

## Open questions that Child Rights Network Switzerland recommends to include into the List of Issues for Switzerland, June 19<sup>th</sup> 2014

### Topics that do not figure in the state party report

- **Reporting cycle:** How does Switzerland justify the delay of the state party report by ten years? On what grounds did the Swiss government decide to hand in one single report covering the excessively long period of 2002 to 2017, instead of handing in the second report in 2007, the second in 2012 and the third in 2017?
- **Budget:** Please provide an overview of the financial means (both on the federal and on the cantonal level) that are invested in child- and youth-related activities
- **Responsibilities of the private sector in relation to child rights:** Which measures (including legal measures) does Switzerland plan to put into practice in order to make sure that child rights are respected by the private sector?

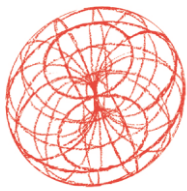
### 1 General measures of implementation

#### Reservations

- Which measures are planned with regard to withdraw the reservation made to article 10, paragraph 1 regarding family reunification?

#### Legislation (Art. 4 CRC)

- How will Switzerland ensure that the principle of the best interest of the child is respected in the implantation of popular initiatives, which are in conflict with international law (for example the initiative on the deportation of foreign national offenders (2010), on mass immigration (2014) and on protection against paedophilia (2014))?
  - Quantitative limits and quotas for immigrants: Following the popular initiative on mass immigration, Switzerland has to adapt its Immigration Act within the upcoming three years due to the new text in the Constitution decided by a majority of Swiss voters on February 9<sup>th</sup> 2014, foreseeing yearly quantitative limits and quotas for immigrants. What safeguards does Switzerland intend to introduce in order to assure that this new legislation respects its international obligations to enforce family unity? In particular, what protection measures does Switzerland intend to put in place in order to avoid children being separated from his or her parents against their will and in order to avoid



any further restrictions concerning family reunification in Switzerland for foreign nationals?

- What measure(s) does the Swiss government intend to set in order to declare void popular initiatives that are in contrast to human rights?
- What measure(s) does the Swiss Government intend to take in order to implement UN-bodies' recommendations? With whom?

### **Coordination**

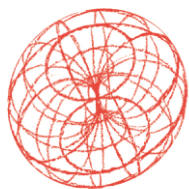
- We ask the Swiss government to provide information on a national plan of action or other measures that could be put in place in order to establish a coordinated children and youth policy based on the new legislation on child and youth promotion.
- What follow-up does the Federal Government foresee with regard to the Swiss Centre for Expertise in Human Rights as it is a pilot project limited to the end of 2015?

### **Training and dissemination of the Convention**

- We ask the Swiss government to provide consolidated and up-to-date information on the training that is currently provided for all professional groups working for and with children (e.g. federal and cantonal parliamentarians, judges, lawyers, law enforcement officials, civil servants, local government officials, personnel working in institutions and places of detention for children, teachers and health personnel).
- How is the amount of financial support for the implementation of the CRC to the civil society calculated and why is it set to (only) 190'000 Swiss Francs?
- Which measures are planned in order to communicate the upcoming Concluding Observations proactively to all concerned target groups (public and private actors, parents, children...) and to make sure that the Concluding Observations are respected?
- Which measures are planned in order to translate and promote the General Comments of the Committee on the Rights of the Child?

### **Data and statistics**

- Which follow-up activities are planned based on the results of the National Research Programme 52 "Childhood, Youth and Intergenerational Relationships in a Changing Society"?
- Which measures does the Swiss government plan in order to establish a systematic collection and a consolidated provision of data on the situation of children in Switzerland covering the range of the CRC?
- How does Switzerland ensure that evidence-based statements on specific risk groups, vulnerable children and children at risk can be made and appropriate political strategies defined?



- How does Switzerland ensure regular systematic reporting on the situation of children in Switzerland?

## 2 Definition of “children”

- What are Switzerland’s intentions with regard to raising the minimum age for criminal responsibility to 12 years?
- What are the government’s plans with regard to the discussed lowering of the minimum age for hazardous activities for vocational trainees to 16 years of age?

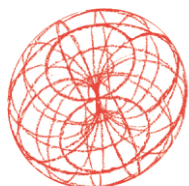
## 3 General principles

### Non-discrimination

- We ask the Swiss government to provide information on strategies and measures (including legal measures) that aim at ensuring the rights of vulnerable and disadvantaged groups of children (asylum seekers, sans-papiers, handicapped children, poor children).
- We ask the Swiss government to provide information on the situation of homosexual, bi-sexual, transgender and intersex children and youth.

