



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 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Initial reports of States parties due in 2008

Switzerland*

[16 December 2011]

* 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>
I. Introduction.....	1–5	3
II. Part One: General information.....	6–10	3
A. Definition of the child in Swiss law	6	3
B. Applicability of the Protocol in Switzerland	7–8	4
C. Implementation of the Protocol	9–10	4
III. Part Two: Articles of the Optional Protocol.....	11–151	4
A. Prohibition on the sale of children, child pornography and child prostitution (art. 3).....	12–40	5
B. Criminal justice process (arts. 4–7)	41–66	9
C. Protection of the rights of child victims (arts. 8 and 9, paras. 3 and 4)	67–85	13
D. Preventive measures (art. 9, paras. 1 and 2)	86–122	17
E. International assistance and cooperation (art. 10)	123–149	24
F. Conclusions	150–151	27
 Annexes		
I. Statistics		29
II. Legislation		31

I. Introduction

1. On 25 May 2000, the United Nations General Assembly adopted the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography,¹ which complements the Convention of 20 November 1989 and aims at improving the protection afforded to children in the areas it covers. Switzerland signed the Protocol on 7 September 2000 during the Millennium Summit in New York and deposited its instrument of ratification on 19 September 2006. The Protocol entered into force for Switzerland on 19 October 2006.

2. The Federal Council has the honour to submit to the Committee on the Rights of the Child the initial report of Switzerland prepared pursuant to article 12, paragraph 1, of the Protocol. The report has not been published until now because it had to be coordinated with the second, third and fourth periodic reports of Switzerland on the implementation of the Convention on the Rights of the Child. It should be read together with the core document, which constitutes the first part of the reports of Switzerland.² It covers the situation in Switzerland up to May 2011.

3. The present report describes the measures taken in the areas of legislation, jurisprudence, administration and others related to the implementation of the rights guaranteed under the Protocol. The content, format and structure of this detailed report on the provisions of the Protocol are in line with the Committee's revised guidelines regarding initial reports to be submitted by States parties under the Optional Protocol (CRC/C/OPSC/2 of 3 November 2006).

4. The report was prepared in cooperation with the various departments of the Swiss Federal Administration and was submitted for consultation to the cantons, several conferences of cantonal directors and non-governmental organizations (NGOs). It was approved by the Federal Council on 9 December 2011.

5. The report will be published in French, German and Italian and will be made available on the website of the Federal Department of Foreign Affairs.³

II. Part One General information

A. Definition of the child in Swiss law

6. The definition of the child in Swiss law is identical to that in the Convention on the Rights of the Child. Under Swiss family law, every person is considered to be a child until the age of 18, when he or she attains majority (Swiss Civil Code, art. 14⁴).

¹ Classified compilation of Swiss Federal Legislation (SR) 0.107.2, http://www.admin.ch/ch/f/sr/c0_107_2.html.

² HRI/CORE/1/Add.29/Rev.1.

³ <http://www.dv.admin.ch>.

⁴ SR 210.

B. Applicability of the Protocol in Switzerland

7. With regard to the relationship between the Protocol and domestic law, Switzerland is a State with a monistic tradition. As such, all international treaties ratified by Switzerland, including the Optional Protocol, form an integral part of the domestic legal order as of their entry into force for Switzerland, and there is no need to enact a specific law in order to incorporate them into national law. The Protocol entered into force for Switzerland on 19 October 2006.

8. The rights arising from an international treaty may be asserted before the Swiss authorities from the date of the treaty's entry into force, insofar as the relevant provisions are directly applicable. Provisions are directly applicable if, overall and in the light of both the subject and the purpose of the Protocol, they are worded unambiguously and in such a way that they can be applied to a specific case and can form the basis of a decision. Furthermore, such provisions must relate to the rights and duties of the individual and must not be addressed to the legislator but rather to the authorities responsible for applying the law,⁵ which decide on whether particular provisions may be invoked.

C. Implementation of the Protocol

9. The implementation of the Protocol in Switzerland is consistent with the general principles of the Convention on the Rights of the Child — non-discrimination (art. 2), the best interests of the child (art. 3), the inherent rights to life, survival and development of the child (art. 6) and respect for the views of the child (art. 12) — since those principles are contained in all Swiss legislation. The reports of the Swiss Government on the implementation of the Convention on the Rights of the Child contain a detailed explanation of the principles.⁶

10. Several mechanisms are involved in the implementation of the Protocol at the federal, cantonal and local levels. The different levels of competence derive from the country's federal structure. The initial report of Switzerland on the implementation of the Convention contains a detailed description of this system.⁷ Specifically, the cantons have the competence to organize their own criminal and criminal prosecution authorities. They also, in principle, have competence in the area of child protection.

III. Part Two Articles of the Protocol

Preliminary note

11. In this report, Switzerland has used the headings in accordance with the Committee's revised guidelines regarding initial reports to be submitted by States parties.

⁵ In accordance with Federal Court judgements 124 III 90 and 129 II 249, p. 257.

⁶ <http://www.unhchr.ch/tbs/doc.nsf>.

⁷ <http://www.unhchr.ch/tbs/doc.nsf>.

A. Prohibition of the sale of children, child pornography and child prostitution (art. 3)

1. General background

12. In recent years, legislation has been amended on several occasions with a view to improving the protection afforded to children who are the victims of crime. The scope of application of the Swiss Criminal Code⁸ has been expanded through article 5, paragraphs 1 and 3, of the Code (offences against minors abroad), which means that offences committed abroad — including child sexual abuse — can be prosecuted in Switzerland to a greater extent than before. A number of other measures worth mentioning include partial reviews of the Criminal Code, which have extended the statute of limitations for sexual acts with children and established the criminal nature of the acquisition and possession of material depicting violence and hard-core pornography, as well as the review of the Victim Support Act,⁹ which established favourable conditions for improvements specifically related to children in the context of criminal prosecutions. The 2001 Act on the Hague Convention on Adoption¹⁰ has given rise to many improvements in the area of international adoption.

2. Criminal liability for the sale of children (art. 3, para. 1 (a) (i))

13. Under article 3, paragraph 1 (a) (i), of the Protocol, offering, delivering or accepting a child for the purpose of sexual exploitation of the child, transfer of the organs of the child or engagement of the child in forced labour shall be covered under the criminal law of States parties.

14. The definition of human trafficking had to be expanded for the Protocol to be implemented, since only trafficking for the purpose of sexual exploitation had been considered an offence under the former article 196 of the Criminal Code. Article 182 of the Criminal Code was consequently expanded and reworded. Under article 182 of the revised Criminal Code, any person who as a supplier, intermediary or customer engages in the trafficking of a human being for the purpose of sexual exploitation, exploitation of his or her labour or for the purpose of removing an organ is liable to a custodial sentence or to a monetary penalty. The soliciting of a person for such purposes is equivalent to trafficking (Criminal Code, art. 182, para. 1). If the victim is a minor or if the offender acts for commercial gain, the penalty is a custodial sentence of not less than 1 year (Criminal Code, art. 182, para. 2). A monetary penalty must also be imposed in every case (Criminal Code, art. 182, para. 3). There are thus longer penalties for trafficking in children and child exploitation for commercial purposes.

15. The requirements of the Protocol in respect of criminal provisions covering the sale of children, as set out in article 3, paragraph 1 (a) (i), are thus fulfilled.

3. Criminal liability for mediation for illegal adoptions (art. 3, para. 1 (a) (ii))

16. In accordance with article 3, paragraph 1 (a) (ii) of the Protocol, States parties are required to ensure that there are explicit criminal provisions covering improperly inducing consent, as an intermediary, for the adoption of a child.

⁸ SR 311.0.

⁹ Federal Act of 23 March 2007 on the Provision of Support to Victims of Crime (Victim Support Act, SR 312.5).

¹⁰ Federal Act of 22 June 2001 on the Hague Convention on Adoption and on Measures to Protect Children in International Adoption Cases (SR 211.221.31).

17. The Protocol does not define the expression “improperly inducing” but the definition derives from the reference to “international legal instruments”, which include in particular the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption. Under article 32 of that Convention, only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid. Anything beyond that is improper. In accordance with the note from the Federal Council of 19 May 1999 concerning the ratification of the Hague Convention on Adoption,¹¹ it is a matter of prohibiting not only services for cash and other gifts but also non-financial benefits where they are considered improper within the meaning of article 32 of the Hague Convention on Adoption.

18. Article 24 of the Swiss Federal Act on the Hague Convention on Adoption and on Measures to Protect Children in International Adoption Cases¹² reiterates this requirement. Penalties apply to anyone who arranges for a child to be entrusted to them with a view to adoption by intentionally providing undue material gain or other advantages to the biological parents or other guardians or to an authority or persons involved in the adoption procedure.

19. With the entry into force of the Act on 1 January 2003, Switzerland has fulfilled its obligations in terms of punishability as set out in article 3, paragraph 1 (a) (ii) of the Protocol.

4. Criminal liability for child prostitution and child pornography (art. 3, paras. 1 (b) and (c), 2 and 3)

20. Pursuant to article 3, paragraph 1 (b) of the Protocol, States parties are required to ensure that offering, obtaining, procuring and providing a child for child prostitution, as defined in article 3, are covered under their criminal law.

