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Child Rights Network Switzerland

Child Rights Network Switzerland

Fourth NGO Report to the UN Committee on the Rights of the Child

2021

This report is supported by the member organisations of the Child Rights Network Switzerland:

- a:primo
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- CURAVIVA Schweiz, Fachbereich Kinder und Jugendliche mit besonderen Bedürfnissen
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- VPOD – Kommission Bildung, Erziehung, Wissenschaft

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Imprint

Child Rights Network Switzerland
May 2021

Supplementary report to the 5th and 6th State Report of Switzerland on the implementation of the UN Convention on the Rights of the Child in Switzerland

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Acknowledgements:

The Child Rights Network Switzerland would like to thank its member organisations and all related organisations for their valuable contributions, which have made a broad-based and detailed portrait of the implementation of children's rights in Switzerland possible. Special thanks go to the members of the working group on the NGO report for their commitment.

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1 Introduction

Switzerland ratified the UN Convention on the Rights of the Child (UN CRC) in 1997 and has so far reported twice to the UN Committee on the Rights of the Child (UN-CRC) on the status of implementation. On 18th of December 2020, Switzerland submitted its combined fifth and sixth report on the implementation of the UN Convention on the Rights of the Child. In this supplementary report, more than 50 member-organisations of the Child Rights Network Switzerland now present their views on the implementation status of the UN CRC in Switzerland.

New Developments

2 Laws and developments

The year 2020 was dominated by the COVID-19 pandemic. Adherence to children's rights is particularly important in times of crisis. For vulnerable groups, such as children in institutions, there was a strong focus on health protection, while child protection aspects were insufficiently considered. The crisis shows that education and care services for young children, functioning child

protection and child and youth welfare are relevant to the system. Furthermore, a stronger commitment to poverty reduction is crucial. In Switzerland, with the exception of exploratory study approaches¹ - there has been no comprehensive analysis of the impact of the pandemic measures on children.²

Recommendations:

- A comprehensive analysis of the impact of pandemic measures on children, in particular on children from vulnerable groups, with the involvement of children, and inclusion of the findings in Switzerland's pandemic plan.
- To include an expert on child rights issues in the COVID-19 Task Force of the Swiss Confederation.

The Children's Rights Network also points to the following new legislation which has problematic aspects from a children's rights perspective:

In September 2020, parliament passed two controversial bills on combating terrorism, the approach and content of which were sharply criticised by human rights groups in Switzerland and at an international level.³ This applies in particular to the Federal Act on Police Measures to Combat Terrorism.⁴ It gives the police additional preventive instruments for dealing with potential terrorist "endangerers". The sanctions can also be imposed on minors. More specifically, children over the age of 15 can be placed under house arrest. Of concern is that the measures can be imposed preventively—i.e. even if there has not yet been any criminally relevant conduct.

In December 2020, the parliament adopted an amendment to the Civil Code that allows trans and intersex people to change their gender and first name in the Civil Status Register with a declaration based on self-determination. However, judicious minors under the age of 16 can now only change the entry in the Civil Status Register with the consent of their legal representative. This additional hurdle undermines the right of self-determination of affected children. The age limit of 16 years is arbitrary. Moreover, the legislator refrains from introducing a non-binary gender option.⁵

3 Sustainable Development Goals

The Sustainable Development Goals (SDGs) of the United Nations 2030 Agenda are relevant benchmarks for the implementation of the UN CRC. The goals call for comprehensive policy responses to some of the most pressing global challenges, including child poverty, inequality and climate change. In 2018, the Confederation conducted a survey on the implementation of the SDGs in Switzerland. Switzerland failed to design the set of indicators (MONET indicators) in a way that would contribute to a comprehensive monitoring of the child rights situation in Switzerland. Finally, it is important to involve children in the implementation of the goals as actors of sustain-

able development, for example through school and extracurricular activities in the field of education for sustainable development.

The funds for international cooperation have been massively reduced. Switzerland has an ODA⁶ quota of 0.46% of gross national income if expenditure for asylum seekers in Switzerland is also counted as development cooperation⁷. Switzerland is thus well below the internationally recognised benchmark of 0.7%. In August 2020, the Federal Council also decided to redirect funds from international cooperation to the Green Climate Fund in the future.

Recommendations:

- To disaggregate the existing MONET indicators for monitoring the SDGs by age (0-17), and other socio-demographic characteristics that allow conclusions on child rights-related issues.
- To take a child rights-based approach in the development of the Sustainable Development Strategy 2020-2030 and the Action Plan 2020-2023.
- To ensure that maximum resources are allocated to efforts that benefit children.
- To increase funding for international cooperation to the level of the international benchmark of 0.7% of GNI, or at least to 0.5%.

Endnotes

- 1 Stoecklin, D. and Richer, L. (2020). [Le vécu des enfants et adolescents de 11 à 17 ans en Suisse romande par rapport au COVID-19 et aux mesures associées \(semi-confinement\)](#). Enquête exploratoire; Jenkel, N., Güneş, S. and Schmid, M. (2020). [The Corona crisis from the perspective of young people in residential child and youth care \(CorSJH\)](#). First results.
- 2 See for example: Observatory of Children's Human Rights Scotland und Children & Young People's Commissioner Scotland (2020). [Independent Children's Rights Impact Assessment on the Response to COVID-19 in Scotland](#).
- 3 See: Office of the United Nations High Commissioner for Human Rights (OHCHR) (2020). [Joint statement by five UN Special Representatives on Human Rights of 26 May 2020](#); Commissioner for Human Rights of the Council of Europe (2020). [Statement of the Commissioner for Human Rights of the Council of Europe of 7 May 2020](#).
- 4 Affair of the Federal Council [19.032](#). Police measures to combat terrorism. Federal Law (BBI 2019 4751).
- 5 Affair of the Federal Council [19.081](#). ZGB. Change of sex in the Civil Status Register (BBI 2020 799).
- 6 Official development assistance.
- 7 Alliance Sud (2020). No sign of international solidarity (media release of 15.06.2020). <https://www.alliancesud.ch/de/politik/entwicklungspolitik/entwicklungsfinanzierung/kein-zeichen-fuer-die-internationale> (26.01.2021).

General implementation measures

4 Reservations

When ratifying the UN CRC, Switzerland made a total of seven reservations to five articles, four of which are still in force. Accordingly, the Convention has no legal effect on these issues:

Family reunification (Art. 10 para. 1 UN CRC)

Art. 10. para. 1 UN CRC obliges State Parties to process applications for family reunification "benevolently, humanely and in a timely manner". Contrary to the UN CRC, provisionally admitted persons and provisionally admitted refugees are subject to a waiting period of three years for family reunification with their children. Even after this waiting period has expired, family reunification is only possible if the children live in the same household, a home that meets their needs is available and the family is not dependent on social benefits.¹ The prerequisites for family reunification are a particularly high hurdle for provisionally admitted persons, as it is difficult for them to enter the labour market due to their uncertain residence status.

The government and parliament have recognised the need for action and have initiated a reform of the status of provisional admission to facilitate access to the labour market.²

Furthermore, there is no legal basis for unaccompanied children to bring their family living abroad to join them in Switzerland (so-called reverse family reunification). The only situation in which the Federal Supreme Court has granted this right in the context of Art. 8 ECHR³ concerns Swiss children who apply for the reunification of their foreign parents, provided the parent has custody or a close relationship with the child. This allegedly also applies to children who are EU/EFTA citizens.⁴ However, children from third countries with C, B or F identity cards are not entitled to this.⁵

Recommendations:

- To process applications for family reunification of provisionally admitted persons and provisionally admitted refugees in a benevolent and humane manner without a waiting period.
- To adapt the legal basis, so that family reunification is also possible when receiving supplementary benefits or social aid.
- To adapt the legal basis so that unaccompanied children can bring their family members living abroad to join them in Switzerland, provided they have custody rights or a close relationship.
- To withdraw the reservation to Art. 10 para. 1 UN CRC.

Consistent separation of juvenile and adult prisoners (Art. 37 lit. c UN CRC)

In Switzerland, the consistent separation of juvenile and adult prisoners is still not guaranteed. The Confederation announced in its package of measures published on 19 December 2018 following the recommendations of the UNCRC of 2015

that it plans to conduct a situation analysis on the implementation of Art. 37 UN CRC in the cantons and to withdraw the reservation if the conditions for this are met.⁶

Recommendations:

- To guarantee the separation of children from adults in the case of imprisonment without exception; the necessary prerequisites for this must be established in the cantons as quickly as possible.
- To withdraw the reservation to Art. 37 lit. c UN CRC.

Access to free legal counselling (Art. 40 para. 2 lit. b no. ii UN CRC)

The Juvenile Criminal Procedure Code guarantees charged juveniles access to judicial representation. The costs of legal representation must be paid

by the accused juvenile or the legal representation, if the means are available. If this is not the case, an official defence is appointed.

Recommendation:

- To withdraw the reservation and grant access to free legal aid in any case.

Separation between investigating and adjudicating authority in juvenile criminal proceedings (Art. 40 para. 2 lit. b no. iii UN CRC)

The Code of Juvenile Procedure does not provide for a separation between investigating and judging authorities. However, the accused juvenile and his or her legal representative may request

without reason that the juvenile court judge who has already conducted the investigation shall not participate in the main proceedings (Art. 9 JStPO).⁷

Recommendation:

- To consider the withdrawal of the reservation.

5 Comprehensive child rights policy, strategy and coordination

In Switzerland, there is as yet no comprehensive child rights policy and strategy at federal level that encompasses the protection, provision and participation of children and young people. In the federal system, child and youth policy is primarily the responsibility of the cantons; the federal government is only active in a subsidiary capacity. The cantons are also responsible for health, education and justice. Consequently, the extent to which children and young people can exercise their rights depends on their canton of residence. Proposals to create a constitutional basis for a coordinated child and youth policy at the national level have so far failed in parliament.⁸ The basis for the subsidiary activity of the Confederation is the Federal Act on the Promotion of Extracurricular Work with Children and Adolescents KJFG⁹ as well as the Regulation on Measures for the Protection of Children and Adolescents and for Strengthening Children's Rights¹⁰.

For the first time, the Federal Council adopted a set of measures in December 2018 to implement the recommendations of the UNCRC of February 2015¹¹. Relevant bodies at inter-cantonal and national level were involved in the preparation of the set of measures under the leadership of the Federal Social Insurance Office (FSIO). However, this internal administrative coordination structure has no institutional safeguard. It is now essential to anchor the established structure institutionally in the form of a coordination office and to

provide it with the appropriate resources in order to be able to develop necessary measures in a timely manner in the future.

In terms of content, the package is limited to eleven measures of varying levels. The package lacks a systematic implementation of children's rights according to Art. 4 UN CRC. It does include an analysis and improvements in the area of child protection, out-of-home placement and the situation of children with a parent in prison. However, some of the measures are narrowly defined: in child protection, for example, they are limited to child protection under civil law and focus on raising awareness among members of the authorities. The prevention of child abuse is not being expanded. Challenges concerning other vulnerable or disadvantaged groups, in particular minors in the migration and asylum sector, but also children with disabilities, are not considered, referring to the cantonal responsibility. At the inter-cantonal level, the Conference of Cantonal Directors of Social Affairs (SODK) plays a coordinating role in the area of child and youth policy. The involvement of the SODK in the development process of the set of measures of the Confederation is an important step towards increased coordination between the Confederation and the cantons. No additional resources have been allocated either at national or cantonal level for the implementation of the measures or the development of the corresponding instruments.

Recommendations:

- To create the necessary legal basis and develop a national strategy to strengthen and promote children's rights, with a special focus on the rights of vulnerable groups such as refugee children, children with disabilities, children in alternative care and children who are subject to multiple discrimination. The national strategy should include clear guidelines for the cantons on services and requirements in the area of child and youth promotion, child and youth protection and the participation of children and young people.
- To establish a federal office for children's rights, as recommended by the Swiss Centre of Expertise in Human Rights (SCHR), and provide it with the necessary competencies and resources to support legislation and parliamentary activities, and to perform advisory, coordination, networking and financial aid tasks; at the very least, however, provide the FSIO with sufficient resources to coordinate the implementation of the national strategy.

6 Data collection

Reliable and disaggregated data is a fundamental prerequisite for identifying and targeting gaps, shortcomings and possible discrimination against specific groups of children. Data on the situation of children and adolescents is widely scattered across many statistics and studies. There is no periodically recurring reporting, e.g. in the sense of a regular child and youth report. Generally, only little data is collected for the age group of 0-13 year olds.

Child and youth welfare, child protection and alternative care

In Switzerland, data on the use of child and youth welfare services as well as child protection measures are recorded very differently in the cantons and on the basis of diverging terminology and data collection concepts. A systematic and continuous recording and description of the services offered and services received in child and youth welfare and child protection is not yet part of the standards of cantonal statistics and reporting.

The federal package of measures includes improvements in data collection on the situation of children from two particularly vulnerable groups: Children with an imprisoned parent and children who are placed in alternative care. Despite these improvements, there is a lack of conclusive data for many areas of the Convention.

Furthermore, there is a lack of information on the cantons' expenditure in this field.¹² There is therefore a need to merge and harmonise existing study approaches¹³ as well as statistical surveys (such as statistics from the Conference for Child and Adult Protection (KOKES)¹⁴; Child protection statistics of the Swiss Children's Hospitals¹⁵ and individual existing data platforms (such as Casa-data).

Recommendations:

- To create standardised child and youth welfare / child protection statistics throughout Switzerland, in cooperation with colleges and universities, taking into account existing study approaches, statistics and data platforms.
- To commission research on the developmental progress of children, the use of child and youth welfare services and the ordering of civil measures for their protection.
- To provide data about public expenditure on child and youth welfare services and on child protection measures under civil law at cantonal level.
- To provide data for the 0-17 year olds on all civil and 'voluntary' placements.

Cybercrime and child trafficking

The police crime statistics are not very informative on the subject of cybercrime in regard to children. Since the offences are subsumed under different criminal offences, it is not clear from the statistics how many children were victims of cybercrime and which forms of cybercrime they were affected by.

The data on underage victims of human trafficking is also insufficient. The trafficked persons are often not aware of their victim situation and are also not recorded by the common police indicators (cf. point 5.2). Lack of criminal proceedings and incomplete victim assistance statistics are the consequence.¹⁶ A very high number of unreported cases is to be expected in Switzerland.

Recommendations:

- To adapt the police crime statistics so that conclusions can be drawn about the various offences in the area of child-related cybercrime.
- To improve data on underage victims of human trafficking.

Children with a disability

Due to its narrow mandate and limited resources, the Federal Statistical Office (FSO) is still limited mainly to extracting sporadic data on children with disabilities up to the age of 14 from very disparately devised and incomplete statistics (health survey, socio-medical institutions, disa-

bility insurance, special education).¹⁷ Hardly any statistics on the situation of children in certain living areas are disaggregated according to the attribute of disability. There is almost no data on violence affecting children with disabilities.¹⁸

Recommendations:

- To expand the mandate and resources of the FSO in the area of statistics on children with disabilities.
- To disaggregate statistics on the situation of children in certain areas of life, in particular statistics on exposure to violence (cf. chapter 5.1), according to the characteristics mentioned in point 6 of the LOIPR, including disability.
- To commission nationwide surveys or research on the exposure of children with disabilities to violence in private households, institutions and in general.

Adoption

The data on international adoptions is still not sufficiently differentiated. The statistics of the FSO now show the countries of origin partly in more detail, but by no means comprehensively.

It is also not possible to differentiate in the statistics whether the adoption is of an unknown or known child or whether it is a stepchild adoption.

