



Convention on the Rights of the Child

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Consideration of reports of States parties

List of issues in relation to the report submitted by Switzerland under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Addendum

Replies of Switzerland to the list of issues*

[Date received: 27 October 2014]

Question 1

Please provide information on the progress made towards the establishment of a centralized system for the compilation of data on cases of the sale of children, child prostitution and child pornography with a view to ensuring a coordinated system of data collection which encompasses all of the State party's agencies involved in child protection matters under the Optional Protocol.

1. Switzerland does not currently have a centralized system or a specific database for the compilation of data on the cases mentioned. Child pornography cases are recorded in a database that is not, however, reserved exclusively for that kind of crime. The database in question can be accessed and added to by all Swiss cantonal police forces.
2. The Confederation and all the cantons (criminal police forces) can verify and record suspected cases of, inter alia, human trafficking (Criminal Code, art. 182) and incitement to prostitution (Criminal Code, art. 195) in the federal database, JANUS. The central departments of the Federal Criminal Police are competent to coordinate such matters with national and international authorities.

* The present document is being issued without formal editing.



3. The crime and criminal justice section of the Federal Office for Statistics has put in place an effective system that provides differentiated data on police crime figures, criminal conviction rates, and on the prison population, including the enforcement of sentences. The system therefore mirrors the formal justice process.
4. The Cybercrime Coordination Unit of Switzerland of the Federal Police Office (Fedpol) serves as the central point of contact for those wishing to report suspect websites or content. After an initial examination and backup of the data, it communicates the information received to the competent criminal prosecution authorities in Switzerland and abroad. Illegal online content of criminal significance is understood to include hard-core pornography (sexual acts with children, animals or acts of violence).
5. The analytical tasks of the Cybercrime Coordination Unit involve:
 - Systematically analysing data on Internet crime from public and internal sources;
 - Reporting the results of analyses, describing trends and situations, and proposing measures and countermeasures;
 - Keeping statistics;
 - General coordination and representational duties;
 - Answering public queries.

Question 2

Please provide statistical data (disaggregated by sex, age, nationality, ethnic origin, socioeconomic background and urban and rural residence) for the last three years on the number of:

(a) Reported cases of the sale of children, child prostitution and child pornography, as well as other forms of exploitation including child sex tourism, with additional information on the type of action taken as a result, including the prosecution and punishment of perpetrators;

(b) Children trafficked from or through Switzerland and children trafficked within the country for the purpose of their sale, prostitution, forced labour, illegal adoption, organ transfer or pornography as defined in article 3, paragraph 1, of the Optional Protocol;

(c) Children offered, delivered or accepted by whatever means for the purpose of prostitution, forced labour, illegal adoption, organ transfer, pornography or marriage;

(d) Child victims who have been provided assistance with reintegration or have received compensation.

6. Data available can be found in the tables in annexes 2 to 4, but relate only, in the case of both injured parties and defendants, to violations of the Criminal Code, the Narcotic Drugs Act and other related laws.

7. With regard specifically to sex tourism, in 2011, 2012 and 2013, the Crimes against Children and Pornography Unit of the Federal Criminal Investigation Police handled five, three and five cases, respectively.

Question 3

Please indicate whether the State party plans to adopt a specific plan of action concerning the sale of children, child prostitution and child pornography. Please also indicate whether the State party has conducted any studies to evaluate the scale of sexual exploitation of and trafficking in children, and in particular child prostitution and pornography, especially over the Internet.

8. Switzerland has a National Action Plan against Trafficking in Human Beings. The Plan covers the period from 2012 to 2014 and includes 23 measures in the areas of prevention, suppression, victim support and collaboration. It is directed at all human trafficking victims, regardless of their age. Some measures are, however, geared specifically towards victims who are minors: measure No. 1, which was implemented in 2014, provided for the ratification by Switzerland of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention); measure No. 3 provides for the development of a national prevention campaign plan, which will also take into account the specific circumstances of victims who are minors; measure No. 5 requires cantons to take the necessary steps to provide victims with specialized assistance. The specific needs of victims aged under 18 must be taken into consideration.

