much more about the subject than adults suppose, and that girls of all ages are more sensitive to these problems. There are many factors in the decision to speak to a third party about violence within the family and to seek help. Boys are afraid in particular of damaging the image of their family, while girls are more often afraid of not being understood or believed. Three factors make children reluctant to seek help: fear that their information will not be kept confidential, concern about damaging the image of their family and the fact that they see domestic violence as a private matter. The children concerned also fear the consequences of their disclosures, although their fear of being placed in an institution or of their parent's being imprisoned is unlikely to be realized. Most children who confide in someone prefer to speak to their siblings, friends, grandparents or mother. The telephone helpline is an important facility.

<sup>260</sup> See [www.ebg.admin.ch/themen/00466/00480/index.html?lang=fr](http://www.ebg.admin.ch/themen/00466/00480/index.html?lang=fr), consulted on 21 February 2012.

<sup>261</sup> Project leader: Corinna Seith. For further information, see [www.nfp52.ch/f\\_dieprojekte.cfm?0=0&kati=0&Projects.Command=details&get=20](http://www.nfp52.ch/f_dieprojekte.cfm?0=0&kati=0&Projects.Command=details&get=20), consulted on 21 February 2012.



226. The initial specialized support services offered, such as the interview with a child following a police intervention for domestic violence, show that increased attention is being paid to the impact of domestic violence on children. The cantons are in the process of setting up such services.

227. Since 1 January 2007, the courts have been able to protect domestic violence victims by expelling the violent person from the shared home for a set period. The judicial authorities may also prohibit the perpetrator of the violence from coming within a certain distance of the home and from approaching or contacting the victim in any way.<sup>262</sup> This type of measure enables children to remain in a familiar environment with their father or mother.

228. As mentioned previously, the Federal Council adopted the dispatch concerning an amendment to the Swiss Civil Code (parental authority) on 16 November 2011. The proposed amendment provides explicitly that, if less restrictive child protection measures are not effective, parental authority may be removed from parents in domestic violence cases, irrespective of whether the child is the victim of the violence himself or herself or is only indirectly a victim of violence inflicted by one parent on the other.<sup>263</sup>

## **J. Periodic review of placement (art. 25)**

229. Please refer to the comments in paragraphs 361 to 363 of the initial report of Switzerland.

## **VI. Basic health and welfare**

230. *Response to paragraph 41 of the concluding observations.*

### **A. Survival and development of the child (art. 6, para. 2)**

231. Please refer to the relevant comments in chapter III.C of the present report and the comments in paragraph 83 *et seq.* of the initial report of Switzerland.

### **B. Children with disabilities (art. 23)<sup>264</sup>**

232. *Response to paragraph 43 of the concluding observations.*

#### **1. National measures**

233. With the entry into force of the fourth revised version of the Federal Act on Invalidity Insurance (Invalidity Insurance Act),<sup>265</sup> the former disability allowances, contributions to the cost of special care for minors with disabilities and contributions for home care have been replaced with a single disability allowance,<sup>266</sup> which is now also paid

<sup>262</sup> Civil Code, art. 28b.

<sup>263</sup> New Civil Code, art. 311, para. 1.

<sup>264</sup> See also the statistics in the annex "Thematic and statistical overviews" (figs. 11, 12, 13 and 14).

<sup>265</sup> RS 831.20.

<sup>266</sup> Federal Act on General Aspects of Social Security Law, art. 9: anyone who, owing to impaired health, is in permanent need of the assistance of another person or of personal supervision in order to perform the basic tasks of everyday life is deemed disabled.

to minors. Furthermore, for those in receipt of disability allowance who live in their own home, the allowance has been doubled. There is a supplement to disability allowance for minors who need intensive care. Care is considered intensive when it is required for at least four hours more per day than the ordinary level of care. Under the new provisions of the Invalidity Insurance Act, a distinction is no longer made, with regard to home care, between children born with a disability and those who become disabled later. The first part of the sixth revised version of the Invalidity Insurance Act, which entered into force on 1 January 2012 (see para. 22 above), introduced a new benefit, the assistance allowance, which, by allowing adults entitled to a disability allowance to hire the assistants they need in order to live at home, promotes the independence of persons with disabilities and provides relief to their families. Minors are entitled to the assistance allowance in cases where it enables them to have a normal education. Children and adolescents who need intensive care and are looked after at home are also entitled to it.

234. On 1 January 2004, the Federal Act on the Elimination of Discrimination against People with Disabilities (Disability Discrimination Act),<sup>267</sup> the Ordinance of the same name<sup>268</sup> and the Ordinance on the Adaptation of Public Transport to the Needs of People with Disabilities entered into force.<sup>269</sup> In accordance with article 8, paragraph 4, of the Constitution, the purpose of the Disability Discrimination Act is to prevent, reduce or eliminate discrimination against persons with disabilities, for example by improving their access to public buildings, education opportunities and public transport, so that they can participate more easily in society, receive education and training, and eventually engage in gainful employment.

235. The cantons ensure that children and adolescents with disabilities receive basic education appropriate to their specific needs.<sup>270</sup> They encourage their integration into mainstream schools as far as possible, provided that it is conducive to their welfare. Pursuant to a decision of the Federal Supreme Court,<sup>271</sup> there must be well-founded reasons for not enrolling a child in a mainstream school on account of his or her disability, but this may be compatible with the prohibition on discrimination under article 8, paragraph 2, of the Constitution and article 20 of the Disability Discrimination Act; the determining factor is the welfare of the disabled child, as the prevailing situation permits.

236. The Vocational Training Act<sup>272</sup> provides for various measures to enable persons with disabilities to pursue vocational training (support classes, extended training periods, individual supervision and special arrangements for examinations).<sup>273</sup> Two-year basic training courses also allow for the acquisition of simplified vocational qualifications. This system takes account of the individual abilities of trainees by offering them a particularly wide range of courses and specially adapted teaching.<sup>274</sup> Advisers who specialize in vocational, university and careers guidance must take account of the particular needs of persons with disabilities.<sup>275</sup>

237. The cantons use various systems to collect data. For example, the canton of Aargau has a particularly comprehensive tool and systematically evaluates the data collected. It has also begun monitoring the services that are on offer to meet the needs of disabled children.

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<sup>267</sup> Disability Discrimination Act; RS 151.3.

<sup>268</sup> RS 151.31.

<sup>269</sup> RS 151.34.

<sup>270</sup> Disability Discrimination Act, art. 20.

<sup>271</sup> ATF 130 I 352.

<sup>272</sup> RS 412.10.

<sup>273</sup> Vocational Training Act, art. 18, and Ordinance on Vocational Training (RS 412.101), art. 35.

<sup>274</sup> Ordinance on Vocational Training, art. 10.

<sup>275</sup> Ordinance on Vocational Training, art. 57.

In the canton of Lucerne, the collection of data on children with disabilities has been improved in order to provide more detail. The cantonal authorities are also making efforts to prevent inequalities in integration and to provide better support to the relevant social institutions. Since 1 January 2011, the canton of Valais has had at its disposal a statistical tool for following all disabled children on their path from school to old age. Under article 16 of the Vocational Training Act, the Confederation may initiate programmes aimed at improving the integration of persons with disabilities into society. Since the Act entered into force, many projects aimed specifically at the integration of disabled children and adolescents have been implemented.<sup>276</sup>

238. At the cantonal level, a variety of services are also available to give the parents of disabled children a break, such as organized leisure activities, holiday camps or weekend care services. This support is often offered by private associations or foundations, which generally receive a cantonal subsidy for that purpose.

## 2. Measures taken by Switzerland at the international level

239. In several countries in Eastern Europe, children with disabilities and their families suffer stigmatization and discrimination. The Swiss Agency for Development and Cooperation promotes projects that foster the social integration of these children. For example, it has provided funding of 1.8 million francs for a project aimed at facilitating access to community services for disabled children and their parents in Serbia and Montenegro. In addition, a contribution of 2.7 million francs has been provided for the establishment of a unit where education professionals are trained in the education and training of children and adults with disabilities. In Belarus and the Republic of Moldova, financial aid from Switzerland is used to fund programmes for disabled children and their families.

240. The Working Community of Alpine Regions (Arge Alp), which brings together various cantons, Länder and provinces of Austria, Italy, Germany and Switzerland, organizes events every year, such as sports competitions for children and adults with disabilities. For example, in August 2010 the canton of St. Gallen organized a football tournament for persons with mental disabilities.

## C. Health and health services (art. 24)

241. *Response to paragraph 45 of the concluding observations, in which the Committee endorses the concluding observations of the Committee on Economic, Social and Cultural Rights.*<sup>277</sup>

242. As an interim measure, Parliament has adopted an amendment to the Federal Health Insurance Act<sup>278</sup> on the reduction of premiums, which entered into force on 1 January 2006: the cantons must reduce premiums for children and adults in education by at least 50 per cent for families on low or medium incomes.<sup>279</sup>

<sup>276</sup> An overview of projects that have received support can be found at [www.edi.admin.ch/ebgb/00587/00605/index.html?lang=fr](http://www.edi.admin.ch/ebgb/00587/00605/index.html?lang=fr) (type “children” or “adolescents” in the search box), consulted on 23 February 2012.

<sup>277</sup> E/C.12/1/Add.30, para. 36.

<sup>278</sup> RS 832.10.

<sup>279</sup> Health Insurance Act, art. 65, para. 1 *bis*.

243. A Health Behaviour in School-Aged Children study is conducted every four years in Switzerland.<sup>280</sup> The quadrennial study is carried out in more than 40 countries under the aegis of WHO. It relates to the health behaviour of children aged 11 to 15 and changes in that behaviour over time. The study thus provides reference points that are important for health policy and for targeted health promotion in schools and recreation activities. It also establishes an important basis for the development of preventive measures. The 2010 study is the seventh in Switzerland, following those of 1986, 1990, 1994, 1998, 2002 and 2006; it was carried out by Addiction Switzerland (formerly the Swiss Institute for the Prevention of Alcoholism and Other Forms of Drug Addiction (ISPA)) and was funded by the Federal Office of Public Health and the cantons.

244. The Swiss multicenter adolescent survey on health (SMASH),<sup>281</sup> which analysed the health and lifestyles of young people aged 16 to 20 in Switzerland, was produced in 2002. The study highlights health needs, health behaviour and associated factors, and also the major changes that have taken place over the past 10 years. The results will make it possible to review and improve the approach to health provision and programmes for prevention and health promotion for adolescents.

245. Parenting style also has an effect on children's health. For example, under the Swiss National Science Foundation's National Research Programme 52, "Parenting style and parent-child relations: impact on children's health and changes over time",<sup>282</sup> it was noted that there was a clear link between children's perception of their upbringing and their health. The study showed that children brought up in a manner that was felt to be "mature" — consisting of both support and parental demands — enjoyed the best health. For example, these children consumed less cannabis and tobacco, had fewer physical symptoms, and experienced their upbringing as more consistent.

## 1. Health promotion

### 1.1 Health promotion in Switzerland<sup>283</sup>

#### 1.1.1 Access to medical care for all children

246. The prohibition on discrimination and the Disability Discrimination Act reaffirm the right of non-discriminatory access to medical services. For example, the Confederation supports a project that helps to improve health-related information for deaf persons. It has also supported the establishment of a centre that specializes in disability and sexuality, one of the aims of which is to help improve the sexual development and the health of children and adults with disabilities.

#### 1.1.2 Health Promotion Switzerland youth programme

247. Under the priority programme of Health Promotion Switzerland for adolescents and young adults, around 100 local, regional and national projects were carried out between

<sup>280</sup> See [www.hbsc.ch](http://www.hbsc.ch), consulted on 2 March 2012.

<sup>281</sup> F. Narring, A. Tschumper, L. Inderwildi Bonivento, A. Jeannin, V. Addor, A. Bütikofer, J. C. Suris, C. Diserens, F. Alsaker and P. A. Michaud: *Swiss multicenter adolescent survey on health (SMASH) 2002. Santé et styles de vie des adolescents âgés de 16 à 20 ans en Suisse* (Health and lifestyles of adolescents aged 16 to 20 in Switzerland). Lausanne: University Institute for Social and Preventive Medicine, 2004 (Raisons de santé, 95b).

<sup>282</sup> Project of Prof. Felix Gutzwiller. For further information, see [www.nfp52.ch/f\\_dieprojekte.cfm?0=0&kati=0&Projects.Command=details&get=31](http://www.nfp52.ch/f_dieprojekte.cfm?0=0&kati=0&Projects.Command=details&get=31), consulted on 21 February 2012.

<sup>283</sup> Information on the type and range of vaccinations carried out can be found in the annex "Thematic and statistical overviews" (fig. 15).

1999 and 2006 with the primary aim of helping children and adolescents to acquire psychosocial skills. The projects focused on better stress management and the ability to manage conflict, taking account of gender differences.

248. In 2007, Health Promotion Switzerland launched a long-term strategy with three components: health promotion and prevention; healthy body weight; and mental health and stress, with a focus on health promotion. Under the healthy body weight and mental health components, the organization Suisse Balance<sup>284</sup> has been revived. Managed by the Federal Office of Public Health and Health Promotion Switzerland, this national organization for the promotion of healthy eating and physical activity offers professional and pragmatic support to entities in Switzerland that wish to be involved in promoting healthy body weight, particularly in children and adolescents (problems of overweight, anorexia and bulimia). Also in 2007, the cantons launched action programmes to promote healthy body weight.

### 1.1.3 Education and health

249. In line with previous projects and with the support of the Swiss Conference of Cantonal Ministers of Education, the Federal Office of Public Health has developed the education + health Network Switzerland (é+s), a programme for the integration of health and prevention into school education. When the programme is over, the education + health Network Switzerland will continue in the form of a network of specialized institutions. The network serves as a forum for the exchange of ideas and the development of specialized knowledge with regard to prevention and health promotion in schools. Its members help schools by providing them with advice and assessments, developing teaching resources, collaborating on projects and, lastly, providing documentation and prevention services.

250. Switzerland is a member of the Schools for Health in Europe network, supported by the WHO European office, the Council of Europe and the European Commission. In recent years, 18 cantonal and regional subnetworks have been established as parts of the Swiss network. A total of 1,734 Swiss schools are currently affiliated to the network, which represents about 40 per cent of pupils in compulsory education. They have undertaken to participate for at least three years in a tailored programme to make schools healthy places of work and learning.

251. Through the Swiss Coordination Conference on Education for Sustainable Development (CC EDD), the Federal Office of Public Health is implementing the Education for Sustainable Development Action Plan for 2007–2014, with the support of other federal offices and the Swiss Conference of Cantonal Ministers of Education. The focus is on the provision of assistance to the cantons in order to integrate education for sustainable development into the curricula of the different linguistic regions, initial and further training of teachers and improvement of quality in schools.

252. The Federal Office of Public Health, with the support of the Federal Office for the Environment (OFEV), the Swiss Agency for Development and Cooperation and the Conference of Cantonal Ministers of Education, is planning to establish a national agency specializing in education for sustainable development in 2013. It will be responsible for promoting and facilitating the integration of education for sustainable development in schools and lessons (compulsory education and upper secondary level). To that end, it will bring together experts, coordinate the actors involved, make effective use of the available resources, connect the various thematic approaches, such as health, the environment, global

<sup>284</sup> For further information, see [www.suissebalance.ch/logicio/client/suissebalance/intro.php](http://www.suissebalance.ch/logicio/client/suissebalance/intro.php), consulted on 1 March 2012.

learning and political education, establish synergies and raise public awareness of education for sustainable development through active communication.

#### 1.1.4 Health and research

253. The new Federal Act on Research involving Human Beings (Human Research Act)<sup>285</sup> lays down specific regulations for research on minors and, more generally, persons not capable of forming their own views.<sup>286</sup> It will probably enter into force in late 2013.

#### 1.1.5 Mental health

254. Problem behaviour, such as mental development disorders, difficult behaviour or emotional disorders, affects 20 to 25 per cent of school-age children. The Confederation and the cantons are working to implement at different levels over the coming years the recommendations submitted in 2005 by the WHO Regional Office for Europe with a view to improving mental health promotion and the prevention of mental illness in children and adolescents.

255. Parliament is currently debating a new law aimed at improving coordination of the prevention of non-communicable diseases and mental illnesses. The Confederation (the Federal Office of Public Health, the State Secretariat for Economic Affairs and the Federal Social Insurance Office), the Swiss Conference of Cantonal Ministers of Health and Health Promotion Switzerland have joined forces to launch a mental health network, which will serve to connect the entities involved and coordinate measures for the promotion of mental health and the prevention and early detection of mental illnesses. Local and regional programmes for early detection and improved treatment of depression (the Alliance against Depression) will be incorporated into the network. Networking and the exchange of knowledge among partners will generate added value that will benefit above all those groups that are particularly at risk, especially adolescents, but also, ultimately, the whole population.

256. In addition to the telephone number offered by Pro Juventute for children and adolescents in difficulty (147), a text message service and Internet-based support are now also available. Free advice from persons who have received psychological and sociopedagogical training is available 24 hours a day in the three national languages. In 2010, more than 520,000 calls were made to the 147 number.

257. In February 2012, there were 2,191 registered doctors of both sexes who held a federal or recognized qualification as a specialist in child and youth medicine, 848 of whom had their own practice, plus 811 psychiatrists and psychotherapists specializing in childhood and adolescence, 485 of whom had their own practice, and 116 surgeons specializing in children, 29 of whom had their own practice.<sup>287</sup>

## 2. Child and adolescent mortality in Switzerland<sup>288</sup>

258. The rate of child mortality in Switzerland is very low. The number of cot deaths has fallen. Mortality in the 1–14 age group is the lowest of all age groups. In this category, the predominant causes of death are injuries, intoxication and other external causes. In

<sup>285</sup> RS 810.30.

<sup>286</sup> Human Research Act, arts. 21–23.

<sup>287</sup> See the Swiss Medical Association list of doctors at [www.doctorfmh.ch/index\\_fr.cfm](http://www.doctorfmh.ch/index_fr.cfm), consulted on 22 March 2012.

<sup>288</sup> Statistics on child and adolescent mortality can be found in the annex “Thematic and statistical overviews” (figs. 16 and 17).

the 15–19 age group, three quarters of deaths are in violent circumstances. Traffic or recreational accidents are the most frequent causes of death, followed by suicide. However, the suicide rate among young men has fallen by 40 per cent since the 1980s, whereas among young women it has increased by 10 per cent; it therefore remains twice as high among boys as among girls, compared with four times as high in the past.

### 3. Maternal mortality and perinatal care<sup>289</sup>

259. The rate of maternal mortality in Switzerland is very low. A report<sup>290</sup> has analysed the causes of death in detail and presented recommendations for prevention. In 2009, the maternal mortality rate stood at 3.8 per 100,000 births.<sup>291</sup>

260. In 2010, 98 per cent of births took place in hospital. Caesarean sections make up 33 per cent of births, with wide disparities depending on the age of the mother and the region.<sup>292</sup>

## 4. Nutrition

### 4.1 Nursing mothers

261. According to the Swiss Health Survey, in 2007 almost 90 per cent of all women breastfed their last baby, more than half of them (55 per cent) for more than three months. Between 2002 and 2007, the proportion of mothers who did not breastfeed fell slightly and the number breastfeeding for more than three months increased (55 per cent in 2007 compared with 52 per cent in 2002).<sup>293</sup>

### 4.2 Child and adolescent nutrition

262. The vast majority of children and adolescents examined in the three cities of Bern, Basel and Zurich during the 2005/06 to 2010/11 school years were not overweight. However, one in five children suffers from overweight (15.1 per cent) or obesity (5 per cent), rates that have remained stable in recent years. It is striking to note, from analysis of overweight according to school grade, that in kindergarten 15 per cent of children are overweight, while the rate reaches 22 per cent in middle schools and 26 per cent in upper secondary schools. The main causes are excessive calorie intake and lack of exercise. Prevention projects such as Suisse Balance, Action D and national implementation of the WHO Global Strategy on Diet, Physical Activity and Health are a first step towards limiting the phenomenon of overweight.<sup>294</sup>

<sup>289</sup> Statistics illustrating variations in maternal mortality in recent years can be found in the annex “Thematic and statistical overviews” (fig. 18).

<sup>290</sup> M. Fässler, R. Zimmermann and K.C. Quack Lötscher, “Maternal mortality in Switzerland 1995–2004”, *Swiss Medical Weekly* 2010, 140 (1–2), pp. 25–30. G. Meili, R. Huch, A. Huch and R. Zimmermann, “Mütterliche Mortalität in der Schweiz 1985–1994” (Maternal mortality in Switzerland 1985–1994), *Gynäkologisch-geburtshilfliche Rundschau* (Gynaecological and Obstetric Review) 2003.

<sup>291</sup> See OECD.StatExtracts at <http://stats.oecd.org/Index.aspx?lang=fr&SubSessionId=3a1adb0d-f219-4d09-af70-94dcc9a5678d>, consulted on 22 March 2012.

<sup>292</sup> Hospital medical statistics, Federal Statistical Office.

<sup>293</sup> See [www.unicef.ch/fr/campagnes/initiatives/hopital\\_ami\\_des\\_bebes/etudes\\_concernant\\_l\\_allaitement\\_en\\_suisse/](http://www.unicef.ch/fr/campagnes/initiatives/hopital_ami_des_bebes/etudes_concernant_l_allaitement_en_suisse/), consulted on 22 March 2012.

<sup>294</sup> See also the information in section 1.1.2 (Health Promotion Switzerland youth programme).

## 5. Sexual health

### 5.1 *Sex information and education*

263. Launched in late 2002, the centre of expertise in sex education in schools was integrated into the University of Teacher Education Central Switzerland in 2006. Its work was based on the National Programme for HIV and Other Sexually Transmitted Infections 2011–2017 (PNVI). The objective of the centre of expertise is to incorporate HIV prevention into the school curriculum at all levels, to provide initial and further training for teachers on HIV/AIDS prevention and sex education and to produce teaching material on these subjects.<sup>295</sup>

264. In 2008, the Federal Commission for Child and Youth Affairs held a seminar entitled “Young people’s sexuality over time – evolution, influences, perspectives”, and published the report on it in 2009.<sup>296</sup> The Commission emphasizes the need for society, parents and schools to provide children with comprehensive sex education. Through an online survey of adolescents conducted in 2008, the Commission found that many adolescents were still under- or ill-informed about sexuality and that old myths and half-truths were surprisingly enduring. For that reason the Commission requests parents, schools and other responsible adults to fulfil their responsibilities more effectively and to contribute more to children’s sex education. Furthermore, it is necessary to ensure the quality of the increasing number of Internet sites offering advice to adolescents but also to raise awareness of them and improve coordination of them.

### 5.2 *Sexual and reproductive health*

265. In response to a parliamentary motion in 2000,<sup>297</sup> a study on the advice services available with regard to sexuality was carried out.<sup>298</sup> It found that there was a wide range of information and advice services, but that they were not coordinated with each other and were not sufficiently well known. An Internet platform on sexual health<sup>299</sup> has therefore been set up to improve networking among support centres and their accessibility.

266. In late 2005, Parliament instructed the Federal Council to legislate on pre-implantation diagnosis and the conditions under which it may take place. On 26 May 2010, the Federal Council noted the outcome of consultations with interested parties on a legislative bill. At the same time, it decided to arrange for the drafting of a version that would improve the protection of women’s health and the chances of having a healthy embryo. In 2011, the proposal was submitted to interested parties for their opinion. The Federal Council will transmit its dispatch on the regulation of pre-implantation diagnosis to Parliament in early 2013.

