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Illegal detention of migrant children in Switzerland: a status report.

June 2016



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Terre des hommes is the leading Swiss organisation for child relief. Founded in 1960, Terre des hommes helps to build a better future for disadvantaged children and their communities, with an innovative approach and practical, sustainable solutions. Active in more than 30 countries, Tdh develops and implements field projects to allow a better daily life for over 2.1 million children and their close relatives, particularly in the domains of health care and protection. This engagement is financed by individual and institutional support, of which 86% flows directly into the programs of Tdh.

Preface.

Children in the context of migration, whether accompanied, separated or unaccompanied should never be remanded in custody. Migratory status should not be considered as an offence and should not justify the detention of children as such. These are not weasel words, but reflect the opinion the Committee on the Rights of the Child as expressed in its General Comment no. 6^[1] as well as the following up to the 2012 day of general discussion: (Rno 78): “... ***In this light, States should expeditiously and completely cease the detention of children on the basis of their immigration status.***”^[2]

However, there is a worldwide trend, particularly in Europe, to “criminalize” migration and instigate a distrust towards migrants, men, women or children, who become, almost automatically, a suspect and for which a solution of return or expulsion is considered, rather than an open and friendly attitude.

Yet, art. 22 of the Convention on the Rights of the Child requires States Parties to “***take appropriate measures to ensure that a child (...) receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention...***”

Furthermore, the said Convention reminds that no child should be left behind. As soon as a child is on the territory of a State Party to the Convention, he is entitled to the rights recognized by the Convention to those under 18. This principle also applies to migrant children whether accompanied or separated from their parents. The category of migrant children constitutes in the eyes of the Convention a category of vulnerable children.

It is therefore puzzling to see how the instinct of withdrawal is common in the field of migration and how States, including Switzerland, flatly ignore their basic obligations towards children on their territory. The research conducted by Terre des hommes – Helping Children Worldwide – has the advantage to give at least objective figures (let us mention incidentally the difficulty in obtaining them) on the use of deprivation of liberty towards migrant children, and by a mirror effect, to demonstrate that we do not respect, in this field, our commitments. Some may argue that the number of identified children deprived of liberty is relatively small and that there are more urgent and important issues to deal with. Maybe. Still we’ve known for a long time that deprivation of liberty of children has short – medium and long term effects on the development of children. We also know as a fact that there are alternatives to the deprivation of liberty, including when children have committed an offence. We are here in the presence of children “victims of migration” and in no way author of a crime to migrate. There is no reason to lock them in. Let’s come to senses and let’s respect our international commitments, which requires to respect children, all children.

Jean Zermatten

Founder and former director
of the International Institute
for the Rights of the Child (IDE)
Former President
of the UN Committee
on the Rights of the Child

^[1] General Comment no. 6 (2005), *Treatment of unaccompanied and separated children outside their country of origin*.

^[2] Committee on the rights of the child, report of the 2012 day of General Discussion on the rights of all children in the context of international migration.

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Glossary.

Administrative detention

Arrest and detention without charge or trial ordered by the administrative authorities rather than judicial bodies/courts. In many countries, violation of the immigration law lead to administrative detention. (Association for the Prevention of Torture (APT) and United Nations High Commissioner for Refugees (UNHCR), 2014. *Monitoring immigration detention. Practical Manual*).

Best Interest of the child

The best interest of the child shall be a primary consideration in all actions affecting children, including asylum-seeking and refugee children (Article 3 in conjunction with Article 22, CRC; UNHCR, *Guidelines on Applicable Criteria and Standards Relating to Detention of Asylum Seekers*, 2012).

Convention on the Rights of the Child

Art. 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Art. 37

States Parties shall ensure that:

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes

into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

Detention

Confinement within a narrowly bounded or restricted location, including prisons, closed camps, detention facilities or airport transit zones, where freedom of movement is substantially curtailed (UNHCR, *Guidelines on Applicable Criteria and Standards Relating to Detention of Asylum Seekers*, February 1999).

Immigration related detention

Deprivation of liberty of non-citizens for reasons related to their immigration status. The deprivation of an individual's liberty, usually of an administrative character, for an alleged breach of the conditions of entry, stay or residence in the receiving country. (Association for the Prevention of Torture (APT) and United Nations High Commissioner for Refugees (UNHCR), 2014. *Monitoring immigration detention. Practical Manual*).

Unaccompanied minors

Children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. (Committee on the Rights of the Child, General Comment No.6 (2005), *Treatment of unaccompanied and separated children outside their country of origin*, CRC/GC/2005/6, 1 September 2005).

Acronyms.

CRC

Convention on the Rights of the Child

CTP

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

FDJP

Federal Department of Justice and Police

FNA

Foreign National Act (2005 Federal Act on Foreign Nationals, RS. 142.20)

GDP

Global Detention Project

NCPT

National Commission for the Prevention of Torture

ODM

Federal Office for Migration

SEM

State Secretariat for Migration

TAF

Federal Administrative Court

Tdh

Terre des hommes

UN

United Nations

UNCRC

United Nations Committee on the Rights of the Child

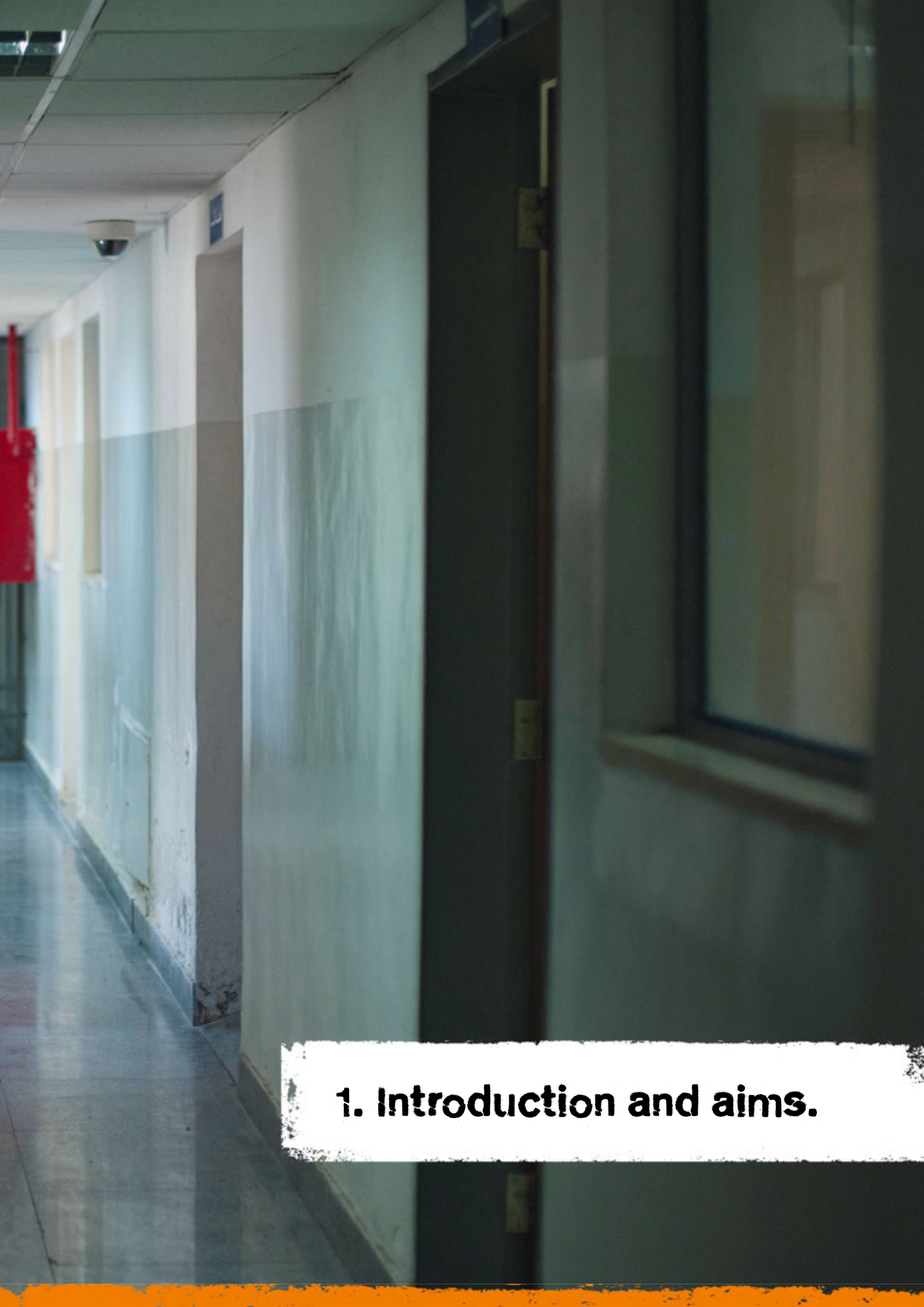
UNHCR

United Nations High Commissioner for Refugees

UNICEF

United Nations Children's Fund





1. Introduction and aims.

1.1 Introduction

According to the United Nations Children’s Fund (UNICEF), approximately one out of every ten children in the world—some 230 million—live in conflict zones.^[3] Up to 50 million people have been forced to flee their countries as refugees, more than 45% (22.5 million) of whom are children.^[4] The UN Population Division estimates that of the 232 million international migrants in the world as of 2013, more than 15% (35 million) were under the age of 19.^[5]

When children cross international borders, particularly those who are not accompanied by an adult or guardian, they are extremely vulnerable to abuse, exploitation, and sexual violence. To deter movement across borders, countries are adopting increasingly stringent policies, including the use of detention. Confinement of children occurs in the highest to the lowest income nations and in many countries children are confined in very poor and overcrowded conditions, at times with unrelated adults, with little access to safe water, food, sanitation, education or legal services.^[6]

According to the UN Committee on the Rights of the Child, the right to liberty under article 37 of the Convention on the Rights of the Child (CRC) and the principle of the best interests of the child, entails that a child should not, as a general rule, be detained. This applies to migrant children whether accompanied or not. Detention cannot be justified solely on the basis of the child being unaccompanied, or on their migratory or residence status, or lack thereof. Where detention is exceptionally justified for other reasons, it must be lawful and only be used as a measure of last resort and for the shortest appropriate period of time (CRC, article 37(b), General Comment no. 6 (2005)).