9. By decision of the Government, a number of amendments to the Criminal Code entered into force on 1 July 2014. The amendments strengthen the protection of minors against exploitation and sexual abuse and allowed Switzerland to accede to the Lanzarote Convention. In force since 1 July 2014, the new article 196 of the Criminal Code punishes obtaining sexual services from a minor in return for payment. The prostitution of minors aged 16 to 18 is no longer tolerated in Switzerland.

10. The new article 123 (b) of the Federal Constitution provides that criminal action and punishment for a punishable act of a sexual or pornographic nature against a prepubescent child are imprescriptible. Article 197 of the Criminal Code has also been amended. There are plans to raise the age limit for the protection of minors from participation in pornographic performances from 16 to 18 years and the consumption of illegal pornography, including child pornography, is now punishable. Moreover, on 1 January 2015, an amendment to article 67 of the Criminal Code will enter into force prohibiting persons convicted, inter alia, of human trafficking, engaging in sexual acts with a child and accessing certain types of pornography containing sexual acts with children from exercising professional activities involving regular contact with children or from contacting or approaching children.

11. The Swiss Government is also implementing the National Youth and Media Programme to prevent children and young people from coming into contact with pornographic material via new media or from producing and disseminating such material themselves (the Programme is described in the reply to question 6 below).

Question 4

Please identify the body responsible for the implementation of the Optional Protocol. Please also provide detailed information on the follow-up and implementation of the Optional Protocol at both the federal and cantonal levels.

12. It is envisaged that the recommendations of the Committee on the Rights of the Child regarding the Optional Protocol will be dealt with as part of the follow-up to recommendations regarding the Convention by a working group comprising various federal services and the Conference of Cantonal Directors of Social Affairs (see also the replies of

Switzerland to the list of issues in relation to the combined second to fourth periodic reports of Switzerland, question I.1).

Question 5

Please provide information on the amounts allocated by the budget specifically for the implementation of the Optional Protocol. Please also describe any measures taken to ensure that national policies and programmes to prevent the offences covered by the Optional Protocol are systematically carried out and funded at both the federal and cantonal levels.

13. The Confederation grants subsidies to the Swiss Foundation for Child Protection to manage the specialized service End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT) Switzerland. The service is involved in the fight against the commercial sexual exploitation of children and young people in Switzerland and abroad, and works in close collaboration with the authorities and with governmental and non-governmental institutions throughout the world (see the reply to question 9 below).

14. In 2010, the Federal Council adopted a range of measures for the period 2011–2015 to combat and prevent violent youth crime and digital media crimes perpetrated by minors and young adults. The measures are being implemented under two national programmes that have been allocated a total of 8,650,000 Swiss francs (SwF) over five years (see the reply to question 6 below).

Question 6

Please provide up-to-date information on the steps taken systematically to raise awareness among the general public, groups of professionals who work with children and among children themselves, and to familiarize them with the Optional Protocol. In particular, please describe measures intended specifically to warn children about the harmful consequences of the practices covered by the Optional Protocol.

15. Until the entry into force of the Ordinance against Trafficking in Human Beings on 1 January 2014, Switzerland did not have the legal basis necessary to launch State-funded prevention campaigns in the country. With the entry into force of the Ordinance, this shortcoming has been addressed and a national campaign plan for the period 2017–2018 is being drawn up. As demonstrated by the experiences of the Federal Office of Public Health and the State Secretariat for the Economy in other areas, the development and implementation of such a plan poses a particularly tough and ambitious challenge involving several partners and requiring well-defined stages. For that reason, measure No. 3 of the National Action Plan against Trafficking in Human Beings (see question 3 above) provides for the development of a general plan (for 2014) specifying the objectives, organization, planning and implementation of the project. To that end, the Coordination Unit against Trafficking in Persons and the Smuggling of Migrants has set up a working group composed of specialized non-governmental organizations (NGOs), a trade union and the International Organization for Migration. The Swiss Foundation for Child Protection is a member of the campaign support group to ensure that the specific circumstances of victims aged under 18 are taken into consideration throughout the development of the campaign.

