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Amélie Evéquoz
Laura Heymann

The Rights of the Child in the Swiss Juvenile Justice System

Analysis and Observations

of the Swiss Section of the

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Prepared, layout, revision, corrections
Dannielle Plisson, Amélie Evéquoz, Laura Heymann

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CRC	Convention on the Rights of the Child, entered into force in Switzerland on 26th March 1997.
CF	Federal Council (Executive Arm of the Swiss Government)
The Committee	The UN Committee on the Rights of the Child
DCI-Switzerland	Defence for Children International-Swiss Section
DPMin	Federal Law Governing the Criminal Liability of Minors, entered into force on 1st January 2007.
Concluding Observations	Concluding Observations of the Committee on the Rights of the Child for Switzerland, 13th June 2002.
General Comment No. 10	General Comment No. 10 (2007) of the Committee for the Rights of the Child on Children's Rights in Juvenile Justice.
PPMin	Federal Law on Criminal Procedure Applicable to Minors, entered into force on 1st January 2011.
Riyadh Guidelines	United Nations Guidelines for the Prevention of Juvenile Delinquency.
Paris Principles	The Paris Principles relating to the status of national institutions for the promotion and protection of human rights.
Beijing Rules	United Nations Standard Minimum Rules for the Administration of Juvenile Justice
Havana Rules	United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

INTRODUCTION

Since 2006, several sections of DCI, in collaboration with the International Secretariat, have conducted an immense programme on juvenile justice. DCI-Switzerland followed suit in June 2008 with a juvenile justice programme regarding Switzerland. In September 2010, DCI-Switzerland published a report entitled "Children's Rights in the Swiss Juvenile Justice System". This publication described the situation of the criminal justice system for juveniles in Switzerland based on diverse reports and by reviewing the array of legislation in force at the time.

Subsequently in June 2012, Switzerland published, all at once, its 2nd, 3rd and 4th reports on its implementation of the Convention on the Rights of the Child (CRC). These reports attempt to portray the current situation in Switzerland, yet remain, in the context of juvenile justice, relatively deficient.

Following on from its September 2010 report, DCI-Switzerland presents an updated version of the situation in Switzerland which picks up on the elements appearing in the Swiss Confederation's reports. As mentioned above, this work focuses on the rights of children within the criminal juvenile justice system in Switzerland: a sensitive issue, too often exploited in recent years in political discourse and in the Swiss media. Based on the most recent assessments and reviews from professionals within this field, we intend to evaluate juvenile justice in Switzerland and to highlight shortcomings but also identify good practices in this domain with regard to the

international instruments on children's rights to which Switzerland pertains.

The rights of children before the justice system are guaranteed, at an international level, by articles 37 and 40 of the CRC, however, the general principles enumerated in articles 2, 3, 6 and 12 of the CRC are also of importance. Furthermore, other international non-binding regulations, such as the Beijing Rules, Havana Rules and the Riyadh Guidelines, ensure child protection in this area. Finally, General Comment No. 10 on Children's Rights in Juvenile Justice, issued by the Committee for the Rights of the Child in 2007, provides more detailed directives and recommendations for the establishment of a juvenile justice system that conforms to the CRC.
On the national front, the rights of children before the criminal justice system are mainly established under the Federal law governing the criminal liability of minors, entered into force on 1st January 2007, as well as under the Federal Law on Criminal Procedure Applicable to Minors, which entered into force on 1st January 2011.

This report is divided into two main sections : firstly, we deal with the **the general conditions** for a juvenile justice system to conform to the CRC, such as the issue of reservations, statistics, CRC implementation follow-up, communication and training. Moreover, we discuss **respect for the child's opinion**, a general principle that underpins all children's rights. In this part, we also deal with the **essential elements of a juvenile justice system** that respects the CRC, for example the age of criminal responsibility, prevention, mediation, community service,

deprivation of liberty and procedural guarantees. Each point discussed under the framework of the Concluding Observation and General Comment N°.10 of the Committee is analysed and commented on. For the second section, we have decided to report statements received from a survey that was carried out last year and from which we draw conclusions and practical ideas for implementing a system more respectful of children's rights. Finally, we conclude our report with suggestions, not from ourselves, but from those most affected.

PART ONE - THEORETICAL FRAMEWORK, STATISTICS AND FACTS

I. General Measures of Implementation

1. Reservations

In 2002, the Committee noted, in its Concluding Observations, that Switzerland had still retained its five reservations to articles 37 and 40 of the CRC. The Committee invited the State party to completely revoke these reservations before it presented its next report.

Since then, some movement in that direction has been made :

1. On the 1st May 2007, Switzerland lifted its reservation regarding free assistance of an interpreter which is guaranteed in Art. 40(2)(b)(vi) of the CRC. However, the State did add that this guarantee would not preclude the beneficiary from paying of resulting costs.

2. The Federal Council (CF), on the 4th April 2007, revoked the reservation on Art. 40(2)(b)(v) of the CRC that provides the right to a judicial review by a superior court of a decision or sentence. The introduction of the law on the Federal Court and the Federal Administrative Court now allows for a superior court to review criminal judgements.

Therefore, there currently remain three reservations to Articles 37 and 40 of the CRC despite the clear and insistent requests of the Committee.

The first reservation concerns the unconditional right to legal assistance guaranteed in Art. 40(2)(b)(ii) of the CRC. In fact, Switzerland wasted the opportunity to place this right in absolute terms in the new Federal Law on Criminal Procedure (PPMin) of the 1st January 2011. Articles 24 and 25 of the PPMin limit this obligation to certain circumstances; a reiteration of the CF in its message of 21st September 1998 regarding changes to the Swiss Penal Code, Military Penal Code and the Federal Law governing the Criminal Liability of Minors. The CF had announced that Switzerland would continue to interpret the CRC's Article 20(2)(b)(ii) as an obligation to appoint a public defender only in cases where a defence was necessary. Article 25(2) of the PPMin adds that the accused minor and parents may be obliged to reimburse such an appointment.

The second existing reservation is placed on the guarantee of separating incarcerated minors from such adults enshrined in Article 37(c) of the CRC. During the Convention's ratification in 1997, such a separation had not been guaranteed by the law in all situations. The new law (DPMin), in force from 2007, introduces the principle of separation (Art. 6.2 and 27.2), yet provides the Swiss cantons with 10 year implementation period under Article 48, so that, they have until the 1st January 2017 to have such adequate corrective institutions. Therefore, according to the CF, the lifting of this reservation depends on how quickly the different cantons make the necessary rearrangements. It is worth noting that beforehand in 1971, following a previous revision of the criminal law, the cantons were given a 10 year period to deal with the paucity of places for juveniles in detention. Nonetheless, the situation has scarcely changed due to a lack of political will and financial means. It is thus clear that a similar situation as regards custodial segregation will arise, if sufficient financial, political and legal means are not quickly provided to resolve the issue.

Currently, the only suitable institution that exists in the French speaking region is the Pramont institution in Valais. Pramont is a closed institution for male juvenile delinquents between the ages 15 and 30 and contains 34 places. The Swiss German region is better equipped as it possesses the Arxhof and Prêles centres, in Bâle-Campagne and Berne respectively, where young male offenders carry out their sentences in open or closed institutions. Meanwhile, Berne also has the Lory centre which houses young women with the aim of their reinsertion into society.

On the 24th March 2005, under a Concordat on the Criminal Detention of Minors in Romandie, it was agreed that two new detention centres for juveniles in the region (and part of Tessin) would be built to mitigate the lack of such institutions in the area. Work on the first, which is situated at Palézieux in the Vaud canton, began towards the end of 2011 and it is expected to be completed on time at the end of 2013. This establishment for 10 to 18 year olds will, at the beginning, receive 36 detainees, of either sex, from Romandie and Tessin. The number of places available will rise to 54 after a second phase. The objective is to offer juvenile delinquents place adequate to their needs: linking the deprivation of their liberty with socio-educational support aimed at their reinsertion into society. Simple and rational, the establishment will consist of four buildings around a yard and all enclosed by walls. The buildings are to be paradigms of environmental planning and will respect the low energy standards: solar-heated water for showers, wood-pellet boiler. This prison will allow for the custodial separation of juveniles and adults.

The second institution is in the locality of Dombresson in Neuchâtel canton. It will receive young females in an enclosed environment; though, they will gradually be able to take advantage of day releases. The main goal of this institution is to protect these young women from themselves, while providing

them with the opportunity to continue their scholastic and professional education. The choice of area for this establishment, on the site of the Borel Foundation, aims to, on one hand, respond to the young women's needs of mobility regarding the possible day releases; and on the other hand, to allow the use of the Foundation's infrastructure. It has already been planned and work has began which is expected to end on the 1st January 2017. The institution is designed and will be

constructed following the same model of the Lory Education Centre at Berne, while also taking into account the structure of the Borel Foundation. Thus, the canton of Neuchâtel will be able to comply with the promises regarding the female juvenile detention made in the above agreement, while respecting juvenile criminal law.

Regarding a minor on remand, the principle of separation of juveniles from adults, stipulated in Article 6(2) of the DPMin, is of immediate application as determined by the Federal Court (ATF 133 I 286). On the 4th April 2007 due to the new legislation, the CF lifted the reservation on Article 10 (2)(b) of the International Covenant on Civil and Political Rights, which dealt with the separation of juveniles and adults on remand. Therefore, the cantons have been required to have appropriate establishments available since 2007.

The third and final reservation that remains relates to the organisational and personnel separation between the investigating authority and the trial judge. The new PPMin confirms this reservation by permitting the canons to freely choose their organisation model even if the cantons do not guarantee the strict personnel separation between the roles of investigator and judge of the public prosecutor of juveniles. It ought to be noted that Art. 9 of the PPMin provides that the alleged young offender and legal representatives may have the judge recused if the latter plays both roles. This demand does not require reasons. Nonetheless, the reservation on art.

40(2)(b)(iii) of the CRC has not been reconsidered; indeed, the State is not concerned with respecting this article for the time being.

2. Data Collection : Statistics

Our previous report stated the consternation of the Committee over the age brackets that Switzerland took into account in its statistical data collection regarding juvenile delinquency. Indeed, the Swiss statistical offices distinguished between children (0 to 14 year olds) and minors (14-18 year olds). The CRC, on the other hand, fixes the age of majority at 18 years of age and make no distinctions in statistics.

