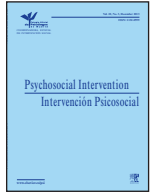


# Psychosocial Intervention

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## Out of home care in France and Switzerland

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### ABSTRACT

This article focuses on the structural similarities and dissimilarities that exist between child protection systems in France and Switzerland, as exemplified by the evolutions of the last decade. The absence of an integrated holistic system and the great diversity of practices between territories in both countries creates a reality that is a challenge for research and practitioners alike. Furthermore, legislation in France and Switzerland is quite similar in that there is no single defined support or welfare body of legislation for children and youth. In both countries, the need for a better understanding of this reality drives the development of better data collection processes and of new in-depth research on these issues.

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### Las medidas de protección a la infancia con separación familiar en Francia y Suiza

#### RESUMEN

Este artículo se centra en las semejanzas y diferencias entre los sistemas de protección a la infancia de Francia y Suiza, de acuerdo con la evolución del último decenio. La falta de un sistema integrado, holístico, y la enorme diversidad de prácticas entre territorios en ambos países crea una realidad que plantea un desafío tanto para la investigación como para los profesionales. Además, la legislación en Francia y en Suiza es bastante parecida en el hecho de que no hay un apoyo definido ni un cuerpo de legislación sobre el bienestar en niños y jóvenes. En ambos países es la necesidad de una mejor comprensión de esta realidad lo que impulsa el desarrollo de mejores procesos de recogida de datos y una nueva investigación en profundidad en este campo.

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When comparing childcare in Switzerland and France to the situation in other European countries, a number of clear similarities become apparent. In terms of general philosophy, a few elements of consensus are of course common with these other countries. For instance, the upbringing of children is understood as a right as well as an obligation of the parents: supporting help is therefore to be preferred when problems in education occur, as opposed to taking children out of the family. Out-of-home care is perceived in this framework as something to be avoided as much as possible. The rights of the parents are taken into account as well as the rights of the child. Parents do not completely lose their parental prerogatives when children are placed.

But whereas in the United Kingdom, Germany or Austria, there are independent Child and Youth Welfare Acts, legislation in France

and Switzerland is quite similar in that there is no single defined support or welfare body of legislation for children and youth. In France, there is no independent and integrated legal code supporting children and families, although considerable legislation exists –there has been talk of consolidating a proper Code for childhood. In Switzerland, questions of childcare and youth are primarily dealt with at canton- and region-level, and they encompass different policies and branches. Despite this striking similarity that set them apart from other European countries, France and Switzerland each have very marking specificities that set them apart when it comes to child protection and childcare.

This article focuses on the structural similarities and dissimilarities that exist between these systems of France and Switzerland, as exemplified by the evolutions of the last decade. However, it should be noted from the start that certain tendencies since the early 2000s are common and echo the preoccupations and evolutions of Europe as a whole.

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## Child protection in France: A kaleidoscope of local realities and organisations structured around national, multi-agency principles

### *Policies regarding children and families in France: philosophy and general principles*

With 64,612,940 inhabitants according to the 2009 general census, France is the second most populated country in the European Union. 17.5% of women and 19.6% of men are under the age of 15; 17.9% of women and 19.2% of men are between the ages of 15 and 29. France is subdivided in 27 administrative regions (5 of which are overseas) and further subdivided into 101 *départements*.

Although local authorities such as regions, municipalities (and especially *départements* when it comes to child protection) play a notable role in the implementation of policies, France remains a unitary state: the power of legislation belongs to the state only. France is indeed notoriously marked by centralism, and family affairs and childcare are in theory no exception. National legislation is the norm for family matters, which are usually dealt with at ministerial level inside the Ministry for social affairs and health, either under the direct authority of the minister himself/herself or under the purview of a deputy minister in charge of families. The public education system, which plays a key role in child protection (as it is the main partner of the services themselves), is also traditionally considered a cornerstone of the French “republican pact” and the Ministry for Education is a particularly prominent one.

However, for all practical intents and purposes, social action, including child protection, is organised at *département* level. Since the devolution process has started in the 1980s, the *département* has been gradually receiving more and more responsibilities in the field of welfare and child protection. This process has culminated with the March 5, 2007 Law regarding child protection, which explicitly states that the president of each *Conseil général* –the political and administrative authority at *département* level– is the local leader for child protection. This is not merely a question of financial and organisational responsibility: *départements* have considerable leeway in defining their priorities and setting up general protocols. Even though the legislation on child protection is defined at national level, the implementation of this legislation by the different *départements* is critical and creates a variety of situations. Equality of treatment is guaranteed by the state so as to ensure that despite differences between *départements*, no person’s access to rights granted by national legislation is undermined.

This governance issue is one of the elements that characterise the contemporary evolutions of the French welfare system. This evolution, however, takes place in a general philosophical framework that has always fluctuated. It is important to note that the French brand of welfare state has never had a single, univocal philosophy. The political philosophies behind the gradual construction of social intervention in France are numerous and not necessarily compatible, invoking notions such as “universalism, republicanism, citizenship, brotherhood and solidarity” (Lazar, 2000).

This ambivalent, fluctuating nature of the social protection system is particularly evident in child protection and family support (Séraphin, 2013).

The first notable law in France regarding child welfare was passed in 1793, the turning point of the French Revolution. Its philosophy is clearly republican in nature: children, as future citizen, are entitled to “the nation’s help”. After the Vichy government made family a pillar of its far-right, collaborationist policies, social issues that dealt with family affairs were given a radical re-think after the Liberation. The Resistance movement had set the basis of a social protection model in its programme and put it in place after the War. With 40 to 50% of all social security spending being at the time spent on families, 1945 and the following years were the high point of “*familialisme*”

with the creation of specialised mother and child universal-access health care centres (PMI), new certification requirements for social workers, the creation of a public and semi-public benefit system (*Allocations familiales*), the development of the juvenile justice system and of family law... The family benefit system plays a central role in this broad system. It is based on the notion that “France is not rich enough, in terms of children, that it might neglect anything that can help them become healthy persons”, to use an oft-quoted sentence from the explanatory statement of the February 2<sup>nd</sup>, 1945 Ordinance No. 45-174 on juvenile justice.

The philosophical references of child protection in France are therefore a very motley set of concepts that oscillate through time between emancipation of the individual and social control, between republicanism and social conservatism. Another fundamental element to take into account in the general framework, beyond the political and historical evolutions of child protection itself, is the broader way in which families are understood.

Family used to be the sole responsibility of the father, with the Latin notion of *patria potestas* (*puissance paternelle*) being the legal rule in France up to the twentieth century (it was enshrined in the *Code Civil* in 1804). Due to social evolutions, not least of which being the women’s rights movements, this has given way to the notion of parental authority (*autorité parentale*) with the June 4<sup>th</sup>, 1970 Law No. 70-459, further defined and elaborated in the March 4<sup>th</sup>, 2002 Law No. 2002-305 as a shared set of rights and obligations for both parents toward their children with the aim of ensuring the children’s protection and development.