### Best interest of the child

- How is article 3 CRC systematically respected in legislation and budget processes as well as in legal and administrative procedures?
- What are the intentions of the Swiss government to clarify the divergence between the German notion “Wohl des Kindes” and the French notion “intérêt supérieur de l’enfant”?
- What concrete procedures does Switzerland intend to introduce in order to assure that the Best Interest Assessments and Best Interest Determination in view of finding a durable solution become a part of the Asylum decision process of an unaccompanied child? In particular, how does Switzerland intend to assess the situation in the country of origin in view of being able to determine whether a return decision has indeed taken in consideration the best interest of the concerned unaccompanied child?
- On July 1st 2009, the new Federal Act on International Child Abduction and the Hague Conventions on the international Protection of Children and Adults entered into force. It is one of the child-friendliest acts worldwide in this domain. Nevertheless, several politicians and representatives of the civil society raised their concerns whether the application of this act really takes the best interest of the concerned abducted children in account. Furthermore, Switzerland decided that the application of the Hague Convention 1996 on International Child Protection stays in the responsibility of 26 cantonal central



authorities. As there is an increasing number of transnational families worldwide, the application of the Hague Convention becomes more important in order to assure child protection in transnational situations.

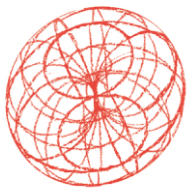
- Does Switzerland intend to evaluate the application of this new federal act after 5 years of implementation by assessing whether the best interest of the concerned abducted children are indeed taken in account as a primary consideration?
- What measures does Switzerland intend to put in place in order to better support the central authorities in the cantons in their application of the Hague Convention and in a nationwide harmonisation of its application?

### **Right to life**

- We ask the Swiss government to provide information on the situation of asylum seeking children that only receive emergency assistance.
- What are Switzerland's plans with regard to a national strategy on the prevention of suicide among children and young people?

### **Respect for the views of the child**

- How does Switzerland ensure that the child is given the opportunity to be heard in all matters affecting the interest of a child including all regulatory areas of the legal, health and education sectors?
- Civil proceedings:
  - Which measures are planned as a follow-up of the Praxisübersicht of the federation from 2005 (Ziff. 100)?
  - Which measures are planned as a follow-up of the evaluation concerning children in divorce proceedings from the National Research Programme 52 "Childhood, Youth and Intergenerational Relationships in a Changing Society" and with regard to the fact that only 10% of children are heard in divorce proceeding?
  - How many children are heard in civil proceedings in Switzerland?
  - Which training measures are in place for courts and authorities in order to ensure that the procedural rights of children are effectively implemented?
  - Please provide up-to-date data on the hearing of children in administrative proceedings (school; Foreign National Act and asylum law).
  - Why are children in proceedings concerning family reunification under the Foreign National Act only heard from an age of 14 years?
  - Please provide information as to how children of provisionally admitted asylum seekers are heard when their parents have to leave the country



when the ban to return (*Rückreisesperre*) is lifted after having spent years living in Switzerland.

- Criminal proceedings:
  - Which measures are in place or planned in order to protect children when they are questioned in court and in proceedings?
- In general:
  - Please provide information on measures that the Swiss federation foresees in order to promote and implement the Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice of November 17, 2010.
  - Please provide information as to how courts and authorities install legal representatives for children in all sorts of proceedings.
  - Please provide information as to how young people are involved and consulted in legislation procedures.

#### **4 Civil rights and freedoms**

##### **The right to know one's identity**

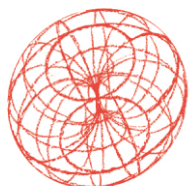
- We ask the Swiss government to provide information on measures that aim at ensuring the right to know one's identity in cases of medically assisted reproduction.

##### **Protection against abuse**

- Please give an overview over possibilities and institutions that children suffering from violence (by persons or institutions) can turn to.