21. Article 195 of the Criminal Code deals specifically with child prostitution. Under that article, any person who induces a minor into prostitution, restricts the freedom to act of a prostitute or makes a person remain a prostitute is liable to a penalty. The victim’s freedom to act is restricted if the other person supervises him or her in the course of his or her activities or exercises control over the location, time, volume or other aspects of his or her work as a prostitute. Any person who introduces another to prostitution and makes that individual exercise the activity against his or her will has induced him or her into prostitution. In view of the range of possible influence, from simple advice to significant pressure, there of course needs to be a degree of intensity to the influence in order for the hypothesis of inducement to prostitution to be accepted. However, since the capacity for self-determination is not fully developed in minors, simple persuasion by a person who is older than or in some other way superior to the minor would suffice.

22. Through article 195 of the Criminal Code, Switzerland fulfils the requirements set out in article 3, paragraph 1 (b) of the Protocol.

23. Under article 3, paragraph 1 (c) of the Protocol, States parties are required to make producing, distributing, disseminating, importing, exporting, offering, selling, or possessing child pornography, as defined in article 2, punishable by appropriate penalties.

24. In Switzerland, child pornography is punishable under article 197, paragraphs 3 and 3 bis (hard-core pornography), of the Criminal Code. Visual representations of pornographic acts with children are also punishable. The list of acts punishable by a penalty

¹¹ Official Gazette 1999 5129.

¹² Federal Act of 22 June 2001 on the Hague Convention on Adoption and on Measures to Protect Children in International Adoption Cases (SR 211.221.31).

given in article 197 of the Criminal Code, which covers producing, importing, storing, marketing, advertising, exhibiting, offering, showing, passing on or making accessible (para. 3) as well as possessing (para. 3 bis) articles or representations depicting pornography involving children, is in line with, and in some cases exceeds, the provisions of article 3, paragraph 1 (c) of the Protocol. Although the Swiss legislation does not explicitly mention the exporting of such objects, this is not necessary as all exported objects have either been produced in or previously imported into Switzerland and are therefore covered. Consequently, there are no loopholes. The judgement passed by the Federal Court on 12 May 2011 changed the jurisprudence on the use of prohibited pornographic material: from now on, consciously saving prohibited pornographic data in the cache memory of a computer is equivalent to possessing the data in accordance with article 197, paragraph 3 bis, of the Criminal Code. The former jurisprudence, which did not take into consideration the possession of data in the cache memory, regardless of the objective and subjective elements, is therefore no longer applicable.

25. Switzerland thus meets the requirements set out in article 3, paragraph 1 (c), of the Protocol.

26. Under article 3, paragraph 2, of the Protocol, States parties are also required, subject to the provisions of their national law, to make punishable any attempt to commit any of the acts and complicity or participation in any of the acts. Attempts, complicity and participation are covered by the general provisions of the Criminal Code. Attempted crimes or misdemeanours and participation in crimes and misdemeanours (incitement and complicity; arts. 182, 195 and 197) are punishable under articles 22, 24 or 25 of the Criminal Code.

27. Under article 3, paragraph 3, of the Protocol, each State party shall make such offences punishable by appropriate penalties that take into account their grave nature. The penalties mentioned in the relevant articles of the Criminal Code (arts. 182, 195 and 197) are in line with these obligations.

28. Consequently, the obligations arising from article 3, paragraphs 2 and 3, of the Protocol are fulfilled.

5. Liability of legal persons (art. 3, para. 4)

29. In accordance with article 3, paragraph 4, each State party is required, subject to the provisions of its national law, to take the appropriate measures to establish the liability of legal persons for the offences referred to in paragraph 1. Such liability may be criminal, civil or administrative.

30. In Switzerland, the liability of legal persons is addressed in the Civil Code. Accordingly, under article 55 of the Civil Code, undertakings, as legal entities, are liable for their governing bodies and, under article 55 of the Code of Obligations, as employers they are liable for their ancillary staff. Furthermore, conditions of liability as governed by law may apply, if necessary.

31. In the case of administrative liability, the focus is on the possibility of withdrawing authorization. The activities of non-State bodies involved in adoptions are subject to authorization, which may be withdrawn by the Federal Office of Justice if, for example, an intermediary body involved in the adoption procedure allows the adoption to take place in exchange for undue material advantages.

32. Corporate criminal liability is governed by article 102 of the Criminal Code. Paragraph 1 provides that, if a crime or misdemeanour is committed in an undertaking and, because of the inadequate organization of the undertaking, the act cannot be attributed to

any specific natural person, the undertaking shall be considered liable and may be fined (subsidiary liability of the undertaking).

33. This criminal, civil and administrative liability complies with the obligations of article 3, paragraph 4 of the Protocol.

6. Comments concerning minimum standards with reference to domestic legislation

34. The minimum standards set out in article 3 of the Protocol are most certainly met (Criminal Code, art. 182, Trafficking in human beings; art. 195, Encouragement of prostitution; art. 197, Pornography). However, States parties may, if they so wish, go beyond the Optional Protocol in certain areas of child protection.

35. The liability of clients who use the sexual services of persons aged between 16 and 18 in exchange for money or any other form of remuneration, the extension of the personal scope of the article on pornography, penalties for the recruitment of children for the purpose of producing pornographic material and the consumption of material of that nature are currently being considered in connection with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of 25 October 2007 (the Lanzarote Convention).

36. Switzerland signed the Lanzarote Convention on 16 June 2010. It is the first international instrument to declare the various forms of child sexual abuse punishable. The Convention goes beyond current Swiss criminal law in certain areas. As a result, the accession of Switzerland to this instrument means that certain changes have to be made to the Criminal Code.

(a) Child prostitution

37. The Lanzarote Convention goes beyond Swiss criminal law in this area. The legal age of consent is set at 16 years in Switzerland. Therefore, in terms of sexual self-determination, voluntary prostitution is considered legal under Swiss legislation from the age of 16. Consequently, the clients of prostitutes over the age of 16 are not committing an offence. In order to implement the Convention, Switzerland will have to recognize the use of the sexual services of persons aged between 16 and 18 in exchange for money as an offence and modify the Criminal Code to that effect.

38. On the basis of article 199 of the Criminal Code, certain cantons, namely Geneva, Vaud and St. Gallen,¹³ have already made their legislation stricter and introduced penalties for the operators of escort services and studios that employ or intend to employ persons aged between 16 and 18. The intention is not to make clients liable to penalties or to criminalize the activity of underage prostitutes but rather to impose obligations on the operators of escort services and studios. Other cantons are considering similar amendments. The canton of Jura recently adopted a law on prostitution making notification compulsory for persons working as prostitutes. If it comes to the attention of the competent authority that a minor is working in the sex industry, the authority is obliged to inform the persons who hold parental authority and the guardianship authority.¹⁴ In the canton of Zurich, the cantonal police has long maintained close links with the Office for Economy and Labour, which informs the police if it suspects that minors are working as prostitutes. The cantonal police also carries out sporadic checks of the websites of the establishments in the canton to

¹³ However, legislative work has been put on hold in the canton of St. Gallen pending federal regulations in the context of the implementation of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (see para. 38).

¹⁴ See art. 5 of the Act on Prostitution, Official Gazette No. 39/2010 of 27 October 2010, p. 757.

verify whether they offer the services of minors. If so, the police attempts to enter into direct contact with the operators of the clubs. Using persuasion, the police has managed to convince the operators not to employ minors. The cantonal police of Ticino, meanwhile, has set up a special unit to combat the prostitution of minors and trafficking and exploitation of persons (TESEU, Tratta e sfruttamento essere umani). This unit carries out checks in the relevant circles in order to identify potential victims of trafficking in persons, bring them to safety and offer them the opportunity to obtain a residence permit for Switzerland or receive assistance from an NGO to return to their country. Furthermore, the new bill on clubs/cabarets and the practice of prostitution is expected to include a provision prohibiting access for minors to this kind of establishment.

(b) *Child pornography*

39. As has already been mentioned, the age of consent is set at 16 in Switzerland. Consequently, the participation of minors aged between 16 and 18 in pornographic material is legal. Accordingly, the following two points should be considered in the context of the implementation of the Lanzarote Convention: extending the personal scope of the provisions on child pornography in article 197, paragraphs 3 and 3 bis, of the Criminal Code to persons aged between 16 and 18 and penalties for the recruitment of children for the purpose of producing pornographic material.

40. In terms of the consumption of child pornography, an extension of the constituent element of the offence is also being considered given that the consumption of child pornography without possession is not currently covered by article 197 of the Criminal Code. In that regard, it should be noted that the majority of Internet service providers in Switzerland have already expressed their willingness to block access to commercial child pornography websites.

B. Criminal justice process (arts. 4–7)

1. Jurisdiction (art. 4)

41. Under article 4, paragraph 1, of the Protocol, each State party is required to establish its jurisdiction when offences have been committed in its territory or on board a ship or aircraft registered in that State.

42. The jurisdiction of the Swiss courts is established by article 3 of the Criminal Code (principle of territoriality), article 4, paragraph 2, of the Federal Act on Navigation under the Swiss Flag (SR 747.30) and article 97, paragraph 1, of the Civil Aviation Act (SR 748.0).