267. Since 1 October 2002, abortion has been legal under certain circumstances.<sup>300</sup> The cantons are required to collect statistics on the frequency of legal abortions.<sup>301</sup> The figures available<sup>302</sup> show that since legalization the number of abortions has fallen slightly.

<sup>295</sup> For further information, see [www.amorix.ch/fr/](http://www.amorix.ch/fr/), consulted on 22 March 2012.

<sup>296</sup> The report is available on the Internet at [www.ekkj.admin.ch/c\\_data/f\\_09\\_rap\\_sexualitejeunes.pdf](http://www.ekkj.admin.ch/c_data/f_09_rap_sexualitejeunes.pdf), consulted on 21 February 2012.

<sup>297</sup> Ruth Genner motion 00.3364: Public health. Improving information about sex.

<sup>298</sup> K. Klaue, B. Spencer and H. Balthasar, *Santé sexuelle et reproductive en Suisse* (Sexual and reproductive health in Switzerland), Lausanne, 2002.

<sup>299</sup> See [www.isis-info.ch](http://www.isis-info.ch), consulted on 11 February 2010.

<sup>300</sup> Criminal Code, arts. 118–120.

<sup>301</sup> Criminal Code, art. 119, para. 5.

<sup>302</sup> See [www.bfs.admin.ch](http://www.bfs.admin.ch), consulted on 11 February 2010.



### 5.2.1 Sexual and reproductive health of migrants

268. In 2010, a research report on the reproductive health of the migrant population<sup>303</sup> was published as part of the Migration and Health 2008 to 2013 federal strategy. It concluded that, with regard to reproductive health, certain groups among the migrant population were exposed to increased risks. The reasons for these differences are complex and cannot be understood in depth on the basis of the data currently available in Switzerland. The researchers concluded that the relevant databases should be upgraded and recommended that a number of gaps should be filled so that observation and analysis of the health of mothers and newborns could be improved. Responding to a parliamentary question in 2011,<sup>304</sup> the Federal Council stated its intention to promote, as far as possible, the collection of more disaggregated data. New research on the reproductive health of migrants is expected in 2012–2013.

269. The second phase of the Migration and Health 2008 to 2013 strategy is under way. Under the strategy, the following measures, which will also help to improve reproductive health, are being implemented:

- Translated into 18 languages, the Health Guide Switzerland explains to migrants the Swiss health system, in particular the pregnancy and childbirth services available;
- The Internet site [migesplus.ch](http://migesplus.ch),<sup>305</sup> which is funded by the Confederation, allows migrants to order a variety of information materials in their language, including on subjects relating to women's and children's health.

270. In order to improve migrants' access to health services, various hospitals have received support under the Migrant-Friendly Hospitals project to design and implement action programmes. The Confederation has also launched the development of an e-learning tool to strengthen the intercultural skills of doctors and care staff. Intercultural translation in the health sector, including training and quality assurance, is actively encouraged. Lastly, a national telephone interpretation service in the health sector is now in operation.

## 6. Action to combat AIDS

### 6.1 Figures

271. Between 2005 and 2011, less than 2.5 per cent of persons who tested positive for HIV were under 20. In 2011, 11 persons aged between 0 and 19 were declared HIV-positive (1.95 per cent).<sup>306</sup> The AIDS and Child Foundation supports children and adolescents.<sup>307</sup>

### 6.2 Prevention and assistance

272. *Response to paragraph 41 (a) of the concluding observations.*

273. This recommendation has been implemented. On the basis of the most up-to-date knowledge, the National Programme for HIV and Other Sexually Transmitted Infections

<sup>303</sup> Bollini *et al.*, 2010, "Vers un système intégré d'indicateurs de la santé maternelle et infantile auprès des collectivités d'origine étrangère en Suisse" (Moving towards an integrated system of indicators to monitor maternal and infant health among foreign national communities in Switzerland), available at [www.miges.admin.ch](http://www.miges.admin.ch), consulted on 22 March 2012.

<sup>304</sup> Parliamentary question from Maury Pasquier, 16 December 2010, "Newborns: victims of lack of integration".

<sup>305</sup> See [www.migesplus.ch](http://www.migesplus.ch), consulted on 22 March 2012.

<sup>306</sup> 2011: children aged 0–4, 0; children aged 5–9, 16; children aged 10–14, 4; adolescents aged 15–19, 6.

<sup>307</sup> See [www.aidsundkind.ch](http://www.aidsundkind.ch), consulted on 22 March 2012.

2011–2017 is following on from 25 years of successful prevention work. For the first time, it is covering other sexually transmitted infections as well as HIV. Its main objective is to reduce significantly the number of new cases of HIV and other sexually transmitted infections and to prevent negative health impacts. The programme includes, *inter alia*, prevention projects in schools and also within the migrant population.

### 6.3 HIV and pregnancy

274. Mother-to-child transmission of HIV is rare in Switzerland.<sup>308</sup> Over the years, recommendations<sup>309</sup> have been drawn up; these were updated in 2009, with the result that the number of mother-to-child transmissions is moving ever closer to zero.

## 7. Prohibition of female genital mutilation

275. On 30 September 2011, the Federal Parliament adopted a new provision of criminal law prohibiting genital mutilation. The purpose of the new article 124 of the Criminal Code is to ensure that all forms of female genital mutilation as defined by WHO are now treated as an offence in themselves and consequently punished. Anyone who mutilates the female genital organs, compromises their natural function or damages them in any other way is guilty of this offence. Article 124 is closely modelled on the wording of the Criminal Code relating to bodily harm, and includes both grievous<sup>310</sup> and ordinary<sup>311</sup> bodily harm. The offence applies to the female internal and external genitalia. Since genital mutilation under article 124 of the Criminal Code cannot generally be considered a prudent or reasonable act, general doctrine and case law provide that neither an adult capable of forming his or her own views nor the parents of a child not capable of forming his or her own views may give their consent to mutilation covered by that article. In order to facilitate the prosecution of acts committed abroad, article 124, paragraph 2, stipulates that anyone who commits the act abroad, is present in Switzerland and has not been extradited is also punishable. This provision permits deviation from the rule of dual criminal liability and enables criminal proceedings to be instituted in Switzerland against all perpetrators of female genital mutilation, irrespective of where the act was committed and of whether it is punishable in the country in question. The penalties established (maximum custodial sentence of 10 years or minimum monetary penalty of 180 day-fines) correspond to those to which perpetrators of grievous bodily harm covered by article 122 of the Criminal Code are liable.

276. As part of the Migration and Health 2002 to 2007 federal strategy, various information and awareness-raising projects to prevent female genital mutilation have been developed and different studies have been conducted.<sup>312</sup> In order to prevent this type of mutilation and the stigmatization of the individuals concerned, a working group has drawn

<sup>308</sup> Two children in 2009 and eight in 2010.

<sup>309</sup> See recommendations of the Commission of Experts in HIV/AIDS Clinical Medicine and Therapy (CCT) of the Federal Office of Public Health: “VIH, grossesse et accouchement. Mise à jour des recommandations pour la prévention de la transmission verticale du VIH du 26.01.2009” (HIV, pregnancy and health. Update of recommendations for the prevention of vertical transmission of HIV, 26 January 2009), available on the Internet at [www.bag.admin.ch/hiv\\_aids/12472/12474/index.html?lang=fr](http://www.bag.admin.ch/hiv_aids/12472/12474/index.html?lang=fr), consulted on 22 March 2012.

<sup>310</sup> Criminal Code, art. 122.

<sup>311</sup> Criminal Code, art. 123.

<sup>312</sup> In particular: C. Thierfelder, 2003, *Female genital mutilation and the Swiss health care system*; UNICEF (ed.), 2004, *Weibliche Genitalverstümmelung in der Schweiz. Rechtsgutachten* (Female genital mutilation in Switzerland. Legal opinions); UNICEF (ed.), 2005, *Mädchenbeschneidung in der Schweiz. Umfrage bei Schweizer Hebammen, Gynäkologen/innen, Pädiatern/innen und Sozialstellen* (Circumcision of girls in Switzerland. Survey of Swiss midwives, gynaecologists, paediatricians and social agencies).

up guidelines for medical staff, an information brochure for migrants and a dossier of information for persons leading courses on preparation for childbirth, infant care and early childhood education. An intercultural translation module has also been devised. In order to implement the Roth-Bernasconi motion of 2005 entitled “Female genital mutilation. Awareness-raising and prevention measures”,<sup>313</sup> the Federal Office of Public Health is supporting the mediation service managed by Caritas Switzerland for the prevention of female circumcision from 2007 to 2013 (from 2010 in conjunction with the Federal Office for Migration). The service’s main activities are participatory prevention work with the relevant migrant population, the provision of advice and access to other experts and institutions, the development of prevention programmes and work tools that can be replicated, and the launch and enhancement of prevention measures in cantonal institutions.

## 8. Health and work

277. To begin with, please refer to the information in chapter V.B.2 (State aid and assistance to parents).

278. It is also noted that, unlike pregnancy, the adoption of a child does not entitle the parent to receive pay on the grounds of inability to work. However, since 1 August 2000,<sup>314</sup> employers have been obliged, in the case of adoption as in that of pregnancy, to grant employees with family responsibilities paid leave for a maximum of three days to care for a sick child, on presentation of a medical certificate.

## 9. International cooperation

### 9.1 *General*

279. By providing financial and strategic support to many multilateral organizations,<sup>315</sup> the Swiss Agency for Development and Cooperation — and therefore Switzerland — contributes to improving not only the health of children and adults but also nutrition and access to water, and also helps to combat HIV/AIDS and female genital mutilation. In addition to its regular annual contribution of 5.8 million francs to WHO in 2011, Switzerland made an extrabudgetary contribution of 5 million francs. In 2011, it also donated 1.1 million francs to the International Agency for Research on Cancer (IARC).

280. In the area of bilateral cooperation and humanitarian aid, the Swiss Agency for Development and Cooperation works closely with many actors, such as governments, civil society and NGOs.

### 9.2 *Various examples of programmes and projects*

281. The Swiss Agency for Development and Cooperation supports many projects in different countries, such as a project to combat malaria in the United Republic of Tanzania, improvement of prenatal health in the five poorest regions of Ukraine, in the Republic of Moldova and in one town in the Russian Federation, modernization of the system of neonatal care in Romania, and programmes for children and families suffering the impact of the Chernobyl nuclear disaster, to name but a few. The Swiss Agency for Development

<sup>313</sup> Maria Roth-Bernasconi motion 05.3235: Female genital mutilation. Awareness-raising and prevention measures.

<sup>314</sup> Federal Act on Employment in Business, Trade and Industry (Employment Act, RS 822.11), art. 36 *et seq.*

<sup>315</sup> The beneficiary organizations include the International Agency for Research on Cancer (IARC), UNICEF, WFP, WHO, UNAIDS, UNFPA and the Global Fund to Fight AIDS, Tuberculosis and Malaria.

and Cooperation has an average overall budget of 1,300 million francs, which enables it, for example, to support UNICEF with a contribution of 25 million francs per year.

## **D. Social security and childcare services and facilities (arts. 26 and 18, para. 3)**

### **1. The nine branches of social security**

282. The following information updates or supplements that provided in the initial report of Switzerland:

- Since 1 July 2005, working mothers<sup>316</sup> have received a daily allowance of 80 per cent of their most recent average income, up to 196 francs per day, for 14 weeks following the birth of their child.
- The minimum salary for receipt of occupational benefits has been lowered so that more workers are eligible for this insurance scheme.<sup>317</sup>
- Old-age, disability and survivors' benefits have been increased. Child benefit and orphan's benefit are now set at a minimum of 464 francs and a maximum of 928 francs per child per month.

### **2. Social insurance benefits**

#### *2.1 Child benefits and family allowances*

283. The Federal Act on Family Allowances (Family Allowances Act)<sup>318</sup> entered into force on 1 January 2009. It sets the minimum amount of family allowances throughout the country: child benefit of 200 francs per month for children aged 0 to 16 and a vocational training allowance of 250 francs for those aged 16 to 25 who are undertaking training. The cantons may provide for higher minimum amounts. The full allowance must be paid irrespective of the parent's degree of employment. Persons in paid employment and, subject to certain conditions, persons not working are entitled to family allowances. From 1 January 2013, the Family Allowances Act will also apply to the self-employed.

284. The Conference of Cantonal Ministers of Social Affairs has undertaken, *inter alia*, to promote the introduction of additional federal benefits for families and in June 2010 adopted recommendations aimed at contributing to the harmonization and coordination of measures in the cantons, thus preparing the way for a future federal approach. Several cantons have introduced or are planning to introduce benefit systems for low-income families, subject to availability of resources. However, the prospect of federal legislation seems to be receding: in summer 2011, Parliament concluded years of work on the subject without reaching a solution.

<sup>316</sup> Both employed and self-employed mothers receive maternity benefit. The same applies to female farmers and women who work on their husband's farm, provided that they have their own income that is subject to old-age and survivors' insurance.

<sup>317</sup> For detailed information, see the third report of Switzerland to the Committee on the Elimination of Discrimination against Women, 2008, p. 126, para. 303 *et seq.*

<sup>318</sup> RS 836.2.

## 2.2 Unemployment insurance

285. In addition to vocational training activities, special programmes are provided as a subsidiary measure under unemployment insurance for unemployed young people who have not received training, so that they can integrate quickly into the world of work.

### 3. Childcare services and facilities (art. 18, para. 3)<sup>319</sup>

286. *Response to paragraph 35 of the concluding observations.*

287. The Federal Act on Financial Aid for Childcare outside the Family,<sup>320</sup> which entered into force on 1 February 2003, provided for an eight-year programme to encourage the creation of additional childcare places. An overall budget of 320 million francs was allocated for the duration of the project. Over eight years, the Confederation supported the creation of more than 30,500 new childcare places, an increase of at least 60 per cent on the estimated number available before the start of the programme.<sup>321</sup> The programme therefore significantly improved the situation.

288. On 1 October 2010, the Federal Parliament adopted a bill to extend the Federal Act on Financial Aid for Childcare outside the Family for four years, until 31 January 2015. The amendment extended the circle of beneficiaries to include all natural and legal persons that establish a new childcare facility, significantly improve the services offered by an existing facility or manage structures for the coordination of childminder care. The amendment also establishes a legal basis for support for innovative projects. Lastly, Parliament approved earmarked funding of 120 million francs for the period of extension of the Act.

289. Pilot projects for the distribution of childcare vouchers have also been receiving support since 1 October 2007. By shifting to the funding of individuals, the city of Lucerne, for example, has greatly improved the services it offers. The Lucerne communes of Horw and Hochdorf also introduced childcare vouchers on 1 August and 1 September 2009 respectively, following the model of the city of Lucerne. The voucher amount has, however, been adjusted depending on the situation of each of the communes concerned. The Confederation is supporting these three pilot projects.

290. In addition to the Confederation's financial incentives, many cantons and communes have adopted initiatives to improve the services available for childcare outside the family. For example, the canton of Solothurn has paid one-off subsidies of up to 20,000 francs from a special fund to give further support in the start-up phase. For childminders, day-care centres, foster care and placement in institutions, the canton of Solothurn has also developed a system of binding standards to safeguard children's development. Compliance with these standards is one of the conditions for obtaining a permit to operate; compliance is checked regularly by experts. The canton of Geneva issues permits to childminders only after they have completed 20 hours of basic training, followed by periodic further training. Inspections are carried out to ensure that children are receiving the best possible care. Under its cantonal law on the family, the canton of Ticino grants generous subsidies for the care of young children and school pupils outside the family. The canton of Aargau plans to support the relevant services through financial incentives and to require its communes to offer such services for children of preschool and school age. Under its primary school law, the canton of Zurich has also placed a requirement on its communes to offer day-care facilities in accordance with needs. An amendment to the law will further require them to

<sup>319</sup> Statistics can be found in the annex "Thematic and statistical overviews" (figs. 19 and 20).

<sup>320</sup> RS 861.

<sup>321</sup> As at 1 February 2011.

provide childcare services for children of preschool age. Lastly, under its youth law, the canton of Valais requires its communes to establish childcare infrastructure.

291. In a joint statement in 2008 by the Swiss Conference of Cantonal Ministers of Education and the Conference of Cantonal Ministers of Social Affairs, the cantons agreed that day-care facilities — i.e. all the services providing care outside the family for children from birth to the end of compulsory education<sup>322</sup> — should meet the following criteria:

- They should guarantee that care is provided by appropriately qualified adults;
- Children and adolescents should receive care and support appropriate to their age and their degree of autonomy;
- In terms of time, day-care services should meet the local needs of families both with regard to the number of hours per day and the number of days per year provided.

292. There are two different types of day-care service: those for children aged 0 to 4 (nurseries) and those for school pupils.

293. The Conference of Cantonal Ministers of Social Affairs is currently preparing recommendations with respect to nurseries for children aged 0 to 4. In recent years, the services available have been expanded significantly. In addition to financial incentives from the Confederation, various cantons have adopted legal frameworks to promote the establishment of nurseries.

294. Some cantons and cities have developed models for early intervention, such as the integration of children from poorly educated backgrounds, with a view to providing early support for young children. However, we do not currently have a full picture of the number and range of the many cantonal and communal early intervention initiatives.<sup>323</sup>

295. The quality of nurseries is assured through regular inspections to check compliance with the licence conditions laid down in federal law<sup>324</sup> and, in some cases, other cantonal laws. Inspections cover not only facilities and staff but in particular the pedagogical approach taken, and they give rise to suggestions for improvement. In the canton of St. Gallen, the office of social affairs and the “kita-netzwerk sg” network regularly organize further training courses for nursery staff, where topics drawn from everyday experience are discussed. In 2010, for example, a number of meetings focused on the quality of care of infants.

296. Similarly, the Childcare Network Switzerland<sup>325</sup> places the welfare of children at the heart of its activities and has produced a charter of quality standards for nurseries. The charter is based explicitly on the Convention on the Rights of the Child and stipulates, *inter alia*, that all nurseries must safeguard children’s physical, social, emotional and intellectual well-being. The Network, which is a collective platform for the main entities involved in childcare, also conducts extensive dialogue on care, education and training in childcare facilities outside the family and outside school.

297. In French-speaking and Italian-speaking Switzerland, the proportion of households that use nurseries is higher than in German-speaking Switzerland. Demand is significantly higher in cities than in villages and rural areas, and a wider range of services is available in the large cantons and cities than in the rural cantons and small communes. Under the Swiss

<sup>322</sup> Up to the age of 20 in special education.

<sup>323</sup> See [www.fruehkindliche-bildung.ch/fr/recherche/etudes.html](http://www.fruehkindliche-bildung.ch/fr/recherche/etudes.html), consulted on 2 March 2012.

<sup>324</sup> See the Ordinance on the Placement of Children for the Purposes of Maintenance and Adoption (RS 211.222.338), art. 13, para. 1 (b).

<sup>325</sup> See [www.netzwerk-kinderbetreuung.ch](http://www.netzwerk-kinderbetreuung.ch) (in German only), consulted on 23 February 2012.

National Science Foundation's National Research Programme 52, a study entitled "Demand for childcare outside the family in Switzerland"<sup>326</sup> concluded, *inter alia*, that various socioeconomic and demographic characteristics play a role in households' choice of care system. For example, the mother's income and age influence the decision to use care outside the family, while the presence of older siblings and the option of having the child looked after by one of the parents reduce demand. Other relevant factors are whether or not the mother has been through higher education, the father's working hours and the situation with regard to care. Where one of the parents is a foreign national, a nursery place is more likely to be required. Lastly, the price, the distance from home, the ratio of care staff to children, the opening hours and the flexibility of care hours are all criteria used to evaluate the services available.

298. Other day-care services are available for children who are at kindergarten or school. At the primary level, the cantons that have become parties to the inter-cantonal agreement on the harmonization of compulsory education (HarmoS agreement)<sup>327</sup> undertake to favour block timetables and to make appropriate care available to pupils outside lessons, in particular care facilities with canteens and homework supervision. This type of service is optional and must be paid for. In several cantons and communes, projects and political initiatives are under way to establish a range of appropriate day-care services. The vast majority of cantons already offer canteens; however, there are still not many schools operating on a continuous schedule, except in the canton of Ticino, where there are already several.

299. The Confederation regulates various initial and further training courses relating to childcare at the national level: the federal certificate for socio-educational assistants, the federal certificate for team leaders in social and medico-social institutions, and college degrees for childhood educators, socio-educationalists and directors of social and medico-social institutions.

300. The Swiss Association of Childcare Services (ASSAE) and the recently established Federation of Swiss Childminders also deal with issues of initial and further training.

301. Switzerland has already taken a number of steps to promote work-life balance. In 2004, it took part in a comparative study on work-life balance by the Organisation for Economic Co-operation and Development (OECD). OECD drew up recommendations for Switzerland. In addition, the Federal Coordination Commission for Family Affairs produced a report in 2004 on work-life balance, which also contains recommendations.

302. In addition to the 2004 report on work-life balance, the Federal Coordination Commission for Family Affairs published a study in 2008 on day-care outside the family and outside school in Switzerland, which reviews the situation and sets out recommendations. In 2010, the Commission also published a specific model of parental leave for Switzerland.

303. The cantons and communes are encouraged to develop specific measures to promote work-life balance. Provision of childcare outside the family needs to be developed further, but the lack of information, due in particular to the complexity of the federal system, hampers such development. In order to remedy the situation, the State Secretariat for Economic Affairs and the Federal Social Insurance Office established an information

<sup>326</sup> Project led by Rolf Iten and Professor Massimo Filippini. For further information, see [www.nfp52.ch/f\\_dieprojekte.cfm?0=0&kati=0&Projects.Command=details&get=9](http://www.nfp52.ch/f_dieprojekte.cfm?0=0&kati=0&Projects.Command=details&get=9), consulted on 23 February 2012.

<sup>327</sup> See also chapter VII. Education, leisure, recreation and cultural activities, A. Education, including vocational training and guidance (art. 28 of the Convention on the Rights of the Child), 2. Education levels, 2.1 Preschool education.

platform in 2009: “Work-life balance: cantonal and communal measures”.<sup>328</sup> The tool for the first time provides quick, readable and practical access throughout Switzerland to information on cantonal and communal policies on childcare outside the family and working conditions favourable to family life. This Internet database simplifies the work of the entities concerned by making available to them the legal frameworks, instruments used and projects under way in the cantons and communes. Its purpose is to promote the exchange of ideas and solutions and to prevent constant reinvention of the wheel. It also supports the monitoring of public associations. The platform will thus help to enrich political debate and speed up the development of measures.

## **E. Standard of living (art. 27, paras. 1 to 3)**

304. *Response to paragraph 47 of the concluding observations.*

305. As explained above, the system of family allowances is regulated at the federal level and a maternity benefit has been introduced. Under the Health Insurance Act,<sup>329</sup> the cantons are required to grant children and adolescents reduced health insurance premiums.

306. With regard to the maintenance obligation of parents<sup>330</sup> and welfare benefits,<sup>331</sup> please refer to the information in the initial report of Switzerland. Following an increase in poverty and in response to a parliamentary motion<sup>332</sup> of 2006, the Federal Social Insurance Office was given the task of developing a national action plan to combat poverty by the end of 2009. The report entitled “Stratégie globale de la Suisse en matière de lutte contre la pauvreté” (Comprehensive anti-poverty strategy for Switzerland), adopted by the Federal Council in March 2010 in response to the parliamentary motion, shows that many measures have been taken or are planned in order to prevent and combat poverty. Three priority areas of action have been established for all political levels: improving equal opportunities with regard to training; developing measures for integration and reintegration into the labour market; and combating poverty in families.

