



Rights of the Child
in Switzerland

OMCT

OPERATING THE **SOS-TORTURE** NETWORK



Rights of the Child in Switzerland



The aim of OMCT country reports are to prevent torture

In its reports on children's rights, OMCT aims to analyse national law in terms of the international commitments that a government has made. For example, in some countries families are not informed when their child is detained and this removes a precious safeguard against abuse. The absence of such safeguards facilitates situations where the torture of children can and does occur.

In other words, the reports aim to point out where, often unknowingly, legislation facilitates grave abuses against children.

The legal analysis is supported, where possible, by urgent appeals on the torture of children documented by OMCT. These urgent appeals (OMCT intervenes almost daily on such cases) are the foundation of all our work.

The reports are not legal semantics for their own sake, but represent, in addition to the urgent actions, another side of our strategy to end torture. The reports include meaningful and feasible recommendations for legal reform aimed at reducing the incidence of child torture.

The reports are presented to the United Nations Committee on the Rights of the Child who use them to analyse how well a country is fulfilling its international commitments with regards to children. Their recommendations on the issue of torture, drawing from OMCT's reports, send a strong message from the international community on the need for action to end the torture of children.

Contents

REPORT ON THE IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD BY SWITZERLAND

I. PRELIMINARY OBSERVATIONS	7
II. DEFINITION OF THE CHILD (ARTICLE 1)	8
III. NON-DISCRIMINATION (ARTICLE 2)	9
IV. PROTECTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (ARTICLE 37)	11
4.1 SWITZERLAND'S LEGAL FRAMEWORK AND ACTUAL SITUATION	11
4.2 DEATH PENALTY AND LIFE IMPRISONMENT	13
V. VIOLENCE AGAINST CHILDREN (ARTICLE 19)	14
5.1 CORPORAL PUNISHMENT	14
5.2 FEMALE GENITAL MUTILATION	15
VI. CHILDREN IN CONFLICT WITH THE LAW (ARTICLE 40)	17
6.1 AGE OF CRIMINAL RESPONSIBILITY	17
6.2 POLICE CUSTODY	18
6.3 PRE-TRIAL DETENTION	19
6.4 SEPARATION FROM ADULTS IN DETENTION	22
VII. CHILDREN SEEKING ASYLUM	24
7.1 FACTUAL SITUATION AND PRELIMINARY OBSERVATIONS	24
7.2 LEGAL FRAMEWORK OF CHILDREN SEEKING ASYLUM	24
7.3 UNACCOMPANIED CHILDREN WITHIN THE ASYLUM PROCEDURE	26
7.4 EDUCATION AND CARE	27
7.5 EXTRADITION	28
7.6 ADMINISTRATIVE DETENTION	30
VIII. RECOMMENDATIONS	32
CONCLUDING OBSERVATIONS OF THE COMMITTEE ON THE RIGHTS OF THE CHILD: SWITZERLAND	35

OMCT would like to express its gratitude to all the Swiss NGOs and Human Rights experts for their help with the research of the present report.



COMMITTEE ON THE RIGHTS OF THE CHILD
30th Session - Geneva, 20 May - 7 June 2002

Report on the implementation of the
Convention on the Rights of the Child
by Switzerland

Researched and written by Matthias Leemann
Co-ordinated and edited by Roberta Cecchetti and Sylvain Vité
Director of the publication : Eric Sottas

I. Preliminary observations

Switzerland ratified the Convention on the Rights of the Child (hereafter referred to as the Convention) on 24 February 1997; it came into force on 26 March 1997. OMCT appreciates the fact that Switzerland submitted its initial report to the Committee on the Rights of the Child (hereafter the Committee).

Due to the high standard of living in the country and Switzerland's commitment to human rights, children in Switzerland seem to be privileged compared to those in many other countries. OMCT recognises the will of Switzerland to carry out the obligations set forth in the Convention. The commitment to putting into practice the rights of children, however, means a permanent process.

OMCT decided, therefore, to submit an alternative report on Switzerland to the Committee, in which it focuses on specific areas that fall within OMCT's mandate. The report raises several concerns, sometimes regarding the information given by the government, and makes a number of recom-

mendations on how to improve children's rights in various situations.

The new Swiss Federal Constitution states the rights of children "to special protection of their personal integrity and to promotion of their development"¹. Various other subjects that concern children, including civil and penal law, are within the competence of the Confederation². However, due to the federal structure of Switzerland, the cantons are sovereign in many areas³. Accordingly, the cantons have adopted their own legislations related to children, including education, criminal justice and execution of criminal penalties, culture and they decide autonomously on substantial parts of health and social policy.

1 - Article 11 para. 1 of the Swiss Federal Constitution states: " Children and adolescents have the right to special protection of their personal integrity and to promotion of their development ".

2- See articles 122 para. 1 and 123 para. 1 of the Swiss Federal Constitution. According to article 123 para. 2, however, *criminal justice and execution of criminal penalties and measures* are cantonal matters.

3 - Article 3 of the Swiss Constitution states: " The Cantons are sovereign insofar as their sovereignty is not limited by the Federal Constitution; they shall exercise all rights which are not transferred to the Confederation ".

For that reason, various authorities and mechanisms are involved in the implementation of the Convention on the Rights of the Child in Switzerland. It has to be stressed, however, that it is within the responsibility of the Confederation to guar-

antee the rights set forth therein and that the application of the country's obligations under the Convention in all parts of its territory must not be hampered by its federal structure.

II. Definition of the child (article 1)

According to article 1 of the Convention “a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier”. Article 14 of the Swiss Civil Code (CC) states that majority is attained at the age of 18⁴. Accordingly, every person under

18 years of age is considered as a child by Swiss law in accordance with article 1 of the Convention.

Unlike the former version, the present civil code does not allow exceptions to this rule⁵. Therefore, a child may neither by marriage nor for any other purpose be emancipated at an earlier age. The Swiss Penal Code (PC) makes a distinction between “children” and “adolescents” (articles 82-99 PC). These terms, however, define two categories of children in the meaning of international law, for each of which specific rules apply⁶. This view is reaffirmed by article 100 PC that even provides for some particular rules for “young adults”, who are defined as persons between 18 and 25 years of age⁷.

4 - Code civil suisse du 10 décembre 1907 (RS 210); article 14 CC states: “La majorité est fixée à 18 ans révolus”.

5 - Article 14 CC had been amended on 7 October 1994 (in force since 1 January 1996).

6 - Code pénal suisse du 21 décembre 1937 (SR 311.0) ; article 82 para. 2 PC states: “Si un *enfant* âgé de plus de 7 ans, mais de moins de 15 ans révolus, commet un acte punissable en vertu du présent code, les dispositions ci-après seront applicables” [emphasis added]; article 89 PC: “Les dispositions suivantes sont applicables lorsqu’un *adolescent* de plus de 15 ans, mais de moins de 18 ans révolus a commis une infraction réprimée par la loi” [emphasis added]. For further details about the age of criminal responsibility see VI. 1.

7 - Article 100 para. 1 PC states under the heading “jeunes adultes”: “Si, au moment d’agir, l’auteur était âgé de plus de 18 ans, mais de moins de 25 ans révolus, les dispositions générales du code sont applicables sous réserve des articles 100bis et 100ter”.

III. Non-discrimination (article 2)

OMCT believes that discrimination is one of the causes of torture and welcomes the fact that the Federal Constitution of Switzerland provides for an explicit non-discrimination clause. Article 8 of the Swiss Constitution prohibits the discrimination of a person for whatever reason, including origin, race, sex, age, language, social position and religious, philosophical, political convictions and corporal or mental disability⁸.

The principle of equality before the law is a fundamental right that protects every person, regardless of majority or citizenship. Accordingly, children are also protected by this provision.

In 1995, a new article 261bis of the Swiss Penal Code was put into force that prohibits racial discrimination. Another new *law on the equality of women and men*⁹ aims at promoting *de facto* equality¹⁰ and guarantees equal rights with regard to working life (equal pay, prohibition of any forms of discrimination with regard to employment and working conditions, etc.), be it in private business or in public services.

OMCT welcomes the recent amendments to Swiss legislation aimed at preventing different forms of discrimination. It also appreciates the action plan “equality of women and men” of the Swiss Federal Council (adopted in 1999¹¹) which includes a chapter on “girls” with several recommendations for the elimination of discrimination between boys and girls in various fields, including education, health, work, and youth activities. It should, however, be noted that discrimination is not confined to gender, but takes places on various levels. OMCT regrets, therefore, that the government report does not examine concrete situations, in which children risk being subjected to discrimination.

8 - Article 8 para. 2 of the Constitution states: “Nul ne doit subir de discrimination du fait notamment de son origine, de sa race, de son sexe, de son âge, de sa langue, de sa situation sociale, de son mode de vie, de ses convictions religieuses, philosophiques ou politiques ni du fait d'une déficience corporelle, mentale ou psychique”; para. 3 specifically provides for the equality of men and women: “L'homme et la femme sont égaux en droit. La loi pourvoit à l'égalité de droit et de fait, en particulier dans les domaines de la famille, de la formation et du travail. L'homme et la femme ont droit à un salaire égal pour un travail de valeur égale”.

9 - Loi fédérale du 24 mars 1995 sur l'égalité entre femmes et hommes (Loi sur l'égalité, LEg) (RS 151.1).

10 - It states in article 1: “La présente loi a pour but de promouvoir dans les faits l'égalité entre femmes et hommes”.

11 - Egalité entre femmes et hommes. Plan d'action de la Suisse (1999).

Accordingly, OMCT is concerned about certain tendencies towards segregation between Swiss and foreign children within the educational system. The municipalities of Lucerne and Rorschach, for instance, are reported to have established separate classes for Swiss and foreign children, respectively¹². There seemed to be similar attempts on the political level to do the same in other regions in Switzerland¹³.

Such measures are discriminatory and contrary to article 2 para. 1 of the Convention, as the right to education enshrined in article 28 must be guaranteed irrespective of a child's language, origin or race¹⁴. OMCT believes that the challenges of the integration of foreign children have to be faced in an

open way, giving equal opportunities to everyone. Permanent segregation not only constitutes a violation of international law, but would also jeopardise the goals of education mentioned in article 29 of the Convention, particularly the development of respect for people from different origins and cultures.

OMCT urges the Swiss authorities to stop and to prohibit any tendency towards segregation between Swiss and foreign pupils and to take all necessary measures to prevent discrimination of foreign children within the educational system. OMCT recommends that the Swiss government take an active stance to promote equal rights for all children and, to this end, to conduct an in-depth study into the question of discrimination of foreign children, particularly within the educational system.

OMCT would also recommend abolishing article 84 of the law on asylum¹⁵, which states that in the case of adult asylum-seekers whose children live abroad, child benefits are withheld during the asylum procedure¹⁶. These benefits are generally financed by compulsory contributions of employers, which are payable for all employees, whether they are Swiss or foreign and regardless of whether their children live in

12 - Cf. the newspaper article "Weiterhin getrennte Klassen", NLZ (7 June 1999).