The Committee, in General Comment No. 10, urges State Parties to systematically collect disaggregated data relevant to the information on the practice of the administration of juvenile justice, and necessary for the development, implementation and evaluation of policies and programmes aiming at the prevention and effective responses to juvenile delinquency in full accordance with the principles and provisions of CRC.
In its latest reports on the subject, Switzerland appears to have partially listened to the Committee's Comments, and presented statistics recognising all under 18s as children:however, the detailed statistical analysis still clearly points to a segregation of two age groups of children: those under and those over 15 years.

Current available statistics on juvenile delinquency in Switzerland are :

1. the Juvenile Criminal Judgement Statistics (JUSUS), which began in 1999 under the aegis of the Swiss Federal Statistical Office (OFS). Although relatively reliable, it only reflects a minority of juvenile delinquency cases: collecting only the court cases involving violence rather than all cases brought before the

judge. Moreover, some offences are the subject of a conciliatory procedure which leads to the closing of the case if successful. In 2004 and again in 2007, the preservation of JUSUS was thrown into doubt but since 2008, these statistics look set to continue.

2. the Police Statistics on Criminality (SPC), which started in 1982 by the Federal Police Office (fedpol). This collects the number of complaints made to the police based on a selection of Criminal Code offences. Thus, it only records those acts brought to the attention of the police (via police work or complaint) and not all violent acts committed. Furthermore, due to the lack of harmony in the codification of offences and court referrals along with the manipulation of data among the various cantons, these statistics are not dependable. Indeed, the federal police and each of the 26 cantonal police forces have developed their own methods of entering and calculating Criminal Code offences, while only providing the Swiss Federal Statistical Office with total figures.

The Swiss Confederation has decided to take some measures to ameliorate the unreliable and incomplete statistical data:

- The Police Statistics on Criminality (SPC) is currently under review; the CF, federal police and cantonal police forces had decided in 2006 to define a single method of data capture on Criminal Code offences. The project is in its final stage.

- Between 2010 and 2012, the Federal Department of Justice and Police (DFJP) made the OFS responsible for a pilot statistical programme on the serving of sentences among juveniles. The aim of this project is to find a useful method of data collection

so as to obtain better information on the application of criminal law on minors and the effectiveness of sentences while achieving efficient use of resources. At the time of writing, the first surge of data collection has ended. The OFS is now analysing these data which could last until 2015. The data collection method should provide some interesting results, to say the least: one part of the statistics will result from data on a particular period in time, as done in the past, the other part will aim to follow particular youths over time. This will allow the drawing of conclusions on the effectiveness of the judicial system and the established enforcement measures.

- Self-report studies of delinquency and victim surveys are also mentioned. The aim of these is the youths themselves given that such studies allow the collection of particular information on their general life-style, so conclusions may be made on the profile of young delinquents. Switzerland has already carried out two such studies : the first in 1992 and a second in 2006.

It seems risky, even harmful, to pass judgements based on current statistics covering the country as was the case with the first study on Swiss youth recidivism published in July 2009 by fedpol. That study, based on lax definitions and estimated figures, resorted to shortcuts and led to confusion by giving an approximate, sometimes even simplistic, portrait of young recidivists in Switzerland. In the end, it failed to provide an in-depth examination of young offenders.

Taking into account the prominent position that youth delinquency has in the media and political debates, it would be preferable to promote understanding of recidivism analyses that the OFS could carry out, in particular, to disseminate the general rules and specific features of the OFS analyses on

recidivism. The goal would be to avoid misrepresentations and the manipulation of figures. Specialists are rarely called upon to decipher and disclose police statistics.

Therefore, we welcome the new research procedure now used by the OFS which will achieve more precise statistics as well as draw real conclusions on the system's efficacy.

Besides, although youth delinquency in Switzerland seems to be considered a recurrent social problem, the understanding of young people and youth delinquency remains pitiful . The Juvenile Criminal Judgement Statistics, and even other sources, as imperfect and partial as they may be, have yet to be structured, studied and interpreted. There is also an absence of more general studies from a sociological and cultural perspective on the changes within this group's makeup and analysed in relation to the changes of its perception.

In a general sense, it is a regrettable state of affairs that Switzerland does not have any federal-level information policy in this field; all the more pertinent when the media promulgates the prejudices of this topic, justifying themselves on the readily available statistics on the internet, which is to say incomplete information.
Finally, it is deplorable that Switzerland, up to this time, has not carried out regular surveys of the youth focusing on their social and cultural habits as well as on their relationship with work and crime. However, there have been some one-off surveys covering small groups of the population which are noteworthy.

On the data collection front, it seems that Switzerland could learn from its European neighbours. In 2011, the European

Parliament issued a Report on juvenile delinquency comprising of a number of recommendations to the Member States, one of which was the use of statistics by each State so the national situations could be better compared. Certain countries, such as Belgium and France, had already a tradition of data collection and relatively accurate stats allowing them to ascertain the level of criminal activity and the effectiveness of preventative measures. These two countries also have a common definition of juvenile delinquency which encompasses all under 18 year olds without a sub-group as in the case of Switzerland.

3. Monitoring and Co-ordinating Implementation : National Institutions for Children's Rights

The 2002 recommendations of the Committee encouraged Switzerland to "*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 [...] which are responsible for monitoring the implementation of the CRC and empowered to receive and address individual complaints of children at the cantonal and federal levels.* ". The Committee also recognised certain discrepancies in the field of human rights. In response to these observations, on the 3rd September 2010, the CF launched a pilot project for a centre focusing on human rights. Under the mandates of the Federal Department of Foreign Affairs (FDFA) and the Federal Department of Justice and Police (DFJP), the Swiss Centre for Expertise in Human Rights (SCHR) was created in the autumn of 2010. The founding institutions of the Centre are the Universities of Berne, Neuchâtel, Fribourg and Zürich along with three partner institutions: University Institute Kurt Bösch (IUKB), the Centre for Human Rights Education (ZMRB) at the

University of Teacher Education Lucerne (PH Luzern) as well as the association humanrights.ch.
The SCHR began its activities in 2011 and has been fully operational since the start of May 2011. As a pilot project, the centre will have four guaranteed years of activity before being evaluated in 2015. Following that assessment, the decision to convert it (or not) into an independent national institution in compliance with the Paris Principles will be taken.
For the time-being, the Centre concentrates on six topics : Migration, Police and Justice, Gender Policy, Child and Youth Policy, Institutional Issues and Human Rights and Economy. Each topic is directed by an institute.
The University Institute Kurt Bösch (IUKB) and the International Institute for the Rights of the Child (IDE), both based in Sion, manage the activities linked to *Child and Youth Policy*.

The SCHR does not provide individual advice and assistance in the matter of human rights violations. Its sole task is to deal with structural issues within legal, institutional or organisational steps that are necessary for an enhanced implementation and compliance of Switzerland's human rights obligations. It enables and promotes the State's engagement in its international obligations regarding human rights at local, cantonal and federal levels. The Centre's objective is to expand the protection and development of human rights among the authorities, civil society and the economic world. To this end, several reports, symposia, information and practical training sessions have been offered.
Therefore, the SCHR is currently only a service centre rather than a bona fide independent national human rights institution as described in the Paris Principles. Such an institute, whose creation had been recommended by the Committee of the CRC

in its Concluding Observations in 2002 and which we referred to in Volume 14 of our Dossier on Children's Rights in 2010, should be able to receive individual complaints from children suffering human rights violations. There is still hope that this will become a reality in 2015.

Many European countries have already established such mechanisms. For example, in Belgium where the French Community Delegate-General for Children's Rights, Bernard De Vos, monitors the safeguarding of children's rights and interests. In the course of this role, he can, inter alia, ensure the promotion of the children's rights and interests as well as recommend proposals aimed at making applicable regulations more complete and effective to any authority with jurisdiction over child law. Moreover, he can even receive complaints or mediation requests related to abuses of children's rights and interests. His actions are performed in complete independence and he can be approached by everyone. There is also a willingness to spread awareness of children's rights in the French region via an 18 metre bus (purchased with help from the European Social Fund. This vehicle, with tags of children's rights and the institution of the Delegate-General, allows the holding of public-awareness, training and information sessions for young people and youth professionals. The bus has also been installed with a multimedia room, a conference room, a welcome area and discussion space. This itinerant conduit is available to associations, youth movements and organisations wanting to better disseminate children's rights messages within the French Community. In this way, understanding such rights becomes accessible rather than remaining the esoteric domain of centres with limited impact and detached from the interested population.

4. Awareness and Information

In its Concluding Observations of 2002, the Committee were concerned that Switzerland had still not undertaken dissemination, awareness-raising and training activities in a systematic and targeted manner. The Committee recommended that the State party "strengthen and continue 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".
Later in its General Comment No. 10, the Committee noted that children who committed offences often received bad press which exacerbated discriminatory stereotyping and reinforced the stigmatisation of children in general. This stigmatisation of young offenders, often based on misinformation and or erroneous interpretation of the causes of youth delinquency, regularly leads to calls for a stricter approach. In order to create an environment conducive to the understanding of the underlying causes of such delinquency, the States parties should organise, promote or support information and other campaigns aimed at raising awareness to the need and obligation of treating young offenders in accordance with the spirit and word of the Convention. Moreover, it would be appropriate to find a fair balance between the work of the legal system and the work of society. Therefore, the legal profession could be concerned with its role of punishing crime and of educating; meanwhile, society could concentrate on the child's place in the social context and the acceptance of society for the reason of resorting to delinquency as well as the need to accept change is possible.

According to a survey on children's rights published in February 2008 by Terre des Hommes entitled : "De l'importance

de diffuser et faire connaître la CDE et son contenu en Suisse: analyse basée sur les résultats d'une enquête menée auprès de 3200 participants" [The Importance of Raising Awareness and the Dissemination of the CRC and its Contents in Switzerland: Analysis based on results of a 3200 participant survey], the Swiss populations level of knowledge regarding human rights is quite poor. Various factors explain this situation: the Swiss Confederation does not have a real information policy in this regard; human rights education is not systematically allotted time in school curricula nor is it a part of professional education in key society sectors such as cantonal administrations and public institutions. There is also a deplorable lack of specialisation in tackling legal issues from a human rights perspective among the judicial body. Furthermore, opinion polls on youth delinquency are often directed towards adults and children are rarely surveyed. Certain media running short news items disseminate disquieting news stories without researching deeper behind the figures or going into the field. In the end, youth delinquency has become a political issue and is now used for electoral gains.

