

## **Unaccompanied Minor Asylum-Seekers in Switzerland – A Critical Appraisal of Procedures, Conditions and Recent Changes**

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### **1 Definition and statistics on unaccompanied minors in Switzerland**

Switzerland has about 8 million residents, 20% of whom are children or youths between the ages of 0 and 19. There are 26 political cantons and 4 official national languages (German, French, Italian and Romansh). Alongside the Swiss Confederation's clear responsibilities, cantons and municipalities have considerable power and influence over the implementation, but also the formulation, of various laws and directives. Accordingly, within the framework of laws and directives that apply nationwide, there are also 26 different contexts and sets of conditions, within which UAM can be placed, supervised and supported, and within which they can reach adulthood. In 2015, the State Secretariat for Migration (State Secretariat for Migration (SEM) 2016a) counted 2736 asylum applications from UAM (up 350% on the previous year), which amounted to around 7% of all asylum applications (up 3.65%). At the moment about 5000 UAM live in Switzerland. However, it seems that many of this specific target group's entitlements and needs are not (yet) met by the process steps between the border and appropriate accommodation, or by the understanding and coordination between asylum policy and child and youth care. One of the reasons for this can be that in issues pertaining to social assistance legislation, the liberal welfare state of Switzerland can be characterized as highly federalist and value-conservative, albeit with a tendency to privatise when it comes to situations of personal risk; in the course of an increasing shift to the political right over the past years, these characteristics have become more pronounced and may well have contributed to the fact that UAM and adolescents seeking asylum in Switzerland are overlooked in many respects, despite their quantitative increase. This article aims to give an insight in the current numbers of UAM and their situation in Switzerland, being shaped by an ambiguous legal framework and important developments within the institutional setting. Compared to other European Countries there is only a very small body of research knowledge on UAM in Switzerland. Therefore, the article has to relate more to non-governmental organization (NGO)-material, statistics and media reports.

#### **1.1 Definition of “unaccompanied minors” in Switzerland**

According to Swiss law, UAM have applied for asylum, are under the age of 18 and are not accompanied by any adult who serves as a basis for the child's welfare in the eyes of the law. The term UAM is more narrowly defined than the term MNA (mineures non accompagnés, French for unaccompanied [refugee] minors), which basically also encompasses fleeing children and youths who have not applied for asylum. In rare cases police or social workers meet children or youths without a legal status in Switzerland. They mostly are sent to a home for children. They have to decide if they want to apply for asylum or to plan a return to where

their families live – supported by the central office for MNA. Temporary residence permits because of minority are not possible in Switzerland. If discussions or interventions address all refugee children (accompanied by parents or not) the term “children on the move” is in use as well. Minors seeking asylum with uncles, aunts or siblings also primarily count as UAM, because according to the law, these persons are not entitled to claim welfare for these minors. Indeed, for reasons relating to police matters (e.g. suspicion of child abduction), the State Secretariat for Migration (SEM) recommends that these minors carry a declaration of consent signed by the parents or the person who has parental custody. This should include their personal details and telephone number.

Every minor seeking asylum in Switzerland (so far) unaccompanied has a legal right to a trustee and to legal representation, which is to be provided by the state and shall supportively accompany the minor through the asylum application process and in their efforts to cope with everyday life (Swiss Foundation of the International Social Service (ISS) 2015). Where, from what exact stage in the process and for how long this legislatively stipulated legal representative and a trustee are provided can, however, differ greatly from case to case as well as from region to region. The same unequal variety can be found in the way involved professionals are able to coordinate various legal, political, technical and individual concerns in the best interests of the child. This is firstly due to unsolved problems during the general asylum procedure, where there are still open issues between the federal state, cantons and municipalities regarding responsibility and authority, and secondly due to insufficient coordination between the asylum procedure and child and youth care in many of the cantons themselves. As one example, asylum-procedure logic evidently dominates the issue of financing: For each UAM, cantons receive a fixed sum from the Swiss Confederation, which is just enough to finance accommodation, assistance and support. However, this is not sufficient for setting up specific professional programs. Therefore, when cantons or municipalities wish to approve more money for this purpose, it is necessary to go through a laborious and slow political process – with an uncertain outcome in each case. Here, the best interests of the child are rarely at the center of the decision-making processes and structures. As a result, the definition and understanding of UAM in Switzerland is primarily very administration-oriented and bureaucratic.

In asylum policy, there are generally three options that are each to be assessed on a case-specific basis with regard to guaranteeing the child’s well-being and the best interests of the child:

- Approval of the asylum application and therefore permission to stay in Switzerland (permit B or C). Longer-term planning and assistance must then commence with regard to completion of schooling, training, the residential situation and development of a social environment.
- UAM who had the possibility of living in a specific UAM accommodation facility during the procedure move into a social welfare flat upon application approval at the latest (often together with adult asylum-seekers whose applications were also approved) unless a longer-term solution has been found, such as a shared flat (with UAM or other peers), a host family, a foster family, or accommodation in a different child-and-youth-care facility (accompanied living or residential care). During the first five (or seven, depending on permit) years after approval resulting social welfare costs are covered by the federal state, afterwards municipalities have to cover them. This

fact is triggering many discussions in which interests of young people completely can get lost.