##### **Corporal punishment**

- Swiss legislation has a serious gap in legislation with regard to corporal punishment as no explicit legal provision prohibits corporal punishment by parents and others with authority over children. Art. 311 Abs. 1 E ZGB that is addressed in the state party report applies only in cases of excessive violence when other measures of child protection have been exhausted and have no preventive effect. Several studies show that corporal punishment is widely accepted among the Swiss population as a means of education in childrearing.
  - How will the Swiss government promote the enactment of an explicit legal provision? Civil society professionals of child care and child protection recommend an amendment to the Swiss Civil Code Article 302 (Education/ Parenting) "to promote explicit prohibition of all



- corporal punishment by parents and others with authority over children”.
- How can Switzerland ensure that its federal legislation does fully implement Article 19 of the Convention?
  - Does the Swiss government plan to carry out a public awareness raising campaign against corporal punishment of children?
  - What kind of actions are currently being carried out or planned to ensure that teachers, child care professionals, parents or any other person with authority over children are aware of:
    - the right of the child under the CRC to be protected from violence, including corporal punishment
    - the harmful impact of corporal punishment on the wellbeing and healthy development of the child
  - How does the Swiss government provide for information and support to parents or any other person with authority over children on violence-free upbringing? For example through courses on violence-free childrearing/parenting.
  - How does Switzerland respond to the recommendations made by the Global Initiative "End All Corporal Punishment of Children"? ([www.endcorporalpunishment.org](http://www.endcorporalpunishment.org))
  - How has Switzerland responded and acted upon the recommendations made in the UPR second cycle (7 December 2012, A/HRC/22/11, Report of the Working Group, paras. 122 and 123):
    - "Increase its efforts to carry out public-awareness campaigns on the negative effects of violence against children, especially corporal punishment (Iran) - accepted by Switzerland
    - "Establish an explicit legal ban on corporal punishment of children in the home (Liechtenstein) - rejected by Switzerland
  - A recent study draws attention to the direct link between children who experienced a violent upbringing and the likeliness of carrying out an assault or aggression as adolescents. What measures that the Swiss government plan to respond to the study's findings? (cf. study on adolescent violence and delinquency by Prof. M. Killias<sup>1</sup>)

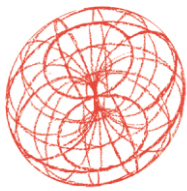
### **Domestic and family violence**

- Does the Swiss government plan to improve the empiric basis on the situation of children affected by family violence?

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<sup>1</sup> Available online:

<http://www.rwi.uzh.ch/lehreforschung/alphabetisch/killias/publikationen/GewaltundbelastendeKindheitserlebnisse.pdf> (last checked June 17 2014).



- How does the Swiss government ensure the follow-up of scientific reports, e.g. the WHO European Report on preventing child maltreatment (2014) and evidence on child abuse in view of a better protection of children?
- How is the progress on coordination between the cantons in matters of child protection and its effects monitored?
- What is the national/intercantonal strategy to address violence in the family?
- How could easy-access counselling for children be made available all over the country?

### **Sexual violence**

- How does the Swiss government plan to ensure that reliable and detailed data on sexual violence and other forms of violence and ill-treatment of children is collected?
- No representative national studies on sexual violence against children exist. What studies are planned to give a detailed overview on the situation in Switzerland?
- How does the Swiss government ensure the follow-up of scientific reports, e.g. the WHO European Report on preventing child maltreatment (2014) and evidence on child abuse in view of a better protection of children?
- How does the Swiss government develop and implement evidence-based national prevention strategies against sexual abuse and violence?
- Child protection professionals highlight the importance of age-appropriate sexual education as an important measure of prevention from sexual victimisation. How does Switzerland ensure age appropriate sexual education of children and adolescents all over the country and according to common standards?

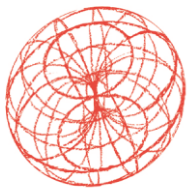
## **5 Family environment and alternative care**

### **Rights of foster children who are separated from their parents**

- Please provide information on follow-up measurements based on the results of the study "*Wenn Kinder mit Behörden gross werden*" from the National Research Programme 52?
- How many children are currently living in foster care (families, institutions)?

### **Rights of children with a parent in jail**

- How many children with parents in jail are currently living in Switzerland?
- We ask the Swiss government to provide information on measurements in place for children with parents in jail.



### **Adoption and surrogate motherhood**

- On 29th November 2013 the Federal Council published its report on surrogacy and concludes that although surrogacy is prohibited in Switzerland, surrogacy indeed became an issue as intended parents with residence in Switzerland use surrogate mothers abroad. A newspaper report (*Blick*, 15.06.2014<sup>2</sup>) documented the case of a boy born to Swiss parents by a surrogate mother in the U.S. whose birth certificate was not accepted by Swiss authorities. What does Switzerland intend to put in place in view of protecting the rights of children living in Switzerland who are born by surrogate mothers abroad?