DCI-Switzerland hopes that regular surveys directed towards the young will be carried out so as to better portray the youth's social and cultural practices, interests, and their relationship with the world of work and of delinquency. It welcomes the step made by Switzerland in attempting to diversify its methods of surveys, thus allowing more specific information to be gathered. We also request the introduction of teaching human rights and in particular children's rights, into the curricula of primary and secondary school and of the Universities of Teacher Training (HEP) and Universities of Applied Sciences (HES).

It transpires from our investigation that all European countries face the same problems as Switzerland regarding raising awareness of youth delinquency. It is a difficult matter to deal with and the budgets to do so are often not available. In France, awareness-raising is entrusted to the Police: a move approved by some, criticised by others. In any case, knowing how to handle this issue requires a sensitivity not readily mastered.

5. Professional Training

In the area of collecting a child's testimony, one actor of the three involved in the judicial system has made efforts to modernise themselves: the police. As every police officer is likely to come into contact with youths, especially during arrest, the police force should have basic training in children's rights. The first technical course in questioning children was created ten years ago. Moreover, since 2010 the Swiss cantons have, under the aegis of the Swiss Police Institute (ISP), organised courses which train officers in contact with young offenders. These officers are known as "Juvenile Specialists". The complete training course comprises of one week in basic training, another week in advanced training as well as expertise modules. A Swiss police work group regularly meet to deal with topics related to juveniles and to organising these training sessions. Consequently, the Romandie area police officers specialised in work with youths are routinely trained in this way. Yet, there exists disparities between the various cantons. Furthermore, all police training centres do not systematically provide training in children's rights unless they take the initiative to institute such training as is the recent case in Geneva. Every police officer in Geneva has been trained to consider the interest of the child (or adolescent) concerned as paramount. Thus, they are trained to adapt their intervention according to the situation of the youth(s) while keeping in mind the CRC.

As for judges, they previously asked for a psycho-sociological report when they had to make a decision. Today, they must question the child while lacking the training for it. As Switzerland lacks a magistrate college, the training invariably

comes from practice leading to an absence of a clearly defined methodology, thus precluding the guarantee that one judge will have as good approach as the next. However, it ought to be noted that Article 9 of the DPMin outlines possible assessments made during the course of the hearing which the judge may rely on.

According to the CRC, the child has the right to legal assistance to protect their interests. Yet in Switzerland, lawyers defending minors are not obliged to undertake training in children's rights, despite the provisions of the DPMin and the PPMin. The Swiss procedural code stipulates that a lawyer is to be present throughout the criminal procedure from the first police interrogation. Its application makes such training necessary more than ever, in particular for police officers and lawyers: two groups unaccustomed to working in the superior interest of the child. In Geneva, a discussion is underway on lawyer training in juvenile criminal law. For the first time, in autumn 2010 a series of conferences dealing with the rights of juveniles was proposed to lawyers. If the debate has not already come to a close, such training will probably not be made compulsory for lawyers wanting to be youth legal defenders from the outset.

Confronting the fact that Swiss youths do not have their interests sufficiently defended in legal proceedings, the association Kinderanwaltschaft Schweiz (Swiss Child Advocacy Association) was created in 2006 to promote participation and defend the rights of children in contact with the authorities and the courts. This association assembles professionals from legal, social work, education, psychology and paediatric backgrounds. As a centre of experts, it is independent of State bodies and parents and it comes to the

assistance of defense counsels and organises training sessions in defending children's rights. It urges that child representation be legally obligatory in all particularly serious cases.

As for juvenile criminal mediators, in Geneva, according to a recent directive, such mediators must have knowledge of juvenile criminal law as well as professional experience to be listed as a sworn mediator of the Council of State (the canton's executive body). They must also have specific skills in child support.

It should be recalled that lawyers defending children's rights also have their place. While the majority of university courses cover juvenile criminal law, it must be noted that in the majority of cantons and cases, the minor is assured defence counsel where the violation is of a moderate gravity; however, these defense lawyers are appointed and rarely do not specialise in the rights of juveniles. Therefore, the lawyer not aware of the difference between the rights of minors and of adults in the criminal procedure are not sufficiently prepared to defend their young client who, themselves, will be unaware of their rights.

DCI-Switzerland also laments the fact that lawyers willing to defend minors are not compelled to undergo training in children's rights as is the case for criminal mediators in Geneva. A compulsory course in such rights could be provided, for example, to apprenticing lawyers. While in the USA and Europe, lawyers have long been specially trained in the legal or socio-pedagogic field, DCI-Switzerland strongly disapproves of Switzerland's sluggishness to adapt on this issue. This would allow the interaction between the social and legal actors in juvenile cases to be more effective. In truth, a lawyer aware of

his/her client's rights would be more capable of discussing and of ensuring that those rights are applied with the aid of a social worker. An efficacious collaboration is only possible between informed parties.

The characteristics of the Swiss juvenile criminal law requires the combining of knowledge and skills to the benefit of the child's interest and therefore to develop the interdisciplinary co-operation between the various judicial actors in this field. The quality training provided by the University Institute Kurt Bösch (IUKB) aims to strengthen the interdisciplinary work and collaboration among police officers, magistrates and defence lawyers. This type of training should be introduced more generally and systematically among professionals. The IUKB offers six university continuous training programmes awarding Certificates, Diplomas or Masters in Advanced Studies (CAS ; DAS ; MAS). These programmes are formulated in collaboration with the International Institute for the Rights of the Child (IDE), the Swiss Federation of Mediation Associations, the Education and Development Foundation, the Faculty of Psychology and Education (University of Geneva), the School of Criminal Science (University of Lausanne), the Criminology Institute (University of Zurich) and the Swiss Society of Legal Psychology (SSPL). In theory, the completion of these programmes should allow all trainees to work towards a justice better adapted to young people.

The number of training programmes have considerably increased over the years; yet, as the mentioned professions have a considerable day-to-day workload, attending these courses is certainly not easy. Furthermore, many training courses are facultative, complicating and weakening attendance. DCI-Switzerland deplores the lack of professional

accreditation given to these courses and hopes that one day they will become compulsory since these courses could really make leap forward in the Swiss juvenile justice system.

II. The Right of the Child to be Heard

Our previous report noted the Committee's concern over the general principle enumerated in Art. 12 of the CRC. In fact, Switzerland had not fully applied it nor substantially integrated it into its policies or programmes. However, in Comment No. 10, the Committee reminded the State that a child must have to opportunity to freely express their opinions which ought to be taken into consideration in view of the child's age and maturity (art. 12(1) CRC) throughout the juvenile justice procedure. By virtue of the due process principles guaranteed in art. 40(2)(b)(iv) CRC, the child alleged as or accused of having infringed the criminal law may fully participate in the procedure and ought to understand the accusations against him/her as well as the possible consequences and sanctions so that they may provide instructions to their legal representative, examine witnesses, present their side of the facts and to make appropriate decisions. Under article 14 of the Beijing Rules, the trial must take place in an atmosphere of understanding, allowing the child to participate and freely express themselves during the proceedings.

The participation enunciated in the CRC and other international instruments gives the child a new status; they become a major participant who must be listened to and whose words are to be recorded in the proceedings. They are urged to take part or even influence, according to their age and maturity, the decisions concerning them. This subjective right

creates a duty on State Parties to recognise this right and to ensure its implementation, that is, to record the child's opinions and views and to give them particular attention. In Switzerland, the child's right to express themselves is a strictly personal right (19(c) Criminal Code): it is imprescriptible. The child may exercise this right and the State must set up a method to record their words.

The Federal Supreme Court (TF) recognised the direct applicability of art. 12 CRC in a 1997 judgement (ATF 124 III 90). According to the court, "Article 12 of the CRC identifies a directly applicable right, such that its violation may be redressed by the TF". This jurisprudence has been repeatedly confirmed.

For a long time in Switzerland, children only had a right to be heard once they reached 10 or 12 years of age. Influenced by the CRC, a TF judgement (ATF 131 III 553) established the possibility that a Swiss judge could take into the view of a 6 year old child in divorce cases. The Court also indicated that the right to be heard was a personal right of the child; listening to the child was the duty of the judge; the reasons to refuse were limited to the child being of a very young age or to situations where the child ran a serious risk to their physical or mental health and finally that the goal of listening to the child was also to allow the child to receive information.

The TF also held in other cases that the judge must carry out the hearing of the child's opinion him/herself and may not systematically delegate it to third parties (ATF 133 II 553), unless specialist help is necessary (ATF 227 III 295)

The right of the child to be heard is vindicated in Swiss criminal law under the DPMin when the juvenile is author, victim, witness or called to provide information. Under Article 4(2) of the new PPMin, it expressly clarifies that the fundamental rights of the child, particularly the right to be heard, must be respected throughout all stages of the proceedings.