- Rejection of the asylum application, but with provisional admission (permit F) and thus, from a legal perspective, permission only to stay temporarily. This leads to a status of being “in between”. Formally this group of people have the legal order to leave the country, but because their country of origin is not to be regarded as safe, the expulsion order cannot be executed. The situation with permit F is shaped by very strict regulations which do (and actually are intended to) hinder or delay the processes of integration – e.g. the access to labor market and vocational training or freedom of establishment are restricted. After having lived in Switzerland for five years, it is possible to apply for permit B, which allows staying and working in Switzerland. In reality though, a large portion of those with F permits remain in Switzerland, so longer-term planning with regard to a continued stay is urgently necessary here, especially for UAM.
- Rejection or dismissal of the asylum application: Repatriation and reintegration (or in some cases deportation) into the country of origin or in some cases from the border or the reception center back into a third European country, according to the Dublin Agreement: if any family members of the child live in another Nation associated with the Dublin Agreement. But it looks different with deportation of UAM: According to Swiss AuG [deportation law] between the age of 15 and 18 an imprisoning of UAM of maximum six months is possible, especially in cases that are deported. In these specific cases of return, alongside the planning and assistance with regard to completion of schooling, training, the residential situation and development of a social environment, it is also necessary to explicitly clarify who, by law, is to be the legal representative and fulfil the role of trustee, so that the child’s well-being can be guaranteed in after having returned to the country of origin. In Switzerland, children aged 15 and above can be detained pending deportation as per art. 80 para. 4 FNA. The detention is intended to ensure that a removal or expulsion order can be enforced. According to Terre des Hommes (Terre des Hommes 2016), by detaining children on the basis of the Swiss aliens law is in breach of its duties pertaining to the UN Convention on the Rights of the Child, because detention can never correlate with the child’s well-being. Last year, in 2015, 142 refused minor asylum-seekers aged between 15 and 18 were detained in preparation for departure or pending deportation. Of these, 12 were in Switzerland unaccompanied by an adult, i.e. as UAM. Although certain cantons are already refraining from detention and in the last five years the total number of youths in detention pending deportation has slightly decreased (an analysis of SEM figures conducted by Terre des Hommes shows that in 2011, 176 children and youths were affected by detention measures based on Swiss aliens law, every child in detention is one too many (Terre des Hommes 2016).

## **1.2 Available Data on the Situation of unaccompanied minors in Switzerland**

Over the past years, as a result of new countries of origin and the increase in asylum applications in general, the number of UAM has also risen. In 2015, the State Secretariat for Migration (SEM 2016a) counted 2736 asylum applications from UAM, which was three to four times as many as in the previous year, when there were 795 applications; at the same time the proportion of applications from UAM in relation to the overall number of asylum applications rose from 3.3% in 2014 to 6.9% in 2015 (see Table 2). Today about 5000 UAM

live in Switzerland. However, particularly in discourses that simplify and homogenize, like those on “waves of refugees” or “asylum chaos”, specific target groups, such as UAM, are often forgotten. At the same time, in the public discourse, it is also noticeable that media reports on UAM have a less daunting and deficit-oriented tone, and instead include much more critical examination of the conditions under which the UAM grow up, and calls for a more humane refugee policy with respect to children as a specific target group.

Given the rapid rise in numbers of minors seeking asylum, the pressure on the authorities and the specialists involved is immense; there is a lack of adequate structures and programs, of trained specialists, of time, of financial resources, and of a coordinated interface between the asylum system and child and youth care. Added to this, in the current situation, is the fact that in 2015, a large portion of the total 2736 UAM came from Eritrea (1191), Syria (909), Afghanistan (228) and Somalia (109), and thus, due to the situation in their countries of origin, will probably remain in Switzerland for the longer term. Therefore, from the point of view of long-term integration policy, quick and adequate solutions for child-oriented accommodation, supervision and assistance are urgently needed (Mey/Keller 2016).

Looking back over the past ten years (and considering 2013–2015 in detail) (Table 1 and Table 2), it is most noticeable that the figures for the year 2015 are by far the highest, not only in terms of quantity, but also in terms of UAM’s percentage of the total number of applications. Eritrea, Afghanistan and Somalia have been the dominant countries of origin among UAM for some years already, while Syria has joined them in the last 3 years for sad and well-known reasons. Applications from West African countries, on the other hand, have decreased – at least in terms of percentage. Further UAM have become younger over the past ten years. From 2005 to 2009, it was always the case that over 90% of UAM were aged between 15 and 18, but from 2010 onwards, the proportion of younger UAM has raised – however, from 2013 onwards, a different, more detailed age classification might slightly skew this picture. Statistics unfortunately don’t declare if missing percentage were younger than eight years (not accompanied by parents but by a cousin or uncle) and/or if they were cases around 18 in which minor age is officially doubted (Table 2). Finally, it is to be noted that the proportion of female UAM, after briefly increasing from 2010 to 2012, has again levelled off between 12% and 19%.