In the exceptional case where detention applies, the conditions of detention should be governed by the best interests of the child. Every child deprived of their liberty should be treated in a manner that accounts for his or

her age. In particular, every child deprived of their liberty should be separated from adults unless the child’s best interest deems otherwise, and in these cases the child shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances (CRC, article 37 (c)).^[7]

The international community has become increasingly concerned about the need to end the detention of children. In 2012 the Committee on the rights of the child explicitly called for States to “expeditiously cease” the detention of children^[8]. In June 2014, the UN High Commissioner for Refugees (UNHCR) issued a call for countries to end the detention of asylum seekers and refugees, with particular emphasis on children. Shortly thereafter, the Parliamentary Assembly of the Council of Europe adopted a resolution calling on all Member States to prohibit the immigration detention of children, with another resolution shortly after supporting the call for a United Nations’ Global Study. These developments follow on a series of recent statements from international authorities, including the UN Secretary General, the Special Rapporteur for the Human Rights of Migrants and the UN Special Rapporteur on torture calling on governments to end the detention of children and promote non-custodial alternatives to detention.

There is real momentum globally to address this issue. However, in many countries there is not enough available information to permit an accurate analysis of the problem. Switzerland is one of those countries.

The first article of the UN Convention on the Rights of the Child clarifies that a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. The age of majority in Switzerland is obtained at 18 years of age.

[3] UNICEF, Press Release, 29 January 2015, www.unicefusa.org/press/releases/unicef-more-1-10-children-living-countries-and-areas-affected-armed-conflict/21551

[4] UNHCR, *War’s human costs*, Geneva: UN High Commissioner for Refugees, 2014; UNHCR, *Displacement: The New 21st Century Challenge*, Geneva: UNHCR, 2013.

[5] UN Population Division, International Migration Wall Chart, 2013, www.un.org/en/development/desa/population/migration/publications/wallchart/docs/wallchart2013.pdf

[6] Hamilton C, Anderson K, Barnes R, Dorling K. *Administrative detention of children: a global report*. New York: United Nations Children’s Fund;2011.

[7] Committee on the Rights of the Child, General comment No. 6 (2005), *Treatment of unaccompanied and separated children outside their country of origin*, CRC/GC/2005/6, 1 September 2005, para. 61.63.

[8] Committee on the Rights of the Child, *Report of the day of general discussion on the rights of all children in the context of international migration*, 2012.

1.2 Aims of the Tdh study

In order to address the lack of information on the administrative detention of children in Switzerland, Terre des hommes (Tdh), in mid-2015, gave the mandate to the Geneva-based Global Detention Project^[9], to carry out research aiming to assess the situation of non-citizen children in Switzerland who are placed in detention for reasons related to their immigration

status. To what extent does Switzerland deprive immigrant children of liberty? What are the main gaps in available information? Do Swiss cantons treat children differently? These are among the questions that inspired this research.

1.3 Methodology

Swiss federal law forbids immigration detention of children under the age of 15 (Federal Act on Foreign Nationals)^[10]. Although the law is federal, immigration authority is exercised at the cantonal level, meaning that, in practice, the discretion of each canton is utilised to enforce the provision of the law.

The federal government was able to supply statistics that accounted for all instances of detention ordered at both the federal and cantonal levels. The State Secretariat for Migration (SEM), on request, provided useful information on the numbers of accompanied and unaccompanied minors placed in administrative detention on a federal level. However, the SEM was unable to provide disaggregated statistics for each canton nor were they able to inform the research team of the particular policies of each canton.

Questionnaires were sent to relevant authorities in each canton. The results of the questionnaire were completed with information from interviews with academics, civil society, social workers and lawyers in Switzerland, reviews of press accounts (including in German and French), and information provided by various official sources, including notably the published reports of the Swiss National Commission for the Prevention of Torture.^[11] The detailed information on the practices of each canton with respect to the immigration detention of children is reproduced in chapter 3.

^[9] The Global Detention Project (GDP) is a non-profit research centre based in Geneva, Switzerland, that investigates the use of immigration-related detention as a response to global migration. www.globaldetentionproject.org

^[10] Federal Act on Foreign Nationals of 16. December 2005 (RS 142.20) - Foreign Nationals Act or FNA, art. 80, al. 4.

^[11] National Commission for the Prevention of Torture (NCPT). www.nkvf.admin.ch/nkvf/en/home.html

1.4 Main results of the Tdh study

Notable findings of this report include:

- **Detention of children is widespread.** While Swiss federal law forbids immigration detention of children under the age of 15^[12], the detention of children between the ages of 15 to 18 years appears to be widespread across the Swiss Confederation, with 142 minors reportedly detained in 2015.^[13]
- **There is a lack of comprehensive, disaggregated detention statistics at the canton level.** Although the federal government provided us with concrete statistics concerning the numbers of detained minors nationally, only a small number of cantons (8 out of 26) provided specific detention statistics from their canton, meaning it has been impossible to verify whether the federal statistics are accurate and comprehensive. Notably, 3 cantons expressly replied at first that they would not provide any answer. When contacted again by Tdh under the Federal Act on Freedom of Information in the Administration^[14], they provided some information. Overall:
 - 8 cantons provided full responses,
 - 12 cantons partial responses,
 - 6 cantons failed to respond to repeated requests for information in spite of the Federal Act on Freedom of Information.^[15]
- **Application of the law is inconsistent.** The practical application of Federal Swiss Law differs substantially from one canton to another, with some following the recommendation that children should not be detained, while others detain children, sometimes in criminal settings and with adults that the children are not related to. There are positive practices in some cantons that have potential to be expanded.

Despite every effort to track down information about cantonal practices concerning the detention of children for immigration or asylum purposes, there remain significant gaps in what we know about this issue in Switzerland. **Only a few cantons provide comprehensive, disaggregated detention statistics.** Cantonal authorities generally provide scant details about the custodial situation of children who benefit from alternative solution to detention, which is critical to know in order to be sure that the best interests of these children are being provided for and ensuring that they are not kept in prison-like settings^[16]. The federal government is, according to the State Secretariat for Migration, not responsible for gaps in information when cantons refuse to answer basic questions about detention activities, raising concerns about the ability of the Swiss federation to adequately account for the detention of both children and adults in the country.

This report is intended to help improving transparency through disaggregated statistics at both the cantonal and national level, enabling accurate information of how many children are detained for immigration purposes, including in which facility, in what conditions and if they are accompanied and unaccompanied. This information will help raise public awareness on the issue, promote alternatives to detention and subsequently reduce the number of children detained for immigration purposes. Tdh expects this process will trigger a legislative reform which explicitly forbids all forms of immigration detention of children in Switzerland – including those between the ages of 15 to 18 years.

^[12] Federal Act on Foreign Nationals of 16. December 2005 (RS 142.20) – Foreign Nationals Act or FNA, art. 80, al. 4.

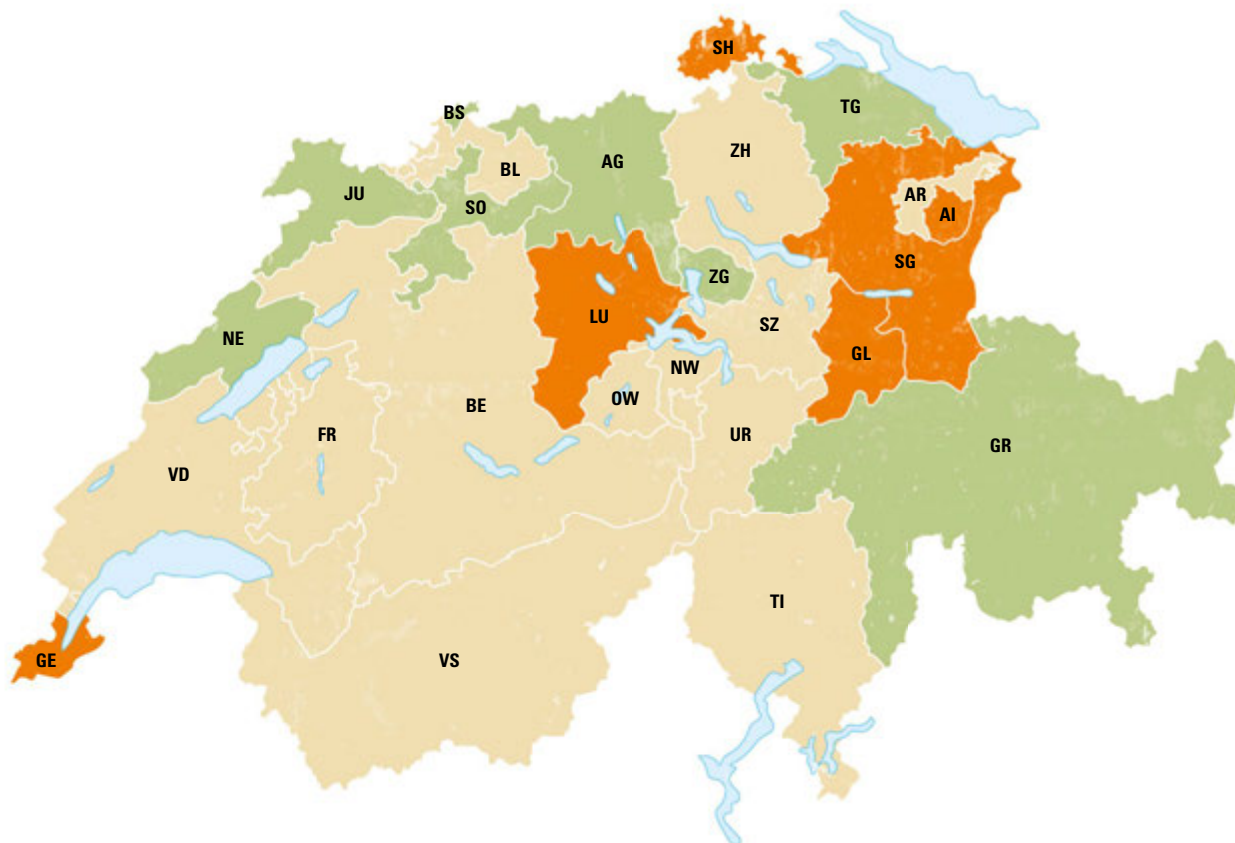
^[13] Céline Kohlprath (State Secretariat for Migration), Email to Lorène Métral (Terre des hommes Foundation), 30 avril 2016.