16. In order to make children and young people aware of the risks associated with new media, the Confederation has implemented a National Youth and Media Programme, the main purpose of which is to encourage children and adolescents to use digital media in a manner that is safe, age-appropriate and responsible. Dangers such as sexting, pornography and online sexual abuse are addressed by the Programme, which offers parents, teachers

and professionals targeted information, support and advice on caring for children and adolescents.

17. Through the National Youth and Violence Programme, the Confederation, cantons, cities and communes have created a basis for the sustainable and effective prevention of violence in Switzerland. Overall, the Programme, which was launched in 2011, makes it possible to support the relevant actors at various stages in the development and implementation of strategies and measures to prevent violence. The aim of the Programme is to reduce violent behaviour and sexual abuse by young people.

18. Moreover, the Confederation provides a total of SwF 60,000 from the funds allocated to children's rights (around SwF 200,000 per year) for the production and dissemination in schools of teaching materials related to the Convention and its Optional Protocols. This includes ongoing training courses on such matters for teachers. Thus far, however, emphasis has never been placed directly on the content of the Second Optional Protocol.

19. As to awareness-raising among professionals, it should be noted that the cantonal criminal authorities are trained in the delicate task of communicating with victims aged under 18 or witnesses to an offence. Moreover, in cantonal and communal police forces, there are specialized professionals to handle such cases. A module on dealing with traumatized victims aged under 18 forms part of police training.

20. In a number of cantons, efforts are being made to improve training for specialists in domestic violence and the ill-treatment and abuse of children. For example, Swiss teacher training colleges have put in place several training schemes and ongoing training courses for teachers on how to protect children and young people from violence.

21. With a view to raising awareness among doctors from various disciplines, in 2011 the Swiss Foundation for Child Protection produced a handbook on child abuse and protection. In 2013, it published two new handbooks for professionals: one on child protection in social work practice and the other on the early detection of violence and abuse against young children.

22. The objectives of the monitoring centre for child abuse of the University of Lausanne include organizing training and disseminating information for university and non-university actors, and promoting scientific and educational activities in the field of child abuse. The Kurt Bösch University Institute in Sion, meanwhile, in collaboration with the International Institute for the Rights of the Child and the University of Fribourg, offers a series of diploma courses in children's rights and protection.

23. In the field of victim assistance, the Government provides financial support for staff training, including on hearing the testimony of children. Even childcare workers, who play an important role in preventing sexual abuse, receive training on the matter. NGOs¹ also offer courses and training programmes on preventing sexual abuse and violence against children and young people.

Questions 7 and 8

Please also provide details of the preventive measures taken to protect particularly vulnerable children who are likely to become the victims of the offences covered by the Optional Protocol, and especially girls who are victims of domestic violence, Roma and other ethnic minority children, children placed in institutions, street children, refugee children, child asylum seekers and migrant children.

¹ Such as Castagna or Limita (www.castagna-zh.ch; www.limita-zh.ch).

24. The important role played by schools and teachers in terms of prevention, the identification of at-risk children or victims of violence and the support that is offered to them is taken into account, particularly through information brochures (such as *Häusliche Gewalt – Was kann/muss die Schule tun* (Domestic violence – What can/must schools do) in the cantons of Bern, Zurich and Thurgau). The brochures supply important information on domestic violence, its effects on children and the opportunities that schools have to support the children affected. Teachers are expected to assume their responsibilities and provide assistance through professional counselling centres.

25. As a form of secondary prevention, some cantons offer specific support to children and young people affected by interparental violence. Shortly after a police intervention, a brief or long individual counselling or group psychotherapy session is offered to children and young people. The canton of Bern also supplies a handbook on the attitude to adopt with children experiencing domestic violence to all cantonal services and institutions dealing with child protection or domestic violence, in order to ensure that they all adopt the same attitude when evaluating the danger to which the children affected are exposed.