Recommendation:

- To provide differentiated, complete and comprehensible adoption statistics.

Children in a refugee context

In the asylum sector, there is a lack of quality indicators and systematic data collection on the care and accommodation settings for accompanied children and adolescents in the asylum sector, which vary throughout Switzerland. There is

also no systematic data collection on the care and accommodation of unaccompanied children in the cantons. Although there are private initiatives in this area¹⁹, these however cannot replace governmental monitoring.

Recommendation:

- To define quality indicators for the care and accommodation structures (at national, cantonal and communal level) of accompanied and unaccompanied children in the asylum sector and establish monitoring of these indicators.

Missing and disappeared children

In Switzerland, there is no systematic data collection on the number of children who go missing. This concerns 1) children who run away from their family/care situation, 2) abductions by a parent in Switzerland or abroad, 3) abductions by third

parties. The lack of data hinders the provision of prevention services for children in risk situations. This includes, among others, unaccompanied children.

Recommendation:

- To establish cantonal statistics on the systematic recording of missing children, including unaccompanied children, by cantonal police authorities and merge them into a national statistic.

Children with an imprisoned parent

Little is known about the situation of children with an imprisoned parent. Only the canton of Geneva is planning to develop statistics on the number of detained persons who have been separated from their minor children due to their detention. The lack of data makes it difficult to provide support measures for this vulnerable group of children. In the absence of systematic data col-

lection, they are usually not "visible" to the prisons, which is why they are rarely reported to the child and adult protection authorities. As part of the implementation of the package of measures on children's rights, the Federal Council has planned a survey of detention facilities and a qualitative survey on the maintenance of relationships. The results are not yet available.

Recommendation:

- To ensure the collection of data on the family situation of detainees and the coordination with child and adult protection authorities by detention facilities.

Trans and non-binary children

State-collected data on trans children is almost non-existent. The exception is the youth health survey of the city of Zurich, whereby the answers of trans young people were deliberately not evaluated separately - and accordingly statements

on their health are missing. Non-binary children cannot even be recorded, as the Federal Statistical Office only records the gender categories male and female.

Recommendation:

- To record which children are trans or intersex in data surveys and evaluate the responses. To introduce additional gender categories in data collections, in particular by the FSO, so that non-binary children can be recorded in existing statistics and surveys (e.g. health surveys).

General Recommendations:

- To continuously adapt the statistical methodology to the standards developed by the UN (Human Rights Indicators according to OHCHR).
- To break down all statistics on the situation of children in specific areas of life according to the characteristics mentioned in the LOIPR.
- To collect data on the situation and health²⁰ of children also for the group of 0-13 year olds (e.g. Swiss Health Survey, Swiss Household Panel).

7 Independent monitoring

On 13 December 2019, the Federal Council adopted the bill on the National Human Rights Institution. The planned institution largely meets international standards. This refers to the legal anchoring, the comprehensive mandate to protect and promote human rights, as well as the independence from government and state structures. However, the planned federal financial support of one million Swiss francs is clearly too low. With this financial framework, the institution cannot credibly fulfil its mandate. The institution is not given a mandate for individual human rights protection. Thus, there is still no body in Switzerland to which minors can turn if their rights are violated. Supervisory and complaints bodies could make a significant contribution to ensuring children's rights (such as super-

visory bodies for institutional homes, ombuds-offices or youth welfare inspectorates)²¹. There is a lack of such positions, especially in the area of child and youth welfare and child protection as well as in the asylum system²². Parliament adopted a motion in September 2020 calling for the creation of an independent ombuds-office for children's rights.²³ This national independent body would analyse how (procedural) rights of children are provided, advise children on legal issues, make recommendations, mediate between professionals and children, and report annually to the Confederation and the cantons. However, the office is not supposed to be able to take complaints. The Federal Council is now mandated to draft a corresponding bill.

Recommendation:

- To examine variants for the creation of an ombuds-office for children's rights without delay and create legal foundations that guarantee its independence, sufficient funding and conformity with the Paris Principles²⁴.

8 Cooperation with civil society

In the area of child and youth policy, the Confederation cooperates with civil society organisations within the framework of the Federal Act on the Promotion of Extracurricular Child and Youth Work²⁵ and the Regulation on Measures to Protect Children and Young People and to Strengthen Children's Rights²⁶. The Confederation commissions them, by means of a performance agreement, to implement measures in the area of child and youth promotion, child protection and the coordination, awareness-raising and promotion of children's rights. However, these funds are limited and the Confederation only pays half of the costs. The Confederation also provides financial assistance to organisations that take on tasks to support families.

As part of the follow-up to the recommendations of the UNCRC of February 2015, the Child Rights Network Switzerland was involved as a civil so-

ciety partner in the allocation of responsibilities for the individual recommendations. However, civil society organisations were neither involved in the prioritisation of the recommendations by the Confederation nor in the elaboration of the measures.

It should be mentioned that the Confederation is financially supporting a temporary cooperation project of various civil society actors on the inclusion of children and young people in the reporting process.

Overarching this, numerous civil society organisations in the human rights field are finding it increasingly difficult to finance activities to promote and protect children's and human rights. A large number of civil society organisations have had to scale down their activities and reduce staff due to a lack of basic funding.

Recommendations:

- To involve children and young people and their representatives from civil society organisations and scientific experts in the planning, implementation and evaluation of measures to implement the UN CRC and the recommendations of the UNCRC.
- To increasingly commission or involve civil society organisations to conduct studies, evaluations and reports on issues in their field of expertise.
- To facilitate access of civil society organisations to public funding at national, cantonal and municipal level, and in particular provide resources for core funding.

9 Children's rights and the business sector

In 2016, the Federal Council adopted a National Action Plan for the implementation of the UN Guiding Principles on Business and Human Rights (NAP)²⁷. The report fulfils the postulate "A Ruggie Strategy for Switzerland", which was referred by the National Council at the end of 2012.²⁸ The NAP describes in 50 "policy instruments" how the 2011 UN Guiding Principles on Business and Human Rights are to be implemented in Switzerland.

The action plan drew fundamental criticism from more than 100 non-governmental organisations that have joined to form the Association Corporate Responsibility Popular Initiative (KOVI)²⁹. An in-depth analysis of the NAP by KOVI from 2016³⁰ shows, that Switzerland falls behind compared to other countries such as Italy, the USA and Germany, which already have an action plan for implementing the UN Guiding Principles. While other countries have included the consideration of legally binding measures in national implementation planning, the Swiss NAP continues to adhere to the principle of voluntariness³¹.

The rejection of binding measures to regulate economic activities was also evident in the negotiations on KOVI. On 29 November 2020, the Corporate Responsibility popular initiative failed in a majority of the cantons, even though 50.7 % of the electorate voted in favour of it. The popular initiative demanded that companies based in Switzerland integrate human rights and environmental standards into their business processes and be obliged to conduct due diligence. The initiative also provided for the liability of companies for violations of human rights and environmental standards committed by themselves or their subsidiaries and other companies controlled by them. Now the counter-proposal comes into force, which only obliges companies to conduct due diligence and to report.

Recommendations:

- To integrate binding regulations into the NAP.
- To introduce binding regulation and liability of companies for child and human rights violations.

Endnotes

- 1 Art. 85 para. 7 Federal Act of 16 December 2005 on Foreign Nationals and Integration (Ausländer- und Integrationsgesetz, AIG), [SR 142.20](#).
- 2 Cf. Federal Council (2016). [Provisional admission and vulnerability: analysis and options for action](#), p. 11.
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General principles

10 Non-discrimination

Access to education

In Switzerland, it is not ensured that children, irrespective of their origin, residence status, gender and health status, have adequate standards of living, equal opportunities for education, health care and social participation. Especially children with a migration background are exposed to severe disadvantages¹. Disadvantages are already evident on entry to primary school, but also when pupils move on to higher school levels.² In addition, children with a migration background are significantly overrepresented in special-needs schools and special-needs classes.³

Children in the asylum system are disadvantaged in terms of access to compulsory education.⁴ Frequent school changes due to transfers from federal asylum centres to a canton and municipi-

pality lead to school interruptions. At the cantonal level, children are sometimes educated separately for a long time instead of being quickly integrated into a regular school. Children from rejected families who live in so-called return centres are severely restricted in their right to education. The internal schooling of these children in collective accommodation or separate school classes is not acceptable.⁵ Cultural participation is also hardly possible due to the often isolated location of the shelters as well as the restricted social welfare.

Recommendations:

- To avoid early screening in the school career and build an inclusive education system.
- To raise teachers' awareness of discriminatory mechanisms and consequences for the children concerned, as well as trauma.
- To improve coordination between the Confederation, cantonal education departments, school authorities and asylum and migration stakeholders.
- To integrate refugee children, regardless of their status, into compulsory and post-compulsory structures of the education system as quickly as possible and ensure transitions.

Discrimination against children on the basis of sexual orientation, gender identity, gender expression or sex characteristics

Lesbian, gay, bisexual, trans or intersex children and young people continue to face multiple disadvantages. It is still difficult for young LGBT* people⁶ to be open about their sexual orientation and/or gender identity - for fear of rejection, bullying and homophobic, bi-sexual and transphobic violence. This can lead to psychological stress. Increased substance abuse, more frequent sexual risk situations, more depressive illnesses and even suicidal behaviour can be the result.⁷ Trans children⁸ often lack support in the school environment to integrate into everyday school life without discrimination (e.g. gender-neutral cloakrooms and toilets). Family doctors, paediatricians and school doctors are sometimes insufficiently trained. This results in incorrect treatment and the omission of indicated treatment. In particular, access to hormonal puberty blockade or hormonal gender reassignment is not always given. However, access to these therapies is crucial for

the healthy development and socialisation of adolescents. Due to federal court rulings from 1988, health insurance companies repeatedly refuse their obligation to pay for gender reassignment treatments for under-25s in violation of the law.

With the amendment of the anti-racism penal norm coming into force on 1 July 2020, discrimination on the basis of sexual orientation will be punishable under criminal law.⁹ Comprehensive protection against discrimination on the grounds of gender identity, gender expression and sex characteristics is still missing.¹⁰ Furthermore, there is no statistical recording of "hate crimes" based on sexual orientation, gender identity, gender expression or sex characteristics. A corresponding parliamentary motion was rejected in parliament.¹¹

Recommendations:

- To ensure comprehensive protection against discrimination on the basis of gender identity, gender expression and sex characteristics.
- To record hate crimes with anti-LGBT* motives in order to build up corresponding prevention work.
- To financially support low-threshold and anonymously accessible information and counselling services for LGBT* issues.
- To ensure that LGBT* children can attend school free of violence and discrimination.
- To ensure that trans children have access to necessary medical treatments and that these are adequately reimbursed by health insurers.
- To train health workers, especially family doctors and paediatricians, to meet the needs of trans children.

11 Best interests of the child

Terminology

In the German version of the UN CRC, the English term "best interests of the child" is now translated as "Kindeswohl". German-language specialist literature and case law also uses this terminology. In its translation of the Concluding Observations of the UNCRC of 4 February 2015, the responsible FSIO refrains from using a translation and uses the English term "best interests". In French-speaking Switzerland, the Swiss Civil Code refers to "bien de l'enfant", while translations

of the UN CRC use the phrase "intérêt supérieur de l'enfant". The UNCRC has rightly criticised that these terms do not express the same meaning.¹² Clarification of the translation and meaning of the concept in both languages is therefore necessary.¹³ Based on a precise definition of terms, there will also be clarity regarding the tasks, competences and responsibilities of the professionals involved.

Recommendations:

- To clarify the translation of the term "best interests of the child" in all national languages.
- To make the principle of the best interests of the child known in relevant professional circles in accordance with General Comment No. 14 of the UNCRC.

Legislation

New draft legislation in Switzerland is not examined for its compatibility with the UN CRC. At the federal level, the Federal Council is required by parliamentary law to explain in its statements on draft legislation whether it is compatible with higher-order law and whether it will have an impact on future generations, but there is no systematic examination of the interests of the child.¹⁴ The

extra-parliamentary Federal Commission for Children and Youth Affairs examines federal laws and regulations that are important in terms of child and youth policy for their impact on children and young people before they are passed and issues brief recommendations to parliament. However, this does not correspond to a systematic examination.

Recommendation:

- To establish mechanisms for review and reflection at federal and cantonal level to ensure that new legislation, programmes and projects are assessed for their compatibility with the UN CRC and their impact on the best interests of the child (child rights impact assessment).¹⁵

The best interests of the child in proceedings

There are no nationwide standard criteria and procedural guidelines for determining the best interests of the child, that are available to the administration and the judiciary and that enable consistent practice.

The best interests of the child is still insufficiently anchored in various areas of law today:

- **Family law proceedings:** In family law proceedings, the needs and interests of children are sometimes not sufficiently considered. Since 1 July 2014, marriage law¹⁶ has provided for joint parental custody as the norm. The primary best interests of the child should be decisive in the question of the assignment of parental custody.¹⁷ With this new provision, the pressure on children to meet the wishes of both parents increases. Rigid ideas of the courts about favourable developmental conditions in families often favour regulations on determining the right of residence that hardly consider the (bonding) needs and wishes of the (especially younger) children.
- **Criminal proceedings:** The criminal prosecution of parents has serious effects on the children. They are directly or indirectly affected by the proceedings. However, their rights are insufficiently considered by the prosecuting author-

ities. There are no norms in the Criminal Code that protect the interests of the children of imprisoned parents.¹⁸

- **Social welfare proceedings:** In current social welfare practice, children are not regarded as independent legal individuals, but only within the community of their parents. In the case of benefit cuts, children are strongly affected, although the authorities have a wide scope of discretion.

In asylum and migration law procedures, the best interests of the child as a primary consideration are given insufficient weight. In many decisions, the general considerations regarding migration control override the best interests of the child¹⁹.

- **Asylum proceedings:** In the asylum procedure, there is a special duty of care and protection towards children.²⁰ If children file an asylum application together with their parents, the child's reasons for fleeing are not examined independently of the parents'. The child is an independent legal individual and can have his or her own reasons for the application to be approved. Furthermore, there is neither a child-specific concept regarding persecution

(e.g. protection against child marriage, recruitment as a child soldier) nor child-specific procedural rights. The Swiss asylum procedure is not designed to determine the best interests of the child²¹, but rather the need for protection under asylum law. However, the best interests of the child encompasses more than just the protection status and should therefore be systematically examined, in particular with regard to unaccompanied children seeking asylum. Switzerland lacks a formal procedure for this.

