



HUMAN
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WATCH

Submission by Human Rights Watch to the Committee on
Economic, Social and Cultural Rights on Switzerland

66th session, 2019

This submission relates to the review of Switzerland under the Convention on Economic, Social, and Cultural Rights. It focuses on the protection of students, teachers, and schools during armed conflict and immigration detention of children.

Protection of Education During Armed Conflict (article 13)

The Swiss Armed Forces recently finalized an addition to their manual on the legal principles applicable in military operations (“Rechtliche Grundlagen für das Verhalten im Einsatz”), that incorporates new explicit protections for schools and universities from military use, reflecting their commitments upon endorsing the Safe Schools Declaration, which Switzerland endorsed in May 2015.¹ The revision entered into force on May 1, 2019.

In the chapter on the law of armed conflict, the manual now states:

Particular caution is required regarding educational institutions. Their destruction can bring particularly serious disadvantages for a people and the future of a country. Schools are also home to many children who are to be protected because of their vulnerability, while universities and other higher education establishments regularly house or display significant cultural assets. Educational institutions must therefore be accorded special importance in the context of precautionary measures

¹ The Safe Schools Declaration is an inter-governmental political commitment that provides countries the opportunity to express political support for the protection of students, teachers, and schools during times of armed conflict ; the importance of the continuation of education during armed conflict; and the implementation of the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict.

and proportionality. Their military use is to be avoided.

Human Rights Watch recommends that the Committee:

- Congratulate Switzerland on endorsing the Safe Schools Declaration, and for their recent addition to the Swiss Armed Forces manual recognizing the importance of protecting educational institutions during armed conflicts, including from their use for military purposes.
- Encourage Switzerland to share their good practices with other countries, including any humanitarian aid or development assistance recipients who have endorsed the declaration.

Immigration Detention of Children (article 10 and 12)

Under Switzerland's Foreign Nationals Act, youths between 15 and 18 years of age can be detained under a number of different circumstances. This includes if they refuse during asylum proceedings, removal proceedings or criminal proceedings to disclose their identity; leave an area allocated to them or enter an area from which they are excluded; enter Swiss territory despite a ban on entry; submit an application for asylum after expulsion; stay unlawfully in Switzerland and submit an application for asylum with the obvious intention of avoiding the imminent enforcement of a removal or expulsion order; seriously threaten other persons or considerably endanger the life and limb of other persons and are therefore being prosecuted or have been convicted; or have been convicted of a felony.²

Terre Des Hommes published a report in 2016 that found that while Swiss federal law forbids immigration detention of children under the age of 15, the detention of children between the ages of 15 to 18 years for migration-related reasons appears to be widespread across the Swiss Confederation, with 142 children of these ages reportedly detained in 2015.³ Also, according to a report from June 2018 by the National Council Control Committee (CC-N), even children who are not yet 15 are detained for migration-related

² Federal Act on Foreign Nationals of 16. December 2005 (RS 142.20) - Foreign Nationals Act or FNA, art. 80, al. 4.

³ "Illegal detention of migrant children in Switzerland: a status report," Terre De Hommes, June 2016, https://www.tdh.ch/sites/default/files/tdh_plaidoyer-ch_en_web_0.pdf

reasons in some cantons.⁴ Immigration detention has been proven to have an adverse effect on the mental health of children. Research from the United States, Canada, Australia and Europe has shown that it can be incredibly destructive and that children react to even short periods of detention with “extreme distress,” becoming aggressive, suffering a loss of appetite, and having trouble sleeping.⁵ This distress often then continues for months afterwards.

Human Rights Watch recommends that the Committee:

- Call on the Swiss Confederation to amend the Foreign Nationals Act to provide that no children under the age of 18 may be detained because of their migration status, in line with the guidance of this Committee and the Committee on Migrant Workers in Joint General Comment No. 4/23.

⁴ “Administrativhaft im Asylbereich Bericht der Geschäftsprüfungskommission des Nationalrates,” 26. Juni 2018, <https://www.parlament.ch/centers/documents/de/bericht-gpk-n-admin-haft-asylbereich-2018-06-26-d.pdf>

⁵ “US: Trauma in Family Immigration Detention: Release Asylum-Seeking Mothers, Children” Human Rights Watch News Release, May 15, 2015, <https://www.hrw.org/news/2015/05/15/us-trauma-family-immigration-detention-0> “Major Findings and Recommendations of the Inquiry,” Australian Human Rights Commission, <https://www.humanrights.gov.au/our-work/17-major-findings-and-recommendations-inquiry>

R Kronick, C Rousseau, and J Cleveland, “Asylum-seeking children's experiences of detention in Canada: A qualitative study,” *American Journal of Orthopsychiatry* 85 (2015) accessed August 9, 2019, doi: 10.1037/ort0000061.

M. von Werthern, K. Robjant, Z. Chui, R. Schon, L. Ottisova, C. Mason and C. Katona, “The impact of immigration detention on mental health: a systematic review,” *BMC Psychiatry* 18 (2018) accessed August 8, 2019,

<https://bmcp psychiatry.biomedcentral.com/articles/10.1186/s12888-018-1945-y>

Katy Robjant, Rita Hassan, and Cornelius Katona, “Mental health implications of detaining asylum seekers: systematic review,” *The British Journal of Psychiatry* 194 (2009) accessed August 8, 2019, DOI: <https://doi.org/10.1192/bjp.bp.108.053223>