### **Family reunification under the Foreign Nationals Act and the Asylum Act**

- According to Art. 85(7) of the Foreign Nationals Act, temporarily admitted persons can apply for family reunification at the earliest three years after temporary admission has been granted and if there are important family reasons. Asylum Seekers are still not entitled to family reunification. How does Switzerland intend to assure that practices in the cantons related to requests of family reunification are harmonised and guided by the principle of the best interest of the concerned children?

## **6 Basic health and welfare**

### **Female genital mutilation**

- How does Switzerland ensure that the topic of female genital mutilation (FGM) is integrated into training and further training curricula for professionals in the relevant domains of medicine, social welfare and asylum?
- How does Switzerland intend to intensify the dialogue with representatives of migrant communities from countries where FGM is wide-spread? How are such representatives going to be involved in preventive measures?

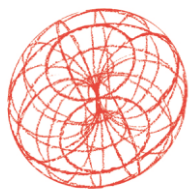
### **Baby-friendly hospitals**

- How does Switzerland ensure that infants and young children enjoy a safe transition process since birth and that risk families are identified and supported at an early stage?

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<sup>2</sup> Available online: <http://www.blick.ch/news/schweizer-ehespaar-laesst-baby-in-den-usa-austragen-und-erlebt-die-hoelle-streit-um-das-kind-mit-den-drei-muettern-id2914288.html> (last checked June 17th 2014).





## 7 Leisure time and recreation

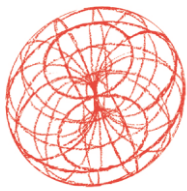
### Right to education

- Since 1st February 2013, well integrated undocumented children, according Art 30a (OASA, Ordonnance relative à l'admission, au séjour et à l'exercice d'une activité lucrative), can apply for a permit in view of commencing an apprenticeship. To be able to submit such a request, the concerned young person and his or her family members are entitled to inform the immigration authorities about their irregular migration situation in Switzerland. What monitoring measures does Switzerland intend to establish in order to evaluate the impact of this new ordinance on undocumented children?

## 8 Special protection measures

### Refugee, asylum-seeking and unaccompanied children

- What does Switzerland intend to put in place in view of abolishing the striking cantonal differences concerning the quality of reception, care and post-mandatory schooling of unaccompanied minor asylum seekers in the cantons? Does Switzerland consider it as realistic that all cantons in the very near future will have specialised reception facilities? What alternatives are foreseen in view of harmonising practices in the cantons?
- New ordinances to the Asylum Act entered into force 1st October 2013 and are foreseen until 28th September 2015. Among these is the test period ordinance (*Testphasenverordnung, TestV*), foreseeing that unaccompanied minor asylum seekers are centralised in specialised reception facilities. A first facility opened its doors in Zurich on 1st January 2014 on a test base.
  - According to Art 5 of those ordinances, the legal representative of an unaccompanied minor staying in this test facility also takes over the role of the "person of trust", the legal guardian. Whereas Switzerland underlines in the State report that a "person of trust" is present in one of the five asylum registration centres since asylum decisions can be taken in such centres, Switzerland does not distinguish any more between the roles of a legal representative and a legal guardian during the test phase. What are the first experiences on the reception of vulnerable groups like unaccompanied minors and single mothers in the test facility? Why are the unaccompanied minors not represented by a legal guardian?
- We ask Switzerland to provide information about the existence of cases in which applications for asylum are dismissed (*Nichteintretensentscheid (NEE)*) when minor asylum seekers are unable to provide identification papers within a delay of 48 hours.



### **Imprisonment**

- Migrant children in administrative detention: Migrant children between 15 and 18 years of age are still at risk to be taken into administrative detention. What is more, these children are often identified as adults as the principle of the benefit of doubt is not applied and non-scientifically approved age assessment methods are still in use. What measures does Switzerland intend to establish with regard to administrative detention in order to respect the benefit of the doubt in situations of disputed age and to respect that detention is always used as a measure of last resort?
- Please provide information on the planned revision of the ordinance with regard to the legal representation and guardianship for minors in detention (*Verordnungsänderung zur Ergänzung betreffend der Rechtsvertretung bzw. vormundschaftliche Massnahmen bei Haft von Minderjährigen (Ziff. 413)*).