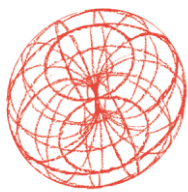


Netzwerk **Kinderrechte** Schweiz  
Réseau suisse des **droits de l'enfant**  
Rete svizzera **diritti del bambino**  
**Child Rights** Network Switzerland

## **NGO-Input on the List of Issues Prior to Reporting (LOIPR)**

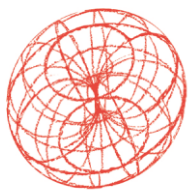
On the occasion of the 3rd State Reporting Procedure on the Implementation of the UN Convention on the Rights of the Child in Switzerland

**July, 1<sup>st</sup>, 2019**

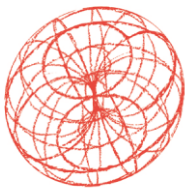


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## 1 General Implementation Measures

### 1.1 Reservations

Switzerland still maintains three reservations to the Convention:

- Reservation to Art. 10 para. 1: For provisionally admitted persons and provisionally admitted refugees, there is a waiting period of three years for the family reunification of their children, contrary to the CRC. Even after this waiting period, reunification is only possible if the family is not dependent on social benefits.<sup>1</sup>
- Reservation to Art.37 lit. c<sup>2</sup>
- Reservation to Art. 40 para. 2 lit. b No. iii: The Swiss Youth Criminal Procedure Code does not provide for a separation between investigating and judging authorities.

### 1.2 Legislation

New draft legislation is not checked for compatibility with the CRC. At the federal level, the Parliamentary Act<sup>3</sup> requires the Federal Council to outline the effects of draft legislation on future generations in its messages on draft legislation, but this examination does not reveal anything about the consequences for children living in Switzerland today.

- How does the Confederation involve civil society - especially children - in order to ensure that legislative projects are examined with regard to their compatibility with the basic principles of the CRC and their impact on children?
- Does the Confederation plan to amend the Parliament Act so that Federal Council messages and Parliament reports must explain the compatibility of the project with the CRC?

### 1.3 National Child Rights Policy and Strategy and Coordination

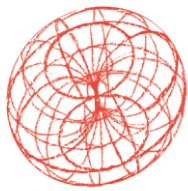
There is no political mandate at the federal level for a child rights policy and strategy. In the federal system, the cantons are responsible for child and youth policy, child and youth welfare and child and youth protection. It therefore depends on the canton of residence how children and young people can exercise their rights and leads to unequal

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<sup>1</sup> Federal Act on Foreign Nationals and Integration (Bundesgesetz über die Ausländerinnen und Ausländer und über die Integration - AuG; SR 142.20), [Art. 85 para. 7.](#)

<sup>2</sup> Cf. Chapter 8.3 «Juvenile Justice System»

<sup>3</sup> Art. 141 para. 2 lit. g Parliamentary Act.



treatment with regard to the scope and quality of services.<sup>4</sup> Many cantons still lack a comprehensive, cross-sectoral child rights policy and strategy.<sup>5</sup>

At the federal level, the Federal Social Insurance Office (FSIO) is responsible for reporting on and coordinating the implementation of the Convention.<sup>6</sup> In the process of developing measures to close gaps in the implementation<sup>7</sup>, numerous offices at federal and intercantonal level have established successful cooperation. The key now is to make sustainable use of this established coordination structure<sup>8</sup> and also to involve civil society in the future. In order to implement the current and future recommendations of the CRC promptly and throughout Switzerland, the necessary expertise and resources must be ensured.

The federal government's package of measures remains very selective and does not provide any concrete implementation guidelines in key areas of children's rights. For example, the Confederation does not stipulate a national child rights strategy and policy or the continuation of the coordination between the Confederation and the cantons that is indispensable for implementation. An improvement in the data situation in all areas affecting children and adolescents is also required. In addition, the package of measures completely leaves out challenges relating to particularly vulnerable or disadvantaged groups, especially minors in the areas of migration and asylum.<sup>9</sup>

- What measures are planned by the Confederation and the cantons to implement the recommendations of the CRC in a timely and systematic manner?
- How does the Confederation plan to involve civil society in the implementation of the recommendations?

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<sup>4</sup> BSV (2014): Current status of children and youth policy in Switzerland ([Aktueller Stand der Kinder und Jugendpolitik in der Schweiz](#)).

UBS Optimus Foundation (2018): Child welfare risks in Switzerland. Forms, aids, professional and political implications ([Kindeswohlgefährdungen in der Schweiz. Formen, Hilfen, fachliche und politische Implikationen](#)). The UBS-Optimus study shows significant regional differences in the assessment of child welfare risks.

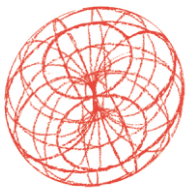
<sup>5</sup> BSV (2017): Structure and further development of cantonal child and youth policies: Status of federal financial assistance under Article 26 KJFG ([Aufbau und Weiterentwicklung der kantonalen Kinder- und Jugendpolitiken: Stand der Ausrichtung von Finanzhilfen des Bundes gemäss Artikel 26 KJFG](#)).

<sup>6</sup> BSV (2015): Recommendation of the UN Committee on the Rights of the Child of February 2016 - Responsibilities and contact bodies ([Empfehlung des Ausschusses für die Rechte des Kindes der UNO vom Februar 2016 – Zuständigkeiten und Kontaktorgane](#)).

<sup>7</sup> Federal Council (2018): Measures to fill gaps in the implementation of the Convention on the Rights of the Child in Switzerland ([Massnahmen zur Schliessung von Lücken bei der Umsetzung der Kinderrechtskonvention in der Schweiz](#)).

<sup>8</sup> In 2016, Parliament rejected two initiatives aimed at better coordination of child and youth policy. Cf. Parliamentary Initiative 07.402 ([Parlamentarische Initiative 07.402](#)): Constitutional basis for a Federal Act on the Promotion of Children and Youth and on the Protection of Children and Minors (Verfassungsgrundlage für ein Bundesgesetz über die Kinder- und Jugendförderung sowie über den Kinder- und Jugendschutz); Parliamentary Initiative 15.423 ([Parlamentarische Initiative 15.423](#)): Support for children and adolescents (Unterstützung von Kindern und Jugendlichen).

<sup>9</sup> Child Rights Network Switzerland (2018): Federal package of measures: Hesitant and selective commitment to children's rights - Statement of the Swiss Child Rights Network. [Massnahmenpaket des Bundes: Zögerliches und selektives Engagement für die Kinderrechte - Stellungnahme des Netzwerks Kinderrechte Schweiz](#).



- How do the Confederation and the cantons intend to institutionalise coordination between federal and inter-cantonal and cantonal bodies?
- How do the Confederation and the cantons ensure that children's rights are strengthened, especially in vulnerable groups?

### 1.3.1 Coordination between the Cantons

At the inter-cantonal level, the Cantonal Conference of Social Directors (SODK) is responsible for coordinating the implementation of the CRC.<sup>10</sup> In May 2016, the SODK adopted general recommendations for the further development of child and youth policy in the cantons<sup>11</sup> and presented recommendations concerning unaccompanied minor children and adolescents from the asylum sector.<sup>12</sup> However, these recommendations are not binding and the SODK lacks the competence and resources to monitor the implementation of the recommendations by the cantons. These measures do not replace a binding strategy at national level.

- What measures and resources are planned at cantonal level to implement the Concluding Observations?
- How is the implementation of the recommendations on child and youth policy and asylum monitored?

## 1.4 Resource Allocation

At the national level, the Federal Government has the possibility to promote extracurricular child and youth work with the Child and Youth Promotion Act (KJFG). In recent years, the number of actors requesting support from the KJFG loan has increased significantly. At the same time, Parliament has cut funding, which restricts the work of many organisations in this area. An expansion of the KJFG loan's funding area, as called for by a current initiative in Parliament<sup>13</sup>, must therefore be accompanied by an increase in funding.

- To what extent does the Federal Government plan to increase the funds for the KJFG loan if the funding scope is expanded?

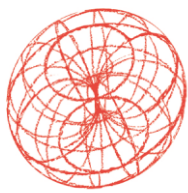
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<sup>10</sup> According to the Decision of the Conference of Secretaries of Inter-cantonal Conferences (KoSeKo) ([Entscheid der Konferenz der Sekretäre der interkantonalen Konferenzen \(KoSeKo\)](#)) the SODK is responsible for coordinating the implementation of the Convention and the final remarks of the Committee on the Rights of the Child in the cantons.

<sup>11</sup> SODK (2016): Recommendations for the further development of child and youth policy in the cantons. ([Empfehlungen für die Weiterentwicklung der Kinder- und Jugendpolitik in den Kantonen](#)).

<sup>12</sup> SODK (2016): Recommendations of the SODK on unaccompanied minor children and adolescents from the asylum sector ([Empfehlungen der SODK zu unbegleiteten minderjährigen Kindern und Jugendlichen aus dem Asylbereich](#)).

<sup>13</sup> Parliamentary Initiative 17.412 ([Parlamentarische Initiative 17.412](#)): Equal opportunities before kindergarten age (Chancengerechtigkeit vor dem Kindergartenalter).



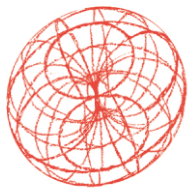
## 1.5 Collection of Data

There is a lack of continuous reporting on the living conditions of children and, with a view to the situation of children at risk, especially on the structures of education, fostering and support services and their utilization. Important basic data is not available because it is not collected at a federal level or only by some cantons and/or because they are collected by cantons in different ways. There is a particular need for action in the following areas:

|  |  |
|--|--|
| Child protection                                       | <p>Information on civil child protection measures is recorded in the KOKES statistics, but there is a lack of information on the reasons for endangerment of the welfare of the child, on the family situation or on the gender of the children. For the first time, a privately financed study provides information on the forms of endangerment of child welfare and on the recording of cases by the authorities.<sup>14</sup> It is urgently necessary for this study to be converted into continuous monitoring. The data situation in the area of criminal law based child protection is also very poor.</p> <ul style="list-style-type: none"><li>➔ What measures are being taken to improve and align the data available on the use of child and youth welfare services and child and youth protection at the inter-cantonal, cantonal and federal levels and to supplement it with information on the living situation and the family of origin?</li><li>➔ What plans exist to improve the quality of data collection and to collect data on the implementation of the CRC for the 0-13 age group and on the corresponding legal bases?</li></ul> |
| Administrative detention of young people over 15 years | <p>Due to blatant shortcomings and large differences in the collection of data on the administrative detention of minors, it is not possible to say how many children are actually affected.<sup>15</sup></p> <ul style="list-style-type: none"><li>➔ What measures are being taken by the Confederation and the cantons to improve the systematic collection and management of disaggregated data on the administrative detention of children?</li><li>➔ To what extent will civil society have access to this data in order to monitor the administrative detention situation of migrant children?</li></ul>   |

<sup>14</sup> UBS Optimus Foundation (2018): Child welfare risks in Switzerland. Forms, aids, professional and political implications ([Kindeswohlgefährdungen in der Schweiz. Formen, Hilfen, fachliche und politische Implikationen](#)).

<sup>15</sup> Terre des hommes (2018): Inventory of the administrative detention of underage migrants in Switzerland ([Bestandesaufnahme zur Administrativhaft von minderjährigen MigrantInnen in der Schweiz](#)), p.18.



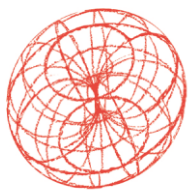
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| Foster care                       | <p>Switzerland still does not provide comprehensive data on children cared for outside the family. The CASADATA project initiated by the Federal Office of Justice is a step in the right direction. However, since the cantons are responsible for data collection and only subsidised institutions are obliged to provide data, there is no systematic and complete collection.</p> <p>→ How do the Confederation and the cantons plan to make data available for the 0-17 age group on all placements in the area of child protection and criminal law and on children with disabilities?</p> |
| Adoption                          | <p>The adoption statistics of the Federal Office of Statistics on national and international adoptions are not sufficiently differentiated.</p> <p>→ How will the Confederation and the cantons systematically collect missing data on adoptions, e.g. information on the country of origin of children adopted from abroad?</p>   |
| Human trafficking                 | <p>The data available on underage victims of human trafficking is insufficient. The victims are often unaware of their victim situation and are also not covered by the usual police human trafficking indicators (see 5.2). Missing criminal proceedings and incomplete victim assistance statistics are the consequence.<sup>16</sup> A very high number of unreported cases can be expected in Switzerland.</p> <p>→ What measures do the Confederation and the cantons intend to take to improve the data situation on underage victims of human trafficking?</p>                            |
| Missing and disappearing children | <p>There is no systematic data collection on the number of children who are missing. This concerns children who run away from their family/care situation, abductions by a parent in Switzerland or abroad, abductions by third parties and missing unaccompanied minors seeking asylum. In contrast to the procedure for the disappearance of resident adolescents, the disappearance of unaccompanied asylum seeking minors<sup>17</sup> is not systematically reported to the competent authorities.<sup>18</sup> The adolescents are therefore not systematically sought by the police.</p>  |

<sup>16</sup> GRETA (2015): ([Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Switzerland](#)).