The purpose given by law to parental authority gives a new perspective for child protection. So far, child protection measures could only take place in very circumscribed situations: from 1889 onward, a father could be stripped of his authority when the child was in danger. In this framework, intervention always took place *against* the father/parent and by severing ties between children and their families.

Relationships between child protection services and families started to change in 1935, with a decree on child protection passed on October 30<sup>th</sup> that puts more emphasis on providing educative assistance to parents –parents of protected children aren’t necessarily evil, they can be helped to become better parents.

Since 1970, their role has continued to evolve in French law in a way that affects child protection: parents are now recognised as important actors of their children’s education, and the idea is to work alongside them, not against them or in a superior position. This has also been translated in the March 5, 2007 Law by stressing the need to work *with* parents as much as possible. Interventions without the parent’s consent should only come as last resort, or when there is an emergency, or when there are grounds to think that a consensual intervention would be pointless. Interventions without the parents’ consent require a judicial decision.

### *Children and the law: the legal framework*

The French legal and administrative framework is clearly centralised. Law is defined at state level and the ministry in charge of social affairs oversees child protection and family issues.

However, here again, this centralised nature is less and less relevant when it comes to social action and protection: “the welfare state is no longer the pilot or the great organizer, but rather a guide or even a ‘negotiator’ of social action; and it experiences great difficulties in giving a general coherence to its various public policies that correspond to different logics and target a society from which a multitude of contradictory demands come forth” (Lazar, 2000, p. 400-401). There is no denying that from one *département* to the other, child protection services vary greatly in terms of organisation and action, while remaining within the general legal framework.

This general framework relies on the notion of “children in danger” as a population requiring a specific type of intervention.

Danger as a legal concept does not only correspond to child abuse and neglect: children who are in situations where their safety, general development and well-being are seriously compromised are also “in danger”. Children who are not in danger, but are at risk of becoming so, are identified as being “at risk” (*en risque*).

The March 5, 2007 Law reforming child protection poses the following general principles:

- Child protection measures can be decided at “administrative” level, i.e., through a decision of child protective services in agreement with the parents, or at “judicial” level, i.e., through a juvenile court judge’s decision, regardless of parents’ wishes.
- Open-settings (in-home) measures, whether administrative (AED) or judicial (AEMO), are to be preferred over out-of-home placement whenever possible.
- Legal action can only occur when the severity of the situation creates an emergency, or when the family refuses to cooperate, or when previous attempts at administrative measures have patently failed, or when there is serious cause to believe an administrative measure would be doomed from the start.
- An inter-service entity (CRIP) in charge of collecting all information giving rise to concern (*Information Préoccupante*, IP) is set up inside each *département*. It is this entity which analyses all situations brought to its attention, to decide whether some kind of action should be taken and if so, whether this action should be administrative or judicial.
- Professionals and individuals can contact this entity, but they can also directly refer the situation to a judge. If the judge decides that there is no need for judicial action, then the information is sent to the CRIP.

Juvenile courts therefore play a key role in this system. Established by the February 2<sup>nd</sup>, 1945 Ordinance on Juvenile justice, these courts have two functions: they give a judicial response to offenses committed by minors (penal role), and they provide protection and educative assistance to children who are in danger (educative role). These courts are mentioned both in the Civil code and in the Code for social affairs and families; they are distinct from other courts in that they are not specialised in terms of infractions but in terms of public: the idea is to guarantee that in all matters regarding children (under-18s), the primacy of educative action over all other considerations will be maintained.

Even though the subsidiarity principle underpinning the 2007 reform should in numerical terms reduce their importance, since they can only intervene in child protection when administrative measures are not an option, they remain very important: judicially-mandated child protection measures represent on average 68.3% of all open-settings (in-home) measures and 87.5% of all placement measures in any given *département* as of December 31<sup>st</sup>, 2010 (ONED, 2013 b).

Regarding young offenders, it should be noted that the February 2<sup>nd</sup>, 1945 ordinance setting the legal framework of juvenile justice makes a clear link between young offenders (under-18s) and children in danger: a young offender is, first and foremost, a child who is in danger and requires protection. However, in practical terms, the judge’s treatment of the same minor is in such eventuality divided into two distinct cases: one concerning the offense and one concerning the child protection measure (protection measures are in no way penal in nature). The *Protection judiciaire de la jeunesse* (PJJ) is a specialised educative service that caters to children in danger, particularly those who have been convicted of penal offenses.

France was the second European country to ratify the United Nations’ Convention on the Rights of the Child (UNCRC), which came into effect in 1990.

Periodic reports to the UN Committee on the Rights of the Child (CRC) have become more regular since the institution in 2000 (March 6<sup>th</sup>, 2000 Law No 2000-196) of a Children’s Ombudsman (*Défenseur des enfants*) who is particularly in charge of following the

implementation in France of the UNCRC. Despite having the status of independent administrative authority, which only grants the Ombudsman a “soft power” of suggestion and commentary more than a direct legal role, the impact of this function on policy-making is noticeable.

Since 2011, after an intense debate, this authority has been merged with the consolidated Ombudsman (*Défenseur des droits*, an Ombudsman for all questions connected to rights) in 2011. This new entity has been given a constitutional status and a deputy of the general Ombudsman is particularly in charge of children’s rights.

France ranks 13<sup>th</sup> of all 29 countries surveyed in the Innocenti Report Card No. 11 in terms of child well-being (UNICEF Office of research, 2013), faring better on the first two dimensions (material well-being and health and security), where it is 10<sup>th</sup>, than in the other three. Housing and environment is most problematic, since France ranks 16<sup>th</sup>.

#### *Child protection and children in care: key indicators in France*

In France, the public debate regarding the child protection system, its fairness, and efficiency have led to the creation of the National observatory for children in danger (ONED) in 2004. Not only does ONED operate an observation system regarding child protection, it also contributes to the development of research on key issues such as life trajectories after care, identification and assessment of situations, or emerging practices in the field.

##### a) Children in the care system and in-home measures

According to Article L221-1 of the *Code de l’Action sociale et des familles*, the situations in which child protection services can provide help are those in which “the health, security, morality of the minors” are jeopardised and those that may “severely impact their education or physical, affective, intellectual and social development”.

As of December 31<sup>st</sup>, 2010 (ONED, 2013b), there are an estimated 273,000 minors who are concerned by at least one measure carried out by child protection services, which accounts for 19% of under-18s. This number has increased slightly since 2003.

In-home interventions represent a very significant part of measures: 53% as of December 31<sup>st</sup>, 2011 (this rate has remained stable since 2003). Of this total, 68.3% are judicially mandated (AEMO), the remaining 31.7% being decided in agreement with the family (administrative measure, AED).

The rate of open-settings measures (10.2%, 146,700 minors) is slightly superior to the rate of placement measures (9.3%, 133,700 minors). The rate of judicially-mandated in-home measures as opposed to administrative measures remains stable.