As stated above, Switzerland has a clear obligation to implement laws and mechanisms to allow the child to exercise their right to be heard. Yet today, there is no real early juvenile consultation, nor proper enquiry into their interests and concerns. Some media describe youths by using abridged statistics and without basing their statements on empirical research which would allow those concerned to be heard. This media construct of reality is far from being participative. In 2010, the conclusion was that youths were never asked what was important for them. Furthermore, debates were conceived and held without them. Since then, some projects, aiming to focus on the young, have seen the light of day. For example, in Sion (in the French-speaking region) the Sion Youths 12-18 Observatory was founded in 2004. The observatory proposes enacting a policy to support youths and tackle current themes affecting young people. It was created from the conviction that there is a disparity between young people according to their living conditions. A field study, performed at the Observatory by a group of students from the Interdisciplinary Masters in Children's Rights of the University Institute Kurt Bösch, brought a number of critical elements to the fore. From this, it appears that the Observatory does not know how to properly listen to those young people. It focused on 12 to 18 year olds that do not directly interact with the Observatory since they do not attend it. Thus, the current collaborators are not

spokespersons for children but rather witness of what they observed on the ground. Besides, the Observatory's impact seems tenuous, in that there is no real decision making done there. It is deprived of any such power, which in fact remains in the hands of the Youth Commission and of the Municipal Council. Concrete action falls within the remit of the concerned municipal services.
Consequently, this initiative is far from perfect; however, in the opinion of DCI-Switzerland, it forms the beginning of an interactive model which, if reinforced and developed, would be capable of expediting the application of the right to be heard

Valais canton, via its Youth Cantonal Service (SCJ), has expressed its willingness to set up a Cantonal Youth Observatory (OCJ). In March 2012, the project was submitted to the Council of State (executive body of the canton). The Observatory is oriented towards four principal objectives :
- Collect and set up a central database of reliable statistics related to all areas affecting young people ;
- Organise regular discussion groups between the different collaborators assisting young people ;
- Contribute independent specialist support to professionals and politicians ; and
- Establish a network and strengthen the skills of local and cantonal stakeholders.
The 20th June 2012 saw the realisation of the Observatory project. The Council of State decided to approve the principles enumerated in the conclusions of the 20th November 2011 report, created the Cantonal Youth Observatory and placed it under the mandate of the SCJ in collaboration with the Secretariat for Equality and the Family. It also designated the University Institute Kurt Bösch to support this operation. The OCJ is to, inter alia, draw up an evaluation report on the

situation of Valais youths which will be modeled on the Swiss governmental report on CRC implementation. Once the report is completed, the Council of State will decide on its approval before returning it to the management committee for analysis. Analysis results will be established and problems requiring attention will thus be determined; work groups could then be set up to find solutions. Subsequently, the OCJ wishes to distribute this report in the various secondary II schools [non-compulsory education institutes] so as to promote the participation of young people. In addition, a conference for politicians and youths to attend may be organised. This would provide youths with the opportunity to voice their opinions on the different topics and problems that concern them. In our opinion, such an initiative is appropriate to stimulate questions from both sides and thus show the principles that a justice system ready to respect the right to be heard should be built upon.

According to the DCI-Switzerland, it is advisable to continue this attempt to fill in the flagrant lack of actual youth consultation and to promote a true participative process involving youths from the start. It is also advisable to carry out research on their interests and specific concerns as well as on their apparent importance. All this will allow greater understanding on how to effectively deal juvenile criminality. Furthermore, it is lamentable that minors are not consulted on all legislative bills that concern them.

From a legal standpoint, though the Swiss Constitution stipulates in its article 11(20) that children can exercise their rights insofar as they understand them, very few cantonal and municipal laws exist which are committed to the organisation and promotion of child participation.

If the interests and opinion of the child are to be taken into account in judgements, they will need to be represented by an party independent of the authorities and courts. It is, therefore, desirable that article 12 will guarantee children not just the right to be heard but also the right to be represented and that child protective measures will include compulsory representation. Under international law, this representation is currently not obligatory, it is optional; the child can exercise their right to be heard without the assistance of a lawyer.

Finally, it would be helpful to establish a post of a National Children's Legal Defender, as exists in Belgium. This post aims to ensure that the personal rights of the child and collective rights of children are respected. The defender would be directly accessible to children. The Swiss Centre of Expertise in Human Rights would typically be an appropriate institute to receive such individual complaints but does not have this competence.

During the Seminar "*Listening to Children: the child's right to express themselves and be heard.*", held in Biel/Bienne in 2010, many speakers involved in the field of juvenile justice repeatedly voiced the urgency to speak *with* the young instead of speaking *about* them. They also expressed their desire for the systematic application of participative rights for children and youths in legal proceedings. Three years have passed and, unfortunately, few things have changed. DCI-Switzerland would like to see young people participate in such seminars and training sessions so they may put forward their views and be aware that their rights are current issue under discussion.

III. Special Protection Measures

1. Minimum Age for Criminal Responsibility

Following the concerns and recommendations of the Committee in 2002, Switzerland raised the minimum age for criminal responsibility from 7 to 10 years. This minimum age threshold is stipulated in art. 3(1) and article 4 of the DPMin. Experts had advocated the minimum age to be 12 years in their draft of the DPMin. In fact, during the consultation period, nearly all consulted parties were favourable to raising the limit from 7 years but a majority of them, including many cantons, wanted to fix it at 10 rather than 12. Consequently, Swiss juvenile criminal law is applicable to children of 10 years of age and up.

Within the European Union, there is no consensus on the minimum age for criminal responsibility. For example, the Netherlands place the threshold at 12 years while it is 14 in Germany and Italy. Spain and Portugal go further by fixing it at 16. It is obvious that Switzerland is stricter in this regard compared to its neighbours, yet without actual justification for this disparity. An increase in the age limit ought to be instituted.

2. Prevention

According to Comment No. 10, "a juvenile justice policy without a set of measures aimed at preventing juvenile delinquency suffers from serious shortcomings." State Parties must therefore integrate the Riyadh Guidelines into their national policy. By virtue of these guidelines, prevention

policies likely to facilitate successful socialisation and integration of all children ought to take precedence. Such policies are to be implemented particularly by the family, community and the school. Prevention programmes must be centred on the following aspects: the support for particularly vulnerable families; the teaching in schools of basic values; and extending the need for special care and attention to at-risk youths. Support measures should not be focused only on the prevention of unfavourable conditions but also on promoting the social role of parents.
State parties should fully favour and support the participation of children, in accordance with article 12 of the CRC, along with the involvement of parents and other key actors in the development and implementation of prevention programmes. The quality of this involvement will be pivotal to the success of these programmes

One year after adopting the report " Youths and Violence ", the CF announced, on the 14th June 2010, its approval for a national programme for the prevention of violence in the family, school and public. For a period of five years from January 2011, the Confederation has budgeted 5.65 million Swiss francs (4.6m Euro) for the execution of this programme designed by the Confederation, cantons and municipalities. The Federal Social Insurance Office has been entrusted with the programme's coordination. The programme aims to list and co-ordinate all that has been done and to pinpoint good practices in order to present, in five years time, principles for long-lasting and effective violence prevention in Switzerland. With this in mind, the programme looks to develop common learning, knowledge sharing and to improve coordination between prevention, intervention and suppression. The legal basis for this

programme is the Order on child and youth protection measures and on the reinforcement of children's rights.

This national programme follows a report that the CG adopted on 20th May 2009 entitled "Youths and Violence - Towards effective prevention in the family, school, society and media". This report concluded that Switzerland recognises its deficiencies in violence prevention. Indeed, the measures already in place and the results obtained from them are hardly known as are the ways to improve and optimise them in a targeted manner. Neither is it known how to take advantage of acquired experience from promising practices or cooperative structures emanating from the measures in order to develop new prevention strategies.

Though in its early days at the moment, the programme's first national conference placing this sensitive subject back on the priority list was held in March 2012 at Berne. The current situation in Switzerland, as perceived by the various sectors that interact with youths, was assessed. Representatives from social, medical, education and legal professions attended the conference, where together they could define a strategy to adopt within the programme's framework. The programme's website also provides access to a list of measures already in place in each canton.

Some cantons, such as Geneva, have already set up pilot projects aimed at fully educating on violence and its repercussions. In Geneva, the project Face to Face attempts to support youths in acquiring social skills that will help them develop positive relations in the future, teach them how to manage their emotions to improve their behaviours and allow them to experience a positive encounter with authority and the

hierarchy. A number of youths have already been placed in the project by the youth court. Although this project only intervenes after the first act of delinquency, it is still worth welcoming the measure.

DCI-Switzerland recognises Swiss efforts to fill in the gaps in the issue of prevention and the intention to henceforth aim towards long-term effective prevention measures rather than reactions to a completed event with little reflection or subsequent assessment.

DCI-Switzerland highlights the importance of the following points taken from the Swiss violence prevention report and programme:

• To effectively control violence, suppression and prevention must always be combined. Indeed, violence prevention is only part of the array of measures encompassing corrective measures, suppression and dissuasion, intervention, rehabilitation and aid to victims. All these elements must be employed in a global strategy for the prevention and fight against youth violence.

• To explain violence, there is no one cause but a profusion, thus it is necessary to look at a complex interaction of many factors with varying importance. Explicative models recognised by research consider not only individual factors but also social, cultural and environmental factors, which directly or indirectly influence children and adolescents. Disparate risk factors can accumulate and reinforce each other. The chances of a youth

turning to violence increases in proportion to the number of risk factors present. So, the risk of turning to violence is greater among groups showing many problems. For prevention strategies to succeed, they must be focused on the youths at risk and reduce the influence emanating from various factors.

• It is necessary to combat the systematic mixing of migration with violence. In public debates, controversies surrounding young people and violence are often directly linked to the topic of migration. Certainly, criminal judgement statistics and statistics on unreported delinquency confirm that youths with immigrant backgrounds commit more violent crimes than Swiss youths. Yet, in reality this overrepresentation has little to do with foreign backgrounds as such. Rather, it demonstrates the cumulative effect of risk factors among these youths; factors that can just as much lead Swiss youths to become violent. Taking into account the influence of all studied risk factors, the migrant context practically loses all relevance.

• Insecurity and the feeling of insecurity must be distinguished in the prevention of these two phenomena. The feeling of insecurity continues to rise and worry the populace because of the media inflation of events such that this feeling may or may not be related to actual violent events. Being completely subjective, the feeling of insecurity does not only depend on perceived violence but also on the influence of various other aspects such as the economic situation.

• Measures taken must be based on tested approaches. An example of a tested prevention programme is the Romandie programme PACE, currently in its assessment stage. The programme aims to increase the skills of 4 to 6 year olds by providing them with 8 to 10 ways to resolve frustrating

experiences while practicing self-regulation of their emotions. PACE rests on a hypothesis that has been tried and tested in Canada and the USA.

• Measures must also be based on a better understanding of young people. In Neuchâtel, school children are biennially surveyed via questionnaires on their interests, neighbourhood, vicitimisation and crimes committed. In analysing these answers, future intervention is then determined. The great advantage in concentrating on cantonal actions or even municipal actions on a small scale is that it allows the focus to be placed on a precise set of young people.