	2005	2006	2007	2008	2009	2010	2011	2012
<b>Total asylum-seekers</b>	10,795	11,173	10,844	16,606	16,005	15,576	22,551	28,631
<b>Number and % of UAM</b>	415 (3.8%)	257 (2.3%)	219 (2%)	631 (3.7%)	427 (2.6%)	235 (1.5%)	327 (1.45%)	485 (1.69%)
<b>% of UAM aged 15–18</b>	94%	90.3%	90.8%	95.5%	90.8%	82.8%	84.3%	86%
<b>Male</b>	81.4%	80.9%	83.6%	82.4%	86.6%	74.4%	75.2%	76.1%
<b>Female</b>	18.6%	19.1%	16.4%	17.6%	13.4%	25.6%	24.8%	23.9%
<b>Main countries of origin</b>	Guinea (12%)  Ivory Coast (10%)  Somalia (10%)	Iraq (9%)  Ivory Coast (7%)  Eritrea (6%)	Eritrea (11%)  Afghanistan (10%)  Iraq (9%)	Somalia (16%)  Nigeria (12%)  Guinea (11%)	Nigeria (12%)  Afghanistan (10%)  Somalia (10%)	Afghanistan (22%)  Sri Lanka (12%)  Eritrea (11%)	Afghanistan (16%)  Eritrea (12%)  Tunisia (9%)	Eritrea (24%)  Afghanistan (12%)  Tunisia (6%)

Table 1: Statistics on unaccompanied minor asylum-seekers in Switzerland 2005 – 2012 (SEM 2016a)

	2013	2014	2015
<b>Total asylum-seekers</b>	21,465	23,765	39,523
<b>Number and % of UAM</b>	<b>346 (1.61%)</b>	<b>795 (3.34%)</b>	<b>2,736 (6.92%)</b>
<b>UAM aged 16–18</b>	71%	69%	66%
<b>UAM aged 13–15</b>	26%	27%	25%
<b>UAM aged 8–12</b>	2%	2%	4%
<b>Male</b>	83.5%	81.3%	82.1%
<b>Female</b>	16.6%	18.7%	12.9%
<b>Main countries of origin</b>	Eritrea: 59 Afghanistan: 48 Syria: 36 Guinea: 25 Somalia: 23 Morocco: 17 Guinea-Bissau: 12 Gambia: 11 Mali: 10 Sri Lanka: 10 Tunisia: 9 Kosovo: 6 Belarus: 6 Ethiopia: 6	Eritrea: 521 Afghanistan: 52 Somalia: 50 Syria: 44 Sri Lanka: 17 Guinea: 13 Morocco: 11 Ethiopia: 10 Tunisia: 9 China, Gambia: 6 Albania, Senegal: 4 Algeria, Belarus, Iraq, DR Congo, Mali: 3 Nationality unknown: 3	Eritrea: 1,191 Afghanistan: 909 Syria: 228 Somalia: 109 Iraq: 40 Ethiopia: 36 Guinea: 30 Gambia: 27 Nationality unknown: 19 Sri Lanka: 18 China: 14 Albania: 11 Pakistan, Senegal: 9 Mongolia, Nigeria: 6

Table 2: Statistics on unaccompanied minor asylum-seekers in Switzerland 2013 – 2015 (SEM 2016a)

However, it seems that in order to comprehend the situation of UAM in Switzerland, it is not only the statistics on how many apply for asylum in Switzerland that are relevant, but also figures on UAM who, without reporting their subsequent whereabouts, disappear, go into hiding in Switzerland or travel onwards to other countries during the asylum procedure. In the first half of 2016, for example, according to SEM, 226 UAM dropped out of the official asylum procedure in this way (the total number of all asylum-seekers doing so in this period was 4833 (SEM 2016b)). ISS presumes that many suddenly go into hiding after their application for asylum is rejected, out of fear of further consequences (ISS 2015), but statistics didn't survey points in time of hiding and thus can't clarify this presumption. Numerically, 226 minors disappearing during the official asylum procedure or just after an official rejection in the first half of 2016 equates to 10% of those who applied for asylum throughout the entire preceding year 2015. Unofficial sources (NGO) believe that a large portion travelled onwards to other countries; about 3000 of refugees without papers were apprehended alongside the German-Swiss-border by German authorities (Müller 2016). In those other countries, however, Dublin Regulation limits the option to seek asylum again. Primarily though, as there are only assumptions as to the motives and goals of UAM who disappear, indications of possible child abductions and child trafficking in particular are also more than troubling (Kinderschutz Schweiz 2016).