Regarding the practical developments of AED and AEMO, the study of the work methods developed in the framework of these measures, both in terms of organisations and intervention procedures, uncovers a number of strong points, as well as interrogations that require elaboration and evolutions. New types of interventions have been developed in the framework of AED and AEMO, which are not necessarily understood by all actors.

The first part of ONED’s 8<sup>th</sup> *Annual Report* (2013b) shows how much AEMO in particular relies on know-how with families and young people and involves working with a network of partners. It summons the judicial system inside educative care and is sustained by a specific work organisation and a specific experience of professional writings.

Research has shown how difficult it is for social workers in the field of in-home intervention to explain their relational activity to the families, which in turn raises questions on its theoretical underpinnings. Resistance by some actors to the setting up of inter-service protocols has been observed. Insufficient quantitative and qualitative research (by academics or fieldworkers) of this activity, as well as limited means and resources given to open-settings interventions are two of the issues raised by ONED’s work.

#### b) Children in foster care

As of December 31<sup>st</sup>, 2010, outplacement remains slightly less common than in-home measures in France (9.3‰ of the general population of under-18s as opposed to 10.2‰ for in-home measures), despite a trend toward more placement measures in some *départements* that has been identified in recent years.

Foster care is preferred to residential care: It accounts for 53.3% of all placement measures, a percentage that remains stable since 2005 nation-wide. Here again, the rate of foster-care placements varies greatly from one *département* to the next: from 4.2‰ to 17.2‰ of all minors in the *département* (mean rate: 9.5‰).

These data do not take into account adoption or placement for adoption, since foster care and adoption are clearly separated in France. Foster families are certified by the *département* and they receive payment for their services, unlike adoptive parents. The question of adoption is detailed below, under sub-section f.

#### c) Residential care

Stories of abuse and neglect in foster families or residential institutions have contributed to the “demonization” of out-of-home care in the 1980s in France, as the Naves-Cathala report has indicated (Naves, Cathala, & Deparis, 2000). This is one of the reasons, along with economic considerations –that should not be downplayed (out-of-home placement being considerably more expensive from the state’s point of view that open-settings assistance)– and with an increasing concern that severing family ties is detrimental to children, that have led to the more recent focus on maintaining family ties and preferring open-settings assistance if at all possible.

However, media attention on specific cases of abuse and neglect in recent years has led to a stronger emphasis on early intervention and placement: both tendencies coexist in the public awareness of child protection issues.

In France, as of 2010, residential care represents 38.6% of all placement measures. This percentage varies greatly from one *département* to the other: residential care can represent between 14.6% and 65.5% of all placement measures inside any given *département*. The *départements* that rely most on residential care for their placement measures are also those in which there are few ASE placements (this is statistically significant).

In all, 48,800 children are residents of child protection institutions and services as of 2008 (Mainaut, 2011), out of 52,780 places available (92% occupancy rate). Three quarters of these children reside in *Maisons d’enfants à caractère social* (MECS), that take in children whose parents can’t look after them, 17% are in *Foyers de l’enfance*, emergency structures that are temporary and prepare the child for other types of placement, or for adoption, or for return to their families; 690 are very young children (under 3 years of age) placed in a *pouponnière*, 1,100 are in *villages d’enfants* (structures for siblings), and 2010 reside in *lieux de vie d’accueil* (specialized structures for very troubled children).

#### d) Adoption

In France, people can adopt as a married couple (joint adoption) or as individuals (if they are single). Recent evolutions of the adoption system mostly concern same-sex couples. The law in France has never mentioned sexual orientation as grounds to refuse an agreement for adoption, meaning that single lesbian, gay or bisexual adults have in theory always had the right to adopt as individuals (a principle reaffirmed in practice by the *E.B. v. France* decision of the European Court of Human rights in 2008). Since joint adoption is only possible for married couples, however, same-sex couples could not request to adopt as a couple until the May 17<sup>th</sup>, 2013 Law No. 2013-404 opening marriage to same-sex couples. Approval of adoption (*agrément*) requests follows a strict evaluation procedure for couples as well as for individuals who wish to adopt.

The number of people who wish to adopt, after having doubled in 15 years, tends to diminish (-7% between 2009 and 2010, -8% between 2010 and 2011). There were about 9,000 adoption requests in France in 2010 and 7,300 in 2011 (ONED, 2012a, 2013a).

International adoption represents approximately 80% of all adoption in France. France is the third country worldwide for international adoption after the United States and Italy. In 2010, 3,504 children have been adopted from abroad (83%), compared to 715 (17%) in France (ONED, 2012a).

Most of the children up for adoption in France have no established filiation: they are “born under secrecy” (*naissance sous le secret*), which means that their birth parents’ names do not appear in their birth certificate. There were 628 children born under secrecy in 2011, slightly less than in 2010 where there were 666 (ONED, 2013a).

#### e) Unaccompanied foreign minors (Mineurs étrangers isolés, MIE)

Unaccompanied foreign minors are defined as children in danger (under article 112-3 of the *Code de l’Action sociale et des familles*) and are therefore granted child protection assistance (provided they can prove that they are, indeed, minors).

There are an estimated 9,000 unaccompanied foreign minors in France, according to the PJJ (Ministère de la Justice, 2013), with a very uneven distribution: while the Paris *département* alone has 1,800 unaccompanied foreign minors, 30 *départements* have less than 50 on their territory. Only 595 of these children (of which 70% are male) have applied for asylum. Ninety-five per cent of minor asylum seekers are over 16 years of age. The data given here exclude overseas *départements*, since their geographic location creates additional issues, especially in Mayotte and Guyane.

This great variation in the number of unaccompanied foreign minors in each *département* poses a serious problem of national solidarity, since taking them into care requires funds and personnel that many *départements* do not have. This is a particularly controversial topic in the current debate on child protection, and one that authorities and services are actively trying to find solutions for.

#### f) Young offenders and children in the penal system

A wide array of measures can be pronounced against young offenders, up to and including prison (specific prisons for minors –*établissements pénitentiaires pour mineurs*, EPM– have been created by the September 9, 2002 Law and the first ones have opened in 2007–2008).

In 2011, 73,116 minors have been judged for penal offenses (out of which 314 were judged for crimes). 64,993 sentences in total have been decided by juvenile courts. Of these, 25,935 were admonishments and other symbolic measures; 10,121 were surveillance and protection or reparation measures, 2,292 were “educative sanctions”, 4,885 community service measures, 3,708 fines, 8,638 suspended prison sentences, 4,348 prison sentences suspended on probation and 5,066 affirmative prison sentences (Ministère de la Justice, 2012).

### Current challenges for French research and practice

#### a) The question of data collection

Data collection in France regarding child protection already has a solid legal framework. However, the discrepancies between *départements* on the actual processes of data collection are currently so significant that it is impossible to consolidate relevant and accurate indicators on the children’s situations or trajectories.

This difficulty has been underlined by the study done by ONED in 2011 of the treatment inside *départements* of information giving rise to concern (ONED, 2011b), the category that currently represents the entry point inside the observation system. As a result, a consensus-building process has begun with actors of the field and should lead in 2013 to a clarification that should dramatically improve the observation system. The first consolidated data from this system should be made public in 2014.