<sup>17</sup> Terre des hommes (2018): Inventory of the administrative detention of underage migrants in Switzerland ([Bestandesaufnahme zur Administrativhaft von minderjährigen MigrantInnen in der Schweiz](#)), p.51-52.

<sup>18</sup> Yannick Frossard & Samuel Morard (2017): Runaways in Valais: a minor phenomenon? ([Fugues en sol valaisan: phénomène mineur?](#)), bachelor thesis HES-SO, on behalf of the Sarah Oberson Foundation.



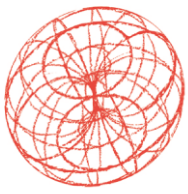


|                               |   |
|-------------------------------|---|
|                               | <p>→ What measures are planned to improve data collection on all missing children?</p>  |
| Cybercrime                    | <p>Police crime statistics on cybercrime regarding children are not very informative. As the offences are subsumed under different criminal offences, the statistics do not show how many children have been victims of cybercrime and of which forms of cybercrime.</p> <p>→ How do the Confederation and the cantons intend to improve police crime statistics in order to allow conclusions to be drawn about the various offences in the field of child-related cybercrime?</p>                           |
| Children in a refugee context | <p>No systematic data is available on the cantonal variations in the care and accommodation settings for children and adolescents in the asylum sector or on the corresponding quality.</p> <p>→ How do the Confederation and the cantons ensure that the quality of care and accommodation structures for vulnerable groups is systematically assessed?</p>  |
| Genital mutilation            | <p>There is no systematic collection of data that would allow conclusions to be drawn about the extent and development of the various genital mutilation practices in Switzerland (number of endangered and circumcised girls/women and boys as well as intersex-children).<sup>19</sup> This data is indispensable for the promotion of prevention and awareness-raising measures.</p> <p>→ What is Switzerland doing to improve the national data situation and the monitoring of genital circumcision?</p> |
| Rare diseases                 | <p>→ What measures are planned to improve data on the incidence of rare diseases?</p>   |

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The study shows that between 2014 and 2016, 16 unaccompanied asylum seeking minors disappeared in the canton of Valais alone, 400 children throughout Switzerland in 2016 alone.

<sup>19</sup> UN Committee on the Elimination of Discrimination against Women (CEDAW) (2016): Concluding observations on the combined fourth and fifth periodic reports of Switzerland, 18<sup>th</sup> of November 2016, CEDAW/C/CHE/CO/4-5.



## 1.6 Independent Monitoring Structure and Complaints Mechanism

Switzerland has not yet made any progress in institutionalising an individual human rights complaints office. Ongoing processes have been put on ice by the Federal Council for the time being. As a result, there is currently no body to which minors can turn if their rights are not respected. Children who come into contact with the legal system often receive too little information about the procedure and are insufficiently aware of their rights.

- How does the public sector intend to ensure in future that children and young people have access to the judicial system through one or more child rights Ombudsoffices?

## 1.7 Awareness Raising, Training and Promotion of the Convention

### 1.7.1 Child Rights Education

In Switzerland's overarching legal provisions, child rights education is still not explicitly anchored (Federal Constitution and numerous cantonal school laws). Nevertheless, in recent years Switzerland has made efforts to strengthen child rights education in primary schools. For example, all new language-regional curricula provide for activities in the area of children's rights. However, most references to child rights education are in the area of transversal specifications. Many teaching materials contain no references to children's rights, and teachers who wish to carry out child rights education activities repeatedly encounter resistance.<sup>20</sup>

- What measures are the cantons planning to take to ensure that children's rights education is sustainably anchored in schools?
- How are teachers systematically trained in teaching and supported in the implementation of child rights education?
- How is the implementation of child rights education evaluated?

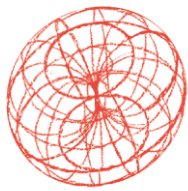
### 1.7.2 Education of Professionals

Certain occupational groups that are in direct contact with children are not systematically trained in children's rights and the right to be heard. This applies in particular to legal representatives of the child, (youth) judges, and members of school supervisory or child protection authorities or health and care professionals.<sup>21</sup> The

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<sup>20</sup> Stefanie Rinaldi (2017): Challenges for Human Rights Education in Swiss Secondary Schools from a Teacher Perspective. *Prospects*, 47(1-2), S. 87-100.

<sup>21</sup> Swiss Competence Centre for Human Rights (SKMR) (2014): The right to child protection. The first effects of implementation in the cantons of Geneva, Vaud and Zurich ([Le droit de protection de l'enfant. Les premiers effets de la mise en œuvre dans les cantons de Genève, Vaud et Zurich](#)).



Confederation now intends to take stock of the education and further training of occupational groups that work with children.<sup>22</sup>

- How do the Confederation and the cantons ensure that occupational groups (including those in the private or non-profit sector) who work directly with children receive binding and systematic training in child rights and participation?

## 2 General Principles

### 2.1 Non-discrimination

In regards to the principle of non-discrimination, the Child Rights Network Switzerland sees a particular need for action in the following areas:

#### 2.1.1 Educational Opportunities for Children with a Migrant Background

Children with a migrant background are still disadvantaged in terms of access to education. At secondary level II, young people with a migrant background are strongly underrepresented. While 94% of young people of Swiss nationality graduate at upper secondary level, only 86% of young people with a migrant background who were born in Switzerland and only 73% of young people who were born abroad achieve a degree.<sup>23</sup> Early school leavers are also more frequent among children and young people with a migrant background. Disadvantages can also be identified in access to vocational education and training.<sup>24</sup>

- What measures are planned to reduce the school drop-out rate of children with a migrant background and the under-representation of this group at upper secondary level?

#### 2.1.2 Right to Protection and to an Adequate Standard of Living for Children of Migrant Origin as well as Asylum Seekers

The conditions for family reunification are becoming increasingly strict. The financial situation of a family has become a central element in the evaluation of an application for family reunification.<sup>25</sup> Practical experience also shows that families waive social benefits for fear of forfeiting their right of residence. The children concerned are thus denied the right to an adequate standard of living.

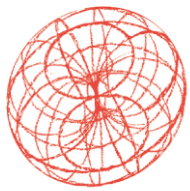
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<sup>22</sup> Federal Council (2018): Measures to close gaps in the implementation of the Convention on the Rights of the Child ([Massnahmen zum Schliessen von Lücken bei der Umsetzung der Kinderrechtskonvention](#)).

<sup>23</sup> Specialist Office for Combating Racism (Fachstelle für Rassismusbekämpfung - FRB) (2017): Racist discrimination in Switzerland 2016 ([Rassistische Diskriminierung in der Schweiz 2016](#)).

<sup>24</sup> Idem.

<sup>25</sup> Swiss Monitoring Centre for Asylum and Alien Law (Schweizerische Beobachtungsstelle für Asyl- und Ausländerrecht 2017): Family life - (not a) human right. Obstacles to immigration and remaining in Switzerland ([Familienleben – \(k\)ein Menschenrecht. Hürden für den Nachzug und den Verbleib in der Schweiz](#)), p. 24 ff.



Especially with regard to children and adolescents who enter Switzerland as asylum seekers, questions of Alien Law are usually given more weight than questions concerning children's rights and the best interests of children. The same standards do not apply to their accommodation and care and to the monitoring of accommodation organisations as to children and adolescents outside the asylum sector. Cantonal differences in the quality of accommodation and care are still considerable and national minimum standards have not yet been implemented.<sup>26</sup> In some cantons, the child and adult protection authorities do not exercise their competence to protect minors in the asylum sector. Child protection measures can therefore not be effective, especially for this vulnerable group of children.

- How do the Confederation and the cantons ensure that children from the asylum sector and children with a migrant background have access to social benefits and that child protection measures can also be applied to children within the asylum sector?
- How do the Confederation and the cantons ensure that children from the asylum sector receive child-oriented accommodation and care and that the recommendations of the SODK on unaccompanied minor children and adolescents from the asylum sector are implemented?
- What measures are being taken to combat the unequal treatment of children and adolescents on the basis of their residency status?

### **2.1.3 Educational Opportunities and Access to Health Care for Transgender Children**

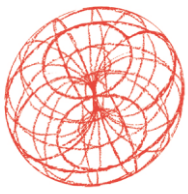
Transgender children<sup>27</sup> are subject to multiple disadvantages: In schools they lack the support they need to integrate into everyday school life without discrimination (e.g. gender-neutral cloakrooms and toilets). The risk of suicide is particularly high in transgender kids<sup>28</sup> and self-damaging behaviour and depression are also more common. Transgender children, who are in psychiatric "treatment", are often subjected to an unnecessary intensive diagnostics, in which they did not freely and informedly consent. In addition, not all adolescents for whom this would be indicated have immediate access to hormonal puberty blockers or hormonal gender adjustment, which is crucial for their healthy development. Some paediatricians and school doctors are inadequately trained, which leads to false diagnoses. This results in incorrect treatment and neglect of indicated treatment.

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<sup>26</sup> Georgiana Ursprung, Patricia Koch (2018): Between asylum and children's rights. Developments in the care of unaccompanied minors in Switzerland, in: SozialAktuell Nr. 11, November 2018, pp. 24-27.

<sup>27</sup> In about 2-3% of the population, the gender assigned at birth does not correspond to the gender identity. Cf. Clark, Terryann C. et al. (2014): The health and well-being of transgender high school students: results from the New Zealand adolescent health survey (Youth'12). *Journal of Adolescent Health*, 55(1), p. 93-99.

<sup>28</sup> According to information by [Transgender Network Switzerland \(TGNS\)](#).



- How do the Confederation and the cantons ensure that people in the education and health sectors are trained and made aware of the needs and rights of transgender children across the board?
- How does the Confederation plan to ensure that transgender kids in adolescence have universal access to the necessary hormonal therapies?

## 2.2 Best Interests of the Child

### 2.2.1 Clarification of Terminology

In German-speaking Switzerland, the English term “best interest of the child” is today translated as “Kindeswohl”. In French-speaking Switzerland, the Civil Code refers to “bien de l'enfant”, while the translations of the Convention and the Concluding Observations of the Committee on the Rights of the Child use the expression “intérêt supérieur de l'enfant”. A clarification of the translation and the legal meaning of the term in both languages is urgently needed.<sup>29</sup>

- What measures have been taken to clarify the term “best interest of the child” and its translation as well as its legal meaning in all national languages?

### 2.2.2 Definition of Procedures and Criteria for Determining the “Best Interests of the Child”

In Switzerland, there are no criteria and procedural guidelines for determining the best interests of the child that are available to the administration and the judiciary. Even in family law proceedings, the needs of the children are not sufficiently taken into account: In a decision of 29<sup>th</sup> of June 2017<sup>30</sup> the Federal Supreme Court stated that the best interests of the child must be decisive in the question of awarding parental custody. However, the notions of favourable developmental conditions in families are often too rigid. There is a need for guidelines on how the viewpoint, needs and expressions of the children are to be weighted. Practice also shows that the determination of the best interest of the child is insufficiently taken into account in asylum procedures and placement in alternative care.<sup>31</sup>

- Which federal and cantonal measures implement criteria and procedures for determining the best interests of the child in accordance with the Council of Europe's Guidelines for child-friendly justice<sup>32</sup>?

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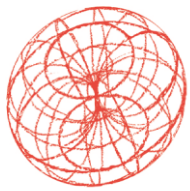
<sup>29</sup> SMRK (2013): Implementation of human rights in Switzerland: A review of the situation in the field of child and youth policy ([Umsetzung der Menschenrechte in der Schweiz: Eine Bestandesaufnahme im Bereich Kinder- und Jugendpolitik](#)).

