

# GLOBAL **NEXTGEN** INDEX

Protecting the liberty of our next generation, today.

## End Child Detention Scorecard

# **SWITZERLAND**

Published August 2018 using information compiled between November 2017 – January 2018, based on the most up-to-date reports and analysis available.



## FINAL SCORE

# 67

According to Federal Law<sup>1</sup>, children under the age of 15 years are exempt from immigration detention in Switzerland. Additionally, Swiss Cantons have relevant cantonal legislation which leads to different practices at the cantonal level.

When arriving in Switzerland, asylum seeking children, whether travelling with their families or unaccompanied, are placed in federal reception and processing centres run by the State Secretariat for Migration (SEM). These centres impose restrictions on liberty. This period of initial reception in the centres can take up to three months<sup>2</sup> and according to the Ordinance currently under ongoing consultations, this period could be increased to a maximum of 140 days.

Switzerland is currently undergoing restructuring of the asylum system, and has displayed a political commitment to end child immigration detention at the international level.<sup>3</sup> The Government of Switzerland could become a world leader on this issue if further changes were made to domestic provisions at federal and cantonal level.

	Switzerland	Possible
Treaties	18	20
National laws	8	10
Processing	13	26
Placement	8	12
Rights	14	20
Oversight	7	12
<b>Sub Total</b>	<b>68</b>	<b>100</b>
<b>Points off</b>	<b>-8</b>	<b>-15</b>
<b>Bonus points</b>	<b>+7</b>	<b>+15</b>

## Treaties 18/20

Switzerland has ratified five of the six Conventions and Protocols that assist in the protection of children in the context of migration.

### Recommendations:

1. The Switzerland NextGen Index Committee and its international partners congratulate the Swiss government on achieving ratification of most of the Conventions and Protocols that assist in the protection of children in the context of migration.

<sup>1</sup> Art. 80(4) and 80a(5), Federal Act on Foreign Nationals from 16 December 2005 (<https://www.admin.ch/opc/en/classified-compilation/20020232/index.html>) (RS 142.20)

<sup>2</sup> Art. 16, Ordinance 1 on Asylum, OA 1 from 11 August 1999

<sup>3</sup> The Parliamentary Assembly of the Council of Europe (PACE)'s [campaign to end child immigration detention](#) has a Swiss General Rapporteur, Mr. Pierre-Alain Fridez, who succeeded another Swiss member, Ms Doris Fiala (former General rapporteur); [New York Declaration for refugees and migrants](#), nov.2016

2. The Committee strongly recommends that Switzerland ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as recently recommended during the 2017 Universal Periodic Review of Switzerland.
3. The Committee recalls the importance of effective implementation of the Convention on the Rights of the Child (CRC) at national level and encourage the Swiss government to follow the guidance provided by the Committee on the Rights of the Child in its General Comments as well as the specific Concluding Observations and Recommendations made to Switzerland.
4. The Committee urges the authorities to take due consideration of the contribution of Swiss civil society organisations in the ongoing revision of the new asylum legislation.

## National laws 8/10

Detention of children under 15 years of age is not permitted under federal law in Switzerland.<sup>4</sup> However, detention of children between 15 and 18 years of age is permitted.<sup>5</sup> The federal law provides the cantons with discretionary powers for the implementation of federal laws. Therefore, at cantonal level, the practices vary due to additional provisions of cantonal legislation, different resources, etc. Some cantonal laws are in line with international standards and good practices, prohibiting the immigration detention of all children, including between 15 years old and 18 years old.

### Recommendations:

1. The Switzerland NextGen Index Committee and its international partners recognize the efforts of the government to protect children under the age of 15 years by law.
2. The Committee strongly encourages the government to bring the age limit for immigration detention up to 18 years within the federal legislation, in order to comply with Switzerland's international obligations under the UN Convention on the Rights of the Child and international human rights instruments.
3. The Committee urges the government to facilitate the adoption of the domestic law on a national human rights institution in order to create the legal basis for monitoring the implementation of human rights standards including children's rights.
4. The Committee strongly encourages the cantons to properly resource and implement relevant obligations, standards and good practice models, including those already developed in some but not all cantons.
5. Therefore, the Committee fosters and calls for further inter-cantonal cooperation between the cantonal governments and cantonal competent authorities in adopting common standards and exchanging good practices.