43. Switzerland thus fulfils the requirements of article 4, paragraph 1, of the Protocol.

44. Under article 4, paragraph 2 (a), each State party may establish its jurisdiction when an offence has been committed by one of its own nationals. In such cases, the jurisdiction of the Swiss courts is established by article 7, paragraph 1, of the Criminal Code (principle of active personality). Thus any Swiss national who commits a crime or a misdemeanour abroad is subject to Swiss criminal law if the act is also an offence in the State where it was committed, if the perpetrator is present in Switzerland, if he or she has been returned to Switzerland because of the act or if he or she has not been extradited despite the fact that the act could lead to extradition under Swiss law. Under article 8, paragraph 1, of the Criminal Code, an offence is also deemed to have been committed where the result takes effect. Furthermore, to determine where the act has been committed, the Federal Supreme Court considers the damage that prompts its punishment. Switzerland thus has criminal jurisdiction when a child has been brought into Swiss territory to be sold or when paedophile images are downloaded via the Internet in Switzerland.

45. Under article 4, paragraph 2 (a), of the Optional Protocol each State party may establish its jurisdiction when the alleged offender has his or her habitual residence in its territory. Under its article 5, the Criminal Code is applicable to anyone in Switzerland who has not been extradited and who has committed one of various acts against a minor abroad, notably human trafficking (art. 182) and incitement to prostitution (art. 195) if the victim was aged under 18; and accessing certain types of pornography (art. 197, para. 3) if the subject matter or depictions contained sexual acts with children. The Criminal Code does not take habitual place of residence into account. Moreover, the application of the provision in question is not obligatory.

46. Under article 4, paragraph 2 (b), each State party may also establish its jurisdiction when the victim is a national of that State. The jurisdiction of the Swiss courts in cases of acts committed against Swiss nationals (principle of passive personality) is based on article 7, paragraph 1, of the Criminal Code.

47. Switzerland thus fulfils the obligations of the optional provision described in article 4, paragraph 2, of the Protocol.

48. Under article 4, paragraph 3, each State party is also required to establish its jurisdiction when the alleged offender is present in its territory and it does not extradite him or her to another State party on the ground that the offence has been committed by one of its nationals. In Switzerland, this obligation to prosecute in cases of non-extradition (“*aut dedere aut judicare*”) is based on articles 6 and 7 of the Criminal Code.

49. Switzerland thus fulfils the requirements of article 4, paragraph 3, of the Protocol.

2. Extradition and mutual legal assistance (arts. 5 and 6)

50. Under article 5, the offences covered in article 3, paragraph 1, are included in any extradition treaty existing between States parties and shall be included in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in such treaties.

51. The Federal Act on International Mutual Assistance in Criminal Matters¹⁵ governs, inter alia, extradition and is applied unless other laws or international agreements provide otherwise (art. 1, para. 1). Given that instruments providing for international mutual assistance and extradition do not generally cover the relevant procedures, implementation is mainly carried out according to the Act and cantonal provisions, even when multilateral instruments exist. The provision in article 5 of the Protocol is consistent with those contained in several agreements to which Switzerland is party and thus does not conflict with Swiss law; the provision in article 5, paragraph 1, of the Protocol is contained in a similar manner in several of those agreements. The conditions for extradition and grounds for refusal set out in the agreements and conventions remain valid in the scope of application of the Protocol.

52. The extradition conditions in domestic legislation take precedence over both paragraph 2 and paragraph 3 of article 5 of the Protocol. The optional provision of article 5, paragraph 2, is not relevant to Switzerland because, under the Mutual Assistance Act, extraditions can take place even in the absence of extradition agreements. Among the conditions on which Switzerland bases extraditions are, notably, dual criminality and respect for guarantees, particularly those set out in the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights. The provision contained in article 5, paragraph 4, of the

¹⁵ Federal Act on International Mutual Assistance in Criminal Matters of 20 March 1981; SR 351.1.

Protocol also exists in several of the international instruments mentioned above, which are applicable in Switzerland. Similarly, the regulations governing criminal prosecutions carried out by one country in place of another, defined in paragraph 5, is not new for Switzerland. In fact, according to domestic legislation, Switzerland can already punish an offence in place of, and at the request of, the State on whose territory the offence was committed.

53. Articles 23 and 24 of the Code of Criminal Procedure define the jurisdiction of the Federal Public Prosecutor's Office (until the end of 2010, federal jurisdiction was regulated by articles 336 and 337 of the Criminal Code). The prosecutor's office has the power to deal with requests for international mutual assistance in cases where the criminal prosecution of the same offence committed in Switzerland would fall under its authority (Mutual Assistance Act, art. 17, para. 4, and art. 79, para. 2). Under these provisions, the prosecutor's office would be the competent authority in criminal prosecutions relating to the sale of children, child prostitution and child pornography, primarily if the punishable acts are attributable to a criminal organization as defined in article 260 ter of the Criminal Code.

54. The mutual legal assistance resource centre of the prosecutor's office is responsible for requests for minor mutual legal assistance. The prosecutor's office has, until now, dealt with requests for mutual legal assistance, such as the searching of premises, the publishing of documents and the questioning of individuals, in accordance with the Federal Act on the Administration of Federal Criminal Justice while, until the end of 2010, the cantons drew on their own criminal procedure codes. Since its entry into force on 1 January 2011, both the Confederation and the cantons have applied the Swiss Criminal Procedure Code,¹⁶ which functions as federal act, governing criminal procedure in a standard manner.

55. Switzerland thus fulfils the requirements of article 5 of the Protocol.

3. Seizure and confiscation of goods and proceeds and closure of premises (art. 7)

56. Under article 7 of the Protocol, States parties are required to adopt appropriate measures to provide for the seizure and confiscation of goods used to commit offences and of the proceeds of such offences. Furthermore, measures must be taken to close premises used to commit offences and mutual legal assistance provided in the seizure or confiscation of goods.

57. At the federal level, articles 69 to 73 of the Criminal Code govern the confiscation and use of objects and assets that have been or may have been used to commit an offence or that are the proceeds of an offence. These provisions are supplemented by provisions relating to criminal procedure. Mutual legal assistance in seizures and confiscations is governed by articles 63 et seq. of the Mutual Assistance Act.

58. In 2002, a large-scale, internationally coordinated, police operation was carried out against child pornography and the sexual exploitation of children. It led to the seizure of 1,400 computers and more than 20,000 data storage devices such as CD-ROMs, zip drives and floppy disks, as well as some 6,000 videos and tens of thousands of magazines, documents and photographs. As part of other police operations to combat paedophilia in recent years, several data storage devices, computers and other objects have been seized as evidence and confiscated. In 2007, a police operation against 19 suspects also led to seizures and confiscations.

59. The obligations under article 7 of the Protocol are thus fulfilled.

¹⁶ SR 312.0.

4. Criminal prosecution

60. Since 1 January 2011, all violations of federal law have been prosecuted and tried according to the provisions of the Criminal Procedure Code, except for acts to which special federal rules of procedure apply, such as military or administrative crimes and misdemeanours. The cantonal rules on the matter that were formerly in force are no longer applicable. However, given the federal structure of Switzerland (see the first section of the report, under “General information”), the cantons largely retain the power to organize their criminal and criminal prosecution authorities. Some cantonal authorities have set up special departments responsible for prosecuting breaches of the Protocol, for example the Minors/Morals Department in the canton of Valais.

61. Intercantonal and international police cooperation, however, is coordinated at the federal level by the Federal Criminal Police, the central office for combating human trafficking for the purposes of sexual or economic exploitation or the removal of organs.

62. A unit dealing exclusively with the trafficking of persons and smuggling of migrants was set up within the Federal Criminal Police on 1 July 2007, as a result of the division of the former Paedophilia, Human Trafficking and Migrant Trafficking Unit into the Human Trafficking and Migrant Smuggling Unit and the Crimes against Children and Pornography Unit. The staff of the former has been doubled to eight persons and that of the latter has also been increased to five.

63. The Human Trafficking and Migrant Smuggling Unit supports the cantonal authorities in complex investigations, coordinates and ensures the exchange of judicial information between the cantons and with other countries, organizes meetings with foreign partners and records all information in a federal database. It represents Switzerland at expert seminars such as those led by the International Criminal Police Organization (INTERPOL) and the European Police Office (Europol) and is expanding its international contacts.

64. Acting as a central office, the Crimes against Children and Pornography Unit coordinates and supports national and international police procedures and operations in the areas of illegal pornography and paedophile acts. Its main functions 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; acquiring information and guaranteeing the exchange of information from police investigations between the competent criminal prosecution authorities in Switzerland and abroad. The Child Crime 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.

65. Since February 2010, the Crimes against Children and Pornography Unit has had online access to the new INTERPOL International Child Sexual Exploitation image database, which makes it possible to compare seized images with a view to identifying victims and establishing possible connections. Switzerland is the sixteenth country to be granted access to this database.

66. The Cybercrime Coordination Unit Switzerland serves as the central point of contact for those wishing to report suspect websites. After an initial examination and backup of the data, it 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 form for reporting suspect websites, available on the Unit’s Internet page, is a very important and well-used tool, allowing anyone, anonymously if desired, to report websites that may lead to criminal prosecutions.

C. Protection of the rights of child victims (arts. 8 and 9, paras. 3 and 4)

67. Under article 8, States parties are required to adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the Protocol at all stages of the criminal justice process. Pursuant to article 9, paragraphs 3 and 4, of the Protocol, they are required to ensure that the victims of such offences receive all appropriate assistance and that all child victims have access to procedures to seek and receive compensation. Furthermore, training for those working with victims shall be ensured.