13 - Cf. for example the parliamentary initiative by Alfred Heer and Thomas Meier (SVP/UDC) regarding separate classes for German-speaking pupils (KR-Nr. 265/1999) in the canton of Zurich; similarly "Motion betreffend Förderung von Schülerinnen und Schülern deutscher Muttersprache" (31 August 1998; KR-Nr. 304/1998).

14 - Cf. also the answer of the Federal Council to an interpellation (98.3656, by Cécile Bühlmann) regarding separated classes for Swiss and foreign pupils: "La création de classes séparées pour élèves suisses et élèves étrangers est donc contraire au principe de l'égalité des droits fondé dans le droit constitutionnel suisse et elle contrevient à l'article 28 en lien avec l'article 2 de la Convention relative aux droits de l'enfant".

15 - Loi sur l'asile du 26 juin 1998 (LAsi) (RS 142.31).

16 - Article 84 of the law on asylum states: "Dans le cas de requérants dont les enfants vivent à l'étranger, les allocations sont retenues pendant la durée de la procédure. Elles sont versées lorsque le requérant est reconnu comme réfugié ou admis provisoirement en vertu de l'article 14a, alinéa 3, 4 ou 4bis, de la LSEE".

Switzerland or abroad. The provision thus results in discriminatory treatment of asylum-seekers and their children, which – in light of article 26 CRC – is contrary to article 2 of the Convention¹⁷.

Finally, OMCT regrets the fact that the government report does not mention the problem of discrimination in naturalisation procedures, which also affects children. It

is concerned about various cases of arbitrary refusal of Swiss citizenship on the community level. In spite of the fact that the Convention contains a right to naturalisation only under special circumstances, OMCT is concerned about any forms of discrimination involving children and urges the Swiss government to take the necessary steps in order to establish a transparent and non-discriminatory naturalisation procedure¹⁸.

IV. Protection against torture and other cruel, inhuman or degrading treatment or punishment (article 37)

4.1 Switzerland's legal framework and actual situation

Article 37 (a) of the Convention provides for the protection of the child against torture or other cruel, inhuman or degrading treatment or punishment. According to article 10 para. 3 of the new Federal Constitution, torture, and other cruel, inhuman or degrading treatment or punishment are forbidden¹⁹. Article 25 para. 3 of the Swiss Constitution states

that no person shall be removed by force (“refoulé”) to a state where he or she is threatened by torture, or any other cruel and inhuman treatment or punishment²⁰. These

17 - Similarly, the " message du Conseil fédéral du 4 décembre 1995 ", BBl 1996 II 1 ; Organisation suisse d'aide aux réfugiés (OSAR), *Entwurf einer Teilrevision des Asylgesetzes*, Stellungnahme der SFH, Berne 2001, p. 37.

18 - In its second report on Switzerland adopted on 18 June 1999, CRI (2000) 6, para. 32, the European Commission against Racism and Intolerance already expressed its concern that the system for the granting of citizenship at cantonal and communal level may leave room for discriminatory practices.

19 - Article 10 para. 3 of the Constitution states: " La torture et tout autre traitement ou peine cruels, inhumains ou dégradants sont interdits ".

20 - Article 25 para. 3 of the Constitution states: " Nul ne peut être refoulé sur le territoire d'un Etat dans lequel il risque la torture ou tout autre traitement ou peine cruels et inhumains ".

articles appear to correspond with the duties that arise from article 37 of the Convention.

In addition, Switzerland has signed and ratified various international human rights instruments prohibiting and aiming at preventing torture, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Pact on civil and political rights, the European Convention on Human Rights, and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Although acts constituting torture or other cruel, inhuman or degrading treatment might be covered by the special provisions (articles 111-332) of the Swiss Penal Code, it has to be stated that Swiss criminal law still lacks a specific provision defining and prohibiting torture. OMCT recommends that Switzerland introduce a provision into its Penal Code that expressly prohibits and punishes acts of torture.

The government report states in para. 215 that, although in a few cases of arrest unlawful treatment by the police force has

taken place, no such case has been known to involve children or juveniles. OMCT believes, however, that this assumption might be too sweeping. In its two recent annual reports, Amnesty International mentions two cases of alleged ill-treatment of children (a 14-year-old boy from Kosovo and a 17-year-old Angolan schoolboy) by Geneva police officers²¹.

In the first case a 14-year-old boy – although an innocent bystander – was detained for several hours following a street disturbance in October 1999. It was reported that an officer ordered a police dog to attack the boy and that it bit his right thigh. The boy said that at the police station he was hit on the back of the neck, that officers stood on his feet, crushing them, and squeezed him so tightly around the neck that he had difficulty in breathing and feared he would die. The police called in a doctor to examine the dog-bite and a medical report by the boy's own doctor recorded physical injuries compatible with his allegations²².

In January 2000 a 17-year-old Angolan schoolboy accused three Geneva police officers of kicking and beating him with truncheons until he lost consciousness and of subjecting him to racist abuse after de-

21 - Amnesty International, reports 2001/2000 on Switzerland.

22 - See Amnesty International, report 2000 on Switzerland; newspaper article in LE COURRIER, 3 November 2001: *L'ONU critique le système judiciaire suisse*.

taining him overnight on suspicion of being involved in a street fight²³.

The UN Human Rights Committee expressed its deep concern recently about reported instances of police brutality towards persons being apprehended and detainees²⁴. The Committee against Torture was also concerned about frequent allegations of ill-treatment in the course of arrest or in police custody²⁵. Considering the gravity of such allegations and the importance of article 37 (a) of the Convention, OMCT is disappointed by the fact that the Swiss Government fails to provide more detailed information on this issue or eventual independent mechanisms for investigations of complaints regarding such human rights violations.

4.2 Death penalty and life imprisonment

Article 37 (a) of the Convention mentions death penalty and life imprisonment in the context of torture and prohibits the imposition of both forms of punishment on children. Article 10 para. 1 of the Swiss Federal Constitution states that every person has the right to life. The same paragraph provides that the death penalty is prohibited²⁶. Switzerland has also signed several international instruments that ban capital punishment. Moreover, in accordance with article 37 (a) of the Convention, Swiss criminal law does not provide for life imprisonment of children.

23 - See Amnesty International, report 2001 on Switzerland; newspaper article in LE COURRIER, 3 November 2001: *L'ONU critique le système judiciaire suisse*.

24 See the concluding observations of the Human Rights Committee on Switzerland, 05/11/2001 (CCPR/CO/73/CH), para. 11.

25 See the concluding observations of the Committee against Torture on Switzerland, 27/11/97 (A/53/44), para. 90: "The Committee is concerned about frequent allegations of ill-treatment in the course of arrests or in police custody, particularly in respect of foreign nationals".

26 Article 10 para. 1 of the Swiss Federal Constitution states: "Every person has the right to life. The death penalty is prohibited".

V. Violence against children (article 19)

5.1. Corporal punishment

Article 19 of the Convention requires States Parties "...to protect the child from all forms of physical or mental violence ..., while in the care of parent(s), legal guardian(s) or any other person who has the care of the child". Thus, the provision asserts children's human

right to personal, both physical and mental integrity.

Article 11 para. 1 of the Swiss Federal Constitution provides for the protection of children's integrity:

"Children and adolescents have the right to special protection of their personal integrity and to promotion of their development".

Articles 111–136 of the Swiss Penal Code provide for the protection of the physical integrity. Both grievous (article 122 PC²⁷) and simple (article 123 PC²⁸) bodily harm carry a punishment. Acts of violence, which exceed the usual, socially respected intensity, but result neither in bodily harm nor in damage of health are punishable as well (article 126)²⁹.

These provisions have to be respected within the family as well as in the public sphere. However, the relationship between the child and its parents is regulated by the Swiss Civil Code. Their custody also encompasses

27 - "Art. 122 Lésions corporelles graves
Celui qui, intentionnellement, aura blessé une personne de façon à mettre sa vie en danger, celui qui, intentionnellement, aura mutilé le corps d'une personne, un de ses membres ou un de ses organes importants ou causé à une personne une incapacité de travail, une infirmité ou une maladie mentale permanentes, ou aura défiguré une personne d'une façon grave et permanente, celui qui, intentionnellement, aura fait subir à une personne toute autre atteinte grave à l'intégrité corporelle ou à la santé physique ou mentale, sera puni de la réclusion pour dix ans au plus ou de l'emprisonnement pour six mois à cinq ans".

28 - "Art. 123 Lésions corporelles simples
1. Celui qui, intentionnellement, aura fait subir à une personne une autre atteinte à l'intégrité corporelle ou à la santé sera, sur plainte, puni de l'emprisonnement. Dans les cas de peu de gravité, le juge pourra atténuer librement la peine (art. 66).
2. La peine sera l'emprisonnement et la poursuite aura lieu d'office, si le délinquant a fait usage du poison, d'une arme ou d'un objet dangereux, s'il s'en est pris à une personne hors d'état de se défendre ou à une personne, notamment à un enfant, dont il avait la garde ou sur laquelle il avait le devoir de veiller".

29 - Article 126 para. 1 of the Swiss Penal Code states: "Celui qui se sera livré sur une personne à des voies de fait qui n'auront causé ni lésion corporelle ni atteinte à la santé sera, sur plainte, puni des arrêts ou de l'amende".

certain reprimands, as long as the latter do not jeopardise the physical and mental health of the child.

Outside the family, the right to corporal chastisement might be stated in cantonal laws regarding education and schools³⁰. However, the Federal Court has not decided yet, whether or not such a cantonal provision would be compatible with federal law³¹. In OMCT's view such legislation that, under certain circumstances, allows corporal punishment is not acceptable.

In 1996, the Commission for legal affairs of the Swiss National Council³² decided to urge the Federal government to provide for the introduction into Swiss law of an explicit ban on corporal chastisement within and outside the family³³. The latter seemed reluctant, however, to create such a provision³⁴.

OMCT would welcome a provision explicitly prohibiting corporal punishment and degrading treatment within the family and in the school on a federal level. This would not only constitute a clarification of the situation, but also underline the importance of the protection of children against all forms of violence and their right to equal protection under the law.

5.2 Female Genital Mutilation

The practice of Female Genital Mutilation (FGM) is still widespread in many countries. The ritual is practised on girls of various age groups and has terrible effects on the child or young girl's physical and psychological integrity, both at the time and in the future. The growing number of migrants from countries practicing FGM has led it becoming a problem in Europe as well.

A recent survey by UNICEF Switzerland and the Swiss Association for Gynaecology and Obstetrics revealed that FGM is also an issue in Switzerland. According to the study, 20% of 1162 gynaecologists in Switzerland have at least once treated a mutilated woman. 8 % have been asked to sew a woman up again after birth, two physicians to mutilate a girl child and four have been asked for information, where in Switzerland mutilations could be practiced on girls³⁵.