<sup>30</sup> Federal Supreme Court (2017): [Court decision 5A\\_346/2016](#) from 29<sup>th</sup> of June 2017.

<sup>31</sup> International Social Service Switzerland (2017): Handbook for the care of unaccompanied minors in Switzerland ([Handbuch zur Betreuung unbegleiteter Minderjähriger in der Schweiz](#)).

Liliane Minor (2017): Especially children suffer in asylum proceedings ([Besonders Kinder leiden im Asylverfahren](#)), *Tages-Anzeiger Online*, 02.02.2017.

<sup>32</sup> Council of Europe (2010): Guidelines of the Committee of Ministers of the Council of Europe for a Child-friendly Judiciary ([Leitlinien des Ministerkomitees des Europarates für eine kindgerechte Justiz](#)).



- How are these criteria and procedures communicated to courts, administrative authorities and public and private social institutions?
- What is planned to support separated families so that they can put the needs of their child/children first?

### **2.2.3 Legal Representation for Minor Victims**

When underage victims find the strength and resources to file a complaint, they face a lengthy procedure. While the perpetrators often receive a necessary defence, the underage victim has some difficulty obtaining legal representation. Today, legal representatives for children are usually appointed by child and adult protection authorities; the police have no way of contacting a stand-by lawyer, as is possible in the case of perpetrators.

- What measures does the public authority take to ensure that in future underage victims will also have immediate access to a stand-by lawyer?

## **2.3 Respect for the Opinion of the Child**

### **2.3.1 Participation of Children in Proceedings**

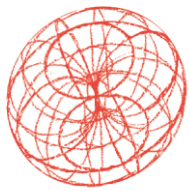
Although the right to be heard is anchored in civil and criminal procedures, in practice children are not systematically heard. Cantonal practices vary widely in terms of the method, the practical experience of the person conducting the hearing and the age of the children. There are training courses on this subject, but only few people from the judiciary take advantage of them.<sup>33</sup> There is also a need for action in proceedings under Alien Law. For example, in deportation proceedings concerning a foreign parent, children are only heard in less than half of the cantons.<sup>34</sup> The inclusion of children with disabilities is also insufficiently taken into account.

A prerequisite for the effective participation of children in proceedings is that children are fully informed about the proceedings in a language suitable for children and that they are involved before, during and after the proceedings. Information material is often only available for adults and parents, but not for children.

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<sup>33</sup> Cf. SKMR (2014): The right to child protection. The first effects of implementation in the cantons of Geneva, Vaud and Zurich ([Le droit de protection de l'enfant. Les premiers effets de la mise en œuvre dans les cantons de Genève, Vaud et Zurich](#)). The study shows a need for action in the training of child protection specialists. Since 2009, the interdisciplinary Institute for Children's Rights has trained 50 experts from French-speaking Switzerland on the subject of child hearing. KESB's legal and judicial staff and experts were clearly underrepresented.

<sup>34</sup> Swiss Competence Centre for Human Rights (2017): Child-oriented justice - Hearing the child during a civil law placement and when a parent is deported due to alien law ([Une justice adaptée aux enfants - L'audition de l'enfant lors d'un placement en droit civil et lors du renvoi d'un parent en droit des étrangers](#)).



- What measures are planned to ensure that the child's right to be heard is put into practice, that the hearing is child-oriented, that specialists are trained and that cantonal practices are harmonised?
- What will the public authorities do to ensure that children and adolescents affected by proceedings have access to appropriate information and can fully participate in proceedings?
- What legal requirements ensure that children with disabilities are heard in judicial proceedings (police, victim support, court proceedings) and that their concerns are given sufficient consideration?

### 2.3.2 Participation in Political Processes and at Regional and School Level

Children are affected by numerous proposals of the Swiss direct democracy (e.g. changes in the school system). However, most of the time they remain excluded from these votes until they reach the age of 18. Many cantons and municipalities have children's councils and/or youth parliaments.<sup>35</sup> However, the involvement of these bodies is often non-binding and selective, and the resolutions are not binding in any way. The same applies to the federal youth session.

The participation of children at community level is also still low and mostly dependent on private initiatives.<sup>36</sup> Municipalities do have the option of applying to the federal government for financial assistance for participation projects.<sup>37</sup> However, the requirements for an application are very high and hardly to be met by municipal authorities without professional advice.<sup>38</sup>

The participation of children in schools is only expressly provided for in individual cantonal school laws (e.g. ZH, AG or BE).<sup>39</sup> The implementation of these provisions is largely dependent on the sensitivity of individual teachers and school management. In general, access to participation opportunities for children from vulnerable groups is associated with particular difficulties.

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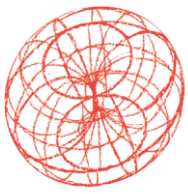
<sup>35</sup>In Switzerland there are almost 70 youth parliaments and councils at cantonal, municipal or regional level. Cf. Umbrella organisation of Swiss Youth Parliaments & Youpa ([Dachverband Schweizerischer Jugendparlamente & Youpa](#)).

<sup>36</sup> UNICEF Switzerland (2015): From voice to effect. A study on the participation of children and young people in Switzerland ([Von der Stimme zur Wirkung. Eine Studie zur Partizipation von Kindern und Jugendlichen in der Schweiz](#)).

<sup>37</sup> Pursuant to Art. 15 of the FSIO Guidelines on the Submission of Applications for Financial Assistance under the Federal Act of September 2011 on the Promotion of Extracurricular Work with Children and Adolescents of 1<sup>st</sup> of January 2015.

<sup>38</sup> Cf. [Interpellation 17.3651](#): KJFG. Unclear criteria for project approval and lack of transparency regarding contributions to national youth umbrella organisations.

<sup>39</sup> Elementary School Law (Volksschulgesetz - VSG) Canton Zürich [412.100, Art. 50](#); Justiz- Gemeinde- und Kirchengemeinde-direktion Kanton Bern (2015): Partizipation von Kindern und Jugendlichen im Kanton Bern. Empfehlungen der Kommission zum Schutz und zur Förderung von Kindern und Jugendlichen. (Justice, Municipal and Parish Directorate of the Canton of Bern (2015): Participation of children and young people in the Canton of Bern. Recommendations of the Commission on the Protection and Promotion of Children and Adolescents).  
Canton Aargau (2018): Children's rights and participation at school ([Kinderrechte und Partizipation in der Schule](#)).



- What are the plans to consider lowering the voting age to 16?
- What instruments are planned to ensure the participation of children in the preparation of political affairs at cantonal and national level, including children with special needs?
- How do the Confederation and the cantons intend to improve participation opportunities for children at the municipal level and to strengthen the actors of district work and youth work<sup>40</sup> that are important for the promotion of participation?
- What plans exist to anchor participation opportunities in cantonal school laws and care settings (e.g. children's homes, asylum centres, institutions for the disabled) comprehensively?

## **2.4 Dissemination of the Optional Protocol on a Communications Procedure**

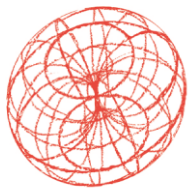
On 24<sup>th</sup> of April 2017, Switzerland acceded to the 3<sup>rd</sup> Optional Protocol to the UN-CRC on a communications procedure (OPIC). OPIC is still insufficiently known among children, professionals and the general public to contribute to the protection of children's rights.

- What measures are planned to make OPIC known to children and their representatives?
- What measures are planned to ensure that individual complaints about violations of children's rights can be dealt with on a low-threshold basis and accessible to children through domestic channels?

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<sup>40</sup> UNICEF Switzerland (2015): Giving the kids a voice. Participation of children and young people in Switzerland ([Den Kindern eine Stimme geben. Partizipation von Kindern und Jugendlichen in der Schweiz](#)).





### 3 Civil Rights and Freedoms

#### 3.1 Statelessness

Children born in Switzerland who are stateless have no possibility of acquiring Swiss nationality at birth and can only become Swiss citizens when they have legally resided in Switzerland for five years. However, there is no entitlement to naturalisation, and since naturalisation is subject to numerous conditions, the authorities have a great deal of leeway.<sup>41</sup>

Children recognised as stateless have an extremely precarious legal status, have only travel documents and no identity documents and are considerably restricted in the exercise of their rights (e.g. concerning travel, education, opening bank accounts, taking out insurances).<sup>42</sup>

Statelessness mainly affects foreign children who live in Switzerland as asylum seekers or refugees. Children of migrants without regular residence status (*Sans-Papiers*) also run the risk of becoming stateless. Finally, children born abroad may become stateless through surrogacy if they do not obtain either the nationality of their parents or that of their surrogate mother.<sup>43</sup>

According to official statistics, at the end of 2018, there were 564 stateless persons living in Switzerland, including 145 children under the age of 18.<sup>44</sup> The number of unreported cases is likely to be significantly higher.<sup>45</sup>

- What plans are there to create an explicit legal basis for avoiding statelessness and to formalise special judicial recognition procedures so that stateless minors are automatically recognised?
- What simplifications of naturalisation procedures are foreseen for children?
- How does the Federal Council plan to improve the legal status of stateless children?

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<sup>41</sup> Federal Act of 16<sup>th</sup> of June 2014, Civil Rights Act (BüG; SR 141.0), [Art. 23](#)

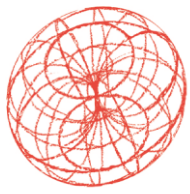
<sup>42</sup> Pablo Arnaiz (2016): Stateless persons in international and Swiss law. *News on foreigners' law* (Staatenlose im internationalen und schweizerischen Recht. *Actualité du droit des étrangers*), p. 57-154.

<sup>43</sup> Véronique Boillet & Hajime Akiyama (2017): Statelessness and International Surrogacy from the International and European Legal Perspectives. *Swiss. Rev. Int'l & Eur.*, 27(4), p. 513-534.

Cf. Federal Council (2013): Surrogacy report. Report of the Federal Council of 29<sup>th</sup> of November 2013 in response to Postulate 12.3917 of 28<sup>th</sup> of September 2012. ([Bericht zur Leihmutterchaft. Bericht des Bundesrates vom 29. November 2013 in Beantwortung des Postulats 12.3917 vom 28. September 2012](#)).

<sup>44</sup> According to statistics on the foreign resident population of the State Secretariat for Migration (SEM). The Federal Statistical Office also records the number of permanent foreign resident populations, but no information is available on the number of stateless children.

<sup>45</sup> UNHCR Office for Switzerland and Liechtenstein (2018): Study on Statelessness in Switzerland, p. 18 ff.



## 4 Violence against Children

### 4.1 Children Affected by Domestic Violence and Violent Parenting Styles

Every fifth child in Switzerland experiences severe violence in his or her life in the context of the family.<sup>46</sup> The most common forms such as psychological and physical violence, neglect or sexual abuse<sup>47</sup> in the family environment tend to be discovered very late, so that the children often suffer physical and psychological damage.<sup>48</sup> Both the federal government and parliament have so far rejected a concrete, legally anchored ban on violence against children in the domestic context.

For this reason, children are hardly the focus of discussions and measures relating to domestic violence. Only a few cantons (e.g. BE, ZH, BS) offer specific support for children affected by domestic violence.<sup>49</sup> Although these child-centred approaches have been evaluated as very effective, there is a lack of systematic and comprehensive recording of affected children and their integration into care and aftercare concepts.

- What measures do the Confederation and the cantons take to ensure that all internationally recognised forms of violence against children in the family context are recognised and identified as forms of violence both by the general public and by professional groups working with and for children?
- How do the Confederation and the cantons ensure that non-violent educational styles replace harmful practices?
- What measures do the Confederation and the cantons take to effectively and mandatorily promote the early detection of child abuse by health and education personnel?
- How is coordination between the actors involved in the prevention of all forms of domestic violence against children and in intervention promoted?

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<sup>46</sup> Dirk Baier et al. (2018): Parental upbringing with special consideration of parental violence in Switzerland: Results of a youth survey (Elterliche Erziehung unter besonderer Berücksichtigung elterlicher Gewaltanwendung in der Schweiz: Ergebnisse einer Jugendbefragung).