- **Removal proceedings:** According to Art. 9 para. 3 UN CRC, children have a right to regular personal relations with both parents. According to the case law of the Federal Supreme Court, this does not entitle them to a residence permit, but it must be considered when weighing up the interests involved.²² In the case of a separation of family members due to the removal of one parent, the authorities often consider that a few contacts per year and modern means of communication are sufficient to maintain the

relationship. The Federal Supreme Court supports this view. Too little consideration is given to the child's interest in a personal relationship with both parents.²³ In addition, children are heard in less than half of the cantons if one parent is to be deported.²⁴ When child protection measures and removal of the family have been ordered, the child protection authorities are obliged to check whether child protection can be ensured during the removal and in the country of destination. In practice, this is often not or only insufficiently guaranteed.²⁵

- **Deportation:** The deportation of family members in phases is problematic. The National Commission for the Prevention of Torture also criticises other situations in which the particular vulnerability of children was not considered (e.g. intrusion into the family's accommodation by armed police officers in order to detain or handcuff a parent during collective deportation with children).²⁶

Recommendations:

- To apply criteria and procedures for determining the best interests of the child in accordance with the Council of Europe Guidelines for Child-Friendly Justice²⁷ at federal and cantonal level.
- To consider ratification of the Council of Europe Convention on the Exercise of Children's Rights.²⁸
- To collect and evaluate existing tools and recommendations on the weighting of children's views, needs and voices in judicial and administrative proceedings and make them known to authorities and courts, policy-makers as well as public and private social institutions.
- To issue clear instructions on how the rights of children of detainees can be considered and protected at all stages of criminal proceedings (arrest, pre-trial detention, sentencing and execution of sentence) in accordance with the Council of Europe Guidelines on the Protection of Children of Imprisoned Parents.²⁹
- To systematically examine and consider the best interests of the child in social benefit proceedings.
- To consider the best interests of the child as a primary consideration in the asylum procedure, in decisions of the State Secretariat for Migration under migration law and in transnational cooperation with regard to removals and departures and to anchor this principle as a procedural rule in the "Asylum and Return" manual.
- To develop standards and guidelines on the inclusion of the best interests of the child and child-specific reasons in asylum decisions.
- To ensure the continuation of child protection measures during removals and departures and strengthen transnational cooperation in the process.
- In the case of deportations of families, to consider their particular vulnerability of children, in order to avoid trauma caused by the deportation and to implement the recommendations of the National Commission for the Prevention of Torture.

12 Respect for the views of the child

12a) The right to be heard and the right to procedural participation of children

According to Art. 12 UN CRC, children have the right to be involved and heard in all proceedings affecting them. In various areas of law the corresponding legal foundations for the participation of the child are still missing. Also, in practice the right to be heard is not always implemented. In Switzerland, the paradigm shift from a protection approach to a child rights approach has not yet been completed.³⁰ In its postulate report on the implementation of the right of children to be heard, the Federal Council notes that children's participation rights are still insufficiently implemented in Switzerland. However, the Federal Council refrains from making concrete legal adjustments, relies on information and awareness-raising among affected professionals and shifts the responsibility to the cantons.³¹

In Swiss civil law, the child's right to be heard is only explicitly regulated for certain types of proceedings, namely for family law proceedings and child protection proceedings, even though the child may also be directly affected by other proceedings. The right to be heard is also not implemented in practice on a nationwide basis³² and there are sometimes significant differences in the hearing methodology. According to Federal Supreme Court case law, children from the age of 6 should in principle be heard and this is increasingly enforced in civil proceedings.³³ However, some civil courts only consider hearing children from the age of 10 onwards.

In the area of juvenile criminal law, there are clear differences between the cantons in the implementation of participation rights and in informing young people about juvenile criminal proceedings. There is a need for age-appropriate information material on juvenile criminal proceedings as well as professional standards for the participation of juveniles. In addition, criminal proceedings are often conducted without hearing the adolescents.³⁴

Administration and courts only selectively observe Art. 12 CRC in asylum and aliens law. The State Secretariat for Migration usually only hears accompanied children from the age of 14 onwards.³⁵ The refusal to hear non-judicious asylum-seeking minors is not compatible with Art. 12 UN CRC.³⁶ Furthermore, there is no adequate methodology for assessing the credibility of children's testimonies. In removal proceedings, children of a foreign parent are heard in less than half of the cantons.³⁷ Both the Federal Supreme Court and the Federal Administrative Court regularly assume that the child's interests and the parents' interests are the same and that a hearing is therefore not mandatory.³⁸ This case law does not meet the requirements of the UN CRC.

Proceedings under school law have a direct impact on the child, and therefore the requirements for the arrangement of the proceedings are high.³⁹ The right to be heard or even to participate in the proceedings varies greatly from canton to canton. Additionally, the legal provisions in this regard are not sufficient in all cantons.⁴⁰ Furthermore, it is important to ensure participation rights for particularly disadvantaged groups of children, e.g. children with disabilities. They are particularly disadvantaged in the exercise of their procedural rights. Minors who are considered to be "incapable of judgement" are deprived of their independent capacity to participate in proceedings, even in the case of highly personal rights.⁴¹ In addition, children with intellectual disabilities in particular are often not heard, or not heard adequately.⁴²

Even if one parent is threatened with an unconditional imprisonment sentence, the child capable of judgement must be able to give his or her opinion on the matter in order to spare the child avoidable disadvantages.

Recommendations:

- To guarantee the child's right to participate in all procedures in accordance with Art. 12 of the UN CRC and to anchor this in legislation and explicitly stipulate it in the Law of Persons.⁴³
- To orient procedural participation towards the Council of Europe Guidelines for Child-Friendly Justice.⁴⁴
- To conduct surveys on practices concerning the participation of children and adolescents in family-based and voluntary child and youth welfare, in statutory child protection and in alternative care facilities.⁴⁵
- To recognise the capacity of children with disabilities to be parties and litigants when they reach a decision through assisted decision-making; ensure their right to be heard; and ensure that an expression of opinion is possible through specially trained legal representation.

Access to legal representation

Access to qualified legal representation is a key element for the participation of children in proceedings. In certain constellations, the legal basis is insufficient in this regard:

- **Child victims in criminal proceedings:** According to Art. 152 of the Code of Criminal Procedure⁴⁶ a victim may be accompanied in criminal proceedings by a legal counsel and a trusted person. While the perpetrator is often provided with a necessary defence, it requires some effort for underage victims to obtain qualified and independent legal representation. The Code of Criminal Procedure does not provide for an initial legal counsel for underage victims as is the case with the offender. With non-judicious victims this is particularly problematic if the child's legal representation itself is involved as a defendant in the criminal proceedings. In this

case children are dependent on immediate access to legal representation.⁴⁷

- **Minors in civil proceedings:** In civil proceedings, the court may, in implementation of Art. 299 para. 1 CCP, order the representation of the child and appoint a person experienced in welfare and legal matters as a counsel. The appointment of a child representative is not systematically analysed and is insufficiently established in practice. Whereas the judicious child itself can request representation (Art. 299 para. 3 CCP), children who are non-judicious do not have this option.⁴⁸
- **Unaccompanied children in asylum proceedings:** In asylum proceedings, legal representation is formally ensured, but the requirements for the qualifications of the representatives are insufficiently defined.

Recommendations:

- To issue directives at cantonal level on the use of legal representation for the child and ensure that systematic checks are carried out to determine whether legal representation is necessary.⁴⁹
- To create the conditions for child victims to have easy access to qualified and independent legal representation.
- To provide access to an initial legal counsel for child victims in criminal proceedings.

12b) Right to socio-political participation

For the personality development of children and young people, the experience of recognition, competences and self-efficacy through participation in the public sphere is of central importance. Although there are children's councils and/or youth parliaments and youth councils in many cantons and communes⁵⁰, the involvement of these bodies is often non-binding and selective, and the decisions do not have any binding char-

acter. The same applies to the federal youth session. At the national level and in most cantons, voting and election rights are currently granted from the age of majority. The exception is the canton of Glarus, which already lowered the voting and electoral right to 16 years in 2007. Currently, a motion is pending in parliament calling for active voting and electoral rights from the age of 16 years.⁵¹

Recommendations:

- To ensure children's participation at local and school level in spatial planning, electoral and school laws and provide financial support for targeted participation and design projects on site as an accompanying measure.
- To systematically involve children and young people in legislative projects at cantonal and national level by means of suitable instruments (e.g. children's and youth parliaments, federal youth session) and to promote and strengthen corresponding instruments.
- To lower the age limit for the right to vote and to be elected to at least 16 years of age.

12c) Training of professionals

Professionals who conduct hearings and/or investigations with children should be sensitised to children's rights and trained in how to conduct discussions with children. There is a great need among professionals in various fields for information on the participation of children and for appropriate tools (checklists, guidelines, etc.).⁵² Cantonal practices vary widely in terms of method, the practical competencies of the person conducting the hearing and the age of the children. Training and further education on this topic exist, but only a few people from the legal system make

use of them.⁵³ Certain professional groups who are in direct contact with children are not systematically trained on children's rights and on how to talk to children. This applies in particular to legal representatives of the child, (juvenile) judges, members of school supervisory or child protection authorities as well as professionals from the asylum, health and care sectors.⁵⁴ Furthermore, guidelines are needed for the invitation practice: a child-friendly invitation to the hearing is decisive for the child to exercise this right.

Recommendations:

- To review hearing practices in the cantons and develop binding standards for the participation of children in legal and administrative proceedings based on existing materials.⁵⁵
- To systematically train professionals from courts and authorities on the participation of children in proceedings.

Endnotes

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- 36 Hotz, Sandra (Hrsg.). (2020). Handbook Children in Proceedings. The position and participation of children in criminal, civil, health, school and asylum proceedings, para. 5. 9.38; SCHR (2019). [The implementation of the child's right to participation according to Art. 12 UN Convention on the Rights of the Child in Switzerland](#).
- 37 SCHR (2017). [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](#).
- 38 BGE Ruling [5A_709/2019](#) of 07.02.2020 and BVGE Ruling [D-7246/2015](#) of 21.09.2017.
- 39 Hotz, Sandra (Hrsg.). (2020). Handbook Children in Proceedings. Position and participation of children in criminal, civil, health, school and asylum proceedings, para. 8.3.
- 40 Compare: Hotz, Sandra (Hrsg.). (2020). Handbook Children in Proceedings. Position and participation of children in criminal, civil, health, school and asylum proceedings.
- 41 See Art. 19c para. 2 ZGB, SR [210](#). The denial of legal capacity manifests itself, for example, in the area of family law in visitation and contact rights, custody arrangements; in child protection and adoption law in the possibility of appeal against refusal of a hearing (Art. 314a para. 3 CC, Art. 268abis para. 3 CC) and appeal to the court in the case of protective placement (Art. 314b para. 2 CC); in criminal law in the right of minors to authorize prosecution (Art. 30 para. 3 CC), SR [311.0](#); in criminal procedural law in highly personal procedural rights (Art.106 para. 3 StPO), SR [312.0](#).
- 42 This inter alia, by invoking "other important reasons" which, in addition to the age of the child, may speak against a hearing; cf. art. 298 para. 1 Swiss Code of Civil Procedure (Zivilprozessordnung) of 19 December 2008 (Code of Civil Procedure, CCP), SR [272](#) (children's affairs in family law), Art. 314a para. 1 CC (child protection), Art. 268a - para. 1 CC (adoption); or on respecting the child's opinion "as far as possible", Art. 133 para. 2 CC (divorce consequences), SR [210](#).
- 43 See: SCHR (2019). [The implementation of the child's right to participation according to Art. 12 UN Convention on the Rights of the Child in Switzerland](#), Recommendation No. 5.2.
- 44 European Council (2015). [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#).
- 45 SCHR (2019). [The implementation of the child's right to participation according to Art. 12 UN Convention on the Rights of the Child in Switzerland](#), Recommendation No. 17.
- 46 Swiss Code of Criminal Procedure of 5 October 2007 (Strafprozessordnung, StPO), SR [312.0](#).
- 47 Hotz, Sandra (Hrsg.). (2020). Handbook Children in Proceedings. Position and participation of children in criminal, civil, health, school and asylum proceedings.
- 48 Swiss Code of Civil Procedure (Zivilprozessordnung ZPO), SR [272](#).
- 49 See: SCHR (2019). [The implementation of the child's right to participation according to Art. 12 UN Convention on the Rights of the Child in Switzerland](#), Recommendation No. 11.1.
- 50 Cf. Umbrella organisation of Swiss youth parliaments (DSJ), DSJ members, <https://www.dsj.ch/ueber-uns/mitglieder/aktuelle-mitglieder/> (28.01.2021); Youpa, <https://www.youpa.ch/> (28.01.2021).
- 51 Arslan Parliamentary Initiative [19.415](#). Giving young people a voice. Active voting and electoral rights for 16-year-olds as a first step into active political life.
- 52 See: SCHR (2019). [The implementation of the child's right to participation according to Art. 12 UN Convention on the Rights of the Child in Switzerland](#).
- 53 Cf. SCHR (2014). [Le droit de protection de l'enfant. Les premiers effets de la mise en œuvre dans les cantons de Genève, Vaud et Zurich](#).
- 54 SCHR (2014). [Le droit de protection de l'enfant. Les premiers effets de la mise en œuvre dans les cantons de Genève, Vaud et Zurich](#).
- 55 E.g. UNICEF Switzerland and Marie Meierhofer Institute for the Child (2014), [The Child Hearing. A guide to practice in law, education and health care](#).

Civil rights and freedoms

13 Statelessness / Right to a nationality

The right of the child to a nationality according to Art. 7 CRC is only insufficiently guaranteed.¹ Swiss law only provides that children recognised as stateless have the option of facilitated naturalisation after a stay of five years (Art. 24 Citizenship Act²). However, there is no entitlement to naturalisation. Children born in Switzerland who are stateless have no possibility of acquiring Swiss nationality directly at birth. Switzerland thus falls short of the recommendations of the UNCRC, according to which children born in the country should automatically acquire citizenship if they would otherwise be stateless.³

At the end of 2019, there were around 614 stateless persons living in Switzerland, among them more than a quarter were children under 19 years of age.⁴ Without access to nationality, children recognised as stateless remain in an extremely precarious legal position, having only travel documents and no identity documents, and are thus severely restricted in exercising their rights.⁵ This uncertainty particularly affects children whose parents do not have a secure right of residence, especially children of refugees and persons with temporary residence.

Moreover, children of Sans-Papiers are at risk of not being registered at birth and subsequently becoming stateless. The UNCRC has called on Switzerland to ensure the registration of new-born children in the near future, irrespective of the residence status of the parents.⁶ It is particularly important in this context to ensure that the civil status authorities do not pass on any information to the migration offices.⁷

Switzerland applies a very narrow definition of statelessness and does not have a formal procedure for its recognition regulated by specific laws.⁸ This insufficiently protects the procedural rights of stateless children.⁹ For more comprehensive protection, ratification of the 1961 Convention on the Reduction of Statelessness would be crucial.¹⁰ Statelessness is also increasingly becoming a problem in Switzerland in connection with surrogacy.¹¹ Switzerland forbids surrogacy (Art. 119 para. 2 lit. d BV¹² and Art. 4 FMedG¹³). Despite difficulties with regard to the recognition of parenthood and the granting of citizenship, surrogacy is utilised abroad to fulfil the wish to have a child.¹⁴ If the child cannot acquire the nationality of the biological mother or the place of birth, it runs the risk of becoming stateless. To date, Swiss law has no protective mechanisms in this regard.

Recommendations:

- To ratify and implement the 1961 Convention on the Reduction of Statelessness and the 1997 European Convention on Nationality.
- To create a constitutional article on the automatic acquisition of Swiss citizenship at birth in Switzerland for children who would otherwise be stateless.
- To reduce the residence requirement of five years to two years for the facilitated naturalisation of stateless children in accordance with Art. 24 of the Citizenship Act.
- To establish a legally regulated procedure for the recognition of statelessness which respects the general procedural guarantees for stateless children and considers their particular vulnerability.
- To create a legal basis so that children born to Swiss citizens through surrogacy automatically acquire Swiss citizenship at birth.

14 Right to know and to be cared for by parents and right to identity

14a) The right to know one's own origin in the case of adoption or medical reproduction

Children have the right to know their origin and consequently, as far as possible, their natural parents. According to Art. 268 c para. 1 CC, adopting parents are obliged to inform the child of the fact of his or her adoption in accordance with his or her age and maturity.¹⁵ Children who have been adopted also have the right to receive information about their biological parents, insofar as this does not allow any conclusions to be drawn about their identity (exception cf. point 14 b). However, in the case of adoptions, there are often data gaps with regard to the biological father.