26. A brochure entitled *Violence à l'encontre des enfants et des adolescent-e-s* (Violence against children and adolescents), which contains a wealth of information and references to support solutions, is made available on the website of the Federal Office for Gender Equality in its series of information leaflets on domestic violence. Moreover, several background and working papers on prevention and intervention can be downloaded from its database entitled *Toolbox Violence domestique* (Domestic violence toolbox). Lastly, prevention, the identification of children affected by domestic violence and the support that is offered to them will be one of the main themes of the Federal Office's 2015 national congress, which is devoted to the protection of minors and adults in the context of domestic violence.

27. Unaccompanied juvenile asylum seekers benefit from special protection measures during the asylum procedure, namely assistance from a trusted person responsible for representing their interests throughout the process (Federal Asylum Act, art. 17, para. 3), with particular regard to the concept of the best interests of the child. They are also entitled to age-appropriate housing and, as far as possible, to specific infrastructure in the canton to which they are assigned during the asylum procedure. Such measures to protect the interests of unaccompanied juvenile asylum seekers prevent asylum-seeking children from falling victim to offences under the Optional Protocol.

In respect of the problems referred to above, please indicate what measures have been taken to identify children who are particularly at risk from the offences covered by the Optional Protocol.

28. With regard to asylum-seeking children, an information campaign on human trafficking was conducted in October 2014 for employees of the Federal Office for Migration who deal with the asylum procedure and external partners of the Office who have contact with asylum seekers. The information campaign is part of the 2012–2014 National Action Plan (measure No. 19) developed by Switzerland to combat human trafficking (see also the replies to questions 3 and 6 above). The aim of the campaign is to better identify and meet the needs of human trafficking victims.

29. The problem of violence, or at least the suspicion of it, has generally been established by the time the police or the prosecutor's office enter the scene. The criminal prosecution authorities are also specialized in recognizing victims of offences such as domestic violence, even if the victims have not mentioned it explicitly.

Question 9

Please provide details of the measures taken by the State party to prevent sex tourism abroad and to publicize the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism which was developed by the World Tourism Organization, also indicating the progress achieved so far. Please also provide detailed information on any criminal prosecutions of nationals who have engaged in paedophile acts abroad.

30. The ECPAT Switzerland service of the Swiss Foundation for Child Protection works to prevent the sexual exploitation of children and adolescents for commercial purposes, in close collaboration with the private sector, in particular the tourism sector, and criminal prosecution authorities, governments and child protection organizations. It works in the Swiss tourism sector to prevent sex tourism involving children through the campaign entitled *Ne pas détourner le regard!* (Don't turn a blind eye!) – www.stopchildsextourism.ch, and by making available a form for reporting suspected cases of sex tourism involving children. The Confederation provides financial support for ECPAT and the prevention campaigns. Since the form was introduced, the public has used it just over 30 times. The cases reported to Fedpol are handled by the Crimes against Children and Pornography Unit of the Federal Criminal Investigation Police. If the information is sufficient and relevant, it is passed on to the competent authority in Switzerland or abroad in order for the necessary steps to be taken.

31. As soon as the Swiss authorities become aware of information indicating that a Swiss national may have committed criminal acts against children abroad, Fedpol passes it on to the country in question. If that country is unable or unwilling to prosecute the accused person, Fedpol informs the competent cantonal authority so that criminal proceedings can be instituted in Switzerland, in accordance with the legislation in force.

32. As part of its economic development cooperation, Switzerland supports the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism. The Code is the most developed response to sex tourism. It covers awareness-raising, training, measures to improve the capabilities of stakeholders, the publication of relevant documents, including examples of good practice, and cooperation with academic institutions and international organizations.

33. The Confederation supports the institutional development of the Code and the establishment of the secretariat in Bangkok and regional offices for the Americas and Europe. This structural expansion will ensure the long-term viability of implementing the Code in all geographical regions. The support from Switzerland will thus help strengthen child protection measures and establish the Code as a mark of quality in global, regional, national and local tourism.

34. ECPAT Switzerland is the representative of the Code in Switzerland (Local Code Representative) and is responsible for Code members in the country, training for specialists in the tourism sector and monitoring.

