Schweizerischer Fonds für Kinderschutzprojekte
Fonds Suisse pour des projets de protection de l'enfance
Fondo svizzero per progetti di protezione dell'infanzia

Système de protection de l'enfance:

Une comparaison internationale de bonnes pratiques dans cinq pays (Australie, Allemagne, Finlande, Suède et Royaume Uni) incluant des recommandations pour la Suisse.

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Schweizerischer Fonds für Kinderschutzprojekte
Fonds Suisse pour des projets de protection de l'enfance
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Le Fonds Suisse pour des projets de protection de l'enfance est une association d'intérêt public, qui identifie et soutient des projets de prévention et de formation scientifiquement validés et avec des résultats mesurables. Le Fonds soutient également des projets de recherche appliquée visant à compléter les connaissances nécessaires à des démarches de prévention. Afin de contribuer à améliorer durablement la protection de l'enfance en Suisse, le Fonds entend participer, par la diffusion des résultats obtenus et des expériences acquises à travers les projets soutenus, à la création, à moyen terme, d'un réseau de partage de connaissances pour tous les intervenants de la protection de l'enfance.

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Avant-propos

Le Fonds suisse pour la protection de l'enfant[1] s'est fixé pour objectif de contribuer au développement de la protection de l'enfant en Suisse par le financement de travaux de fond et de projets. L'étude présentée ici tire des enseignements des expériences effectuées dans d'autres pays et fournit des indications sur les besoins d'amélioration et le potentiel de développement en Suisse. A cette fin, des experts provenant du Royaume-Uni, d'Australie, de Finlande, de Suède et d'Allemagne ont décrit les systèmes de protection de l'enfant de leurs pays respectifs. Ils ont procédé à une analyse commune des systèmes et en ont tiré des conclusions utiles pour le système en Suisse.

Malgré leurs évolutions historiques différentes, les systèmes nationaux obéissent actuellement à deux grands principes. D'une part, les familles doivent être soutenues de façon à ce que les parents soient en mesure d'assumer leur rôle de façon responsable et que les enfants soient protégés contre la maltraitance et la négligence. Cela implique la mise en place d'une infrastructure composée de diverses mesures de soutien aux parents et aux familles. D'autre part, tous les systèmes présentent un éventail de mesures d'intervention différenciées et coordonnées, permettant de réagir de façon appropriée en cas de maltraitance ou de négligence avérée ou de risque d'apparition de ce phénomène.

Les chercheurs tirent des expériences des autres pays toute une série de recommandations, qui ont été discutées et adaptées avec des experts de Suisse. Ces recommandations concernent principalement des aspects structurels comme la création d'organes compétents pour la protection de l'enfant à différents niveaux, la définition de voies de formation destinées aux personnes chargées de la protection de l'enfant, mais aussi la collaboration interdisciplinaire indispensable en cas d'interventions à différents niveaux.

Un grand nombre de responsables de la protection de l'enfant souhaitent eux aussi un meilleur ancrage structurel de la protection de l'enfant en Suisse. Le rapport livre de précieuses indications sur les domaines où cela serait possible et nécessaire, et sur la façon d'y parvenir. Le Fonds suisse pour la protection de l'enfant forme le vœu que ce rapport contribue au développement de la protection de l'enfant en Suisse.

Août 2012

Muriel Langenberger

Présidente

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[1] Auparavant Association PPP – Programme national pour la protection de l'enfant.

Préface

L'étude présentée dans ce rapport a pu être réalisée grâce à une aide financière de l'Association PPP - Programme National pour la Protection de l'Enfant, un partenariat public-privé entre Oak Foundation, UBS Optimus Foundation et l'Office fédéral des assurances sociales (OFAS).

Nous souhaitons remercier tout particulièrement ces institutions de financement ainsi que les membres du groupe d'experts, Stefan Blülle (directeur de la division pour la protection de l'enfance et de la jeunesse de l'autorité de tutelle, canton de Bâle-Campagne), Andrea Hauri (travailleuse sociale et sociologue, Haute Ecole Spécialisée de Berne), Christian Nanchen (directeur des services pour la jeunesse, canton du Valais), Stefan Schnurr (éducateur, Haute Ecole Spécialisée du nord-ouest de la Suisse), Peter Voll (sociologue, Haute Ecole Spécialisée de Suisse occidentale), Judith Wyttenbach (juriste, Université de Berne - Institut de droit public) et Marco Zingaro (juriste, Haute Ecole Spécialisée de Berne). Stefan Schnurr nous a non seulement fait profiter de ses connaissances pendant le séminaire des experts mais il a également apporté une contribution importante à la réunion de l'équipe de projet en juin 2011. Nous sommes aussi très reconnaissants envers Jonas Weber (département de droit pénal et de criminologie de l'université de Berne) qui a contribué à ce projet par ses conseils en matière de droit pénal suisse.

Enfin, nous souhaitons témoigner notre reconnaissance à Manuela Krasniqi de l'Office Fédéral des Assurances Sociales (OFAS) pour avoir assuré la communication entre les institutions de financement et la direction du projet. Nous souhaitons également remercier Chiara Rondi et Corinne Trescher de la Haute Ecole Spécialisée de Berne pour leur aide à la conduite de ce projet.

Bâle, le 16 mars 2012

Au nom de l'équipe de projet

Jachen C. Nett

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1 Introduction

Jachen C. Nett et Trevor Spratt

En mars 2011, l'Association PPP - Programme National pour la Protection de l'Enfant a mandaté l'équipe de projet, menée par le professeur Jachen C. Nett et le docteur Trevor Spratt, pour la réalisation de l'étude intitulée « Systèmes de protection de l'enfance : une comparaison internationale des bonnes pratiques ». Une étude complémentaire effectuée par Jachen Nett, intitulée « La protection de l'enfant en Suisse : description du contexte culturel, politique et juridique » avait également été mandatée par l'Association PPP en septembre 2011.

Ce qui suit est un résumé des objectifs du projet et de la conception de l'étude ainsi que les remerciements à nos collaborateurs pour leurs contributions : ceux qui ont fourni les études par pays, ainsi que notre groupe d'experts qui nous a conseillés sur l'applicabilité de nos recommandations dans le contexte suisse. Nous conclurons par un bref rappel de nos principaux résultats. La partie principale du présent rapport commence par « La protection de l'enfant en Suisse : description du contexte culturel, politique et juridique », suivie de la présentation d'un rapport global sur les « Analyses transnationales des bonnes pratiques et recommandations qui en découlent », avec les cinq « Études de cas » par pays figurant en annexe.

1.1 Objectifs

L'objectif de la présente étude est double : d'une part, il consiste à se pencher sur les indications actuelles concernant l'efficacité des services de protection de l'enfant dans les pays ayant un niveau de développement économique et social comparable à celui de la Suisse ; d'autre part, le but est d'identifier des exemples internationaux de bonnes pratiques à évaluer en fonction de leur potentiel d'application en Suisse. En particulier, nous visons à : (a) analyser les systèmes de protection de l'enfance dans cinq pays de comparaison et produire une étude de cas pour chacun d'eux ; (b) analyser les études de cas afin d'identifier les bonnes pratiques ; (c) présenter des recommandations à un groupe d'experts (comité de conseil) afin de s'assurer de leur applicabilité en Suisse, en se basant sur le profil démographique du contexte national historique, politique et pratique ; (d) formuler des recommandations finales à l'intention de l'Association PPP - Programme National pour la Protection de l'Enfant.

1.2 Modèle de recherche et restrictions

Notre plan de recherche ne nécessitait pas véritablement de recherche préliminaire. Les informations permettant de répondre aux questions soulevées dans notre étude sont en libre accès et se présentent sous la forme de données quantitatives et qualitatives dans des documents publics (par ex. légi-

slation et politiques, statistiques officielles, articles de journaux et critiques académiques). Nous avons par ailleurs établi un modèle d'étude par pays afin d'assurer une bonne comparaison des données dans les différents domaines-clé. Une fois finies, les analyses par pays ont été rassemblées puis soumises à une seconde analyse par l'équipe de recherche, en fonction des objectifs de l'étude. Les recommandations provisoires ont ensuite fait l'objet d'un examen complémentaire de la part du groupe d'experts quant à leur applicabilité en Suisse.

1.3 Auteurs: équipe principale et groupe d'experts

L'étude a été menée par Jachen Nett (Haute Ecole Spécialisée de Berne, Suisse), Trevor Spratt (Queen's University Belfast, Irlande du Nord) et leurs partenaires : Leah Bromfield (University of South Australia - Australian Centre for Child Protection), Johanna Hietamäki (Université de Jyväskylä, Finlande), Lina Ponnert (Université de Lund, Suède) et Heinz Kindler (German Youth Institute). Chaque membre de l'équipe a réalisé un rapport par pays et a pris part à la deuxième analyse des données obtenues. Trevor Spratt a rédigé le rapport global. Le groupe d'experts était composé de Stefan Blülle (directeur de la division pour la protection de l'enfance et de la jeunesse de l'autorité de tutelle, canton de Bâle-Campagne), Andrea Hauri (travailleuse sociale et sociologue, Haute Ecole Spécialisée de Berne), Christian Nanchen (directeur des services pour la jeunesse, canton du Valais), Stefan Schnurr (éducateur, Haute Ecole Spécialisée du nord-ouest de la Suisse), Peter Voll (sociologue, Haute Ecole Spécialisée de Suisse occidentale), Judith Wyttenbach (juriste, Université de Berne - Institut de droit public) et Marco Zingaro (juriste, Haute Ecole Spécialisée de Berne).

1.4 Résumé des principaux résultats

On observe une convergence des informations quant aux évolutions historiques entre les nations ayant une éthique sociale. Les pays ont cherché à établir des lois et des procédures à partir de cette éthique, afin d'équilibrer les droits des parents à la vie privée et les droits de l'enfant à la protection. Encore aujourd'hui, ces lois et procédures sont basées sur une science du développement de l'enfant intégrée dans une notion écologique. Cependant, les nations partagent toutes un dilemme fondamental : à quel moment l'État doit-il intervenir pour protéger l'enfant ? En effet, on a pu observer que l'excès d'intervention, tout comme le manque d'intervention, peut avoir des conséquences imprévues et indésirables sur la vie de famille. Au cours du temps, on a pu constater des changements dans les services de protection de l'enfant, reflétant différentes réponses à ce dilemme central.

Cela dit, les cinq pays étudiés partagent une idéologie commune fondée sur l'idée qu'il faut promouvoir les interventions précoces avant l'aggravation des problèmes, mais qu'il est également nécessaire d'avoir un système efficace afin de protéger les enfants contre une maltraitance grave dans les situations où leurs parents ne veulent ou ne peuvent pas fournir cette protection. Reflétant cette idéologie, les cinq nations considèrent que le meilleur système de protection de l'enfance engloberait aussi bien

un soutien aux familles - afin d'éviter de mauvais résultats pour les enfants vulnérables - que des interventions imposées pour ceux qui ont un besoin immédiat de protection. Par ailleurs, il n'existe pas de modèle uniforme en matière de prise en charge des jeunes au comportement criminel ou asocial. Dans certains pays, ces jeunes sont intégrés dans le système de protection des enfants, alors que dans d'autres, ils sont pris en charge dans un système à part.

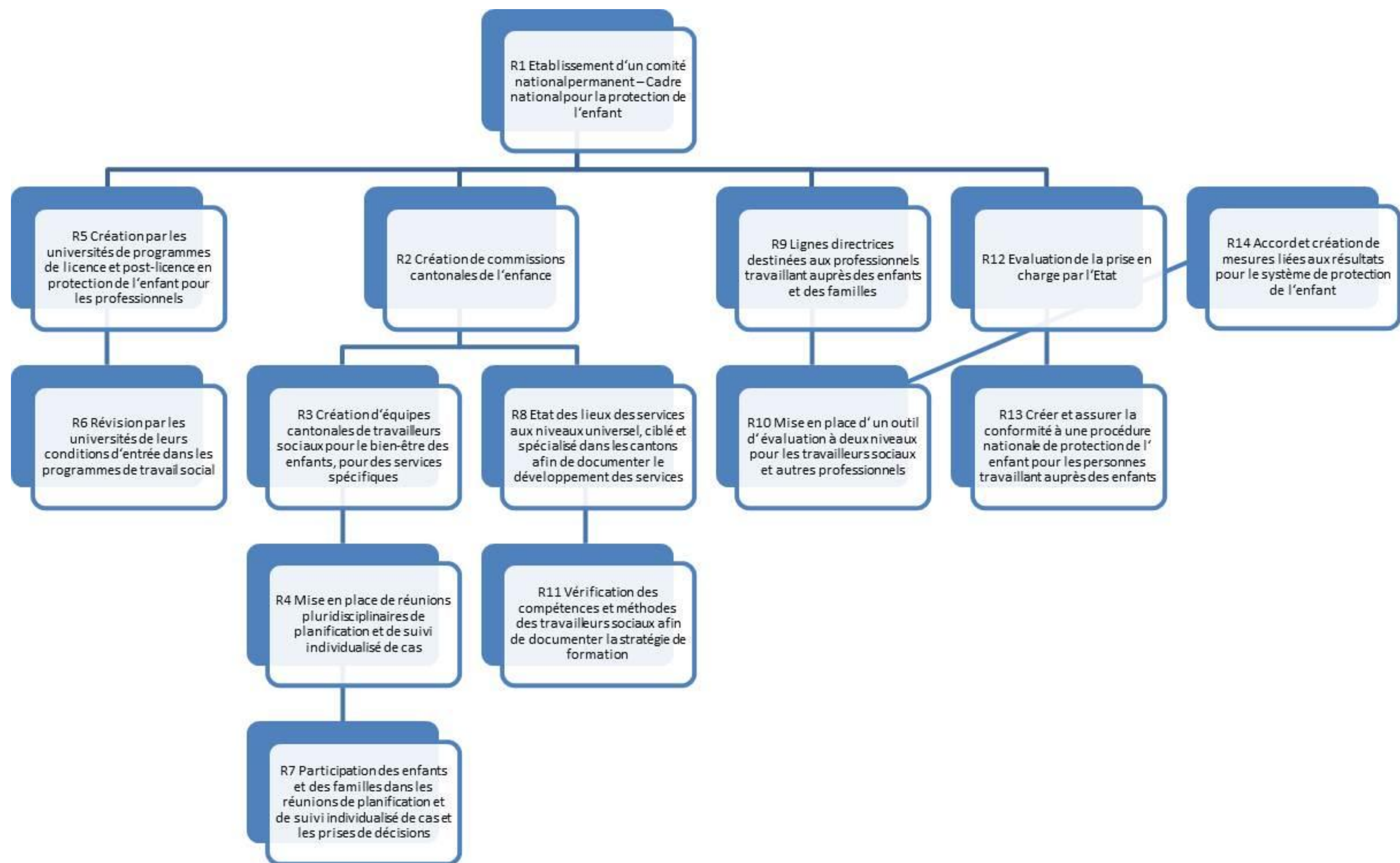
Dans les cinq pays, la réponse systémique engage la participation des autorités gouvernementales, celles-ci ayant un rôle primordial dans la prise en compte des rapports de protection de l'enfant. On observe également que la prestation de service diffère grandement entre les services publics, bénévoles et privés. Le rôle de l'État devenant de plus en plus important, son lien avec le troisième secteur ou secteur du bénévolat, a été revu et renégocié.

Quelles que soient les proportions d'action des différents secteurs, les systèmes nécessitent une approbation et une coordination des interventions à trois niveaux : entre les autorités centrales et locales mais aussi entre les autorités locales et le secteur du bénévolat / secteur privé (conformes aux directives de protection de l'enfant) ; entre les professionnels et les familles au niveau local (afin de refléter les éléments interdépendants des systèmes de protection de l'enfance) ; dans le cadre d'une analyse et d'une réforme continues des prestations afin de garantir les « meilleures pratiques ».

Citons ici la conclusion du « rapport général » : « Les systèmes de protection de l'enfance sont nécessaires car nous sommes désormais conscients des préjudices causés aux enfants lorsqu'ils sont soumis à un certain nombre de difficultés, et notamment la maltraitance. » En développant et en renouvelant son système de protection de l'enfance, la Suisse a l'occasion unique de profiter d'une analyse des systèmes contemporains de protection des enfants dans cinq pays. Le constat majeur de cette recherche est que les leçons tirées, tant sur des aspects positifs que négatifs dans ces pays, sont remarquablement cohérentes. Au début de ce projet, nous pensions qu'il serait très difficile de dégager des enseignements clairs étant donné les éventuels problèmes pour trouver des points de comparaison. Cela a certes été le cas en ce qui concerne certains aspects particuliers tels que les résultats, mais, d'une manière générale, nous avons vu émerger un consensus remarquable quant à ce qui représente les « meilleures pratiques » dans les systèmes modernes de protection de l'enfant. Les 14 recommandations que nous avons formulées représentent ce que tous ceux de l'équipe de recherche souhaiteraient pour leur propre pays ; aucun de ces pays ne regroupe pourtant tous ces éléments.

Niveau fondamental – Éléments de gouvernance des systèmes modernes de protection de l'enfant
Recommandation n°1 – Un comité national permanent, au niveau fédéral, devrait établir un cadre national pour la protection de l'enfant, afin de servir de base à l'élaboration de lois et à la mise en place de services cantonaux. Recommandation n°2 – Les cantons conservent une responsabilité juridique pour les services de protection de l'enfant mais ceux-ci sont planifiés et fournis avec des prestataires bénévoles et privés dans les commissions de l'enfance.
Niveau intermédiaire – Aspects interdépendants des systèmes modernes de protection de l'enfant
Recommandation n°3 – Dans chaque canton, des équipes de travailleurs sociaux devraient assumer les responsabilités juridiques liées au service spécifique de protection de l'enfant. Recommandation n°4 – Des réunions pluridisciplinaires de planification et suivi individualisé de cas devraient être mises sur pied dans chaque canton afin de garantir une planification permettant de répondre aux besoins et d'assurer la protection au niveau individuel. Recommandation n°5 – Les universités devraient mettre en place des formations pré et post-licence en protection de l'enfant pour les professionnels. Recommandation n°6 – Les hautes écoles devraient revoir leurs standards d'admission aux cursus de travail social. Recommandation n°7 – Promotion du partenariat. Les parents devraient assister aux réunions de planification et de suivi individualisé de cas. Les droits des enfants à la représentation et à l'appel aux décisions les concernant devraient devenir la norme.

Niveau supérieur – Éléments de la fourniture de service des systèmes modernes de protection de l'enfant
Recommandation n°8 – Développement d'un ensemble de services aux enfants fondés sur le modèle de santé publique et servant de base à la mise en place du cadre national pour la protection de l'enfant. Recommandation n°9 – Développement de lignes directrices pour les travailleurs sociaux, intégrant la législation et les « meilleures pratiques » mises en évidence par la recherche. Recommandation n°10 – Introduction d'un cadre d'évaluation à deux niveaux : l'un, spécifique, pour les travailleurs sociaux, et l'autre, général, pour les autres professionnels. Recommandation n°11 – Vérification des méthodes actuelles d'intervention employées par les travailleurs sociaux. Le résultat de cette vérification servirait de base aux commissions de l'enfance dans leur travail de développement de formation et de mise en place de stratégies. Recommandation n°12 – État des lieux de la prise en charge par l'État qui servirait de base au développement du cadre national pour la protection de l'enfant et au travail des commissions de l'enfance. Recommandation n°13 – Établissement d'une procédure nationale de protection de l'enfant destinée aux personnes travaillant auprès des enfants. Recommandation n°14 – Mise en place d'un système national de données afin d'effectuer un suivi des résultats du système et de ceux concernant les enfants, ceci faisant partie du cadre national pour la protection de l'enfant mais servant également de base d'informations aux commissions de l'enfance.


R1 Etablissement d'un comité national permanent – Cadre national pour la protection de l'enfant
R5 Création par les universités de programmes de licence et post-licence en protection de l'enfant pour les professionnels
R2 Création de commissions cantonales de l'enfance
R9 Lignes directrices destinées aux professionnels travaillant auprès des enfants et des familles
R12 Evaluation de la prise en charge par l'Etat
R14 Accord et création de mesures liées aux résultats pour le système de protection de l'enfant
R6 Révision par les universités de leurs conditions d'entrée dans les programmes de travail social
R3 Création d'équipes cantonales de travailleurs sociaux pour le bien-être des enfants, pour des services spécifiques
R8 Etat des lieux des services aux niveaux universel, ciblé et spécialisé dans les cantons afin de documenter le développement des services
R10 Mise en place d' un outil d' évaluation à deux niveaux pour les travailleurs sociaux et autres professionnels
R13 Créer et assurer la conformité à une procédure nationale de protection de l' enfant pour les personnes travaillant auprès des enfants
R4 Mise en place de réunions pluridisciplinaires de planification et de suivi individualisé de cas
R11 Vérification des compétences et méthodes des travailleurs sociaux afin de documenter la stratégie de formation
R7 Participation des enfants et des familles dans les réunions de planification et de suivi individualisé de cas et les prises de décisions

2 La protection de l'enfant en Suisse : description du contexte culturel, politique et juridique

Jachen C. Nett

2.1 Introduction

Dans ce chapitre, nous allons présenter les composantes essentielles ainsi que les aspects particuliers du système de protection de l'enfance en Suisse. Certains éléments du système politique suisse peuvent sembler étranges à des personnes d'autres pays car ils ne correspondent pas aux dispositions politiques existant dans d'autres pays développés et démocratiques. Ces particularités ont des conséquences sur le processus décisionnel à l'échelle nationale mais touchent également la création et l'application de lois aux différents niveaux du système fédéral. Ainsi, la section 2.2 du présent chapitre vise à fournir, à titre indicatif seulement, un bref aperçu du système politique suisse. Cela sera suivi d'un court profil de la démographie suisse, permettant de voir les défis actuels et futurs du système de politique sociale.

Ensuite, dans la section 2.3, on met en exergue les conditions de vie actuelles des enfants et des adolescents en Suisse, notamment aux niveaux de l'économie, de l'éducation et de la santé. Cette partie donne également des informations sur les récents développements mettant à l'épreuve la relation entre les parents et les enfants. A la fin de cette section, il sera question des indications dont on dispose concernant les abus et la négligence envers les enfants en Suisse. Dans les sections suivantes, nous évoquerons les fondements constitutionnels et juridiques du système de protection de l'enfance, puis nous analyserons l'adoption des articles centraux du Code Civil et du Code Pénal (section 2.4). Nous nous pencherons ensuite sur la mise en œuvre institutionnelle des politiques concernant les enfants et la jeunesse à différents niveaux du système fédéral. Nous examinerons donc également le rôle des organisations privées dans ce domaine (section 2.5). Nous terminerons le chapitre par un compte rendu des récents développements dans la politique suisse de protection de l'enfant. Nous mettrons l'accent sur certains amendements législatifs qui viennent d'être introduits (où qui le seront sous peu) et présenterons quelques initiatives nationales et programmes récents. Enfin, nous aborderons la perception publique du thème de la protection des enfants à travers un ensemble de sujets mis en avant par les médias.

2.2 Ce qu'il faut savoir sur la Suisse

La Suisse est un pays relativement petit (41'000 km²) partageant ses frontières avec l'Autriche, la France, l'Allemagne, l'Italie et le Liechtenstein. De hautes chaînes de montagnes s'étendent sur de

vastes parties du pays ; par conséquent, les zones habitables sont densément peuplées (184 habitants par km²). La Suisse est une république démocratique *fédérale* parlementaire, avec de forts éléments de *démocratie directe*. Le gouvernement est élu par le parlement pour un mandat de quatre ans. Il est composé de sept membres du Conseil fédéral et du Chancelier fédéral.

2.2.1 Le système politique

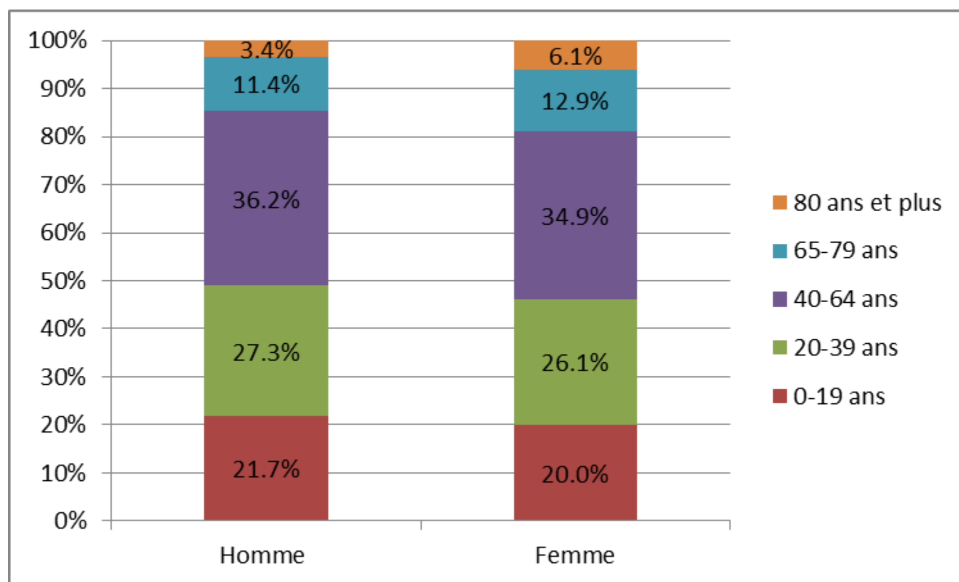
Le fédéralisme et la démocratie directe sont deux traits distinctifs de la politique suisse et sont profondément ancrés à différents niveaux de l'organisation politique, juridique et constitutionnelle. L'Assemblée fédérale suisse (le parlement) est composée de deux chambres, le Conseil national et le Conseil des États. Ce dernier représente les 26 cantons dont six sont, pour des raisons historiques, ce que l'on appelle des « demi cantons », ce qui signifie qu'ils ne peuvent avoir qu'un représentant au lieu de deux à cette chambre.

Tout amendement apporté à la Constitution fédérale de la Confédération suisse (CFCS), selon son appellation officielle, mais également certaines autres décisions parlementaires d'importance majeure, doivent être approuvés par un vote de la majorité de la population et des cantons. Les effets du système fédéral sur les décisions politiques au niveau national ne peuvent guère être surestimés, étant donné les différences entre les cantons quant à la taille de leur territoire et à leur population (le canton de Zurich, qui compte plus d'1 million d'habitants, et le canton d'Uri, dont la population ne dépasse guère les 35'000 habitants, élisent l'un comme l'autre deux représentants) On peut certes identifier une tendance générale à un accroissement de la régulation fédérale dans certains domaines de la société, du fait d'exigences venant du droit international, mais les cantons n'en conservent pas moins une grande souveraineté dans les domaines centraux de la politique fiscale, économique et sociale. Le principe du fédéralisme fonctionne également au niveau inférieur au canton, à l'échelle de la municipalité. Les communes, unités administratives les plus petites, sont au nombre de 2'551 et bénéficient d'une autonomie politique considérable. La structure ascendante du système politique en Suisse a été réaffirmée il y a peu par un amendement constitutionnel important. En effet, depuis 2008, la Constitution fédérale comporte un article selon lequel « l'attribution et l'accomplissement des tâches étatiques se fondent sur le principe de subsidiarité » (article 5a[2] CFCS). Cet article a été adopté après l'approbation d'une « initiative populaire » lors des votations du 28 novembre 2004. La « démocratie directe » est ainsi abordée comme étant l'autre élément central du système politique suisse. D'une part, les procédures de démocratie directe se trouvent dans le système électoral, étant donné que les membres des deux chambres du parlement suisse sont élus directement par le peuple. Le processus électoral du Conseil national suit des règles fédérales standard alors que le Conseil des États est élu conformément aux réglementations cantonales. D'autre part, les votations populaires sont des instruments importants de la démocratie directe. Elles peuvent être basées sur ce que l'on appelle les « initiatives populaires » ou les « référendums ». Dans le second cas, un vote a lieu si 50'000 citoyens demandent, par leur signature, qu'un acte de législation fédérale, une décision du parlement ou, dans certains cas, des traités internationaux, soient remis en question. Ainsi, « le référendum est une sorte

de veto qui ralentit le processus politique. En effet, le peuple dispose ainsi d'un frein qui lui permet de bloquer ou de différer les modifications proposées par le Parlement ou le gouvernement » (Chancellerie fédérale, 2011, p19). Quant aux initiatives populaires, elles reflètent le droit des citoyens d'apporter un changement à la Constitution (à l'échelle fédérale) ou de demander une nouvelle loi ou un amendement à une loi existante (seulement à l'échelle cantonale). La soumission d'une initiative populaire nationale requiert la collecte, dans un délai de 18 mois, de la signature valide de 100'000 votants.[2]

2.2.2 Démographie

Quatre langues sont pratiquées au sein de la population autochtone suisse. Selon le recensement de 2000, la grande majorité de la population (63,7%) parle l'allemand comme langue principale, 20,4% parlent le français, 6,4% parlent l'italien et une minorité de 0,5% parle le romanche. Les 9% restant de la population parlent divers autres idiomes reflétant partiellement le nombre d'immigrés proportionnellement élevé et croissant au cours de la dernière décennie. Le taux de migration a plus que triplé entre 2000 et 2009, passant de 2,8 à 9,6 pour mille habitants (OFS, 2009). Selon l'Office fédéral de la statistique (OFS), en 2010, la part de résidents étrangers dans la population était de 22,4%. Le dernier rapport sur la population étrangère en Suisse publié par l'OFS (OFS, 2008) révèle qu'environ un tiers de tous les mariages célébrés en 2007 avaient lieu entre des personnes de nationalité suisse et d'autres nationalités (37,5%). En 2007, près de la moitié (47,5%) des enfants nés de femmes mariées avaient une parenté suisse/autre nationalité et environ un quart de tous les enfants nés cette année ont une nationalité étrangère.



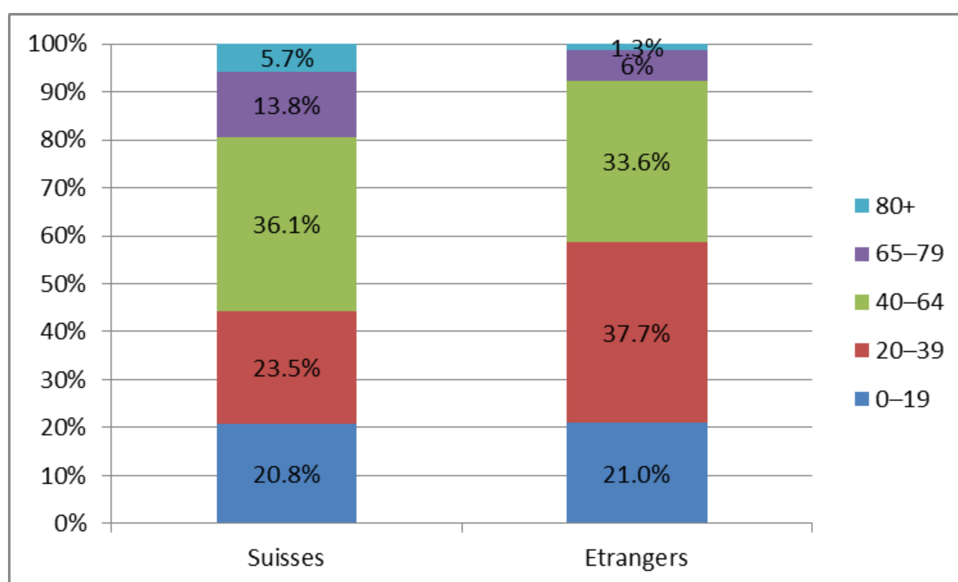
Graphique 1 : Age et sexe de la population résidente, 2010[3]

[2] Pour un bref aperçu du système politique suisse, voir Chancellerie fédérale (2011).

[3] Source www.bfs.admin.ch, consultée le: 19/11/2009.

La pyramide des âges de la Suisse et son évolution sont comparables à celles de la plupart des pays européens : le vieillissement démographique est la conséquence du faible taux de fécondité (2009 : 1,50) et de l'accroissement de l'espérance de vie. Pour les femmes, l'espérance de vie à la naissance est passée, entre 1950 et 2009, de 70,9 ans à 84,4 ans ; pour les hommes, elle est passée de 66,4 ans à 79,8 ans (OFS, 2011b). Comme on le voit dans le graphique 1, la disparité entre les sexes entraîne une pyramide des âges inégale : dans la classe d'âge des plus de 64 ans, les femmes sont largement surreprésentées, avec une proportion de 19,0% contre 14,7% pour les hommes. La tendance qui découle d'un quotient de vieillissement croissant[4] a été ralentie par l'immigration de jeunes gens ; cependant, ce quotient a quand même augmenté, passant de 23,5% en 1990 à 27,1% en 2010. Pendant la même période, le quotient de jeunes a baissé, passant de 37,7% à 33,5% (ibid.). Comme on voit sur le graphique 2 : l'impact actuel de l'immigration sur la pyramide des âges est plus fort dans la classe d'âge des 20-39 ans.

Le vieillissement démographique est une source de préoccupation dans presque tous les pays développés, surtout parce que les scénarios de population suggèrent que cette tendance continuera au cours des prochaines décennies et causera probablement de sérieux problèmes, notamment en matière de sécurité sociale (ibid., p.531).



Graphique 2 : Age et nationalité de la population résidente, 2010[5]

[4] Le quotient de vieillissement indique la proportion de personnes de plus de 64 ans dans le groupe des 20-64 ans.

[5] Source www.bfs.admin.ch, consultée le: 19/11/2011.

2.3 Conditions de vie des enfants et des adolescents en Suisse

En 2000, le Conseil fédéral a mandaté le Fonds National Suisse de la Recherche Scientifique (FNSNF) pour mettre en œuvre le 52ème Programme National de Recherche (PNR) intitulé « L'enfance, la jeunesse et les relations entre générations dans une société en mutation ». Ce vaste thème, réparti en six modules dans le PNR 52, a fait l'objet de 29 projets de recherche couvrant divers aspects (cf. FNSNF, pas d'année)[6]. Un résumé des principaux résultats a été publié en 2008 (Schultheis, Perrig-Chiello, & Egger, 2008). Nous nous référerons à certains des résultats les plus pertinents dans les sections suivantes.

2.3.1 Conditions économiques

La Suisse est l'un des pays les plus riches du monde mais cet état de faits ne constitue pas un indicateur du niveau de vie des citoyens de ce pays car 14,6 % (2009) de la population vit en dessous du seuil de pauvreté (OFS, 2011b). En effet, le seuil de pauvreté est mesuré en fonction des normes européennes comme le pourcentage de ceux gagnant moins de 60% du revenu médian national, et risquant donc d'être exclus socialement[7]. Cependant, une comparaison avec les autres pays étudiés dans ce rapport est importante car elle sert d'indicateur de l'inégalité de revenu dans ces pays. Une telle analyse révèle une proportion similaire de personnes vivant en dessous du seuil de pauvreté en Allemagne (2009 : 15%), en Finlande (2009 : 13.1%) et en Suède (2010 : 13.4%) mais une proportion plus élevée au Royaume-Uni (2008/2009 : 17%) et en Australie (2006 : 19.4%).[8]

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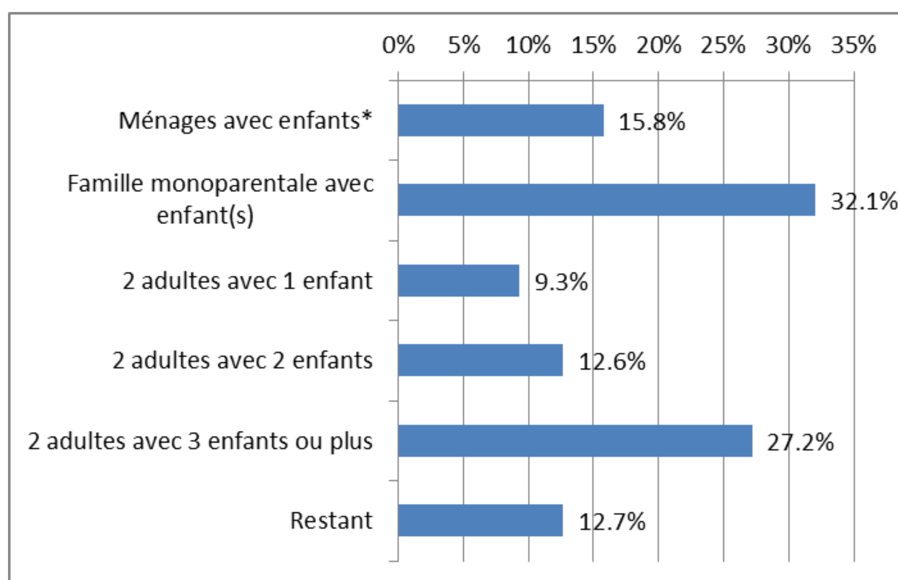
[6] Les six modules correspondaient aux sous-thèmes suivants : (1) Nouvelles données sur les conditions de vie des enfants, des jeunes et de leurs familles en Suisse, (2) Aspects juridiques et économiques, (3) Les questions de générations dans la politique sociale et la politique de migration, (4) Les familles comme centre des relations entre générations, (5) Santé psychosociale, (6) Aspects de la vie quotidienne : école et loisirs (cf. www.nfp52.ch).

[7] Source www.bfs.admin.ch, consulté le: 22/11/2011

[8] Sources: Australie (ACOSS, 2010), Finlande (pxweb2.stat.fi, consulté le 29/11/2011), Allemagne (www.destatis.de, consulté le 28/11/2011), Suède (www.scb.se), Royaume-Uni (www.ons.gov.uk, consulté le 28/11/2011).



Graphique 3 : Proportion de personnes vivant en dessous du seuil de pauvreté selon le type de ménages en 2009

* Le terme « enfant » désigne une personne âgée de moins de 18 ans ou âgée de 18 à 24 ans ne travaillant pas et vivant avec son père et/ou sa mère.

Les groupes d'âges les plus concernés par le risque de pauvreté en Suisse sont, selon la définition européenne, les personnes âgées (65 ans et plus) à 26,3% et les jeunes (0 à 15 ans) à 18,3%. Si l'on se penche sur le type de ménages (OFS 2011)[9], on s'aperçoit que les ménages avec enfants ont plus de risques de tomber en dessous du seuil de pauvreté (15,8%) que ceux n'ayant pas d'enfant (13,5%). Cependant, comme on le voit sur le graphique 3, cela dépend du type de ménage : le risque est supérieur à la moyenne pour le nombre croissant de familles monoparentales[10] ainsi que pour les ménages composés de deux adultes et de trois enfants ou plus (27,2%).

En ce qui concerne le chômage, jusqu'ici la Suisse a été dans une position privilégiée par rapport à d'autres pays. Au cours des dix dernières années, les taux de chômage, selon les standards établis par l'Organisation Internationale du Travail (OIT) sont passés de 2,7% en 2000 à 4,5% en 2005, montant à 3,4% en 2008, pour atteindre 4,5% en 2010 (OFS, 2011[11]). Tous les pays évoqués dans le présent rapport présentaient des taux de chômage plus élevés en 2010 (Australie : 5.1[12] ; Allemagne 7.1% ; Finlande : 8.4% ; Suède : 8.4% ; Royaume-Uni : 7.8%[13]). Pourtant, comme dans la plupart des autres pays, le chômage des jeunes est un problème particulier en Suisse aussi. Comme présenté dans le graphique 4, le chômage chez les jeunes âgés de 15 à 24 ans a augmenté, surtout au cours des dix dernières années.

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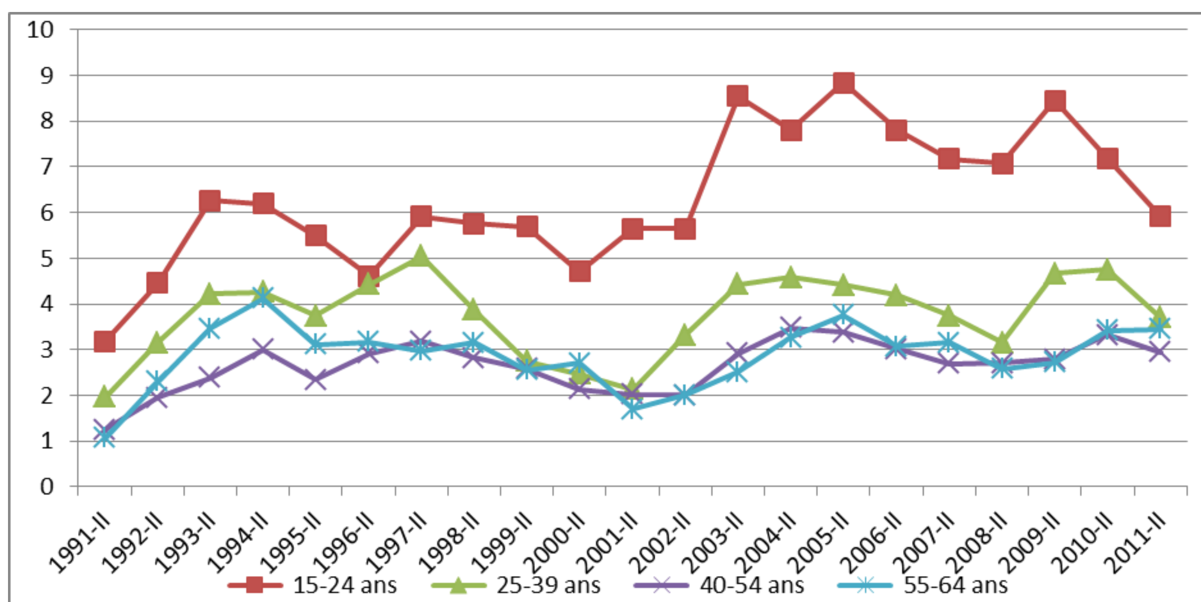
[9] Source: www.bfs.admin.ch, date de téléchargement: 22/11/2011 (fichier Excel: „Erhebung über die Einkommen und die Lebensbedingungen, SILC-2009 Version 25.08.11")

[10] Le nombre de ménages monoparentaux a augmenté de 70,6% entre 1970 et 2008, passant de 106'258 à 181'000 (OFS, 2009).

[11] Source: www.bfs.admin.ch, état de la base de données au: 29/09/2011.

[12] Source: ACOSS (2010)

[13] Source pour l'Allemagne, la Finlande, la Suède et le Royaume-Uni: http://epp.eurostat.ec.europa.eu, consulté le 03/01/2012.



Graphique 4 : Taux de chômage selon le standard de l'OIT pour les différentes classes d'âge[14]

Les différences de taux de chômage entre hommes et femmes sont relativement faibles, mais on constate des écarts considérables entre les régions de Suisse. L'OFS (ibid.) observe des taux de chômage relativement élevés dans la région autour du lac Léman (2010 : 6,7%) ainsi que dans le canton du Tessin (2010 : 6,1%) ; en revanche, on observe des taux plus faibles dans le centre et l'est de la Suisse (2010 : respectivement 3,0% et 3,5%).

2.3.2 Situation éducative

Selon les derniers résultats disponibles du Programme international pour le suivi des acquis des élèves (PISA), qui font référence à une enquête menée en 2009 (Nidegger et al., 2010)[15], les résultats des étudiants suisses sont plus élevés que la moyenne de tous les pays de l'OCDE dans tous les domaines abordés (c'est-à-dire la lecture, les mathématiques et les sciences naturelles). Si l'on compare les résultats des étudiants suisses avec ceux des pays étudiés dans notre rapport, on observe qu'ils sont considérablement plus faibles qu'en Finlande et en Australie en matière de lecture et de sciences naturelles. En revanche, ils présentent de meilleurs résultats (importants d'un point de vue statistique) en mathématiques que les élèves d'Australie, d'Allemagne, de Suède et du Royaume-Uni (ibid.)[16].

Dans les conditions actuelles[17], on peut prévoir qu'un enfant suisse de quatre ans suivra une éducation formelle pendant en moyenne 17,1 ans, dont une année et demie sera passée en maternelle, et neuf ans et demi dans le système de l'école obligatoire. Bien qu'il y ait des consignes officielles pour

[14] Source: www.bfs.admin.ch (adaptation personnelle). Les données font référence au deuxième trimestre de l'année concernée.

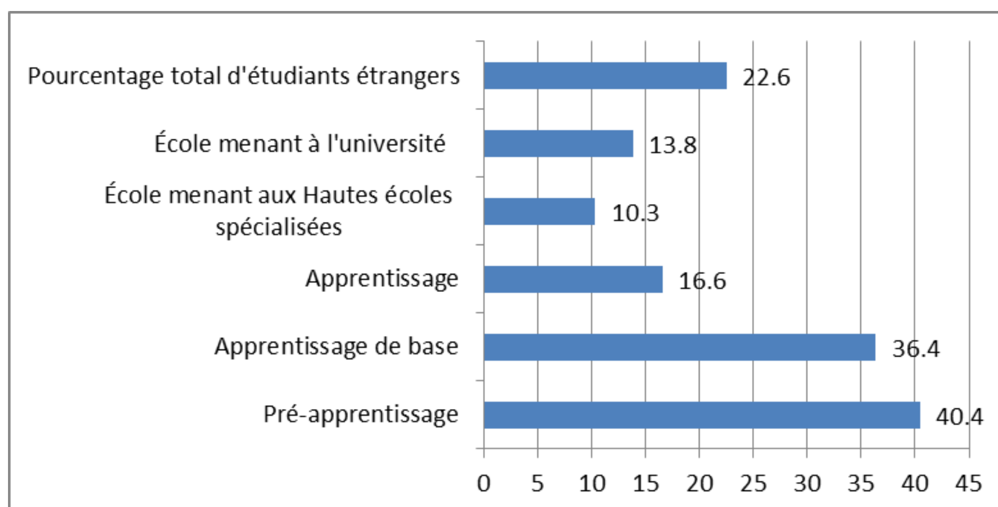
[15] PISA est une enquête internationale menée régulièrement auprès des élèves, mesurant leurs compétences et connaissances lors qu'ils arrivent vers la fin de l'école obligatoire (cf. www.pisa.oecd.org).

[16] Par ailleurs, les élèves suisses présentent des résultats plus élevés que les élèves suédois en sciences naturelles.

[17] Ces données correspondent à l'année 2008.

tous les cantons quant à la durée (9 ans) et à l'âge (6 ans) au début de l'éducation obligatoire, les cantons demeurent responsables en matière de système éducatif. Ainsi, on constate une grande variété quant à l'organisation de l'école obligatoire. Il existe par exemple différents types d'écoles secondaires, les heures d'enseignement pour les neuf années de scolarisation obligatoire peuvent varier de 7100 à 8900 par enfant par année, et certains cantons ont commencé à intégrer l'école maternelle dans le système de scolarisation obligatoire. On peut donc s'attendre à ce que les efforts d'harmonisation du système aboutissent à une scolarisation obligatoire étendue à 11 années dans toute la Suisse.

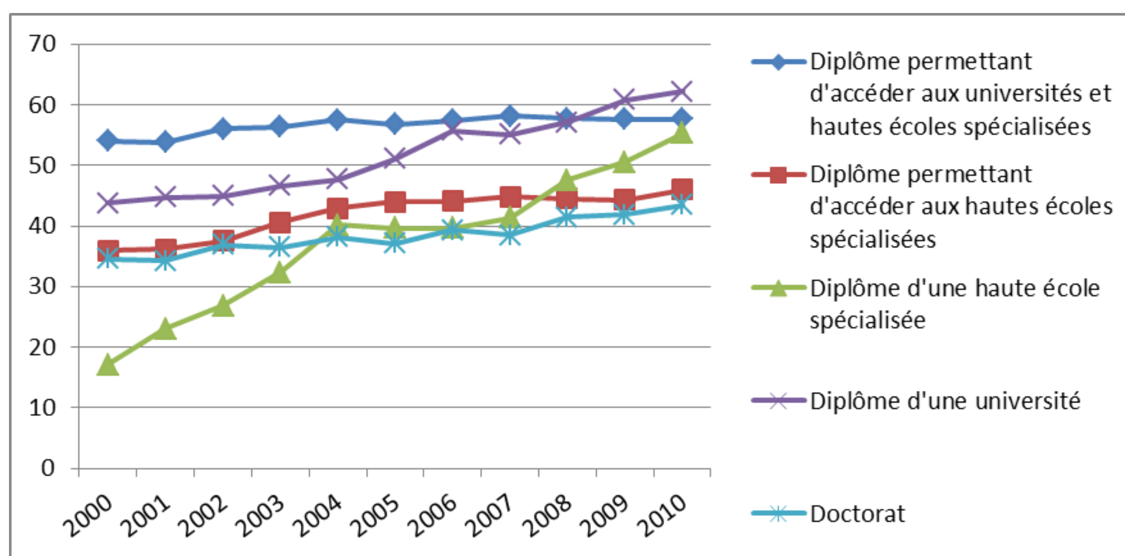
En 2008, 86,8% des élèves atteignaient le niveau secondaire supérieur et 33,7% obtenaient un diplôme de troisième niveau (OFS, 2011a). Le système suisse d'enseignement professionnel a la particularité d'être toujours basé essentiellement sur une double approche de formation professionnelle. Cela signifie qu'après l'école obligatoire, une majorité des jeunes entament un apprentissage en entreprise tout en fréquentant un établissement d'enseignement professionnel. En 2010, 65% des jeunes terminant l'enseignement secondaire le faisaient en réussissant un examen particulier d'apprentissage professionnel. L'une des préoccupations majeures de la politique éducative suisse est le fait que les enfants de familles immigrées sont plus nombreux dans les écoles moins exigeantes et donc moins nombreux dans celles qui sont plus exigeantes quant aux résultats (OFS et CDIP, 2002). Le graphique 5 présente quelques unes des voies possibles vers l'enseignement professionnel. Les élèves étrangers ne représentent que 22,6% de tous les élèves mais ils ne comptent que pour 10,3% des élèves dans les écoles menant aux enseignements professionnels, et 13,8% dans les écoles préparant aux parcours universitaires ordinaires. Par contre, ils sont surreprésentés dans les formations professionnelles peu exigeantes (apprentissage préliminaire et de base) qui ne comptent guère sur le marché de l'emploi sans qualification professionnelle complémentaire.



Graphique 5 : Pourcentage d'élèves étrangers aux différents niveaux d'exigence de l'enseignement secondaire en 2009/2010[18]

[18] Source www.bfs.admin.ch, consulté le: 22/11/2011.

Parallèlement à cette disparité, on constate également sur le graphique 6 des différences considérables dans les proportions de filles et de garçons allant jusqu'à l'obtention de certificats aux plus hauts niveaux de l'enseignement secondaire et tertiaire. Les filles sont de plus en plus représentées dans le groupe des élèves atteignant le certificat au niveau secondaire donnant accès aux universités (2010 : 57.6%) et réussissent encore mieux dans l'obtention d'un diplôme dans l'un des deux types d'établissement d'enseignement supérieur (2010 : respectivement 62.1% et 55.3%)[19]. Par contre, au niveau du doctorat, les filles sont toujours en minorité (2010 : 43.4%).



Graphique 6 : Pourcentage de filles obtenant un certificat aux plus hauts niveaux de l'enseignement secondaire et tertiaire[20]

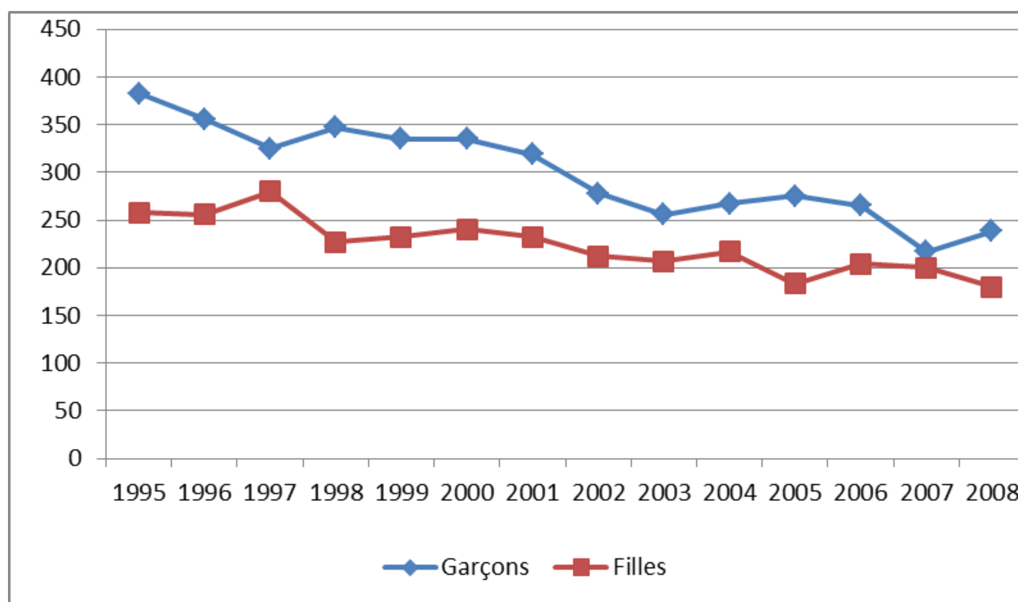
Ces différences entre les sexes est source de préoccupations quant à l'adéquation du système d'enseignement secondaire. Il semblerait effectivement qu'il y ait une certaine discrimination envers l'encouragement des compétences typiquement masculines ; il serait donc judicieux de mieux prendre en compte le développement psycho-social des garçons et des filles pendant l'enfance et l'adolescence et d'y porter plus d'intérêt.

[19] L'augmentation du nombre de filles obtenant un diplôme dans une université à orientation professionnelle (ce que l'on appelle les Hautes Ecoles Spécialisées) doit être interprétée face au paysage éducatif changeant de la Suisse. Avec l'établissement des Hautes Ecoles Spécialisées au début du siècle, l'enseignement de nombreuses professions majoritairement exercées par des femmes a été amélioré et est passé au niveau de diplôme universitaire (par exemple : le travail social par exemple et, depuis 2007, les formations d'infirmier/ère, de physiothérapeute, de sage-femme, etc.).

[20] Source: www.bfs.admin.ch, «Statistiques sur les niveaux de formation» (état de la base de données: juin 2010).

2.3.3 Mortalité des enfants et risque pour la santé

Certaines tendances sont visibles en matière de santé des enfants et des adolescents en Suisse, qui montrent clairement que certains aspects ont changé de manière positive au cours des deux dernières années. Comme on voit sur le graphique 7, la mortalité chez les garçons et les filles de moins de 14 ans a baissé entre 1995 et 2008, passant de 383 (garçons) et 258 (filles) à respectivement 238 et 180.

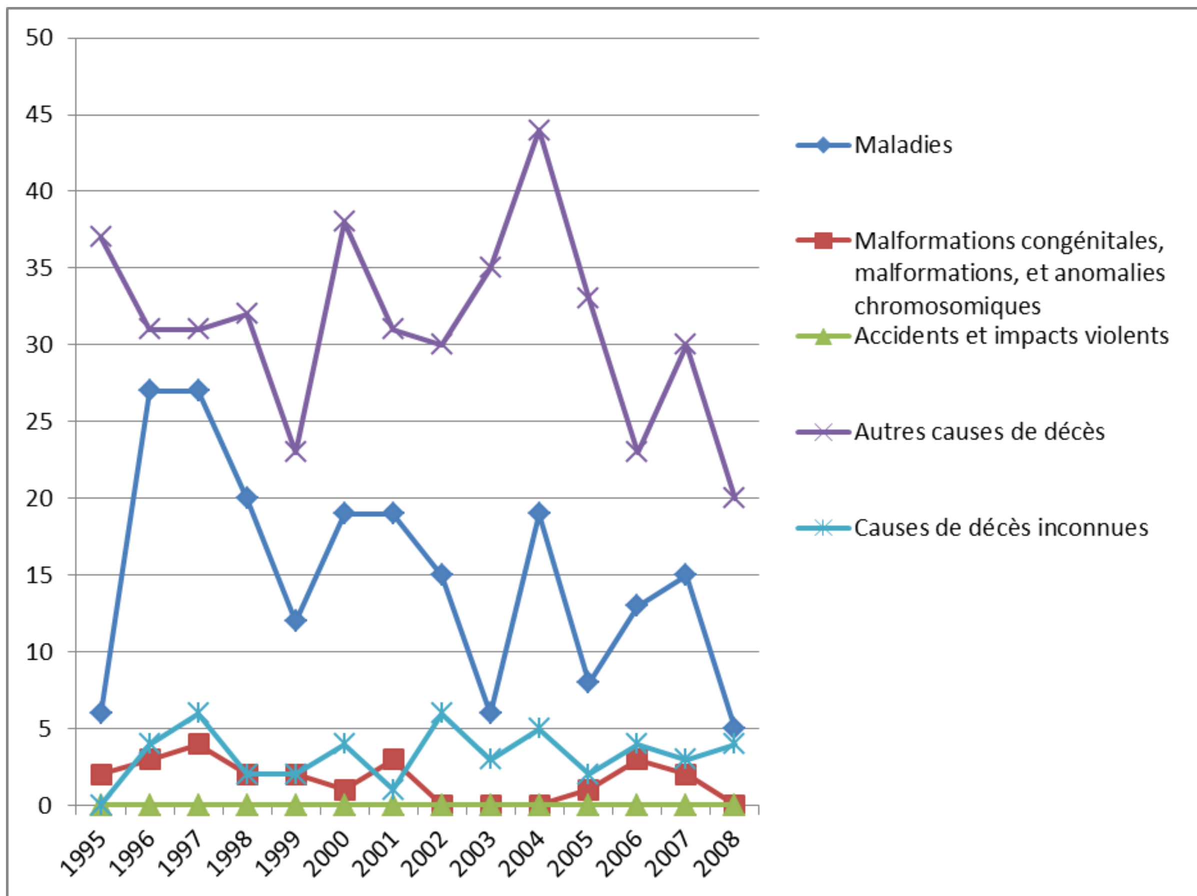


Graphique 7 : Mortalité chez les garçons et filles de 0 à 14 ans (1995-2008)[21]

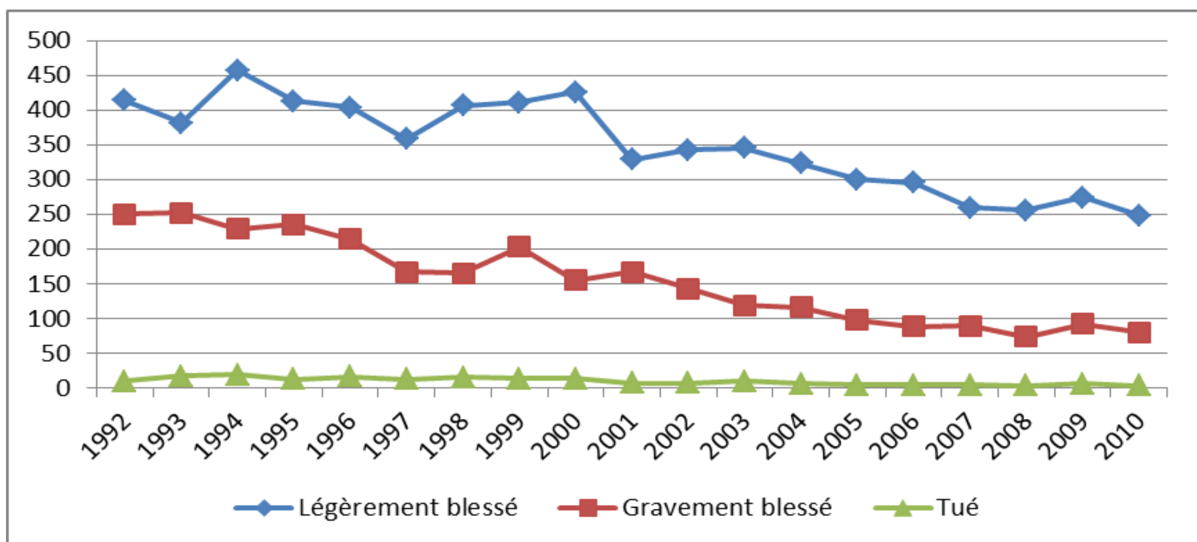
Si l'on considère les causes de décès des nourrissons, on s'aperçoit des répercussions positives des progrès médicaux de diagnostic et de traitement. Toutes les causes de décès connaissent un déclin (voir graphique 8). On note en particulier une baisse du nombre de cas de mort subite du nourrisson (MSN) qui est parfois liée à une maltraitance fatale de l'enfant (Committee on Child Abuse and Neglect, 2001 ; Reece, 1993).

Au cours des dernières décennies, le trafic routier a largement augmenté en Suisse. Le fait le plus notoire est que le nombre d'enfants de 0 à 9 ans blessés ou tués en tant que piétons dans un accident de la route est en baisse (voir graphique 9) ; ce groupe doit être considéré comme particulièrement à risque, car à cet âge-là, les enfants ne peuvent pas être totalement responsables de leur comportement et méritent donc une protection particulière. Cette évolution positive est hélas contrastée par le fait que l'augmentation du trafic routier restreint d'autant la liberté des enfants de jouer dehors.

[21] Source: www.bfs.admin.ch: « Statistiques concernant les causes de décès » (état de la base de données: 23/11/2010)



Graphique 8 : Causes de décès chez les nourrissons (1995-2008)[22]



Graphique 9 : Piétons victimes d'accidents de la route de 0 à 9 ans (1992-2010)[23]

[22] Source: www.bfs.admin.ch: « Statistiques concernant les causes de décès » (état de la base de données: 23/11/2010)

Lorsque les enfants arrivent à l'adolescence, un autre élément de santé publique prend de l'importance ; selon l'Office fédéral de la santé publique (OFSP, 2005), le pourcentage d'années perdues suite à un suicide avant l'âge de 70 ans est deux fois plus élevé que celui des années perdues suite à un décès dans un accident de la route. Avec 19,1 décès par suicide pour 100'000 habitants, les taux de suicides en Suisse figurent parmi les plus élevés du monde.[24] Le suicide est d'ailleurs la principale cause de décès des hommes âgés de 15 à 44 ans. Le taux de suicide augmente fortement avec le début de l'adolescence pour atteindre un premier sommet au milieu de la vingtaine d'années. Dans cette catégorie, les garçons sont largement plus nombreux que les filles. Selon les résultats obtenus suite à des interviews basées sur de larges échantillons de la population en 1992, 1997 (Rey Gex, Narring, Ferron, & Michaud, 1998), et 2002 (Narring et al., 2003), entre 3,4% et 3,9% des filles et entre 1,6% et 2,6% des garçons de 15 à 20 ans ont déclaré avoir fait une tentative de suicide au cours des 12 mois précédents. Les données sur la prévalence des tentatives de suicide présentées par Delgrande & Messerli (2003) montrent que 4% des filles et 2,6% des garçons de 15 à 16 ans ont déjà essayé de se donner la mort au moins une fois.

Parmi les autres problèmes de santé publique touchant les adolescents, on peut citer l'obésité, l'abus d'alcool et la prise de substances illicites, surtout de cannabis.

Selon les résultats du projet de recherche « Monitoring IMC »[25]lancé par Promotion Santé Suisse – une fondation constituée et soutenue par tous les cantons suisses – le surpoids et l'obésité sont largement répandus chez les enfants et les adolescents. Toutefois, les changements physiologiques de l'enfance et de l'adolescence font qu'il n'y a pas de définition simple et générale du critère permettant un diagnostic fiable du surpoids et de l'obésité (Stamm, Wiegand, & Lamprecht, 2010). Par rapport aux années précédentes, l'IMC (indice de masse corporelle) semble s'être stabilisé chez les enfants et adolescents en Suisse (Aeberli, Amman, Knabenhans, Molinari, & Zimmermann, 2009). Toutefois, les données de prévalence suggèrent qu'il est trop tôt pour un feu vert total ; selon les villes et cantons étudiés, le pourcentage d'enfants concernés varie de 10% à 26% (ibid.) : en moyenne, un enfant sur cinq ou sept en Suisse est en surpoids et 4% des enfants souffrent d'obésité. Il existe un lien bien connu et souvent étudié entre un statut socio-économique bas et le surpoids ou l'obésité (voir ISPA, 2009 ; Robertson, Lobstein, & Knai, 2007 ; Stamm et al., 2011 ; OMS/Europe, 2006, 2012). Comme les familles défavorisées vivent souvent dans des quartiers exposés à un trafic routier conséquent, on est à même d'imaginer que de telles conditions de vie réduisent les activités d'extérieur et ont donc un effet négatif sur l'activité motrice des enfants (cf. Sauter & Hüttenmoser, 2006).

Les données concernant la consommation d'alcool et de cannabis chez les adolescents en Suisse sont mises à disposition par une étude réalisée pour l'OFSP (Schmid, Delgrande Jordan, Kuntsche, Kuendig, & Annaheim, 2008). Selon cette enquête, 7% des garçons et près de 3% des filles de 15 ans consomment de l'alcool quotidiennement, et 40% ont déjà été en état d'ivresse ; 1% d'entre eux ont

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[23] Source: Calculs personnels basés sur les données de l'OFS (www.pxweb.bfs.admin.ch)

[24] Si l'on compare avec les pays observés dans ce rapport, seule la Finlande présente un taux de suicide plus élevé (OFSP, 2005).

[25] L'IMC désigne l'Incide de Masse Corporelle utilisé pour détecter le surpoids et l'obésité.

même dû aller à l'hôpital suite à cela. Quant à l'âge de la première consommation d'alcool, on observe une moyenne de 13,3 ans (ibid.). En ce qui concerne le cannabis, qui est consommé bien plus fréquemment que toute autre substance illégale, 26,8% des filles et 34,2% des garçons interrogés ont déclaré avoir consommé cette substance au moins une fois.

2.3.4 Préoccupations à l'égard du contrôle parental et de l'influence croissante des médias électroniques.

La société suisse, comme la plupart des pays très développés, est confrontée à un phénomène qui fait désormais l'objet de nombreux débats publics et qui a un impact sur les politiques de l'enfance et de la jeunesse. Les modes de consommation et les activités de loisirs des jeunes ont considérablement changé au cours des dernières années. En particulier dans les agglomérations densément peuplées, la société a changé et est devenue ce que l'on appelle parfois la « société 24h/24 ». Cela signifie que le temps consacré par les jeunes à leurs activités de loisirs s'étend, surtout le weekend, jusqu'au matin. De ce fait, le temps libre pour l'abus d'alcool, les comportements indécents, le vandalisme et la délinquance a également augmenté. Cette tendance explique évidemment certains faits généralement déplorés, tels que la dégradation des espaces publics par les salissures et actes malveillants ainsi que l'augmentation ressentie,[26] si ce n'est réelle, de la violence des jeunes. Cependant, il y a de bonnes raison de penser que ces phénomènes sont également liés au déclin de l'autorité parentale. Deux études réalisées dans les écoles secondaires du canton de St Gall (Walser & Killias, 2009) et dans trois communes de l'agglomération de la ville de Berne (Urwyler, Nett, & Rondi, 2011) révèlent un lien entre les niveaux d'autorité parentale et les comportements à problèmes (consommation d'alcool, jeux d'argent, recours à la violence, participation à des groupes délinquants, etc.). L'autorité parentale était mesurée à l'aune des connaissances des parents quant aux faits et gestes de leurs enfants lorsqu'ils sortent la nuit mais aussi en fonction de la volonté des parents à établir et à faire respecter des règles pour ces occasions. Les résultats des deux études révèlent que les familles d'origine immigrée sont moins disposées à ou capables de maîtriser leurs enfants ; en outre, la deuxième étude (ibid.) souligne également que les familles monoparentales ou recomposées exercent moins d'autorité sur leur enfants. Ainsi, le nombre croissant de ménages monoparentaux, la décomposition des familles traditionnelles, et donc la création de familles recomposées, mais également le faible contrôle social exercé au sein des populations immigrées de plus en plus nombreuses, pourraient très bien être liés à l'augmentation des mauvais comportements des jeunes.

Le problème de la baisse de l'autorité parentale se reflète également dans le déclin de l'influence qu'ont les parents sur leurs enfants quant à l'utilisation des médias électroniques. En effet, la deuxième étude mentionnée plus haut a permis d'identifier des liens entre un faible contrôle de l'utilisation des médias électroniques d'une part et la délinquance et les comportements à risque d'autre part. La constatation suivante pourrait revêtir un intérêt particulier pour les mesures préventives : le faible contrôle de l'utilisation des médias électroniques s'inscrit en corrélation avec un contexte d'immigration et

[26] D'ailleurs, une controverse scientifique existe toujours quant à l'augmentation véritable ou non de la violence des jeunes au cours des dernières années ou pas (OFAS, 2010 ; Conseil fédéral, 2009 ; OFAS, 2010 ; Nett, 2010).

une famille incomplète (ibid.).[27] Selon les affirmations d'environ un tiers (36%) des personnes interrogées, les parents d'enfants et d'adolescents âgés de 12 à 18 ans (la moyenne d'âge était de 13,9 ans) n'établissent pas de règles restreignant l'utilisation de la télévision. Un pourcentage supérieur de parents essayait par contre de réguler l'utilisation de l'ordinateur (47%). Le contrôle de l'utilisation des médias électroniques devient de plus en plus compliqué car de nombreux enfants ont accès à des appareils mobiles, et à une télévision ou à un ordinateur dans leur chambre. Pourtant, 66% des personnes interrogées disent avoir un accès personnel à l'Internet (ibid.). Cette constatation correspond plus ou moins aux résultats d'une étude représentative pour la Suisse (on l'appelle l'étude JAMES [28]), également menée en 2010 dans les écoles, parmi 1000 élèves âgés de 12 à 19 ans (Willemse, Waller, & Süss, 2010). Selon cette enquête, trois quarts des personnes figurant dans l'échantillon de population ont un ordinateur personnel avec accès au web. Internet est très fréquemment utilisé dans cette classe d'âge : environ deux heures par jour pendant la semaine, et une heure de plus le weekend. Toutefois, il y a un grand écart entre quelques minutes et de nombreuses heures.

De nombreuses activités de loisirs demeurent toutefois basées sur l'adhésion à des associations formelles. Cela s'applique tout particulièrement au sport : 53% des filles et 65% des garçons interrogés dans trois communes du canton de Berne ont déclaré faire partie d'un club de sport ; 28% ont affirmé faire partie d'un autre type d'association, et 21% ont dit faire partie de plusieurs associations. La plupart de ces associations sont liées à la musique ou sont des groupes de jeunesse tels que les Scouts (Urwyler & Nett, 2011). Cependant, lorsque l'on considère l'évolution des activités de loisirs, on ne peut ignorer le changement fondamental qui a eu lieu au cours des dix dernières années (cf. Ribeaud & Eisner, 2009). Une grande majorité des jeunes aiment toujours retrouver leurs amis et pratiquer des activités sportives – respectivement 82% et 70% déclarent avoir ce genre d'activités plusieurs fois par semaine – mais pourtant, les deux activités de loisirs en tête du classement sont l'utilisation d'un téléphone mobile et d'Internet. Bien que la troisième place soit occupée par les activités sans rapport avec les nouveaux médias, la liste des dix principales activités demeure dominée par les activités liées aux médias. Les réseaux sociaux (Facebook par exemple) dans ce que l'on appelle le web 2.0[29] ont pris beaucoup d'importance pour les jeunes : selon l'étude JAMES, 84% des personnes interrogées sont inscrites sur au moins un des réseaux sociaux en ligne. Évidemment, il n'en reste pas moins que les vraies amitiés se créent généralement à l'école (94% l'affirment) ou dans le voisinage (56%) et également souvent dans les associations (38%) et dans les contacts de famille (30%). Tout de même, on remarque que 16% des jeunes interrogés citent également Internet comme source de nouvelles amitiés.

L'utilisation de plus en plus fréquente du web 2.0 a des conséquences sur la gestion individuelle de la sphère privée car elle peut entraîner une mauvaise utilisation des données personnelles publiées en ligne. Ce problème est particulièrement préoccupant chez les adolescents. A la puberté, l'une des

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[27] Dans le cadre du PNR 52, un projet de recherche dirigé par Heinz Moser et Heinz Bonfadelli a enquêté sur les activités de loisirs et l'utilisation des médias chez les enfants et les adolescents âgés de 9 à 16 ans dans la région de Zurich. Les résultats de cette étude ont révélé des différences considérables d'utilisation des médias électroniques entre les jeunes étant et ceux n'étant pas issus de l'immigration (cf. Bonfadelli & Bucher, 2006 ; Bonfadelli & Moser, 2007 ; Moser, 2006).

[28] L'acronyme JAMES correspond à « Jugend – Aktivitäten – Medien – Erhebung – Schweiz » (Jeunes - Activités - Médias - Collecte de données - Suisse).

[29] Le web 2.0 est un terme référant aux aspects interactifs et collaboratifs d'un nombre croissant de services Internet.

tâches principales de développement consiste à se socialiser et à fréquenter des groupes de personnes du même âge, et à forger ainsi sa propre identité sociale distincte de la famille d'origine (cf. Harris, 1995 ; Hurrelmann, 2005). Ainsi, les adolescents sont proportionnellement plus vulnérables quand il s'agit des violations de la sphère privée par l'exploitation d'informations personnelles mises en ligne sans précaution. L'étude JAMES citée plus haut présente plusieurs résultats intéressants à cet égard : 29% des jeunes interrogés reconnaissent que des photos ou des vidéos d'eux ont été mises sur Internet sans qu'ils aient donné leur accord, et 18% ont participé à une communication en ligne utilisant des expressions vulgaires et des injures (ce qu'on appelle le « flaming »). Enfin, 8% ont déclaré avoir déjà été la cible d'insultes et de diffamation en ligne (Willemse et al., 2010). Les résultats concernant la propension individuelle à diffuser des informations personnelles montrent une différence de comportement entre les filles et les garçons. D'une manière générale, les filles sont plus réticentes à publier des informations personnelles, à une exception près : elles mettent plus volontiers en ligne des photos et des vidéos d'elles-mêmes. Cette différence en particulier peut s'expliquer par les différences de stratégies de séduction entre les sexes, mais il est moins évident de comprendre pourquoi les jeunes des régions francophone, germanophone et italophone de la Suisse présentent une variation considérable en matière de comportement en ligne, comme le souligne l'étude JAMES.