The lack of nation-wide statistics and data on child protection in France has been identified as a problem since the 1990s. Without these data, it is difficult to correctly assess the needs in terms of policy and budget. To remedy this problem, a national Observatory

of children in danger (ONED) has been created by law on January 2, 2004 as a part of the Public interest grouping for children in danger (GIPEP) with the aim to “better understand the field of childhood in danger so as to better prevent and intervene”. The March 5, 2007 Law reforming child protection has also increased ONED’s role by creating *département*-level observatories of child protection (ODPE) and providing for the transmission of data from *départements* to the ODPE and ONED.

Despite there being a strong legal framework (consolidated by the February 28, 2011 Application decree) setting up this entity, the data collected so far is not complete, due to the ambitious nature of the observation system being created (it is individual, anonymous, longitudinal and centralised and comprises 130 variables divided into 6 general categories) as well as to the serious discrepancies between *départements* in terms of organisation and software, which have practical consequences. As a result, our current knowledge and understanding of the population that is taken into care or provided assistance by the child protection system is limited: only broad numbers are known, we do not have a detailed understanding of what these children’s (and their families’) characteristics are, how long and how often they remain in care, or what happens to them after leaving care.

A consensus-building process has been initiated to solve these problems. The expert committee has released a number of recommendations: in particular, the different variables have been divided into 4 categories in terms of priority and availability. ONED should be able to publish its first consolidated scoreboard for group-1 variables during the last trimester of 2014. As it currently is, the observation system set up by ONED already provides some much-needed information on child protection and when it is completely consolidated we should be able to have a better understanding of these children’s situation and trajectories. Other long-term studies are currently being developed on the long-term effects of placement, but such studies are very ambitious and require a few years before they can have results.

b) Adapting existing practices to new challenges and identifying best practices.

The main practical problem linked to this absence of data is that it is difficult to identify the main problems that lead to children being taken into care, and the different factors that seem to have an impact on child protection. Better data, in particular, could help professionals tailor their action to populations whose living conditions and difficulties are currently insufficiently studied in France.

One population that needs to be better understood and for which solutions must be found are unaccompanied foreign minors. Their number is relatively high and their distribution on the territory is uneven, for obvious reasons (*départements* which have international ports or airports, as well as areas around the border are more likely to identify foreign minors).

The living conditions of non-sedentary Roma children is another question that raises a number of issues, since shantytowns have developed and they do not represent adequate living conditions. Here again, not all *départements* are affected in the same way.

Children with disabilities represent a non-negligible proportion of children in the protection system (Sellenet, 2013). More effort should be made to propose new ways of providing inclusive care to them.

c) Structural evolutions: toward a more integrated and more inclusive system.

Another research deficit concerns the system itself, both in terms of prospective (what priorities for the future, what improvements could be made) and of practices in the field of education and social action. Many different sectors, each with its own professional culture(s), interact in the framework of child protection and family support: health, social work, justice, housing and employment are all

areas that should be better articulated to better identify situations and improve the system’s response to them. For instance, general practitioners are frequently not aware of how the child protection system works and frequently do not adequately report situations they are faced with that would require intervention: actors in the field have tried to find solutions, but there is no study analysing this mechanism and proposing adequate solutions. The evolution of the offer of services in child protection goes faster than research around these issues and happens in all the *départements* at the same time: it would be useful to identify best practices and study how they can be replicated.

The way local systems evolve in relation to the state legislation, in a broader way, is something that needs to be studied as it creates a challenge regarding equality of treatment across the nation, as well as for the implementation of EU recommendation.

Finally the main challenge of the French protection system could be summarised in the question of developing a more integrated, holistic, approach. Information and interventions are scattered between different actors, it is very difficult to get a general overview of standards and practices in France, although this is necessary if equality of treatment is to be maintained.

A more integrated approach, that still recognises the specificities of the different sectors involved while improving the efficiency of the system, the identification of situations of danger and the collection of complete and accurate data, should be developed, following in the footsteps of the 2007 reform. It would be useful to create in the light of recent findings (Sellenet, 2013) links with other services and structures, such as those for the inclusion of persons with disabilities.

Such an integrated approach would also help take into account the difficulties experienced by children in the care system when reaching adulthood, since leaving care requires a transition (from the targeted protection of child protection services to general, universal-access services) that they are currently not prepared for.

The input of research on promising practices should be capitalised at national level to help give inspiration to all, which also requires a more efficient, more legible system.

Finally, taking into account the well-being of children and their points of view are aspects that should be developed in the child protection system, in the framework of the 2012–2015 Council of Europe strategy for the rights of the child.

Identifying and analysing best practices in the field; setting up a comprehensive and longitudinal observation system are two of ONED’s missions that can provide much-needed data on these questions. Long-term research currently underway, such as the ELAP (Etude sur l’autonomie des jeunes après le placement) cohort study or Annick-Camille Dumaret’s current work on the evaluation of interventions and autonomy in adulthood should also give us a finer and better understanding of the realities of child protection in France.

### **Child protection in Switzerland: Philosophy, current changes and challenges**

*Swiss childcare system’s philosophies: Federalism and the presence of the past*

Switzerland has a population of about 8 million; 22% of them are children and juveniles between 0 and 19 years. There are 26 political cantons (6 of them being so-called half-cantons) with 15,000 (half-canton of Appenzel Innerrhoden) to 1.5 million (canton of Zurich) inhabitants. And there are 4 official national languages (German, French, Italian and Romansh). In Switzerland’s highly federalised system, welfare, education, and legal policy are largely a cantonal responsibility. National rules and regulations are imposed in specific cases only. The diversity in cantonal and community

competences is in turn overlaid by differing social structures as well as by differences in language regions and between denominations. In addition, the federal system always accorded considerable significance to mixed forms of public-private welfare. Thus, federalism in the area of upbringing and childcare has a different meaning. This system does not rely on any developed federal bureaucracy or government agency. Hence, no federal Ministry of Child, Family or Welfare exists.

Between 1798 and 1802, during his occupation of the Old Swiss Confederacy, Napoléon Bonaparte tried to implement centralism with *départements* according to France by founding the Helvetic Republic, but he couldn't establish his ideas. After the pull-out of his French troops, short civil wars have taken place between proponents and opponents of centralistic ideas among others. So, Napoléon returned in 1803, convoked political elites, and considered federalism and the independency of the cantons; 1815 inner and outer frontiers of Swiss Confederation were accepted at the Congress of Vienna, most of them persisting until today. Since the 19th century, when a liberal development of public education and care as a consequence of the French Revolution's philosophies took place, reforms have never been organized in a "from-top-to-bottom" way (Lengwiler, Hauss, Gabriel, Praz, & Germann, 2013). Conservative family ideologies still are implicit and often also explicit motivating forces for both political actions and for professional family interventions in Switzerland. The family is generally protected by the State to a high degree. Low levels of interventions, but also less support and social security in an international comparison, can be seen as consequences.