35. It should be noted that the ratification of the Lanzarote Convention resulted in legislative amendments to the Criminal Code that have been in force since 1 July 2014, raising the legal age for prostitution from 16 to 18 years (see also the replies to question 3 above and 10 below).

Question 10

In the light of paragraph 37 of the State party's report, please indicate whether the State party has prohibited child prostitution on its territory, in conformity with its obligations under the Optional Protocol. Please also explain on the basis of what criteria it has been decided that persons may voluntarily engage in prostitution from the age of 16.

36. The new article 196 of the Criminal Code has been in force since 1 July 2014. It provides for a prison term of up to 3 years or a fine for anyone who engages in a sexual act with a minor or induces them to commit such an act by paying them or promising to pay them. The article covers persons who perform a sexual act on a minor in exchange for payment or induce a minor to perform a sexual act on them, a third party or themselves in return for payment. The decisive factor is whether there is a causal link between the rendering of the service and the payment. It must be possible to state objectively that the (promise of) payment is the reason that led the victim to perform the sexual act, and that the act did not occur in the context of a relationship. Minors are understood to be men and women under 18 years of age. Victims are not criminally liable and the existence of consent has no bearing on the liability of perpetrators.

Question 11

Please indicate whether all the forms of the sale of children covered by article 2 (a) and article 3, paragraph 1 (a), subparagraph (i) b and c, of the Optional Protocol have been classified as distinct offences from human trafficking and whether child prostitution, child pornography, grooming and sexting of children have been explicitly defined and classified as criminal offences. Please also indicate whether the State party has taken any measures to classify as criminal offences all forms of the production, possession, sale and exchange of pornographic material.

37. Human trafficking is a specific offence and punishable as such (Criminal Code, art. 182). The following offences are punishable, where appropriate in conjunction with human trafficking: the production, possession, dissemination and exchange of child pornography (Criminal Code, art. 197, para. 4, in particular).

38. Grooming is not a distinct offence under the Criminal Code. Nevertheless, it is covered by various offences:

- Sexual acts involving children (Criminal Code, art. 187, para. 1), the production of child pornography (Criminal Code, art. 197, para. 4) and attempts to commit such acts;
- Exposing a child to pornographic written or pictorial material (Criminal Code, art. 197, para. 1);
- Inducing a child to perform a sexual act (Criminal Code, art. 187, para. 1);
- Involving a child in a sexual act, for example by performing the act in the child's presence (Criminal Code, art. 187, para. 1).

39. Consideration was given to establishing a separate offence for grooming in the Criminal Code in connection with the implementation of the Lanzarote Convention but was rejected by the Government and parliament. Nevertheless, a parliamentary initiative by the Legal Affairs Committee entitled *Grooming avec des mineurs* (Grooming minors) is currently pending (No. 13,442).

40. Sexting is not a specific offence in Switzerland. Under the Criminal Code, various acts constituting an offence may, however, apply to sexting. Foremost in this regard are the provisions on pornography. The age of the person depicted and that of the person who views the image are important factors. Anyone who shows pornographic material or makes it accessible to a person under the age of 16 is criminally liable (Criminal Code, art. 197, para. 1), as is anyone who circulates child pornography or makes it accessible (Criminal Code, art. 197, para. 3). If a person is forced to send an intimate photograph of themselves or threatened with the publication of such a photograph, the provisions related to coercion (Criminal Code, art. 181) or threats (Criminal Code, art. 180) may apply.

41. The Government does not deem it necessary to extend the scope of the offence to include the distribution of intimate photographs and films of third parties that are not pornographic within the meaning of article 197 of the Criminal Code.

42. In order to make children and young people aware of the risks associated with new media, the Confederation has implemented the National Youth and Media and National Youth and Violence programmes (see the descriptions in the reply to question 6 above).

Question 12

Please provide details of the programmes and measures taken to ensure access to rehabilitation, reintegration and compensation services for child victims of the sale of children, child prostitution and child pornography, including by the provision of information for victims on such programmes and of funding for professional assistance to victims at both the federal and cantonal levels. In the same connection, please provide information on the refoulement and expulsion of children who may have been the victims of trafficking towards Switzerland for sale or sexual exploitation.