^[14] Federal Act on Freedom of Information in the Administration of 17 December 2004. (RS 152.3) – Freedom of Information Act, FoIA.

^[15] Federal Act on Freedom of Information in the Administration of 17 December 2004. (RS 152.3) – Freedom of Information Act, FoIA.

^[16] See, for instance, GDP, “Children in Immigration Detention: Challenges of Measurement and Definition”, GDP Discussion Paper, June 2015, www.globaldetentionproject.org/publications/special-reports.html

Cantons that responded to the Terre des hommes questionnaire



■ No response to the questionnaire ■ Partial response to the questionnaire ■ Complete response to the questionnaire

Source: Answers to the inquiry led by Terre des hommes on administration detention of children in Switzerland. Results based on the answers from the cantons to a questionnaire elaborated by the Global Detention Project – April 2016

Illustration 1. Cantons that responded to the questionnaire.





2. Legal framework for immigration detention in Switzerland and its application to minors.

2.1 Legal framework

Immigration-related detention is defined as “the deprivation of liberty of non-citizens for reasons related to their immigration status.” This definition is intended to encompass both incarcerations resulting from criminal prosecution for immigration-status infractions as well as administrative processes related to immigration control. The definition also covers both adults and minors. Although Swiss law provides criminal punishments for certain immigration offences, this report focuses on the administrative immigration detention of minors.

Minors include anyone under the age of 18. As defined by the UN Committee on the Rights of the Child (CRC), unaccompanied minors are “children [...] who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.”^[17]

Unlike some other European countries—including Hungary, Italy, and Spain, which ban detention of unaccompanied children—Swiss legislation does not prohibit placing unaccompanied minors in immigration detention. However, it forbids detaining children below the age of 15 (articles 80(4) and 80a(5) of the Foreign Nationals Act). The legal framework providing for immigration detention in Switzerland thus applies to minors above the age of 15 – accompanied and unaccompanied. There are however a few specific guarantees for minors, including a shorter period of detention and provisions related to the conditions of detention (see appendix 2). Throughout this report, the detention of children in Switzerland means detention of minors between the age of 15 and 18.

The legal framework relevant to immigration detention is based on the 2005 Federal Act on Foreign Nationals – RS. 142.20 (Foreign Nationals Act or FNA; *Loi fédérale sur les étrangers* or LEtr) and the 1998 Asylum Act – RS. 142.31 (*Loi sur l'asile* or LAsi). Both Acts have been amended several times since their adoption under the political pressure of a strong right wing political party.

Switzerland’s first foreigners’ law, the 1931 Foreign Nationals Act, introduced the “internment” of foreign nationals, providing authorities with the power to detain non-citizens for up to two years in cases where deportation orders could not be carried out.^[18] In 1994, “internment” in Swiss law was replaced with “coercive measures,” which included—among other things—measures that expanded grounds for the detention of asylum seekers. According to Achermann and de Senarclens, “the elaboration of coercive measures emerged after an important increase in the number of asylum requests from the middle of the 80s until the beginning of the 90s, leading to what has been called the first Swiss crisis of asylum.”^[19]

^[17] Committee on the Rights of the Child, General comment No. 6 (2005), *Treatment of unaccompanied and separated children outside their country of origin*, CRC/GC/2005/6, 1 September 2005.

^[18] Zünd 2007, cited in Achermann and de Senarclens 2011.

^[19] Achermann and de Senarclens 2011.

2.2 On what grounds can non-citizens be detained?

Swiss legislation lays down several provisions, which justify and regulate immigration detention. These can be divided into 8 categories:

1. detention at the airport for refusal of entry;
2. detention of asylum seekers;
3. temporary detention;
4. detention in preparation for departure;
5. detention pending deportation;
6. detention under the Dublin procedure;
7. detention pending deportation due to lack of co-operation in obtaining travel documents;
8. coercive detention (see appendix 2).

An academic study analysing official documentation from 2008 revealed that 93% of detention orders were detentions pending deportation; 5% were coercive detentions; and 2% were detentions in preparation for departure.^[20] Statistics published by the Federal Department of Justice and Police (FDJP) in 2011 showed that out of a total 7,136 non-citizens detained between January 2008 and June 2010, 6,804 (or 95%) were placed in “detention pending deportation,” 200 (3%) in “coercive detention,” and 132 (2%) in “detention in preparation for departure.”^[21]

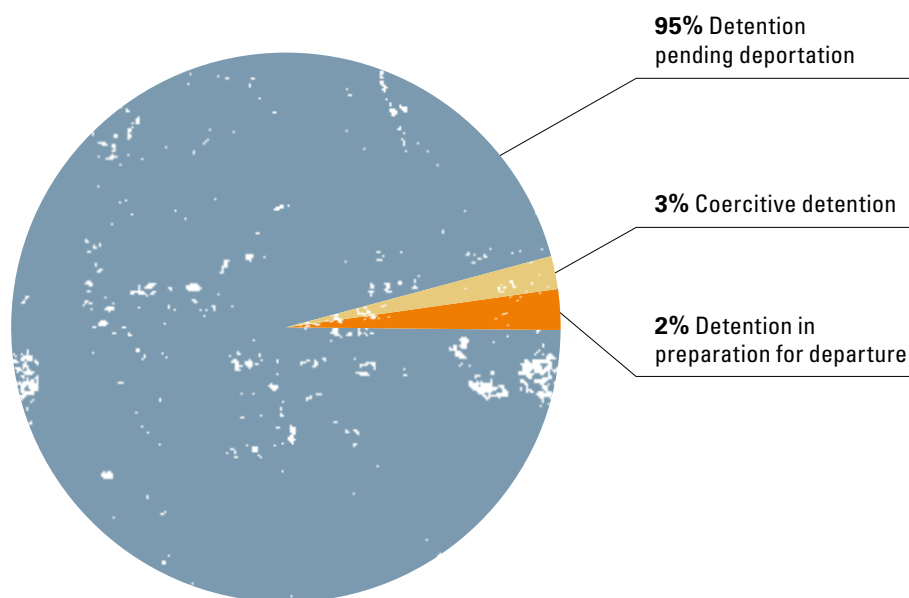


Diagram 1. Detention orders 2008–2010.

^[20] Achermann and de Senarclens 2011.

^[21] Federal Department of Justice and Police, 2011, *Rapport sur des mesures d'accélération dans le domaine de l'asile*, p.24-25.

2.3 For how long can migrants, including migrant children, be detained?

As set out in article 79 of the FNA, the total length of detention shall not exceed 6 months. This length may be extended by 12 months—or by 6 months in case of minors aged between 15 and 18—if there has been a lack of cooperation by the person concerned

with the relevant authority, or a delay in the issue of travel documents by a third country. According to SEM, the average detention period was 21 days in 2014 and 22 days in 2013. In 2008 this average was of 19 days.^[22]

2.4 What authorities are responsible for immigration detention?

The State Secretariat for Migration is in charge of regulating the conditions of entry to Switzerland, the applications for international protection, stay and integration, and return at national level. The SEM replaced the Federal Office for Migration (*Office fédéral des migrations* or ODM) in January 2015^[23] and is part of the Federal Department of Justice and Police. The Federal Administrative Court handles instance of appeals against the decisions adopted by the SEM.

In most cases immigration detention is ordered by the cantonal authorities (FNA, article 80(1)). Cantons have discretion in their implementation of federal immigration law which means that enforcement practices can

differ from one canton to the next. The cantonal courts and the Federal Supreme Court provide channels of appeal.^[24] However, in cases of “detention pending deportation” under article 76(1)(b)(5) of the FNA, if the removal decision is issued in a “reception centre” or “special centre” governed by article 26(1)(bis) of the Asylum Act and the enforcement of the removal is imminent, detention is ordered by the SEM (FNA, article 80(1)). The SEM also orders “detention under the Dublin procedure” with respect to non-citizens accommodated in a “reception centre” or in a “special centre” (FNA, article 80a(1)).

^[22] Conseil Fédéral. *Rapport sur la conformité aux droits de l'enfant des mesures de contrainte*, en exécution du postulat « Conformité des mesures de la législation sur l'asile et sur les étrangers avec la Convention relative aux droits de l'enfant » de la Commission des institutions politiques du Conseil national du 31 janvier 2008. Adopté le 16 décembre 2009, p.7.

^[23] State Secretariat for Migration. *Migration Report 2014*. www.bundespublikationen.admin.ch

^[24] Swiss Refugee Council. *Country Report: Switzerland*. AIDA. October 2015. www.asylumineurope.org/reports/country/switzerland

2.5 What are the procedural guarantees and minimum standards applicable to migrants in detention?

Articles 80 and 80a of the FNA set out rules for the judicial supervision of detention. Accordingly, judicial authority shall review the legality and appropriateness of detention within 96 hours on the basis of an oral hearing. The people in detention may apply for release from detention one month after the review. The court shall decide on the basis of an oral hearing within eight working days. However, the same articles provide for several exceptions to these rules. For instance, if the non-citizen is subject to “detention pending deportation due to lack of cooperation in obtaining travel documents” or “detention under the Dublin procedure” the review procedure is carried out solely in writing. If detention has been ordered by the SEM with respect to a non-citizen placed in a “reception centre” or “special centre” or in Dublin procedures the detainee shall request the review of the legality and appropriateness of his detention and the applicable procedure is solely in writing. Also, the judicial authority may dispense with an oral hearing if deportation is anticipated within eight days following the detention and the detainee has expressed their consent in writing.


Conditions of detention and procedural guarantees are provided in article 81 of the FNA and include, *inter alia*, the right to correspond with a representative, family members, and consular authorities. Also, the

same provision explains that detention shall take place in “appropriate premises” and the authorities shall avoid, if possible, placing immigration detainees alongside with pre-trial detainees or detainees serving a prison sentence. Confining non-citizens with these other categories may be ordered as a temporary measure and to overcome shortages of accommodation in administrative detention (article 81(2)). In line with article 81(3), the needs of vulnerable persons, unaccompanied minors and families with minor children must be accounted for within the detention arrangements.

