

Conclusions

As this research shows, the contemporary Swiss legal framework for removal decisions and placement in foster care is aligned with international standards to a significant extent. However, there are some gaps that require attention that may lead to undue State's exercise of its protective power. The removal and placement decision may become "unjustifiably" coercive whenever it is made contrary to the safeguards embedded in applicable international standards, which can be further exacerbated by a complaint mechanism that is not fit for purpose. To this end, we identified the following answers to the research questions below.

(i) How were/are coercive decisions leading to the removal of children prevented through family support initiatives, in light of evolving international standards?

International standards progressively evolved starting with vague concepts of sheltering orphans in the [1924 Declaration of the Rights of the Child](#) to encouraging to support families at risk and removal being an exceptional measure in the [1959 Declaration on the Rights of the Child](#). With time, international standards continued clarify the conditions for which the State's protective responsibility in child welfare matters could be exercised with the introduction of the [1989 CRC](#) where children could be removed from their families in certain situations, such as abuse and neglect. Several 1989 CRC provisions also created clear obligations on the States to support families in their caregiving role. The 2009 UN Guidelines provided a more holistic approach to the States responsibilities in supporting families prior to removal, which was reinforced by the [2019 UNGA resolution](#) related to alternative care. These international standards were complemented by European norms.

In terms of alignment and influence of international standards on prevention, the following are key Swiss legislative, policy and practices that illustrate efforts to **ensure "justified" coercive removals** :

- 1975 European Convention resulted in the suppression of the distinction between legitimate and illegitimate children.
- national laws provide basic services (e.g. Federal law on health insurance, LAMaL (RO 1995 1328) and 2002 Federal Act on Financial Aid for Child-Care outside the Family) – section 3.2.1
- national laws provide targeted services (e.g. Federal Act on the Elimination of Inequalities Affecting Persons with Disabilities (LHand), 2010 Global Strategy for Switzerland in the fight against poverty) – section 3.2.2
- national laws requiring efforts to maintain contact between the child and his or her parent(s) when temporarily separated (e.g. SCC, Art. 273 ss) section 3.2.3
- development of diverse initiatives at Cantonal level to provide both basic and targeted services to families (e.g. AEMO, CMS, Maisonnée, psychological support centre (CDTEA)) – section 3.2

Regarding areas where there is a lack of alignment with international standards on prevention measures, the following are key Swiss legislative, policy and practices that create **opportunities for "unjustified" coercive removals** :

- Some terminology in Swiss national legislation needs to better reflect international norms (e.g. best interests of the child instead of well-being of the child, famille d'accueil instead of famille nourricière) – section 3.1.1
- While the Constitution includes general support to all families, it does not go as far as proactively supporting those at risk of separation. Such legislative provisions are particularly lacking at a Federal level.
- Legislation currently allows automatic removal of new-borns from their parents who are minors, without any obligation to support them to be able to undertake their caregiving role – section 3.2.2
- The case review reveals a number of obstacles to accessing support for families at risk :
 - Services offered may not necessarily specifically address the reasons for separation especially in cases of domestic violence and marital disharmony.
 - Services should also be more diversified so that they can respond to short-term needs through early prevention initiatives such as respite care, emergency and in-home support
 - Certain services are accessible only at a cost to parent(s), who generally have limited means

- Availability of services does not always respect the constraints and pressures of families, who are already struggling with daily life
- Cultural and geographical barriers can also limit access
- Swiss laws and practices are not fully aligned with reintegration as defined by UN Guidelines (Para. 146) and as confirmed by the case law of the European Court of Human Rights. For example, the Federal provisions do not go as far as requiring a proactive effort for reintegration measures, which would address the reasons for separation.
- partial implementation of legal requirement for professional and multi-disciplinary decision-making of CAPA, which will require significant resources and continued training – section 3.3.2
- while laws exist for participation of children and families, further awareness raising and efforts are required to ensure full and meaningful in practice - section 3.3.1