3. Diversion (Non-Judicial Recourse): Mediation

According to General Comment No. 10, by virtue of article 40(3) of the Convention, States must make efforts to promote the adoption of measures designed to deal with children alleged as, accused of, or recognized as having infringed the penal law without resorting to judicial proceedings, whenever such a solution is appropriate and advisable. Given that the vast majority of juvenile delinquents only commit small misdemeanours, recourse to a collection of alternative measures which spare them from judicial proceedings should be a well-established practice that can and should be used in most cases. In compliance with the principles enumerated in article 40(1) of the CRC, it is appropriate that such cases be dealt without resorting to criminal proceedings. Apart from avoiding the stigmatisation inherent in criminal proceedings, this step provides good results and has proved more cost-effective.

The rise in violence, especially among young people, and the profusion of the media's "public interest stories" have triggered repressive reactions towards juvenile delinquents in Switzerland and neighbouring countries: more severe coercive measures, especially involving incarceration, have entered into force or will be shortly. Yet, the main international texts (the Beijing Rules, Riyadh Guidelines, Havana Rules, Council of Europe's Recommendation on Social Reaction to Juvenile Delinquency) confirm that where possible, an extra-judiciary solution must be found in order to avoid insofar as possible the stigmatisation of criminal justice intervention, to maintain the educational and social reinsertion objectives of juvenile justice

and finally to emphasise alternatives to the deprivation of liberty.

Since 2007 in Switzerland, the new federal juvenile criminal law has introduced criminal mediation under articles 8 and 21 of the DPMin. These provisions are not applicable on their own but they have led cantonal parliaments to adopt applicative rules. Mediation is also inscribed in articles 5(1)(b) and 17 of the PPMin. By establishing a minimum of criminal mediation, the DPMin prescribes a certain uniformity in the actions of the cantons. The federal law also ensures that all cantons place it in their body of legislation. Cantons that only have only introduced mediation into their legislation since 2007 remain in an initial phase and thus the number of cases dealt in this manner remain very limited. On the other hand, other cantons that had showed interest in the procedure in the 1990s, thanks to the initiative of certain magistrates and associations, have developed distinctive and heterogenous practices.

Already in October 2001, the canton of Fribourg had placed mediation in its criminal procedure code. Later on the 16th December 2003, Fribourg ratified the Order on mediation in the criminal justice system for juveniles. Finally, this pioneering canton established a Bureau of Mediation comprising of three State elected mediators (work commitment fixed at 150%), which has functioned since November 2004. Dealing on average with 87 cases every year, this Bureau has had a very positive outcome. Mediation has been opted for in more than 400 cases involving more and 700 juveniles in conflict with the law: a rate of 20% of cases where the parties had been brought before the judge. The success rate of mediation where all parties, including the wrongdoer, wronged person, mediators and judge, have been satisfied is at 75% of all cases - the

remainder return to the ordinary criminal procedure. Among the factors contributing to this success are: a richer and more diverse legal culture, the mediators' professionalism and creativity, complete State financing of the service and the conscientious respect for the need of voluntary compliance to this alternative conflict resolution process.

The Committee of Ministers of the Council of Europe have taken notice and put forward, on the basis of Recommendation No.R (99) 19, Fribourg's practice of juvenile justice mediation as *best practice* and appended it to its Policy Guidelines for Child Friendly Justice.

Another factor explaining the positive outcome in criminal mediation for juveniles in Fribourg may be the organisational system employed by the canton. The legal organisation falls within the remit of the competences of cantons, so cantonal legislation essentially governs to whom the justice authority must turn when it wishes to engage a mediator to undertake the process. Currently, there are three types of criminal mediation models in Switzerland. In Fribourg, the case is sent to an office of mediation that is administratively attached to the Cantonal Department of Justice. Thus, mediation is a new public responsibility.
Unfortunately, the Fribourg system is not emulated by any other canton. In 2006-07, many were interested in what Fribourg was doing, delegations from Romandie visited to investigate but no other canton has established the same orgainsational model. For example, Geneva chose to mirror the organisation of mediators on that of lawyers, that is, maintain a list of private mediators registered by the State and among which the parties may choose a mediator.

As for the canton of Zurich, it is encountering difficulties, the number of criminal cases brought into the mediation framework remains very low (in 2007, 32 trials were transferred for mediation; in 2008, 34 cases) According to some observers, this can be explained by the fact that criminal mediation services do not maintain a registry nor publicise their services to the extent that the majority of potentially interested people are ignorant of this institution. Even the investigating authorities are poorly informed on it.

Presently, criminal mediation is in its infancy in the majority of Swiss cantons. As experience has already shown, this institution possesses significant potential. Future institutional commitments and capitalisation on existing positive experiences are indispensable in taking advantage of mediation's educational character and in placing this method firmly within the Swiss criminal system.
Criminal mediation kindles a passion among some people, and scepticism or even hostility from others.

Today, it is important to publicise this new method of conflict resolution and the good practices developed within it. Through this raised awareness, scepticism and opposition for some will recede.

4. Personal Service

According to Observation No. 10, the legislation must provide courts or other competent authority with an array of options other than incarceration so that the deprivation of liberty remains as a measure of last resort lasting as short as possible (Art. 37 CRC). A single exclusively repressive approach does

not abide by the guiding principles of juvenile justice described under Article 40 (1) of the CRC. In the case of a child, their well-being and interest, along with the promotion of their social reinsertion must always prevail over considerations of public security and sanctions. Under Swiss juvenile justice, mediation can decide on the accused presenting a personal service provided that the beneficiary gives their consent. This service can also be imposed by the judge in order for the juvenile to make amends as part of a catalogue of stipulated penalties under Article 23 of the DPMin. Since 1974, this sanction has greatly increased, in particular regarding adolescents, and has clearly superseded fines and imprisonment. The Juvenile Criminal Judgement Statistics show the percentage of personal service has increased from 37% of sanctions to almost 50% between the years 2006 and 2010. It is often accompanied with a fine. The new DPMin has emphasised this recourse a means of redress and as a true alternative to short periods of incarceration. According to articles 24(3) and 26 of the DPMin, the convicted youth may request the substitution of a fine or imprisonment sentence of no more than three months with a sanction of personal service.

These services imposed by Swiss youth courts can be performed in various institutions, such as in the janitorial or gardening services, sports services or Municipal Sports Schools, catering, neighbourhood associations, workshops, school maintenance or in agri-businesses. Swiss Youth Courts have also developed compulsory classes, for example, traffic education, health education or sessions for adolescent sexual abusers. Personal service is thus a punishment encompassing both the educational idea (active class participation) and social reintegration goal by means of a symbolic gesture (working in the public interest).

To assist the execution of such activities, some cantons have established institutions that coordinate personal service activities. In Geneva, the Alternative Punishment Department (SEDPA) allows courts to place delinquents into a structured arrangement for providing services (SEDPA also manages youth detention centres). It should however be noted that, in light of the human element that attempts to keep the courts involved in juvenile cases, such services are often organised by the judge in collaboration with different parties involved in the proceedings in order to provide the youth with the opportunity to directly remedy the damage caused rather than assigning them to a task unrelated to the delinquent act and thus to fulfil the educative role of this category of punishments.

Indeed, in order to fulfil its educational and reparative functions, the imposed service must be adapted to the particular youth. In this sense, DCI-Switzerland recommends organising tasks that would allow youths to fully confront the possible consequences of their delinquent actions: such as sentencing those who committed a violent act to work in a centre for paraplegics or those involved of a drugs offence to work in a drug-addicts clinic. The potential of personal services must be fully exploited by adapting such services as far as possible to make the convicted youth assume their responsibility. The goal must be two-fold : showing them the consequences of their actions and strengthening their personal capabilities while they begin their social development.
It also ought to be noted that the youth, according to the crime committed and the canton, can be lead to follow a number of courses connected with their crime within the framework of their personal service.

DCI-Switzerland welcomes the initiatives such as the programme "Pas de sursis pour l'illettrisme! " [No Reprieve for Illiteracy!] which was launched in December 2009 in Romandie. Its objective was to put forward reading, or even writing exercises, as a method to prevent recidivism. The convicted would be obliged to regularly meet a volunteer with whom they would enrich their vocabulary by reading, for example, a novel twice a week. This activity could be ordered as a personal service, code of conduct parallel to mediation or as a provisional measure during a hearing. The canton of Vaud has launched a pilot programme. Fribourg appears enthusiastic about the programme; on the other hand, Geneva has not followed suit. The programme is currently in its trial run.

The Netherlands are, without doubt, the country possessing the most developed alternative punishment system; in fact, alternatives are applied at all phases of the criminal proceedings . In 1994, the country adopted legislation (entering into force in Sept. 1995) that permitted first-time offenders of misdemeanours to rectify their mistake even before the commencement of criminal proceedings. Another criminal code article allows the prosecutor to place performance of a particular task as a condition for the suspension of proceedings. A third article offers the judge the capacity to substitute incarceration and fines with a limited category of alternatives (community service, reparations for damage caused or participation in an educational project).
The trend in the rest of the European Union is just as clear; there is a growing emphasis on the place given to personal services in the sentences handed down to minors, as is the case in Switzerland.

5. Deprivation of Liberty: Before and after the trial

Entering into force in 2007, the DPMin incorporated into national law the principles required under international law as regard the deprivation of liberty for juveniles, such as the principle of segregating juveniles from adults in detention (Art. 37(c) CRC) and detention as a *last resort* and lasting as short as possible (Art. 37(b) CRC). Nevertheless, at the legislative level, there persists omissions regarding such detention and several other oversights may be noted in the enforcement of the law.
The number of juveniles in prison varies considerably from one European country to the next. The Netherlands has the greatest proportion of imprisoned juveniles, with more than 11.7% of the entire incarcerated population being under 18. In Hungary and Greece, the percentage is over 5%. France, with only 1%, is towards the bottom of the list, while in Sweden, Spain and Poland, there is hardly any imprisoned minor.

