Child Rights References in the Universal Periodic Review

Summary:
A compilation of extracts featuring child-rights issues from the reports submitted to the first Universal Periodic Review. There are extracts from the 'National Report', the 'Compilation of UN Information' and the 'Summary of Stakeholder's Information'. Also included is the 'Final Report' and 'Conclusions and Recommendations' from the Review.

Switzerland – 2nd Session – 2008

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National Report

Article 11 of the constitution gives special protection to children and young people, encourages their development and allows them to exercise their rights themselves. Article 67 ensures that the federation and cantons are aware of the needs of children and young people in terms of development and protection, in education, culture and extracurricular activities. Article 116 considers the needs of the family. This has been translated into the law in various ways, including into the civil code, in compulsory schooling, professional training, the promotion of after-school and extracurricular activities, and in protection from abuse. Furthermore, the penal code includes crimes protecting the sexual integrity of the child until they have the maturity to make a responsible decision concerning sexual behaviour. The penal code condemns those who abuse children sexually.

In 2006, Switzerland ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Switzerland has also signed the Council of Europe Convention on Cybercrime, and ratified the ILO’s conventions on the minimum age for work and the worst forms of child labour.

In terms of child protection, several federal offices share the responsibility for this: the Federal Police Office (OFP) and the Federal Office for Social Security (OFAS) focus on paedophilia and the prevention of violence and abuse. OFAS acts as a coordinator for child protection issues. It provides information on the potential for aid and training, and supports projects aimed at the prevention of and research into child abuse (such as information or prevention campaigns). Due to the principle of subsidiarity, the main responsibility for child protection is at canton level; this means that the principle of “the best interests of the child” by all the authorities requires permanent work and effort. OFAS undertakes activities to promote the rights of the child and encourages the application of the CRC into the national plan of action. In terms of financial aid, Switzerland also counts of NGOs to set up projects and activities which show the diversity of children’s hopes and rights, as well as encouraging their participation.

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Child protection in terms of human trafficking appears in the penal code. Switzerland has also ratified the protocol to prevent, suppress and punish trafficking in persons, especially women and children, in addition to the UN Convention against transnational crime of October 2006. The penal code further allows judges to rule a case against anyone in Switzerland for the crime of sexual exploitation committed against minors abroad. The acquisition or possession of pornographic materials is punishable either by a custodial sentence or by a fine. A coordination service against the trafficking in human beings and migrants was set up in the OFP.

Following the serious sexual abuse of children, child pornography and paedophilia on the web, the federal authorities set up a national service to combat internet criminality (SCOCI) which acts as a point of contact for people who have encountered a suspicious website. SCOCI researches illicit content on the internet and carries out in-depth analysis into cyber criminality. In 2005, with the support of the cantons and the federation, a three-year campaign against internet criminality (paedophilia and pornography) was launched throughout the country. That same year, NGOs launched a three-year campaign against child sexual abuse, with the support of the federation. In May 2007, they also organised a national alliance against this activity, with the aim of reinforcing prevention and detection in cases as well as intervention. This alliance for the prevention of sexual violence against children and teenagers also produced a platform of information on the internet in May 2007, directly targeting those concerned, which was also supported by the federation. Finally, in terms of sex tourism, and thanks to a large contribution by the federation, the NGO ECPAT Switzerland introduced the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism into Switzerland. At the moment, two of the biggest Swiss tourist agencies have already agreed to protect children and fight against child sexual exploitation.
The foundations in terms of the protection and promotion of the rights of children have been laid. However, efforts should now be made to translate certain aspects of legislation into practice, such as the right of the child to be heard at divorce trials.

The right to free basic education is written into the constitution. This is a justiciable right which forces the community to take positive action. The responsibility for education is at canton level, and each canton has to provide free, basic education in public facilities. Although the constitution doesn’t provide for general training, the social aims of the constitution are that the federation and the cantons will ensure that every child, young person, and person of working age will have initial training and adequate continued education.

The results of the OECD's 2000 PISA survey (Programme for International Student Assessment) showed that young people from less wealthy social groups and those who are not Swiss natives have the greatest difficulties in school. To respond to this, the authorities have undertaken a number of measures: to encourage pre-school and extracurricular tuition, to encourage the development of language skills and to ensure the quality of compulsory education. The most recent PISA survey showed improved results, highlighting the effects of the measures undertaken.

