

Children's Right to Identity in Switzerland

Factsheet submitted to the UN Committee on the Rights of the Child

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1 Creation of identity

- Birth registration is 100% covered¹ and regulated by the "[Ordonnance sur l'état civil](#) (OEC)" (Ordinance on civil registry).
- The "[Loi sur les centres de consultation en matière de grossesse](#)" (Law of 9 October 1981 on Maternity Counselling Centres), obliges the Cantons to set up accredited consultation centres for all problems relating to pregnancy, with details published by the Federal Office of Public Health². Most Cantons have hotlines for mothers who need support. Despite these efforts abandonment of children continues, which indicates the need for further efforts.
- Although abandonment of a child is sanctioned by art. 219 "[Code pénal Suisse](#) (CP)" (Swiss Criminal Code), baby boxes exist in Switzerland. Between 2016 and 2020, 55 children were abandoned and 25 of these children were put in a baby box³. In 15 years (since 1991) Switzerland went from one to six baby boxes⁴. In all, between 2001 and June 2016 (date of survey), 17 children were deposited anonymously; the mothers of two of them were later identified⁵. The existence of baby boxes allowing for anonymous births affects the child's right to identity.
- Since 2001⁶ the donations of sperm are no longer anonymous. Furthermore, the "[Loi Fédérale sur la procréation médicalement assistée](#) (LPMA)" allows (retroactively) the child born through donor conception to obtain information about biological origins upon maturity (see section on preservation).
- Article 6 LPMA creates an obligation to offer counselling to couples who consider ART. In addition, hospitals such as the University Hospital in Lausanne, have established compulsory psychological support for couples, before the beginning of the process, noting that "in the specific case of insemination with the sperm of the donor, counselling is obligatory because of the multiple issues involved. Certain subjects are covered in depth with the couple, such as the break in the genetic filiation, the bond with the future child, and possible alternatives (adoption, abandoning the project), etc."⁷
- Although surrogacy is forbidden in Switzerland, from 2016 to 2019, at least 144 children born from surrogacy were registered in Switzerland⁸. It seems that there are cases of foreign surrogate mothers coming to Switzerland to give birth in Switzerland and jeopardizing the child's right to identity including nationality and family relations⁹.

Potential consideration(s)

- How will the State guarantee access to origins to children placed in baby boxes and prevent anonymous abandonment?
- How will Switzerland guarantee that children born from surrogacy and living in Switzerland with their intending parents will be able to know the names of their surrogate mother and potential donor(s)?

2 Modification of identity

- Support to parents to prevent family separation seems insufficient in the different Cantons¹⁰, which may lead to unnecessary separation and modification of the child's identity in cases when there is a transfer of legal parentage and/or parental responsibility.
- Despite the Confederation and cantons having developed a platform to collect data of children in alternative care as well as working group¹¹, lack of statistics may prevent policy planning to protect children's identity by promoting family reunification and/or preservation of family ties when this is not possible.
- Concerning adoption, Federalism has led to different practices depending on the Cantons and the adoption procedures has not always guaranteed the child's right to identity, as mentioned in the report of the Federal Council about Sri Lanka¹². However, since 1980, the supervision of adoption procedures has improved at a national and international level, even if, according to a recent report, risks of illicit practice remain¹³.
- Parentage established by a private surrogacy arrangement are recognized in Switzerland only within the limits of public order (ATF 141 III 312 and 328). In principle, persons residing in Switzerland who had recourse to a surrogate mother abroad are not legally considered as the parents of the child, even if they are registered as parents on the foreign birth certificate. If the intending father is also the genetic father, he can be considered the child's legal father as soon as the paternity of the surrogate mother's possible husband is cancelled. His partner will then be able to adopt the child¹⁴. In terms of Swiss birth records, it seems that an informal practice of registering the name of the surrogate mother occurs. There is no legislative requirement to do record the details of the surrogate mother or the potential donors, which places the child's right to know their origins at serious risk.¹⁴ Further at this stage it is only the Civil Registry office that primarily deals with international surrogacy arrangements, and they do not have the mandate to explore questions of whether any illicit practices occurred, such as the sale of children. In parallel to questions of recognition of legal parentage and/or parental responsibility, Swiss authorities must also ensure that the children's other rights such as identity and right to not be sold are upheld?

Potential consideration(s)

- How will Switzerland ensure that the support to the parents before the separation is sufficient?
- How will Switzerland ensure that the surrogate child will be able to access full information on his or her genetical and gestational origins, as well as other rights in international surrogacy arrangements?



3

Falsification of identity

- Two recent comprehensive reports regarding illegal adoptions that occurred in the 80's and 90's in Sri Lanka¹⁵. Findings included missing or falsified data in children's documents, commercial aspects of the practices of the intermediaries, outstanding fees, baby farms which allowed for the exploitation of poor women who sold their babies or became pregnant in order to sell them or who were lied about the adoption intentions, corruption or use of acting mothers (women paid in order to pretend there were biological mothers and give their consent to the adoption in court) "¹⁶.
- In recognising the genetic intending parent of children born through international surrogacy arrangements, it does not seem that any gatekeeping measures are in place to verify that sale and/or trafficking has not occurred prior to the recognition of legal parentage and/or parental responsibility. It seems that checks are in place to ensure consent of surrogate mother post-birth.