307. Within its field of competence, the Confederation’s priority is integration and reintegration into the labour market. It is therefore continuing the approach of inter-agency collaboration for integration on which it embarked at the time of the most recent amendments to invalidity insurance and unemployment insurance. The report also sets out recommendations for the cantons and communes.

308. In November 2010, the Confederation organized a national conference on poverty with a view to presenting the anti-poverty strategy to a wider audience. The conference gave the key actors the opportunity to discuss the implementation and development of the priorities set by the Confederation. At the conference, the Confederation, the cantons, cities and communes published a joint declaration in which they undertook to monitor the implementation of the national anti-poverty strategy and review it every two years.

309. Furthermore, in June 2010 the Conference of Cantonal Ministers of Social Affairs adopted a programme to combat poverty and social exclusion. Its main areas of focus are

<sup>328</sup> See [www.berufundfamilie.admin.ch/informationsplattform/index.html?lang=fr](http://www.berufundfamilie.admin.ch/informationsplattform/index.html?lang=fr), consulted on 23 February 2012.

<sup>329</sup> RS 832.10.

<sup>330</sup> See initial report of Switzerland (CRC/C/78/Add.3), para. 492.

<sup>331</sup> *Ibid.*, para. 493.

<sup>332</sup> Motion CN 06.3001 of the Social Security and Health Committee: Comprehensive anti-poverty strategy for Switzerland.



the reduction of family poverty, improved coordination of the social security system and the introduction of cantonal reports on social affairs.

310. The subject has also been addressed under National Research Programme 52 on childhood, youth and intergenerational relationships in a changing society. A study entitled “Well-being of children in Switzerland and intergenerational transmission of economic opportunities”<sup>333</sup> pursued two objectives: to examine the phenomenon of child poverty and to evaluate the link between the generations from the point of view of economic opportunities. It found that the financial health of families with one or two children was generally overestimated, whereas it was underestimated in families with three or four children. The main factors in child poverty are the level of education and socioeconomic status of the head of the family and the family structure, particularly if it is a one-parent family. Lastly, the study attempted to determine whether the parents’ situation is one of the major factors in children’s success, particularly with regard to the level of education. It answered in the affirmative, having found that there was a close link between the level of education of the parents and that of the children.

## VII. Education, leisure, recreation and cultural activities

### A. Education, including vocational training and guidance (art. 28)

#### 1. Right to education and distribution of competences between the Confederation and the cantons

311. In Switzerland, responsibility for education is shared between the Confederation and the cantons. Since 2006, each has had responsibility within its sphere of competence for ensuring the quality and flexibility of education in Switzerland on the basis of new constitutional provisions.<sup>334</sup> In May 2011, the Confederation and the cantons for the first time established joint objectives for education<sup>335</sup> in Switzerland.

312. Primary and secondary education falls within the competence of the cantons. If the cantons are unable to standardize the education sector (age of entry into school, compulsory schooling, duration and objectives of the different levels of education and the routes for moving between them, and recognition of diplomas), the Confederation issues the necessary instructions.

313. Since 2006, the Confederation has been mandated under the Federal Constitution to establish principles for further training, promote such training and enshrine the applicable fields and criteria in law.<sup>336</sup> A bill on further training that has been drafted since then is currently under consultation.

<sup>333</sup> Project of Prof. Yves Flückiger. For further information, see [www.nfp52.ch/f\\_dieprojekte.cfm?Projects.Command=details&get=8](http://www.nfp52.ch/f_dieprojekte.cfm?Projects.Command=details&get=8), consulted on 23 February 2012.

<sup>334</sup> Constitution, arts. 61a–67.

<sup>335</sup> The objectives relate to compulsory schooling (harmonization), post-compulsory education diplomas at upper secondary level (increasing the diploma rate from 90 to 95 per cent), the baccalaureate (improving aptitude for higher education), the international comparability of degrees from higher vocational education (increasing the attractiveness of a career in research) and skills validation (more flexible career planning).

<sup>336</sup> Constitution, art. 64a.

314. In February 2004, the Confederation and the cantons agreed on the establishment of a long-term system for monitoring education. The outcome of the process was a national report on education covering the systematic collection, processing and interpretation, over the long term, of scientific information on the Swiss education system and the environment in which it operates.<sup>337</sup> The report will serve as a basis for making decisions on the development of education in Switzerland and acquiring the information needed to improve the quality of the data available.

315. The Swiss Conference of Cantonal Ministers of Education, which is responsible for national coordination of educational and cultural matters, is committed to ensuring that all children and young people have access to appropriate education and training that will allow them to develop in their adult life. This is done by promoting high-quality State education that is capable of integrating children from very different sociocultural backgrounds. Schools must provide quality education, delivered by competent persons, that allows pupils to develop in accordance with their needs and aptitudes.

316. The inter-cantonal agreement on the harmonization of compulsory education<sup>338</sup> entered into force on 1 August 2009. The cantons that have become parties to it undertake to harmonize the objectives and structures of compulsory schooling. To that end, they pursue national teaching objectives (teaching standards) and implement study plans that are based on these standards and adapted to each linguistic region. This is, therefore, the first time that the subjects taught to every child during compulsory schooling have been determined at the national level.<sup>339</sup> Through the monitoring of education in Switzerland, the Swiss Conference of Cantonal Ministers of Education is able to verify the level of attainment of teaching objectives and thus ensure quality control in the cantons. The inter-cantonal agreement on the harmonization of compulsory education also serves to standardize structures: the cantons that have become parties to it are obliged to provide compulsory schooling consisting of two years of nursery school, six years of primary school and three years of secondary school. In primary schools, they also undertake to arrange the timetable preferably in blocks.

## 2. Education levels<sup>340</sup>

317. The Swiss education system and its different levels can be summarized as follows:

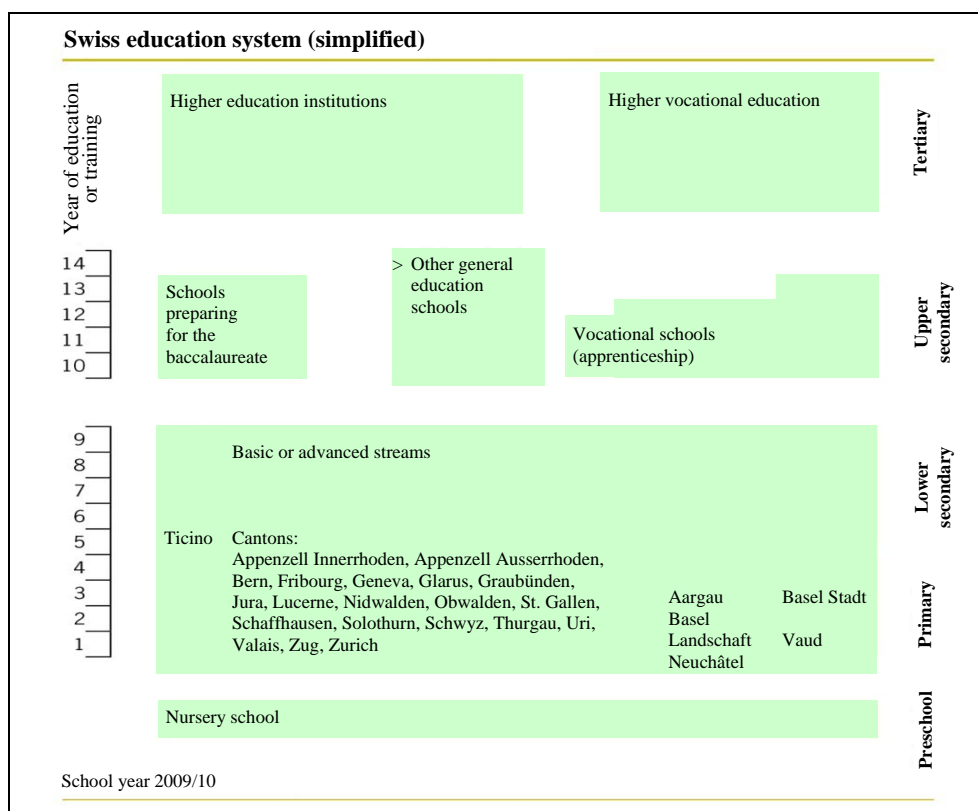
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<sup>337</sup> The 2010 report on education in Switzerland was drawn up by the Swiss Coordination Centre for Research in Education (CSRE). The assessment cycle lasts four years. A new report will be published in 2014.

<sup>338</sup> To date, 15 cantons have signed the agreement: Schaffhausen, Glarus, Vaud, Jura, Neuchâtel, Valais, St. Gallen, Zurich, Geneva, Ticino, Bern, Fribourg, Basel Stadt, Solothurn and Basel Landschaft.

<sup>339</sup> These subjects are: languages (language spoken at school, second national language and another foreign language), mathematics and natural sciences, social sciences, music/applied arts, physical activity and health.

<sup>340</sup> Various statistics on the distribution of children among education levels, class size, etc., can be found in the annex "Thematic and statistical overviews" (fig. 21 *et seq.*).



Source: Federal Statistical Office.

## 2.1 *Preschool education*<sup>341</sup>

318. Attendance at preschool (0 to 4 years) varies from one canton to another. Inter-cantonal cooperation with the Confederation on childcare matters takes place under the supervision of the Conference of Cantonal Ministers of Social Affairs. In Switzerland, almost all children attend nursery school for at least one year and 86 per cent for two years. The inter-cantonal agreement on the harmonization of compulsory education, which was an initiative of the Swiss Conference of Cantonal Ministers of Education and to which 15 cantons are parties, provides for school attendance from the age of 4 and establishes a requirement to provide two years of nursery schooling.

319. In the canton of Basel, early learning of German is compulsory for all children whose linguistic knowledge is deemed inadequate at the age of 3. This measure is aimed at eliminating obstacles to integration even before entry into nursery school.

320. A project relating to education in nursery school and the lower primary level was launched in 2002 with a view to developing that phase of schooling and basic education. A final report was drawn up in that regard in June 2010. Arrangements for putting the knowledge acquired into practice are the responsibility of each canton.

<sup>341</sup> Statistics on preschool education in Ticino can be found in the annex "Thematic and statistical overviews" (para. 22).

## 2.2 *Compulsory primary education*

321. During the 2009 school year, some 769,314 children and young people were enrolled in compulsory primary education. The downward trend observed in 2000 is continuing because of the lower birth rate in the 1990s. The proportion of pupils of foreign nationality, however, remains stable at 22.6 per cent.

## 2.3 *Lower secondary level*

322. Since the entry into force of the inter-cantonal agreement on the harmonization of compulsory education in the cantons that are parties to it, lower secondary level has lasted three years (from seventh to ninth grades). This provision will be implemented by the start of the 2015/16 school year at the latest.

## 2.4 *Upper secondary level*<sup>342</sup>

323. Upper secondary level, which follows compulsory schooling, includes general education and vocational education. In 2007, 70 per cent of adolescents in school were pursuing vocational education.

324. In 2006, the Confederation, the cantons and labour market organizations set themselves the goal of increasing to 95 per cent the proportion of 25-year-olds holding an upper secondary diploma. This goal has already been achieved for young people born in Switzerland but not for those who have received part of their schooling abroad.

325. The canton of Geneva plans to ensure that all pupils obtain an upper secondary diploma, either in general education (baccalaureate) or in vocational education. For this reason, all young people aged 15 to 25 whose education has been interrupted or is at risk of being interrupted are registered and given individual support to find an appropriate solution.

### 2.4.1 *General education*

326. Upper-secondary specialized schools, which have gradually been replacing diploma-level schools since 2004, have experienced a comparatively high level of growth.<sup>343</sup> Some 74 per cent of pupils choosing this branch are girls. The first specialized baccalaureate certificates were awarded in 2009.

327. In 2009/10, the number of pupils studying for the federal baccalaureate reached 73,500.

### 2.4.2 *Vocational education*

328. Since the entry into force of the revised Vocational Training Act<sup>344</sup> on 1 January 2004, all occupations not requiring a university education have become part of the same system for the first time, which makes it possible to compare them. The health sector, the social sector and the arts, previously regulated by the cantons, now fall within the competence of the Confederation. The Vocational Training Act also covers occupations in agriculture and forestry. The Act strengthens collaboration between both sides of industry and the State.

<sup>342</sup> Statistics can be found in the annex "Thematic and statistical overviews" (fig. 28).

<sup>343</sup> Upper-secondary specialized schools were attended by 5,500 pupils in the first year and 6,000 in the second year.

<sup>344</sup> RS 412.10.

329. This is one of the reasons that more and more people are taking advantage of the opportunities offered by the vocational baccalaureate.<sup>345</sup> Vocational education has become a fully fledged alternative to general education and offers the same opportunities. Through the vocational baccalaureate and the routes available from there to university or a federal institute of technology, vocational education has become integrated into the higher education system. The new system of skills validation ensures that skills acquired in other branches are linked to formal degree courses. Overall, this general system ensures the greatest possible horizontal and vertical flexibility. Vocational education is an essential tool for ensuring that young people are integrated into the labour market and the adult world. Basic vocational training lasting two years has been put in place for young people who face educational difficulties and who are more inclined towards practical skills. This path leads to a federal certificate of vocational education. Appropriate courses are also available for all persons who train apprentices. Such persons must be approved by the Federal Office for Professional Education and Technology (OFFT).

330. The cantons now receive fixed sums based on performance rather than subsidies based on their financial responsibilities.<sup>346</sup> Furthermore, 10 per cent of Confederation funds are set aside to support specific development projects and services that benefit the public. These funds are earmarked for the integration of young people into vocational training, measures to promote genuine equality between men and women, initial and further training for persons with disabilities and assistance to disadvantaged regions and groups.

331. Empirical data from the canton of Graubünden show that 75 per cent of young people in a given year complete basic vocational education and then attend a vocational school. The canton of Graubünden aims to have 22 to 24 apprentices per class in vocational schools; in fact, the number ranges from 6 to 24 young people per class.

332. In the canton of Graubünden, about 5.5 per cent of apprentices do not finish their apprenticeship; most of them are boys of Swiss nationality. In the canton of St. Gallen, despite the economic difficulties experienced between 2007 and 2009, more than 92 per cent of young people found a means of staying in education at the end of their compulsory schooling. Some 67 per cent of them went on to pursue basic vocational education.

333. The Confederation, the cantons and labour market organizations have launched a number of measures to combat discrimination with regard to apprenticeships. Young applicants are provided with career information, lists of available apprenticeships, transitional services and support programmes. The range of apprenticeships available is boosted by special facilitators and through the establishment of associations of training enterprises.

334. The Confederation funds various vocational education projects, such as an Internet career guidance project,<sup>347</sup> which received two awards and came second in the Master of Swiss Web 2004 competition. The Confederation also encourages further vocational training by supporting in particular services that help people to remain in the labour market or to reintegrate into it when structural changes take place. A Swiss quality label — the eduQua label — has been specially designed for further training providers; a growing number of cantons are making it a requirement for the receipt of public money.

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<sup>345</sup> See figure 29 in the annex “Thematic and statistical overviews”.

<sup>346</sup> The Confederation’s share of public expenditure has increased from less than a fifth to a quarter.

<sup>347</sup> See [www.orientation.ch](http://www.orientation.ch), consulted on 11 February 2010.

## 2.5 *Tertiary education*<sup>348</sup>

335. Since 2008, the Confederation has been focusing its education subsidies on tertiary education. Its influence on arrangements for cantonal education subsidies has also increased.

336. The Confederation attaches great importance to collaboration among higher education institutions, course flexibility and student mobility. Progress has already been made with the implementation of the Bologna Declaration in Switzerland: 93 per cent of regular students below doctorate level follow programmes structured in accordance with the Bologna model; the European Credit Transfer and Accumulation System (ECTS) is applied throughout the country for all study programmes and the diploma supplement is automatically added free of charge to all Bologna-type diplomas. Challenges persist with regard to the establishment of the national qualifications framework and more systematic guidance on learning outcomes. Under the Copenhagen Process, a national frame of reference is being developed in order to improve the transparency and comparability throughout Europe of Swiss qualifications, particularly in higher vocational education. Furthermore, the Conference of Rectors of Swiss Universities (CRUS) and the National Academic Recognition Information Centre (NARIC) respond to questions from abroad on Swiss qualifications and serve as an access portal for the recognition of foreign qualifications.

## 2.6 *Private schools*

337. Owing to the lack of a legal framework, private schools in Switzerland could not until now be accredited at the federal or cantonal level and therefore had no way of gaining certification of their standards. A number of organizations<sup>349</sup> therefore set up the Swiss Private School Register Foundation. The Register attests to the seriousness and standards of the establishments included in it. The Foundation provides information and assistance in the event of problems with the schools on the Register. In 2007/08, there were 431,610 pupils attending State primary schools and 13,526 children attending private schools.

## 2.7 *Careers guidance*

338. The basic vocational, university and careers guidance service, which provides general information and individual advice, is free of charge. It enables young people to choose a career or course of study that suits their aptitudes and aspirations while taking account of labour market constraints. Vocational, university and careers advisers follow training that is recognized by the Confederation. Since 2001, the Swiss Conference of Gender Equality Delegates and the Federal Office for Professional Education and Technology have organized the national “All Types of Future for All” day<sup>350</sup> (previously “Girls’ Day”) every year. Thousands of girls and boys accompany their parents to their place of work in order to find out about their occupation and the world of work, think about career options and learn to develop their own prospects in this regard.

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<sup>348</sup> The annex “Thematic and statistical overviews” contains a graph on university master’s degrees disaggregated by area of specialization and gender (fig. 30).

<sup>349</sup> Members are the Swiss Federation of Private Schools (FSEP), *hotelleriesuisse* (the Swiss Hotel Association), the Foundation for the Promotion of Rudolf Steiner Education in Switzerland, the Swiss Union of Arts and Crafts, the Confederation of Swiss Employers, *economiesuisse* (the Swiss Business Federation), the Federation of French-speaking Swiss Enterprises and the Employers’ Centre.

<sup>350</sup> See [www.futurentousgenres.ch/](http://www.futurentousgenres.ch/), consulted on 24 February 2012.

## 2.8 Schools and language

339. The Swiss Conference of Cantonal Ministers of Education decided in 2004 to reorganize the teaching of foreign languages in Switzerland by drawing up a language teaching development strategy. The main themes of the strategy have been incorporated into the inter-cantonal agreement on the harmonization of compulsory education. These themes include the teaching of a second national language and English for all pupils at the latest from the third grade and the fifth grade respectively (the fifth grade and the seventh grade respectively after the introduction of the inter-cantonal agreement, which provides for 11 years of compulsory schooling). Since 2010, all the cantons have started teaching the first foreign language in the third grade. By 2012 at the latest, a second foreign language will be taught from the fifth grade.

340. The attainment of clearly defined objectives for language teaching is prescribed on the basis of national education standards for pupils at the end of the sixth and ninth grades (eighth and eleventh grades respectively) in two languages. The first foreign language is subject to regional coordination.

## 3. Equality between women and men

341. In education, important groundwork has been laid as part of the project on gender mainstreaming in education; for example, the authorities have funded research on the differences between girls and boys with regard to their school results, qualifications, social behaviour and participation in sport. This project has provided a basis for the development of many projects aimed at eliminating discrimination in this area. Some cantons have explicitly enshrined respect for sexual identity in their laws on education.

342. In post-compulsory education, gender-specific differences nonetheless persist. There are still more young women than men without post-compulsory education. Young men more often opt for vocational training, whereas young women prefer a general-education school offering baccalaureate courses or an upper-secondary specialized school, with, of course, some regional variations.<sup>351</sup> Efforts to improve the balance between the sexes in different occupations have had only a modest impact over the past 25 years. According to the 2010 report on education in Switzerland,<sup>352</sup> 90 per cent of women pursued basic vocational training in 15 per cent of the occupations on offer in 2007.

343. In addition to the aforementioned national “All Types of Future for All” day and the gender mainstreaming benchmarks<sup>353</sup> set out in the new Vocational Training Act, the “Profile – Career Plan and Life Plan” project gives tailored help to young people who have completed an apprenticeship in order to prepare them for working life through different modules for each sex.

344. Between 2004 and 2009, the Federal Office for Professional Education and Technology invested more than 3 million francs in projects to promote equality between women and men.

<sup>351</sup> In 2006, in German-speaking Switzerland, 85 per cent of men and 73 per cent of women opted for vocational training. In French-speaking Switzerland, 67 per cent of men and 48 per cent of women decided to do an apprenticeship, compared with 66 per cent of men and 50 per cent of women in Ticino.

<sup>352</sup> Swiss Coordination Centre for Research in Education, 2010 report on education in Switzerland: [www.skbfc-sre.ch/fr/monitorage-de-leducation/rapport-2010/](http://www.skbfc-sre.ch/fr/monitorage-de-leducation/rapport-2010/), consulted on 24 February 2012.

<sup>353</sup> Gender mainstreaming is achieved through career flexibility and mobility, which can be particularly useful to women who have not followed a linear academic and career path.

345. The project “Context and competence: Swiss survey of children and youth”,<sup>354</sup> which was implemented under National Research Programme 52, examined over the long term, as part of a representative interdisciplinary study, the living conditions, life experiences and psychosocial development of more than 3,000 children and young adults divided into three groups (6 years, 15 years and 21 years) in German-speaking and French-speaking Switzerland. The purpose of the study was to explore the complex interactions between the social environment and the process of individual development. The research focused on the social and individual factors that might lead young women to choose an occupation that is not typically female. The results of the study reveal a complex set of influences: educational opportunities, family support and individual values favouring such a choice.

346. Since 2002, more young women than men have been entering university, and in 2005 the specialized higher education institutions achieved parity between the sexes for the first time. However, as career choice remains strongly linked to a person’s sex,<sup>355</sup> the Federal Institute of Technology at Lausanne (EPFL) and a number of specialized higher education institutions organize workshops specially for women, to encourage their interest in technical and scientific disciplines.

347. Scholarship funding awarded in 2010 was distributed almost equally between women and men, in line with the number of recipients (54 per cent women and 46 per cent men).

#### 4. Foreign children<sup>356</sup>

348. During the 2009/10 school year, 181,582 of the 769,314 pupils enrolled in compulsory education were of foreign nationality.<sup>357</sup> Even children who have asylum applications pending attend State schools. The situation of children who do not have legal residence status in Switzerland has significantly improved in recent years.<sup>358</sup> In all cantons they have access to compulsory schooling. Their prospects for post-compulsory education have also improved. The supplementary examination that enables vocational baccalaureate holders to enter university and the federal vocational baccalaureate give access to all Swiss universities and all branches of study.

349. The proportion of children in the basic stream of lower secondary school is twice as high among the foreign population (41 per cent) as among the Swiss population (23 per cent). After compulsory schooling, young people of foreign origin coming from the basic stream experience greater than average difficulty in finding apprenticeships.

350. Since 2006, the “Priority Education Network” project has been under way in the canton of Geneva to provide particular support to urban schools with a significant proportion of foreign pupils. The aim of the project is to ensure equal opportunities in schools throughout the canton, irrespective of pupils’ socioeconomic background. This objective is achieved by reducing the number of pupils per class, increasing the funds

<sup>354</sup> Project of Marlis Buchmann and Helmut Fend. For further information, see [www.nfp52.ch/d\\_dieprojekte.cfm?Projects.Command=details&get=1](http://www.nfp52.ch/d_dieprojekte.cfm?Projects.Command=details&get=1), consulted on 24 February 2012.