During the twentieth century, tens of thousands of children and adolescents in Switzerland were placed in foster families or residential homes. Recent research indicates that the wellbeing and protection of the children was often secondary. The last years have seen increased public interest in the issues surrounding the outplacement of children in Switzerland. Research in Switzerland squarely situates the issues surrounding outplacement and care homes in the context of poor relief and guardianship systems. In part, the focus has also been on the juvenile justice system. Long into the twentieth century, the responsible authorities regarded the dissolution of families and the outplacing of children as an effective remedy against poverty. It was also a means of establishing social conformity. From this perspective, outplacement and care home upbringing was part of a social welfare policy that more highly valued arguments about discipline or costs than arguments about participatory rights and equal opportunity. Furthermore, support for such a policy orientation came from the absence of centralized oversight or regulatory bodies –something more generally characteristic of the Swiss welfare state (Lengwiler et al., 2013).

Yet there has been little study of post-1950 notions of childhood, or of what growing up meant, which underlay social welfare practices, though one can assume such notions were anything but static. The public discourse show: by the last third of the twentieth century, the rebellious and delinquent child of the 1950s had become the child in need of protection. After 1945 the debate over human rights in the UN had an influence on childcare in Switzerland. For the first time, it raised the question –in Swiss welfare policy as well– how individual rights could be protected as well as weighed against collective interests. By around 1950, the disciplining administrative intervention heretofore practiced began to be questioned. The (preliminary) endpoint of this development, one heading toward increased inclusion of the perspectives of children, juveniles and adults, came around 1990. The concepts discussed and used in social work also became more differentiated between the 1950s and 1980s. But it is unknown whether they as well as emancipatory discourses after 1968 had an effect on administrative and further practices in childcare. Not least because terms like "neglect" had made arbitrary administrative practices all too easy. Newer normative phraseology,

including "endangering the child's welfare" or "parental duties" or "inexperience of the parents" replaced "neglect" after 1978 (Lengwiler et al., 2013). The latest change of philosophies is marked by the new law on child and adult protection in 2012, which gives more rights to children and families.

#### *UN Convention on the Rights of the Child: Lacks in implementation*

First of all, Switzerland must be seen as a late subscriber of international conventions or standards as far as human rights are concerned. At least there has been a competence centre for human rights since 2010. But there is no official institute for human rights, the reason being that the national government did not want to support it. It comes as no surprise that Switzerland was one of the last countries to have ratified the UN convention for the rights of the child in 1997. The UN convention should now be an undisputedly an important basis for definitions of child well-being and child protection. That's why it is important for the Swiss field of residential and foster care in three main issues:

- *Child well-being*: The Convention codifies the precedence of child well-being as a primary consideration in political, legal or institutional decision making.
- *Safeguarding children in care*: The Convention declares a specific protection of fostered children (article 20). The desirable continuity in education as well as ethical, religious, cultural and linguistic origin should be considered in an appropriate way.
- *Hearing and representation of children in judicial and governmental proceedings (article 12)*: This issue outlines a very important point in biographies of children in care. In decision making, the child's opinion should always be considered with respect to its age and maturity.

Main recommendations from the UN-CRC-Committee after the 1<sup>st</sup> Swiss report (United Nations, 2002) inter alia focussed on penal law relating to young offenders, on refugee children and on political participation. The recommendations' crucial topics concerning residential and foster care also pointed out mentioned challenges to coordinate and overview a federalist care system in Switzerland:

- Need to check, coordinate and implement the UN Convention.
- Need for nationwide data-collections in residential and foster care (and for all children less than 18 years in general).
- Need for specific focus on the right of non-discrimination and the right of legally binding hearings.
- Need for more direct references to the UN-CRC-Convention: need for independent observations and evaluations as well as discriminating legal obligations.

In a concluding statement, the Committee complains that children's well-being in Switzerland is inadequately safeguarded, even though it should be the highest goal. Although it is able to highlight a few improvements in some specific fields or laws since 2002, the new Swiss report on the right of the child (EDA, 2012) that was claimed by NGOs for a long time and contains three outstanding reports in one cannot deny that many of these complaints are justified. But in a preliminary draft of new regulations in children's residential and foster care, the Swiss government focuses more on promotion of national standards, professionalism (apprenticeship and training) and national collection of statistical data. That draft was commented on by Swiss NGOs and experts and these comments could be summarised as follows (EDA, 2012):

- *Positive assessments of proposed goals*: Focus on domestic uniformities; Focus on professionalism (apprenticeship, training and the plan to oblige institutions to prepare, support and accompany children, when changing or leaving care by writing detailed reports and considering the children's point of view) ; Focus on national statistic collections.
- *Negative assessments of proposed goals*: The child still seems to be seen as an object; main focus on structures/Cantons are the

guarantors of named qualities; difficulty of implementations of articles.

Switzerland ranks 8<sup>th</sup> of all 29 countries surveyed in the Innocenti Report Card No. 11 in terms of child well-being (UNICEF Office of research, 2013), with a positive development during the last decade, as it started as 11<sup>th</sup> in early 2000s. The first place in in the dimension *Housing and environment* is a sharp contrast to 16<sup>th</sup> rank in the dimension *Education*, which is the most problematic. Concerning the dimensions *health and security* and *behaviours risks* Switzerland ranks at the 11<sup>th</sup>, a bit lower in the dimension *material well-being* (9<sup>th</sup> rank).

#### *Children in the legal framework: current changes in fostering and child protection*

Since 1848, Switzerland has been organised as a federal state consisting of 26 cantons. As mentioned earlier, there is a complex distribution of competences and powers between the 26 cantons and the Confederation (central Government). The Confederation has exclusive rights to legislate in the areas of railways, customs, currency, transportation and postal services. Cantonal regulations are effective in seven additional areas, which may differ from canton to canton. Among others, labour legislation, education or civil and penal codes belong to these seven fields (Bombach & Gabriel, 2013). Thus, for example, the penal code for juveniles has 26 different sets of cantonal regulations on juvenile jurisdiction and therefore also 26 ways of assigning adolescents to residential care facilities or to juvenile correction institutions (Gabriel & Stohler, 2008).

This explains why no specific ministry for education or social welfare exists in Switzerland. Consequently, there are no centrally collected data available about the Swiss childcare sector as a whole (see Gottesmann, 1991). In addition, there are legal regulations on a cantonal basis which must not contradict federal law. According to the federal constitution, children and juveniles are entitled to protection of their physical well-being and to the advancement of their development (Federal Constitution art. 11, art. 41, art. 62, art. 67). Furthermore, parents have the right and the responsibility to care for their children. They have to bring them up according to their circumstances and to support and protect their physical, intellectual and moral development (Civil Code art. 302,1). If the welfare of the child is at risk, and/or if the parents neglect their responsibilities, there are three ways into out-of-home placement:

- child protection by civil law
- penal child and juvenile protection
- voluntary child juvenile protection

Child protection by civil law, and penal child and juvenile protection measures are uniformly regulated at federal level (Gabriel & Stohler, 2008).