Potential consideration(s)

- How will the State adapt its current legislation to prevent the risks of illicit adoptions including trafficking through falsification of his or her identity?
- What measures will the State employ to prevent the sale of children in international surrogacy arrangements?

4

Preservation of identity and access to origins

- Every adopted child has the right to obtain information about the identity of his or her biological parents as he/she reaches majority, or before majority if he or she can assert a legitimate interest. The child may also, obtain information concerning the direct descendants of his or her biological parents, if the said descendants are 18 and have consented to it. The identity of the adopted child may be disclosed to the biological parents only with the express consent of the child if he or she is 18, and with both consents of the child and his or her adoptive parents if he or she is a minor. Finally, the direct descendants of the biological parents also have the possibility of receiving information on the adopted child, provided that the adopted child is 18 and has consented to it. Each canton has designated one service.¹⁷
- The Confederation works with the cantons to support adoptees in the search for their origins. To this end, the OFJ and the CCDJP¹⁸ have established a working group specialised on this issue, which is not limited to search for origins in Sri Lanka. In addition, on the initiative of Switzerland, a group of European states and Sri Lanka have agreed on a protocol of collaboration for the processing of original research requests in Sri Lanka¹⁹.
- Adults born of a sperm donation within Switzerland can obtain information about their donor from the Federal Registry Office (OFEC). The personal data, medical status of the donor at the time of the donation and its physical appearance are recorded. At birth, this information is transmitted to the OFEC. Access to information about donations outside Switzerland are not guaranteed.

Potential consideration(s)

- What measures is the State planning to ensure full access to identity information in intercountry adoptions?
- How does the State propose to uphold children's identity rights when donations are used from human reproductive material outside of Switzerland²⁰

5

Restoration of identity

- Research²¹ has shown that undue alternative care placements occurred in the past. Excuses were made, procedures put in place to restore the identity of the children unduly placed in out of home care (access to archives) and compensation given²². In some cantons, like Geneva, the compensation does not seem to have been sufficient²³. Since 2013, authorities in charge of the placement of children have changed and are currently the Child Adult Protection Authority (CAPA) which have the mandate in terms of compulsory removals according to the Swiss Civil Code (arts. 310-311 SCC).
- In the above-mentioned report on Sri Lanka²⁴, Switzerland works with the cantons to support adoptees in the search for their origins and to restore their identity (see above access to origins). Excuses were made, for Sri Lanka only, by the Confederation in 2020²⁵.

Potential consideration(s)

- What is Switzerland considering in terms of its obligations to restore children's identities in alternative care (e.g. baby boxes and/or undue placements), adoption and assisted reproductive technology, including the lifting of the statute of limitations ?

1 Statistics UNICEF, https://www.unicef.org/french/infobycountry/switzerland_statistics.html.
 2 Santé sexuelle suisse, <https://old.sante-sexuelle.ch/fr/centres-de-conseil/>.
 3 Fenêtre à bébé, <https://www.babyfenster.ch/fr/statistiques/moins-de-bebes-retrouves-morts-grace-a-la-fenetre-a-bebe/>.
 4 Conseil Fédéral (2020, December 18). *Réponse de la Suisse au Comité des droits de l'enfant, 5ème et 6ème rapport périodique*. Retrieved from: <https://www.news.admin.ch/news/message/attachments/64590.pdf>.
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 6 Procréation médicalement assistée - Ch.ch, <https://www.ch.ch/fr/fecondation-assistee/>.
 7 CHUV, Psychological counselling, <https://www.chuv.ch/fr/fertilite/umr-home/procreation-medicalement-assistee/soutien/counseling-psychologique>.
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 12 *Rapport du Conseil Fédéral (2020, December 11). Adoptions illégales d'enfants du Sri Lanka, étude historique, recherches des origines, perspectives*, p. 13. Retrieved from: <https://www.bj.admin.ch/bj/fr/home/gesellschaft/adoption/ilegale-adoptionen.html>.
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 14 *Supra 4*. See also https://serval.unil.ch/resource/serval:BIB_02C38028FCB1_P001/REF.
 15 ZHAW (2020, February 27). *Adoptionen von Kindern aus Sri Lanka in der Schweiz in den 1980er Jahren*. Retrieved from: <https://www.zhaw.ch/de/sozialarbeit/news-liste/news-detail/event-news/herkunft-unkannt-adoptionen-von-kindern-aus-sri-lanka/>.
 16 *Supra 12*
 17 Office fédéral de la justice, Liste d'adresse des services d'information et de conseils, <https://www.bj.admin.ch/bj/fr/home/gesellschaft/adoption/herkunftssuche.html>.
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 23 RTS, <https://notrehistoire.ch/galleries/l-enfance-volee-en-suisse>.
 24 *Supra 12*
 25 RTS (2020, December 4). *Les regrets du Conseil Fédéral sur les adoptions au Sri Lanka*. Retrieved from: <https://www.rts.ch/info/suisse/11823272-les-regrets-du-conseil-federal-sur-les-adoptions-illegales-au-sri-lanka.html>.