Pursuant to Art. 27 of the Reproductive Medicine Act¹⁶ children born through medical reproduction can receive information about the sperm donor when they reach the age of majority. Before that, this is only possible by proving a "legitimate interest". However, there is no obligation on the part of the parents to provide information, which means that there is no guarantee for these children that they will be informed about their origin and that they can demand information accordingly. If couples resort to medical reproduction abroad, the right to know one's own origin is even more difficult to claim.

Recommendations:

- To ensure that adopted children can find out the identity of their natural father, e.g. through the possibility of a confidential child acknowledgement by the natural father.¹⁷
- To ensure that adopted children or children born through medical reproduction are accompanied in the process of tracing their origins.

14b) «Legitimate interest»

Since the revision of the adoption law in 2018, the underage adopted child has the right to be informed about the birth parents, as long as this does not allow any conclusions to be drawn about their identity (e.g. profession, appearance, age, etc.).¹⁸ The underage child is only entitled to receiving identifying information (e.g. name, place of origin, nationality) of the natural parents if he

or she can prove that he or she has a «legitimate interest»¹⁹ (e.g. for medical reasons). This also applies to children born through medical reproduction.²⁰ The concept of «legitimate interest» is only conditionally compatible with the primary best interests of the child. The search for one's own origin is identity-forming and thus worthy of protection per se from the child's point of view.

Recommendation:

- To refrain from requiring proof of an interest worthy of protection in the case of adopted children or children born through medical reproduction. (As a minimum, create uniform instruments for the examination of the proof of a legitimate interest in order to guarantee equal treatment for the children concerned nationwide).

14c) Baby boxes

There are still baby boxes at 6 locations in Switzerland. These are attached to a hospital and ensure the medical care of the new-born child. Leaving the child anonymously in a baby box violates the child's right to know its own origins, but can under certain circumstances prevent threats to life and limb. As an alternative, the

possibility of a confidential birth should therefore be promoted, in which the identity of the pregnant woman is protected by the hospital and the birth is registered confidentially by the civil registry office. Confidential births make it possible to guarantee both the rights of the child and the medical care of the child and mother.

Recommendations:

- To publicise alternatives to the baby box and promote confidential birth.
- To develop a standardised procedure for confidential births nationwide.

Endnotes

- 1 Cf. UNHCR Office for Switzerland and Liechtenstein (2018). [Statelessness in Switzerland](#); humanrights.ch, Institute on Statelessness and Inclusion, European Network on Statelessness and Terre des hommes Foundation (2017). [Joint Submission to the Human Rights Council at the 28th Session of the Universal Periodic Review](#). See also: Arnaiz, P. (2016). Stateless persons in international and Swiss law, in: *Actualité du droit des étrangers* (pp. 57-154); Kanics, J. (2019). Preventing statelessness: ensuring migrant and refugee children's right to acquire a nationality, in: *ASYL* (2, pp. 10-16); Von Rütte, B. (2019). Legal challenges in the protection of stateless persons in Switzerland, in: *ASYL* (2, pp. 3-9).
- 2 Federal Act of 20 June 2014 on Swiss Citizenship (Bürgerrechtsgesetz, BÜG), SR [141.0](#).
- 3 Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families of the United Nations (UN-Wanderarbeiterrausschuss, CMW) und UN-KRA (2017). [Joint general comment No. 4 \(2017\) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 \(2017\) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return](#), para. 24.
- 4 UNHCR Office for Switzerland and Liechtenstein (2018). [Statelessness in Switzerland](#), para 51.
- 5 See: Arnaiz, P. (2016). Stateless persons in international and Swiss law, in: *Actualité du droit des étrangers* (p. 57-154).
- 6 United Nations Committee on the Rights of the Child (UNCRC) (2015). [Concluding observations on the combined second to fourth periodic reports of Switzerland, 26 February 2015 \(CRC/C/CHE/CO/2-4\)](#), CO 31.
- 7 Cf. Kanics, J. (2019). Preventing statelessness: ensuring migrant and refugee children's right to acquire a nationality, in: *ASYL* (2, p. 10-16), p. 9.
- 8 UNHCR Office for Switzerland and Liechtenstein (2018). [Statelessness in Switzerland](#), para. 68 ff. Cf. also: Von Rütte, B. (2019). Legal challenges in the protection of stateless persons in Switzerland, in: *ASYL* (2, pp. 3-9), pp. 4 ff.
- 9 UNHCR Office for Switzerland and Liechtenstein (2018). [Statelessness in Switzerland](#), para. 109 ff.
- 10 UNCRC (2015). [Concluding observations on the combined second to fourth periodic reports of Switzerland, 26 February 2015 \(CRC/C/CHE/CO/2-4\)](#), para. 31; Postulate Günter [05.3737](#). Accession to the Convention on the Reduction of Statelessness; Postulate Masshardt [15.3269](#). Convention on the Reduction of Statelessness; Interpellation Fridez [16.3126](#). Apatridie des enfants. Où en est la Suisse?; United Nations Human Rights Council (2017). [Report of the Working Group on the Universal Periodic Review Switzerland \(A/HRC/37/12\)](#), para. 148.13 and 148.14.
- 11 Cf. Boillet, V. and Akiyama, H. (2017). Statelessness and International Surrogacy from the International and European Legal Perspectives, in: *Swiss review of international and European law* (27 (4), p. 513-534); Federal Council (2013). [Report on surrogacy. Federal Council report of 29 November 2013 in response to Postulate 12.3917 of 28 September 2012](#).
- 12 Federal Constitution of the Swiss Confederation of 18 April 1999 (BV), SR [101](#).
- 13 Federal Act of 18 December 1998 on Medically Assisted Reproduction (Fortpflanzungsmedizingesetz, FMedG), SR [810.11](#).
- 14 Boillet, V. and Akiyama, H. (2017). Statelessness and International Surrogacy from the International and European Legal Perspectives, in: *Swiss review of international and European law* (27 (4), p. 513-534); Federal Council (2013). [Report on surrogacy. Federal Council report of 29 November 2013 in response to Postulate 12.3917 of 28 September 2012](#).
- 15 CC, SR [210](#).
- 16 FMedG, SR [810.11](#).
- 17 Cf.: Federal Commission for Children and Youth Affairs (EKKJ) (2019). [The right of the child to an upbringing without violence. Situation in Switzerland, need for action and requests of the ECCY, position paper, November 2019](#).
- 18 Art. 268c para. 2 sentence 1 CC, SR [210](#).
- 19 Art. 268c para. 2 sentence 2 CC, SR [210](#).
- 20 Art. 27 para. 2 FMedG, SR [810.11](#).

Violence against children

15 Freedom of the child from all forms of violence

15a) Corporal punishment

Half of all children in Switzerland today experience physical and/or psychological violence in their upbringing,¹ every fifth child even experiences severe violence.² The most common forms such as psychological and physical violence, neglect or sexual abuse in the family³ tend to be discovered very late, so that the children often suffer physical and psychological damage.⁴ 1500 children are treated for child abuse in children's emergency wards in hospitals every year.⁵

According to the case law of the Federal Supreme Court, corporal punishment is only prohibited under criminal law if it "goes beyond what is accepted by society". However, it is unclear how exactly this measure is defined.⁶ Therefore, a clear anchoring of the right to non-violent upbringing

in the Civil Code is needed. This would help parents to recognise their own violent behaviour as such and support professionals in prevention. An explicit ban on violence in education leads to a reduction in corporal punishment, as international studies have proven.⁷ Corresponding proposals to change the legal situation have repeatedly failed in parliament in recent years.⁸ The Federal Council has also always denied the need for action, most recently in spring 2020 in its rejection of motion 19.4632 «Anchoring non-violent education in the CC».⁹ In December 2020, the National Council passed a postulate instructing the Federal Council to present a report on how the protection of children from violence in upbringing can be anchored in the Civil Code.¹⁰

Recommendations:

- To fully prohibit all forms of corporal punishment and enshrine the right to a non-violent upbringing in law.
- To provide annually recurring resources for social sensitisation against various forms of violence in upbringing.

15b) Data collection

In Switzerland, there is still a lack of conclusive and systematically collected data on forms of violence against children, on its occurrence and on the practices of the responsible authorities. The Confederation stated that a lack of data makes

effective child protection more difficult and that the collection and analysis of relevant data is a matter of urgency. However, the Federal Council does not intend to conduct any prevalence studies for cost reasons, as it states in the State Report.¹¹

Recommendations:

- To create nationwide uniform child and youth welfare and child protection statistics on forms and incidence of violence against children, with a special focus on recording "invisible groups" (e.g. children in asylum centres, with disabilities, etc.), taking into account existing study approaches, statistics and data platforms.
- To commission suitable stakeholders to research the developmental paths of children who have received child and youth welfare services and for whose protection civil measures have been ordered.

In its report on the implementation of the recommendations of the UNCRC of 2015, the Federal Council notes the need for greater commitment to raising the awareness of professional groups directly involved in the early detection of violence. Furthermore, it considers a coordinated approach by the cantons and the responsible specialists in child protection interventions to be urgent. However, the planned measures do not go far enough. Neither does the Confederation provide addition-

al (financial and human) resources for the implementation of measures, nor does it want to develop a comprehensive strategy for the protection of children from violence. Children and parents should be able to access low-threshold support services regardless of their residential location and socio-economic background, and should be able to receive prompt and competent help in the event that a threat to the welfare of a child is imminent or has already occurred.¹²

Recommendations:

- To develop a national strategy for the protection of children from violence in cooperation with the cantons. The strategy includes prevention, early detection and intervention and considers the protection of particularly vulnerable groups (including children in institutions, children with a disabilities children in the asylum system, LGBT* children).
- To raise awareness and train professional groups working directly or indirectly with children on all forms of violence against children and on reporting rights and obligations.
- To oblige private and public institutions working with children to develop internal protection policies and to require a criminal record and special privacy statement when recruiting individuals who work directly with children.

15c) Continuous monitoring of the child protection system

There are significant regional differences in the recording of risks to the well-being of children by the authorities. Accordingly, child protection meas-

ures are not applied in the same way in all cantons. Consequently, it depends on the canton of residence what protection children receive.¹³

Recommendation:

- To introduce continuous monitoring of the forms of threats to children's well-being, the recording of cases by the authorities and the child protection measures ordered, and to carry out regular analyses.

16 Harmful practices

16a) Female genital mutilation

Estimates suggest that in 2018, there were around 22,410 girls and women affected by or at risk of female genital mutilation (FGM) in Switzerland¹⁴. The "Netzwerk gegen Mädchenbeschneidung Schweiz" provides information about FGM, advises those affected, raises awareness among professionals and communities and establishes low-threshold support services. Federal funding

for the network is secured until 2021 and is expected to be extended. The prevention, protection and support of girls who are affected or at risk depends heavily on their canton of residence. Furthermore, FGM must be increasingly considered as a threat to children's well-being in the context of domestic violence.

Recommendations:

- To implement recommendations of the postulate report of November 2020¹⁵.
- To improve data collection and monitoring on FGM.
- To ensure long-term financing of prevention services.
- To include FGM in measures for the early detection of and dealing with intra-family violence and threats to children's well-being and take specific risk factors for FGM into account.
- To integrate FGM into the training and further education curricula of relevant professional groups, especially in the health sector.

16b) Medically unnecessary surgery and other procedures on intersex children (Intersex Genital Mutilation IGM)

In its 2015 recommendations, the UNCRC classified medically unnecessary surgery and other procedures on intersex children as a harmful practice and strongly recommended that Switzerland protect children from such procedures, ensure their physical integrity and provide adequate support to their families. Other UN treaty bodies also recommend that Switzerland refrain from such harmful practices and ensure physical integrity.¹⁶ The National Ethics Committee in the Field of Human Medicine (NEK) also stated that non-trivial, sex-determining treatment decisions that have irreversible consequences and can be postponed should not be made for ethical and legal reasons until the person to be treated is able to decide on this for him or herself.¹⁷ The Federal Council subsequently admitted that interventions took place "without medical necessity", "partly

without the consent or even the knowledge of the parents", and "in many cases caused considerable consequential damage and severe suffering" to those affected. However, the Federal Council believes that a free psychosocial counselling service for those affected is not feasible.¹⁸ The Federal Council also denies the need for further action beyond this. Accordingly, the set of measures also does not provide for any additional measures for the protection, counselling and support of affected persons. The corresponding recommendation of the UNCRC was discarded with reference to the revision of the Civil Code concerning the simplified change of gender in the civil status register.¹⁹ At the cantonal level, too, no effective measures have been implemented to date.

Recommendations:

- To ensure that the NEK recommendations are followed and implemented.
- To establish a legal basis to ensure that IGM could only be performed if the person concerned has validly consented to the intervention, if the intervention is life-saving or if it is the only way to avert serious damage to health.
- Access to free psychosocial counselling for affected children and their families, as well as for persons who have undergone unnecessary surgery in the past.

16c) Child marriage

Persons under the age of 18 are not entitled to marry in Switzerland. Nevertheless, children are married or threatened with forced marriage. According to its own information, the Forced Marriage Unit counted 123 specialist counselling sessions for minors affected in 2019.

A marriage abroad to a child who is now over the age for protection of 16 years²⁰, can be recognised in Switzerland.²¹ Although it is examined whether the continuation of the child marriage is in the interest of both spouses. However, this is usually difficult to evaluate due to family and cultural loyalty conflicts. In addition, those affected are often exposed to great family pressure. Measures are therefore needed to better protect those af-

ected and those at risk. The National Council has adopted a proposal to declare marriages invalid if one of the spouses was a minor at the time of the marriage, and a proposal to abolish the weighing of interests.²² The Federal Council proposes that marriages entered into abroad by minors will no longer be automatically "cured" at the age of 18, but at the age of 25.²³ Informal underage marriages are on the rise in Switzerland.²⁴ Although such traditional religious marriages have no legal validity, they are often far more meaningful to the families concerned than civil marriages.