In September 2015, the UN Committee against Torture made several recommendations to the Swiss government with respect to immigration detention, including detention of children. The Committee expressed its concern that the maximum period of administrative detention for children aged 15–18 is 12 months. The Committee recommended that Switzerland develop and implement non-custodial measures to replace detention policies and that detention only be used as a last resort, particularly where unaccompanied minors are concerned, and only when detention is necessary and proportionate, for the shortest period possible.^[25]

^[25] See Convention on the Rights of the Child, Article 37(a).





3. How many asylum seekers, including children, have been detained in recent years?

3.1 On a national level

In Switzerland, the number of asylum applications raised during the past 5 years: 22,551 in 2011; 28,631 in 2012; 21,465 in 2013; 23,765 in 2014, and 39,523 in 2015 ^[26]. Concerning the number of unaccompanied minors asylum seekers, the SEM provided the following data: in 2011, there was 327 unaccompanied minors seeking asylum in Switzerland (1.45% of the total asylum applications), 485 in 2012 (1.69%); 346 in 2013 (1.61%); 795 in 2014 (3.34%) and 2,736 in 2015 (6.92%) ^[27].

On the other hand, according to statistics provided by the SEM to the Global Detention Project, between 2011 and 2014 there was a steady decrease in the numbers of people placed in immigration-related detention: 7,540 in 2011 (33.43% of the total of asylum

seekers), 6,806 in 2012 (23.77%), 6,039 in 2013 (28.13%) and 5,417 in 2014 (22.79%).

The SEM also provided the data regarding administrative detention of children. The data reports a small decrease in the instances of child immigration detention during this period: 176 in 2011 (3.24% of the total of children applying for asylum – accompanied and unaccompanied); 177 in 2012 (2.42%); 130 in 2013 (2.44%); 131 in 2014 (1.94%); and 142 in 2015 (1.25%) ^[28].

The number of unaccompanied minors placed in administrative detention also decreased during the past years: 35 in 2011 (10.70% of the unaccompanied minors asylum applications); 52 in 2012 (10.72%); 17 in 2013 (4.91%); 10 in 2014 (1.25%); 12 in 2015 (0.44%) ^[29].

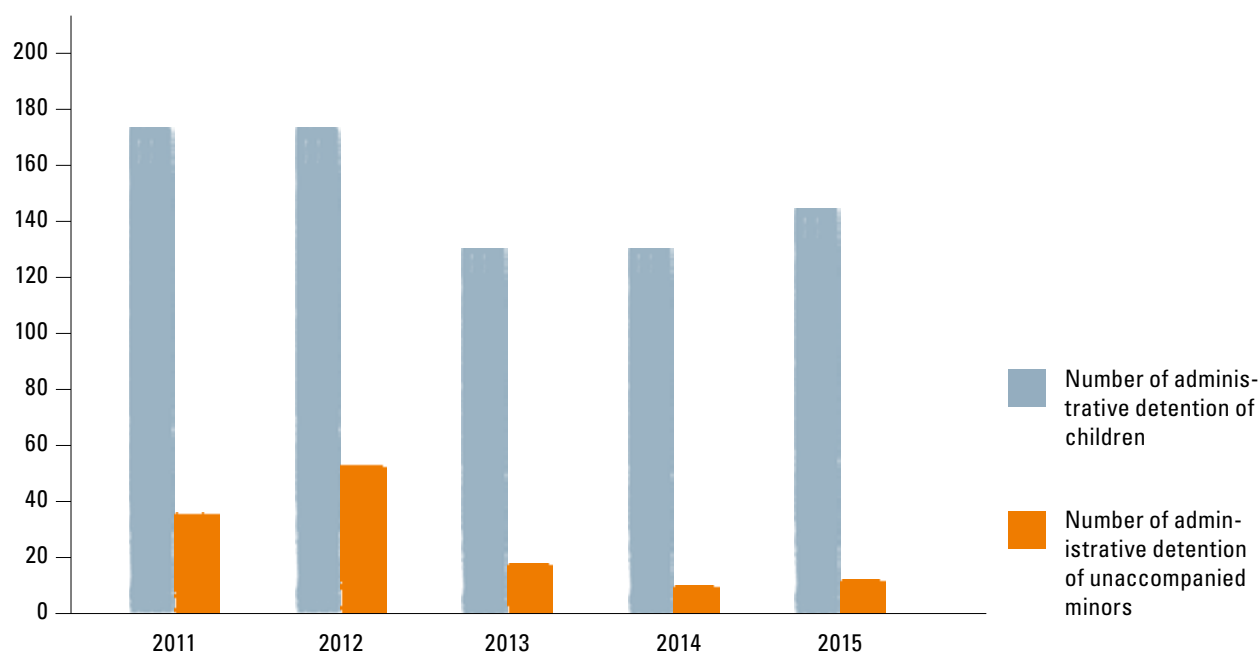


Diagram 2. Administrative detention of children, 2011–2015.

^[26] Source: Admin, SEM, Statistique en matière d’asile, 1er trimestre 2016, p.10 www.sem.admin.ch/dam/data/sem/publiservice/statistik/asylstatistik/2016/stat-q1-2016-kommentar-f.pdf

^[27] Admin, SEM, Requérants d’asile mineurs non accompagnés (RMNA) – Statistiques, tableau comparative. Bgd/11.01.2016; Bgd/ 28.01.2015; Bgd/04.02.2014. www.sem.admin.ch/dam/data/sem/publiservice/statistik/asylstatistik/statistiken_uma/uma-2015-f.pdf www.sem.admin.ch/dam/data/sem/publiservice/statistik/asylstatistik/statistiken_uma/uma-2014-f.pdf www.sem.admin.ch/dam/data/sem/publiservice/statistik/asylstatistik/statistiken_uma/uma-2013-f.pdf

^[28] Philippe Feliser (State Secretariat for Migration), Email to Michael Flynn (Global Detention Project), 8 October 2015; and Philippe Feliser, Response to Global Detention Project/Access Info Questionnaire, 9–24 October 2013 - number of children applying for asylum: 5433 in 2011; 7321 in 2012; 5328 in 2013; 6741 in 2014; 11340 in 2015. Source: Céline Kohlprath (State Secretariat to Migration), email to Lorène Métral (Tdh), 27 May 2016.)

^[29] Céline Kohlprath (State Secretariat for Migration), Email to Lorène Métral (Terre des hommes Foundation), 30 avril 2016.

In a 2015 review of Swiss practices, the UN Committee against Torture reported that children account for only 2% of the total number of people placed in immigration detention annually in Switzerland.^[30] In 2008, children accounted for 1.5% (71 out of a total of 4,564) of the total.^[31]

The 142 children detained in 2015 may appear to be a low figure, especially in comparison with neighbouring European countries.^[32] However, it is 142 children being placed in administrative detention where alternatives could be sought and solutions found that fully respects and realise the rights of children.

This is illegal under the Convention on the Rights of the Child. One child placed in administrative detention is one too many.

^[30] Committee Against Torture. 2015. Concluding observations on the seventh periodic report of Switzerland. CAT/C/CHE/CO/7. 7 September 2014.

^[31] Conseil Fédéral, (2009). *Rapport sur la conformité aux droits de l'enfant des mesures de contrainte*, en exécution du postulat « Conformité des mesures de la législation sur l'asile et sur les étrangers avec la Convention relative aux droits de l'enfant » de la Commission des institutions politiques du Conseil national du 31 janvier 2008, adopté le 16 décembre 2009.

^[32] In UK, the total number of detained minors was 228 in 2013. In Norway, there was 330 detained minors in 2014. GDP website, Country Profile.

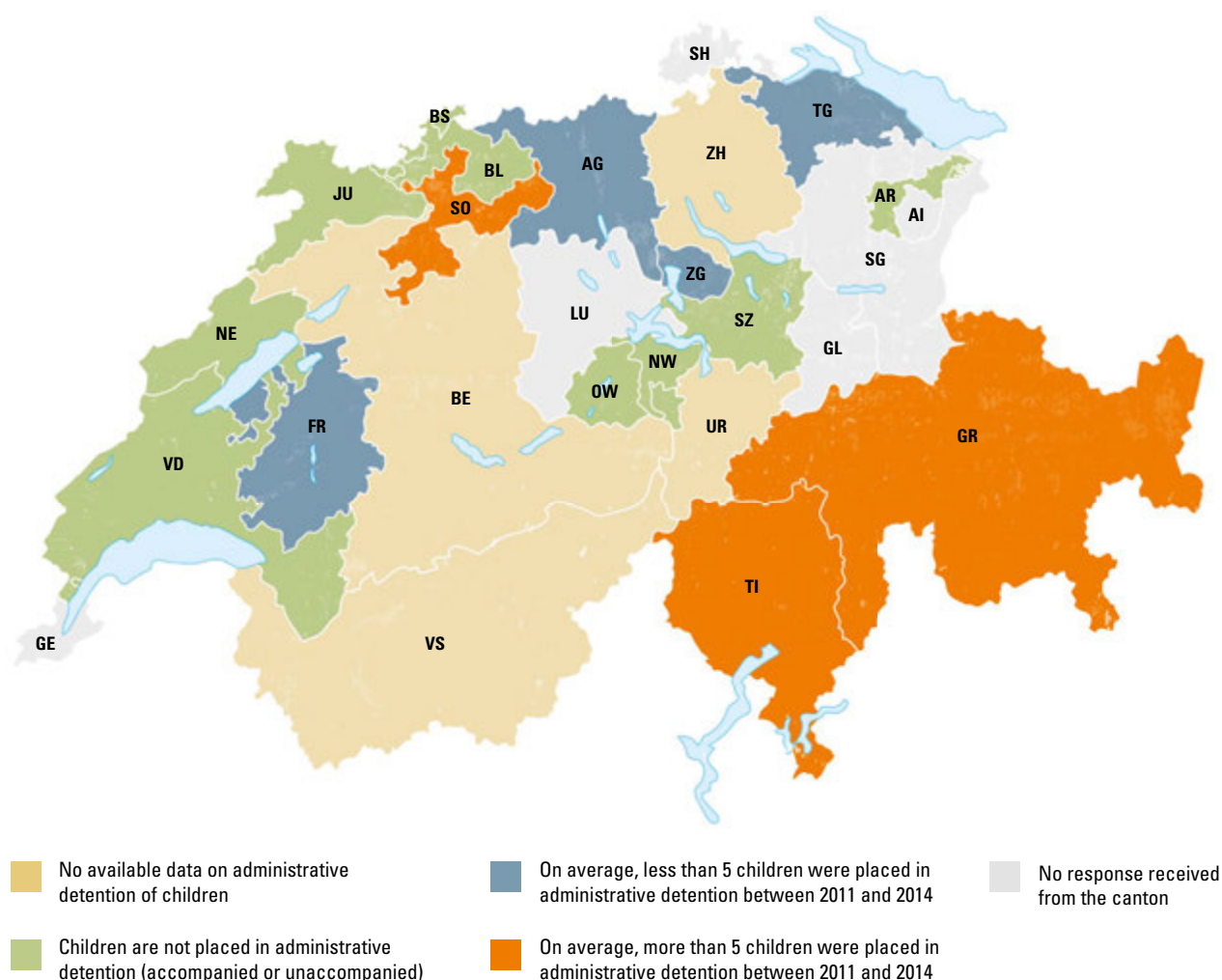


3.2 Practices at the cantonal level with respect to immigration detention of migrant children

Information collected from the cantons indicates significant difference in practice from one canton to another with respect to immigration detention of migrant children. The Tdh Foundation can confirm that at least 7 cantons have detained children for immigration or asylum related reasons during the last four-year period given the statistics provided

by the cantons; only 9 cantons reported that they do not detain children for immigration purposes; and it is not possible to confirm the specific practices regarding minors in deportation or asylum procedures in 10 cantons due to a lack of data.