(ii) **How were/are coercive decisions relating to foster care placement adapted in light of evolving international standards?**

For a long period, it was primarily regional standards that explicitly provided a framework for alternative care placements, whenever a child was deprived of their family. The Swiss context, evolved with the introduction of the [1950 European Convention on Human Rights](#) and the [1975 European Convention on the Legal Status of Children born out of Wedlock](#) (1975 European Convention). These standards introduced certain restrictions on the State's protective powers, influencing reforms to the Swiss Civil Code (SCC) and the introduction of 1977 Ordinance regulating the placement of children for maintenance and adoption (OPEE), revised in 2012 (OPE) and the end of compulsory administrative detention in 1981.

It was only in 1986 that international standards created a specific framework for alternative care placements through the 1986 Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and Internationally adopted by General Assembly resolution 41/85 of 3 December 1986. The 1986 Declaration noted the importance of national regulations (Art. 10), possibility of foster care continuing until adulthood, but not precluding family re-integration (Art. 11) and importance of State supervision (Art. 12), as well as importance of professionalism of decision-makers (Arts. 6-7). The 1986 Declaration was superseded by the 1989 CRC, 2009 UN Guidelines and 2019 UNGA resolution, which provided a further and clearer clarification on States responsibilities in providing quality alternative care.

In terms of alignment and influence of international standards on quality foster care placements, the following are key Swiss legislative, policy and practices that illustrate efforts to **ensure "justified" coercive removals** :

- National legal framework for authorisation and supervision of foster care placements (OPEE and OPE) – section 3.4.3
- Emerging availability of training, support and follow-up to foster families, particularly advanced in private organisations – section 3.4.4
- Mandatory legal requirement for professional and multi-disciplinary decision-making of CAPA, including evaluation mechanism – section 3.3.2
- Development of better support for the child, through a person of trust – section 3.3.4
- 2020 COPMA/CDAS recommendations on out of home family placements provides a national framework to harmonise practices through quality standards, despite not being mandatory (e.g. full and meaningful participation of children, training and financial support of foster families, leaving care)– section 3.1.2

Regarding areas where there is a lack of alignment with international standards on quality foster care placements, the following are key Swiss legislative, policy and practices that create **opportunities for "unjustified" coercive removals** :

- Review of placements is required at least once a year instead of every three months – section 3.4.3
- Lack of national provisions to facilitate leaving care and independent living – section 3.4.5
- Support network for foster carers and children is missing to address their individual needs as well as advocate at a cantonal/national level for necessary changes – section 3.4.4

- Cases showed that costs of removal and alternative care placements, including the CAPA decisions are often delegated to parent(s) who have limited means. A few cases reflected the financial pressure on families to behave in a certain way (e.g. threat of limiting visiting rights to child) – section 3.4.
- Reinforce communication tools to facilitate better participation of children and families during the process

(iii) **When coercive decisions fall outside of the “justifiable” scope of evolving international standards, what pathways were/are available for accessing justice?**

In terms of alignment and influence of international standards on quality foster care placements, the following are key Swiss legislative, policy and practices that illustrate efforts to **ensure “justified” coercive removals** :

- Information and advice services exists – LAVI, KESCHA, Pro Juventute etc.
- National legal framework exists for appeals that has evolved to be more in line with international standards – section 3.7
- The 30 September 2016 Federal Act on Coercive Measures for The Purpose of Assistance and Extra-Familial Care Prior to 1981 enabled victims of abusive placements to obtain compensation, which provides a clear framework, that is well-known among the general public – section 3.7.2a
- Switzerland has ratified the OPIC so that complaints be heard at an international level – section 3.7.2b

Regarding areas where there is a lack of alignment with international standards on quality foster care placements, the following are key Swiss legislative, policy and practices that create **opportunities for “unjustified” coercive removals** :