1. Protection of victims during the criminal justice process (art. 8, paras. 1, 2 and 6)

68. Since 1 April 2003, legislation regarding the criminal justice process has fallen within the jurisdiction of the Confederation and no longer that of the cantons (Federal Constitution, art. 123). Under article 124 of the Constitution,¹⁷ the Confederation and the cantons ensure that victims receive assistance. The Confederation established minimum standards for such assistance with the adoption of the Federal Act of 1991 on Assistance to Victims of Offences (the Victim Support Act), whose provisions are legally binding on the cantons. As part of the criminal justice process and in accordance with the Act (see following figure), specific regulations apply in all cases of children who have suffered a direct violation of their physical, mental or sexual integrity as a result of an offence (victims). These specific regulations apply to most of the offences prohibited by the Protocol, given that such offences almost always represent a direct violation of physical, mental or sexual integrity as defined in article 2 of the Act. On 23 March 2007, the Federal Parliament adopted a fully revised version of the Act, which was promulgated by the Federal Council (Government) on 27 February 2008 and entered into force on 1 January 2009. The provisions relating to hearings for children were not amended. The procedural provisions of the Act concerning the rights of victims and their place in the criminal justice process were transferred almost without amendment into the Swiss Criminal Procedure Code, which entered into force on 1 January 2011.

69. The Criminal Procedure Code provides that children aged under 15 may appear as persons called to give information, but not as witnesses. They are not obliged to testify. To ensure the protection of children appearing as witnesses or called to give information, protection measures can be arranged, for example by guaranteeing their anonymity or modifying their appearance and voice. The Criminal Procedure Code offers particular protection to victims during the criminal justice process. The term “victim” is understood to refer to the injured party, who has suffered a direct violation of his or her physical, mental or sexual integrity as a result of an offence. The acts referred to in the Protocol almost always involve victims according to this definition. The following regulations apply to all victims: the authorities are obliged to safeguard the personal privacy of the victim; a victim whose sexual integrity has been violated may ask to be questioned by someone of the same sex, or request an interpreter of the same sex; in closed hearings, the victim may be accompanied by a maximum of three trusted persons, who may include a representative from a consultation centre as provided for in the Act; the victim must be informed of his or her rights at each stage of the procedure; and confrontations between a victim whose sexual integrity has been violated and the accused may only be ordered against the victim’s wishes if the accused’s right to a hearing cannot otherwise be guaranteed. There are special supplementary measures aimed at protecting children during hearings or confrontations. The term “child” is understood to refer to a victim aged under 18 at the time of the hearing or confrontation. The initial questioning of the child should take place as soon as possible.

¹⁷ SR 101.

If the hearing or confrontation could cause the child severe mental harm, it is ruled out unless the child expressly requests it or the accused's right to a hearing cannot otherwise be guaranteed. In principle, the child should not be submitted to more than two hearings. The hearing is led by persons trained to that effect and takes place in the presence of a specialist, who will write a report. If no confrontation takes place, the hearing is recorded by video.

70. Switzerland thus fulfils the requirements of article 8, paragraphs 1, 2 and 6.

2. Compensation (art. 9, para. 4)

71. In principle, the federal criminal court rules on the victim's civil claims against the perpetrator of the offence as these do not have to be brought before a civil court in a separate case. As of 1 January 2011, it is no longer the Victim Support Act, but the Criminal Procedure Code that governs the right to bring civil claims via the criminal justice process. Under the Act, the victim is also able to request compensation and non-material damages from the canton where the offence was committed, subject to certain conditions. During the revision of the Victim Support Act, the two-year deadline for making such a request was extended to five years; additionally, child victims of certain serious sexual acts (see Criminal Code arts. 187, 188 and 189) may now register a complaint up to the age of 25.

72. Legislation regarding obligatory health insurance covers the treatment of the effects of child abuse, as well as abuse suffered by adults.

73. Switzerland thus fulfils the requirements of article 9, paragraph 4.

3. Training of relevant persons (art. 8, para. 4)

74. Practice shows that at the federal and cantonal levels, the authorities involved have very disparate specialist knowledge. In order to raise awareness among the services concerned, to effectively combat human trafficking and to improve victim protection, the Coordination Unit against Trafficking in Persons and the Smuggling of Migrants organizes specialized training jointly with recognized training institutes in the different fields concerned, including the Swiss Police Institute, the Judicial College of Criminal Law of French-speaking Switzerland, the Competence Center für Forensik und Wirtschaftskriminalistik and the College for Social Work. Specialized training for police officers, also open to the migration services and border guards, was given in German in 2007 and 2010 and in French in November 2009. Training aimed more specifically at magistrates, investigating judges, public prosecutors and judges was given in German in 2008 and is planned in French for 2011. Training for victim assistance services and victim support centres took place in autumn 2010. Police training includes a module on the specific problems connected with child trafficking.

75. Under the Victim Support Act, the Confederation provides financial assistance for training for persons responsible for assisting victims as defined in the Act. Courses may be organized by various providers. Financial support is given in particular for training on conducting hearings for child victims and child protection.

76. There are also activities aimed at other professional groups in the area of violence prevention. Teacher training colleges offer training courses and in-service training for teachers on protecting children and young people from violence. To raise awareness among doctors across a range of specializations, in March 2011 the Swiss Foundation for Child Protection published a guide to early detection and the steps that should be taken by staff working in doctors' surgeries, (http://kinderschutz.ch/cmsn/files/110317_Guide_MaltraitanceInfantileProtectionEnfant_3.pdf), which has already been distributed to 20,000 doctors. Another guide for staff working in the area of early childhood is being prepared.

In-service training is also organized for nurses and auxiliary nurses who work with infants and children, because they play an important role in relation to parents in preventing abuse.

77. In conjunction with local organizations and in order to raise awareness of child trafficking, the Foundation¹⁸ has produced a manual adapted to the situation in Switzerland, for the interdisciplinary training of police officers, the judiciary, social workers and other professional groups responsible for potential victims of child trafficking, entitled “*Traite d’enfants; pratique nationale face à un problème international*” (Child Trafficking; National Practice for an International Problem). Organized by End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT)¹⁹ Switzerland, the first interdisciplinary training session on child trafficking took place in November 2007, and was attended by 45 representatives of the national and cantonal criminal authorities. It was aimed at cantonal and municipal police officers, border guards, staff of the public prosecutor’s office and members of regional investigating judge services, as well as social workers and other professional groups responsible for potential victims of child trafficking. In addition to conveying contextual knowledge, the training dealt with identifying and interviewing victims, legal guidelines, the investigation procedure in cases of child trafficking, needs relating to assistance and services available to victims, and cooperation between the police and social institutions. Owing to a lack of resources, this interdisciplinary training could not be continued. However, it would be useful to organize it every two years or to include it as a module in existing training courses.

78. ECPAT Switzerland and the Swiss Foundation for Child Protection regularly organize training courses for professionals in the tourism industry, with the objective of making them aware of child protection, child sex tourism and those who indulge in it. ECPAT Switzerland has been involved in this field for a long time through its code of conduct for the tourism sector, in which tour operators are reminded of their responsibilities in this area (see chapter 4).

79. The International Institute for the Rights of the Child and the Kurt Bösch University Institute²⁰ should also be mentioned. Both are based in the canton of Valais and are heavily involved in prevention and training on child protection. Moreover, one of the particular aims of the Observatory of Child Abuse,²¹ led by the University of Lausanne, is to offer in-service training courses and information sessions, not only for university members, but also for stakeholders outside the university. The Observatory also carries out research and teaching activities aimed at preventing child abuse.

80. In recent years, efforts have been made in several cantons to improve training for specialists working with children and increase their awareness. To that end, schools and teachers in the canton of Lucerne can take advantage of activities run by the Lucerne Teacher Training College sex education resource centre, which supports trainee and qualified teachers by providing them with training and reference documents and by making recommendations on existing multimedia resources. The canton of Lucerne also has a

¹⁸ The protection of children and young people (aged 0 to 18), as well as their fulfilment, are at the heart of the activities and approach of the Swiss Foundation for Child Protection. Through its specialized service, ECPAT Switzerland, the Foundation combats the commercial sexual exploitation of children and young people in Switzerland and abroad, particularly in the areas of child prostitution, child pornography and child trafficking for sexual purposes. ECPAT Switzerland also targets persons engaging in sex tourism, who, by their actions, directly incite the sale of children, child prostitution and child pornography.

¹⁹ ECPAT = End Child Prostitution, Child Pornography And Trafficking of Children for Sexual Purposes.

²⁰ IUKB; www.iukb.ch/index.php?id=12.

²¹ www.unil.ch/ome/page25551.html.

specialized child protection service and a sex education service attached to the local AIDS support group to which schools and teachers can, and regularly do, turn for specialist advice regarding questions or problems. The canton of Zurich Child Protection Commission has established guidelines for standardizing procedure in cases of child abuse. An information sheet for teachers, school management and education authorities explains the steps to be taken in cases of suspected abuse. The Child Protection Centre in the canton of St. Gallen organizes various training courses in the area of child protection and violence prevention.²² Other cantons also provide in-service training courses on these issues.