Finally, the situation at the border between Switzerland and Italy is also to be mentioned: In Como, on the Italian side of Switzerland's southern border, an illegal camp of refugees (meanwhile complemented with a legal one) has been in place since summer 2016. According to statements made in occasional interviews, they wish to travel through Switzerland unnoticed and onwards to a target country, such as Germany, Sweden or England. 200 UAM have been sent back to Como or Milan by the Swiss Border Guard, without any asylum procedure being initiated (amnesty international 2017; Michel 2016). To explain why they were sent back, reference was made to their possible intention to pass through illegally, to Schengen, or to Italy as country of first asylum – regardless of whether or not they wanted to apply for asylum in Switzerland or via the Border Guard. In general, the border controls on Switzerland's southern border have been greatly intensified in 2016 (drones and helicopters with thermal imaging cameras, larger Border Guard corps) without attracting much media attention, or generating political or public debate.

### **1.3 Characterization of unaccompanied minors in comparison with same-ages peers**

The Swiss admission procedure appears to focus mainly on truth. This means that in the asylum procedure, including cases of minors seeking asylum, the primary concern is to verify their origins and reason for flight, sometimes despite a lack of papers, to question and assess the grounds for asylum, or to prove or disprove their status as minors. If SEM doubts the stated age, this can be checked using the hand bone analysis age-determination method. However, this is scientifically disputed and, according to the established legal practice of the Federal Administrative Court, provides information of only limited value. For this reason, the appearance and statements of the asylum-seeker are of key importance upon evaluation of the credibility of the stated age. If SEM comes to the conclusion that, contrary to an asylum-seeker's statements, they are not a minor, this person must be given an opportunity to respond (right to be heard) (Swiss Refugee Council 2016). In addition, some health information is collected at the reception centers as well.

Regrettably, and for obvious reasons, the "truths" about the asylum-seeker's personal history that are formally presented in the asylum procedure under these conditions are only very

rarely the biographical “truths” that would be useful for a (socio-)pedagogical, person-oriented and future-oriented understanding of each case. UAM are too sceptical about any interest shown in them that appears to be a state interest. Due to these formalistic focal points in the procedure’s admission phase, characterized by mistrust, little is known about minor asylum-seekers’ individual resources or problematic situations, e.g. post-war trauma or flight trauma, in Switzerland or in their countries of origin (Swiss Foundation of the International Social Service (ISS) 2015). In the procedure itself, there is little room for the people themselves (be they minors or not) (Jurt/Roulin 2016), for their family situations, their personal stories of flight, or their possible future prospects. Last but not least, it also follows that, from the start, little is done to bridge the gaps in comparison with their same-age peers in Switzerland, e.g. via relevant adults who represent their interests, look after their legal entitlements, and offer pedagogical support. This initial situation leads to the assertion that there are few same-age peers whose interests and perspectives regarding many concerns (including those covered by children’s rights) are ensured to this limited extent by third parties.

In Switzerland there are no data available yet which allow comparing UAM once they have been placed in the cantons by the border reception centers (based on the principle of a distribution mechanism) with same-age peers concerning important characteristics such as educational attainment or state of health. However, it’s possible to point out very unequal institutional as well as legal conditions having a formative influence on their educational perspectives and well-being. According to that the need for action, and the challenges, pertaining to education, training and transition to adulthood are clearly evident. It can also be noted that the Swiss understanding of “integration,” also with regard to funded programs, is still very static and oriented towards the majority culture. It follows that UAM, in comparison with their same-age peers in Switzerland, experience inequality in relation to the following topics:

- **Right to education:**  
Even though there is greater awareness that investment in this area is necessary, for instance in order to avoid subsequent costs to society, children’s right to education seems to be secondary – even more if UAM, upon their arrival, are older than 16 when school is no longer compulsory in Switzerland. Children who arrive at an older age are structurally too late to be integrated into the school system. Additional catch-up programs are overfull and mostly too short.
- **Continuous education structure:**  
There are often difficulties in shaping continuous paths of education because of uncertainty surrounding the right to remain as well as of (changes in) status.
- **Facilitation of training:**  
De facto access to vocational training is blocked because of severe restrictions when entering job market by the Swiss aliens law.
- **Appropriate accommodation:**  
At the moment there is no effort to provide appropriate accommodation with neither too much nor too little support according to the respective case. Quality standards currently appear to be much lower than those in child-and-youth-care programs for same-age peers with similar needs to UAM.

- Follow-up support and attainment for transitions to adulthood:  
Lacks of education become even more evident after reaching adulthood. Premature structural transitions to adulthood can be seen as a result of the formal asylum process and make it more difficult for UAM to enter first labor market and to avoid social exclusion.
- Regular meeting with family members and friends  
A combination of laws and scarce resources make it complicate or impossible to maintain regular meetings with family, family members or friends in neighbouring countries or in other cantons in Switzerland. Instead of their importance for relationships, social media cannot replace physical meetings or they even worsen longings.