2.3.5 Indicateurs de maltraitance et de négligence

En 1988, suite à une initiative parlementaire[30] , le Département fédéral de l'Intérieur avait mandaté un groupe d'experts pour l'élaboration d'un rapport fournissant des informations sur la nature, la prévalence et les causes de la maltraitance des enfants en Suisse. Le groupe de travail avait également été sollicité pour formuler des propositions quant à la manière de compenser les lacunes majeures et aux mesures préventives à introduire. Pour ce rapport, une base de données étendue et hétérogène avait été créée (à travers une collecte de données dans 5'000 services de santé et dans 800 services sociaux, une enquête auprès des parents représentatifs de la Suisse, des entretiens avec des détenus dans sept prisons, des entretiens avec des experts, etc.). Le groupe de travail publia ses résultats en 1992 (Arbeitsgruppe Kindermisshandlung, 1992). C'était la première tentative, et la seule à ce jour, d'élaboration d'un aperçu national du problème très varié et complexe de la maltraitance des enfants. Nombre de propositions formulées dans le rapport furent ensuite reprises dans des modifications juridiques et dans la pratique.

Depuis la publication de ce rapport national, seules quelques informations sélectives ont été données, qui nous renseignent sur la prévalence actuelle de la maltraitance des enfants en Suisse. Cependant, on attend les résultats de la recherche en cours, soutenue par l'UBS-Optimus Foundation, qui devraient être publiés en 2012 et qui permettront d'avoir un aperçu plus récent et plus précis de la situation actuelle. Selon la description en ligne de l'étude Optimus[31], celle-ci devrait « donner une idée plus globale de l'ampleur de la violence, des abus et de la négligence parmi les jeunes, quantifiant le mal

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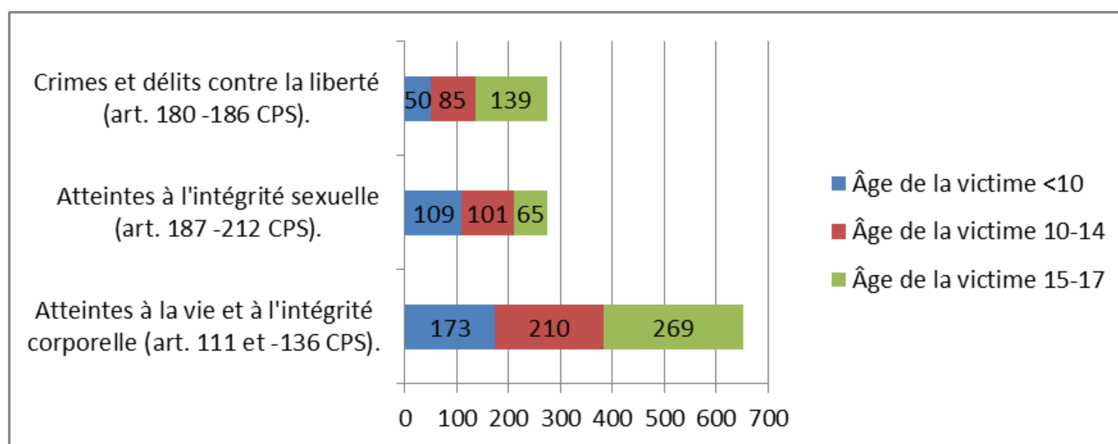
[30] C'est ce que l'on appelle le « postulat » soumis au Conseil Fédéral par Judith Stamm (Conseil National) le 18 juin 1987.

[31] L'étude Optimus a été conçue en Suisse par les personnes suivantes, membres de l'équipe de recherche: Ulrich Schnyder, Meichun Mohler-Kuo, Markus Landolt et Thomas Maier (directeur d'études, Université de Zurich). La principale base de données est une enquête réalisée auprès d'environ 6'000 élèves de neuvième année.

fait aux victimes et la mesure dans laquelle les projets de proximité, tels que les programmes de soutien aux victimes, peuvent aider ces jeunes »[32]. Nous espérons que les données recueillies dans le cadre de l'étude Optimus éclairciront au moins en partie le champ obscur des mauvais traitements et de la négligence envers les enfants en Suisse. Par conséquent, avant que ces résultats soient disponibles, la dimension du problème ne peut être jugée qu'en consultant diverses statistiques sur certains de ses aspects.

L'Office fédéral de la statistique (OFS) a commencé à analyser et à publier des données concernant la violence domestique[33], comprenant notamment des informations sur la maltraitance des enfants. Une sélection de ces données est présentée dans le graphique 10, basée sur les statistiques policières de la criminalité en Suisse et prenant en compte toutes les infractions ayant eu lieu dans les relations entre la victime et ses parents, parents d'accueil ou membres de la famille. Les infractions domestiques présentées là sont classées selon les différents articles du Code pénal suisse (CPS). Ainsi, la majorité des infractions domestiques envers des mineurs sont des infractions contre la vie et l'intégrité corporelle, ce qui correspond principalement aux voies de fait (art. 126 CPS) et aux atteintes plus ou moins graves à l'intégrité corporelle (art. 123 et 122 CPS). Il est notoire que les infractions domestiques à connotation sexuelle concernent plus souvent les jeunes enfants et en moindre mesure les adolescents plus âgés.



Graphique 10 : Jeunes victimes de violence domestique en fonction de leur âge et du type d'infraction enregistré par la police en 2010[34]

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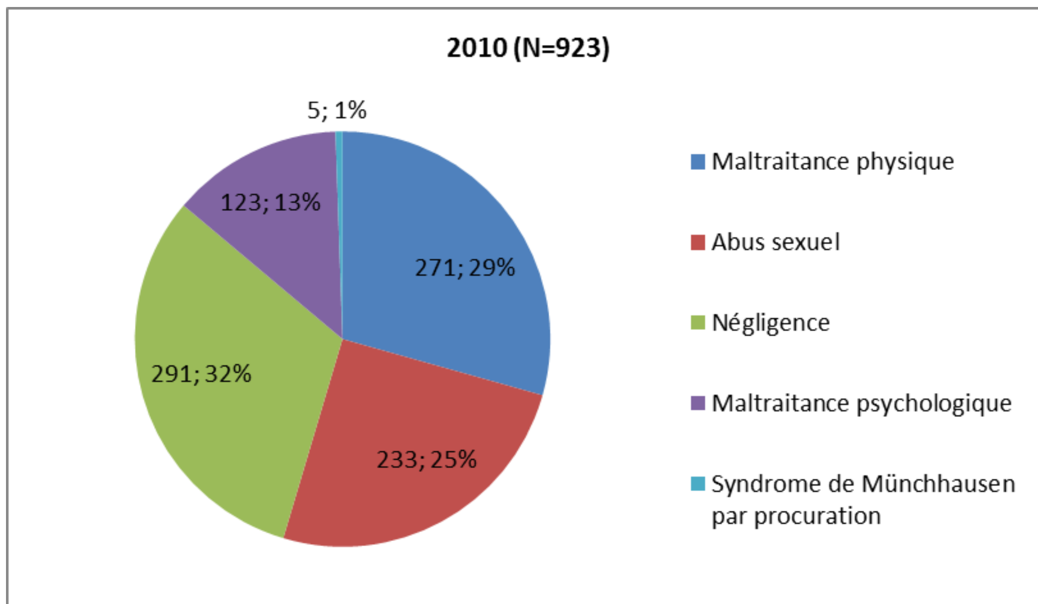
[32] Source: www.optimusstudy.org, consulté le 01/11/2011

[33] Source www.bfs.admin.ch, consulté le: 22/11/2011.

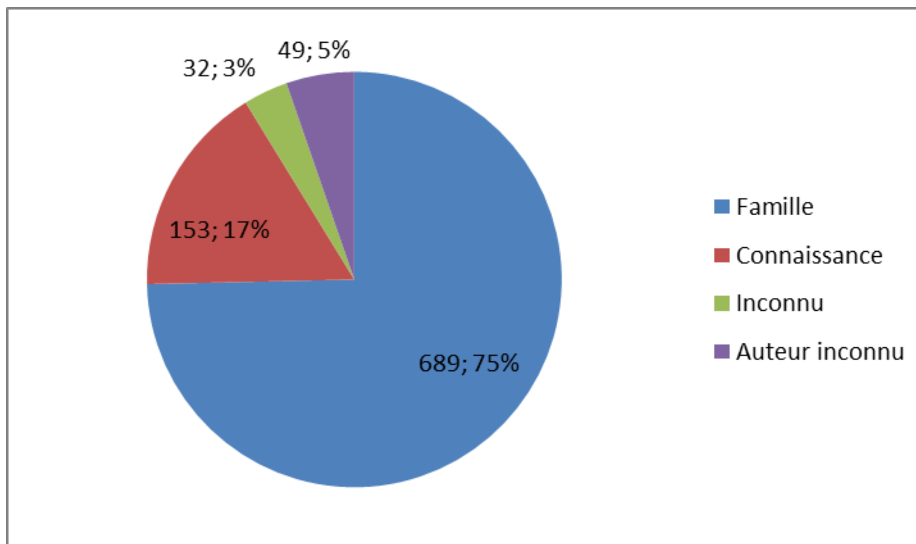
[34] Source : www.bfs.admin.ch: « Statistiques policières de la criminalité en Suisse » (état de la base de données au 02/11/2011).



Graphique 11 : Cas de maltraitance infantile détectée ou suspectée dans 15 (sur 26) cliniques pédiatriques suisses selon la catégorie[35]

Les statistiques fournies dans la section « Protection de l'enfant » de la Société Suisse de Pédiatrie (SSP) représentent également une bonne source d'informations. La Société publie depuis 2009 les données recueillies par les cliniques pédiatriques en Suisse. Si l'on considère plus attentivement les informations de 2010, on observe quelques faits instructifs (Société Suisse de Pédiatrie, 2011). En ce qui concerne les 923 cas de maltraitance présumée ou détectée dans le graphique 11, il importe d'indiquer préalablement que seulement la moitié de ces cas sont basés sur un diagnostic totalement fiable, 19% sont jugés probables, et les 31% restant demeurent non confirmés. En outre, près d'un tiers des cas enregistrés en 2010 concernent une ou plusieurs occurrences de négligence envers un enfant, suivis des pourcentages d'abus physiques et sexuels, respectivement à 29% et 25%. On remarque que les fillettes sont surreprésentées dans toutes les catégories : au total, elles représentent 60,5% des victimes présumées, avec la plus grande proportion dans la catégorie « abus sexuels » (75,9%). Les victimes sont souvent de petits enfants, les bébés étant les plus vulnérables : près d'un quart sont encore nourrissons, c'est-à-dire qu'ils ont moins d'un an (ibid.).

[35] Source : données obtenues auprès de la Société Suisse de Pédiatrie (2011). Le syndrome de Münchhausen par procuration nécessite probablement d'être brièvement présenté : il s'agit du terme employé pour désigner un type de comportement des parents (principalement les mères) consistant à simuler une maladie ou à la provoquer chez l'enfant (cf. Stirling & Committee on Child Abuse and Neglect, 2007).

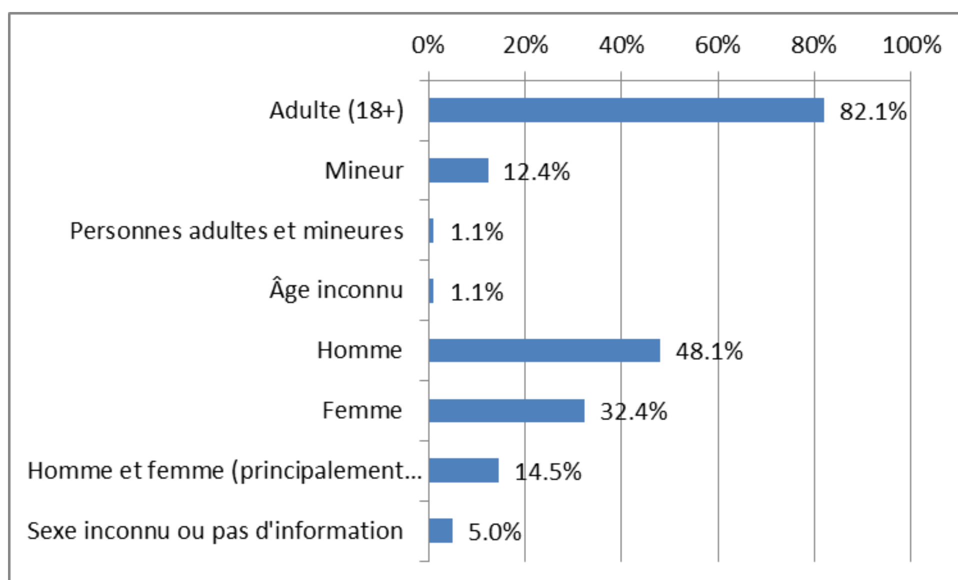


Graphique 12 : Relation des auteurs de violences avec leur victime dans l'échantillon des 15 cliniques pédiatriques[36]

Selon l'échantillon des cliniques pédiatriques, dans 75% des cas, l'auteur de violences fait partie de la famille (voir graphique 12), ce qui confirme l'importance des statistiques de violence domestique comme indicateur de la maltraitance de l'enfant ; cependant, la part considérable de 17% représentant les personnes faisant partie de l'entourage de l'enfant met en évidence le fait que la prévention doit englober tout le contexte d'éducation de l'enfant. Les auteurs sont en grande majorité des personnes adultes (82,2%) et principalement de sexe masculin (48,1%). Pourtant, si l'on prend en compte le fait que dans 14,5% les personnes des deux sexes sont auteurs de violence, les femmes sont impliquées dans près de la moitié des cas de l'échantillon étudié (voir graphique 13).

Suite aux diagnostics, le groupe de protection de l'enfant des cliniques pédiatriques a été à l'origine des mesures de tutelle en informant l'autorité compétente dans 22,2% des cas, ou a recommandé de telles mesures (7,5%). Pour 20,7% des patients, de telles mesures avaient étaient déjà lancées par un tiers. En outre, 8,4% des cas ont donné lieu à des poursuites judiciaires entamées ou recommandées par le groupe de protection de l'enfant. Dans 14,5% des cas, les poursuites avaient déjà été entreprises par un tiers (ibid.).

[36] Source : données obtenues auprès de la Société Suisse de Pédiatrie (2011).



Graphique 13 : Âge et sexe des auteurs de violences dans l'échantillon des 15 cliniques pédiatriques[37]

Évidemment, les cas de maltraitance des enfants détectés dans les cliniques pédiatriques ne représentent hélas que la partie visible de l'iceberg. Cette remarque est aussi valable pour les cas apparaissant dans les diverses statistiques officielles comptabilisant les activités des cours pénales et civiles et d'autres agences œuvrant avec un mandat légal, ce à quoi nous reviendrons dans le chapitre 2.4 ci-dessous. Comme nous l'avons déjà évoqué, les informations concernant le vécu des enfants victimes de violence et d'abus ne sont pas systématiquement collectées en Suisse. L'une des études mentionnées plus haut (Urwyler et al., 2011) fournit toutefois quelques informations pouvant servir d'indicateurs de la prévalence de la violence parentale envers les enfants. Selon les résultats de cette étude, 80% des filles et garçons interrogés et âgés de 12 à 18 ans déclarent n'avoir jamais été battus par leurs parents.[38] Ceux ayant reçu des coups violents ou « raclées » provoquant des contusions ou nécessitant un traitement médical ne représentent que 2,9%. Une analyse en fonction du statut professionnel et du contexte d'immigration a cependant révélé une certaine disparité concernant particulièrement le statut d'immigration des enfants ou de leurs parents : 31% de ceux issus de l'immigration rapportaient des actes de violence parentale pour seulement 13% dans le groupe des personnes n'étant pas issues de l'immigration. Cette tendance est plus présente dans la première génération de familles immigrées que dans la seconde, et souligne donc les effets positifs de l'intégration dans la société suisse (ibid.).

[37] Source : données obtenues auprès de la Société Suisse de Pédiatrie (2011).

[38] Ces valeurs sont considérablement inférieures à celles présentées dans l'étude représentative effectuée il y a une vingtaine d'années. Toutefois, on est à même de supposer que le pourcentage relativement plus élevé de victimes observé là (35%) provient d'une méthodologie différente.

2.4 Bases légales et constitutionnelles de la protection de l'enfant

Le terme « protection de l'enfant »[39] est communément employé en Suisse dans un sens relativement étroit, se référent principalement à l'action juridique des autorités. Néanmoins, il doit être considéré comme faisant partie intégrante du cadre plus large de la politique nationale concernant les enfants et les jeunes, laquelle est solidement ancrée dans le droit constitutionnel mais également dans le droit international. Selon une différenciation commune suggérée par Christoph Häfeli (2005), le système de protection de l'enfance en Suisse peut être divisé en plusieurs secteurs : un secteur volontaire, un secteur spécialisé, et deux secteurs à base juridique, l'un étant soumis au droit civil et l'autre au droit pénal. Le secteur volontaire regroupe les services auxquels les parents, enfants et adolescents peuvent avoir recours s'ils le souhaitent, tels que le conseil familial, l'éducation parentale, ou encore la pédopsychiatrie et la psychiatrie juvénile. Le secteur spécialisé de la protection de l'enfance, lui, se caractérise par des services précis et ciblés, tels que l'assistance aux victimes ou le comité de protection de l'enfant d'une clinique pédiatrique. La protection de l'enfant gouvernée par le droit civil couvre les droits et devoirs parentaux et constitue le cadre légal pour l'interférence des pouvoirs publics dans la vie de famille. Quant au système de droit pénal, sa fonction protectrice pour l'enfant est double : d'une part, à travers les poursuites judiciaires de délinquants adultes ou juvéniles afin de protéger les enfants ; d'autre part, à travers des procédures pénales particulières et un système de sanctions établi pour poursuivre en justice les délinquants juvéniles, tout en prenant en compte les exigences de protection et les besoins spécifiques des enfants. Dans la section suivante, nous verrons plus en détail les divers fondements juridiques de la politique suisse de protection de l'enfance.

2.4.1 Droit international et droit constitutionnel fédéral

Bien que le droit international soit exécutoire et qu'il ait la primauté sur le droit national, il n'annule pas le droit national car, en principe, la pleine ratification ne vient qu'après l'entrée en vigueur des amendements constitutionnels et légaux. Si le droit national ne permet pas la pleine ratification, des réserves sont généralement émises.[40] Comme celles-ci sont habituellement à caractère provisoire, le développement du droit international a, par conséquent, un impact important sur le système juridique suisse. En ce qui concerne le système juridique de protection de l'enfant, il existe quatre accords internationaux importants, mais c'est la ratification de la Convention internationale des Droits de l'Enfant (1989) en 1997 qui doit être considérée comme étant celle ayant le plus grand impact. Les trois autres accords internationaux sont de moindre importance à cet égard car ils abordent les aspects de l'enlèvement d'enfants relevant du droit privé[41] , la juridiction, la loi applicable, la reconnaissance, l'applica-

[39] En Suisse, le terme le plus fréquent et le plus utilisé dans le contexte juridique est « protection de l'enfant » en français, « Kindesschutz » en allemand et « protezione del figlio » en italien.

[40] Par exemple, la Convention des Droits de l'Enfant (1989) et le Pacte international relatif aux droits civils et politiques (1966) exigent tous deux la séparation des enfants et des adultes dans les établissements pénitentiaires et centres de détention : ces accords ont été ratifiés par la Suisse (1997 et 1992) mais des réserves ont été émises. Dans ce dernier cas, la réserve a été abolie entre temps (cf. www.humanrights.ch).

[41] Cf. Convention de la Haye du 25 octobre 1980 sur les *aspects civils de l'enlèvement international d'enfants.*

tion et la coopération quant à la responsabilité parentale et aux mesures de protection des enfants[42] ou encore les règles juridiques d'adoption entre différents pays[43].

Dans la Constitution fédérale[44], seuls quelques articles importants sont directement liés aux thèmes fondamentaux de la protection de l'enfant. Il s'agit des articles 11 (protection des enfants et des jeunes), 13 (protection de la sphère privée), 14 (droit au mariage et à la famille), et de l'article 67, récemment ajouté (encouragement des enfants et des jeunes)[45]. Au premier paragraphe de l'article 11, article central s'il en est, on lit que « les enfants et les jeunes ont droit à une protection particulière de leur intégrité et à l'encouragement de leur développement ». Le second paragraphe limite l'exercice des droits aux enfants eux-mêmes, « dans la mesure où ils sont capables de discernement ». L'article 13 a trait à la protection de l'enfant dans le sens où il limite l'ingérence des autorités dans la vie des familles (premier paragraphe) d'une part, et de l'autre, par le second paragraphe, protège toutes les personnes, et donc aussi les enfants, contre l'emploi abusif des données personnelles. Enfin, le premier paragraphe de l'article 67 de la Constitution établit qu'en accomplissant leurs tâches, « la Confédération et les cantons tiennent compte des besoins de développement et de protection propres aux enfants et aux jeunes ». Le second paragraphe rend légitime l'implication de la Confédération dans cette tâche car elle « peut favoriser les activités extrascolaires des enfants et des jeunes » (ibid.).

Les buts sociaux présentés dans l'article 41 de la Constitution sont juridiquement moins contraignants. Dans cet article, il est question de la sécurité sociale et des soins de santé, de la protection et de l'encouragement des « familles en tant que communautés d'adultes et d'enfants », de conditions de travail équitables, de l'accès à « un logement approprié à des conditions supportables », de la scolarisation et de la formation aussi bien initiale que continue correspondant aux aptitudes individuelles, de l'encouragement et du soutien aux enfants et aux jeunes afin qu'ils s'intègrent dans la société avec succès, et enfin, de la protection contre les conséquences économiques de l'âge, de la maternité ou de difficultés imprévues telles que l'invalidité. Dans l'article 41, on lit que la « la Confédération et les cantons s'engagent, en complément de la responsabilité individuelle et de l'initiative privée [c'est-à-dire seulement subsidiaire] » à ce que ces buts soient atteints. Les 3ème et 4ème paragraphes relativisent ces efforts, indiquant que la Confédération et les cantons ne s'engagent en faveur de ces buts sociaux que « dans le cadre de leurs compétences constitutionnelles et des moyens disponibles », et qu'« aucun droit subjectif à des prestations de l'État ne peut être déduit directement des buts sociaux » (ibid.).

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[42] Cf. Convention de la Haye du 19 octobre 1996

[43] Cf. Convention de la Haye du 29 mai 1993 sur la *protection des enfants et la coopération en matière d'adoption internationale.*

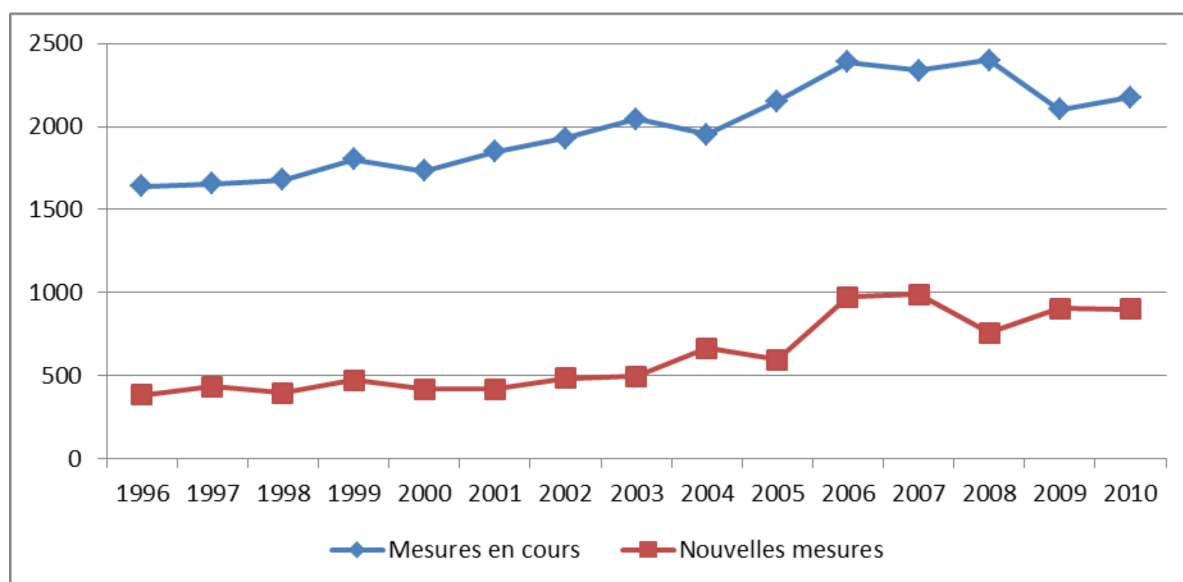
[44] Constitution fédérale de la Confédération suisse du 18 avril 1999 (statut au 1er janvier 2011).

[45] Tel qu'adopté sur vote populaire le 21 mai 2006.

2.4.2 Code civil suisse

On peut dire que le Code civil suisse (CCS) représente l'élément central de la protection juridique de l'enfant car il se concentre sur la manière de protéger et de soutenir les mineurs afin de veiller à ce que leurs droits soient respectés. En tant que loi fédérale, le code civil est applicable dans tout le pays. Cependant, il ne représente qu'un ensemble de minima juridiques dans le cadre duquel les cantons peuvent développer leur propre politique de protection de l'enfance. Dans les articles 307 à 314 du code civil, qui revêtent un intérêt particulier pour notre champ d'étude, la loi définit principalement les droits et devoirs des parents et de l'autorité tutélaire, mais également de manière plus générale les différents types d'intervention gouvernementale applicables et sous quelles conditions. Les deux articles suivants, le 315*a* et le 315*b*, traitent de la portée et de la place de la juridiction quant aux instances civiles et à l'autorité tutélaire. Les deux derniers articles pertinents dans ce contexte sont ceux qui règlent la surveillance des parents d'accueil (article 316 CCS) et obligent les cantons à assurer une collaboration des services « chargés des mesures de droit civil pour la protection de l'enfance, du droit pénal des mineurs et d'autres formes d'aide à la jeunesse » (art. 317 CCS).

Nous donnerons plus loin dans ce rapport un aperçu du développement de mesures tel que défini par le code civil. Les données sur lesquelles sont basés les graphiques sont tirées des tableaux publiés chaque année par la Conférence des cantons en matière de protection des mineurs et des adultes (COPMA[46]). Il importe de remarquer ici que ces données ne fournissent des informations que sur les « apports au système » et que le nombre de mesures établies ne nous dit rien sur les « résultats du système » ni sur l'efficacité de ces mesures (voir recommandation n°14).



Graphique 14 : « Mesures appropriées » actuelles et nouvelles selon l'art. 307 CCS[47]

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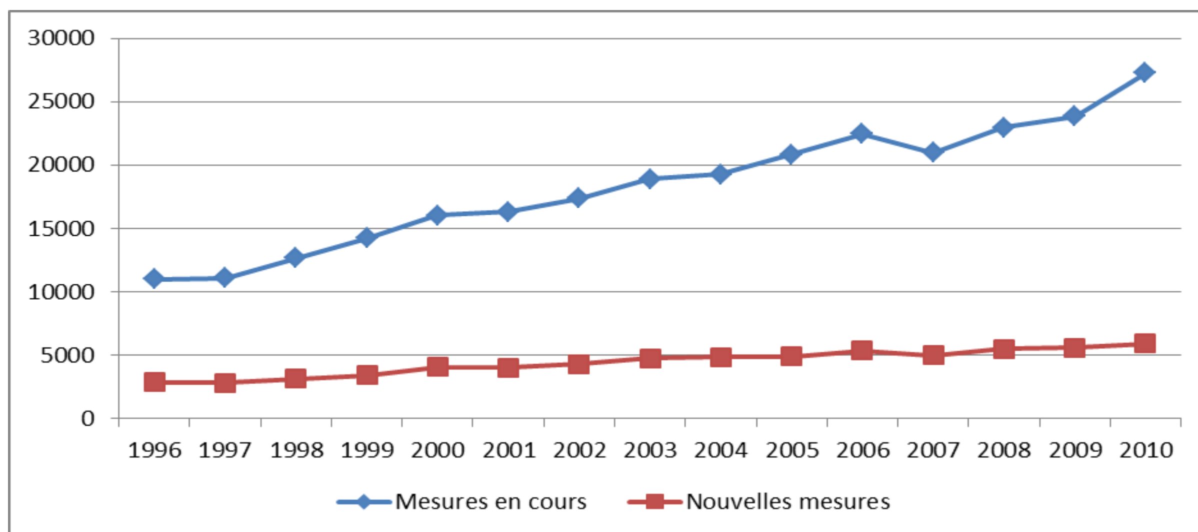
[46] COPMA est l'acronyme correspondant à la Conférence des cantons en matière de protection des mineurs et des adultes (KOKES en allemand).

[47] Nos calculs basés sur les données publiées par la COPMA (voir note de bas de page 48).

Le graphique 14 illustre ce que l'on appelle les « mesures appropriées » basées sur l'article 307 CCS, comprenant des interventions moins envahissantes et plus préventives entreprises par l'autorité tutélaire. Celle-ci peut rappeler les parents biologiques, les parents d'accueil et les enfants à leurs devoirs mais également « donner des indications ou instructions relatives au soin, à l'éducation et à la formation de l'enfant, et désigner une personne ou un office qualifiés qui aura un droit de regard et d'information » (ibid.). Déjà différenciées dans les tableaux publiés par la COPMA[48], les mesures en cours et nouvelles sont représentées dans le graphique 14. Ainsi, entre 1996 et 2012, le nombre de mesures en cours a augmenté de 32,6%, et les nouvelles mesures ont, elles, plus que doublé (+ 134,1%).

L'autre étape de l'autorité tutélaire, plus intrusive cette fois, consiste à nommer « à l'enfant un curateur qui assiste les père et mère de ses conseils et de son appui dans le soin de l'enfant » (art. 308 CCS). Le cas échéant, certains droits et pouvoirs peuvent être attribués au curateur, ce qui peut limiter l'autorité parentale.

Comme le montre le graphique 15, le nombre de cas dans lesquels un curateur a été nommé a aussi nettement augmenté entre 1996 et 2010 alors que, en contraste avec le graphique 14, le nombre de mesures en cours a augmenté plus fortement que les nouvelles mesures (respectivement de 147,5% et 108,1%).



Graphique 15 : Mesures de nomination d'un curateur, conformément à l'article 308 CCS[49]

Les articles 310 et 311 CCS, lorsqu'ils sont mis en application, ont tous deux pour conséquence le placement de l'enfant hors de sa famille. L'article 310, cependant, est de nature moins catégorique. Il indique que l'autorité tutélaire peut décider de retirer l'enfant à ses parents ou au tiers chez qui il se trouve et le placer de façon appropriée. Ce retrait de la garde parentale est conseillé si l'autorité tutélaire « ne peut éviter autrement que le développement de l'enfant ne soit compromis » (art. 310[1] SCC), ou si ce retrait est demandé par les parents ou l'enfant et que l'autorité tutélaire arrive à la con-

[48] Source : www.kokes.ch, consulté le 23/10/2011.

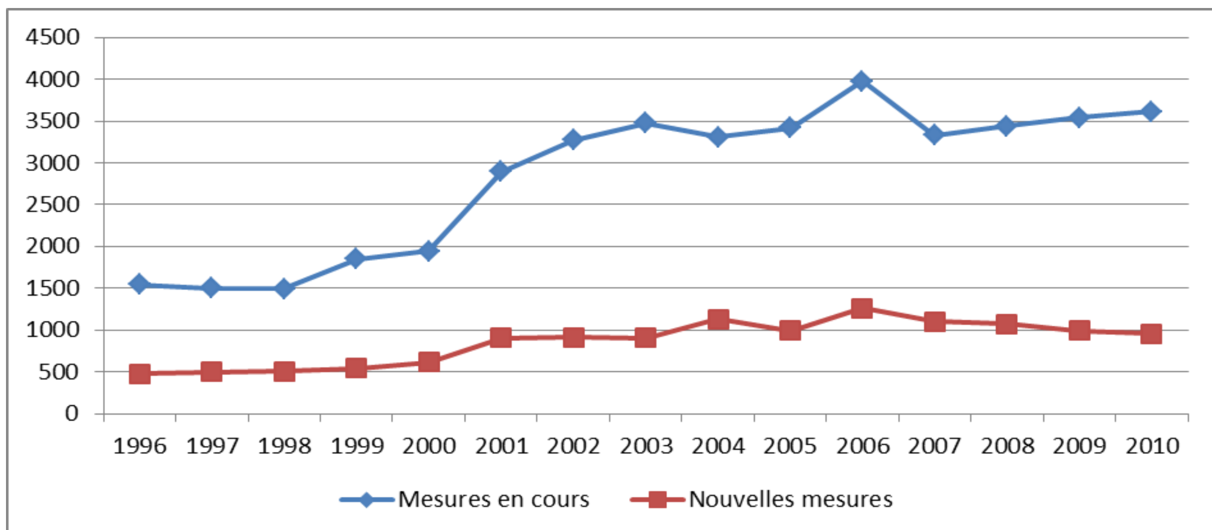
[49] Nos calculs basés sur les données publiées par la COPMA (voir note de bas de page 48).

clusion que « les rapports entre eux sont si gravement atteints que le maintien de l'enfant dans la communauté familiale est devenu insupportable et que, selon toute prévision, d'autres moyens seraient inefficaces » (art. 310[2] CCS). Cet article s'applique également si les parents veulent reprendre l'enfant chez eux, même si celui-ci a vécu longtemps dans une famille d'accueil, et que l'intention des parents est considérée comme constituant une menace pour le développement de l'enfant (art. 310[3] CCS).

Par contre, l'application de l'article 311 CCS a des conséquences plus graves car « lorsque le contraire n'a pas été ordonné expressément, les effets du retrait [de l'autorité parentale] s'étendent aux enfants nés après qu'il a été prononcé » (ibid.) Cette mesure des plus intrusives ne peut donc être appliquée que de manière obligatoire (c'est-à-dire contre la volonté des parents) sur décision de l'autorité tutélaire de *surveillance*[50]*.* Cette mesure ne peut être prise qu'à deux conditions : « pour cause d'inexpérience, de maladie, d'infirmité, d'absence ou d'autres motifs analogues, les père et mère ne sont pas en mesure d'exercer correctement l'autorité parentale », et « les père et mère ne se sont pas souciés sérieusement de l'enfant ou […] ont manqué gravement à leurs devoirs envers lui » (ibid.).

L'article 312 CCS se rapporte à une situation dans laquelle les parents demandent le retrait de leur autorité parentale, pour de justes motifs ou avec l'intention de donner l'enfant à l'adoption par un tiers anonyme. Dans ce cas, la décision appartient à l'autorité tutélaire.

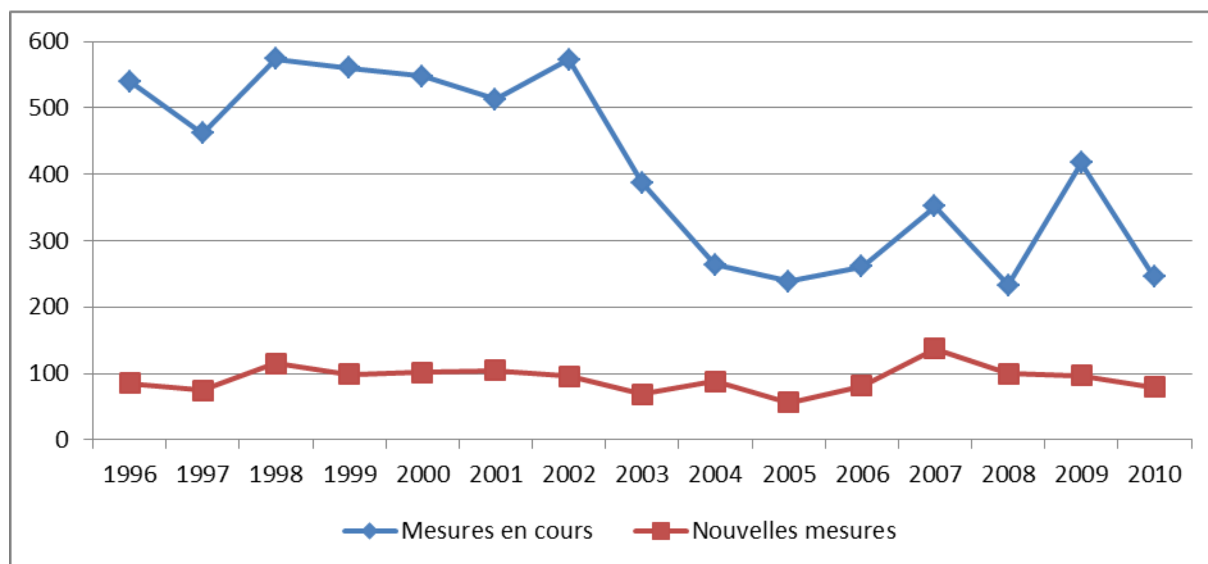
Enfin, l'article 313 CCS indique que les mesures prévues doivent prendre en compte les changements de circonstances et être adaptées en conséquence. Quant au rétablissement de l'autorité parentale, il ne peut avoir lieu qu'à partir d'une année après le retrait.



Graphique 16 : Retrait de l'enfant de la garde des parents en tant que mesure selon l'art. 310 ou 310/308 CCS[51]

[50] Cela changera en 2013 avec l'introduction des dispositions révisées. A partir 2013, l'autorité tutélaire de surveillance n'aura plus le droit de prendre de décision de première instance.

Les graphiques 16 et 17 représentent l'évolution de l'application de l'article 310, en combinaison partielle avec l'article 308 CCS (graphique 16), et des décisions concernant le retrait de l'autorité parentale (obligatoire ou volontaire) selon les articles 311 et 312 CCS (graphique 17).



Graphique 17 : Retrait de l'autorité parentale comme mesure selon les articles 311 et 312 CCS[52]

Si l'on compare ces deux diagrammes, on constate une certaine disparité dans les développements entre 1996 et 2010. Le nombre de cas de retrait des enfants de l'autorité parentale était en augmentation jusqu'au début de la dernière décennie puis s'est stabilisé à un niveau élevé. Par contre, le nombre de cas d'application des articles 311 et 312, c'est-à-dire le retrait de l'autorité parentale, s'était déjà stabilisé au début de cette période, en 1996, alors que le nombre de nouvelles mesures étaient restées d'une manière générale à peu près au même niveau. Le fait que le nombre de mesures en cours ait chuté au début de la dernière décennie indique qu'avant 1996, les cas de retrait de l'autorité parentale étaient plus courants et que les mesures en cours avaient alors commencé à arriver à expiration, probablement après un changement de décision. Les différentes évolutions suggèrent également une éventuelle substitution partielle entre les deux types de mesures ; en effet, on estime que dans les cas récents, les autorités tutélaires ont plus souvent pris des décisions en faveur du retrait de l'enfant de sa famille et contre la mesure plus drastique de retrait de l'autorité parentale.

Une analyse des dossiers de protection de l'enfant (N=164) provenant des autorités tutélaires des régions de Suisse alémanique et de Suisse romande (Voll, Jud, Mey, Häfeli, & Stettler, 2010) révèle que les filles sont clairement surreprésentées (56%) dans les cas de nomination d'un curateur (art. 308 CCS) et les retraits d'enfants de leur famille (art. 310). Rien que dans le nombre de retraits, les filles représentent 62% des cas (ibid.). On estime que cette disparité peut être la conséquence du fait que les garçons concernés par une prise de mesures sont plus souvent délinquants et bénéficient

[51] Nos calculs basés sur les données publiées par la COPMA (voir note de bas de page 48).

[52] Nos calculs basés sur les données publiées par la COPMA (voir note de bas de page 48).

donc plus fréquemment de mesures de protection, non pas en vertu du code civil mais après avoir été jugés selon le droit pénal des mineurs (cf. Cottier, 2006). Cependant, il importe de souligner que selon Voll et al. (2010), la principale raison pour ces mesures est l'existence de conflits parentaux impliquant l'enfant. Dans environ 70% des cas analysés, la mesure visait à confiner le conflit aux adultes, loin de l'enfant.

L'article 314 CCS est particulièrement intéressant car il correspond à une condition de la Convention international des droits de l'enfant, prévoyant que l' « on donnera notamment à l'enfant la possibilité être entendu dans toute procédure judiciaire ou administrative l'intéressant, soit directement, soit par l'intermédiaire d'un représentant ou d'un organisme approprié, de façon compatible avec les règles de procédure de la législation nationale » (art. 12[2] CDE ONU). Bien qu'en principe, la réglementation des procédures relève de la compétence des cantons, l'article 314[1] CCS établit que, conformément à la Convention, les cantons doivent se plier à cette disposition et donc faire en sort que l'enfant soit entendu avant d'ordonner une mesure de protection de l'enfant[53] Pourtant, dans le paragraphe suivant, ce droit est restreint par l'effet d'un recours contre la mesure de protection de l'enfant, laquelle peut être retirée par l'autorité qui l'a ordonnée ou par l'autorité de recours (art. 314[2] CCS). Les conditions de procédure d'une audition de l'enfant sans intermédiaire et le rôle correspondant du représentant de l'enfant ne sont quasiment pas déterminées en Suisse. Cependant, selon les experts, il est évident qu'en pratique, les deux modes de participation de l'enfant demeurent peu courants. En outre, il n'y a pas assez de professionnels ayant une formation adaptée dans le domaine particulier des auditions d'enfants (Hanhart, Hauri, & Fondation Suisse pour la Protection de l'Enfant, 2009a).

Le Code civil suisse fait l'objet d'une révision partielle concernant principalement la protection des adultes vulnérables, mais cette révision a aussi des conséquences sur le système de protection de l'enfance. Il n'y aura certes pas de changement notoire dans les articles cités précédemment, mais les modifications juridiques impliquent de profonds changements à l'égard de l'organisation des autorités tutélaires. Le Conseil fédéral a décidé que la nouvelle loi entrerait en vigueur en 2013[54]. D'ici là, l'organisation des autorités tutélaires dans les cantons doit répondre à certains standards élémentaires déterminés par la loi fédérale. Les cantons sont toujours libres de choisir que l'autorité tutélaire soit un tribunal ou un conseil administratif, mais ils doivent garantir une composition pluridisciplinaire et un certain degré de professionnalisme (cf. Häfeli, 2010).

2.4.3 Droit pénal et loi fédérale sur l'aide aux victimes d'infractions

Contrairement à l'époque où la peine prononcée à l'encontre de l'auteur et les plaintes de la victime ne faisaient qu'un (cf. Berman, 1983), de nos jours, le droit pénal est centré sur l'auteur, alors que les plaintes de la victime relèvent des instances civiles et doivent donc être traitées conformément au

[53] L'enfant doit être entendu « personnellementet de manière appropriée, pour autant que son âge ou d'autres motifs importants ne s'opposent pas à l'audition » (ibid.).

[54] Tel qu'annoncé par le Département fédéral de Justice et Police le 12 janvier 2011.

code civil[55]. En ce qui concerne les moyens juridiques de protection de l'enfant, le droit civil et le droit pénal peuvent être considérés comme les deux faces d'une même pièce. Le droit civil vise à garantir le respect des droits de l'enfant, alors que le droit pénal revêt un caractère dissuasif, afin d'éviter que ces droits soient ignorés, négligés ou violés. Le droit pénal se concentre sur les auteurs potentiels ou déjà condamnés, reposant sur les effets positifs d'une dissuasion générale, et basé en particulier sur des sanctions dissuadant les auteurs d'infractions de récidiver. Par ailleurs, le système du droit pénal protège les enfants des infractions, mais aussi, s'ils deviennent victimes, du stress et des tensions venant de la procédure pénale en elle-même. Le code de procédure pénale récemment établi (CPC)[56] a non seulement pour but de standardiser ces procédures, mais également de garantir le respect de certains principes élémentaires dans tous les cantons[57]. Il est particulièrement intéressant de remarquer que cette nouvelle loi fédérale comprend des dispositions quant à l'audition des victimes qui sont mineures (art. 154 CPC). Autre loi récemment réformée, la loi fédérale sur l'aide aux victimes d'infractions (LAVI)[58] ne concerne pas exclusivement les enfants mais elle met l'accent sur la situation des enfants victimes et même des enfants dont les parents sont victimes ; en particulier, elle leur donne le droit de faire valoir leurs prétentions auprès de l'État dans les cas où aucun auteur n'a été découvert, mais aussi indépendamment de la culpabilité, du caractère délibéré ou de la négligence de l'auteur (art. 1 LAVI).

En principe, les enfants peuvent être victimes de la plupart des infractions. Pourtant, il existe certains types d'infractions dans le cadre desquelles les victimes sont souvent des enfants ou des adolescents. En ce qui concerne certaines infractions, les victimes sont *par définition* des mineurs. Les infractions qui ne peuvent être commises qu'envers des mineurs forment la base des diagrammes ci-dessous. Il existe cependant une exception : les paragraphes concernant la pornographie (art. 197 CPS) se réfèrent en partie à des objets ou représentations ayant comme contenu non seulement des « actes d'ordre sexuel avec des enfants » mais également avec « des animaux, des excréments humains ou comprenant des actes de violence » (ibid.). Néanmoins, on peut imaginer que la grande majorité des peines prononcées en vertu de cet article ont trait à des infractions sur mineurs.

Les données présentées ci-dessous sont tirées des statistiques de condamnations pénales (SUS) concernant des personnes adultes (18 ans et plus). Ces données sont fournies et régulièrement mises à jour par l'OFS[59]. Les infractions présentées dans les deux diagrammes sont rassemblées selon le nombre relatif de condamnations en vertu des articles correspondants. Par conséquent, les condam-

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[55] Cependant, ce n'est que récemment que le rôle de la victime dans les procédures pénales a été considérablement accentué ; en effet, sous certaines conditions, il ou elle peut faire valoir ses prétentions civiles dans la procédure pénale et a également le droit de faire recours à cet égard (cf. art. 37 and 38 LAVI et depuis 2011 : art. 122-126 LAVI)

[56] Entré en vigueur le 1er janvier 2011.

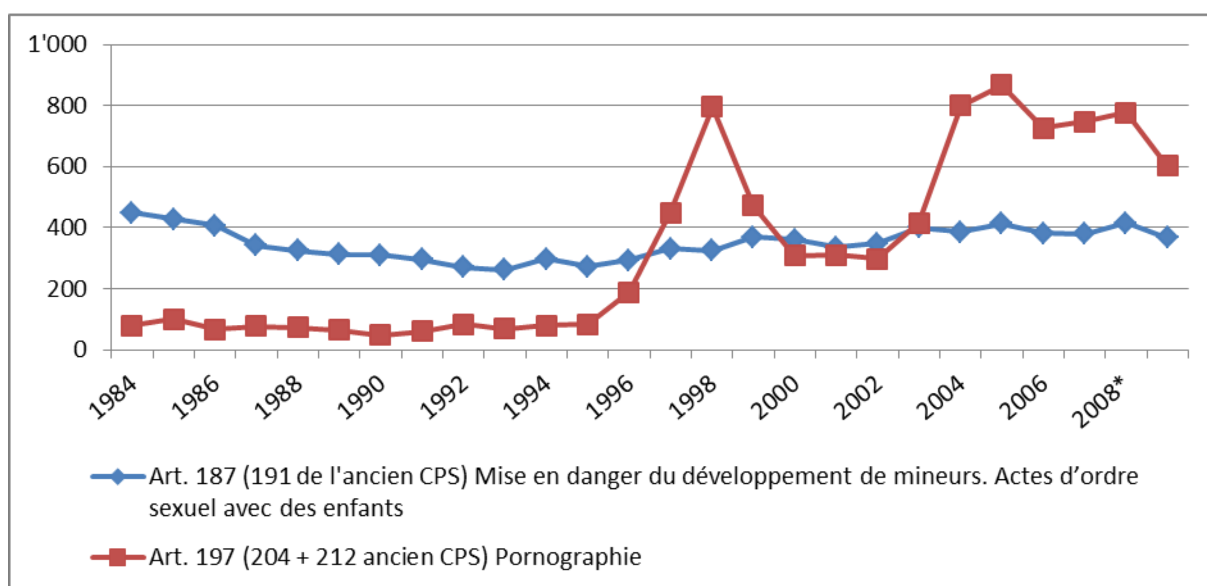
[57] Avant 2011, l'organisation des procédures pénales relevait complètement de la compétence des cantons.

[58] La Loi fédérale sur l'aide aux victimes d'infractions a été introduite pour la première fois en 1993. Après quelques années d'évaluation, une refonte complète de la loi a été décidée. La nouvelle version est entrée en vigueur au 1er janvier 2009.

[59] La SUS (*Schweizerische Urteilsstatistik*) présente certaines caractéristiques qui doivent être prises en compte lors de l'interprétation des données. Comme elle est basée sur le registre central suisse des casiers judiciaires, il peut y avoir des conséquences sur le moment où les données apparaissent dans la SUS et le moment où elles sont enregistrées dans les statistiques : les données de la SUS présentées n'incluent que les crimes et délits contre la liberté ; comme toutes les contraventions (actes uniquement passibles d'une amende, art. 103 CPS) ne sont pas enregistrées, elles ne sont pas comprises dans les données publiées par l'OFS. Quant à la date des données entrées dans les statistiques, il importe de souligner que seules les condamnations en vigueur sont prises en compte. Les procédures de recours pouvant durer longtemps, les infractions correspondantes peuvent n'apparaître dans les statistiques que plusieurs années après les faits.

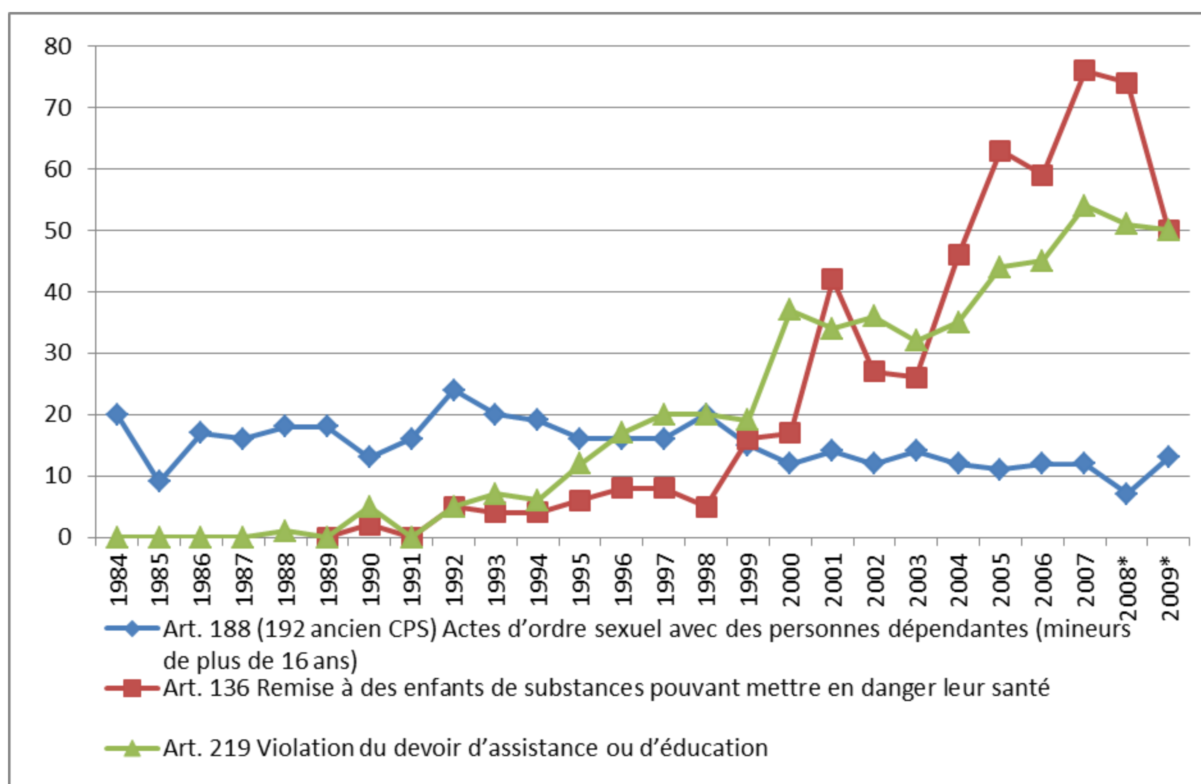
nations les plus nombreuses conformément aux articles 187 et 197 CPS étaient reportées dans le graphique 18, et les moins nombreuses dans le graphique 19 (art. 188, 136 et 219 CPS).

Comme on le voit dans le graphique 18, le nombre de condamnations en vertu de l'article 187 concernant des actes sexuels avec des enfants est resté relativement constant au cours de la période d'observation (1984-2009). A contrario, le nombre de condamnations pour pornographie a considérablement augmenté depuis la seconde moitié des années 1990. Ce changement doit être pris en considération dans le contexte de l'importance croissante de l'Internet qui représente un nouveau lieu pour ce genre de méfaits ; cependant, ce changement a permis de promouvoir l'élaboration de lois pour lutter contre les infractions liées à l'Internet. Les pics évidents que l'on observe sur la courbe représentent les bons résultats d'investigations effectuées à grande échelle dans le domaine de la pornographie sur Internet menant de manière ponctuelle et sporadique à la condamnation d'un grand nombre d'auteurs d'infractions.



Graphique 18 : Infractions contre les enfants selon les articles 187 et 197 CPS[60]

[60] Comme seules les condamnations en vigueur sont prises en compte, l'interprétation des données se rapportant aux dernières années pose problème (cf. note 59).



Graphique 19 : Infractions contre les enfants selon les articles 188,136 et 219 CPS[61]

Les tendances en matière de condamnations particulières illustrées dans le graphique 19 ont diverses causes. Comme avec l'article 187 (actes d'ordre sexuel avec des enfants) dans le diagramme précédent, le recours à l'article 188 CPS est demeuré constant pendant la même période, mais à un niveau bien plus bas. L'augmentation du nombre de condamnations concernant la remise à des enfants de « substances pouvant mettre en danger leur santé » commence progressivement avec l'introduction de l'article 136 CPS en 1989 ; ensuite, le nombre de condamnations correspondantes augmente subitement pour atteindre des chiffres élevés au début du XXIème siècle. L'évolution au cours des deux dernières années est sans doute liée aux préoccupations croissantes dans la société concernant la protection des enfants, notamment à l'égard de la consommation d'alcool, de tabac et de cannabis, ce qui engendre des poursuites accrues de ce genre de délinquance.

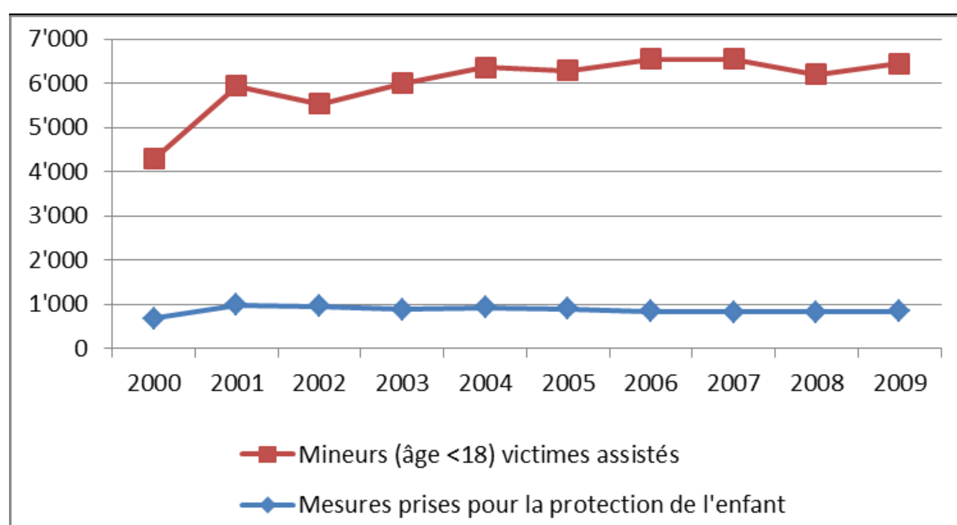
Les causes du nombre croissant de cas de négligence des devoirs de soins, de supervision ou d'éducation sont, elles, moins évidentes. On peut imaginer que les parents sont les auteurs de ces infractions dans la majorité de ces cas. D'une part, cela peut être associé à des changements de société décrits plus haut dans ce chapitre : un nombre croissant de parents seuls et de foyers recomposés ainsi qu'un déclin de l'autorité parentale, en partie liée à ce phénomène de société. D'autre part, cette évolution ne reflète peut-être qu'une tendance sociale générale : la généralisation de la judiciarisation

[61] Cf note 59.

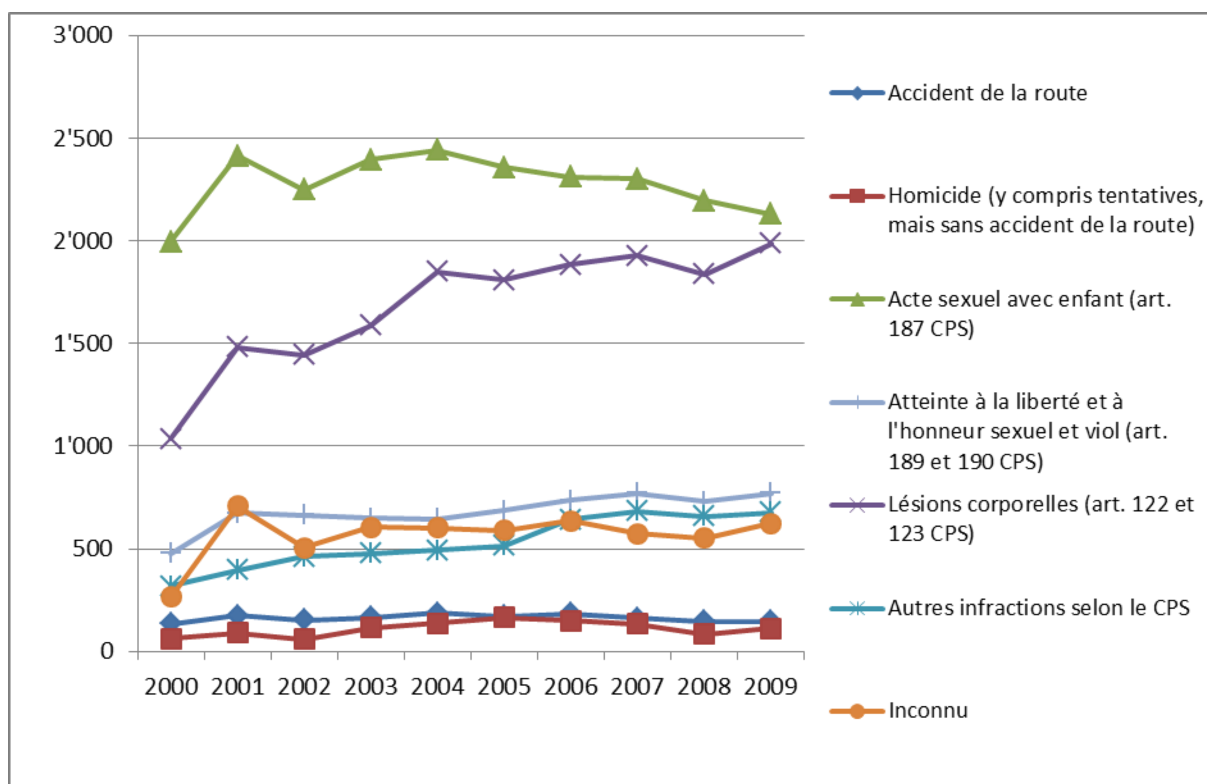
dans les relations sociales privées (cf. Nett, 1999), en particulier dans la famille, qui fait que les autorités sont de plus en plus prêtes à intervenir.

A l'exception des infractions ne pouvant être commises qu'à l'encontre de mineurs, les statistiques sur les condamnations ne fournissent aucune information sur les victimes des infractions évoquées. En outre, une statistique nationale des condamnations civiles – qui pourrait également servir de source d'informations concernant les enfants victimes – n'existe pas et n'est pas prévue. Pourtant, la Statistique policière de la criminalité en Suisse (SPC) – évoquée plus haut dans la partie 2.3.5 à propos des données concernant les infractions domestiques – fournit ce genre d'informations ; hélas, la SPC n'a été introduite qu'en 2009 et ne permet donc pas, à l'heure actuelle, d'analyse sur une plus longue période. Il existe toutefois une autre source de données concernant les victimes : l'OFS publie régulièrement des données pouvant remonter jusqu'à 2000, procurant des informations sur les services fournis par les organisations d'aide aux victimes. Une sélection de ces données figure dans les deux diagrammes ci-dessous. Tous deux se rapportent à des cas de soutien à des victimes de moins de 18 ans.

Quant au graphique 20, représentant les nombres annuels de cas de soutien et de prises de mesures de protection de l'enfant, on constate que l'augmentation n'est évidente qu'au cours de la première année pour la période de 2000 à 2009. Nul doute que cette augmentation précoce est due soit à un défaut de collecte de données, soit à une extension de la fourniture de services de soutien. Par conséquent, lorsqu'on observe les données présentées dans le graphique 20, on peut conclure qu'il y avait une restriction quantitative au niveau des services de soutien engendrant un nombre constant de cas, ou bien que la demande pour ce genre de services n'a que peu changé. Par ailleurs, on peut affirmer que le nombre d'enfants ayant besoin de mesures de protection est manifestement resté constant.



Graphique 20 : Mineurs victimes et prise de mesures de protection de l'enfant (cas de soutien dans l'aide aux victimes)



Graphique 21 : Mineurs victimes selon l'infraction (cas de soutien dans l'aide aux victimes)

Les évolutions illustrées dans le graphique 21 sont intéressantes car elles sont révélatrices des raisons pour lesquelles l'enfant est devenu victime et de la manière dont ces causes ont changé au cours de la période observée. On constate également que le pourcentage de cas correspondant à l'infraction « actes d'ordre sexuel avec des enfants » (art. 187 CPS) a baissé entre 2000 et 2009, passant de 46,6% à 33,0%. A l'inverse, pendant cette même période, les lésions corporelles (art. 122 et 123 CPS) sont passées de 24,1% à 30,8%. Dans l'absolu, le diagramme n'expose pas vraiment ce fait, mais le pourcentage d'atteintes à la liberté et à l'honneur sexuels et de viols (art. 189 et 190 CPS) était plus ou moins le même au début et à la fin de la période observée (11,1% et 11,9%).

2.4.4 Loi fédérale régissant la condition pénale des mineurs

Avant le 1er janvier 2007, les dispositions pénales concernant les mineurs auteurs d'infractions faisaient partie intégrante du Code pénal suisse. Désormais, elles sont réorganisées dans un code fédéral à part, que l'on appelle la Loi fédérale régissant la condition pénale des mineurs (LCPM)[62]. La réforme du droit pénal des mineurs a fait suite à l'idée directrice d'une intégration sociale par la formation (OFJ, 2010 ; Conseil fédéral suisse, 1998). Elle vise aussi explicitement l'affirmation des droits des auteurs d'infractions dans la procédure pénale et durant l'application des peines en établissant

[62] L'introduction de cette loi s'inscrivait dans le cadre d'une révision complète du code pénal suisse.

certains standards (ibid.)[63]. Certaines dispositions correspondantes ont toutefois été rapidement abolies par l'introduction du Code de procédure pénale applicable aux mineurs.[64]

Les principales modifications apportées dans la nouvelle loi relative à la justice pénale des mineurs peuvent être résumées de la manière suivante :

- l'âge de responsabilité pénal a été relevé, passant de sept à dix ans (art. 4 LCPM) ;
- les mesures pouvant être ordonnées par condamnation sont plus orientées vers celles mises à disposition par le code civil ; elles ont donc été rebaptisées « mesures de protection » ;
- l'alternative, définie juridiquement, entre les peines et les condamnations ordonnant une mesure a été abandonnée ; par conséquent, les jeunes auteurs légalement responsables de leurs actions sont principalement condamnés à une peine, même s'ils ont besoin d'une mesure de protection (cf. art. 11 LCPM). Toutefois, si une peine de privation de liberté coïncide avec un placement, celui-ci a la priorité, et la privation de liberté est abandonnée si la mesure a l'effet souhaité (cf. art. 32 LCPM). En réalité, en matière de condamnation, il est toujours possible de renoncer à prononcer une peine si elle est susceptible de compromettre l'objectif d'une mesure de protection en cours ou prévue (art. 23 LCPM) ;
- pour les auteurs d'infractions de plus de 15 ans, la durée maximale d'une peine de privation de liberté a été prolongée de quatre ans (art. 25 LCPM) ;
- l'âge maximum pour un auteur d'infraction concerné par une mesure de protection a été abaissé de 25 à 22 ans (art. 19 LCPM) ;
- le nombre de types de peines et en particulier les possibilités de les combiner a largement augmenté ;

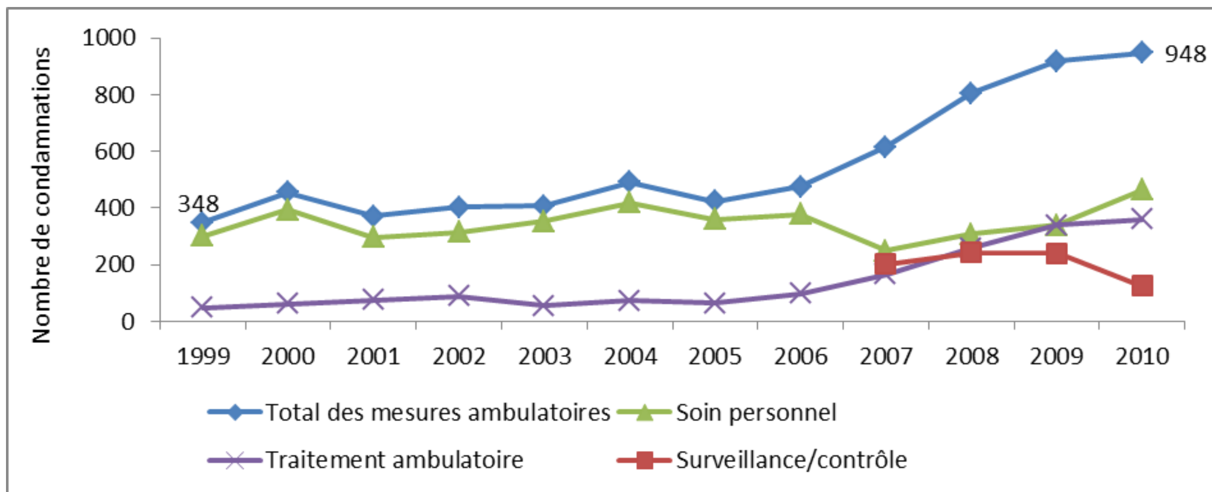
Toutes ces modifications sont destinées à correspondre au mieux aux objectifs de prévention ; elles permettent en particulier de prononcer des sanctions sur mesure pour les jeunes auteurs d'infractions. C'est le but déclaré du système suisse de justice des mineurs. Contrairement au droit pénal des adultes, le droit pénal des mineurs n'est pas axé sur l'infraction et sur sa gravité, mais sur l'auteur et sur les dispositions prises pour le dissuader de récidiver. On peut donc dire qu'en Suisse, le droit pénal est principalement orienté vers la réhabilitation.

Néanmoins, il ne faut pas négliger le nombre considérable de mineurs coupables faisant l'objet d'une réprimande, d'une amende, d'une prestation personnelle ou d'une privation de liberté. Selon les statistiques suisses des jugements pénaux des mineurs (JUSUS), les mesures de protection ne représentent qu'un pourcentage minime (7,8%) de tous les jugements : en 2010, les mesures ambulatoires n'étaient prononcées que dans 6,1% des cas, et les mesures résidentielles ne représentaient que 1,5% (Urwyler & Nett, à venir). Les nombres annuels de mesures de protection prononcées sont illus-

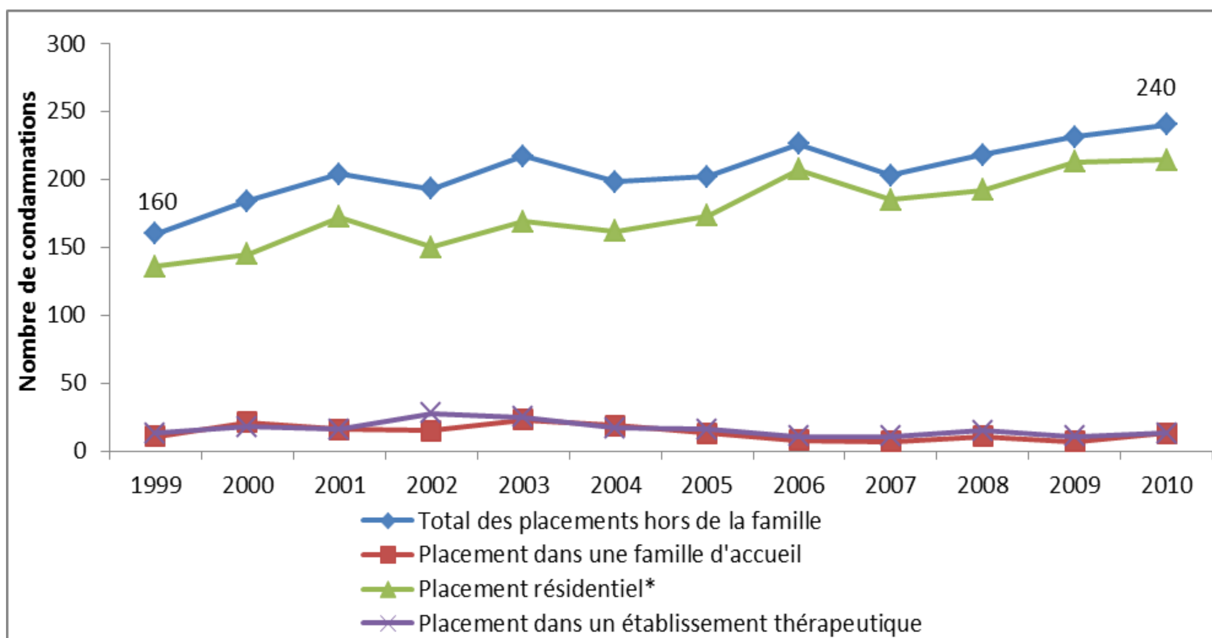
[63] L'administration évalue actuellement les divers effets de la nouvelle loi et leur conformité aux objectifs (Urwyler & Nett, à venir).

[64] Entré en vigueur le 1er janvier 2011, en même temps que le Code de procédure pénale suisse (CPP).

trés dans le graphique 22 qui donne un aperçu des mesures ambulatoires et dans le graphique 23 concernant les placements hors de la famille.



Graphique 22 : Nombre de mesures de protection ambulatoires prises lors de jugements en vertu de la LCPM[65]



Graphique 23 : Jugements pénaux des mineurs selon mesures de protection 1999-2010[66]

* Le placement résidentiel correspond à des institutions accueillant des enfants de manière collective.

Enfin, il importe de souligner que, conformément à la Convention des droits de l'enfant, la nouvelle loi pénale des mineurs prend en compte l'article 37 lettre c de la Convention qui prescrit la séparation des enfants et des adultes dans les centres de détention[67] et prévoit que les cantons mettent à disposition les infrastructures correspondantes (art. 27 paragraphe 2 LCPM). Cependant, l'article 48 du code ad-

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[65] Voir note 59.

[66] Voir note 59.

[67] Voir aussi note 41.

met une période de transition jusqu'au 1er janvier 2017 pour la mise en application de cet article dans les cantons[68].

2.5 Perspectives institutionnelles en matière de protection de l'enfant

Dans les sections suivantes, nous donnerons une description de la manière dont les dispositions légales de protection de l'enfant sont mises en œuvre dans le contexte institutionnel suisse. Nous nous pencherons sur cette application au niveau de la confédération, des cantons et des communes, et nous verrons les différences régionales qui en ressortent. Par ailleurs, nous proposerons un aperçu de la répartition correspondante des tâches et responsabilités, mais également des principales agences, associations et organisations actives dans le domaine de la protection de l'enfant. A la fin de cette section, nous aborderons la place accordée à la protection de l'enfant dans les cursus des institutions offrant un enseignement professionnel aux travailleurs sociaux.

2.5.1 Le rôle des cantons et des communes

Il importe de commencer par une description du rôle des cantons et des communes. Comme on a pu le voir plus haut dans la section 2.4.1 et plus généralement compte tenu du principe de subsidiarité (CFCS art. 5a) déjà évoqué dans la section 2.2.1, en Suisse, les cantons et les communes sont les principales entités responsables de la politique concernant les enfants et les adolescents. Par conséquent, ils jouent également un rôle majeur dans la mise en œuvre d'un système de protection de l'enfance conforme aux dispositions légales fédérales. La situation qui en découle présente des disparités considérables à l'égard de l'importance accordée à la politique de l'enfance et de la jeunesse et donc aussi en matière d'attribution de ressources aux services dans ce domaine. Il y a une dizaine d'années, l'Institut de hautes études en administration publique de Lausanne a réalisé une analyse étendue et exhaustive des différentes politiques concernant les enfants et les jeunes dans les cantons (Frossard, 2003) qui a abouti à une description de situation encore pertinente à l'heure actuelle. Entre autres éléments, l'étude explique que seuls quelques cantons adaptent des procédures appropriées afin de coordonner les mesures en matière de politique des enfants et des jeunes. L'exhaustivité de ces politiques dépend largement de la concentration des ressources administratives et de prises de décisions centrales, mais aussi de l'introduction d'une loi cantonale abordant en particulier les problèmes touchant les enfants et les jeunes. Par ailleurs, les auteurs de cette étude soulignent le fait que l'existence de comités cantonaux de jeunesse, dans les cantons de Berne, Lucerne et Schwyz notamment, constitue une politique de l'enfance et de la jeunesse bien plus proactive. Enfin, ce travail identifie les différences majeures qui existent entre les cantons au niveau de l'encouragement du bien-être des enfants en dehors des contextes institutionnels tels que l'école (cf. Wyttenbach, 2008).

[68] Cette période de transition assez longue, entre autres éléments, a suscité une objection dans le « Deuxième rapport des ONG » (2009) de Suisse adressé au Comité

En ce qui concerne l'organisation des autorités de protection de l'enfant, on constate une différence régionale évidente : ces entités sont constituées de travailleurs ordinaires dans la plupart des régions de Suisse alémanique, alors qu'elles sont généralement organisée comme des tribunaux et composées de juristes professionnels en Suisse romande (cf. VBK, 2008b). Ces disparités ne s'arrêtent toutefois pas au niveau régional ou cantonal, elles apparaissent également au niveau des communes. Les municipalités bénéficient d'une indépendance assez importance dans l'adaptation des politiques de l'enfance et de la jeunesse à leurs besoins locaux. Cependant, cette indépendance n'est pas limitée à la fourniture locale de services de soutien aux familles et aux jeunes. Elle a également un impact sur la gestion des cas de protection de l'enfant et sur la mise en place des mesures correspondantes. Se basant sur les analyses de dossiers des cas de protection de l'enfant déjà cités, Voll et al. (Voll et al., 2010) soulignent que le contexte organisationnel a une importance notoire sur les prises de décisions des autorités tutélaires. Par exemple, les petites communes ont tendance à procéder à des interventions plus restrictives engendrant une limitation plus sévère des droits parentaux (cf. Schultheis et al., 2008).