<sup>355</sup> See figure 30, which presents university master’s degrees by sex and field of study, in the annex “Thematic and statistical overviews”.

<sup>356</sup> See also the information provided above with regard to article 2 of the Convention on the Rights of the Child.

<sup>357</sup> During the school year 2003/04, 192,467 of the 813,448 pupils enrolled in compulsory education were of foreign nationality.

<sup>358</sup> See the report of the Federal Commission on Migration, “Vivre sans papiers en Suisse, évolution 2000–2010” (Living without papers in Switzerland: developments 2000–2010), p. 60 *et seq.*



available to schools and giving schools greater autonomy so that they can better respond to specific needs. In addition, close coordination has been established between schools, the office for minors and its social workers, doctors, care staff and psychologists, and also the communes and local associations. The strengthening of coordination is in line with the objective of improving relationships of trust within and outside the school.

351. The action plan of the Swiss Conference of Cantonal Ministers of Education, drawn up in response to the 2000 PISA study, provided for the following measures: general support for the use of standard language and development of the language skills of young people with learning difficulties, and also expansion of childcare outside the family. The action plan gave rise to 191 language-teaching projects throughout Switzerland and 83 foreign-language-teaching projects in 24 cantons.

352. It is difficult to assess the amount spent on specific measures to promote integration, because it is not easy to separate it from the rest of the budget for the education system. Nonetheless, it is estimated that the amount of funds allocated each year for the promotion of integration is 40 to 80 million francs in the school system and 10 to 20 million francs in vocational education. Specifically, since the introduction of the new Vocational Training Act, around 30 projects relating to the integration of young migrants have received funding of 10 million francs. Vocational training case management also supports children of foreign origin both in choosing an occupation and during their training.

353. Every two years, the General Secretariat of the Swiss Conference of Cantonal Ministers of Education, in conjunction with the Education and Migration Committee, organizes a national conference on these issues.

354. A project under National Research Programme 52 entitled “Schooling of the first-born child as a catalyst for fresh cultural integration in migrant families”<sup>359</sup> focused on the extent to which schooling has a sociocultural and linguistic impact. The study concluded that the first-born child, who always plays a special role, serves as a link between school and family in migrant families. The schooling of the oldest child also entails an adjustment of social roles, and the school can find out, through the child, about decisions taken by the family in order to meet these new social requirements. As a result, adjustments are made, which lead to linguistic and cultural changes. Often, siblings speak the language spoken at school among themselves, whereas their parents stick to their family language. The school also has an impact on career choices, family organization, diet, dress and education.

355. Another project under National Research Programme 52 entitled “Intergenerational effects on educational attainment and labour market performance among second-generation immigrant and native young people in Switzerland”<sup>360</sup> studied the correlation between the level of education of young people aged 17 and the level of education of their parents. The study concluded that economic theories alone did not explain discrepancies with regard to academic and professional success, even though the impact of parents’ level of education on their children’s success varied widely from one population group to another. It also found that family background was less important in the case of young people who pursued higher education at a later age. The linguistic region in which migrants grow up is also a significant factor. Their chances of success are highest in Ticino and lowest in German-speaking Switzerland.

<sup>359</sup> Project of Christiane Perregaux. For further information, see [www.nfp52.ch/d\\_dieprojekte.cfm?Projects.Command=details&get=25](http://www.nfp52.ch/d_dieprojekte.cfm?Projects.Command=details&get=25), consulted on 24 February 2012.

<sup>360</sup> Project of Regina T. Riphahn. For further information, see [www.nfp52.ch/d\\_dieprojekte.cfm?Projects.Command=details&get=11](http://www.nfp52.ch/d_dieprojekte.cfm?Projects.Command=details&get=11), consulted on 24 February 2012.

## 5. Children with disabilities<sup>361</sup>

356. *Response to paragraphs 42 and 43 of the concluding observations.*

357. Following the revision of the system of fiscal equalization and division of tasks between the Confederation and the cantons, since 1 January 2008 the cantons have assumed full formal, legal and financial responsibility for special education and special teaching measures for children. The invalidity insurance unit no longer co-funds these activities and has given up its joint decision-making power in this area. In October 2007, the plenary assembly of the Swiss Conference of Cantonal Ministers of Education adopted a new inter-cantonal agreement on collaboration in special education (agreement on special education). The agreement has made it possible for the first time to provide a national framework for the most important measures in special education. The key points of the agreement are as follows:

- Special education forms part of the State education mandate;
- From birth to the age of 20, children and young people who live in Switzerland and who have special educational needs are entitled to appropriate special education measures;
- The distinction between those with invalidity insurance and those without has been abolished;
- With regard to special education, it is important to prioritize integration measures, as set out in the Federal Act on the Elimination of Discrimination against People with Disabilities<sup>362</sup> (Disability Discrimination Act), which entered into force on 1 January 2004, while respecting the principle of proportionality;
- Special education, like compulsory schooling, is free of charge;
- The beneficiaries are involved in making decisions on measures.

358. The agreement specifies the basic special education services that every signatory canton is obliged to provide, alone or in collaboration with other cantons. These services include advice and support, special early education, speech therapy and psychomotor skills; special education measures in mainstream schools or special schools; and day care or residential care in a special education institution. The cantons are responsible for organizing the necessary transport and covering the associated costs for children who, because of their disability, are unable to travel on their own from home to school and/or the place where they receive therapy.

359. For most children who have special educational needs, tailored measures are taken as part of special early education in the family, or in a mainstream school during the period of compulsory education. If these measures prove inadequate, the competent school authorities may — following a standard enquiry<sup>363</sup> to determine the individual needs of the person in question — order enhanced measures. Regular checks are then carried out to ensure that these measures remain relevant. Many cantons have set up specific bodies to

<sup>361</sup> See the statistical references in the annex “Thematic and statistical overviews” (figs. 11, 12, 13, 14 and 31).

<sup>362</sup> RS 151.3.

<sup>363</sup> This process involves detailed and comprehensive analysis, collection and, where necessary, supplementing of all existing diagnoses, and a guarantee of neutrality and objectivity towards the service providers responsible for implementing the measures. The beneficiaries are involved in the process. The final decision on enhanced measures rests with the competent cantonal authority and is subject to administrative-law action.

coordinate these processes — for example, the centre of expertise in early education in the canton of Aargau.

360. With regard to the education of disabled children and adolescents, there is a growing trend towards integration into mainstream schools. The Disability Discrimination Act, which entered into force on 1 January 2004, has also contributed<sup>364</sup> to this paradigm shift. In many cantons, children with disabilities have for several years been integrated into mainstream schools if they can make progress with the help of special teaching measures adjusted to their needs. For example, the number of children with a mental disability who are integrated into mainstream schools in the canton of Lucerne has doubled. In the canton of Geneva, a child guidance service has existed for more than 100 years, consisting of professionals from the various disciplines concerned, specifically doctors and teachers, which makes collaboration much easier.

361. The new Vocational Training Act, which entered into force on 1 January 2004, also contains provisions establishing the principle of equality of disabled persons and aimed at eliminating discrimination<sup>365</sup> (see the next section).

## 6. Children of low educational ability and children with high potential

### 6.1 *Children of low educational ability*

362. The aim of the new Vocational Training Act is to enable individuals to develop professionally and personally and to integrate into the labour market. To that end, it promotes equal opportunities for training across all social groups and regions, genuine equality between the sexes and the elimination of discrimination against persons with disabilities.<sup>366</sup>

363. Specifically, the Vocational Training Act enables young people with learning difficulties to pursue two years of initial training, at the end of which they obtain a federal certificate of vocational education.<sup>367</sup> Thereafter, they may enter basic training of three or four years. In addition, the Confederation may support initial and further vocational training for young people with learning difficulties and undertakes to facilitate the transition from school to working life.

364. There are also services for children of low educational ability at the cantonal level. For example, under the “Plan B” project, the canton of St. Gallen supports integration into the labour market, from upper secondary level through apprenticeship to the transition to working life for young people who experience difficulties in integrating into the labour market. Furthermore, the Speranza foundation, which cooperates with the canton’s occupational and career guidance services, encourages the creation of traineeships for young people with educational difficulties. Collaboration has also been established with the Chance foundation for young people in eastern Switzerland who, because of their academic results or their social background, cannot find an apprenticeship.

### 6.2 *Children with high potential*

365. In several Swiss cantons, State schools offer services for pupils of exceptionally high intellectual potential, social engagement and creativity. The goal is to identify the talents of such pupils early and to give them the opportunity to develop all their abilities

<sup>364</sup> See the information concerning article 23 of the Convention on the Rights of the Child.

<sup>365</sup> Vocational Training Act, art. 3 (c), art. 18, art. 21, para. 2 (c), and art. 55, para. 1 (a).

<sup>366</sup> See Vocational Training Act, art. 3.

<sup>367</sup> See Vocational Training Act, art. 17, para. 2, and art. 37.

harmoniously. Of particular note in this regard is the inter-cantonal agreement of 20 February 2003 on schools offering teaching specifically for gifted children, which entered into force on 1 August 2004 and which has been signed by 15 cantons to date. It is also important to mention the support given by the Confederation to the Association of Swiss Scientific Olympiads to fund the participation of particularly gifted adolescents in national and international biology, chemistry, computing, physics, mathematics and philosophy competitions, to impart to them in-depth knowledge in their preferred discipline and, for the best among them, to cover the costs of their participation in the scientific Olympiads. More than 1,600 young people took part in these competitions in 2011.

## 7. International

366. Since the PISA studies have found that Swiss pupils have average reading skills, the regions and cantons are endeavouring to make progress in this area through teaching support, a policy of integration, longer preschool education and other, more far-reaching, measures.

367. Since 2011 Switzerland has been participating in the European programmes “Lifelong Learning” and “Youth in Action”, which offer opportunities for mobility, partnerships and collaboration on international projects at all levels of education (school, vocational education, higher education, further training and non-formal education). Previously, Switzerland took part in programme activities only under certain projects. Its participation means that Swiss entities may now take part in strategic dialogue at the European Union level. Swiss institutions may now propose and coordinate projects. At the end of the initial phase, it is envisaged that the number of participants will increase gradually and that a balanced level of participation in all activities will be achieved. The Swiss participants have the same entitlement as European Union nationals to take part in all activities under these programmes. The Confederation is also gearing up to support Erasmus for All, the successor programme to Lifelong Learning and Youth in Action for 2014 to 2020.

368. With regard to education, the Swiss Agency for Development and Cooperation is particularly involved in West Africa,<sup>368</sup> Asia<sup>369</sup> and Eastern Europe<sup>370</sup> and cooperates closely with UNICEF and UNESCO. The Agency’s objective in education is to guarantee access for all to quality basic education, specifically by improving access for those population groups currently excluded.<sup>371</sup> The Agency also runs projects aimed at promoting teacher training.

369. Switzerland also supports the International Programme on the Elimination of Child Labour of the International Labour Organization (ILO), which promotes children’s access to education and their intellectual development.

## B. Aims and quality of education (art. 29)

370. *Response to paragraph 49 of the concluding observations.*

371. While it cannot be stated that all compulsory school curricula in Switzerland contain an explicit reference to human rights and the rights of the child, many cantons have incorporated references to children’s rights in their curricula, for example in relation to

<sup>368</sup> Mali, Niger, Burkina Faso, Chad, Benin.

<sup>369</sup> Bangladesh, Pakistan, Afghanistan, Bhutan.

<sup>370</sup> The former Yugoslav Republic of Macedonia, Albania, Serbia, Montenegro.

<sup>371</sup> For example, the population of rural regions, ethnic and linguistic minorities, young girls and women.

historical, ethical, religious or intercultural issues or citizenship education. Irrespective of any explicit reference to human rights and the rights of the child, Swiss curricula place an emphasis on teaching pupils rules for living in society, respect for others and tolerance, as well as their own rights. Different forms of discrimination and social, religious or sexual prejudices are also frequently addressed. Furthermore, curricula promote the development of a value system characterized by a responsible attitude to cultural heritage and the natural environment.

372. In the canton of Solothurn, for example, human rights education is included in teaching objectives in different forms. Subjects such as “Human rights yesterday and today” and “The emancipation of women” or the Age of Enlightenment and the French Revolution are taught in the seventh and ninth grades. In addition, knowledge of citizens’ rights and duties and the related citizenship skills form part of the compulsory school curriculum. In middle schools, the standard curriculum includes human rights under the subjects of history and citizenship education. The same applies to vocational schools, which regard these subjects as educational objectives in the teaching of history, politics and ethics.

373. The education law in Ticino states expressly that schools, in conjunction with families and other educational institutions, must give children an increasingly active and responsible role in society.

374. Every year, the canton of Geneva uses Universal Children’s Day, 20 November, as an opportunity to discuss the Convention on the Rights of the Child in primary schools. Throughout the month of November, primary school classes address a topic related to the Convention, such as the prohibition of all discrimination. Activities also take place outside the classroom, such as a children’s rights concert. Lower secondary pupils in the canton are given a brochure on civic rights, which addresses the issue of human rights from different perspectives and contains extracts from the Convention.

375. The last example is the canton of Zug, which expressly includes the rights of the child in its compulsory ethics and religion curriculum for primary schools. The history and politics curriculum at lower secondary level deals with human rights but also child labour and many other subjects, which are explored from different angles.

376. Curriculum content and teaching objectives are also affected by the process of standardization under way within Swiss State education. In the cantons of French-speaking and German-speaking Switzerland, standardized curricula are developed by linguistic region. The “French-speaking curriculum” thus contains various references to topics such as the Convention on the Rights of the Child and human rights in general. In the documents on which the curriculum in German-speaking Switzerland, “Lehrplan 21”, is based, human rights are mentioned in the general chapter on political education.

377. Mention should be made here of the Foundation for Education and Development, a private organization supported by the Swiss Agency for Development and Cooperation, the Swiss Conference of Cantonal Ministers of Education, teachers’ associations and NGOs, which is mandated to promote global learning and ensure that it becomes established in Swiss schools. Its major topics are North-South relations, human rights, cultural diversity, sustainable development and education for peace. In these areas, it provides services such as information and advice, loaning and distribution of teaching material and initial and further training courses aimed primarily at teachers in all school grades. During the International Year of Human Rights Learning organized by the United Nations in 2009, the Foundation launched a competition in baccalaureate schools and vocational schools for school projects aimed specifically at promoting human rights learning. Between 2008 and 2011, the Foundation for Education and Development in French-speaking Switzerland developed teaching tools on the rights of the child for compulsory schools, co-financed by the Federal Social Insurance Office through “children’s rights” funding.

378. The Human Rights Education Centre at the University of Teacher Education Lucerne is also committed to developing human rights education as part of initial and further training for teachers. Through courses on human rights education for children, the Centre intends to support the efforts of teachers and others working with children to integrate human rights education into their teaching activities. This training highlights various multidisciplinary thematic areas that can be used in human rights education and involves the evaluation or preparation of relevant teaching material for different grades. Some 150 pupils in middle schools or vocational schools take part each year in the human rights education programme “Students Meet Human Rights”, which has been in place since 2004. From January 2012, the University of Teacher Education will offer a further training module on human rights education for teachers and staff of State or civil society organizations involved in promoting human rights education.

379. Raising pupils’ awareness of disability issues forms part of the broader objective of teaching children and adolescents to respect others.

380. The core curriculum for general education published in 2006 by the Federal Office for Professional Education and Technology serves as a basis for teaching in all initial vocational training courses. It prescribes compulsory teaching objectives with regard to human rights education. These are examined and evaluated during training and in the theoretical, and sometimes also the practical, part of the qualification process.

381. With regard to further training, a Swiss quality label, eduQua,<sup>372</sup> has been established for the purpose of setting minimum quality criteria for further training courses and ensuring that they are met. In many cantons, eduQua certification is required in order to obtain State assistance.

### **C. Rest, leisure, recreation and cultural and artistic activities (art. 31)**

382. In addition to the areas mentioned below, young people’s extracurricular activities should also be mentioned. On 30 September 2011, Parliament adopted the fully revised version of the Federal Youth Activities Act.<sup>373</sup> Since the promulgation of the Act, which entered into force in 1989, the context of extracurricular activities for children and young people has radically changed. One has only to think of the changes in social and family structures, the effects of migration, new technologies, the new demands made of children and adolescents at school, education and the economy. Extracurricular activities have also changed and the range on offer has been adjusted to the new social order. The law in force is inadequate to meet those challenges and to take due account of these developments.

383. By adopting the new Advancement of Children and Young People Act, the Confederation is bolstering its commitment to children and young people. In particular, it intends to strengthen the impact — in terms of integration and prevention — of the advancement measures that it supports. It will also give targeted support to extracurricular activities for children and young people that are open (not tied to a membership or other conditions) and innovative. In that regard, the Confederation intends from now on to base its financial aid more systematically on substantive criteria. The Act also provides for the allocation to the cantons of time-limited financial aid to help them establish and develop measures for children and young people. It will also particularly encourage cantonal and communal projects of national significance that could serve as a model. Lastly, it will strengthen the coordination of activities organized by federal departments involved in child

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<sup>372</sup> See [www.eduqua.ch](http://www.eduqua.ch), consulted on 11 February 2010.

<sup>373</sup> RS 446.1.

and youth policy and the networking of all the entities concerned. The new Advancement of Children and Young People Act should enter into force on 1 January 2013.

384. At the cantonal level, the Conference of Cantonal Delegates for the Advancement of Children and Young People has developed standards in this area, which the committee of the Swiss Conference of Cantonal Ministers of Education took note of in January 2010 as “good practices” to be recommended to the cantons and communes. The purpose of these standards is to ensure that all children in Switzerland, not only those resident in cantons with a well-established mechanism for the advancement of children and young people, are provided with appropriate informal education services. These standards are based on the Convention on the Rights of the Child, the Federal Constitution, cantonal laws and ordinances and delegates’ practice. They include the main competences and activities of the three levels of the State.

### 1. Media

385. Under the Ordinance on Radio and Television,<sup>374</sup> the Swiss Broadcasting Corporation (SSR) is required gradually to increase the proportion of subtitled television programmes to one third of total transmission time under the editorial programme of each linguistic region. The Swiss Broadcasting Corporation must also broadcast at least one news programme with sign language daily in each official language and at least two films per month in each official language that include audio description for those with visual impairments. The other national or linguistic-region television broadcasters must offer those with hearing or visual impairments a programme adapted to their needs at least once a week, at peak viewing time.

### 2. Sport

386. “Youth+Sport”, the main programme for the promotion of sport set up by the Confederation, offers children and young people courses and camps in 75 sports. Almost 550,000 children and young people aged 10 to 20 attend more than 50,000 courses and camps each year. Children aged 5 to 10 can now also benefit from the promotion of physical activity and sport appropriate to their age.

387. Since 2005, the “Active Schools” programme<sup>375</sup> has been supporting teachers in the straightforward long-term promotion of physical activity in school. Each year, 3,000 teachers carry out daily activities as part of “Active Schools” with their 60,000 pupils.

388. In 2010, the Confederation invested 70 million francs in youth sport. In addition, the cantons and communes invested almost 900 million francs in sport. A significant proportion of that sum benefited children and young people.

## VIII. Special protection measures

### A. Children in situations of emergency (arts. 22, 38 and 39)

389. *Response to paragraph 51 of the concluding observations.*

390. Since 1 July 2007, the Federal Administrative Court has replaced the Swiss Asylum Appeals Commission. It is a completely independent judicial review body.

<sup>374</sup> RS 784.401.

<sup>375</sup> See [www.schulebewegt.ch/](http://www.schulebewegt.ch/), consulted on 24 February 2012.

## 1. Refugee children (art. 22)

### 1.1 Statistical data<sup>376</sup>

391. For the period 2005 to 2010, the number of minors involved in asylum or family reunification procedures each year was between 3,102 (in 2007) and 4,148 (in 2010). That equates to an annual average of 3,651 minors, representing 27 per cent of all asylum seekers. Of these minor asylum seekers, 56 per cent were boys. Of the total number of minor asylum seekers, the proportion who were unaccompanied was 10 per cent on average between 2005 and 2010. In the same period, 90 per cent of unaccompanied minor asylum seekers were aged between 15 and 18. Between 2005 and 2010, the majority of unaccompanied minor asylum seekers came from Somalia, Guinea, Afghanistan, Nigeria and Côte d'Ivoire.

392. For the period 2005 to 2010, positive decisions (granting of asylum and recognition of refugee status) relating to children and adolescents represented 43 per cent of all positive decisions handed down by the Federal Office for Migration. In absolute numbers, this means that, of 13,163 positive asylum decisions, 5,643 related to minors. During the same period, 5,800 young people seeking asylum were granted temporary shelter. In total, 52 per cent of all decisions concerning minors were positive: the minors in question were granted asylum or a temporary residence permit.

### 1.2 Legal framework

393. The rules in force relating to the protection of minors apply on principle to all minors, irrespective of their residence status.

394. The Asylum Act<sup>377</sup> now provides that decisions relating to unaccompanied minor asylum seekers, including decisions to enforce removal orders, may also be taken in registration centres. The competent cantonal authorities must therefore immediately appoint a responsible adult, including in cases where the procedure takes place at an airport or in a registration centre.

### 1.3 The asylum procedure for unaccompanied minors

395. On 1 January 2008, the directives<sup>378</sup> of the Federal Office for Migration relating to the Asylum Act, which concern, *inter alia*, the treatment of unaccompanied minor asylum seekers, entered into force. They provide that a responsible adult is appointed for unaccompanied minor asylum seekers on their arrival at a registration centre. These directives are now applied by all the cantons and the situation has significantly improved in recent years. Moreover, persons who hold hearings relating to grounds for asylum have received special training on the particular situation of unaccompanied minor asylum seekers. The directives also govern the responsibilities of legal guardians of unaccompanied minor asylum seekers, the duration of their mandate and acceptance of liability for costs.<sup>379</sup>

<sup>376</sup> The annex "Thematic and statistical overviews" gives a breakdown of numbers of minor foreign nationals by residence status (fig. 32). It also contains a comparative table of unaccompanied minor asylum seekers for the years 2009 to 2011 (fig. 33).

<sup>377</sup> Asylum Act, art. 17, para. 3, and Asylum Ordinance No. 1, art. 7.

<sup>378</sup> See [www.bfm.admin.ch/content/dam/data/migration/rechtsgrundlagen/weisungen\\_und\\_kreisschreiben/weisungen\\_asyl/asylverfahren/11\\_asylverfahrenf.pdf](http://www.bfm.admin.ch/content/dam/data/migration/rechtsgrundlagen/weisungen_und_kreisschreiben/weisungen_asyl/asylverfahren/11_asylverfahrenf.pdf), consulted on 24 February 2012.

<sup>379</sup> See Asylum directives: III. Asylum Act, 1. Asylum procedure, 1.3 Unaccompanied minor asylum seekers, section 1.3.4.



396. The responsible adult<sup>380</sup> has the task not only of assisting and supporting the unaccompanied minor asylum seeker throughout the asylum procedure but also of ensuring his or her protection under civil law. This means, for example, arranging the minor's psychological or medical care, ensuring his or her social integration, including schooling or education, and taking any other appropriate measures. Assistance or guardianship is generally arranged for unaccompanied minors after they have been allocated to a canton.