Ultimately, the discontinuity in the logic of the asylum procedure, in which changes of residence within a canton are explicitly arranged according to space and procedural status, and the location of many homes or housing facilities outside larger cities, make it difficult to develop a reliable social network with non-UAM same-age peers. At the same time, the high consumption standard of these same-age peers (new media, clothes, going out) can also be a temptation to budget beyond the financial level prescribed by the asylum procedure, which is low compared to that of same-age peers. This can quickly result in debt or lead to the adoption of illegal means of obtaining money for satisfying the urge to consume and participate. In this respect, the number of offences (such as theft, robbery and assault) committed by UAM is rising sharply, at least according to representatives of the juvenile prosecutor's offices in various cantons. It is claimed that the reasons for this include their sometimes traumatic backgrounds, but also insufficient means of reaching their (consumption) goals. In the juvenile legal system, there is also often a lack of case-appropriate places to put convicted UAM.

On the whole in Switzerland, support and placement programs, but also child-and-youth-care interventions, have so far had to deal with limited knowledge of the UAM's cultures of upbringing and welfare state backgrounds, or insufficient knowledge about their experiences during flight. This brings new challenges when it comes to conceiving such programs and interventions: How are opinions, reactions or communications to be understood and interpreted? What leads to conflicts and how are these to be resolved? What difference does it make if, for example, UAM from Afghanistan are used to clans and not very familiar with state institutions, whereas UAM from Eritrea are used to omnipresent totalitarian state structures?

Of even greater importance though, are child protection issues that can unsettle many professionals who are new to working with UAM and are contemplating how to "characterize" them: How are indications of traumatization, child trafficking, forced marriage (Riklin 2016) genital mutilation to be handled?

As already indicated in the previous section, UAM differ from their same-age peers in Switzerland, not only in terms of their pasts and their current situations concerning supported education, apprenticeship and family contacts, but mainly in terms of the resulting, or non-resulting, prospects and transitions to adulthood. Particularly, during these very delicate structural and individual transitions that youths undergo, insufficient (or sometimes completely lacking) opportunities for assistance and support can have long-term consequences. The immense inequality gaps that open up here are related to the high degree

of inequality caused by education processes in Switzerland, which can manifest itself in social exclusion, despite the good material well-being and general living conditions of youths in Switzerland (UNICEF 2013). It follows that younger (accompanied or unaccompanied) asylum-seekers, via their integration into the school system, perhaps still have a chance of gaining ground in the education process, whereas older ones can find it very difficult to catch up when school is no longer compulsory for them. So they might fall in a “vacuum” and it’s nearly impossible for them still to get access to a (sustainable) education. Not solely, but especially, in this vacuum of social exclusion and no prospects, at a time in life when reorientation and finding oneself are highly important, the risk of UAM falling victim to political or religious propaganda or exploitation by different organization also rises.

## **2 Legal framework and policy**

Not only is the rise in numbers of UAM a huge challenge in itself, it also comes up against a problematic basic set-up regarding how the state handles UAM and youths who seek protection: From a legal perspective, they are in the target group of both the asylum system and child and youth care – two separate domains with federal jurisdiction. There is no central federal ministry for child and youth care. In the asylum system, despite the existence of a central office, implementation issues concerning accommodation, support and assistance fall under the jurisdiction of the cantons, of which there are 26 in total, six of those being so-called half-cantons. These political jurisdictions encompass areas with populations of between 15,000 (half-canton Appenzell Innerrhoden) and 1.5 million (canton Zurich).

Broad cantonal responsibilities are also the reason behind the still-predominant interweaving of public and private providers of social services. The diversity of the cantons in terms of population, urbanity/rurality, geographical location and language (Gabriel et al. 2013) is also reflected by the respective local conditions for UAM. These range from non-uniform structures and standards for placement and accommodation through to unequal opportunities for education and social integration, depending on which canton a UAM is transferred to from the border reception center. For instance, urban and/or populous cantons have already been setting up specific accommodation facilities, programs or offices for quite some time. That’s because UAM were sent only to accommodations in urban and/or populous cantons before their number began to increase two years ago.

In order to meet the international standards that are also binding for Switzerland in connection with the special legal status of the child<sup>1</sup>, various adjustments to the asylum system have been made. UAM are formally represented and set apart as a specific target group in asylum law and asylum policy. For instance, there are various references to an obligation to take into account and assess their special situation and needs. This should be ensured by aforementioned legal representatives and trustees or by the provision on prioritization of applications from UAM in the Asylum Act, art. 17 para. 2bis – but it still seems far away from being fulfilled. The fact that in the actual implementation UAM are still primarily seen and addressed as asylum-seekers rather than children has far-reaching consequences. These range from insufficient consideration of children’s rights at various points and in various processes within the asylum procedure, to the still-underdeveloped inter-institutional cooperation between the asylum system, youth care and the education system (and thus also between specialist departments and the regulatory structure). In addition it’s a fact that child

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<sup>1</sup> The UN Convention on the Rights of the Child and the supplementary provisions in the Dublin III agreement are particularly relevant.

asylum-seekers, regardless of their sometimes high vulnerability, are directly affected by pressure to make savings in the politically charged asylum system. However, even where child-oriented structures and programs for UAM are (already) present, they are usually heavily overloaded and overfull due to the immense numbers. So even in these areas, it is necessary to fall back on solutions that are dissatisfactory, both in a technical sense and in terms of children's rights (Mey/Keller 2016).