Selon l'article 44 de la Constitution fédérale (CFCS), la Confédération et les cantons « s'entraident dans l'accomplissement de leurs tâches et collaborent entre eux » (1er paragraphe). En outre, ils « s'accordent réciproquement l'entraide administrative et l'entraide judiciaire » (2ème paragraphe) ; les éventuels différends « sont, autant que possible, réglés par la négociation ou par la médiation » (3ème paragraphe). Divers accords, conférences intercantonales de gouvernements, directeurs de cabinet ou fonctionnaires abordent également les problèmes touchant les enfants et les jeunes. En ce qui concerne la politique de protection de l'enfant, deux institutions en particulier doivent être mentionnées ici : d'une part la Conférence des cantons en matière de protection des mineurs et des adultes (COPMA) et, de l'autre, la Conférence suisse des responsables cantonaux de la protection de l'enfance et de l'aide à la jeunesse (CPEAJ) ; depuis juillet 2011, cette dernière a le statut de conférence technique de la Conférence des directrices et directeurs cantonaux des affaires sociales (CDAS), tout comme la Conférence des délégués cantonaux à la promotion de l'enfance et de la jeunesse (CPEJ). En intégrant la CPEAJ et la CPEJ mais aussi en établissant un domaine spécialisé pour les questions enfance et jeunesse, la CDAS a acquis le statut de plateforme de coordination dans ce domaine. Elle a également exploité avec succès sont potentiel de base institutionnelle grâce à laquelle le « cadre national pour la protection de l'enfant » (cf. recommandation n°1, chapitre 3) pourrait être mis sur pied.

Outre la COPMA, la CPEAJ et la CPEJ, il convient de mentionner également l'Association suisse des curatrices et curateurs professionnels (ASCP) qui est une association de fonctionnaires dont il ne faut pas sous estimer l'influence sur la pratique nationale en matière de protection de l'enfant. Comme nous l'avons déjà indiqué dans la section 2.4.2 ci-dessus, une refonte partielle du droit civil a récemment été accomplie ; l'obligation de conformité à certains standards professionnels fait partie des conséquences de cette réforme sur l'organisation institutionnelle des autorités de protection de l'enfance. L'association cantonale COPMA a élaboré et publié des recommandations détaillées à ce sujet. Elle

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des droits de l'enfant.

indique notamment que ces entités devront se plier, entre autres, aux conditions suivantes (CAT, 2008a) :

- Parcours professionnel de ses membres : les disciplines telles que le droit, le travail social et la pédagogie devront être représentées au sein du collège décisionnel ; d'autres compétences professionnelles dûment spécifiées devront être disponibles si besoin est. En outre, un personnel administratif hautement qualifié devra apporter son soutien au collège décisionnel.
- Ce dernier doit compter (au moins) trois membres siégeant de manière constante.
- Le bureau doit être ouvert 24h sur 24 pour la prise de décisions.
- En principe, les décisions doivent être prises de manière collective.
- La zone desservie par chaque collège décisionnel doit comprendre au moins 50'000 à 1000'000 habitants ; on estime en effet que cela correspond à environ 1'000 mesures en vigueur.

Étant donné que les petites communes n'ont pas les ressources suffisantes pour se conformer à ces conditions, elles seront incitées à organiser leurs autorités de protection de manière conjointe. Par conséquent, si les recommandations de la COPMA sont suivies comme on le prévoit, le processus de professionnalisation dans le domaine de la protection de l'enfant avancera considérablement. Cela réduira sans doute l'aspect arbitraire de la prise de décision qui caractérise d'une certaine manière les comités non professionnels à petite échelle.

2.5.2 Le rôle des institutions fédérales

En ce qui concerne la politique de l'enfance et de la jeunesse, la Confédération (c'est-à-dire le Conseil fédéral comme organe exécutif, les départements attachés à chacun de ses sept membres mais également des offices fédéraux liés à ces départements) n'a le droit, en vertu de la loi constitutionnelle, que d'assumer des fonctions auxiliaires de soutien et de coordination. Cependant, c'est à elle qu'incombe la responsabilité de vérifier la conformité avec les accords internationaux[69]. Enfin, le Conseil fédéral a l'obligation de répondre aux motions et postulats parlementaires. Par conséquent, la Confédération, et les offices fédéraux correspondants, sont appelés de temps à autre à fournir des analyses sur les problèmes sociaux et sur des sujets qui préoccupent les citoyens, et de les évaluer en particulier en prenant en compte les instruments juridiques disponibles pour les gérer[70]. Suite à ce genre d'initiative parlementaire[71], le Conseil fédéral a publié en 2008 un rapport intitulé « Pour une politique suisse de l'enfance et de la jeunesse » (Conseil fédéral 2008). Comme il arrive souvent dans

[69] Par exemple, la Confédération est régulèrement appelée à fournir des rapports aux organisations internationales afin de documenter la conformité aux accords ratifiés. Un rapport très récent de ce genre (publié le 9 décembre 2011) traite de l'état de mise en œuvre du protocole facultatif des Nations Unies du 25 mai 2000, concernant la vente d'enfants, la prostitution des enfants et la pornographie mettant en scène des enfants, ratifié par la Suisse en 2006.

[70] Par exemple, en 2005, l'Office fédéral des assurances sociales (OFAS) a répondu à un postulat de la Commission des affaires juridiques *(postulat CN 96.3178)* au moyen d'un rapport d'experts intitulé *« Violence envers les enfants :* concept pour une prévention globale » (OFAS, 2005)

[71] Cela concerne plus précisément les trois postulats des parlementaires Janiak (00.3469), du 27 septembre 2000 et Wyss (00.3400 et 01.3350), du 23 juin 2000 et du 21 juin 2001.

ce type de procédure, cette stratégie est fondée sur plusieurs rapports scientifiques[72] et fait appel à l'expertise de divers organismes, associations professionnelles et groupes d'intérêt. Cet exemple reflète bien le rôle de la Confédération, en référence au droit international et constitutionnel. Ce rapport met en exergue l'adéquation de la responsabilité au niveau cantonal en matière de politique de l'enfance et de la jeunesse car elle permet des actions adaptées au contexte, aux ressources et aux besoins locaux, et soutenues par un contact direct avec les parties prenantes locales. Cependant, le rapport identifie aussi quelques points négatifs concernant la mise en œuvre des droits de l'enfant dans les cantons, nécessitant des efforts d'amélioration de ce système hétérogène et complexe afin de mieux coordonner les activités et la définition des tâches entre les entités fédérales, et ce en collaboration avec les agences cantonales (ibid., 19).

Fondé sur la Constitution fédérale[73] et sur la Convention internationale des droits de l'enfant[74] , le « rapport-stratégie » aboutit à trois « éléments centraux » d'importance fondamentale pour la politique suisse de l'enfance et de la jeunesse (ibid., 3 pp.). Ces éléments représentent une politique pour :

- la protection
- l'encouragement du développement et de l'autonomie (individuels)
- la codétermination et la participation.

A partir de ces trois principes, on peut déduire deux significations de la politique de jeunesse : d'une part une définition étroite référant à une politique de jeunesse apportant des contributions bien orientées vers la protection des enfants et des adolescents, afin de soutenir leur développement et d'encourager leur participation. On peut citer en exemple la protection contre le danger que présentent l'effet envahissant de certains médias et les produits commerciaux sources de problèmes. Dans la stratégie, on suggère de prévenir ces effets néfastes en encourageant les parents et les adultes référents à prendre une plus grande responsabilité et en autonomisant les ressources pour les enfants.

D'autre part, ce document suggère également une notion plus large de la politique de l'enfance et de la jeunesse. Elle prend comme point de départ le fait que les conditions de vie des enfants et des adolescents sont influencées par diverses variables. Les enjeux qui en découlent peuvent toucher de nombreux domaines de la politique et toutes les classes d'âge. Par conséquent, la responsabilité en matière de politique de l'enfance et de la jeunesse dans le sens large ne peut pas être centralisée ; elle doit au contraire être considérée comme une question interdisciplinaire englobant de nombreux domaines et champs juridiques tels que l'enseignement, la formation professionnelle, les lois sur le travail ainsi que les politiques de marché du travail concernant les enfants et les adolescents, ou encore la prévention des infractions, en particulier la délinquance juvénile.

La division du travail dans le contexte organisationnel de la Confédération reflète les deux perspectives sur la politique de l'enfance et de la jeunesse abordées ci-dessus, mais pas de manière com-

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[72] Voir OFAS (2008).

[73] Plus concrètement, ce rapport attire l'attention sur le droit des enfants à une « protection particulière de leur intégrité et à l'encouragement de leur développement » (articles 11 et 41 (buts sociaux)), avec une référence particulière aux dispositions *f* et *g* spécifiant les objectifs éducatifs concernant les enfants (Conseil fédéral, 2008).

[74] Cf art. 2,12 et 23 de la Convention des Nations Unies relative aux droits de l'enfant.

plète. La responsabilité en matière de politique dans le sens étroit du terme peut se situer principalement au niveau de l'Office fédéral des assurances sociales (OFAS) qui dépend du Département fédéral de l'Intérieur. A l'OFAS, le domaine Famille, générations et société (FGS) s'occupe des questions ayant trait aux droits et à la protection de l'enfant, à l'encouragement des activités extrascolaires pour les jeunes, mais également aux thèmes généraux de l'enfance et de la jeunesse, y compris certains types de subventions[75] accordées par l'assurance sociale nationale en majorité aux familles[76].

D'autres thèmes appartenant au domaine de la politique de l'enfance et de la jeunesse au sens étroit du terme sont traités par des offices fédéraux qui, dans certains cas, font partie d'autres départements nationaux. On peut citer notamment :

- l'Office fédéral de la santé publique (OFSP) et ses domaines s'occupent de la promotion de la santé et de la prévention des addictions (voir section 2.4.3)
- l'Office fédéral du sport, rattaché au Département de la défense, de la protection de la population et des sports, gère en collaboration avec les cantons et les associations sportives un programme de longue date et très apprécié : Jeunesse + Sport (J+S). A l'origine, ce programme avait été conçu comme un projet de préformation volontaire visant à encourager l'activité sportive chez les jeunes garçons suisses et à les préparer ainsi pour le service militaire (cf. Gärtner & Vollmer, 2008)[77]
- l'Office fédéral de la justice et l'Office fédéral des migrations appartiennent tous deux au Département fédéral de Justice et Police. Le premier est responsable de la protection des mineurs dans le cadre du droit pénal des adultes, de la condition pénale des mineurs et du droit international, alors que le second traite toutes les questions relevant du droit des étrangers et du droit d'asile, mais également des minorités ethniques parmi les jeunes en Suisse.
- le Service national de coordination de la lutte contre la criminalité sur Internet (SCOCI) apporte son assistance aux cantons en coordonnant leurs investigations en matière de criminalité sur internet. Il met également à disposition un formulaire d'annonce accessible en ligne permettant de signaler les sites internet ayant un contenu douteux. Ce service est rattaché à l'Office fédéral de la police (fedpol)[78], mais il est dirigé par un comité composé de membres venant de plusieurs associations cantonales.[79]

En plus de ces autorités fédérales, certaines autres agences œuvrant au niveau fédéral exercent une forte influence sur la politique suisse de l'enfance et de la jeunesse : la Commission fédérale pour

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[75] Ce que l'on appelle officiellement les prestations complémentaires.

[76] La page suivante présente un aperçu de l'organisation et des activités de ce domaine de l'OFAS : http://www.bsv.admin.ch/themen/kinder_jugend_alter/index.html?lang=fr.

[77] Gärtner & Vollmer (2008) soulignent que l'origine du programme Jeunesse+Sport (cf. www.jeunesseetsport.ch/) est fortement associée au fait que l'armée suisse est organisée comme une armée de milices ; c'est un aspect qui doit être considéré comme une particularité culturelle car elle correspond au principe central selon lequel tous les citoyens sont responsables de la communauté entière (Gärtner & Vollmer, 2008:4).

[78] L'Office fédéral de la police est également actif en matière d'investigation des infractions de nature sexuelle à l'encontre de mineurs commises dans les pays étrangers. Il met notamment à disposition un formulaire en ligne invitant les gens à signaler tout « événement mettant en cause l'intégrité sexuelle d'enfants par des touristes » (www.fedpol.admin.ch).

[79] C'est-à-dire la Conférence des directrices et directeurs des départements cantonaux de justice et police (CCDJP), la Conférence des autorités de poursuite pénale de Suisse (CAPS), et la Conférence des commandants des polices cantonales de Suisse (CCPCS).

l'enfance et la jeunesse (CFEJ) et la Commission fédérale de coordination pour les questions familiales (COFF). Bien que ces deux entités soient rattachées au domaine Famille, générations et société de l'OFAS, elles représentent chacune un comité d'experts indépendant dans leurs secteurs d'activités respectifs. Même si leur travail n'est pas axé sur les mêmes questions, leur mandat est très similaire : la CFEJ observe et interprète les tendances en matière de relations entre les enfants et adolescents et la société. Sa tâche consiste à identifier et à anticiper les préoccupations de la jeune génération et à formuler les recommandations correspondantes ; la COFF œuvre de manière similaire au niveau des conditions de vie spécifiques des familles en Suisse. En outre, depuis sa création en 1995, elle endosse également la fonction d'organe consultatif du Département fédéral de l'Intérieur. En tant que commissions extraparlementaires, les deux entités évaluent des projets de la Confédération et formulent des recommandations dans les premières étapes de ces projets. Ces commissions jouent également un rôle important en tant que plateformes d'échange d'informations professionnelles entre l'administration fédérale, les organisations non gouvernementales (ONG), les agences privées et les autres types d'institutions concernées par ces sujets.

2.5.3 Le rôle du troisième secteur et du secteur privé

Comme dans d'autres sociétés civiles (cf. Sihls, 1991 ; Walzer, 1992), les organisations non gouvernementales (ONG), généralement regroupées sous le terme « troisième secteur », jouent également un rôle déterminant en Suisse au niveau local mais aussi régional et national. On estime que dans le domaine de la politique de l'enfance et de la jeunesse, l'importance des activités des ONG est encore plus notoire que dans les autres secteurs de la politique sociale. Cela vient du fait que les problèmes touchant les jeunes attirent proportionnellement plus l'attention car ils sont intrinsèquement liés au bien-être futur de la société. Dans la déclaration de mission de l'Institut Marie Meierhofer pour l'enfant (*Verein Marie Meierhofer-Institut für das Kind* créé en 1996), il est écrit que les enfants ne bénéficient pas d'un lobby dans notre société (Marie Meierhofer-Institut für das Kind, 1996). Ce n'était probablement pas entièrement vrai il y a quinze ans, et on ne peut guère le dire aujourd'hui, à l'heure où prolifèrent les initiatives privées organisées en associations, fondations, etc., affirmant leur engagement pour le bien des enfants. Cependant, le fait qu'un certain nombre d'ONG s'engagent dans le lobbying sur des questions de protection de l'enfant ne signifie pas forcément que ces efforts aboutissent ou déterminent l'ordre du jour politique.

Les ONG actives en matière de politique de l'enfance et de la jeunesse peuvent être distinguées en fonction de leurs objectifs, de leur type et de la gamme de leurs activités, mais également de leur origine et de leur constitution. L'indépendance financière des ONG représente également un aspect intéressant. Il n'est ni possible ni cohérent, dans le présent rapport, de donner un aperçu complet du paysage des ONG actives en Suisse dans le domaine de la protection de l'enfant. Il semble toutefois utile de montrer l'éventail des questions traitées par ces ONG et de fournir une brève présentation de quelques unes des organisations les plus importantes se consacrant totalement ou en partie à la protection de l'enfant.

En ce qui concerne les origines des ONG engagées en politique de l'enfance et de la jeunesse, on peut distinguer celles qui ont une longue tradition remontant au début du XXème siècle, celles qui ont commencé par des associations d'affiliation politique ou professionnelle, et enfin celles fondées sur des idéaux, souvent par des personnes ayant une vision ou une préoccupation par rapport à des thèmes particuliers.

Les ONG ayant une longue histoire trouvent principalement leurs racines dans des mouvements philanthropiques ou dans une affiliation confessionnelle. Généralement, leurs objectifs ont changé au cours du temps en fonction de l'évolution des problèmes sociaux et de l'esprit de l'époque. L'ONG Pro Juventute en est un exemple intéressant : ayant le statut juridique d'une fondation, elle fut créée en 1912 sous le patronage de la Société suisse d'utilité publique (SSUP), fondée elle-même une centaine d'années plus tôt (1810) et existant encore aujourd'hui[80]. L'objectif initial de Pro Juventute était de lutter contre la tuberculose chez les enfants et les jeunes. Plus tard, en 1927, elle reprit l'administration de la Fédération suisse des auberges de jeunesse créée trois ans plus tôt. En 1926 s'ouvrit un chapitre plus sombre de l'histoire contemporaine suisse (cf. Meier, 2008) : Pro Juventute lança un projet public d'aide sociale appelé « Œuvre des enfants de la grand-route » ; de 1927 à 1973, l'organisation poursuivit l'objectif d'éduquer les enfants nomades à la sédentarité et au travail afin qu'ils correspondent à la norme du « bon citoyen suisse ». Ainsi, en accord avec les autorités et même avec leur soutien, l'organisation retirait systématiquement les enfants yéniches de leur famille et les plaçait dans des familles d'accueil ou des institutions. Cette pratique, ayant touché un total de 586 enfants, ne cessa qu'après des protestations dans la société, suscitées par les médias. Suite à cela, la Confédération mandata une équipe d'historiens afin d'élucider les détails de ce programme dans une étude (cf. Leimgruber, Meier, & Sablonier, 1998). Aujourd'hui, Pro Juventute est représentée dans toutes les régions de Suisse, offrant des services aux jeunes, aux familles et aux enseignants. En ce qui concerne la protection de l'enfant, Pro Juventute propose un service gratuit d'aide par téléphone, par SMS et sur internet 24H/24 pour les mineurs cherchant du soutien et des conseils dans l'anonymat.

En Suisse, il existe plusieurs ONG dont l'activité principale est le lobbying politique sur les questions de protection de l'enfant. L'une des plus influentes est probablement la Fondation Suisse pour la Protection de l'Enfant[81] . Elle se présente comme une organisation de lobbying œuvrant à l'échelle nationale pour changer le cadre institutionnel et la perception sociale, afin de protéger les enfants de la pauvreté, de la violence sexuelle, psychologique ou physique et de la négligence. La Fondation poursuit ces objectifs en exerçant des activités de pression politique mais également en mettant en place dans toute la Suisse des projets de prévention et des campagnes ciblées visant à sensibiliser les adultes aux problèmes des enfants[82].

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[80] La SSUP doit être considérée comme ayant été l'organisation la plus influente en matière de politique sociale pendant la période de formation de la confédération suisse actuelle. Sa contribution à l'introduction d'écoles gratuites fut déterminante (Schumacher, 2010).

[81] Cette ONG fut d'abord instituée comme une association (1983) puis transformée en fondation en 1988.

[82] La branche suisse de l'ONG internationale ECPAT (End Child Prostitution in Asian Tourism) fait également partie de la Fondation Suisse pour la Protection de l'Enfant. cf. www.kinderschutz.ch.

D'autres groupes de pression agissant pour la protection de l'enfant se concentrent sur des éléments plus précis et restreints. Ainsi, la *Pflegekinder-Aktion Schweiz* (Action pour les enfants placés en famille d'accueil en Suisse), fondée en 1950, se consacre à l'amélioration des conditions de vie des enfants placés en famille d'accueil et cherche à attirer l'attention du public sur leur situation ; on peut citer aussi l'Association Marche Blanche[83], fondée en 2001 par des parents consternés par les rapports sur les méfaits des pédophiles, qui se concentre exclusivement sur son objectif d'aider les enfants victimes ou menacés par des pédophiles et diffuse ainsi une politique de tolérance zéro. D'autres associations telles que le Réseau suisse des droits de l'enfant[84] ou le Lobby Enfants Suisse[85] se concentrent sur la garantie des droits de l'enfant conformément à la convention onusienne.

D'autres encore se caractérisent par le fait que leurs membres partagent un intérêt professionnel commun : ainsi, l'association Integras réunit des professionnels de la pédagogie sociale et spécifique, et la Société suisse de droit pénal des mineurs représente les professionnels des tribunaux des mineurs, des services sociaux, des institutions, des familles d'accueil, etc.

Toutes les organisations mentionnées ci-dessus ont pour point commun une portée plus ou moins nationale. Ces ONG font du lobbying, font bénéficier de leur expertise et organisent parfois des séances de formation spécialisée ; leurs représentants sont généralement bien ancrés dans les réseaux des comités fédéraux et des associations intercantonales. Il y a toutefois, aux niveaux régional et cantonal, de nombreuses autres organisations non publiques, à but partiellement lucratif ou non, qui offrent des services couvrant les différents aspects nécessaires à un système complet de protection de l'enfant. Les agences privées ont souvent des activités telles que la médiation du placement en famille d'accueil ou la prestation de services dans le secteur de l'apprentissage fondé sur l'expérience. Ces prestataires de services sont souvent associés à des groupes de pression plus conséquents mais ils bénéficient généralement de peu d'indépendance économique car ils sont liés par les accords d'objectifs et de performance avec les autorités locales et cantonales.

Enfin, il y a des organisations privées qui s'occupent de questions liées à la protection de l'enfant, et dont les activités se limitent principalement à l'attribution de subventions afin de soutenir des projets d'utilité publique ou des organisations à but non lucratif œuvrant dans les domaines sélectionnés pour le financement. Ce genre d'organisation a généralement le statut juridique d'une fondation et œuvre parfois à l'échelle internationale, telles Oak Foundation ou UBS Optimus Foundation.

Lorsque l'on observe les différents champs d'activités dans lesquels évoluent les organisations du troisième secteur ou du secteur privé engagées pour et auprès des enfants et de leur famille, la nécessité de coordination apparaît clairement, afin d'éviter un double emploi dans les activités de soutien et les services, mais également comme moyen d'identifier les lacunes dans les prestations de ser-

[83] Cf. http://www.marche-blanche.ch.

[84] Cf. http://www.netzwerk-kinderrechte.ch.

[85] Cf. http://www.kinderlobby.ch.

vices. Cette constatation est valable au niveau du canton mais aussi dans les cas où la fourniture de certains services devrait prendre en compte les économies d'échelle afin d'être la plus efficace possible. Cela s'applique à la gestion d'un établissement de traitement spécialisé par exemple (cf. recommandation 2, chapitre 3).

2.5.4 Formation professionnelle des travailleurs sociaux dans le domaine de la protection de l'enfant.

Les études de cas présentées dans ce rapport montrent clairement que le travail social a le statut de « profession principale dans le travail auprès des familles et des enfants aux niveaux spécifiques, là où existent des conditions définies et immédiates de protection des enfants les plus vulnérables » (voir chapitre suivant, section 3.6.2 p.88). Ainsi, pour compléter l'illustration du contexte institutionnel développé en Suisse afin de traiter la protection de l'enfant, il importe aussi d'examiner la formation professionnelle offerte à ces travailleurs sociaux souhaitant éventuellement travailler dans le domaine de la protection de l'enfant.

En Suisse, la formation professionnelle des travailleurs sociaux n'a acquis un statut académique qu'à la fin des années 1990. Avant, il y avait un grand nombre d'écoles de travail social, relativement petites et généralement financées par les cantons ou les communes. Ces établissements avaient été fondés ou maintenus pour répondre à la demande des administrations locales d'un personnel formé dans les services sociaux. Dans les années suivantes, ces écoles ont été regroupées en six nouvelles Hautes Ecoles Spécialisées (HES). Ces HES ont des critères d'admission différents à divers égards de ceux des universités. Elles offrent par ailleurs un cursus fortement orienté vers la pratique et transmettent donc des connaissances principalement professionnelles. Bien que des critères formels conditionnent l'entrée dans les HES, c'est finalement l'établissement qui décide au cas par cas de l'admission des étudiants, qu'ils correspondent à ces critères ou non. Les candidats dont la formation préliminaire ne correspond pas aux conditions passent par une procédure d'admission particulière sur dossier. La Conférence spécialisée des domaines du travail social dans les Hautes Ecoles Spécialisées suisses (SASSA) propose un séminaire de préparation de ce genre de candidature ainsi qu'une procédure de sélection qui ne garantit cependant pas l'admission à une HES. Par conséquent, il n'existe pas de standard inconditionnel d'admission à une formation de travail social (cf. recommandation 6, chapitre 3).

Depuis la fondation des HES, les étudiants en travail social peuvent obtenir un diplôme du bachelor, reconnu dans tous les pays[86]. Un Master of Arts ou un Master of Sciences comme diplôme de travail social est proposé aux étudiants des Hautes Ecoles Spécialisées depuis peu (2008). Comme il est prévu que le bachelor continue d'être le diplôme standard pour les travailleurs sociaux à l'avenir, la Confédération a décidé de limiter l'offre de cursus de Master en travail social pour des raisons financières. Il n'y a donc que deux cursus de Master de la sorte offerts en Suisse : un Master of Sciences

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[86] Conformément au système européen de transfert de crédits ECTS, le diplôme de bachelor vaut 180 points.

proposé en collaboration par quatre HES – celles Berne, de Lucerne, de Suisse orientale et de Zurich – et un Master of Arts proposé par la Haute Ecole Spécialisée du Nord-Ouest de la Suisse[87]. Les programmes de Master proposés par les HES ne conduisent cependant pas à un programme ultérieur de doctorat. En Suisse, on ne peut effectuer un doctorat en « action et politiques sociales » qu'à l'université de Fribourg, qui est moins orienté vers la pratique et ne prépare pas à l'exercice de la profession de travailleur social.

En ce qui concerne l'enseignement des compétences pour le traitement des questions relatives à la protection de l'enfant, les divers cursus de bachelor en travail social ne transmettent que des connaissances de base. Cela demeure le cas, mais en moindre mesure, même si les étudiants choisissent des matières principales ou secondaires particulièrement pertinentes pour le travail social avec les enfants et les familles. Évidemment, ce jugement n'est pas valable dans l'absolu. En effet, il est peut-être possible de trouver quelque part un cursus qui peut être composé de manière à acquérir de solides compétences en matière de services de protection de l'enfant. Cependant, un passage en revue des guides de l'étudiant accessibles en ligne suggère que les contenus d'enseignement relatifs à la protection de l'enfant ne sont pas considérés comme faisant partie intégrante d'un programme de travail social au niveau bachelor. En outre, si l'on examine de plus près les deux cursus de Master évoqués plus haut, on s'aperçoit que la protection de l'enfant n'y est pas non plus proposée comme matière principale. De toute évidence, les connaissances et compétences spécifiques nécessaires à la pratique professionnelle ne peuvent être acquises qu'en ayant recours aux divers types de formation continue. Une étude à ce sujet révèle qu'il existe effectivement quelques formations dispensées spécifiquement par les HES, abordant les aspects particuliers du travail auprès des enfants en danger et de leur famille. Certaines de ces formations semblent être proposées sous la forme de cours intensifs. D'autres formations intitulées DAS (Diploma of Advanced Studies) ou CAS (Certificate of Advanced Studies) garantissent certains standards élémentaires. A l'heure actuelle, en Suisse, il n'y a qu'un seul MAS (Master of Advanced Studies)[88] proposé qualifiant en prise en charge des jeunes.

Comme l'accent est très peu mis sur la protection de l'enfant dans la formation au travail social, les professionnels travaillant dans les autorités tutélaires ne peuvent pas être sélectionnés en fonction d'une qualification dans ce domaine en particulier. Il semblerait d'ailleurs que les compétences professionnelles soient acquises sur le terrain, et par le biais de cours ponctuels de formation continue (cf. recommandation 5, chapitre 3).

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[87] Les deux cursus de master correspondent à 90 points ECTS.

[88] Contrairement aux diplômes de DAS et CAS, les MAS sont accordés par l'Office fédéral.

2.6 Évolutions récentes dans la politique de protection de l'enfant

Cette dernière section du chapitre présente quelques unes des modifications juridiques prévues ou introduites récemment. Dans cette partie, il sera également question de l'ordre du jour politique en matière de protection de l'enfant en Suisse. Nous finirons par une brève analyse de la perception publique de la protection de l'enfant telle qu'elle est reflétée par les récents articles parus dans les médias.

2.6.1 Modifications et initiatives juridiques les plus récentes au niveau national

En juin 2010, le Conseil fédéral a publié une ordonnance abordant des mesures pour la protection des enfants et le renforcement de leurs droits conformément aux articles 13 et 19 de la Convention internationale des droits de l'enfant[89]. Cette ordonnance abordait en outre la prévention des comportements violents chez les jeunes délinquants.[90]

Cette ordonnance sert également de base légale permettant à la Confédération de prendre des initiatives pour des mesures de soutien et des aides financières de l'État dans ce domaine. En plus de protéger les enfants et les adolescents de toutes formes de maltraitance, l'ordonnance mentionne explicitement les diverses formes de mises en danger pouvant découler de l'utilisation des médias électroniques et interactifs, telles que des contenus pornographiques ou violents, de la (cyber-)intimidation, du (cyber-)mobbing, ou encore du harcèlement (y compris ce que l'on appelle la prédation sexuelle). Enfin, l'ordonnance met l'accent sur le fait que les mesures prises par la Confédération doivent également engendrer de meilleurs liens et une meilleur coopération entre les différents acteurs (publics et privés) dans les secteurs-mêmes évoqués dans le texte.

Cette ordonnance était nécessaire car elle procure une base légale à deux programmes nationaux[91] lancés le jour de sa publication et s'étendant sur cinq ans. Le premier, le programme de prévention « Les jeunes et la violence », vise à fournir un aperçu national des activités de préventions et des formes d'intervention dans le vaste domaine évoqué dans l'intitulé, mais également d'identifier les bonnes pratiques et les approches innovantes. En outre, les programmes sont conçus pour soutenir les cantons et les communes dans leurs stratégies préventives par le biais de conseils, en favorisant les liens, et en promouvant l'information spécialisée et la formation avancée. Enfin, il permettra également d'améliorer l'efficacité de l'action conjointe des mesures préventives, interventionnelles et répressives. Le second, le Programme national «Protection de la jeunesse face aux médias et compétences médiatiques », est axé sur les divers problèmes liés à l'utilisation par les enfants des nouveaux médias, thème également abordé par l'ordonnance. La stratégie principale consiste à mettre en place des activités orientées vers la promotion des capacités à faire face de manière « créative et respon-

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[89] Ordonnance sur des mesures de protection des enfants et des jeunes et sur le renforcement des droits de l'enfant, publiée le 11 juin 2010 (entrée en vigueur le 01/08/2010).

[90] Le paragraphe correspondant de l'article 2 de l'ordonnance est fondé sur le Code Pénal suisse (art. 386^4 SPC), qui dispose que la Confédération est compétente, en matière de prévention criminelle, pour définir le contenu, les objectifs et le type de mesures préventives.

[91] Ces deux programmes ont été conçus suite à un rapport du Conseil fédéral lui-même suscité par trois postulats parlementaires (Conseil fédéral, 2009).

sable » aux risques que présentent les nouveaux médias. Elle vise également à sensibiliser les parents, les enseignants et autres personnes ayant des enfants à charge, à les rendre plus attentifs à ces problèmes et à les soutenir dans leur rôle éducatif. Parallèlement, le programme promeut également la recherche, le développement et la mise en œuvre de bonnes pratiques et de standards de qualité en matière de projets d'éducation aux médias. Enfin, il conviendra d'observer, au cours du programme, la nécessité ou non d'une intervention régulatrice ou de toute autre évolution juridique correspondante.

La stratégie « Pour une politique suisse de l'enfance et de la jeunesse » mentionnée dans la section 2.5.2 a également servi à promouvoir le changement en matière de législation. En effet, elle a été à l'origine d'un processus qui a engendré une volonté de revoir totalement la « loi fédérale sur l'encouragement des activités de jeunesse extrascolaires »[92]. Selon le message du Conseil au parlement (Conseil fédéral, 2010), basé sur la procédure habituelle de consultation, la loi réformée introduira les changements suivants :

- Renforcement du potentiel intégrateur et préventif de l'encouragement de l'enfance et de la jeunesse au niveau fédéral en inscrivant dans la loi et en étendant le soutien accordé aux formes ouvertes et novatrices d'activités extrascolaires destinées aux enfants et aux jeunes.
- Meilleure prise en compte du contenu des projets bénéficiant d'aides financières de la Confédération, notamment en matière de standards de qualité des services. Existence d'un éventail national des activités, ou couvrant au moins une région linguistique.
- Élargissement du groupe cible des mesures de soutien de la Confédération aux enfants fréquentant l'école enfantine.
- Promotion de la participation politique des jeunes au niveau fédéral par le biais d'un soutien aux institutions non publiques actives dans ce domaine.
- Aide aux cantons qui le demandent, par le biais d'un financement incitatif temporaire, pour réaliser des programmes visant à concevoir et à développer des mesures relevant de la politique de l'enfance et de la jeunesse. Cependant, cette aide ne doit être apportée que sur un accord mutuel concernant les stratégies et les mesures prévues.
- Encouragement de l'échange d'informations et d'expériences ainsi que de la collaboration avec les cantons et d'autres protagonistes de la politique de l'enfance et de la jeunesse.
- Enfin, renforcement de la coordination horizontale des organes fédéraux qui traitent de sujets relevant de la politique de l'enfance et de la jeunesse. Concentration de la responsabilité de manière plus contraignante sur l'Office fédéral des assurances sociales (OFAS).

Ces propositions ont été soumises à un examen parlementaire en 2011 et ont toutes été incorporées

[92] *Loi fédérale concernant l'encouragement des activités de jeunesse extra-scolaires* du 6 octobre 1989

dans la nouvelle loi fédérale sur l'encouragement des activités extrascolaires des enfants et des jeunes, adoptée le 30 septembre 2011. L'entrée en vigueur de cette loi qui se réfère désormais de manière explicite aux enfants et aux jeunes est prévue pour le 1er janvier 2013. Un autre domaine législatif actuellement évoqué concerne la volonté de création de standards élémentaires en matière de placement des enfants (Zatti, 2005). Les débats publics sur ces deux projets de lois montrent que des conflits fondamentaux demeurent à résoudre : d'une part, dans quelle mesure les parents influencent-ils la décision quant à la personne en charge de l'enfant placé hors de sa famille ? D'autre part, quelles sont les réglementations nécessaires pour garantir certains standards professionnels dans le placement d'enfants ? Il faut par ailleurs décider des capacités éducatives dont doivent faire preuve les personnes connues des parents avant de pouvoir prendre en charge l'enfant ; il s'agit ici des membres de la famille ou des voisins par exemple. En ce qui concerne la procédure politique de prise de décision, il semblerait qu'il n'y ait pas de modification au niveau de l'ordonnance[93], contrairement à ce qui était envisagé à l'origine, mais plutôt au niveau du droit civil.[94]

Certains développements ont lieu actuellement dans le domaine législatif et présentent un intérêt particulier par rapport à la protection de l'enfant. Il s'agit notamment de modifications du droit pénal :

- Une initiative parlementaire soumise en 2007[95] insiste sur l'introduction de modifications constitutionnelles qui serviraient de base à une loi fédérale sur la promotion et la protection des enfants et des jeunes. Ce genre de loi donnerait le pouvoir à la Confédération d'édicter des règles dans ce domaine politique seul. Une sous-commission parlementaire prépare actuellement un projet d'entrée en matière sur ce sujet.
- Une motion parlementaire soumise en 2008[96] appelle l'introduction de rapports obligatoires auprès des autorités tutélaires en cas de présomption de violence ou d'abus sexuels sur des enfants. Une chambre du parlement suisse (Conseil des États) a accepté cette modification sous réserve que certaines exceptions clairement définies soient faites.
- Très récemment, le Parlement suisse a décidé d'introduire une nouvelle disposition dans le Code pénal suisse (art. 124 CPS), déclarant illégale la mutilation génitale féminine : toutes formes de ce genre d'acte seront désormais punies en Suisse, quel que soit l'endroit où l'acte a été pratiqué (sauf prescription). [97] La mutilation génitale féminine est pratiquée dans certaines régions du nord-est de l'Afrique et devient un problème d'intérêt public en Suisse, étant

[93] Initialement, seule l'Ordonnance sur la prise en charge extrafamiliale d'enfant était prévue.

[94] Voir communiqué de presse du Département fédéral de Justice et Police du 29 juin 2011 (*Prise en charge extrafamiliale d'enfants : créer la base légale avant d'édicter une ordonnance/Le Conseil fédéral fixe au 1er janvier 2012 l'entrée en vigueur de l'ordonnance sur l'adoption).*

[95] Initiative parlementaire de Viola Amherd (07.402) en date du 05/10/2007: « Loi fédérale sur l'encouragement et la protection des enfants et des jeunes. Base constitutionnelle » Source : curia vista: www.parlament.ch.

[96] Motion de Josiane Aubert (08.3790) en date du 09/12/2008 : « Protection de l'enfant face à la maltraitance et aux abus sexuels ». Source: curia vista: www.parlament.ch.

[97] Cette loi a été publiée le 30 septembre 2011 mais n'est pas encore entrée en vigueur. Elle peut faire l'objet d'un référendum jusqu'au 19 janvier 2012 (cf. http://www.admin.ch/ch/f/ff/2011/6817.pdf).

donné le nombre croissant d'immigrés venant des pays de cette région (cf. Dupont, 2008 ; Niggli & Berkemeier, 2006).[98]

- En février 2011, le Conseil fédéral a publié un message au Parlement (Conseil fédéral, 2011), présentant un ensemble de mesures juridiques visant à lutter contre les mariages forcés et prévoyant la mise en place d'un projet complet de prévention et de protection en la matière. Le mariage forcé est également un problème relevant du domaine de la protection des enfants car, comme la mutilation génitale féminine, il touche généralement les mineures dans certaines populations immigrées. Les modifications légales proposées ne concernent pas seulement le droit civil (procédure et validité des mariages) mais également le droit international (reconnaissance des mariages célébrés à l'étranger) ainsi que le droit pénal. En effet, le Conseil fédéral propose ici l'introduction d'une disposition permettant des peines plus élevées dans les cas de mariage forcés que dans les cas ordinaires de contrainte, conformément à l'art. 181 CPS.[99] Par ailleurs, les personnes vivant en Suisse et commettant cette infraction à l'étranger seront passibles de poursuites judiciaires (art. 181a paragraphe 2 du *nouveau* CPS proposé).
- Un autre processus actuel de législation concerne le droit pénal des adultes et loi relative à la justice pénale des mineurs ainsi que les dispositions correspondantes dans les procédures pénales (CPP et CPPMin)[100]. Issues d'une motion parlementaire[101] et soutenues par une initiative populaire lancée par l'association Marche Blanche (voir section 2.5.3), les modifications proposées sont axées sur l'extension et le renforcement d'une interdiction professionnelle existante pour certains auteurs d'infractions. L'extension se réfère principalement au fait que l'interdiction professionnelle doit également inclure les activités bénévoles dans les associations et organisations. Une interdiction peut être prononcée même si l'infraction, à l'encontre d'un mineur ou d'une autre personne ayant besoin de protection, n'a pas été commise durant l'exercice de l'activité professionnelle. En outre, l'interdiction professionnelle peut être imposée de manière pertinente si la condamnation concerne certains actes sexuels avec des mineurs. Enfin, ces modifications devront être complétées par des dispositions permettant de réduire la mobilité géographique des auteurs condamnés et de restreindre leur droit à fréquenter certaines personnes ou certains groupes de personnes.

Lorsque l'on considère les divers processus législatifs et initiatives politiques en cours évoqués dans cette section, il apparaît évident que le bien-être des enfants et des jeunes et en particulier les questions de protection de l'enfant font partie intégrante, bien que n'étant pas centraux, de l'ordre du jour

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[98] Cf. www.humanrights.ch

[99] Selon le projet de loi sur le mariage forcé, une personne encourra une peine maximale de cinq ans (art. 181a paragraphe 1 du *nouveau* CPS proposé), au lieu de trois ans pour simple contrainte (art. 181 CPS).

[100] L'introduction des modifications légales en question engendre la nécessité d'ajout, dans la Constitution fédérale, d'une nouvelle clause attribuant à la Confédération l'autorité d'édicter des prescriptions pour protéger les mineurs et autres personnes ayant un besoin accru de protection contre de telles infractions.

[101] Motion de Carlo Sommaruga (08.3373) en date du 06/12/2008 : *Prévention pénale accrue en matière de pédocriminalité et autres infractions* Source: curia vista: www.parlament.ch.

politique suisse. Il importe de remarquer ici que le gouvernement suisse aurait dû présenter un deuxième rapport national au Comité des droits de l'enfant en 2007 et ne l'a toujours pas fait (Réseau suisse des droits de l'enfant, 2009). L'association Réseau suisse des droits de l'enfant affirme, dans son deuxième rapport d'ONG au Comité des Nations Unies que ce retard est dû à un manque de volonté politique à l'égard de l'établissement de conditions institutionnelles permettant une mise en œuvre harmonisée de la Convention de l'ONU aux niveaux cantonal et fédéral (ibid.). Néanmoins, il faut souligner ici la tentative entreprise au nom de la Confédération pour mettre en place une politique cohérente et complète de protection de l'enfant au niveau national ; en effet, en juin 2008, l'Office fédéral des assurances sociales (OFAS) a fondé, avec UBS Optimus Foundation et Oak Foundation[102], une association basée sur un partenariat public-privé, avec l'objectif d'améliorer la coordination, la promotion et la mise en œuvre des projets de prévention au niveau national. A long terme (2020), l'association « PPP Programme National pour la Protection de l'Enfant », a l'intention de parvenir à une stratégie nationale de protection de l'enfant définie conjointement, dans le cadre de laquelle les cantons et tous les groupes d'intérêt importants sont censés être impliqués. En 2009, une proposition de programme national de protection de l'enfant et un plan de mise en œuvre en conséquence ont été présentés (Hanhart et al., 2009a ; Hanhart, Hauri, & Fondation Suisse pour la Protection de l'Enfant, 2009b). La réalisation de ces projets a hélas été interrompue suite à une procédure de consultation qui avait révélé un grand scepticisme envers la structure organisationnelle de l'organe de financement ; en effet, comme la protection de l'enfant est une tâche relevant de la compétence des cantons, des communes et dans une moindre mesure de la Confédération, les personnes consultées jugeaient qu'il n'est pas judicieux de céder la direction et le développement stratégique dans ce domaine à un partenariat public-privé. Certaines critiques avaient également été formulées à l'égard du contenu du plan proposé (PPP PN, 2010)[103]. L'OFAS, qui représente la partie publique du partenariat, a donc décidé de poursuivre l'objectif d'amélioration de la coordination entre les politiques de protection de l'enfant du canton dans le cadre d'un autre projet politique : un postulat parlementaire actuellement en cours. Ce postulat exhorte le Conseil fédéral a présenter un plan d'action comprenant des propositions sur les mesures à prendre pour mieux protéger les enfants de la violence domestique[104]. Ce postulat demande également que le plan d'action présente la manière dont les tâches des communes, des cantons et de la Confédération doivent être coordonnées, afin d'assurer un emploi plus efficace des ressources disponibles pour la protection des enfants contre la violence dans le foyer.

2.6.2 Perception publique de la protection de l'enfant

Dans la courte description du système politique effectuée dans la première section de ce chapitre, nous remarquions que la démocratie directe est l'une des principales caractéristiques du système

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[102] Il s'agit-là de deux fondations influentes oeuvrant à l'échelle internationale et finançant des projets de prévention dans le domaine de la protection de l'enfant en particulier.

[103] Pour de plus amples informations: www.ppp-protection-enfance.ch

[104] Cf. Postulat de Jacqueline Fehr (07.3725) en date du 05/10/2007 : « Violence au sein de la famille. Protection des enfants et des jeunes ». Source: curia vista: www.parlament.ch.

politique suisse. On le voit à travers les diverses particularités du cadre institutionnel, ancrées dans la longue histoire de démocratie de la Suisse. En outre, on peut dire que l'idée de citoyenneté comme source de pouvoir absolu dans la gouvernance des questions sociales est solidement gravée dans la mentalité du peuple suisse. Il n'y a pas si longtemps, la citoyenneté demeurait encore l'apanage des hommes puisque les femmes ne se sont vu accorder les pleins droits politiques au niveau fédéral qu'en 1971. Pourtant, cette citoyenneté est désormais considérée comme l'élément central de toute participation ou prise de décision dans les questions d'intérêt public. Par conséquent, les parlementaires, les membres de l'armée suisse, mais également les membres de l'exécutif, les magistrats et les autorités tutélaires au niveau local, en particulier dans les petites communes, ne sont pas nommés en tant que professionnels mais doivent continuer d'exercer une activité professionnelle en parallèle afin de s'assurer un revenu. Ce système de milice, démontrant la persistance des outils très efficaces de la démocratie directe, reflète la forte réticence du peuple suisse à abandonner des droits aux élites politiques ou professionnelles. Cela explique aussi le refus généralisé, parmi la population suisse, de laisser les droits civils politiques aux tribunaux, que ce soit au niveau constitutionnel ou international, bien que ce fait entre parfois en conflit avec des conceptions basées sur les droits humains. Autre conséquence de l'accent mis sur la citoyenneté en tant que pièce maîtresse de la cohésion sociale : la sphère privée est tenue comme un principe qui s'oppose à toute ingérence de l'État. De ce fait, la manière dont la protection de l'enfant est ancrée de manière institutionnelle en Suisse, ainsi que sa position dans l'ordre du jour national (comme nous le présentons dans les deux prochaines sections), doit être considérée à l'aune de ces particularités culturelles. Cela s'avère évidemment pour la perception publique de la protection de l'enfant qui est mise en exergue plus bas à travers l'utilisation représentative des articles dans les médias alémaniques. Cette analyse rapide des rapports et articles publiés au cours des deux derniers mois révèle que les thèmes liés de manière implicite ou explicite à la protection de l'enfant peuvent être répartis en deux sujets qui alimenteront la discussion concluant ce chapitre.

Le premier est de nature historique et traite de la situation des « Verdingkinder », enfants placés d'office dans des familles pour travailler, au siècle dernier. Ce terme renvoie à une pratique qui était relativement courante dans les zones rurales suisses du XVIIIème siècle jusqu'au milieu du XXème siècle : les enfants nés dans des familles pauvres étaient parfois placés par leurs parents dans une famille d'accueil pour y travailler. Au cours des dernières années, de nombreux récits autobiographiques de personnes victimes de cette pratique ont été publiés (voir notamment Leuenberger & Seglias, 2008 ; Ramsauer, 2000). En 2011, un film historique a été diffusé dans les cinémas, présentant dans une fiction le vécu difficile de ces enfants[105]. Une exposition itinérante sur ce sujet a en outre été mise en place, informant le public sur les souffrances de ces enfants placés pour travailler, au siècle dernier[106]. Cependant, le point de vue ne mettant en évidence que les aspects négatifs de ce phénomène social des enfants placés dans des familles pour y travailler a récemment été remis en question par deux

[105] Le film est intitulé « L'enfance volée », réalisé par Markus Imboden.

[106] L'exposition « Enfances volées - Verdingkinder reden» a été créée par l'association Enfances volées.

articles publiés dans un magazine hebdomadaire (Gut, 2011a, 2011b). Ils faisaient valoir que l'image, présentée par les autobiographies et les histoires personnelles qui ont été publiées, était déformée car la motivation à rapporter des expériences positives est par nature-même moins fréquente que l'inverse (cf. Hafner, 2011). Dans le second article, basé sur les études évoquées plus haut, l'attention est portée au fait historique : pendant la première moitié du XXème siècle, les institutions sociales modernes étaient encore inexistantes et une grande partie de la population vivait encore dans la pauvreté, en particulier dans les zones rurales. La pratique du placement des enfants, motivé par le manque de ressources, représentait donc souvent une meilleure solution pour les enfants des familles dans le besoin car au moins, cela leur permettait de manger et même parfois d'être scolarisés. En outre, cette pratique du placement était promue par les philanthropes des XVIIIème et XIXème siècles, et encore au XXème siècle par les instigateurs de la démocratie sociale, comme une manière d'améliorer l'égalité des chances.

Le second sujet, qui peut être tiré des débats publics actuels qui ont lieu dans les médias à propos de la protection de l'enfant, a trait à une question tout à fait fondamentale : jusqu'à quel point la liberté de religion et de conscience (art. 15 CFCS) doit-elle être interprétée, surtout lorsqu'elle entre en conflit avec la protection des enfants et des jeunes, elle-même présente dans la section 2.4.1 de la Constitution fédérale (art. 11) ? Plus précisément, cela concerne les dispositions du Code civil suisse qui établit que les parents « disposent de l'éducation religieuse de l'enfant » (art. 303[1] CSS) mais qu'ils « dirigent son éducation en vue de son bien et prennent les décisions nécessaires » (art. 301[1] CSS) et qu'ils « ont le devoir de favoriser et de protéger son développement corporel, intellectuel et moral » (art. 302[1] CCS). Le conflit potentiel engendré par ces dispositions se manifeste dans l'opinion publique de différentes manières. Un débat public a fait surface à propos de la volonté de la Confédération d'instaurer une éducation sexuelle dans les écoles primaires et enfantines dans le cadre d'un programme de prévention anticipée. L'opposition à ce genre de projet ne se confine pas aux cercles sociaux représentant des idéaux religieux radicaux, même s'il semble évident que ceux-ci dominent le débat. Autre domaine de préoccupation : les systèmes de valeurs culturels de certains immigrés entrent parfois en conflit avec les attitudes de la majorité de la population autochtone. L'attention politique accordée à la mutilation génitale féminine et au mariage forcé reflète bien ce genre de conflits potentiels. Parmi d'autres sujets de débats et de préoccupation, on peut citer notamment l'écart de prévalence de la maltraitance des enfants entre les familles autochtones et les familles immigrées, ou encore les dispenses de natation accordées aux filles musulmanes dans les écoles.

Enfin, un nouveau problème a été mis en évidence très récemment par les médias (voir par ex. Rau, 2011) et sera probablement l'objet de préoccupations croissantes de la part des autorités de protection de l'enfant à l'avenir. Il s'agit d'un scepticisme très répandu concernant la médecine traditionnelle reposant sur des bases scientifiques. Il semblerait qu'à l'heure actuelle, ce scepticisme conduise à une négligence de plus en plus fréquente de la part des parents à l'égard des besoins vitaux de l'enfant. Ainsi, les parents qui suivent un régime végétalien et l'imposent à leur enfant lui font courir un grand risque s'ils ne veulent pas effectuer de compensation en vitamine B12, absolument essentielle au développement du système nerveux de l'enfant. Les adeptes des médecines alternatives refusent

parfois d'accorder leur permission pour le traitement médical du cancer chez leur enfant. De même, les Témoins de Jéhovah refusent parfois les transfusions de sang dans les cas d'urgence médicale. Bien d'autres situations similaires pourraient également être citées, notamment au sujet des idéologies religieuses ou autres qui sont néfastes ou même dangereuses pour le développement de l'enfant. Les autorités de protection de l'enfant font face à un défi de taille dans ce genre de cas, car elles doivent trouver un juste milieu entre le droit des parents à éduquer leur enfant selon leur croyance et leur vision du monde, et l'intérêt de l'enfant, surtout à l'égard de sa santé physique et mentale.

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CPP : Code de procédure pénale suisse entré en vigueur le 1er janvier 2011

CFCS : Constitution fédérale de la confédération suisse, entrée en vigueur le 18 avril 1999

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Loi fédérale sur l'encouragement des activités extrascolaires des enfants et des jeunes, adoptée le 30 septembre 2011

LAVI : Loi fédérale sur l'aide aux victimes d'infractions, entrée en vigueur le 1er janvier 2009

LCPM : Loi fédérale régissant la condition pénale des mineurs, entrée en vigueur le 1er janvier 2007

CPPMin : Code suisse de procédure pénale applicable aux mineurs, entré en vigueur le 1er janvier 2011

CCS : Code civil suisse, entré en vigueur le 1er janvier 1912

CPS : Code pénal suisse, entré en vigueur le 1er janvier 1942

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3 Analyses transnationales de bonnes pratiques et recommandations

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3.1 Introduction

A l'origine, lors de la création de ce projet, nous avons identifié deux objectifs essentiels : tout d'abord, examiner les indications actuelles concernant l'efficacité des services de protection de l'enfant dans les pays ayant un niveau de développement socio-économique comparable à celui de la Suisse ; ensuite, identifier les bonnes pratiques issues de comparaisons internationales et évaluer la pertinence de leur application en Suisse. Nous avons atteint ces objectifs en comparant les pratiques de protection de l'enfant dans les divers pays, en proposant une analyse et en formulant des recommandations. Les analyses et recommandations présentées sont tirées en partie de celles fournies dans l'étude de cas dans cinq pays et des analyses secondaires collectives effectuées par les auteurs du rapport lors d'un atelier organisé à Berne. Un groupe d'experts, œuvrant au niveau juridique, académique ou sur le terrain en Suisse, ont analysé et évalué ces résultats de manière plus approfondie quant à leur application dans un contexte suisse, Nous sommes très reconnaissants envers Andrea Hauri, Marco Zingaro, Christian Nanchen, Stefan Blülle, Peter Voll, Stefan Schnurr et Judith Wyttenbach pour leur travail sur ce sujet. Les conseils du groupe d'experts ont permis d'apporter un certain nombre de modifications au rapport final, reflétant la faisabilité de la mise en œuvre des recommandations dans le contexte suisse. Notre intention est de rendre compte, de manière pragmatique et fondée sur des principes, de ce qui constitue un système moderne et efficace de protection de l'enfant avec des recommandations pour une application en Suisse. Toutefois, notre objectif n'est pas de présenter précisément la manière dont ces recommandations peuvent être mises en pratique ; en effet, la phase de mise en œuvre est une tâche à part entière incombant à tous ceux concernés par les dimensions juridique, politique et pratique de la protection de l'enfant en Suisse.

La structure de ce chapitre global, bien que n'étant pas totalement similaire aux rapports nationaux individuels, se fonde sur les informations fournies dans chaque rapport et présente des analyses et recommandations correspondant aux divers aspects de la proposition initiale. Bien sûr, certains pays fourniront plus d'indications que d'autres sur certains éléments. C'est à prévoir étant donné que le développement de chaque système national engendre des différences servant précisément à mettre en évidence des points particulièrement intéressants. Il est utile de noter, dès le début, qu'en déterminant ce qui constitue un système efficace de protection de l'enfant, l'équipe de recherche s'est basée

sur les échecs mais également sur les pratiques prometteuses, ainsi que sur les connaissances conceptuelles et théoriques qui étayent les systèmes modernes de protection de l'enfant. Il importe toutefois de souligner que la base d'indications issue de la recherche et visant à comprendre ce qui fonctionne dans la protection de l'enfant n'est pas suffisamment développée pour donner un modèle définitif applicable dans n'importe quel contexte. Par conséquent, dans la spécification des modèles opérationnels, nous nous basons également sur les principes étayant les systèmes efficaces de protection de l'enfant.

3.2 Identification des motivations essentielles conduisant au développement des systèmes de protection de l'enfance

Lorsque l'on cherche à comprendre les raisons qui poussent les pays développés à se pencher sur la réforme et la mise en place de leurs systèmes de protection de l'enfance, il importe d'identifier les motivations essentielles qui constituent à la fois le contexte et le catalyseur de ce genre de développement. Cela permettra non seulement de considérer l'initiative actuelle prise par la Suisse à cet égard, mais aussi d'avoir un contexte plus large pour comprendre le consensus émergent, au niveau international, au sujet des principes sur lesquels doit se fonder un système efficace de protection de l'enfant. Ce consensus est d'ailleurs un thème récurrent dans la présente étude.

Les motivations essentielles identifiées ici sont les suivantes : les indications épidémiologiques de la prévalence et des effets de la maltraitance des enfants, la reconnaissance de la nécessité de consacrer des fonds aux enfants, l'importance des droits de l'enfant et la comparaison internationale mettant en évidence les actions des gouvernements face aux droits et aux besoins des enfants dans le cadre de leur protection. Ce genre de motivations entraîne un certain nombre d'impératifs qui, considérés collectivement, représentent à la fois un point de départ et un élan continu pour le changement dans les systèmes de protection de l'enfance.

3.2.1 Prévalence et effets de la maltraitance des enfants – l'impératif scientifique

La maltraitance des enfants comprend à la fois les abus et la négligence. Les effets s'observent non seulement pendant l'enfance mais aussi potentiellement pendant toute la vie : suite aux graves difficultés rencontrées pendant leur enfance, les personnes victimes sont en mauvaise santé physique et mentale, souffrent d'addictions et rencontrent des problèmes dans l'éducation de leurs propres enfants. Le fait d'être confronté à ce genre de problèmes et à leurs conséquences est devenu une question de santé publique dans les pays développés. En ce qui concerne la prévalence, on estime que 4 à 16% des enfants sont victimes de violence physique et qu'un enfant sur dix est victime de négligence ou de violence psychologique. Pendant leur enfance, entre 5 et 10% des filles et jusqu'à 5% des garçons sont victimes d'abus sexuels avec pénétration, ... cependant les chiffres officiels (enfants portés à l'attention des services sociaux) indiquent moins d'un dixième de cela (Gilbert et al., 2008, p70). Toutefois, ces statistiques sont encore plus significatives lorsque l'on considère la définition très étroite

que l'on utilise pour désigner ce qui a un effet négatif sur l'enfant. Le fait d'adopter une vision plus large des problèmes contre lesquels il faut protéger les enfants (comme nous le faisons dans ce rapport) augmente donc considérablement le nombre d'enfants ayant besoin d'une assistance supplémentaire de la société. Le travail effectué par les épidémiologistes en matière de prévalence et les études rétrospectives détaillant les rapports entre les problèmes vécus dans l'enfance et ceux rencontrés une fois adulte forment l'impératif scientifique pour une action à ce sujet.

3.2.2 Consacrer des fonds aux enfants – l'impératif économique

Dans le concept d'« investissement social étatique », les enfants sont considérés comme un domaine d'investissement important. Cette notion exerce une influence persuasive dans les économies développées qui considèrent désormais l'investissement dans les citoyens comme une priorité – permettant à ceux-ci de profiter des opportunités créées par une économie de marché mondialisée et de contribuer à leur tour à cette économie par leur participation. Ce genre d'investissement se fait généralement dans l'amélioration des perspectives éducatives, mais les enfants ne parviennent pas à tirer profit de ces opportunités cibles d'investissement supplémentaire. Les recherches révèlent que ces enfants sont souvent confrontés à de nombreux problèmes pendant leur enfance. Cela constitue un obstacle les empêchant de profiter des opportunités éducatives mais prédit également d'un avenir de coûts élevés pour la société, étant donné le nombre de services d'assistance qui seront nécessaires sur toute une vie et la faible contribution à l'impôt due à une participation dérisoire voire non existante au marché du travail (Spratt, 2009). Un modèle ainsi formé engendre donc un impératif économique incitant à identifier ces enfants à problèmes de manière anticipée, et contribue largement à l'augmentation du nombre d'interventions précoces et d'initiatives de prévention visant à éviter que les enfants aient une vie médiocre.

3.2.3 Droits de l'enfant – l'impératif juridique

Tous les pays présentés dans cette étude sont signataires de la Convention internationale des droits de l'enfant (CDE). Bien que basée sur un code moral, le principal pouvoir de la convention est sa fonction d'instrument juridique contenant des principes clairs sur le droit des enfants à être protégés et à bénéficier de services d'assistance. L'article 19 revêt une importance particulière à cet égard, prévoyant explicitement que tous les enfants doivent être protégés de « toutes formes de violence, d'atteintes ou de brutalités physiques ou mentales, d'abandon ou de négligence, de mauvais traitements ou d'exploitation, y compris la violence sexuelle ». Grâce aux rapports effectués par les pays sur la mise en conformité de leurs lois et politiques à ces principes, les actions des gouvernements sont visibles, aussi bien par les citoyens du pays que par la communauté internationale. De cette manière, la protection de l'enfant devient un impératif juridique inscrit dans un traité international et soumis à un examen permanent.

3.2.4 Comparaison internationale - l'impératif moral

Les organismes internationaux ont de plus en plus tendance à enregistrer les progrès des différents pays en utilisant des données comparables à l'aune de divers critères. La CDE en est un exemple parmi d'autres dans le domaine de la protection de l'enfant. L'Organisation Mondiale de la Santé a publié de nombreux documents de comparaisons internationales de l'incidence et des actions en matière de maltraitance des enfants (Butchart et al, 2006). L'UNICEF, de son côté, fournit des indices sur la mortalité des enfants due à la maltraitance (2003) et sur la santé et la sécurité des enfants dans les pays riches (2007). Au niveau international, les chercheurs universitaires s'intéressent de plus en plus à l'analyse de l'efficacité des systèmes de protection de l'enfance (Gilbert et al., 2011). Un tel intérêt de la part du monde universitaire a permis de sensibiliser les gouvernements aux effets des comparaisons qui peuvent exposer les aspects négatifs ou positifs de leurs propres politiques et pratiques et engendrer ainsi un sentiment de responsabilité dans la communauté internationale. Ces comparaisons servent également à créer un impératif moral poussant les gouvernements à améliorer leurs politiques et pratiques concernant l'enfance, ce qui se traduit par des performances positives dans les classements internationaux.

Le poids collectif des motivations essentielles répertoriées plus haut a conduit les gouvernements à se pencher de plus en plus sur les systèmes de protection de l'enfance dans des pays similaires, se basant sur ces comparaisons pour établir les meilleures pratiques étayant la réforme et le développement de leurs propres systèmes de protection de l'enfance. Ces motivations essentielles ont évidemment pour pendant les motivations internes puisque les pays répondent aux pressions particulières au sein de leur propre juridiction, y compris aux échecs du système.

3.3 Les objectifs des systèmes modernes de protection de l'enfance

Les cinq pays présentés dans cette étude diffèrent les uns des autres, surtout dans certaines de leurs dimensions historiques. Toutefois, on peut observer des trajectoires similaires quant à leur manière d'envisager les besoins des enfants aujourd'hui. Cela comprend la mise en œuvre de lois et politiques nécessaires à l'identification et à la protection des enfants les plus vulnérables dans la société, la création de services visant à répondre à leurs besoins et le développement de méthodes pratiques permettant d'assurer les meilleurs résultats pour l'enfant. Pris ensemble, ces développements représentent l'influence grandissante d'une approche sociale, à base scientifique, de la question de la protection de l'enfant.

Une analogie avec la médecine peut s'avérer utile pour illustrer l'évolution des mentalités à l'égard de questions sociales et médicales comparables. Le premier défibrillateur portatif fut inventé par le docteur Frank Pantridge à Belfast, en Irlande du Nord, dans les années 1960. Il avait eu l'idée de placer des défibrillateurs dans les ambulances afin de pouvoir porter secours sur place aux patients ayant fait une crise cardiaque, au lieu de les amener à l'hôpital. Dans les 15 premiers mois d'utilisation, il enregistra 10 succès. A sa mort, on put lire dans la notice nécrologique qui lui était consacrée que ce ne

fut qu'après les « 10 à 15 années habituelles de scepticisme » que les autorités décidèrent de placer un défibrillateur portatif dans toutes les ambulances britanniques et le docteur Pantridge fut décrit comme le « père de la médecine urgentiste ». On repense à cette époque et on la considère comme le début d'une histoire à succès dans le domaine de l'intervention médicale, le nombre de décès dus à un arrêt cardiaque ayant baissé de 40% au Royaume-Uni depuis le début des années 1970. Cependant, il est nécessaire de se pencher de plus près sur la question pour mieux comprendre ce qui a contribué à cette baisse formidable. Dans une étude associant et analysant des données concernant l'adoption et l'efficacité des traitements cardiologiques mais également les tendances en matière de facteurs de risque, les auteurs ont étudié la mesure dans laquelle la baisse de la mortalité suite à des maladies cardiaques en Angleterre et au Pays de Galles entre 1981 et 2000 pouvait être attribuée aux traitements médicaux et chirurgicaux (tels que l'utilisation de défibrillateurs portatifs) et aux progrès en matière de compréhension des facteurs de risques cardiovasculaires. Ils sont arrivés à la conclusion que 58% de la baisse de la mortalité était attribuable à la réduction des facteurs de risques majeurs, principalement la tabagie (Unal et al., 2004).

De manière similaire, les systèmes modernes de protection de l'enfant peuvent avoir deux fonctions : avoir recours à un système d'interventions d'urgence pour les situations avérées, et identifier les populations les plus à risque, puis leur faire bénéficier des services de prévention évitant ce genre de réponse d'urgence. Ces deux types d'actions sont nécessaires et contribuent à la protection des enfants. Cependant, nos études individuelles par pays révèlent qu'historiquement, l'Australie et le Royaume-Uni mettent plus l'accent sur l'importance de veiller à ce que le système d'urgence ait les ressources nécessaires et sur son rôle central dans la protection des enfants (souvent désigné, dans la littérature spécialisée, sous le terme d'orientation vers la protection de l'enfant). Par contre, à des degrés différents, en Finlande, en Suède et en Allemagne, on met plus l'accent sur le travail auprès des familles afin de réduire les facteurs de risques associés à des résultats médiocres pour les enfants (« orientation vers le service à la famille »). Notre analyse des cinq rapports par pays suggère qu'en dépit de telles différences historiques d'orientation, on discerne une convergence actuelle vers le fait d'assurer que les services préventifs et d'urgence soient associés au sein du système de protection de l'enfance, parfois appelé « modèle de santé publique ».

Il n'existe certes pas de modèle parfait. Toutefois, dans ce rapport, nous avons montré qu'il est aussi nécessaire de mettre en place des systèmes d'action immédiate solides que d'avoir des services permettant d'identifier et de réduire les facteurs de risque afin de véritablement protéger les enfants, tout comme il est nécessaire de mettre à disposition des défibrillateurs (ils sont désormais disponibles dans la plupart des bâtiments publics) mais également de promouvoir un mode de vie sain afin de réduire les risques de problèmes cardiovasculaires. C'est le mieux que nous puissions faire pour être au plus près d'une « vérité universelle » en matière de systèmes de protection de l'enfance. Dans les sections suivantes de ce chapitre, nous chercherons à illustrer cela en trouvant une juste mesure entre les recommandations – concernant la nécessité de mettre en place un système d'intervention solide pour les enfants ayant besoin d'une protection immédiate – et l'impératif de création d'un sys-

tème efficace permettant d'identifier de manière précoce les enfants ayant besoin d'assistance, afin d'éviter de mauvaises suites dans leur vie.

Notre deuxième « vérité universelle » est que les GRANDES IDÉES (souvent basées sur des idéologies plutôt que sur les faits), mises en œuvre rapidement sans essai rigoureux préalable, sont généralement inutiles et peuvent même se révéler dangereuses. Dans de nombreux aspects de la vie, l'innovation peut être considérée comme quelque chose de positif, mais la mise en application d'idées très prometteuses en termes de protection de l'enfant nécessite un examen attentif. Comme nous l'observerons lorsque nous nous pencherons sur les aspects des systèmes de protection de l'enfance dans les cinq pays, il existe une oscillation entre les méthodes de protection de l'enfant consistant à retirer les enfants de leur famille et celles cherchant à promouvoir la famille biologique comme étant le meilleur cadre d'éducation des enfants, avec une réticence à les placer en institution. A certains moments, ces idées peuvent être présentées comme des principes globaux suscitant presque le consensus dans les pays, mais ce genre de principes peut avoir des conséquences dysfonctionnelles. Par exemple, dans les pays tels que la Suède – qui estiment que les services doivent plutôt être adressés directement aux enfants dans le contexte de leur propre famille – le nombre d'enfants placés en institution est assez faible, le nombre d'adolescents placés dans ces établissements étant lui plus élevé une fois que les arrangements familiaux échouent. Pourtant, on sait que les jeunes enfants sont les plus vulnérables aux effets d'une éducation abusive ou inappropriée et que le fait de tenter de fournir des services au sein de la famille peut avoir l'effet de causer plus de tort aux enfants dont les besoins de développement auraient été mieux satisfaits en grandissant dans un cadre plus stable de placement en institution. A l'inverse, l'approche résiduelle peut créer des effets opposés. Elle est notoire en Australie, où l'État a moins tendance à intervenir pour offrir des services dans les familles qui en ont besoin, et plutôt à placer les enfants en institution à un jeune âge si les parents ne pourvoient pas à leurs besoins ou sont violents. Là, le manque de services de prévention peut entraîner une augmentation du nombre d'enfants placés en institution, alors qu'une prestation de service précoce dans le milieu familial aurait pu éviter ces placements.

La leçon que l'on peut tirer de ce genre d'analyse est qu'il faut veiller à ce que les systèmes de protection de l'enfance soient basés sur des principes, mais qu'il faut se garder d'appliquer ces principes de manière absolue, sans quoi ils peuvent avoir des effets déformants au sein du système et avoir des conséquences négatives sur la vie de certains enfants. L'approche alternative consiste à mettre sur pied un ensemble de principes plus nuancés reflétant la diversité des familles et des besoins des enfants. Ces principes devraient être issus de recherches sur les meilleures solutions pour les enfants et refléter un équilibre entre les droits des parents et ceux des enfants. Ces équilibres refléteront inévitablement les différences entre les pays mais nous avons constaté, dans notre étude comme dans la littérature spécialisée, un certain consensus quant à ce qui constitue un bon résultat pour l'enfant et la manière dont les systèmes de protection de l'enfance peuvent cultiver ces bons résultats. Ils sont également représentés dans notre analyse et nos recommandations.

3.4 Aspects du développement de systèmes de protection de l’enfance

Si l'on veut donner une analyser cohérente des systèmes de protection de l’enfance dans les cinq pays, il importe de commencer par une présentation de la manière dont ces systèmes se sont développés. Ce faisant, on peut distinguer trois périodes différentes, marquant les développements initiaux, les évolutions ultérieures, puis les étapes les plus récentes. Il faut remarquer ici que ces périodes ne correspondent pas aux mêmes moments dans l'histoire des cinq pays du fait de certaines différences importantes telles que le début de l'industrialisation ou l'influence précoce ou tardive des évolutions internationales en matière de politique et de pratique de protection de l'enfant. Cependant, ces différences temporelles semblent seulement retarder, et non pas dévier, une avancée linéaire visible vers un fort consensus sur la forme nécessaire d'un système de protection de l’enfance.

3.4.1 Développements initiaux – Réponse de la société aux besoins des enfants

Les premières indications du développement de systèmes de protection de l’enfance à travers les cinq pays reflètent les bouleversements économiques et sociaux engendrés par l'industrialisation et l'urbanisation. L'entrée dans cette nouvelle ère industrielle avait rendu les enfants plus vulnérables, leur famille quittant la sécurité et la stabilité des économies rurales pour un environnement urbain plus exposé et industriel. Dans ces nouvelles communautés, les enfants étaient plus visibles, et on commençait à se préoccuper de plus en plus de leur bien-être physique et moral. Les toutes premières lois de protection de l'enfant illustrent bien l'éthique de l'époque : la société devait se protéger contre les enfants considérés comme délinquants mais aussi protéger elle-même les enfants vulnérables. La tendance, soit à mettre en place des services séparés pour chaque groupe – reflétant l'opinion que le problème présent (délinquance ou besoin) était la considération importante – soit à intégrer ces services (se concentrant sur les antécédents des problèmes se présentant), influence encore aujourd'hui le développement des prestations.

Étude de cas en Suède « La tendance, dans la société comme dans la première loi sur les enfants, était toutefois à la protection de la société contre le mal moral, et les enfants maltraités étaient considérés comme une menace potentielle pour l'équilibre de la société (Lundström, 1993). La loi sur les enfants de 1902 concernait les enfants de moins de 15 ans. La perspective idéologique était dominée par la conviction qu'une bonne éducation pouvait éviter que les jeunes versent dans la délinquance. Par conséquent, les services sociaux de l'époque et le système correctionnel partageaient la responsabilité des jeunes délinquants en Suède comme en Norvège, une double responsabilité qui subsiste encore aujourd'hui en Suède (Dahl, 1978 ; Kumlien, 1994). »

Les deux groupes étaient finalement similaires puisqu'ils étaient généralement composés d'enfants sans abri ou abandonnés, sans parent voulant s'occuper d'eux. Ils constituaient un problème social visible d'un nouveau genre, les premières conséquences du capitalisme industriel. On voit clairement

dans les études de cas par pays que les premiers services et législations pour la protection des enfants étaient axés sur ces enfants sans abri, une tendance approuvée par l'opinion publique de l'époque, selon laquelle les motifs justifiant une ingérence de l'État dans la vie de la famille devaient être rigoureusement réglementés. La réponse la plus courante était la création d'institutions pour enfants. Ces établissements étaient souvent dirigés par les églises ou les associations de charité ; ils associaient instruction morale et préparation des jeunes au travail de production. Il est d'ailleurs intéressant de constater qu'avant la formation de lois et services de l'État, les principales dispositions en matière de protection des enfants étaient assurées par le secteur bénévole. Ces antécédents historiques ont ainsi donné à ce secteur une certaine influence dans le développement des systèmes de protection de l'enfance.