Recommendations:

- The weighing of interests in the examination of a marriage of minors contracted abroad, anchored in Art. 105 No. 6 CC²⁵, should be discontinued.
- To mandatorily address disadvantages of annulments such as loss of residence permit for affected children (e.g. victim protection or adaptation of the Foreign Nationals and Integration Act).
- To provide information on the primacy of civil marriage.
- To prohibit the engagement of children in Switzerland.²⁶

Endnotes

- 1 Institute for Family Research and Counselling at the University of Freiburg (2020). [Punishment behaviour of parents in Switzerland. A scientific monitoring of the prevention campaign «Strong ideas - There is always an alternative to violence»](#); Baier, D., Manzoni, P., Haymoz, S., Isenhardt, A., Kamenowski, M. and Jacot, C. (2018). [Parental education with special regard to parental use of violence in Switzerland: results of a youth survey](#).
- 2 Baier, D. et al. (2018). [Parental education with special regard to parental use of violence in Switzerland: results of a youth survey](#).
- 3 UBS Optimus Foundation (2018). [Threats to well-being of children in Switzerland. Forms, help, professional and political implications](#); Institute for Family Research and Counselling at the University of Freiburg (2017). [Punishment behaviour of parents in Switzerland. Physical and psychological violence in parenting and partnership in Switzerland: Current survey and trend analysis](#); BFS (2018). [Criminal Code \(StGB\): Offences of domestic violence and persons harmed](#).
- 4 Federal Council (2018). [Early detection of intra-family violence among children by health professionals. Report of the Federal Council in fulfilment of the postulate 12.3206 Feri Yvonne of 15 March 2012](#).
- 5 Paediatrics Switzerland, National child protection statistics 2019. <https://www.paediatricschweiz.ch/kinderschutzstatistik-2019/> (30.01.2021).
- 6 Cf. EKKJ (2019). [The right of the child to an upbringing without violence. Situation in Switzerland, need for action and demands of the ECCJ, position paper, November 2019](#).
- 7 Federal Ministry of Economy, Family and Youth of the Republic of Austria (Ed.) (2009). [Family - no place for violence! \(?\) . 20 years of legal prohibition of violence in Austria. Comparative study Austria - Germany - Sweden - France - Spain](#).
- 8 Latest: Question Feri 19.5591. Right of children to an upbringing without violence; Motion Marchand-Balet 18.360. Anchor a ban on corporal punishment and other degrading acts towards children in the Civil Code; see also: EKKJ (2019). [The right of the child to an upbringing without violence. Situation in Switzerland, need for action and demands of the ECCJ, position paper, November 2019](#).
- 9 Motion Bulliard-Marbach 19.4632. Anchor non-violent education in the CC.
- 10 Postulate Bulliard-Marbach 20.3185. Protecting children from violence in upbringing.
- 11 Federal Council (2020). [United Nations Convention on the Rights of the Child. Switzerland's response to the List of Issues prior to submission of the fifth and sixth State reports](#).
- 12 Schnurr, p. (2019). Child and youth welfare in Switzerland, in: *Jugendhilfe* (1, p. 13-18); Schnurr, S. (2012). Basic services of child and youth welfare, in: *Violence and neglect in the family: necessary measures in the area of child and youth welfare and state sanctioning. Federal Council report in fulfilment of the postulate Fehr (07.3725) of 5 October 2007*. (p. 66-109).
- 13 UBS Optimus Foundation (2018). [Child welfare risks in Switzerland. Forms, help, professional and political implications](#).
- 14 Abdulcadir, J. (2019). Mutilations génitales féminines : recommandations pratiques, in : *Obstetrica*, (11, p. 18-24).
- 15 Federal Council (2020). [Measures against female genital mutilation. Report of the Federal Council in fulfilment of the postulate Rickli Natalie \(18.3551\)](#).
- 16 UN-CRC (2015). [Concluding observations on the combined second to fourth periodic reports of Switzerland, 26 February 2015 \(CRC/C/CHE/CO/2-4\)](#), paras 42-43; UN Committee against Torture (CAT) (2015). [Concluding observations on the seventh periodic report of Switzerland \(CAT/C/CHE/CO/7\)](#), para 20; UN Committee on the Elimination of Discrimination against Women (CEDAW) (2016). [Concluding observations on the combined fourth and fifth periodic reports of Switzerland \(CEDAW/C/CHE/CO/4-5\)](#), paras 24-25, 38-39; United Nations Human Rights Council (2017). [Concluding observations on the fourth periodic report of Switzerland \(CCPR/C/CHE/CO/4\)](#), paras 24-25.
- 17 National Ethics Committee in the field of human medicine (NEK-CNE) (2012). [On dealing with variants of gender development. Ethical questions on "intersexuality". Statement](#).
- 18 Federal council (2016). People with ambiguous gender - promoting sensitivity (media release of 06.07.2016). <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-62507.html> (30.01.2021).
- 19 Federal Council (2018). [Measures to close gaps in the implementation of the Convention on the Rights of the Child in Switzerland](#).
- 20 Cf. Jugement du tribunal de première instance, Canton de Genève, 7ème Chambre, du lundi 2 juin 2014. In this case, a (religious) marriage of a 14-year-old girl was recognised in Switzerland two years later.
- 21 Art. 105 No. 6 CC, SR 210, in conjunction with Art. 45 Federal Act of 18 December 1987 on Private International Law, SR 291.
- 22 Motion of the Committee for Legal Affairs of the National Council 20.3011. No tolerance of child and underage marriages.
- 23 Federal Council (2020). Marriage of minors: Federal Council wants to better protect those affected (media release of 29.01.2020). <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-77926.html> (07.02.2021).
- 24 Cf. NZZ am Sonntag of 29.01.2017, Preachers perform marriages of minors. <https://www.nzz.ch/nzzas/ille-gale-ehen-prediger-trauen-minderjaehrige-ld.142413?reduced=true> (30.01.2021).
- 25 SR 201.
- 26 Cf: Art. 21 para. 2 African Charter on the Rights and Welfare of the Child of 11 July 1990.

Family environment and alternative care

17 Family environment

Federal policy continues to focus early childhood education and care (ECEC) on the compatibility of family and work with the aim of keeping as many parents as possible in employment. The quality of care and the best interests of the child are not given priority. An evaluation of the programme «Financial aid for supplementary childcare for families»¹ shows that this has doubled the offer in supplementary family childcare.² Since summer 2018, there have been additional financial support measures that can be applied for by cantons or municipalities to further expand the provision of supplementary family childcare. The focus is on quantity, so no funding is available to promote quality in the area of ECEC. There is also

no nationally implemented monitoring for quality control of the services.

There has also been little progress in the structuring of paid childcare leave. A 14-week maternity leave has been in place since 2005, and since its introduction it has been extended in terms of those entitled to it, but not in terms of duration. In 2019, Parliament was able to agree on a 2-week paternity leave, and the change in legislation came into effect on 1 January 2021. There is no extended parental leave, although it has been proven to have a positive impact on the child's mental and physical health.³

Recommendations:

- To expand investments in ECEC by the Confederation, cantons, municipalities and the private sector and reduce parental fees.
- To include the quality of ECEC as an important criterion for federal funding.
- To establish nationwide monitoring of the quality of early childhood education.
- To use the potential of paid childcare leave and introduce parental leave for mothers and fathers.

18 Children deprived of a family environment

18a) Consideration of the best interests of the child in out-of-home placements

There are no binding quality criteria throughout Switzerland for determining and considering the best interests of the child when placing children outside their family. This applies both to placements ordered by the authorities and to agreed or consensual placements. Established standards are particularly missing in the area of agreed placements, although this form accounts for around two thirds of all out-of-home placements.⁴ Accordingly, the joint recommendations of SODK and KOKES on minimum qualitative standards for out-of-home placements are much appreciated. However, the recommendations are non-binding.⁵

According to Art. 1a para. 2 lit. b Ordinance of 19 October 1977 on the Admission of Foster Children (PAVO), a trusted person must be assigned to each foster child without delay.⁶ In practice, however, trusted persons are often appointed if at all, only after the placement has already taken place. Moreover, there is also no consensus on who can be appointed as a trusted person and which role they should take on.

Recommendations:

- To statistically record consensual placements.
- To ensure that children are heard in placement proceedings.
- To systematically examine the appointment of qualified legal representation and give reasons for negative decisions, as is already required in some cantons.
 - In line with the subsidiarity principle, to strengthen family-based measures in families; at the same time, ensure that financial incentives do not play a role in decisions on out-of-home placement.
- To comprehensively revise the PAVO, particularly taking into account the following aspects:
 - To consider the Quality4Children standards in officially ordered and consensual placement processes by the responsible authorities and explicitly anchor them in the PAVO.⁷
 - To promote interdisciplinary reflection processes in placement decisions as a quality criterion, to provide appropriate resources and to explicitly anchor interdisciplinarity in the PAVO.
 - To evaluate the implementation of the institution of the trusted person with regard to the specific mandate, the timing of the appointment, the qualification of the person appointed and the participation of the child in the appointment decision; to use the findings of the evaluation for the revision of Art. 1 para. 2 lit b PAVO.⁸

18b) Quality standards for alternative care

There are no binding standards for alternative care at supra-cantonal level. The PAVO contains only a few specifications and leaves a great deal of leeway to the cantons. Children growing up in foster families and institutions are in a particularly vulnerable situation and need to be protected from abuse by their

caregivers or by other minors. Binding approval procedures, protection concepts and quality standards as well as external supervision and complaint mechanisms support this goal. The selection, supervision and monitoring of foster families should be carried out by defined bodies in order to avoid functional overlaps. Professionals should be able

to benefit from regular training, psychological guidance and peer-counselling. Work with parents should take place throughout the placement process.

Binding standards on quality, approval, psychological guidance and monitoring of foster care relationships as well as harmonised regulations on cost sharing by the Confederation, cantons

and municipalities as well as by families are imperative to ensure that children removed from their families can enjoy equal guarantees in terms of accommodation, monitoring and protection. This also applies to unaccompanied children in the asylum system. Accommodation and care structures for unaccompanied children in the asylum system should therefore require approval.

Recommendations:

- To develop inter-cantonal standards for the approval, psychological guidance and quality of foster families and alternative care institutions, as well as for the regulation of cost sharing by the Confederation, the cantons, the municipalities and the families, based on the primary best interests of the child.
- To comprehensively revise the PAVO, considering the following aspects in particular:⁹
 - To obligate institutions to develop binding protection concepts and quality standards as part of the operating licence procedure and to review these regularly.
 - To ensure that children are fully informed and involved in decisions on placement, during the care relationship and when it is terminated. Define participation as a quality standard.
 - To clearly define key functions in the selection, monitoring and supervision of foster care and avoid overlapping functions.
 - To explicitly include structures for the care and placement of unaccompanied children in the asylum system within the scope of the PAVO.

18c) Support and accompaniment of foster families

The training and further education of foster families is implemented very differently among the cantons. While there are promising initiatives and projects¹⁰, these services are not available in all parts of the country.

Training should provide knowledge about the child protection system in general and promote exchange between foster families and professionals from relevant fields.

Furthermore, there is a need for professional support of the care relationships psychological guidance and peer counselling. This support should be tailored to the needs of the client and consider the specific situation of kinship care relationships and the care of unaccompanied children. Practice shows that the support provided by the mandated persons is often inadequate due to a lack of resources. Even the annual supervisory visits by the authorities provided for in the PAVO cannot guarantee this support.¹¹

Recommendations:

- To ensure that each foster relationship is individually accompanied by professionals according to need.
- To provide psychological guidance and peer counselling for foster families and guarantee that the costs of further training and education are covered as part of the national standards for the authorisation, supervision and support of foster families.
- To expand training and further education for foster families.

18e) Return to the family of origin

Transition phases such as the return to the family of origin are crucial moments in children's lives. In order for these transitions to succeed, children and their caregivers need special support and must be accompanied in an appropriate manner. In the case of return, the support offered also varies greatly from canton to canton. Interdisciplinary cooperation between professionals and

those affected is urgently needed. Moreover, parental work to support the return process should be linked to the operating permit and facility inspection procedures. Furthermore, there is a need for support services for children during the transition from a home or foster family to independence.

Recommendations:

- To define binding requirements for interdisciplinary parental work with regard to the support of return processes within the framework of quality standards and link them to operating approval and inspection procedures of the institution or foster family. To ensure that children and parents are involved in these processes.
- To ensure a wide range of support options for parents at all stages of placement (and beyond re-placement/return).
- To ensure free support services in the transition to independence for care leavers.

19 Adoption

Reports on past, illegal foreign adoptions of children from Sri Lanka lead to a partial reappraisal of Swiss adoption practice.¹² There are still irregularities in adoption procedures today. This concerns children from states that have ratified the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Inter-country Adoption as well as from non-contracting states.¹³ Switzerland has a responsibility in this regard and must sensitise interested adoptive parents to the risks of international adoption. It is therefore urgently necessary that interested adoptive parents be obliged to seek advice from an accredited adoption agency.

The Federal Council recently admitted failures and misconduct by the Swiss authorities in connection with adoptions from Sri Lanka in the 1970s and 1980s. Despite clear indications of illegal adoptions and child trafficking, the federal government and the cantons remained inactive for a long time. In future, the Federal Council wants to provide better support to those affected in their search for origin and to extend the investigation of Swiss practice to other countries of origin. In addition, the current system of international adoptions is to be examined.¹⁴

Recommendations:

- To declare cooperation with an accredited placement agency to be mandatory for interested adoptive parents from Switzerland.
- To scientifically investigate international adoption practice since the 1960s in all cantons.
- To support those affected by illegal adoptions in the search for their origin, in particular through psychological and financial support as well as covering translation services; to strengthen the legal and administrative means to support those affected in this process.

Children who are not adopted from a Contracting State to the Hague Convention or born abroad through surrogacy remain with their adoptive parents in Switzerland on a trial basis for one year until the adoption is legally valid. If the child loses

its foreign nationality as a result of the adoption procedure and/or the parents decide against the adoption during this trial period, the child is stateless.

Recommendation:

- To create a legal basis so that children born to Swiss citizens through surrogacy automatically acquire Swiss citizenship at birth and children who come to Switzerland as part of an adoption procedure automatically acquire Swiss citizenship.

Endnotes

- 1 Federal Act of 4 October 2002 on Financial Aid for Supplementary Family Childcare (KBFHG), SR 861, in effect since 2003.
- 2 Ecoplan (on behalf of the Federal Social Insurance Office) (2017). [Sustainability of financial aid for supplementary family childcare.](#)
- 3 Müller, F. and Ramsden, A. (on behalf of the Federal Commission for Family Affairs FDFA) (2017). [Evidence-based findings on the effects of parental leave and maternity and paternity leave. Literature review.](#)
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- 5 SODK und KOKES (2020). [Recommendations of the Conference of Cantonal Directors of Social Affairs \(SODK\) and the Conference for Child and Adult Protection \(KOKES\) on out-of-home placement.](#)
- 6 Ordinance of 19 October 1977 on the Admission of Foster Children (PAVO), SR 211.222.338.
- 7 Quality4Children (2008). [Quality4Children standards in alternative care in Europe.](#)
- 8 PAVO, SR 211.222.338.
- 9 See also: Recommendations on item 18a.
- 10 See e.g.: Integras. Formation pour parents d'accueil: désormais en coopération avec Espoir et Tipiti, <https://www.integras.ch/fr/actualites/299-nouvelle-formation-pour-parents-d-accueil-a-zuerich-integras-a-accompagne-la-transition> (31.01.2021).
- 11 Art. 10 para. 1 PAVO, SR 211.222.338.
- 12 Cf.: ZHAW Zurich University of Applied Sciences (Hrsg.). (2020). [Adoptions of Children from Sri Lanka in Switzerland 1973-1997. On the practice of private placement agencies and the authorities, Historical analysis concerning the postulate Ruiz 17.4181 on behalf of the Federal Office of Justice.](#) Postulate Ruiz 17.4181. Bringing light into the darkness. In the 1980s, children from Sri Lanka were illegally adopted in Switzerland.
- 13 HAc 93, SR 0.211.221.311.
- 14 Federal Council (2020). Adoptions from Sri Lanka: Federal Council regrets the authorities' failings (media release of 14.12.2020), <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-81577.html> (31.01.2021); Federal Council (2020). [Illegal adoptions of children from Sri Lanka: historical reappraisal, search for origin, perspectives. Report of the Federal Council in fulfilment of Postulate 17.4181 Ruiz Rebecca of 14.12.2017.](#)

Children with disabilities

20 Children with disabilities

20a) The right of children with disabilities to inclusive education

Children with disabilities still do not have access to inclusive education, in the sense of mainstream education for all students, where diversity is normal and adapted to the needs of individual students. While the federal government acknowledged that "further efforts must be made" to promote inclusion, especially in the field of education, it did not consider the recommendations 55.b and 55.c of the UNCRC, referring to its limited area of competence.¹ At the same time, neither inter-cantonal nor cantonal bodies have developed a strategy and legislation for the development of an inclusive education system in recent years. Thus, a special school system still exists alongside the regular school system.