On the individual case level, it also happens that many legal representatives in Switzerland often have to fulfil so many mandates that they cannot provide youths with adequate assistance beyond the formally designated tasks. This demonstrates the considerable importance of the part that trustees play, but their work and roles are not clarified to any great extent and are sometimes also performed by the legal representatives or institutions' social workers themselves, which can also be problematic, especially with regard to confidential personal issues.

## **2.1 Impact of the UN Children's Rights Convention on legal framework and policy**

In view of increasing activities and criticism by NGO and individual cantons, as well as the rising numbers, the Swiss Confederation has now explicitly called on all cantons to set up suitable structures for accommodation of UAM. Although such calls are not the same as a new law, accommodation and assistance concepts are currently being developed and implemented in various cantons, incorporating all relevant institutions from the fields of asylum aid, youth care and education. Following on from this, in May 2016, the Conference of Cantonal Social Services Directors (SODK) issued non-binding recommendations on UAM and youths coming from the asylum system. These recommendations are intended to bring about harmonization of cantonal regulations, especially with regard to accommodation, assistance, legal representation, schooling, possibilities for further training and transition to adulthood (Mey/Keller 2016). Already, specific needs of UAM are responsible for rising costs in each canton. That's why SODK currently prepares statistics to negotiate a new deal with the federal state (NZZ am Sonntag 2016).

As just mentioned, various NGO have for some time already been repeatedly pointing out that the asylum procedure in Switzerland does not provide any comprehensively applicable specific principles or settings for UAM as required by the UN Convention on the Rights of the Child (UN CRC) and thus breaches this convention. For instance, there is no evident specific consideration or critical evaluation of whether the best interests of the child are guaranteed in all process steps (UN CRC Article 3). In addition, there are no evident binding measures on where and how children going through the procedure have an opportunity to be heard, either directly or via a representative (UN CRC Article 12). Only with such measures can the needs and histories of each individual UAM be catered for – particularly when it comes to decisions of central importance to them. The launched network ADEM (Alliance for the Rights of Migrant Children) hosted a national symposium at the end of 2015 in Bern<sup>2</sup>. Further single NGO as SSI (Swiss Foundation of the International Social Service), SRC (Swiss Refugee Council), Terre des Hommes, Caritas Switzerland and SBAA (Swiss Observation Organization for Asylum and Aliens Law) also do a lot of networking in this regard and drive the public relations work forwards with position papers, handbooks and political demands pertaining to the status of the child in the asylum procedure. Various

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<sup>2</sup> [www.enfants-migrants.ch](http://www.enfants-migrants.ch)

foundations and funds also attempt to bridge the education barriers<sup>3</sup>. At the beginning of 2016, the NGO SSI, for instance, issued a very extensive and instructive handbook on the assistance of UAM. “The purpose of this handbook is to provide the foundation for a methodology of intervention in nine stages, primarily based on respect for the rights of the child and the search for a durable solution for each situation” (Swiss Foundation of the International Social Service 2015). And at the moment a pilot scheme is implemented in a few cantons by the ISS as well. Its goal is to coordinate and support voluntary mentors aiming to bridge a lack of consistent trustees without formal and official tasks and backgrounds.

However, the concerns voiced by the UN Committee on the Rights of the Child in 2015 (Committee on the Rights of the Child 2015) also point out that while these shortcomings in the assistance and support of UAM mentioned by NGO appear to exist in many fields, they are once again clearly coming to a head in the urgent situation in which many UAM in Switzerland find themselves. The committee has thus issued recommendations to Switzerland, as a state party to the convention – not only specific recommendations for UAM that apply to the aforementioned topics, but also the selected points listed below, for all domains concerning children in Switzerland. These also indirectly refer to what UAM cannot fall back on. Specifically, it is recommended that the Swiss Confederation do the following:

- Continue and strengthen its efforts to harmonize the federal and cantonal laws with the convention.
- Develop and implement a national policy and strategy on children’s rights in accordance with the UN Convention on the Rights of the Child, so as to provide a framework for cantonal projects and strategies.
- Introduce a budgeting process that gives due consideration to children’s needs on federal and cantonal levels, and allows child-oriented spending to be earmarked within the relevant departments and authorities.
- Establish an independent institution for monitoring human rights, including a specific monitoring mechanism for children’s rights, with the capacity to receive complaints from children, to assess these, and to investigate them, all in a child-oriented manner.
- Intensify its efforts to eliminate discrimination against children in situations that have an ostracising and disadvantageous effect on them. This particularly applies to migrant children, refugee children, asylum-seeking children, disabled children and undocumented children.
- Define procedures and criteria that the relevant authorities can use for orientation when determining the “best interests” of the child in all domains.
- Continue and intensify preventative and protective measures against female genital mutilation.