Use of immigration detention per canton (2011–2014)



Source: Inquiry led by Terre des hommes. Results based on the answers from the cantons to a questionnaire elaborated by the Global Detention Project – April 2016

Illustration 2. Use of immigration detention per canton.

Aargau

Aargau provided a full response to the questionnaire.^[33] They reported that in practice children are not placed in immigration detention. Although the authorities have at their disposal a dedicated pre-removal facility with a capacity of 14, they do not detain minors at that facility. Rather, they use the Zurich airport pre-removal centre for this purpose, where they “rent” 10 places. In 2014 they detained 2 minors (1 unaccompanied, 1 accompanied). During the period 2011–2013, they detained one minor per year (in each case, an unaccompanied minor). When unaccompanied minors are not detained, they are accommodated in special facilities managed by cantonal social services, separately from adults. When families with children are apprehended, authorities detain only the father or mother, while the child is accommodated in a non-prison setting.

Appenzell Ausserrhoden

We received only a partial response from Appenzell Ausserrhoden. Cantonal authorities failed to respond to our emailed questionnaires. However, one official agreed to provide some information during a brief telephone conversation.^[34] The official claimed that minors are not detained. When dealing with families, depending on the case, the father may be detained. We were unable to get any additional information from other officials or other sources about this canton.

Appenzell Innerrhoden

We were unable to develop any information about immigration detention in Appenzell Innerrhoden. Authorities did not respond to any direct mails or emails. Researchers were, however, able to reach an official by phone in mid-October.^[35] After a brief conversation, this official said that the canton would respond shortly to the questionnaire. However, no response was ever received.

Basel-Land

Basel-Land provided a partial response to the questionnaire.^[36] The migration office responded that in general they do not detain minors but in certain cases will detain the father in cases involving entire families. They were unable to give us any statistics on immigration detention. However, the canton reported that while they do not have a specific place for used for immigration detention purposes, the canton has an arrangement with canton Basel-Stadt, where they “rent” 17 places. The Social Security office is in charge of the non-prison accommodation of minors during asylum or migration-related proceedings.

Basel-Stadt

Basel-Stadt provided a full response to the questionnaire.^[37] The prison of Bässlergut is used to accommodate people subject to a detention order under the law on foreign nationals. The canton Basel-Stadt reserved several places for the detention of non-citizen in two facilities: 13 places in the prison of Bässlergut and 3 places reserved for women in the Waaghof prison. Basel-Stadt officials reported that administrative detention of minors is used only in last resort and alternatives were sought as a priority (such as assigning a caregiver to the child, finding a foster care accommodation, imposing “reporting requirements”). In case of placement in custody, the Children and Youth Protection Authority of the canton is informed. Basel-Stadt officials reported that since 2011, no migrant children have been detained during the immigration process or for administrative reasons.

Concerning the accommodation of migrant children, Basel-Stadt officials described several situations:

- Accompanied children are placed together with their family (parents, siblings) in apartments or in civil protection infrastructures.

^[33] Daniel Küttel (Stabsleiter, Amt für Migration und Integration, Kanton Aargau), email correspondence with Izabella Majcher (Global Detention Project), 14 and 15 October 2015.

^[34] Roland Diem (Leiter des migrationsamtes Appenzel Ausserrhoden), telephone conversation with Izabella Majcher, 15 October 2015.

^[35] Amt für Ausländerfragen Appenzell Innerrhoden, telephone conversation with Izabella Majcher (Global Detention Project), 15 October 2015.

^[36] Peter Weisskopf (Abteilungsleiter Asyl & Rückkehr Amt für Migration Kanton BL), email correspondence with Izabella Majcher (Global Detention Project), 19 and 20 October 2015.

^[37] Semih Kutluca Bevölkerungsdienste und Migration, Leiter Abteilung Zwangsmassnahmen und Shwarzarbeit) email correspondence with Lorène Métral (Terre des hommes Lausanne), 31.03.2016.

- Unaccompanied minors are placed in specialised structures (such as a residence for unaccompanied minor asylum seekers or a home for children and youth) or in foster care. Unaccompanied children over 16 years old are hosted in specialised infrastructures where they are partially supervised, allowing them a certain degree of independence.
- Children without residential permits are hosted in accommodation for children and youth.

A legal guardian is appointed for unaccompanied minors.

According to a report by the National Commission for the Prevention of Torture (NCPT), following a visit in December 2011 to the canton's Bässlergut "deportation prison" (*Ausschaffungsgefängnis*), minors have been detained at this facility. Minors, if possible, are placed in single cells. The Commission found that the regime of detention in this facility is overly restrictive with only two hours of outdoor activities permitted daily.^[38] It is worth noting that since this visit in 2011, the canton Basel-Stadt appears to have made significant efforts to limit the detention of children.

Bern

Authorities in Bern provided a partial response to the questionnaire.^[39] They reported that there are four facilities where non-citizens can be detained: prisons in Bern (*Regionalgefängnis Bern*) (with a capacity for 22 persons), Burgdorf (*Regionalgefängnis Burgdorf*) (with a capacity for 22 persons), Thun (*Regionalgefängnis Thun*) (with a capacity for 10 persons), and Witzwil (*Anstalten Witzwil*) (with a capacity for 36 persons). Children can be detained under the FNA but not during asylum proceedings. Families with children can be detained in a family room in Thun prison. The Migration service did not provide any specific statistics. They gave the total number of detainees per year and highlighted that minors represent less than 5% of detainees. The researchers estimate that, based

on this number provided, the following numbers of children were detained: 40 in 2014 (of 812 detainees in total); 57 in 2013 (of 1,140 detainees); 53 in 2012 (of 1,063 detainees); and 51 in 2011 (of 1,037 detainees).

When they are not detained, children between 14 and 18 years old are accommodated in specialised and adapted structures. Children below 14 years old are taken care into by a childcare group (*Kinosch - Kinder, Notaufnahme Gruppe Kinder und Jugendheim Schlossmatt*) or placed in foster care. When researchers attempted to follow up with authorities to get more details about these non-custodial measures and clarify some of the information provided in the questionnaire, they were unsuccessful.^[40]

Following a visit to the Bern prison in February 2014, the NCPT found that the infrastructure does not allow for an adequate regime for female immigration detainees. The NCPT did not provide any specific information concerning the detention of families or children.^[41]

Fribourg

Fribourg provided a partial response to our questionnaire, which it sent by regular post to the GDP.^[42] The canton reported that it has 4 places in the Prison Centrale de Fribourg for the purposes of immigration detention, as well as 4 places at the Zurich airport pre-removal detention centre. Minors are detained only on an exceptional basis. As a general rule the canton does not place minors in administrative detention and claims to put the best interests of minors first. When no alternative to detention are found, unaccompanied minors are detained in a special cell located in the Central Prison - Canton Fribourg where they are separated from adults. The canton claimed that the last time this occurred was in 2013, when two unaccompanied minors were held in detention. Authorities failed to explain what made these cases exceptional or why it was deemed necessary to detain these minors.

^[38] National Commission for the Prevention of Torture (NCPT). *Bericht an den Regierungsrat des Kantons Basel Stadt betreffend den Besuch der Nationalen Kommission zur Verhütung von Folter im Ausschaffungsgefängnis Bässlergut vom 15. und 16. Dezember 2011.*

^[39] Anna Elsasser Kanellopoulos (Leiterin Dienst Rückkehr, Migrationsdienst des Kantons Bern (MIDI), Amt für Migration und Personenstand), email correspondence with Izabella Majcher (Global Detention Project), 16 October 2015.

^[40] Izabella Majcher (Global Detention Project), email to Anna Elsasser Kanellopoulos (Leiterin Dienst Rückkehr, Migrationsdienst des Kantons Bern (MIDI), Amt für Migration und Personenstand), 20 October 2015.

^[41] National Commission for the Prevention of Torture (NCPT). *Bericht an den Regierungsrat des Kantons Bern betreffend den Nachfolgebisuch der Nationalen Kommission zur Verhütung von Folter im Regionalgefängnis Bern vom 21. Februar 2014.*

^[42] Chef du service (Etat de Fribourg, Service de la population et des migrants), Letter to Michael Flynn (Global Detention Project), 5 October 2015.

Additionally, the response did not include any details about where children are accommodated when they are not placed in immigration detention.