30 - In the canton of Zurich, for example, § 85 (b) of the Regulation on primary schools ("Volksschulverordnung") provides that, although corporal chastisement is – as a principle – not permissible, it can be excusable under certain conditions.

31 - Cf. BGE 117 IV 20.

32 - One of the two chambers of the Swiss Parliament.

33 - See *Disposition relative à la protection de l'enfance dans la constitution fédérale*, conseil National, Commission des affaires juridiques (CN 93.034).

34 - See *Disposition relative à la protection de l'enfance dans la constitution fédérale*, conseil National, Commission des affaires juridiques (CN 93.034), Prise de position du Conseil fédéral (3 juin 1996).

35 - See "Mädchenbeschneidung – ein Thema auch in der Schweiz", UNICEF press release, 1 May 2001.

Female Genital Mutilation constitutes a *grievous bodily harm*³⁶ under Swiss criminal law, which is prohibited by article 122 of the Swiss Penal Code³⁷. However, unlike in other European countries, so far, there have been no judgements in Switzerland against persons involved in mutilations.

Female Genital Mutilation is hidden and takes place in the private sphere of the family, possibly after consultation of a physician or another person. In most cases, the practice takes place while on visits to the respective home country. For this reason, reports of FGM to the authorities or legal proceedings in Switzerland are very unlikely and criminal prosecution ineffective. It would therefore be important to raise public awareness and focus on educational work with regard to FGM, for example by raising the issue during the study of medicine.

OMCT welcomes the fact that Switzerland is actively engaged against the practice of FGM on a bilateral as well as a multilateral level. It regrets, however, that the government report does not further analyse the problem in the Swiss context³⁸. Although the issue had been mentioned in the Swiss plan of action in the aftermath of the World Conference on Women in Beijing in 1995³⁹, the government report fails to provide further information on FGM in Switzerland or to refer to concrete measures to be taken.

OMCT recommends that the Swiss government conduct a comprehensive study on the scale of the problem of Female Genital Mutilation in Switzerland and promote educational work on the subject as well as a prevention campaign in order to stop this practice in line with articles 19, 37 (a) and 24 para. 3 of the Convention.

36 - "Lésions corporelles graves".

37 - See footnote 27.

38 - Cf. para. 451 of the government report.

39 - Suivi de la 4e Conférence mondiale sur les femmes de Pékin (1995), *Egalité entre femmes et hommes, Plan d'action de la Suisse*, p. 117.

VI. Children in conflict with the law (article 40)

6.1 Age of criminal responsibility

In respect of article 40 para. 3 of the Convention the Swiss Penal Code (article 82 para. 1) establishes “a minimum age below which children shall be presumed not to have the capacity to infringe the penal law”. According to this regulation, the minimum age of criminal responsibility is 7 years⁴⁰. For children below the age of 15 particular rules apply regarding criminal measures and penalties (article 82 para. 2). Separate rules apply also for children who are not yet 18 years old (“adolescents”)⁴¹. The Penal Code provides for sanctions depending on the age of the criminal.

It has to be stated that the age of criminal responsibility (7 years) is relatively low in Switzerland. In its concluding observations on the rights of the child in Sri Lanka, the Committee on the Rights of the Child expressed its view that it was “deeply concerned by the low age of criminal responsibility (8 years old) ...”⁴².

In light of this, OMCT recommends that the criminal age should be raised. It therefore welcomes the intention of the Swiss government to reform the juvenile justice system and to increase the minimum age below which children do not have the capacity to infringe the penal law⁴³. In OMCT’s view, however, the proposed age of criminal responsibility (10 years) is still too low, and it encourages the Swiss government to increase it even further⁴⁴.

40 - Article 82 para. 1 PC states: " Le présent code n'est pas applicable aux enfants qui n'ont pas atteint l'âge de 7 ans révolus ".

41 - Article 89 PC: " Les dispositions suivantes sont applicables lorsqu'un adolescent de plus de 15 ans, mais de moins de 18 ans révolus a commis une infraction réprimée par la loi ".

42 - Committee on the Rights of the Child, Concluding observations on Sri Lanka, CRC/C/15/Add.40, para. 22.

43 - Cf. article 3 para. 1 of the draft version of a new penal law for minors: " La présente loi s'applique à quiconque commet un acte punissable entre l'âge de dix ans révolus et l'âge de 18 ans révolus "; message du Conseil fédéral concernant la modification du code pénal suisse (dispositions générales, entrée en vigueur et application du code pénal) et du code pénal militaire ainsi qu'une loi fédérale régissant la condition pénale des mineurs, FF 98.038.

44 - The draft version of experts had already proposed to set the minimum age of criminal responsibility at 12 years (cf. message du Conseil fédéral FF 98.038, p. 2031).

6.2 Police custody

Of all phases of the juvenile justice procedure, it is on arrest and immediately thereafter, while in police custody, that a child is most likely to become a victim of torture and other forms of cruel, inhuman or degrading treatment prohibited by article 37 (a) of the Convention. It is also at this stage that the child is likely to be denied the presence of those (parents, legal representative, social worker), who might best provide protection against such acts.

Article 31 of the new Swiss Federal Constitution expressly states the funda-

mental rights of a person in detention⁴⁵. However, due to the federal structure of Switzerland, different cantonal rules apply with respect to the arrest of people by the police. The duration of police custody and the time spent until the arrested person is heard by a judge differs from canton to canton. It has to be stressed that the application of Switzerland's obligations under the Convention in all parts of its territory must not be hampered by its federal structure.

The Human Rights Committee expressed its concern recently "that many cantons do not have independent mechanisms for investigation of complaints regarding violence and other forms of misconduct by the police"⁴⁶. OMCT would deem it very important that the cantons which have not yet done so set up independent mechanisms for recording and following up complaints of ill-treatment in the course of arrest or in police custody in order to prevent mistreatment of detainees.

OMCT would have appreciated it if more detailed information had been given to the Committee on this issue. The government report mentions in para. 215 that, although in a few cases of arrest, unlawful treatment by police forces had taken place, no such case

45 - "Art. 31 Privation de liberté

1 Nul ne peut être privé de sa liberté si ce n'est dans les cas prévus par la loi et selon les formes qu'elle prescrit.

2 Toute personne qui se voit privée de sa liberté a le droit d'être aussitôt informée, dans une langue qu'elle comprend, des raisons de cette privation et des droits qui sont les siens. Elle doit être mise en état de faire valoir ses droits. Elle a notamment le droit de faire informer ses proches.

3 Toute personne qui est mise en détention préventive a le droit d'être aussitôt traduite devant un ou une juge, qui prononce le maintien de la détention ou la libération. Elle a le droit d'être jugée dans un délai raisonnable.

4 Toute personne qui se voit privée de sa liberté sans qu'un tribunal l'ait ordonné a le droit, en tout temps, de saisir le tribunal. Celui-ci statue dans les plus brefs délais sur la légalité de cette privation."

46 - Cf. the concluding observations of the Human Rights Committee on Switzerland, 05/11/2001 (CCPR/CO/73/ CH), para. 11; cf. also the concluding observations of the Committee against Torture on Switzerland, 27/11/97 (A/53/44), para. 90: "The Committee is concerned about frequent allegations of ill-treatment in the course of arrests or in police custody, particularly in respect of foreign nationals. Independent machinery for recording and following up complaints of ill-treatment does not seem to exist in all the cantons".

was known to be against children or juveniles. However, as already stated, OMCT believes that this assumption might be too sweeping. Amnesty International's two most recent annual reports, for instance, mention two cases of alleged ill-treatment of children (a 14-year-old boy from Kosovo and a 17-year-old Angolan schoolboy) by Geneva police officers while in police custody⁴⁷.

The UN Human Rights Committee also expressed its deep concern recently about reported instances of police brutality towards detainees⁴⁸. Considering the gravity of such allegations and the importance of article 37 (a) of the Convention, OMCT is disappointed by the fact that the Swiss Government fails to provide more detailed information on this issue or eventual independent mechanisms for investigations of complaints regarding such violations.

6.3 Pre-trial detention

The Convention on the Rights of the Child, not least article 37, mentions several rights and requirements that have to be met in cases of children in pre-trial detention. Particularly, the preventive custody has to

be a measure of last resort and must be used for the shortest period of time. In addition, the detained child has the right to prompt access to legal and other appropriate assistance as well as the right to challenge the legality of detention before an independent and impartial authority.

The *UN Standard Minimum Rules for the Administration of Juvenile Justice* (“the Beijing Rules”) stress that “juveniles shall receive care, protection and all necessary individual assistance – social, educational, vocational, psychological, medical and physical – that they may require in view of their age, sex and personality” (rule 13.5). The *UN Rules for the Protection of Juveniles Deprived of their Liberty* mention with regard to pre-trial detention that juveniles should be provided with opportunities to pursue work, and continue education or training. Moreover, they should receive and retain materials for their leisure and recreation (rule 18).

In Switzerland, pre-trial detention is still governed by cantonal rules. All cantonal legislations provide for the possibility of

47 - Amnesty International, reports 2001/2000 on Switzerland.

48 - See the concluding observations of the Human Rights Committee on Switzerland, 05/11/2001 (CCPR/CO/73/CH), para. 11.

preventive detention of minors⁴⁹. Nevertheless, constitutional guarantees apply. Article 31 para. 3 of the new Federal Constitution states:

“Every person taken into preventive detention has the right to be brought before a judge without delay; the judge shall decide whether the person shall remain in detention or shall be released. Every person in pre-

ventive detention has the right to be judged within a reasonable time”.

Unfortunately, the provision does not mention the particular requirements regarding pre-trial detention of children stated in article 37 (b) of the Convention, which guarantees that it is used only as a measure of last resort and for the shortest period of time.

The Swiss cantons have adopted very different rules regarding access of the detained child to legal assistance. While in some cantons the criminal procedure provides that the child automatically receives a defence lawyer immediately after the preventive detention is ordered⁵⁰, there are no specific rules regarding legal assistance in the legislation of others⁵¹.

OMCT deems it important that children receive prompt legal assistance in the delicate moment of preventive detention. It fears, however, that the implementation of Switzerland’s obligations under the Convention in all parts of its territory might be hampered by its federal structure. Therefore, OMCT welcomes Switzerland’s plan to provide for minimal standards regarding pre-trial detention of minors on a federal level⁵² as well as its intention to

49 - See JEAN ZERMATTEN, *Détention préventive et droits de l'enfant: Un couple à problèmes*, in: *Les droits de l'enfant en détention préventive*, Geneva 2001, pp. 13-15 regarding different cantonal laws on pre-trial detention.

50 - Cf. for example § 380 of the law on criminal procedure in the canton of Zurich.

51 - See JEAN ZERMATTEN, *Détention préventive et droits de l'enfant: Un couple à problèmes*, in: *Les droits de l'enfant en détention préventive*, Geneva 2001, pp. 25/26.