Although DCI-Switzerland understands that, for the time being, it should not expect a low juvenile prison population, the organisation calls on the Swiss authorities to provide more political and financial support to juvenile justice. The important work of professionals within the system, particularly in their interprofessional and interdisciplinary connections, cannot be led nor developed without support in financial and human resources. The Swiss juvenile criminal law requires a more stable foundation. DCI-Switzerland can only welcome the fact that the Swiss Confederation has chosen to allocate a budget to the prevention of juvenile delinquency, as presented in the relevant section of this report, but its effectiveness up to now cannot justify neglecting the needs of adequate detention centres.

a) A measure of last resort

According to Comment No. 10, the arrest, detention or imprisonment of a child must only be a measure of last resort. Under Swiss juvenile criminal law, detention is used only as an *ultima ratio*, whether it is before the trial (Art. 6(1) DPMin) or afterwards. Regarding detention subsequent to the trial, article 37(b) CRC limits its use more so than the DPMin. If we compare the frequency with which the judicial authorities imprison juveniles, a significant difference is noticed between the French region and the German region of Switzerland. The OFS published statistics showing that out of the 14,044 criminal verdicts handed down to juveniles in 2011, the number of non-suspended imprisonment sentences was 240. Of these 240 sentences, more than half were given by the authorities in the French-speaking cantons while these cantons represent a quarter of the Swiss population. Yet, these juveniles do not commit more offences than their Swiss German counterparts; in 2011, Swiss German authorities handed down 81% of sentences against juveniles (all penalties considered) whereas Swiss French verdicts covered 15%: proportions roughly representing the population density of the country's regions. Furthermore, the statistics show that the offences committed by Swiss French juveniles are no more serious than those of their Swiss German peers. The disproportion is thus confined to the more or less frequent recourse to juvenile detention. Clearly, the Swiss French cantons, representing 25% of the Swiss populace, hand out more than half of all imprisonment sentences. It may be concluded that the Swiss French judicial authorities resort more willingly to imprisonment than their Swiss German counterparts. They therefore sentence juveniles to prison in cases where another more moderate sanction would be just as effective.

As for detention before the trial, it should not be applied unless the provisional protection measures are insufficient. However, in practice, the provisional protection measures are only adopted once the facts are established. Before establishment of the facts, the youth is thus in pre-trial detention. On the other hand, in the case of a serious crime, the best measure is institutional placement (Art. 15 DPMin), favoured over detention. Yet in practice, a placement measure is difficult to implement which often leads to it being replaced by detention. Elsewhere, although the DPMin only alludes to provisional protective orders, the PPMin does not dismiss applying measures stipulated in article 237 of the Criminal Procedure Code (CPP).

According to article 237 of the CPP and to the Explanatory Note of the CF regarding the codification of the criminal procedure, the judge must take all necessary measures to avoid the detention of the minor. But in practice, the two stipulated measures in article 237 (CPP) , namely the payment of bail and legal supervision (eg. document confiscation, regular appearance before authorities, house arrest), are rarely substituted for pre-trial detention. Consequently, police custody and detention prior to trial are exercised on juveniles to an extent that violates the fundamental principle of *last resort*.

Some judges violate this *last resort* principle of detention for juveniles by handing down overly long imprisonment sentences and pre-trial detentions. It is necessary that these judges revisit this issue in order that the CRC be respected and the federal law be applied coherently throughout the country. DCI-Switzerland urges the Swiss authorities to overcome this

large gap between practice and the new law so that juveniles may not be incarcerated except as a last resort.

b) Shortest appropriate period of time

According to General Comment No. 10, the arrest, detention and imprisonment of a child must be for the shortest appropriate period of time. The Committee recommends ensuring that the child can exit pretrial detention as soon as possible, under certain conditions if necessary.

In a 22nd May 2006 judgement (judgement 6A.20/2006), the Federal Supreme Court (TF) stated that even particularly difficult young delinquents must not be held in prison for a long period of time. Juveniles may be temporarily placed in a correctional institution while suitable accommodation is searched for but this is only an emergency short-term solution.

The OFS has statistics on the average duration of imprisonment based on five categories of detention duration. This only allows the determination of an average bracket of duration for the deprivation of liberty. Thus, we cannot give an exact average on such detention length for juveniles in Switzerland, but the approximate average is between 20 and 55 days. This bracket is certainly indefinite but it is encouraging to note that juvenile detention in Switzerland is relatively short.

c) Separation from adults

In its Concluding Observations of 2002, the Committee spoke of its concern for the non-separation of children and adults in police custody and in prisons. It particularly recommended the State party to segregate children and adults in these two

situations. As stated in General Comment No. 10, a child deprived of its liberty must not be placed in a detention centre or any other such facility for adults. Placing a child in such a situation compromises their fundamental safety, well-being and their future ability to remain free of crime and to reintegrate.

Switzerland, in ratifying the Convention in 1997, issued a reservation to that article of the Convention because such separation was not guaranteed in all cases by the law. The new federal law governing the juvenile criminality (DPMin) which entered into force in 2007, introduced the principle of separation (articles 6(2) and 27(2)). However, article 48 gives the cantons a period of 10 years to set up adequate facilities for child detention. Already in 1971, following a previous criminal law review, cantons were provided with a 10 year period to rectify the paucity of places for detained juveniles. Despite this ample time period, the situation has only changed slightly in the last few decades because of a lack of political will and financial resources. Today, the infrastructure in place for allowing the separation of juveniles from adults in detention is woefully inadequate. Nevertheless, the TF has stated in a judgement in early 2006 (unreported judgement 6A. 20/2006) that placing a juvenile in an adult prison is only authorised for a temporary period due to an emergency situation or due to a lack of available space in a facility for juveniles; a stay of many months is illegal, even where the juvenile as given their consent.

Concerning pretrial detention, the principle of separating juveniles and adults as stipulated in article 6(2) DPMin is of immediate effect. The Federal Supreme Court (ATF 133 I 286) has judged that the 10 year grace period does not apply to

pretrial detention and does not allow the cantons a transition period in separating juveniles and adults in provisional detention.
Moreover, on the 4th April 2007 in view of the new legislation, the CF revoked its reservation on Article 10(2)(b) of the International Covenant on Civil and Political Rights, related to the separation of juveniles and adults in pretrial detention. As a consequence, the cantons are now obliged to have appropriate facilities.

The Court for the Canton of Zurich, in a judgement on 10th December 2007, considered the duty of separation under article 6(2) DPMin was just as applicable to a walk in the courtyard of a closed institution. The Court stated that the such a walk by a juvenile in the courtyard is to be done with other juveniles or on his/her own so that strict separation between youths and adults is respected.

Responding to a list of points to address sent by the Committee Against Torture to Switzerland during the examination of the 6th periodic report in April-May 2010, the CF indicated that the OFJ had carried out a study in 2009 of juvenile prosecutors and youth court judges. This study collected information on the conditions of pretrial detention. The data for 2008 from the study point out that only 9 out 43 facilities that take in juveniles for pretrial detention were specifically only for juveniles. Eleven had separate buildings for youths and thus separated them from adults, whereas the remainder practised separation on an organisational basis. Despite these indications, the Committee Against Torture considers the detention conditions of Swiss prisons are inadequate, particularly in Romandie, and that juvenile-adult separation is not always guaranteed.

The Committee therefore called on Switzerland to take immediate measures to improve the conditions of detention, and urged the use of alternative sanctions as well as the reduction of time in preventative detention and administrative detention.

The issue of separating juveniles and adults in detention also reveals a paucity of resources and clear political will. Today, the situation in Romandie is particularly alarming as noted in January 2010 by the Commission of Visitors of the Grand Council of Geneva during a visit to the detention facility of la Clairière. There, they found prison overpopulation, inadequate facilities for those suffering serious psychiatric disorders and insufficient staff training. A large number of articles and reports on the subject have also shed light on this issue. There exists a greater lack of adequate facilities for female juveniles. Structures that also take into account female delinquents is therefore an urgent matter. The Concordat on the Criminal Detention of Minors in Romandie (applicable since 1st January 2007, places the onus on Vaud, Valais and Neuchâtel to create criminal detention places for juveniles.

The current situation on the separation principles application is particularly unsatisfactory. However, the cantons have no transitory law available on pretrial detention. The authorities must quickly take measures to comply with the separation of juveniles and adults in detention and finally remove its reservation to article 37 of the CRC.

It is admitted that there are a certain number of projects, in progress and already alluded to above that could enhance the situation. The first Romandie prison specifically only for juveniles will open at the end of 2013 at Palézieux in the canton

of Vaud. In June 2011, the Grand Council (legislature) agreed to the 23.5 million Swiss francs needed for its construction. This project is the fruit of the inter-cantonal Concordat between the Romandie cantons and part of Tessin which responds to the new law on the criminal liability of juveniles (DPMin), applicable since 2007.
This institution for youths between 10 and 18 years of age will originally be able to accept 36 detainees, boys and girls. In a second phase the number of places will rise to 54. This facility aims to offer juvenile delinquents with a place adapted to their needs, combining deprivation of liberty with socio-educational resources driven by social reinsertion.

Following this same path, another centre, Dombresson will open its doors in the coming years.

d) Adapted care

The deprivation of liberty for juveniles is the most restrictive sentence under the DPMin (art. 27), but it is also perceived as educational under Swiss criminal law. The penalty of incarceration must not constitute the alienation of the juvenile from society but a particular framework in which they can relearn community rules and conventions. To attain this goal, the juvenile in conflict with the law must be able to benefit from adapted care while in detention. It is essential that the infrastructure is encouraging and takes into consideration the personality of each convicted juvenile. Only under this condition can the deprivation of liberty fulfil its function as a special preventative measure.

Under art. 27, the DPMin obliges the cantons to provide facilities adapted to the care of juvenile delinquents. The

cantons are given a 10 year transition period for the creation of these establishments (art. 48 DPMin). The law further defines in article 27(2) the requirements that juvenile detention centres must fulfill : means to offer adapted educational care, possibility of communicating with a person not part of the institution, access to psychological and/or medical support. To fulfil these obligations, it is indispensable that the centres recruit a sufficient number of competent educators. The particular requirements for choosing personnel are not discussed in the law but rather in international texts, specifically in the Havana Rules that Switzerland has committed itself to respect.