Geneva

Researchers did not receive a response from authorities in Geneva to any of the requests sent by regular post or email, nor were researchers able to reach relevant authorities by phone. An official at the Frambois detention centre was reached by telephone, who said the centre would respond to a written request, which was sent in mid-October 2015. However, as of the time of this publication in May 2016 no response had been received. Nevertheless, there is an active civil society in Geneva that monitors detention issues in the canton and we were able to use these sources to identify many of the detention practices in this region.^[43]

Geneva applies federal law and does not detain anyone under the age of 15. None of the sources approached confirmed whether minors between the ages of 15 and 18 are detained by Geneva authorities. However, cantonal authorities reportedly are potentially planning on opening a new facility by 2018, according to an April 2015 report from the Geneva government.^[44] One organization in Geneva criticized these plans, arguing that detaining families would be in contravention to the law as Geneva law does not provide for this practice.^[45]

An important issue to take into account when assessing the situation in Geneva is that it has an agreement (“concordat”) with two other cantons (Vaud and Neuchatel) providing each canton with places to hold non-citizens in immigration detention facilities that are located in Geneva. The two facilities covered in this agreement are located in Frambois and Favra. Both of these facilities are specialised immigration detention centres, and both receive regular visits from local non-governmental groups. According to one non-governmental source consulted for this report, these facilities only confine adult males.

Glarus

Cantonal authorities in Glarus did not respond to any requests. Reached by phone in late October 2015, one official from the canton said that they would need more time to respond.^[46] To date no response has been received.

Graubünden

Researchers received a full response from Graubünden.^[47] The canton uses Sennhof Prison (*Justizvollzugsanstalt Sennhof*) in Chur, which has 20 places (18 for men and 2 for women) for immigration detention purposes that are located in a separate wing. The canton also rents space to canton Ticino in Realta Prison (*Justizvollzugsanstalt Realta*) in Cazis (16 places). Families are not detained. In rare cases children over 15 years of age are detained. They are held in Sennhof Prison and are not separated from adults. Whenever possible, they are kept in the female section of the immigration wing. Between 2010 and 2014, 7 minors were reportedly detained for a total of 19 days, although officials said that they were unable provide data detailing how many minors were detained by year. Unaccompanied minors who are not detained are accommodated in the Davos family centre, in a separate wing.

In September 2014, the NCPT visited the Sennhof Prison. It found that the time when detainees can move freely within the facility is too short on the weekends – merely three hours. Also, besides random activities, there were inadequate leisure activities available to people in detention.^[48]

^[43] Lucine Miserez Bouleau (Centre social Protestant, Genève), email correspondence with Mariette Grange (Global Detention Project), 7 October 2015; Anne-Madeleine Reinmann (Diacre à l'AGORA, Aumônerie Genevoise Œcuménique auprès de Requéant d'asile et de réfugiés), email correspondence with Mariette Grange (Global Detention Project), 15 October 2015; AGORA *Rapports d'activités annuels 2014–1011*, www.agora-asile.ch/RapportsActivite.html

^[44] Secretariat du Grand Conseil de Genève, « Rapport de la Commission des pétitions chargée d'étudier la pétition: “Ma Genève”: pas de nouveaux lieux de personnes migrantes à Genève ! » 20 April 2015, ge.ch/grandconseil/data/texte/P01923A.pdf

^[45] AGORA, Rapport d'activités 2014, p. 7, www.agora-asile.ch/RapportsActivite/Rapport%20activit%E9%202014.pdf

^[46] Departement Sicherheit und Justiz Abteilung Migration Glarus, telephone conversation with Izabella Majcher (Global Detention Project), 16 October 2015.

^[47] Barbara Nauli-Laube (Abteilungsleiterin und Ressortleiterin Verfahren und Rückkehr, AMT FÜR MIGRATION UND ZIVILRECHT GRAUBÜNDEN), two emails and a telephone conversation with Izabella Majcher (Global Detention Project), 6 October 2015.

^[48] National Commission for the Prevention of Torture (NCPT). *Bericht an den Regierungsrat des Kantons Graubünden betreffend den Besuch der Nationalen Kommission zur Verhütung von Folter vom 29. und 30. September 2014 in der Justizvollzugsanstalt Sennhof*.

Jura

Jura provided a full response to the questionnaire.^[49] According to the information they provided, the canton uses Delémont Prison for immigration detention, reserving 1–2 spaces for this purpose. However, they claimed that the canton does not detain minors, regardless of age or whether they are accompanied.

Luzern

Cantonal authorities in Luzern did not respond to any written requests for information, either by regular post or email. However, researchers were able to communicate by telephone with an official in late October 2015^[50]. This official asked us to resend the questionnaire by email. No response has been received to date.

Neuchatel

The canton of Neuchatel provided a full response to the questionnaire. The canton does not have immigration detention facility but has an agreement (“concordat”) with the canton of Geneva which provide places to hold non-citizens in immigration detention facilities. The two facilities covered in this agreement are located in Frambois and Favra in the canton of Geneva. Both of these facilities are specialized immigration detention centres. Officials claim that Neuchatel does not hold children (accompanied or unaccompanied) in immigration detention facilities.

Accompanied children stay with their family and are first hosted in cantonal centres until they are hosted in a private apartment. Unaccompanied children are first hosted in a collective centre until the child protection authority assigns appropriate accommodation.

The non-governmental group AGORA provides some statistics about immigration detention in Neuchatel because it monitors the facilities in Geneva that are

used by Neuchatel to hold people in detention. However, AGORA was unable to confirm whether children are detained in the canton.^[51]

Nidwalden

Authorities in Nidwalden provided a partial response to the questionnaire.^[52] According to their response, administration detention takes place at the Stans prison in Canton Nidwalden where 36 detention places are reserved. Nidwalden authorities claimed that they do not detain children on the basis of immigration. However, their answer was not precise enough to distinguish if at the present time they are not detaining children, or if the canton has no history of ever detaining children. The cantonal statistics also do not disaggregate to specify the detention of migrant and asylum seeker children.

Obwalden

According to the partial response received from canton Obwalden, a police detention facility is used for immigration detention.^[53] There are 2 cells reserved for immigration detainees at this facility. The migration office claimed that they do not detain minors and according to the immigration detention statistics they provided, there were no recorded instances of the detention of children during the period 2011–2014. Instead of people placed in detention, minors are accommodated in shelters run by the charity Caritas. Nevertheless, in its response, the response from Obwalden immigration office was ambiguous whether their statistics referred only to asylum seekers or to all people detained under other immigration laws. The canton failed to respond to requests for clarification.^[54]

^[49] Didier Hulmann (Collaborateur Asile, République et Canton du Jura, Service de la Population), email correspondence with Michael Flynn (Global Detention Project), 7 October 2015.

^[50] Amt für Migration Luzern, telephone conversation with Izabella Majcher (Global Detention Project), 27 October 2015.

^[51] AGORA, Rapport d’activités 2014, p. 7, www.agora-asile.ch/RapportsActivite/Rapport%20activit%E9%202014.pdf

^[52] Sabine olivier (Amt für Migration Nidwalden) email correspondence with Lorène Métral (Terre des hommes Lausanne), 15.03.2016.

^[53] Amt für Migration Obwalden, letter sent to Michael Flynn (Global Detention Project), 28 September 2015.

^[54] Izabella Majcher (Global Detention Project), email sent to Amt für Migration Obwalden, 6 October 2015.

St. Gallen

St. Gallen authorities did not respond to any of the written requests for information. However, researchers were able to communicate by telephone with an official in late October 2015.^[55] This official requested the questionnaire was resent by email, despite following this request the researchers did not receive a response by the time of publication in May 2016.

Schaffhausen

Cantonal authorities in Schaffhausen did not respond to written requests for information. However, researchers were able to communicate by telephone with an official in late October 2015, requesting a telephone conversation the following day.^[56] Despite repeated efforts to call them again, the telephone was not answered.

Schwyz

Schwyz provided a near-full response to the questionnaire.^[57] Bennau Prison has places which are utilised for immigration detention purposes. However they report that no children are detained in these places. Instead, children are cared for by unspecified child service agencies. Researchers opted to code this as a “partial response” because the questionnaire requested specific details about the custodial situation of children who are not detained, and in this case researchers deemed that the response was not sufficiently detailed.

Solothurn

Solothurn provided a highly detailed response to the questionnaire, tasking separate agencies in the cantonal government to respond to questions that pertained to them.^[58] There is a section reserved especially for immigration-related detention in the canton’s re-trial prison (*Untersuchungsgefängnis Solothurn*), which has a capacity of 10. This section has 4 single cells and a single 4 person cell.

Regarding children, officials reported that detention can occur only when alternatives to detention have been deemed inadequate for the specific situation. In those exceptional cases, children are confined in the immigration detention section of the pre-trial prison. In 2014, 7 unaccompanied minors were detained; in 2013, 6; in 2012, 14; and in 2011, 3. No accompanied minors were reportedly placed in detention during these years.

The Office for Social Security (*Amt für Soziale Sicherheit*) manages accommodation for children involved in deportation proceedings who are not placed in detention. Children with families may be accommodated in municipal facilities (not prisons). In cases concerning entire families, the canton has detained a parent while providing non-custodial alternatives to detention for the rest of the family. Unaccompanied asylum seeking children may be accommodated in a specialized centre, may continue living with their relatives, or may be placed with a family.

The NCPT visited the Solothurn pre-trial prison in February 2015. It found that the open times of the cells—10 hours per day—was adequate for administrative detainees. However, it expressed concern with respect to the outdoor space and activities offered to the detainees. The detainees had only a small balcony protected tightly with bars for outside walk and had no organized leisure or sport opportunities. The NCPT did not develop on the issue of migrant children placed in administrative detention at the prison.^[59]

^[55] Migrationsamt Zentrale Dienste St. Gallen, telephone conversation with Izabella Majcher (Global Detention Project), 27 October 2015.

^[56] Kantonales Migrationsamt Schaffhausen, telephone conversation with Izabella Majcher (Global Detention Project), 27 October 2015.

^[57] Fiona Elze (Abteilungsleiterin Asylwesen, Amt für Migration, Schwyz), email correspondence with Izabella Majcher (Global Detention Project), 25 and 29 September 2015.

^[58] Charles Rieben (Migrationsamt, Asyl und Rückkehr, Solothurn), email correspondence with Izabella Majcher (Global Detention Project), 23 and 29 October 2015.

^[59] National Commission for the Prevention of Torture (NCPT). *Bericht an den Regierungsrat des Kantons Solothurn betreffend den Besuch der Nationalen Kommission zur Verhütung von Folter vom 3. und 4. Februar 2015 im Untersuchungsgefängnis Solothurn.*

Thurgau

In canton Thurgau migrants are detained in Thurgau cantonal prison (*Thurgau Kantonalgefängnis*) located in Frauenfeld, according to the completed questionnaire provided by the cantonal migration office.^[60] There are no specific places reserved for immigration detainees but on average the migration office uses 5–6 places at any given time. As a rule, criminal detainees and immigration detainees are separated. Children are rarely detained. In 2014, there was one minor detained. The office did not provide additional statistics for other years covered in the questionnaire.