52 - Cf. articles 6 and 39 of the draft version of a new penal law for minors.

Article 6 ("Détention avant jugement") states:

1 La détention avant jugement ne peut être ordonnée que si le but qu'elle vise ne peut être atteint par une mesure de protection ordonnée à titre provisionnel.

2 Pendant la détention, les mineurs sont séparés des détenus adultes. Une prise en charge appropriée est assurée. Si le mineur n'a pas encore quinze ans révolus ou si la détention dure plus de quatorze jours, il doit être placé dans un établissement spécialisé.

3 L'instruction est menée avec diligence”.

Article 39 (“Défense”) states:

1 Pendant la procédure d'instruction et la procédure de jugement, le mineur ou ses représentants légaux ont en tout temps le droit de se pourvoir d'un défenseur.

2 L'autorité compétente commet d'office un défenseur si le mineur ou ses représentants légaux ne sont pas en mesure d'assurer eux-mêmes la défense. Si elle ordonne la détention avant jugement du mineur ou son placement à titre provisionnel, elle commet d'office un défenseur lorsque le mineur ou ses représentants légaux n'ont pas choisi eux-mêmes de défenseur.

3 Les frais de la défense d'office peuvent être mis en tout ou en partie à la charge du mineur ou de ses parents s'ils sont en état de les payer”.

unify the rules governing criminal procedures⁵³.

While nearly all cantonal legislations provide for the separation of detainees in pre-trial detention from convicts, there are still no satisfactory solutions as to the principle of separation between children and adults in preventive detention in many cantons. The situation of girls seems to be particularly precarious, as there are even fewer adequate facilities for their detention⁵⁴. They may be placed in institutions that are thoroughly inadequate and which are clearly not designed for children. In the Geneva based “Riant-Parc” (a prison for women), for example, girls – during OMCT’s recent visit five locked up in a small cell – are detained in a completely separated tract of the building without the necessary care and assistance. There is no possibility for them to have free exercise in the open air⁵⁵ apart from occasional access to a fully encaged residential balcony⁵⁶.

Children in pre-trial detention often do not receive social and educational assistance as required by the Convention. The Geneva based “Champ-Dollon” (a pre-trial detention centre), for example, does not offer any educational activities for detained children⁵⁷.

They spend 23 hours a day in their cells, which is contrary to the obligations under the Convention, that provides for the right to education and leisure and recreational activities⁵⁸. The same is true for “Riant-Parc”, which lacks the personnel to offer the necessary social and educational assistance.

Moreover, the lack of suitable institutions can result in a certain discrimination of detainees based on sex, age, language and origin or status⁵⁹. The notoriously insufficient number of adequate institutions for girls, for instance, leads to generally poorer detention conditions, which is unacceptable in light of article 2 of the Convention⁶⁰.

53 - Cf. articles 39 and 40 of the draft version of a new federal law on the criminal procedure for minors.

54 - See JEAN ZERMATTEN, *Détention préventive et droits de l'enfant: Un couple à problèmes*, in: *Les droits de l'enfant en détention préventive*, Geneva 2001, p. 23; GEODE/DIDE, *L'Application des droits de l'enfant dans le contexte de la détention préventive*, in: *Les droits de l'enfant en détention préventive*, Geneva 2001, p. 57.

55 - Cf. Rule 47 of the UN Rules for the Protection of Juveniles Deprived of their Liberty: " Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided ".

56 - OMCT visit on 21 January 2002.

57 - See GeoDE, *Droits de l'enfant en prison: La situation des mineur(e)s détenu(e)s à Genève*, Geneva 1999, p. 15.

58 - GeoDE, *Droits de l'enfant en prison: La situation des mineur(e)s détenu(e)s à Genève*, Geneva 1999, p. 16.

59 - GeoDE, *Droits de l'enfant en prison: La situation des mineur(e)s détenu(e)s à Genève*, Geneva 1999, p. 15.

60 - GEODE/DIDE, *L'Application des droits de l'enfant dans le contexte de la détention préventive*, in: *Les droits de l'enfant en détention préventive*, Geneva 2001, p. 57.

There is also an actual risk of discrimination of children who are not residents in Switzerland, as they seem to be more likely to spend pre-trial detention in inadequate institutions lacking the necessary care and assistance⁶¹. Gipsy girls from France, who were arrested for theft in Geneva, for example, are reported to have spent up to four months in poor detention conditions in the aforementioned “Riant-Parc”.

In OMCT’s view, the present situation regarding preventive detention of children in Switzerland is not acceptable. Solutions need to be found as soon as possible. OMCT recommends to the Swiss government to promote joint projects among the cantons to set up the necessary institutions designed for pre-trial detention of children in order to fully implement the requirements of the Convention.

Despite the fact that in Switzerland pre-trial detention seems to be particularly delicate

as far as children’s rights are concerned, it has to be stressed that article 37 of the Convention needs to be respected with regard to all kinds of deprivation of liberty (pre-trial, penitentiary, administrative detention etc.). It also has to be highlighted that the rights set forth in the Convention on the Rights of the Child, such as the right to education (article 28), the right to leisure and recreational activities (article 31) and the principle of non-discrimination (article 2), are also valid for children in detention. The *UN Rules for the Protection of Juveniles Deprived of their Liberty* apply for the various forms of detention⁶². They specify, for instance, the right to education, vocational training and work (rules 38–46) as well as the right to recreation, i.e. daily free exercise, time for leisure activities etc. (rules 47/48) more in detail⁶³.

6.4 Separation from adults in detention

Article 37 (c) of the Convention requires that detained children be separated from adults unless it is in the best interest of the child not to do so. OMCT believes that this is a very fundamental principle, for the risks for

61 - GEODE/DIDE, L’Application des droits de l’enfant dans le contexte de la détention préventive, in: Les droits de l’enfant en détention préventive, Geneva 2001, p. 56.

62 - Cf. the broad definition in rule 11 (b) (“ Scope and Application ”) of the UN Rules for the Protection of Juveniles Deprived of their Liberty: “ The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority ”.

63 - Cf. also the UN Standard Minimum Rules for the Administration of Juvenile Justice (“ the Beijing Rules ”).

children detained with adults, both to their physical and psychological integrity, are enormous.

In Switzerland, however, it may happen that children are detained in institutions for adults, that cannot guarantee a strict separation from the latter. Many detention centres are neither designed nor equipped for children⁶⁴.

The Swiss government, therefore, made a reservation to Article 37 (c) of the Convention, according to which it was not in the capacity to guarantee the separation of children from adults in detention. OMCT is very concerned about this reservation and the fact that not all the Swiss cantons currently guarantee a consequent separation, neither in pre-trial nor ordinary detention, as it strongly believes that separation from adults in detention is a crucial safeguard to prevent detained children from ill-treatment and abuse. It is also generally acknowledged that prison has a detrimental effect on detained persons, which is particularly true for young offenders⁶⁵.

OMCT therefore strongly recommends the full implementation of article 37 (c) of the Convention and the withdrawal of the reser-

vation as soon as possible. It welcomes the plans of the Swiss government to enact a separate penal law for juvenile offenders, to unify the criminal procedure on a national level and to provide for a strict separation between children and adult detainees⁶⁶. Nevertheless, OMCT would like to express its concern with regard to the present situation as well as to the fact that the new law – once it comes into force – will oblige the cantons of Switzerland to establish the necessary institutions only within 10 years of

64 - Cf. for example GeoDE, *Droits de l'enfant en prison: La situation des mineur(e)s détenu(e)s à Genève*, Geneva 1999, p. 14.

65 - Cf. JEAN ZERMATTEN, *Détention préventive et droits de l'enfant: Un couple à problèmes*, in: *Les droits de l'enfant en détention préventive*, Geneva 2001, pp. 22; cf. also the "Rapport explicatif relatif à l'avant-projet de la loi fédérale sur la procédure pénale applicable aux mineurs", p. 88.

66 - Article 6 para. 2 of the draft version of a "Loi fédérale régissant la condition pénale des mineurs" states: "Pendant la détention, les mineurs sont séparés des détenus adultes. Une prise en charge appropriée est assurée. Si le mineur n'a pas encore quinze ans révolus ou si la détention dure plus de quatorze jours, il doit être placé dans un établissement spécialisé".

Article 26 para. 2 states: "La privation de liberté est exécutée dans un établissement pour mineurs qui doit assurer à chaque mineur une prise en charge éducative adoptée à sa personnalité et, notamment, un encadrement propre à préparer son intégration sociale après sa libération".

Similarly, the draft version of a "Loi fédérale sur la procédure pénale applicable aux mineurs":

"Article 40 Exécution de la détention préventive

1 Pendant la détention, les mineurs sont séparés des adultes et une prise en charge appropriée est assurée aux mineurs.

2 Si le mineur n'a pas encore quinze ans révolus ou si la détention dure plus de quatorze jours, il doit être placé dans un établissement spécialisé.

3 ...

4 ..."

time⁶⁷. OMCT encourages the Swiss authorities to fully implement the principle of separation from adults in detention already under the present regime of juvenile justice

and, accordingly, to adopt a more ambitious timetable in order to comply with article 37 (c) of the Convention.

VII. Children seeking asylum

7.1 Factual situation and preliminary observations

Every year several thousand children arrive as asylum seekers in Switzerland, of which a considerable number are unaccompanied⁶⁸. As children are especially vulnerable, they need particular care and attention⁶⁹. This is particularly true for unaccompanied children seeking asylum, who face the essential problem of living in a foreign country without the care of their parents or legal guardian and therefore run a high risk of not receiving proper protection and

care. Accordingly, protection – not only within the asylum procedure – is vital for these children.

OMCT welcomes the fact that the Swiss authorities have become increasingly aware of the problem of child asylum seekers and appreciates the efforts made in this area within the last couple of years. Nevertheless, OMCT deems it worthwhile to take a closer look at the problems these children face in Switzerland, as their situation is very delicate since they are in a crucial stage of personal development.

7.2 Legal framework of children seeking asylum

Switzerland has signed and ratified the relevant international instruments relating to

67 - Article 47 (" Etablissements d'exécution du placement et de la privation de liberté ") of the draft version of a " Loi fédérale sur la procédure pénale applicable aux mineurs " states: " Les cantons créent les établissements nécessaires à l'exécution du placement (article 14) et de la privation de liberté (article 26) au plus tard dix ans après l'entrée en vigueur de la présente loi ".

68 - According to the Federal Office for Refugees, the number of unaccompanied minors amounted to 4-6 % of all asylum seekers between 1998 and 2001.

69 - SADAKO OGATA in Refugee Children: Guidelines on Protection and Care (UNHCR): " Refugee children are children first and foremost, and as children, they need special attention ", p. 1.

the status of refugees⁷⁰. The Convention on the Rights of the Child contains some provisions that affect in certain ways the status and rights of child asylum seekers: Particularly article 3 (best interests of the child), article 12 (participation), article 20 (special protection of children deprived of their family environment), and article 22 (measures for child refugees/children seeking refugee). It must also not be forgotten other fundamental provisions such as the right to education (article 28) or the principle of non-discrimination (article 2), which underlines that refugee children, child asylum seekers, and rejected asylum seekers are entitled to all the rights of the Convention⁷¹.