81. The website of the Swiss Foundation for Child Protection provides general information on child abuse, as well as a list of events and training sessions.²³ Abuse prevention courses are also provided by other NGOs.²⁴

82. Switzerland thus fulfils the requirements of article 8, paragraph 4, of the Protocol.

4. Other measures relating to the protection of child victims

83. Independently of criminal justice proceedings, children who are considered victims as defined by the Victim Support Act can attend a consultation centre for victims, which will provide them with assistance and help them to find emergency accommodation, if necessary. Under the Act, anyone who has suffered a direct violation of his or her physical, mental or sexual integrity as a result of an offence is a victim. Using this definition, the offences described in the Protocol almost always involve victims. Victim advice centres are managed by the cantons and some cantons have set up specialized centres for children. In addition to child protection centres, there are other specialized individuals, such as youth protection officers and advisers specifically trained in working with young people. The cantons of Basel Stadt and Basel Landschaft have launched an intercantonal project establishing a consultation centre for children and young people who are victims of violence in the two cantons.²⁵ The regional and municipal child protection groups advise professionals who encounter child protection issues in their work and inform them of the steps to take in cases of abuse, as well as of the relevant measures. In the canton of Lucerne, for example, the centre specializing in child protection advises, coordinates and supports schools and guardianship authorities. It also undertakes information and awareness campaigns in the area of child and victim protection.

84. Many schools also have units that deal with cases of abuse or have general health services that can provide initial assistance to mistreated or abused children. School-based social and psychological assistance services also provide support for pupils who are victims of abuse and are able to take the appropriate steps.

85. If parents neglect their duties, they may be putting their child's development at risk or harming him or her. This can lead to sexual abuse, sexual exploitation or exploitation of the child through begging. Under article 307 of the Civil Code, the guardianship authority takes the necessary civil law measures to protect a child whose development is threatened and whose parents do not, or cannot, remedy the situation. To this end, a guardian or trustee can be appointed for the child. There are other solutions, such as giving the parents specific instructions or removing their custodial rights. This does, in any case, guarantee the child's development and that their interests are taken into account. Moreover, with the recent revision of the Civil Code, child protection work is now carried out only, in principle, by professional and interdisciplinary bodies comprising at least three members. This will mean

²² www.kispisg.ch/?menu=ksz&sub=veranstaltungen.

²³ http://kinderschutz.ch/veranstaltungen_f/index.php.

²⁴ Such as Castagna and Limita (www.castagna-zh.ch, www.limita-zh.ch).

²⁵ www.opferhilfe-beiderbasel.ch.

quicker and more targeted application of the measures envisaged by the law, providing greater protection for children and young people.

D. Preventive measures (art. 9, paras. 1 and 2)

86. Pursuant to article 9 of the Optional Protocol, States parties are required to take political measures and conduct information and prevention campaigns in order to better protect children against sexual exploitation and sale.

1. Preventive measures at the federal level

A. Preventive measures taken by the Federal Social Insurance Office

87. The Federal Social Insurance Office acts as coordinator in the field of child protection and the rights of the child. It coordinates efforts and supports projects to prevent the ill-treatment and sexual abuse of children. A new order on protection measures for children and young people and on strengthening the rights of the child entered into force on 1 August 2010, enabling the regulation and implementation of various activities in this field. These measures should help to protect children against all forms of violence, including sexual violence, and against the dangers arising from the use of new media. The order will also regulate the funding of programmes or projects and activities. It is above all the cantons, however, that are responsible for matters concerning child protection.

88. The Federal Social Insurance Office also subsidizes national organizations working with children and young people, through service contracts. It subsidizes various activities aimed at preventing ill-treatment and sexual abuse of children, usually in collaboration with NGOs.

89. The Federal Office supports the Swiss Foundation for Child Protection through a service contract that covers the Foundation's regular activities related to providing professional counselling to persons concerned, specialized services, the authorities and companies as well as conducting information and awareness-raising campaigns. These activities relate to child protection in general, but also to the specific issue of the commercial sexual abuse of children. In this regard, the Foundation manages the specialized service known as ECPAT Switzerland.

90. The Federal Social Insurance Office also supports a free national helpline for children and young people offering year-round 24-hour support that they can access from anywhere in the country by dialling 147 to contact the Pro Juventute Foundation. They can also receive advice via SMS or the Internet. Pro Juventute also manages a digital directory of all the support and advisory services in Switzerland relating to the protection of children and young people. Children and young people facing any kind of problem, including sexual abuse or violence, can receive advice and high-quality support not only through Pro Juventute Internet platform but also through the www.ciao.ch or www.tschau.ch websites, which are popular with young people in Switzerland.

91. Using its budget allocation for the "rights of the child", the Federal Social Insurance Office works to further raise awareness of the United Nations Convention on the Rights of the Child. The projects subsidized by the Office aim to explain the rights of the child to children, parents and persons working with children.

B. *Prevention measures taken by the Federal Office of Police*

I. Concerning trafficking in children

92. The Coordination Unit against Trafficking in Persons and the Smuggling of Migrants was established by the Federal Department of Justice and Police in 2002 and began operations on 1 January 2003. Attached to the Federal Office of Police for administrative purposes, the Unit's governing board establishes the necessary structures and networks to effectively combat and prevent trafficking in persons and smuggling of migrants in Switzerland. The Service serves as an information, coordination and analysis hub for the Confederation and the cantons, and as the focal point and coordinating body for international cooperation. Its objective is to improve preventive measures, criminal prosecution and victim protection. It addresses the specific issue of trafficking in children, including through specialized NGOs such as Terre des Hommes (until November 2009) and the Swiss Foundation for Child Protection (from November 2009), which are represented both in the Unit's steering body and in a specific working group.

93. A working group established within the Coordination Unit, known as AG Kinderhandel, deals with the specific problems raised by trafficking in children and minors. In 2008 and 2009, the Unit's steering body assigned this group the task of examining the applicability of specific recommendations made by the United Nations Children's Fund (UNICEF) Switzerland in its report entitled "*La traite d'enfants et la Suisse*" (Child Trafficking and Switzerland), published in 2007. It was found that many of the recommendations had already been implemented. The remaining recommendations are being followed up.

94. In order to improve cooperation among the police, the judiciary, the migration authorities and organizations that assist victims, eight cantons (Zurich, Bern, Solothurn, St. Gallen, Basel Stadt, Fribourg, Lucerne and Ticino) have established round tables on combating trafficking in persons and have adopted cooperation agreements. Similar agreements are being developed in five other cantons (Vaud, Geneva, Basel Landschaft, Aargau and Schwyz). The Unit's governing board actively supports these round tables, and in 2005 it published a practical guide on the subject, which includes a chapter specifically devoted to child trafficking.

95. Some Swiss cities regularly encounter organized begging by Roma. Given that minors are recruited, trained, sent to Western Europe and used for this purpose, this form of child labour constitutes trafficking in persons for purposes of labour exploitation. The Coordination Unit has raised public awareness of this form of trafficking in persons and has introduced projects to combat the exploitation of children and to assist the victims. In March 2010, Political Division IV of the Federal Department of Foreign Affairs, in collaboration with the International Organization for Migration, organized an international conference in Switzerland on child trafficking and child begging. Foreign experts explained the methods and codes of good conduct that can be used to combat this type of exploitation. The Swiss Cities Association, together with the Coordination Unit, subsequently took on the issue with the aim of considering establishing services to help child victims of exploitation.

96. As of 1 January 2010, Switzerland has a comprehensive response system to deal with cases of child abduction. The system is triggered when there is a genuine suspicion or knowledge that a child has been abducted and that his or her life is in danger. Once cantonal police authorities are informed of a case of child abduction, they in turn inform the Federal Office of Police. Alerts are then issued via radio and television, highway billboards, loudspeaker announcements in train stations and airports and through press agencies. The search for the victim can thus begin very quickly after the abduction, thereby reducing the risk of child sexual abuse.

II. Child pornography

97. The Cybercrime Coordination Unit Switzerland actively searches the Internet for content that might be subject to criminal prosecution, such as child pornography. In collaboration with Swiss Crime Prevention and ECPAT Switzerland, it works to restrict access to websites that contain child pornography while stemming the income flows that stimulate the market. This is one of a number of measures taken to combat child pornography. Thus far, Internet service providers have voluntarily agreed to block access to these sites. In the future, it would be advisable for all Swiss Internet service providers to subscribe to this important preventive measure so that it may be applied systematically throughout the country. The Cybercrime Coordination Unit also helps to prevent child pornography by monitoring the exchange of information in peer-to-peer forums and by studying social networks and discussion forums. The purpose of these actions is to prevent persons from engaging in illegal activity.

98. The increasingly high profile of the Cybercrime Coordination Unit has aroused the interest of the press, radio and television. By collaborating with these media, it is able to publicize its activities to a wide audience. The purpose, as always, is to raise public awareness about the extremely harmful nature of child pornography and the penalties it incurs.

99. There is also an interdisciplinary working group on child abuse, which meets twice per year and is organized and led by the Crimes against Children and Pornography Unit. It comprises representatives of the Cybercrime Coordination Unit, cantonal criminal authorities from all regions of the country and Swiss NGOs. Its meetings encourage the exchange of experiences and collaboration and are based on the "letter of intent" signed by each member, which governs the collaboration and the exchange of information.