According to a study that appeared in March 2009, statistics show that there are a sufficient number of juvenile facilities in Switzerland. However, many of them are unable to offer satisfactory care to juveniles; therefore, the new projects for the erection of adapted facilities is absolutely essential. Yet, to avoid resorting more frequently to the imprisonment of juveniles, the inadequate existing establishments must be abandoned once the new facilities are built.
In cases of convicted juveniles being young women, the lack of adequate facilities becomes more apparent. In fact, there are currently no institutions that are specifically adapted to the care of female juvenile delinquents in Romandie. We will not reiterate the projects underway mentioned previously, except to note the the Palézieux centre will, out of necessity, take in female delinquents and will be equipped to ensure separation between the juveniles " on the basis of their sex, age and length of stay ". In the Swiss German region, the situation is not as worrying. The collection of closed institutions is greater. Consequently, the Swiss German cantons have not entered into a concordat on the detention of juveniles.

As for those delinquents needing therapy, the situation is worrying, as shown in a recent Zurich study that analysed the psychiatric experiences of 106 juvenile delinquents. There is an urgent need to create specialised services to carry out adequate treatment. The warden of the youth detention centre in Geneva, La Clairière, also highlights the lack of personnel who are suitable for being in charge of youths psychiatric care.

At that detention centre, the Commission of Visitors of the Grand Council of Geneva observed, during a January 2010 visit, the general lack of staff which was recalled in its 2011 report. As a consequence, the staff present are exhausted with the result being that the essential tasks, such as teaching, are carried out by those who are not specifically employed to perform such tasks.

Furthermore, the number of juvenile prisoners has greatly increased to the point that the prison is regularly at over 100% capacity and detainees sleep two to a cell. Owing to the overpopulation, these juveniles spend long hours in their cells without even a book or even something to write with for fear of damage. The Geneva Youth Court stated, in a 2009 review of the judiciary's activity, it was constantly concerned by the overpopulation in La Clairière.

In the opinion of the federal government, the most important changes brought in by the DPMin are the requirements on institutional placement and the conditions related to the deprivation of liberty, given that the deprivation of liberty for juveniles must take place in institutions which can provide education. Such institutions must have the facilities that allow individual educational care and social integration. This is the reason why opportunities for training and activities must be available including those that are available outside the confines of the institution as provided for in article 27(3) of the DPMin

as well as adequate therapeutic treatment. These planned establishments must fulfil the same conditions for placements. However, the construction of such institutions face considerable obstacles. Essentially, their requirements are the same as those of closed institutions, but in practice, the two types of requirements ought to be separated. This is an extremely difficult task for a specific and small number of people. It is also difficult because almost the same demands are placed on the infrastructure and management of such places as there are for closed institutional placement, despite the different needs and conditions of juveniles being deprived of their liberty.

According to the CF, all educational establishments recognised by the State must undergo periodic reviews ; the concepts, staff rules, internal rules and other regulations and measures upon which the establishment is based are inspected. Furthermore, a place visit and meeting with those in charge (cantons, supervisory bodies and establishment management) are organised before the end of the inspection.

In 2009, the 175 educational institutes in Switzerland underwent a comprehensive review for the first time. Particular attention was paid to the disciplinary measures and the possibilities offered by these measures to turn to coercion. The problem lies in the lack of a legal basis in the cantons concerning the handing out of public tasks to individuals, which need to be rooted in legislation. Moreover, imposing disciplinary and security measures must be supported by an appropriate legal basis since such measures are a serious infringement on the fundamental rights of young people.

In a letter on 15th January 2008, the Director of the Department of Justice called on cantonal governments to investigate these legal bases and to fulfil the conditions. For the next examination of the conditions for approval, the Department of Justice will pay particular attention to these legal provisions.

The legal provisions conducive to establishing an effective and adapted system of juvenile sanction enforcement already exist for the most part, even if there are sometimes failings at the cantonal level. However, it is the application of the provisions which are particularly difficult. This is due to the cantons receiving a 10 year transition period in 2007 for the construction of necessary facilities. Furthermore, these adaptations bring with them costs: constructing new facilities and all the necessary infrastructure, and particularly the hiring of staff. DCI-Switzerland, therefore, urges greater political urgency and financial resources to establish adapted juvenile care which conforms to the Havana Rules.

e) Juveniles under 15 years of age

Article 6 of the DPMin regulates the pretrial detention of juveniles in Switzerland, while omitting the mention of juveniles under 15 years. Pretrial detention of under 15 year olds is absolutely illegal in Switzerland. Whereas the PPMin clearly establishes the conditions for pretrial detention, already expounded above, it remains silent on the issue of age. The Swiss Parliament has unfortunately not legislated on the question of the minimum age for pretrial detention. Under article 3(1), the PPMin defers to the Swiss Penal Procedure Code (CPP) in all matters it does not specifically deal with. Article 212(3) of the CPP stipulates that the length of pretrial detention may not exceed that of the sanction of imprisonment.

Nevertheless, according to article 25 in the DPMin, only a juvenile of over 15 years may be sentenced to imprisonment. Therefore, pretrial detention of under 15 year olds is absolutely illegal in Switzerland; yet, it must be noted that Switzerland violates the law by allowing pretrial detention for juveniles.

It is indispensable that the legislature clarifies the situation by stating that a pretrial detention, in principle, can only be ordered for a juvenile of at least 15 years of age. The practices

of police custody and pretrial detention too often concern juveniles under the age of 15.

6. Guarantees for a fair trial

Article 40(2) of the CRC, according to General Comment No. 10, outlines an important list of rights and guarantees that are all meant to ensure that every child alleged as or accused of having infringed the penal law receives fair treatment and trial. Particular attention must be given to the particular needs of females, whose development, at those ages are different to those of their male counterparts.

a) Right to assistance

The Committee recommends States parties provide, insofar as possible, adapted legal assistance, notably through lawyers or duly trained legal assistants. Appropriate aid can also be contributed by others (eg. social workers) but these people must have sufficient knowledge and understanding of the different legal aspects of the proceedings for juvenile and have been trained to work with children in conflict with the law.

According to the 2002 Concluding Observations of the Committee, parents or legal guardians should also attend the proceedings as they can provide general, psychological and emotional support to the child. However, the judge or competent authority may decide to limit, restrict or exclude, at the request of the child or of his/her legal or other appropriate assistance or because it is not in the best interests of the child (art. 3 CRC) the presence of the parents from the proceedings.
The Committee also recommends that States parties explicitly provide by law for the maximum possible involvement of parents or legal guardians in the proceedings against the child. To facilitate their involvement, parents should be informed as early as possible of their child's arrest.

The DPMin establishes some procedural rules, in particular under article 40 which stipulates the right of the juvenile to a legal defender in all stages of the proceedings. The PPMin, applicable since the 1st January 2011, increased the participation of lawyers in juvenile criminal cases, highlighting the trend to consider the juvenile as an integral part of the proceedings.
Article 23 of the PPMin sets out the right of the accused juvenile to choose his/her lawyer without the assistance of a legal representative.
The PPMin also stipulates in article 24that defence counsel is compulsory in certain specific cases, including those where there is the risk of losing freedom for more than one month or of institutional care. The juvenile must likewise have a legal defender if they are not sufficiently capable of defending their own interests in the proceedings, nor can their legal representatives. Other situations include when the juvenile is temporarily placed in an institution and when the magistrate or the youth prosecutor personally intervene in the

proceedings. Finally, in virtue of article 24(c) PPMin, a lawyer must be present in the case of provisional detention or detention on the grounds of safety for more than 24 hours. These provisions take on the recommendations of the Committee on the subject of juvenile defence.
The same is true for the recognition of the right to legal assistance in article 25 of the PPMin and thus broadening the opportunity to have a defense counsel.

As soon as the right to a lawyer from the first moment is established, it is then necessary to examine the conditions which such a professional has to fulfil to appear on the immediate legal assistance list. This issue, as well as that of their training, is the cause of debate in the various cantons. The Committee had indeed underlined the importance of training for juvenile defence lawyer, who must have sufficient knowledge and understanding of the various legal aspects of juvenile justice proceedings and be specially trained to work with youths in this environment. Although, in Geneva, the consensus it to not oblige juvenile criminal law training on the profession, a group of magistrates and judges of Romandie convened in September 2008 to discuss the issue. They noted that designating a lawyer from 24 hours of the deprivation of liberty is not very useful because, unless the lawyer already understands their role in the particular framework of juvenile criminal law, the presiding judge must take a lot of time advising the lawyer and the juvenile does not always understand the role of the lawyer.
Yet, currently, lawyers are often significantly unaware of their role which causes their intervention to be of dubious usefulness or even sometimes counter-productive.
It must be reiterated that a number of courses, seminars and specialised training courses have emerged which could, under

more encouraging policies, provide advisory training better suited to the specific needs of juvenile delinquents.

b) Right to be informed

A delegation from the European Committee for the Prevention of Torture (CPT) has noted, particularly in the cantons of Aargau and Zurich, that when a juvenile is arrested, a trusted adult (parent, tutor, legal representative, lawyer, etc.) is not automatically and immediately informed. Therefore, juveniles are sometimes interrogated by the police without the presence of a trusted adult to help them; they even sign their statement alone. The new PPMin does not guarantee that a close relative will be informed while the right to a lawyer from the moment of the arrest is obstructed by a number of restrictions. Moreover, the law does not contain any provision regarding the handling of the police interrogation. Its article 4(4) states that adult attendance to the questioning in not compulsory in principle ; it could even be forbidden under article 13.
The CPT recommends that measures be implemented to guarantee that when a juvenile is deprived of their liberty by the police, the authorities must inform an adult relative or other trusted adult individual at the very beginning of police custody. The option " except where the person concerned expressly opposes this duty " (art. 214(2) CPP) should not be applicable in the case of juveniles.
The Federal Council (CF), on the contrary, believes that the express opposition of the juvenile (based on art.214(2)CPP) to informing someone of their loss of liberty ought to be respected insofar as possible. This naturally assumes that the competent authority, including the police, considers it is not appropriate that the legal representatives or the civil authorities be involved in the proceedings, which will be infrequent especially in view

of the fact that the minor's legal representatives and the civil authority have, in principle, the right to be informed of all proceedings brought against the juvenile (art. 4(4) PPMin). The exceptions being where such an action obstructs the course of justice or is detriment to the interests of the juvenile themselves. Therefore the cases where there is application for the express opposition of the juvenile will be rare.