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<sup>3</sup> e.g. [www.bildung-perspektiven.ch](http://www.bildung-perspektiven.ch)

## 2.2 Political impact on the Situation in Switzerland

The liberal welfare state of Switzerland can be characterized as value-conservative, although situations of personal and private risk are being privatized to an increasing extent, be it in terms of private providers being mandated to carry out the state's duties, or in these duties being seen as entirely the responsibility of the family or the affected person themselves. An increasing shift to the political right over the past years has contributed to this significantly. However, it also seems to be a relatively long-standing tradition for international accords to face difficulties in Switzerland. This is despite globally active organizations such as the UN (United Nations), WHO (World Health Organization), ICRC (International Committee of the Red Cross) and IOM (International Organization for Migration) being based in Geneva. For instance, Switzerland did not ratify the European Convention on Human Rights until 1974, over 20 years after it came into force. In addition, there has only been a non-state-run competence center for human rights<sup>4</sup> here since 2010 and there is no corresponding state-run committee. In view of the scepticism towards international pacts and conventions that persists to this day (Switzerland does not belong to the EU either) it is not surprising that Switzerland was also one of the last countries to ratify the UN Convention on the Rights of the Child, not doing so until 1997.

Finally until as recently as 2013, a total of 1420 local laypersons' or semi-professional agencies advised and made decisions on child protection cases. Since a legislative change in 2013, these have been replaced by a total of around 200 regional agencies (mostly made up of lawyers, psychologists and social workers), organized and managed in an interdisciplinary way. Together, they comprise the Authority for Child and Adult Protection (KESB) and are responsible for the child protection that the state must guarantee (child law: Swiss Civil Code (ZGB) No 252-327c), as well as for the protection of adults who, for various reasons, are unable to adequately support or protect themselves (adult protection law: Swiss Civil Code (ZGB) No 360-455). KESB must ensure that after an official notice of endangerment (and this also includes a UAM's arrival at the Swiss border), appropriate clarification, support and/or intervention take place. Thus, as an authority, KESB should officially be responsible for all UAM and it issues corresponding mandates to social services or legal representatives. The fact that this (still young) authority's structure, networking, and state of technical differentiation vary greatly from canton to canton and region to region could also be a reason for the heterogeneous and incomplete coordination and understanding between the Swiss Confederation and the cantons (Gabriel et al. 2013). Similar challenges in coordination can be found between the asylum procedure and child and youth care, with regard to the supervision and support of UAM. While in some cantons the new Authority KESB is able to fill a legal lack concerning clear responsibilities for UAM, existing professionalized cantonal offices for UAM fear losing competences that have been built since years in other mostly urban cantons.

## 3 Clearance practices and care arrangements

To date, it is clear that there are no coordinated, fully differentiated clearance practices or care arrangements between the asylum procedure and child and youth care, apart from relatively large institutions for the accommodation of UAM in individual cantons, and non-binding recommendations on assistance and support. The factors contributing to this include unclear responsibilities at reception centers, the changing of trustees upon transfer from the reception center to the cantons, and the overloading of accommodation facilities and of individual

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4 [www.humanrights.ch](http://www.humanrights.ch)

specialists, such as the legal representatives. In more urban (and thus experienced) cantons, clearance is sometimes carried out via specific care arrangements or professionalized offices. Frequently though, this does not happen until months after arrival in Switzerland, and depends on the respective institution. The key challenges to be addressed in order to ensure child-centered placement, assistance and support, are as follows (Mey/Keller 2016):

- Prioritized, age-specific and individual application assessment: case-specific consideration of the situation in the country of origin and receiving country, and of the flight.
- Immediate appointment of a constant, relationship-based trustee; clarification of the relationship between trustee and legal representative.
- Cultivation of interfaces between reception centers and cantons, as well as between individual institutions in the asylum system and youth care, including KESB.
- Lasting solutions that also go beyond the change of status (the granting of asylum or provisional admission).
- Facilitation of participation and consideration of the UAM's prospects; prevention of simplistic categorization and adverse stigmatization.

In larger and/or urban cantons, specific care arrangements are either already in place or have been established in recent months, e.g. in cooperation with an SOS Children's Village. Most care arrangements consist of homes, in which most places are currently occupied. In many cantons, as a result of this lack of places due to no experience with UAM until their number has started to increase, there are still UAM in asylum organizations' standard accommodation facilities, which are usually very large and by no means conceived for this target group. Alternatively, the lack of places means that UAM already have to give up their place in a UAM accommodation facility and switch to a standard accommodation facility before reaching legal age, like in the urban canton Zurich, for example, where this happens at the age of 17. At present, only a few voluntary projects and foundations provide assistance of UAM throughout the delicate transition to adulthood beyond the statically stipulated legal age of 18.