According to the Swiss Federal Constitution, legislation regarding the granting of asylum is a matter within the competence of the Confederation⁷². The current federal law on asylum, which came into effect in 1999, contains a provision that takes into account the specific situation of unaccompanied child asylum seekers⁷³. Article 17 of the law provides that special care has to be taken with respect to children in the asylum procedure and that a so-called “trustworthy person” has to be allocated to every unaccompanied child, once he or she

has been transferred from the registration centre to one of the cantons⁷⁴.

The federal structure of Switzerland leads to the fact that not only the Confederation but also the cantons and municipalities are in charge of asylum seekers. This also means that the practice regarding matters regulated on a cantonal or community level may vary considerably within Switzerland. As the cantons are, for instance, responsible for the care of asylum seekers, the situation of children can be very different from one canton to another.

70 - Cf. particularly the 1951 Convention and the 1967 Protocol relating to the Status of Refugees.

71 - Cf. the UNHCR *Guidelines on Protection and Care regarding refugee children*.

72 - See Article 121 para. 1 of the Federal Constitution.

73 - Loi sur l'asile du 26 juin 1998 (RS 142.31).

74 - Article 17 of the federal law on asylum provides:

“Dispositions de procédure particulières

1 (...)

2 Le Conseil fédéral édicte des dispositions complémentaires concernant la procédure d'asile, notamment pour qu'il soit tenu compte dans la procédure de la situation particulière des femmes et des mineurs.

3 Si un requérant mineur non accompagné est attribué à un canton, celui-ci nomme immédiatement une personne de confiance chargée de représenter les intérêts de l'enfant pendant la durée de la procédure. Le Conseil fédéral règle les exceptions.”

7.3 Unaccompanied children within the asylum procedure

Children are generally included in their parents' asylum applications. However, problems arise when the children seeking asylum are unaccompanied. Although article 17 of the federal law on asylum provides that special care has to be taken with regard to children within the procedure and that a "trustworthy person" has to be allocated to unaccompanied children, their legal situation being far from straightforward. The provisions are very general and leave much to the discretion of the relevant authorities. Article 7 para. 7 of the ordinance on the asylum procedure⁷⁵, for example, states that "the persons in charge of the hearing of a minor seeking asylum takes into consideration the different characteristics of childhood"⁷⁶.

75 - Ordinance number 1 on the asylum procedure (RS 142.311).

76 - Article 7 para. 7 of the ordinance number 1 on the asylum procedure (RS 142.311) states: "Les personnes chargées de l'audition d'un requérant d'asile mineur tiennent compte des différentes caractéristiques de la minorité".

77 - This has also been the view of the Swiss Asylum Appeal Commission in several decisions.

78 - Article 32 para. 2 b of the federal law on asylum states: "Il n'est pas entré en matière sur une demande d'asile si le requérant:
(...)
b. a trompé les autorités sur son identité, le dol étant constaté sur la base de l'examen dactyloscopique ou d'autres moyens de preuve;
(...)"

79 - See FEDERAL OFFICE FOR REFUGEES, Rapport concernant le projet de révision partielle de la loi sur l'asile, June 2001, p. 43.

The government report mentions in para. 623 that, in the best interest of the child, the authorities can enforce medical tests in the registration centre in order to determine the age of the asylum seeker. However, the method generally used so far (ex-ray of the wrist bone) is highly questionable, especially in light of the potential inaccuracy of this test⁷⁷. According to article 32, para. 2 b of the federal law on asylum, an age determination test that shows a different age to that claimed by the asylum seeker can result in a negative decision without examination of the motives for asylum⁷⁸.

Considering the likelihood of serious consequences of the described method, OMCT urges the Swiss government to resort to more reliable methods of age determination and, in uncertain cases, to give the child seeking asylum the benefit of the doubt. Although the Federal Office for Refugees seems to have tested out a more sophisticated medical test for age determination, OMCT recommends that it be used only in flagrant cases of "false minors". OMCT regrets Swiss government endeavours to introduce a new para. 4 to article 17 of the law on asylum which provides for the presumption of adult status if the applicant refuses to submit to a scientific analysis⁷⁹.

OMCT deems it crucial, that unaccompanied children receive the necessary legal assistance mentioned in article 22 of the Convention from the very beginning of the asylum procedure. In its view, it would be preferable therefore, to send child applicants to a canton straight away, without all the investigations taking place at the registration centre as described in para. 623/624 of the government report. Accordingly, the unaccompanied child should only be heard after the nomination of a legal representative.

OMCT is not convinced that the recently introduced “trustworthy person” in charge of representing the child during the procedure (article 17 para. 3 of the law on asylum) is in the best interest of the child. His or her nomination, training, role, control of activities etc. are rather unclear. OMCT believes that, in light of the principle of non-discrimination enshrined in article 2 of the Convention on the Rights of the Child, ordinary tutelary measures should be taken for unaccompanied children seeking asylum⁸⁰.

In OMCT’s view, interrogations of unaccompanied children should be carried out by specially trained staff of the relevant au-

thority. Moreover, specific questionnaires should be used for the hearing of these children, which is not yet the case in Switzerland⁸¹.

7.4 Education and care

As education is vital to the development of children, it is recognized as a universal right in article 28 of the Convention on the Rights of the Child, which binds its signatories to fulfilling their obligation in providing it. It has to be stressed that being uprooted does not negate a child's right to education nor the responsibility of states to provide it.

The provision of education falls within the competence of the cantons, and there are considerable differences regarding children seeking asylum and those who have received a provisional permit from one canton to another⁸². Article 62 para. 2 of the Swiss Constitution states that primary school education is free, compulsory and open to all

80 - Cf. also the report of the ORGANISATION SUISSE D'AIDE AUX RÉFUGIÉS (OSAR), *Die Bedeutung der Kinderrechtskonvention im Asylbereich*, June 2000, p. 14, which states that it is common practice in many cantons not to order tutelary measures for unaccompanied minors seeking asylum.

81 - Cf. also article 3 para. 3 of the Convention.

82 - See ORGANISATION SUISSE D'AIDE AUX RÉFUGIÉS (OSAR), *Die Bedeutung der Kinderrechtskonvention im Asylbereich*, June 2000, p. 20.

children⁸³. It is important for the development of older children, however, that they have access to further education, particularly vocational training. As foreign juveniles need a work permit in order to start such training, access is often restricted. Some cantonal immigration authorities seem very reluctant to grant a permit.

OMCT deems it important to remind Switzerland of its obligation to provide education to all children irrespective of their origin or status, in accordance with article 2 of the Convention. It urges the Swiss government not to tolerate any practices that can result in discrimination of a certain group of children.

According to article 20 of the Convention, a child temporarily or permanently deprived of his or her family environment is entitled to special protection and assistance. This provision is of particular importance for unaccompanied children seeking asylum⁸⁴. Unfortunately, special institutions for the care of this group of children exist only in a couple of cantons. This means that children may end up without special assistance

in ordinary accommodation centres for asylum seekers, which cannot be regarded as “suitable institutions for the care of children” as stated in article 20 para. 3 of the Convention. Such institutions also have to conform to certain standards, not least regarding suitability of their staff (article 3 para. 3).

OMCT recommends that Switzerland provide for minimal standards regarding special protection and care of unaccompanied children in order to fully comply with the requirements of the Convention in all parts of Swiss territory.

7.5 Extradition

If an asylum seeker does not qualify for refugee status, the authority has to decide on the question of his or her extradition, particularly whether such action would constitute a concrete danger for the foreigner concerned⁸⁵. If this is the case, a provisional residence permit is issued. Under certain circumstances, a provisional permit can also be ordered according to article 44 para. 3 of the law on asylum in cases of “serious personal difficulties”.

83 - School-leaving age is approximately 15 years.

84 - See ORGANISATION SUISSE D'AIDE AUX RÉFUGIÉS (OSAR), *Die Bedeutung der Kinderrechtskonvention im Asylbereich*, June 2000, p. 13.

85 - See article 14 (a) para. 4 of the federal law on the residence and establishment of foreigners.

In the case of a minor, the best interest of the child (article 3 of the Convention) has to be considered when making such a decision on the actual expulsion. In particular, the asylum authorities are required to pursue all the investigations possible in order to track down the parents or other relatives of an unaccompanied child. However, there seems to be a certain tendency of the Federal Office for Refugees to block the files of unaccompanied children until they attain majority. The following case of a young Ethiopian girl (“Ruta”) is an example:

Born in February 1982, Ruta left her country on 15 March 1996, and sought asylum in Switzerland, at the age of 14. On 25 July 1996, the Federal Office for Refugees rejected her request and ordered her extradition without further investigating the possibilities regarding the care of the child in Ethiopia. Due to an appeal made on behalf of Ruta, the Swiss Asylum Appeal Commission reversed the decision of the federal office on 12 August 1998, referring to the requirements set forth in the Convention on the Rights of the Child and ordered that further investigation was needed regarding the circumstances of her future care. However, there were no further consequences to this decision until 25

September 2000, shortly after Ruta’s majority, when the federal authority again ordered Ruta’s extradition.

This practice of blocking the cases of unaccompanied children pending their majority seems to be quite common in Switzerland, as similar examples have been reported by several organisations working in the field of asylum. OMCT believes that this practice undermines the requirements set forth in the Convention on the Rights of the Child, and that it is contrary to the best interest of the child, which, according to article 3, shall be a primary consideration. OMCT therefore regrets the withdrawal of the principle of priority treatment in the new directive of the Federal Office for Refugees on unaccompanied minors⁸⁶.

In light of this, OMCT deems it important to assess as soon as possible the personal and family situation of the child, both in the country of origin and in Switzerland, in order to give the child a real perspective for his/her future, without waiting until he/she is more or less integrated before being sent back to his/her country of origin.

86 - The former directive of 15 February 1995 (“Circulaire relative aux tâches cantonales spécifiquement liées au traitement des demandes d’asile émanant de requérants d’asile mineurs non accompagnés”) expressly mentioned “le principe d’un déroulement rapide de telles procédures” (“the principle of rapid progress of such procedures”).

OMCT would also recommend that the Swiss authorities produce detailed statistics on the extraditions of unaccompanied children. Such information could further contribute to the analysis of the problem, however it does not seem to be available so far.

7.6 Administrative detention

The coercive measures provided in articles 13a–e of the federal law on the residence and establishment of foreigners⁸⁷ allow, inter alia, for the detention of asylum-seekers whose claims have been rejected and who are considered likely to abscond before being expelled, and of persons whose identity or country of origin cannot be established.