3.4.2 Développements ultérieurs – Réponse de l'État aux besoins des enfants

Les développements ultérieurs dans les systèmes de protection de l'enfance se présentent sous deux aspects : un souci de protéger les enfants au sein de leur famille et un développement de services destinés à protéger les enfants d'une manière générale. Ces éléments se traduisent de deux manières : la création de lois pour protéger les enfants contre la violence et la négligence dans leur propre foyer, et l'expansion des associations bénévoles s'occupant d'enquêter sur les maltraitances potentielles des enfants dans la famille et la prestation de services aux familles en ayant besoin. Les gouvernements édictèrent également des lois limitant les heures de travail des enfants. Ces évolutions sont les pierres fondatrices sur lesquelles sont fondés les systèmes modernes de protection de l'enfant : tout d'abord, la reconnaissance que certaines familles font du tort à leurs enfants, de manière intentionnelle ou par négligence, que les lois civiles (pour protéger l'enfant) et pénales (pour dissuader et punir) sont nécessaires, et que les services peuvent être efficaces et contribuer à prévenir le mal fait aux enfants. Ensuite, la prise en compte du fait que les conditions sociales et la réaction de la famille aux facteurs de stress peuvent créer des conditions difficiles pour les enfants, les parents ne sachant ou ne pouvant pas protéger leurs enfants contre les effets néfastes de ce contexte. Ces difficultés peuvent également être atténuées par le biais d'une intervention efficace visant à améliorer les conditions sociales et à réduire les effets néfastes.

Dans la plupart des pays, ces développements précédèrent la formation d'un État social et la prise de mesures de protection sociale notamment en matière de santé, d'éducation et de retraite. Néanmoins, les idéologies étayant l'État social peuvent être considérées comme ayant influencé le développement des systèmes de protection de l'enfance. Avant l'apparition des mesures sociales, les dispositions en faveur de la protection de l'enfant pouvaient être décrites comme un ensemble de lois, idées et services interdépendants mais pas comme un système. L'émergence d'États sociaux a contribué à redéfinir le rôle de l'État dans sa relation avec la famille, soutenue par le concept selon lequel l'État est responsable de la protection des citoyens et accomplir cette tâche à travers la redistribution des ressources permettant l'accès à une série d'aides. Celles-ci sont notamment les aides fiscales et les services aux enfants et aux familles, destinées pour la plupart à soutenir les familles dans l'éducation des

enfants, incluant une aide pour les enfants les plus vulnérables dont les circonstances révèlent qu'ils ont besoin de prestations supplémentaires. C'est d'ailleurs dans la prestation de ces services supplémentaires que l'on observe la plus grande variation entre les cinq pays. Dans la plupart d'entre eux, l'État fournissait la majorité des services avec le soutien du secteur bénévole, à l'exception de l'Allemagne, où le secteur bénévole est le prestataire principal.

Étude de cas en Allemagne « Les ONG (*Freie Träger*) occupent une place importante dans le système allemand de services de protection des enfants et des jeunes. Du fait du principe de subsidiarité, l'autorité de protection des enfants et des jeunes ne fournit pas seule certains types de services si des ONG sont disposées à intervenir et capables de fournir ces services. »

Cependant, il importe de souligner que dans tous les pays de l'étude, le gouvernement a pris le contrôle et demeure responsable de l'investigation dans les cas de maltraitance présumée. Il ne s'agit pas de dire que cette disposition est inévitable, universelle (par ex., au Canada, les investigations des cas de maltraitance sur les enfants sont effectuées par le secteur non gouvernemental) ou manifestement plus efficace que toute autre disposition de protection des enfants, mais simplement qu'il s'agit de la norme dans les pays étudiés.

Dans les pays ayant un gouvernement fédéral, on observe évidemment une dévolution considérable des pouvoirs et responsabilités en matière de protection de l'enfant aux États, comme c'est le cas en Australie et en Allemagne, et aux nations, comme au Royaume-Uni. On peut toutefois remarquer que des efforts considérables sont faits pour que les dispositions locales de protection de l'enfant soient conformes aux normes et standards nationaux. Cela n'est nullement surprenant. En effet, comme nous l'avons observé, l'une des fonctions centrales des gouvernements est d'assurer la protection des citoyens. Il leur faut donc le pouvoir et l'autorité nécessaires. Les gouvernements ne pourraient pas signer des accords internationaux tels que la Convention internationale des droits de l'enfant s'ils n'avaient pas l'autorité suffisante pour la mise en œuvre de ces traités. Ces développements se produisent également dans le contexte suisse, le gouvernement fédéral ayant adopté en août 2008 le rapport de stratégie « Pour une politique suisse de l'enfance et de la jeunesse » afin d'inclure les trois éléments essentiels de protection, de soutien et de participation. En Suisse, des tensions peuvent se manifester quant à la manière de mettre en œuvre ce genre de politique tout en suscitant un consensus dans les cantons.

3.4.3 Développements récents – Systèmes de protection de l'enfance

Les récents développements dans les systèmes de protection de l'enfance concernent les réponses au problème de la maltraitance des enfants. Depuis la publication par Henry Kempe et ses collègues de leur travail déterminant sur le syndrome des enfants battus (« Battered Child Syndrome », Kemps et al., 1962), nous avons assisté à une prise en compte de plus en plus importante du problème de la

maltraitance des enfants comme objet d'inquiétude publique dans les pays développés. Ce genre de préoccupation est certes apparue plus rapidement dans les pays anglophones tels que le Royaume-Uni et l'Australie, mais on constate dans les études par pays qu'une prise de conscience de la prévalence de la maltraitance des enfants a, plus progressivement, influencé le développement de tous les systèmes de protection de l'enfance. Comme nous l'avons vu, l'introduction de l'idée que certains parents maltraitent leurs enfants et négligent leur bien-être n'est bien sûr pas nouvelle. Cependant, d'une certaine façon, les changements dans la manière dont on explique la maltraitance des enfants (présentés plus bas) ne reflètent pas seulement les théories modernes de causalité mais également les tentatives visant à faire face à la dimension du phénomène. Il est devenu évident que, contrairement à ce que l'on croyait dans les années 1960, la prévalence de la violence physique à l'égard des enfants n'est pas limitée à un petit groupe de parents présentant des troubles pathologiques, mais se manifeste également dans les familles « ordinaires ». On constate des trajectoires similaires dans la manière dont les pays développent cette compréhension de l'abus sexuel et, plus tard, de la violence psychologique et de la négligence, cette dernière étant particulièrement influencée par les évolutions dans ce que l'on considère comme la « bonne façon d'éduquer les enfants», détaillée dans les théories modernes de développement de l'enfant.

L'émergence d'une reconnaissance de la maltraitance des enfants en tant que grand problème social mais aussi comme phénomène distinctif a, à son tour, engendré de nouveaux modèles explicatifs théoriques sur lesquels baser le développement des systèmes de protection de l'enfance. Ces modèles sont présents dans les études de cas par pays et nous pouvons échelonner leur développement en six phases :

Phase 1 – Les enfants ont besoin d'être protégés contre la corruption morale, l'abandon ou contre leur propre comportement asocial. Ces idées étaient particulièrement manifestes dans les premiers temps du développement des systèmes de protection de l'enfance. Elles continuent d'être exprimées aujourd'hui, notamment à travers l'élan visant à sauver les enfants victimes de la traite des êtres humains. C'est également un élément des pays développés : les débuts des systèmes de protection de l'enfance sont axés sur l'aide aux enfants dont la présence est visible dans les rues et dont les besoins évidents suscitent une réponse. Les actions sociales face à cette situation comprennent notamment la création d'institutions de prise en charge où les enfants peuvent être placés afin de ne plus vivre dans la rue. Ces établissements dispensent un enseignement moral et pratique permettant aux enfants de participer et de contribuer à la société une fois adultes, principalement à travers le travail.

Phase 2 – Les enfants ont besoin d'être protégés de leurs parents ou d'autres personnes présentant des troubles psychopathologiques. Ce genre d'idée prend de l'importance quand les sociétés reconnaissent que les enfants sont en danger dans le milieu familial mais aussi en dehors de celui-ci. Cependant, la population enfantine considérée en danger est relativement réduite car les parents présentant des troubles psychopathologiques sont généralement rares dans la population

globale. Cette théorie est couramment employée pour expliquer les abus sexuels sur les enfants causés par la psychopathologie de l'auteur des violences. Les interventions sont fondées sur une évaluation des risques et une concentration sur trois aspects : traitement médical pour les auteurs, services thérapeutiques pour les enfants et suivi des familles dans lesquelles les enfants demeurent sous l'autorité de leurs parents.

Phase 3 – Les enfants et les familles ont besoin d'être protégés contre les effets néfastes des inégalités dans la société. Les violences physiques et la négligence à l'égard des enfants sont associées à la pauvreté de la famille. La pauvreté est souvent le produit des inégalités structurelles dans la société. Au niveau familial, la pauvreté peut entraîner un facteur de stress externe s'ajoutant aux problèmes existants, créant des conditions menant à la violence physique et à la négligence à l'égard des enfants. Ces théories sont ancrées dans les politiques plus ou moins présentes dans les États sociaux modernes, où la protection sociale des citoyens est basée sur une redistribution des ressources. Les liens entre la pauvreté et la maltraitance des enfants engendrent un impératif conduisant au développement de systèmes plus complexes de protection de l'enfant, systèmes qui ne comportent pas seulement des actions au niveau professionnel pour aider les familles à surmonter les effets de la pauvreté mais également au niveau gouvernemental, avec l'introduction de politiques destinées à résoudre le problème des inégalités structurelles et ainsi prévenir la souffrance des enfants.

Phase 4 – Protéger les enfants selon un modèle écologique. A divers égards, une notion écologique de ce qui nuit aux enfants vise à réunir les conceptions précédentes des causes et à les répartir sur un certain nombre de dimensions telles que la société au sens large, la communauté locale, ainsi que les caractéristiques familiales et individuelles. Les tenants de cette théorie développent l'idée d'une causalité systémique et soutiennent qu'il faut chercher à comprendre la violence à l'égard des enfants dans l'interaction complexe entre les différentes dimensions. Ce faisant, on peut situer les facteurs de risque et déterminer à quel niveau cibler les interventions. Cette théorie a beaucoup de succès actuellement car elle présente un modèle bien plus nuancé et moins idéologique, mettant en avant la nécessité d'une action efficace à entreprendre dans toutes les dimensions afin de garantir la protection des enfants.

Phase 5 – La protection de l'enfant comprise dans le cadre des droits de l'enfant. Depuis l'introduction de la Convention internationale des droits de l'enfant, on a de plus en plus tendance à voir l'intérêt de l'enfant comme étant séparé et parfois différent des droits des parents. Par conséquent, la manière dont les parents traitent leur enfant peut constituer une atteinte aux droits de l'enfant devant être prise séparément des droits des parents dans l'établissement de stratégies de protection de l'enfant. Cependant, la mise en œuvre de stratégies de protection de l'enfant au niveau gouvernemental a engendré des tensions au niveau des politiques. En effet, dans les cas où ces politiques étaient orientées vers les familles, il importe désormais de considérer séparément l'intérêt de l'enfant pouvant être différent de celui de la famille. Ce dilemme se manifeste également dans les relations entre les fa-

milles et les professionnels : l'opinion indépendante de l'enfant est de plus en plus prise en considération dans le processus décisionnel.

Phase 6 – La protection de l'enfant par la prévention à travers l'intervention précoce. Il faut remarquer que seul un modèle explicatif (phase 2) concerne essentiellement la maltraitance des enfants. La compréhension de l'étiologie de la maltraitance des enfants a rapidement évolué, conduisant à reconnaître qu'un grand nombre de personnes vivent dans des conditions médiocres une fois adultes car elles ont été confrontées à de multiples difficultés pendant leur enfance. Dans cette conception, l'idée de prévention inclut les enfants étant exposés au risque d'une maltraitance continue mais ne se limite pas à ce groupe. Des études ont révélé que certains facteurs de risque rendaient plus vulnérable à la maltraitance et pouvait conduire à de nombreux problèmes médicaux et sociaux, quel que soit le vécu (Anda et al., 2010). Les interventions préventives ciblent donc une population bien plus large ; dans ce cadre, les enfants exposés au risque d'être maltraités, ou l'ayant été, bénéficient d'interventions spécifiques.

Nous avons présenté ces phases comme une progression dans laquelle un modèle peut sembler en supplanter un autre mais cette illustration n'est pas tout à fait précise. Le développement d'une nouvelle phase ne prend pas forcément le pas sur la phase précédente. Au contraire, de nouvelles idées peuvent être intégrées dans les concepts existants, telles les notions complémentaires de droits et de prévention. On peut toutefois observer certaines interruptions et disparités dans les études de cas par pays. On le remarque bien au niveau de la phase deux, où l'influence des modèles de pathologie anglo-américains et leurs effets sur le développement des systèmes de protection de l'enfance concernant l'identification de la maltraitance et l'intervention dans la vie de famille sont bien moins marqués en Allemagne, en Suède ou en Finlande qu'en Australie ou au Royaume-Uni. Néanmoins, la question des abus sexuels sur les enfants a fourni un point de comparaison de ce phénomène entre les pays.

Étude de cas en Finlande « Les travailleurs sociaux ne définissent pas les problèmes de protection des enfants en fonction de la violence à l'égard des enfants. Si les violences ont lieu dans le cadre de la violence générale dans la famille ou du fait de problèmes des parents, tels que la toxicomanie, l'alcoolisme ou des problèmes de santé mentale par exemple, ces violences seront définies en tant que « conflits familiaux » ou « problème d'alcoolisme des parents » plutôt que violence à l'égard des enfants. De ce fait, l'enfant est rarement désigné comme le motif de l'intervention pour sa protection (Pösö 1997, p 151). Par contre, les abus sexuels représentent une exception dans ce contexte : ils sont considérés séparément des autres formes de violences et de problèmes sociaux. »

Tous les pays étudiés présentent les caractéristiques essentielles de l'État social dans lequel on estime que les gouvernements sont responsables de la protection sociale des citoyens (phase 3). Par ailleurs, malgré les variations dans les traditions sociales, on peut observer un consensus émergent à

l'égard des phases 4, 5 et 6 : des modèles écologiques globaux de causalité documentent le développement des interventions précoces et des stratégies de prévention destinées à une large population d'enfants ayant besoin de protection ; ce soutien est une question de droit plutôt que de contribution de la société. Après avoir retracé les évolutions historiques des systèmes de protection de l'enfance dans les cinq pays et répertorié les différentes phases de la théorie explicative, tournons-nous maintenant vers la gouvernance, les caractéristiques interdépendantes et les aspects des prestations de services des systèmes modernes de protection de l'enfant.

3.5 Caractéristiques de gouvernance des systèmes modernes de protection de l'enfant – Comparaison et recommandations

Dans l'ouvrage récent intitulé « Child Protection Systems : International Trends and Orientations » (Gilbert et al. 2011), les auteurs passent en revue les systèmes modernes de protection de l'enfant dans un certain nombre de pays européens et nord-américains, notant l'émergence d'une « orientation axée sur l'enfant ». Ils expliquent qu'elle n'est pas limitée aux seules préoccupations à l'égard des nuisances et des violences ; au contraire, l'objet de l'attention dans le cadre de cette orientation est le développement et le bien-être général de l'enfant (p. 252). Nous avons pu observer, à la phase 2 du développement des systèmes de protection de l'enfance dans les pays étudiés, surtout en Australie et au Royaume-Uni, que les perspectives étroites définissant le besoin de protection d'un enfant se limitaient à ceux qui étaient susceptibles d'être victimes de maltraitance. Toutefois, ce n'est plus le cas. L'un des principes essentiels consiste à ce qu'une notion plus large de la protection de l'enfant serve de base aux législations, politiques et pratiques.

Étude de cas en Finlande « La seconde loi en matière de protection des enfants date de 1983 et est entrée en vigueur en 1984. Comme Tarja Pösö l'observe dans son ouvrage, la période s'étendant de 1970 à 1994 a été une époque de grands changements dans la protection de l'enfant, l'étape importante étant la loi sur la protection de l'enfant de 1983. Cette législation n'a pas seulement permis de recatégoriser la nécessité d'intervention pour la protection de l'enfant, elle a également donné lieu à une nouvelle approche de ce sujet. Un enfant a le droit à un environnement sûr et stimulant et à un développement dans l'harmonie et l'équilibre. Un enfant a un droit particulier à la protection (Pösö, 1997, p 154). La deuxième loi sur la protection de l'enfant a donné la priorité aux mesures préventives et a adopté une conception plus large de ce domaine. L'orientation et les débats à ce sujet ont commencé à changer, passant d'une tendance à placer les enfants hors de leur famille à une position plutôt axée sur la prévention et le soutien aux familles. »

3.5.1 La protection de l'enfant, qu'est-ce que c'est?

La protection de l'enfant consiste à protéger les enfants (jusqu'à 18 ans dans la plupart des pays) contre un ensemble de problèmes ayant des effets néfastes sur leur bien-être. Ces problèmes sont notamment la violence physique, sexuelle ou psychologique, la négligence, mais aussi la pauvreté, la vie dans des quartiers de grand dénuement, dans des familles présentant des caractéristiques augmentant les risques futurs pour la santé et la condition de l'enfant. Les définitions précises varient en fonction des pays mais d'une manière générale, il existe un consensus concernant les enfants ayant besoin de protection. Quel est le rôle des gouvernements dans la création de lois et la mise en œuvre de politiques employant ce genre de définition élargie ?

3.5.2 Le rôle des gouvernements centraux/fédéraux – Législation et politiques

Comme nous l'avons déjà observé, l'une des caractéristiques des systèmes modernes de protection de l'enfant est que l'État joue un rôle dans la protection sociale des citoyens les plus vulnérables. Dans la plupart des pays analysés, l'État interprète son rôle de deux manières : tout d'abord, il considère que les familles ont le droit à des services de soutien, universels, ciblés ou spécifiques en fonction de la nature des besoins. Ensuite, les services spécifiques peuvent prendre la forme d'interventions coercitives (parfois désignées comme imposées), sur le motif que les droits d'un enfant à la protection supplantent les droits de la famille à la vie privée dans les situations de risque immédiat pour l'enfant. En Australie, en Allemagne et au Royaume-Uni, l'État bénéficie d'une grande autonomie en matière de législation pour la protection des enfants et de mise en application des politiques ; par contre, ce n'est pas le cas dans les pays ayant une population moins importante, en Finlande ou en Suède par exemple. Un cadre national de gouvernance pour la protection de l'enfant doit toutefois impérativement exister afin d'établir des directives claires de responsabilité et de veiller à ce que les développements au sein des États soient conformes aux accords nationaux, notamment en raison des obligations internationales en matière de droits de l'enfant (voir recommandation n°1).

Comme il apparaîtra dans les études de cas par pays (voir annexes), la comparaison des législations est complexe étant donné les variations dans les structures de gouvernance et de justice propres à chaque pays, à l'image de leurs traditions et histoires respectives. Les exigences fondamentales envers les législateurs consistent en la création de limites encadrant l'intervention obligatoire de l'État dans la famille, avec une description claire des droits de la famille et de l'enfant, des responsabilités de l'État envers la famille (généralement sous la forme de prestations de service) et de la manière de concrétiser celles-ci. Il est difficile d'affirmer l'existence d'un niveau idéal auquel atteindre l'équilibre. Les lois guident les magistrats et les professionnels de la même manière à cet égard, mais il incombe aux professionnels d'interpréter les lois en fonction des cas qu'ils estiment être du ressort du tribunal, et il incombe aux tribunaux d'établir une jurisprudence sur la façon d'interpréter ces lois. Les conditions essentielles, en termes d'équité et de justice, sont d'assurer une cohérence et d'éviter la fragmentation. Cela signifie que tous les enfants du pays, quelle que soit leur situation géographique, doivent bénéficier des même niveaux de services et des mêmes décisions concernant leur protection.

La seule façon d'atteindre cet objectif est de mettre en place un système national de protection de l'enfant ou au moins une approche nationale des questions de protection de l'enfant avec des principes convenus et des standards élémentaires. Dans ce cadre, il importe de veiller à ce que les lois locales soient conformes aux lois nationales et que les prestations de services soient semblables dans tout le pays.

Nous savons qu'en Suisse, la Commission fédérale pour l’enfance et la jeunesse (CFEJ) et Conférence des délégués cantonaux à la jeunesse ont mis en évidence le manque de coordination et de coopération entre les cantons et la Confédération en matière de services, d'où l'absence de stratégie globale et de structure de gouvernance. Gärtner et Vollmer notent que selon une étude réalisée en 2003, environ la moitié seulement des cantons considèrent que la politique de l'enfance et de la jeunesse englobe à la fois la protection et le soutien aux jeunes. Un certain nombre de cantons ont d'ailleurs développé des politiques séparées et indépendantes sur la protection de l'enfance et de la jeunesse d'une part et sur l'encouragement des enfants et des jeunes d'autre part, se concentrant soit sur l'un soit sur l'autre. (2008, p. 4). Ces différences illustrent un phénomène plus répandu qui apparaît nettement dans nos études de cas : la tendance des politiques de protection de l'enfant à se concentrer sur les cas les plus problématiques nécessitant une intervention imposée et spécialisée par l'État afin de protéger immédiatement l'enfant (orientation vers la protection de l'enfant), ou à fournir un ensemble de services aux niveaux universel et ciblé représentant une orientation vers le service aux familles. Nous estimons que ces différences d'orientation sont en réalité inutiles. La plupart des enfants et des familles bénéficieront de services universels et ciblés visant à améliorer le bien-être de l'enfant et à le protéger des effets des situations difficiles. Néanmoins, un service solide et efficace, spécialisé dans la protection de l'enfant, est également nécessaire afin de garantir que les enfants les plus vulnérables dans la société reçoivent une protection immédiate et efficace. L'une des fonctions essentielles du gouvernement central consiste à créer un ensemble équilibré de lois et de politiques qui, bien que sujettes à variations locales, reflètent des normes et des principes documentés et consensuels, avec des lignes de gouvernance et d'autorité bien définies. Nos recommandations reflètent donc ces normes et idéaux.

Étude de cas en Australie « Le cadre national 2009-2010 pour la protection de l'enfant en Australie (*National Framework for Protecting Australia's Children* - Council of Australian Governments, 2009a) fut créé suite aux actions de plaidoyer des organisations non gouvernementales, des associations à but non lucratif et des universitaires. Cependant, le modèle de gouvernance destiné à sa mise en application tourne une nouvelle page dans la relation entre le gouvernement et les organisations non gouvernementales en Australie.

Ce cadre de travail s'étendant sur douze années pose un ordre du jour partagé pour le changement, afin d'améliorer la sécurité et le bien-être des enfants en Australie, sous la direction de l'État mais avec des objectifs communs et convenus. Le cadre national australien est essentiellement le fruit du travail des secteurs non gouvernementaux à but non lucratif réalisé en partenariat avec des universitaires spécialisés dans la protection de l'enfant. Pendant plusieurs années, ils ont affirmé que la maltraitance et la négligence envers les enfants étaient un problème grave d'envergure nationale, insistant sur le fait qu'il incombe aux pouvoirs publics d'y remédier par le biais d'une action coordonnée permettant de créer des standards élémentaires à l'échelle du pays et de surmonter des problèmes apparemment impossibles à résoudre... Le cadre national australien est dirigé par le National Framework Implementation Working Group (groupe de travail sur la mise en application du cadre national), composé de représentants du gouvernement du Commonwealth, de représentants de chacun des huit états et territoires, et de huit représentants de la Coalition of Organisations Committed to the Safety and Wellbeing of Australia's Children.

L'une des caractéristiques centrales des systèmes modernes de protection de l'enfant est qu'ils exigent des directions bien définies en matière de gouvernance et de responsabilité. Par ailleurs, comme le montrent les pires cas rapportés par les enquêtes publiques sur les décès d'enfants, le manque de lignes directrices claires de responsabilité aux niveaux interprofessionnels sont à l'image de la situation au niveau gouvernemental. L'étude de cas en Allemagne présente la relation entre le gouvernement fédéral et les *Länder*. Le gouvernement fédéral a le devoir de veiller à ce que les conditions de vie dans toutes les régions d'Allemagne soient comparables, ce qui justifie l'existence de lois nationales en matière de protection de l'enfant. Les *Länder* peuvent édicter des lois supplémentaires destinées à protéger les enfants et complétant les lois nationales. Nous voyons que dans la Constitution fédérale de la Confédération suisse sont présents trois principes : les compétences de l'État fédéral se limitent aux tâches « qui excèdent les possibilités des cantons ou qui nécessitent une réglementation uniforme par la Confédération » (article 43*a*) ; en matière d'attribution et d'accomplissement des tâches étatiques, « les prestations de base doivent être accessibles à tous dans une mesure comparable » (article 43*a*4) ; la Confédération « respecte l'autonomie des cantons » (article 47 1) et « laisse aux cantons suffisamment de tâches propres et respecte leur autonomie d'organisation » (article 47 2). Ces principes ne sont pas incompatibles avec une bonne gouvernance en matière de protection de l'enfant mais ils nécessitent un pouvoir d'unification afin de donner lieu à un accord et d'en assurer le respect.

3.5.3 Recommandation n°1 - Comité national permanent

Nous recommandons la création d'un comité national permanent, représentant tous les gouvernements cantonaux, afin de passer en revue les lois et politiques fédérales et cantonales suisses, avec l'objectif de produire un cadre national pour la protection de l'enfant (similaire au cadre national pour la protection des enfants en Australie, dont les structures étatiques et fédérales sont comparables). Cette mesure aurait pour effet de former un ensemble de principes universels visant à orienter les législations et services cantonaux. Afin de fournir des informations nécessaires au travail du comité permanent, les cantons devraient revoir leurs prestations de services actuelles de manière globale puis ciblée (voir recommandation n°9) afin de garantir une continuité dans les prestations.

3.5.4 Responsabilités et rôles respectifs des autorités et prestataires de services non gouvernementaux et privés à l'échelle locale

Comme nous le verrons dans les études de cas par pays, il n'y a pas de manière « idéale » d'entretenir les relations entre les autorités locales et les prestataires non gouvernementaux et privés. Toutefois, dans tous les pays analysés, quelles que soient leurs structures gouvernementales et juridiques, la protection des enfants exposés au risque d'être maltraités est la responsabilité première de l'État. Cela n'est peut-être pas surprenant étant donné que la responsabilité de la protection des citoyens tend à faire partie des dispositions de l'État social. A l'exception de l'Allemagne, dans tous les autres pays, les services spécialisés de protection de l'enfant s'occupant des enfants maltraités sont principalement fournis par l'État. Dans la plupart des pays, nous avons constaté un déplacement de cet équilibre au cours du temps, les organisations non gouvernementales et privées engageant et fournissant la majorité des services aux enfants et aux familles dans les développements initiaux des systèmes de protection de l'enfance. Au niveau des prestations de services, un certain nombre de modèles pourraient être judicieusement adoptés en Suisse (nous développerons notre commentaire à ce sujet dans les sections suivantes) ; cependant, en ce qui concerne la gouvernance, il est important d'établir clairement des lignes d'autorité et de responsabilité.

Reflétant les principes dont on anticipe l'institution dans un cadre national pour la protection de l'enfant – et conformément à l'article 5a2 de la Constitution fédérale selon lequel « l'attribution et l' accomplissement des tâches étatiques se fondent sur le principe de subsidiarité » – les cantons devraient être principalement responsables des services de protection des enfants en danger de maltraitance et déléguer la prestation de services aux organisations non gouvernementales et privées de manière adéquate. Ces dispositions devraient être consolidées par la présence de commissions de l'enfance dans chaque canton, représentant toutes ces organisations. De la sorte, les autorités cantonales demeureraient juridiquement responsables des services de protection de l'enfant mais la prestation pourrait être assurée par des organisations non gouvernementales et privées sous contrat. Cela ne vise nullement à ébranler les idéaux de partenariat mais bien à attribuer des rôles clairement définis au sein des structures d'autorité et de responsabilité. On peut citer ici un modèle illustrant la manière dont les conditions décrites ci-dessus pourraient être mises en application : au Royaume-Uni, les Safe-

guarding Boards réunissent tous les prestataires gouvernementaux, non gouvernementaux et privés afin d'identifier les types de services nécessaires selon les domaines et de convenir d'une stratégie de prestation selon les besoins de la population locale.

Étude de cas au Royaume-Uni « La législation et les politiques devraient aller dans le sens d'une collaboration des prestataires et des professionnels à tous les égards. Dans notre analyse de la situation au Royaume-Uni, on le constate à trois niveaux. Tout d'abord, on voit la nécessité de relier et de coordonner les prestations à l'échelon local entre toutes les agences (étatiques, bénévoles et privées) impliquées dans les services aux enfants. Ensuite, les Safeguarding Boards aident à établir un plan des besoins locaux mais également à optimiser le potentiel d'efficacité des prestations. »

3.5.5 Recommandation n°2 - Commissions de l'enfance

Nous recommandons de créer une « commission de l'enfance » dans chaque canton, composée de toutes les organisations et prestataires de services non gouvernementaux et privés du canton. Ces commissions mettraient en œuvre les politiques visant à atteindre les objectifs du cadre national pour la protection de l'enfant, mais elles auraient également une série de responsabilités en matière de développement de protocoles de communication entre les agences et les services d'audit au sein du canton, d'un point de vue global, ciblé et spécialisé afin d'identifier et de combler les lacunes dans les prestations fournies. Nous prévoyons que certains services hautement spécialisés seront nécessaires, nécessitant notamment un soutien et des arrangements de prise en charge intercantonaux, par exemple en matière de services thérapeutiques spécialisés pour les enfants victimes d'abus sexuels. Dans ces cas, des mesures spéciales seraient nécessaires afin d'établir des indications claires de gouvernance et de responsabilité qui impliqueraient des modalités de coopération entre les commissions de l'enfance et les instances cantonales.

3.6 Caractéristiques interdépendantes des systèmes modernes de protection de l'enfant – Comparaison et recommandations

L'une des particularités essentielles des systèmes de protection de l'enfance, apparaissant dans les études par pays et dans la littérature spécialisée, réside dans la nécessité d'avoir des éléments verticaux de gouvernance et des lignes de responsabilité, mais aussi dans le fait qu'une importance égale soit accordée aux éléments horizontaux. Ces caractéristiques horizontales peuvent être décrites au mieux comme une série de relations nécessaires pour assurer la planification, la prestation et l'évaluation des services. Un point important doit être signalé ici : les accords formels entre les partenaires à tous les niveaux du système de protection de l'enfance ne suffisent pas. Un accord écrit peut impressionner mais sans entretenir les relations entre les partenaires en matière d'objectifs communs et de respect mutuel, ces dispositions peuvent se révéler inefficaces voire contre-productives. Des relations de travail interdisciplinaires médiocres peuvent être nuisibles, même aux systèmes de protection de

l'enfance les plus méthodiques, et mener à des résultats tragiques, comme on le constate à travers les enquêtes sur les décès d'enfants dans un certain nombre de rapports nationaux.

Étude de cas en Allemagne « Les autorités de protection de l'enfance et de la jeunesse ne peuvent assurer seules la détection et la protection des enfants maltraités. C'est pourquoi il est nécessaire de tisser des liens de coopération avec les autres professionnels (les pédiatres par exemple) et les membres de la famille de l'enfant. Des études de cas graves en Allemagne et dans d'autres pays ont montré qu'un manque de travail collaboratif peut avoir des conséquences néfastes pour les enfants en danger (Fegert et al. 2010). Par ailleurs, les projets pratiques ont révélé que les professionnels participant à des tables rondes trouvent celles-ci utiles à leur travail avec les familles (voir par exemple Kindler 2011). »

3.6.1 Relations entre le gouvernement central/fédéral et les autorités régionales

Nous avons déjà évoqué la nécessité d'une relation formelle entre la Confédération et les cantons en matière de création d'un comité permanent pour la protection de l'enfant, avec l'objectif d'établir un cadre national correspondant. Toutefois, nombreux sont les accords et les rapports qui prennent la poussière sur les étagères et que l'on oublie. Nous estimons que les impératifs scientifique, économique, juridique et moral détaillés plus haut entraînent une pression irrésistible pour la création et la mise en application efficace d'un système réformé de protection de l'enfant. Il vaut généralement mieux ne pas se laisser aller à l'utilisation d'arguments émotionnels dans le contexte d'un rapport comme celui-ci mais permettons-nous un seul commentaire de la sorte. Les enfants sont la richesse future des nations ; la société a la responsabilité particulière de protéger les plus faibles et les plus vulnérables d'entre eux. Il importe de faire de cette responsabilité une priorité ; cela implique d'ôter tout obstacle aux partenariats à tous les niveaux afin de veiller à ce que les enfants soient protégés.

3.6.2 Relations entre les gouvernements fédéraux et régionaux et les prestataires bénévoles et privés

L'exercice des responsabilités en matière de développement d'un programme national de protection de l'enfant par la Confédération et le travail préparatoire correspondant ont été confiés au Partenariat Public Privé pour la protection de l'enfant. Cela représente un élément unique dans le contexte suisse et rend difficiles les comparaisons avec nos études de cas par pays. La principale différence est la suivante : dans les cinq pays, les relations entre les gouvernements régionaux et les prestataires bénévoles et privés sont régies par un ensemble de lois et de politiques édictées par un gouvernement élu. Ces organisations cherchent à exercer une influence sur les lois et politiques à travers les représentants élus, mais elles doivent travailler en conformité avec ces lois une fois celles-ci établies. La disposition actuelle peut éventuellement poser des problèmes de conflit d'intérêt ; en effet, dans le

PPP, les personnes en charge du développement du programme national de protection de l'enfant peuvent également participer à la fourniture de services dans ce cadre.

En tant qu'équipe de recherche internationale, nous n'avons aucun intérêt particulier dans le système suisse. Par conséquent, toute recommandation que nous formulons à l'égard de la Suisse est issue de notre expérience et de nos connaissances des systèmes de protection de l’enfance dans les autres pays. Comme nous l'avons déjà observé, il n'existe pas de système idéal de protection de l'enfant applicable de manière universelle. Cependant, nos recommandations au sujet des dispositions de gouvernance forment une base pour le développement des relations entre les autorités fédérales et cantonales et les prestataires bénévoles et privés. Dans les pays que nous avons étudiés, la façon normative d'établir des liens entre les autorités et les organisations bénévoles et privées, aux niveaux national, régional ou local, passe par des accords contractuels comprenant un paiement en fonction de la quantité et de la qualité des services demandés, mais également selon les résultats obtenus.

Dans la plupart des pays analysés, l'État fournit la majorité des services spécialisés de protection de l'enfant et les organisations bénévoles et privées se chargent, elles, de fournir un ensemble de services supplémentaires de soutien et de thérapie dans tous les aspects de la protection de l'enfant, c'est-à-dire aux niveaux universel, ciblé et spécialisé. Un pays fait exception dans ce cadre, il s'agit de l'Allemagne, où tous les services sont externalisés et assurés par des prestataires non gouvernementaux et privés. Dans la mesure où ils sont planifiés et fournis dans des structures bien définies de responsabilité et de gouvernance, les deux modèles peuvent être considérés comme efficaces, sauf si les travailleurs sociaux employés par l'État doivent travailler au niveau spécialisé et évaluer les familles dans lesquelles a lieu la maltraitance et/où dans lesquelles il est urgent d'agir, y compris par le biais d'un placement de l'enfant. Il ressort de nos études de cas, reflétant aussi bien les dispositions dans d'autres pays du monde, que les travailleurs sociaux sont devenus les principaux professionnels œuvrant auprès des familles et des enfants au niveau spécialisé, dans les situations où les enfants les plus vulnérables doivent de toute évidence être protégés d'urgence. Il n'est pas inéluctable que les travailleurs sociaux représentent la principale profession dans ce domaine mais il s'agit de la norme. L'important ici est qu'une profession soit clairement mandatée pour diriger le travail dans ce domaine, au moins pour établir des directives claires de responsabilité et assurer une confiance du public. Ces travailleurs sociaux incarnent les pouvoirs formels de l'État dans les circonstances les plus graves et il est bien qu'ils soient responsables envers l'État. Nous ne souhaitons certes pas prescrire la manière de mettre cela en place au niveau des cantons, mais toute disposition – concernant les personnes employées par des agences extérieures qui sont responsables de l'investigation et de l'évaluation de la maltraitance de l'enfant – doit être inscrite dans un cadre bien défini de gouvernance et de responsabilité.

3.6.3 Recommandation n°3 - Travailleurs sociaux

Chaque canton devrait disposer d'équipes de travailleurs sociaux qualifiés assumant les rôles relatifs à la protection de l'enfant au niveau spécialisé et correspondant aux exigences fixées par le Code civil

suisse, articles 307 à 317. Ces travailleurs sociaux devraient être principalement responsables de l'évaluation des familles dans lesquelles sont signalés des cas de maltraitance et/ou pour lesquelles des services thérapeutiques ou préventifs s'avèrent nécessaires. Ils devraient aussi être responsables de l'organisation de réunions de planification et de suivi de cas individuel avec les autres professionnels afin d'élaborer des plans d'intervention et de prestation (voir recommandation n°4).

3.6.4 Relation entre les professionnels

Il apparaît clairement dans les rapports par pays que l'entretien de bonnes relations de travail entre les professionnels est absolument indispensable à l’efficacité de la planification, de la fourniture et du suivi des services. Un aspect convaincant des enquêtes sur les décès d'enfants connus des services de protection est le fait que les professionnels détiennent souvent des éléments d'information qui ne signifient peut-être pas grand chose individuellement mais qui, une fois rassemblés avec les autres éléments connus d'autres professionnels, peuvent contribuer à donner une image globale des dangers menaçant un enfant et donc des besoins de protection correspondants. Pourtant, les professionnels n'ont pas encore la confiance nécessaire au partage de ce genre d'information s'ils ne connaissent pas les autres professionnels impliqués.

Pour bâtir des relations interprofessionnelles, il faut deux choses : la présence de structures formelles permettant aux professionnels de se rencontrer, d'échanger des idées et des prises de décisions par rapport à des cas spécifiques, et de partager des compétences professionnelles, afin d'assurer un respect mutuel et d’établir une relation de confiance. La mise en place d'un système de réunions pluridisciplinaires de planification de cas individualisée leur donnerait la possibilité de tisser des relations professionnelles de façon naturelle et profitable, et ce dans l'intérêt des enfants et des familles.

Étude de cas au Royaume-Uni « Les enquêtes réalisées par le gouvernement sur les décès d'enfants n'ont cessé de mettre en évidence la nécessité de partage des informations concernant l’enfant entre les professionnels le connaissant, afin de donner une « image réaliste » de la situation de l'enfant. Les réunions de suivi des cas permettent ce partage d'informations entre les professionnels et donnent lieu à des prises de décisions basées sur les meilleures informations possibles. La bonne pratique consiste à ce que les parents assistent à ces réunions afin de connaître les préoccupations des professionnels et d'y répondre. Ces réunions de suivi des cas visent à déterminer si l'enfant en question est exposé au risque permanent de maltraitance et, si tel est le cas, à mettre en place un plan de protection de l'enfant afin de garantir sa sécurité future et de réduire les risques. Cela comprend généralement un ensemble de services à l'enfant et à sa famille. Une fois le plan de protection de l'enfant lancé, le cas est régulièrement examiné par les membres de la réunion jusqu'à ce que l'on estime que l'enfant n'est plus exposé au risque de maltraitance. »

3.6.5 Recommandation n°4 - Réunions de planification individualisée

Un système de réunions pluridisciplinaires de planification et suivi individualisé de cas devrait être mis en place dans chaque canton. Reflétant certains points positifs du système de réunion par cas en pratique au Royaume-Uni, ces réunions devraient rassembler tous les professionnels œuvrant avec les familles dans lesquelles il existe un problème de protection de l'enfant. Pour adopter les meilleures pratiques internationales, de telles questions doivent être comprises au sens large, englobant aussi bien les situations où des risques immédiats existent pour l'enfant que des situations où l'enfant fait face à de telles difficultés que l'on peut déjà prévoir un résultat insuffisant. Dans les deux cas, le but doit être d'apporter un plan de soutien pluridisciplinaire dont l'efficacité en matière de protection de l'enfant et l'amélioration de son bien-être pourraient être évaluées dans les réunions ultérieures. Il importe, dans l'intérêt supérieur de l'enfant, que le partage des informations ne soit pas entravé par des considérations liées à la confidentialité.

3.6.6 L'obligation de rapporter

A l'échelle internationale, on débat de la nécessité d'un processus de rapports obligatoires (loi obligeant les professionnels à faire un rapport aux travailleurs sociaux sur les cas de maltraitance présumée) dans les systèmes de protection de l'enfance. Un certain nombre de dispositions sont présentes dans les pays étudiés et remarquons ici qu'il n'y pas de modèle de préférence. Il n'existe pas de système de rapport obligatoire en Grande-Bretagne. Par contre, en Australie, on observe différents niveaux de rapport obligatoire dans chaque État. Dans ce contexte, le point d'entrée dans le système de protection de l'enfance réside dans une allégation de maltraitance de l'enfant. Or, les États ayant des lois sur l'obligation de rapporter, dont la portée est vaste et inclusive, voient leurs systèmes de prise en charge débordés de recommandations de cas de la part des autres professionnels. Cela vient principalement du fait que ces professionnels deviennent trop prudents, ne souhaitant retenir aucune information susceptible d'indiquer une éventuelle maltraitance. En effet, ils se protègent ainsi car ils risqueraient d'avoir des problèmes si un cas de maltraitance était détecté et que l'on découvrait qu'ils n'avaient pas transmis des informations essentielles. L'obligation de rapporter existe en Suède et en Finlande. Dans ces deux pays, cependant, on observe chez certains professionnels une réticence à s'adresser aux travailleurs sociaux gouvernementaux par volonté de respecter la confidentialité du client ; ils font parfois preuve de scepticisme envers l'efficacité des travailleurs sociaux dans le domaine de l'enfance. Remarquons ici que le système finlandais n'encourage pas à ce que les rapports soient rédigés avec le consentement de la personne concernée, alors que les services demeurent fournis par les professionnels en question. Une autre façon de traiter ce problème consiste à édicter des lois similaires à celles en vigueur en Allemagne, donnant le « droit » et non l'obligation aux professionnels de rapporter aux travailleurs sociaux gouvernementaux.

Il y a peut-être ici des questions de fonds plus complexes qui, si elles étaient abordées, annihileraient toute nécessité d'un système de rapport obligatoire. Il faut que les professionnels soient formés afin de reconnaître les signes et symptômes de la maltraitance des enfants, et qu'ils comprennent clairement

que les droits de la famille à la confidentialité sont supplantés par les droits de l'enfant à la protection. Ces professionnels font également partie d'un réseau qui pose les bases d'une responsabilité collective en matière de protection de l'enfant ; à cet égard, l'identification et les renvois vers les professionnels servent de fondation sur laquelle bâtir des relations interprofessionnelles efficaces ; l'objectif étant de veiller à ce que les enfants soient protégés grâce à un travail en collaboration et de réduire le besoin de loi de rapport obligatoire.

3.6.7 Recommandation n°5 - Enseignement professionnel en protection de l'enfant

En Suisse, nous avons la possibilité de bâtir un système efficace et interprofessionnel de protection de l'enfant. La création de lois peut certes être utile à cet effet dans certaines circonstances, mais nous recommandons toutefois de mettre l'accent sur un autre aspect : la création d'un système d'enseignement professionnel au sein des universités, où une formation unique en protection de l'enfant serait une composante obligatoire du cursus de premier cycle pour tous les professionnels travaillant avec les enfants ou les familles ; une formation pluridisciplinaire deviendrait alors obligatoire pour ces mêmes professionnels, au niveau du troisième cycle. De cette manière, tous les professionnels auraient des connaissances de base en matière de protection de l'enfant et verraient la protection efficace des enfants comme une responsabilité collective. Cela nécessiterait bien sûr que les universités élaborent du matériel d'enseignement pour les cours de licence et post-licence.

3.6.8 Le travail social

Pour arriver à l'objectif de création de services professionnels assurés par les travailleurs sociaux dans tout le pays, tel que nous le présentons dans la recommandation n°3, et garantir une crédibilité professionnelle aux travailleurs sociaux afin qu'ils bénéficient de la confiance de leurs pairs – condition nécessaire au travail interdisciplinaire évoqué dans la recommandation n°4 – il faut prendre en considération le statut de la profession de travailleur social. C'est un problème particulier à l'échelle internationale, notamment en ce qui concerne la formation et le statut des travailleurs sociaux. On sait que le travail social est une profession exigeante, bien plus que certaines autres professions à bien des égards ; de grandes qualités intellectuelles et psychologiques[107] sont nécessaires à la réalisation d'évaluations complexes et à la prise de décisions sur quelques uns des problèmes les plus controversés dans la société, tel que le moment de l'intervention de l'État pour placer un enfant hors de sa famille.

Il faut veiller à ce que les meilleurs étudiants entrent dans les cursus de travail social de l'enseignement supérieur et qu'ils reçoivent la meilleure formation possible, basée sur les standards internationaux. De même, il faut établir des structures de carrière bien définies pour les travailleurs sociaux, non seulement par des voies menant à la gestion mais également par la reconnaissance du développe-

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[107] Cf. Golenman, 1995.

ment d'expérience pratique (comme c'est le cas en médecine) avec une rétribution financière appropriée. Cela pourrait contribuer à attirer les meilleurs candidats vers les cursus de travail social. Certains pays exigent aussi que les travailleurs sociaux soient inscrits auprès d'un conseil central ou d'un corps professionnel pour exercer leur travail en tant que professionnels. Ces organes ont le pouvoir de supprimer leur inscription si un jury de pairs les juge « inaptes à l'exercice de leur profession ». Cela ne fait pas partie de nos recommandations pour le moment mais le développement naturel d'une profession nécessite généralement l'institution d'un organe de réglementation et cela vaudra la peine d'être considéré à l'avenir en Suisse. Dans les pays où ces dispositions n'existent pas, les indications issues d'analyses internationales suggèrent que la prise de décision concernant les enfants est changeante. On constate également que les travailleurs sociaux ne sont pas respectés par les autres professionnels, que les citoyens ne sont pas protégés lorsque des pratiques médiocres sont manifestes, et que les travailleurs sociaux ne restent pas longtemps dans la profession, ce qui engendre une grande instabilité du personnel dans ce domaine. Par conséquent, la recommandation suivante sert de base au développement des capacités des travailleurs sociaux en tant que professionnels afin qu'ils assument des fonctions de protection de l'enfant au niveau spécialisé et qu'ils tissent des relations étroites avec les autres professionnels, mais également avec les familles et les enfants.

3.6.9 Recommandation n°6 - Promotion du travail social

Les universités devraient veiller à ce que les procédures de sélection soient plus strictes, notamment en imposant des conditions d'entrées plus exigeantes telles que des notes d’entrées élevées et des entretiens, afin de sélectionner les meilleurs candidats possibles. Le cadre national de protection de l'enfant (voir recommandation n° 2) devrait comporter une stratégie de promotion du travail social en le présentant comme une carrière professionnelle exigeante, stimulante et gratifiante. Les cantons devraient veiller à offrir aux travailleurs sociaux des salaires et des structures de carrière représentant les exigences complexes et socialement importantes de leur profession.

3.6.10 Relations entre les professionnels et les familles

Comme nous le remarquons dans nos analyses par pays, la relation entre les professionnels et les familles a évolué au fil du temps, de manière différente selon les pays. Ces changements dans les relations entre l'État et la famille s'expriment dans la législation et la culture. Par exemple, malgré des traditions d'État social similaires dans tous les pays, on constate que la Suède, la Finlande et l'Allemagne adoptent plutôt une orientation vers le service à la famille. La Grande-Bretagne comme l'Australie présentent, elles, des caractéristiques orientées vers la protection de l'enfant et le service à la famille, ce dernier étant préféré dans l'opinion publique depuis longtemps et freinant donc le changement vers le premier. Les tenants d'une orientation vers le service à la famille considèrent que les problèmes dans la famille résultent de difficultés psychologiques ou sociales pouvant faire l'objet d'aide et de soutien. Les politiques de ce genre tendent à promouvoir les services à la famille et des efforts importants pour préserver l'unité de celle-ci. Par contraste, une orientation vers la protection de

l'enfant induit une mise en exergue de la culpabilité ou de l'insuffisance parentale en matière d'éducation de l'enfant ; par conséquent, dans le cadre d'une telle orientation, les services préventifs seront moins présents et la tendance sera plutôt à enquêter sur la base d'une maltraitance présumée à l'égard de l'enfant.

Il n'est guère surprenant que les styles d'intervention de l'État engendrés par des orientations différentes suscitent divers types de relation ; par exemple, en Australie et au Royaume-Uni, les familles ont souvent l'appréhension du contact avec les travailleurs sociaux alors que dans d'autres pays ce n'est pas autant le cas. Il importe toutefois de remarquer qu'une ambivalence apparaît dans l'attitude de certaines familles à l'égard des travailleurs sociaux dans les cultures orientées vers le service à la famille. En Finlande, où l'orientation vers le service à la famille est probablement la plus marquée, on a observé que des contradictions et des tensions demeurent entre le contrôle et le soutien. Les résultats des recherches concernant l'Australie et le Royaume-Uni suggèrent que, même dans les investigations de maltraitance des enfants, le fait de traiter les familles avec honnêteté et respect est un moyen efficace de bâtir des relations essentielles à la future protection des enfants. Cela s'accompagne toutefois d'un avertissement issu de la recherche : parfois, les travailleurs sociaux pensent qu'une relation de coopération avec la famille permettra de protéger efficacement l'enfant, une « règle d'optimisme » qui ne s'avère pas toujours dans la réalité. Le défi posé aux travailleurs sociaux œuvrant dans les pays orientés vers le service à la famille est d'éviter un optimisme similaire avec les familles dont les enfants sont maltraités, ayant toujours à l'esprit que les droits de la famille ne doivent en aucun cas supplanter ceux de l'enfant concerné. Comme nous le verrons, le travail auprès des familles et l'approche des limites de l'assistance et du contrôle nécessitent des compétences approfondies et une formation professionnelle solide ; les décisions doivent être basées sur la communication pluridisciplinaire. Il faudrait en outre que les travailleurs sociaux soient soutenus dans leur prise de décision par des collègues expérimentés.

Les familles ont besoin de pouvoir influencer les perspectives professionnelles aussi bien sur les risques que sur les besoins. Les enfants ont le droit à la protection, mais les familles ont aussi le droit à un soutien lorsque les circonstances montrent qu'elles ont besoin d'assistance supplémentaire de la part de l'État afin de répondre aux besoins de leur enfant. Ces droits doivent être exprimés et il est donc impératif de créer des mécanismes permettant aux familles d'être entendues.

3.6.11 Relations entre les professionnels et les enfants

Comme nous le verrons dans les rapports par pays, dans les débats actuels au sujet de la protection de l'enfant, il est de plus en plus question de distinguer, au besoin, les droits de l'enfant des droits des parents. Il importe d'agir en conséquence afin de garantir que l'opinion de l'enfant sera prise en compte indépendamment de celle de ses parents lors des évaluations et aux moments de prises de décisions importantes, en particulier lorsque le placement de l'enfant est envisagé, mais également dans les considérations en matière de placement lorsque l'enfant est pris en charge par l'État. Cet aspect remet en question les notions traditionnelles de l'expertise des professionnels mais également

l'idée que les parents savent toujours ce qui est bien pour leur enfant. Toutefois, la réalisation des droits des enfants dans la relation entre l'enfant et les professionnels n'est pas seulement une question d'application de protocoles d'évaluation ou parfois de prise de décision. Elle requiert souvent un changement culturel pour éviter les mesures purement symboliques.

Étude de cas en Allemagne « La participation a une solide base légale dans le système de protection de l'enfance et de la jeunesse, comprenant des procédures d'évaluation de la mise en danger de l'enfant. L'importance attribuée à la participation vient de l'idée que les dangers dans la famille ne peuvent être écartés que si les parents acceptent l'intervention et se sentent encouragés à coopérer. Même dans le cas d'un placement, il sera plus facile pour l'enfant de faire face à la situation si les parents ne s'opposent pas au placement (voir Strijker et al. 2009) ou si l'enfant ne se sent pas négligé dans la prise de décision. Certaines études corrélationnelles (bien que n'ayant pas d'échantillon concernant la protection de l'enfant) montrent que la participation engendre généralement de meilleurs résultats.

3.6.12 Recommandation n°7 - Participation de la famille

Nous recommandons que la Suisse se conforme aux standards internationaux de bonnes pratiques. Cela consisterait notamment à faire en sorte que les familles soient présentes et prennent part aux prises de décisions lors des réunions pluridisciplinaires de planification et de suivi individualisé de cas (voir recommandation n°4). Il importe de veiller à ce que parents et enfants (ces derniers pouvant avoir une perspective différente de celle de leurs parents) soient systématiquement impliqués dans tous les processus d'évaluation et de prise de décisions. Ce principe devrait ainsi être présent dans tous les outils de conseil et d'évaluation destinés aux travailleurs sociaux et autres professionnels (voir recommandations n°9 et 10). Lorsque des cas de tutelle sont considérés, des droits particuliers de représentation et des procédures d'appel devraient être normalisées dans le cadre de travail suggéré pour la protection de l'enfant en Suisse.

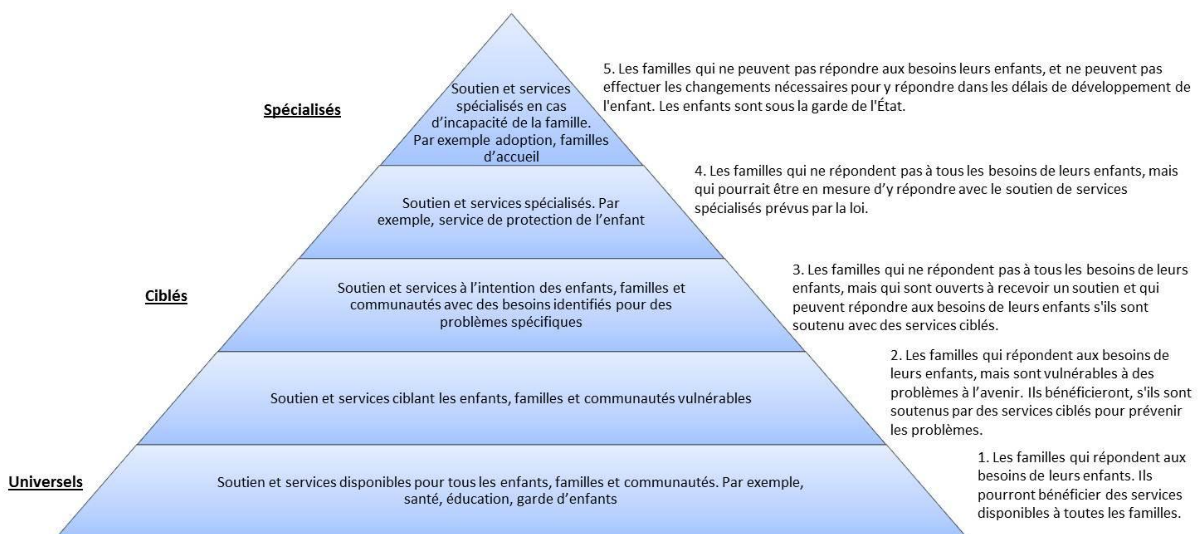
3.7 Éléments de prestations de services dans les systèmes modernes de protection de l'enfant – Comparaison et recommandations

Les lois et politiques représentent des bases sur lesquelles fonder les relations caractérisant les systèmes modernes de protection de l'enfant ; la finalisation de ces systèmes nécessite un certain nombre de développements au niveau de la prestation de service. Ceux-ci sont très variés, allant de la conceptualisation des pratiques – à travers un ensemble de prestations reflétant les différents besoins de la famille – aux outils pratiques nécessaires aux travailleurs sociaux pour inclure des méthodes

d'évaluation et d'intervention, dont l'efficacité peut être estimée en fonction des résultats et mesures correspondantes pour les enfants.

3.7.1 Une continuité dans la prestation de services

Lorsque l'on se conforme aux doubles objectifs des systèmes modernes de protection de l'enfant et que l'on répond aux besoins à la fois d'un groupe restreint d'enfants maltraités et d'un groupe plus étendu d'enfants susceptibles d'avoir un avenir difficile car exposés à de nombreux problèmes, il faut que les systèmes soient « reliés » afin d'être représentatifs des différents niveaux de fourniture de service en fonction des différents besoins. Il est plus aisé de comprendre ces systèmes lorsqu'ils sont représentés par un diagramme. Deux des « triangles » de l'ensemble de services issus des rapports australien et britannique sont associés dans le graphique 24, illustrant à la fois le besoin croissant d'intervention de l'État quand les familles ne peuvent pas bénéficier des services, et les types de services fournis aux niveau universel, ciblé et spécialisé.



Graphique 24 : Des services universels aux services spécialisés : conditions pour une intervention des autorités (Bromfield, 2011)

Ce modèle se base principalement sur l'idée que l'État ne devrait imposer son intervention dans la famille que quand les risques de maltraitance deviennent si grands que cette mesure est nécessaire ; dans la plupart des cas, on peut éviter une escalade des problèmes en fournissant un ensemble planifié de services, assurés aussi bien par l'État que par les prestataires bénévoles, du niveau universel au niveau spécialisé en passant par le niveau ciblé. C'est ce que l'on appelle parfois le « modèle de santé publique » ; il est appliqué de manière plus ou moins approfondie dans les cinq pays analysés dans notre rapport. Ce modèle se fonde principalement sur deux ensembles de principes interdépendants représentés dans les phases 5 et 6 du développement des systèmes de protection de l'enfance : les prestations de services précoces répondent utilement aux besoins des familles ; cependant, ces services ne doivent pas être une question de contribution de la société mais de droit de l'enfant. Tous les pays ont essayé ou essaient actuellement d'arriver à une combinaison de services et

d'assistance adaptés aux différents besoins. Lorsque l'on développe ces services, le plus important est de commencer avec les besoins évalués et d'utiliser cela comme base de planification des prestations.

Étude de cas en Australie « Les approches de santé publique issues du domaine des maladies pouvant être prévenues mettent fortement l'accent sur la promotion de la santé et sur la prévention en la matière, les interventions étant de plus en plus intensives et ciblant des risques identifiés (Baum, 1998; Garrison, 2005). Une telle approche est adoptée lorsqu'un problème que l'on peut éviter est fréquent et grave, et qu'il a des effets néfastes à long terme sur les personnes et les populations. Généralement constituées de trois niveaux d'intervention (primaire, secondaire, tertiaire), les approches de santé publique comprennent une série de stratégies déterminées par l'objectif du travail de prévention. Appliquée à la maltraitance et à la négligence à l'égard des enfants, une approche de santé publique pourrait comprendre :
- une assistance et des services universels à la disposition de tous les enfants et familles pour améliorer le bien-être des enfants ; une assistance et des services ciblés, destinés aux enfants et familles vulnérables (par exemple les très jeunes parents) afin de prévenir les éventuels problèmes ;
un soutien et des services aux familles ayant certains problèmes (par exemple les parents alcooliques ou toxicomanes) et ne pourvoyant pas aux besoins des enfants, mais étant disposées à demander de l'aide aux services concernés ;
- des services juridiques de protection de l'enfant pour les familles dans lesquelles les enfants sont victimes de violence et de négligence graves (par ex. des abus sexuels, des violences physiques graves, une négligence criminelle) ou qui ne pourvoient pas aux besoins de l'enfant et qui ne sont pas disposées à faire appel aux services d'assistance ; et enfin des services de prise en charge hors de la famille pour les enfants ne pouvant pas rester avec leurs parents (Arney & Bromfield, en relecture). »

3.7.2 Recommandation 8 - État des lieux des services

La mise en place d'un ensemble cohérent de services destinés aux enfants nécessite d'effectuer un état des lieux afin de fournir une description des services déjà disponibles aux niveaux universel, ciblé et spécialisé, ainsi que leur localisation à travers la Suisse. Cela fournirait une base d'analyse des besoins à l'échelle cantonale et permettrait ainsi d'identifier où se situent les lacunes dans les services, et donc de prendre les mesures nécessaires pour mettre en place des services selon les priorités documentées par le travail des commissions de l'enfance (voir recommandation n°2). Ces informations pourraient ensuite être rassemblées au niveau national afin de guider le développement du cadre national pour la protection de l'enfant (voir recommandation n°1).

3.7.3 Élaboration de lignes directrices

Que ce soit au niveau fédéral ou cantonal, les lois et politiques procurent un cadre nécessaire auquel les travailleurs sociaux et autres professionnels peuvent se référer dans l'exercice de leur profession ;

cependant, il importe que ces derniers bénéficient de lignes directrices de pratique supplémentaires afin de les aider dans leur travail. Les rapports par pays fournissent des exemples de cela. Les leçons que l'on peut tirer du système britannique sont que si ces lignes directrices deviennent trop prescriptives et trop compliquées, elles produisent un effet contraire à ce que l'on souhaite, menant les travailleurs sociaux à passer de plus en plus de temps à effectuer des tâches administratives engendrées par les directives et les procédures. D'autres pays de l'Union européenne ont des lignes directrices moins prescriptives ; citons ici le manuel allemand de protection de l'enfant (Kindler et al., 2011) qui peut être plus facile d'utilisation pour les travailleurs sociaux. L'essentiel est que de telles lignes directrices soient engageantes, représentatives des objectifs nationaux des législations et politiques de l'enfance, basées sur les résultats de recherches concernant les facteurs de promotion d'issues positives pour les enfants, et d'une longueur raisonnable permettant d'être aisément mémorisées. Toutefois, il importe de formuler un avertissement issu de l'expérience britannique. Les éventuels manquements à ce genre de lignes directrices peuvent faire l'objet de critiques envers les travailleurs sociaux et autres professionnels dans le contexte d'enquêtes publiques ultérieures ou d'investigations médiatiques suscitées par la découverte de cas d'enfants maltraités n'ayant pas été détectés ou abordés de manière adéquate par les travailleurs sociaux au cours de leur évaluation ou de leur intervention. Nonobstant ces préoccupations, la mise à disposition de ce type de lignes directrices demeure importante pour aider les travailleurs sociaux et autres professionnels à accomplir leur rôle social de protection des enfants.

3.7.4 Recommandation n°9 - Lignes directrices pour la protection de l'enfant

Nous recommandons que le comité national permanent (voir recommandation n°1) émette des lignes directrices permettant aux travailleurs sociaux et aux autres professionnels d'effectuer leur travail de manière efficace et conforme aux lois et politiques fédérales et cantonales, mais aussi d'être informés des résultats des recherches internationales en matière de meilleures pratiques liées au travail avec les familles et les enfants. Ces lignes directrices devraient être engageantes mais pas trop prescriptives.

3.7.5 Développement de méthodes d'évaluation

De bonnes évaluations de la qualité de vie sont fondamentales pour des interventions efficaces menées par les professionnels dans la vie de la famille. Au niveau pratique, il s'agit ici de la pierre angulaire servant de base au développement de toutes les prestations ultérieures. On constate, dans les rapports par pays, que les évaluations restreintes dont le seul objet est l'identification des facteurs de risque ont été remplacées (à l'exception des évaluations en matière d'abus sexuels sur les enfants, demeurant basées principalement sur les risques) par des outils d'évaluation plus sophistiqués et destinés à localiser les problèmes des familles dans un grand nombre de domaines, et ce dans le cadre d'une conceptualisation écologique. Le recours à ce genre d'outils d'évaluation tend à s'éloigner des questions de culpabilité et de reproche axées sur l'action parentale et ses effets sur l'enfant. L'effort

porte plutôt sur une volonté de comprendre les causes et les effets de manière plus large. Cette approche stimule à son tour une prestation de services considérée comme un soutien à la famille, intervenant de manière efficace pour rompre les schémas problématiques de cause et d'effet.

L'*Assessment Framework for Children in Need and their Families* (cadre d'évaluation des enfants dans le besoin et de leur famille) a été élaboré au Royaume-Uni puis repris avec succès par les travailleurs sociaux dans d'autres pays tels que la Suède. Ce cadre s'appuie sur un modèle écologique fondé sur les résultats de recherches, abordant les points forts et les difficultés dans trois domaines : les besoins de développement de l'enfant, la capacité éducative des parents et les facteurs liés à la famille élargie et à l'environnement. Toutefois, il est nécessaire d'établir des liens entre les évaluations des travailleurs sociaux et celles d'autres professionnels ; cela contribuera à documenter la décision cruciale concernant la nécessité ou non d'une recommandation du professionnel au travailleur social, puis de la planification et de l'intervention en conséquence. Cet aspect implique le développement de modèles d'évaluations communs tels que le *Common Assessment Framework* (cadre commun d'évaluation) actuellement employé par d'autres professionnels travaillant auprès des familles en Grande-Bretagne. Il importe toutefois de noter que ce genre d'outil représente une aide à la pratique et à la prise de décision mais ne donne pas de réponse.

Étude de cas au Royaume-Uni « Le gouvernement a introduit un cadre commun d'évaluation afin d'encourager la vision selon laquelle la protection de l'enfant ne doit pas être réservée aux travailleurs sociaux mais faire l'objet de la préoccupation de tous les professionnels travaillant auprès des enfants (Department for Children, Schools and Families, 2006). Le but premier de cette mesure était d'aider un ensemble de professionnels à identifier les enfants vulnérables ayant très tôt des besoins supplémentaires. Ces professionnels peuvent être des enseignants, des infirmiers/ères à domicile ou encore des employé(e)s de crèche. A ce point de reconnaissance, une évaluation aurait lieu, indiquant si la situation nécessite l'intervention d'un seul professionnel ou si un soutien global est requis, impliquant un certain nombre de professionnels, l'un d'entre eux étant désigné comme professionnel responsable. Si l'évaluation révèle des besoins plus complexes nécessitant des services spécialisés, un renvoi peut alors être fait vers les travailleurs sociaux de l'autorité locale qui mettront en place une évaluation approfondie conforme aux lignes directrices du *Framework for the Assessment for Children in Need and their Families* (cadre d'évaluation pour les enfants dans le besoin et leur famille).

Cependant, même si elles sont bien conçues et suivies, les procédures d'évaluation ne conduisent pas toujours à des décisions similaires à l'égard d'enfant connaissant des circonstances comparables. D'autres facteurs influencent la prise de décision, notamment et surtout les notions orientant la relation entre l'État et la famille selon les pays. Les grandes idées ou positions idéologiques que nous avons identifiées plus haut peuvent orienter les résultats des évaluations dans différentes directions. C'est probablement plus notoire à l'égard de la vulnérabilité des jeunes enfants. Pour les pays ayant une tradition marquée de service aux familles, on observe une certaine réticence à placer les jeunes enfants à la charge de l'État. Dans ces pays, les tendances de l'admission en institution sont relative-

ment faibles en ce qui concerne les jeunes enfants et plutôt élevées pour les adolescents. C'est l'inverse dans les pays ayant une orientation vers la protection de l'enfant. Ces éléments représentent évidemment des risques réels associés à l'une ou l'autre de ces orientations. Les enfants peuvent être laissés dans des situations ne correspondant pas à leurs besoins de développement et les exposant au risque d'être maltraités ou, à l'inverse, être placés en institution à un âge où ils sont vulnérables et où ils peuvent souffrir d'un plus grand manque si les conditions pour un nouvel attachement émotionnel ne sont pas prévues. Ici, le principal est que les cadres d'évaluation ne soient pas la réponse mais seulement une partie de la réponse pour le développement d'un système efficace de protection de l'enfant.

3.7.6 Recommandation n°10 - Évaluation générale et spécifique

Nous recommandons un cadre d'évaluation à deux volets, commandé par le comité national permanent (voir recommandation n°1), et mis en fonction par les commissions cantonales de l'enfance (voir recommandation n°2) ; le premier volet serait destiné à tous les professionnels travaillant auprès des enfants, et le second, spécifique, destiné aux travailleurs sociaux. Ce cadre d'évaluation devrait refléter les meilleures pratiques internationales, basées sur le modèle écologique du développement de l'enfant et documentées par les faits.

3.7.7 Développement de méthodes d'intervention

Le développement de méthodes d'intervention a été assez rapide au cours des cinquante dernières années, mais ce rythme a dépassé celui des indications formant la base de ces méthodes. On peut identifier une série de méthodes actuellement employées qui sont devenues normatives dans les systèmes de protection de l'enfance. Les méthodes auxquelles ont recours les travailleurs sociaux sont généralement appliquées au niveau individuel ou familial, bien que certaines soient utilisées avec des groupes. Voici quelques exemples.

L'éducation des parents a eu de plus en plus de succès ces dernières années ; elle est basée sur l'idée que l'éducation des enfants n'est pas innée et qu'elle nécessite des compétences qu'il faut acquérir. Les cours d'éducation, fondés sur de solides indications, peuvent être collectifs ou individuels, dispensés par des travailleurs sociaux aux parents dont l'évaluation indique qu'ils en ont besoin. L'essentiel de l'activité des travailleurs sociaux ne concerne toutefois pas la prestation directe de services mais plutôt la gestion des cas lorsque les services sont prévus et que leur efficacité est évaluée en termes de réduction ou en relation avec les problèmes touchant les familles. On peut citer en exemple la réduction du stress par le biais d'un service de placement de jour pour l'enfant. Cependant, les problèmes sous-jacents sont souvent de nature plus complexe et nécessitent des interventions spécialisées. Les études de cas dans les pays montrent bien que les problèmes omniprésents sont la violence dans la famille (parfois appelée « violence domestique »), l'abus d'alcool et la consommation de drogue ainsi que les troubles psychologiques des parents. Dans la gestion des cas, il est plus pro-

bable que ces problèmes fassent l'objet d'un renvoi à des services spécifiques (souvent assurés par des organisations bénévoles ou privées). On trouve de nombreux exemples de thérapies familiales multi-systémiques et de thérapies cognitives comportementales ; il est courant que les travailleurs sociaux ayant recours à ces méthodes aient bénéficié auparavant d'une formation et possèdent un diplôme de troisième cycle.

Les autres approches d'assistance employées à la fois auprès des parents et des enfants sont généralement basées principalement sur des valeurs telles qu'une perspective positive inconditionnelle, et en moindre mesure sur les recherches suggérant que les partenariats avec les familles sont synonymes de bons résultats. Ces approches générales peuvent avoir une utilité limitée lorsqu'il s'agit de maltraitance des enfants, surtout si les parents refusent l'intervention des travailleurs sociaux. Il existe de plus en plus de méthodologies de travail direct auprès des enfants, souvent fondées sur la créativité des thérapies artistiques qui se sont révélées très utiles pour aider les jeunes enfants à donner des informations et à exprimer leurs souhaits et leur ressenti.

L'enseignement principal que l'on peut tirer des systèmes de protection de l'enfance est que les méthodes employées par les travailleurs sociaux doivent refléter les besoins de la population et, si possible, être validées par une base de preuves. On remarque le risque particulier, dans les pays adoptant une orientation vers la protection de l'enfant, que les parents soient considérés comme personnellement responsables de leur réaction à un ensemble de problèmes auxquels ils sont confrontés, et que le rôle par défaut des travailleurs sociaux réside dans une sorte de « police » sociale demandant aux parents de changer mais ne leur offrant aucune aide pour cela.

3.7.8 Recommandation n°11 - Vérification des méthodes

Le recours à une série de méthodes de la part des travailleurs sociaux est devenu la norme dans les systèmes de protection de l'enfance. Il importe d'employer, dans la mesure du possible, des méthodes basées sur les faits et reflétant les besoins du client ; ces méthodes devraient inclure aussi bien les services de soutien que les interventions thérapeutiques. Les méthodes actuellement utilisées en Suisse devraient être évaluées en fonction des niveaux de nécessité estimés à l'échelle cantonale (voir recommandation n°9) en vue d'identifier les éventuelles lacunes des prestations. De telles lacunes, si elles existent, devraient ensuite être prises en compte dans les stratégies de formation et de mise en œuvre des prestations des commissions de l'enfance (voir recommandation n°2).

3.7.9 Enfants pris en charge par l'État

La décision la plus sérieuse dans les cas de protection de l'enfant est celle consistant à déterminer si l'enfant doit être placé ou non en institution. On observe de nettes différences d'approche dans les divers rapports par pays. Au Royaume-Uni et en Australie par exemple, la tendance est de placer les enfants, à un jeune âge, s'ils sont victimes d'une mauvaise prise en charge parentale ou de maltraitance. Si des erreurs sont commises, elles le sont du côté de la sécurité. L'objectif pour de tels jeunes

enfants est de les réunir avec leur famille dès que les facteurs de risque diminuent. Cependant, les études menées dans ce domaine montrent que les besoins de développement des jeunes enfants ne peuvent pas être satisfaits dans une situation où leur retour dans leur famille biologique est retardé ou bien lorsqu'ils alternent retour dans la famille et retour en institution. Dans ces cas-là, les services sociaux ont de plus en plus tendance à chercher des solutions plus permanentes pour répondre aux besoins des enfants, que ce soit par l'adoption, le placement avec des membres de la famille élargie ou le placement à long terme en famille d'accueil. On peut arguer que ces dispositions donnent la préséance aux droits de l'enfant sur les droits des parents, alors que c'est l'inverse en Allemagne, en Suède et en Finlande, où la tendance est plutôt à laisser les enfants dans leur famille biologique. La logique typique, dans ces pays, consiste à ce que les services soient mis à disposition de la famille afin de prévenir un éclatement de celle-ci ; par conséquent, le nombre d'enfants placés en institutions est relativement faible. On peut toutefois remarquer que ces efforts retardent mais n'évitent pas le placement de l'enfant, comme le prouve le nombre d'adolescents placés hors de leur famille dans ces pays. L'interprétation de ces données est d'autant plus compliquée que la justice des mineurs et les secteurs de protection se chevauchent, certains jeunes étant placés pour cause de comportement antisocial et d'autres pour leur protection.

On peut toutefois repérer deux tendances importantes dans ces pays : la première étant une augmentation du nombre d'enfants placés en institution et la seconde étant une préférence croissante pour le recours aux placements chez des membres de la famille élargie ou dans une famille d'accueil plutôt que le placement en institution. Il n'y a pas d'explication unique concernant l'augmentation de ces chiffres. Nous avons évoqué les causes de l'augmentation du nombre d'adolescents placés dans les pays orientés vers la protection de l'enfant ; par contre, dans ceux adoptant une orientation vers le service aux familles, l'intolérance publique suscitée par les résultats des enquêtes sur les décès d'enfants semble avoir eu un effet d'inflation sur le nombre de jeunes enfants placés. Il est également fort probable que la prise de conscience publique de la nécessité d'intervenir pour protéger les enfants, comme le montre l'augmentation du nombre de renvois vers les travailleurs sociaux de protection de l'enfant, ait eu une certaine influence. La préférence d'une prise en charge familiale a été largement suscitée par des raisons négatives, suite aux scandales, qui ont eu lieu dans la plupart des pays, de maltraitance des enfants par le personnel dans les institutions, mais également pour des raisons positives, suite à des recherches suggérant que les résultats sont meilleurs pour les enfants pris en charge dans un cadre familial que pour ceux placés en institution. L'exemple suivant, en Suède, illustre l'importance de réformer la prise en charge par l'État afin d'assurer une sécurité continue tout en veillant à ce que les objectifs des politiques soient documentés.