Particularly in small cantons that only recently have to accommodate very few UAM according to the national distribution mechanism, there are also frequent efforts to place UAM in accompanied residential groups or foster families, as there are no specific facilities for them. However, places in foster families are generally scarce in Switzerland. Attempts to place the UAM under the kinship care are made in urban as well as in rural contexts if relatives of a UAM already live in Switzerland. However, some information suggests that this very often entails a lower degree of support and supervision, both qualitatively and quantitatively. It is also quite common to attempt to specifically integrate and support UAM in their leisure time, via centrally organized support programs (UAM meetings, sport programs, etc.), thus offering low-threshold assistance as required.

It is not surprising that these starting points lead to many lengthy discussions about costs. For reasons such as imprecise clearance, or a lack of clearance, placements in settings that provide either much more (and more expensive) or much less (and too cheap) support and assistance than is appropriate for the child or youth are also frequently initiated, sometimes in a very

pragmatic rather than expert way. For rectification of these shortcomings, the following measures would have to be more effective (Mey/Keller 2016):

- Urgently preventing UAM from having to live in the asylum procedure's standard accommodation facilities.
- Implementing new pedagogically oriented residential programs under conditions of time pressure and scant resources.
- Matching the needs of the individual case (range extending from the traumatized to the independent and well-connected UAM); supporting the UAM and giving them a say during placement.
- Preventing the existing child-and-youth-care programs from being devalued by the acceptance of qualitatively dissatisfactory accommodation of UAM under placement pressure.
- Minimising placements and relocations, also after a change in status.
- A binding nationwide implementation of placement and support programs that go significantly beyond the age of 18, the legal age of adulthood.

The available data on how UAM experience their situation is limited to a number of smaller projects and a Charter written by UAM in 2014, which was developed and published in cooperation with SAJV (the National Youth Council of Switzerland) as part of the project "speak out!"<sup>5</sup>. In this Charter, UAM wrote about the situation where they live, their guardians, their assistance, their education, and their prospects after turning 18 and becoming adults. Their demands pick up on many of the aforementioned shortcomings and challenges. The NGO SSI also regularly publishes a UAM magazine called "Ma voix pour toi" (French for "my voice for you"), which is co-written by UAM. Furthermore, one small case study asked former residents of an UAM-institution about their experiences during their stay and after leaving the specifically conceptualized institution; while institutional aspects (organization, attending school, material support) were definitely appreciated, the youths believed there was not enough emotional support (Jurt/Roulin 2016).

#### **4 Research overview and required research**

To date, there are still hardly any scientifically based studies in Switzerland on the subject of UAM. However, alongside numerous position papers from various NGO on legal aspects of UAMs' life situations in particular, a number of relevant pilot studies and Master's theses have been presented.

As far as we know the only larger study<sup>6</sup> is currently underway at the University of Bern following an ethnographically orientated perspective. In this study, young unaccompanied refugees' navigation through the education system is traced, and the significance of various legal, political and pedagogical contexts is assessed with regard to the young people's possible courses of action. The focus is on the youths' experiences and the strategies that they use when faced with obstacles in their search for education and training. The ethnographic

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<sup>5</sup> [www.sajv.ch/speakout](http://www.sajv.ch/speakout)

<sup>6</sup> <http://p3.snf.ch/project-156476>

study is comparative (between Turkey and Switzerland) and methodically uses a combination of participatory observation, and a visual and verbal storytelling compilation.

It is our opinion that in Switzerland, the need for research is particularly high in three fields: Firstly, there is a desperate lack of data on the life trajectories of former UAM. To date, nothing is known about where former UAM are today, how they are (well-being), what training they are completing or have completed, how they are positioned on the job market (if at all) and whether they still live alone or are reunited with their families. Thus, there is also nothing known so far about what kinds of accommodation, supervision and assistance lead to which life situations in their subsequent adult lives. One fundamental problem here is that former UAM are as yet unidentifiable as such in the central asylum databases. There has also been almost no research on the goals and wishes of the children and youths with regard to their own future, and how these change during the time they spend in Switzerland. Practitioners in the field often notice immense differences in terms of the educational orientation of the children and youths, but there is no substantiated knowledge about what causes these differences. Finally, there has so far been a lack of studies on how professionals (social workers, teachers) handle UAM; one important question here would be: Which concepts and notions of family guide their work and decisions?

It is important to note here that not only unaccompanied, but also accompanied minor refugees have as yet only rarely been the focus of research. Even though various problems apply specifically to UAM, some aspects of the two groups' life situations are similar. Here, for selected issues, we think it would make sense to also develop research designs in which both groups can be included (and thus also compared with each other).

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