Whilst primary and secondary education and training is formally guaranteed to all, the reality is often somewhat different. Non-native Swiss children have greater difficulty at school than those of Swiss or mixed origin. School is very important for the integration of immigrants and they are enrolled immediately, whatever their resident status and regardless of the status of their parents. However, once compulsory schooling is completed, it is difficult for them to find employment.

The cantons have attempted to battle xenophobia and racism in education in many ways. Human rights education is part of the syllabus, in various school subjects.

Compilation of UN Information

The Committee on the Rights of the Child (CRC) in 2002 was concerned that the application of the State's obligations under CRC in all parts of its territory may be hampered by the federal structure of the State.

While welcoming the numerous initiatives to tackle violence against children, CRC in 2002 remained concerned at the lack of comprehensive data and information on child abuse and/or neglect; the lack of knowledge about the extent of sexual exploitation of children, in particular vulnerable groups; the fact that corporal punishment is not considered as physical violence if it does not exceed the level generally accepted by society. CRC inter alia recommended the State to explicitly prohibit all practices of corporal punishment.

The Special Rapporteur on the sale of children, child prostitution and child pornography raised their concern about children who were repatriated from Switzerland and assigned to the custody of their parents despite the accusations of abuse by their father. Switzerland replied that the repatriation had taken place in compliance with the law. It also stated that it was not competent to investigate the penal aspects of the case when the alleged criminal facts were perpetrated abroad.

Concerning FGM, CRC recommended in 2002 the State to develop awareness campaigns to put an end to this practice. CRC welcomed in 2002 the discussion on the federal bill on the criminal status of minors, the federal bill on criminal procedures applicable to minors and on the amendment to 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, CRC was concerned at the lack of provisions regarding legal assistance during pre-trial detention in some cantons and at the failure to separate children from adults in pre-trial detention and imprisonment. CRC recommended the State take additional steps to reform legislation and the system of juvenile justice in line with the Convention, and other United Nations standards in the field of juvenile justice.

CRC raised in 2002 the same concern that, according to information provided by the State, young families, single-parent families and families with many children are the most affected by poverty. In addition, CRC was concerned that the family allowances or benefits vary according to canton and depend on the recipients being gainfully employed. CRC recommended to the State to take all appropriate measures to prevent poverty, and that it review its system of family allowances and benefits, especially for families without gainful employment and self-employed families.

In 2002, CRC noted the ongoing reform of the social security system but remained concerned that the cost of social insurance and health is very high, which may affect low-income families. CRC recommended to the State to review its health insurance systems in order to lower the cost of health services.

While taking into account the advanced health care system, CRC was nevertheless concerned about the high number of suicides among adolescents and the limited measures to prevent this phenomenon as well as the insufficient access by adolescents to counselling services. CRC recommended to the State, inter alia, to pursue its efforts to decrease the prevalence of HIV/AIDS; take all necessary measures to prevent suicides among adolescents; increase its efforts to promote adolescent health policies. CRC was also concerned at the increasing use and sale of illegal drugs among adolescents, and at the high and increasing, prevalence - notably among girls - of alcohol and tobacco use. CRC recommended the State to pursue its preventive measures, including awareness-raising of the danger of drugs in schools.

CESCR recommended in 1998, as highlighted also by UNHCR, that Switzerland play a more active role in promoting equal access to higher education for women, immigrants and ethnic minorities. On the same issue, CEDAW recommended in 2003 that the State intensify its efforts to encourage diversification of the educational choices of boys and girls to help them to fully develop their personal potential.
In 2002, CRC noted with concern, as highlighted also by UNHCR, that authorities who interview children applying for asylum receive no special training for dealing appropriately with children affected by military activities and armed conflicts. CRC recommended the State to pay particular attention to asylum-seeking, refugee and migrant children entering Switzerland who may have been involved in armed conflicts and provide them with assistance for their physical and psychological recovery and social reintegration.

**Summary of Stakeholders' Information**

Regarding the situation in certain places of detention, the CoE CHR recommended the Swiss authorities to take all appropriate measures, including the use of alternative sanctions, to reduce the population of the Champ-Dollon prison to an acceptable level very rapidly, to immediately entrust the supervision of under-age prisoners in the “La Stampa” prison to properly trained warders and educators, and improve the premises in which these young people are held, and to stop using the cells in the Central Police Station at Bellinzona for detention purposes. The State provided comments to these recommendations.