Although there is an inter-cantonal agreement on cooperation in the field of special needs education of 25 October 2007 (Special Needs Education Concordat), this has only been ratified by 16 of

the 26 cantons. The Concordat only provides for a conditional priority of integration over special needs education.² According to the statistics on special needs education, around 28,000 pupils were taught in special schools or classes throughout Switzerland in the 2017/18 school year. In contrast, only 22,000 children with special needs education attended a mainstream school.³

Although standards for inclusive schools have been developed by private professional organisations⁴, there are no binding quality criteria at national or inter-cantonal level. It is important to analyse the needs of affected pupils and the mainstream school system, as well as to adopt measures for individual support and adaptation of the school environment.

Recommendations:

- To develop a strategy for the nationwide establishment of an inclusive school system accessible to children with all types of disabilities, including the guarantee of the right to inclusive education, far-reaching structural changes to the school system to avoid segregation, and the replacement of the "Special Needs Education" Concordat, by the Confederation and the EDK.
- To raise awareness among school management and teachers of the right to inclusive education and anchor practical knowledge in dealing with heterogeneous learning groups in training courses at teacher training colleges.
- To initiate a process of reflection at national level for a coherent implementation of the right to inclusive education.
- To ensure that cantonal legislation meets the requirements of an inclusive education system and develop inter-cantonal standards for the concrete design of inclusive schools and provide sufficient resources.

20b) Access to early childhood education and care services and vocational training

Access to early intervention and personal assistance for children with disabilities has also not fundamentally improved. Such measures are central to ensuring that children's self-determination and their inclusion in school and society can be fostered from the very beginning. These recommendations of the UNCRC⁵ were also not followed up by the Confederation, pointing to the cantonal competence.⁶ However, there are still large gaps at all three levels of government: For example, in the area of cerebral movement impairment, only four out of 100 eligible children use the relevant disability insurance benefits (IV) for early intervention, partly due to a lack of specialised staff and high administrative hurdles.⁷ Autism-specific therapy services also do not yet meet the demand.⁸ The lack of inclusivity of general pre-school services (day care centres, playgroups) is sometimes due to the fact that the additional demand is only financed sporadically by cantons and municipalities.

Despite the Confederation's extensive regulatory competence in the VET sector, it also refers to the cantons in this area. Young people with disabilities who basically meet the requirements of an apprenticeship under the Federal Act of 13 December 2002 on Vocational Education and Training (BBG)⁹ are entitled - at least at vocational school - to compensation for disadvantages through the adaptation of learning and examination modalities as well as assistance. Other young people, especially those with cognitive disabilities, are usually excluded from regular training and bridging programmes, as they are hardly designed to be inclusive or individually adaptable.

Recommendations:

- To ensure access to early detection and scientifically based, intensive early support by specifically trained professionals, without waiting lists, especially for children with autism.
- To ensure comprehensive state funding for inclusive preschool programmes.
- Inclusive design of vocational training according to the BBG by the federal government, including individually adaptable training plans and certificates of competence as well as a clear legal entitlement to compensation for disadvantages in on-the-job training in training companies.

20d) Placement in psychiatric institutions

Adequate care services are not always available for certain forms of impairment, especially for children with early autism. These children are sometimes placed in psychiatric institutions, some-

times also in institutions for adults. Even though these are often interim solutions, alternative services should be established.

Recommendation:

- To refrain from placing and caring for children with disabilities in psychiatric institutions and establish adequate services.

Endnotes

- 1 UN-CRC (2015). [Concluding observations on the combined second to fourth periodic reports of Switzerland, 26 February 2015 \(CRC/C/CHE/CO/2-4\)](#), Recommendation 55 (b) and (c); Federal Council (2018). [Measures to close gaps in the implementation of the Convention on the Rights of the Child Report of the Federal Council following the recommendations of the UN Committee on the Rights of the Child to Switzerland of 4 February 2015](#), p. 67 f.
- 2 Cf. Art. 2 lit. b of the Inter-cantonal Agreement on Cooperation in the Field of Special Needs Education of 25 October 2007. ([Special Needs Education Concordat](#)).
- 3 See: BFS (2019). In compulsory school, 4.5% of children receive enhanced special educational measures (media release of 29.10.2019), <https://www.bfs.admin.ch/bfsstatic/dam/assets/10428096/master> (31.01.2021), Graphic G 1.
- 4 Integras. Association for Social and Special Education (2018). [Standards inclusive school](#).
- 5 UNCRC (2015). [Concluding observations on the combined second to fourth periodic reports of Switzerland, 26 February 2015 \(CRC/C/CHE/CO/2-4\)](#), Recommendation 55 (d) and (e); Federal Council (2018). [Measures to close gaps in the implementation of the Convention on the Rights of the Child Report of the Federal Council following the recommendations of the UN Committee on the Rights of the Child to Switzerland of 4 February 2015](#), p. 68 f.
- 6 Integras. Professional Association for Social and Special Education (2018). [Measures to close gaps in the implementation of the Convention on the Rights of the Child Report of the Federal Council following the recommendations of the UN Committee on the Rights of the Child to Switzerland of 4 February 2015](#), p. 68 f.
- 7 Bureau for Labour and Social Policy Studies (BASS) (commissioned by the Federal Social Insurance Office (2017). [Evaluation Assistance Subsidy 2012-2016](#).
- 8 See also: Liesen, C., Krieger, B. and Becker, H. (on behalf of the Federal Social Insurance Office) (2018). [Evaluation of the effectiveness of intensive early intervention methods for early childhood autism](#), p. 17.
- 9 Vocational Training Act (BBG), SR [412.10](#).

Basic health and welfare

21 Health care and health services

21a) Access to paediatric primary care

The national health report identifies access problems to health care for mothers and children with a migration background and for socially disadvantaged groups.¹ Pregnant and new mothers with a migrant background have more difficult access to perinatal and early childhood care. Migrant mothers and new-borns also experience more health problems than Swiss mothers and new-borns.² Lack of knowledge about the Swiss health care system, language barriers or low income make access to primary health care difficult.³

Gaps in care are also particularly evident in the area of paedio-psychological health care. There are long waiting lists for psychiatric care as well as for non-medical psychotherapy. There is also a shortage of specialists in child and adolescent psychiatry. The structural and health care data on child and adolescent health are also insufficient.⁴

Recommendations:

- To ensure access to primary care for pregnant mothers and children with a migration background and from socially disadvantaged groups.
- To expand specialised offers of psychiatric and psychotherapeutic care for children and adolescents.

21b) Cost coverage for the treatment of rare diseases

There are also challenges in Switzerland regarding the coverage of costs for minors affected by rare diseases.⁵ 80% of rare diseases are genetic and often appear during childhood.⁶ Until the age of 20, disability insurance covers the costs of treatment for certain birth defects.⁷

Although the aim of compulsory health insurance is to cover the costs of diagnosing and treating an illness and its consequences⁸, reimbursement is not always guaranteed.⁹ Certain medicines for the treatment of rare diseases are very expensive and the coverage of the costs by the health in-

insurance companies is not ensured or is associated with a high administrative effort for the attending physicians or the parents.¹⁰ The lack of a legal basis to regulate reimbursement for orphan

drugs exposes affected children to the risk of unequal treatment.¹¹

21c) Healthy diet and lifestyle

Overweight and obesity are widespread in Switzerland. In 2017, 11.7 % of children between the ages of 6 and 12 were overweight, and 3.3 % were obese.¹² Obese children often remain overweight or obese as adults. The risk for numerous diseases

is increased and effects on mental health are usually unavoidable. Prevention and the promotion of a healthy lifestyle and diet are therefore central. So far, there are no restrictions in the area of food advertising in the media.

Recommendations:

- To restrict marketing and advertising of foods high in sugar and fat.
- To create standards for nutrition in childcare facilities, schools and homes as well as asylum accommodation.
- To raise awareness for healthy eating among parents and children, e.g. through educational institutions.
- To introduce transparent labelling for processed food products to inform consumers about the nutritional quality of the products and thus make it easier for parents to choose healthy products.
- To create a legal basis that requires the sugar content of processed foods to be indicated in the nutrition declaration on the packaging.
- To consider taxing products with free sugars (e.g. sweet drinks).

22 Breast-feeding

22a) Comprehensive strategy

In Switzerland, there is no national strategy to promote breastfeeding. A study from 2014 shows a high initial breastfeeding rate of about 95%, in the 3rd and 4th month of life 68% of the children are still fully breastfed.¹³ Data on breastfeeding are only collected on a random basis every 10 years. There is no national monitoring. The num-

ber of certified baby-friendly hospitals that consistently promote and support breastfeeding has been steadily decreasing since 2009. Currently, in addition to political support, there is an increasing lack of resources to continue the initiative.¹⁴

Recommendations:

- To develop a national strategy that includes measures to protect, promote and support breastfeeding.
- Systematic and regular data collection on breastfeeding behaviour, e.g. for epidemiological evaluations of communicable and non-communicable diseases.
- To establish the criteria of the UNICEF and WHO Baby-Friendly Hospital Initiative as a standard for all maternity and paediatric hospitals.

22b) Marketing of breast milk substitutes

The International Code of Marketing of Breast-milk Substitutes is only partially anchored in Swiss law and does not apply to stage-two milks. Accord-

ingly, no sanctions are possible for violations of the Code.¹⁵

Recommendations:

- To incorporate all the provisions of the International Code into national legislation and apply them to stage-two milks.
- To include information on the Code in the training courses for nurses, midwives, breastfeeding counsellors, parent counsellors and paediatricians.

23 Mental health

23a) Suicide prevention

Child and youth suicide is the subject of numerous international recommendations to Switzerland.¹⁶ The lack of a coordinated national strategy and the regional differences in the availability of prevention services are repeatedly criticised. In 2016, Switzerland adopted a national action plan for suicide prevention, but the necessary financial resources are missing for its effective implementation.

From 2009 to 2013, an average of 133 young people died by suicide each year, 32 of them before their 20th birthday.¹⁷ For suicide attempts, the rate is significantly higher for adolescents and

young adults than for other age groups.¹⁸ Special attention must be paid to vulnerable groups of children. Although the national action plan on suicide prevention refers to the increased suicidality of LGBT people, prevention measures were only anchored in the action plan with regard to LGBT adolescents. Corresponding prevention measures for trans adolescents were not included.¹⁹ Adolescents in the asylum sector, especially unaccompanied youths, are also vulnerable to suicide attempts, as evidenced by seven suicide attempts in 2016.²⁰

Recommendations:

- To evaluate the effectiveness of the measures of the Action Plan on Suicide Prevention and provision of sufficient resources for efficient implementation.
- To anchor measures for trans children and underage asylum seekers in the Action Plan on Suicide Prevention.
- To break down data on suicides and suicide attempts by socio-demographic characteristics.

23b), c), d) Mental Health

A clear insufficiency of psychiatric-psychotherapeutic care for children and adolescents could be observed in 2016, which manifests itself in long waiting times, a lack of professionals, a lack of availability of services in all regions and settings, as well as funding problems.²¹ In 2017, the rate of utilisation of outpatient psychiatric and psychotherapeutic treatments by children and adolescents increased, which indicates a slight improvement in the outpatient care situation. At the same time, however, the hospitalisation rate of children and adolescents is also increasing. This rose by

45.5% between 2012 and 2017. In 2017, the hospitalisation rate of children and adolescents in inpatient psychiatric facilities was 3.2 hospitalisations per 1,000 inhabitants.²²

The teacher training "FOKUS" for the support of children with ADHD in the classroom showed a positive effect.²³ However, it is not known to what extent the planned measures for monitoring and quality assurance of the therapeutic use of methylphenidate-containing medicinal products have been implemented.²⁴

Recommendations:

- To expand outpatient psychiatric and psychotherapeutic services for children and adolescents with mental problems or mental disabilities and ensure community-based professional support for affected children and their families.
- To introduce targeted measures to reduce inpatient treatment of children and adolescents in psychiatric hospitals.
- To ensure that children are hospitalised only when clearly necessary and their rights are respected, and only in institutions specialised in paediatric psychiatric needs.
- To systematically teach the FOKUS approach in all pedagogical training and further education, fully implement the planned monitoring and quality assurance with the involvement of the medical associations.
- To consider new forms of addiction such as the extensive use of information and communication technologies in the prevention and diagnosis of mental problems and illnesses.

24 Standard of living

In Switzerland, 144,000 children are directly affected by poverty. 291,000 children are at risk of poverty.²⁵ These children experience material disadvantage and social exclusion. In addition, affected children have poorer educational opportunities and often remain poor into adulthood.²⁶ The reasons for child poverty are high living costs, parents' low incomes and lack of opportunities to combine work and family life, gaps in children's financial support and a lack of federal investment in the area of children and families. Exemplary measures such as supplementary family benefits in the cantons of Vaud, Ticino, Geneva and Solothurn or the voluntary kindergarten for children from the age of three in Ticino are an exception.²⁷ In many cases, foreign working-poor families waive their right to social welfare benefits, as receiving these benefits makes the naturalisation process

or obtaining a B or C residence permit more difficult.²⁸ For family reunification, the financial situation is also a central element in the approval of an application.²⁹ Switzerland's State Report only very briefly addresses the situation of *sans-papiers* children and completely ignores children from families whose asylum application has been rejected and who are living on emergency support. At the end of 2018, 1,234 children were living on emergency support, 37 of whom were unaccompanied.³⁰ The level of emergency support is significantly lower than that of social assistance benefits and is often paid as a non-cash benefit.³¹ As a rule, emergency aid recipients live in the simplest shared accommodation. The prolonged stay of children in shared accommodation is not compatible with the UN CRC. The cantons of Basel-Stadt and Vaud already pursue an approach

that considers the special needs of children in the emergency aid scheme.³²

In June 2020, the Federal Assembly approved a motion instructing the Federal Council to establish regular poverty monitoring.³³

Recommendations:

- To develop a binding national strategy for combating poverty and provide the corresponding financial resources, including supplementary family benefits.
- To ensure the right to an adequate standard of living for children from families whose asylum application has been rejected; in particular, to ensure access to social aid and refrain from placing them in collective accommodation.
- To record the situation of children in families without regular residence status and/or in emergency accommodation in the national poverty monitoring system.

25 Impact of climate change on the rights of the child

25a) Greenhouse gas emissions

In the period from 1990 to 2018, greenhouse gases were reduced by only 14%.³⁴ Aviation, which has shown a significant increase in emissions and has not been subject to any climate protection regulations, was not taken into account.³⁵ The 2011 Federal Act of 23 December 2011 on the Reduction of CO2 Emissions sets the target of a

20% reduction in CO2 emissions by 2020.³⁶ This has not been achieved. In September 2020, parliament passed the total revision of the CO2 Act for the period after 2020, defining targets and measures for the reduction of greenhouse gas emissions by 2030. However, the measures are too hesitant to achieve the Paris climate goals.

Recommendations:

- To set reduction targets for agriculture.
- To define a binding deadline by which new cars may no longer emit CO2.
- To initiate the Federal Council strategy of net zero emissions by 2050 (context of the national initiative "Glacier Initiative").

25b) Environmental pollution

In 2018, the Federal Office for the Environment prepared a report on the measured levels of nitrogen dioxide, ozone and particulate matter. This shows that the limits defined in Swiss law are regularly exceeded by traffic- and industry-related emissions.³⁷ Persistent exposure to these pollutants can trigger health problems, including asthma, bronchitis, cardiovascular disease and cancer.³⁸ In Switzerland 14% of new cases of

asthma in children each year can be attributed to nitrogen pollution; the symptoms of bronchitis in asthmatic children also increase in connection with long-term exposure to nitrogen dioxide.³⁹

Recommendations:

- To develop a communication strategy on the risks of air pollution that reaches all parts of the population and provides sufficient information.
- To advance proven measures for reducing air pollution such as the expansion of the public transport network, reduction of traffic intensity and the development of car-free cities as well as the promotion of soft mobility.