87 - Loi fédérale du 26 mars 1931 sur le séjour et l'établissement des étrangers (RS 142.20).

88 - This practice had already been criticised by the European Commission against Racism and Intolerance in its second report on Switzerland adopted on 18 June 1999, CRI (2000) 6, para. 22.

89 - MARIE-FRANÇOISE LÜCKER-BABEL, *Les enfants migrants vus au travers de la convention relative aux droits de l'enfant*, in: *Etrangers, migrants, réfugiés, requérants, clandestins... et les droits de l'enfant ?*, Sion 2001, p. 85 also questions the legality of such detention unless other methods of control or surveillance had been looked for and applied in the first place; cf. also PHILIP GRANT, *Les mesures de contrainte en droit des étrangers*, Mise à jour et rapport complémentaire de l'Organisation suisse d'aide aux réfugiés (OSAR), Berne 2001, p. 25.

Due to a lack of facilities, such people, who have committed no crime, may be kept in normal prisons alongside convicted criminals during a period of up to one year⁸⁸. According to article 13c para. 3 of this law, children from the age of fifteen years may also be subject to such administrative detention. The practice of such administrative detention is particularly disturbing when applied to children.

According to article 37 (b) of the Convention, the arrest, detention or imprisonment of a child “shall be used only as a measure of last resort and for the shortest appropriate period of time”. OMCT doubts therefore as to the legality of such measures, not least in light of the detention conditions⁸⁹. It believes that children should not be subject to administrative detention and recommends that Switzerland increase the minimum age of such measures to 18 years. It also stresses that in the case of administrative detention of a child it must be made sure that he/she enjoys all the rights set forth in the Convention, including the guarantees of article 37 as well as adequate care and education.

Considering the lack of special institutions for such children and the fact that

Switzerland seems unable to guarantee a systematic separation from adults, OMCT urges that the measures provided for in Swiss legislation not be used for children. It also seems that the practice is quite different from one canton to another and that due to the federal structure of the country and the lack of institutions designed for the detention of children, they risk being detained with adults.

OMCT knows of a case brought to the attention of the Geneva government by the local section of a human rights organisation, where three boys from another canton were detained in a Geneva based adult administrative detention centre in February 2001, despite the fact that the cantonal law of

Geneva does not allow such detention for children. It was reported that a 16-year-old boy was assaulted by an adult detainee while in confinement. Attempting to escape from the detention centre, due to fear of further aggression, the boy suffered injuries requiring his admission to hospital for treatment involving 49 stitches.

Unfortunately, the government report does not contain any information on coercive measures and there seem to be no comprehensive study on the practice nor statistics on this subject⁹⁰. OMCT urges the Swiss government to provide detailed information on such measures taken against children by the immigration authorities.

⁹⁰ - See *Erster Bericht der Schweiz an den UNO-Ausschuss für die Rechte des Kindes, Würdigung und Empfehlungen der SFH*, Berne 2000, p. 6

VIII. Recommendations

Non-discrimination

OMCT urges the Swiss authorities to stop and prohibit any tendency towards segregation between Swiss and foreign pupils and to take all necessary measures to prevent discrimination of foreign children within the educational system.

OMCT recommends the abolishment of article 84 of the law on asylum, which states that in the case of adult asylum-seekers whose children live abroad, child benefits are withheld during the asylum procedure.

OMCT urges the Swiss government to take the necessary steps in order to establish a transparent and non-discriminatory naturalisation procedure.

Protection against torture and other cruel, inhuman or degrading treatment or punishment (article 37)

OMCT recommends that Switzerland introduce a provision into its Penal Code that

expressly prohibits and punishes acts of torture.

OMCT urges the Swiss Government to provide detailed information on allegations of police brutality against children and on the existence of independent mechanisms for investigations of complaints regarding such human rights violations.

Violence against children (article 19)

Corporal punishment

OMCT recommends that Switzerland introduce a provision explicitly prohibiting corporal punishment and degrading treatment within the family and in the school on a federal level.

Female Genital Mutilation

OMCT recommends that the Swiss government conduct a comprehensive study on the scale of the problem of Female Genital

Mutilation in Switzerland and promote educational work on the subject as well as a prevention campaign in order to stop this practice.

Children in conflict with the law (article 40)

Age of criminal responsibility

OMCT recommends that Switzerland raise the minimum age below which children do not have the capacity to infringe penal law.

Police custody

OMCT urges the Swiss Government to provide detailed information on cases of ill-treatment of children in police custody as well as on the existence of independent mechanisms for the investigation of complaints regarding such violations.

OMCT urges the cantons, which have not yet done so, to set up independent mechanisms for recording and following up complaints of ill-treatment in the course of arrest or in police custody.

Pre-trial detention

OMCT recommends that the Swiss government promote joint projects among the cantons to set up adequate institutions designed for pre-trial detention of children.

Separation from adults in detention

OMCT urges Switzerland to withdraw the reservation regarding the separation of children from adults in detention as soon as possible in order to fully implement article 37 (c) of the Convention.

Children seeking asylum

Unaccompanied children within the asylum procedure

OMCT recommends to the Swiss government that the scientific test for age determination be used only in flagrant cases of “false minors”.

OMCT recommends sending unaccompanied children to a canton straight away, without all the investigations pursued in the

centre of registration; the unaccompanied child should only be heard after the nomination of a legal representative.

OMCT recommends that in light of the principle of non-discrimination ordinary tutelary measures should be taken for unaccompanied children seeking asylum instead of the nomination of a “trustworthy person”.

OMCT recommends that interrogations of unaccompanied children be carried out by specially trained staff; specific questionnaires should be used for the hearing of these children.

OMCT recommends that the Swiss government reintroduce the principle of priority treatment for cases of unaccompanied minors.

Education and care

OMCT urges Switzerland to provide education to all children irrespective of their origin or status, to promote equal rights and not to tolerate any practices that can result in discrimination of a group of children.

OMCT recommends that Switzerland provide for minimal standards regarding special protection and care of unaccompanied children on a federal level.

Extradition

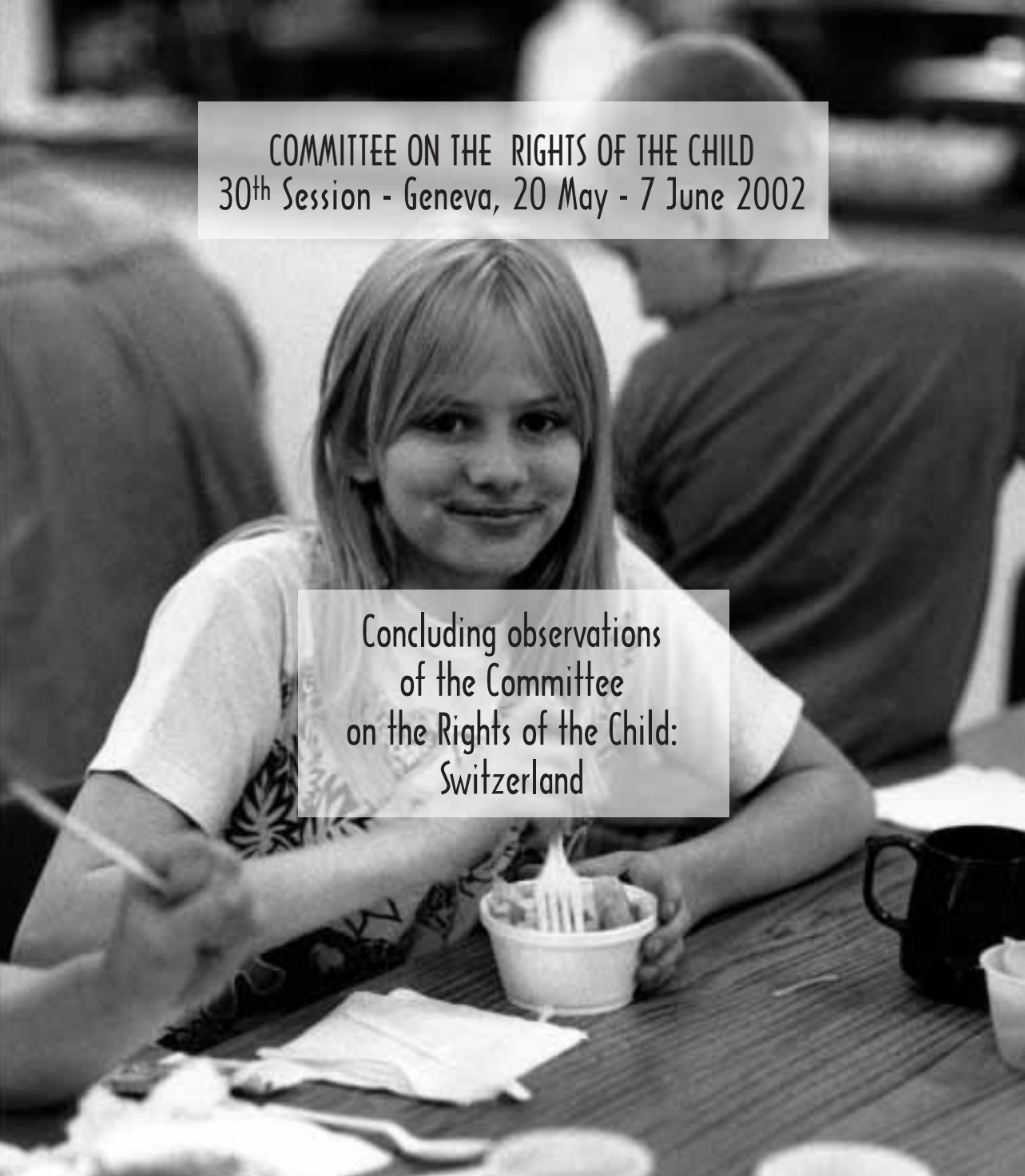
OMCT urges Switzerland to assess as soon as possible the personal and family situation of the unaccompanied child, and to refrain from any practices blocking such cases pending adulthood.

OMCT recommends that the Swiss authorities produce detailed statistics on extraditions of unaccompanied children.

Administrative detention

OMCT recommends that Switzerland increase the minimum age of administrative detention to 18 years.

OMCT urges the Swiss government to provide detailed information on coercive measures taken against children by the immigration authorities.



COMMITTEE ON THE RIGHTS OF THE CHILD
30th Session - Geneva, 20 May - 7 June 2002

Concluding observations
of the Committee
on the Rights of the Child:
Switzerland

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION

1. The Committee considered the initial report of Switzerland (CRC/C/78/Add.3), received on 19 January 2001, at its 790th and 791st meetings (see CRC/C/SR. 790 - 791), held on 29 May 2002 and adopted at the 804th meeting (CRC/C/SR.804), held on 7 June 2002, the following concluding observations.