The Global Initiative to End All Corporal Punishment of Children (GIEACP) added that corporal punishment is lawful in the home. A 2003 Federal Court judgment ruled that repeated and habitual corporal punishment is unacceptable but did not rule out the right of parents to use corporal punishment. According to GIEACP, research in 2004 by Fribourg University commissioned by the Federal Social Insurance Office found that the use of corporal punishment by parents is in decline. GIEACP strongly recommended that Switzerland introduce legislation as a matter of urgency to prohibit corporal punishment of children in all settings, including in the home.

Stop Suicide reported that for young people aged between 15 and 24, suicide is the number one cause of death, along with road accidents.

The NGO coalition reported that a recent survey into child rights showed that the Swiss population had a poor understanding of them overall. This shows that the current level of human rights education within schools is insufficient.

**Final Report**

- With regard to violence against children and suicide, the scope of the phenomenon of sexual violence against children needs further comprehensible studies throughout the country. There are criminal statistics which do not show the full scope of the problem, as there is still underreporting on a number of cases. On the issue of adolescent suicides, a report approved by the Federal Council in 2005 revealed that the yearly 1,400 cases of suicide were above the world average. It is essential to strengthen preventive measures, in particular at cantonal level, with a view to reducing the number of suicides. With regard to the ill treatment of children, it was noted that corporal punishment is prohibited at schools. To the question asked on whether corporal punishment was allowed at home, Switzerland stated that the Federal Constitution specifically protects children against degrading punishment and treatment, and any physical punishment of a child is punishable and prosecutable.

(ii) Interactive Dialogue with the State under Review

- Algeria endorsed the recommendations made by the Committee on the Rights of the Child, in particular related to children asylum-seekers, refugees and migrants.

- Brazil stated that Switzerland replied positively to numerous human rights challenges, inter alia, on the rights of the child, disabilities, sexual orientation and right to education, but it would need to further focus on other challenges. Brazil enquired about steps taken to promote the rights of the child.

- India noted that in 2002, Committee on the Rights of the Child recommended that Switzerland establish a federal independent human rights institution in accordance with the Paris Principles.

- Canada noted that most of the juvenile offenders are treated as adults and recommended that offenders under 18 be treated in a different manner.

- Cuba enquired about the measures the Government intends to take to address the high suicide rate among juveniles.

- In response to the interventions, Switzerland noted that since 1996 an office within the federal administration coordinates work on the protection of children and informs of assistance. Research is undertaken, subsidies provided, and a free of charge hotline is available 24 hours per day to help young people in all cantons. Relevant departments at canton level dealing with health, youth, sport, education undertake measures, and cantons undertake initiatives to ensure better training of professionals to address violence against children.

- With regard to the children of Travellers and the right to education, Switzerland stated it is a challenge to ensure access to schooling in light of their nomadic lifestyle. Pragmatic solutions have included school attendance where the families spend the winter, and during the summer the children are provided with necessary school materials and interact with their teachers by correspondence.

- Switzerland makes constant efforts to provide information on human rights through education in schools, and by the use of websites and brochures.

- Iran expressed concern regarding trafficking of women and girls and their sexual exploitation. In particular, migrant women experience discrimination and are at risk of exploitation and violence. Iran recommended the formulation of a broad strategy to combat these phenomena, which should include measures of prevention, prosecution and punishments of offenders, and increased international cooperation.

- Regarding the protection of children, Chile was particularly interested in the work done together with NGOs and would like to have
more details on how is the work structured between the authorities and the representatives of civil society in this respect.

- Italy wished to receive information on a concern expressed in 2002 by the Committee on the Rights of the Child on the age for criminal responsibility, which appears still too low. Italy recommended considering the explicit prohibition of all practices of corporal punishment of children.

- In responding to some questions, Switzerland noted that it has withdrawn a number of reservations, particularly to the Convention on the Rights of the Child, and that it is a policy to regularly consider reservations with a view to withdrawing them when possible. At the moment, Switzerland will not adopt further legislation on corporal punishment, while further consideration to this will be given.

**Conclusion and Recommendations**

The following recommendations will be examined by Switzerland which will provide responses in due time. The response of Switzerland will be included in the outcome report to be adopted by the Human Rights Council at its eighth session:

- To treat offenders under the age of 18 in police custody and detention differently from adults (Canada);

- Regarding trafficking of women and girls and their sexual exploitation, to formulate a comprehensive strategy, which should include measures of prevention, prosecution and punishment of offenders and increased regional and international cooperation (Islamic Republic of Iran);

- To consider the explicit prohibition of all practices of corporal punishment of children (Italy).