In October 2011 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited the Thurgau cantonal prison. The Committee found that the conditions of detention of migration detainees were analogous to those accorded to the criminal detainees. The time during which they were allowed to be outside their cells was limited to two hours of walking and two and a half hours for leisure activities during weekdays.^[61]

Ticino

Canton Ticino provided a partial response to the questionnaire.^[62] The canton claimed to use 16 places for immigration detention, at the Realta Prison.^[63] Ticino reported that children, both accompanied and unaccompanied, can be detained in single cells. According to the statistics provided by the Migration Office, 5 unaccompanied minors were detained in 2014; 9 in 2013; 9 in 2012; and 4 in 2011. There were no accompanied minors detained in these years. Accompanied children who are not detained remained with their respective families in specific housing provided by the canton. The office added that they have had no cases of minors under the age of 15 in their records.

Uri

Canton Uri provided a partial response to the questionnaire.^[64] The canton does not have facilities for immigration detention but 3–4 places are reserved for administrative detention in canton Nidwalden, investigation and criminal prison, Stans. The canton Uri has placed children in administrative detention in the prison located in Nidwalden. However, officials claim that in the past years, there were no cases of minors placed in administrative detention and that children and women represent a very small fraction of people detained for immigration reasons. The statistics of canton Uri are not disaggregated, thus officials were unable to give us specific number of children held in administrative detention previously.

The Office of Social Affairs (AfS) with the Swiss Red Cross (SRK) in Canton Uri are in charge of the accommodation of asylum seekers and work in cooperation with the child protection authority (KESB) in cases of migrant children.

Valais (Wallis)

Valais authorities did not respond to any of our written requests. Researchers managed to communicate by telephone with an officer of the cantonal migration service, who in turn forwarded the request on to the head of the canton's training and security service.^[65] Responses were subsequently received by email to this information request, although officials did not answer all the questions and some of their statistics are not disaggregated.^[66]

^[60] Camillus Guhl (Amtsleiter, Migrationsamt, Departement für Justiz und Sicherheit, Kanton Thurgau), email correspondence with Izabella Majcher (Global Detention Project), 9 October, 23 October, and 6 November 2015.

^[61] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). *Rapport au Conseil fédéral suisse relatif à la visite effectuée en Suisse par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 10 au 20 octobre 2011*. October 2012.

^[62] Morena Antonini (Servizio asilo, Ufficio della migrazione, Ticino), letter sent to Global Detention Project, 6 October 2015.

^[63] Barbara Nauli-Laube (Abteilungsleiterin und Ressortleiterin Verfahren und Rückkehr, AMT FÜR MIGRATION UND ZIVILRECHT GRAUBÜNDEN), email correspondence with Izabella Majcher (Global Detention Project), 6 October 2015.

^[64] Patrik Zwysig, (abteilungsleiter – abteilung Migration Uri) email to Lorène Métral (Terre des hommes), 31.03.2016.

^[65] Service de la population, Délémont, telephone conversation with Mariette Grange (Global Detention Project), 15 October 2015; Bureau de l'Action Sociale, telephone conversation with Mariette Grange (Global Detention Project), 15 October 2015; Georges Seewer (Chef du service de l'application des peines et mesures – SAPEM), Sion, telephone conversation with Mariette Grange (Global Detention Project), 15 October 2015.

^[66] Daniel Hermann, (Juriste, Service de la population et de la migration du canton du Valais), e-mail correspondence with Mariette Grange (Global Detention Project), 3, 11 and 12 November, 2015.

The canton confirmed that it has an administrative detention facility used for immigration detention purposes and that this facility, called that Centre de Detention LMC in Granges, has a capacity of 18 and is used for males only. In addition, the canton reported that they have 2 places reserved for the detention of women at Martigny Prison. In the detention statistics they provided, they combined statistics on women and children, appearing to indicate that children are detained in the canton. They also indicated that they did not disaggregate statistics on detained accompanied and unaccompanied migrants and asylum seekers.

Vaud (Waadt)

Authorities in Vaud responded to most of the questions provided, but not all of them.^[67] They confirmed that as per the concordat with Geneva and Neuchâtel, Vaud reserved detention places in the two specialized immigration detention facilities located in Geneva - Frambois and Favra. However, they said that minors in deportation procedures are not required to be detained by the canton are instead hosted by non-government organisations the “*Établissement Vaudois d’accueil des migrants*” (EVAM) and the “*Service de protection de la jeunesse*” (SPJ).

Zug

Canton Zug provided a full response to the questionnaire.^[68] Officials reported that minors are seldom detained. The canton Zug has 12 reserved places for administrative detention in its cantonal prison. Accompanied minors remain with their respective families in specific housing provided by the canton. However, the canton detained 5 unaccompanied minors in administrative detention between 2011 and 2014 (1 in 2011, 2 in 2012, 0 in 2013, 2 in 2014). The children stay in cells separated from adults and receive special care.

Unaccompanied minor asylum seekers are accommodated in special care provided in consideration of their age, level of development and needs. The office for Migration assigns a legal adviser to each unaccompanied minor and informs the child protection authority.

Zurich

The Zurich Migration Department answered part of the questionnaire.^[69] It reported that immigration detainees are confined in the Zurich airport prison (*Flughafengefängnis Zürich*), providing the legal basis for immigration detention decisions. It noted that asylum seekers are accommodated by the cantonal social security office. However the Migration Department provided no statistics on the numbers of people placed in detention and did not answer questions from researchers about whether children are ever placed in immigration detention.

In March 2013, the NCPT conducted a visit to the airport prison. With respect to the pre-removal section of the prison, the Commission found that many of its previous recommendations with respect to the design of collective spaces (including narrow walking spaces and the lack of a collective room) and the regime had not been implemented. The Commission did not discuss the situation of detained children at the facility.^[70]

^[67] Christophe Gaillard, (Adjoint au chef de Division, Service de la Population (SPOP), Division Asile & Retour), Lausanne, telephone conversation with Mariette Grange (Global Detention Project), 8 and 13 October 2015.

^[68] Georg Blum (Leiter – Amt für Migration) email to Lorène Métral (Terre des hommes), 17.03.2016.

^[69] Marcaurel Schmid (Juristischer Sekretär, Kommunikationsbeauftragter, Migrationsamt des Kantons Zürich), email correspondence with Izabella Majcher (Global Detention Project), 9 October 2015.

^[70] National Commission for the Prevention of Torture (NCPT). *Bericht an den Regierungsrat des Kantons Zürich betreffend den Nachfolgebefuch der Nationalen Kommission zur Verhütung von Folter im Flughafengefängnis Kloten vom 1. März 2013.*

Immigration detention of children in Swiss cantons and nationally

	Detain minors?	2011	2012	2013	2014	Average 2011–2014	
	Federal statistics	176	177	130	131	153.5	
1	Aargau	Yes	1	1	1	2	1.25
2	Appenzell Ausserrhoden	No	0	0	0	0	0
3	Appenzell Innerrhoden	Denied access to data					
4	Basel-Land	No	0	0	0	0	0
5	Basel-Stadt	No	0	0	0	0	0
6	Bern	Yes - No specific data					*
7	Fribourg (Freiburg)	Yes	0	0	2	0	0.5
8	Geneva	Denied access to data					
9	Glarus	Denied access to data					
10	Graubünden	Yes				**	7
11	Jura	No	0	0	0	0	0
12	Luzern	Denied access to data					
13	Neuchâtel	No	0	0	0	0	0
14	Nidwalden	No – No specific data					
15	Obwalden	No	0	0	0	0	0
16	St.Gallen	Denied access to data					
17	Schaffhausen	Denied access to data					
18	Schwyz	No	0	0	0	0	0
19	Solothurn	Yes	3	14	6	7	7.5
20	Thurgau	Yes				1	0.25
21	Ticino	Yes	4	9	9	5	6.75
22	Uri	Yes – No specific data					
23	Valais (Wallis)	Yes – No specific data					
24	Vaud (Waadt)	No	0	0	0	0	0
25	Zug	Yes	1	2	0	2	1.25
26	Zurich	No specific data					

The data received by the cantons does not allow a disaggregation between accompanied and unaccompanied minors.

* Statistical deduction calculated from the indication given by the authorities in Bern are available in the part describing the answer of the canton.

** Graubünden authorities claimed that the canton detained 7 minors between 2011 and 2014 but were unable to break down this number by year.

Chart 1. Immigration detention of children in Swiss cantons and nationally.



5. Conclusions.

The Swiss federal law which forbids immigration detention of children under the age of 15 (Federal Act on Foreign Nationals)^[71] is to be commended, recognising that one child detained is one child too many: a child is first and foremost a child.

However, Switzerland continues to detain children aged between 15 and 18 for immigration purposes, in violation of its obligations under the Convention on the Rights of the Child. The expert Committee to the CRC has stated that **it is never in the best interest of the child to be detained**. This principle has been reiterated by the Parliamentary assembly of the Council of Europe^[72] in a resolution approved by Switzerland.

Practices which respect the rights of child migrants and asylum seekers can be seen in some cantons, such as Basel-Stadt where alternatives are sought as

a priority, including assigning a caregiver to the child, finding a foster care accommodation and imposing “reporting requirements”.

This research indicates a worrying lack of information and transparency, both for the general public, but also for central authorities in Bern, when it comes to details on detention of children. In particular, there is a lack of information regarding the different practices of the cantons with respect to administrative detention, conditions of detention and facilities where children are detained. It is also particularly worrying that cantonal authorities in a democratic state can flatly refuse to provide Tdh with the relevant information, in some cases even when being applied for via the Federal Act on Freedom of Information and its local application legislation.

^[71] Federal Act on Foreign Nationals of 16. December 2005 (RS 142.20) – Foreign Nationals Act or FNA, art. 80, al. 4.

^[72] Resolution 1810 (2011) “*Unaccompanied children in Europe: issues of arrival, stay and return*”, stating that unaccompanied children should never be detained.