397. Pursuant to the relevant directives of the Federal Office for Migration, unaccompanied minor asylum seekers are housed appropriately for their age and maturity. Thus the youngest are placed with parents, in professional host families or in cantonal facilities, such as children's homes. The oldest are housed in registration and processing centres,<sup>381</sup> where possible with persons of the same sex who speak the same language and have the same cultural origins as them. Account is also taken of the presence of travelling companions. In these centres, unaccompanied minor asylum seekers receive education and support that is appropriate to their needs.

398. In recent years, various questions have been studied in greater depth and clarified in Swiss case law. With regard to the representation of unaccompanied minor asylum seekers, it has been specified that the person providing such representation must have legal knowledge and must be able to defend the minor's interests adequately. It has also been stated that the siblings of minor asylum seekers do not have parental authority and must therefore be regarded as unaccompanied minors. It has been concluded that the age of asylum seekers should be considered and assessed immediately, that is, on their arrival at the reception centre. Where there is any doubt, a general assessment of the situation is carried out and the asylum seeker concerned must be able at least to demonstrate plausibly that he or she has not yet reached the age of majority. Lastly, it has been confirmed that the principle of the best interests of the child under article 3 of the Convention is an important element that should be duly taken into account when the lawfulness of the removal of a minor asylum seeker is considered.

399. Measures have also been taken at the cantonal level. The cantons of Lucerne and Basel, for example, have set up special facilities for the care of unaccompanied minor asylum seekers. Since 2000, there has been a centre for unaccompanied minors in the canton of Zurich, whose expert staff assist unaccompanied minor asylum seekers by acting as representative trustees pursuant to article 392, paragraph 2, of the Civil Code. In the canton of Bern, all unaccompanied minor asylum seekers are provided with legal representation for their asylum procedure of first instance, which, as instructed by the canton, is provided by the Bern Legal Advice Centre for Persons in Distress (RBS). Unaccompanied minor asylum seekers aged between 14 and 17 can be provided with care and accommodation for a period of six months in a special residential centre for unaccompanied minor asylum seekers. In December 2011, 36 unaccompanied minor asylum seekers were housed in the centre. Fourteen of these young people were enrolled in State schools. Unaccompanied minor asylum seekers aged over 16 first of all receive training within the centre and then pursue external programmes focusing on integration. The youngest ones and those who need special care are placed in ordinary facilities for children and young people who are not living with their parents. The Bern cantonal authorities also give the Bern Legal Advice Centre for Persons in Distress responsibility for guardianship arrangements for unaccompanied minor asylum seekers, as provided for in the Civil Code. The canton of Bern, which is keen to comply with the Convention on the

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<sup>380</sup> When the competent cantonal authority is notified of an unaccompanied minor asylum seeker, it appoints a guardian or trustee for him or her.

<sup>381</sup> Some cantons house unaccompanied minor asylum seekers in special centres (see footnote 377).

Rights of the Child, is currently considering possible ways of further improving the situation of unaccompanied minor asylum seekers.

#### 1.4 *Dismissals of applications and removal orders*

400. Persons in respect of whom a final decision is made to dismiss their application or to remove them from the country are no longer entitled to social welfare benefits. They may, however, receive emergency assistance. Minors are explicitly informed of this right. The particular needs of unaccompanied minor asylum seekers are taken into account when they are granted emergency assistance under article 12 of the Constitution. When the cantons grant emergency assistance, they are obliged to ensure that it meets the specific requirements of article 3, paragraph 2, of the Convention. If it does not, they must increase the support provided. In the context of the implementation of the return directive, two new provisions relating to unaccompanied minors were added to the Federal Act on Foreign Nationals on 1 January 2011: the competent cantonal authorities must now immediately appoint a responsible adult to represent the interests of an unaccompanied foreign minor during the removal procedure.<sup>382</sup> Before removing or expelling an unaccompanied foreign minor, the competent cantonal authorities must also ensure that the minor will be sent to a family member, guardian or care facility that can guarantee his or her protection in the State of origin.<sup>383</sup>

## 2. **Children in armed conflicts (art. 38), including physical and psychological recovery and social reintegration**<sup>384</sup>

### 2.1 *Action by Switzerland to support child victims of armed conflicts*

401. On 26 June 2002, Switzerland ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict,<sup>385</sup> which entered into force for Switzerland on 26 July 2002. The initial report of Switzerland on the implementation of the Optional Protocol was submitted on 30 April 2004.

402. Under articles 38 and 39 of the Convention and article 4 of the Optional Protocol on the involvement of children in armed conflict, the Human Security Division of the Federal Department of Foreign Affairs has supported various organizations, including the United Nations Trust Fund for Children and Armed Conflict and the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, which works to meet the particular needs of children during and after conflicts. Since the entry into force of the Optional Protocol on the involvement of children in armed conflict, the international forum known as the Coalition to Stop the Use of Child Soldiers, whose objective is to put in place effective international measures to protect children from (forced) recruitment, has been focusing its efforts on the recruitment of child soldiers by non-State armed groups. At the international level, Switzerland also works to prevent the involvement of children in armed conflict by supporting the International Programme on the Elimination of Child Labour<sup>386</sup> established by ILO. The Human Security Division also supports a project run by the NGO Geneva Call, which works directly on the ground to encourage armed non-State actors to refrain from recruiting child soldiers by having them sign a “Deed of Commitment”.

<sup>382</sup> Foreign Nationals Act, art. 64, para. 4.

<sup>383</sup> Foreign Nationals Act, art. 69, para. 4.

<sup>384</sup> For further information, see chapter IX on the Optional Protocols.

<sup>385</sup> RS 0.107.1; RO 2002 3579; FF 2001 5977.

<sup>386</sup> International Programme on the Elimination of Child Labour.

## 2.2 *Compulsory military service in Switzerland*

403. The arrangements for compulsory military service have not changed since the initial report of Switzerland was submitted.<sup>387</sup> The revised military legislation that entered into force on 1 January 2011 contains only terminological changes, systematic improvements and clearer definitions. There has been no change in the age restriction for military service.

## **B. Children in conflict with the law (arts. 37, 39 and 40)**

404. *Response to paragraphs 57 and 58 of the concluding observations, in which the Committee refers to the various standards<sup>388</sup> governing juvenile criminal procedure and sentence enforcement.*

405. On 20 June 2003, Parliament adopted a new Federal Act on the Criminal Law applicable to Juveniles (Juvenile Criminal Law Act),<sup>389</sup> which entered into force on 1 January 2007. The new Act contains various provisions that fulfil the recommendations set out in the Committee's concluding observations (for more details, see section 2 below).

### **1. Prevention of juvenile crime**

406. A number of cantons have launched prevention and outreach projects in order to raise awareness among children and young people of issues such as violence, vandalism, racketeering, drugs and alcohol.

407. In response to the Leuthard (2003), Amherd (2006) and Galladé (2007) parliamentary motions,<sup>390</sup> the Federal Council in May 2009 also issued a detailed report on the prevention of juvenile violence in the family, at school, in social contexts and in the media.<sup>391</sup> The report analyses the causes and scope of violent behaviour in young people, gives an overview of current prevention measures in Switzerland and presents the main areas of focus for the effective prevention of violence. Following the release of the report, the Federal Council in June 2010 launched two nationwide five-year programmes: the first is aimed at more effective prevention of violence and the second at helping young people to acquire the skills necessary to make the most of the opportunities available to them and avoid the risks associated with electronic media.

408. The programme for the prevention of violence in the family, at school and in social contexts is the product of collaboration between the Confederation, the cantons and the communes. Measures already taken have been systematically recorded and successful experiences are identified with a view to establishing good practices. Innovative ideas for prevention are tested at pilot sites and validated knowledge has to be disseminated in a practical manner, through publications or events. Over the five years of its duration, the

<sup>387</sup> Initial report of Switzerland to the Committee on the Rights of the Child, paras. 638–640.

<sup>388</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules); United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines); United Nations Rules for the Protection of Juveniles Deprived of their Liberty; and Guidelines for Action on Children in the Criminal Justice System.

<sup>389</sup> RS 311.1.

<sup>390</sup> Leuthard motion 03.3298: Violence in young people; Amherd motion 06.3646: Violence in young people. Making prevention more effective; Galladé motion 07.3665: Entertainment media. Protecting children and adolescents from violence.

<sup>391</sup> "Les jeunes et la violence – pour une prévention efficace dans la famille, l'école, l'espace social et les médias" (Young people and violence – effective prevention in the family, at school, in social contexts and in the media), report of the Federal Council of 20 May 2009.

programme will lay the foundations for effective and sustainable prevention in Switzerland but will also improve the interaction between prevention, intervention and punishment.<sup>392</sup>

409. The second programme, which relates to the protection of young people with regard to the media, essentially aims to help children and adolescents to use the media in a safe, responsible and age-appropriate way. It also aims to support parents, teachers and responsible adults in their role as mentors and educators. It involves providing them with targeted information and training for that purpose. The Confederation makes use of the wide range of services already offered by private organizations and by the media sector and collaborates with business, NGOs and relevant departments at the local and cantonal levels. The programme will also address whether there is a need to legislate in order to protect children and adolescents effectively from the risks they face in the media.<sup>393</sup>

410. Many prevention measures are already in place at the cantonal level. Since 2001, the canton of Lucerne has received support from a working group on juvenile violence, made up of representatives of various cantonal departments such as the offices of the juvenile prosecutor and the public prosecutor, the youth and family department of the city of Lucerne, the criminal police and school departments.

411. The cantons have generally adopted different preventive measures to combat juvenile crime. Since 2005, the canton of Fribourg, for example, has had a juvenile division chiefly responsible for juvenile crime cases and prevention. The canton of Solothurn has also established a police force for juveniles, responsible for both prevention and punishment. However, it is not limited to preventing or solving cases of juvenile violence, but also works to combat violence against young people, whether perpetrated by other young people or by adults. It collaborates closely with the department for action against domestic violence, which communicates to it information on families known to the authorities for domestic violence. The canton of Thurgau is also very active in the area of prevention. The juvenile prosecutor there cooperates closely with around 15 institutions and projects.

## **2. Juvenile criminal proceedings (art. 40)**

### *2.1 Juvenile criminal law*

412. The new Federal Act on the Juvenile Criminal Procedure Code<sup>394</sup> provides that minors must be separated from adults during pre-trial detention;<sup>395</sup> as a result, the reservation concerning article 10, paragraph 2 (b), of the International Covenant on Civil and Political Rights relating to the separation of accused juvenile persons and adults has already been withdrawn. The new Federal Act on the Criminal Law applicable to Juveniles (Juvenile Criminal Law Act)<sup>396</sup> stipulates that juveniles and adults must be separated in prisons. However, the Act grants the cantons a transitional period of 10 years in which to establish the necessary institutions.<sup>397</sup>

<sup>392</sup> National prevention programme on young people and violence, decree of the Federal Council of 11 June 2010; see also [www.jeunesetviolence.ch](http://www.jeunesetviolence.ch), consulted on 27 March 2012.

<sup>393</sup> National programme for the protection of young people and promotion of media literacy, decree of the Federal Council of 11 June 2010; see also [www.jeunesetmedias.ch](http://www.jeunesetmedias.ch), consulted on 27 March 2012.

<sup>394</sup> RS 312.1.

<sup>395</sup> Juvenile Criminal Procedure Code, art. 28, para. 1. Before the Code entered into force, juvenile criminal law provided for the separation of minors from adults in prisons.

<sup>396</sup> RS 311.1; Juvenile Criminal Law Act, art. 27, para. 2.

<sup>397</sup> Juvenile Criminal Law Act, art. 48.

413. Before the introduction of the new juvenile criminal law, the Federal Supreme Court<sup>398</sup> had already ruled that young people could be detained in prison or remand prison only on a temporary basis, as a short-term solution in an emergency situation. It had ruled that it was unlawful to detain an adolescent in a remand prison for weeks or months in the absence of options for placement in an appropriate institution, even if the person concerned had given his or her consent.

## 2.2 Revision of juvenile criminal law

414. The main innovations introduced by the new Federal Act on the Criminal Law applicable to Juveniles are as follows:

- Juvenile criminal law is no longer integrated in the Criminal Code, in parallel with the criminal law applicable to adults, but is the subject of a separate Act;
- The minimum age of criminal responsibility for minors has been increased from 7 to 10 years;<sup>399</sup>
- The protection and education of minors are paramount in the application of the law;<sup>400</sup>
- The range of penalties has been expanded and made more flexible (see below).

415. Where a minor has committed a punishable act, a decision is made as to whether he or she needs particular educational or therapeutic care.<sup>401</sup> Whether or not the child has acted culpably, the law provides for various protection measures: depending on the child's needs, he or she may be monitored,<sup>402</sup> provided with personal assistance<sup>403</sup> or outpatient treatment<sup>404</sup> or placed in an institution.<sup>405</sup>

416. Where the minor has acted culpably, the trial court imposes a penalty and may also impose a protection measure.<sup>406</sup> Depending on the act committed, it may issue a reprimand<sup>407</sup> or order community service,<sup>408</sup> a fine<sup>409</sup> or a custodial sentence.<sup>410</sup> This last measure may be ordered only if the acts committed constitute a crime or misdemeanour and if the perpetrator had reached the age of 15 at the time of the acts.

417. The authorities may refrain from instituting criminal proceedings or suspend them if an agreement is reached between the injured party and the juvenile perpetrator through mediation.<sup>411</sup> The competent authority may also refrain from instituting criminal proceedings or imposing a penalty if certain other conditions are met.<sup>412</sup>

<sup>398</sup> ATF 6A.20/2006 of 12 May 2006.

<sup>399</sup> See comment on article 1 of the Convention on the Rights of the Child.

<sup>400</sup> Juvenile Criminal Law Act, art. 2.

<sup>401</sup> Juvenile Criminal Law Act, art. 10.

<sup>402</sup> Juvenile Criminal Law Act, art. 12.

<sup>403</sup> Juvenile Criminal Law Act, art. 13.

<sup>404</sup> Juvenile Criminal Law Act, art. 14.

<sup>405</sup> Juvenile Criminal Law Act, art. 15 *et seq.*

<sup>406</sup> Juvenile Criminal Law Act, art. 11.

<sup>407</sup> Juvenile Criminal Law Act, art. 22.

<sup>408</sup> Juvenile Criminal Law Act, art. 23.

<sup>409</sup> Juvenile Criminal Law Act, art. 24.

<sup>410</sup> Juvenile Criminal Law Act, art. 25 *et seq.*

<sup>411</sup> Juvenile Criminal Procedure Code, art. 5, para. 1 (b), and art. 17.

<sup>412</sup> Juvenile Criminal Procedure Code, art. 5, paras. 1 (a) and 2; Juvenile Criminal Law Act, art. 21.

### 2.3 *Statistical data on criminal offences and penalties*<sup>413</sup>

418. A total of 685,500 persons aged between 10 and 17 were living in Switzerland in 2009. In that year, sentences were handed down to 15,100 minors. The number of criminal convictions of minors rose from 15,064 in 2009 to 15,646 in 2010 (an increase of 3.8 per cent). Of those convicted, 77.3 per cent were young people aged over 15 and 77.7 per cent were boys (22.3 per cent girls). After a slight drop in the number of convictions of juveniles for violent crime, from 2,456 in 2008 to 2,367 in 2009, the number increased again in 2010, to 2,619. The breakdown of the types of penalties imposed remained approximately the same: most were reprimands and community service.

419. According to Police Crime Statistics, which records reported crime, the number of juvenile defendants fell by 21 per cent between 2010 and 2011 (29 per cent since 2009).<sup>414</sup> Police records show that most of the criminal offences committed by juveniles are minor offences, such as shoplifting, damage to property, simple larceny or assault.

420. In 2010, 68.9 per cent of juvenile delinquents were of Swiss nationality, 22.6 per cent were foreign nationals resident in Switzerland, 4.3 per cent were asylum seekers, 3 per cent were homeless foreigners, and in the remaining 1.1 per cent of cases no information was available.

Most of the offences recorded in 2010 (67.7 per cent) were offences under the Criminal Code, 29.3 per cent under the Narcotics Act, 13.9 per cent under the Road Traffic Act and 2 per cent under the Foreign Nationals Act.<sup>415</sup>

421. In 2010, 95.3 per cent of verdicts involved the imposition of a penalty and 5.7 per cent a protection measure. In the same year, 4.3 per cent of juvenile delinquents were exempted from punishment.

### 2.4 *Juvenile Criminal Procedure Code*

422. The Juvenile Criminal Procedure Code<sup>416</sup> entered into force on 1 January 2011, at the same time as the Swiss Criminal Procedure Code. Juvenile criminal law in Switzerland focuses on the perpetrator rather than on the act; its primary purpose is not punishment but reform and education.

## 3. **Children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings (art. 37 (b), (c) and (d))**<sup>417</sup>

### 3.1 *Juvenile Criminal Procedure Code*

423. The new Juvenile Criminal Procedure Code entitles a minor or his or her legal guardian to use the services of a defence counsel at any time during investigation and trial proceedings.<sup>418</sup>

424. Most of the staff employed in prisons and detention centres are responsible for educational activities. In order for the Federal Office of Justice to recognize an institution's

<sup>413</sup> See also statistics in the annex "Thematic and statistical overviews" (fig. 36 *et seq.*).

<sup>414</sup> See graph in the annex "Thematic and statistical overviews" (figs. 34 and 35).

<sup>415</sup> RS 142.20.

<sup>416</sup> RS 312.1.

<sup>417</sup> See the annex "Thematic and statistical overviews" for statistical data relating to detention by the police and pre-trial detention, using two cantons as examples (figs. 48 and 49).

<sup>418</sup> Juvenile Criminal Procedure Code, art. 23. Art. 25 of the Code sets out the conditions for the appointment of an official defence counsel.

educational function and allocate subsidies to it,<sup>419</sup> at least three quarters of the persons responsible for educational activities must have completed recognized training in, for example, special education or social work.

### 3.2 *Application to minors of coercive measures under the law on foreign nationals*<sup>420</sup>

#### 3.2.1 Legal framework

425. The coercive measures provided for in the Federal Act on Foreign Nationals<sup>421</sup> are as follows:

- Detention pursuant to article 73 of the Act;
- Specification of a place of residence and prohibition of entry into a particular region pursuant to article 74 of the Act;
- Detention at the preparatory stage pursuant to article 75 of the Act;
- Detention pending removal or expulsion pursuant to article 76 of the Act;
- Detention pending removal or expulsion in the event of failure to cooperate in obtaining travel documents pursuant to article 77 of the Act;
- Coercive detention pursuant to article 78 of the Act.

426. Under the law on foreign nationals, detention at the preparatory stage, detention pending removal or expulsion, and coercive detention are forms of administrative detention. The purpose of detention at the preparatory stage is to guarantee the enforcement of the removal or expulsion procedure, whereas detention pending removal or expulsion is aimed at guaranteeing the enforcement of a removal or expulsion order that has already been handed down at least at first instance, even if it is not yet enforceable. The purpose of coercive detention is to bring about a change of conduct in persons required to leave Switzerland in cases where it is believed that, on expiry of the deadline set for their departure, despite the authorities' efforts, the removal or expulsion order in respect of such persons cannot or can no longer be enforced without their cooperation.<sup>422</sup>

427. Under article 5, paragraph 1 (f), of the European Convention on Human Rights, administrative detention ordered under the law on foreign nationals in respect of a foreign national who is already on the national territory is admissible only in the case of a "person against whom action is being taken with a view to deportation or extradition" (or action with a view to removal or expulsion, in the Swiss terminology). In practice, the aim of detention must therefore be the feasible and lawful removal of the person in question. If it is established that removal is unfeasible or unlawful, detention cannot achieve its aim and may not, therefore, be ordered.

<sup>419</sup> Art. 1, para. 2 (f), combined with article 3 of the Ordinance on Federal Subsidies for the Execution of Sentences and Measures, RS 341.1.

<sup>420</sup> In its report "Protection de l'enfance et mesures de contrainte en matière de droit des étrangers" (Child protection and coercive measures under the law on foreign nationals) of 7 November 2006 (FF 2007 2373), the National Council Control Committee (CdG-N) studied in detail the situation of minors detained pending return and made five recommendations to the Federal Council. The latter responded in its opinion of 16 March 2007 (FF 2007 2391). The first recommendation was to incorporate the conclusions of the Committee's report into the present report of Switzerland.

<sup>421</sup> RS 142.20.

<sup>422</sup> See ATF 135 II 105.

428. The introduction of the European Union return directive,<sup>423</sup> which constitutes a development of the Schengen rules, necessitated an adjustment of the Foreign Nationals Act and the Asylum Act.<sup>424</sup> The amendments to these two Acts, which entered into force on 1 January 2011, also concern coercive measures: the maximum duration of administrative detention has been reduced from 24 to 18 months. In the case of minors aged 15 to 18, it is only 12 months. Initially, administrative detention may be ordered for a maximum period of six months.<sup>425</sup> Subject to the agreement of the cantonal judicial authority, it may, however, be extended by a maximum of 12 months for adults and six months for minors aged 15 to 18.<sup>426</sup> On 1 January 2011, three new grounds for detention were added with a view to guaranteeing the enforcement of removals or expulsions ordered under the Dublin agreements.<sup>427</sup>

429. Under the return directive, the use of detention for the purpose of removal is justified only in specific cases where the application of less coercive measures would not be sufficient. The directive also contains various rules applicable to the detention of vulnerable persons, minors and families. It requires in particular that families be provided with separate accommodation guaranteeing adequate privacy. Minors in administrative detention must have the possibility to engage in leisure activities. These requirements are already applied for the most part in the cantons responsible for the detention of persons belonging to the groups mentioned; in some cases they have even already been incorporated into cantonal laws. Furthermore, they are largely consistent with the case law of the Federal Supreme Court on administrative detention with respect to foreign nationals. With regard to the detention of minors, the Foreign Nationals Act — unlike the return directive — establishes a minimum age of 15 years. With regard to detention arrangements, the Foreign Nationals Act contains only a few general provisions of a basic nature,<sup>428</sup> since the cantons are responsible for the enforcement of detention at the preparatory stage, detention pending removal or expulsion, and coercive detention.

### 3.2.2 Detention of minors

430. In practice, unaccompanied minors are young people who, for the most part, are aged between 15 and 18 or will soon reach the age of majority (about 90 per cent). A study by the National Council Control Committee<sup>429</sup> revealed that 355 minors in total were placed in detention at the preparatory stage or detention pending removal or expulsion during the period 2002 to 2004. The Federal Office for Migration estimated that that number represented less than 5 per cent of all persons in detention at that time.<sup>430</sup> Between January 2008 and December 2011, 367 minors were placed in detention at the preparatory stage or

<sup>423</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

<sup>424</sup> RS 142.31.

<sup>425</sup> Foreign Nationals Act, art. 79, para. 1.

<sup>426</sup> Foreign Nationals Act, art. 79, para. 2.

<sup>427</sup> See Foreign Nationals Act, art. 75, para. 1 *bis* (detention at the preparatory stage pursuant to Dublin) and art. 76, para. 1 (b) (1) and (6) (detention pending removal or expulsion pursuant to Dublin).

<sup>428</sup> Foreign Nationals Act, art. 81.

<sup>429</sup> See annex to the report of the National Council Control Committee, “Protection de l’enfance et mesures de contrainte en matière de droit des étrangers” (Child protection and coercive measures under the law on foreign nationals), of 7 November 2006 (FF 2007 2373).