25c) Impact of investments made by financial institutions on children's rights

The investments of Swiss banks, insurance companies and pension funds cause more than 20 times the emissions of the entire country⁴⁰. Swiss banks alone invest more per capita in fossil fuels than most banks in Europe and worldwide.⁴¹ The investment behaviour of these institutions supports global warming of 4 to 6° Celsius.⁴² Accordingly, these large financial flows not only have a negative impact on Switzerland's climate efforts, but also promote the ongoing and still expanding

use of fossil fuels worldwide. The new CO2 law proposes hesitant measures to redirect the financial flows. However, no binding reduction targets are imposed on the financial sector. As a result, Switzerland will continue to have a disproportionately high carbon footprint. This undermines the right of children to the highest attainable standard of health and to live in a safe and sustainable environment.

Recommendations:

- To ensure that private and public funds flow into carbon-neutral technologies and that the financial sector refrains from investing in fossil fuel-related industries (including climate risk reduction targets as a condition for operating licences).
- To introduce regular monitoring and evaluation of financial institutions with regard to their investment activities, and provide public information on the carbon footprint of the financial sector.
- To adopt the EU Action Plan for a Sustainable Financial Marketplace and adopt binding rules for financial institutions.⁴³

Endnotes

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- 6 Karg, S. and Baumgartner, M. (2017). Susciter l'enthousiasme pour les maladies rares, in: *Paediatrica* (28(1), S. 41-42).
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- 17 Federal Office for Health (BAG) (Hrsg.) (2016). [Suicide prevention in Switzerland. Initial situation, need for action and action plan.](#)
- 18 BAG (Hrsg.) (2016). [Suicide prevention in Switzerland. Initial situation, need for action and action plan.](#)
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Education, leisure and cultural activities

26 Early childhood education and care and children's rights education

26a) Access to early childhood education and care

Children who grow up in a socio-economically disadvantaged or foreign-language environment have poorer educational and developmental opportunities.¹ Studies show that they can hardly catch up without additional measures in early childhood education, care and education (ECEC).² In fact, however, their access to these services is much more difficult.³ Reasons for this include the lack of needs-based support in many communities, parents not knowing about the services or not being able to afford them.⁴ While the number of private and public ECEC services has developed in recent years, especially in small and medium-sized municipalities, there is often a lack of sector-linking strategies and specialised agencies to reach disadvantaged families.⁵ On the one hand, there is a need for low-threshold support services for children at affordable rates (e.g. daycare centres, playgroups, orthopaedagogy), and on the other hand, specific support for dis-

advantaged families (e.g. family centres, home consultation programmes, parent counselling).⁶ In many cantons and municipalities, the funding of such measures is not sufficiently guaranteed.⁷

Especially children and families in the asylum sector hardly benefit from FBBE offers. Although the federal government and the cantons have set themselves the goal that 80% of children aged 0-4 from the asylum sector should be able to speak the language spoken at their place of residence by the time they start compulsory schooling, this is not the case. However, access to professional early intervention activities and counselling services for parents are still inadequately guaranteed in the federal centres as well as at cantonal and communal level.

Recommendations:

- To develop national and cantonal legal foundations and ensure public funding for ECEC so that these services are accessible, affordable and in accordance with the needs of all children from birth; this includes appropriate tariffs, low-threshold registration procedures, comprehensible information and referral of families between the individual services.
- To develop national and cantonal minimum standards for ECEC in asylum centres; to ensure funding for the employment of ECEC specialists in the asylum centres.
- To coordinate actors and ECEC activities in the fields of migration, integration, education, poverty prevention and health promotion at federal, cantonal and municipal level and ensure their cooperation.

26b) Prevention of ESL

Foreign-born young people are still disadvantaged in terms of educational careers. In 2017, only 73% of foreign-born young people completed upper secondary education. In comparison, young foreigners born in Switzerland had a graduation rate of 86%, young Swiss born in Switzerland a graduation rate of 94%.⁸ The education policy goal set by the federal government and the cantons, according to which 95% of young people should achieve a qualification at upper secondary level, has therefore not been achieved for young people with a migration background.

Minors from socially and financially challenged families are also disadvantaged when it comes to vocational training. Children and young people who are on their (vocational) training path, who themselves or their parents receive social assistance, must, depending on the cantonal regulations, give up a large part of their wages to social welfare. This means that they are in fact not paid for their work. It can also reduce the incentive to complete vocational training.

Recommendation:

- To adapt the SKOS social assistance guidelines so that young people under 18 in education who themselves or their parents receive social aid are entitled to at least 50% of their wage as an income.

26c) Children's rights education

Child rights education is still not explicitly anchored in Switzerland's overarching legal provisions (Federal Constitution and numerous cantonal school laws). Nevertheless, Switzerland has strengthened children's rights education in primary schools in recent years. For example, all new language-regional curricula provide for activities in the area of children's rights. However, these are in the area

of cross-curricular specifications and not integrated in the subject-area curricula. Many teaching materials do not contain references to children's rights and teachers who want to carry out children's rights education activities repeatedly encounter resistance.⁹ Therefore, less than half of the children in Switzerland know their rights or the UN CRC.¹⁰

Recommendations:

- To explicitly anchor children's rights education in the language-regional curricula and subject area curricula.
- To raise awareness of children's rights education among school management and teachers and train them in the teaching of children's rights.
- To evaluate the implementation of children's rights education in schools.

27 Rest, leisure, recreation and cultural and artistic activities

To play is the basis of all child development.¹¹ Access to open spaces varies greatly depending on the residential environment. Children who grow up in a less privileged residential environment only play on average about four minutes a day unsupervised in their living environment. 87% of these children do not play outside at all.¹² Parents' increased need for safety and the increase in time spent in out-of-home care settings limits children's ability to play freely in their immediate environment.¹³ The performance orientation of society increasingly structures children's time. Furthermore, media and virtual spaces are also gaining in importance. "Play deprivation" and "inability to play" are the result.¹⁴

For accompanied and unaccompanied children in the asylum system, access to leisure activities and play-friendly spaces inside and outside the asylum centres is often not guaranteed because the centres are not sufficiently child-friendly. The locations of the centres are partly remote and external activities are dependent on social welfare payments at certain locations.¹⁵

Children with disabilities are also disadvantaged in terms of access to culture, recreation, leisure and sport. Often, leisure and cultural facilities are not structurally, technically (e.g. books, films) or content-wise suitable and accessible for children with disabilities.

Recommendations:

- To give priority to the child's right to play in planning projects in public spaces.
- To promote play culture and creativity in care institutions.
- To ensure that underage asylum seekers have access to recreational activities outside of asylum centres anywhere.
- To guarantee accessibility of public and private recreational activities for children with disabilities and provide the necessary resources for this.

Endnotes

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Special protection measures

28 Children in the asylum sector, refugee and migrant children

28a) Age in asylum procedures

Underage refugee children who are not accompanied by their parents have a special position in the procedure and enjoy special protection. The assessment of the age is therefore of great importance in the asylum procedure. According to the Asylum Regulation 1, the age assessment can be clarified with scientific methods.¹ These are forensic medical reports that include a socio-medical history, a physical examination, X-rays of the hand and teeth, sometimes supplemented by a computer tomography of the collarbone.² These invasive methods do not provide precise results and are controversial both medically and ethically.³

Age assessments must not be carried out systematically or arbitrarily: They should only be used if there is doubt about the age of a child confirmed by a paediatrician and if the measures are in the

best interests of the child.⁴ There is currently a lack of multidisciplinary assessments by paediatricians, psychologists and socio-educational caregivers to include the maturity and developmental stage of the child in the age estimation.⁵

Before an age assessment is available, presumed minor asylum seekers must benefit from child-friendly care and accommodation as a precautionary measure. However, the immediate appointment of a trusted person to safeguard the primary best interests of the child and separate accommodation from adults is not systematically ensured in practice.⁶ Another problem is the lack of simple means of appeal against an age assessment decision.⁷

Recommendations:

- In case of doubt, to consistently assume that asylum seekers are minors and consider their special needs with regard to medical care, accommodation and support, including the immediate assignment of a trusted person.
- To use only multidisciplinary age assessment procedures based on developmental psychology. Forensic medical examinations are an exception and a last resort. The burden of proof should not be placed on the juvenile.
- To carry out a forensic medical report only after an interdisciplinary preliminary assessment with comprehensive information and consent of the juvenile. To guarantee the juvenile's right to refuse the examination. To clearly emphasise and recognise the lowest age within the error-range of the expert opinion.
- To establish child-friendly appeal possibilities against the age assessment in the asylum procedure.

28b) Mental health of refugee children

The mental health of many minors seeking asylum is strained due to their refugee experience and post-migratory stress factors.⁸ Experts estimate that about 60 % of young asylum seekers in Switzerland suffer from psychological challenges such as post-traumatic stress syndromes, depression or anxiety disorders.⁹ In 2018, the NCPT expressed concern that mental stress receives too little attention and is given little weight in the asylum process.¹⁰

Minors in the asylum sector often lack access to child-friendly and low-threshold services offered by the psychological and psychiatric specialist agencies¹¹, as is also recommended by the SODK.¹²

Existing services are little known among the minors or are hardly used for fear of stigmatisation.¹³ Furthermore, access to health care is more difficult¹⁴, because many cantons do not cover the costs of intercultural interpreting for paediatric consultations and psychological therapies.¹⁵ There is a lack of appropriate multidisciplinary and trans-cultural socio-educational support, which guarantees bridges to paediatric and psychosocial care.¹⁶ There is also a need for further training opportunities for medical staff, but also for the support staff in the centres for migration-specific stress among minors. This is because trauma after-effects often go unrecognised.

Empfehlungen:

- To adapt recommendations of the expert report on the mental health of traumatised asylum seekers and to implement them for children and young people.¹⁷
- To systematically include psychological stress in health assessments: Establish early detection mechanisms for traumatic stress and include findings in the asylum procedure.
- To ensure access to low-threshold psychosocial services in all federal and cantonal asylum centres.
- To sensitise, train and provide psychological guidance for all persons and centre staff involved in the asylum procedure so that they can contribute to the identification and stabilisation of psychological stress.
- To ensure that the costs of intercultural interpreting services for paediatric or psychological therapies for minors are covered.

28c) Standards for accommodation and care

In 2017, the SODK adopted recommendations on the care and accommodation of unaccompanied children and adolescents in the asylum sector.¹⁸ However, their implementation is neither binding nor is it systematically supported or monitored by the SODK.

In practice, there are still major differences in the accommodation and care of refugee children between the Confederation, the cantons and the municipalities.¹⁹ This applies both to unaccompanied children and to children and adolescents who have fled with their families and are also entitled to special protection.

For example, there are no guidelines on child-friendly living conditions, on the pedagogical qualifications of the staff, on care ratio or on the provision of integration and educational measures.²⁰ There

is also a need for action with regard to the lack of standardised protection concepts for accompanied and unaccompanied children at federal and cantonal level.²¹ In addition, coordination between the most important services (such as child and youth welfare, child protection authorities) and actors to safeguard the primary best interests of minors in the asylum sector is often insufficient. There is also a lack of a supervisory body to review accommodation and care arrangements.²²

With the decline in the number of asylum seekers, the structures, accommodations and measures specifically for children and adolescents have been suspended again in some cantons for cost reasons.

Recommendations:

- To ensure that all asylum shelters have nationally standardised and binding guidelines on family- and child-friendly accommodation and care in accordance with UNICEF/UNHCR²³ and SODK guidelines and regularly review their implementation.
- To provide multi-level and individual accommodation solutions that consider the age, independence and specific vulnerability of minors.
- Child- and age-appropriate accommodation and care concepts in accordance with the evaluation of the pilot project on unaccompanied children also for accompanied children in federal and cantonal centres²⁴:
 - To ensure sufficient resources for specialised socio-educational support staff to carry out individual case work, individual assessments and social group work.
 - To ensure access to regional civil society services and youth-specific environments for gaining experiences.
 - To establish an independent supervisory body that regularly monitors the child-friendly accommodation and care of unaccompanied and accompanied children in the cantonal and federal asylum centres.
- To define interfaces between the Confederation, cantons and municipalities so that care, legal representation and, in particular, child protection are guaranteed when children and adolescents transfer to the cantons and municipalities. To clarify responsibilities and cost credits for child protection measures at federal, cantonal and municipal level.

28d) Right to a trusted person for unaccompanied children

Immediately after submitting their asylum application, the unaccompanied children are assigned a trusted person who looks after their interests.²⁵ This is an interim solution and the cantons are required to evaluate and order guardianship measures²⁶ by the child protection authority as soon as possible.²⁷ However, these are only assigned after allocation to the cantons (in extreme cases after 140 days) and not systematically everywhere. In practice, this leads to considerable delays and

gaps in the protection of minors.²⁸ The local child and adult protection authorities must already initiate child protection measures in federal asylum centres so that the minors can benefit - immediately and without gaps - from the support of a guardian.²⁹

Unaccompanied children are assigned a legal representative during their stay in federal asylum centres. This person also assumes the role of a trusted person.³⁰ This dual role is problematic: for example, many officers lack either qualifications in the legal field or expertise in the psycho-social

field.³¹ Moreover, one legal representative is responsible for many minors at the same time, which can lead to an insufficient establishment of trust in the relationship. In order to ensure quality support and representation, there is a need to specify the tasks of the trusted persons.

Recommendations:

- To involve child protection authorities from the moment the unaccompanied child is identified in the federal asylum centre so that sustainable solutions can be found in the best interests of the child.
- To clarify cantonal responsibilities for child protection measures for unaccompanied children as quickly as possible and establish guardianships for all UMAs, regardless of their status.
- To define minimum standards with regard to the necessary psychosocial and legal qualifications of trusted persons and legal representatives for the accompaniment of unaccompanied children and anchor them accordingly in the service providers' specifications, as well as harmonised quality criteria for case management throughout Switzerland (e.g. clear tasks, number of clients, interpreting services).

28e) Exemption of unaccompanied children from the accelerated asylum procedure

Since the revision of the Asylum Act came into force, asylum applications by minors are also subject to the accelerated asylum procedure.³² This procedure has shortened the processing of asylum applications and thus the duration of uncertainty about the outcome of the asylum procedure. However, the speed of the process does not correspond to the often complex situation of unaccompanied children. Systematic clarifications of the primary best interests of the child, as recommended by the UNHCR,³³ are not part of the asylum procedure.

Although the law allows for an individual examination in the extended procedure for complex cases and persons in particular need of protection, the SEM does not systematically make use of this for unaccompanied children. This entails the possibility that risks to the best interests of the child are not given sufficient attention and that the procedural guarantees are not respected.³⁴

Recommendations:

- To systematically determine the primary best interests of the child in the asylum procedure and to base decisions in the procedure on this³⁵.
- To exempt unaccompanied children from the accelerated asylum procedure and examine their asylum applications in the extended procedure.
- To assign underage asylum seekers to a canton as quickly as possible and place them under child protection measures of the cantonal authorities.