- Ombudsperson for children does not yet “officially” exist to hear complaints and represent children – section 3.1.2
- For potential “unjustified” coercive decisions post 1981, a clear framework is not in place and well-known among the public
- Need for child and family friendly tools that explain the complaint and appeal mechanisms (e.g. poster/leaflets that are widely available in the waiting rooms of the Child protection offices and CAPA)
- Need for services that specifically support children and families for complaints and appeals, including access to legal representation and public awareness raising of their existence through schools
- Lack of fast-tracked processes for complaints and appeals related to cases involving children to avoid lengthy and bureaucratic procedures
- Opportunity to have greater recourse to mediation and alternative dispute resolution between the different parties before formal complaints

Recommendations

In addition to the recommendations by the CRC Committee to Switzerland in 2015 and 2021, the following considerations stem from the research undertaken (legal review, empirical review in terms of expert interviews and case studies):

Overarching recommendations for entire Swiss system

- Political will to ensure alignment with international standards, notably the 1989 CRC, 2009 UN Guidelines and 2019 UNGA resolution
- Adequate investment into financial and human resources (e.g. reduce the caseload for both the CPO and CAPA, continuous training, strengthen coordination mechanisms such as COPMA/CDAS and cantonal level)
- Robust and binding framework for national child protection system (e.g. Federal child protection law, review of OPE, additional provisions in the civil code of procedure (child participation, person of trust, complaints mechanism, refine terminology) building on the work of actors such as 2020 COPMA/CDAS recommendations, GLAF common norms on foster care, etc.

Support to families in their caregiving role

- Embed in national and cantonal frameworks the necessity to support families prior to any removal and placement decisions building on the Constitution
- Improve access to the existing basic and targeted services (e.g. remove potential barriers such as costs for the families and cantons; cultural, geographic; availability of parents in terms of time and competing pressures etc.)
- Training of all professionals in contact with children (e.g. teachers, paediatricians, nursery, psychologists, police) to detect and offer early prevention measures for families at risk
- Public awareness raising of the importance of prevention measures and supporting families
- Strengthening re-integration practices beyond maintaining contact with the family of origin by addressing the initial reasons for separation. Introduction of a “professional” who is responsible for working with families of origin, to enable a “re-start” and ensure collaboration with all relevant sectors, whenever in the best interests of the child
- Introduce a wide range of respite care options for families of origin, foster families and children to improve the sustainability of care of the child

Promising practices

Cambodia – with the support of UNICEF, the country drafted a Capacity Development Plan for family support, foster care and adoption in 2018. The Plan presents key findings and 23 recommendations, sub-divided into short-term, medium-term and long-term actions, for an effective and efficient implementation of foster care, adoption and family support in the country. Another Action Plan for improving child care with the target of safely returning 30 per cent of children was developed from residential care institutions. As a result of these Action Plans, Prakas on Procedures to Implement Kinship Care and Foster Care were launched in 2021 including pro-actively addressing initial reasons for separation prior to separation. <https://www.unicef.org/cambodia/reports/capacity-development-plan-family-support-foster-care-and-adoption> ; <https://www.unicef.org/cambodia/reports/action-plan-improving-child-care-target-safely-returning-30-cent-children> and <https://bettercarenetwork.org/sites/default/files/2021-07/Final-Prakas-on-Kinship-and-Foster-Care-English-1-1.pdf>

Kenya - National care reform strategy for children from 2022 -2032 : Prevention of separation and family strengthening is one of the three pillars of this care reform and “involves support measures and services which strengthen families and prevent children being separated from their families. It includes education, health care, social protection, food security, livelihood support, positive parenting, psychosocial support, day-care facilities, community-based rehabilitation services for children with disabilities, employment support, support for child-headed households, and so on.”