DCI-Switzerland supports the requests of the CPT to guarantee that a relative of the detained juvenile will be informed at the beginning of the loss of liberty as well as to guarantee the presence of a trusted adult individual throughout the police interrogation of the juvenile, without the exception stipulated in article 13 of the PPMin.
For DCI-Switzerland, it is also indispensable to train lawyers in juvenile criminal law so that the juvenile will have an effective defence. With this goal in mind, DCI-Switzerland proposes the introduction of training focused on the DPMin for all trainee lawyer. The training could be complementary to the other training courses proposed by the IUKB which have already been described elsewhere.

PART TWO: PRACTICIONERS PERSPECTIVE ON JUVENILE JUSTICE

Part two contains opinions and statements resulting from a study of the various actors within the prison, judiciary, mediation, police and social systems in Switzerland. The study was performed during the first quarter of 2013. We have tried, as far as possible, to interview people from different cantons so as to ensure that the responses reflect the majority opinion. We have chosen the structure of this section according to the received responses; therefore, the topics show the points raised by the interviewees.

I. Imprisonment

1. Prison system recourse and availability

In the opinion of practitioners in all sectors concerned, it is appropriate to distinguish between the recourse to detention in the pretrial phase and its recourse as a sanction

a) Preventative Detention

To respond to the issue of the usefulness of preventative detention, the point of view should be focused on the criminal trial process and not on the socio-educational role. This type of detention has a constraining role within the framework of the proceedings, aimed at expediting the in-progress criminal affair's resolution. Its goal is to attenuate the risks of collusion and of fleeing, just as in the law for adults. For those in the police and the judiciary, this detention is indispensable in its role of quickening the proceedings: more streamlined and

unobstructed. It also allows the authorities to quickly consult the juvenile and to portray a particular hierarchy in the youth's eyes - necessary for the progress of proceedings. For those in the prison and social fields, the image of this detention is no less positive. In their view, preventative detention provides a framework for the youth. If done effectively, the detention can quickly offer new markers and help in understanding the importance of authority. The difficulty resides in the available means for managing the youth during this stage. Indeed, preventative detention often lasts a short period of time. Consequently, quick action must be taken so that the youth can benefit from this structured period and be given the necessary tools on release. The difficulty in managing the supply and demand of places is regretted, but also the rhythm of daily life of the youth who must often appear before the judge for matters of the trial. Due to this, some youths spend their time in preventative detention in a state of flux. Elsewhere, because of the lack of staff allocated to assisting youths in preventative detention, the latter show numerous difficulties in normalising their daily lives, a vital factor in achieving stability.

It should also be recognised that everyone agrees that, despite international and Swiss law provisions, youths under the age of 15 have to benefit from preventative detention. Detention is considered by all to be beneficial when its application is determined to be sufficiently appropriate – indeed, all agree in any case that it still should only be a measure of last resort.

b) Post-trial detention

As in the case of preventative detention, all those interviewed agree that punitive detention must only be used as a last resort after all other measures have been judged ineffective.

2. Organisation and resources

All interviewees deplore the scarcity of financial means provided to the prison system. Though the criticism may seem commonplace, the needs themselves seem real and justified. Shockingly, the principal lacking resource is people. With more adults available, youths could be received in prison better and thus be brought to quickly understand the benefits that may be taken from incarceration. This would then make the detention effective and useful. Second on the list of factors disapproved of by the professionals is the lack of medical and psychological infrastructure in place for the imprisoned youths. Among the interviewed employees of penitentiaries, youth delinquents are as a rule psychologically unstable. It they do not receive any care, the risk of recidivism is enormous. In fact, their delinquency is often an expression of their troubles. Their presence in prison ought to be considered as the ideal moment to commence treatment, insofar that their loss of liberty would allow them to focus in the initial stages (often a problem for such treatment). Many wish to see the strengthening of peripatetic means made available to youths, for the purposes of providing services to the population in general and to the families in difficulties. Finally, the lack of education given to youths is lamented. Where youth detainees are truly offered courses, it is often in large groups in which no distinction can be made in their educational levels. Youths who are serving long detention sentences can only barely maintain the educational level they had on entering the establishment; progress is out of the question. Furthermore, due to the low staff levels, very often youths cannot be pushed towards internships and apprenticeships which would keep them

rooted in reality and improve their reinsertion into society at the end of their incarceration.

3. Towards a new detention centre

All interviews are delighted with the upcoming opening of a new detention centre specially designed for juveniles in Switzerland. The principal hope regarding this facility is that it may offer care that conforms with all the different conventions and guidelines related to children's rights. It should also relieve the overcrowding of already existing detention centres and thus provide better care for youths. Some are however worried about the creation of many new prison places : fearing greater offer of places would push upwards the supply of detainees.

II. Progress of criminal proceedings

We have seen it in the first part of this report: the Convention on the Rights of the Child places a particular emphasis on the progress of judicial proceedings involving juveniles. In Switzerland, the new juvenile criminal procedural law has strengthened the defence of juveniles in criminal proceedings and ensures respect for their fundamental rights. However, the effectiveness of this law and its application have not been valued in the same way by everyone.

1. New juvenile criminal procedural law: a mixed result

All practitioners agree in saying that the chances of seeing a young delinquent get back on the right track increase if he/she is quickly faced with criminal proceedings and the consequences of his/her acts. This is precisely the objective aim

by new juvenile criminal procedural law (PPMin), which entered into force on the 1st January 2011.

From the courts' perspective, the interviewed judges enthusiastically describe the new role the legislature has bestowed on them, which calls on youth court judges to punish violations through education while ensuring the protection of the accused juvenile. So, the judge should make sure that the youth understands the reasons for the judge's action and especially the reasons why the youth's actions are being reprimanded. This entails an investment in time and energy for a judge who is often already overworked. The judge will devote his/her time time and energy to ensure the monitoring of the youth so that the juvenile cannot doubt the fact that proceedings against the juvenile are in reality proceedings for his/her benefit. However, all admit to being pleased with this evolution in their official role, which is only officially recognising what was already reality. The new criminal procedure has also reinforced the role of lawyers for youths. Though this means Switzerland is completing the requisites of international rules, there are still few lawyers specialised in youth criminal issues in Switzerland because it is a field offering little profit but is complex in human and technical terms. Youth court judges and prosecutors of juveniles are those who understand this specialised criminal law and they meet little opposition from lawyers regarding their interpretation of the procedure and criminal law for juveniles. Consequently, the role of these defence lawyers is minimal and, according to some judges, could even be counter-productive by only slowing down the proceedings which looks be as effective as possible

Nevertheless, for those working in the police and social sectors, the tune is fairly different. They criticise in particular article 13 PPMin which confers on the judge the role of examining

authority. In the eyes of many, the judge would have little time to conduct an investigation; thus, the article is contrary to the sought expediency. Elsewhere, the law reduces the flexibility of the police as they are forced to wait for judicial authorisation of every action and as a consequence are deprived of the right to take the initiative which may appear appropriate in the circumstances.

The new procedural law's description of mediation as being a part of the proceedings and as a method approving and encouraging dialogue with the delinquent youth is unanimously welcomed. Although the mediators still regret the lack of credibility given to them by the various sectors and the absence of political support received for this role, all are convinced of the efficacy of the method and of establishment as an alternative solution to a long and sometimes painful trial.

III. Mediation

1. What is it ?

By virtue of the law (art.17 PPMin) youth court judges can use criminal mediation. Under this process, the judge extricates the case from the legal framework by yielding, under mandate, his place and file to a third party : the mediator. The latter can be an independent accredited mediator, as is the case in the cantons of Geneva and Valais, or be part of a state-run association as in Fribourg.

According to the explanatory report on the drafting of the PPMin bill, the mediatory approach fits perfectly within the " reparative " justice because mediation takes a better account of the interests of the victim while attempting to lead the juvenile (admitted author of the act) to rectify his/her mistake through a positive action.

2. Impact

The overall perspective of criminal mediation encompasses all professionals concerned. Indeed, this process offers a complementary and effective method in settling disputes. However, upon studying the process more thoroughly and comparing it in the different cantons, disparities appear. In the canton of Fribourg, for example, mediation enjoys excellent recognition from the current youth court justices; thus, it is greatly employed. Over the last few years in the cantons of Geneva, Vaud and Valais, mediation has increasingly won over the judges, even if it is still applied sparingly: in 2012, it was applied an average of 40 times in Geneva and 50 in Vaud

whereas Fribourg used it 92 times. On the other hand, in the canton of Neuchâtel, this method has barely developed correctly or even been accepted into minds of those in the justice system. This situation is partly due to a lack of political interest in juvenile justice and elsewhere to reticence among both politicians and youth court judges.

For all the interviewed mediators, they are not giving up ; criminal mediation has a future in Switzerland! However, all are of the opinion that youth court judges must be trained in this alternative in order to have a better understanding of the process and thus be convinced of the soundness of mediation. In the opinion of the questioned mediators, it would appear that the reticence of the judges is tied to the fear of seeing themselves giving up important issues. It is a fear that could be undermined by the energy employed by those magistrates who support this resolution method. Everyone agrees in saying that mediation would relieve pressure on the courts by allowing an extra-judiciary solution to a large number of disputes. On the other hand, they deplore the lack of training in this fledgling discipline. The mediators themselves attempt to benefit from a more advanced training just as political support increases. Yet, the most surprising aspect for mediators is the lack of confidence that youths and their parents have for this conflict resolution method, which they consider as a denial of justice. It is imperative that this lack of comprehension be rectified by informing society as much as possible of the usefulness and benefits of mediation.

CONCLUSION : IDEAS AND HOPES FOR THE FUTURE

During our interviews with these Swiss practitioners, we asked them about their dreams for the future of juvenile justice. We wish to finish our report on these hopes and constructive ideas with the aspiration to guide our readers towards a juvenile criminal justice system which is more respectful to the child and, perhaps more so, respectful to the qualities of those working within this justice system.

Attempts to avoid at all costs the imprisonment of juveniles would be an illusion. In the current justice system, turning away from this answer is impossible, all the more since everyone, from social workers to judges, seem to agree on the utility of a well-managed period of incarceration. So, this "good management" must be provided. It will occur when the legal proceedings concentrate on the opinions of the youth, mediation is applied when it proves possible as well as when a necessary sentence of imprisonment is handed down, the youth is monitored on an individual basis and focused on their well being so that this period of confinement can lead to their flourishing of their development.

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