Étude de cas en Suède «...l'organisation privée « Stolen Childhood », a été créée en 2005 suite à la diffusion d'un documentaire à la télévision suédoise, dans lequel des hommes d'une quarantaine d'année disaient avoir été victimes de négligence et de maltraitance pendant leur enfance en institution. Ce documentaire fut le point de départ de l'établissement d'une association à but non lucratif, en 2006, rassemblant des personnes ayant été victimes de maltraitance en institution et demandant justice et réparation. La même année, le gouvernement suédois lança une investigation sur les négligences et maltraitances graves commises dans les institutions et les foyers d'accueil en Suède entre 1920 et 1995 (The Inquiry in Child Abuse and Neglect in Institutions and Foster Homes , S 2006 : 05). Cette enquête a été retardée plusieurs fois à cause du grand nombre de personnes prenant contact avec la commission afin de parler de leur vécu. Lorsque le rapport final verra le jour, environ 1000 personnes ayant été placées en institution entre 1920 et 1999 auront été interrogées.
Les recherches ont montré que les enfants en institution en Suède sont généralement placés dans plusieurs foyers d'accueil ou établissements différents au cours de leur enfance (voir notamment Vinnerljung et al., 2001 ; Sundell et al. 2004). Cela peut être interprété comme un conflit entre les travailleurs sociaux faisant leur possible pour réunir l'enfant et ses parents biologiques et le besoin de l'enfant d'un placement stable hors de la famille (Sinclair et al. 2005 a, 2005b, Thoburn et al., 2000).

Le nombre supérieur d'enfants placés en institutions dans les pays orientés vers le service aux familles reflète bien les difficultés inhérentes au placement des enfants plus âgés chez des membres de la famille élargie ou dans des familles d'accueil. Les leçons que l'on peut tirer de cette constatation sont que la prise en charge par l'État doit suivre des principes équilibrés et offrir un ensemble de placements adaptés aux besoins de l'enfant. En termes de juste milieu idéologique, il importe de respecter aussi bien les droits de l'enfant que ceux des parents, mais il faut également comprendre que cet équilibre doit prendre en compte l'échelle temporelle du développement de l'enfant. Le fait de laisser l'enfant dans sa famille lorsque la maltraitance est constatée présente un vrai risque, surtout quand l'enfant est très jeune. De même, il est risqué d'interrompre la phase d'attachement en plaçant un jeune enfant et en proposant une planification de réintégration n'étant pas adaptée aux besoins de développement. Des plans constants sont nécessaires pour répondre aux besoins de ces enfants.

Le fait de privilégier la prise en charge individuelle familiale par un membre de la famille ou une famille d'accueil plutôt que la prise en charge collective en institution se base sur les recherches effectuées relevant de meilleurs résultats pour la plupart des enfants, mais pas pour tous, et il convient de le noter. Les institutions demeurent adaptées aux adolescents qui préfèrent généralement ce genre de placement, ou aux enfants ayant été gravement maltraités par leurs parents et pouvant avoir besoin d'un environnement thérapeutique spécialisé.

Les éléments importants des systèmes efficaces de prise en charge par l'État sont les suivants : une condition claire et cohérente de placement en institution, un intervention précoce sous la forme d'un placement obligatoire le cas échéant, une option de placement évaluée en fonction des besoins de l'enfant et de bonnes procédures permettant de garantir que l'opinion de l'enfant est prise en compte à chaque étape du processus.

3.7.10 Recommandation n°12 - Évaluation de la prise en charge par l'État

Nous recommandons que le comité national permanent demande une évaluation de la prise en charge par l'État – dans le cadre du développement d'un réseau national suisse pour la protection de l'enfance (voir recommandation n°1) – et que cela soit réalisé par les commissions de l'enfance dans leurs cantons respectifs (voir recommandation n°2).

Pour les enfants en institution, en plus de la procédure de protection de l'enfant garantissant que seules les personnes ayant un casier judiciaire vierge puissent faire partie du personnel de ces établissements, il existe des garde-fous supplémentaires tels que des procédures de plainte des enfants, nécessaires à la prévention de la maltraitance en institution. On pourrait évoquer par exemple la mise en place un service d'aide téléphonique sécurisée permettant aux enfants de se plaindre de manière anonyme.

3.7.11 Recommandation n°13 - Procédure de protection de l'enfant

A partir de l'observation des meilleures pratiques dans les divers pays analysés, nous mettons l'accent sur la nécessité d'avoir en vigueur des procédures de protection de l'enfant afin de veiller à ce que les personnes travaillant auprès des enfants, dans des institutions ou dans la communauté, aient un casier judiciaire vierge. Nous recommandons que ces informations soient recueillies au niveau fédéral et soient accessibles aux cantons ; les personnes cherchant à travailler auprès des enfants devraient ainsi être soumis aux mêmes règles dans toute la Suisse.

3.7.12 Résultats du système et mesures correspondantes

Il est très difficile de comparer les données concernant les mesures de protection de l'enfant entre les pays. Différents aspects sont abordés, différents critères sont appliqués pour les évaluer et leur signification peut faire l'objet d'un débat. On peut toutefois observer certaines tendances dans les pays. La première est une augmentation du nombre de familles et d'enfants portés à l'attention des travailleurs sociaux au cours du temps. Cela correspond aux statistiques suisses rapportant une augmentation du nombre de mesures de protection de l'enfant en vertu du Code civil, passant de 23'290 en 1996 à 43'613 en 2010[108]. Certains pays différencient ces renvois selon des catégories de maltraitance. Dans certains pays (en Grande-Bretagne et en Australie par exemple), on observe une baisse considérable du nombre de cas dans les catégories de maltraitance physique et sexuelle et une augmentation dans les catégories de la violence psychologique et de la négligence. Cela correspond également à des tendances générales au niveau international. Dans d'autres pays, l'interdiction des punitions corporelles sur les enfants fait de tout acte visant à discipliner l'enfant physiquement une maltraitance potentielle et engendre ainsi l'augmentation du nombre de cas dans la catégorie de violence physique. Dans le sens de la définition assez large de la protection de l'enfant que nous avons documentée

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[108] Source : www.kokes.ch, consulté le 23/10/2011 (cf. Schnurr, 2011).

dans les différents pays, on observe que la Grande-Bretagne et la Finlande enregistrent les besoins étendus des enfants et des familles nécessitant un soutien préventif ; le nombre de personnes concernés par cela est d'ailleurs en augmentation.

Étude de cas en Australie « Ces données sont limitées car elles sont regroupées au lieu d'être prises individuellement, mais elles peuvent ainsi être utilisées à des fins descriptives, sans pour autant pouvoir être manipulées. Les données fournissent de bonnes indications d'activité au sein des services de protection de l'enfant mais représentent un indicateur médiocre de l'incidence de la maltraitance dans la communauté (Holzer & Bromfield, 2008). On note également des problèmes de comparaison des données entre les États et les territoires (Holzer & Bromfield, 2008). Enfin, le type d'éléments recueillis et la disponibilité des données d'ensemble signifie que nous avons une grande quantité de données concernant les résultats de l'activité des services de protection de l'enfant mais nous n'avons pas d'information sur les voies empruntées par les enfants dans ce système ni de donnée sur les résultats pour les enfants (par ex. santé, scolarisation, récurrence des violences).
En 2010 a été publié le premier rapport annuel, fournissant des données de base pour un certain nombre d'indicateurs, destiné à surveiller l'impact du cadre national de protection de l'enfant en Australie. Il comprenait les données concernant l'activité de protection de l'enfant évoquées plus haut et des indicateurs supplémentaires issus des informations administratives. Ce rapport contenait également des études de cas qualitatives, des informations sur l'ordre du jour de réforme de l'État et des régions, et des rapports sur l'évolution des projets nationaux entrepris dans le cadre national de protection de l'enfant en Australie (Council of Australian Governments, 2011). Les départements administratifs de l'État et des régions ont également publié des rapports annuels mais les informations présentes dans ces rapports ne sont pas comparables. Les agences non gouvernementales (très nombreuses, une centaine) publient aussi des rapports annuels dont les données ne sont pas comparables car elles ne sont pas recueillies et regroupées au niveau national ni régional ni territorial. »

Pris ensemble, ces rapports indiquent une augmentation des nombres de signalements, du nombre d'enfants ayant besoin des services sociaux – parfois pour cause de maltraitance et d'autres fois pour une protection plus générale – et du nombre d'enfants pris en charge par l'État. Pourtant, nous savons, grâce aux recherches rétrospectives, que les chiffres repris dans les données de résultats du système ne représentent qu'une infime partie des cas dans les sociétés. Néanmoins, il est probable que l'augmentation du nombre de cas adressés aux systèmes de protection de l'enfance par le public comme par les professionnels constitue une prise de conscience croissante de ce qui peut nuire aux enfants, à une époque où la société est bien plus sensible aux effets de ces problèmes sur l'enfant.

Notons ici que les systèmes modernes de protection de l'enfant n'ont pas une vision certaine de ce qu'ils accomplissent pour l'enfant car ils ne mesurent pas régulièrement les résultats individuels ; en effet, ils ne sont pas prévus pour cela, d'où la nécessité de mettre en place des mesures spécifiques basées sur un ensemble de mesures actuellement existantes. L'étude de cas en Australie que l'on

citait plus haut met en lumière divers éléments dont ce manque de mesures, l'influence d'indicateurs introduits dans le cadre national, et les problèmes continus de comparabilité des données.

3.7.13 Recommandation n°14 - Résultats et mesures

Dans le cadre national pour la protection de l'enfant en Suisse (voir recommandation n°1), il importe de se mettre d'accord sur une série de mesures liées aux résultats pour le système. Ce dernier devrait mettre à disposition des données quantitatives mais également qualitatives (par ex. l'enregistrement de l'expérience subjective des enfants et leur évaluation des services). L'établissement de données nationales de ce genre nécessite d’attribuer à chaque enfant une personne de référence pouvant effectuer un suivi au fil du temps dans le système. Cela permettrait de rassembler les données et de discerner les trajectoires et tendances, et donc de fournir des informations utiles à la planification des prestations et au développement des services dans le canton (voir recommandation n°2) mais aussi aux interventions pluridisciplinaires au niveau individuel.

3.8 Conclusion

Les systèmes de protection de l'enfance sont nécessaires car nous sommes désormais conscients des préjudices causés aux enfants lorsqu'ils sont soumis à un certain nombre de difficultés, et notamment la maltraitance. En développant et en renouvelant son système de protection de l’enfance, la Suisse a l'occasion unique de profiter d'une analyse des systèmes contemporains de protection des enfants dans cinq pays. Le constat majeur de cette recherche est que les leçons tirées, tant sur des aspects positifs que négatifs dans ces pays, sont remarquablement cohérentes. Au début de ce projet, nous pensions qu'il serait très difficile de dégager des enseignements clairs étant donné les éventuels problèmes pour trouver des points de comparaison. Cela a certes été le cas en ce qui concerne certains aspects particuliers tels que les résultats, mais, d'une manière générale, nous avons vu émerger un consensus remarquable quant à ce qui représente les « meilleures pratiques » dans les systèmes modernes de protection de l'enfant. Les 14 recommandations que nous avons formulées représentent ce que les membres de l'équipe de recherche souhaiteraient pour leur propre pays ; aucun de ces pays ne regroupe pourtant tous ces éléments.

En formulant nos recommandations tirées des meilleures pratiques dans d'autres pays, nous réalisons que la plupart des éléments que nous recommandons sont représentés dans les évolutions actuelles en Suisse. Nos commentaires finaux reflètent certains de ces développements, issus de notre chapitre sur le contexte suisse, en lien avec nos recommandations.

Le domaine potentiellement le plus important de redressement est abordé dans nos recommandations 1, 2 et 3, à travers notre appel à la création d'un comité national permanent, de commissions cantonales de l'enfance et d'équipes de travailleurs sociaux ; ces propositions reflètent la nécessité d'agir

pour changer la situation actuelle en Suisse. Dans ce pays, les différences de culture à l'échelle régionale, de taille des cantons, de traditions et de capacités municipales engendrent différents types de décisions à l'égard d'actions de protection de l'enfant. Il faut certes accorder de la valeur et du respect aux différences locales mais elles ne devraient pas enfreindre les droits des enfants et des parents à des réponses juridiques justes et équitables. Autrement dit, le résultat d'un problème particulier de protection de l'enfant ne doit pas être déterminé par une situation géographique mais par une réponse conforme à la loi, aux politiques et aux meilleures pratiques professionnelles. A cet égard, nous accueillons favorablement la révision du Code civil suisse et les recommandations correspondantes de la Conférence des cantons en matière de protection des mineurs et des adultes (COPMA) au sujet de la professionnalisation et de l'organisation des services. Il est particulièrement important que le travail des ONG soit représenté au niveau national par la mise en place d'un cadre national de protection de l'enfant et, à l'échelle locale, par la participation à des commissions cantonales de l'enfance illustrant leur rôle déterminant dans le système de protection de l'enfance.

Comme c'est également le cas dans les autres pays cités dans notre rapport, les autorités suisses se préoccupent de répondre aux questions liées aux conditions économiques et sociales, qui peuvent avoir un impact sur la santé et le bien-être des enfants et des adolescents. Les autorités s'occupent également d'identifier les populations les plus vulnérables risquant de ne pas atteindre les standards de santé et de bien-être, et de les cibler par des interventions spécifiques de nature préventive, tout en assurant une protection immédiate aux personnes quand cela s'avère nécessaire. L'état des lieux de l'ensemble des services au niveau cantonal (recommandation n°8) illustre un développement naturel de ces stratégies nationales à l'échelle locale.

En ce qui concerne la nécessite de veiller à ce que les meilleures prestations professionnelles soient disponibles, les éléments suivants reflètent tous la nécessité croissante de compétences spécifiques : les programmes spécialisés d'enseignement supérieur destinés aux professionnels, la réforme des conditions d'entrées dans les cursus professionnels, tels que présentés dans nos recommandations 5 et 6, la vérification des compétences proposée dans la recommandation n°11 et l'appel à la mise en place de lignes directrices (recommandation n°9) ainsi que l'outil d'évaluation à deux niveaux (recommandation n°10). Cette professionnalisation peut certes provoquer des tensions dans les cantons où différentes traditions existent en matière de prestations sociales.

Conformément à la recommandation n°13 abordant le sujet d'une procédure nationale de protection de l'enfant, il est satisfaisant de voir les évolutions actuelles en droit pénal conduisant vers des mesures limitant l'activité bénévole ou rémunérée, auprès d'enfants, des personnes ayant un casier judiciaire.

En ce qui concerne la recommandation n°14, on observe un intérêt croissant dans la collecte d'informations, principalement orientée vers la prévalence de la maltraitance des enfants, en particulier par rapport aux taux différents chez les populations immigrées. Des informations importantes au sujet des mesures de protection de l'enfant, telles qu'établies par le Code civil suisse, ont également été ras-

semblées par la COPMA, montrant une augmentation du recours à ce genre de mesures au cours des dernières années. Ces données révèlent des tendances dans le développement de réponses aux problèmes de protection de l'enfant et forment une base utile sur laquelle fonder des mesures plus complexes liées aux résultats pour les enfants.

Nous avons cherché à formuler un série de recommandations en partant de la base, avec notamment des questions de gouvernance, en passant par le niveau intermédiaire, avec des éléments interdépendants, pour enfin atteindre le niveau spécialisé, identifiant les services clés. Nous avons rassemblé ces recommandations dans le tableau ci-dessous et les avons également représentées dans le diagramme suivant. Deux choses apparaissent : tout d'abord, les recommandations se fondent les unes sur les autres, et s'emboîtent. C'est la nature des systèmes modernes de protection de l'enfant. C'est pourquoi il est difficile d'en ôter une sans faire s'écrouler les autres. Ensuite, elles se réfèrent collectivement à une phase suivante : leur mise en œuvre à travers un certain nombre de secteurs d'activités. Ce sera le prochain défi.

3.8.1 Niveau fondamental – Éléments de gouvernance des systèmes modernes de protection de l'enfance
Recommandation n°1 – Un comité national permanent, au niveau fédéral, devrait établir un cadre national pour la protection de l'enfant, afin de servir de base à l'élaboration de lois et à la mise en place de services cantonaux. Recommandation n°2 – Les cantons conservent une responsabilité juridique pour les services de protection de l'enfance mais ceux-ci sont planifiés et fournis avec des prestataires volontaires et privés dans les commissions de l'enfance.
3.8.2 Niveau intermédiaire – Aspects interdépendants des systèmes modernes de protection de l'enfance
Recommandation n°3 – Dans chaque canton, des équipes de travailleurs sociaux devraient assumer les responsabilités juridiques liées au service spécifique de protection de l'enfant. Recommandation n°4 – Des réunions pluridisciplinaires de planification et suivi individualisé de cas devraient être mises sur pied dans chaque canton afin de garantir une planification permettant de répondre aux besoins et d'assurer la protection au niveau individuel. Recommandation n°5 – Les universités devraient mettre en place des formations pré et post-licence en protection de l'enfant pour les professionnels. Recommandation n°6 – Les universités devraient revoir les standards d'admission aux cursus de travail social.

Recommandation n° 7 – Promotion du partenariat. Les parents devraient assister aux réunions de planification et de suivi individualisé de cas. Les droits des enfants à la représentation et à l'appel aux décisions les concernant devraient devenir la norme.

3.8.3 Niveau supérieur – Éléments de la fourniture de service des systèmes modernes de protection de l'enfance

Recommandation n° 8 – Développement d'un ensemble de services destinés aux enfants, fondés sur le modèle de santé publique et servant de base à la mise en place du cadre national pour la protection de l'enfant.

Recommandation n°9 – Développement de lignes directrices pour les travailleurs sociaux, intégrant la législation et les « meilleures pratiques » mises en évidence par la recherche.

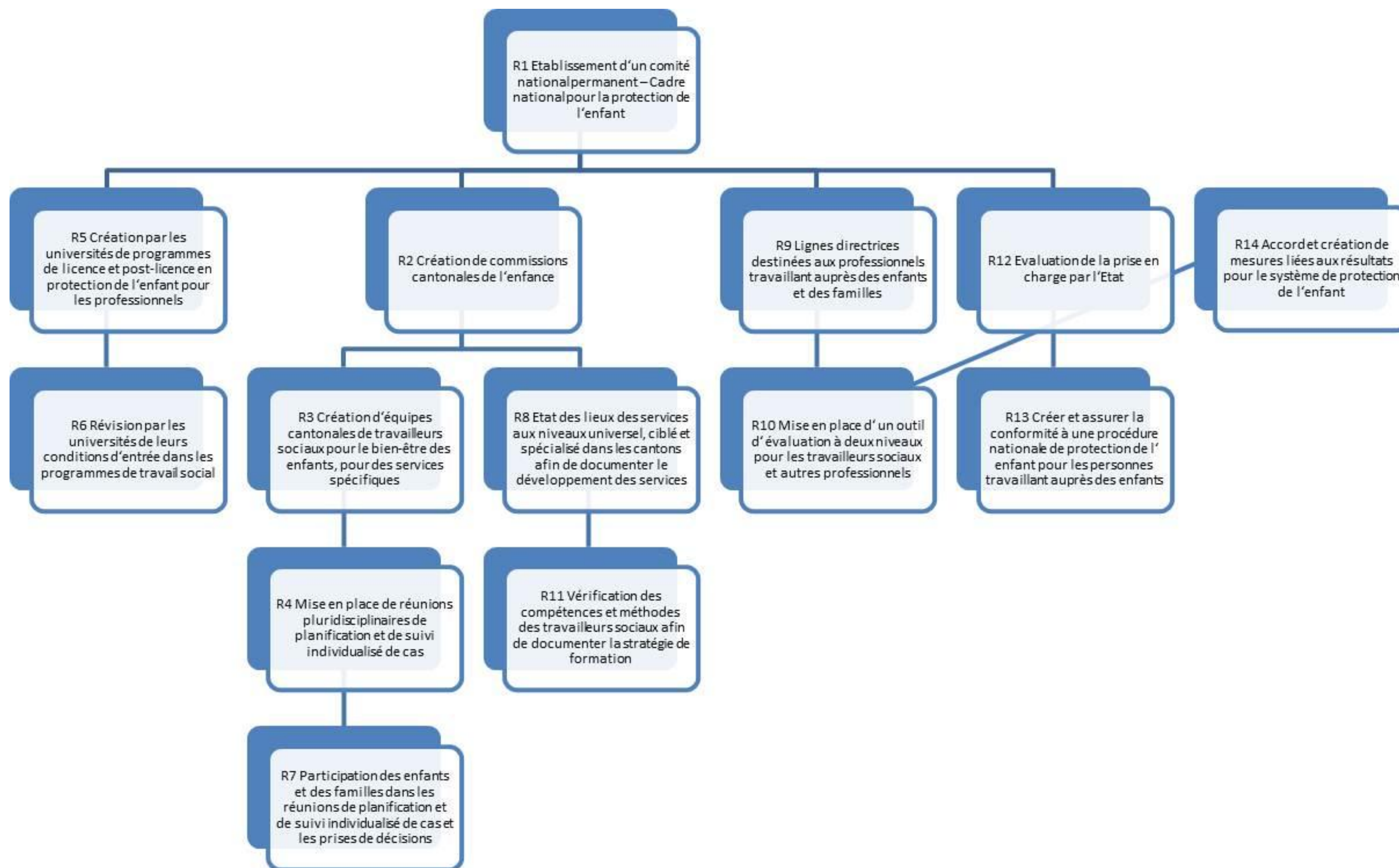
Recommandation n° 10 – Introduction d'un cadre d'évaluation à deux niveaux : l'un, spécifique, pour les travailleurs sociaux et l'autre, général, pour les autres professionnels.

Recommandation n° 11 – Vérification des méthodes actuelles d'intervention employées par les travailleurs sociaux. Le résultat de cette vérification servirait de base aux commissions de l'enfance dans leur travail de développement de formation et de mise en place de stratégies.

Recommandation n°12 – État des lieux de la prise en charge par l'État qui servirait de base au développement du cadre national pour la protection de l'enfant et au travail des commissions de l'enfance.

Recommandation n° 13 – Établissement d'une procédure nationale de protection de l'enfant destinée aux personnes travaillant auprès des enfants.

Recommandation n° 14 – Mise en place d'un système national de données afin d'effectuer un suivi des résultats du système et de ceux concernant les enfants, ceci faisant partie du cadre national pour la protection de l'enfant mais servant également de base d'information aux commissions de l'enfance.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R5 Création par les universités de programmes de licence et post-licence en protection de l'enfant pour les professionnels
R2 Création de commissions cantonales de l'enfance
R9 Lignes directrices destinées aux professionnels travaillant auprès des enfants et des familles
R12 Evaluation de la prise en charge par l'Etat
R14 Accord et création de mesures liées aux résultats pour le système de protection de l'enfant
R6 Révision par les universités de leurs conditions d'entrée dans les programmes de travail social
R3 Création d'équipes cantonales de travailleurs sociaux pour le bien-être des enfants, pour des services spécifiques
R8 Etat des lieux des services aux niveaux universel, ciblé et spécialisé dans les cantons afin de documenter le développement des services
R10 Mise en place d'un outil d'évaluation à deux niveaux pour les travailleurs sociaux et autres professionnels
R13 Créer et assurer la conformité à une procédure nationale de protection de l'enfant pour les personnes travaillant auprès des enfants
R4 Mise en place de réunions pluridisciplinaires de planification et de suivi individualisé de cas
R11 Vérification des compétences et méthodes des travailleurs sociaux afin de documenter la stratégie de formation
R7 Participation des enfants et des familles dans les réunions de planification et de suivi individualisé de cas et les prises de décisions

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Appendix: Country Studies

Authors of the country studies

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Johanna Hietamäki (University of Jyväskylä, Finland)

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1 Child protection in the United Kingdom by Trevor Spratt

1.1 Historical background

1.1.1 Child protection prior to WWII

The starting points for organised societal responses to children in need of protection in the UK may be traced back to the nineteenth century. During the period 1801 to 1861 there was a doubling of the population in the UK from 10 to 20 million, associated with an industrial revolution which resulted in a migration of large numbers of people from the countryside to the cities to work in the new industries (Corby, 2000). Prior to this time children requiring support because of parental incapacity received help from local communities or the church. However, the advent of industrialisation led to new social problems which required new solutions. Such solutions were initially directed towards children living outside their own homes; street children who had no parental care. This period consequently saw the rise of charitable voluntary organisations, such as Dr Barnardo's, who provided residential homes to meet the needs of such children. Eventually concerns to address problems visible outside the home were complimented by a public concern to reach children experiencing problems in their own home environments. This led to the formation of the National Society for the Prevention of Cruelty to Children (NSPCC); their concern was to seek the passing of civil legislation (concerned with protecting the victim) to complement the criminal law (concerned with convicting the perpetrator) in relation to child protection. The result was the 1889 Prevention of Cruelty to Children Act which specified what actions on the part of parents were harmful to children and provided powers to move such children to a 'place of safety' ; effectively into the care of the state, although much of the provision of such care was by the Church or newly formed charitable organisations. The NSPCC were given the lead role in the implementation of the legislation and it is instructive to note that 'their workers faced the dilemma that social agencies still face: how, following liberal traditions, to influence the family without undermining its independence' (Corby, 2000, p 27). From this period through to WWII rising living standards and better welfare provision served to limit the worst effects of industrialisation and reduce the visibility of problems evident outside the family home. There was a belief amongst the public that the issue of child abuse was being managed well by NSPCC officers, with some evidence for this being provided by a drop in convictions for child abuse. Some commentators, however, question the resulting public and political complacency seen as characteristic of this era, arguing for example, that in fact this represented a shift in thinking that had occurred with regard to how best to intervene in family life, with direct interventions favouring child removal into state care being replaced with more supportive approaches designed to prevent family break up (Dingwall *et al.,* 1984).

1.1.2 Child protection post WWII

Most commentators locate the commencement of the modern system for the protection of children as the period immediately following World War II. At that time the Welfare State was introduced in the United Kingdom; this involved the setting up of the National Health Service with services free at point of delivery, universal pension and social security benefits and free education for all children. Alongside these changes, legislation was passed to enable local authorities to provide a range of public services, including a 'welfare committee' to take responsibility for children's services. Such services had three aspects; family support services to prevent the need for children to enter state care, services to protect children from ill treatment and neglect and state care facilities to provide homes for children who could not be looked after by their own families. The apparatus for delivering protective services to children and families was now firmly in state control and whilst voluntary providers such as Barnardos and the NSPCC continued to provide a significant level of services, the state system of statutory bodies (now known as local authorities) employed social workers to deliver the majority of services to children and families. This was a time of considerable optimism in society as the economic austerity characteristic of the period immediately following WWII was replaced by economic growth in the 1950s and 1960s. This optimism extended to the philosophy underpinning social work with children and families, wherein families, given the right support, were seen as capable of change.

Such optimism, however, was to prove short-lived. In the United States, the publication by Henry Kempe and his colleagues of their seminal paper on *The Battered-Child Syndrome* (Kempe *et al.,* 1962) led down the foundations for the development of a much different way of thinking about the purposes of social work with families and children. Building on analyses of cases of children referred to hospital and utilising the new diagnostic possibilities provided by radiology, Kempe argued that some injuries to children were non accidental, caused indeed by their parents. Importantly he located the causes of child abuse within the psychopathology of some parents. During the following decade this work was to have great influence in the UK. The resulting shift in philosophy to a position where parents might be viewed as potentially dangerous to their children was accelerated as a result of public inquiries into the deaths of children at the hands of their parents or care givers. Such inquires are conducted when there has been a death of a child in these circumstances and there are matters of public interest involved; usually when there have been interventions by the state prior to the death. Of particular influence was the inquiry into the death of Maria Colwell aged 7, a child who had been in state care for five years prior to a return to her family home (against her wishes), and who was subsequently killed by her stepfather, 13 months later. The inquiry led to the establishment of the current child protection system within the United Kingdom (Parton, 1991). At that time much of the professional identity of child care social work became consolidated around child protection functions and it became difficult for social workers to develop supportive partnerships with families, given the atmosphere which encouraged them to view such families with suspicion.

1.1.3 The development of the child protection system

Whilst, following the work of Kempe, much of the focus in the 1970s was concentrated upon the physical abuse of children and how to prevent injury or death occurring, during the 1980s the focus was to shift to the issue of child sexual abuse. There are a number of reasons for this; Corby (2000) identifies the accounts of adult female survivors of sexual abuse and the work of pioneer family therapists such as Giaretto *et al.* (1978) as being of particular importance. As with physical abuse the pattern in development of understanding the phenomenon of child sexual abuse was that it came to be regarded as more prevalent than previously thought, with most perpetrators being known to the child (Macfarlane and Waterman, 1986). Unlike physical abuse however, where theories of psychological causation were challenged by structural understandings wherein deprivation and poverty came to be considered as influential factors in creating the conditions within which physical abuse might occur, explanations for sexual abuse were located in theories of psychopathology and family dysfunction.

Since the 1970s the issue of how best to protect children has become a major public issue in the UK as the public have become more aware of the nature of child abuse, including its prevalence (much greater than thought possible prior to this time) and impact upon children (both profound and long lasting). This period saw the growth of social work in the UK, both numerically and in terms of prestige, as it became the lead profession in tackling the issue of child abuse. However, this exposed social workers to criticisms with regard to their ability to recognise child abuse and intervene effectively to protect children. For example the judge at the trial of Morris Beckford into death of Jasmine Beckford (another child who had been in state care for six months and who was returned home and subsequently killed by her stepfather) described the attitude of the social worker in the case as being 'naive beyond belief' (Brent, 1985). As a response to such criticisms social workers began to prioritise in their practice the identification of those parents who had potential to abuse their children. 'It is unsurprising then, that the numbers of involuntary clients, as measured by families having their children taken into the care of the state, increased greatly through the 1970s and early 1980s, peaking at over 100,000 children in state care in 1982, with the use of statutory orders increasingly preferred over voluntary arrangements (Parton, 1985)' (Spratt, 2007, p 14).

Whilst the provision of state care was seen as a way of providing safety for children experiencing abuse in their own homes, doubts began to be raised in relation to the ability of the state to secure good outcomes for children; in effect the ability for the state to act as a 'good parent'. In what may be regarded as symbolic of how such issues are dealt with in the UK, such doubts were created by a number of media scandals and subsequent public inquiries which revealed that residential care itself could pose considerable dangers for children. The first such scandal concerned the Kincora Boys home in Belfast, Northern Ireland, where it was found that residents of the home had been systematically sexually abused by staff over a considerable number of years. The resulting public inquiry was to be followed by others which detailed the physical, sexual and emotional abuse of children whilst in state care in England, Scotland and Wales (Utting, 1991). As a result, social workers developed a tendency to view state care as 'last resort' and delayed the admission into care of some children whose circumstances required it. The state also moved to

ensure that children in state care might be made safe by introducing a comprehensive system of vetting and barring (checking that staff had not committed any offences and preventing those who had from working with children). Such rules now apply to anyone working with children in the UK. There was also a shift in state care placement provision away from residential care to foster family care and a move to balance the immediate issue of keeping a child safe with the more complex task of securing good outcomes for the child. Some of these changes reflected (the then) new concern, that changes in the systems for protection and care of children should be research informed as a counterbalance to the more familiar drivers for change, what Ayre has described as the unholy trinity of public, media and political pressures to 'do something to stop child abuse' (2001).

The great majority of families, however, experiencing state social work, did not have their children taken into the care of the state. During the 1980s the child protection system, introduced in the wake of the death of Maria Colwell, continued to be refined. The current system is described in detail in the section dealing with 'Legal and Policy Frameworks'. Suffice to say here that the system was comprised of Local Authority based Area Child Protection Committees who implemented child protection procedures (local versions based on national guidelines) which involved investigation of allegations of child abuse which, if validated, resulted in multi disciplinary case conferences to consider the risks to the child. One of the options for the case conference was to place the child's name on a database (accessible by other professionals) known as the 'Child Protection Register'. This is not to say that those families experiencing problems raising their children and who required support -from the state to do so were not offered services by the state, in fact such families did (and still do) make up the large majority of those referred to social workers. It was rather that during this period social work directed at meeting the supportive needs of children and families diminished in scope. As Corby observes 'the form and style of this intervention was, from the parents' viewpoint, punitive and severe. Parents suspected of abusing their children were at first treated with great suspicion' (2000, p 39). Even those families receiving supportive interventions remained suspicious that state social workers would perceive their circumstances or actions as potentially indicative of child abuse and remove their children into state care as a result (Spratt and Callan, 2004). A corrective to these punitive tendencies in practice was provided by the publication of the *Cleveland Inquiry Report* (Butler-Sloss, 1988) which, it has been argued, marked the zenith of compulsory state interference in family life (Myers, 1994). This report resulted in widespread public disquiet with regard to the actions of police, social workers and doctors who were involved in removing 121 children, for reasons of suspected sexual abuse, from their families over a six month period in the County of Cleveland. Social workers were now criticised for being overzealous in their attempts to diagnose abuse and 'rescue' children from their families. As a result social workers felt they were in an impossible situation, criticised for not intervening in families where abuse was later found to have occurred, often with tragic results, and criticised for responding too punitively in families where abuse was suspected but later found not to have occurred. Their dilemma is illustrated below.

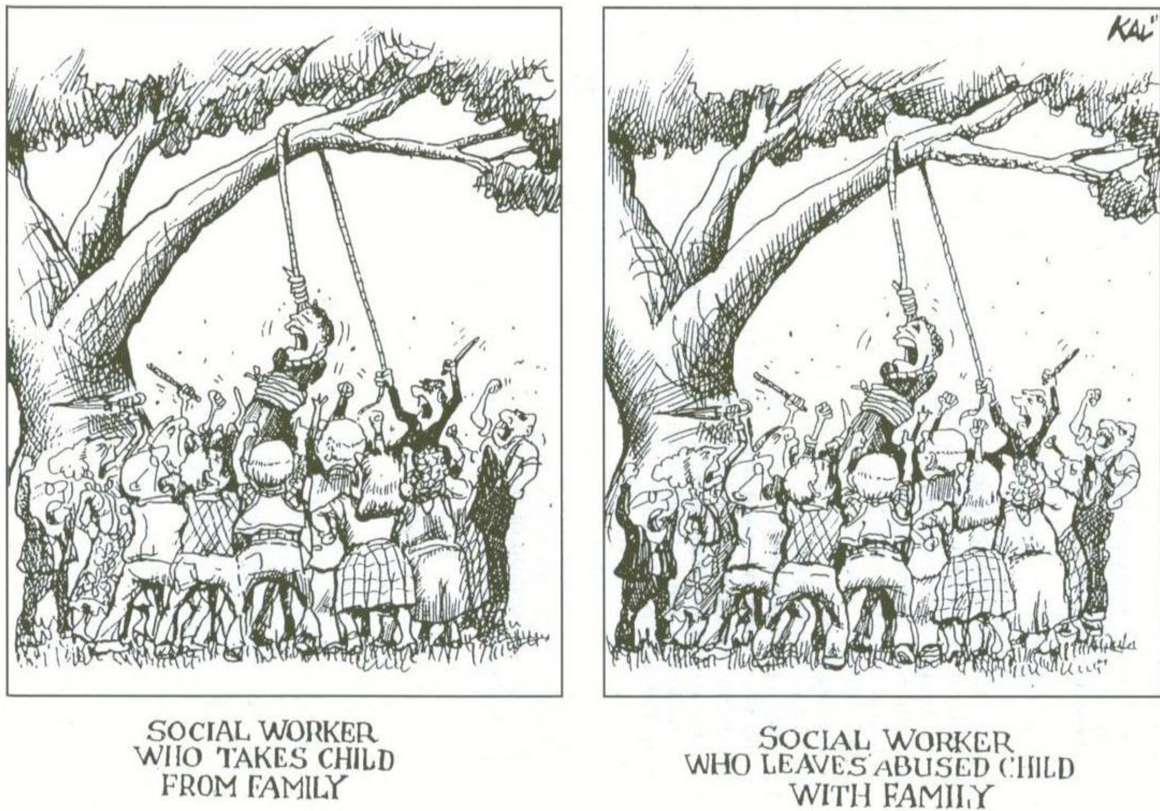


Figure 25: Damned if you do and damned if you don't! (source unknown)

1.2 An emerging consensus on child protection

As a result of such dilemmas a public, political and professional consensus emerged that while some children should be protected from abusive parents the state should also provide non stigmatising support for those families who required help. Coming 100 years after the 1889 Prevention of Cruelty to Children Act, the 1989 Children Act sought to strike new balances in the relationship between the state and the family (Parton, 1991). The parts of the Act dealing with both child protection and family support are described in the 'Legislation for Child Protection' section in greater detail, but it is important to note here that the central principle of the legislation is that there should be a new contract or 'partnership' between the state and the family. To achieve the new balance the threshold for state intervention in family life was raised to that of 'suspected or actual significant harm' (from the previous 'in need of care, protection or control'), alongside new duties directing provision of support to families by local authorities. It was anticipated that most responses to family situations by social workers would be of the later type. 'In fact this did not occur; at least to the degree it had been anticipated. The overview of government commissioned research, *Child Protection: Messages from Research* (Department of Health, 1995) portrayed a reactive social work system still preoccupied with the investigation of possible child abuse, with consequently little attention paid to the wider needs of children and families and restricted development of family support services' (Spratt, 2008, p 14). In a bid to stimulate the further development of family support services to children and families in

line with the legislative intent, the government, through its Social Services Inspectorate, stimulated a 'refocusing debate'. 'Such refocusing or rebalancing requires local authorities and their social workers to shift attention from procedurally narrow investigations under the child protection system to broader perspectives that embrace the priorities and sense of enquiry associated with family support' (Hearn *et al.*, 2004, p 35).

The way to achieve such changes was initially seen as the introduction of modern management techniques alongside the adoption of new work tools for social workers. An example of the former was the introduction of 'performance measures designed to track the response of local authorities against prescribed targets. For example, the reduction of numbers of children on the 'at risk' register; the use of the Social Services Inspectorate to reinforce good practice, often through public dissemination of exemplars of good practice such as local authorities who met or exceeded performance targets; and the award of stars to denote local authority performance standards' (Spratt, 2008, p 16). An example of the later was the *New Assessment Framework* (Department of Health, Department for Education and Employment, Home Office, 2000), introduced to help social workers balance their previous concentration on child protection risks with a new emphasis on the assessment of family needs and how these might be addressed. Much of the underpinning philosophy of the Framework was sited within ecological theories which located the risks posed to children across a range of systems (from family to society), challenging the ideas of pathological parenting promoted by Kempe as an explanation for child abuse, which had so influenced the development of the child protection system. As Léveillé and Chamberland observe, the 'careful and systematic assessment of the needs levels of children and their families referred to social services is at the heart of this initiative for refocusing children's services' (2010, p 931). The government's response to these findings was to 'ensure that referral and assessment processes discriminate effectively between different types and levels of need and produce a timely service response' (Department of Health, 1999, p 20). The Framework for the Assessment for Children in Need and their Families was created in response to this demand. It consists of a framework that aims to understand the complex situations in which children in need of services evolve within their own families' (Léveillé and Chamberland, 2010, p 931). Whilst assessments conducted under past guidance had been concerned to locate risks to children primarily in their caregivers, the philosophy underpinning the Framework were located in ecological approaches 'based on the premise that the development and behaviour of individuals can be fully understood only in the context of environments in which they live' (Horwath, 2001, p 54). These included the child's developmental needs, parenting capacity and family and environmental factors, with sub categories indicating areas for particular attention.

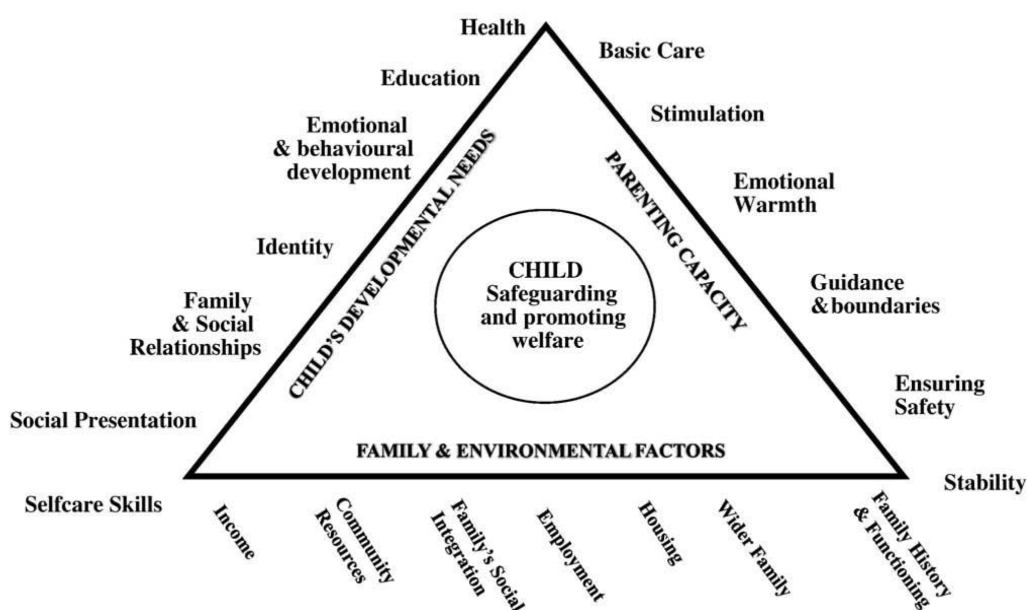


Figure 26: Framework for the Assessment of Children in Need and their Families (Department of Health, Department for Education and Employment, Home Office, 2000)

1.3 Difficulties in changing the child protection system: the influence of public inquiries

Did introduction of modern management techniques alongside the adoption of new work tools for social workers achieve the goals of the refocusing debate? Research by the author and colleague into the effects of the refocusing initiative have demonstrated that whilst overall rates of investigative child protection responses by social workers diminished, with an associated increase in family support responses, this did not necessarily lead to the development of a greater partnership with parents wherein service provision to meet needs became the normative response (Spratt, 2001; Spratt and Callan, 2004). Whilst the intention to move away from a narrow focus on child protection towards a broader response, recognising family problems and their needs for support, was generally welcomed by local authorities and social workers, it nevertheless remained difficult to move away from 'risk averse' practices. As the author and colleague have observed, 'it is politically and ethically unacceptable to route cases that appear to indicate lower risk through child protection processes; such lower risk cases are routed through child welfare processes; social workers must continue to manage risks inherent in child welfare cases; social workers achieve this by developing risk filtration practices; risk filtration practices inhibit the development of wider services to child welfare cases' (Hayes and Spratt, 2009, p 1593). Essentially such practices involve engaging with the family, establishing that there are indeed very low or no child protection risks, but then failing to more fully assess any needs the family might have as a basis for delivering services to them. In fact, very few families in this study received services.

To understand why social workers are reluctant to change their practices, even when mandated to do so by legislation and government policy, we need to reflect on the culture of blame that exists in the UK in relation to child protection issues. Social workers are very wary of being criticised in public if a child they are working with is abused or killed and this may cause them to focus on child protection issues rather than broader family support needs in their practice. Much of this fear has been created by public inquiries, where social workers have been blamed for not acting to protect children. Perhaps unlike other nations, the role of public inquiries into child deaths has also been pivotal in the continuing development of child protection policy and practice in the UK. Whilst the deaths of Maria Colwell and Jasmine Beckford were respectively, to provide stimulus for the creation of the child protection system in the UK, and then cause that system to become risk averse and interventionist in nature; the deaths of two children in recent years, Victoria Climbié and Peter Connolly, have resulted in public inquiries leading to wide ranging reviews of the child protection system.

Victoria Climbié

Victoria Climbié, a West African child, was murdered in 2000 in London by her great aunt and her partner with whom she was living at the time. Victoria had come into contact with a range of professionals, including social workers, who failed to interpret a number of signs, which indicated she required immediate protective intervention. At her post mortem, the pathologist noted 128 separate injuries on her body as a result of having been beaten. The political response was to commission Lord Lamming to examine the system for protecting children. Laming concluded that the system, underpinned by the legislative framework, was basically sound but that there needed be better structures to permit good communication between agencies and that these needed a basis in law; echoing a theme of previous inquires into child deaths which emphasised that professionals needed to work together to have a full understanding of what was happening in a child's life (Laming, 2003).

1.4 From protection to safeguarding: 'Every child matters'

We have witnessed changes in the language used to describe the difficulties children face in life, the early notion of 'child abuse' (in common with the more familiar term internationally – 'child maltreatment') focused on what is done to the child and the term 'child protection' focused on what can be done to protect children from abuse. The new term, emphasised in the government's response to the Laming Report, was 'safeguarding' The concept of safeguarding was derived from the 1989 Children Act which stated that local authorities had a duty 'to safeguard and promote the welfare of children in their area who are in need' (Section 17(1)). Whilst the 'refocusing debate' of the 1990s (referred to above) had concentrated on encouraging social workers to develop more supportive interventions for children in need in preference to investigative child protection responses, the shift to safeguarding envisaged state and voluntary services (including social workers, but also applying to all professionals involved in work with children) being of-

fered to a much broader range of children whose circumstances indicated that if services were not provided they would go on to suffer a range of poor outcomes. Such ideas were underpinned by the importance of prevention and early intervention.

The Green Paper, *Every Child Matters*, was published by the Government in 2003 (Chief Secretary to the Treasury). Whilst in part it was a response to the recommendations set out in Lord Laming's Report into the circumstances surrounding the death of Victoria Climbié, it also represented an attempt to connect an understanding of individual tragedies with the experiences of a much broader group of children, making it clear that child protection could not be separated from policies to improve children's lives as a whole. Parton has observed; 'the priority is not only that children are protected from significant harm but that the welfare of as many children as possible is safeguarded and promoted' (Parton, 2006, p 169). The concern was that there should be improved, measurable outcomes across a range of indicators, children's health, safety, enjoyment and achievement, ability to contribute to society and social and economic well-being. Parton has observed of the policy context, '[an] emphasis in early intervention, family support and a focus on vulnerable children was being developed. Concerns about children not fulfilling their potential and becoming social problems in the future were the driving force for change as much as children being at risk of parental abuse' (2006, p 166).

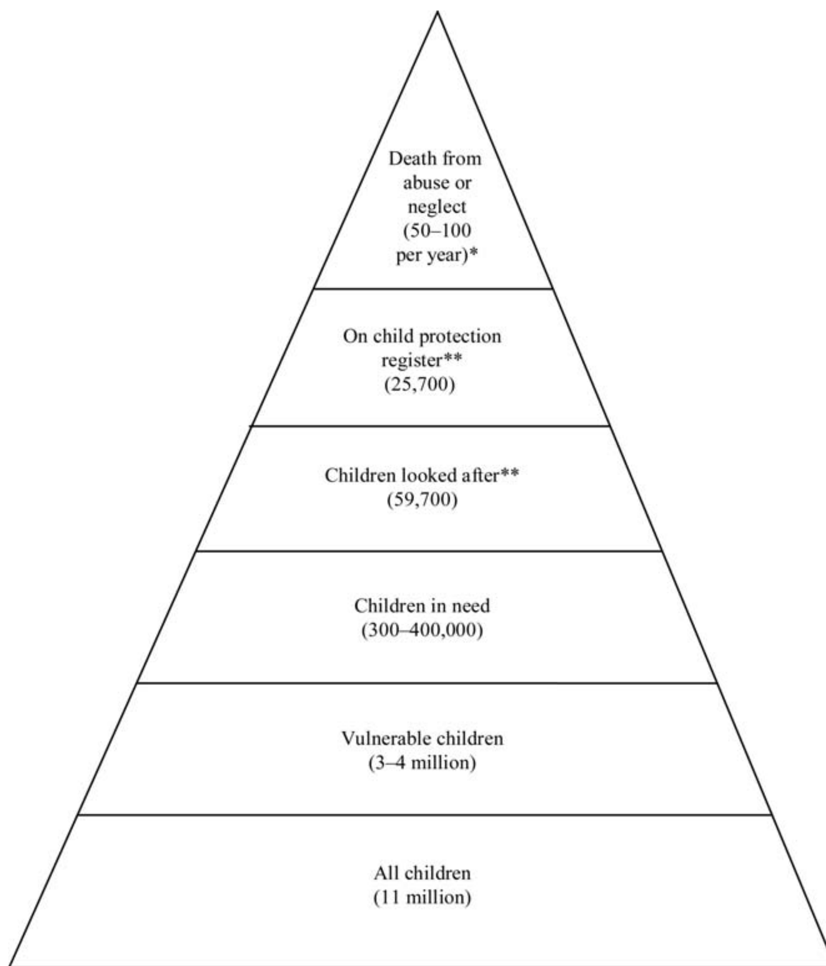
Whilst the *Every Child Matters* policies were closely aligned to the then Labour Governments intentions to tackle social exclusion in the UK, we may also identify three key underlying influences on policy development at that time which helped guard against a reactive policy response to the death of Victoria Climbié which might have resulted in a turning away from helping a broader group of children and concentrated resources on those who might be most likely to suffer abuse or death at the hands of their caregivers. First; a concern by government to invest in children as human capital has increasingly replaced investment in traditional industries, as western economies locate their future economic security in the knowledge economy requiring highly trained and mobile workers. Second; the influence of economists such as James Heckman who has calculated that universal provision of pre-school learning-enhancement programmes in the USA would generate cumulative benefits to society of over $400 billion (Heckman and Masterov, 2004). For those families in the UK presenting risk factors indicative of poor future outcomes, there is a strong economic case for early and high-cost investment to prevent the occurrence of predictable poor social and economic outcomes in the future. Third; the scientific claims that we can identify those families with multiple problems who are most likely to become high cost in the future, through reduced tax contribution due to unemployment and increased costs in terms of health and social support. For example, using findings from the UK Birth Cohort Study, Feinstein and Sabates found that: 'For higher levels of adult deprivation ...the probabilities of experiencing 10 or more of the 32 [negative] outcomes are 1% for the low risk group, 12% on average and 51% of the high risk group [the 5% most at risk]. This highlights the very strong relationship between high childhood risk and multiple adult deprivation' (2006, p ii). Such findings have caused policy makers in the UK to make it a priority to identify high risk groups and target these for

early interventions designed to prevent predicted poor outcomes, the motivations being to prevent human misery and reduce economic costs.

1.5 The 2004 Children Act

The question for local authorities and social workers posed by *Every Child Matters* was, could the core business of investigation of families where there had been accusations of child abuse be complemented by actions to help a broader range of children who could be identified as living with the type of risk factors (referred to above and mentioned in more detail in the Section dealing with Policies for Child Protection) which indicated they might either (a minority) suffer child abuse later in childhood or (a majority) experience a range of poor outcomes in later childhood and in adult life? To help create a positive answer to this question the initial focus on achieving the aims of the *Every Child Matters* policies was to create a statutory framework to better facilitate interagency working in meeting the twin objectives of improving the range of services to promote the welfare of as many children as possible, whilst ensuring a proper focus on safeguarding the most vulnerable of children; the result was the 2004 Children Act.

Key to achieving such objectives was the establishment of Local Safeguarding Boards in each Local Authority area, to provide an institutional structure to ensure the welfare of children. The core objectives, set out in *Working Together to Safeguard Children* (the interagency guidance issued by the government for professionals working to protect children), are as follows: 'to co-ordinate what is done by each person or body represented on the Board for the purposes of safeguarding and promoting the welfare of children in the area of the authority; and to ensure the effectiveness of what is done by each such person or body for that purpose. Safeguarding and promoting the welfare of children is defined ...as: protecting children from maltreatment; preventing impairment of children's health or development; ensuring that children are growing up in circumstances consistent with the provision of safe and effective care; and undertaking that role so as to enable those children to have optimum life chances and enter adulthood successfully' (Department for Children, Schools and Families, 2010, p 87). The Board members include representatives from the local authority, national health service, and a range of national voluntary sector providers (e.g. the NSPCC), together with local providers of services who should include 'faith groups, children's centres, GPs, independent healthcare organisations, and voluntary and community sector organisations including bodies providing specialist care to children with severe disabilities and complex health needs' (2010, p 105). The objectives, as illustrated below, were to reach a much wider number of children, ranging from those children considered vulnerable in some way, to children in need and to those children requiring state care or at extreme risk.



* These children may or may not be on the child protection register, nor looked after, nor vulnerable.

** These children are included in the children in need figure, and not all children on the child protection register are children looked after.

Figure 27: Every Child Matters (Department for Education and Skills, 2004)

1.5.1 The service delivery continuum

As will be evident from the illustration above, this shift in policy direction had the potential to greatly increase the number of children requiring help from local authorities. So whilst local authorities were (2004 statistics) responsible for some 25,700 children whose names were on the child protection register, looked after some 59, 700 children in the care of the state and provided services to between 300,000 - 400,000 children in need, it was estimated that there were 4 million vulnerable children (requiring extra help) in the total population of 11 million children in England. It is obvious that local authority social workers alone could not meet the needs of such numbers of children. Rather, it was envisaged that services to children should be delivered along a continuum from universal services to specialist services by a range of professionals, with services targeted at the specified level of need. And, reflecting the composition of local safeguarding boards, it was envisaged that all should be involved (including the voluntary sector) in delivering such services to children. The following figure illustrates these concepts.

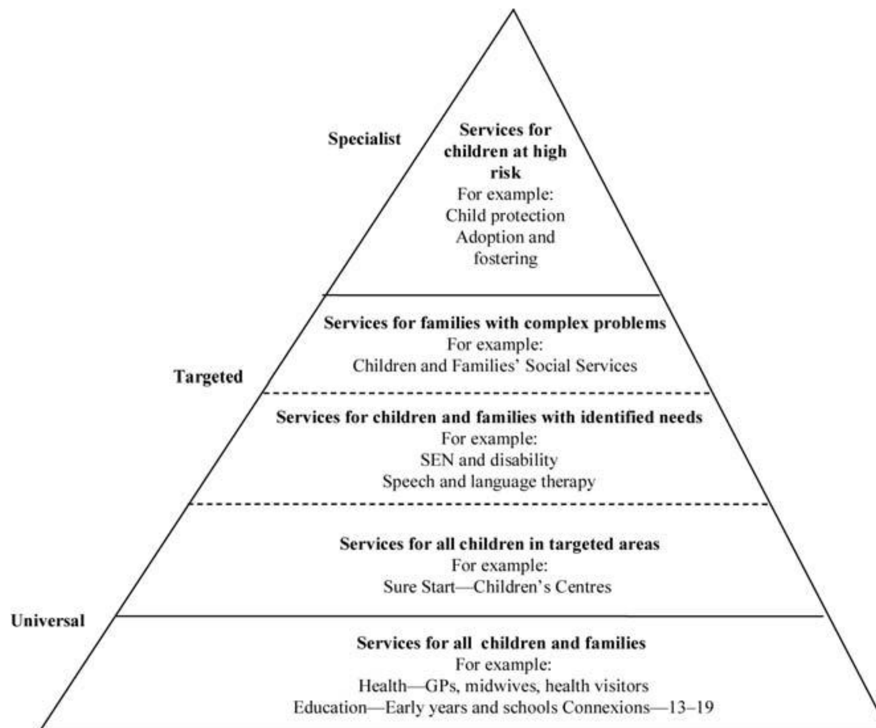


Figure 28: From Universal to Specialist Services (Department for Education and Skills, 2004)

1.5.2 The Common Assessment Framework

To help in the process of encouraging the view that the protection of children should not be confined to social workers but be a concern of all professionals working with children, the government introduced a *Common Assessment Framework* (Department for Children, Schools and Families, 2006). This was primarily designed to help a wide range of professionals identify vulnerable children who had additional needs at an early stage. This might be, for example, a teacher or a health visitor or a nursery worker. At this point of recognition an assessment would take place which might indicate that the needs could be addressed by a single professional or require more integrated support involving a number of professionals, one of whom would be appointed the *lead professional*. If the assessment indicated the presence of more complex needs requiring more specialist services then a referral could be made to local authority social workers who would implement a more in depth assessment along the lines indicated by the Framework for the Assessment for Children in Need and their Families referred to above. These processes, often referred to as the 'windscreen model', are illustrated below.

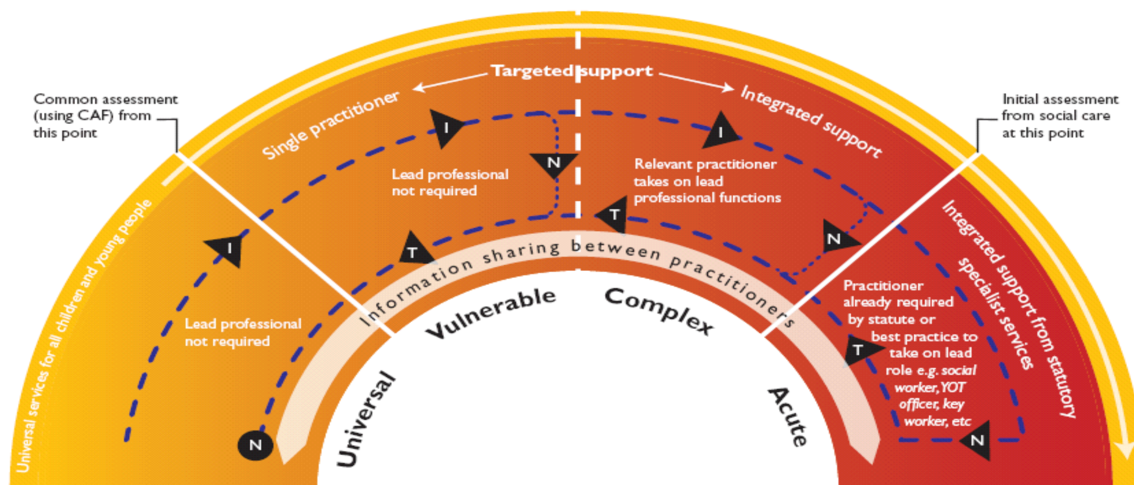


Figure 29: The Common Assessment Framework 'Windscreen Model' (DfCSF. 2006)

1.6 Recent developments in protecting children in the United Kingdom

We may trace two significant trends in child protection in the United Kingdom since the introduction of the 2004 Children Act. These are the further strengthening of the services delivered by state social workers to children at most risk of immediate harm, whilst taking forward policies based on the concepts of prevention and early intervention as informed by assessments identifying risk factors. The strengthening of services for those children most at risk was, as we have now come to expect, as a consequence of the death of a child.

Peter Connolly

Peter Connolly, a seventeen month old boy, died at the hands of his mother, step father and another man in London in 2007. 'During the trial, the court heard that Baby Peter was used as a 'punch bag' and that his mother had deceived and manipulated professionals with lies and on one occasion had smeared him with chocolate to hide his bruises. There had been over sixty contacts with the family from a variety of health and social care professionals' (Parton, 2010, p 12). Social workers were heavily criticised by a media who once again questioned their abilities to protect children when confronted with manipulative parents. As had been the case, following the death of Victoria Climbié in 2000, Lord Laming was once again commissioned by the government to report on the child protection system. His report was entitled *The Protection of Children in England* (Laming, 2009). Following this report, and also taking into account the report of the government commissioned Social Work Task Force (2009), a Social Work Reform Board was set up to overview the strengthening of social work as a profession, including the setting of new profes-

sional standards for social work education with a drive to recruit the most able students. Since the election of the new Coalition Government in the UK in 2010, Professor Eileen Munro has been commissioned to review frontline child protection services. This recently published review contains recommendations for both how services are organised and how social work is practiced (Munro, 2011). The effect of the death of Peter Connolly, therefore, was to once again put children at immediate risk at centre stage and reinforce the role or social workers as the lead professionals in ensuring their protection.

1.6.1 Prevention and early intervention

In some ways the repositioning of social work in the wake of the death of Peter Connolly was to confirm the apprehensions of some commentators. 'The changing identity of social work in policy towards a primary association with intervention focused on social and public protection brings material consequences. Child and family social work runs the risk of becoming a residual service, synonymous with child protection, where there is a need for investigation and compulsion... There is a risk that prevention, so far as child and family social work is concerned, may come to be associated with a narrow interpretation, namely prevention of significant harm or admission to public care' (McGhee and Waterhouse, 2010, p 12). Such comments may, however, be reflective of a fear of a profession being over identified with children at most risk in our society, where wider policies aspire to meet the needs of families at earlier points, before problems escalate. It could be argued that state social workers are better positioned at the apex of the continuums of needs and of services noted above with other professionals and service providers concentrating their attentions on earlier parts of the continuums. The data presented in relation to those children designated as children in need, children on child protection registers and children in state care (later in this report) certainly point to a concentration on the part of state social workers on those children at greatest risk and with most complex needs. And, counterbalancing the public perception that social workers do not properly protect children, (based largely on the findings of Public Inquiries), the evidence suggests that social workers have been effective in protecting those children most at risk. Part of the difficulty for social workers in becoming more involved in the delivery of preventative services directed towards a wider range of children in need has been a tendency for other professionals to refer families to social workers at increasingly lower thresholds of concern. This has greatly inflated the numbers of children social workers have had to respond to, whilst there has not been a proportionate increase in resources. It may be that burdening state social workers with the more supportive responsibilities, (as outlined in the 1989 Children Act and reinforced by the 2004 Children Act), is not the best way to proceed and that these responsibilities would be better undertaken by others. Any such changes, however, would require a massive and costly expansion of the voluntary service sector in the UK.

1.6.2 Bureaucratisation and professionalization

There are two final developments in child protection social work in the UK which are worthy of note. The legislation, policies and procedures governing the present child protection system (described below) has greatly increased the bureaucracy involved in social work practice. As previously referred to, one of the first actions of the new Coalition Government in the UK on coming to power in 2010 was to commission a review of child protection in England. The report has recently been published, (Munro, 2011), with the author observing in an Interim Report that; 'The main criticism [of procedures] is that they have become too extensive and are so dominating practice that space to exercise professional expertise is being severely reduced' (Munro, 2010, p 61). Munro further points out that, 'it seems that rules and guidance have been issued because of a lack of confidence in workforce competence. This is potentially damaging for two reasons. First, too great a reliance on rules creates the illusion of certainty in a sector where uncertainty prevails. Secondly, it leads to an overdependence on process which diminishes professional judgement and creates a mindset which seeks pre-formulated solutions to complex and uncertain situations' (2010, p 63). Whilst part of the solution may be to make such rules and procedures less prescriptive and decrease the amount of bureaucracy there has also been an ongoing drive within the UK to strengthen the social work profession. Prior to the new millennium it had been possible to qualify as a social worker at diploma level; qualification is now at degree level with indication that 'improvement in child protection practice [is] crucially dependent on the rejuvenation of a well trained, respected social work profession' (Parton, 2010, p 14). It will be interesting to see if the profession remains wedded to the more high risk end of the child protection with its complex bureaucracy or adapts to meet the needs of a wider range of children whose present circumstances indicate future risks and so require early prevention services.

1.6.3 The role of the third sector

In reflecting upon the history of child protection in the UK it is evident that the part played by voluntary providers of services has changed considerably. Whilst the early history of child protection featured lead roles for charitable and church based providers of services, since the advent of the welfare state their roles have changed, still being providers of services but in ways that are usually locality based and supportive of state services. In the UK this has become known as the 'third sector'. 'The Government defines the third sector as non-governmental organisations that are value-driven and which principally reinvest their surpluses to further social, environmental or cultural objectives....It includes voluntary and community organisations, charities, social enterprises, co-operatives and mutual's' (Department for Children Schools and Families, 2007, p 4). It is recognised that state services cannot meet all needs, so the resources provided by the third sector are regarded as important in a number of ways:

1. They are often in a position to develop services to respond more quickly in response to local needs than is the case with the larger and more complex state services.

2. The services provided may be regarded as less stigmatising than state services by those who use them (because they are generally considered less directly associated with the statutory child protection services).

3. They may involve local communities in the running of services, being less remote and more accountable than are the more bureaucratic state led services.

The major funding for the third sector is derived from government, but some organisations within this sector, particularly the larger ones, such as the NSPCC and Barnardos, raise considerable revenues from individual donors as well as from large foundations and businesses. In the UK in 2010 the government provided funding of some £240 million to third sector organisations to support the *Every Child Matters* policy goals referred to above. Such support is delivered through a process of service commissioning. This may happen in a variety of ways; for example, a Local Safeguarding Board may identify the need for particular service in an area. For example, it may have been observed that there are a large number of cases of domestic violence in the area but there are no services to help men overcome their tendency to violence against women. The local authority, as members of the Board, could decide to commission a national organisation who operated in the area (for example, Barnardo's), or a smaller locally based organisation, to provide a service for such men. This arrangement is usually referred to as 'a service level agreement', wherein a contract is created stipulating that an agreed programme is delieverd to an agreed number of men over a certain timescale at a particular cost. Such arrangements are then evaluated by the commissioning local authority to ensure that they are both effective in meeting the aims and represent value for money. By way of illustration, Barnardo's in Northern Ireland currently provide a range of services (at the targeted and specialised levels identified in Figure 28) commissioned by local authorities under contract arrangements; these include, a Child Bereavement Service, a Domestic Violence Outreach Scheme, Family Group Conferencing (facilitating families to provide solutions to their own problems), a residential unit called Parents and Children Together, where high risk single parents and their children can be assessed and a scheme to help young people leaving state care (barnardos.org.uk). It is important, however, to note that whilst the state relies heavily on such organisations to provide these types of services, the services are located in particular localities and therefore are not accessible by all citizens within Northern Ireland. Essentially the state remains responsible for the provision of services to all citizens, in the majority of cases this is achieved by a comprehensive network of social workers employed by local authorities, with the third sector used to fill gaps in service provision and respond to new needs where they become apparent in communities.

1.7 The Relationships between the United Kingdom government and national governments in Wales, Scotland and Northern Ireland

We now turn to the political and legislative structures in the UK. The United Kingdom comprises four nations, England, Wales, Scotland and Northern Ireland. Traditionally power has been centralised in the UK parliament at Westminster in London. Whilst all countries continue to have elected representatives at Westminster, following referendums in Wales and Scotland in 1997 and in Northern Ireland in 1998, national parliaments (referred to as assemblies in Wales and Northern Ireland) were created and a range of powers were transferred to them. This has become known as the 'devolution of power'. Whilst central government in Westminster remains responsible for national security, social security, foreign policy, economic policy (including taxation) and trade, the range of powers devolved to national governments is extensive. These include, health, education, housing, home affairs (including some aspects of criminal and civil law), the environment and social work. Responsibilities for discharging these powers are further devolved to a range of local authorities who organise and deliver services to the public.

Child protection, whilst being a devolved responsibility at national government level in terms of laws, policy and control of local authorities, also remains an issue at the heart of central government in Westminster, where concern for children in England, reflects public concern that the welfare of children remains an important priority. As we have seen, the issue of child protection has, in modern times, been a central concern of government, leading to public debate on the issues. Consequently the system for protecting children in the United Kingdom has come under intense public, media and political scrutiny in ways perhaps not familiar to other European nations. In effect this has meant that nations within the UK are wary of developing policies out of line with mainstream thinking. So whilst policies are not identical, they nevertheless reflect 'cross-cutting concerns across the jurisdictions' (McGhee and Waterhouse, 2010, p 3). This is reflected in legislation, policies and procedures.

1.7.1 Legislation for child protection

At the level of legislation, the Children (Northern Ireland) Order 1995 is a close copy of the 1989 Children Act in England and Wales. Scotland has a different legal system, in existence since 1885, with the Children (Scotland) Act 1995 being the most up to date child protection legislation. Unlike the rest of the United Kingdom, where there are strict legal divisions between legislation concerned with dealing with children who commit offences and those who are in need of care and protection, these issues are dealt with within the same legal system in Scotland. As a result, however, of growing concern with regard to child protection issues, the Children's Hearing System (courts), whilst 'originally dominated by referrals on offence grounds is now primarily concerned with referrals on care and protection grounds' (McGhee and Waterhouse, 2010, p 6).

The central purposes of the 1989 Children Act were to provide a basis for partnership between the state and the family by providing a number of checks and balances within the legislation to promote the rights of

parents to bring up their children and the rights of children to be brought up in their own home, whilst ensuring those children requiring protection were safeguarded. Intentions to support families are reflected in statutes directing local authorities to provide a range of services to such families and are balanced by statutes giving powers to local authorities to intervene in family life in order to protect the children when situations become so severe or chronic as to pose considerable risks to children should they remain in the family home. Other parts of the legislation deal with Looked after Children (children in state care) emphasising, in so far as it is possible to do so, that such children are brought up in a partnership between the state and their natural parents, with the responsibilities shared, not replaced. It is important to note that these three parts of the legislation overlap in practice, for example, children who are abused meet the criteria for being children in need and such children may become looked after children. The articles of the legislation dealing with these three areas are described below.

1.8 Family support

The first two articles of the 1989 Children Act are of particular importance for clarifying the legislative intent in relation to family support. Article 18 sets out 'the general duty of every authority': (a) To safeguard and promote the welfare of children within its area who are in need; and (b) So far as is consistent with that duty to promote the upbringing of such children by their families; by providing a range and level of personal social services appropriate to those children's needs.

In Article 17 three criteria are established for determining which children are deemed to be 'in need'. A child is defined as "in need" if-

'(a) He is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services;

(b) His health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or

(c) He is disabled.'

1.9 Child protection

Section 47(1) of the 1989 Children Act gives Local Authorities the responsibility for investigating suspected child abuse on the basis of 'significant harm': 'Where a local authority – have reasonable cause to suspect that a child who lives, or is found in their area is suffering, or is likely to suffer, significant harm, the authority shall make, or cause to be made, such enquiries as they consider necessary to enable them to decide whether they should take any action to safeguard or promote the child's welfare'. If such enquiries confirm that a child is suffering or likely to suffer significant harm, then if is deemed necessary to protect

the child, the social worker may apply to the court for an Emergency Protection Order which permits the removal of the child into the care of the state for a period of up to eight days. After this time a further application must be made to the court for an interim Care Order if it is thought unsafe to return the child home and/or further time is required for assessment. If interim Orders are granted the Local Authority must decide, when all assessments are complete, whether or not to apply for a full Care Order. If the Care Order is granted by the court, the state shares parental responsibility with the natural parents until the child is 18 or the Order is revoked. In effect this usually means that they continue to reside in state care until such times.

1.9.1 Looked after children

The Children Act 1989 provides two routes through which children may become looked after. The first is through the granting of a Care Order (Section 31) which brings the child into state care on a compulsory basis. The court may only make a Care Order if satisfied that the child is suffering, or is likely to suffer, significant harm attributable to the care given, or to the child being beyond parental control. The second is via the provision of voluntary accommodation, which comes into effect with respect to any situation (with the exception of the child being at risk of suffering significant harm at the hands of their parents) where a parent is unable to provide care for a child. The parent may remove their child from this voluntary arrangement at any time.

1.9.2 Children's rights

In common with other countries, the UK is a signatory (in 1991) of the United Nations Convention on the Rights of the Child (UNCRC), and reports to the UN Committee on the Rights of the Child on progress made on implementing the rights of children. Children's' Commissioners have been appointed in each UK nation to ensure compliance with the Convention. A number of the Conventions Articles direct governments to protect children from exploitation or abuse and to promote their development and welfare. Whilst the 1989 Children Act was introduced before the signing of the Convention it does in many ways reflect an intention to both hear the concerns of children and act to protect their rights. For example, children in court proceedings have the right to independent legal representation and social workers must consult with them and consider their views on any matters which might affect their lives across a wide range of circumstances. A Guardian Ad Litem service has also been introduced in UK nations to ensure that independent social workers scrutinise all applications made to Courts under the Children Act by local authorities to ensure that child's best interests are protected, making representation directly to the court with regard to these matters. At a broader level, however, the idea of children having rights has entered the public consciousness and it has become a priority for all organisations working with children to ensure that their policies and procedures are compliant with the principles of the Convention. In child protection work, this is most

often expressed by a concern that the wishes and feelings of children should be heard and influence decisions at all levels in the child protection process.

1.10 Policies for child protection

Common approaches across the four nations to the protection of children at the level of legislation are also evident at policy level. In Northern Ireland *Our Children and Young People—Our Pledge, 2006–2016* (Office of the First Minister and Deputy First Minister, 2009), in Scotland, *Getting it Right for Every Child* (Scottish Executive, 2005) and in Wales, *Children and Young People: Rights to Action in Wales* (Welsh Assembly Government, 2004) all, with some variation, reflect the broad themes contained in the English policy paper (reviewed in detail previously) *Every Child Matters* (Chief Secretary to the Treasury, 2003), of improved measurable outcomes across a range of indicators, children's health, safety, enjoyment and achievement, ability to contribute to society and social and economic well-being. Much of the development of policy in England has been described in detail in an earlier section of this report. It is important to note here that the policy documents across the four nations all reflect a growing preoccupation with preventative services and early intervention in line with the concern to reduce the social and economic costs referred to above; targeting children and families where risk factors indicate the likelihood that problems will develop to require interventionist specialist services in the future if preventative services are not offered in the present. They advocate a whole of government approach; all government departments concerned with children should work cooperatively to achieve the policy outcomes for children. They also promote inter-agency working between the state and third sector in pursuit of the same goals (Social Exclusion Task Force, 2008).

1.10.1 The role of the third sector in the development of legislation and policy

It is important to note that the work of the third sector has not been restricted to the direct provision of services; it has also had significant roles to play in relation to the development of legislation and policy. In line with an international growth in concern for children's rights, organisations such as the NSPCC have developed significant interests in promoting such rights through campaigning strategies. They list a number of significant achievements in this regard over the last ten years, including an increase in the penalties delivered by courts to those convicted of sexually abusing children, the introduction of more 'child friendly' arrangements for those children giving evidence in child abuse trials, lobbying the government to pledge £13 million to help support victims of child abuse and launching national campaigns to heighten public awareness of the signs and symptoms of child abuse to enable improved early reporting and effective interventions (nspcc.org.uk). Much of this work is achieved by the astute use of the media to highlight issues and the direct lobbying of political representatives to ensure that the policy and law makers take into account the views and wishes of third sector organizations, who often have considerable support from

the public, in making new laws and policies. They also have an important role in calling such law and policy makers to account, ensuring that policies are implemented and measuring their effects in practice. In this way they have a vital role in influencing policy formation and implementation and critiquing its effectiveness. State social workers and local authorities are less free to critique such policies as they are employed directly by the state.