III. Measures to combat child sex tourism

100. Developed in the autumn of 2008 by the Federal Office of Police and the Crimes against Children and Pornography Unit, in collaboration with ECPAT Switzerland, the electronic form available at www.stop-childsextourism.ch is another preventive measure that enables the reporting of cases and suspected cases of child sex tourism and sex tourists. In November 2010, the State Secretariat for Economic Affairs and ECPAT Switzerland launched a campaign to protect children and young people from sexual exploitation in the tourism sector. This trilateral campaign, carried out in collaboration with Germany and Austria, aims to raise awareness about child sex tourism through targeted measures in all three countries. The aforementioned online form and a widely disseminated video clip are key components of the campaign.

101. Thanks in particular to funding from the Confederation, ECPAT Switzerland has also introduced in the country the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism, which was developed in 1998 in cooperation with the World Tourism Organization. Kuoni Travel Holding Ltd., Hotelplan Suisse, Accor Hospitality Switzerland, Globetrotter Travel Service AG and Schweizerischer Reisebüro-Verband have already adopted the Code, thereby making a commitment to protect children and to combat child sex tourism. Switzerland supports the implementation of the Code of Conduct abroad as part of its economic development cooperation.

102. Through these measures, Switzerland fulfils its obligations under the Optional Protocol.

C. *Strategic reports and political programmes at the federal level*

103. In August 2008 the Government adopted a strategic report entitled "*Pour une politique suisse de l'enfance et de la jeunesse*" (Towards a Swiss Policy on Children and

Young People), which calls for various commitments to be made relating to child protection, the rights of the child and a policy on children and young people. The Confederation aims to carry out prevention and protection activities relating to violence against children and young people, including through the media, and to raise awareness about the rights of the child (see also below). With regard to youth development, a full review of the Federal Act on the Promotion of Youth Activities is under way, including expansion of the Act to cover detached youth work. One of the objectives of the review is to encourage the potential of extracurricular activities to contribute to prevention and integration.

104. In May 2009, the Government adopted a report entitled “*Les jeunes et la violence – pour une prévention efficace dans la famille, l’école, l’espace social et les médias*” (Youth and Violence – Towards Effective Prevention at Home, in Schools, in Social Spaces and in the Media). The report provided an analysis of the situation and identified policy options. At the federal level, it proposed measures to gain a better understanding of the phenomenon of youth violence and to strengthen efforts to combat it.

105. In order to support the communes and cantons responsible for preventing youth violence, in June 2010 the Government adopted two programmes for the protection of children and young people and allocated a budget of 8.5 million francs for their implementation over a five-year period (beginning in January 2011). The programmes’ results and effects will be evaluated at the end of that period.

106. The Confederation, cantons and communes have developed the first national prevention programme, entitled “Young People and Violence”, which will focus on preventing violence at home, in schools and in public spaces. The programme aims to identify and coordinate efforts already being made and to pinpoint successful approaches and projects so as to establish sustainable and effective “good practice” in Switzerland. Pilot projects carried out in specified locations will be used to test innovative approaches. Emphasis will also be placed on current issues such as multiple repeat offences and early detection and intervention.

107. The second national programme, entitled “Protecting Minors from the Media and Building Media Literacy”, aims primarily to help children and young people to use the media in a way that is safe, responsible and appropriate for their age. It also focuses on supporting parents, teachers and key adults in children’s lives in their role as mentor and educator. To that end, it provides them with information and targeted training. The Confederation plans to make use of the wide range of services already offered by private organizations and the media sector, and will collaborate with business circles, NGOs and the relevant government services at the local and cantonal levels. It is especially important to develop strategies for reaching young people who engage in risky forms of media consumption.²⁶

108. A popular initiative calling for the non-applicability of statutory limitations to acts of child pornography was adopted on 30 November 2008. The Swiss people thus expressed their desire that paedophiles should not imagine that they can live out the rest of their days with impunity, nor should they be protected by statutory limitations. The new article 123

²⁶ Informational material and reference documents for lifelong training will be made available to cantonal services, NGOs, parents and the police. Several associations have already taken preventive measures, and media enterprises such as Swisscom and Microsoft will participate in these efforts. In addition, an awareness-raising campaign will be carried out in collaboration with various partners and in connection with information and communication technologies, for example with the Swiss Foundation for Child Protection/ECPAT, Swiss Crime Prevention or Action Innocence.

bis of the Constitution must now be implemented in the Criminal Code. The necessary legislative measures are under way.

2. Preventive measures at the cantonal level

109. A national campaign to combat crimes against children, entitled “Stop Child Pornography on the Internet”, has been in place since 2005 and is coordinated by Swiss Crime Prevention, a body set up by the Conference of Cantonal Justice and Police Directors. The first stage of the campaign aimed to inform the public that viewing child pornography was subject to criminal sanctions. Later on, the campaign focused more specifically on measures targeting children and young people, parents and those involved in education, but also potential creators or viewers of child pornography. The campaign has steadily expanded and adapted to the new risks posed by the Internet for children and young people. An online campaign entitled “Facebook, Netlog & Co.: Safe and Sure!” has been launched at www.safersurfing.ch. Through the campaign, parents and children receive prevention messages about social networks. In addition, the “Safesurfing” and “Combating Crimes against Children” campaigns organized by Swiss Crime Prevention are carried out and partially developed by all the Swiss police forces. The police are responsible for disseminating information in their different spheres of competence. They thus make an important contribution to prevention work in the field of child protection.

110. The cantonal youth and child protection services deal with virtually all aspects of children’s development (medical, psychological, social, financial, legal and cultural). The main departments responsible for children who have suffered abuse are the youth offices, young people’s health and protection services, the guardianship services, teaching and child psychiatry hospitals, children’s hospitals, the police and the counselling centres established under the Victim Support Act. Several cantons have improved their systems for prevention and intervention in cases of ill-treatment and sexual abuse of children, and these now include, for example, child abuse prevention officers, child abuse and neglect teams in hospitals, cantonal child protection committees, and multidisciplinary groups offering support and advice in connection with the ill-treatment or sexual abuse of children. The canton of Aargau has improved its strategies for prevention and intervention in cases of ill-treatment and sexual abuse of children by setting up child protection groups in Aarau and Baden. The two cantonal hospitals manage the multidisciplinary protection groups within their paediatric clinics. These groups provide care for newborns, children and young people as soon as there is a suspicion or knowledge that they have been or are currently the victims of physical or psychological abuse, neglect or sexual abuse. They offer advice by telephone or in person, provide support, offer therapy and hold in-service training courses for specialists and the authorities.

111. Information on the abuse and sexual exploitation of children, on the rights of the child and on ways children can protect themselves is also included in youth activities and school curricula. In French-speaking Switzerland, information on the rights of the child is an integral part of the school syllabus.²⁷ The cantonal public education authorities in German-speaking Switzerland are currently developing a school syllabus, known as Syllabus 21 (“*Lehrplan 21*”), that will, from 2014, also include the rights of the child. Child protection associations and health groups are working with schools to highlight the problem of ill-treatment and ways of dealing with it. At school, children are educated about abuse through pamphlets, drama skits, films or travelling interactive exhibitions (such as the exhibition “My Body Belongs to Me!” organized by the Swiss Foundation for Child

²⁷ The school syllabus in French-speaking Switzerland specifies that, as part of the responsibility of public schools to educate, teachers and schools must respect the rights of the child.

Protection, the project on gender issues entitled “*Selbstbewusst und stark!*” (“Strong and Confident!”) or the “fit4chat” project). In addition, since 2007, the Federal Social Insurance Office has funded the development of teaching materials on the rights of the child through its “rights of the child” budget allocation.

112. Preventive measures are being taken in various cantons; they include distributing brochures giving practical information, holding information sessions, issuing circulars and training teachers, instructors and educators who work with children. In the canton of Lucerne, for example, trainee teachers studying at the college of education who plan to teach in middle schools must take a compulsory sex education class. In addition, each year many in-service training courses are offered on gender and on specific issues related to sex education, such as the course “*Liebe, Sex und andere Sachen*” (“Love, sex and other things”). The Zurich canton branch of the organization Formation des Parents (Parent Training) does a lot to help prevent violence and abuse by offering approximately 2,000 courses each year, which are attended by more than 32,000 persons. In the canton of St. Gallen, interdepartmental collaboration has led to the publication of a two-volume workbook entitled “*En sécurité, en bonne santé*” (“Safe, Healthy”), which addresses health promotion, prevention and safety. It contains detailed information on violence at school, child abuse, youth protection and sex education. It also offers strategies to help teachers and authorities prevent high-risk situations, detect such situations at an early stage and intervene in crisis situations. The workbook has been distributed to all schools in the canton. It can be accessed at: <http://www.schule.sg.ch>.