<sup>430</sup> See Federal Council opinion of 16 March 2007, FF 2007 2391, p. 2392.



detention pending removal or expulsion, which represented 2.8 per cent of all detention orders. The proportion of juvenile detainees is therefore falling.<sup>431</sup>

431. During the period January 2008 to December 2011, the average duration of detention was 29 days for adults and 43 days for minors. However, of the 367 minors detained, 204 were in detention for no more than four days. On the other hand, 26 persons were detained for more than six months. Detailed statistical analyses on the duration of detention, and also other statistical data relating to coercive measures imposed on minors under the law on foreign nationals, are contained in the annex “Thematic and statistical overviews”.

432. The average duration of detention for minors is higher than for adults essentially because returning minors is administratively more complex than returning adults: the competent authority must ensure that the minor, once returned to his or her country, will be sent to a family member, guardian or care facility that can guarantee his or her protection.<sup>432</sup> The higher number of minors than adults being detained for a period significantly longer than the average is probably also explained by the way in which these cases are accounted for in the statistics.

### 3.2.3 Practice with regard to enforcement

433. In Switzerland, the cantons are on principle responsible for the enforcement of the law on asylum and foreign nationals. Under article 46 of the Asylum Act and article 69 of the Foreign Nationals Act, they are responsible for enforcing removal or expulsion orders. All coercive measures that may be taken under the law on foreign nationals are left to the discretion of the cantons, which decide whether they are appropriate in each specific case. The Federal Council has nonetheless emphasized repeatedly that a lack of uniformity in cantonal practice with regard to enforcement could lead to glaring inequalities where persons in comparable situations are treated differently. It is therefore in the Confederation’s interests to support efforts at standardization with regard to the enforcement of coercive measures.

434. The following institutions are contributing to the standardization of cantonal practice with regard to enforcement:

- Conference of Cantonal Justice and Police Directors;
- Association of Cantonal Migration Departments (ASM);
- Conference of Cantonal Police Commanders of Switzerland (CCPCS);
- Cantonal coordinators responsible for the enforcement of removals;
- Expert Committee on Return and Enforcement of Removals.

435. These bodies ensure cooperation among the various authorities responsible for promoting standardization and *de jure* equality in the application of coercive measures. Conferences such as the annual meeting of cantonal coordinators responsible for enforcement, and special training courses, for example on the procedure under the Dublin agreements, are also organized.

436. The collection of data on coercive measures under article 15a of the Ordinance on the Enforcement of Removal and Expulsion of Foreign Nationals<sup>433</sup> is another tool for the standardization of practice with regard to enforcement. Analysis of the data collected

<sup>431</sup> See graphs in the annex “Thematic and statistical overviews” (figs. 50–54).

<sup>432</sup> Foreign Nationals Act, art. 69, para. 4.

<sup>433</sup> RS 142.281.

highlights differences in cantonal practice and provides a solid basis on which experts can draw conclusions. In the case of minors, the Federal Council is planning to add information on legal representation and guardianship measures to the data that the cantonal authorities are required to collect under the Ordinance. The consultation process on the planned amendment of the Ordinance is currently under way.

#### 3.2.4 Detention conditions

437. The introduction of the European Union return directive,<sup>434</sup> which represents a development of the Schengen *acquis*, necessitated an amendment to the Foreign Nationals Act and the Asylum Act, which entered into force on 1 January 2011. Article 81, paragraph 3, of the Foreign Nationals Act now provides that the form of detention must take account of the needs of minors. With regard to specific arrangements for detention, the Foreign Nationals Act contains only a few general provisions of a basic nature, because the cantons are responsible for the enforcement of detention at the preparatory stage, detention pending removal or expulsion, and coercive detention. The Confederation bears a share of the cantons' operating costs associated with the enforcement of administrative detention by paying them a daily lump sum.<sup>435</sup>

438. Articles 16 and 17 of the return directive contain various provisions relating to the detention of vulnerable persons, minors and families.<sup>436</sup> Under these articles, minors in administrative detention must have the possibility to engage in leisure activities. These requirements are applied by the cantons responsible for the detention of persons belonging to the groups mentioned; in some cases they have even been incorporated into cantonal laws. With regard to the detention of minors, the Foreign Nationals Act — unlike the return directive — establishes a minimum age of 15 years.

#### 3.2.5 Legal representation and guardianship measures

439. A responsible adult is appointed for unaccompanied minor asylum seekers on their arrival at the registration and processing centre.<sup>437</sup> The competent cantonal authorities immediately appoint a responsible adult who is responsible for representing the interests of the unaccompanied foreign minor during the removal procedure.<sup>438</sup> As already mentioned above, before removing or expelling the minor, the authority must ensure that he or she will be sent to a family member, guardian or care facility that can guarantee his or her protection in the State of origin.<sup>439</sup> Federal and cantonal legal procedures guarantee compliance with the relevant provisions. In this context, we should also highlight the planned elaboration of article 15a of the Ordinance on the Enforcement of Removal and Expulsion of Foreign Nationals, which should enable the Federal Office for Migration to assess the extent to which the interests of foreign minors are protected in the cantons.

<sup>434</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (return directive).

<sup>435</sup> Foreign Nationals Act, art. 82.

<sup>436</sup> See dispatch on the approval and implementation of the exchange of notes between Switzerland and the European Community concerning the adoption of the European Union return directive, 09.087, FF 2009 8043.

<sup>437</sup> Asylum Act, art. 17, para. 3. See also the section entitled "The asylum procedure for unaccompanied minors".

<sup>438</sup> Foreign Nationals Act, art. 64, para. 4.

<sup>439</sup> Foreign Nationals Act, art. 69, para. 4.

#### 4. The sentencing of juveniles, in particular the prohibition of capital punishment and life imprisonment (art. 37 (a))

440. The new juvenile criminal law stipulates a custodial sentence of up to one year for minors who were aged 15 at the time of the offence<sup>440</sup> and up to four years for those who were 16 at the time of the offence, where the offence was very serious.<sup>441</sup>

#### 5. Reservations

441. Although the separation of minor and adult detainees in pre-trial detention<sup>442</sup> became effective with the entry into force of the new juvenile criminal law, the cantons were granted a period of 10 years<sup>443</sup> from the entry into force of the new law to establish the institutions necessary for strict application of the required separation in prisons. For this reason, the reservation concerning article 37 (c) of the Convention has not yet been withdrawn.

442. Under the Juvenile Criminal Procedure Code, a juvenile defendant or his or her legal guardian have the right to appoint a lawyer at any time. If the young defendant or his or her legal guardian do not choose a defence counsel themselves, the competent authority appoints an official defence counsel, subject to certain conditions relating, for example, to the level of penalty incurred or the duration of pre-trial detention. The lawyer's fees, whether the lawyer is chosen by the defendant or officially appointed, may be payable by the minor or his or her parents if they have the necessary means. The Committee on the Rights of the Child has interpreted article 40, paragraph 2 (b) (ii), of the Convention as meaning that States must guarantee minors the assistance of a lawyer or other appropriate representative in all proceedings and that such assistance should be free of charge.<sup>444</sup> As this does not correspond to the regulations set out in the Juvenile Criminal Procedure Code, Switzerland cannot withdraw the reservation that it formulated in that regard.

#### 6. Projects abroad

443. In its juvenile criminal law projects, the Swiss Agency for Development and Cooperation has for some years given special priority to disadvantaged sectors of the population that suffer discrimination, while paying greater attention to human rights, legal systems and the global political environment.

444. One example is the projects carried out in north-west Pakistan, where, as part of its support for the reform of criminal proceedings, the Agency is focusing in particular on the situation of women and children. Another example is the projects under way in Lebanon and Jordan, which involve the review of national laws in the light of the Convention on the Rights of the Child, the improvement of detention conditions for children, the establishment of reintegration programmes and initial and further training of experts. Mention should also

<sup>440</sup> Juvenile Criminal Law Act, art. 25.

<sup>441</sup> Very serious criminal offences are those crimes for which the law applicable to adults stipulates a custodial sentence of at least three years, and also acts constituting grievous bodily harm, armed robbery or false imprisonment, where the minor has acted with particular unscrupulousness, for example, if his or her motive or modus operandi or the purpose of his or her act reveal criminal intentions; see Juvenile Criminal Law Act, art. 25.

<sup>442</sup> Juvenile Criminal Law Act, old art. 6, para. 2, repealed by Juvenile Criminal Procedure Code (RO 2010 1573; FF 2006 1057, 2008 2759), annex, section 1.

<sup>443</sup> See Juvenile Criminal Law Act, art. 48.

<sup>444</sup> See Committee on the Rights of the Child, general comment No. 10 (2007), Children's rights in juvenile justice, *Official Records of the General Assembly, Sixty-third Session, Supplement No. 41* (A/63/41), annex IV.

be made of South Africa, where alternative solutions have been found to custodial sentences, training courses have been organized and juvenile criminal procedure has been reformed in line with the Convention on the Rights of the Child.

## **C. Exploitation of children, including their physical and psychological recovery and social reintegration (arts. 32 to 36)**

### **1. Economic exploitation, in particular child labour (art. 32)**

#### *1.1 Principal legal framework*

445. Ordinance No. 5 on the Employment Act,<sup>445</sup> which entered into force on 1 January 2008, governs the protection of the health and safety of young workers and of their physical and mental development.

#### *1.2 Prevention of child labour abroad*

446. Switzerland is working to strengthen the role of ILO in efforts to combat child labour abroad. Since 1998, it has been making financial contributions to the International Programme on the Elimination of Child Labour<sup>446</sup> through the Swiss Agency for Development and Cooperation. It also supports the activities of OECD relating to child labour, is involved in efforts to combat child labour in various countries and participates in projects for street children, for example in Pakistan, Viet Nam, Bangladesh, Madagascar and Brazil. Lastly, Switzerland is working to promote child welfare indirectly by improving the working conditions of their parents.

447. The canton of Geneva has taken measures specifically aimed at women who beg with their young children and child beggars. The latter are also referred to the youth protection services, alone or with their parents. After a review of the situation, these services take the steps necessary to protect the child beggars. The aim is to prevent all active and passive begging involving children.

### **2. Drug use**

448. The preventive approach based on early detection and intervention was developed in the context of efforts to prevent cannabis use and of the “supra-f” research programme on the prevention of drug dependency. It was adopted in the third package of Confederation measures to reduce drug-related problems (ProMeDro III). In conjunction with specialized institutions, the Federal Office of Public Health supports communes and schools in the development of an effective mechanism for early detection and intervention that is tailored to specific situations and targets vulnerable children and adolescents. This involves creating work tools, documenting and disseminating examples of good practice, advising and monitoring schools and communes and organizing exchanges of experience. This work has led to the publication of brochures proposing an early detection and intervention model for young people at risk. The model is supplemented by recommendations and practical examples. In 2012, a publication on the current legal framework in this area for schools and communes is expected to be issued by the University of Lucerne.

449. As part of the supra-f research programme on the prevention of drug dependency, various forms of intervention for young people at risk have been successfully developed and tested. Since 1999, 12 supra-f day centres for young people at risk of marginalization

<sup>445</sup> RS 822.115.

<sup>446</sup> International Programme on the Elimination of Child Labour.

have been set up in Switzerland. Young people who do not find an apprenticeship have the opportunity to take motivational training.

450. With regard to primary prevention, the platforms [www.tschau.ch](http://www.tschau.ch) and [www.ciao.ch](http://www.ciao.ch) provide young people with a great deal of information on drugs, prevention and health, and allow them to ask questions anonymously and receive a response within three days.

451. With regard to youth organizations, the newly established Umbrella Association for Non-institutional Youth Activities (AFAJ) is involved in early detection and intervention, with the support of the Federal Office of Public Health.

452. Although the cantons are already taking part in many activities and programmes to prevent drug addiction, alcoholism and smoking, set out below, the impetus provided by the ratification of the Convention on the Rights of the Child has helped — directly or indirectly — to motivate the cantons to follow the Confederation's example by developing concepts and packages of measures specifically aimed at promoting children's health in Switzerland. Young people therefore have available to them a host of advice and treatment services, as shown by the following examples from different cantons:

- In the canton of Geneva, cooperation between the youth protection authority and hospitals or other institutions caring for young people at risk of addiction has been stepped up.
- The canton of Vaud provides financial support for a programme known as "Départ" (detection, prevention and care of children at risk of substance abuse), which promotes the networking of existing structures, thus offering specific assistance to young people with addiction problems. The programme targets young people directly but also their families and the experts in the network, including educators, social workers, doctors, psychiatrists and judges.
- The canton of Aargau has launched the "Fit at School" programme, the purpose of which is to combine health promotion measures with educational development.
- Another example is the addiction prevention programme developed by the canton of Solothurn, which targets young people specifically. The canton also prepares projects for early detection and intervention in schools and communes, which have been successively implemented since 2010.
- Since 2007 in the canton of Graubünden and 2009 in the canton of Jura, addiction advice sessions or participation in a prevention programme have been prescribed in some 50 per cent of cases where young people have been convicted of narcotics offences.

453. Cantonal advice and treatment services address the issue of drug use. Children who are at risk of drug addiction, dependency or abuse can therefore obtain information, assistance and advice from cantonal and communal support services.<sup>447</sup> The health services offer brochures and training courses, and also information sessions for schools, parents, apprentice instructors and all other interested parties.

454. Some cantons have even targeted preschool-age children. The canton of Aargau, for example, has a centre of expertise in early therapeutic education, which is responsible for early detection and prevention throughout the preschool period. In order to achieve the triple objective of early detection, prevention and learning, the centre contacts all the relevant partners (paediatricians, crèches, parental advice services, parent groups, etc.).

<sup>447</sup> See also the graph on the number of children reached by prevention campaigns in the canton of Lucerne, contained in the annex "Thematic and statistical overviews" (fig. 62).

2.1 *Drugs*<sup>448</sup>

455. *Response to paragraph 55 of the concluding observations.*

456. Various experts in the cantons believe that the figures available do not corroborate the Committee's conclusion that the use of illegal drugs by children and the sale of drugs to children are increasing. In their view, this perception is caused by a distortion of the situation in the media. The substance which is the number one problem among young people in Switzerland is alcohol.

457. Since 2002, the proportion of young people aged 15 who have tried cannabis has been falling.<sup>449</sup> According to the Health Behaviour in School-aged Children study 2010, 36 per cent of boys and 25 per cent of girls said they had already used cannabis. Eight years previously, these figures stood at 46 per cent for boys and 37 per cent for girls. Focusing on prevention, the Confederation set up a national anti-cannabis action programme for 2003 to 2007. Its primary objective was early identification of young people at risk. In that context, the "School and cannabis" guide was distributed to all upper-level classes in Switzerland. It is used as a basis for prevention and intervention measures at school. Another pilot project, entitled "Realize it", encourages adolescents and young adults to stop using drugs.

458. The Health Behaviour in School-aged Children study 2010 revealed the following results with regard to the use of other drugs: 3 per cent of girls and 2.4 per cent of boys aged 16 have used cocaine, 2.5 per cent have used magic mushrooms, 1.5 per cent ecstasy, 1 per cent LSD and 0.8 per cent heroin.

459. According to statistics, about 30 per cent of criminal convictions are for offences under the law on narcotics.<sup>450</sup>

460. The Central Office against Drug Trafficking is an integral part of the Federal Office of Police (fedpol). There are several agreements governing collaboration nationally and internationally. Since 2005, Switzerland has been a party to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. A new cooperation agreement signed on 1 March 2006 lays the foundations for operational and strategic cooperation with the European Police Office (Europol) and the States members of the European Union in efforts to combat serious international crime, particularly drug trafficking, trafficking in human beings and the smuggling of migrants.

461. Since the last report of Switzerland, a number of amendments have been made to the law. For example, the revised version of the road traffic law, which entered into force on 1 January 2005, introduced zero tolerance of driving under the influence of narcotics. On 30 November 2008, the people voted in favour of the revised version of the Narcotics Act,<sup>451</sup> which, as well as enshrining in law the principle of the four pillars<sup>452</sup> as a basis for drug policy and the conditions for administering heroin-based treatment to adults, has strengthened the measures taken for the protection of young people and has introduced a

<sup>448</sup> For more statistical data on this subject, see the annex "Thematic and statistical overviews" (figs. 55, 56 and 57).

<sup>449</sup> Addiction Switzerland: *Konsum psychoaktiver Substanzen Jugendlicher in der Schweiz – Zeitliche Entwicklungen und aktueller Stand. Resultate der internationalen Studie "Health Behaviour in School-aged Children" (HBSC)* (Use of psychoactive substances by adolescents in Switzerland – trends and current situation. Results of the international Health Behaviour in School-aged Children (HBSC) study), Lausanne 2011 (study available in German only).

<sup>450</sup> For statistics on criminal offences and penalties, see the annex "Thematic and statistical overviews" (figs. 38, 39 and 46).

<sup>451</sup> RS 812.121.

<sup>452</sup> The four pillars are prevention, therapy, risk reduction and punishment.

new legal basis for prevention and the medical use of cannabis. The initiative to decriminalize the use of hemp by adults was, however, rejected.

## 2.2 Alcohol<sup>453</sup>

462. The trend of alcohol consumption at a young age persists: in 2010, 2.6 per cent of boys aged 11 consumed alcohol every week. This proportion rises to 26.5 per cent among 15-year-old boys. For girls, the corresponding figures are 1 per cent at age 11 and 13 per cent at 15.

463. In 2010, 1.1 per cent of boys aged 11 said that they had been drunk more than once. This proportion increases to 27.4 per cent among boys aged 15. For girls, the percentages are lower: at age 11, 0.1 per cent said that they had been drunk more than once, and at 15, 21.2 per cent.<sup>454</sup> Hospital medical statistics give an annual overview of diagnoses in respect of persons treated in Swiss hospitals. Analysis of these statistics for the years 2006 and 2007 shows that around 2,100 people aged between 10 and 23 were treated in a Swiss hospital for alcohol intoxication or chronic alcoholism (primary or supplementary diagnosis). Some 60 per cent of these individuals were male. In 2005, Swiss hospitals recorded a daily average of around five adolescents or young adults who were treated for alcohol-related problems. In 2007, this figure increased to six. There are cases of alcohol dependency in people as young as 14 or 15.<sup>455</sup>

464. In 2004, a tax on spirit-based alcopops was introduced. Since this measure to protect young people was introduced, beer-based alcopops and flavoured beers have been taking over. Sales of mixed beer-based drinks are increasing rapidly, whereas those of spirit-based alcopops and wine remain at the same level.<sup>456</sup> In Switzerland, the sale of alcohol to persons under 16 is prohibited.<sup>457</sup> Regular checks are carried out in order to ensure compliance with this rule. Between 2000 and 2008, it is estimated that 36.5 per cent of children were still obtaining alcoholic drinks on request. Regular test purchases of alcohol help to ensure ongoing compliance with the rules for the protection of young people.

465. The National Alcohol Programme (PNA)<sup>458</sup> is aimed at providing a broad basis for Swiss policy on alcohol from 2008 to 2012. Its main objectives are to reduce problem

<sup>453</sup> For further statistical data, see the annex "Thematic and statistical overviews" (figs. 58, 59 and 60).

<sup>454</sup> B. Windlin, E. Kuntsche and M. Delgrande Jordan (2011): *Consommation de substances psychoactives des adolescents en Suisse – évolution récente et situation actuelle – Résultats de l'étude "Health Behaviour in School-aged Children" (HBSC)* (Use of psychoactive substances by adolescents in Switzerland – trends and current situation. Results of the Health Behaviour in School-aged Children (HBSC) study), Addiction Switzerland, Lausanne, December 2011.

<sup>455</sup> M. Wicki and G. Gmel (2009): *Alkohol-Intoxikationen Jugendlicher und junger Erwachsener. Ein Update der Sekundäranalyse der Daten Schweizer Spitäler bis 2007* (Alcohol intoxication in adolescents and young adults. An update of secondary analysis of data from Swiss hospitals up to 2007), Swiss Institute for the Prevention of Alcohol and Drug Problems (SFA), Lausanne, December 2009 (study available in German only).

<sup>456</sup> R. Niederer, K. Korn, D. Lussmann and M. Kölliker (2008): *Marktstudie und Befragung junger Erwachsener zum Konsum alkoholhaltiger Mischgetränke (Alcopops)* (Market study and survey of young adults regarding consumption of alcoholic mixed drinks (alcopops)), University of Applied Sciences and Arts Northwestern Switzerland, School of Business, Olten (study available in German only).

<sup>457</sup> At the federal level, alcohol consumption by young people is governed by the Federal Act on Alcohol (RS 680; arts. 41 and 42b), the Ordinance on Foodstuffs and Basic Necessities (RS 817.02; art. 11) and the Criminal Code (RS 311.0; art. 136). There are also relevant cantonal laws, in particular those relating to food and health.

<sup>458</sup> For further information, see [www.bag.admin.ch/themen/drogen/00039/00596/index.html?lang=fr](http://www.bag.admin.ch/themen/drogen/00039/00596/index.html?lang=fr), consulted on 22 March 2012.

drinking and diminish the negative impact of alcohol consumption on families and society. Priority is given to enforcing the existing laws, particularly with regard to youth protection.

466. The pilot project to prevent binge drinking among groups of young people,<sup>459</sup> developed by the Umbrella Association for Non-institutional Youth Activities, is aimed at preventing problem drinking in young people.

### 2.3 *Tobacco*<sup>460</sup>

467. Since 2000, the percentage of 14-to-65-year-olds who smoke has been falling. The same trend can be seen among young people. Between 2001 and 2010, the proportion of persons aged between 15 and 19 who smoked fell from 31 to 24 per cent. The various reasons for this change include the huge increase in tax on tobacco products, the fact that most of the resources set aside for prevention among young people have been allocated to prevention measures in schools, including a national competition, and the organization, between 2001 and 2010, of a national awareness-raising campaign<sup>461</sup> aimed at the public as a whole.

468. The No-Smoking Experiment, a national campaign under way since 2000, is aimed at persuading young people not to start smoking or at least delaying the time when they smoke their first cigarette.<sup>462</sup> In Switzerland, almost 20 per cent of pupils between the sixth and the ninth grades enter a competition to win travel vouchers. In recent years, the competition, which is organized in Switzerland and the rest of Europe, has proved to be an effective and attractive vehicle for addressing the subject of tobacco addiction in class. During the 2006/07 school year, an independent assessment of the effectiveness of the No-Smoking Experiment in the seventh and eighth grades was carried out. It showed that the campaign served primarily as a way of informing adolescents about the dangers of tobacco addiction and the benefits of not smoking.

469. A fund for sustainable prevention of tobacco addiction was set up in 2004 with a view to financing more specifically measures aimed at preventing smoking initiation, encouraging people to stop smoking and protecting the public from passive smoking. The fund, which is maintained through a tax of 2.6 centimes on every packet of cigarettes sold, has about 14.5 million francs at its disposal each year, which can be spent on preventing tobacco addiction.

### 2.4 *Other forms of dependency*

#### 2.4.1 Consumption of more than one psychoactive substance

470. Different psychoactive substances are often consumed in combination, according to the 2010 Health Behaviour in School-aged Children survey of Swiss school pupils. When asked about their consumption of alcohol, tobacco and cannabis, 15 per cent of young people aged 15 said that they had used at least two of these substances repeatedly (at least

<sup>459</sup> Prevention of excessive alcohol consumption, pilot project, summary project description of 26 April 2007, Petra Baumberger, head of health promotion project; see [www.sajv.ch/fr/projets](http://www.sajv.ch/fr/projets), consulted on 11 February 2010.

<sup>460</sup> For further statistical data, see the annex "Thematic and statistical overviews" (fig. 61).