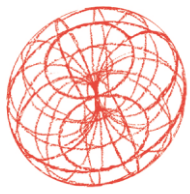
<sup>47</sup> UBS Optimus Foundation (2018): Child welfare risks in Switzerland. Forms, aids, professional and political implications ([Kindeswohlgefährdungen in der Schweiz. Formen, Hilfen, fachliche und politische Implikationen](#)).

Kinderschutz Schweiz (2017): Punishment behaviour of parents in Switzerland. Physical and psychological violence in upbringing and partnership in Switzerland ([Bestrafungsverhalten von Eltern in der Schweiz. Physische und psychische Gewalt in Erziehung und Partnerschaft in der Schweiz](#)).

Federal Statistical Office (2018): Penal code, Crimes domestic violence and injured persons ([Straftaten häusliche Gewalt und geschädigte Personen](#)).

<sup>48</sup> Federal Council (2018): Early detection of intra-family violence in children by health professionals ([Früherkennung innerfamiliärer Gewalt bei Kindern durch Gesundheitsfachpersonen](#)).

<sup>49</sup> Monika von Fellenberg & Luzia Jurt (ed.) (2015): *Kinder als Mitbetroffene von Gewalt in Paarbeziehungen (Children as affected persons of violence in partner relationships)*. Wettingen: eFeF-Verlag.



## 4.2 Exploitation of Children and Child Trafficking

One in four victims of human trafficking is a minor<sup>50</sup>, and yet only a fraction of minor victims are identified and registered. This is partly due to the fact that many children are unaware of their victimisation and exploitation situation – especially in their family environment – and cannot make any statements or seek help. On the other hand, the current identification measures - including those of the “National Action Plan against Trafficking in Human Beings 2017-2020”<sup>51</sup> – are too little child-centred. These are mostly lists of police indicators which target female victims in the sex industry and do not sufficiently identify underage and/or male victims. In addition, restructuring in the Federal Office of Police and budget cuts have led to a shortage of resources in the area of child and human trafficking.

- How do the Confederation and the cantons ensure that all authorities and the general public are made aware of the phenomenon's manifestations and the possibilities for reporting it and that they can identify victims of child trafficking?
- How do the Confederation and the cantons support the development and safeguarding of perpetrator-centred prevention measures?
- What specialised protective measures and institutions do the Confederation and the cantons have in place to ensure the protection of children in suspicious cases?
- How do the Confederation and the cantons ensure that a child who has been forced to commit criminal acts is not punished?
- How do the Confederation and the cantons protect minors in the area of asylum, children without regular residence status and missing children and adolescents from becoming victims of human trafficking, e.g. in the context of family reunification?

## 4.3 Cybercrime in Regard to Children

The use of digital media is associated with numerous risks which can lead to serious negative effects on the physical and mental health of children and adolescents. Problem areas are, for example, the addressing of children and adolescents by adults on the Internet, cyberbullying and extortion, cybergrooming, sexting or child pornography. The non-transparent dissemination of personal data, which is therefore difficult to assess in terms of its consequences, is also a problem.<sup>52</sup>

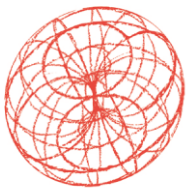
In particular, the (verbal) sexual harassment of children needs to be made an offence prosecuted ex officio, and there is a particular need to review the punishability of sexual

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<sup>50</sup> ILO (2017): [Global Estimates of Modern Slavery: Forced Labour and Forced Marriage](#).

<sup>51</sup> EJPD (2016): National Action Plan against Human Trafficking 2017 – 2020 ([Nationaler Aktionsplan gegen Menschenhandel 2017 – 2020](#)).

<sup>52</sup> Federal Council (2015): Youth and media. Future structuring of child and youth media protection in Switzerland. [Jugend und Medien. Zukünftige Ausgestaltung des Kinder- und Jugendmedienschutzes der Schweiz](#).



harassment in virtual media.<sup>53</sup> In Switzerland's neighbouring countries "grooming" has already been explicitly included in criminal legislation.<sup>54</sup>

- To what extent are the Confederation and the KKJPD planning to ensure nationwide coordination in the field of pedo-criminality on the Internet?
- What measures does the Confederation take to protect certain age groups from unsuitable media content, cybercrime or harmful acts in the context of individual communication (e.g. sexual harassment)?
- What measures does the Confederation and the cantons intend to implement in order to regulate the non-transparent collection and dissemination of data and to ensure the informed and self-determined handling of personal data of children and adolescents?

#### 4.4 Prevention of Violence in Non-family Settings

Child protection guidelines and practices can reduce child welfare risks in non-family settings (external day care, schools, associations). However, corresponding standards are not defined as binding principles in all areas of children's and young people's lives. Persons who deal with children only have to be partially qualified or are not extensively trained in child protection risks. For example, minimum standards concerning care ratios or qualification of staff have so far been non-existent in asylum accommodations, in contrast to the corresponding requirements for day-care centres.<sup>55</sup>

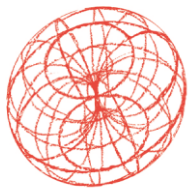
- How do the Confederation and the cantons intend to better protect children and adolescents from child welfare risks in the public/semi-public setting?
- How do the cantons intend to ensure that appropriate child protection guidelines are formulated in all facilities and institutions financed by state funds?
- What steps are the cantons planning to take to ensure that child protection training is offered as a standard at public schools throughout Switzerland for all employees?

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<sup>53</sup> Karin Fontanive & Monika Simmler (2016): Danger on the Internet: The outdated data collection on cyber-grooming and cyber-harassment in Swiss sexual criminal law - On the necessity of modernising Article 198 of the Swiss Penal Code, ZSR I. (Gefahr im Netz: Die unzeitgemässe Erfassung des Cybergroomings und des Cyberharassments im schweizerischen Sexualstrafrecht – Zur Notwendigkeit der Modernisierung von Art. 198 StGB, ZSR I).

<sup>54</sup> Sandra Muggli (2014): Summary of the workshop for prosecutors and investigators on "Combating pornography and sexual abuse of minors on the Internet" ("Bekämpfung der Pornographie und sexuellen Missbrauchs Minderjähriger im Internet"), Jusletter 10th of November 2014.

<sup>55</sup> Cf. The recommendations of the working group Child Protection for Refugees in Zurich: Directorate of Education Canton Zürich (2017): [Empfehlungen für den Kinderschutz im Asyl- und Flüchtlingsbereich](#). SODK (2016): [Empfehlungen zu unbegleiteten minderjährigen Kindern und Jugendlichen aus dem Asylbereich](#), p. 23.



## 4.5 Genital Mutilation

### 4.5.1 Circumcision of Boys

In the genital circumcision of boys, the foreskin of the penis is partially or completely removed. In 2014, 2.928 outpatient and inpatient circumcisions of children were performed in Swiss hospitals.<sup>56</sup> Since no data is available on procedures in doctors' surgeries, the number of circumcisions is likely to be significantly higher.

From the point of view of child rights, the practice of circumcision of children that is not medically justified raises questions. It is undisputed that this is a bodily injury.<sup>57</sup> An analysis carried out by the Swiss Centre of Competence for Human Rights in 2013 shows that there is a certain degree of legal uncertainty in Switzerland regarding the legitimacy of circumcision of boys. According to this analysis, it must be assessed on a case-by-case basis, whether circumcision of a boy who is incapable of making a decision, endangers the welfare of the child or not.<sup>58</sup>

Organisations representing affected people complain that circumcision of boys is a serious injury to the genitals and the physical integrity that can cause urological, sexual and psychological damage.<sup>59</sup> They demand that circumcision be carried out only when medically necessary (ultima ratio).<sup>60</sup> A public debate on the subject has barely taken place as yet.

- How do the Confederation and the cantons intend to ensure that the best interests of the child are given priority in decisions on circumcision?
- What measures are the Confederation and the cantons planning to take in order to promote a social debate and awareness of this issue?

### 4.5.2 Female Genital Mutilation

Female genital mutilation (FGM/C) is prohibited under Swiss criminal law, even if the offence is committed abroad.<sup>61</sup> Estimates from 2013 assume that around 14,700 girls and women in Switzerland are affected or threatened by this harmful practice.<sup>62</sup> The

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<sup>56</sup> Response of the Federal Council to the [Interpellation 17.3499](#): (Circumcision versus the right to an intact body). Knabenbeschneidung versus Recht auf einen unversehrten Körper.

<sup>57</sup> Marianne Schwander (2014): Circumcision of boys. A legal discussion, Bern, o.O.; Natalie Hiltbrunner & Andrea Egbuna-Joss (2013): Circumcision of boys from a legal point of view. Basic paper of the Swiss Centre of Competence for Human Rights.

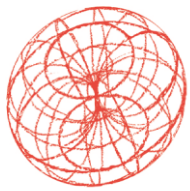
<sup>58</sup> Natalie Hiltbrunner & Andrea Egbuna-Joss (2013): The circumcision of boys from a legal point of view. Basic paper of the Swiss Centre of Competence for Human Rights.

<sup>59</sup> Morten Frisch et al. (2013): Cultural Bias in the AAP's 2012 Technical Report and Policy Statement on Male Circumcision, *Pediatrics*, 131(4), p.796-800.

<sup>60</sup> Pro Kinderrechte Schweiz (2013): European paediatricians criticises AAP opinion on circumcision. ([Europäische Pädiater kritisieren AAP-Stellungnahme zur Beschneidung](#)).

<sup>61</sup> Swiss Penal Code (StGB, SR 311.0), [Art. 124](#).

<sup>62</sup> Federal Council (2015): Sexual mutilation of women. Sensitisation and prevention measures. Report of the Federal Council in response to the Bernasconi motion (Sexuelle Verstümmelung an Frauen).



Federal Office of Public Health has been committed since 2005 to raising awareness and preventing FGM/C in Switzerland. Between 2016 and 2019, the Confederation is supporting a network against FGM/C, which maintains an information portal, advises affected persons and specialists, sensitises specialists and communities, and establishes regional specialist offices with low-threshold support services.<sup>63</sup>

However, there is still a need for action with regard to the systematics and sustainability of the measures against FGM/C. In particular, FGM/C must be increasingly considered as a form of domestic violence/endangerment to child welfare. Since the funding of measures against FGM/C expires at the end of 2019, it is important that a sustainable strategy to promote prevention and awareness be launched.

- Does Switzerland intend to continue financing measures against FGM/C after 2019? And if so, how will it be ensured that the financial support is sustainable?

#### 4.5.3 Intersex Genital Mutilation

Contrary to recommendations by international human rights bodies<sup>64</sup>, operations that are not medically indicated on children with variance of sex development are still practised in Switzerland and paid for by the disability insurance (IV). These operations are serious and irreparable and often cause lifelong pain and suffering. There are no legislative or other measures to prevent children from these harmful practices, which are unnecessary from a medical point of view.<sup>65</sup> Children affected and their families still do not have access to adequate psychosocial care. The Federal Council considers the recommendations of the Swiss National Advisory Commission on Biomedical Ethics of November 2012 to have been implemented to a large extent<sup>66</sup>. The Federal Council does not intend to implement the CRC-recommendations on IGM, referring to a revision of the Civil Code, which shall make it easier to change civil register entries for gender.<sup>67</sup> To date, there is no reliable data available on interventions carried out in Swiss hospitals that are paid for by the IV. It is alarming that hospitals are sometimes destroying corresponding medical records.<sup>68</sup>

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Sensibilisierungs- und Präventionsmaßnahmen. Bericht des Bundesrates in Erfüllung der Motion Bernasconi) (05.3235).

<sup>63</sup> Network against female genital mutilation Switzerland (Netzwerk gegen Mädchenbeschneidung Schweiz) (2018): Female Genital Mutilation in Switzerland ([Mädchenbeschneidung in der Schweiz](#)).

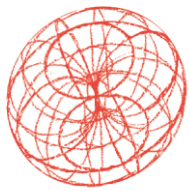
<sup>64</sup> CRC/C/CHE/CO/2-4, paras 42-43; 2015: CAT/C/CHE/CO/7, para 20; 2016: CEDAW/C/CHE/CO/4-5, paras 24–25, 38–39; 2017: CCPR/C/CHE/CO/4, paras 24-25.

<sup>65</sup> A [Petition \(15.2043\)](#) of the human rights group *Zwischengeschlecht/Stop IGM*, which called for a ban on Intersex genital mutilation, failed in March 2017 in the Council of States and in June 2017 in the National Council.