## Processing 13/26

Screening procedures in place in Switzerland require consent to participate. However, asylum seekers are expected to shoulder the burden of proof in procedures<sup>6</sup> and age assessment relies on controversial and intrusive methods, which are not consistent with relevant human rights law. The best interests of the child is to be taken into consideration, with prioritised processing of asylum applications from unaccompanied children.<sup>7</sup> Furthermore, the

<sup>4</sup> Art.80 (4) and Art. 80 a (5), Federal Act on Foreign Nationals

<sup>5</sup> Art.80(4) and Art.79 (2), FNA and other FNA and AsyIA provisions applicable to the detention of children between 15 and 18 years old.

<sup>6</sup> Application of art. 8 CC by analogy: "Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact". Il appartient « au requérant qui entend se prévaloir de sa minorité de la rendre pour le moins vraisemblable, s'il entend en déduire un droit, sous peine d'en supporter les conséquences juridiques » (Arrêt du TAF E-803/2015; ATAF 2009/54)

<sup>7</sup> (art.17,let.2bis, Federal Act on Asylum)

Swiss Inter-Cantonal Conference of Cantonal Directors of Social Affairs (CDAS) considers the best interests of the child as a primary consideration in its recommendations.<sup>8</sup> However, a formal process with strict procedural safeguards designed to determine the child's best interests on the basis of best interests assessments and a best interests determination is absent from the policy at federal and cantonal levels. The federal law provides for a person of trust<sup>9</sup> to be appointed as an interim measure. Unfortunately, this role does not fulfill all of the legal skill requirements of being a guardian.<sup>10</sup> However, reports have shown that often the person of trust is more than an interim measure and that they are overburdened and unable to perform their responsibilities fully.

**Recommendations:**

1. The Switzerland NextGen Index Committee and its international partners urge the cantons to implement the recommendations of the Inter-Cantonal Conference of Cantonal Directors of Social Affairs (CDAS/SODK) on the protection of unaccompanied children during the asylum procedure.
2. The Committee encourages the cooperation between the SEM and the cantons, in improving the processing from the entry into a federal centre to the assignment to a canton and during the final decision over the legal status of the migrant, in compliance with the best interests of the child which is a right deriving from the CRC.
3. The Committee recommends better coordination between competent authorities when assigning the persons in charge of the legal representation, of the guardianship and the person of trust. Those should be duly trained and allocated resources should be available to ensure continuity in legal representation and legal assistance as well as provision of alternative care during relevant procedures.
4. The Committee strongly recommends recruitment and provision of quality legal advisors and professional guardians to comply with human rights instruments ratified by Switzerland.
5. The Committee urges the SEM and the cantons, with the support of inter-cantonal conferences, to develop a systematic, formal and individualized process to ensure that the best interests of the child are assessed and taken as a primary consideration during all decisions at both the cantonal and federal levels for all children. Together with its development, implementation of systematic case management to follow the children and ensure their best interests throughout the whole procedure is needed.

## Placement 8/12

A variety of placement options are available in Switzerland during the asylum procedure. All those who apply for asylum in Switzerland do so in special reception and processing centres which should have special provisions for the needs of children and families, however this does not always appear to be the case.<sup>11</sup> Families may become separated when one of the parents is placed in detention according to cantonal practices.

**Recommendations:**

1. The Switzerland NextGen Index Committee and its international partners commend the cantons favouring and prioritizing unconditional placement options, which are alternatives to detention such as foster care and accommodation within local communities and host families.

<sup>8</sup> [The Swiss Conference of Cantonal Directors of Social Affairs \(CDAS\) - Recommendations on unaccompanied children and youth in the asylum system, 2016, May 20<sup>th</sup>](#)

<sup>9</sup> (art. 17, al. 3, let. c LAsi ; art. 7, al. 2 OA 1). The person of trust is foreseen as an interim measure until child protection measures according to the Civil Code (such as appointing a guardian) are implemented. (art. 17, al. 3 LAsi, art. 7, al. 3 OA 1)

<sup>10</sup> [Caroni, M. and Scheiber, N. \(August 2015\). Gutachten im Auftrag der Demokratischen Juristinnen und Juristen Schweiz \(DJS - JDS\) betreffend rechtliche Fragestellungen im Zusammenhang mit der Neustrukturierung im Asylbereich und der Beschleunigung im Asylve](#)

<sup>11</sup> [Swiss Refugee Council, AIDA Report, Special Reception needs of vulnerable groups and Swiss Refugee Council, AIDA Report, Conditions in Reception facilities](#)