<sup>461</sup> The programme, which was based on recommendations from WHO, the European Union and the Federal Commission on Tobacco-Related Problems, focused on structural measures. It was aimed chiefly at preventing smoking initiation, encouraging people to stop smoking and protecting the public from passive smoking.

<sup>462</sup> The earlier young people start smoking, the higher their risk of developing an early nicotine dependency and the more difficult it is for them to stop smoking subsequently.



three times) within the past month. The majority (57 per cent) used alcohol and tobacco repeatedly but did not use cannabis or had used it twice at the most.

#### 2.4.2 Use of medication

471. The Swiss Health Survey 2002 and 2007 revealed the following facts:<sup>463</sup> slightly fewer than half of the respondents (46.3 per cent) said that they had used at least one prescription or non-prescription medication over the seven days prior to the survey, which was conducted in 2007. Analgesics (20.1 per cent) and medications for high blood pressure (14.0 per cent) were the medications most commonly used at least once during the week prior to the survey. Some 6.4 per cent of respondents took cholesterol medication, 6.0 per cent heart medication and 5.2 per cent sleeping pills; the figures for other types of medication were 4 per cent or lower. A total of 7.9 per cent of the population used three or more of the 10 medications surveyed in 2007. Proportionally, more women than men use at least one medication (51.3 per cent compared with 41.0 per cent). In general, use increases dramatically with age, rising from 31.0 per cent among 15-to-34-year-olds to 76.6 per cent among persons aged 65 and over. The figures disaggregated by age and sex reveal certain characteristics: at all ages, overall use is higher among women, and the most pronounced difference with men is in the 20 to 35 age bracket, probably because of motherhood. At older ages, the level of medication use by men is very similar to that of women.

472. The taking of medication to induce a psychoactive effect seems to be a marginal phenomenon. The 2010 Health Behaviour in School-aged Children survey of Swiss school pupils showed that 3.5 per cent of girls and 3 per cent of boys had taken medication to get a “fix”.

#### 2.4.3 Weight: underweight – overweight

473. According to the Swiss Health Survey 2007, at least 81 per cent of 15-to-24-year-olds are a normal weight. Some 9 per cent are overweight and 2.4 per cent suffer from obesity. There are no significant differences from the figures for 2002. We do not have figures on underweight.

### 3. Sexual exploitation and sexual violence (art. 34)<sup>464</sup>

474. *Response to paragraph 53 of the concluding observations.*

#### 3.1 National measures

475. As part of efforts to combat trafficking in children,<sup>465</sup> the Swiss Coordination Unit against Trafficking in Persons and the Smuggling of Migrants (SCOTT) was established in

<sup>463</sup> Swiss Health Observatory (Obsan), *Consommation et coût des médicaments en Suisse. Analyse des données de l'Enquête suisse sur la santé 2002 et 2007 et des données de l'assurance obligatoire des soins de 1998 à 2009* (Use and cost of medication in Switzerland. Analysis of data from the Swiss Health Survey 2002 and 2007 and data from compulsory health insurance 1998–2009); see [www.obsan.admin.ch/bfs/obsan/fr/index/05/publikationsdatenbank.html?publicationID=4550](http://www.obsan.admin.ch/bfs/obsan/fr/index/05/publikationsdatenbank.html?publicationID=4550), consulted on 11 March 2012.

<sup>464</sup> See also the comments relating to article 19 of the Convention on the Rights of the Child. With regard to trafficking in children, child prostitution and child pornography, see also the report of the Swiss Government of 9 December 2011 on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

<sup>465</sup> See the report of the Swiss Government of 9 December 2011 on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, para. 92 *et seq.*

2002. Both in Switzerland and abroad, the Unit is the contact and coordination body for issues relating to trafficking in human beings and the smuggling of migrants. It coordinates the representation of the Confederation on national and international committees and supports public relations work.

476. With regard to efforts to combat child pornography,<sup>466</sup> the Cybercrime Coordination Unit Switzerland,<sup>467</sup> whose two principal objectives are to combat child pornography on the Internet and cybercrime generally, was set up on 1 January 2003. The Unit facilitates the work of the cantonal and federal criminal prosecution authorities through Internet searches to detect punishable abuse, legal reviews to determine whether any of the cases reported to it involve criminal activity, and analysis at the national level of the phenomenon of cybercrime. An electronic form is made available to members of the public who wish to report potentially criminal content. Between 2006 and 2010, the Unit referred 1,435 suspicious cases to the criminal prosecution authorities. On average, some 290 cases have been referred to the cantons each year.

477. Since 2002, the Federal Criminal Police have coordinated several international operations against child pornography, including a number of large-scale ones. For example, as part of one of these special operations and the follow-up measures taken between 2002 and 2007, almost 2,000 suspects were reported to the criminal prosecution authorities. Since data on child pornography are not collected systematically, there are currently no statistics in this area.

478. Because there has been a significant increase in the amount of evidence seized, action taken by cantonal police forces with regard to child pornography presents an ever greater challenge in terms of human resources. Moreover, the increasingly international nature of cases means that the criminal prosecution authorities need to step up their networking efforts in Switzerland and abroad. The Crimes against Children and Pornography Unit (Commissariat PP) and the Human Trafficking and Migrant Smuggling Unit (Commissariat TT) are thus building up their contacts at meetings and conferences, such as meetings of the Specialists Group on Crimes against Children of the International Criminal Police Organization (INTERPOL), and INTERPOL and Europol working groups on trafficking in persons and the smuggling of migrants. Officers of the Federal Criminal Police posted abroad support proceedings conducted on site and ensure the direct exchange of information.<sup>468</sup>

479. At the federal level, the Human Trafficking and Migrant Smuggling Unit and the Crimes against Children and Pornography Unit are responsible for facilitating investigations in specific cases. Annual progress reports for the sectors covered by the two Departments are published by the Federal Office of Police.

480. The national prevention campaign “Stop Child Pornography on the Internet”,<sup>469</sup> coordinated by NGOs, is aimed at preventing various criminal activities against children on the Internet. The primary aim of Swiss Crime Prevention, which is leading the campaign, is to make the consumption of child pornography a criminal offence; in addition to its awareness-raising activities, it has introduced measures aimed at children, adolescents,

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<sup>466</sup> Ibid., para. 97 *et seq.*

<sup>467</sup> See [www.cybercrime.admin.ch/content/kobik/fr/home.html](http://www.cybercrime.admin.ch/content/kobik/fr/home.html), consulted on 11 February 2010. A reporting form is available in four languages on the site for notifying the Cybercrime Coordination Unit of web pages with potentially criminal content. On average, 500 to 700 forms are sent to the Unit every month.

<sup>468</sup> Officers of the Federal Criminal Police are currently posted in Germany, Italy, France, the Netherlands, Brazil, Thailand, the Czech Republic and the United States of America.

<sup>469</sup> See [www.stopp-kinderpornografie.ch](http://www.stopp-kinderpornografie.ch), consulted on 11 February 2010.

parents and educators, but also at potential criminals. It has also taken the necessary measures to incorporate the topic and prevention measures into the activities of Swiss police forces for the long term.

481. In recent years, efforts have been under way to raise general awareness of the issue of trafficking in human beings, particularly for the purposes of sexual exploitation, in the context of asylum procedure, including in cases of unaccompanied minor asylum seekers. A representative has been appointed to the Asylum and Return Unit of the Federal Office for Migration to look into all suspected cases of human trafficking, advise and train partners in the Unit and liaise with the competent entities in the Federal Office of Police.

482. The Federal Act on Foreign Nationals,<sup>470</sup> which entered into force on 1 January 2008, continues to provide for the possibility of waiving the conditions for admission to Switzerland in extremely serious individual cases.<sup>471</sup> In general, the Foreign Nationals Act helps to reduce and even prevent criminal acts and abuse by providing for measures against breaches of the law, illegal labour and the smuggling of migrants. The new Act also provides for tougher penalties, a prohibition on paper marriage, and the abolition of the presumption of paternity in cases of annulled marriage. It also reminds transport companies of their duty of care.

483. With regard to protection against sexual violence and sexual abuse, it has already been stated in the comments on article 19 of the Convention that Switzerland signed the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) on 16 June 2010.<sup>472</sup> The purpose of the Convention is to guarantee the right of children and adolescents to normal sexual development; States parties are required to criminalize the sexual abuse of children, child prostitution and child pornography, and also the forced participation of children in pornographic performances. In accordance with the Convention, Switzerland will criminalize recourse, for remuneration, to sexual services provided by persons under 18 (criminal law currently refers to persons under 16).

484. Various activities are under way to prevent sex tourism involving children.<sup>473</sup> Among the different NGOs that have launched national long-term prevention campaigns to protect children from all forms of sexual exploitation, the Swiss Foundation for Child Protection deserves particular mention.<sup>474</sup> It set up ECPAT Switzerland,<sup>475</sup> which works to prevent the sexual exploitation of children and adolescents for commercial purposes, in close collaboration with the private sector, in particular the tourism sector, and the criminal prosecution authorities, governments and child protection organizations. It works in the Swiss tourism sector to prevent sex tourism involving children through the campaign [www.stopchildsextourism.ch](http://www.stopchildsextourism.ch)<sup>476</sup> and by making available a form for the reporting of suspected cases of sex tourism involving children; it also acts as a local representative of the organization The Code, which campaigns for the implementation of the Code of

<sup>470</sup> RS 142.20.

<sup>471</sup> Foreign Nationals Act, art. 30.

<sup>472</sup> See the report of the Swiss Government of 9 December 2011 on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, para. 37 *et seq.*

<sup>473</sup> *Ibid.*, para. 100 *et seq.*

<sup>474</sup> Overview at <http://kinderschutz.ch/cmsn/fr/category/rubriques/campagnes>, consulted on 15 February 2012.

<sup>475</sup> NGO End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes.

<sup>476</sup> As part of the campaign, conducted jointly with Germany and Austria, collaboration has been established between the State Secretariat for Economic Affairs, the Federal Office of Police, the Swiss Foundation for Child Protection and ECPAT Switzerland.

Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism.<sup>477</sup> The Confederation has provided financial support for ECPAT and the prevention campaigns, the Code of Conduct and the website. As far as they are able, the Federal Office of Police and the Crimes against Children and Pornography Unit actively support the campaigns of NGOs such as ECPAT.

485. Measures have also been taken at the cantonal level. For example, the “Online – click clever” prevention campaign, launched in the canton of Fribourg, aims to raise parents’ awareness of the risks associated with use of the Internet and modern means of communication and to show them how to protect their children against these risks.

486. In many cantons, police officers — or at least some of them — have also received special training on trafficking in children, hearings and care of child victims, juvenile criminal procedure and respect for the child’s dignity. In the canton of Geneva, for example, all police cadets are trained in human rights, various aspects of trafficking in human beings and respect for the rights and dignity of the child. The eight-hour course on children’s rights, which explains the rights of children as victims but also as perpetrators, is given by a police officer who studied the rights of the child at the Kurt Bösch University Institute. Further training courses are also organized regularly for police officers who have already received initial training. In 2010, for example, a conference was held on the potential impact of police interventions on minors. The members of the police force for juveniles receive even more comprehensive initial and further training. They are also specially trained to conduct hearings of children.

### 3.2 *Measures at the international level*

487. On 20 September 2011, the Council of States unanimously adopted the Amherd motion entitled “United Nations resolution to combat child pornography on the Internet”.<sup>478</sup> The National Council had already adopted the motion on 18 March 2011. The motion, as put forward by the proposer, instructs the Federal Council to take the following action:

- Include efforts to combat child pornography on the Internet on the agenda of the United Nations intergovernmental expert meeting on cybercrime to be held in January 2011.
- Consider the possibility of proposing a resolution at the United Nations on combating child pornography on the Internet. In that regard, Switzerland actively participated in the drafting and adoption by the United Nations Commission on Crime Prevention and Criminal Justice of a resolution entitled “Prevention, protection and international cooperation against the use of new information technologies to abuse and/or exploit children”. The resolution was finally adopted by the United Nations Economic and Social Council on 28 July 2011.

488. With regard to measures taken for the physical and psychological recovery and social reintegration of victims of sexual abuse, please refer to the comments relating to article 19 of the Convention.

<sup>477</sup> ECPAT Switzerland has successfully introduced the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism (available in English at [www.thecode.org](http://www.thecode.org), consulted on 15 February 2012). ECPAT Switzerland has also published a guide, *Protecting Children Online*, aimed at protecting children against cybercrime (see [www.ecpat.net/ei/Publications/ICT/Protecting\\_Children\\_Online\\_ENG.pdf](http://www.ecpat.net/ei/Publications/ICT/Protecting_Children_Online_ENG.pdf), consulted on 15 February 2012), and a practical guide, *Jugendschutz Online* (Youth Protection Online) (see [http://kinderschutz.ch/cmsn/files/jugendschutz\\_online\\_de.pdf](http://kinderschutz.ch/cmsn/files/jugendschutz_online_de.pdf), consulted on 15 February 2012).

<sup>478</sup> Amherd motion 10.4148: United Nations resolution to combat child pornography on the Internet.

### 3.3 *Criminal law provisions*

#### 3.3.1 Acquisition and possession of hard pornography

489. Since 1 April 2002, not only the acquisition but also the possession of child pornography has been a criminal offence.<sup>479</sup>

#### 3.3.2 Trafficking in human beings

490. Following the ratification of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography,<sup>480</sup> the definition of trafficking in human beings has been developed and amended. The scope of article 182 of the Criminal Code has thus been extended to cover trafficking in human beings for the purposes of labour exploitation or the removal of organs. The penalty established for child trafficking or human trafficking for commercial purposes has been increased and the scope of the provisions has been extended: they now cover isolated acts, and the first stage of the act, namely recruitment, is regarded as a completed offence.

#### 3.3.3 Criminal offences committed against minors abroad

491. The provisions of article 5 of the Criminal Code that entered into force on 1 January 2007 allow for the prosecution of persons who have committed serious sexual offences against minors, provided that such persons have their domicile or place of habitual residence in Switzerland. However, a decision was made not to base the new provisions on the principle of dual criminal liability and to provide for the application of the law of the place where the offence was committed, if it is more favourable.

#### 3.3.4 Internet crime

492. Switzerland ratified the Council of Europe Convention on Cybercrime, the primary purpose of which is to criminalize child pornography on the Internet and other networks, on 21 September 2011. The Convention, along with the necessary amendments to the law, entered into force for Switzerland on 1 January 2012.<sup>481</sup>

493. On 20 April 2009, at a European Union ministerial conference on the Safer Internet programme, Switzerland approved the Prague Declaration entitled “A new European approach for safer Internet for children”. The European Union programme is aimed at combating illicit content and conduct online, promoting a safe online environment and encouraging self-regulation measures such as the establishment of a database on new trends in the use of the Internet by children and their potential impact on children’s lives.

### 3.4 *Statistical data*<sup>482</sup>

494. Statistics show that 200 to 300 people are convicted each year of sexual acts against children under article 187 of the Criminal Code or article 156 of the Military Criminal Code. Most abuse takes place within the family or the circle of people close to the child. There are only isolated cases of forced prostitution of minors. No trafficking of children for this purpose has been recorded to date.

495. In the canton of Graubünden, for example, the annual number of victims of sexual acts where the perpetrator was a minor was between one and four in recent years. In total

<sup>479</sup> Criminal Code, art. 197, para. 3 *bis*.

<sup>480</sup> RS 107.2.

<sup>481</sup> RS 0.311.43.

<sup>482</sup> For further information, see annex “Thematic and statistical overviews” (figs. 63, 64 and 65).

— that is, including acts committed by adults — there have been on average 12 recorded cases per year of sexual acts committed against children aged between 21 months and 16 years. Between 2001 and 2009, there were five cases in the canton of sexual acts committed against dependants. The victims were young women aged between 14 and 17. During the same period, there were also eight cases of sexual coercion. The victims, all young women, were between 15 and 17 years old. During the same time period, 12 young girls or women were victims of rape, the youngest of whom was 12 years old. There was also one recorded case of a sexual act committed against a young woman of 17 who was incapable of determining her own will or of resisting. Under the laws in force in the canton, all children who are recognized by the authorities as victims of exploitation or sexual violence have access to appropriate assistance, whether it be counselling, therapy or support. Depending on the act committed (sexual harassment, sexual acts committed against a victim incapable of determining his or her own will or of resisting, sexual acts with children), juvenile perpetrators have been punished with a fine or community service and have also often been prescribed outpatient psychotherapeutic treatment. Adult perpetrators have been sentenced to community service, fines or immediate or suspended prison sentences, or have been ordered to have therapy.

496. Between 1996 and 2010, 6,918 persons were convicted of pornography offences under article 197 of the Criminal Code or other offences involving illicit pornography.

### 3.5 *Causes of child prostitution and other forms of child exploitation*

497. In October 2007, UNICEF Switzerland published a report entitled “La traite d’enfants et la Suisse” (Child trafficking and Switzerland). The study entitled “Situation et protection des victimes de la traite des personnes en Suisse” (Situation and protection of victims of human trafficking in Switzerland), produced by the Conference of Cantonal Ministers of Social Affairs,<sup>483</sup> was issued in the same year. It contains an analysis of the commitments entered into by Switzerland with regard to human trafficking and ways for the cantons to meet those commitments.

## 4. **Sale of, traffic in and abduction of children (art. 35)**

### 4.1 *Legal situation*

498. The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography<sup>484</sup> was adopted by the Federal Assembly on 24 March 2006. It was ratified on 19 September 2006 and entered into force for Switzerland on 19 October 2006. In connection with the ratification, the concept of trafficking in human beings,<sup>485</sup> which had previously applied only to trafficking for purposes of sexual exploitation, was extended to acts leading to labour exploitation and the removal of organs. It should be noted, *inter alia*, that penalties have been stiffened in cases of trafficking for commercial purposes or where the victim is a child.

499. The United Nations Convention against Transnational Organized Crime<sup>486</sup> and the two protocols thereto, namely the Protocol against the Smuggling of Migrants by Land, Sea and Air<sup>487</sup> and the Protocol to Prevent, Suppress and Punish Trafficking in Persons,

<sup>483</sup> The report is available on the Internet at [www.sodk.ch/fileadmin/user\\_upload/Fachbereiche/Opferhilfe/2007\\_Bericht\\_Menschenhandel\\_f.pdf](http://www.sodk.ch/fileadmin/user_upload/Fachbereiche/Opferhilfe/2007_Bericht_Menschenhandel_f.pdf), consulted on 28 February 2012.

<sup>484</sup> RS 0.107.2.

<sup>485</sup> Criminal Code, art. 182; RS 311.0.

<sup>486</sup> RS 0.311.54.

<sup>487</sup> RS 0.311.541.

Especially Women and Children,<sup>488</sup> were adopted by the Federal Assembly on 23 June 2006 and ratified on 27 October 2006. They entered into force for Switzerland on 26 November 2006.

500. Switzerland participated actively in the drafting of the Council of Europe Convention on Action against Trafficking in Human Beings, the purpose of which is to strengthen the protection afforded by the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Switzerland signed the Convention on 8 September 2008 and is currently working to introduce legal provisions on extra-procedural witness protection with a view to ratification.

#### 4.2 *Situation in Switzerland and measures taken*

501. Most cases of trafficking in women in Switzerland are for the purpose of sexual exploitation in prostitution. The vast majority of victims come from Eastern Europe (Hungary, Romania, Bulgaria). They are generally young women, mostly adults. Under-16s are the exception. Furthermore, cases of trafficking in children for the purpose of labour exploitation are rare and do not occur in either agriculture or industry, which could be explained by the fact that labour laws are rigorously applied and stringent checks are carried out.

502. Switzerland has, however, seen the emergence of a new phenomenon relating to minors: for some years, children mainly of Roma ethnicity and Romanian nationality have been brought to Switzerland for short stays in various cities, where they are forced to beg and to commit various offences. In collaboration with the city of Bern and the Swiss Coordination Unit against Trafficking in Persons and the Smuggling of Migrants (see next paragraph), the Union of Swiss Cities has drawn up an action plan for better protection of these children. The aim is to raise the awareness of the authorities and take action against this form of trafficking in minors in a coordinated manner and with the broadest possible support. Minors who are beggars or (petty) criminals are not regarded primarily as offenders but as victims of trafficking networks. Any measure aimed at resolving the problem must first and foremost protect the children in question against those responsible for trafficking, organize their voluntary return to their country of origin and reintegrate them into their society.

503. In September 2001, an interdepartmental working group produced a report on trafficking in human beings<sup>489</sup> that described the situation in Switzerland and recommended a number of measures. Following the release of the report, the aforementioned Swiss Coordination Unit against Trafficking in Persons and the Smuggling of Migrants was established in January 2003. As a permanent unit of the Federal Office of Police, it serves as a platform for information, coordination and analysis for the Confederation and the cantons with regard to trafficking in persons. As part of efforts to combat trafficking in persons and the smuggling of migrants, the Unit develops strategies and measures for prevention, suppression and protection, and coordinates the representation of the Confederation on national and international committees.

504. In March 2010, the Unit organized an international round table in Bern on links between child begging and trafficking in children. Following the conference, the Union of Swiss Cities set up a working group to propose measures against this form of exploitation and to discuss the establishment of a reception centre for Roma children caught begging or

<sup>488</sup> RS 0.311.542.

<sup>489</sup> The report is available on the Internet at the following address: [www.ksmm.admin.ch/content/dam/data/kriminalitaet/gesetzgebung/menschenhandel/ber-menschenhandel-f.pdf](http://www.ksmm.admin.ch/content/dam/data/kriminalitaet/gesetzgebung/menschenhandel/ber-menschenhandel-f.pdf), consulted on 28 February 2012.

stealing in Switzerland. In line with good practices developed abroad, the aim is to keep Roma children away from the influence of the adults who are exploiting them and refer them to the local institutions responsible for determining whether they can be returned to their families.

505. In November 2005, the Unit published a practical guide entitled “Cooperation mechanisms for combating trafficking in human beings”,<sup>490</sup> which presents tools for combating trafficking in human beings and contains recommendations on possible forms of cooperation with cantonal authorities and victim protection agencies.

506. With a view to strengthening its coordination function, the Confederation on 1 November 2003 set up the Paedophilia, Human Trafficking and Migrant Smuggling Unit (PMM) within the Federal Criminal Police. On 1 July 2007, the Unit was divided into two separate entities: the Crimes against Children and Pornography Unit and the Human Trafficking and Migrant Smuggling Unit. At that time, the number of staff also increased, from seven in the old Unit to a total of 13 in the two new Units.<sup>491</sup> In their specific areas of competence, the Units are also responsible for Switzerland’s relations with INTERPOL and Europol.

507. Operating as a national centre, the Human Trafficking and Migrant Smuggling Unit is involved in the efforts of the criminal prosecution authorities both in Switzerland and abroad to prevent and combat trafficking in human beings and the smuggling of migrants. It coordinates international procedures and maintains a network of contacts. It is also represented in expert bodies and national and international working groups and takes part in the technical meetings of INTERPOL, Europol and other partner agencies. Lastly, it ensures the exchange of information from police investigations between Switzerland and foreign countries, amounting to about 4,200 inputs per year.

508. Operating as a central office, the Crimes against Children and Pornography Unit coordinates and supports national and international police procedures and operations relating to illegal pornography and paedophilia. Its key tasks include, in particular, analysing and preparing files and data, including by viewing photographic and video material, evaluating their criminal nature and identifying the relevant jurisdiction; organizing and holding coordination meetings; collecting information; and guaranteeing the exchange of information from police investigations between the competent criminal prosecution authorities in Switzerland and abroad. The Crimes against Children and Pornography Unit also participates in working groups (INTERPOL, Europol, working group on child abuse) and is constantly building up its network of contacts at the national and international levels.