A. INTRODUCTION

2. The Committee welcomes the submission of the State Party's initial report, which followed the established guidelines. The Committee also takes note of the timely submission of the written replies to its list of issues (CRC/C/Q/SWI/1), which allowed for a clearer understanding of the situation of children in the State party. The Committee also notes the positive dialogue it had with the delegation of the State party. The Committee acknowledges that the presence of a high-qualified delegation directly involved in the implementation of the Convention allowed for a better under-

standing of the rights of children in the State party.

B. POSITIVE ASPECTS

3. The Committee welcomes the adoption of:
- a) the new Constitution of 1999 which enshrines provisions on the rights of the child, notably in its article 11;
 - b) the new Act on divorce and filiation (entered into force in 2000);
 - c) the amendments to the Penal Code which introduce the prohibition of possession of hard-core pornography, including child pornography (entered into force in 2002);
 - d) the revision of the Federal Act concerning Assistance to Victims of Offences (LAVI) (entered into force in 2002);
 - e) the Act on Medically-Assisted Procreation (LPMA entered into force in 2001))
4. The Committee also welcomes the fact that the Convention can be directly invoked

before the courts and that the Federal Tribunal has referred to the provisions and principles of the Convention on several occasions.

5. The Committee welcomes the State party's close cooperation with civil society with regard to children's rights.

C. PRINCIPAL SUBJECTS OF CONCERN AND RECOMMENDATIONS

1. General measures of implementation

Reservations

6. The Committee is concerned at the reservations made by the State party to article 5, 7, 10, 37 and the four reservations made to article 40 but welcomes the information that the State party is considering the withdrawal of most of these reservations thanks to recent and current revisions of the Constitution and other relevant laws, following a tentative timetable presented during the dialogue. Despite this information, the Committee remains concerned at the rather slow pace of this withdrawal process and even more at the fact that some reservations may not be with-

drawn at all or only in a far away future.

7. In light of the 1993 Vienna Declaration and Programme of Action, the Committee recommends that the State party:

- a) expedite as much as possible the process for the withdrawal of the reservations regarding the provision of an interpreter free of charge (article 40(2)(b)(vi)) and use this process to also withdraw as soon as possible the reservation to article 5 given the fact that this reservation is according to the State party only an interpretative declaration without the intention to affect the meaning of article 5;
- b) expedite the current revision of the naturalisation law and withdraw as soon as possible after the approval of this revision the reservation made to article 7;
- c) expedite the current revision of the Foreign Nationals Act (formerly Federal Act concerning the Permanent and Temporary Residence of Foreigners) and withdraw as soon as possible after the approval of this revision the reservation made to article 10(1) regarding family reunification;

- d) expedite the approval and enactment of the new Juvenile Penal Law in order to start as soon as possible thereafter the withdrawal of the reservation to article 40(2)(b)(ii) regarding legal assistance and to article 37(c) regarding separation of juveniles deprived of their liberty from adults;
- e) reconsider the reservation made with regard to the possibility of having the same juvenile judge as an investigating and a sentencing judge since the requirement of an independent and impartial authority or judicial body [article 40(2)(b)(iii)] does not necessarily and under all circumstances, mean that investigating and sentencing juvenile judges cannot be the same person;
- f) expedite the current legal reform which abolishes the competence of the Federal Tribunal as a court of first instance and withdraw as soon as possible after approval of that reform the reservation made to article 40(2)(b)(v).

8. The Committee urges the State party to have the withdrawal of all reservations completed before the submission of the next report.

Legislation

9. The Committee is aware of the numerous laws under revision in the State party, including in the Cantons which are relevant to children such as the Federal bill on criminal procedures applicable to minors, the Federal bill on the criminal status of minors, and the Foreign National Act.

10. The Committee recommends that the State Party:

- a) ensure, through an appropriate mechanism that national and cantonal laws conform with the Convention in order to avoid discrimination which may arise from existing disparities in the State party;
- b) rigorously review and ensure that these and other laws concerning children as well as administrative regulations both at the federal and at the cantonal level, are rights-based and conform to the Convention and other international human rights instruments and standards, including the Convention;
- c) ensure adequate provision is made for their effective implementation, including budgetary allocation; and

d) ensure their smooth and rapid promulgation.

Coordination

11. The Committee notes that the Federal Council stipulated in its resolution dated 15 October 1997 that the Federal Department for Home Affairs is responsible for co-ordinating the implementation of the Convention and that co-ordinating mechanisms exist between Cantons and between the Cantons and the Federal Government. However, the Committee remains concerned that the absence of a central mechanism to co-ordinate the implementation of the Convention in the State party makes it difficult to achieve a comprehensive and coherent child rights policy.

12. The committee recommends that the State party establish an adequate permanent national mechanism to coordinate the implementation of the Convention at the federal level, between the federal and the cantonal levels and between Cantons.

13. The Committee notes that the Federal Department of Home Affairs formulated elements of a Swiss policy concerning

children and youths but remains concerned that this policy does not address all rights of children, especially the younger children, as recognised in the Convention.

14. The Committee recommends that the State party prepare and implement a comprehensive national plan of action for the implementation of the Convention, undertaken through an open, consultative and participatory process. This national plan of action should adopt a rights-based approach and not be limited to protection and welfare. In addition, the Committee recommends that equal attention should be paid both to young and older children. Finally, the Committee recommends that the State party make use of child impact assessments in the formulation of legislation, budgets and policies.

Monitoring structures

15. The Committee notes the establishment of mediators in a number of Cantons and of mechanisms specialised in children's issues in a number of Cantons and cities. The Committee also notes that there have been a number of parliamentary motions for the establishment of a federal national human

rights institution. However, the Committee is concerned that there is no central independent mechanism to monitor the implementation of the Convention, and which is empowered to receive and address individual complaints of children at the cantonal and federal level.

16. The Committee recommends that the State party establish a federal independent human rights institution in accordance with the Paris Principles relating to the status of national institutions (General Assembly resolution 48/134), to monitor and evaluate progress in the implementation of the Convention. It should be accessible to children, empowered to receive and investigate complaints of violations of child rights in a child-sensitive manner, and address them effectively.

Data collection

17. The Committee welcomes the statistical data provided with the replies to the list of issues and notes the measures underway to improve data collection, notably through the National Research Programme. However, the Committee remains concerned that age-brackets used by statistics - notably national

census - do not conform to the definition of the child as set up in the Convention and that not all areas of the Convention are covered.

18. The Committee recommends that the State party collect disaggregated data on all persons under 18 years for all areas of the Convention, with specific emphasis on those who are particularly vulnerable and on fields which are not yet covered by current data; and use this data to assess progress and design policies to implement the Convention.

Training/dissemination of the Convention

19. The Committee welcomes information that the State party will publish its initial report with concluding observations together as well as a summary of the report. However, the Committee is concerned that the Convention was not translated into the fourth national language of the State party, namely Romansh, and that dissemination, awareness-raising and training activities are not always undertaken in a systematic and targeted manner.

20. The Committee recommends that the State party:

- a) strengthen, and make on-going its programme for the dissemination of information on the Convention and its implementation among children and parents, civil society, and all sectors and levels of Government, including initiatives to reach vulnerable groups, especially migrant and asylum seeker children;
- b) translate the Convention into Romansh;
- c) develop and disseminate systematic and ongoing training programmes on human rights, including children's rights, for all professional groups working for and with children (e.g. federal and cantonal parliamentarians, judges, lawyers, law enforcement officials, civil servants, local government official, personnel working in institutions and places of detention for children, teachers and health personnel).

2. General Principles

Non-discrimination

21. While acknowledging noting the prohi-

bition of at discrimination is prohibited under the Constitution (article 8), and welcoming that age has been kept as a basis for the Committee is concerned at the persistence of de facto discrimination in the State Party. In particular, the Committee is concerned at the regional disparities in the enjoyment of rights experienced by children depending of the Cantons they reside in. It is also concerned discrimination against foreign children and at incidents of racial hatred and xenophobia that can have a negative effect on the development of children. The Committee is also concerned that some of the cantonal disparities in practice and services provided and in the enjoyment of the rights by children may amount to discrimination.

22. In light of article 2 and other related articles of the Convention, the Committee recommends that the State party carefully and regularly evaluate existing disparities in the enjoyment by children of their rights and undertake on the basis of that evaluation the necessary steps to prevent and combat discriminatory disparities. It also recommends that the State party strengthen its administrative measures to prevent and eliminate de facto discrimination against foreign children or children belonging to minorities.

23. The Committee requests that specific information be included, in the next periodic report, on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party to follow up on the Declaration and Programme of Action adopted at the 2001 World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and taking account of General Comment no. 1 on article 29(1) of the Convention (aims of education).

Best interests of the child

24. The Committee is concerned that the general principle of the best interests of the child (art. 3) is not fully applied and duly integrated in the implementation of the policies and programmes of the State party.

25. The Committee recommends that the State party take all appropriate measures to ensure that the general principle of the best interests of the child is appropriately integrated in all legislation and budget, as well as judicial and administrative decisions and in projects, programmes and services which have an impact on children.

Respect for the views of the child

26. While welcoming article 11(2) of the Constitution recognising that the child can exercise his/her own rights in accordance with his/her maturity, and the numerous legal provisions recognising the right of the child to express his/her views, and noting the establishment of various Youth Parliaments at the cantonal or municipal levels, the committee is still concerned that the general principle as laid down in article 12 of the Convention is not fully applied and duly integrated in practice into the implementation of the policies and programmes of the State party.

27. The Committee recommends that further efforts be made to ensure the implementation of the principle of respect for the views of the child. In this connection, particular emphasis should be placed on the right of every child to participate in the family, at school, within other institutions and bodies, and generally in society at large, with special attention to vulnerable groups. This general principle should also be reflected in all policies and programmes relating to children. Awareness-raising among the public at large as well as educational and training of professionals programmes on the

implementation of this principle should be reinforced.

3. Civil Rights and Freedoms

The right to know one's identity

28. The Committee notes that, according to article 27 of the Law on Medically-Assisted Procreation, a child can be informed on the identity of his/her father only if he/she has a “legitimate interest” and is concerned at the meaning of “legitimate interest” in that regard.

29. In light of article 7 of the Convention, the Committee recommends that the State party ensure, as far as possible, respect of a child's right to know his or her parents' identities.

Torture and ill-treatment

30. The Committee is deeply concerned about allegations of instances of ill-treatment by law-enforcement officers against foreign children and at the prevalence of abuse.

31. The Committee endorses the recommendations made by the Committee against torture in that regard [A/53/44, para. 94] and, in light of article 37 of the Convention, recommends that the State party:

- a) set up child-sensitive mechanisms in all Cantons to receive complaints against law-enforcement officers regarding ill-treatment during arrest, questioning and police custody; and
- b) systematically train the police force on the human rights of children.

Corporal punishment

32. While noting that corporal punishment is prohibited in schools, the Committee is concerned that according to the jurisprudence of the Federal Tribunal, corporal punishment is not be considered as physical violence if it does not exceed the level generally accepted by society. In addition, the Committee is concerned that corporal punishment within the family is not prohibited under law.