A look at the way legal framework is put into practice reveals that there are broad inter-cantonal variations; these are caused by different historical developments and administrative structures. In Switzerland, a variety of different residential care settings for children and juveniles exist (day care, week care, permanent care, attendance care), according to canton or linguistic region. Still, there are no obligatory standards governing the placement of children (Bombach & Gabriel, 2013).

Current changes in foster care: partial appeal of the Ordinance on Foster Children's Accommodation (PAVO): In 2009 it was officially decided that the revision of the enactment which regulates adoption and fostering in Switzerland is obsolete (revision from PAVO to Ordinance on Child Care [KiBeV]). This enactment is responsible for child well-being, children's rights and for the placement of children. Cantonal policy accepted the suggested changes in residential care but they are still critical of suggestions for day care (EJPD, 2011). This is largely due to the high number of detailed regulations as well as the feeling that the best interests of the child are not being adequately

considered. The second draft of KiBeV in 2010 also gave rise to many critical or even negative reactions. It is not yet clear how the revision project will continue (EDA, 2012). The Swiss Federal Council subsequently repealed the decree but it has enacted a partial appeal of the PAVO, which became effective on January 1st, 2013. Instead of a new enactment at the moment there are only a few adaptations, such as the enforcement of much stricter standards with regard to allocating short-term placements in foster-care families. Long lasting political procedures are part of a federal democratic system –not always in the interest of the child.

Current changes in guardianship: From Guardianship Authority (VB) to the Authority for Child and Adult Protection (KESB). Unlike all European countries, where guardianship is decided in court, most cantons in Switzerland have proceeded with lay authorities, organised on the community level until 2012. This system was based on a law from 1907 at which time Swiss guardianship authorities used to be political elected committees. To be elected as a member, no specialised know-how was required. Guardianship authorities were often even part of the welfare centre of the municipality, too. Thus, child protection measures and the placement of children were decided by people who had to take costs into account. As a consequence, the focus was not always on the best interests of the child but on the cheapest solution for the community (Zatti, 2005, p. 34).

The current revision of the child and adult protection regulations illustrates the difficulty of intervening in a family's privacy. The federalist system in Switzerland works in favour of applying cautious regulations. Since January 2013 the Authority for Child and Adult Protection (KESB) is a new professionalised, interdisciplinary, and regionally organised institution in Switzerland and supersedes the semi-professional guardianships on a municipal level. Instead of 1420 lay authorities, there are now about 200 specialized and interdisciplinary authorities all over Switzerland. The professionals come from the fields of jurisprudence, social work, and psychology. They are in charge of the protection of children (child law: Swiss Civil Code [ZGB] No. 252-327c) as well as of the protection of adults who are unable to ask for required support or protection on their own (adult protection law: Swiss Civil Code [ZGB] No. 360-455). KESB has to clarify the availability of support and intervention after receiving official notice of possible danger from such people as relatives, neighbours, professionals, police, teachers or similar. In special cases, the authorities may be able to afford a placement in an out-of-home institution (Liesen, 2012).

Main challenges facing the new authorities are the re-organisation between the interdisciplinary authorities and the main people involved in the guardianship process. In the first months of implementation it can be observed that the authorities examine very closely all the aspects of previous structures and processes, as do all main actors in the new decision-making procedures. At the moment there are no clearly defined distinctions but many interfaces: the new professionalised and important authorities still are in a mood of self-discovery and localisation. Their challenges and goals are successful cooperation concerning the actors, the structures, the planning and organisation in this fragile field of different claims.

#### *Public's awareness and understanding of placement issues*

In Switzerland, during the twentieth century, tens of thousands of children and adolescents were placed in foster families (often on farms) or care homes (often Christian homes) and the welfare of the children was secondary. Those placements were frequently associated with social isolation, compulsory work, or even with sexual or physical abuse. As in several European countries, Switzerland has recently undertaken efforts to reappraise this past with its life-long consequences for those affected and make reparations. And similar steps are also currently in the preparatory stage.

In recent years, public and research interest in the issues surrounding the outplacement of children in Switzerland has increased. The focus was mostly on the first half of the 20th century as well as on the upsetting experiences some former care home and foster children had undergone. Unlike in Germany or Ireland, however, where interpretive frameworks for the issues soon emerged at the national level (Smith, 2007), research efforts in Switzerland soon shifted to cantonal and local levels (Akermann, Furrer, & Jenzer, 2012; Heller, Avanzino, & Lacharme, 2012). Today there is evidence of a high degree of pressure on both public and private welfare institutions to look back on and reappraise what happened (Lengwiler et al., 2013).

#### *Child protection and children in care: key indicators in Switzerland*

##### a) Children looked after

The Conference of Cantonal Social Administrations (shortened as often with legal terms in at least three languages [German, French, and Italian]: SODK/CDAS/CDOS) is, among others, responsible for the Inter-Cantonal Agreement of Social Institutions (IVSE). SODK takes a stand for quality in placements and for an orientation towards the rights of the child. For example, they recommended the standards of "quality4children" (SOS-Kinderdorf International, 2007) to the cantons. The recommendations were not binding, but nevertheless some cantons were ready to conclude a contract of achievements. In those projects, models and instruments to encourage participation of children and juveniles in out-of-family care were developed and implemented (Eidgenössischer Bundesrat, 2012).

We know that in 2005, 2,300 children received assistance and 3,300 were removed from the custody of their parents. Form and number of arrangements vary considerably from canton to canton. In 70% of the cases, child protection by civil action was caused by parents' conflicts and not directly by child abuse. In 15%, the reason was neglect of the child, in 6%, physical abuse, and in 3% of the cases, sexual abuse. Further a study worked out that in regions with fewer cases of child protection, more restrictive measures were in place. The results showed that the opportunity for a formal and personal hearing was hardly ever given, neither to the children nor to their parents with regard to placement procedures (Eidgenössischer Bundesrat, 2012).

##### b) Children in foster care and residential care

One of the aims in Swiss foster care is long-term placement (maximum stability), especially for young children with no prospects of returning to the home family. The other aim is short-term placement (maximum "normality"), seeking to find a solution for a crisis or prospects for the child. Decisions with regard to the different forms of placement in childcare are not clearly regulated. This leads to major differences between language regions and cantons. Types of placements are: permanent placement, short-term placement, day care and week fostering, before adoption. types of foster families: traditional foster family, kinship foster care, professional foster families, semi-professional foster families, adoption families waiting for legal status of adoption (takes about one year after arrival of the child).

In line with the Civil Code, the legal requirements for children in foster care are regulated only on a minimal basis. The history of foster care and the conservative ideologies and attitudes towards family life and upbringing influence the current state of foster care. And in this field too, the federal system allows every canton to define its own legislations. As a result, no valid national data are available. The very few statistics on foster children are based on estimates and therefore vary between a total number of 8,500 and 150,000. According to Gabriel and Stohler (2008) the number of children in foster care varies from canton to the canton: Per 10,000 between the age of 0 to 19 there are, for instance, 139 foster children in the canton of Neuchâtel and 12 in the canton of Obwalden (Bombach & Gabriel, 2013).