<sup>66</sup> Federal Council (2016): Media release - People with ambiguous sex - Fostering sensitivity ([Medienmitteilung – Menschen mit uneindeutigem Geschlecht – Sensibilität fördern](#)).

<sup>67</sup> Federal Council (2018): Measures to fill gaps in the implementation of the Convention on the Rights of the Child in Switzerland ([Massnahmen zur Schliessung von Lücken bei der Umsetzung der Kinderrechtskonvention in der Schweiz](#)).

<sup>68</sup> How Zurich Children's Hospital handles the medical files Cf. Inquiry Cantonal Council of Zurich ([328/2018](#)): Shredding of files concerning operations on children with variations of sex development in the Zurich Children's Hospital.



- How many interventions on intersex-children have been paid for by the IV since the publication of the Concluding Observations 2015 (disaggregated data by age at the time of the intervention, type of intervention, clinic)?
- What has Switzerland done specifically to implement the relevant CRC, CAT, CEDAW, CCPR recommendations?

#### 4.6 Children of Mentally Stressed Parents

According to estimates, there are at least 20,000 to 50,000 children in Switzerland with a mentally ill parent.<sup>69</sup> These children often also assume responsibility for the sick parent.<sup>70</sup> They run the risk of experiencing physical or psychological violence or of being neglected. The risk of children suffering from mental illness themselves later on is significantly increased.<sup>71</sup> The support needs of children of mentally ill parents often recede into the background. Child protection authorities are often only consulted if there are external signs of impairment of the child's well-being, neglect or abuse.

- What measures are the Confederation and the cantons planning to take to make medical professionals, who care for people with mental illnesses or stress, aware of the situation of children who are also affected?
- What measures are planned by the Confederation and the cantons to ensure that it is systematically clarified whether the person concerned has children and whether the children suffer from psychosocial burden?

#### 4.7 Underage Marriage

Persons under the age of 18 are not entitled to marriage in Switzerland. Nevertheless, minors are married or are threatened by forced marriage. In 2017, the Federal Competence Centre for Forced Marriage advised 107 minors.<sup>72</sup> Swiss legislation on underage marriages<sup>73</sup> is problematic in three respects: Firstly, a marriage abroad of a

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Fabian Baumgartner & Jan Hudec (2018): Files of Intersex Patients Destroyed ([Akten von Intersex-Patienten vernichtet](#)), NZZ 01.11.2018, p. 29.

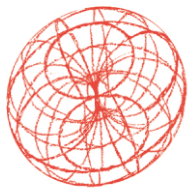
<sup>69</sup> Kurt Albermann & Brigitte Müller (2016): Support for children of mentally ill parents. Paediatrics - Focus issue of the SGPP and SGKJPP Annual Congress on Mental Health from the Generational Perspective, Paediatrics, ([Unterstützung für Kinder psychisch kranker Eltern. Pädiatrie – Schwerpunktausgabe zum Jahreskongress der SGPP und SGKJPP zum Thema Psychische Gesundheit aus der Generationenperspektive](#)), 16 (3), p 4-8.

<sup>70</sup> . Federal Office of Public Health (2015): Psychische Gesundheit in der Schweiz. Bestandsaufnahme und Handlungsfelder. Bericht im Auftrag des Dialogs Nationale Gesundheitspolitik (Mental Health in Switzerland. Inventory and fields of action. Report on behalf of the National Health Policy Dialogue).

<sup>71</sup> Kurt Albermann & Brigitte Müller (2016): Support for children of mentally ill parents. Paediatrics - Special Issue of the SGPP and SGKJPP Annual Congress on Mental Health from the Generational Perspective, Paediatrics [Unterstützung für Kinder psychisch kranker Eltern. Pädiatrie – Schwerpunktausgabe zum Jahreskongress der SGPP und SGKJPP zum Thema Psychische Gesundheit aus der Generationenperspektive](#), Pädiatrie, 16 (3), p 4-8.

<sup>72</sup> Andreas Schmid (2018): More than 100 forced marriages of children in one single year ([Über 100 Zwangsheiraten von Kindern in einem einzigen Jahr](#)), NZZ am Sonntag, 03.03.2018.

<sup>73</sup> Underage marriages are also covered by the term "family-based gender violence" (verwandtschaftsbasierte Geschlechtergewalt).



minor above the age of 16 may be acknowledged.<sup>74</sup> Although in Switzerland it is examined whether the continuation of a minor marriage is in the mutual interest of the spouses, it is usually difficult to evaluate due to complex family, intergenerational and cultural conflicts of loyalty and the multi-national interdependence of the parties involved.

Secondly, Swiss legislation currently does not prohibit the engagement of minors.<sup>75</sup> Thirdly, there is an increase in informal marriages of minors in Switzerland.<sup>76</sup> Although such traditional religious marriages have no legal validity, they are often far more significant for the families concerned than civil marriages.

- How does the Confederation ensure that the general public as well as professionals and specialists are informed and made aware of the primacy of civil marriage?
- What measures does the Confederation intend to take to cancel marriages of minors that have taken place abroad without leaving the decision burden to the minors?

## 5 Family Environment and Alternative Care

### 5.1 Conflicts of Loyalty in Joint Parental Custody

In the case of family law disputes, the child and adult protection authorities and/or courts must intervene. Since 1<sup>st</sup> of July 2014, matrimonial law has stipulated joint parental custody as the norm. The best interests of the child should be decisive in the question of granting parental custody.<sup>77</sup> This new provision increases the pressure on children to have to comply with the wishes of both parents. When regulating the right to determine the place of residence, solutions are favoured which hardly take into account the (bonding) needs and statements of the children. This is particularly true for younger children.

- What action is planned to support the practice of the judiciary and public authorities in regulating the right of determining residence/ to care/ to contact of children of separated parents, in particular by developing recommendations on how to weight the views, needs and statements of children without putting pressure on them?

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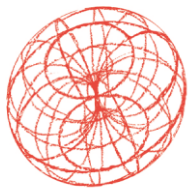
<sup>74</sup> According to the Swiss Civil Code (ZGB, SR 210), Art. 105, para. 6, in conjunction with the Federal Act on Private International Law (IPRG, SR 291), Art. 45 IPRG.

<sup>75</sup> Swiss Civil Code (ZGB; SR 210), [Art. 90 para. 2](#).

<sup>76</sup> Cf. NZZ am Sonntag, Preachers wed minors („[Prediger trauen Minderjährige](#)“), 29.01.2017.

<sup>77</sup> Federal Supreme Court (2017): [Ruling 5A\\_346/2016](#) of 29<sup>th</sup> of June 2017.





## 5.2 The Right to Know One's Own Origin in Case of Adoption or Medical Reproduction

With the revision of the adoption law in 2018, the underage child is entitled to information about the natural parents, as far as no conclusions about their identity are possible with that (e.g. occupation, appearance, age).<sup>78</sup> The underage child is still only entitled to knowledge of identifying information (e.g. name, place of origin, nationality) of the natural parents in the case of “evidence of legitimate interest”<sup>79</sup> is provided. This also applies to children conceived by medical reproduction.<sup>80</sup> The concept of “legitimate interest” is only conditionally compatible with the best interest of the child. The search for one's own origin creates identity and is therefore per se legitimate.

In addition, there are often data gaps concerning the biological father in the cases of adoptions, since many releasing mothers do not want to name the father of the child.

- How many children were guaranteed or denied access to information on their origin on the basis of a “legitimate interest”?
- How will the Confederation and the cantons ensure in future that a child can exercise his or her right to know his or her origin even before he or she reaches the age of majority?
- What measures are planned to ensure that adopted children or children conceived by medical reproduction can find out the identity of their biological father, for example by naming their biological father in confidence?

## 5.3 Legal Representation of the Child in Adoption Proceedings

In Switzerland, every child given up for adoption or stepchild adoption receives a guardian ad litem who coordinates and accompanies the adoption process. It is often not clarified whether other solutions, such as open adoption or placement in a foster family, are more in the child's interest.

The relationship between the natural parents is often severely strained, which is why the child should be provided with legal representation to safeguard his or her interests. In practice, this is still insufficiently implemented.

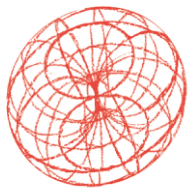
- What measures are planned to ensure that guardians ad litem in adoption procedures clarify comprehensively which solution corresponds with the child's interest?

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<sup>78</sup> Swiss Civil Code (ZGB; SR 210), [Art. 268c para. 2 lit 1.](#)

<sup>79</sup> Swiss Civil Code (ZGB; SR 210), [Art. 268c para. 2 lit 2.](#)

<sup>80</sup> Federal law on medically assisted reproduction, [Art. 27 Abs. 2.](#)



- How do the cantons ensure that the authorities responsible for adoptions are sensitised to the establishment of legal representation for the child concerned in the case of stepchild adoptions?
- What steps are the Confederation and the cantons taking to ensure that sufficient legal representatives are trained for children?

#### **5.4 Professional Support for Foster Care**

Professional support for foster children, foster parents and also biological parents is urgently needed in view of the often conflictual or challenging family settings. Particular attention should be paid to underage unaccompanied foreign foster children and foster children from particularly difficult family backgrounds.

Foster families often receive little or no support. The guardians ad litem of the foster children often do not have enough resources to accompany the families.<sup>81</sup> The annual supervisory visits stipulated by the authorities<sup>82</sup> are therefore not sufficient. According to the Foster Children Regulation, each foster child would have to be assigned a trusted person.<sup>83</sup> In practice, not all cantons implement this regulation, and/or the foster children receive only a guardian ad litem who also represents the interests of the biological parents. This is problematic because it does not take sufficient account of the child's interests.<sup>84</sup>

- How do the cantons plan to proceed in order to ensure that each care relationship receives appropriate professional support that is not only employed in crisis situations?
- What measures are planned to ensure that all foster children receive a trusted person, as provided for in the PAVO?

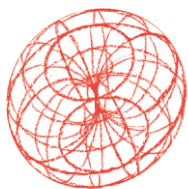
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<sup>81</sup> Seiterle, Nicolette (2018): Result-Report Inventory of Foster Children Switzerland 2016 ([Ergebnisbericht Bestandesaufnahme Pflegekinder Schweiz 2016](#)). Zürich: PACH Pflege- und Adoptivkinder Schweiz (PACH Foster- and Adopted Children Switzerland).

<sup>82</sup> Regulation on Fostering Children (Verordnung über die Aufnahme von Pflegekindern) (PAVO; SR 211.222.338), [Art. 10 para. 1](#).

<sup>83</sup> Regulation on Fostering Children (Verordnung über die Aufnahme von Pflegekindern) (PAVO; SR 211.222.338), [Art. 1a para. 2 lit b](#).

<sup>84</sup> Seiterle, Nicolette (2017): Result-Report Inventory of Foster Children Switzerland 2015 ([Ergebnisbericht Bestandesaufnahme Pflegekinder Schweiz 2015](#)). Zürich: PACH Pflege- und Adoptivkinder Schweiz. (PACH Foster- and Adopted Children Switzerland).



## 6 Disability, Health and Welfare

### 6.1 Rights of Children with Disabilities to inclusive Education and Early Support

Children with disabilities still have no access to inclusive education. According to the Federal Constitution and the Swiss Disability Equality Act (BehiG), the cantons are responsible for ensuring that children with disabilities receive primary education that meets their special needs and promotes their integration into regular schools. To date, however, no canton has developed a strategy and legislation for the development of an inclusive education system.

In addition to the regular school system, a special education system still exists<sup>85</sup>, and the integrative system is massively underfunded. Only 16 out of 26 cantons have ratified the Special Needs Education Concordat, according to which integrative solutions have priority.<sup>86</sup> In a recent ruling, the Federal Supreme Court approved the separate schooling of a child with Trisomy 21, among other things with reference to the fact that there is no constitutional right to schooling in a regular school and that the inclusive training according to Art. 24 of the UN-CRPD do not go beyond the federal guarantees.<sup>87</sup>

In addition, there are cantonal regulations according to which pupils whose behaviour impairs the operation of the school can be excluded from lessons for a certain period of time (e.g. Art. 28 para. 5 of the Elementary School Act of the Canton of Berne -VSG).