33. The Committee recommends that the State party explicitly prohibit all practices of cor-

poral punishment in the family, schools and in institutions and conduct information educational campaigns targeting, among others, parents, children, law enforcement and judicial officials and teachers, explaining children's rights in this regard and encouraging the use of alternative forms of discipline in a manner consistent with the child's human dignity and in conformity with the Convention, especially articles 19 and 28, para. 2.

4. Family Environment and Alternative Care

Child-care services for children of working parents

34. While welcoming a parliamentary initiative to increase the number of child-care facilities, the Committee notes with concern that, according to information provided by the State party (State party report, para. 481), the existing offer of child-care services is far from meeting the needs of single mothers or those of families in which both parents have to work for financial reasons.

35. In light of article 18 para. 3 of the Convention, the Committee recommends

that the State party:

- a) take measures to establish more child-care services to meet the needs of working parents; and
- b) ensure that the child-care services provided promote early childhood development and meet the needs of working parents, in light of the principles and provisions of the Convention.

Adoption

36. The Committee welcomes the entry into force of article 268(c) of the Civil Code which will allow adoptive children to know their biological parents and the ratification process expected to be completed in 2003 of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption. However, the Committee remains concerned that children adopted abroad shall wait two years before being formally adopted which can lead to discrimination and statelessness. In addition, the Committee is concerned that, because of the inadequate follow-up, cases of ill-treatment of children by adoptive parents have been reported.

37. The Committee recommends that the State party take necessary measures to avoid that children adopted abroad become stateless or are discriminated against because of the gap between their arrival in the State party and formal adoption. In addition, the Committee further suggests that the State party systematically review the conditions of these children by an adequate follow-up with a view to eliminating instances of ill-treatment and violations of other rights of these children.

Abuse and neglect/violence

38. While welcoming the numerous initiatives to tackle violence against children in family, schools and sports, the Committee remains concerned at the lack of comprehensive data and information on child abuse and/or neglect.

39. In light of article 19, the Committee recommends that the State party:

- a) undertake studies on violence, ill-treatment and abuse against children, especially vulnerable groups, including sexual abuse, within the family and bullying in schools in order to assess the

extent, scope and nature of these practices;

- b) develop awareness-raising campaigns with the involvement of children in order to prevent and combat child abuse with the involvement of children;
- c) evaluate the work of existing structures and provide training to the professionals involved in this type of cases; and
- d) investigate effectively cases of domestic violence and ill-treatment and abuse of children, including sexual abuse, within the family through a child-sensitive inquiry and judicial procedure in order to ensure better protection of child victims, including the protection of their right to privacy.

5. Basic Health and Welfare

Adolescent health

40. While taking into account the advanced health care system, the very low infant mortality rate, and the decrease of HIV/AIDS prevalence, the Committee is concerned

about the high number of suicides among adolescents and the limited measures to prevent this phenomenon, and the insufficient access by adolescents to counseling services, including outside schools. In addition, the Committee is concerned by the high and increasing prevalence –notably among girls– of the use of alcohol and tobacco. Moreover, while noting that the fatality rate is decreasing, the Committee is still concerned at the high number of children who die or are wounded in road traffic accidents. Finally, the Committee is concerned at the cases of female genital mutilations performed abroad.

41. The Committee recommends that the State party:

- a) pursue its efforts to decrease the HIV/AIDS prevalence and take all necessary measures to prevent suicides among adolescents, including the collection and analysis of information, the launching of awareness-raising campaigns, and the establishment of specific programmes and counseling services;
- b) increase its efforts to promote adolescent health policies, particularly with respect to alcohol consumption and tobacco use;

- c) pursue its efforts to decrease the number of children victims of road traffic accidents; and
- d) develop awareness campaigns to target the relevant population to put an end of the practice of female genital mutilations and to conduct a comprehensive study on this issue.

Children with disabilities

42. While welcoming the fact that the Constitution prohibits discrimination on the basis of disability (article 8 of the Constitution), the Committee remains concerned at the lack of statistics regarding children with disabilities and at the lack of uniformity in the integration of these children in mainstream education depending from the Canton where they live in. In addition, the Committee is concerned at the difference made between children born with disability and children becoming disabled as far as home care is concerned. [para. 391 of the State party report]

43. The Committee recommends that the State party:

- a) reinforce the collection of data regarding children with disabilities;
- b) undertake an assessment of the existing disparities in the integration of disabled children in mainstream education across the country and take all necessary measures to eliminate these differences which may amount to discrimination;
- c) review its home care support system in order to eliminate de facto discrimination between children born with disability and children becoming disabled as a result of disease or an accident.

Health insurance

44. The Committee takes note of the ongoing reform of the social security system but remains concerned that costs of social insurance and health are very high which may affect low-income families.

45. The committee endorses the Concluding Observations of the Committee on Economic, Social, and

Cultural Rights [E/C. 12/1/ Add.30, para. 36] and recommends that the State Party review its systems of health care insurance system in order to lower the costs of health services and reduce negative effects on low-income families, by introducing e.g. premium reduction.

Standard of living/social welfare

46. While noting the economic wealth and high standard of living within the State party, the Committee is concerned that 5,6% of the population is affected by poverty, and that, according to information provided by the State party [Éléments d'une politique Suisse de l'enfance et de la jeunesse], young families, single parent families and families with many children are the most affected. In addition, the Committee is concerned that the family allowances or benefits largely vary according to the Canton and depends on the recipient's being gainfully employed.

47. The Committee recommends that the State party take all appropriate measures be taken to prevent poverty in light of the principles and provisions of the Convention, especially its articles 2, 3, 6, 26 and 27 and to review its system of family allowances and

benefits, taking duly account of the means-testing system, especially for families without gainfully employment and self-employed families.

6. Education

48. The Committee is concerned at the lack of information about how the aims of education, especially human rights education are reflected in the school curricula in all Cantons of the State party in light of article 29 of the Convention and the Committee's General Comments on the Aims of Education.

49. The Committee recommends the State party to provide information in its next report on how the aims of education have been reflected into the curricula at the cantonal level.

7. Special Protection Measures

Refugee, asylum seeking children and un-accompanied children

50. While welcoming the entry into force of the Federal asylum legislation (Federal Asylum Act and Ordinance 1 on Asylum Procedure) on 1 October 1999, the Committee remains concerned that the procedure used for unaccompanied minors is not always in their best interests and fully in line with relevant provisions of the Convention. In addition, in relation to reservation made to article 10 of the Convention, the Committee is concerned that the right to family reunification is too restricted.

51. The Committee recommends that the State party simplify its approach regarding proceeding for asylum seekers and take all necessary measures to expedite that asylum proceedings and to ensure they take into account the special needs and requirement of refugee and asylum seeking children, in particular unaccompanied children, notably concerning the designation of a legal representative, their placement in centres, their access to health care and education. In addition, the Committee recommends that the State party review its system for family

reunification, notably for refugees who stay during a long period in the State party.

Sexual exploitation and sexual abuse

52. While welcoming the amendments to the Penal Code prohibiting the possession of hard-core pornography, including child pornography and the establishment of a new centre against cyber-crime in 2003, the Committee remains concerned at the lack of knowledge about the scope of sexual exploitation of children, in particular vulnerable groups, in the State party.

53. In light of article 34 and other related articles of the Convention, the Committee recommends that the State party undertake studies with a view to assess the scope of sexual exploitation and trafficking of children, including prostitution and child pornography (including on the internet); and implement appropriate policies and programmes for prevention and for recovery and social the reintegration and recovery of child victims according to the 1996 Declaration and Agenda for Action and the 2001 Global Commitment adopted at World Congresses against Commercial Sexual Exploitation of Children.

Drug abuse

54. While noting the current policy of the State party to prevent and fight against drug the use of drugs by adolescents, the Committee is concerned at the increasing use and sale of illegal drugs among adolescents.

55. The Committee recommends that the State party to pursue its awareness-raising and preventive measures, including awareness raising of the danger of drug in schools. It further recommends that the State party allocate more resources to the child welfare service system for prevention, treatment therapies and services for recovery and social the reintegration specifically tailored for children and childrenadolescents.

Administration of juvenile justice

56. The Committee welcomes the ongoing discussion on the Federal bill on the criminal status of minors, the Federal bill on criminal procedures applicable to minors and on the amendment of the Federal Act concerning Judicial Organisation, but remains concerned at the very low age of criminal responsibility (7 years), and considers

that the new proposed age of criminal responsibility, namely 10 years, is still too low. In addition, the Committee is concerned at the lack of provisions regarding legal assistance during pre-trial detention in some Cantons and at the lack of separation of children from adults in pre-trial detention and imprisonment.

57. The Committee recommends that the State party take additional steps to reform legislation and the system of juvenile justice in line with the Convention, in particular articles 37, 40 and 39, and other United Nations standards in the field of juvenile justice, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, and the Vienna Guidelines for Action on Children in the Criminal Justice System

58. As part of this reform, the Committee particularly recommends that the State party:

a) raise the minimum age for criminal responsibility to an age above 10 years and

amend accordingly the Federal bill on the criminal status of minors;

b) systematise the provision of legal assistance to all children in pre-trial detention;

c) separate children from adults in pre-trial detention or detention;

d) introduce systematic training programmes on relevant international standards for all professionals involved with the system of juvenile justice;

e) take into consideration the deliberations of the Committee during its day of general discussion on juvenile justice (CRC/C/46, paras. 203-238).

Children belonging to a minority group

59. The Committee is concerned at the lack of information on Roma and travellers and their children in the State party and that there is no policy for these children.

60. The Committee recommends that the State party undertake a study on children belonging to Roma and travellers minorities to assess their situation and develop policies

and programmes to prevent social exclusion and discrimination, and to allow these children to fully enjoy their rights, including to have access to education and health care.

8. Optional Protocols to the Convention on the Rights of the Child

61. The Committee encourages the State party to ratify and implement the Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution, child pornography, and on the involvement of children in armed conflict.

9. Dissemination of Documents from the Reporting Process

62. Finally, the Committee recommends that, in light of article 44, paragraph 6, of the Convention, the initial report and written replies presented by the State party be made widely available to the public at large and that the publication of the report be considered, along with the relevant summary records and the concluding observations adopted thereon by the Committee. In addition, the Committee recommends that the State party made also widely available the summary of the State party report, which they have produced. Such a document should be widely distributed in order to generate debate and awareness of the Convention and its implementation and monitoring within the Government and the general public, including NGOs.

The World Organisation
Against Torture (OMCT)
wishes to extend its gratitude
to the following for their
support to the Children's
Rights Programme:



P.O. Box 21 - 8, rue du Vieux-Billard
CH 1211 Geneva 8
Tel. +4122-809 49 39 - Fax +4122-809 49 29
[http:// www.omct.org](http://www.omct.org) - Electronic Mail: omct@omct.org

ISBN 2-88477-027-5