<https://www.socialprotection.go.ke/wp-content/uploads/2022/06/The-National-Care-Reform-Strategy-for-Children-in-Kenya-2022-2032.pdf>

Norway - the Norwegian Child Welfare Services (barnevernet) offers comprehensive services and programmes to support parents in different situations where their caring role is at risk.

https://www.bufdir.no/en/English_start_page/The_Norwegian_Child_Welfare_Services/

Spain - a general law including all children's rights embedded in the 1989 CRC has been adopted at federal level in 1996 and applies to the different autonomous communities "Ley Orgánica 1/1996, de 15 de enero, de Protección Jurídica del Menor, de modificación parcial del Código Civil y de la Ley de Enjuiciamiento Civil" <https://www.boe.es/buscar/act.php?id=BOE-A-1996-1069>

Gatekeeping (coercive decision to remove the child)

- Improve the implementation of the laws that facilitate participation of the child and his or her family (e.g. information tools about their rights and responsibilities, functioning of the system, role of actors; modes of communication such as child hearing, questionnaires)
- Ensure the inter-disciplinarity and professionalism of decision-making authorities such as CAPA and CPO (e.g. minimum qualifications, specialised expertise on child protection, continuous learning on child protection and overall child rights)
- Strengthen accreditation and supervision of private actors that have recently been introduced across all Cantons (e.g. new KJG and the new regulations in Zurich)
- Ensure that whenever in the child's best interests, siblings should not be separated and if placement is necessary, they should be placed together as part of Federal legislative framework. To facilitate such placements, policies should ensure that adequate resources are available to prioritise family-based options (e.g. subsidies are available for kinship carers, suitable support is provided to foster families for this specific type of placement)
- Guarantee that the child's representative has the specific child protection expertise and in practice, easily accessible through a process known to the child
- Ensure that the child is able to choose their person of trust within their existing entourage who is available to listen to his or her needs, and is equipped to act when necessary

Promising practices

Child friendly tools that explain children's rights – as a general tool to explain the 1989 CRC and general children's rights, UNICEF has produced the following

<https://www.unicef.org/sop/convention-rights-child-child-friendly-version>.

Missing Children in Europe have also developed a smartphone application "Miniila" that provides "up to date and accessible information on their rights, procedures and the available support wherever they are" in Europe. Such an application could be developed for children and their families in Switzerland. <https://www.miniila.com/>

Regarding alternative care, **RELAF** published a child friendly version of the UN Guidelines on alternative care titled "Your right to live in a family and to be cared for in all the situations of your life". This publication based on the 1989 CRC and the 2009 UN Guidelines explains in a very accessible language the rights of children at risk of being separated, provides concrete examples of difficult situations as well as available responses <https://www.relaf.org/Guidelines%20FV%20Children.pdf>

SOS Children's villages together with the Council of Europe published a child friendly guide for children in care titled "Children and young people in care - Discover your rights!" that explains to children their rights going through the different steps of the care process. <https://www.sos-childrensvillages.org/getmedia/65242186-a6d2-4056-b6fe-9b18cc639d41/111202-English-brochure-DYR.pdf>

Accreditation of service providers - The Child Safe Standards for Permanent Care in New South Wales, a state in Australia, form the basis for how agencies become accredited to provide statutory out-of-home care and adoption services. Before an agency can be accredited by the Children's Guardian, they assess the agency and its operations to make sure it meets the requirements of the regulations. <https://ocg.nsw.gov.au/statutory-out-home-care-and-adoption/about-statutory-out-home-care-and-adoption/accreditation>

Australia and UK – there exists specialist child's rights lawyers with accreditation by the Law Society trained on child law <https://www.lawsociety.org.uk/career-advice/individual-accreditations/children-law-accreditation/> and <https://www.lawsociety.com.au/for-the-public/going-court-and-working-with-lawyers/specialist-accreditation-scheme>

European countries with legislative framework covering siblings – several countries across Europe have adopted laws giving sibling the right not to be separated in alternative care. This is the case for France, Netherlands, Norway, Scotland and more recently Belgium. The effective implementation of such laws requires adequate investment into child protection mechanisms to make it concretely possible to place siblings, including large groups, together whenever in their best interests. <https://www.sos-childrensvillages.org/news/laws-to-keep-siblings-together-debated-across-eu>