Another problem is the limited access to early intervention and personal assistance for children with disabilities. Such measures are crucial in order to promote children's self-determination and their inclusion in school and society from the outset. For example, in the area of cerebral mobility impairment, only four out of every 100 eligible children use the relevant IV-benefits for early intervention, partly because of a lack of specialist staff and high administrative hurdles.<sup>88</sup>

- How do the Confederation and the cantons ensure that cantonal legislation and cantonal "special education" concepts comply with the requirements of an inclusive (rather than integrative) education system?

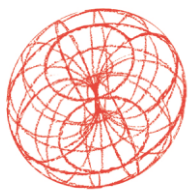
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<sup>85</sup> Federal council (2016): First report of the Swiss government on the implementation of the Convention on the Rights of Persons with Disabilities. ([Erster Bericht der Schweizer Regierung über die Umsetzung des Übereinkommens über die Rechte der Menschen mit Behinderungen](#)). "In Switzerland, the training of children and young people with special educational needs takes place either in special schools, in special small classes or integratively in regular classes with the involvement of curative education services", p. 40.

<sup>86</sup> Inter-cantonal Agreement on Cooperation in the Field of Special Needs Education of 25 October 2007 (Special Needs Education Concordat). The agreement defines common quality standards for service providers, a common terminology and a common clarification procedure. For the status of the accession procedures, cf. Swiss Conference of Cantonal Ministers of Education ([Schweizerische Konferenz der kantonalen Erziehungsdirektoren](#)) (Last update: 23.10.2017).

<sup>87</sup> Cf. Federal Supreme Court (2017): Ruling [Urteil 2C\\_154/2017](#) of 23<sup>rd</sup> of May 2017.

<sup>88</sup> Federal Office for Social Insurances (2017): Evaluation ([Evaluation Assistenzbeitrag 2012 - 2016 – Forschungsbericht Nr. 8/17](#)).



- When and to what extent will the Federal Supreme Court in its jurisdiction actually take into account the requirements of Art. 24 UN-CRPD and its concretisation by the CRPD Committee?
- How do the Confederation and the cantons intend to ensure that the right to be heard of affected children is guaranteed in important school decisions?
- What measures do the Confederation and the cantons envisage for the specific early intervention and personal assistance of children with disabilities?
- How do the cantons and the Confederation ensure that the needs of children with disabilities in regard to housing, education and access to information are taken into account in such a way as to ensure equal participation in society and that their opinions are sufficiently taken into account?

## 6.2 Access to Basic Paediatric Medicines and Cost Assumption for Treatment of Rare Diseases

As the home state of numerous market-leading pharmaceutical companies, Switzerland has a central role in ensuring that children are not discriminated against when it comes to access to basic medication. Numerous medicines are prescribed to children without testing the efficacy and safety of products for younger age groups.<sup>89</sup>

There are also important challenges regarding the cost assumption for minors affected by rare diseases.<sup>90</sup> 80% of rare diseases are genetically conditioned, and many occur already during childhood.<sup>91</sup> Up to the age of 20, disability insurance covers the costs of treating certain birth defects.<sup>92</sup>

Although the aim of compulsory health insurance is to cover the costs for diagnosis and treatment of a disease and its consequences,<sup>93</sup> reimbursement is not always guaranteed.<sup>94</sup> Certain medications for rare diseases are very expensive, and cost assumption is not ensured by health insurance funds, or is associated with a high administrative effort for the attending physicians or parents.<sup>95</sup> The lack of a legal basis to regulate the cost absorption for medicines for rare diseases exposes affected children to the risk of unequal treatment.<sup>96</sup>

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<sup>89</sup> Swissmedic (2017): Paediatrics, children and medicines. ([Pédiatrie, Les enfants et les médicaments](#)).

<sup>90</sup> SAMW (2014): National Concept Rare Diseases ([Nationales Konzept Seltene Krankheiten](#)); A disease is considered rare if five or fewer people per 10,000 population are affected by a particular disease that is potentially fatal or chronically debilitating. 80% of those affected are children.

<sup>91</sup> Saskia R. Karg & Matthias R. Baumgartner (2017): To generate enthusiasm for rare diseases. ([Susciter l'enthousiasme pour les maladies rares](#)). *Paediatrica*, 28(1), p. 41-42.

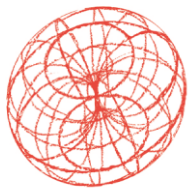
<sup>92</sup> Regulation on Birth Defects, ([GgV: SR 831.232.21](#)).

<sup>93</sup> Federal Health Insurance Act (KVG; 832.10), [Art. 25 para. 1](#).

<sup>94</sup> ProRaris. (2017): Press release - No to a two-tier public health ([Non à une santé publique à deux vitesses](#)).

<sup>95</sup> According to a study by the University of Freiburg, 11% of parents surveyed stated that health insurance companies do not cover the costs of their children's medication. Cf. Romain Lanners (2016): National survey on the current situation of families with a child with a rare disease: Analysis and discussion of the first results. ([Enquête nationale sur la situation actuelle des familles avec un enfant atteint d'une maladie rare : Analyse et discussion des premiers résultats](#)).

<sup>96</sup> Cf. ProRaris: Unequal treatment remains (last retrieved on 01.10.2018). ([Ungleichbehandlung bleibt bestehen](#)).



- What incentives does Switzerland offer to encourage pharmaceutical companies to invest more into research and production of medicines suitable for children?
- How does Switzerland ensure that all children suffering from rare diseases can exercise their right to the best possible state health and that inequality in access to medicines are eliminated?

### 6.3 Suicide Prevention

In 2017, an average of two to three youths with suicidal thoughts or questions on this topic contacted the emergency number 147 for children in need every day. These contacts often involve anxiety states, persistent depressive moods, sleep and eating disorders in connection with performance pressure. There are also more and more reports of suicide or attempted suicides by minors in the area of asylum.

Suicide of children and adolescents is the subject of numerous international recommendations to Switzerland.<sup>97</sup> These repeatedly criticise the lack of a coordinated national strategy and the unequal coverage of prevention services at regional level.<sup>98</sup> Although Switzerland adopted a national action plan on suicide prevention at the beginning of 2017, it lacks the necessary financial resources to implement it effectively.

- On the basis of the action plan on suicide prevention, what concrete contributions will the Confederation and the cantons make to reduce the suicide rate among young people in Switzerland?

### 6.4 Child Poverty

In Switzerland, 108,000 children are directly affected by poverty, a further 155,000 live in precarious conditions, just above the poverty line.<sup>99</sup> Children who grow up in poverty experience material disadvantage, social exclusion and poorer educational opportunities. The poorer starting chances cannot be compensated for later. Children often remain poor into adulthood.<sup>100</sup>

Child poverty is caused by high maintenance costs, low income of parents and a lack of opportunities to balance work and family life, a lack of livelihood security for children

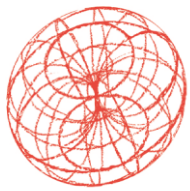
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<sup>97</sup> For example [CRC/C/CHE/CO/2-4](#): CO63.

<sup>98</sup> Federal Office of Public Health (2016): Suicide prevention in Switzerland. Initial situation, need for action and action plan ([Suizidprävention in der Schweiz. Ausgangslage, Handlungsbedarf und Aktionsplan](#)). "Young people and young adults in Switzerland have a significantly higher suicide attempt rate than other age groups (133 suicides per year)". Compared to heterosexual comparison groups, LGBT people have an increased suicide rate, which has also been confirmed for Switzerland (World Health Organization WHO 2014; University of Zurich: Wang et al. 2012 and 2014).

<sup>99</sup> Federal Statistical Office (2017): Survey on income and living conditions (SILC) 2016.

<sup>100</sup> Federal Council (2018): Results of the National Programme for Preventing and Combating Poverty 2014-2018, Report of the Federal Council on the National Programme and in compliance with Motion 14.3890 Socialist Group of 25<sup>th</sup> of September 2014.



and a lack of federal investment in children and families. Unfortunately, exemplary measures such as supplementary family benefits in Vaud, Ticino, Geneva and Solothurn or the voluntary kindergarten from the age of three in Ticino<sup>101</sup> are still the exception.

- How does the Confederation intend to intensify coordination in the area of poverty reduction and approach the goal of a binding poverty strategy?
- What measures are the Confederation and the cantons planning to take to effectively protect children from poverty and ensure their material livelihood, e.g. by introducing supplementary family benefits?
- How do the Confederation and the cantons plan to ensure that poor and vulnerable families have access to early childhood care, education and furtherance?

## 7 Education, Leisure and Cultural Activities

### 7.1 Early Childhood Education and Care

Studies show that children from socially disadvantaged families already lag behind in their development when they start school.<sup>102</sup> These children can particularly benefit from attending a preschool institution.<sup>103</sup> However, de facto their access to institutional childcare is much more difficult.<sup>104</sup> Reasons for this include the fact that socially disadvantaged parents do not know of or cannot afford services that support them in the education of their children.<sup>105</sup>

In addition, most services are aimed mainly at parents with school-age children aged four and over. In order to improve equal opportunities, children and their legal guardians

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<sup>101</sup> Swiss Childcare Network & National Programme for the Prevention and Eradication of Poverty (Netzwerk Kinderbetreuung Schweiz & Nationales Programm zur Prävention und Bekämpfung von Armut) [ed.] (2016): Focus publication on poverty prevention ([Fokuspublikation Armutsprävention](#)): Aspects and components of successful parental cooperation in the context of poverty prevention in early childhood. A thematic deepening of the orientation framework for early childhood education, care and upbringing in Switzerland.

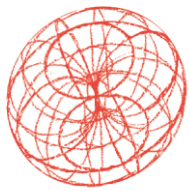
Heidi Stutz et al. (2016): Municipal strategies, measures and services to prevent and combat family poverty. Federal Social Insurance Office (FSIO). Catherine Walter-Laager & Claudia Meier Magistretti (2016): Literature study and good practice criteria for the design of early support programmes for children from socially disadvantaged families. Federal Social Insurance Office.

<sup>102</sup> Cf. Doris Edelmann (2015): Strengthening equal opportunities through early support. In: Andrea Haenni Hoti (Hrsg.): Equity - Discrimination and equal opportunities in education. ([Equity – Diskriminierung und Chancengerechtigkeit im Bildungswesen](#)). Migration background and social origin in focus, EDK series "Studies + Reports" | 37 A.

<sup>103</sup> Infras & University of St. Gallen (2013): White paper on the costs and benefits of an early childhood policy, commissioned by the Jacobs Foundation. ([White Paper zu Kosten und Nutzen einer Politik der frühen Kindheit](#)).

<sup>104</sup> Regula Schlanser (2011): Who uses crèches in Switzerland? ([Wer nutzt Kinderkrippen in der Schweiz?](#)). In the Federal Social Insurance Office: Social security CHSS, 3/2011, p. 139-143.

<sup>105</sup> SWR (2018): Social Selectivity - Recommendations of the Swiss Science Council SW ("[Soziale Selektivität – Empfehlungen des Schweizerischen Wissenschaftsrats SWR](#)").



need targeted support as early as pre-school age, and today's early childhood education, care and support services need to be extended.

- How is access to early childhood education and care for all children made possible and how is it ensured that child-oriented, affordable, high-quality services are available and known?
- What is the planned approach to reach socially disadvantaged families at an early stage with care and early support services, for example day-care centres, day families and playgroups?
- How is the aim of the integration agenda of the Confederation and the cantons to be achieved specifically so that 80% of children from the asylum sector who come to Switzerland at the age of 0-4 can communicate in the language spoken in their region of residency at the start of compulsory schooling?

## 7.2 Right to Play

Access to free space for children in Switzerland is dependent on their family environment and varies greatly depending on their living environment.<sup>106</sup> In addition, a growing need for security on the part of parents and caregivers, as well as the increase in third-party-care settings, influence the possibility for children to play freely in their immediate environment.<sup>107</sup> Social performance orientation is increasingly structuring children's time, and media and virtual spaces are also becoming increasingly important. "Play-deprivation" and "play-inability" is a result.<sup>108</sup>

These developments lead to the outdoor space losing its significance as a world for play and experience for children, and to continuous loss of temporal freedom for self-determined free play. Socially unusual behaviour as well as movement and coordination disorders are among the negative consequences.

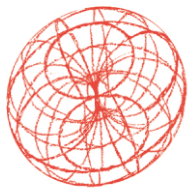
- What measures does the public sector take to retain and promote play culture and children's creativity in public institutions?
- To what extent does the planning of public spaces give priority to environments that promote the well-being and play of the child?