113. The work of the cantonal legislative bodies should also be mentioned. St. Gallen law requires all persons, and especially teachers and government employees, to report to the guardianship authorities any abuse of parental authority, any serious neglect of parental duties or any child endangerment as soon as they become aware of it.²⁸ In addition to having the duty to inform the authorities about certain serious offences, employees of the canton or the communes are also subject to criminal proceedings for failure to do so. These serious offences include grievous bodily harm, kidnapping and abduction, while aggravating circumstances include sexual acts with children, sexual coercion and rape.²⁹

114. Prevention and information efforts also cover the media and information and communication technologies – particularly in response to pornographic and violent images and violence and sexual abuse among young people. The specialized service for youth protection of the canton of Basel Landschaft has thus coordinated the “Necity” project (see paragraph 118 below), which provides in-service training courses for teachers and parents. In addition, as part of its health promotion work, the canton has also made available online a handbook for young people entitled “Julex”.³⁰ The handbook gives young people affected by ill-treatment and abuse better access to a wide range of information, including the available support options.

115. Through these measures and campaigns, Switzerland fulfils its obligations under the Optional Protocol.

3. Preventive measures and projects carried out by civil society

116. In order for prevention to be effective, parents must, first and foremost, be made aware of the issue of sexual abuse and sexual exploitation. Training courses, such as the ones organized by the Fédération Suisse pour la Formation des Parents / Der

²⁸ Art. 50 of the implementing regulations of the Swiss Civil Code (sGS 911.1; abbreviated EG-ZGB).

²⁹ Art. 48, para. 1 of the implementing regulations of the Swiss Code of Criminal Procedure and of the Act on Criminal Procedure Applicable to Minors (sGS 962.1; abbreviated EG-StPO).

³⁰ www.tschau.ch/julex.

Schweizerische Bund für Elternbildung (Swiss Federation for Parent Education) have been developed to help parents. Other very effective prevention tools, as well as the assistance and support provided to parents to help them fulfil their duties to their children can act as safeguards against neglect, recourse to violence or abuse. Couples therapy, family planning, sex education, counselling centres for mothers and children and meeting places (in the event of a conflict over parental visitation rights) also play a decisive role in this regard. However, there are still shortcomings in early detection during the period from pregnancy through to the child's enrolment in school.

117. ECPAT Switzerland, a specialized service connected to the Swiss Foundation for Child Protection, is the Swiss branch of ECPAT International. ECPAT Switzerland takes action against the sexual exploitation of children and young people in Switzerland and abroad, and works in close collaboration with the authorities and with governmental and non-governmental institutions throughout the world, including those in the tourism sector, criminal prosecution authorities, governments and child protection agencies. It focuses its activities on awareness-raising, documentation, information and social and political lobbying.

118. The Swiss Foundation for Child Protection and Action Innocence launched a campaign in March 2010 as a fun way to help students better protect themselves against the risks posed by the Internet, to encourage parents and children to discuss the issue and to provide teachers with a teaching tool. It includes an online game for children aged between 9 and 12 (www.campagne-netcity.org).

119. In 2010 the State Secretariat for Economic Affairs and ECPAT Switzerland, in collaboration with Germany and Austria, launched the www.stopchildsextourism.ch campaign to protect children and young people from sexual exploitation in tourist destinations. The campaign's activities are focused on a widely distributed video clip, and it provides information about new ways of reporting suspicious cases to the Cybercrime Coordination Unit Switzerland through a new dedicated online form. The objective of the international campaign is to make tourists and persons working in the tourism sector aware of their responsibilities, so as to strengthen the child protection network. The tourism sector supports the campaign and offers online training to tourism workers on ways to prevent child sex tourism. This free programme shows tourism workers how to react to and report suspicious situations. The course is currently available in seven languages.

120. ECPAT Switzerland, the Centre for Assistance to Migrant Women and Victims of Trafficking in Women and The Body Shop also led a campaign entitled "Stop Child Trafficking for Sexual Purposes"³¹ and submitted a petition on 9 June 2011.

121. Sports associations wish to send a clear message condemning sexual assaults on children in sports. Swiss Olympic and the Federal Office of Sport address the problem by providing related information and practical support to young people, coaches, association officials and parents. The Swiss Olympic website, www.spiritofsport.ch, offers specific information, guidelines and practical advice on prevention, as well as a list of the counselling centres and advisory services operating in Switzerland. The Federal Office of Sport and Swiss Olympic have adopted a charter containing seven principles for promoting healthy, respectful and fair sport, one of which is the obligation to oppose violence, exploitation and sexual harassment. Swiss Olympic and the various sports federations must use at least 15 per cent of the funding they receive from the Confederation to implement the Charter for Ethics in Sport. The sports clubs are responsible for organizing the

³¹ <http://kinderschutz.ch/cmsn/fr/content/remise-de-la-p%C3%A9tition-contre-le-traffic-des-mineurs-%C3%A0-des-fins-sexuelles>.

Jeunesse+Sport (Youth+Sport) activities. The Federal Office of Sport, for its part, takes preventive and punitive measures against sexual assault so as to strengthen protection for young people participating in Jeunesse+Sport classes and camps. Jeunesse+Sport offers classes on sexual assault as part of the training it provides to instructors. In addition, awareness-raising programmes have been conducted to inform the participants and to provide them with useful contact details.

122. Many conferences, discussions, special events and in-service training sessions have been held on the subjects of child sexual exploitation, child pornography and cybercrime. The Swiss Foundation for Child Protection manages an online directory of the various events and opportunities for training and in-service training on child protection in Switzerland (<http://kinderschutz.ch/veranstaltungen>).

E. International assistance and cooperation (art. 10)

123. Under article 10 of the Optional Protocol, States parties are required to take all necessary steps to strengthen international cooperation.

1. Cooperation with international partners

124. Through the activities undertaken by the Swiss Agency for Development and Cooperation in the field of development cooperation, cooperation with the East and humanitarian aid, Switzerland is helping to eliminate the root causes, as mentioned in article 10, paragraph 3, of the Optional Protocol, that contribute to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.

125. Switzerland views UNICEF as the key partner within the United Nations system in promoting and protecting the rights of the child throughout the world and makes annual general contributions to its resources. This financial commitment is supported by active participation in the work of the UNICEF Board of Directors, which allows Switzerland to play a contributing role in defining the Fund's priorities, policies and strategies, including those which ensure protection against the violations covered by the Optional Protocol. Switzerland also works with the UNICEF Innocenti Research Centre and the International Institute for the Rights of the Child (Sion), which together produced the Handbook for the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography in 2009.

126. Switzerland also provides financial and strategic support for other multilateral organizations whose programmes and activities have a direct or indirect bearing on the well-being of children, including, for example, the United Nations Population Fund and the World Bank.

127. It also supports the efforts of those of its multilateral partners that provide protection and/or assistance to children affected by armed conflict or disasters, including, for example, the International Committee of the Red Cross, the Office of the United Nations High Commissioner for Refugees, the World Food Programme and, of course, UNICEF, and makes sizeable, regular contributions to the budgets of these agencies. In conflict and disaster situations, thanks to the Swiss Humanitarian Aid Unit, Switzerland is able to provide direct support to the affected children, who are particularly exposed to the risk of violations covered by the Optional Protocol.

128. Switzerland provides financial and operational support for the activities of Swiss relief agencies, including, for example, Terres des Hommes and Enfants du Monde, which run programmes that benefit children in various parts of the world, including in emergency situations and in areas of activities covered by the Optional Protocol. It also supports international and local non-governmental organizations.

129. In addition, Switzerland was an active participant in the third World Congress Against the Sexual Exploitation of Children and Adolescents which took place in Rio de Janeiro between 25 and 28 November 2008. The Congress provided an opportunity to take stock of progress in the fight against the sexual exploitation of children and to contribute constructively to the debate on lessons learned, best practice and the challenges still to be addressed in this area. As the host of two preparatory meetings, one in Geneva and the other in Bern, Switzerland also contributed to the preparations for the Congress.

2. Projects and programmes in countries of the Commonwealth of Independent States

130. Working closely with various partners, Switzerland runs specific projects and programmes designed to prevent the kind of violations addressed by the Optional Protocol and to support the reintegration of children who have been victims of such violations in a number of countries and regions.

131. The fight against trafficking in human beings, including children, is a priority area for Swiss assistance to the countries of the Commonwealth of Independent States. Examples of the work undertaken by Switzerland include:

132. Implementation of a programme to combat trafficking in human beings in Ukraine, working in conjunction with the International Organization for Migration (IOM) and a network of local partners. Children aged between 13 and 18 years and living in difficult circumstances are the main risk group. The aim of the programme, which is focused on four areas of Ukraine, is to improve protection for young people by involving social services, schools and authorities more closely in preventive efforts.

133. Implementation, through IOM and Terre des Hommes, of a regional programme providing protection against trafficking in human beings in Moldova, Russia and Ukraine. The aim of this programme is to help the Governments of Moldova and neighbouring countries to develop mechanisms that provide protection and support for victims of trafficking in human beings at the national and transnational levels, applying the international standards specific to the protection of minors. It is essential that these victims receive direct, coordinated assistance. Cooperation between States facilitates return assistance with returning home and lasting reintegration in the victims' country of origin or, where required, the joint development of alternative rehabilitation plans. In the same region, Switzerland also supports the efforts of Terre des Hommes to reduce the number of child victims of neglect, exploitation and trafficking in human beings through improvements to the protection systems of the countries concerned. The purpose of this programme is to identify children at risk (preventive component) and victims so that appropriate protection and support can be provided to them.

134. In conjunction with IOM, a programme to raise awareness of trafficking in human beings among secondary school students is being run in Georgia, Armenia and Azerbaijan. The principal aim of the project is to prevent trafficking in human beings and combat the risks associated with migration in Transcaucasia through targeted information campaigns. To this end, it is helping to develop information and awareness-raising materials, to provide training for teaching staff and to distribute the materials developed throughout the three countries.