28f) Administrative detention of minors

The Foreign Nationals and Integration Act stipulates that minors aged 15 and over can be placed in administrative detention for up to 12 months.³⁶ Between 2017 and 2018, approximately 36 minors between the ages of 15 and 17 were detained for a period ranging from 2 to 120 days.³⁷ Detention of minors on the basis of their residence status is not compatible with the UN CRC and runs counter to the principle of the primary best interests of the child. It is true that Article 37 b UN CRC states that children who have committed a criminal offence may be detained as a last possible resort and for the shortest possible period. However, this applies to measures under juvenile criminal law and not at all as a measure under Aliens Law.³⁸

The detention of parents with children under Aliens Law may result in children under the age of 15 also being detained or separated from their parents and placed in a home.³⁹ A report by the National Council's Control Committee revealed that around 200 minors were taken into administrative detention in the period from 2011 to 2014. Of these, the majority were under 15 years of age

and presumably detained in the family unit.⁴⁰ The detention of children under 15 years of age is not compatible with the UN CRC and Swiss legislation.⁴¹ The Federal Council has therefore instructed the State Secretariat for Migration and the cantons to examine alternative options for enforcing the removal of families.⁴² However, reliable cantonal statistics on the use of detention of minors under migration law are still lacking.

The differences regarding the legal situation and practice of ordering administrative detention between the cantons are considerable: while most cantons refrain from detaining under-15 year-olds, only the cantonal legislation of Geneva and Neuchâtel prohibits the detention of minors under Aliens Law even for over-15-year-olds.⁴³ The National Commission for the Prevention of Torture criticises the fact that individual cantons adhere to this practice.⁴⁴ A general, national ban on detention for reasons of migration law also for minors over 15 years of age has been rejected by parliament.⁴⁵ In addition, juveniles in administrative detention are still not placed separately from adults in all cantons⁴⁶.

Recommendations:

- To adapt the Federal Act on Foreign Nationals and Integration (AIG) and cantonal legislation and prohibit the administrative detention of minors.
- To ensure that minors are accommodated in family-like structures specialised in minors or in open accommodation suitable for families without prison-like character and receive individual care. To ensure family unity.
- To issue a written confirmation to persons in emergency assistance and Sans-Papiers as a substitute for the missing residence permit, so that they are not fined or detained as illegal residents during personal checks by law enforcement officers

29 Rights of children without a regular residence status (*sans-papiers*)

According to estimates, there are more than 76,000 people living in Switzerland without regular residence status (*sans-papiers*).⁴⁷ Over 9,000 of these are children.⁴⁸ Also concerning is the more recent phenomenon of unaccompanied *sans-papiers* children who do not apply for asylum. They are often in a very precarious situation, as they are not registered by the competent authorities and do not have access to the child protection system.⁴⁹

According to the Federal Constitution⁵⁰ and the recommendations of the Swiss Conference of Cantonal Ministers of Education (EDK), all children in Switzerland have a right to schooling, regardless of their residence status.⁵¹ Schools are there-

fore not allowed to pass on data on underage *sans-papiers* to the migration authorities. Parliamentary initiatives to undermine this protection have only narrowly failed.⁵² *sans-papiers* children remain disadvantaged in many areas: Although stipulated in the law,⁵³ children and young people without regular residence status very rarely have access to early childhood programmes or vocational training.⁵⁴ In addition, many *sans-papiers* do not have health insurance for fear of contact with the authorities or for cost reasons. The effects of the measures to combat the COVID-19 pandemic have intensified the precarious situation of many *sans-papiers* families.⁵⁵ National solutions for the registration of people without regular residence status are urgent.⁵⁶

Recommendations:

- To implement existing solutions for the regularisation of *sans-papiers* children and their families throughout Switzerland (cf. pilot project "Operation Papyrus" in the canton of Geneva).⁵⁷
- To guarantee effective access to basic health care for all children, regardless of their legal status, and ensure child protection.
- To guarantee access to compulsory health insurance for *sans-papiers* families and inform them about options such as premium reductions.
- To ensure that *sans-papiers* families have access to legal entitlements to social benefits (family allowances, old-age and surviving dependants' pensions, disability pensions, compensation for loss of earnings).
- To ensure access to school, vocational and post-compulsory education for minors without regular residence status with specific support measures, e.g.:
- To ensure access to early support, education and care services through targeted information and financial support;
- To keep information on the residence status of pupils in the education sector strictly confidential and sensitise professionals in the school and education sector to the basic rights of *sans-papiers*.
- To grant hardship residence permits with less strict requirements for *sans-papiers* children and young people who want to complete basic vocational training. Promote their vocational follow-up solutions, e.g. by informing employers about the legal access to vocational training.

30 Administration of child justice

30a) Age of criminal responsibility

Swiss law sets the age of criminal responsibility at 10 years (Art. 3 para. 1 Juvenile Criminal Code).⁵⁸ The statistics of child convictions show that an age limit of 14 years would be closer to reality: a large proportion of child offenders are over 15 years old. In 2019, out of 14,773 convictions, 12,319 offences were committed by juveniles over 15 and 2,454 offences were committed by juveniles under 15 years of age.⁵⁹

However, the Juvenile Penal Code is guided by the principles of protection and education of juveniles. It is a dual system that can impose educational and therapeutic protective measures as well as punishments. The measures are designed

for protection and integration (e.g. ordering personal support) and are similar to those in civil law. The penalties are also often of an educational nature.

Moreover, there are significantly more resources available for the child justice system than for child protection under civil law. Therefore, raising the age of criminal responsibility will only be effective if the protection of children under civil law is significantly strengthened and provided with more human resources. Furthermore, improved coordination between the child protection and child justice authorities is a prerequisite.

Recommendation:

- To strengthen child protection under civil law and consider raising the age of criminal responsibility.
- To ensure coordination between the child justice authorities and the civil law authorities.

30b) Access to free legal representation

The Juvenile Criminal Procedure Code guarantees accused children access to legal representation. The costs of legal representation must be borne by the accused child or the legal representation, if the means are available. If this is not the case, an official legal defence is appointed. However,

the conditions for the appointment of an official legal defence are very strict and only apply if the family lacks the means to pay for court costs in addition to their living expenses. In practice, legal representation is used with restraint in juvenile criminal proceedings.

Recommendation:

- To ensure access to free legal representation in all cases and withdraw the reservation to Art. 40 para. 2 lit. b no. ii UN CRC.

30c) Training of professionals

Although some universities have specific courses or modules (e.g. the interdisciplinary Master's on children's rights at the University of Geneva or the certificate course in juvenile criminal law at the University of Fribourg), professional groups in the justice sector are not systematically trained on children's rights. Only a few lawyers are specialised in the field of children's rights. Some initiatives are worth mentioning: the private association "Kinderanwaltschaft Schweiz", which offers certification for children's advocates; the Commission for Children's Rights of the Geneva Bar Association, which organises conferences on juvenile criminal law; and further training modules at the Universities of Fribourg and Lucerne in the field of child hearings and legal representation. There are no comparable training programmes in French-speaking Switzerland.

The Confederation has recognised the need for action and stated in the package of measures to "close the gaps in the area of children's rights" that expertise on children's rights is indispensable in the area of child justice. However, the package only provides for an inventory to be carried out without defining concrete measures. The additional human and financial resources required for this are also not secured. Only in a second step does the Confederation intend to examine the provision of additional funds for training and information services.

Recommendations:

- To develop appropriate measures for the training of personnel who work with children in the justice system.
- To provide sufficient human and financial resources to implement these measures.
- To ensure that training and further education programmes reach all professional groups in the justice system who work with children.
- To introduce mandatory training in child interviewing and developmental psychology for all professionals involved in child justice proceedings.

30d) Detention separate from adults

The Juvenile Justice Act of 2003 stipulates that juveniles in the correctional system must be accommodated in separate spaces from adults.⁶⁰ This also applies to pre-trial detention.⁶¹ The ten-year period granted to the cantons for the implementation of separate placement in the penal system expired at the end of 2016.⁶² Nevertheless, separation is not yet guaranteed in all institutions.⁶³ The Confederation plans to conduct a status report on implementation in the cantons in order to decide whether the reservation to Art. 37c UN CRC can be lifted.⁶⁴

Even in police detention, separation is not guaranteed everywhere: In the canton of Zurich, for example, over 2 000 children and adolescents were placed in the provisional police detention centre for adults between 2013 and 2015.⁶⁵

Recommendation:

- To ensure separate placement of children and adults in detention without exception - this also applies to police custody and pre-trial detention, administrative detention and youth welfare placement.

Endnotes

- 1 Art. 7 para. 1 Asylum Regulation 1 of 11 August 1999 on Procedural Matters (Asylverordnung 1, AsylV 1), SR 142.311.
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- 4 Allianz für die Rechte der Migrantenkinder (ADEM), Amnesty International Switzerland, SSI, Schweizerische Flüchtlingshilfe (SFH), Terres des hommes, UNICEF und UNHCR (2019). [International guidelines on age assessment. A fact sheet for legal representatives, counsellors and persons of trust of MNAs.](#)
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- 7 ADEM, Amnesty International Schweiz, SSI, SFH, Terres des hommes, UNICEF and UNHCR (2019). [International guidelines on age assessment. A fact sheet for legal representatives, counsellors and trusted persons of UMAs.](#)
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Optional protocols

31 Optional Protocol on the sale of children, child prostitution and child pornography

31a) Comprehensive strategy

One in four victims of human trafficking is a minor.¹ Nevertheless, only a fraction of underage victims is identified and registered. On the one hand, this is due to the fact that many children are not aware of their victimisation and exploitation situation. Especially in the family environment, it is difficult for them to make statements and to seek help. On the other hand, the common identification measures, including those of the «National Action Plan against Human Trafficking 2017-2020»², are insufficiently child-centred. These are mostly police indicator lists which target female victims in the erotic sector and do not sufficiently detect underage and especially male victims. Trafficked persons need to be better identified within the asylum system, as child victims are often encouraged to present themselves as adults. The «family members» of the child are not always actual relatives; sometimes family members are involved in trafficking themselves.

There is also a lack of cross-sectoral coordination to protect against child pornography, child prostitution and child trafficking. The federal government and the cantons only ensure the coordination function sporadically. Where coordination bodies exist (e.g. at the Federal Office of Police Fedpol), their work is restricted by restructuring and limited resources.

There is still no systematic data collection on child prostitution, child pornography and child trafficking in Switzerland. This means that there is no knowledge base to combat these crimes with targeted measures.

Recommendations:

- To develop a comprehensive strategy for the implementation of the OPSC; to strengthen coordination and the relevant bodies.
- To raise awareness of the phenomenon of child trafficking among relevant actors such as border guards, guardians, migration authorities, social workers, legal advisors and staff in asylum centres, and inform them about the procedure to follow in case of suspicion and about reporting possibilities so that victims of child trafficking can be identified.
- To establish clear processes for dealing with suspected child trafficking and set up specialised child protection facilities that provide immediate and comprehensive support to trafficked persons.
- To give greater consideration to the protection of children in the digital world in the federal government's digitalisation strategy³ by promoting high-quality online content, increasing awareness and empowerment, creating a safe online environment for children and combating the sexual abuse and sexual exploitation of children within the framework of the European strategy «Better Internet for Children».⁴

31b) Criminal sanctioning of child trafficking and sexual exploitation through information and communication technologies

Protection against sexual exploitation through information and communication technologies is patchy in Switzerland. A national strategy is lacking. For example, there is still no specific criminal offence in Switzerland for so-called «Grooming», contacting children with the aim of performing sexual acts. The sexual harassment of children in chats also remains unpunished.⁵

The Confederation is assigning more and more competences to the cantons: The Fedpol has announced that it will hand over undercover investigations in the area of child pornography on the internet to the cantons from January 2021. However, the resources necessary for this are not available in most cantons.

Recommendations:

- To ensure protection of all children from sexual exploitation through information and communication technologies and ensure the legal, technical, financial and organisational conditions for this.
- To establish or support specialised hotlines to make it easier to report illegal content.
- To establish specialised law enforcement agencies that can ensure rapid and systematic identification of child pornographic material in online channels and ensure rapid removal from the Internet.
- To recognise sexual harassment of and sexual acts with children online as an official offence and explicitly criminalise it.

32 Optional Protocol on the involvement of children in armed conflicts

In the Swiss asylum process, there are no mechanisms to ascertain child-specific reasons for fleeing in the case of applications from minors, such as forced recruitment by armed groups. Specialist organisations complain that the interviews conducted by the SEM with minors in the asylum process are not child-friendly and that the officers are not specifically trained on the subject of child soldiers.⁶ This does not systematically ensure the protection of these vulnerable persons under the Refugee Convention. The case law of the Federal Administrative Court is contradictory on this issue. In the case of a Syrian minor asylum seeker, it ruled that the forced

recruitment of this child was admissible as grounds for asylum.⁷ In a similar case, in which a boy claimed that he had been forcibly recruited by the Taliban, the court rejected this circumstance as a reason for asylum. In the case of a 13-year-old Sri Lankan applicant of Tamil origin who had been forcibly recruited, the court did not see any special need for protection. It only recognised his trauma when it came to his expulsion from Switzerland and classified this as unreasonable.⁸ This shows the urgency of raising awareness of this issue among the authorities and the judiciary.

Recommendations:

- To conduct child-friendly hearing procedures and examine child-specific reasons for fleeing, such as the forced recruitment of child soldiers for the granting of political asylum.
- To raise awareness for the issue of forced recruitment among staff of the authorities, the judiciary and child and youth welfare institutions and train them to identify and support minors who have been forcibly recruited.
- To ensure access to child protection services, medical and psychological care, education and training for child soldiers or minors who have fled recruitment.

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List of abbreviations

BAFU	Federal Office for the Environment
BAG	Federal Office of Public Health
BFS	Federal Statistical Office
BGE	Decision of the Federal Supreme Court
BVGE	Decision of the Federal Administrative Court
CAT	UN Committee Against Torture
CC	Swiss Civil Code
CEDAW	UN Committee on the Elimination of Discrimination against Women
CMW	UN Committee on Migrant Workers
ECEC	Early Childhood Education and Care
ECHR	European Convention on Human Rights
EDK	Swiss Conference of Cantonal Ministers of Education
EKKJ	Federal Commission for Children and Youth Affairs
EKM	Federal Commission on Migration
ESL	Early School Leaving
Fedpol	Federal Office of Police
FGM	Female Genital Mutilation
FSIO	Federal Social Insurance Office
GPK-N	National Council's Control Committee
GRETA	Council of Europe - Group of Experts on Action against Trafficking in Human Beings
IGM	Intersex Genital Mutilation
IV	Invalidity Insurance
KJFG	Federal Act on the Promotion of Extracurricular Work with Children and Adolescents
KOKES	Conference for Child and Adult Protection
KOVI	Association Corporate Responsibility Popular Initiative
KSMM	Coordination Office against Trafficking in Persons and Smuggling of Migrants
LOIPR	List of Issues Prior to Reporting
NAP	National Action Plan for the implementation of the UN Guiding Principles on Business and Human Rights
NEK	National Ethics Committee in the Field of Human Medicine
NKFV	National Commission for the Prevention of Torture
ODA	Official Development Assistance
OHCHR	Office of the High Commissioner for Human Rights
OPAC	Optional Protocol on the Involvement of Children in Armed Conflicts
OPSC	Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography
PAVO	Ordinance on the Admission of Foster Children
SCHR	Swiss Centre of Expertise in Human Rights
SDGs	Sustainable Development Goals
SEM	State Secretariat for Migration
SFH	Swiss Refugee Council
SKOS	Swiss Conference for Social Welfare
SODK	Conference of Cantonal Directors of Social Affairs
SR	Classified Compilation of Federal Legislation
UN CRC	UN Convention on the Rights of the Child
UNCRC	UN Committee on the Rights of the Child
UNHCR	UN Refugee Agency
UNICEF	United Nations Children's Fund

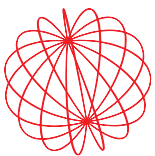
Legal texts

International Law

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