##### c) Family interventions

As mentioned above there are no national data available on the total residential care population, care leavers or children in need. At the national level there are also no data available on placement types, lengths of stay in care or on the age profile of looked after children (Gabriel & Stohler, 2008, p. 197f). It can be assumed that the number and characteristics of young people in residential care highly differ between local authorities, cantons and also between different language regions. Over the last 15 years, there is an increase of costs per placement – which is also based on increasing labour costs (Liesen, 2012).

In Switzerland especially interventions in early childhood are mostly family-based. Early interventions can start at birth, in the very first years or before school. During the life course there is an on-going diversification of interventions like family counselling (voluntary and low-threshold), social-pedagogical family assistance (serving families), school-social work and mother child units (institutions) in childcare. Within the childcare system, the mother child units are an example for new measures to avoid the out of home placements of children.

##### d) Adoption

In contrast to foster care or residential care there are exact numbers of placements available in the field of adoptions. In 2011, 509 children were adopted (236 males and 273 girls), 175 of them were Swiss (almost exclusively kinship adoptions by a step-parent or sometimes by other relatives), 60 from Europe (without Switzerland), 135 from Africa, 64 from America, and 75 from Asia. At the moment of adoption, 221 children were between 0 and 4 years, 73 between 5 and 9, 67 between 10 and 14, 76 between 15 and 19, and 72 older than 19 (Bundesamt für Statistik, 2013). It is obvious that non-kinship adoptions in Switzerland almost always mean international adoptions. Many children come from Ethiopia (a country without ratification of the Hague Convention on Adoption) or India (a country with ratification). Most adopters are (married) couples, a few are single persons who are allowed to adopt only in specific cases. Adoptions by homosexual couples are not allowed. Those normative characters in statistics on adoption procedures could be verified in a research project in the canton of Zurich. Many normative concepts in society and politics, among professionals and future parents, seem to be responsible for great tension and uncertainty in adoptive families, mainly in the turn-over-phases after the arrival of the child (Gabriel & Keller, 2013a). Similar characteristics can be observed in the practical fields of foster care, child protection and family interventions.

##### e) Young offenders and children in the penal system

Although education and (re)socialisation and not punishment is the main goal in cases of penal code placements in Switzerland juveniles can be placed in closed institutions and – to bridge gaps – in prisons as well in emergency situations. The latest changes in the regulations of youth custody considered the separation of juveniles and adults in investigative custodies. The separation in all custodies is also under consideration but cantons have time to implement it. The latest reform in young offender's law raised the age of criminal responsibility from 7 to 10 and focuses on the protection and education of children and juveniles. In 2009, there were 685,500 minors aged between 10 and 17 living in Switzerland. In the same year, some 15,000 minors received a sentence. The number of juvenile sentences rose from 15,064 in 2009 to 15,646 in 2010 (+3.8%); 77.3% of these sentences were against juveniles over the age of 15, 77.7% of the sentences were against male, and 22.3% against female children and juveniles. After a slight decrease in crimes of violence from 2,456 in 2008 to 2,367 in 2009, the figure rose again in 2010 to 2,619. The issuing of sanctions against juveniles is stable. According to Police Criminal Statistics (PKS), which records the number of crimes committed, the number of minors found guilty in 2011 fell by 21% from 2010 and by 29% from 2009. Minors are most commonly charged with petty crimes such as shoplifting, wilful



damage to property, theft or acts of violence (Eidgenössischer Bundesrat, 2012).

#### *Current challenges for Swiss research and practice*

##### a) Research deficits and research needs

As mentioned earlier, no consistent definitions exist in Switzerland's child and juvenile services, and no overview exists on child and juvenile services, neither on a national nor on a regional level and sometimes not even on a cantonal level. Only for specific categories such as adoption, juvenile sentences or residential homes for offenders there are national statistics. The main reason for this lack of overview and insight can be seen in the highly differentiated Swiss child and juvenile services, involving many different participants, authorities and responsibilities. Furthermore, hardly any holistically organised coordination or opportunities for exchange of ideas exist. If some programmes are implemented, then it is on a cantonal or regional level. That is why it is not easy to identify or define specific shortcomings in Swiss child and juvenile services – apart from this lack of national overviews, opportunities for exchanges of information and experience and coordination between national and cantonal authorities. The government and the authorities are fully aware of this problem. Nevertheless, solutions are hard to find; structures are still being worked on, by the Conference of Cantonal Social Administrations (SODK), for example.

In addition to these shortcomings in the gathering of national data in all areas of childcare and out-of-home care, the following specific research needs can be listed (Lengwiler et al., 2013):

Focussing on the post-1950 period, in Switzerland only a few studies in research on welfare and care home upbringing have investigated the post-war era (Akermann et al., 2012; Droux & Ruchat, 2012; Heller et al., 2012). The emphasis up to now has thus been on the pre-1945 period. Studies addressing changes after 1948, brought about by the economic boom and expansion of the welfare state, are still largely lacking. That is why investigations are needed that focus on how changes in social attitudes toward education and upbringing, authority, work, sexuality, and similar issues, as well as the flexible stance toward morality and the trend towards to self-realisation that began in the 1950s, had an effect on how poverty and social marginality were addressed. Changes at the discursive and normative levels are of particular importance here and also affected the care home sector (Lengwiler et al., 2013).

With respect to comparative studies between regions and denominations, the federal relevance of the cantonal and regional levels has thus far been neglected, though there are a number of surveys of the development and differentiation in the care home sector (Hafner, 2011). Inter-denominational investigations have been carried out, but independently, not on a comparative basis, such as examining Pietist orphanages and the work of Catholic women's orders. The same is true of comparisons between the urban and rural forms of childcare or between language regions –all of them important issues in Swiss micro cultural differences. The categorising of individual case studies, therefore, remains difficult (Head-König, 2010).

As for leaving care and effects of care, the existing approaches regarding the effects are problematic inasmuch as they tend towards reductionism that links life courses to problematic socialisation conditions. Less isolated issues should be focussed on flexible biographical patterns, individual coping strategies, or understanding the relationship between vulnerability and resilience. Further research is needed on the effects placement in care homes had on the juveniles and children housed there. As far as Switzerland is concerned, studies that investigate the process of leaving care as well as the subsequent life courses of former care home clients in a long-term perspective still need to be undertaken. What needs to be examined are which factors positively contribute to a successful

transition from a care home into adult working life, with respect to access to further education or training, occupational opportunities, and social integration (Gabriel & Keller, 2013b).

##### b) General data: gaps and challenges

Owing to a lack of consensus, various initiatives for the establishment of federal statistics of institutions in Switzerland have consistently failed. That is a further reason why there are no national data available on the total childcare population, care leavers or children in need. Furthermore there are no data available on placement types, lengths of stay in care or on the age profile of children being looked after (Gabriel & Stohler, 2008, p. 197f). By no means least importantly, an overview is made more difficult by the fact that there have recently also been many changes in models of data collections in the cantons themselves (Liesen, 2012). And there are difficulties in distinguishing between penal and civil law because, depending on the case, one or the other law is hampered in the placements of children by the complex cost-regulations existing between cantonal and municipal authorities.

c) Not yet focussed groups: care leavers, non-residential interventions, minor asylum seekers.