135. It also provides financial support for a Russian-language telephone assistance service. The special telephone hotline provides information and counselling to Russian-speaking victims of trafficking in human beings and to persons at risk of trafficking, including children, in the Russian Federation and in Switzerland.

3. Projects and programmes in other regions

136. Switzerland supports the Training for Development (*traDE*) project which forms part of the Training and Education Against Trafficking (TREAT) programme funded by the Government of the United States of America. The *traDE* programme is designed to improve the quality of non-formal education by introducing new curricula and new teaching and training methodologies for young people aged between 9 and 15 who have either never attended school or have dropped out early and thus constitute the main target group for trafficking in children. For this reason the programme is run in areas of high risk for children – i.e. in the Sahel, Haut Bassins, Boucle de Mouhoun and Sud-Ouest regions.

137. Switzerland supports various programmes in Mongolia and Myanmar that work to combat trafficking in human beings. These programmes cover children even if not specifically focused on them.

138. Switzerland is also involved in several programmes designed to help children particularly at risk. Although the programmes do not focus on the Optional Protocol directly, indirectly they can help to prevent the violations which the Optional Protocol addresses. Below are a number of examples:

139. Switzerland supports education in West Africa through targeted activities focused on the most vulnerable groups (children and young people who have never attended school or have dropped out). In Niger, Mali, Burkina Faso and Benin (programme currently being set up), Switzerland supports non-formal education programmes intended for children aged between 9 and 15 who are either too old to enter primary education or have dropped out of school. These educational programmes are designed to give the children concerned a solid basic education and to enable them to move into formal secondary education, vocational training or employment.

140. In Serbia and Montenegro, Switzerland is participating in a programme under which the aim is to establish apposite educational and institutional models in various municipalities in order to facilitate the successful, lasting integration of marginalized children within the basic education system. Most children who are not in school either have some form of disability or are members of the Roma and Vlach minorities.

141. Switzerland is a contributor to the Roma Education Fund. The Fund's goal is to enable Roma children, who are very often victims of discrimination and exclusion, to access quality education.

142. In Syria, Switzerland is working with UNICEF to strengthen mechanisms for preventing sexual and gender-based violence committed against adolescent refugees of Iraqi origin.

143. For several years, Switzerland has been contributing to a programme in Pakistan that is focused on promoting and protecting the rights of the child, with an emphasis on the most vulnerable children. The implementation of this programme is a result of the combined efforts of three agencies: UNICEF, the International Labour Organization and the Society for the Protection of the Rights of the Child (SPARC) (a Pakistani NGO). The main programme objectives are: to adopt and implement a national child protection policy; to eliminate the worst forms of child labour by 2016; to increase awareness of issues related to the rights of the child at the national level; and to maximize synergies and enhance coordination between actors working in the field of children's rights.

4. International police cooperation

144. At the bilateral level, Switzerland has concluded police cooperation agreements with its neighbours (Germany, Austria, Liechtenstein, Italy and France) and also with Albania, Bosnia and Herzegovina, Hungary, Latvia, Macedonia, Romania, Bulgaria (a Memorandum

of Understanding), Slovenia and the Czech Republic. These cooperation agreements allow for information exchange and increased police cooperation in various fields, including trafficking in human beings (which encompasses trafficking in children), paedophilia and child pornography. In addition, the stationing of police officers in countries such as Macedonia (with secondary accreditation in Bosnia and Herzegovina and in Kosovo), Brazil and Thailand, among others, allows for more effective cooperation between these countries and Switzerland by ensuring in situ follow-up of investigations.

145. At the multilateral level, cooperation is pursued through various channels. At the European level, in December 2008 Switzerland acceded to the Schengen Cooperation Agreement. This agreement allows for the exchange of information between Switzerland and all other members of the Schengen area through the Schengen Information System, among other mechanisms, and also for enhanced police cooperation between these member States. Switzerland has also been party to a cooperation agreement with the European Union law enforcement agency, Europol, since 1 March 2006. Thus, the Federal Criminal Police division of the Federal Office of Police cooperates with Europol in the fight against trafficking in human beings.

146. The signing of the Council of Europe Convention on Action against Trafficking in Human Beings on 8 September 2008 marked a strengthening of the Federal Council's resolve to fight trafficking in human beings in an effective manner and to ensure protection for victims. The Convention establishes minimum standards for criminal law, victim support and foreign law. Switzerland already largely complied with these standards, except in the area of extra-procedural witness protection. To rectify this lacuna, a Federal Act on Extra-procedural Witness Protection was drafted, and a process of consultation was initiated with a view to adopting and implementing the Convention and the new law. Most of the participants in the consultation process supported ratification of the Convention and the Federal Council's proposal to resolve the witness protection issue by establishing a witness protection unit within the Confederation. On 17 November 2010, the Federal Council adopted, for submission to Parliament, the dispatch on approving and implementing the Council of Europe Convention on Action against Trafficking in Human Beings and the new Federal Act on Extra-procedural Witness Protection.

147. At the international level, Switzerland is a member of the international police organization, INTERPOL. The INTERPOL framework gives member States a rapid means of exchanging information among themselves, including information about offences covered by the Optional Protocol.

148. At the informal level, information about technical developments in the context of enquiries into the use of data carriers is exchanged with various foreign police forces. Contacts are also forged during seminars organized by the police force which are often open to police officers from other countries. In the fight against Internet-based crime, the police use search tools that have been developed in-house. Questions related to police operations are raised on Internet forums accessible exclusively to the police; interdisciplinary reflection is required at all times.

149. By means of these international cooperation measures, Switzerland is fulfilling its obligations under the Protocol.

F. Conclusions

150. This report provides an overview of the current situation in Switzerland in areas falling within the scope of application of the Optional Protocol. The information was obtained through consultation with the relevant federal offices, the cantons, the conferences of cantonal directors and the organizations concerned.

151. In summary, the report demonstrates that Switzerland is in full compliance with its obligations under the Optional Protocol and is making considerable efforts to ensure that children are protected from the sale of children, child prostitution and child pornography. Switzerland is cognizant that constant efforts are essential at all levels in order to respond effectively to the problems raised by the three phenomena. Maintaining, and where possible further improving, the high level of protection from which children benefit in Switzerland is a long-term task.

Annexes

Annex I

Statistics

Criminal convictions – preliminary observations

1. Offences under Swiss law do not necessarily correspond to the definitions established in the Optional Protocol. On a simplified basis, certain articles of the Swiss Criminal Code can be equated to certain paragraphs of article 3 of the Optional Protocol, as follows:

<i>Article of Swiss Criminal Code</i>	<i>Paragraph of article 3 of the Optional Protocol</i>
Article 182: Trafficking in human beings	Article 3, paragraph 1 (a)
Article 195: Encouragement of prostitution	Article 3, paragraph 1 (a)
Article 197, paragraph 3: Child pornography	Article 3, paragraph 1 (c)

2. As Switzerland has data for 2009 only, crime statistics are not reflected in this annex. The justice statistics given below cover the period from 1999 to 2008 (with the exception of those for article 182 of the Criminal Code, which replaced the former article 196 of the Criminal Code in 2006).

3. In the case of article 195 of the Criminal Code, on the encouragement of prostitution, it is not possible to make a distinction between the different paragraphs. For this reason, the number of convictions given is certainly too high.

4. In the case of article 197, paragraph 3, of the Criminal Code, concerning child pornography, it is not possible to make a distinction between the different subcategories. Once again, therefore, the number is too high.

5. With regard to article 182 of the Criminal Code, concerning trafficking in human beings, the numbers given also include cases involving adults.

	<i>Adult convictions</i>									
	<i>1999</i>	<i>2000</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>
Art. 182 Criminal Code	7	5	2	2	7	2	12	5	1	
Art. 195 Criminal Code	18	18	17	11	7	12	15	18	16	7
Art. 197.3 Criminal Code	421	256	263	247	360	353	563	480	505	522

Criminal records updated as of: 30 June 2009

	<i>Adult convictions</i>									
	<i>Juvenile convictions</i>									
	<i>1999</i>	<i>2000</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>
Art. 195 Criminal Code	1	0	0	0	0	0	0	0	0	0
Art. 197.3 Criminal Code	1	3	2	2	6	16	29	47	52	37

Database updated as of: 25 September 2009

Annex II

Relevant legal texts

- Criminal Code of 21 December 1937; SR 311.0;
 - Federal Act of 20 March 1981 on International Mutual Assistance in Criminal Matters (Mutual Assistance Act); SR 351.1;
 - Federal Act of 15 June 1934 on the Administration of Federal Criminal Justice; SR 312.0 (repealed with the entry into force of the Criminal Procedure Code on 1 January 2011);
 - Federal Act of 23 March 2007 on the Provision of Support to Victims of Crime (Victim Assistance Act); SR 312.5;
 - Federal Act of 22 June 2001 on the Hague Convention on Adoption and on Measures to Protect Children in International Adoption Cases; SR 211.221.31;
 - Federal Act of 18 March 1994 on Health Insurance; SR 832.10;
 - Swiss Criminal Procedure Code of 5 October 2007; SR 312.0.
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