Placement in foster care, coercive decision to place the child in an alternative setting

- At a national level, the relevant State actors should prioritise the recurring recommendations of the CRC Committee by ensuring that existing statistics are comprehensive including all forms of alternative care including foster care (e.g. uniform definition of different types of foster family applicable to the 26 Cantons; common data collection period; adequate resources)
- Ensure a robust accreditation and monitoring system of private bodies to have minimum qualifications, continued training and periodic audit of services
- Ensure a harmonised accreditation system and supervision of all foster carers to have minimum qualifications and compulsory training across all cantons for both public and private actors
- Guarantee holistic support (initial, continuing and post) is available to all foster families, including children (e.g.: training, punctual services to address specific issues, associations of foster families that provide peer support and represent their needs in ongoing reforms)
- Further research should be undertaken on how costs for placement are borne by parents in practice and to what extent there is a potential "unjustified" coercive decision
- Introduce a national legal provision that encompasses leaving care support so that it is equally available to all children independent of which Canton they are in. Adequate resources should be invested to ensure transition into full independence (e.g. facilitate access to all education and professional training, support person, suitable accommodation)
- In order to respect the child's right to identity (1989 CRC, Arts. 7-8), ensure that all children are aware of how and where they can access comprehensive information about their dossier. Such information should be centralised and kept in perpetuity.

Complaints and appeal mechanisms, as well as pathways for remedies for "unjustified" coercive decisions

- Regarding complaint mechanisms at Federal and Cantonal, Switzerland should ensure that it has a specialised national human rights institution focusing on children's rights where individual cases can be addressed (e.g. ENOC)
- Ensure that all children and families are aware of all available complaint mechanism for individual cases through different materials (e.g. Kescha, LAVI, Pro Juventute)
- Building on the solid framework for remedies available for abuses prior to 1981 available through PLAFa, a mechanism should equally be developed for all cases post 1981 where potential abuses may have occurred. This mechanism should include procedures, support services and remedies.

Promising practices

Primero platform – is a protection-related information management system that helps social workers, child protection practitioners and service providers to manage, store and analyse data on children, including information about families. Primero manages three types of data, including case management, incident management and information about the localisation and reunification of families. This platform could be used as a framework for the collection of national statistics.

<https://www.primero.org/>

Recruitment of foster care families – investment into a campaign for the wider public that explains the role, responsibilities and benefits such as 2022 John Lewis advertisement

<https://www.youtube.com/watch?v=1z0jfP2gCIs>

National association of foster families – In the UK, the Fostering Network is the country's leading fostering charity and membership organisation, bringing together everyone involved in the lives of fostered children to support those who foster, improve opportunities for fostered children and young people and provide expert guidance to all fostering services, including support fostering families and the services that work with them. <https://www.thefosteringnetwork.org.uk/get-involved/membership/foster-carer-membership>.

Leaving care in Scotland – law and regulations set up the duties of the State to provide after care support up to 26 (or beyond in some cases). This legal framework has been strengthened over time as well as guidance on support services developed. <https://www.gov.scot/policies/looked-after-children/children-leaving-care/>

European Network of Ombudsman – Ombudsman ENOC gathers 44 independent children's rights institutions in 34 countries within the Council of Europe member states. Inspiration can be gathered from the different models. <https://enoc.eu/>

Children's Rights Commissioner Scotland - a national, independent organisation with statutory powers and regulations which has a legal duty to promote and protect the rights of all children in England in accordance with the 1989 CRC. The Children's Commissioner takes on a crucial role, sitting at the heart of Government, delivering for children, and championing their voices and needs. <https://www.cypcs.org.uk/>

Children's rights defender in France – children may contact the defender whenever they are concerned about their rights being contravened. The defender also prepares topical reports on the application of children's rights in France, including child friendly versions. <https://www.service-public.fr/particuliers/vosdroits/F1628> and <https://www.defenseurdesdroits.fr/fr/competences/missions-objectifs/defense-des-droits-de-lenfant>