1.11 Guidance and procedures for child protection

The guidance and procedures for child protection in the England is, *Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children* (Department for Children Schools and Families, 2010). The guides available in Wales (*Safeguarding Children: Working Together under the Children Act 2004,* Welsh Assembly Government, 2006) and Northern Ireland (*Co-operating to Safeguard Children,* Department of Health, Social Services and Public Safety, 2003) are very similar, with some variation in the Scottish guidance (*Protecting Children – a Shared Responsibility: Guidance on Inter-agency Co-operation,* Scottish Office, 1998) reflecting the differences in their legislation. The English guidance runs to a remarkable 393 pages in length and contains complex instructions for the procedures and protocols to be followed, including, roles and responsibilities of various professionals; arrangements for local safeguarding boards; training, development and supervision for interagency working; managing individual cases where there are concerns about a child's safety and welfare; child death review processes; serious case reviews; safeguarding and promoting the welfare of children who may be particularly vulnerable, and managing individuals who pose a risk of harm to children. It also provides the definitions of various forms of abuse which are of particular importance in deciding which children should receive an immediate response in line with the child protection requirements of the legislation. These are detailed in full below as they represent the official definitions upon which practice is based.

1.11.1 Neglect

The definition of neglect is the persistent failure to meet a child's basic physical and/or psychological needs, likely to result in the serious impairment of the child's health or development. Neglect may occur during pregnancy as a result of maternal substance abuse. Once a child is born, neglect may involve a parent or carer failing to: provide adequate food, clothing and shelter (including exclusion from home or abandonment); protect a child from physical and emotional harm or danger; ensure adequate supervision (including the use of inadequate care-givers); or ensure access to appropriate medical care or treatment. It may also include neglect of, or unresponsiveness to, a child's basic emotional needs' (2010, p 39).

1.11.2 Physical abuse

The definition of 'physical abuse may involve hitting, shaking, throwing, poisoning, burning or scalding, drowning, suffocating, or otherwise causing physical harm to a child. Physical harm may also be caused when a parent or carer fabricates the symptoms of, or deliberately induces, illness in a child' (2010, p 38).

1.11.3 Sexual abuse

Defining 'sexual abuse involves forcing or enticing a child or young person to take part in sexual activities, not necessarily involving a high level of violence, whether or not the child is aware of what is happening. The activities may involve physical contact, including assault by penetration (for example, rape or oral sex) or non-penetrative acts such as masturbation, kissing, rubbing and touching outside of clothing. They may also include non-contact activities, such as involving children in looking at, or in the production of, sexual images, watching sexual activities, encouraging children to behave in sexually inappropriate ways, or grooming a child in preparation for abuse (including via the internet). Sexual abuse is not solely perpetrated by adult males. Women can also commit acts of sexual abuse, as can other children' (2010, p 38).

1.11.4 Emotional abuse

'Emotional abuse is the persistent emotional maltreatment of a child such as to cause severe and persistent adverse effects on the child's emotional development. It may involve conveying to children that they are worthless or unloved, inadequate, or valued only insofar as they meet the needs of another person. It may include not giving the child opportunities to express their views, deliberately silencing them or 'making fun' of what they say or how they communicate. It may feature age or developmentally inappropriate expectations being imposed on children. These may include interactions that are beyond the child's developmental capability, as well as overprotection and limitation of exploration and learning, or preventing the child participating in normal social interaction. It may involve seeing or hearing the ill-treatment of another. It may involve serious bullying (including cyberbullying), causing children frequently to feel frightened or in danger, or the exploitation or corruption of children. Some level of emotional abuse is involved in all types of maltreatment of a child, though it may occur alone' (2010, p 38).

1.12 Risk factors

Whilst these definitions of abuse point to those situations where the various forms of abuse may be already seen to be occurring, the greater numbers of referrals to local authority social workers are more likely to involve vulnerable children where there may be concerns in relation to the risk factors evident within the family environment. Knowing which families are most in need of early intervention has been

informed by epidemiological studies which have demonstrated that the 'risk factors' for future poor outcomes may be identified and inform the targeted delivery of services to reduce the likelihood of poor outcomes occurring. Whilst such risk factors include the familiar indicators of child abuse upon which the traditional child protection system has been built, other factors such as adult offending behaviour, large family size, child rearing models which include poor supervision, poor discipline and emotional coldness on the part of parents (sometime termed 'low warmth and high criticism' families) experience of family disruption (such as divorce) are predictive of poor outcomes in adulthood (Farrington and Welsh, 2007). While there is no definitive list of such risk factors the World Health Organisation note that findings of international studies 'strongly suggest the universality of adverse childhood experiences effects and consequences' (World Health Organisation, 2009, p. 4).

The term Adverse Childhood Experiences (ACE) represents an empirically based attempt to link adverse experiences in childhood and health and social outcomes in later life and defines adversity in two ways; firstly the experience of childhood maltreatment, for example, physical abuse, and secondly, untoward familial circumstances such as the experience of having a parent who abuses drugs or alcohol, are imprisoned or have a mental illness. It also includes situations of family breakdown. An individual's ACE score is a simple count of such experiences with higher scores 'repeatedly showing a positive graded relationship to a wide variety of health and social problems' (Anda *et al.*, 2010, p 95). Such studies have demonstrated that those children facing multiple adversities (or risk factors) are more likely to suffer poor outcomes in adulthood than those experiencing singular adversities. Furthermore, it is the multiple effects of equally weighted adversities which influence poor outcomes rather than the particular influence of one type of adversity. This perhaps challenges our intuitive sense that the experience of a type of maltreatment would be likely to outweigh other factors. This type of research has now begun to inform the guidance offered to social workers and other professionals whose task it is to safeguard children. However, the five factors highlighted below in *Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children* (Department for Children Schools and Families, 2010), also reflects the influence of social workers over the years who have repeatedly recognised such factors to be present in cases where children have been abused.

1.12.1 Domestic violence

The guidance defines 'Domestic violence is defined as any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality.' In terms of incidence nearly 25% of adults (the great majority being women) are victims of domestic violence. The guidance further observes: 'domestic violence affects both adults and children within the family'. Some 200,000 children are estimated as being effected by prolonged or regular exposure to domestic violence which can have a serious consequences for their safety and welfare, either because they are directly caught up in the violence or because they witness it and suffer emotional trauma as a result (2010, pp. 262-3).

1.12.2 Mental illness of a parent

In relation to the mental health of a parent or carer the guidance notes that ‘a wide range of mental ill health can affect parents and their families. This includes depression and anxiety, and psychotic illnesses such as schizophrenia or bipolar disorder....Mental illness may also be associated with alcohol or drug use, personality disorder and significant physical illness. Approximately 30% of adults with mental ill health have dependent children’. Poor mental health, especially in mothers, may pose risks for children, particularly in relation to their development if they are very young. For example the guidance observes that ‘children with mothers who have mental ill health are five times more likely to have mental health problems themselves.... in rare cases a child may sustain severe injury, profound neglect, or even die’ (2010, p 266). Such observations must, however, be tempered by the fact that most parents suffering mental illness do not pose a risk to their children.

1.12.3 Parental problem drug use

In relation to parental drug use the guidance observes: ‘Although as many as one in three adults have used illicit drugs at least once, problem drug users are less than one percent of the population in England.... In England and Wales it is estimated that one per cent of babies are born each year to women with problem drug use, and that two to three per cent of children under the age of 16 years have parents with problem drug use....Parental problem drug misuse is generally associated with some degree of child neglect and emotional abuse. It can result in parents or carers experiencing difficulty in organising their own and their children’s lives, being unable to meet children’s needs for safety and basic care, being emotionally unavailable and having difficulty in controlling and disciplining their children’ (2010, p 270).

1.12.4 Parental problem alcohol use

Whilst alcohol use differs from other drug use in that is a legalised drug, nevertheless its use by parents may potentially be harmful to their children. The guidance defines harmful drinking as: ‘Drinking at levels that lead to significant harm to physical and mental health and at levels that may be causing substantial harm to others... Women who regularly drink over 6 units a day (or over 35 units a week) and men who regularly drink over 8 units a day (or 50 units a week) are at highest risk of such alcohol-related harm. Findings from the *General Lifestyle Survey 2008* suggest that 7% of men and 4% of women regularly drink at higher-risk levels’. The estimated figure for children affected by parental use of alcohol at harmful levels is 1.3 million in England. As the guidance further points out, ‘Parental problem drinking can be associated with violence within the family and the physical abuse of children, ...Children are most at risk of suffering significant harm when alcohol misuse is associated with violence’ (2010, p 274).

1.12.5 Parents with a learning disability

The definition of learning disability encompasses people with a broad range of disabilities: 'Learning disability includes the presence of: a significantly reduced ability to understand new or complex information, to learn new skills (impaired intelligence); with a reduced ability to cope independently (impaired social functioning); which started before adulthood, with a lasting effect on development'. Whilst the research provides an estimate of some '985,000 people in England with a learning disability; equivalent to an overall prevalence rate of 2% of the adult population....It is important not to generalise or make assumptions about the parenting capacity of parents with learning disabilities' (2010, p 279). The risks to children are seldom as a result of deliberate wilful acts against them but rather the result of neglect through parental omission in relation to necessary caring tasks.

As the guidance further points out, however, these risk factors of course rarely exist in isolation as 'many parents also misuse drugs or alcohol, experience poor physical and mental ill health and have a history of poor childhood experiences themselves. The co-morbidity of issues compounds the difficulties parents experience in meeting the needs of their children, and increases the likelihood that the child will experience abuse and/or neglect' (2010, p 164). This confirms the observations made above in relation to the ACE research, it the multiplicity of risk factors which may act together to produce a toxic cocktail of childhood adversity,

As is evident from this description of risk factors contained in the guidance available to social workers, only relatively small proportions of families featuring such risk factors may go on to abuse or neglect their children. However, looked at another way, children living in such families, especially where there are a number of risk factors present, have significantly greater chances of going on to experience poor outcomes in terms of health and development in later childhood and poor outcomes in terms of health and social circumstances in adulthood (Spratt, 2009). As we have seen, there is a tendency for social workers to prioritise the immediate child protection issues (those cases where the risk factors have resulted in abuse) over those cases where abuse has not occurred but where, nevertheless, the presence of multiple risk factors indicate poor long term outcomes for the child. Whilst the influence of possible criticism of social workers leading to risk averse practices has been cited as one explanation for these phenomena, there is another influence we need to bear in mind. Over the years the numbers of families referred to social workers has risen as the pubic and professionals alike have become more aware of the need both to protect children and offer families support. For example Munro notes that in 2009-10, '603,700 referrals were made to children's social care services, an increase of 56,700 (10%) from the 2008-9 figures' (2011, p. 25). As will be apparent in the later section dealing with National Data Bases local authorities do not have the capacity to meet the needs of this large referred population, in part explaining why there has been little national interest in implementing a mandatory reporting policy.

1.12.6 Mandatory reporting

Mandatory reporting is a legislative duty for professionals working with children to report cases of suspected child abuse to social workers. In a report on the issue of mandatory reporting laws. Wallace and Bunting note that: 'internationally, few countries appear to have mandatory reporting laws covering child abuse. The USA, Australia and Canada are the main countries that pursue this as an approach.... Full mandatory reporting may result in an increase in reporting rates but the international experience highlights the potential for overburdening already stretched child protection services and raises questions as to the quality of increased reports, many of which have been found to be unsubstantiated....A voluntary reporting system strengthened by interagency protocols emphasising the duty of care professionals have in relation to children can provide a similar but more flexible framework for reporting child abuse concerns' (2007, pp. 4-5.).

Essentially mandatory reporting creates a situation where professionals are reluctant not to report a case which *might* have features indicating that the child needs protection, and so refer cases to social workers because they are uncomfortable with dealing with even very low levels of risk as this may create risk to them if someone later accuses them of not referring a case where the child has been subsequently abused. The vast increase in referrals such a system creates, paradoxically, may increase risk for children as all the responsibility for the case is given to social workers who are only able to respond to the most serious cases because of the great increase in numbers of referrals. There has consequently been no great public or professional pressure for mandatory reporting in the UK.

How are these laws, policies and procedures implemented? We have examined the reasons why the child protection system was established and described how it developed; we will now detail its current form before examining how its activities are captured in national data measures.

1.13 The child protection system

Families are referred by other professionals or, on occasions, refer themselves to local authorities for a wide number of reasons. The first task for social workers is to screen referrals to ascertain if they meet the criteria for social work intervention; such criteria may vary between local authorities who operate thresholds in relation to what is deemed an appropriate referral but will usually reflect the targeted and specialist service levels illustrated in Figure 28. If help is not offered by the local authority advice may be given in relation to a more appropriate source of support, for example the telephone number of a local voluntary provider operating a service relevant to the need. This process is sometimes referred to as 'screening out'; it is evident from

Figure **30** that approximately one third of referrals do not make it to the next stage, the initial assessment. An initial assessment is a brief assessment in accordance with statutory guidance, the Framework for the Assessment of Children in Need and their Families (Department of Health *et al*, 2000) of any child who

meets the threshold criteria and should be completed within a maximum of seven working days and may lead to three types of outcome: 1. no further action; 2. the immediate provision of services; or 3. a more detailed type of assessment known as a 'core assessment'. This is a more in-depth assessment which, as with the initial assessment, seeks to ascertain and analyse information along the three domains of the Assessment Framework i.e. the child's developmental needs, the parents' or caregivers' capacity to respond appropriately to those needs; and the wider family and environmental factors. It should be completed within 35 days. Approximately one third of those receiving an initial assessment have a core assessment. It is evident from

Figure 30 that the majority of those receiving core assessments are also subject to child protection inquiries with half of this number becoming subject to 'child protection plans' (this term in England replacing the previous practice of recording the child's name on the 'at risk' register). This further emphasises the tendency for social workers to prioritise children in need of immediate protection within the 'children in need' definition outlined in the 1989 Children Act. This tendency is further illustrated in the National Data section.

The figure below illustrates the numbers of children entering the system in England in 2010 and what proportion ended up in receipt of a child protection plan. Approximately one in fourteen referred children becoming subject to a child protection plan. It is important to note that part of the referral and assessment process outlined above involves special procedures for those cases requiring actions to protect a child, either because they are judged to be at immediate risk of significant harm at initial referral or this becomes apparent during the assessment process. These procedures are described below.

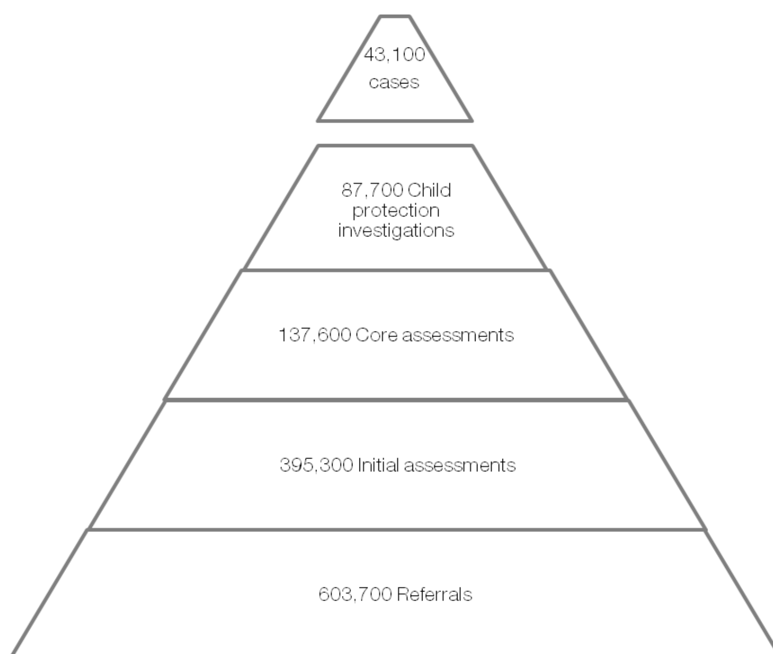


Figure 30: Children referred to local authorities in England in 2010, the final figure of 43,100 represents those subject to a child protection plan

1.13.1 Child protection processes

If a referral is received that indicates that the child is suffering or likely to suffer significant harm, then an immediate child protection response may be initiated in compliance with Section 47 of the Children Act. In a minority of cases, application may be made directly to the courts for an Emergency Protection Order if is considered unsafe to leave a child in the care of their parents. The investigation will involve the social worker liaising with a designated police officer to agree a strategy under 'joint protocol' arrangements. These arrangements were first introduced following the Cleveland Inquiry, referred to previously, to ensure that children did not receive multiple interviews to cover both civil and criminal legal aspects, the new protocol allowing a joint interview to cover both evidential and welfare concerns. The process is illustrated in Figure 31.

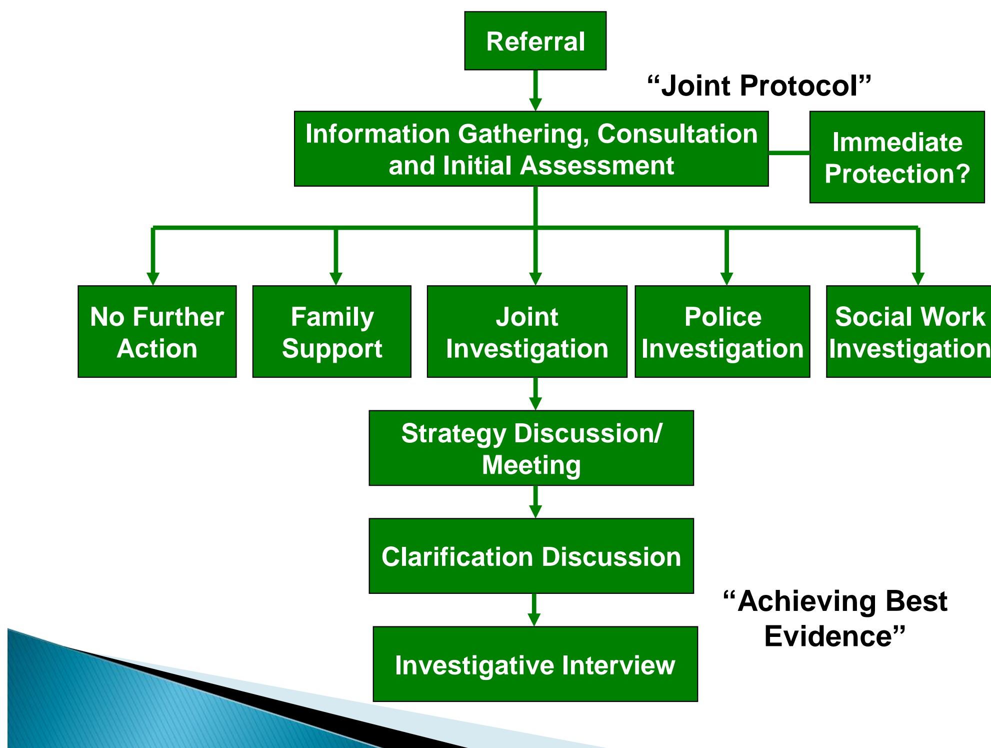


Figure 31: The child protection referral process

1.13.2 The case conference

If, after the joint protocol process is complete and an assessment has been made, any evidence supporting a criminal investigation is the responsibility of the police, if there remain concerns with regard to the child's welfare then this is dealt with at a case conference. This should be held within 15 days from an investigation taking place. Government inquiries into the deaths of children have continually highlighted the need for professionals who know the child to share information with regard to a child to enable a 'true

picture' of the child's situation to be developed. The case conference allows the sharing of this information between professionals and permits decisions to be made on the best possible information. It is good practice for parents to also attend case conferences and hear the concerns of professionals and make response to these. The case conference must decide if the child in question is at continuing risk of significant harm, if so they must develop a child protection plan to ensure the child's future safety and reduce the risks. This normally involves the provision of a range of services to the child and their family. Once subject to a child protection plan the case is reviewed by the case conference at regular intervals until it is judged that the child is no longer at risk of significant harm.

1.14 National data on child protection

All the nations in the UK collect data on those children referred to local authorities. The data covers a range of indicators covering numbers and categories of children in need; numbers of children in the child protection system and numbers of looked after children. It is important to note that these data reflect the various legal and procedural categories available. Essentially how the system defines and responds to the problems faced by children. They are therefore system output measures, a record of incidence, categorisation and journey through the system. They do not measure outcomes for children. In the majority of cases we will use data from England as the data sets are derived from a bigger population than the other countries, who collect similar data with comparable patterns evident.

1.15 Children in need

As detailed above, children in need are those children who, following assessment, meet the legal criteria, that is, their health and development are likely to be significantly impaired without the provision to them of services. As the figure 8 illustrates, in practice, the most frequent sub category of children are defined as having been abused or neglected. This demonstrates the historic tendency we noted above, that is that social workers prioritise child protection cases. There were 375,900 children in need in England in 2010, which was a rate of 341.3 per 10,000 children. The types of services Local Authorities are directed to deliver to children are set out in Schedule Two of the Children (N.I.) Order 1995, they include: the provision of day care, supervised activities after school and during holidays, advice, guidance and counselling, occupational, social, cultural or recreational activities, assistance to enable a child and family to have a holiday and the provision of a family centre (a centre to provide therapeutic facilities for children and their parents). Local Authorities provide such services directly or may commission these from voluntary providers of services.

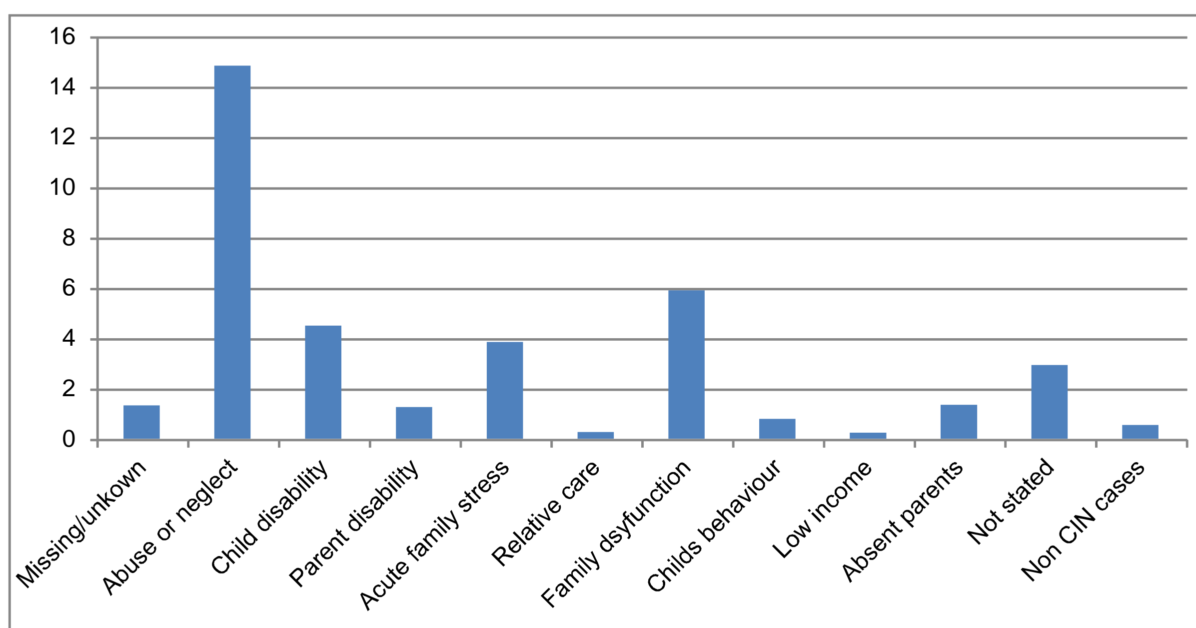


Figure 32: Children in Need: Open Case Status. Each number represents 10,000 children (DfE, 2010).

1.15.1 Child protection

The Table below illustrates trends in child protection registrations in England over the period 1994 to 2010 (alternate years). It represents the numbers of cases judged to meet the definitional criteria for child abuse and neglect set out above, by professionals meeting in case conferences, following an investigation into the circumstances of the case by social workers. It is important to note that these statistics capture the *incidence* of child abuse as reported to local authorities, not the *prevalence.*

Abuse Category	1994	1996	1998	2000	2002	2004	2006	2008	2010
Neglect	7,800	9,400	11,600	14,000	10,800	12,600	13,700	15,300	17,200
	(25%)	(31%)	(35%)	(41%)	(39%)	(41%)	(44%)	(44%)	(44%)
Physical Abuse	11,400	10,700	9,900	8,700	5,300	5,700	5,100	5,000	4,700
	(37%)	(35%)	(30%)	(26%)	(19%)	(18%)	(16%)	(15%)	(14%)
Sexual Abuse	7,500	6,200	6,100	5,600	2,800	2,800	2,600	2,300	2,200
	(24%)	(20%)	(18%)	(16%)	(10%)	(9%)	(8%)	(7%)	(5%)
Emotional Abuse	3,500	4,000	4,800	5,500	4,700	5,600	6,700	8,600	11,400
	(11%)	(13%)	(15%)	(16%)	(17%)	(18%)	(21%)	(25%)	(28%)
Multiple categories	500	400	700	310	4,100	4,300	3,300	2,900	3,400
	(2%)	(1%)	(2%)	(1%)	(15%)	(14%)	(11%)	(8%)	(9%)
Total	**30,700**	**30,700**	**33,100**	**34,110**	**27,700**	**31,000**	**31,400**	**34,100**	**39,100**

Table 1: Numbers and percentages of children with 'child protection plans' registered 1994 to 2010 by category of abuse in England (adapted from Stafford et al., 2010, p. 25)

It will be apparent that there have been considerable changes both with regard to overall numbers of children registered and in growth and decline within categories of abuse over the period. There are a number of explanations for this. The first is that official guidance has changed over the period to steer professionals away from registering children on the grounds of ‘potential’ abuse in favour of ‘actual’ (or confirmed) abuse. This has resulted in a decline in numbers of children registered in physical and sexual abuse categories and a growth in numbers of children registered in the neglect and emotional abuse categories. With regard to these later two categories, it could be argued that the standard of proof for meeting the definitional criteria is more subjective than the more objective criteria of the first two categories. However, we do need also to take into account a growing concern in the UK context that the emotional requirements of children, being now better understood, has cast a spotlight on standards of parenting to the extent that many more parents in this generation are judged not to meet their children’s needs in this regard than would have been the case in the past.

1.15.2 Children in state care

In 2010 there were 64,400 children looked after by local authorities in England, with some 52% of the current care population being admitted to care because of abuse or neglect. Most of these children were placed with foster families. The number of children in care has fallen from a high-point of nearly 100,000 children in care in the 1980s; it reached a low-point in the mid 1990s and has levelled off at around 60,000 in recent years. This reflects the new balances struck in the 1989 Children Act since when there has been more concentration on trying to provide families with support to enable children to remain at home in the care of their parents. In recent years, however, there has been an increase in the use of compulsory court orders with less use of voluntary arrangements. This may be reflective of an increase in the numbers of the young people being subject to significant harm or may mirror an increase in risk averse practices by social workers. Such a hypothesis receives some support in statistics detailing applications to the courts for children to be taken into state care, which, following the death of Peter Connolly, increased by 33.7% in the year after his death.

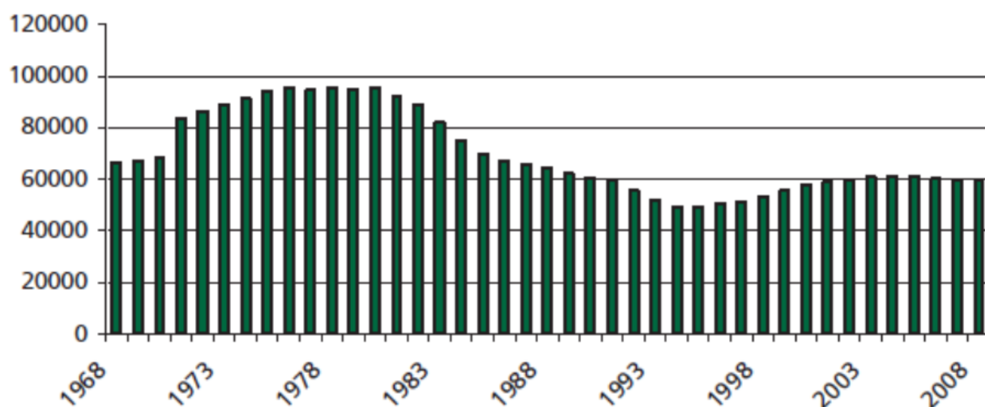


Figure 33: Numbers of children in state care from 1968 to 2008 (House of Commons Report)

With regard to where children in state care are placed, there has been a move over the past number of years to favour placements with either foster family (a family recruited by the local authority to provide a home for a child in state care) or with the child's relatives (often the child's grandparents, but may include other family members) over residential placements (institutions where a group of children are placed). In part this reflects a philosophy that regards children as being best raised in family environments, but it also reflects a reaction to the abuse of children which took place in residential homes in the 1980s. The following table illustrates placement patterns across the four nations. Not included in this table are those children who are adopted. Adoption of children who have been in state care and for whom a return home is unlikely has been encouraged in policy and practice in recent years. At present there are approximately 3.5 thousand children per year adopted from state care in the UK, representing some 6% of the population of children in state care.

Category	**N. Ireland**	**England**	**Scotland**	**Wales**
	%	%	%	%
Residential home	13	11	10	5
Foster family	57	75	30	75
With relatives	26	8	59	12
Other	5	3	1	9
Total	**100**	**100**	**100**	**100**

Table 2: Looked after Children by Placement Type across the four nations

1.15.3 Securing good outcomes for children

If we are to measure the effectiveness of the child protection system we cannot rely on the statistics which illustrate the outputs of the system. We must instead turn to research using other measures to judge the efficacy of the system in securing good outcomes for children. As we have observed previously, the child protection system does not reach all those children who experience abuse or indeed those who require help to ensure that their health and development is not significantly impaired. In a recent report on *Child Cruelty in the UK 2011* the NSPCC has reported on trends in child abuse and neglect in the UK over the past 30 years (nspcc.org.uk). There are some encouraging signs, they report that 'One in four of the young adults reported experiences of severe physical violence, sexual abuse or neglect in childhood. However, despite the high levels of maltreatment, the comparison with the earlier study [in 1998] reveals that many childhoods have changed for the better over the last 30 years. Overall, the young adults in 2009 reported less physical, sexual and verbal abuse during their childhoods than those interviewed previously' (2011, p. 4). A more sobering comment, however, concerns the ability of social services to reach such young people. 'The incidence of severe maltreatment in our study indicates that almost 1 million secondary school children have been seriously physically or sexually abused or neglected at some point during childhood. With around 46,000 children of all ages currently on a child protection plan or register, the re-

search raises concern that the vast majority of abused and neglected children are not getting the vital help and support they need' (2011, p.4). In practice it is difficult to attribute an accurate proportion to the effectiveness of the child protection system in bringing about the decline in young adult reports of abuse over the decades. As the NSPCC report observes, 'it is difficult to weigh the state's contribution to reducing child abuse and neglect against the actions taken by individuals and communities through long-term social change' (2011, p.5). As we have already observed, there is now much greater awareness amongst the public of what may constitute harm to children with a parallel concern to both protect them from such harm and support their rights.

We may, however, point to two indicators of worth in relation to the child protection system. Devaney's work on children suffering chronic child abuse illustrates the effectiveness of the child protection system in keeping those children who become known to social workers safe from the experience of repeated significant harm (2009). And, examining those most serious cases where there are concerns for a child's life, Pritchard observes that, 'looking at the overall results, most CPS [Child Protection Services] in the MDC [Major Developed Countries] have some cause for cautious satisfaction about the progress being made. Whilst, in every MDC, the medical and protection services for children overlap, in England and Wales and three other MDC, their CARD [Child Abuse-Related Deaths] mortality rate, the primary responsibility of CPS, fell significantly more than the ACD [All Causes of Death], the primary responsibility of medicine, whereas the reverse was true in Germany, Italy and the USA. Therefore, as the media readily blame social work for the high-profile tragedies, with all the cautions rehearsed above, they may begin to acknowledge something of social work's probable contribution to the achievements over the past thirty years' (2010, p. 1715). Some reasons, perhaps, for cautious optimism.

1.15.4 Analysis and recommendations

The child protection system in the UK has historically been heavily influenced and, arguably, heavily distorted, by inquiries into the deaths of children and the associated public disquiet, causing social workers to focus on the need to prevent such deaths in their practice. Such preoccupations have rendered social work practice vulnerable to a concentration on high risk cases with the consequent neglect of other families whose needs may be regarded as less immediately concerning: 'a classic instance of a low probability/high consequence risk that leads to risk-averse cultures and practices in all walks of life' (Cooper *et al.*, 2003, pp. 10–11). In one sense the system can only achieve what the public wish for it. In the UK the dominant debate in relation to child protection is fuelled by a media influenced public who see the primary responsibility of social work as preventing child deaths. The system, however, was never designed with this as the central goal. Whilst the legislators and policy makers encourage a consideration of a much wider range of preventative interventions with children in keeping with research informed analysis of risk factors, it is difficult to move in this direction wholeheartedly as regular inquiries into child deaths act as a restraining counterbalance. There is a general lesson here for all societies in now they handle public de-

bates around sensitive issues, with a responsibility on all to ensure that rationality prevails when emotive topics are being discussed.

Someone arriving from another country and looking at the legislation, policies and guidance concerning child protection in the UK might reasonably conclude that this was a great country for children to live in. In many ways it is, with childhood valued as never before. Nevertheless we know that there are many families whose children require help but do not receive it. A number of conditions are necessary for an effective child protection system; the successes and failures of the child protection system in the UK are instructive for those seeking to design effective systems in their own context. The following recommendations reflect an ecological understanding of child protection, situating recommendations from the societal through to the practice levels.

1.15.5 Societal level

1. It is important to ensure that a **consensus is reached** both in relation to which children need protected and how best they might be protected. This consensus on **which children need protected** took many years to achieve in the UK. The emerging belief is that the concept of child protection should not be restricted to those children who have suffered or who are at immediate risk of suffering child abuse. Systems concentrating on this group alone are sometimes referred to as *residualist systems*, where child abuse is treated as one would treat other crimes, only intervening at the very last stages. By contrast the science of child protection has created a general acceptance that children subject to certain risk factors are at increased risk of suffering poor developmental outcomes, including, for some, experience of child abuse. Interventions therefore need to be targeted at such children at earlier stages to prevent such outcomes occurring. A consensus, however, on **on how best such children might be protected** has been much more difficult to achieve because of public pressure to prevent child deaths as a priority for the system. It is therefore important to manage unrealistic expectations on the part of the public and avoid the development of a culture of blame. Creating information led debate which educates the public on both the purposes and limits of state intervention in relation to child protection is therefore vital. This should involve political representatives, the media and professionals presenting a consensual view.

2. As we have seen, restricting the responsibility for child protection to social workers makes them vulnerable to accusations of poor practice and limits the protection of children because other professionals and the community may see the issue as not belonging to them. The idea that **child protection is *everyone's business*** should be promoted. The public health model of educating people as to the signs and symptoms of child abuse creates a shared sense of responsibility for the issue and may have the general effect of decreasing the prevalence of abuse. The media has been used effectively in this regard in the UK and child protection concerns are now more likely to be reported to professionals by the public as society has become better educated with regard to the issues. There is also evidence that rates of physical and sexual abuse of children have diminished as there is a marked change in the level of public tolerance

for violence against children and people are better educated as to the phenomenon of child sexual abuse, making perpetration of this crime more difficult.

1.15.6 Legislation and policy levels

1. As we have seen from the legislation and policy contexts in the UK, a **balance must be struck between the state and the family.** The legislation and policy framework over the past 20 years in the UK has seen the development of the idea that this balance must be struck by forming a *partnership* between the state and the family. This partnership is based on the idea that children are best brought up in their family home, but that the state has a responsibility to help those families experiencing most difficulties, and for whom the outcomes for their children are predictably poor, by providing services to them. The state only has a right to take more affirmative action when there are clear and immediate risks to the child, signifying child abuse. Whilst every society may strike such balances differently, all societies must recognise that a range of supportive services is required for some families whilst a more interventionist approach is required for others.

2. Legislation and policies should ensure that **service providers and professionals work together at all levels**. From our review of the UK this is apparent at three levels. Firstly the necessity to join up and coordinate service at local levels between all those agencies (state, voluntary and private) involved in providing services to children. Local Safeguarding Boards help map the needs in the local area and maximise the potential to deliver service efficiently and effectively. Secondly, one of the big lessons from the UK is that children are best protected when professionals all take responsibility for child protection and do not leave this to social workers. Inter professional communication is vital to ensure that a full picture of the child's circumstances are available to aid decision making. Such arrangements should be codified in policies and procedures, for example, in *Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children* (Department for Children Schools and Families, 2010). Thirdly, at case level, professionals are encouraged to *think family* in their approach, for example, a professional working with a mother suffering from depression would be encouraged to consider the effects of this on the children in the family. Such working together arrangements do, of course, require service providers and professionals alike to think beyond the narrow boundaries of organisational or personal interests and consider the greater good of the children and families as being their chief priority.

3. Over elaborate procedures for the assessment of child abuse are counterproductive. Simple but effective policies and procedures should be built on a set of core principles with clear steps for implementation, not being over bureaucratic but universally accepted and applied.

1.15.7 Practice level

1. There is need to provide **a range of good practice tools** for professionals. An integrated family support and child protection system which is non-stigmatising to families requires good assessment instruments. The assessment framework for social workers and the 'windscreen' model for all professionals working with children provide illustrations of such tools.

2. There is a need **to provide a range of services to meet the needs of children and families at universal, targeted and specialist levels**. Societies need to build universal services which act to prevent future problems by lessening stress on parents and building capacity in children, the provision of day care for example. At targeted level, for those families where risk factors have been identified, there needs to be the growth of services to address both the risks (therapy for a parent with an alcohol problem for example), and their impact (therapy for the child who is affected by parental alcohol abuse). Such services developed at universal and targeted levels will protect some, but not all, children. For those children requiring help at specialist levels interventions may need to address abuse that has already occurred. As we have seen the UK system has a sophisticated system for monitoring such children with the objective that therapeutic help and services should reduce impact of trauma, with admission of the child into state care only called for in the most serious of cases where family cooperation cannot be secured.

3. Finally, to operate effective services at specialist level requires a highly educated work force. The evidence from the UK is that social work should become a high status profession as it demands high levels of intellectual and emotional capabilities to work in the field of child protection.

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2 Child protection in Australia by Leah Bromfield

2.1 Prolog

Australia is a federation of eight states and territories. The population of Australia is 22,617,927 (Australian Bureau of Statistics, 2011). The country comprises a geographic area of 7,617,930 km2 and is the world's sixth largest country in terms of land area. The majority of Australians living in cities along the East Coast of Australia (Australian Bureau of Statistics, 2007) (see Figure 34).

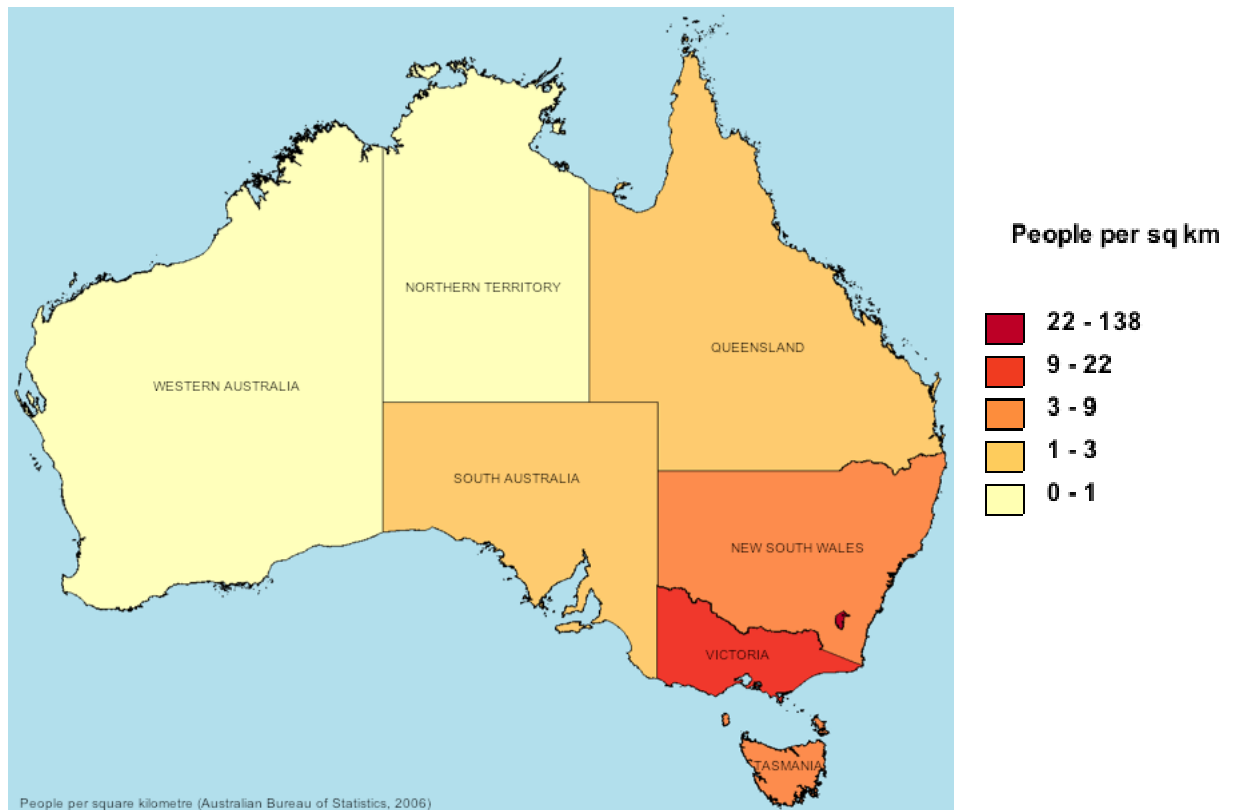

Figure 34: Australian population density

As a federation of eight states and territories or jurisdictions, which are each accountable for their own health and welfare services there is not one unified child protection system within Australia. However, there is a high degree of similarity in the broad approach to child protection across jurisdictions within Australia (Bromfield & Higgins, 2005). The approach to child protection in Australia is largely modeled upon the systems and approaches to child welfare in the United Kingdom (UK) and the United States (US). Child protection data collected by the eight states and territories has been collated and published annually

from 1990 (Australian Institute of Health and Welfare, 2010). The specific elements that comprise child protection services and systems across Australia's eight jurisdictions are relatively well documented since the mid-2000s through the National Child Protection Clearinghouse's "National Comparisons" research publications (National Child Protection Clearinghouse, 2011). There is also an extensive evidence-base about failure in the form of public inquiries investigating negative case examples such as child deaths or abuse in care (Bromfield, 2010). However, there is not an evidence-base on "what works" in child protection and rigorous outcome evaluations comparing different elements of child protection system designs are very rare. This is a significant international evidence-gap. It means that conclusions about best practice in child protection are necessarily developed through analysis of evidence of failure, combined with sound theory and inductive reasoning.

2.2 Historical background

2.2.1 Child protection 19th century to 1960s

Australia's history since European settlement in 1788 is a relatively brief one compared to other nations. However, there have been some (albeit limited) provisions for the protection of children from the early days of colonisation. In the 19th Century, protections for children primarily took the form of orphanages and boarding out to approved families of children who were abandoned or whose parents were seen as morally or socially inadequate (e.g. such as sole mothers) (Lamont & Bromfield, 2010). However, there were no legal protections for children from cruelty perpetrated by their caregivers. In New York in 1874, the carer of Mary Ellen McCormack was successfully prosecuted for a charge of animal cruelty on the basis that Mary Ellen was a "human animal" and the New York Society for the Prevention of Cruelty to Children was founded (NSPCC, 2000; NYSPCC, 2000). Subsequently the British National Society for the Prevention of Cruelty to Children (NSPCC) was founded. In England there was considerable resistance to the introduction of laws to protect children from their parents. This was seen as an interfering into the private sphere of the family, in which women and children were the property of their husbands and fathers who could treat them in any way they saw fit, barring murder (Lamont & Bromfield, 2010). Despite such opposition, in 1889 the Prevention of Cruelty to Children Act was passed in England giving the NSPCC a legal mandate to intervene to protect children from cruelty or neglect by parents. These events paved the way for Australia, which established its own Societies for the Prevention of Cruelty to Children between 1890 and 1906 (Lamont & Bromfield, 2010). Throughout the 19th Century provisions for the protection of children in Australia were largely modelled upon and developed apace with those in the United Kingdom (see Historical Timeline in Table 3).

1875	New York Society for the Prevention of Cruelty to Children (NYSPCC) founded
1884	British National Society for the Prevention of Cruelty to Children founded
1889	England passed the Prevention of Cruelty to Children Act giving the NSPCC a legal mandate to intervene to protect children from cruelty or neglect by parents
1890-1906	Societies for the Prevention of Cruelty to Children founded in Australian colonies. These societies were responsible for investigating child abuse and neglect
1940s	Social Work degrees introduced into Australian Universities
	This marked the beginning of professionalism in child welfare. It also marked the start of the debate as to whether parents who maltreated their children were "mad" (i.e. a result of parental psychopathology) or "bad" (i.e. perpetrated by morally corrupt individuals).
1962	Kempe and colleagues (1962) discovered the "Battered Child Syndrome"
	The discovery of the battered child syndrome pushed child abuse into the realm of professionals and resulted in a medical model being applied to the problem of child maltreatment with a focus on the psychopathology of perpetrators and lead to massive growth in government run child protections services.
1960s	Establishment of government-run statutory child protection services and introduction of mandatory reporting laws in the US
1960s	Australian states and territories (with the exception of Victoria) replicated the US approach and introduced government-run statutory child protection services*
1970s	Mandatory reporting laws were introduced in Tasmania (1974), South Australia (1975), NSW (1977) and Queensland (1980)**
1972	Federal Labor Government reformed health, welfare and education in Australia
1980s	Managerialism applied to child welfare
1989	United Nations Convention on the Rights of the Child first ratified
1990	Australia ratified the Convention on the Rights of the Child

* In 1985, mandate to respond to investigate and respond to child abuse allegations in Victoria was transferred from the non-government Children's Protection Society (established 1884 as the Victorian Society for the Prevention of Cruelty to Children) to a government-run child welfare service

** Following high profile failures of care, and public inquiries accompanied by substantial media coverage, mandatory reporting was reluctantly introduced by governments in Victoria in 1994 and in Western Australia in 2009.

Table 3: Historical timeline of key events in the development of child protection in Australia

2.2.2 Historical background: Child protection 1960s - 21st century

The 1960s and 1970s were a period of rapid social change within Australia; the progressive Whitlam government introduced a raft of provisions to reduce social inequity, including for example free tertiary education, welfare payments for single mothers, and a national healthcare scheme. Changes such as the women's liberation movement and the introduction of no fault divorces, saw changes to family structures with increased numbers of sole mothers and blended families. Against this backdrop, and heavily influenced by events within the US, the 1960s and 70s were also a significant period of change in the approach to child protection within Australia. In 1962, Kempe, Silverman, Steele, Droegemueller, and Silver (Kempe, et al., 1962) published their seminal paper in which they coined the term „Battered Child Syndrome" to describe

children who had experienced multiple non-accidental bone fractures as a result of physical mistreatment by a caregiver. The discovery of the battered child syndrome and the subsequent media coverage of the issue was a catalyst for change in the provision of child welfare starting in the US, and replicated across Australia. Child abuse was pushed into the realm of professionals and a medical model adopted which focused on the psychopathology of perpetrators. Laws mandating professionals to report suspected child abuse were introduced. The responsibility for responding to cruelty to children shifted from the philanthropic and non-government sector to government-run statutory child protection services[109] responsible for receiving and investigating reports of alleged child maltreatment (Lamont & Bromfield, 2010). The approach implemented in Australia, as in the US, in the wake of Kempe and colleagues' discovery of the battered child syndrome is a „residual" approach to protecting children. In a residual approach, social welfare is provided only after family and community systems have failed. Thus welfare is required only by the (presumably small) proportion of the community who are in crisis. In comparison, an institutional approach to social welfare presumes universal social services are available to everyone, not just those in crisis (Wileauxsky & Lebeaux (1958) in Ife & Fiske, 2003). Applied to child abuse and neglect, an institutional approach prioritises services and supports to prevent abuse and neglect rather than responding after abuse and neglect has occurred.

During the 1980's, managerialism was highly influential across many spheres of work in the United States and the United Kingdom – an approach also adopted within Australia. This period saw business models applied to the provision of social welfare – experts in management rather than child welfare were appointed to lead child welfare agencies, competitive tendering increasingly pitted non-government providers of services to vulnerable families against each other, in child protection practice teams were created for individual functions (e.g., intake, investigation, response) and case workers became case managers. Managerialism and the discourse of the risk society in tandem changed the nature of practice within child protection services during the 1980s and 1990s. While the influence of managerialism has declined, some of the the impacts of this period on the nature of child protection practice remain (eg practitioners continue to be referred to as case managers, data collected relates to service outputs rather than client outcomes, business models are applied to funding decisions).

2.2.2.1 Factors contributing to a long-term pattern of increasing demand

Since the establishment of statutory child protection services in Australia in the 1970s, demand on these services has increased substantially. Bromfield and Holzer (2008a, 2008b) argued that increases in demand could be largely attributed to three broad issues impacting Anglophone child protection services internationally: (a) an increase in the nature and scope of what constitutes child abuse and neglect; (b) unintended consequences of the professionalisation of child welfare; and (c) the impact of risk assessment and risk aversion on thresholds for child protection activity.

[109] Note: the „child protection" and "statutory child protection" are used interchangeable to describe those services mandated by legislation to receive and investigate reports about suspected abuse and neglect.

Broadening of what constitutes abuse and neglect. Since the 1960s, the recognised types of child maltreatment expanded from child physical abuse to also include sexual abuse, neglect, emotional maltreatment and exposure to domestic violence (see Table 4). Over the same period, social values changed and evidence about the impact of maltreatment on children's development and emotional wellbeing increased. As a consequence, the threshold for what constituted maltreatment decreased substantially from bone fractures and abandonment in the 1960s to bruising, developmental delay and psychological harm (Bromfield & Holzer, 2008b; Holzer & Bromfield, 2008). The changes that expanded the nature and scope of what constitutes child maltreatment were based on sound evidence. However, these changes had the consequence that child maltreatment is now highly prevalent (Price-Robertson, Bromfield, & Vassallo, 2010) and demand on statutory child protection services has increased significantly as a result.

19th Century	Abandonment, moral corruption
1962	Physical abuse
1980s-1990s	Physical, supervisory, medical, educational and emotional neglect
Mid-1980s	Sexual abuse
Early 1990s	Emotional maltreatment
Early 21st Century	Exposure to domestic violence

Table 4: Historical timeline for the formal recognition of different types of child maltreatment

Professionalisation of child welfare. Since the shift in the 1960s from child welfare as a charitable to a professional endeavour, the provision of child protection services has become increasingly specialised. The minimum entry-level requirement for a child protection practitioner within Australia is a relevant undergraduate degree (e.g. Bachelor of Social Work or Psychology) followed by additional vocational training upon appointment. Vocational training includes training in the use of technologies such as risk assessment instruments (Bromfield & Ryan, 2007). Bromfield and Holzer (2008b) argue that an unintended consequence of the increasing specialisation of child protection practitioners has been a privileging of expert knowledge and action over other types of knowledge and action in responding to family needs (for example, the work of other health and welfare professionals and the role of community members). They argue further that the privileging of expert knowledge and action can lead other professionals and community members to feel disempowered or reluctant to intervene to assist a family (as this is thought to be the role of specialists), and to feel that they have discharged their responsibility for a child and family's welfare by notifying child protection authorities of their concerns. A perception that has been reinforced by the mandatory reporting laws requiring suspicions of abuse and neglect to be reported to child protection services for assessment. They conclude that an unintended consequence of professionalising child welfare, in conjunction with mandatory reporting requirements, has been a perception that protecting children is the responsibility of "the child protection department" rather than a broader community responsibility.

Risk assessment and risk aversion. As the nature and scope of what constitutes maltreatment has changed, the threshold at which the state is expected to intervene to protect the child has also changed. There are two types of thresholds, which have changed over time: Changes to the threshold at which members of the public choose to contact child protection services; and Changes to thresholds at critical decision-making points within child protection services (i.e., decisions to investigate, substantiate or forcibly remove children) (Bromfield, 2009). Changing social values regarding acceptable child rearing practices, children's rights, child maltreatment and the role of child protection services have decreased the threshold at which members of the public choose to contact child protection services (Bromfield, 2004; Holzer, 2008}. Changes to thresholds at critical decision-making points within child protection services reflect a combination of changing social values and factors internal to the service system (such as, capacity to respond, and the introduction of technical aids such as computer assisted case files and risk assessment tools) (Bromfield, 2009).

Researchers in the UK have argued that risk assessment, as a practice tool in child protection, has its roots in what Beck termed the "risk society" (Dingwall, 1999; Joffe, 1999; Kemshall, 2002; Lupton, 1999). In the "risk society", "the term "risk", rather than being a neutral term to describe statistical probability, is value-laden and implies heightened risk (for example., groups are referred to as "at risk" when what we mean is that they are at high-risk)" (Bromfield & Holzer, 2008b). Within this discourse, risk to children is considered to be measurable and manageable. The implication of this is that harm to children both can and should be prevented—and if it is not, that someone is to blame (Gillingham & Bromfield, 2008). This perception is evident in community reactions to adverse events in child protection in countries with a child protection orientation (e.g. Australia, the UK, US, Canada and New Zealand). For example, media reports of child death typically present retrospective analyses of events, which imply that outcomes were predictable and only occurred because "someone got it wrong". The application of technologies in social work practice such as "risk assessment tools" have contributed to the perception that social work decision-making is based on rigorous scientific models and have contributed to expectations of infallible decision-making by child protection practitioners (Gillingham, 2006). Child protection practitioners, aware of the expectations that their decisions are infallible, have become more pre-occupied with minimising risk to themselves to the extent that Spratt (2001) argued that risk assessment in child protection, which is purportedly about risk to the child, comprised the unstated dimension of risk to the individual or organisation of making the "wrong" decision. This is referred to as „risk-averse" or „procedural" practice. Risk-averse practitioners are pre-occupied with procedures and complying with the prescriptive requirements rather than the intent of their role. For example, it might comprise contacting other professionals involved with a family so that a file note can be recorded stating that consultation has occurred without really listening to what other professionals have to say about the family. Risk-averse practice also means that practitioners are inclined to err on the side of caution, which results in a high number of "false positives" (see Figure 35) and therefore has contributed to increased demand on child protection services (Bromfield & Holzer, 2008b).

Predicted	Observed -	Observed +
-	True Negative	False Negative (e.g. child death)
+	False Positive (e.g. false substantiation)	True Positive

Figure 35: Assessment outcomes

These issues in conjunction with other local issues impacting capacity and throughput have seen a national rise in the number of reports to child protection services in Australia of 250% over the last 10-years. The increased demand on child protection services has impacted practice, and in some instances (e.g. Report of the Board of Inquiry into the Child Protection System in the Northern Territory, 2010; Wood, 2009) overwhelmed statutory child protection services in Australia.

2.2.3 The repositioning of child protection in the 21st century

In contemporary child protection services, the most common factors associated with involvement with child protection services are domestic violence, parental substance misuse, and parental mental illness. These problems are often inter-related and occur within a wider context of exclusion and disadvantage (e.g. poverty, social isolation, homelessness) (Bromfield, Lamont, Parker, & Horsfall, 2010). Aboriginal and Torres Strait Islander children continue to be significantly over-represented in child protection services, a circumstance complicated by a historical legacy of colonisation, marginalisation, dispossession, and racism, including the continuing effects of the 'Stolen Generation', in which Aboriginal children were forcibly removed from their parents between 1869 and 1969 for no cause other than that they were of mixed race (Berlyn, Bromfield, & Lamont, 2011; Human Rights and Equal Opportunity Commission, 2010). Members of the Stolen Generation were placed in Institutional care or with families. An Inquiry into the forced removal of Aboriginal children in which many adult survivors of the Stolent generation provided accounts of their experienced found that many membes of the Stolen Generation were exploited as child labour, experienced harsh discipline, rigid routines, and a lack of warmth, and they were not permitted to express their culture, Many also experienced physical abuse, sexual abuse, neglect and psychological abuse while in care (Human Rights and Equal Opportunity Commission, 2010).

The number of children in care is on a constant upward trajectory and there are insufficient placements to meet demand and provide children with stable and nurturing care environments matched to their needs (Bromfield & Osborn, 2007). A series of adverse events, including preventable child deaths and abuse in care, have resulted in child protection services and the practitioners within them being subjected to severe

criticism, such that morale of practitioners is low and it is difficult to attract new staff to the profession (e.g. Report of the Board of Inquiry into the Child Protection System in the Northern Territory, 2010; Wood, 2009). By the middle of the 20th century Government departments responsible for statutory child protection services across Australia were willing to acknowledge that they were beset by multiple inter-connected and mutually reinforcing problems that had proved intractable, the most critical of which included:

- Demand pressures at the entry to child protection services
- A lack of services for families in which children were at high risk of abuse and neglect, which if in place, could serve to decrease demand on child protection services.
- The quality of practice in statutory child protection services
- Insufficient qualified skilled staff to fill vacancies
- The over-representation of Aboriginal and Torres Strait Islander children in child protection services, and the need for culturally appropriate responses
- The growing population of children in out-of-home care, and the difficulty in finding them appropriate placements and providing them a safe and nurturing environment in which to heal and to thrive.
- The growing number of families with multiple and complex needs, particularly the co-occurrence of domestic violence, alcohol and other drug misuse and mental illness; and the need to determine an effective response for families with these problems.
- The difficulties of government departments, service agencies and practitioners within services responding only to a narrow presenting problem, and not working collaboratively or holistically to the multiple needs of clients.
- Determining what were the tools that staff needed to effectively perform their roles and implementing these (e.g. information systems, risk assessment tools) amid a growing concern that some of the tools that had been implemented had unintended negative consequences on practice.
- Challenging the perception within the community and wider service system that child protection services, which were designed to respond only to the most serious cases of abuse and neglect after it had already occurred, held the primary responsibility for the prevention of harm to children.
- Various strategies and solutions had been or were being trialled to address these challenges, which itself created the additional challenge of determining an effective means to implement and sustain changes in practice (Bromfield & Holzer, 2008a).

At this time, statutory child protection services became advocates for earlier intervention as a means of reducing the overwhelming demand on child protection services. Directors of child protection services believed that, if demand on child protection services were reduced, their resources could be re-directed from intake and assessment towards managing other challenges.

The reform agenda in the state of Victoria, which for a period was perceived as a leader in child welfare reform in Australia, provides an illustration of the approach towards child protection service reform in the early 2000s (see Box 1).

Box 1: Reforming child protection in Victoria

In 1989, toddler Daniel Valerio was murdered by his step-father Paul Aitken. Photographs of Daniel with bruising to his face and eyes were taken by a Police Surgeon only days prior to Daniel's death. The heart-wrenching photographs presenting evidence that Daniel was a victim of serious physical abuse prior to his death angered the community who were outraged by the failure of the system to protect Daniel. In 1993, during the trial of Paul Aitken, an intense media campaign was mounted advocating for the introduction of mandatory reporting in Victoria (Goddard & Liddel, 1995). It is ironic that the campaign for mandatory reporting used the death of Daniel Valerio as Daniel's case was known to both police and child protection services prior to his death. In fact, a parliamentary inquiry into his death found his death was preventable and was a result of a failure to respond rather than any failures in detection (Fogarty & Sargeant, 1989). Nevertheless, Daniel's death was used to mobilise the community. Eventually the Victorian government succumbed to media and community pressure, and mandatory reporting was introduced in 1994. The government attempted to mitigate the impact of increased demand caused by mandatory reporting by only prescribing a small group of professionals (e.g. teachers, doctors, police) who were legally required to make reports and only applying mandatory reporting to child physical and sexual abuse (Goddard & Liddel, 1995). However, the substantial press coverage surrounding the introduction of mandatory reporting raised community awareness and resulted in misperceptions that all people were mandated to report any suspicion that a child might be experiencing any form of maltreatment. Undoubtedly this led to the discovery of previously undetected cases of maltreatment. However, it also resulted in many reports of incidents that did not constitute a statutory child protection concern. In the year following the introduction of mandatory reporting, notifications to Victorian child protection services increased 75% from 15,000 in 1992-93 to 26,000 in 1993-93 (The Allen Consulting Group, 2003). In 1999-2000, Victoria had the highest number of reports to child protection services of any Australian jurisdiction and were struggling to meet demand (Bromfield, 2009).

In 2002 the Victorian government undertook extensive data mining of their internal data systems and developed projections based on current trajectories (Victorian Government Community Care Division, 2002). These data trajectories predicted that, if nothing were done to reduce demand on Victorian child protection services, within 5-years one in five Victorian children would be reported to child protection services at some stage in their childhood. This statistic was incredibly powerful, and was communicated to Treasury, the Premier and cabinet and other government departments to successfully argue that the approach to child protection at that time was unsustainable (Humphreys et al., 2010). An alternative approach was endorsed, the key tenets of which were to intervene early – in the life of the child and in the life of the problem (Bromfield & Holzer, 2008b; Humphreys, et al., 2010). The reform agenda adopted a prevention approach to abuse and neglect (see Box X.2), which posited that there be services and supports available to all families (primary or universal services), more intensive targeted services and supports for vulnerable children and families (secondary services), and statutory child protection services (tertiary) for the relatively few families in which involuntary intervention was required to keep children safe. It was recognized that prior to the reform there was a dearth of secondary services for vulnerable children and families. A critical component of the reform was substantive investment in intensive family support services (secondary services) and the establishment of an alternative non-statutory entry-point into services for vulnerable families – ChildFIRST. The rationale for the alternative entry point was that people concerned about a child should contact ChildFIRST who could refer the family to voluntary services and support. If the family could not make the necessary changes or would not accept the support of voluntary services it was expected that

these voluntary services would refer the family to statutory child protection services (Bromfield & Holzer, 2008b). Following the implementation of this reform agenda, the upward trajectory of reports to child protection services in Victoria was halted for several years compared with a significant increases in the number of reports in other Australian jurisdictions (Holzer & Bromfield, 2008). The reforms to child protection in Victoria embodied a shift from seeing child protection services as having the primary responsibility for the safety of children from abuse and neglect to a whole of government responsibility for the protection of children. This approach has since strongly influenced the reform agendas in other Australian states and territories; and the approach adopted within the National Framework for Protecting Australia's Children (Council of Australian Governments, 2009a).

The reforms to child protection in Victoria halted the increase of reports to child protection services. However, the reforms did not result in sufficient changes to the quality of practice within child protection services. Problems in the quality of child protection practice within child protection services were highlighted in a report released by the Victorian Ombudsmen in late 2009 (Ombudsman Victoria, 2009). Challenges such an inability to attract and retain skilled child protection practitioners, a continuing over-representation of Indigenous children in child protection services, rising numbers of children remaining in out-of-home care and problems in the quality of care provided to those children who were living in state care. Inquiries into failures in child protection services in other states and territories show that these problems are common to child protection services across Australia (Report of the Board of Inquiry into the Child Protection System in the Northern Territory, 2010; Wood, 2009). At the time of writing a parliamentary inquiry was in process investigating failures in practice in Victorian child protection services (Victorian Government, 2011). In a keynote address to the leadership of the Victorian child welfare sector at their annual strategic planning retreat in late 2009, the current author argued that the problems with the quality of practice did not signal a failure of the preventive approach to child protection trialled in Victoria. This author argued that instead it showed preventive services alone were not enough. Although the restructuring of the service system and investment in additional services and supports to prevent families from being referred to child protection had been successful in halting an increase in demand, the necessary changes to increase quality of practice within child protection services had not been achieved (Bromfield, 2009). The parliamentary inquiry and practice issues within statutory child protection services in Victoria do not, at the time of writing, appear to have flowed through to a rejection of prevention-based reform agendas being implemented across Australia. However, Australians are now looking internationally once more for possible solutions to effectively change the nature of child protection practice and enhance outcomes for clients. These new avenues for reform are focused more on the quality of services provided to families rather than the broad structure of the service system. For example, Alexander (2010) reports the findings of an international study tour identifying and profiling innovative approaches to the provision of child protection services, including the "Reclaim Social Work" trial in Hackney in the United Kingdom and Olmsted Country Child Protection Services approach in Minnesota in the United States; and Ryan (2010) profiles the ChildStat approach to case review in New York. Common to these innovative approaches is a concerted attempt to overcome the risk-averse and proceduralised practice that have characterized child protection services in Australia, the United Kingdom, the US and New Zealand since the 1980s.

At a national level, the concern with overwhelmed child protection services, and the need to invest in effective prevention and early intervention is described in *Protecting Children is Everyone's Responsibility: The National Framework for Protecting Australia's Children 2009-2020*. The National Framework was endorsed by the Council of Australian Governments in April of 2009 and explicitly adopts a "public health" approach to child protection (see

Box 2). A "public-health" approach is a theory to inform service system design, which originates from the area of health promotion but which can be applied to any preventable social problem. The approach has a high degree of support among Australian governments, non-government agencies and academics within the Australian child welfare sector (Council of Australian Governments, 2009a).

Box 2: A public health approach

Public health approaches, originating from the field of preventable illness, strongly emphasize health promotion and prevention with increasingly intensive interventions targeting identified risks (Baum, 1998; Garrison, 2005). A public health approach is used when a preventable problem is prevalent and serious, and is associated with severe long-term effects on individuals and populations. Typically characterised as having three levels of intervention (primary, secondary and tertiary), public health approaches incorporate a range of strategies determined by the target of intervention efforts. Applied to the issue of child abuse and neglect, a public health approach might comprise:

- Universal services and supports available to all children and families to enhance child wellbeing;
- Targeted services and supports for vulnerable children and families (e.g. teenage parents), provided to prevent problems occurring;
- Services and supports for families with indicated problems (e.g. parental substance addiction), in which children's needs are not being met, but parents voluntarily engage with needed services and supports;
- Statutory child protection services for families in which children are experiencing serious abuse and neglect (e.g. sexual abuse, severe physical abuse, criminal neglect) or in which children's need are not being and parents are unwilling to engage with available services and supports; and
- Out-of-home care services for children who cannot safely remain in the care of their parents (Arney & Bromfield, under review).

2.2.4 Legal and policy frameworks

2.2.4.1 What does the term "child protection" describe

In a national study investigating approaches to child protection services in Australia, Bromfield and Holzer (2008a) asked representatives of government departments what the term child protection was used to describe in their jurisdiction. "Child Protection" was universally used to describe those services mandated by a legal statute outlined within a state or territory Act of parliament that prescribes the legal functions for responding to allegations that a child is at risk of serious harm, typically as a result of abuse or neglect. These are government-run services, typically described as "statutory child protection services". However, there was a concern that this definition was too narrow, and had resulted in a community perception that the primary responsibility for the protection of children, and the prevention of child abuse and neglect rested with statutory child protection services. The National Approach for Child Protection Project reported that government departments believed that the protection of children needed to include:

(1) the wider community (such that child protection is not seen as simply the responsibility of government); (2) wider areas and departments of government (that is, not just strictly the department traditionally responsible for child protection); and (3) non-government and community organisations that specialise in the provision of social and family welfare services (Bromfield & Holzer, 2008a, p. 19).

The phrase "protecting children" is typically used to refer broad concepts of child welfare, while "child protection" continues to be used to describe the statutory child protection services, which respond to allegations of abuse and neglect.

2.2.4.2 The legal basis for child protection

Australia is a federation of eight states and territories and has three levels of government: the Commonwealth or federal Government; state and territory governments; and local governments. The Commonwealth government collects taxes, administration of income support programs, and is a significant funder of non-government services designed to enhance the wellbeing of the population (e.g., parenting supports). Goods and service tax (GST) revenue collected by the Commonwealth is distributed to state and territory governments who have primary responsibility for health (e.g hospitals), safety (e.g. police), community welfare (e.g. child protection and disability services) and education services (e.g. state schools). State governments are both significant service funders and service providers. Local governments collect rates from home owners and have responsibility for municipal services such as rubbish collection, establishing and monitoring council by-laws such as parking restrictions, approving building planning applications and the provision of facilities such as public lending libraries.

Jurisdiction	Principal Legislation	Government Department
Australian Capital Territory	**Children and Young People Act 2008** (ACT)	Office for Children, Youth and Family Support, Department of Disability, Housing and Community Services
Northern Territory	**Care and Protection of Children Act 2007** (NT)	Children, Youth and Families, Department of Health and Families
New South Wales	**Children and Young Persons (Care and Protection) Act 1998** (NSW)	Community Services, Department of Human Services
Queensland	**Care and Protection of Children Act 2007** (NT)	Child Safety, Department of Communities
South Australia	**Children's Protection Act 1993** (SA)	Families SA; Department for Families and Communities
Tasmania	**Children, Young Persons and their Families Act 1997** (Tas)	Child Protection Services, Department of Health and Human Services
Victoria	**Children, Youth and Families Act 2005** (Vic)	Children Protection and Juvenile Justice Branch; Department of Human Services
Western Australia	**Children and Community Services Act 2004** (WA)	Department for Child Protection

Table 5: Child protection services: Principal Acts and departments responsible (Holzer & Lamont, 2009)

Child protection is a state-run service provided by public servants employed by the Government Department charged with responsibility for providing child protection services. Child protection practitioners within Australia are predominantly (but not exclusively) social workers (Bromfield & Ryan, 2007). The core elements of what comprises statutory child protection functions are set out in a legislative Act passed by the Parliament (see Table 5), and includes the core functions of: intake, investigation and case management.

A common feature of all eight of the principal Acts prescribing the role and functions of statutory child protection services are the inclusion of principles that can be directly linked to the United Nations Convention on the Rights of the Child. Ratification in 1989 of the United Nations Convention on the Rights of the Child to which Australia became a signatory in 1990 was highly influential on practice in Australian child welfare services. Since the 1990s, as the Acts of Parliament prescribing the role and functions of statutory child protection services were revised, the principles outlined in the Convention underpinned many of the new legislative provisions, such as:

- A prioritisation of children's rights over parent's rights in matters of safety with the best interests of the child stipulated as the primary consideration in decision-making;
- Requirement that parents be provided the widest possible assistance to care for their children or make changes to have their children returned to their care, reflecting children's rights to grow up in their families of origin;
- Specific provisions for children from Aboriginal and other culturally and linguistically diverse backgrounds to support culturally-informed decision-making and maintain children's connection to their culture; and
- Provisions, particularly in relation to children in out-of-home care, for children and young people to have an opportunity to participate in decisions that affect them (Bromfield & Holzer, 2008a).

A child is need of protection. Each of the principal Acts prescribing the operation and functions of child protection services contains a definition of "a child in need of protection". Within these Acts "a child" is defined as a person 0-17 years of age. This is the legal definition of the circumstances in which the state (through statutory child protection services) has a legal mandate to intervene to protect children from harm caused by abuse and neglect. The definitions seek to define the threshold at which sub-optimal caregiving becomes abuse and neglect under law. Definitions of a child in need of protection vary across states and territories, however the threshold for statutory intervention is broadly consistent and the definitions typically: restrict potential perpetrators to parents or persons acting in the place of parents; restricts the definition to children who do not have a parent "able or willing" to protect them; defines physical abuse, sexual abuse, emotional abuse and neglect; and prescribes a threshold at which harm caused by abuse and neglect warrants statutory intervention - typically where abuse or neglect has or is likely to cause a child 'significant' or 'serious' harm. Some jurisdictions also nominate a child who has no caregiver as (e.g. a result of abandonment, parental death, incarceration or admission to a health facility) as being in need of

protection. There is a trend towards the inclusion of a child being exposed to domestic violence as sufficient cause to warrant statutory intervention (Holzer & Bromfield, 2010).

For example, in the Australian Capital Territory, according to section 156 of the Children and Young People Act 1999 (ACT) a child aged 0-17 years is in need of care and protection if:

(1) *(a) the child or young person:*

- *i. has been abused or neglected; or*
- *ii. is being abused or neglected; or*
- *iii. is at risk of abuse or neglect; and*

(b) no-one with parental responsibility for the child or young person is willing and able to protect the child or young person from suffering the abuse or neglect.

Abuse in the Australian Capital Territory, according to section 151 of the Act, is defined as:

- *(a) physical abuse; or*
- *(b) sexual abuse; or*
- *(c) emotional abuse (including psychological abuse) if the child or young person has suffered or is suffering in a way that has caused or is causing significant harm to his or her wellbeing or development; or*
- *(d) emotional abuse (including psychological abuse) if*
  - *i. the child or young person has been or is being exposed to conduct that is domestic violence under the Domestic Violence and Protection Orders Act 2001 (ACT); and*
  - *ii. the exposure has caused or is causing significant harm to the wellbeing or development of the child or young person.*

Neglect in the Australian Capital Territory, according to section 151A of the Act, is defined as:

> *A failure to provide the child or young person with a necessity of life that has caused or is causing significant harm to the wellbeing or development of the child or young person. Examples of necessities of life:*
>
> 1) *food*
> 2) *shelter*
> 3) *clothing*
> 4) *medical care*

For the definition of what constitutes a child in need of protection in each state and territory see (Holzer & Bromfield, 2010).

Other relevant legislation. Table 5 outlines the principal Acts, which prescribe the provision of child protection services. However, child protection laws and services were established to protect children from maltreatment perpetrated by a caregiver, or from maltreatment perpetrated by a non-caregiver in circumstances in which the caregiver is unable or unwilling to protect the child. There are a range of other rele-

vant Commonwealth and state or territory Acts that are relevant to the safety and wellbeing of children (see Holzer & Lamont, 2009). Particularly pertinent to abuse outside the family are the laws contained within the criminal codes of each state and territory which pertains to any person who has reached the age of criminal responsibility (i.e. 10-years of age). The crimes Acts of each state and territory include a variety of crimes which constitute 'serious' child maltreatment, such, physical assault (unless it is deemed lawful correction, i.e. corporal punishment), sexual abuse or exploitation and criminally neglectful acts such as abandonment, starvation, and deprivation of liberty. Investigation of alleged crimes under the criminal act is the responsibility of police. In the case of criminal maltreatment perpetrated by a parent, child protection practitioners and police often work in partnership. In other cases, such as sexual abuse by an extra-familial perpetrator, abuse of children within institutions such as schools, detention centres, or health care facilities, police are solely responsible. In most states and territories legal provisions also exist to prevent known perpetrators of child abuse and neglect from being employed in a capacity in which they would have routine contact with children through pre-employment screening, these are commonly referred to as "Working with Children Check and Police Checks". For a complete description of the working with children check provisions within each state and territory see (Berlyn, Holzer, & Higgins, 2011). In Australia, the age of legal majority when an individual becomes an adult is 18-years of age. Individuals aged between 10-years and 17-years of age who commit a crime as defined in law by a Crimes Act are referred to as "juvenile offenders". Crimes committed by juvenile offenders are heard before the Children's Court instead of the adult courts. Children who are found guilty and sentenced to incarceration are send to juvenile remand centres. Juvenile Justice services have responsibility for this group of children. Juvenile Justice services are operated independently from child protection services.