2. The Committee underlines that any restriction of liberty of movement required by a conditional placement option should be necessary and proportionate, as required under the International Covenant on Civil and Political Rights.
3. The Committee strongly recommends that the government and the cantons take due consideration of the right to family life (art. 8 of the ECHR) and implement alternatives to detention, thus avoid ordering the detention of one member of the family, which causes family separation and which is not consistent with the best interests of the child.
4. The Committee encourages Swiss policies and practices to be consistent with the right to family life and therefore to prohibit the separation of families and imprisonment of family members for the purposes of immigration detention.<sup>12</sup>

## Rights 14/20

Switzerland provides for basic rights of some populations to be met, especially asylum seekers and refugees. Positive practice includes providing basic healthcare and enabling children up to the age of 16 to access education, although education should also be provided in the actual Federal Centres. It is specifically provided in the law that the level of social assistance provided to some categories of migrants must be below the one that is granted to Swiss nationals.<sup>13</sup> This discrimination is highly problematic for children who could see their rights to health, education, integration and development harmed because of the difficult financial situation of their parents. Switzerland provides access to education for children up to 16 years of age although education is not provided while children and their families are living within the Federal Centres, which can be for as long as 3 months.<sup>14</sup>

### Recommendations:

1. The Switzerland NextGen Index Committee and its international partners commend the government for its commitment to uphold the rights of migrants, especially asylum seekers and refugees.
2. Whereas efforts are undertaken to facilitate the integration and access to the labour market to prospective refugees and those admitted under provisional admission, the government should consider non-discriminatory treatment and measures applicable to other categories of migrants, in order to avoid worsening their precariousness and vulnerability.

## Oversight 7/12

National legislation provides for judicial oversight of immigration detention, but compliance with these safeguards is not guaranteed in practice in all cantons.<sup>15</sup> The National Commission for the Prevention of Torture (NCPT) ensures the protection of human rights for persons placed in all forms of detention throughout Switzerland. However, NGOs require personal authorisation in advance to visit the facilities, which is not always granted. Immigration detention statistics are available only upon request and detailed, disaggregated and precise information is not available as reported in a recent parliamentary Commission report on detention of asylum seekers.<sup>16</sup>

### Recommendations:

<sup>12</sup> <https://www.humanrights.ch/fr/droits-humains-suisse/interieure/asile/loi/progres-a-faire-regroupement-familial>

<sup>13</sup> art. 82, co. III – Federal Law on Asylum

<sup>14</sup> a) [Swiss Refugee Council, AIDA Report, access education](#)

<sup>15</sup> [Swiss Refugee Council, AIDA Report, Judicial Review of the Detention order](#)

<sup>16</sup> Détermination administrative de requérants d'asile. Rapport de la Commission de gestion du Conseil national. 26 juin 2018 <https://www.parlament.ch/centers/documents/fr/bericht-gpk-n-admin-haft-asylbereich-2018-06-26-f.pdf>

1. The Switzerland NextGen Index Committee and its international partners commend the Swiss authorities for the judicial oversight of immigration detention and the National Preventive Mechanism (NCPT).
2. The Committee strongly recommends that the competent Swiss authorities grant NGOs access to immigration detention centers and data in order for them to carry out preventive monitoring and provision of services such as legal aid and advice.
3. The Committee urges the SEM and the cantons government to provide disaggregated statistics on immigration detention and to make them publicly available.

## Points off -8/-15

Statistics on the number of children detained are difficult to obtain and verify. A recent Swiss Parliamentary Commission report has also shown evidence that some children below the age of 15 years were detained which contravenes the national legislation<sup>17</sup>.

### Recommendations:

1. The Switzerland NextGen Index Committee and its international partners urge the government to considerably improve the collection of data and to publicise disaggregated statistics on immigration detention of children on a regular basis and according to a reliable data collection system.
2. The Committee urges the government to take into consideration the immigration detention practices abroad and the living conditions of migrant children in the countries of return, including in Dublin cases.

## Bonus points +7/+15

Switzerland has made a number of political and funding commitments to end child detention, including a federal law that protects those under 15 years of age. The Swiss Rapporteur for the Parliamentary Assembly of the Council of Europe (PACE)'s campaign to end child immigration detention has been instrumental in advocating with other COE Member States to reform their laws. The Swiss government has also contributed significant funding to the PACE campaign. Ratified international treaties and agreements have effect in Switzerland, but their effective implementation and reservations clauses, in particular those made to the CRC, impact on the ability of children to be able to access and fulfill their rights.