6. Perspectives and recommendations.

In summary this report recommends:

- The Swiss federal law should be amended to forbid immigration detention of children under the age of 18.
- Alternatives to detention should be developed for children aged 15 to 18 years to ensure that no child is detained.
- Swiss Federal authorities should implement and maintain a detailed monitoring and reporting system, based on cantonal statistics.
- Comprehensive, disaggregated detention statistics should be collected at the canton level.
- All cantons should comply with the recommendations of the CRC, that children should never be detained. There are positive practices in some cantons that have potential to be translated into other cantons.

Considering that administrative detention of children based solely on their migration status is illegal as it violates the Convention on the Rights of the Child, Terre des hommes strongly recommends for a federal legislation which bans any type of detention of migrant children on migration grounds and which specifically provides for alternatives, as commonly applied in the course of the asylum seeking procedure.

Apart from being illegal and expensive, administrative detention harms children. It is the cause of serious clinical symptoms such as severe depression, anxiety, post-traumatic disorders and even self-mutilation.^[73]

Therefore, on the basis of the present research, Terre des hommes calls upon the Swiss Federal authorities, to give without delay the necessary instructions to the cantons in order to stop any detention of children on immigration grounds, in full respect of the Convention on the Rights of the Child.

In this sense, Terre des hommes invites Federal and cantonal authorities to identify and implement alternative measures to detention which would be less costly to cantons and preserve the health and dignity of children. Alternatives do exist and have proven to be effective in other European countries like Belgium, United Kingdom and Germany. Community housing with individual case managers and regular reporting are some examples of successful alternatives to child immigration detention.^[74]

Moreover, in order to track the progress in ending the illegal detention of children, Terre des hommes calls upon the Swiss Federal authorities to implement and maintain a detailed monitoring and reporting system, based on cantonal statistics, on migrant children subject to administrative detention measures, which will allow the civil society to know exactly how many migrant children, accompanied and unaccompanied, are subject to such detention measures per canton, in what facilities and in which conditions.

^[73] *The Impact of Detention on the Health of Asylum Seekers: A Systematic Review*. Filges T, Montgomery E, Kastrup M, Jørgensen, A-MK. Campbell Systematic Reviews 2015:13
DOI: 10.4073/csr.2015.13.

^[74] Sampson, R., Chew, V., Mitchell, G., and Bowering, L. *There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention* (Revised), (Melbourne: International Detention Coalition, 2015).





Appendices.

Appendix 1: The questionnaire.

1. What facilities are used in this canton to detain people for immigration-related reasons, including asylum seekers? How many detention spaces are available in each of these facilities for immigration-related detainees?
2. Does the canton detain minors (anyone under the age of 18) for reasons related to immigration or asylum? If so, where are they detained? Do these facilities provide separate space for the detention of unaccompanied minors, accompanied minors, or families?
3. How many of the following were detained in this canton for immigration or asylum reasons during the years 2011, 2012, 2013, and 2014?
 - a. Adult Males
 - b. Adult Females
 - c. Accompanied Minors
 - d. Unaccompanied Minors
 - e. Asylum Seekers
4. If minors are not detained for immigration or asylum reasons in this canton, how are they accommodated during asylum or immigration enforcement procedures? Please indicate any differences in treatment between:
 - a. Accompanied and unaccompanied minors:
 - b. Asylum seeker and undocumented migrant children:
 - c. Children older and younger than 15 years of age:

Appendix 2: Legal framework for immigration detention in Switzerland - Provisions which justify and regulate immigration detention.

On what grounds can non-citizens be detained?

Swiss legislation lays down several provisions, which justify and regulate immigration detention. These can be divided into eight categories:

1. detention at the airport for refusal of entry;
2. detention of asylum seekers;
3. temporary detention;
4. detention in preparation for departure;
5. detention pending deportation;
6. detention under the Dublin procedure;
7. detention pending deportation due to lack of cooperation in obtaining travel documents;
8. coercive detention.

1. Detention at the airport for refusal of entry:

Article 65 of the FNA provides that if entry is refused at the airport, the foreign national must leave Switzerland immediately. He/she may remain in the airport international transit zone for up to 15 days in order to prepare his/her departure, provided deportation or other kinds of immigration detention is not ordered.

2. Detention of asylum seekers at the airport:

As per Article 22 of the Asylum Act, asylum seekers may be held at the airport or exceptionally at another location for a maximum of 60 days. Once a legally binding removal order has been issued, asylum seekers may be transferred to a prison specifically for deportees.

3. Temporary detention:

Under article 73 of the FNA, non-citizens without a short stay, residence or permanent residence permit, may be detained for a maximum of three days in order for authorities to notify them of a decision in connection with their residence status or to determine their identity or nationality, as far as their personal cooperation is required.

4. Detention in preparation for departure:

Article 75 of the FNA provides for up to six months detention of persons without a short stay, residence or permanent residence permit, during the preparation of the decision on residence status in order to facilitate the conduct of removal proceedings. This form of detention can be imposed on migrants who:

- a. refuse during asylum or removal proceedings to disclose their identity, apply for asylum using various identities or repeatedly fail to comply with a summons without sufficient reason or ignore other instructions issued by the authorities in the asylum procedure;
- b. leave their designated area of residence or enter an area from which they are excluded;
- c. enter the county territory despite a re-entry ban and cannot be immediately removed;
- d. submit an asylum application after being removed following a legally binding revocation or a non-renewal of the permit due on public security, public order, and internal or external security grounds;

- e. submit an asylum application after being expelled;
- f. submit an asylum application while staying irregularly in the country with the obvious intention of avoiding the imminent enforcement of a removal or expulsion order;
- g. constitute a serious threat or danger to others for what they are being prosecuted or have been convicted; or
- h. have been convicted for a felony.

5. Detention pending deportation:

Article 76 of the FNA provides that persons served with expulsion or removal order may be detained for up to 18 months (maximum term of detention, art 79 FNA) to enable the authorities to enforce the decision. Some of the previously mentioned grounds for detention also provide for this category of detention pending deportation. In addition, there should exist specific indications that convince authorities that the person is seeking to evade deportation, in particular because the person fails to cooperate; his/her previous conduct leads to the conclusion that he/she will refuse to comply with official instructions; or the removal decision has been issued in a "reception centre" or "special centre" and enforcement of the removal is imminent.

6. Detention under the Dublin procedure:

Article 76(a) of the FNA provides for detention to ensure removal to another Schengen state responsible for asylum proceedings based on the EU Dublin Regulation. Such detention can be ordered when there are specific indications that the person intends to evade removal, which are detailed in the law.

7. Detention pending deportation due to lack of cooperation in obtaining travel documents:

Article 77 of the FNA provides for detention for up to 60 days to ensure enforcement of removal if the person concerned was issued an enforceable decision, has not left the country within the appointed deadline, and the cantonal authority has had to obtain travel documents for this person.

8. Coercive detention:

Under Article 78 of the FNA, where detention pending deportation is not permitted but a person does not fulfil their obligation to leave Switzerland by the appointed deadline and if the legally binding removal or expulsion order cannot be enforced due to their personal conduct, they may be detained to ensure the obligation to leave Switzerland is complied with. Coercive detention can last up to 18 months.

Appendix 3: List of cantonal authorities contacted for the study.

	Canton	Postal address
1	Aargau	Amt für Migration und Integration Bahnhofstrasse 88 Postfach, 5001 Aarau
2	Appenzell Ausserrhoden	Migrationsamt Landsgemeindeplatz 5 9043 Trogen
3	Appenzell Innerrhoden	Amt für Ausländerfragen Marktgasse 2 9050 Appenzell
4	Basel-Land	Amt für Migration Parkstrasse 3 4402 Frenkendor
5	Basel-Stadt	Justiz- und Sicherheitsdepartement Bevölkerungsdienste und Migration Spiegelgasse 6 Postfach, 4001 Basel
6	Bern	Migrationsdienst des Kantons Bern Eigerstrasse 73 3011 Bern
7	Fribourg (Freiburg)	Service de la population et des migrants Rte d'Englisberg 11 1763 Granges-Paccot
8	Geneva	Office cantonal de la population et des migrations (OCPM) Service Étrangers et Confédérés Rte de Chancy 88 1213 Onex Etablissement concordataire de détention administrative Route de Satigny 27 1214 Vernier
9	Glarus	Departement Sicherheit und Justiz Abteilung Migration Postgasse 29 8750 Glarus
10	Graubünden	Amt für Migration und Zivilrecht Fremdenpolizei GR Karlihof 4 7000 Chur
11	Jura	Service de la population Rue du 24-Septembre 1 2800 Delémont
12	Luzern	Amt für Migration Fruttstrasse 15 6002 Luzern
13	Neuchâtel	Service des migrations Office du séjour et de l'établissement Case postale 124 Rue de Tivoli 28 2003 Neuchâtel

Canton	Postal address
14 Nidwalden	Amt für Justiz Abteilung Migration Kreuzstrasse 2 Postfach 1242 6371 Stans
15 Obwalden	Amt für Migration St. Antonistrasse 4 6061 Sarnen
16 St. Gallen	Migrationsamt Zentrale Dienste Oberer Graben 38 9001 St. Gallen
17 Schaffhausen	Kantonales Migrationsamt Mühlentalstrasse 105 8200 Schaffhausen
18 Schwyz	Amt für Migration Steistegstrasse 13 Postfach 454 6431 Schwyz
19 Solothurn	Migrationsamt Ambassadorsenhof Riedholzplatz 3 4509 Solothurn
20 Ticino	Sezione della popolazione Ufficio della migrazione Via Lugano 4 CP2170 6501 Bellinzona
21 Thurgau	Migrationsamt Schlossmühlestrasse 7 8510 Frauenfeld
22 Uri	Amt für Arbeit und Migration Abteilung Migration Klausenstrasse 4 6460 Altdorf
23 Valais (Wallis)	Service de la population et des migrations Avenue de la Gare 39 1950 Sion Service de l'application des peines et mesures (SAPEM) Direction Rue Traversière 3 Case postale 1080 1951 Sion
24 Vaud (Waadt)	Service de la population Secteur Etrangers Avenue de Beaulieu 19 1014 Lausanne
25 Zug	Amt für Migration Aabachstrasse 1 Postfach 857 6301 Zug
26 Zürich	Migrationsamt des Kantons Zürich Berninastrasse 45 Postfach, 8090 Zürich

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