Core components of statutory child protection services in Australia:

Reports may be made by anyone within the community (e.g., neighbour, family member, police officer, teacher, doctor) who knows or suspects that a child is being maltreated. In all circumstances, the identity of the reporter or "notifier" is protected. Some members of the community are required by law to report their suspicions of abuse and neglect, this is referred to as "mandatory reporting". There are substantial differences in the mandatory reporting requirements in each state and territory of Australia (see Higgins, Bromfield, Richardson, Holzer, & Berlyn, 2010 for the specific provisions within each Australian jurisdiction). The provisions range from very broad requirements, such as the Northern Territory where all adults have a legal duty to report suspicions of abuse or neglect, to very narrow requirements, for example in Western Australia where a small number of specified professionals are only required to make a report if they know that a child is being sexually abused (Higgins, et al., 2010).

Intake is an office-based response in which reports are received, typically by telephone, and a practitioner must make an assessment based on the information provided as to whether the allegation is consistent with the definition of "a child in need of protection" as defined by the state or territory legislation. On the basis of the information provided by the notifier and information recorded about the child in any existing client files the practitioner makes an initial assessment of whether the case warrants further investigation.

Cases assessed as warranting further investigation are assigned a priority rating based on the severity of the allegation (e.g. Priority 1 requires an investigation to commence within 24-hours). The practitioner uses an assessment instrument, commonly described as a risk assessment tool or an initial screening tool, to guide their decision-making. Cases assessed as requiring further investigation are transferred to another team to conduct that investigation. Cases assessed as not requiring further investigation by statutory child protection services may be closed without any further action, or families may be assessed to be in need of support and provided with a referral to another service, such as a family support service. These services are typically provided by non-government agencies, and are described as “voluntary” services as families have the freedom to choose whether they will or will not access the offered service. In comparison, statutory child protection services are an “involuntary” service and parents have no choice but to comply with statutory requirements or risk the forced removal of their child(ren) (Bromfield & Higgins, 2005).

Investigation describes the process in which practitioners make direct contact with the child, their parents, and typically make a visit to the child’s home to determine the veracity of the allegations received in the report and gather the information necessary to make an assessment of the continuing risk to the child, and the needs of the child and their family. Those cases in which child protection practitioners find , on the balance of probability, that the allegations are true and/or the child is at continuing risk of being abused or neglected are “substantiated”. Substantiated cases remain open for ongoing statutory intervention or “case management”. Those cases that are not substantiated may either be closed without any further action, or families may be provided with a referral to other voluntary services and supports (Bromfield & Higgins, 2005).

Case- management is provided for those cases in which ongoing statutory involvement is required to secure the safety of the child. For a case to be in receipt of ongoing statutory intervention, there may or may not be a court order in place. A court order is a legal direction made by the Court and may require parents to either behave or stop behaving in a certain way, which was assessed as harmful/abusive to the child (e.g. that parents send children to school or prevent their children from having contact with a known sex offender), or that parents comply with a specific form of monitoring (e.g. undergoing weekly drug screens). A court order may also direct that a child be removed from the care of their parents either for a fixed period or permanently and placed in state approved care. If there is no court order, families are aware that if they fail to comply with child protection practitioners, an order can be sought. Typically children in out-of-home care are placed in home-based care with another relative, in home-based care with a pre-registered foster parent who is unknown to the child, or placed in a group home with other children removed from their families and which are staffed around the clock by paid carers. Out-of-home care services may be provided by the state, or by non-government not-for-profit agencies or private for-profit organisations. In the majority of cases, the initial goal of the intervention with parents of children placed in out-of-home care is to support parents to change the conditions within the family (e.g. addiction, domestic violence) that made the home an unsafe place for the child and “reunify” the child with their families. Underpinned by a recognition of the importance of stability for children, in some states and territories there

are time limits applied to length of time parents are provided to make the necessary changes for their child to be returned to their care. These time limits may vary depending on the age of the child. For example, in the Child Youth and Family Act 2005 (Victoria) S.170(3) stipulates that a stability plan is required: for children under 2-years of age, once that child has been in out-of-home care for one or more periods totalling 12 months; for 2-6 year olds, once the child has been in out-of-home care for one or more periods totalling 18-months; and for children over 7-years, once the child has been in out-of-home care for one or more periods totalling 2-years. Long-term and stable placements are sought (but frequently not achieved) for children unable to be safely returned to the care of their parents (Bromfield & Higgins, 2005; Bromfield & Holzer, 2008a).

2.2.5 The role of the third sector

The non-government, not-for-profit sector (i.e. faith-based and charitable organisations) are known, in relation to the public and private sectors, as the 'third sector'. The degree to which the third sector have been involved in child protection has expanded and contracted over time, but the non-government, not-for-profit sector have always had a role in relation to child protection in Australia. For example, long-standing established non-government, not-for-profit organisations such as The Benevolent Society (est. 1813) in New South Wales, and Berry Street (est. 1877) and the Children's Protection Society (est. 1896) in Victoria have since their inception provided support and care for children in need and their families. In comparison, the public sector involvement in child welfare service provision is more recent commencing in the 1970s. Traditionally, the role of the private sector was restricted to making charitable contributions rather than providing services. In contemporary Australia, a small number of private for-profit organisations provide out-of-home services (e.g. Life Without Barriers). However, this is a relatively recent phenomena.

The initial inception of child protection in Australia in the early 19th Century was solely a charitable endeavour, primarily carried out by ladies' societies and charitable groups (Scott & Swain, 2002). Government involvement in the provision of child protection services is relatively recent, with the first government operated child protection services established in the 1970s. At that time the third sector became an essential partner in the provision of child protection services, providing out-of-home placements to children removed from the care of their parents. The third sector have also had a continuing role in the provision of services and supports to individuals, parents and families suffering hardship, and thus have had an ongoing preventative role in addressing the social determinants and risk factors associated with child maltreatment. The investment in preventative services and supports for families relative to statutory child protection and out-of-home care service investments has historically been quite low (e.g. Bromfield, Holzer, & Lamont, 2010). However in the decade 2000-2010, prevention has become a government priority. There were significant new investments by state and territory and Commonwealth governments in services and supports for families, with the third sector contracted by government to provide the majority of these services and supports.

The nature of the funded child and family services and the profile of clients attending family support services also changed over this period. With increasing demands on government-provided statutory child protection services, differential response models were implemented enabling child protection services to refer families that did not meet the threshold for statutory intervention to non-government services and supports. Intensive family support services were funded by governments and provided by third sector organisations to respond to clients with multiple and complex needs, children who had been repeatedly referred to child protection services, and families in which children were at high risk of abuse and neglect. These services were purpose-designed to provide a direct pathway from child protection services into appropriate voluntary services and supports. As a result the distinction between child protection and non-government intensive family support services is eroding.

Throughout history, the third sector has always defined itself as both service provider and advocate for those in the community experiencing hardship and disadvantage. The role of the non-government sector as independent advocates can at times put the third sector and the government of the day on opposing sides of a political issue (e.g., government proposed conditions imposed on recipients of income support). Although the third sector originated as charitable endeavours, and continue to operate as charities, the majority of revenue for most agencies now comes from government contracts. This adds an additional dimension to the relationship between non-government organisations and governments on whom they depend for survival. A further issue that adds pressure to government-non-government provider relationships is the application of economic rationalism to government contracts. Non-government agencies are frequently required to take part in competitive tenders to secure government funding. Competitive tendering creates competition between non-government providers and forces non-government agencies to continually reduce costs. At the same time governments are requiring increasing service output data demonstrating that contractual obligations have been met straining the capacity of non-government providers. Non-government agencies must continually balance their roles as partners in service provision, as advocates and as government contractors.

2.2.6 The National Framework for Protecting Australia's Children 2009-2020: A partnership between government and non-government agencies

The National Framework for Protecting Australia's Children 2009-2020 (Council of Australian Governments, 2009a) originated as a consequence of the advocacy efforts of non-government, not-for-profit agencies and academics. However, the governance model for its implementation marks a new chapter in the relationship between government and non-government agencies in Australia.

The 12-year National Framework sets out a shared agenda for change to enhance the safety and wellbeing of Australia's children under national leadership and with agreed common objectives. The National Framework came about, primarily due to the advocacy efforts of the non-government, not-for-profit sector in partnership with leading child welfare academics who argued over several years that child abuse and neglect was prevalent and a serious national problem, which was the responsibility of government and

required national leadership and a coordinated response to achieve minimum national standards and overcome seemingly intractable problems. An election promise was secured in the lead-up to the 2007 Commonwealth election from then Opposition Leader The Honourable Kevin Rudd, MP who committed, if elected, to developing and leading a national approach to respond to the problem of child abuse and neglect. In November 2007, the Labour Party led by Kevin Rudd won the federal election. The Coalition of Organisations Committed to the Safety and Wellbeing of Australia's Children – a representative group comprising non-government agencies and academics – and sought to work in partnership with Commonwealth, state and territory governments to develop the national framework.

The Framework was endorsed in April 2009 by the Council of Australia Governments. The Council of Australian Governments comprises the leaders of Commonwealth, state and territory governments (i.e. Prime Minister and Premiers) and is the highest form of national government agreement in Australia. The framework states that its long-term objective is for "Australia's children and young people to be safe and well", and sets a target for "a substantial and sustained reduction in child abuse and neglect in Australia over time". The framework is underpinned by six supporting outcomes:

- Children live in safe and supportive families and communities;
- Children and families access adequate support to provide safety and intervene early;
- Risk factors for child abuse and neglect are addressed;
- Children who have been abused and neglected receive the support and care they need for their safety and wellbeing;
- Indigenous children are supported and safe in their families and communities; and
- Child sexual abuse and exploitation is prevented and survivors receive adequate support.

The first 3-year implementation plan was released in mid-2009, which included a governance structure in which the non-government and academic Coalition group were explicitly named – not as advocates or advisors – but as partners with Governments in the ongoing monitoring, implementation and priority setting under the National Framework (Council of Australian Governments, 2009b). The National Framework is directed by the National Framework Implementation Working Group, which comprises a representative from the Commonwealth Government, representatives from each of the eight state and territory governments, and eight representatives from the Coalition of Organisations Committed to the Safety and Wellbeing of Australia's Children. The Implementation Working Group is informed by a National Advisory Council, and several sub-groups comprising technical specialists and experts in key areas of activity (e.g. performance and data). The Implementation Working Group reports to the Community and Disability Ministers' Advisory Council, and through this to the Community and Disability Ministers' Conference who are ultimately accountable to the Council of Australian Governments (Council of Australian Governments, 2009b).

The National Framework sets out an ambitious long-term shared vision to which all parties (Commonwealth, state and territory and the non-government and academic Coalition) have committed. In addition,

its initial implementation plan sets out several national projects to be undertaken as part of the framework in the first 3-years under the direction of the National Framework Implementation Working Group. The priorities in the first three-year implementation plan are:

- “Joining up service delivery” by implementing programs and strategies designed to increase integration and cooperation between services, particularly those for vulnerable and at-risk children and their families.
- “Closing the gap” between Indigenous and non-Indigenous Australians by reducing the over-representation of Indigenous children and their families who are involved with child protection services.
- “Seeing early warning signs, taking early action” is the development and trial of a common assessment tool designed to assist all health and human service professionals who come into contact with children and their families to identify children in need of additional services and supports and provide them with an appropriate referral.
- “Improving support for carers” by identifying their financial and non-financial needs and working across agencies to implement services and supports to address support gaps.
- “National standards for children in care” was the first of the national priorities to be concluded. There are now a framework of minimum standards in the provision of services to and conditions for children in out-of-home care.
- “Building capacity and expertise” is the priority area focused on the development, attraction and retention of a skilled workforce equipped to provide high quality services.
- “Enhancing the evidence-base” is the priority area relating to the program of work to strengthen the quality and expand the scope of national child protection data.
- “Filling the research gaps” refers to the development of a national research agenda articulating the priority areas in which research is needed to inform critical policy and practice decisions.
- “Transitioning to independence” is the priority area relating to improving the supports for young people who are make the transition from state care to independent living.
- “Responding to sexual abuse” was identified as a priority area as the other priorities were primarily related to the prevention of neglect, emotional abuse and physical abuse occurring within families and a recognition that a different response was required for child sexual abuse.
- “Advocating nationally for children and young people” is about exploring the potential to establish an Australian Commissioner for Children and Young People who could advocate nationally for children’s rights.
- “Sharing information” refers to the changes being made to privacy and confidentiality laws in legislation that have been identified as a barrier to cooperative practice across agencies.
  (Council of Australian Governments, 2009b)

2.2.7 National databases

2.2.7.1 Administrative data and data monitoring the provision of services protecting children

Australia has data on the activities and key decision-making points or child protection services aggregated at state, territory and national levels, which are compiled and published annually by the Australian Institute of Health and Welfare. National data on child protection and out-of-home care is published annually in a report titled *Child Protection Australia*, which was published for the first time in 1998 with data relating to the 12-month period July 1996 to June 1997. *Child Protection Australia* publication superseded an earlier annual publication, which was first published with data for the period July 1990 to June 1991 and described only out-of-home care data (Australian Institute of Health and Welfare, 2010). *Child Protection Australia* includes:

- Total number of reports (notifications) to child protection services per annum
- Total number of children in reports to child protection services per annum (a child may be subject to multiple reports in a 12-month period)
- Total number of investigations commenced, in process, unable to be finalised and finalised
- Total number of substantiations by child protection services per annum
- Total number of children in substantiations by child protection services per annum
- Total number of substantiated maltreatment types (emotional abuse, neglect, physical abuse and sexual abuse)
- Source of notifications
- Family type
- Total number of children subject of a court order at a specified data (the court order could be removing the child into care, or it could direct parents to behave in a particular way).
- Number of court orders issued, and number of children admitted on and discharged from a court order per annum
- Lengths and types of court orders
- Total number of children in out-of-home care at a specified data
- Number of children admitted and discharged from out-of-home care per annum
- The living arrangements of children in out-of-home care (e.g. Kinship, foster or residential care) and length of placements
- The proportion of Aboriginal children placed with an Aboriginal carer

The data collected is also published by age group, gender and Aboriginal or Torres Strait Islander status of the child. There are some data on a very narrowly defined group of intensive family preservation services which aim to prevent children from entering out-of-home care where there is a high risk of this occurring or to reunify children in care (e.g. Australian Institute of Health and Welfare, 2011). The limitations of these data is that they are aggregate rather than unit record data, and thus can be used for descriptive

purposes, but cannot be manipulated. The data provides a good indication of activity within child protection services, but is a poor indicator for the incidence of maltreatment in the community (Holzer & Bromfield, 2008). There are also problems with the comparability of the data across states and territories (Holzer & Bromfield, 2008). Finally, the types of data items collected and the availability of aggregate data only means that we have a wealth of output data on child protection service activity, but that we do not have information about children's pathways through the service system or data on children's outcomes (e.g. health, education, re-abuse).

In 2010, the first annual report was released reporting baseline data for a variety of indicators intended to be used to monitor the impact of the National Framework for Protection Australia's Children. This included the child protection activity data above, and additional indicators from administrative data. The report also includes qualitative case studies, information on state and territory government reform agendas, and progress reports on National Projects being undertaken as part of the National Framework for Protecting Australia's Children (Council of Australian Governments, 2011). State and territory government departments also release annual reports, however, information in these annual reports are not comparable. Individual non-government agencies (of which there are 100s) release annual reports, however none of the data from non-government agencies are in a comparable format and are not compiled and aggregated at the state or territory or national level. States and territories also have independent monitoring bodies such as Ombudsmen, Children's Commission or Guardians of Children in Care and Child Death Review Teams. These bodies release annual reports, including data on child deaths, however this data is also not in a comparable form (Lamont, 2010; Lamont & Holzer, 2011). There are no data reported on abuse in organisational or institutional contexts (e.g. faith-based organisations, schools, detention centres, out-of-home care). As part of the National Framework for Protecting Australia's Children priority to "enhance the evidence-base" there is a significant program of work underway to improve the breadth and quality of data on protecting children. This includes replacing the aggregate data with unit record data, linking child protection with education and health data and developing new national data items. However the timelines for these projects means that new data are not scheduled to be available for several years (Council of Australian Governments, 2009b, 2011).

2.2.7.2 Trends in child protection activity 1998-2011

Figure 36 - Figure 40 demonstrate the trends in child protection activity in Australia since the commencement of national data reporting. Note in Figure 36 the quadrupling of reports to child protection services, which have so overwhelmed child protection services in Australia. A similar upward trajectory can be observed for both substantiations (verified cases of maltreatment) and the total number of children in state care on the annual census date (see Figure 37).

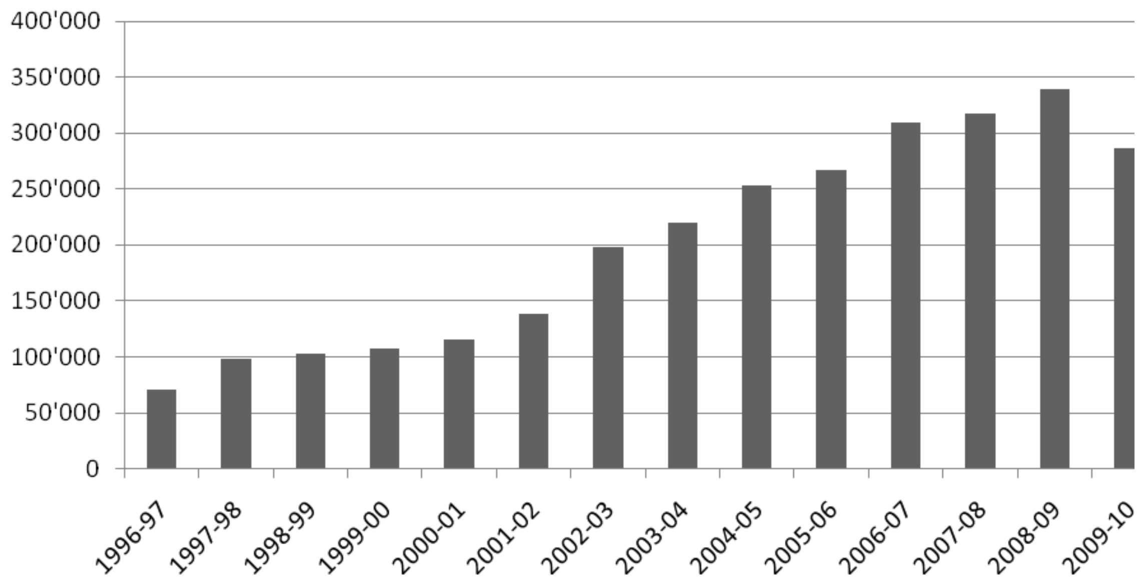

Figure 36: Trends in number of reports to child protection services per annum

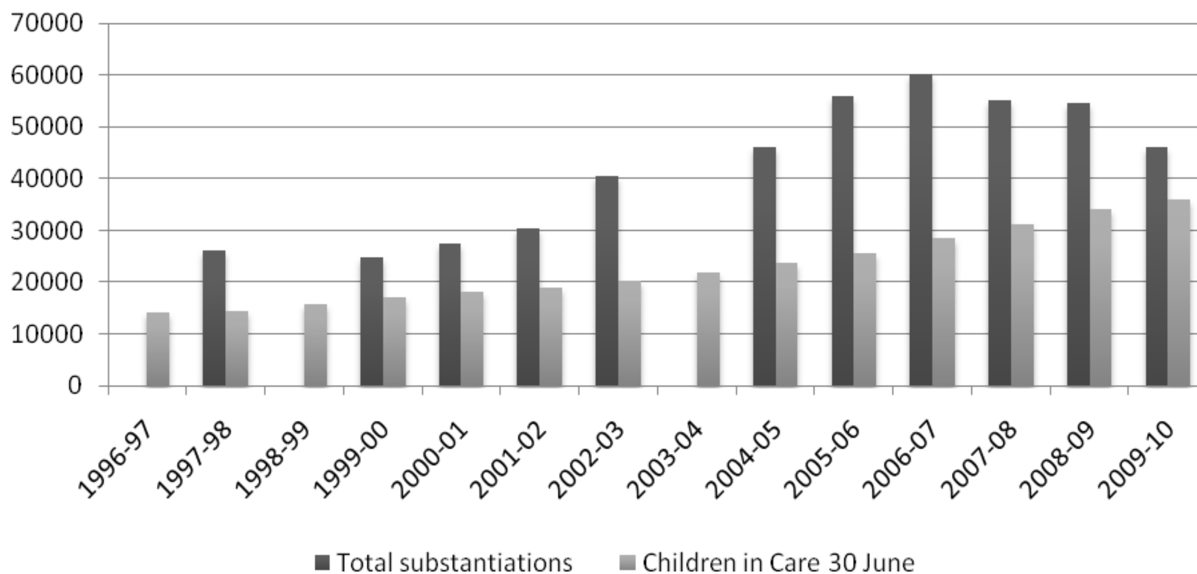

Figure 37: Trends in number of verified cases of maltreatment and children in care

The most recent data released for the period July 2009 to June 2010 show that the most common type of maltreatment verified by child protection services is emotional abuse, which includes exposure to domestic violence (see Figure 38). It is worth noting that sexual abuse, while always the maltreatment type most sensationalised by the media, was the least common matlratment type substantiated. The rank order for maltreatment types does vary in different countries.

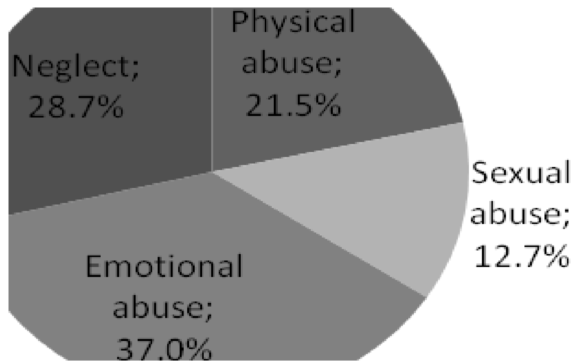

Figure 38: Verified maltreatment types by per cent

While the number of children in care has risen substantially over the past decade, this has been caused by children remaining in care for longer not because more children were removed each year. This is evident in the data presented in Figure 39, which shows that there has been minimal change year on year in total number of admissions and discharges. However, the number of children admitted into care consistently exceeds that number of children discharged from care each year resulting in the increased cumulative total number of children in care at the annual census date shown in Figure 37 (above).

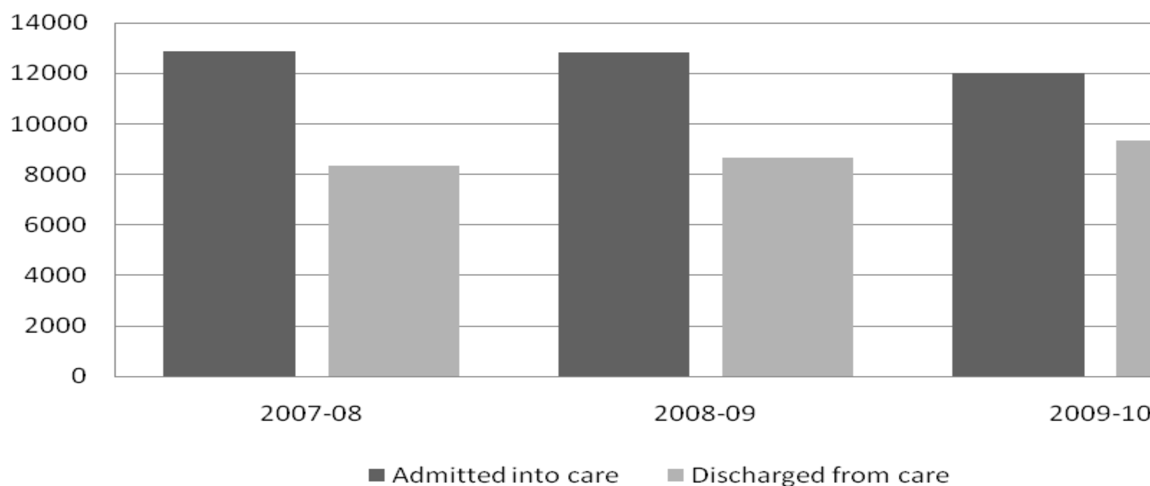

Figure 39: Number of children admitted into and discharged from care, 2007-09 to 2009-10

Within Australia, infants and younger children are more likely to be removed into care than older children and adolescents (see Figure 40) as young children are seen as the group at greatest risk of harm, including fatal abuse. Jordan and Sketchley (2009) write "the particular vulnerability of infants arises from their almost complete dependence on others for survival, their physical fragility, under-developed verbal communication, and their social invisibility" (p. 4).

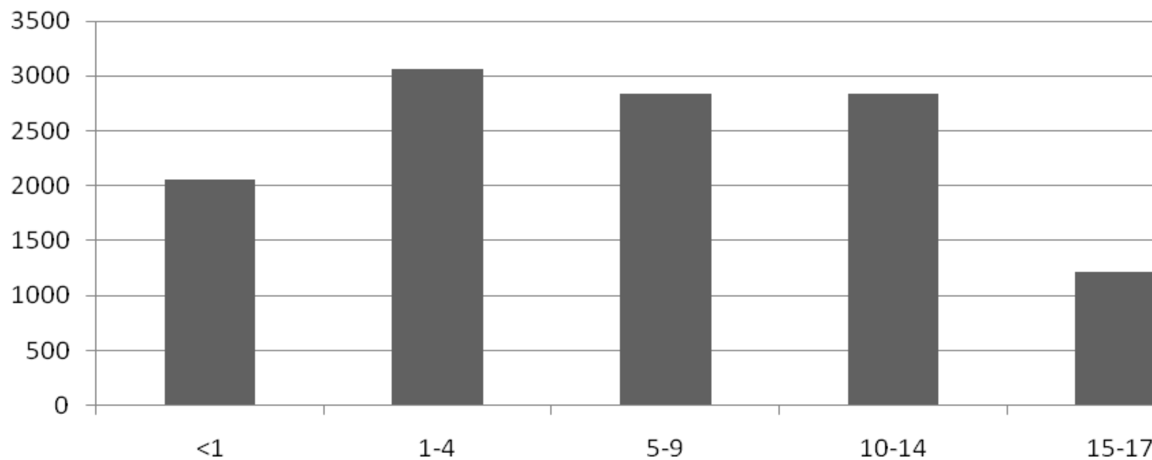

Figure 40: Children admitted into care by age group (2009-10)

2.2.7.3 Prevalence and incidence data

The best available indicator of child maltreatment incidence is child protection activity data (described above). However, child protection activity data has been found to be a poor indicator of the number of children who experience abuse and neglect in the community as:

- child protection data reflects only those cases identified and reported to the child protection services, reports from adult survivors of maltreatment suggest only a fraction of children who are maltreated come to the attention of authorities;
- child protection data only includes abuse and neglect cases in which a parent either perpetrated the abuse or failed to protect their child from abuse;
- child protection data include some children who were not abused or neglected, for example if a parent is incarcerated and there is no one to care for the child;
- finally, child protection data fluctuates considerably based on changing community attitudes and values – for example, the four-fold increase in reports to child protection services over the last 15-years is a reflecting of changing perceptions regarding the role of child protection not an indication of a four-fold increase in child maltreatment (Bromfield & Horsfall, 2011; Holzer & Bromfield, 2008).

Other countries, such as the UK, US and Canada have undertaken national prevalence or incidence studies to provide estimates of the number of children who experience abuse and neglect in the community (Bromfield & Horsfall, 2011). Australia has no national study of the incidence or prevalence of child maltreatment in the community, however, a review conducted by Price-Robertson, Bromfield and Vassallo (2010) of community-sample prevalence studies of child maltreatment with large samples, concluded that the best available estimates suggest:

- 5-10% of Australian children experience physical abuse
- 11% of Australian children experience emotional abuse
- 12-23% of children are exposed to domestic violence
- 7-12% of females and 4-8% of males experience penetrative child sexual abuse; and 23-36% of females and 12-16% of males experience non-penetrative child sexual abuse.

The authors concluded that there was insufficient evidence to provide an estimate for the number of children in the community who experienced neglect (Price-Robertson, et al., 2010).

2.2.7.4 Research evidence on effective child protection service provision

Child protection services in Australia, their current challenges and reform agendas are well documented. Areas of child protection and out-of-home care service provision which have received the most attention in academic research, writing and debate, include:

- Differential response and models of intake
- Problems in a residual approach to child protection and benefits of the investment in prevention
- Debate over risk assessment
- Addressing the determinants of abuse and neglect – geographic, cultural, and parental problems
- Mandatory reporting
- Issues preventing children in care from having equality of opportunity in terms of life opportunities and outcomes.

However, this evidence-base is drawn largely from analysis of failures within child welfare and not effectiveness studies. This means that conclusions about best practice in child protection are drawn from a critical analysis of the known and theoretical strengths and limitations of proposed reforms rather than robust and generalizable evaluation data.

In 2009, a national workshop of over 100 leaders within the Australian child welfare sector from a range of government and non-government organisations and research institutions reflecting the views of service providers, policy makers and researchers met for a national forum. The purpose of this forum was to undertake a broad consultation about the priorities for future child protection research within Australia (Department of Families Housing Community Services and Indigenous Affairs, 2009). At this forum it was concluded that there was a priority for Australian evidence into “what works” in service provision, and for large-scale robust quantitative research with findings that could be generalised. These priorities were reflected in the recently published *National Research Agenda for Protecting Children 2011-2014* (Department of Families Housing Community Services and Indigenous Affairs together with the National Framework Implementation Working Group, 2011). The National Research Agenda outlines a broad range of priority research areas to inform policy and practice, such as:

- What are effective ways to influence attitudes, behaviours and cognitions around the safety and wellbeing of children in communities?
- What prevention strategies are effective, and for what risk factors?
- What are the elements of cost-effective service models for families with multiple and complex needs?
- What models are effective in working with Aboriginal and Torres Strait Islander families – statutory and non-statutory, in Australia and internationally?
- What are vulnerable families' perceptions, experiences and preferences for services?
- What factors should guide decision-making about the frequency and nature of family contact for children and young people in out-of-home care?
- For which children is reunification appropriate, under which circumstances?
- What aspects of organisational environments and culture support effective practice?
- What is the incidence and prevalence of child abuse and neglect?
- What strategies are effective in addressing neglect?

2.3 Conclusion

The systems, services and supports designed to protection children in Australia are expanding and changing. The focus of reform within Australia over recent years has been to invest in more preventative services and reduce some of the unnecessarily adversarial aspects of service provision that are characteristic of the child protection orientation. European child welfare systems, which reflect a family support orientation, have been informed these reform approaches within Australia. It is important to acknowledge the differences in orientation to child welfare between Australia and Europe in considering how Australian child welfare successes and failures might inform the Swiss context.

An optimal system for protecting children comprises services and supports that increase in intensity in line with family needs, and which only impose mandated services upon families who are unable or unwilling to meet the needs of their children without statutory intervention (see Figure 41).

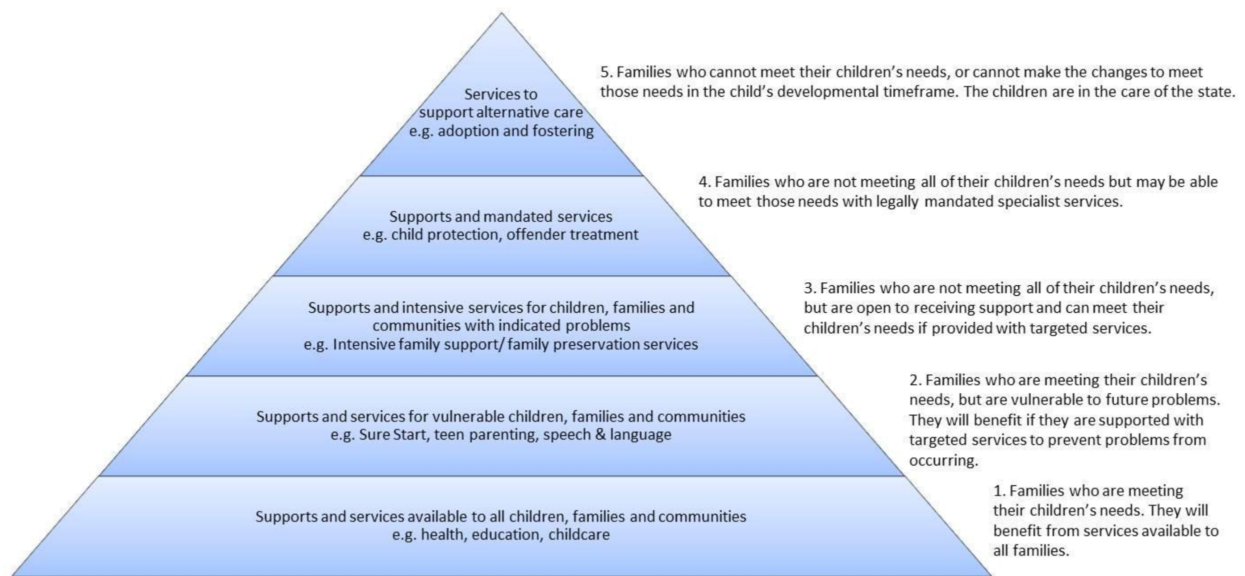

Figure 41: A public health approach augmented by the theory of responsive regulation (Arney & Bromfield, 2010)[110]

The failure of the residual approach to child protection, which was initially implemented within Australia, provides support for the social welfare orientation common across Europe. Child welfare predicated on a social welfare orientation provides high levels of universal supports for children and families. Such an approach is likely to better meet the majority of the population of parents who are able to meet their children's needs, but whom would still benefit from services and supports to reduce the burden of parenting obligations. However, from an Australian perspective, there are potential limitations of European family support orientations to child welfare. These relate to the minority of families in which children are victims of serious abuse and neglect. For example, a view of abuse and neglect as a symptom of family dysfunction may result in victims of abuse and family violence being held accountable for their perpetrators' actions. A family support orientation may result in serious abuse going undetected for longer than would be the case in a child protection orientation. Finally, the desire to work in cooperation with families may result in a decisions to remove children into state care being made much later in the course of a child's development. In terms of governance, the partnership between state, territory and Commonwealth governments, and the third sector through a coalition of non-government and academic institutions offers a potential model for Switzerland to consider in implementing national standards within local models.

[110] (Arney & Bromfield, 2010, under review; Department of Families Housing Community Services and Indigenous Affairs together with the National Framework Implementation Working Group, 2011)

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3 Child protection in Finland by Johanna Hietamäki

3.1 Historical background

3.1.1 Child protection prior to WWII

Finland was a part of Sweden from about 1200 till 1809 (Mäntysaari, 2000). Although Finland became an autonomous area of the Russian Empire in 1809 the Swedish social order and Law continued (Hearn et al 2004, 31). Finland declared independence 1917 and a civil war ensued in 1918, followed by wars with the Soviet Union in 1939 and 1941-1944 (WWII) (Mäntysaari, 2000).

In early times the extended families took care of children if their parents could not take care of them. Up untill 1868 the church was responsible for care of persons who could not support themselves. The essential social problems were poverty, infant mortality (Pulma 1987, p 15), begging and children born out of wedlock. Poverty remained the major social problem related to the children in the 1800s. In 1866-1868 there was a big famine in Finland. Other problems were orphanhood, the use of the alcoholand an increase in poverty in the countryside and towns. The growing industry was able to employ only small part of the people (Lindgren, 2000, pp 77, 84).

The development of the medical service, the establishment of children's homes and supporting children's own homes were seen as solutions to infant mortality problems. The children were transferred from the children's homes to the farmers and the craftsmen as soon as the children were able to work (Pulma, 1987, pp 14-18). The other central forms to arrange care for vulnerable children were to leave the child to be taken care of by the lowest-bidding parish-member or house group. The latter refers to houses formed into a group and in each group there were some poor who shifted from house to house. These practices continued till 1910s, and then were replaced by foster care (Lindgren, 2000 pp 80-81).

In the 1850s there were a shift in thinking and children in need were no longer seen as just labour solutions. They were divided into two goups: the vulnerable children and the bad-mannered children. Furthermore, the state and the municipalities started to take care of children in need. The state (and later the big cities and private associations too) founded reform schools for bad-mannered children (Lindgren, 2000 p 84). The municipalities were responsible for the care of vulnerable children based on poor relief (Pulma, 1987 p 25). Actual child welfare policy began to emerge in the 1850s (Hämäläinen, 2007, p 30).

The Civil War in 1918 was significantfor the welfare of children. There was a division between the Whites and Reds (the names of the two groups involved in the conflict) and this was reflected in social policy

(Satka, 2003, pp 76-79). The children of the Reds and Whites were treated differently. The Reds' orphans were given only poor relief while the Whites' orphans received state pension. All children received preventive child welfare but the Red families were subject to moral surveillance by the child inspector (Satka, 2003, pp 76-79; Pulma 1987, p 128). More than 14,000 children lost one or two parents and furthermore around 6,000 children's carers were in prisons. About 90 % of these children were Reds' children (Satka, 2003, p 76; Lindgren 2000, p 79.) After the Civil War lots of children were begging and therefore municipalities had to found a number of children's homes (Lindgren, 2000, p 83). Economic and social problems came to a head during and after the civil war (Pulma 1987, pp 123-124).

The ideological bloom of the child welfare began in the 1920s (Pulma, 1987, pp 123-124) and child protection began to to be understood in terms of preventive social policy. The public school appeared as an integral part of preventive child welfare and aim was to give all children a uniform upbringing (Pulma 1987, pp 144-145; Satka 2003, p 79). The assumption was that childhood is "the best possibility to prevent the growth and development of future criminals". The public school became compulsory 1921. The other preventive measures in child welfare were mainly in provision of leisure-time activities and day-care for children in need (Satka, 2003, pp 74, 79).

The first Finnish Child Welfare Act was developed over a 20-year period. A significant factor influencing Finland's first Child Weldare Act was the world's first Child Welfare Act enacted in Norway in 1896, which prompted intensive debate and later reform efforts in Finnish child welfare (Satka, 2003, p 74). The first Finnish Child Welfare Act came into force in 1936 between the civil war and the Second World War. During this time employed workers, elected officials and volunteers worked with vulnerable people in the municipalities. At the end of 1800s and at the beginning of 1900s the first education courses for social workers and staff who worked in the children' home were instigated. Formalization of social work began when the laws were introduced to regulate their actions (Matthies, 1993 and Satka, 1994 in Vuorikoski, 1999; Opetusministeriö, 2007).

Charity work

The gentry began to undertake charity work from the 1700s, but in the 1840s charity work increased and became common among both the gentry and the middle class. They established children's homes, schools, work houses, child-care centres, shelters, summer settlements for poor children and gave financial support to poor families. Well-to-do people gave advice and counselling to women and children. The objective was to eliminate threats caused by poverty, like crime and moral degeneracy (Hämäläinen, 2007, p 58; Pulma 1987, pp 37-93; Lindgren, 2000, p 86). In addition to private charities, many ideological and religious associations also arranged services to help children (Lindgren, 2000 p 86). Towns provided economic support to private charities, an alternative on occasions to founding children' homes and providing day care themselves (Pulma, 1987, p 89). Private and public child welfare services developed side by side. During that time the municipalities arranged the child welfare as a part of the poor relief (Hämäläinen

2007, pp 66-67). In the beginning of 1900s child welfare started to develop slowly towards a rational expert activity and charitable work was regarded as traditional, idealistic and religious-minded work lacking a model for effective and individualized treatment for children (Satka, 2003, pp 74-75).

3.1.2 Child protection post WWII

"After the Second World War a new, discursively much more internationally informed understanding of children and youth began to emerge" (Satka, 2003, p 79). The division of children into vulnerable and bad-mannered groups began do disappear in the 1950s when pedagogical, psychological and sociological orientations strengthened (Lindgren, 2000, p 84). People started to emphasise that all children are equally important to the state. The idea was that investment in children is an investment in the citizens of the future. After the war people felt insecurity and it opened space for expert advice. Related to the child, the leading discourse and method was professional casework for families with children. In the 1940s the state began to provide normalising state benefits to families with children, like child allowance, free school meals and maternity benefits. Furthermore, social benefits and services for needy families, like subsidies for families with numerous children (1943), state subsidies for single-mother homes (1949), and municipal home aids for overburdened mothers caring for many small children (1950) (Satka, 2003, pp 80-80, 84). The first degree in social work commenced in the University of Tampere in 1942 and the level of education required for social work practice was raised to master's level in 1980's (Vuorikoski, 1999).

In the 1950s the majority of the new services were geared towards families with children, like day care to children in need, social case work and family counselling clinics. "Individually tailored social services provided by highly skilled, university trained professionals or multi-professional teams, expanded rapidly" (Satka, 2003, pp 84-85.) Some services founded by private associations transferred to the ownership of municipalities, such as family counseling clinics (Lindgren, 2000, pp 84-85). These clinics had spread throughout the whole country by the end of 1950s (Satka, 2003, p 85), signifying an important change in child welfare. Previously young who behaved problematically were taken out of the family and now children and young people were helped within their families. This represented a transition from the provision of substitute care to support in community care and began in the 1950s (Lindgren, 2000, pp 84-85).

A major structural change took place in Finnish society in the 1960s (Tuori, 2004, p 75) Finland had a very rapid transformation from an agricultural to a modern service society (Hearn et al 2004, p 31; Satka, 2003, p 73). Economic growth quickened structural change and a crisis in values created preconditions for expansion of social policy (Pulma, 1987, p 237). Finland's agrarian society transformed quickly into an industry and service society. A lot of people moved to the towns and to Sweden. In the 1960s women started to work the outside home (mostly full-time jobs) and this considerable changed the lives of women and children. At the same time municipalities organised day care for children and services for older people (Tuomisto & Vuori-Karvia, 1997, p 84). Individual freedom strengthened radically and traditional values started to weaken. The mothers who gave birth to children out of wedlock were not regarded as deviant

any more (Pulma, 1987, p 229). There were transitions from poor relief to social services offered to all who need them (Alila, 2008).

Child welfare orientation began to emphasise service orientation and familism (family-centred practice). Child welfare work concentrated on working with families, with this philosophy extending to work in family clinics, child health clinics, school social worker action, and improving the possibilities of families to attend holiday and recreation services, and provision of accommodation and day care. Foster care was regarded as rehabilitation. These orientations gave bases for the developing of the second Child Welfare Act, which came into force in 1984 (Pulma, 1987, pp 240-242).

The welfare state was born in the 1950s but only developed to its full extent in the 1980s. In 1992 Finland met a hard economic recession; "unemployment grew suddenly from 5-7 % to near 20 % of the labour force" (Tuomisto & VUori-Karvia, 1997, p 77). Basic social services for families with children were diminished in all areas of social welfare, from maternity clinics to home-help services and youth work (Sinko, 2008; Pösö, 1997, p 160). These services and benefits have not been restored. Related to the deep economic recession in Finland in the early 1990s, there has been growing concern regarding an increase in the number of families experiencing problems and the complexity of problems within families. The most common concerns are connected to neglect in the care and upbringing children; an increasing number of children being taken into care; high and long-term unemployment and its consequences for children; increasing rates of poverty among children and families with young children; and violence, alcohol and mental health problems in families. Furthermore, it has been noted that the demanding conditions of contemporary society in Finland have life more difficult for parents raising children, for example, for example, problems in the reconciliation of work and family life, loosening social networks, and cutbacks in financial support and services for families (Kuronen & Lahtinen, 2010, p 65).

Child welfare changed in scope in the 2000s. Child welfare social work has encountered criticisms that it concentrates on working with mothers and pays little attention to children and that its working methods are too vague from the viewpoint of service users. Furthermore, social workers have not taken relatives and their potential to provide care for children into consideration. This criticism has influenced the development of new working methods. One of the most significant changes is the development of comprehensive assessment in child welfare. This method has also influenced the newest Child Welfare Act 13.4.2007. However, at least as big a change is in the work orientation towards more child-centered practice. Social workers meet children individually more often than before. This change has been made possible by the development of relevant working methods, the social workers have regarded the adoption of such methods as good practice. The other essential change is that more attention is paid to family networks. The network should be assessed as a part of any decision to take a child into state care, as regulated in the newest Child Welfare Act.

3.1.3 History of the Child Welfare Act up to today

The Hospital and Children's Home statute/Act 1763 was the first law regulating the care of vulnerable children in Sweden and in Finland. The first *Finnish Child Welfare Act* came into force in 1936. This act established regulations with regard to taking children into state care. The spirit of the Act was concerned with discovering poor conditions and 'bad' parents. Furthermore, the intention was to divide children into those who need support and care, and those who need discipline and punishment (Tuomisto & Vuori-Karvia, 1997, p 85). The Act supported children's upbringing in their own homes and it regarded day care as a form of child protection to compensate for poor domestic conditions (Satka, 2003, p 84). "The state assumed the right to intervene in the family and to suspend parental rights if children were neglected or their asocial behaviour caused harm to society or themselves" (Pösö, 1997, p 145). The Act listed the grounds for taking a child into custody. One of the categories was child abuse. The Act, however, "did not define the rights and duties of child welfare intervention with great precision" (Rauhala 1978, in Pösö, 1997, p 145). Interventions included four stages: caution/complaint, counselling, surveillance and institutional care (Tuori, 2004, p 84).

The second *Child Welfare Act1983* came into force in 1984. As Pösö observes; "The period from 1970 to 1994 was a time of great changes in child protection, the landmark being the Child Welfare Act of 1983. This act not only redefined the categorization of the needs for child welfare interventions (…), but opened the whole approach to child welfare. A child is entitled to a secure and stimulating environment in which to grow and to a harmonious and well-balanced development. A child has a special right for protection" (Pösö, 1997, p 154). The second Child Welfare Act gave priority to preventive measures and adopted a broader understanding of child welfare instead of the earlier more limited focus on child protection. Orientation and discursion in child welfare started to change from removing children from their home towards preventing problems and supporting families. This aroused a need to find new forms of support for families and children at home instead of placing children into institutional care. Residential institutions 'opened their doors' and instead of institutional care began to direct their work more towards helping children and their parents in their own homes. Whilst the orientation was supportive of families, in practice this often meant working with adults (usually mothers) rather than children. As a consequence of this critique comprehensive assessment of the whole family has been developed within the newest Child Welfare Act (see Kuronen & Lahtinen, 2010, pp 72-73).

Two essential viewpoints of the Act are that child need protection from society and an emphasis on the child's best interests being paramount in any decision made with regard to the child, with a priority that their voice is heard. "For the first time children's rights to care and protection were to be principle for interventions" (Pösö, 1997, p 146). The Child Welfare Act is consequently divided into two main areas: preventive measures related to the children's living conditions and general welfare services to all families, and family-oriented and individual child welfare interventions. "The former deals broadly with children's interests and the latter deals with assistance to individual children in their natural living surroundings (…), taking the child into care and substitute care (…), and after care (…)." The act emphasised community

care services. “Supportive measures have been emphasized, with prevention and open care highly valued. At the same time, care orders and out-of-home placements are avoided as far as possible and, if necessary, made on a short term basis” (Pösö, 1997, p 154). Preventive and support for community care as a part of child welfare intervention ideas came into operation in the Child Welfare Act; these ideas have been developed further within the latest Child Welfare Act.

Criticism of the second Child Welfare Act led to the introduction of the newest (third) *Child Welfare Act.* It came into force in 2008. According to Sinko, the second Child Welfare Act was more or less a skeleton law. It gave no precise instructions when or how to intervene. There was a strong and publicly expressed wish to have a law that would tell how to engineer child welfare services, how to carry out child protection and tell the clients and the officials more precisely what their respective rights and duties are on child protection issues. The new Act is much more exact and detailed than its predecessor. The third act includes several new obligations for the authorities, new statutory duties, measures and practices for child protection work (Sinko, 2008; HE, 2006). The other changes include an emphasises on more and earlier children’s participation, child-centred working, child welfare social worker qualifications, preventive measures, cooperation within all services for children and families and mandatory reporting (HE, 2006).

One big change in the Child Welfare Act 2008 relates to decision-making. The previous Act did not guarantee the legal protection of a child and parent. The new law changed this at two levels. First, involuntary admission to care decision-making shifted from elected officials on the social welfare board to the administrative court. The reason for this was that the social welfare boards (consisting of elected officials) in municipalities were not generally considered expert enough to make balanced decisions. In Finland, there were big differences in such decision-making if the social welfare boards had a child welfare expert or not. Second, voluntary admissions to care decisions were shifted from the social worker to the head social worker. The courts do not make voluntary care decisions (STM, 2006, pp 57-59).

Other changes in the new Child Welfare Act are that it regulates assessment in detail, services for adults have to assess if a child in the family also needs assistance from child welfare services, regulation of multiprofessional teams for child welfare, guardianship to the child in certain situations. Furthermore, a new issue is that a child’s social network has to be exploreed when a social worker is preparing an admission to care decision, all children have a named responsible social worker, and if parents refuse assessment a social worker can apply for permission to undertake an assessment from the administrative court. There is also more regulation related to the institutional care, for example, the numbers of staff required. c (HE, 2006). The co-operation of all the municipal authorities in child welfare and protection issues is consequently, strongly emphasised with responsibilities clarified. Furthermore, improving the rights of the child as well as the parents, particularly in the decision-making processes, is an important principle.

3.2 Legal and policy frameworks

3.2.1 Definitions of child welfare and child abuse

Child and family welfare system in Finland can be best described with the terms ‘child welfare’ or ‘family service system’ rather than ‘child protection’ (Cameron & Freymond, 2006; Gilbert, 1997; Hetherington, 2002, pp 28-29[111]). The problems of the family and the services and supports to the family are seen from a wide point of view. There has been strong criticism against taking too narrow a view of social problems. Social problems are seen from wide a multi-problem perspective. “Physical violence or child abuse in the family is seen as too narrow a category that emphasizes the symptoms of the problem more than the basic causes and stigmatizes or blames the perpetrator too easily. These problems, it is argued, should be seen in the context of ‘family conflicts’ instead. ”As a consequence child welfare is “focused on the child’s healthy development rather than the risks of mistreatment”. The main focus of the family service system is providing support for parent-child relationships and the care of children (Pösö, 1997, pp 153, 146).

The social problems in the background of child welfare are various e.g. criminality, crises, violence, mental health and substance abuse problems. The problems are seen holistically and there can be a big variation between the seriousness of the problems. In some cases the problems can be quite mild. For example the parents can be exhausted and need practical help in home. In this kind of a situation the family can receive light support from child welfare or from other professionals. The more serious the problem the more strongly family need help from child welfare. The problems often accumulate and it is not always easy to know what problems are the causes and what problems are the consequences. For example if a young person does not obey their parents, uses alcohol and is away from home without the permission are these the actual problems or are they symptoms of problems in the background such as domestic violence?

The basic definition of child abuse in Finland is similar to that in the UK (see UK case study). Child abuse is not defined in the Child Welfare Act but it is defined inthe literature. All forms of child abuse can be defined also from the viewpoint of active and passive abuse (see Pösö, 1997, pp 147-148) and can take different forms: physical, chemical, psychological, economical and sexual abuse. Active physical abuse means for, example, physical violence and passive abuse can take the form of neglect. Active chemical abuse refers to the misuse of the medicines and intoxicants and passive refers to neglect of medical treatment. Psychological abuse is neglect, humbling, threatening and mocking in active form, and passive forms are invalidation and ignoring. Sexual abuse can too have active forms like touching and intercourse,

[111] Hetherington (2002, 26-29). *Dualistic system with ‘child protection’ orientation*: “Child welfare systems characterised by a focus on child protection, distrust of state intervention, and a legalistic approach. These systems were crisis orientated, with an emphasis on rights and individual responsibility. Their systems treated family support and child protection as discrete processes.” *Holistic system with ‘family service’ orientation*: “Holistic child welfare systems that treated prevention, support and the protective responses to child abuse as parts of a whole”. Inside the holistic system there is difference between deliveries of the services. In some countries is the principle of subsidiarity (like Germany) and the other countries state delivery services (Sweden, Finland).

and passive abuse can include exposing a child to a sexual atmosphere (Taskinen 2003, in Ellonen et al 2007, p 15).

Social workers do not define child welfare problems through the lens of child abuse. If child abuse take place as a part of general violence in family or parents have problems such as substance abuse or mental health problems, these are more likely to be defined ‘family conflicts’ or ‘parental drinking problems’ than child abuse. Because of this the “child is rarely defined as the reason for child welfare interventions” (Pösö, 1997, p 151). Sexual abuse is, however, an exception; it is seen separately from the other forms of abuse and social problems.. Aside form sexual abuse there is no strict definition and categorisation of the problems for child welfare interventions. The Child Welfare Act is essentially a skeleton law, only defining the general framework for child welfare (Pösö, 2011 forthcoming).

Pösö argues that; “In Finland, and in the other Nordic countries, extensive support for families and children is prioritised against more controlling measures, and state intervention is seen more as service and support than control and surveillance.” “The strong critique of many British researchers towards the state control differs from most Finnish discussions on family support or child welfare. A reason for this might be different ideologies and models of child welfare/ child protection (Hearn et al 2004 and Pösö 2007, in Kuronen & Lahtinen, 2010), different family policy and welfare systems (Eydal & Kröger, 2010), and different situations of families with young children”. In countries which have family service systems, like Finland, “demonstrating risks of harming children is not a necessary precursor for families or children to receive assistance”. Child and family welfare services are the same services to the general population. If child abuse or neglect is suspected, the social worker makes an investigation request to the police. However, despite such clear lines of responsibility there are: “Still, contradictions and tensions between control and support is one of the basic questions is social work and child welfare also in Finland (Pösö 2007, in Kuronen & Lahtinen, 2010)” (Kuronen & Lahtinen, 2010, p 69).

3.2.2 Legal framework to protect children

The central law is the Child Welfare Act (CWA) 2007/417. Furthermore, there is an Act to safeguard children in institutions, concerning checking the criminal background of persons working with children. The Child Welfare Act also contains regulation concerning child welfare institutions. Juvenile justice is based on both criminal law system and child welfare system. The basic principle is that the child welfare system is primary. The age of criminal responsibility is 15. The majority of the juvenile offenders are in child welfare placement and there are about ten young people in the prison (Marttunen, 2008).

3.2.2.1 Child Welfare Act – General principles and other professionals

The most important guide to child welfare social work is the Child Welfare Act. There are many guidelines accompanying the Act especially concerning the assessment of abused children. The present Child Welfare Act came into force 2008. The act emphasizes preventive child welfare in the normal services to the

families. As indicated above, all public professionals who work with children and families are responsible to support parents and custodians in their child's upbringing and provide necessary assistance at a sufficiently early stage. Professionals are responsible to support the parents and give services that parents can take care of children, parents retain the primarily responsibility for the child's upbringing and well-being (Räty, 2007). Such repsonsiblities are guided by the cental principle of the *smallest sufficient measure*. The objective is to intervene as little as possible in the family's and the child's autonomy. Assistance offered should be such which best corresponds to the individual needs of a child and family. The economic resources of the municipality should not affect the determination of measures (Räty, 2007, p 19).

The Child Welfare Act consists of two parts: child and family specific child welfare and preventive child welfare. Child and family specific child welfare consists of five sections: assessment and service user plans, support in community care, emergency placement, taking the child into care and after-care. The objectives of the child and family specific child welfare are to promote child's favourable wellbeing and development, prevent problems, promote early intervention and take into account the child's best interest. When institutional care is needed it has to be arranged without delay. The child's best interest is the most important issue when authors are assessing the family situation and what measures are needed (Räty, 2007, 20-22; CWA, 2007, section 4). A child is defined as less than 18 years of age and a young person as 18–20 years of age (CWA, 2007, section 6). Preventive child welfare is used to promote and safeguard the growth, development and wellbeing of children and to support parenting. Preventive child welfare is assistance and special assistance when a child is not a child welfare service user. For example schools, youth work, day care, maternity and child health clinic and other social and health care offer preventive child welfare services (Räty, 2007, pp 19-20; CWA, 2007, section 3; Act for changing Child Welfare Act, 2010).

The Child Welfare Act also comprises obligations to other social and health care authorities, stipulating that when adults are being provided with social and health-care services (substance abuse, mental health or some other social and health care services or parent is imprisoned) and a parent's capacity to take care of their children is deteriorated, children's need for care and support must be assessed (Räty, 2007, 39-41; CWA, 2007, section 10). Furthermore, the social and health-care authorities must arrange essential services for the special protection of pregnant women and unborn children where necessary (CWA, 2007, section 10). Health-care has special obligations to children who are child welfare service users with provision of expert assistance and provision of health care and theraputic services for the child. Services needed by children in connection with the investigation of suspected sexual abuse or abuse must be arranged without delay (CWA, 2007, section 15; Räty, 2007, pp 73-74).

3.2.2.2 Child Welfare Act – Children's rights

In provision of child welfare, the child's wishes and views must be taken into account in a way that is appropriate for the child's age and level of development. This includes small children having an opportunity

to express their views related to the child welfare issues concerning them. In all child welfare measures the child's opinions and wishes should be ascertained. Workers have to be sensitive that a court hearing does not cause unnecessary harm to the relationship between child and carers. The more important the child welfare measure the more weighting should be given to the child's opinion. Furthermore, children of twelve years or more have an opportunity to express their views before decisions about taking a child into care, ending care placements and placements outside home (HE, 2006; Räty, 2007, 117-118; CWA, 2007, section 20, 43). Children of twelve years or more can independently apply for amendment to decisions or deny authorities the right to give information to the parents for special reasons (CWA, 2007, section 21; Räty, 2007, 126-127; Status and Rights of Social Welfare Clients, section 11). All children in child welfare have a named qualified social worker who is responsible for the child's affairs Professional qualification for social work can be achieved by completing the degree of Master of Social Sciences (majoring in social work).

All children in child welfare have a named qualified social worker who is responsible for the child's affairs Professional qualification for social work can be achieved by completing the degree of Master of Social Sciences (majoring in social work). The responsible child welfare social worker has to oversee the child's best interest, provide assistance for children or young people in exercising their right to be heard and, where necessary, must direct the child or young person to seek legal aid or ensure that an application is made for a child's guardian (CWA, 2007, section 24; Räty, 2007, pp 132-133). The child can have a guardian[112] to deputise for their custodian if there is good cause to assume that the custodian is unable to represent the child's best interests in the case without prejudice; and a guardian is necessary in order to investigate a case or otherwise to safeguard the best interests of the child. A Guardian can be needed if a parent has abused the child[113] (CWA, 2007, section 22; Räty, 2007, pp 129-130). Furthermore, Finland has established the post of Ombudsman for Children to support the rights of the child and the Ministry for Foreign Affairs reports on progress made in relation to children's rights regularly to the UN (Ministry for Foreign Affairs, 2008).

3.2.2.3 Child Welfare Act – Mandatory reporting

Mandatory reporting became compulsory in 1984 but this did not mean that all authorities began to make child welfare notifications in all cases. This requirements were apparently neither well known nor widely complied with by the authorities. As Pösö explains; "The lack of compliance is sometimes excused by referring to legal norms. The concern about breaching confidentiality in professional relations with clients is often noted as a reason for the reluctance of authorities to report incidents of abuse to child welfare services". Besides, the standards of evidence for reporting are often misunderstood. "Although many workers think that there ought to be definite proof of child abuse before the municipal child welfare organi-

[112] A guardian in Finland means different thing than quardian in Switzerland.

[113] More information from Guardianship in Child Protection website in English: http://www.sosiaaliportti.fi/en-GB/guardianship_in_child_protection/

zation is informed, the law requires that a report be filed when the worker suspects the likelihood of child abuse, even if there is no firm proof at the moment" (Pösö, 1997, pp 149-150). Mandatory reporting practice has been extended to the new professional groups and the threshold for report/notification has reduced by the Child Welfare Act 2008.

There are various designated groups who are responsible for child welfare notification (mandatory reporting) for child welfare social services: 1) social- and health care, 2) education, 3) youth services, 4) police service, 5) criminal sanctions agency, 6) fire- and rescue services, 7) social service or health service provider; 8) organizer of teaching or education, 9) parish or other religious community, 10) asylum seekers reception unit or other residential unit, 11) emergency response centre, 12) unit arranging morning and afternoon activities for school children[114]. These authorities and elected officials (person elected to a position of trust), self-employed persons and all who are working in health care have a duty to notify the municipal body responsible for social services without delay and notwithstanding confidentiality regulations if, in the course of their work, they discover that there is a child for whom it is necessary to assess the need for child welfare on account of the child's need for care, circumstances endangering the child's development, or the child's behaviour (CWA, 2007, section 25; Räty, 2007, pp 143–144).

There are provisions for persons responsible for child welfare notifications (referred to as the "author") to make these notifications cooperatively with the service user. Instead of a mandatory report, the author can make ´a request to assess the need for child welfare´. The provision is designed for situations in which one of the family members is a client of the author of the child welfare notification (STM, 2010).This requiremnent came into force in 2010 as a supplementary part of the Child Welfare Act. Child welfare notification can be proactive if there is reasonable ground to suspect that a child needs help immediately after birth. Other people can notificatify anonymously, like neighbours, grandparents and a child (CWA, 2007, section 25; Räty, 2007, pp 143–144).

Child welfare normally receive the notification and the social worker has in turn a responsibility to give information to the police, notwithstanding confidentiality regulations, if there are reasonable grounds to suspect that the environment within which a child is being brought up is harmful, the child has been the subject of sexual abuse or abuse that has caused injuries to the child (CWA, 2007, section 25d; STM, 2003). Social worker can use discretion when informing the police. It is possible to inform less serious situations, when child is young (Räty, 2007, p 164).

3.2.2.4 Child Welfare Act - Interventions

Child welfare social workers must assess immediately a child's possible urgent need for child welfare services. Social workers have to decide during seven days after receipt of the notification or after other contact whether a worker will begin an assessment or the situation is clearly of a kind that does not require

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[114] The list has been specified more later in CWA 12.2.2010/88.

measures to be taken (CWA, 2007, section 26). An assessment must be made whether there was a child welfare notification or the service user themselves sought help. The assessment should be completed within three months and include a comprehensive assessment of the circumstances in which the child is being brought up and of the prospects of the carer to care for the child, and any need for child welfare measures. The extent of the assessment will be as required by the circumstances of the case in question. After completion of the assessment, the career/ custodian and the child must be informed of the continuation of the child welfare service user relationship (CWA, 2007, section 27; HE, 2006, 143-144; Räty, 2007, pp 169-170), this gives social workers opportunity to decide to extend the assessment individually if necessary. If the parents forbid the assessment the social worker can apply for the permission from the administrative court to the assessment if there is a heavy reason for it (CWA, 2007, section 28; Räty, 2007, pp 171-172). After the assessment, the social worker undertakes a service user plan (e.g. objectives, services to the child and careers, and time schedule) with the child and family both in community care and taking into care cases. The service user plan must be reviewed where necessary, and at least once a year (CWA, 2007, section 29).

The core of the child and family specific child welfare is a division between the community-based child welfare interventions and taking into care decisions. The municipal body responsible for social services (in practice the child welfare social work office) must provide community care measures if one condition is realised: 1) the circumstances in which the children are being brought up are endangering or failing to safeguard their health or development; or 2) the children's behaviour is endangering their health or development. The objectives of community care are to promote and support the child's development and to support and enhance the parenting skills and opportunities of the carers. This assistance is voluntary and of a preventative nature and is provided in cooperation with the child and carers (CWA, 2007, section 34).

The community-based child welfare interventions comprise the biggest part of the child welfare services. The Child Welfare Act list these services: 1) support for assessing a problem situation involving the child and family; 2) financial and other support for the child's schooling and in acquiring an occupational qualification, obtaining accommodation, finding work, in free-time pursuits, maintaining close human relationships and satisfying other personal needs; 3) support person or support family; 4) care and therapy services supporting the child's rehabilitation; 5) family work; 6) placement of the whole family in family or institutional care; 7) peer group activities; 8) holiday and recreational activities; and 9) other services and supportive measures to support the child and family (CWA, 2007, section 36). Furthermore a child can be in placement as support in community care. This is the voluntary placement and there are regulations in connection with the child's age, duration of the placement and in what kind of situations can it be used (CWA, 2007, section 37).

State care must be provided if three conditions are realized. 1a) a child's health or development is seriously endangered by lack of care or other circumstances in which they are being brought up; or 1b) a child seriously endangers their own health or development by abuse of intoxicants, by committing an illegal act

other than a minor offence or by any other comparable behaviour. 2) Community care support measures would not be suitable or possible for providing care in the interests of the child concerned or if the measures have proved to be insufficient. 3) Taking into care is estimated to be in the child's best interests. Before a child is placed outside the home social worker has to assess what opportunities there are for the child to live with the parent with whom the child does not primarily reside, with the relatives or with other persons close to the child, or for these parties otherwise participating in supporting the child. This process may be omitted if it is not required on account of the urgency of the case or for some other justified reason (CWA, 2007, section 32). At this stage is possible to use family group conference (Heino, 2009).

Decisions concerning taking a child into care, placement outside home and terminating care are made by a head social worker with specified qualifications (an appointed officeholder with specified qualifications and skills) or the administrative court. The head of the social worker makes the decisions if a child 12-years or older and the child's carer accept the decision. When the child is 12 or older or their carer resists the decision the municipal officeholder makes the application to the administrative court, which makes the decision (CWA, 2007, sections 14, 43, 44; Räty, 2007, pp 276-277). Taking into care is valid indefinitely but it has to be terminated if the need for care and placement outside home no longer exists and is against the best interests of a child or when the child reaches the age of 18 (CWA, 2007, section 47). A young person is entitled to have after-care after placement outside home and after-care terminates when young person is 21 years of age. After-care is voluntaryand the objective is to support a young person to independent life (CWA, 2007, sections 75-77).

3.2.2.5 Violence in the family

Violence in family is punishable and has been regulated in the many laws. The Constitution of Finland states that everyone has the right to life, personal liberty, integrity and security. The Constitution emphasizes especially children's equality and their need for special protection (The Constitution of Finland, 1999, sections 6, 7; Paunio, 2006, p 9). Corporal punishment has been prohibited in the Child Custody and Right of Access Act 1984. Assault and sexual abuse have been defined separately and they are punishable actions according to the Criminal Code. Domestic violence and severe harassment inside family can be preventing by Act on the Restraining Order in 1998.

Corporal punishment of children has been forbidden explicitly by the Child Custody and Right of Access Act (1984). Finland was the second country in the world to forbid all kinds of bodily disciplining of the children (Ulkoasiainministeriö, 2003, p 15). The Child Custody and Right of Access Act prohibited corporal punishment and any treatment that would hurt or oppress children. "The act did not however specify the criteria for the definition of maltreatment of a child, and neither did the Child Welfare Act". Corporal punishment has diminished in Finland but it is still appears. Because of this the Ministry of Social Affairs and Health have set up a program called "Don't hit the child - National action programme to reduce corporal punishment of children 2010-2015" (Ministry of Social Affairs and Health, 2010).

Assault and sexual abuse are criminal actions. Assault has been divided into three groups in the Criminal Code: petty assault, assault, aggravated assault (Criminal Code, chapter 21, sections 5-7). Sexual assault includes for example sexual act, rape, sexual abuse and sexual abuse of a child (Criminal Code, chapter 20, sections 1-7). With regard to domestic violence a significant change was made to the Criminal Code at the beginning of 2011. Now *the public prosecutor* bring charges for petty assault, if the victim is less than 18 years old, spouse, co-habiting partner, sibling, relative in direct descent or ascend, or someone comparable person (The Criminal Code, chapter 21, section 16). In these cases the police are responsible to do a preliminary investigation and the public prosecutor brings charges even if the victim would not want it. Objectives of the Act are that it facilitate a break in the spiral of the assault and improves the position of the victimIt is especially harmful to the child to experience assault in near human relationships. Even a slight assault may cause a child difficult conflicts and possibly long time damage. The situation is made worse by the fact that the child cannot apply for the support from the person whom the child should be able to trust (HE, 78/2010).

3.2.3 Child welfare methods and other services

There are many organisations that organise services to the children and their families. Child welfare social workers are the essential professionals in child welfare cases. They should assess the situation and co-operate and organise needed measures with normal services like school, day care and health nurse and with specialised services like substance abuse and mental health treatment professionals, family counselling offices and many organisations.

Child welfare interventions are based usually on the expert knowledge. Furthermore research based information has been utilised when intervention methods have been developed such as the comprehensive assessment. Family group conference and PRIDE foster parent training are probably methods which have been studied most internationally. However, service user's opportunities to participate, worker's genuineness and openness working with service users are essential factors in all social work, especially with the involuntary service users (Hiitola & Heinonen, 2009, p 30). In the following section we will introduce some of the most important practices and measures which are used in social work the comprehensive assessment, family work, and community care measures. We will then examining developments in child welfare organisations before reflecting on the role of the social welfare ombudsman, and highlighting centres of excellence in social work and information technology innovations.

3.2.3.1 Comprehensive assessment

Comprehensive assessment in child welfare forms the starting point for the working process. The social worker has to assess all new families, even if the urgent services would also already have been begun. The objective of the Finnish ‘comprehensive assessment’ is to undertake a holistic assessment of a child's situation and whether the parents are able to take care of the child and assess if she needs support. Even though the Child Welfare Act gives flexibility to undertake an assessment it nevertheless comprehensive assessment model forms an essential part of the child welfare program of the Ministry of Social Affairs and Health (Oranen, 2006). Furthermore, the Ministry has funded extensive national training program for trainers who induct employees in using the model.

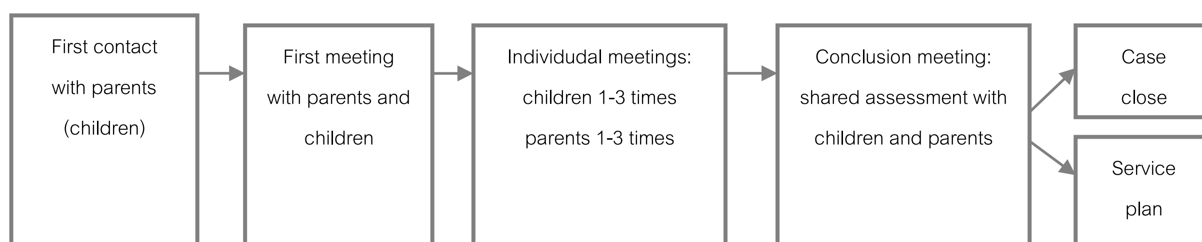

Figure 42: Comprehensive Assessment Process in Finland

To provide an overview, the assessment model consists firstly of contact with the family by phone, letter or preparing meeting (Figure 42). Sometimes the working process finishes at this phase, if it is apparent that there is no need to continue working with the family. In ideal case comprehensive assessment begins at the opening meeting with the parents and children. The objective is to discuss a notification or application of the family, introduce assessment process and goals, motivate family members to participate into the assessment, and do a schedule for the rest of the assessment process. After that, it is direct work with the child and the parents, and individual meetings deals with themes: home and important relationships, child and everyday life of the family, needs of the child, and parent’s resources to support child and parent’s readiness to do cooperation. Social workers use various functional working methods during the individual meetings. Functional methods can be a network map, timeline, role maps, time circle/ my day, variety cards (e.g. strength cards, reflexion cards, bear cards, feeling cards, the most important issues in my life[115]) and games. These methods are found to be useful and facilitate working with children and parents. Functional methods are used also working with children in placements and with children whose parents are divorced and social worker is hearing child’s opinion concerning living and meeting with parents. The assessment ends in the conclusion meeting with the family. In that phase strengths and needs for chance

[115] Many of these cards are from Australia and translated into Finnish http://www.innovativeresources.org/.

of the child's life are discussed. Social worker also informs service user concerning will the case close or will continue they and do a service plan.

3.2.3.2 Family work

Family work is concrete professional help to families in their own home given by family worker. It is provided to the families and children who are assessed to be in need of corrective and more intensive intervention in their everyday life. (Kuronen & Lahtinen, 2010, pp 66-67). Family work can be preventive and corrective intervention. One of the objectives can be to prevent taking a child into care (Heino, 2008, p 24). Family work can consists of discussion help and support in everyday life. Family worker can support parents as educator, assess parenthood and provide support for children. (HE, 2006, p 155.) In practice, family work can be for example counselling of the parents in the doing of housework, using of money or parents can need help and counselling to find day-rhythm to a child and child's upbringing (Heino, 2008). Above presented family work applies so-called common child welfare family work. There also are the other variations of family work, like intensive family work, family work of the child health clinic, baby family work and family peer-groups for different target groups (Lastensuojelun käsikirja).

3.2.3.3 Family group conference

"The Family Group Conference (FGC) model of practice has emerged as a significant innovation, a process that brings together the family, including the extended family, and the professional network systems in a family-led decision-making forum." (Connolly, 2007, p 3). In Finland, an own application was created from the family group conference (FGC) created in the New Zealand. Related to the newest Child Welfare Act it has been discussed should the family group conference be compulsory in some cases. Use of the family group conference is optional and social workers can use when they regard it relevant. Finland and other Nordic countries have developed FGC more towards child centred and diverge from other countries in this way. One essential point is that the worker creates a personal and genuine relationship with the child and knows child's concerns, opinions and wishes. Child-centred orientation is essential also on concern to questions to the adults. Dialogical, service user's resources and all views observing orientation promote relationship between workers, service users and their networks. (Reinikainen, 2007; Heino, 2009.) The use of the FGC-method is not too widespread and there is variation between social work offices how much FGC is used (Vuorio et al 2008). FGC is suggested to be one possible way to charting out the child's family network before the child is placed outside the home (HE, 2006, p 150).