### Recommendations:

1. The Switzerland NextGen Index Committee and its international partners strongly recommend legal amendments prohibiting immigration detention of children under the age of 18 years as well as those who are age disputed, in line with human rights standards.
2. The Committee strongly recommends that Switzerland removes reservations made to the CRC relating to art. 10 (1) (family reunification), to art.37(c) (conditions for deprivation of liberty) and to art. 40 (juvenile criminal procedure).

<sup>17</sup> Détention administrative de requérants d'asile. Rapport de la Commission de gestion du Conseil national. 26 juin 2018  
<https://www.parlament.ch/centers/documents/fr/bericht-gpk-n-admin-haft-asylbereich-2018-06-26-f.pdf>



This scorecard has been assessed by the Switzerland NextGen Index Committee:

- Terre des hommes – Helping Children Worldwide
- Swiss Refugee Council (OSAR)
- UNICEF Switzerland
- Jyothi Kanics, Individual Member of the International Detention Coalition

Advice provided by Global Detention Project (GDP) and International Social Service (ISS).

For further information regarding how this score was measured visit <http://next-gen-index.org/>

If you have any questions, please contact the Global Campaign:  
[media@endchilddetention.org](mailto:media@endchilddetention.org)

# Additional Resources & Information

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## Treaties & National Laws

- [List of ratified Conventions](#)
- [Convention Relating to the Status of Refugees](#)
- [International Covenant on Economic, Social and Cultural Rights](#)
- [Swiss Confederation, Federal Department of Foreign Affairs: ABC of International Law](#)
- [Federal Act on Foreign Nationals, 2005](#)
- [Federal Constitution of the Swiss Confederation](#)

## Directives & Services

- Swiss Pediatrics Society: [Asylum Seeker Age Assessment Statement](#)
- Swiss government reply to Council of Europe: [Protecting Refugee Children from Abuse](#)
- OSAR: [Dossier Requéant-e-s Mineur-e-s non-accompagné-e-s](#)
- SEM: [Reprise de la directive sur le retour \(Développement de l'acquis de Schengen\)](#)
- [Gutachten im Auftrag der Demokratischen Juristinnen und Juristen Schweiz](#)
- CDAS: [Recommandations de la Conférence des directrices et directeurs cantonaux des affaires sociales](#)
- [Decision of the Federal Tribunal](#)
- Swiss Refugee Council, AIDA Reports
  - [Legal Representation of unaccompanied children](#)
  - [Registration of the Asylum Application](#)

## Community Integration & Support

- CDAS: [Coûts d'hébergement et d'encadrement des MNA](#)
- CSDH: [Une justice adaptée aux enfants](#)
- SEM: [Manuel Asile et retour. Requéants d'asile mineurs non-accompagnés.](#)
- Asile LGBT Genève: [Recherche-action sur l'accueil des réfugié.es LGBTI à Genève](#)
- Amnesty International: [La détention d'une famille de réfugiés jugée contraire aux droits humains](#)
- PACH: [Ergebnisbericht Bestandesaufnahme Pflegekinder Schweiz](#)
- Swiss Refugee Council, AIDA Reports
  - [Special Reception needs of vulnerable groups](#)
  - [Conditions in Reception facilities](#)
  - [Reception conditions, specific structures](#)
  - [Reception conditions, type of accommodation](#)

## Infrastructure & Oversight

- SEM: [Refugee Permits](#)
- Observatoire Romand: [Permis F - Admission provisoire ou exclusion durable?](#)
- Humanrights.ch: [Toute une vie dans le provisoire - un rapport dénonce les effets pervers du permis F](#)
- Council of Europe, Commissioner for Human Rights: [Rapport Par Nils Muiznieks](#)
- [National Commission for the Prevention of Torture](#)
- Terre Des Hommes, Status Report: [Illegal Detention of Migrant Children in Switzerland](#)
- UN Committee, Torture: [Observations finales concernant le septieme rapport périodique de la Suisse](#)
- Council of Europe: [Swiss Government Supports Campaign to End Child Immigration Detention](#)
- Swiss Refugee Council, AIDA Reports
  - [Dismissed Asylum Seekers](#)
  - [Emergency Assistance](#)
  - [Safe Country of Origin](#)
  - [Judicial Review of the Detention Order](#)