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<sup>106</sup> Baldo Blinkert & Peter Höfflin (2016): Free space for children. Results of a survey conducted as part of the Pro Juventute Foundation's open space campaign. ([Freiraum für Kinder. Ergebnisse einer Umfrage im Rahmen der Freiraumkampagne der Stiftung Pro Juventute](#)).

<sup>107</sup> Stamm, Margrit, Early intervention as child's play. A plea for the right of children to free play, ([Frühförderung als Kinderspiel. Ein Plädoyer für das Recht der Kinder auf das freie Spiel](#)), Dossier, 2014, (19.10.2018).

<sup>108</sup> Margrit Stamm (2014): Early intervention as child's play. A plea for the right of children to free play, ([Frühförderung als Kinderspiel. Ein Plädoyer für das Recht der Kinder auf das freie Spiel](#)), Dossier 14/5.



## 8 Specific Protection Measures

### 8.1 Refugee Children

#### 8.1.1 Age Determination Methods in Asylum Procedures

Minors seeking asylum enjoy special protection and special rights in Switzerland in accordance with the Convention. Their age determination therefore plays an important role in asylum procedures. The Asylum Regulation stipulates that the indication of age can be clarified using scientific methods.<sup>109</sup> In the Federal Asylum Centres, children and adolescents may be required to undergo X-ray analyses of the wrist, collarbone and teeth<sup>110</sup>, supplemented by a body examination assessing the pubertal development. These invasive methods do not produce precise results and are medically and ethically questionable.<sup>111</sup> In particular, the assessment of sexual maturity violates the privacy and integrity of the child.<sup>112</sup>

It is regrettable that the Confederation does not include multidisciplinary assessments of socio-pedagogically trained caregivers in order to include the children's maturity and level of development in the age determination.<sup>113</sup> This makes it all the more important that all underage asylum seekers are supported immediately after their identification by a trusted person who advocates their integrity.

- How does the Confederation ensure that the dignity and integrity of the child is respected in the procedure for determining age?
- How does the Confederation ensure that, in view of these inaccurate biological methods, decisions on age determination are always made in a multidisciplinary manner and are based on developmental psychological findings, and that these decisions protect presumed minors and that, in case of doubt, minority is assumed?
- What possibilities do affected children and adolescents have to appeal against the results of the age determination?

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<sup>109</sup> Asylum Regulation 1 on Procedural Issues (AsylV 1; SR 142.311), [Art. 7 para. 1](#).

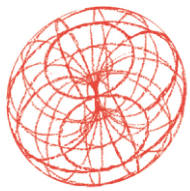
<sup>110</sup> Cf. Lukas Häuptli (2018): Asylum Seeking Minors: In case of doubt, into forensic medicine, NZZ am Sonntag, 16.09.2018.

<sup>111</sup> Cf. Sarah Depallens, Fabienne Jäger & Nicole Pellaud (2017): Age determination of young migrants - Statement of the Swiss Society for Paediatrics. *Paediatrica*, 28(2), p.3-4.

<sup>112</sup> Cf. Swiss Refugee Council: [International guidelines on age assessment procedures](#).

<sup>113</sup> Cf. UNHCR recommendations on the placement of asylum seekers in federal asylum centres ([UNHCR zur Unterbringung von Asylsuchenden in Bundesasylzentren](#)), August 2017.





### 8.1.2 Right to a Trusted Person for Unaccompanied Refugee Minors

In 2017, 733 unaccompanied refugee minors (Mineurs non-accompagnés MNA) applied for asylum in Switzerland.<sup>114</sup> The cantons are responsible for the accommodation and care of MNA. According to the Asylum Act, they should immediately assign the MNA a trusted person who represents their interests.<sup>115</sup> According to the recommendations of the SODK<sup>116</sup>, this is only a temporary measure until a guardian ad litem or legal guardian has been appointed by the child protection authority.<sup>117</sup> Affected children and adolescents and specialist organisations criticise this support as being clearly inadequate and delayed.<sup>118</sup>

With the new Asylum Regulation 1, the assigned legal representation during the stay of the MNA in Federal Asylum Centres is also to perform the function of the trusted person.<sup>119</sup> This dual role is problematic because many of those responsible lack either qualifications in the legal field or specialist knowledge in the psychosocial field.<sup>120</sup>

In addition, guardianship measures can only be taken after the minors have been assigned to the cantons. However, it would be important for the local child and adult protection authorities to be able to order child protection measures at the Federal Centres.

- How do the Confederation and the cantons ensure that the trusted persons have the necessary psychosocial qualifications to support unaccompanied asylum seeking minors, e.g. through corresponding standards in the specifications of the service providers?
- How can it be ensured that unaccompanied minors receive the necessary protection and access to child protection measures during the asylum procedure even during their stay in federal institutions?

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<sup>114</sup> State Secretariat for Migration (SEM) (2018): Statistics Unaccompanied Asylum Seeking Minors in Switzerland ([Statistik unbegleitete minderjährige Asylbewerber in der Schweiz](#)).

<sup>115</sup> Asylum Regulation 1 on Procedural Issues (AsylV 1; SR 142.311), [Art. 17. para. 3](#).

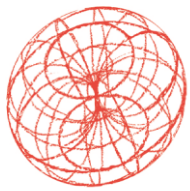
<sup>116</sup> SODK (2016): Recommendations of the SODK on unaccompanied minor children and adolescents from the asylum sector ([Empfehlungen der SODK zu unbegleiteten minderjährigen Kindern und Jugendlichen aus dem Asylbereich](#)).

<sup>117</sup> Support according to [Art. 306 para. 2 ZGB](#) or guardianship according to [Art. 327a-327c ZGB](#).

<sup>118</sup> SAJV (2014): MNA Charter on the Issues of Unaccompanied Minor Asylum Seekers (MNAs) in Switzerland ([MNA-Charta zu den Anliegen von unbegleiteten minderjährigen Asylsuchenden \(MNA\) in der Schweiz](#)). Developed by MNA of the SAJV project Speak out! 2014.

<sup>119</sup> Cf. State Secretariat for Migration (2018): Comment - Implementation of the proposal to speed up asylum procedures (restructuring of the asylum area). Amendment of the Asylum Ordinance 1-3 ([Kommentar Umsetzung der Vorlage zur Beschleunigung der Asylverfahren \(Neustrukturierung des Asylbereichs\). Änderung der Asylverordnung 1-3](#)). The amendments will come into force on 1<sup>st</sup> of March 2019.

<sup>120</sup> Art. 7 para. 3 AsylV 1 (in force from 1<sup>st</sup> of March 2019).



### 8.1.3 (Psychological) Health Care for Refugee Children

Children and adolescents in a refugee context are de facto disadvantaged in terms of access to health care.<sup>121</sup> Cantons do not guarantee to cover the costs of intercultural interpreting during consultations with paediatricians (with the exception of canton GR and in some cases cantons VD and GE).<sup>122</sup>

The mental health of many minors in the asylum sector is particularly at risk due to their experience of flight and post-traumatic stress syndromes, depression or anxiety disorders.<sup>123</sup> In many places there is a lack of adequate multidisciplinary and transcultural support, including general and paediatric medical care, sexual counselling and mental health services.<sup>124</sup> In many cantons, minors do not have access to low-threshold services provided by the psychological and psychiatric services<sup>125</sup>, as recommended by the SODK.<sup>126</sup>

- What legal and administrative measures are planned to ensure that free intercultural interpreting services are available for the paediatric or psychological care of minors from the asylum sector?
- In which cantons do children and adolescents from the asylum sector have access to adequate psychosocial or psychiatric care?
- What measures are the Confederation and the cantons taking to sensitise support persons of young refugees to trauma and stress caused by the flight situation?

### 8.1.4 Preparing Unaccompanied Minors from the Field of Asylum for their Legal Majority

In the last three years, over 60% of MNAs were 16 or 17 years old at the time of asylum application.<sup>127</sup> The special care and support services are terminated when reaching the legal age of majority.<sup>128</sup>

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<sup>121</sup> International Social Service Switzerland (2017): Good Practice Catalogue: Promising approaches to care and accommodation of MNA in Switzerland ([Good-Practice-Katalog: Vielversprechende Ansätze der Betreuung und Unterbringung von MNA in der Schweiz](#)), p. 6.

<sup>122</sup> Federation of Swiss Psychologists, Joël Frei (2018): The forgotten suffering of refugees. ([Das vergessene Leiden der Geflüchteten](#)).

<sup>123</sup> Cf. SGKJPP (2016): Media release: Psychological trauma treatment - especially for underage refugees. ([Medienmitteilung: Psychische Traumata behandeln – vor allem bei minderjährigen Flüchtlingen](#)).

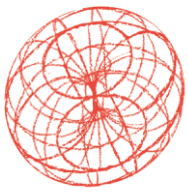
<sup>124</sup> S. Depallens, C. Plati & A-E. Ambresin (2016): A growing population? The unaccompanied asylum seeking minor in Switzerland. ([Eine wachsende Population? Die Unbegleitete minderjährige Asylsuchende in der Schweiz](#)). *Paediatrica*, Special Edition: Migrants 2016, p. 21-22.

<sup>125</sup> International Social Service Switzerland (2018): Mapping of the MNA support institutions in the cantons. ([Mapping der MNA-Betreuungsinstitutionen in den Kantonen](#)).

<sup>126</sup> SODK (2016): Recommendations of the SODK on unaccompanied minor children and adolescents from the asylum sector. ([Empfehlungen der SODK zu unbegleiteten minderjährigen Kindern und Jugendlichen aus dem Asylbereich](#)).

<sup>127</sup> State Secretariat for Migration (SEM) (2018): Statistics on unaccompanied asylum seeking minors in Switzerland. ([Statistik unbegleitete minderjährige Asylbewerber in der Schweiz](#)).

<sup>128</sup> International Social Service Switzerland (2018): Resolution: To accompany young refugees into independence. ([Resolution: Junge Geflüchtete bis zur Selbständigkeit begleiten](#)).



At this point, very few young people have completed their education, and a change of residence and the associated loss of the social network, isolates the MNA socially.<sup>129</sup> The SODK recommends that cantons provide underage asylum seekers with certain support and care services even after they have reached the legal age of majority. If possible, MNAs should be able to remain in their familiar environment, and they should be informed about broader counselling and support services.<sup>130</sup>

- In which cantons do MNAs receive support and care services in accordance with the SODK recommendations beyond the legal age of majority?
- What measures do the cantons plan to take to prepare MNAs for adulthood?

### 8.1.5 Educational Opportunities

Minors seeking asylum should have access to educational opportunities as soon as they arrive in Switzerland. In accordance with the MNA Charter, young people would like to be integrated into a public school as quickly as possible, which facilitates their integration into the regular (vocational) education system. They also hope for easier access to post-compulsory education, especially to apprenticeships. At present, it is very difficult for youths with an N- or F-Permit to be able to complete an apprenticeship. This requires support in the search for apprenticeships as well as the removal of obstacles in the labour market for young people with these Permits.<sup>131</sup> Even in the event of a negative asylum decision, the knowledge acquired strengthens their future chances abroad.<sup>132</sup>

At present, there are major cantonal differences in access and continuity of education and there is a lack of coherent legal regulation.<sup>133</sup>

- What measures and means are being implemented by the Confederation and the cantons to enable young people from the asylum sector to complete compulsory primary schooling - at least up to the age of 30?

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<sup>129</sup> Caritas (2018): Position Paper on Integration: Better Opportunities for Young Refugees ([Positionspapier Integration: Bessere Chancen für junge Flüchtlinge](#)).

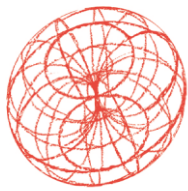
<sup>130</sup> SODK (2016): Recommendations of the SODK on unaccompanied minor children and adolescents from the asylum sector. ([Empfehlungen der SODK zu unbegleiteten minderjährigen Kindern und Jugendlichen aus dem Asylbereich](#)).

<sup>131</sup> SAJV (2014): MNA Charter on the concerns of unaccompanied minor asylum seekers (MNAs) in Switzerland. ([MNA-Charta zu den Anliegen von unbegleiteten minderjährigen Asylsuchenden \(MNA\) in der Schweiz](#)). Developed by MNA of the SAJV project Speak out! 2014.