509. The Cybercrime Coordination Unit Switzerland serves as the central point of contact for those wishing to report suspect websites. After an initial review of the data, which it saves, the Unit communicates the information received to the competent criminal prosecution authorities in Switzerland and abroad. In its role as a national coordination service, the Unit is the main liaison point for its foreign counterparts. The reporting form, available on the Unit’s website, is an important and well-used tool, allowing anyone, anonymously if desired, to report websites that may give rise to criminal prosecutions.

510. The “Abduction Alert” project was launched pursuant to an agreement between the former head of the Federal Department of Justice and Police, Eveline Widmer-Schlumpf,

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<sup>490</sup> The practical guide is available on the Internet at the following address: [www.ksmm.admin.ch/content/dam/data/ksmm/dokumentation/leitfaden/leitfaden-f.pdf](http://www.ksmm.admin.ch/content/dam/data/ksmm/dokumentation/leitfaden/leitfaden-f.pdf), consulted on 28 February 2012.

<sup>491</sup> Eight staff in the Human Trafficking and Migrant Smuggling Unit, five in the Crimes against Children and Pornography Unit.



and the Chairman of the Conference of Cantonal Justice and Police Directors, the cantonal councillor Markus Notter. The initial mandate was to design a national alert system involving the criminal prosecution authorities of the Confederation and the cantons in cases of abductions of minors aged up to 18 and to complete the first stage of implementation by the end of 2009. A project team consisting of representatives of the federal and cantonal criminal prosecution authorities was set up. The national alert system concept was adopted by the steering committee on 15 October 2009 and the Abduction Alert system began operating on 1 January 2010. During the same year, the mobile telephone operators Swisscom, Orange and Sunrise became involved in the project, which now includes alerts by text message containing an Internet link through which the user can access a photo of the victim and, where appropriate, a photo of the suspected perpetrator. The idea of disseminating photos by multimedia message services (MMS), however, had to be abandoned because of network capacity issues.

511. As part of efforts to combat human trafficking, several cantons have introduced round tables to promote the conclusion of agreements between relevant agencies, such as the authorities responsible for criminal prosecution and migration issues, public services for victim support and NGOs. Such agreements make it possible to guarantee the protection of victims of human trafficking and the prosecution of the perpetrators. In 2010, 13 cantons had already concluded such agreements or were still working to establish them.

#### 4.3 *Projects to combat the sale of, traffic in and abduction of children abroad*

512. The Swiss Agency for Development and Cooperation is participating in two projects of this type in the Republic of Moldova and Serbia. In the Republic of Moldova, it provided funding of half a million francs between 2004 and 2006 for a Terre des hommes programme to protect children and adolescents against migration and child trafficking. At the local level, the programme is implemented through the establishment of committees for the promotion of children's rights and the protection of children at risk, awareness-raising among villagers and children themselves, and the care of victims of child trafficking, including repatriation, supervision and monitoring of their integration at school and in the family.

In Serbia, one NGO — to which the Agency provided funding of 380,000 francs for the period 2001 to 2006 — has paid particular attention to women and girls in its efforts to help victims of human trafficking with their social reintegration.

### 5. **Other forms of exploitation (art. 36)**

513. Please refer to the comments relating to articles 32, 34 and 35.

## D. **Children belonging to minorities (art. 30)**

### 1. **Travellers**

514. *Response to paragraph 60 of the concluding observations.*

515. Since the ratification of the Council of Europe Framework Convention for the Protection of National Minorities, which was concluded on 1 February 1995,<sup>492</sup> Swiss Travellers have been recognized explicitly as a national minority. Switzerland has also

<sup>492</sup> RS 0.441.1; the Framework Convention entered into force for Switzerland on 1 February 1999. The current situation was recently set forth in the Swiss Government's third report on the implementation of the Council of Europe Framework Convention for the Protection of National Minorities of January 2012.

undertaken to create a favourable environment for the defence and development of the culture of national minorities.

516. To date, the “Ensuring the Future of Swiss Travellers” foundation, established by the Confederation in 1997, has only marginally addressed issues relating to school education, because nowadays the school authorities are generally understanding and compassionate towards Travellers. In winter, children go to school in the place where they are staying. In summer, they are excused from classes but continue to be monitored by teachers, who send them lessons and correct their homework. Many projects and programmes in this area have been initiated in recent years.<sup>493</sup> In spite of these efforts, the half-year absences lead to gaps in the children’s education, with resulting disadvantages later on when they are looking for apprenticeships. The foundation therefore seeks solutions by proposing concrete measures that take account of the specific educational needs of young Yenish. The vast majority of Travellers are satisfied with the schooling which their children receive in the various cantons.<sup>494</sup>

517. At the conference on the situation of Travellers held in Bern on April 2011, the Yenish represented on the board of the “Ensuring the Future of Swiss Travellers” foundation emphasized that the way of life of Swiss Travellers could be preserved only if the younger generation in the majority population showed the necessary understanding. They believe that State schools should also address the subject of minority communities in Switzerland and that the history and culture of Travellers should therefore form part of school teaching at different levels. The “Ensuring the Future of Swiss Travellers” foundation is currently working on the concept of dossiers on the subject for schools, which it will make available to teachers through the Internet.

518. As part of National Research Programme 51, “Integration and Exclusion”,<sup>495</sup> more than 100 researchers participating in 37 projects — three of which focused on Travellers<sup>496</sup> — have studied the way in which social, institutional, cultural and economic mechanisms of integration and exclusion come into being and take root.

## 2. Languages in Switzerland

519. According to the census carried out in 2000, the distribution of languages in Switzerland is as follows:<sup>497</sup> German 63.7 per cent, French 20.4 per cent, Italian 6.5 per cent, Romansh 0.5 per cent, and non-national languages 9 per cent.

520. Today, each of the three main linguistic communities in Switzerland has two television channels, which are required to take into account the interests of the Romansh community by broadcasting a number of programmes in the Romansh language.

<sup>493</sup> See the Swiss Government’s third report on the implementation of the Council of Europe Framework Convention for the Protection of National Minorities of January 2012, para. 107 *et seq.*

<sup>494</sup> *Ibid.*, para. 107.

<sup>495</sup> See [www.pnr51.ch](http://www.pnr51.ch), consulted on 28 February 2012.

<sup>496</sup> While the first project focused on the forms and phases of exclusion and integration of the Yenish, Roma and Sinti from 1800 to the present, the second project related to the Yenish in the communes of Graubünden in the nineteenth and twentieth centuries. The third project focused on the phenomenon of stigmatization and case management in the context of the Association for Traveller Children, which, from 1926 to 1973, systematically took children of Yenish origin away from their parents and placed them with third parties.

<sup>497</sup> See also *Le paysage linguistique en Suisse* (The linguistic landscape in Switzerland) on the website of the Federal Statistical Office: [www.bfs.admin.ch/bfs/portal/fr/index/themen/01/22/publ.html?publicationID=1738](http://www.bfs.admin.ch/bfs/portal/fr/index/themen/01/22/publ.html?publicationID=1738), consulted on 28 February 2012.

521. The Federal Act on the National Languages and Understanding among the Linguistic Communities (Languages Act)<sup>498</sup> has been in force since 1 January 2010. The Act governs the use of the official languages by the Confederation and provides for various measures to strengthen quadrilingualism and promote exchanges among the linguistic communities. Under the new Act, the Confederation is responsible for encouraging school exchanges.

522. The Research Centre on Multilingualism<sup>499</sup> is the cornerstone of the Confederation's promotion of languages. The Centre, which is attached to the University of Fribourg and the University of Teacher Education Fribourg, opened in 2011. It is responsible for coordinating and managing applied research in the field of languages and multilingualism and is also working to establish a network of Swiss research institutions in all the country's linguistic regions, as well as a documentation centre. The Centre also offers an information service on multilingualism that is open to the public.

523. With regard to schools, the inter-cantonal agreement on the harmonization of compulsory education governs the teaching of languages, and in particular the learning of a second national language. There are national educational objectives that consist of basic skills both in the language of education and in foreign languages. The acquisition of these basic skills is verified through random checks. In recent years, several cantons have developed positive measures to promote multilingualism among teachers and pupils.<sup>500</sup>

524. In its strategy for the development of language teaching, dating from 2004, the Swiss Conference of Cantonal Ministers of Education decided that a first foreign language should be taught at the latest from the third grade and that a second foreign language should be added from the fifth grade at the latest. These foreign languages are either a national language or English. At the end of compulsory schooling, pupils are expected to have acquired comparable skills in the two languages. To facilitate the achievement of these objectives, the Confederation has supported many projects for the development of innovative teaching methods. These measures are aimed at encouraging the learning not only of a second national language but also of Italian as the third national language. With the entry into force of the inter-cantonal agreement on the harmonization of compulsory education, the cantons are required to offer basic teaching of the third national language.

525. Since non-formal education contributes significantly to the integration of foreign children, services such as assistance in finding apprenticeships have been introduced to complement the sociocultural activities on offer to young migrants. Centres for non-institutional youth activities also offer them the opportunity to meet young people in the same situation, while counsellors provide a sympathetic ear. Intercultural knowledge helps the counsellors in their role as mediators and is also vital for young people, who have to develop their tolerance and understanding of other cultures and other ways of life. The various youth organizations in Switzerland, such as the Swiss Guide and Scout Movement and the Swiss National Youth Council, are currently making efforts to encourage participation by young people from immigrant backgrounds.

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<sup>498</sup> RS 441.1.

<sup>499</sup> See [www.centre-plurilinguisme.ch/centre-de-compétence](http://www.centre-plurilinguisme.ch/centre-de-compétence), consulted on 12 April 2012.

<sup>500</sup> An overview is contained in the Swiss Government's third report on the implementation of the Council of Europe Framework Convention for the Protection of National Minorities of January 2012, para. 98 *et seq.*

## IX. Optional Protocols to the Convention on the Rights of the Child

526. *Response to paragraph 61 of the concluding observations.*

527. In accordance with paragraph 61 of the concluding observations, Switzerland has ratified and implemented the Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict<sup>501</sup> and on the sale of children, child prostitution and child pornography.<sup>502</sup> After ratifying the first of the two Protocols on 26 June 2002, Switzerland submitted its initial national report under that Protocol on 30 June 2004. The second Protocol was ratified on 19 September 2006<sup>503</sup> and the corresponding report was submitted on 9 December 2011.

### A. Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

528. In addition to the information provided in relation to articles 38 and 39 of the Convention, the present report sets out, in accordance with article 8, paragraph 2, of the Optional Protocol, the efforts made by Switzerland with regard to the involvement of children in armed conflict. Only the changes that have taken place since the submission of the initial report on 30 June 2004, to which the Committee is referred, are included here.

#### 1. Information relating to the various articles of the Optional Protocol

##### 1.1 Articles 1 and 2

529. As indicated above in relation to article 38 of the Convention, articles 7 and 11 of the Armed Forces Act<sup>504</sup> have been revised.<sup>505</sup> The minimum age for recruitment remains 19; however, those who wish to start earlier for personal reasons may enter recruit school from their eighteenth birthday.<sup>506</sup>

##### 1.2 Article 3

530. The decision made in 2002 to raise to 18 the age at which soldiers may be voluntarily recruited<sup>507</sup> remains in force. There are no plans to change it.

<sup>501</sup> RS 0.107.1.

<sup>502</sup> RS 0.107.2.

<sup>503</sup> See the comments under section B and the previous information relating to article 35 of the Convention on the Rights of the Child.

<sup>504</sup> RS 510.10.

<sup>505</sup> Conscription and recruitment have not been substantively changed, particularly with regard to the age restriction. See the dispatch of 19 August 2009 concerning the amendment of the Federal Act on the Armed Forces and the Military Administration (FF 2009 5331) and the dispatch of 7 March 2008 concerning the amendment of military law (Federal Act on the Armed Forces and the Military Administration and Federal Act on Military Information Systems) (FF 2008 2841).

<sup>506</sup> Art. 8 (c) of the Ordinance on Recruitment (RS 511.11); art. 27, para. 3, of the Ordinance on Compulsory Military Service (RS 512.21).

<sup>507</sup> See para. 29 *et seq.* of the report of Switzerland on the Optional Protocol.

### 1.3 Article 4

531. Since there are no armed groups active in Swiss territory, there are also no children enlisted in such groups. The legal provisions mentioned in the initial report<sup>508</sup> that would be applied in the event of a violation of the Optional Protocol have not been amended.

### 1.4 Article 5

532. Regarding amendments to Swiss law and the ratification of international treaties, please refer to the information previously provided<sup>509</sup> on the various thematic areas of the Convention on the Rights of the Child.

### 1.5 Articles 6 and 7

533. Please refer first of all to the initial report of Switzerland.

534. Continuing the humanitarian tradition of Switzerland, the Swiss Agency for Development and Cooperation is focusing its new policy on particularly vulnerable persons and groups, including children, adolescents and young adults. In order to promote the advancement of these generations, which are particularly important for the country's future, Switzerland is supporting many projects aimed at achieving a general improvement in children's living standards. It considers it important to provide overall help to children rather than focusing too narrowly on certain issues, which could lead to the neglect of other issues. Switzerland attaches particular importance to protecting and assisting children during armed conflicts, preventing their enlistment, and also demobilizing and reintegrating child soldiers.

535. In that connection, Switzerland regularly provides substantial contributions to the partner humanitarian agencies of the United Nations, such as UNICEF, UNHCR, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and WFP, and also ICRC. The Office of the Special Representative of the Secretary-General for Children and Armed Conflict also receives financial support from Switzerland. This support, which includes the services of an expert, has amounted to 205,047 francs between 2010 and the present. In addition, Switzerland provides financial support and the assistance of experts for a number of specific projects organized by these partners, among others, and also conducts its own programmes.<sup>510</sup>

## 2. Position with respect to the concluding observations of the Committee on the Rights of the Child of 27 January 2006 on the initial report of Switzerland regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

### 2.1 Response to paragraph 8 of the concluding observations

#### 2.1.1 Subparagraph (a)

536. Switzerland has implemented this recommendation. As there were many objections to the criterion of a "close link", the Federal Council decided to remove it when the laws on the implementation of the Rome Statute of the International Criminal Court were revised. A limited principle of universality has been established for prosecutions of war crimes, under which the suspected perpetrator must be present in Switzerland and there must be no

<sup>508</sup> See para. 34 *et seq.* of the report of Switzerland on the Optional Protocol.

<sup>509</sup> See para. 14 *et seq.*

<sup>510</sup> See also figure 1 in the annex "Thematic and statistical overviews".

prospect of extraditing him or her. Subsidiary procedural law measures must guarantee that Switzerland can suspend or terminate proceedings by default where there is no link with our country and no chance of success. There must, however, be a possibility of taking steps to preserve evidence so as to ensure that Switzerland does not give war criminals safe haven. The revision of article 10, paragraph 1 *bis* to 1 *quater*, of the Military Criminal Code<sup>511</sup> was approved by the National Council with minor modifications in spring 2009 and entered into force on 1 January 2011.

537. The revised version of the laws implementing the Rome Statute of the International Criminal Court, which entered into force on 1 January 2011, establishes that the offence of “recruitment or use of child soldiers” is a war crime under the Criminal Code and the Military Criminal Code.<sup>512</sup> The provision punishes anyone who conscripts or enlists children under 15 into the armed forces or armed groups or makes them participate in armed conflict.

#### 2.1.2 Subparagraph (b)

538. In cases where the jurisdiction of Switzerland extends to persons who have committed such crimes, criminal proceedings may be instituted, even if the victim is abroad.

#### 2.1.3 Subparagraph (c)

539. If persons under 18 were recruited in Switzerland for enlistment in armed forces or armed groups abroad or to participate in hostilities abroad, the criminal law provisions referred to in the initial report of Switzerland<sup>513</sup> would apply, in particular articles 271, 180 *et seq.* and 299 *et seq.* of the Criminal Code.<sup>514</sup>

### 2.2 *Response to paragraph 10 of the concluding observations*

540. As already mentioned, the number of asylum seekers in Switzerland is declining. Between 2003 and 2006, the number of unaccompanied minor asylum seekers fell from 1,442, or 6.9 per cent of asylum applications filed, to 257, or 2.4 per cent of applications. This trend continued in subsequent years: in 2010, 235 unaccompanied minor asylum seekers were registered in Switzerland, which represented 1.5 per cent of applications filed. In 2008, 95.5 per cent of such minors were aged 15 to 18; in 2010, the figure was 82.8 per cent.

541. The physical and mental care of unaccompanied minor asylum seekers is commented on below and in chapter VIII.

#### 2.2.1 Special procedure and immediate assistance to children who may have participated in armed conflict

542. At the time of registration, the competent services conduct an in-depth interview with every asylum seeker so as to determine the reasons for his or her asylum application and the reasons why he or she has come to Switzerland. The question of whether or not the person has participated in armed conflict is raised at that time. In addition to the interview, a medical examination is carried out and, if emergency care is necessary, it is provided immediately.

<sup>511</sup> RS 321.0.

<sup>512</sup> Criminal Code, art. 264f, and Military Criminal Code, art. 112b.

<sup>513</sup> See para. 35 *et seq.* of the report of Switzerland on the Optional Protocol.

<sup>514</sup> RS 311.0.

543. For each unaccompanied minor asylum seeker, the authority appoints a responsible adult, guardian or trustee<sup>515</sup> with basic legal knowledge, who supports and assists the minor throughout the asylum procedure. This person is involved in the entire procedure and is responsible for the protection of the minor under civil law. Where necessary, he or she arranges professional psychological and medical care and ensures the social integration of the minor through schooling, training or other measures. The Red Cross Outpatient Clinic for the Victims of Torture and War<sup>516</sup> offers medical and psychotherapeutic care and advice on social issues in Bern-Wabern, Zurich, Lausanne and Geneva.

544. Pursuant to the applicable directives of the Federal Office for Migration,<sup>517</sup> unaccompanied minor asylum seekers must be housed in conditions appropriate to their age and maturity. Thus the youngest are placed with family members, in professional host families or in other cantonal facilities, such as children's homes. The authorities place older minors in registration and processing centres, taking into account as far as possible their linguistic and cultural background, their sex and any travelling companions they may have.

#### 2.2.2 Training of persons who care for such children

545. If initial contact with a child gives reason to believe that he or she may have come from a war zone, the assistance of an expert from the Federal Office for Migration is sought. These experts are trained in psychology and therapeutic teaching. They are available throughout the procedure to provide information and general support. Particularly sensitive cases are handled directly by experts from the Federal Office for Migration throughout the procedure. The cantons are responsible for training the people that provide this support; the Federal Office for Migration pays a share of the cost.

#### 2.2.3 Statistics

546. There are no statistics relating specifically to child refugees, asylum seekers or migrants who may have been involved in armed conflict. However, there are statistics on unaccompanied minor asylum seekers, disaggregated by sex, age and origin.<sup>518</sup>

#### 2.3 *Response to paragraph 11 of the concluding observations*

547. The previous comments relating to articles 6 and 7 of the Optional Protocol mention some of the projects and bilateral and multilateral activities to which Switzerland makes a significant contribution.

#### 2.4 *Response to paragraph 12 of the concluding observations*

548. The Federal Social Insurance Office, through its family, generations and society unit, supports projects aimed at raising public awareness of the rights of the child. In practice, it collaborates closely with NGOs, such as the Child Rights Network Switzerland. The subject of human rights is also included in education programmes; school education falls within the competence of the cantons, which include theoretical and practical human rights teaching in their curricula.

<sup>515</sup> The responsible adult assists the minor during the procedure at the airport or in the registration and procedure centre, and also during the cantonal procedure. See art. 17, para. 3, of the Asylum Act (RS 142.31) and art. 7 of Asylum Ordinance No. 1 on Procedural Matters (RS 142.311).

<sup>516</sup> See [www.redcross.ch/activities/health/ambu/index-fr.php?](http://www.redcross.ch/activities/health/ambu/index-fr.php?), consulted on 11 February 2010.

<sup>517</sup> See [www.bfm.admin.ch/content/bfm/fr/home/dokumentation/rechtsgrundlagen/weisungen\\_und\\_kreisschreiben.html](http://www.bfm.admin.ch/content/bfm/fr/home/dokumentation/rechtsgrundlagen/weisungen_und_kreisschreiben.html), consulted on 11 February 2010.

<sup>518</sup> See statistics in the annex "Thematic and statistical overviews" (figs. 32 and 33).

549. With regard to the information provided on military service, the following points should be made. In the year of their sixteenth birthday, all Swiss nationals, male and female, receive written information about military service, civilian service, civil defence and the Red Cross Service. This advance information takes the form of brief factual descriptions presenting the various service options. The same applies on the information day, owing to the shortage of time available. International humanitarian law and human rights are compulsory subjects for new recruits to the army. Interactive training modules on CD-ROM have been developed for military training in army camps.

2.5 *Response to paragraph 13 of the concluding observations*

550. Switzerland has published its initial report on the Optional Protocol. Moreover, the report and the Committee's concluding observations can be downloaded in all the national languages on the website of the Federal Department of Foreign Affairs.<sup>519</sup>

**B. Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography**

551. On 19 September 2006, Switzerland deposited its instruments of ratification of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, which entered into force for Switzerland on 19 October 2006.

552. The definition of the criminal offence of trafficking in human beings was revised following the ratification of the Optional Protocol. Penalties are now established for trafficking not only for the purpose of sexual exploitation but also for the purpose of labour exploitation or removal of an organ.<sup>520</sup> A stiffer penalty is incurred if the victim is a minor or if the perpetrator is a professional trafficker in human beings. The scope of criminal law has been extended to the perpetrators of isolated acts, and the preparatory act of recruiting a person for trafficking purposes is considered a completed offence.

553. The initial report of Switzerland on the Optional Protocol was submitted to the Committee on 9 December 2011.

**X. Dissemination of documentation**

554. *Response to paragraph 62 of the concluding observations.*

555. The information relating to articles 42 and 44 of the Convention and to the concluding observations on the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict indicates the various measures taken. In summary, it can be said that, through "children's rights" funding, the Federal Social Insurance Office has been able to support various organizations carrying out projects to raise awareness of children's rights and the Convention on the Rights of the Child. The Office has also concluded a service contract with the Child Rights Network Switzerland under which the latter will ensure coordination among NGOs working in this area and provide them with information. The Office also provided financial support for the event on 26 March 2007 organized by the Child Rights Network Switzerland to mark the tenth anniversary of the Convention in Switzerland. Lastly, the Office organized and funded

<sup>519</sup> See [www.eda.admin.ch/eda/fr/home/topics/intla/humri/humrtr/humrep/childr.html](http://www.eda.admin.ch/eda/fr/home/topics/intla/humri/humrtr/humrep/childr.html), consulted on 30 September 2011.

<sup>520</sup> Criminal Code, art. 182.



courses and information sessions on the initial report. It has also planned activities in connection with the publication of the present report.

556. Lastly, the reports on the Convention on the Rights of the Child and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the summary of the initial report of Switzerland and the concluding observations of the Committee on the Rights of the Child can be downloaded on the website of the Federal Department of Foreign Affairs.<sup>521</sup>

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<sup>521</sup> See [www.eda.admin.ch/eda/fr/home/topics/human/humri/humtr/humrep/childr.html](http://www.eda.admin.ch/eda/fr/home/topics/human/humri/humtr/humrep/childr.html), consulted on 29 February 2012.