'Leaving care' isn't a specific issue in current comprehensive observations for Switzerland. But in a preliminary draft of new regulations in residential and foster care, the Swiss government wants to focus on standards and quality control, professionalism (apprenticeship and training) and on the nationwide collection of statistical data. Furthermore it plans to oblige institutions to prepare, support and accompany children, when changing or leaving care by writing detailed reports and considering the children's perspective.

Realistic and discursive preparations with parents as well as children's right to be heard before and during care are still very rare in documented practice (Voll, 2006). Some 30,000 children are clients of non-residential intervention to avoid out-of-home placement. But there is great heterogeneity between cantons, districts and municipalities as far as preparations or restrictive actions are concerned. Further no comprehensive knowledge about the quality, processes or the end of this preventive measures exist, as Voll (2006) worked out.

From 2005 to 2010, on average 3,651 minor asylum seekers start the asylum procedure in Switzerland each year, that is 27% of all asylum seekers. Most of them are young children arriving together with parents or a parental unit. Nevertheless 10% of the minor asylum seekers are unaccompanied and often from countries in Africa (mainly Somalia, Guinea, Nigeria, Ivory Coast). In some cantons exist specific institutions for unaccompanied asylum seekers. But it should also be mentioned that in 2010 a total of 355 minor unaccompanied asylum seeker were in preparation for or were actually in deportation custody (Eidgenössischer Bundesrat, 2012).

d) Past, present and the future: forgetting the present while blaming the past?

In current (public) dialogues on the past of Swiss childcare systems links to present situations and issues are hardly ever made. Although NGOs and other experts acclaim current changes presented in this article, we shouldn't forget to look closely to the presence. Children mostly do not participate on decisions on their lives and nationwide standardisations in planning and finishing care seem to be difficult. 53.3% of children between 6 and 12 and 23.6% in the age group of 13 to 18 were not informed about the reasons of their placement (Arnold, Huwiler, Raulf, Tanner, & Wicki, 2008, p. 106). Also to mention are difficulties in implementing the recommendations of the UN Convention: For example, respecting "children's opinions" or "children's well-being" (Keller, 2010) are seen as insufficiently defined terms in residential and foster care and its transitions.

Because of different procedures and definitions of dossiers in the cantonal authorities it is still difficult to gather data in the section of welfare benefits. Furthermore there are different laws and different financial models in each canton will remain. That's why it will keep

being hard to find worthwhile definitions for specific cases. And data do not permit the identification of recipients of welfare benefits so the distinction between out-of-home placements, pedagogical family support as well as psychological/psychiatric support is not explicit. At the moment, no one knows if all collectors of statistical data on the authorities' level do so in the same way. But it is clear that those three specific groups of recipients recently became more and more significant with regard to their number as well as the costs per case.

That is why in 2012 the Swiss government has contracted out this mandate for implementing new and differentiated instruments of data collection in the field of welfare benefits: Are those groups significant and if so, how can they be elected with a consistent and comparable definition on a national level?

### Concluding remarks

Many differences between the French and Swiss realities of child protection can ultimately be understood as direct consequences of these countries' legal structures. In France, in spite of all their prerogatives, *départements* do not have a real independence from the state, which is ultimately in charge of defining the law. *Préfets* representing the state inside each *département* are ultimately in charge of ensuring that the national law is indeed respected and that there is equality of treatment. Not so in Switzerland, where cantons can legislate themselves and therefore have more margin for action.

#### *Providing a strong, coordinated framework for research and observation*

One such difference is the existence in France of a national observatory, ONED, created by law, that receives funding from state and *départements* and benefits from a strong legal framework to work with. It has a budget specifically for research in the field and can rely on a network of local Observatories, the ODPE. ODPEs interact with all the services involved in child protection at *département*-level, and they have a key role in identifying the local needs and drafting the standardized, *département*-wide protocol of child protection (*schéma départemental*). ONED also plays a role in identifying and promoting best practices at central level.

A similar observatory has been set up for Switzerland in Lausanne, the *Observatoire de l'enfance maltraitée* (OME), but it does not have the same legal and financial backing and cannot rely on a network of local-level observatories. Furthermore NGOs like Integras (professional association of special education and social pedagogy), inter-cantonal conferences like SODK (conference of cantonal social administrations) and other types of organisations are founding or working on standardized quality and active networks in childcare, but their suggestions remain nonbinding and national coordination is difficult.

The periodic publishing of official UNCRC reports in France as contrasted with collected volumes in Switzerland is another example of the differences that stem from this fundamental division between binding and nonbinding frameworks and between coordinated and less coordinated observations.

#### *The common challenges presented by the multi-dimensional complexity of child protection in Switzerland and France*

This different legal and administrative paradigm between France and Switzerland has consequences at territorial level. Many of the difficulties faced when trying to analyse child protection in both countries are linked to the variation between territories (*départements* in France, cantons in Switzerland), which compounds the difficulty faced on a practical level by the co-existence and interaction of diverse sectors and professional cultures.

This double layer of complexity, by which child protection must be thought of inside a network of diverse services and policies, adding complexity to a system that is already made complex by local variations, is also a challenge for policy-makers. Providing high-quality care and adapting the system to the needs of children require inter-service collaboration. The importance of child protection and the growing public awareness around this subject require more attention from researchers and decision-makers alike.

Despite the unifying factor of the French national framework, which does allow for more uniformity and allows a measure of observation, quite a lot about child protection at national level remains unknown, which is why ONED's role and current work are so crucial. If Swiss central Government, NGOs or currently implemented authorities like the authority for child and adult protection will be able to support nationwide frameworks, data and qualities in Swiss childcare system can't be clearly observed yet.

Indeed, beyond the very different legislative systems (federalism and centralism) there is a comparable heterogeneity of practice, which grows richer and more complex and echoes in a similar way a few general trends and concerns of European care services: the offer of services both in foster care and residential care is increasingly diverse. The growing emphasis on de-institutionalisation has led to two symmetric evolutions: the decline of residential care, understood as placement in institutions, and the development of smaller institutions in the children's former environment, as opposed to the previously-existing huge residential homes. In parallel, placement in qualified and accompanied foster care families as an alternative to residential care is also on the rise. The increasing awareness of the necessity for qualifications, is leading to more and more professional requirements for staff in the institutions and in foster care.

This multi-faceted offer of child protection services, alongside with the complexities of the situations encountered, calls in both countries for research-based knowledge to promote innovations and secure the well-being of children in the care system. The challenges concerning new target groups of care, like young adults leaving care or unaccompanied minor asylum seekers, are surprisingly similar.

### Conflicts of interest

The authors of this article declare no conflicts of interest.

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