<sup>132</sup> Appeal of the Alliance for the Rights of Migrant Children (ADEM) ([Appel der Allianz für die Rechte der Migrantenkinder \(ADEM\)](#)), so that young people from the asylum sector can complete their training with a negative asylum decision; ADEM (2018): Statement on the integration agenda and the federal government's contribution to the costs of unaccompanied minors. ([Stellungnahme zur Integrationsagenda und dem Kostenbeitrag des Bundes für unbegleitete Minderjährige](#)).

<sup>133</sup> Humanrights.ch (2016): Unaccompanied asylum seeking minors in Switzerland ([Unbegleitete minderjährige Asylsuchende in der Schweiz](#)).

Caritas Switzerland (2017): Caritas position paper on child refugees in Switzerland: Children need security and education. ([Caritas-Positionspapier zu den Kinderflüchtlingen in der Schweiz: Kinder brauchen Geborgenheit und Ausbildung](#)).



- What measures are being taken to make it easier for MNAs to undergo vocational training?
- How do the Confederation and the cantons ensure that young people who are in training are able to complete their training in case of a negative asylum decision?

### **8.1.6 Rights of Children without a Regular Residence Status (*Sans-Papiers* Children)**

According to estimates, around 76,000 people in Switzerland live without a regular residence status (*Sans-Papiers*).<sup>134</sup> It can be assumed that these are many families with children or MNAs. The latter find themselves in a very precarious situation as their access to cantonal child protection measures is not guaranteed.<sup>135</sup>

According to the Federal Constitution<sup>136</sup> and the recommendations of the Conference of Cantonal Ministers of Education (EDK), all children in Switzerland have a right to school education, regardless of their residence status.<sup>137</sup> Schools are therefore not allowed to pass on data from *sans-papiers* minors to the migration authorities. Parliamentary initiatives now demand a simplification of data exchange. It is also planned that access to health insurance services is to be restricted.<sup>138</sup>

In general, young people without regular residence status are restricted in their access to vocational training: although it would be legally possible for them<sup>139</sup>, in practice they very rarely have access to an apprenticeship.<sup>140</sup>

- What measures are planned to ensure that all children, regardless of their legal status, have effective access to child protection measures?
- What measures are planned to ensure that young people without regular residence status can complete schooling and vocational training without discrimination?

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<sup>134</sup> Michael Morlok et. al. (2015): *Sans-Papiers in Switzerland 2015*. Final report for the attention of the State Secretariat for Migration ([Sans-Papiers in der Schweiz 2015. Schlussbericht zuhanden des Staatssekretariats für Migration \(SEM\)](#)).

<sup>135</sup> Cf. Motion in the Geneva Cantonal Council: [M2487](#), "For immediate care of unaccompanied minors who are not asylum-seekers, in accordance with the Convention on the Rights of the Child".

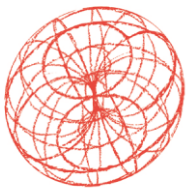
<sup>136</sup> Federal Constitution of the Swiss Confederation, [Article 19](#) and [Article 62](#).

<sup>137</sup> Swiss Conference of Cantonal Ministers of Education (1991): Recommendations for the training of foreign-language children. ([Empfehlungen zur Schulung der fremdsprachigen Kinder](#)).

<sup>138</sup> Commission for Social Security and Health NR (2018): [Motion 18.3005](#), "For coherent legislation on *sans-papiers*", and Political Group of the Swiss People's Party (2018): [Motion 18.3421](#), "For a coherent practice on illegal immigrants (*sans-papiers*)".

<sup>139</sup> Regulation on admission, residence and employment (VZAE, SR 142.201), [Art. 30a](#).

<sup>140</sup> Cf. Website of the Federal Migration Commission EKM: Access to vocational training ([Webseite der Eidgenössischen Migrationskommission EKM: Zugang zu Berufslehre](#)), (last retrieved on 26.07.2018).



## 8.2 Administrative Detention of Minors in the Migration Field

### 8.2.1 Administrative Detention of Adolescents 15 and over

The Federal Law on Foreign Nationals (AuG) stipulates that minors aged 15 and over can be held in administrative detention for up to 12 months.<sup>141</sup> Alternative, less drastic and more proportionate measures are not provided for in the Foreign Nationals Act. Between 2011 and 2014, around 72 young people between the ages of 15 and 17 were imprisoned, two out of three of whom were MNAs.<sup>142</sup> This legislation and practice is in flagrant contradiction to Art. 37 UN-CRC. The detention of children has irreversible harmful effects on their mental and physical health and increases their vulnerability.

### 8.2.2 Administrative Detention of Children under the Age of 15

The detention of parents with children on the basis of their residence status may mean that children under the age of 15 are also detained or separated from their parents and placed in an institution.<sup>143</sup> A recent report by the National Council's Control Committee showed that between 2011 and 2014 around 200 minors were detained, the majority of whom were under 15 years of age and presumably imprisoned with their family. According to Swiss law, this detention is prohibited.<sup>144</sup> The Federal Council has stated that the legal basis for such detention is inadequate and that the State Secretariat for Migration will therefore instruct the cantons to examine alternative ways of enforcing family deportations.<sup>145</sup>

In addition, the separate accommodation of adolescents from adults in administrative detention is still not implemented in all cantons, also in the area of asylum.<sup>146</sup>

- What alternative measures are taken to ensure that no more children are detained in connection with their migration status or that of their parents?

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<sup>141</sup> Federal Law on Foreign Nationals and Integration (AuG, SR 142.20), [Art. 79 para. 2](#) and [Art. 80 para. 4](#).

<sup>142</sup> Administrative detention in the asylum area ([Administrativhaft im Asylbereich](#)). Report of the Parliamentary Administrative Control to the Audit Committee of the National Council of 1<sup>st</sup> of November 2017, p. 35.

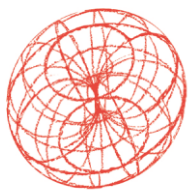
<sup>143</sup> Cf. Federal Supreme Court (2017): Judgement ([Urteil 2C\\_1052/2016 und 2C\\_1053/2016](#)) of 26<sup>th</sup> of April 2017: Canton of Zug: Due to the administrative detention of the parents, the cantonal authorities placed the family's children in a children's home. According to the Federal Supreme Court, this is an encroachment on family life and may only be ordered as a last resort. The authorities should have considered alternative accommodation.

<sup>144</sup> Terre des hommes (2018): Inventory of the administrative detention of underage migrants in Switzerland ([Bestandesaufnahme zur Administrativhaft von minderjährigen MigrantInnen in der Schweiz](#)), p.29 and chapter "Illegal detention of minors under the age of 15", p.79-80.

<sup>145</sup> Federal Council (2018): Media release: Federal Council comments on the recommendations of the GPK-N on administrative detention in the field of asylum. ([Medienmitteilung: Bundesrat nimmt Stellung zu den Empfehlungen der GPK-N zur Administrativhaft im Asylbereich](#)).

<sup>146</sup> National Commission for the Prevention of Torture (2016): Report on administrative detention under alien law in Zurich airport prison.

Report of the CPC of the National Council (2018): Administrative detention in the asylum sector ([Administrativhaft im Asylbereich](#)), p. 13 ff.



## 8.3 Juvenile Justice System

### 8.3.1 Separation of Children from Adults in Detention

The new Juvenile Delinquency Act of 2003 stipulates that juveniles must be kept physically separate from adults in the penal system.<sup>147</sup> This also applies to pre-trial detention.<sup>148</sup> The ten-year period granted to the cantons to implement separate accommodation in the penal system expired at the end of 2016.<sup>149</sup> Separation is not yet guaranteed in all institutions.<sup>150</sup> The Confederation now plans to take stock of implementation in the cantons in order to decide whether the reservation to Article 37c of the CRC can be lifted.<sup>151</sup>

Even with police detention, separation is not guaranteed everywhere: Between 2013 and 2015, more than 2000 children and adolescents were accommodated in the provisional police prison for adults in the Canton of Zurich.<sup>152</sup>

- What is the state of implementation of the separation of juveniles and adults in detention before and after sentencing and in police custody (provisional detention) in the cantons?

### 8.3.2 Provisional Detention of Minors

In accordance with the Swiss Juvenile Criminal Procedure Code (JStPO), the investigating authority can, on the one hand, order pre-trial detention in "exceptional cases and after examining all possibilities and alternative measures".<sup>153</sup> However, the law does not set an age limit for such detention. On the other hand, the Federal Act on Juvenile Criminal Law provides that detention after trial is only possible for juveniles aged 15 and over.<sup>154</sup> In 2016, the Federal Supreme Court ruled that the case of a Romanian child at the age of twelve who was detained by the Geneva court for 30 days on remand was lawful.<sup>155</sup>

- What measures will Switzerland take to close the legal loophole to prohibit the detention of minors in criminal proceedings?

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<sup>147</sup> Federal Juvenile Delinquency Act (JStG; SR 311.1), [Art. 15 para. 1](#) and [Art. 27 para. 2](#).

<sup>148</sup> Swiss Youth Criminal Procedure Ordinance (JStPO; SR 312.1), [Art. 28 para. 1](#).

<sup>149</sup> Federal Juvenile Delinquency Act (JStG; SR 311.1), [Art. 48](#).

<sup>150</sup> For example, the penal institution "Etablissement de détention pour mineurs et jeunes adultes - Aux Léchaies" in the canton of Vaud, a prison designed for young people, was recently opened to young adults aged 18 to 22. Cf. [Etablissements pénitentiaires, EDM "Aux Léchaies"](#).

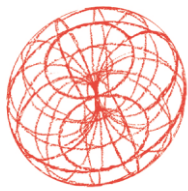
<sup>151</sup> Federal council (2018): Measures to close gaps in the implementation of the Convention on the Rights of the Child. ([Massnahmen zum Schliessen von Lücken bei der Umsetzung der Kinderrechtskonvention](#)).

<sup>152</sup> Cf. Article in the Tages-Anzeiger from 23.02.2017: The eleven-year-olds in the adult prison. ([Artikel im Tages-Anzeiger vom 23.02.2017: Die Elfjährigen im Erwachsenen-Gefängnis](#)).

<sup>153</sup> Swiss Youth Criminal Procedure Ordinance (JStPO; SR 312.1), [Art. 26](#) and [27 para. 1](#).

<sup>154</sup> Federal Juvenile Delinquency Act (JStG; SR 311.1), [Art. 25](#).

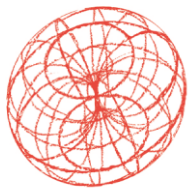
<sup>155</sup> Federal Supreme Court (2016): Judgement [Urteil 6B\\_1026/2015](#) of 11<sup>th</sup> of October 2016.



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**The present input is supported by the member organizations of the Child Rights Network Switzerland:**

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- CURAVIVA Schweiz. Fachbereich Kinder und Jugendliche mit besonderen Bedürfnissen
- Dachverband Offene Kinder- und Jugendarbeit Schweiz DOJ
- Défense des Enfants International (DEI), Section Suisse
- Fondation Missing Children Switzerland
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- Internationale Gesellschaft für erzieherische Hilfe (FICE)
- Internationaler Sozialdienst - Schweiz (SSI Schweiz)
- Integras Fachverband Sozial- und Sonderpädagogik
- Jacobs Foundation
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- Kovive
- Limita, Fachstelle zur Prävention sexueller Ausbeutung
- Marie Meierhofer Institut für das Kind
- MADEP-ACE Romand
- MOJUGA - Stiftung für Kinder und Jugendförderung
- Netzwerk Bildung und Familie
- Ombudsstelle Kinderrechte (OMKI)
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- Pfadibewegung Schweiz (PBS)
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- Pro Juventute
- Save the Children Schweiz/Suisse/Svizzera
- Schlupfhuus Zürich
- Schulsozialarbeitsverband (SSAV)
- Schweizer Kinderhilfswerk Kovive
- Schweizerische Arbeitsgemeinschaft der Jugendverbände (SAJV)
- Schweizerischer Verband des Personals öffentlicher Dienste (VPOD)
- Schweizerische Vereinigung der Berufsbeiständinnen und Berufsbeistände (SVBB)
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**The Child Rights Network Switzerland would like to thank the following organisations for their technical support:**

- Allianz für die Rechte der Migrantenkinder (ADEM)
- Caritas Schweiz
- Inclusion Handicap
- Netzwerk Kinderbetreuung Schweiz
- Terre des femmes Schweiz