43. The access of child victims of the offences in question to the counselling centres provided for under the Victim Support Act is facilitated by the online publication of a list of services intended specifically for children and young people. The manner in which the public is informed of the existence of cantonal victim support services varies from one canton to the next, as shown by a recent study.² In the event of criminal proceedings, the police or prosecution have a duty to inform the victim of the existence of counselling centres at the initial hearing. They must also, if the victim consents, pass on the victim's name and address to a counselling centre, which will contact the victim or his or her relatives.³ The counselling centres are funded by the cantons.

Question 13

Please provide details of the measures taken to protect the rights and interests of child victims and witnesses of the criminal offences covered by the Optional Protocol at all stages of criminal proceedings. Please also describe the measures taken to ensure that these children are treated as victims rather than as offenders, and that they are able to receive the benefit of measures to provide psychological support, reintegration and rehabilitation. Please also describe the programmes introduced for perpetrators of the offences covered by the Optional Protocol.

² econcept study entitled Opferhilfe: Befragung zur Öffentlichkeitsarbeit der Kantone und über den Kenntnisstand der Bevölkerung (10 July 2014), available at www.ofj.admin.ch > Thèmes > Aide aux victimes > Publications.

³ Code of Criminal Procedure, art. 305, and Victim Support Act, art. 12.

44. Under the Swiss Code of Criminal Procedure, injured parties who have suffered a direct attack on their physical, psychological or sexual integrity during the commission of a crime (victims) are entitled to specific rights. Moreover, special provisions apply to victims under the age of 18 (art. 116). Article 117 of the Code of Criminal Procedure sets out a list of victims' rights during criminal proceedings.

45. At the start of criminal proceedings, victims must be informed of the existence of victim support and counselling centres (see also the reply to question 12 above), and of their rights and obligations during the proceedings.⁴

46. The following rules apply to all victims:

- Protection of personal privacy⁵ with, in particular, the following rules: the authorities and individuals are authorized to divulge the victim's identity or information making it possible to identify him or her only under certain exceptional circumstances;⁶ proceedings are not public if the legitimate interests of the victim so require;⁷
- Right to be accompanied by one or more trusted persons: at all stages of the proceedings, the victim may be accompanied by a trusted person in addition to his or her legal counsel; in closed hearings, the victim may be accompanied by a maximum of three trusted persons;⁸
- Avoidance of any encounter or confrontation with the accused: the criminal justice authorities shall ensure that the victim does not encounter the accused if the victim so requests.⁹

47. Moreover, special protection measures apply to victims of sexual offences: they may ask to be questioned by a person of the same sex;¹⁰ they may also request that there be at least one panel member of the same sex.¹¹

48. For child victims (who are understood to be victims aged under 18 at the time of the examination or confrontation hearing), the Code of Criminal Procedure also provides for the following protection measures (see article 154 of the Code):

- The hearing must take place quickly and no more than two hearings may be held during the entire proceedings;
- A confrontation hearing with the accused may be ordered only if the child expressly requests one;
- The hearing shall be conducted in the presence of a specialist by an investigating officer specifically trained for that purpose;
- A video recording shall be made of the hearing;
- The hearing shall be conducted solely by the investigating officer specifically trained for that purpose.

⁴ Code of Criminal Procedure, art. 305, para. 1.

⁵ Pursuant to article 152, paragraph 1, of the Code of Criminal Procedure, the criminal justice authorities shall safeguard the personal privacy of the victim at every stage of the proceedings.

⁶ Code of Criminal Procedure, art. 74, para. 4.

⁷ Code of Criminal Procedure, art. 70, para. 3 (a).

⁸ Code of Criminal Procedure, arts. 152, para. 2, and 70, para. 2.

⁹ Code of Criminal Procedure, art. 152, para. 3, subject to arts. 152, para. 4, and 153, para. 2, of the same Code.

¹⁰ Code of Criminal Procedure, art. 153, para. 1.

¹¹ Code of Criminal Procedure, art. 153, para. 1.