3.2.3.4 Family counselling office

Family counselling office (FCO) gives both preventive child welfare services and child welfare community care services. Services users can ask for help directly from the FCO or for example a child welfare social worker can refer service users to FCO. The majority of the workers of the FCO are social workers and psychologies. Furthermore, doctors, speech therapists are working in some of the FCO (Stakes, 2008). The FCO helps children and families if they need special help concerning the child's development and

upbringing, problematic family situations and child or family crises. Furthermore, FCO gives the couple and family therapy and arrange various groups, such as: post-divorce group coaching program[116] to parents, post-divorce groups for children, parenthood and child rearing groups, fathers group for fathers of infants, family program for overactive children and their parents, grief group for parents who have lost their child, music therapy group for children, rehabilitation group for children who have learning difficulties, group for women who have suffered domestic violence and a corresponding group for children[117], relationship group for parents, ´käsikynkkä´ –g roup to support interaction between a parent and a child.

In child welfare, therecan be special situations when child welfare social workers cooperate with FCO. For example, if a social worker is assessing the appropriateness of reunification when a child is in care, the social worker may ask the FCO to assess the interaction between the child and the parents and the child and foster parents.

3.2.3.5 Foster parent training

Foster parents are educated using PRIDE (Parent Resources for Information, Development, and Education) foster parent training program. This program has imported from the USA (Männikkö, 2010). PRIDE is a program for recruiting, preparing, assessing, and selecting prospective foster and adoptive parents. It consists of 14-step process and contain five competency categories for foster parents and adoptive parents: “1) protecting and nurturing children; 2) meeting children's developmental needs, and addressing developmental delays; 3) supporting relationships between children and their families; 4) connecting children to safe, nurturing relationships intended to last a lifetime; and 5) working as a member of a professional team.” (CWLA, www-page) Pesäpuu ry have developed multicultural additional package to the PRIDE –program.

3.2.3.6 Child welfare organisations

In Finland, there are around 25 child welfare organisations. I will introduce two central child welfare organisations which develop child welfare practices. The other organisations arrange for example camps for children, weekend activities for families, to have effect in the decision-making concerning children, foster homes, reforms schools, after-care services, peer-groups, help-line, support in internet. In addition to the previous organisations there is *Save the Children Finland* organisation which is developing a model to work *with abused children their foster families, biological parents and close relatives.*

Centre of Expertise in Child Welfare (Pesäpuu ry) is a national centre for expertise in child welfare and protection with the aim of maintaining and developing the quality of child protection and its family care (Kittilä 2005). Pesäpuu is an essential trainer to social workers to use the comprehensive assessment method. Pesäpuu develops and imports methods from other countries for working with children, and edu-

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[116] designed by Dr. Bruce Fisher, in the USA.

[117] Furthermore The Mobile Crisis Centre arrange groups for violent adults, and for adults who have suffered domestic violence.

cate social workers and other professionals in child welfare in these methods. They have a variety of different kind of cards like strength cards, reflexion cards, bear cards, feeling cards, the most important issues in my life[118]. The other functional methods are feeling circle and TEJPING. The last mentioned method[119] has been imported from Norway. Besides, Pesäpuu have developed many guides, peer-group and training programs for foster parents', children and young in foster care, multicultural foster care and kinship foster care.

The Federation of Mother and Child Homes and Shelters is a central organisation for the member associations assisting families by means of institutional and community services and projects. The Federation is an expert in the work with families of infants and in domestic violence (Kittilä 2005). They have mother and children homes and shelters, and they arrange peer-groups, family work at homes, controlled or supported meetings between a child and a parent. Furthermore, the federation has the mother and children homes which give substance abuse treatment for pregnant women and families with babies (Hyytinen et al 2008, 11). They have created a new model to the child centred substance abuse treatment at families own homes (Veijalainen & Paasikannas, 2008). They have established the first crisis centre for men in 2003, and that followed 'Jussi-work' which is directed to the men and the objective is to prevent or stop domestic violence and do crisis work (Törmä & Tuokkola, 2010, pp 5, 9-11).

3.2.3.7 Organisations and internet support concerning to the child abuse and domestic violence

Tukinainen - rape crisis centre[120] provides support and guidance for people (especially for women) who have been sexually assaulted/ or abused, as well as providing guidance for their families. They have various peer-groups, free legal consultation, help-line and they educate professionals and give consultation, and give support via e-mail/internet to the victims.

Lyömätön Linja[121] services is aimed and offered to men who have used or are frightened they will use violence within the family. They have developed a cut-off violence program for men. The objective is that men can develop readiness and tools to live without violence. The program consists of individual work, group work and follow-up meetings. They do also multicultural work and they have a telephone-service. *Women's line*[122] offer free helpline and net aid for women. *Maria-Akatemia Demeter*[123] offer help to violent women by help-line, individual meetings and peer-group.

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[118] http://www.innovativeresources.org/, http://www.pesapuu.org/

[119] http://www.bof-tejping.com/English/index-uk.htm

[120] http://174.132.188.98/~tnainen/in_english/

[121] http://www.lyomatonlinja.fi/Sivusto%209/Welcome.html

[122] https://www.naistenlinja.fi/en/public/how+can+we+help+you/

[123] http://www.maria-akatemia.fi/html/tehtavamme/demeter/demeter-toiminta.html

Net aid is given by: *Family counselling office* (FCO) gives counselling concerning children's upbringing and human relationships by e-mail. *Finnish Online Family Shelter*[124] help in family abuse - security in intimate relationships. Furthermore, there is exploring/searching young work in Facebook and IRC-gallery[125]. A new work model is net-group for mothers who have substance abuse problems, organised by The Federation of Mother and Child Homes and Shelters[126].

3.2.3.8 Social welfare ombudsman

The social ombudsman action is based on the Act on the Status and Rights of Social Welfare Clients, which came into force in 2001. Social welfare ombudsmans are appointed professionals. The aim of the Act is to foster a client-oriented approach, support the client's right to good social welfare, and further client and welfare personnel commitment to jointly agreed matters. All municipalities have to arrange the social ombudsman action. The ombudsman act as an arbitrator, give advice and help to file complaints, if client is dissatisfied with the treatment or service. Ombudsmans monitors aspects of client rights and reports annually to the municipal executive board (Ministry of Social Affairs and Health, www-page). Social welfare ombudsmen consider the best way arrange social welfare ombudsman is that municipalities themselves do not produce social welfare ombudsman action but burchase it from non-municipal organisation. Child welfare service users have contacted to the the social welfare ombudsman when service users have experienced insufficient attention being paid to their views and social workers writing negative matters and one-sided accounts of situations in the documents. Furthermore, service users wanted to get information concerning child welfare in generally (Hiekka & Metsäranta, 2011).

3.2.3.9 Ombudsman for children

Finland has established one post of Ombudsman for Children by the UN Convention on the Rights of the Child. The law concerning the Ombudsman for Children came into force in 2005. (Ombudsman for children in Finland, www-page). The Ombudsman for Children have the following duties: "1) Monitor the welfare of children and youth and the implementation of their rights; 2) Influence decision-makers from the viewpoint of children; 3) Maintain contacts with children and youth and convey information received from them to decision-makers; 4) Convey information concerning children to professionals working with children, decision makers and the public; 4) Develop cooperation between actors concerned with child policy; 5) Promote the UN Convention on the Rights of the Child." The Ombudsman for Children reports annually to the government on the welfare of children and youth and the implementation of children rights. The Ombudsman carry out lobbying work assessesing pending government projects from the perspective of the UN Convention. An important task to convey the opinions of young people to decision-makers." (Ombudsman for children in Finland, www-page).

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[124] http://www.turvakoti.net/en/home

[125] http://www.etsivanettityo.fi/index.php?pageName=etusivu&pid=3&cols=1&cont=true

3.2.3.10 Centres of excellence on social welfare

Centres of excellence on social welfare are essential for the developing of social work and they can also produce child welfare services. These centres were established all over Finland in 2002. Their tasks include safeguarding access to expertise on social welfare, basic and special services, and training as well as maintaining a link between the work in practice and the research, testing, and development activities. The nine centres of excellence on social welfare is based on the collaboration between municipalities and universities, polytechnics and other educational institutions, provincial associations, and non-governmental organisations in the field of social welfare (Heikkilä et al, 2009). "The centres of excellence are network organisations whose actions are based on the development needs and resources of each area". In practice the centres have succeeded in networking the regional social actors in their area (STM, 2003b). These centres have done many professional development projects with child welfare social workers who are working in municipalities (e.g. child welfare practical training, child welfare methods and interventions). Furthermore some of these centres have organised social welfare ombudsman services, multi-professional child welfare groups and specialised child welfare social worker services to the small municipalities.

3.2.3.11 Information technology for social workers

"The eHandbook for Child Welfare is a public, national-level and free-of-charge online service that is updated on a regular basis". It is a quick access practical tool for professionals in child welfare to topical, user-friendly and reliable information on a wide variety of topics in the area of child welfare. The aim is make child welfare practices more uniform at the national level. "The eHandbook for Child Welfare describes the different stages of the child welfare process, from preventive child welfare through to after-care". It helps individual child welfare professionals in applying the new legislation and provides tools for high-quality child welfare. The eHandbook for Child Welfare include a variety of work methods, forms and checklists (e-Handbook, www-page).

Information technology project 'Tikesos' is a national development project the objective of which is to standardise the service user data of the social welfare. They are going to develop electronic service user documents and they will be used nationally in the future. Therefore, child welfare documents will be standardised form hereafter. The project is governed by the Ministry of Social Affairs and Health (Sosiaaliportti, www-page).

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[126] http://www.ensijaturvakotienliitto.fi/tyomuodot/pidakiinni/paihteita_kayttavien_aitien_nett/

3.3 State, local authority and nongovernmental provider relationships

“One of the duties of the public sector is to take care of the health and wellbeing of the population. This is done in part by arranging social and health services. The responsibility for organising such services lies with local government (commonly described as the municipalities). The Ministry of Social Affairs and Health is in charge of the overall functioning of social and health services.” It determines the development of these services, drafts legislation and steers reform processes and monitors the implementation and quality of services (Ministry of Social Affairs and Health). Under the Finnish Ministry of Social Affairs and Health is a research and development institute ‘The National Institute for Health and Welfare (THL)’. The aim of the THL is to promote health and welfare in Finland. It seeks to serve the broader society in addition to the scientific community, actors in the field and decision-makers in central government and municipalities. The functions are: 1) promote the welfare and health of the population, 2) prevent diseases and social problems and 3) develop social and health services. (THL, www-page)

The municipalities must ensure that preventive child welfare, and child and family specific child welfare are arranged in such a way that the content, extent and quality of such services accord with the prevailing need within the municipality (CWA, 2008, section 11; Räty, 2007, p 41). The State Provincial Office steers and monitors municipal and private social services to ensure they comply with legal requirements for the provision of child welfare and grants licences to the private sector. The State Provincial Office has for example imposed a conditional fine on some municipalities when child welfare assessments had not been completed within the prescribed lime limit (e.g. HE 2006, p 36).

The municipalities are the primary provider of child welfare social work, either alone or in collaboration with other municipalities: a) an organisation model based on so-called host municipalities, where partner municipalities transfer the responsibility to a chosen host, which then runs the actual services; or b) joint municipal boards, a traditional administrative format for co-operation and democratic control between municipalities (Kokko et al, 2009). Community care interventions are also primarily provided by municipalities (Vetteenranta et al, 2008, p 8). Whereas organisations and enterprises are important child welfare service producers in residential care, professional family home, shelter, and mother and children’s home services from organizations and enterprises. In addition, municipalities buy some home help services and aftercare from organizations and enterprises. Support family and support person are in most case based on voluntary work.

Municipalities buy quite a lot placement services from enterprises and organisations. In the 2000’s municipalities have began require enterprises and organizations to tender to provide residential care and professional family home services in child welfare (Heino et al 2006). Vettenranta, Holma and Rousu (2008) asked enterprises and organisations their experiences concerning tendering in child welfare. Many respondents considered the tendering process to be too laborious in proportion to the advantages. The definite quality is difficult to bring forth to the documents. Participants had mixed views about the effect of

tendering on prices, some of the respondents said that tendering had decreased prices and others that it had increased prices.

There is debate about the right number of municipalities. Many hold that the number of municipalities must decrease and/or that municipalities must arrange services together. The number of municipalities is now 336 and the population in Finland is around 5 380 000 people. In 2001, there were 448 municipalities and population was 5 195 000 inhabitants and in 1991 460 municipalities. A fourth of the municipalities have interconnected during last ten years. There are only a few big municipalities. Eight municipalities have more than 100,000 inhabitants and the biggest city Helsinki had 589 000 inhabitants in 2010. The median size of the municipalities was 5 850 citizens in 2010 (Kunnat.net).

The Ministry of Social Affairs and Health have recently published a report in which they claim that the social and health services should be produced in bigger areas. They describe three possible models. A) A two-level municipality and region model in which big municipalities alone and small municipalities together will constitute 20 to 50 regions, which have responsibility to arrange basic and special social and health care services. Furthermore, there is need for 5 regions which produce special services. B) A two-level municipality model in which all together 30-50 municipalities are responsible to arrange basic services and some special services. Five regions would be responsible to arrange other special services. C) A one-level municipality model in which there are all together less than 20 municipalities and they arrange all basic and special social services (STM, 2011).

The organisation of social services will evidently change in future. Some changes have already happened, especially in health care and this has had consequences for social work in some areas. These changes are based on the Finnish Act on Restructuring Local Government and Services (169/2007), which came into force in 2007 and will be in the force until 2012. The act aims at increasing efficiency in municipal services and structures. In the field of health care services and closely related social services the minimum population base is set at 20 000 residents. To achieve this minimum, those municipalities with less than 20 000 residents must either merge with neighbouring municipalities or form collaborative areas that will organise services. In addition, the Act also aims to create and strengthen regional co-operation over services and to promote co-operation between social and health services (Kokko et al 2009).

3.4 National data

The National Institute for Health and Welfare (THL) annually receives statistical data from municipalities on children and young people in support interventions in community care and children and young people placed outside the home. Furthermore, the data include personal identifiers concerning the children and young people placed outside the home (THL) In addition to the national data the results of child welfare

studies are presented to create a more comprehensive view. National data gathering in child welfare is being developed currently by a national information technology project entitled 'Tikesos'.

3.4.1 Child welfare notification

In the 1980's, reports to child welfare services were made in equal numbers by parents and professionals. Reports initiated by parents usually expressed their concerns about family conflicts, problems in bringing up children, and their own psychiatric problems. The reports made by social welfare, health care, education, and police professionals tended to involve cases of child neglect, cases in which the parents had psychiatric and family problems, and cases in which children had difficulties at school or crimes were being committed by young people. Child abuse was rarely mentioned as a motive for a contact (Pösö, 1997, pp 149).

There were 79 651 child welfare notifications in 2009. These notifications concerned 53,318 children (average 1.5 notifications per a child). Child welfare notifications predominantly concerned children aged between 13 and 17 years (7.1% of the population 13 years) than children 0-12 years (3.1-4.1% of the population 0-12 years) (Kuoppala & Säkkinen, 2010). The number of child welfare notifications increased after the newest Child Welfare Act. For example, in the six biggest municipalities where more exact information is available the number of notifications increased on average 28% between the years 2007 and 2008 (Kuusikko, 2008; Kuusikko, 2009). The possible reasons for the increase in the number of child welfare notifications are: extension in the Child Welfare Act to the groups who have an obligation to make a child welfare notification to include emergency social services, increased awareness, cooperation with the other agencies, and many police stations having their own social workers.

Person who made a notification	Number of notifications	%
Private total	**7638**	**26 %**
Family member	3648	12 %
Relative, friend, neighbour, another private person	3990	14 %
Professionals total	**20596**	**71 %**
Social professionals	3017	10 %
Health care	3705	13 %
Police	8360	29 %
School	2628	9 %
Other authority	2886	10 %
Unknown person	**890**	**3 %**
Total	**29124**	**100%**

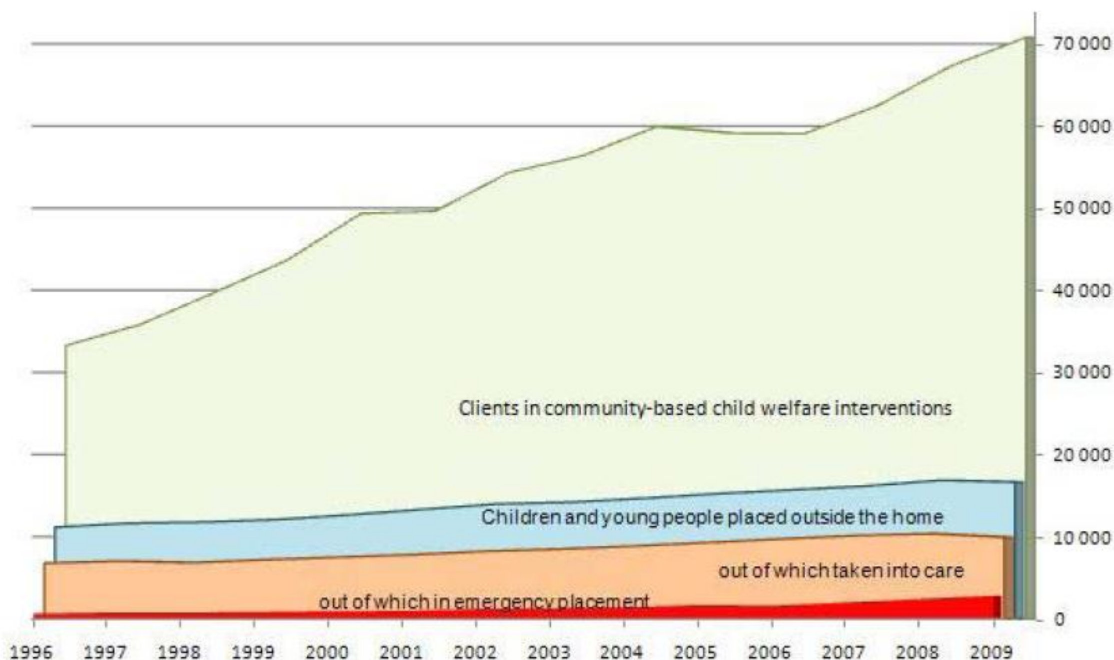
* These results apply to Finland's six biggest municipalities in 2009 (population between 139.000 and 583.000 in 2009).

Table 6: Child welfare notifications according to the notifier* (Kuusikko, 2009)

Professionals made nearly three-quarters and private persons a quarter of the child welfare notifications in Finland's six biggest municipalities (Table 6). The biggest reason for the notifications was conditions which endangered the child's development (49 %). The other reasons were the child's own behaviour (35 %) and the child needed care (12 %) (Kuusikko, 2009). Katajamäki (2010) have studied child welfare notifications in one of the biggest cities (Vantaa) in Finland in the years 2008 and 2009. She found that two of the biggest reasons for notifications were a child's criminal behaviour (17%) and parental substance abuse (16 %). The other essential reasons were a child's violent behaviour, domestic violence, child's substance abuse, parent's mental health problems, parent's exhaustion and crisis in the family. Around 8 % of the notifications were related to a child's neglect, abuse and sexual abuse (Katajamäki 2010). There is no exact information on how many of these children became a service user in child welfare. In South-Finland, children became service users in around 62 % of the notifications (Kuoppa et al 2009).

3.4.2 Child welfare

In Finland, the total number of children who had been the subject of community-based child welfare interventions was 62 886 in 2009 (5.8% of the population 0-17 years). The number of the children in community care is substantially bigger than number of children who had been taken into out-of-home care (9,357 in 2009, equating to 1% of the population of 0-17 year olds) (Kuoppala & Säkkinen, 2010).



*In addition to register data on children and young people placed outside the home, including personal identity codes, statistics are also kept of clients in community-based child welfare interventions. Some of the children and young people recorded as clients in community-based child welfare interventions are also included in those placed outside the home.

Figure 43: Clients in community-based child welfare interventions and children and young people placed outside the home in 1996–2009* (Kuoppala & Säkkinen, 2010, p 43)

“The number of children and young people who had been the subject of child welfare interventions in community care continued to grow in 2009” (Kuoppala & Säkkinen, 2010, p 29). The total number of children and young people subject to community based-child welfare interventions was 70,753 (Figure 43). This figure consists of 62,886 (82 %) children under 18 and 7,867 (11 %) young people aged 18-20. Furthermore, these numbers include 3,315 children and young people who are placed outside the home as community-based child welfare intervention. The total number of service users continued to rise, and was up 5.1% on 2008 figures. The increase in the number of service users has been bigger in cities and rural areas than in semi-urban areas. “The growth in the number of clients in community-based child welfare interventions is partly explained by the 2008 Child Welfare Act” (Kuoppala & Säkkinen, 2010).

The total number of the children and young people placed outside the home had been 16 643 in 2009. Of these children, 82 % (n=13 680) were aged 0-17 years and 18 % (n=2 963) were aged 18-20 years and were in after-care placements (Figure 43). Of these 16,643 children and young people (aged 0-20): 9,357 had been taken into care; 1,627 were in emergency placement; 3,315 were subject to community-based intervention; and 2,344 were in after care. Of these children, 17 % (1,872 children) were taken into care involuntarily. The number of the children placed outside the home increased until 2008 and fell by 4% for the first time in 2009 (Figure 43). The number of children in emergency placement has increased the fastest. (Kuoppala & Säkkinen, 2010).

	Children and young people placed outside the home*				**Children taken into care****	
	2000		2009		31.12.2009	
Placement***	N	%	N	%	N	%
Foster care	5 595	44	5 462	33	4 042	49
Professional family home	1 535	12	2 971	18	1 730	21
Residential care	3 431	27	5 916	35	2 150	26
Other care	2 109	17	2 294	14	337	4
Total	**12 670**	**100**	**16 643**	**100**	**8 280**	**100**

* According to the latest reason for the placement. Ages 0-20. Include: children taken into care, emergency placement, community care intervention, after-care.
** Children in emergency not included. Ages 0-17.
*** Foster care: With relatives or other kin, or a foster family. Professional family home: A professional foster family home licensed as a family home or child welfare institution. Residential care: Child welfare institution, family rehabilitation unit, reform school, institution for substance abusers, institution for people with intellectual disabilities. Other care: Placements in the child’s or young person’s own home (with the parent/s), independently supported accommodation and other forms of care not classified above.

Table 7: Children and young people placed outside the home in 2000 and 2009, and children taken into care 31.12.2009 (Kuoppala & Säkkinen, 2010, p 38)

In 2009, around one third of children were in foster care and a further one third were in residential care. The number of children in foster care has decreased, with a corresponding increase in residential care and professional family home care between the years 2000 and 2009. When we look at children who have been taken into care on 31 December 2009 we can see that nearly half of the children are placed in fami-

lies. Out of these children, 244 (6%) were placed with relatives or other kin (Kuoppala & Säkkinen, 2010, pp 37-38.) One challenge in child welfare in Finland is to increase placements in foster care and kinship families.

Owner of the placement	**N**	**%**
Public (municipality, federation of municipalities, state)	113	19
Private (enterprise, association, organization)	490	81
Total	**603**	**100**

Table 8: Owner of the placement (Heino, 2008, 56)

The Public sector owns one fifth of the residential care placements in Finland (Table 8). The private sector of enterprises, associations and organizations, owns the largest part of residential care placements. Furthermore, they own professional family homes. Professional family homes are more home-like than residential care facilitities. They are homes in which at least two adults who are responsible to take care of the children live. One of these adults has to have bachelor degree of social services in the University of Applied Sciences. Furthermore, they can have another member of staff which does not live in the home (Länsi-Suomen lääninhallitus). The Public sector owns fewer placements but more children live in each placement (Table 8, Table 9). Private enterprises produce the majority of placement services.

Owner of the placement	**%**
Public (municipality, federation of municipalities, state)	32
Private association	23
Private enterprise	45
Total	**100**

Table 9: Number of the days/nights in the placements (Heino 2008, 56)

The children in child welfare are most typically 16-17 years old both in community-based child welfare (Figure 44) and those taken into care (Figure 45) when compared to the percentage of the population of the same age. The second biggest group is chilren aged between 13 and 15 years. More boys (53 %) than girls (47 %) (N=16 643) were placed outside of the home. As a proportion of the total population of 0-17 year olds, 1.3% of children aged 0-17 are placed outside the home (Kuoppala & Säkkinen, 2010).

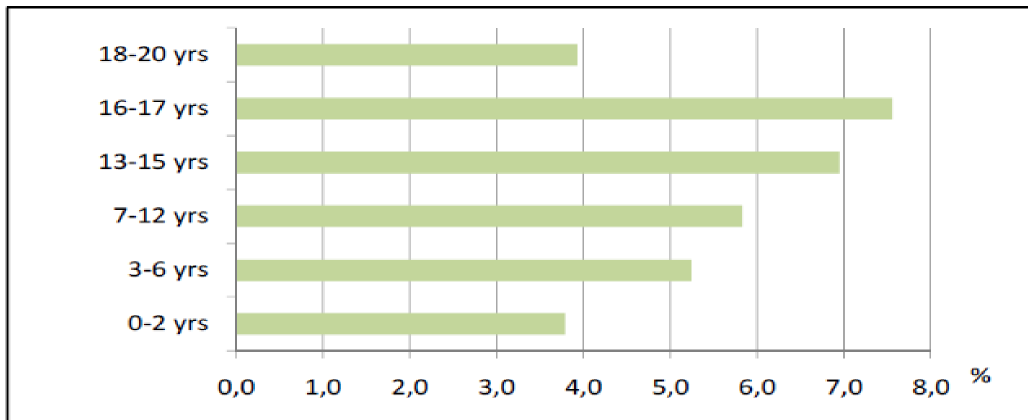
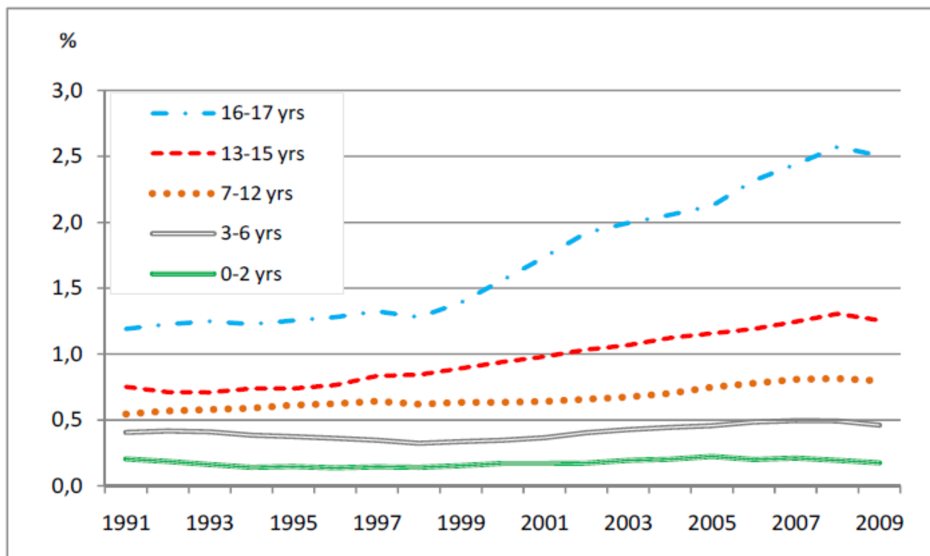


Figure 44: Children and young people in community-based child welfare interventions as a percentage of the total population of the same age in 2009, % (Kuoppala & Säkkinen 2010, 44)



* Children in emergency placement not included.

Figure 45: Children taken into care as a percentage of the population of the same age in 1991–2009, %* (Kuoppala & Säkkinen, 2010, 39)

There has been discussion about why the number of child welfare services users has increased. One proposition is that the families and children have more problems than before. The research results suggests that more and more young people are doing well but children' and young people' situations are polarised in relation to health, mental health, crime, welfare and family economics (Konsensuskokous 2010; Myllyniemi 2008; Elonheimo 2010). Therefore the situations of the children and families who are child welfare service users can be more difficult than earlier. This may be one reason that need for emergency placements have increased. On the other hand new professional activities have increased, like social workers in police offices and the whole country covering emergency social work. Child welfare social

workers are striving to increase their cooperation with other professionals. Furthermore, traditional low-threshold home help (which is not a child welfare intervention) is now not usually available to families because the number of elderly who need home help have increased. In many cases traditional home help has been replaced with child welfare family work and the threshold to receive family work has increased. Now if a family need family work they have to become a child welfare service user. There is also discussion as to whether there is too much of an orientation towards early intervention in Finland (Harrikari & Hoikkala 2008). There is no certainty about the reasons that led to the addition of customer numbers.

There is no data available for the number of social workers who are doing child welfare social work in the municipalities. Ristimäki and colleagues (2008) reviewed the number of child welfare service users in child welfare social work. They found that social workers have approximately 33 families and 53 children as service users. The national quality recommendations have been given to child protection. It defines that a suitable service user number is 20 children per child welfare social worker and 35 children per child welfare social worker if she/he has a social counsellor working as a working partner (Lastensuojelun kansallinen laatusuositus, 2011).

3.4.3 Social problems on background of child welfare

There is no congruent data concerning social problems in the background of child welfare interventions. It is distinct, that social problems are seen from a multi-problem perspective. This is visible in the studies which are examining reasons for child welfare services. There is no research that divides the reasons between different forms of child abuse and neglect like in England. The situation in Finland has both strengths and weaknesses. The strength is a broad understanding about family problems and the weakness is that too little attention is paid to child abuse.

Reasons for contacts to the child welfare social emergency were: substance abuse (24%), child's neglect stemming example from parents' substance abuse and mental health problems (24 %), domestic violence (15 %), mental health problems (14 %), child custody and right of access problems (12 %) and other (10 %). These results are related to the child welfare emergency service in eight municipalities in 2006 (N=242) (Soine-Rajanummi, Kuosmanen & Hornborg, 2006, p 16). It seems that social problems are quite similar between service users in child welfare social emergency service and in community care (Table 10). Social problems service users subjects to community-based child welfare interventions were studied in 2006 when social worker assessments of the social problems of new child welfare families (N= 330 children) (Heino, 2007).

Social problem	%*
Related to the parent	
Parent's exhaustion /tiredness	37
Family contradictions	29
Inadequate parenthood	28
Parent's helplessness	22
Parent's mental health problems	20
Parent's substance abuse	20
Domestic violence or threat	14
Child's neglect	13
Child's abuse or suspicion	8
Criminal	4
Child's sexual abuse or suspicion	3
Related to the child	
Contradictions between child and parent	22
Difficulties attend to school	20
Child's mental health problems	17
Child's ill health	10
Delayed development	10
Victim of the violence	8
Criminal	4
Substance abuse	4

* In this statistics one family can have problems and therefore per cents are more than 100%

Table 10: The essential social problems of the new child welfare service user families (N=330 children, 9 municipalities) (Heino, 2007)

The results in Table 10 show that there were more many social problems connected to parents than to children. It is alson worth noting that a single family can have multiple problems which are related to parents and children simultaneously. The most common parental problems were related to incapacity, contradictions between parents and their mental health and substance abuse problems. The most central problems related to the children are contradictions with parents; difficulties attending school and mental health problems. Violence in different forms did not come forth as a strong category (Heino, 2007). There is also comparative research in which are compared conditions for notifications in four Nordic countries: Finland, Sweden, Norway and Denmark (Blomberg et al 2010). Comparing Finland and Sweden, the research showed there were more reports in Sweden for child abuse and neglect, and young people's behaviour problems and criminal behaviour. Respectively in Finland, there were more reports for parental problems and deficiencies in children's care, and young people's harmful domestic conditions and other problems (e.g. deficiency in care and domestic violence) (Blomberg et al 2010, pp 38-39).

There is no extensive data on what are the social problems behind the decision to take children into care. The data concerning voluntary take into care decisions is missing. There are few studies which review involuntary decisions which have been made in Administrative justice. Hiitola and Heinonen (2009) have studied involuntary take into care decisions in Administrative court in 2008. There were altogether 500 decisions in 2008 and the researchers analysed 300 of them in more detail. In this data the three biggest social problems that were in the background of take into care decisions were violence, substance abuse and mental health problems (N=303 decisions). The children's criminal behaviour was one of the reasons for the take into care decision in 25 % of the cases for children aged between 10-18 years (Hiitola & Heinonen, 2009).

Violence is a central problem in the background of take into care decisions. It has been mentioned in the documents for 63% of decisions. The offender of the violence was more often the father (39%) or a boy (40%) than the mother (21%) or a girl (15%). The victim of the violence was more often the mother (23 %) or a girl (20 %) than a boy (10 %) or the father (3%). Furthermore, 40% of the documents included vague information concerning domestic violence. The general view of the violence was inaccurate in the documents. For example in some documents it had been written that a child was a victim of domestic violence but there was no information regarding who had treated the child violently (Hiitola & Heinonen, 2009). This is one weakness in child welfare in Finland that child welfare social workers do not examine domestic violence explicitly enough.

The substance abuse problem was mentioned in the 63% of the cases. It was more often related to mothers (27%) and children (24%) than to fathers (18%). Substance abuse was most frequently a problem for single mother families. One explanation for this is that single mothers were the most common family type in the data. The third common problem was mental health problems, which was mentioned in the 57% of the cases. Mental health problems were more often related to the children (37%) and mothers (24%) than to fathers (4%) (N=303). The mental health problems of children were often suicidality (Hiitola & Heinonen, 2009).

The comparison of social problems between families who receive community based child welfare interventions and those whose child is in care is difficult because there is no comparative data and research. Based on the results that have been presented above one can probably say that mild social problems are emphasized more in the cases who receive community based child welfare interventions than take a child into care cases. This is not a surprising conclusion.

Comparisons of the children and young people in care for example between Finland and England are complicated by the youth crime system (Kuula et al 2006). In Finland, the youth crime system is based on idea that child welfare measures are the first line of interventions. Kuula and Marttunen (2009) have studied children aged 10-17 (N=264) who have been taken into care involuntarily and decision concerning taken into care have been done in Administrative court. Results illustrate that crime was mentioned in documents concerning 44% of the girls and 68% of the boys (Kuula & Marttunen, 2009). There were three

boy aged between 15-17 years that went to the prison in 2009. Furthermore, 31 boys and one girl were remand prisoners waiting for court proceedings (Rikosseuraamusalan vuosikertomus, 2009).

3.4.4 Community care measures

There is not extensive data available concerning community care measures. However, Hiitola and Heinonen (2009) have studied involuntary take into care decisions which have been made in the Administrative Court and from this research we receive some illustrations. In this research they examined how much and what kind of community care measures these children received before the take into care decision.

Amount of community care measures	%
Not offered	4
A few measures	55
Plenty of measures	33
Offered plenty of measures but the family had refused from them	2
Total	**100**

Table 11: Amount of the community care measures before take into care decision (N=468, Missing N=32) (Hiitola & Heinonen, 2009, 26)

Table 11 shows the majority of families received ”a few measures”, this signifies that a family received individual community care measures like intoxicant laboratory testing of parents, day care for the child, one placement as a community care measure, referring a parent or child to the psychiatrist or substance abuse treatment, or a meeting time with a social worker (Table 12). A third of the families had been offered ”plenty” of community care measures. Usually these families had received family work, home help, children had visited support family for several years (around once per month), children had support person, children had received financial support for their interests and camps. Furthermore, many children had been in regular therapy or psychiatric care contact. Many children received support from the school welfare officer and peer-groups and many children had been in day care as a community care measure. Also many parents had several care contacts mostly for mental health treatment and substance abuse treatment. In addition to these, the family, of course, met the child welfare social worker. Families who had received a considerable number of community care measurements had been a service user for longer time (four years on average) than those who had received only a few measures (a little over a year) (Hiitola & Heinonen, 2009).

Violent fathers received help from ‘Jussi-työ’ which offer crisis help, individual therapy and group work for men who use violence. It was easy for men to get support for the control of violent behaviour. Men who had suffered violence had not received support. Women who had suffered violence or violated the others

did not receive help. Furthermore, children who had suffered violence had not received individual therapy. On the other hand children and mothers can receive support when they are in shelters (Hiitola & Heinonen, 2009). It is important to remember that there is variation in what kind of special services are available. Some areas have more support than others for women and children who suffer violence.

Huuskonen and Korpinen (2009, 39) have done a follow-up study of the new families who are service users of the community care measures. This study had a different finding than Hiitola & Heinonen (2009). The families had received more kinds of measures although they had been only a short time as service users (Table 12). It was reasoned that this finding reflected that social workers did not organize many measures if there was an obvious need for the take into care decision (Huuskonen & Korpinen, 2009).

Community care measure	**%*** **
Family work	48
Financial support to the child's interests	31
Financial support to the families housing	28
Support family	28
Day care to a child	20
Emergency placement to a child**	18
Family had met social worker max 5 times	30
Family had met social worker 6-10 times	31
Family had met social worker more than 10 times	39
Home visit	43

* They followed up 203 children. 110 of them continued service users in community care. 93 children no in community care: 15 children had been taken into care, 38 children did not need child welfare service any more. 33 children had moved. 7 children no named reason.
** Usually they were young between 13-17 years old.
*** In this statistics one family can have measures and therefore per cents are more than 100%

Table 12: Community care measures and meetings with social worker during two years (2006-2008) (N=110 child*) (Huuskonen & Korpinen, 2009)

Based on Hiitola and Heinonen's (2009) and Huuskonen and Korpinen's (2009) studies it can be said that child welfare family work is the most popular child welfare measure for families in community care. The other frequently used measures in community care are financial support and support to child's interests (see Heino, 2007). It is not evident whether child welfare service users receive all needed measures. Huuskonen and Korpinen (2009) write that social workers assessed that 31% of the service users had not received enough supportive measures. Reasons for this were resource shortages and long queues in half of the cases or that the service users had refused the measures.

3.4.5 Child abuse

The definition of child abuse is complicated because children are exposed to the abuse in many different ways. Often the violence experiences are connected to the violence experienced in the children's family and made by the adults. The children's experiences of the violence at home refer either to the seeing and hearing of the violence between parents or where child themself is subject to the violence. In addition to the fact that the children can experience abuse at home, the abuse can take place also in peer-groups and institutions like at school or institutional care. In practice the violence is present in the children's everyday life. For example, child can be exposed to bullying at school or on the street, or hear violent stories through their hobbies. Furthermore children hear and see extremely hard violence in the afternoon papers and in the news (Ellonen et al 2007).

The definition of child abuse is strict in Finland and all Nordic Countries. An attempt is made to secure the same rights to protection for children are there are for adults. According to the Criminal Code of Finland all violence (including physical punishment) and sexual abuse is criminal (Ellonen et al 2007, 13). Child abuse is seen in a different way in Finland than many other countries. In Finland, the interpretation of child abuse is strongly oriented toward social and psychological aspects of family relations. The consequence of that is that child abuse is most often reported and addressed as family conflicts (except for sexual abuse) (Gilbert, 1997, p 234).

It is not easy to know, how many children are the victims of abuse as not all instances of child abuses come to the knowledge of the social worker and the police. There is one extensive research study of with students in comprehensive school as respondents of the study, which opens the conception of the situation (reference, year)[127]. Psychological abuse was the most general, a little over 40% of young people had experienced psychological abuse sometimes or often before they were 14 years old (Figure 46). Pulling children's hair was also quite usual. Serious physical abuse was rare. Young people's experiences of the symbolic abuse and physical abuse had diminished considerably over the past twenty years (Figure 46). Mild /slight abuse had diminished the most, such as pulling hair, pushing, slapping and whipping. Symbolic abuse, such as sulked or refused to talk, berated, taunted, threw objects, threatened with abuse, has diminished too but not as much as mild abuse. Serious physical abuse had also diminished, although the earlier levels were already low.

Children reported that mothers used more symbolic abuse and mild abuse than fathers. Furthermore, children in nine-class had experienced more symbolic and mild abuse than children in six-class in primary school. Sexual abuse had diminished between the years 1988 and 2008. In 2008, eight percent of nine-class students responded that an adult person had abused them sexually (sexual suggestion, petting, adult have touched or showed genitalia, child have touched or showed genitalia, imitate sexual intercourse, sexual intercourse) (13% in 1988). The adult who perpetrated sexual abuse was usually a friend,

[127] Total 13 415 students: 7653 stidents in six-class (around 12-year-old) and 5762 students in nine-class (around 15-year-old).

acquaintance or unknown person. In only a few cases the adult was a father/stepfather (9 child) or sibling (2 child) (N=5762) (Ellonen et al 2008).

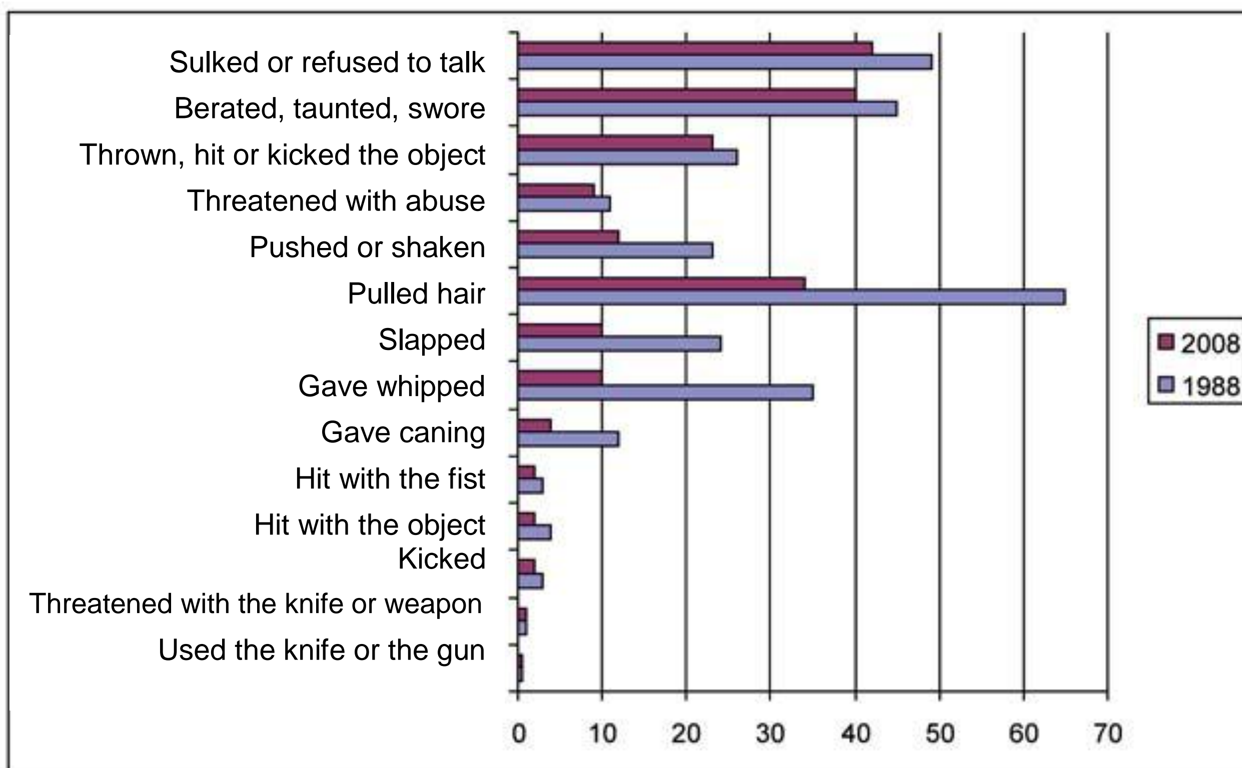


Figure 46: Experiences of nine-class students of the abuse used by a mother and/or father before they were 14 years old during years 1988 and 2008, % portion of the ones which had answered (N= 5 762) (Ellonen et al 2008)

Children experienced more often physical abuse from siblings and peers than from parents. The same reasearch shows that a few percent of children experienced physical abuse in foster family or residential care. Furthermore a few children had experienced physical abuse from teachers. Internet and mobile phones were also used for teasing (Ellonen et al, 2008). “In 2007, six children under the age of 14 died due to homicide or other violent criminal acts. The number of violent child deaths had been between four and eight during the period of 2003–2007, with more than half the deaths having been caused by mothers” (Lehti & Kivivuori 2008 in Pösö, 2011).

The number of cases of domestic violence recorded by police has increased. This is to be expected as the threshold to contact police in domestic violence situations has decreased and police now pay more attention to domestic violence issues. About 12% of the violence which come to the attention of the police is domestic violence. In particular, the reports of crimes which are directed toward children have increased. In 2007, 461 children had been the subject of petty assault/assault which has happened inside family and had come to the knowledge of police; 17 children had been the subject of aggravated assault; and 3 children had been the subject of homicide. However, violence between children is more common than violence directed towards children by adults (Salmi et al 2009).

“In 2007 police recorded 2 024 assaults against under 15-year-old children”. Aassault mostly concerned physical violence (75%). Sexual violence was 20% of cases and 5% was recognised as neglect. Boys were the majoirty of victims of physical violence (70%) and girls were the most common victims of sexual violence (87%). Almost half of physical violence occurs in peer-relationships and most often the victims of peer-violence were boys (80%). Physical violence among children happens most commonly on public places. “Family violence constitutes less than one third of all physical violence towards children”. Only young children are recorded as victims of indirect family violence. “A child’s father is more commonly suspected than a child’s mother”. Also indirect violence by seeing or hearing violence between parents in a family is seen as violence experienced by children (Humppi, 2008).

3.5 Analysis and recommendations

The child welfare legislation forms another foundation to protect children and families. It is the most important part of the foundation from the view point of social work in protecting children. However, other laws also are important to protect children and other members of the family. The child welfare legislation is based on the rights of the child, human rights and civil rights, service user’s participation and consideration of kinship. The fundamental part of the legislation is provide the basis for assessment, community care measurements to intervene at an early stage and care regulations governing state care. Procedures concerning decision making are also regulated. It is important that different actors are sufficiently informed of law and they want to observe the law. Clear instructions and methods that have been accepted at the workplace help it. This affects for example how well workers follow the Child Welfare Act concerning child welfare notifications. It is preferable for the person who is responsible for making a child welfare notifications to make a request to assess the need for the child welfare together with the service user instead of a mandatory report. If the service user does not agree to it, it is important to be as open as possible with the service user. Laws do not guarantee good realisation. The supervision of the achievement of the law also is important.

The orientation in child welfare creates the foundation for how issues are approached. It apparently has a role for confrontation between social worker and service user. Confrontation is a ´self-evident´ part of child welfare work due to the control in the child welfare social work. Comprehensive approach of the family situation, child-centred working, measures of low threshold and aspiring to support the family can probably reduce confrontation. Therefore, the orientation is a matter to which attention is worth paying. For example, child-centred working orientation can be achieved in child welfare social work when social workers are provided with good methods and education. It is also important that social workers and others who work with children have high education.

The assessment is the essential starting point for the whole process in child welfare. The first contact has a big significance for what kind of view the service user forms of child welfare social work. There is no research concerning the effectiveness of the comprehensive assessment method in Finland but social workers have good experiences of the method. The description of the whole assessment process to services users (children and parents) has progressed because the process is clear (what do they assess and how). It is easier to encourage also involuntary service users to participate. In the best case, a good assessment can prevent a child being taken into care. In addition to it is important that social workers have realistic chances to carrying out the assessment, and different and reasonable supportive measures are available. What kinds of individual, group and network work forms are needed? The functional methods and child-centred orientation make all the people's participation possible in many kinds of situations in child welfare (e.g. comprehensive assessment, and with children taken into care and their families).

Many kind of practical development have been made and imported from other countries in child welfare in Finland. The child welfare workers in Switzerland could be interested in functional working methods and their versatile use in the different situations. Furthermore, various peer-groups to children in care, abused children, mothers and fathers which suffer from domestic violence, and the mother and children homes which give substance abuse treatment for pregnant women and families with babies, could be interesting.

The municipalities are responsible for the arranging the child protection. They buy services from organisations and enterprises. The voluntary sector is part of the holistic service system. On the one hand, there could be a need to increase voluntary work and peer-group activity in Finland. The Finnish system operates well in Finland but it is difficult to form a position on whether this system would be appropriate for Switzerland. One challenge is to make child welfare practices more uniform at the national level, perhaps by the promotion of a Child Welfare Act, regulating qualifications of the social workers, supervision arrangements, etc and informed by practice guidance materials such as the eHandbook for Child Welfare in Finland.

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Centres of excellence on social welfare http://www.socca.fi/in_english/ , http://www.socca.fi/in_english/materials_in_english

Children's rights http://www.lastensivut.fi/index.php/oikeudet

CWLA, Child Welfare League of America. www.cwla.org

eHandbook for Child Welfare. http://www.sosiaaliportti.fi/en-GB/handbookforchildwelfare/

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The Federation of Mother and Child Homes and Shelters http://www.ensijaturvakotienliitto.fi/in_english/

The Federation of Mother and Child Homes and Shelter: a net-group for mothers

http://www.ensijaturvakotienliitto.fi/tyomuodot/pidakiinni/paihteita_kayttavien_aitien_nett/

Finnish Online Family Shelter http://www.turvakoti.net/en/home

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TEJPING –method http://www.bof-tejping.com/English/index-uk.htm

THL The National Institute for Health and Welfare http://www.thl.fi/en_US/web/en/aboutus, http://www.stakes.fi/EN/tilastot/statisticsbytopic/childhoodandfamily/childwelfare.htm

Tukinainen – rape crisis centre http://174.132.188.98/~tnainen/in_english/

Women's line https://www.naistenlinja.fi/en/public/how+can+we+help+you/

4 Child protection in Sweden by Lina Ponnert

4.1 Historical background

4.1.1 Child protection prior to WWII

The twin objects of the child welfare system in Sweden have been interventions for maltreated children and for children displaying antisocial behaviour. Sweden, as many other European countries, has a long history of using institutions and foster homes as an intervention for children. For example the use of correctional institutions became a common intervention during the 19th century in Sweden (Bramstång, 1964). The legal framework regulating child welfare was however not developed in a structured way until the beginning of the 20th century.

In 1902 the first laws regulating the child welfare system and foster care were formed in Sweden. Municipalities were now obligated to more strictly control foster homes providing care for children up to seven years. However, the discourse in society as well as in the first Children Act was to protect society from moral evil, and maltreated children were seen as a potential threat to the wellbeing of society (Lundström, 1993). The Children Act of 1902 regulated state interventions in family life and compulsory care for children up to 15 years old. The ideological perspective was dominated by a belief that a proper upbringing could prevent youth from criminal behaviour, which from these times gave the social services and the correctional system mixed responsibility for youth with a criminal behaviour in Sweden as in Norway, a dual responsibility that remains in Sweden even today (Dahl, 1978; Kumlien 1994). The second Children Act of 1924 finally made it possible for society to intervene in families to protect children (16 years or younger) from child abuse and neglect, and a more modern form of child protection system emerged (Lundström, 1993). The possibility, however, to use compulsory care for young delinquents or children with what we today refer to as “antisocial behaviour” remained, now for children aged 17 years old or younger. The Children Act of 1924 also contributed to a more common organization of child welfare in Sweden since it became necessary for each municipality to have a specific Child Custody Board. The protestantic clerics in Swedish society had, prior to this time, a main role in the child welfare work, and the cleric in each municipality became an obligatory member of the Child Custody Board, but it was now also regarded as necessary to have a teacher, a doctor and at least one woman in the Child Custody Board (a.a.). A lot of other social issues were also discussed during this period in Sweden by socio-political associations and with a growing working-class movement demanding reforms and increased democracy in society. The central association for Social Work (CSA) in Sweden, established in 1903, also played an important role in the area concerning social policy during this period. A number of laws were revised during 1913-1918 concerning substance abusers, social allowance and pension insurance. Sweden also introduced a universal right to vote in 1921.

The Swedish welfare state has historically been highly influenced by the Social Democratic Party that was in power during the period of 1932-1976. The political concept “The People´s Home” was used by Per Albin Hansson to describe the visions and the democratic changes that would reduce class differences in society. Per Albin Hansson was the leader of the Social Democratic Party and an important person for social reforms during the 1930s. He was later followed by Tage Erlander (1940s-1960s) and by Olof Palme (1960s-1970s).The importance of good education and good living conditions were emphasized during this period, and led to reforms which came to affect the social conditions for children and their families in Sweden. For instance, child allowance became a right for all children in 1948 in Sweden, regardless of the parent’s income (Elmér et al., 2000, p 93). Sweden also became one of the first countries in the world to offer free education. Since 1943 the Swedish state has helped finance daycare centers for children with working parents, and Swedish parents today have a legal right to daycare centers within the municipality at a subsidized price. The Swedish welfare state is also characterized by a Universal Health Care system.

In the development of the Welfare State the concept “social engineering” played an important role during the 1930s. When describing this period it is often referred to Alva and Jan Myrdal, since they put forward many radical ideas, later to the subject of much criticism, with regard to how society should handle the decreasing population in Sweden and promote family life.

One strategy for preventing illness and disease in the population during this period was the use of compulsory sterilization, which came to affect over 60 000 people in Sweden (from 1935 to 1975) until it became forbidden in 1976 (SOU 2000:20, pp 15-16). This scandal later led to state damages being paid to people that had been subject to compulsory sterilization. However, the concept of social engineering also led to a modernization of Swedish houses during the 1940s and 1950s and a lot of working-class suburbs were constructed during the period of 1960s-1970s, a national investment for the growing population called the “Million Program” (Elmér et al., 2000).

4.1.2 The development of a family support system

The first Children Acts were specialized and dominated by coercive measures and social control. A new Children Act was introduced in 1960 which more actively emphasized preventive measures. During this period there had also developed a shift from moral and individual explanations concerning deviant behaviour towards a more medical-psychological practice (Lundström, 1993). The assessment of cases coming to the attention of child welfare agencies also became more bureaucratic and professional during this period (a.a.). The Children Act from 1960 had many similarities to the former Children Act concerning the target group for interventions, but it now became possible to intervene in families until the child was 18 years old in cases of neglect, and until 21 years old in cases of antisocial behaviour (a.a). The focus on coercive care and social control were however still dominant in the legislation and in practice and this became subject to professional criticism, especially since the democratic reforms in society were not manifested in the legislation concerning social work.

A national commission was from 1967 given the mission to look into the legal framework guiding the social services in Sweden, and a reorganization of the social services took place when the new Social Service Act (Swedish abbreviation: SoL) became operative in 1982 (SOU, 1977:40). The Social Service Act is a goal-oriented enabling Act which displaced the former Children Act and the laws regulating social support to adult substance abusers and social allowance. The massive reform work and ideological debates that had preceded this social reform marks an important shift in Sweden, from specialized, coercive legislation and a practice based on social control towards a practice that should mainly be based on preventive, voluntary and supportive measures. A motive for replacing the former laws with a general Social Service Act was to encourage a broader perspective on social problems and to emphasize voluntary support and the service aspect of social work (prop. 1979/80:1). The basic aims for the social services in Sweden has, since then, been founded on democracy and solidarity, with the aim of achieving equality and safety for people, with respect to their integrity and their freedom to decide for themselves (SoL, 1:1). The Social Service Act doesn't include any compulsory measures, but compulsive out- of-home care of children is still possible according to the supplemental Care of Young Persons Act (which became operative the same year as the Social Service Act). The Social Service Act remains the legal framework for the social services in Sweden today, although it was slightly modified in 2002.

It is important to mention that in the early 1980s Sweden was in the international media described as a country using unnecessarily hard measures for families with social problems and for having an extremely high percentage of children taken into custody by compulsory care (Hort, 1997 pp 105-106; Gould 1988, p 55). Such concerns came to affect policy makers and social workers and the new law became a way to reduce the number of children in Sweden taken into state care without the consent of their parents. In fact the number of children in compulsory care dropped considerably after the introduction of the Social Service Act, from less than 4 to 2 children per 1000 below age 18 years (Hort, 1997, pp 116-117). However, the death of a German immigrant boy in the late 1980s, killed by his mother and step-father in Sweden, led to criticism being directed towards the responsible local authority, and also raised the question if social workers in the municipalities had become too unwillingly to intervene in families (a.a.). This question of how to achieve a legitimate balance between a supportive service approach and a social control approach towards families has remained a challenge for the social services in Sweden.

Theoretically the Social Service Act is based on an integrated and holistic perspective on social problems, but the trend in how municipalities organize their social services has moved in an opposite direction during the last decade (Bergmark & Lundström, 2008). In practice social services organisations have a high level of specialization, and families with different kinds of social problems usually have contact with social workers from different organisations or divisions, representing such specializations (a.a.). This specialization can both be vertical with one division responsible for investigations and another for interventions and follow-ups ,and horizontal where different divisions handle different target groups and social problems (for example children/adults, maltreated children/teenagers with antisocial behaviour). This trend has been interpreted as being as a result of the increased professionalization and bureaucratization of social work.

Yet the assessment work undertaken by social workers is still guided by a holistic perspective, which requires time for cooperation between different divisions within the social services, and the consent of the family involved. There is as yet little research on how this increased specialization has affected social work from a client perspective in Sweden. It is argued that specialized social workers can offer better knowledge and provide better care for children and their families, but from a critical point of view specialized social services can be difficult to understand from a client perspective and social workers may develop a distanced and narrow approach to clients and social problems.

During the period from 1990, the social services and the child protection system in Sweden were heavily criticized for lacking systems and methods for investigation of children in need, and for using interventions with poor or lacking scientific evidence. The National Board of Health and Welfare was in 1999 given a mission by the Government to design programs and develop the knowledge base within the social services in Sweden. This has, for example, resulted in some changes in the legislation to clarify the rules during the investigation process and the obligations from the social services to give information to the family involved. But more important, it has resulted in the introduction of a Framework for the Assessment of Children in Need and their Families developed in United Kingdom (described in more detail in the Case study concerning United Kingdom). In Sweden this framework is called “Children’s Need in Focus” (Swedish abbreviation: BBIC) and started as a project in seven municipalities in 1999 on the initiative of the National Board of Health and Welfare, but has now been implemented in most municipalities in Sweden and is recommended by the National Board of Health and Service (Rasmusson, 2004; Socialstyrelsen, 2006c). This has resulted in a similar and more structured procedure for investigating children within the social services, even if assessment work remains a complicated task within child welfare (Rasmusson, 2009).

4.2 Legal and policy frameworks

4.2.1 What is meant by the term child protection

Early interventions and voluntary family support interventions are regarded as the best way to protect children in Sweden. Since the introduction of the Social Service Act in 1982 Sweden has a strong *family service orientation* that emphasizes preventive and voluntary support to children and families in collaboration with parents (Gilbert, 1997). But the Swedish system can also be characterized as a mixed system, since it is oriented towards family support but also has a mandatory reporting system (Cocozza, 2007, p 32). Child protection based on control is also possible according to the Care of Young Persons Act. Although the service aspect of child welfare is strongly emphasized in the legal system, the authority social workers have to suggest compulsive care to the administrative court makes people aware of the underlying control aspect in the system, which means that even supportive and voluntary interventions may be perceived as

control or coercion. Voluntary family support measures can also, therefore, involve elements of control (Wiklund, 2006).

This two-fold perspective in the Swedish system can be problematic, since there is no evident or clear distinction between child protection and family support (Lagerberg, 2009). Maltreated children can be placed in state care both as a voluntary family support service and as a compulsory measure, dependent on whether the parents *consent* to care or not. The question of *consent* is central in the Swedish legal system and is usually crucial when social workers assess whether care can be carried out as a family support intervention or if compulsive care is necessary. Regardless of whether the care outside home is voluntary or compulsive, the principle of *reunification of families* is central in the Swedish system. Even when children have been maltreated by parents there is no time limit for parent's rehabilitation, and termination of parental rights is very unusual. The Swedish legal system for protecting children is guided by a strong *relational perspective,* since the child's prior carers (usually its parents) are regarded as important for the child's future development (Mattsson, 2006, pp 110-111). When children are placed away from home, the institution or foster home should, if possible, be as near their parents as possible to *preserve and facilitate contact with their biological family* (prop. 1979/80:1 Del A, SOU 2009:68 pp 453-454). The social services are according to the law since 1999 obliged to consider if relatives are suitable as foster carers (SoL 6:5, prop. 1997/98:182). Swedish social workers in general have a positive attitude towards relatives as foster families, even if they are not always considered in practice (Linderot, 2006).

According to the law the social services shall, for example, strive for children to grow up under good and stable circumstances, and pay special attainment to children at risk of developing in an unfavorable manner (SoL 5:1). But there does not exist any generic term for children in need of support or protection in the Swedish law, since the social services are obligated to investigate every information that "might cause an intervention", which include reports as well as applications for services (SoL 11:1). This unclear definition widens the target group as well as the responsibility for initiating investigations for children in Sweden. Since the Social Service Act has a general service approach, the target group is not only children that are being maltreated or neglected, but also adults, children and families in need of social support or social allowance, and support to and protection of young persons under the age of 21 displaying antisocial behaviours.

Since Sweden has a family service orientation rather than a child protection orientation, I will in the following text primary use the term "family support system" when discussing Swedish child welfare. Child welfare is the term associated with child protection in some countries; it has been argued that the term "child and family welfare" is more appropriate for Swedish conditions (Andersson, 2006 p 172).

4.2.2 Legal framework for protecting children

The legal framework for protecting children is mainly regulated by the *Social Service Act* 2001:453 (Swedish abbreviation: *SoL*) and the *Care of Young Persons Act,* 1990:52 (Swedish abbreviation: *LVU*). Of

relevance is also the *Children and Parents Code*, 1949:391 (Swedish abbreviation: *FB)* which regulates the rights and responsibilities of parents. The Social Service Act contains regulations and recommendations for assessment work and voluntary support (social allowance as well as treatment support) to families, children and single adults. The Care of Young Persons Act consists of compulsory care measures when voluntary support is not possible or sufficient, and regulates compulsive care for abused or neglected children (until eighteen years old), as well as to young persons under the age of twenty-one with an antisocial behaviour. In a report made on the mission by the Government, it is however suggested that the Social Service Act and the Care of Young Persons Act should be united in a specific Children Act, which is now under consideration (SOU 2009:68). A motive for this suggestion is that a specific Children Act would emphasize the importance of child welfare and strengthen a children's rights perspective, it would also enable families to more clearly appreciate the obligations and interventions from social services concerning children (a.a.).

4.2.2.1 The Social Service Act

The Social Service Act is an outline law, which means that it regulates rules of competence and procedure, rather than rules of action (Hydén, 2001). This means that very few interventions are mentioned in the law, and it gives little guidance as to how social workers should act and what measures that should be taken in response to different kinds of social problems. Instead the Social Service Act focuses on the rules of the assessment and the decision making process, and offers guidance on how to support families. Investigation of children in need of protection or support is restricted to four months and it is also possible for social services to require information about the family from other authorities and persons without the consent of the family (SoL 11:2).The individual need of each person should determine what kind of supportive measures should be taken, which means that social workers in Sweden have a high degree of discretion to assess suitable interventions, according to available resources in the municipalities (SoL 4:1).

Sweden ratified the UN Convention on the Rights of Children in 1990, but has not incorporated the convention into Swedish law, instead the UN Convention has been transformed into Swedish law in different steps, where the need for changes in the legal system has systematically been evaluated, and changes in the Swedish legislation and in the Social Service Act is accordingly an ongoing process (for example SOU 1997: 116, prop. 1997/98:182, prop. 2006/07:129, prop. 2009/10:192, prop. 2009/10:232). Articles 3 and 12 of the Convention have been represented in the Social Service Act and the Care of Young Persons Act. The best interests of the child should be considered in the decision-making process according to the legislation, and in compulsory care cases the best interests of the child should be paramount (SoL 1:2, LVU 1 §, SOU 1997:116). The child also has a legal right to relevant information from social services during an investigation (SoL 3:5, LVU 1 §). Children who have reached the age of 15 years have the right to plead to court in social services cases and have the right to speak for themselves and to apply for help according to the law (SoL 11:10, LVU 1 and 36 §§§). The possibility for children (15-18 years) to actually receive voluntary services without their parents consent is although limited to the provision of a contact-person at the present time, limited by parents decision-rights according to the Children and Parents Code

(FB 6:11, SoL 3:6). It is now being considered whether children should get increased legal rights to voluntary support measures (in non-institutional care) without the parents consent (SOU 2009:68, p 342-352). Children under the age of 15 should be heard during an investigation if they are not assessed to be harmed by this procedure (SoL 11:10, LVU 36 §). However, it is only recently (August 2010) that social services have been granted the legal right to talk to children during an investigation without the consent and presence of their parents (SoL 11:10, prop. 2009/10:192).

4.2.2.2 Mandatory reporting

The Social Service Act includes rules of mandatory reporting regulation, which means that some public authorities and social service agencies have to report to the social services any suspicion that a child (under 18 years old) is in need of protection, whether this is due to maltreatment or antisocial behaviour (SoL 14:1). All personnel working in authorities concerning children (for example schools and daycare centers) are obliged to report, and so are personnel at medical services, forensic psychiatry, the social services and the correctional system. Private and professional work within these areas also applies under the rules of mandatory reporting (for example private schools, private health care, private institutions offering treatment to adults or children). The Social Service Act also encourages the public to report suspicion of children in need of protection, but the public have no legal responsibility to do so. Unfortunately there are no statistics in Sweden regarding mandatory reports on a national level, but research can give some guidance as to the function and reliability of the mandatory reporting process in Sweden. Research has shown that professionals with legal responsibility to report child maltreatment do not always report. One study of 341 child care institutions in three suburbs of Stockholm showed that the institutions only reported 37 % of suspected cases of child maltreatment, and that mandatory reporting was often delayed because professionals estimated the consequences of a report before deciding if a report should be made or not (Sundell, 2007). Negative experiences from earlier reports to the social services could also affect professional's decision to report or not (a.a.). A study of medical records shows that medical staff in a Children's University hospital in Sweden only reported 55 % of 137 children who had been diagnosed as victims of child abuse during a period of four years, and a report was made to the police in only 27 % of these cases (Tingberg, 2010; Tingberg et al. submitted). Another research study showed that nurses at children's clinics only reported 11 % of all children they suspected might be in need of social support (Lagerberg, 1998). To increase professionals' ability to report children in need of protection, it is suggested that the social services should be able to give information if whether the case is assessed to need further investigation or not (SOU 2009:68).

Teenagers between the ages of 13-17 are overrepresented in mandatory reporting in Sweden, and few young children are reported (Wiklund, 2006; Sundell et al., 2007). A national representative research study concerning municipalities of middle size, showed that approximately 30,5 children are reported out of 1000, but 63,5 out of 1000 children in the age 13-17 are reported compared to 17,7 out of 1000 children in the age 0- 12 (Wiklund, 2006). This can partly be explained by the fact that youth delinquency is also a responsibility for the social services in Sweden. According to research the most common problem to be

reported in Sweden is conflicts within families and youth delinquency, and most reports come from the police and the school (Cocozza, 2007; Wiklund, 2006; Sundell et al., 2004; Vinnerljung et al., 2001; Sundell & Karlsson, 1999; Östberg, 2010). However, many crime reports from police do not indicate child maltreatment and researchers have stressed that a national register of mandatory reports in Sweden might become deceptive due to automatically police reports (Cocozza et al., 2007).

As in other countries, many reports do not lead to further investigation in Sweden. Local studies indicate that approximately one third of reports are sorted out without investigation (Kaunitz et al., 2004, Sundell & Karlsson, 1999). Other studies show that if application for help is also included as much as 50-60 % of all reports and applications are sorted out without investigation (Cocozza, 2007; Östberg, 2010). Approximately 30-50 % of mandatory reports do not result in a decision to investigate the child's need for support or protection in Sweden (Sundell & Egelund, 2007). This can imply that some children in need do not get the help they require, even when maltreatment is reported, especially since some children are reported several times before an investigation is made (Cocozza et al., 2007). How municipalities handle reports and how many reports lead to investigation also differs between municipalities (Gegner, 2009). In average about 50 % of all children that are investigated by the social services also get some kind of intervention, but this can vary immensely between different municipalities (Sundell & Egelund, 2007; Sundell & Karlsson, 1999). Research has shown that these children usually get two or three different interventions and stay in interventions on average for five years (Sundell et al., 2004, p 8). Today there is a trend in Swedish municipalities to offer family support as a service without previous investigation, for example different parental training programs (Socialstyrelsen, 2006).

4.2.3 The Care of Young Persons Act

Compulsory care according to the Care of Young Persons Act (LVU) is only possible when social services assess that the child is in need of care outside home due to specific risk factors, and the parents with custody do not give their consent to such care. Children that have reached the age of 15 years also have to give their consent to voluntary care (SoL 11:10, LVU 1 and 36 §§§). In Sweden compulsory care according to the Care of Young Persons Act is decided by the administrative court, and is based on the written assessment made by the social services and an oral negotiation in court. The circumstances that may lead to placement without parental consent for children below 18 years due to home conditions in Sweden are:

1. Physical and mental abuse. This includes even minor physical abuse, terror, and systematically degrading behaviour.

2. Inadequate care/neglect. This includes lack of emotional or/and physical nurturing and inadequate supervision, and may be circumstances where parents due to substance abuse or mental disease neglect their children

3. Exploitation. This usually refers to sexual abuse, but also situations where children are forced to do heavy work or to take on a great responsibility at home.

4. Other condition at home. This primarily refers to situations when the child is maltreated or exposed to dangerous situations by someone else than the parent itself (for example a partner to one of the parents). It may also refer to situations when the child and parent have a disturbed relation (Socialstyrelsen 1997).

The home conditions presumed consequences must also be included in the assessment, since the law regulating compulsory care states that home conditions (or the child´s behaviour) must constitute "an apparent risk to the child`s development or health" (LVU, 2- 3 §§). The circumstances that may lead to placement without consent for children and youth's below 20 years displaying an antisocial behaviour in Sweden are:

1. Substance abuse

2. Crime

3. Other socially destructive behaviour. This refers to other situations when a child or youth is at risk, for example prostitution, or when children are seen in inappropriate environments (for example with adult substance abusers).This can also refer to situations when the child, from a holistic perspective, is at risk due to a combination of causes such as many minor offences (Socialstyrelsen 1997).

In this text all three circumstances concerning youth are referred to as "antisocial behaviour". When a young person under the age of 20 has been taken into compulsory state care due to antisocial behaviour, state care can last until the age of 21 (LVU 21 §). Whenever a child is placed outside home, the social services has to review care every six months, which usually involves visiting the child, and reporting the circumstances to the local social welfare board (LVU 13 §). This is also done when the care is a voluntary family support intervention (SoL 6:8). In a new Bill it is suggested that each child in care should have a legal right to visits from a particularly social welfare secretary of their own at least four times a year (SOU 2009:68, pp 483-486).

Compulsory care according to the Care of Young Persons Act always begins in either residential care or in foster care, but it is possible to have state care "at home" later on, which is often used when the compulsory care is assessed to be terminated soon. For young persons under the age of 21 displaying an antisocial behaviour it is possible for social services to decide that the young person should have a contact-person or participate in supportive (non-institutional) interventions, even without the consent of the child or their parents (22 § LVU). This possibility for compulsory measures in non-institutional care is however very seldom used in Sweden municipalities, and there is no equal legal opportunity for compulsory care measures in non-institutional care in cases of neglect.

National adoption is not possible without the consent of the child's parents (custodians) and is thus not an intervention in the family support system in Sweden. However, to promote continuity and safety in foster

care, the social services are since 2003 legally obligated to review if foster parents should achieve legal custody of the foster child, provided that a child has been in the same foster home for three years (prop. 2002/03:53; SoL 6:8, LVU 13 §). The final decision is made by the district court. Although this has led to an increase in the number of foster parents that receive custody of their foster children, this is still an unusual intervention that only concerned 125 children in 2005, and the children had at that time been in the same foster homes for an average of more than seven years (Socialstyrelsen, 2006b). However, if foster parents get full custody of the child they can apply for and consent to adoption, but the adoption must be assessed to be an advantage for the child (FB 4:5a). Approximately 16-18 children are adopted each year by their foster parents in Sweden, mainly children under six years old (Socialstyrelsen, 2008, 2009, 2010 p 69). Although international studies have shown that adoption can promote stability in care, a Swedish qualitative study has proven that foster children can experience a strong family connection to both their foster parents and their biological parents (Andersson, 1998). Andersson (2009, pp 216-220) points out that when adoption is discussed as a possible intervention within the social services, it is usually based on the assumption that most foster parents *want* to adopt their foster children and that foster children in general have a poor contact with their relatives, although this may not always be the case. Adoption as an intervention within the child welfare system can also decrease stability in care, since children are moved from their foster parents to new adoptive parents when they are freed for adoption (a.a.).

4.2.4 Youth delinquency

The age of criminal responsibility is fifteen in Sweden, which means that all police reports concerning even minor offences committed by children below fifteen years are reported to and handled by the social services. When a young person between fifteen and seventeen years old is charged with an offence, the social services has a duty to assist the prosecutor with a written report, wherein the social services assess the teenagers need for support, what measures have been taken, and what measures are planned (LuL 11 §). Children and young persons under the age of 21 can according to this also be sentenced to care within the social services, if social support is regarded as most suitable (BrB 32:1). Prison sentences are avoided for young person's between the ages of 18 and 21, and are only given when there are specific reasons for doing so in addition to committing a serious crime (BrB 30:5). When young person's between the age of 15 and 17 commit very serious crimes they should be sentenced to state institutional care instead of prison if possible, for no less that 14 days and no more than 4 years (BrB 30:5). This means that the state institutional care for young persons (usually referred to as "Homes for special supervision") are institutions which offer means-tested treatment to young person's according to the Care of Young Persons Act, as well as fixed-term punishments according to the Penal Code (Palm 2003). This dual responsibility between the state (Penal Code) and local social authorities providing social services in the municipalities (according to the Social Services Act and the Care of Young Persons Act) concerning children who commit crimes has an arbitrary affect, since a child can either be detained or be taken into immediate custody by the Social Services after a serious crime (Svensson, 2006). The question as to what extent

young delinquents should receive “punishment“ or “treatment”, and the relationship between these concepts, has been an ongoing debate the last century in Sweden (Svensson,1998). The role of the social services in Sweden towards delinquents today is in a way characterized by two opposite logics. The main role is to be caring and to assess the needs and the best interests of the child (offender), but the role in the court-process and the assessment of whether interventions is possible within the social service system, also involves assessment concerning the seriousness of the crime which may result in interventions based on more punitive principles (Tärnfalk, 2007).

4.2.5 National policies and strategies for protecting children

4.2.5.1 Prohibition of corporal punishment as a way to discipline children

At the beginning of the 20th century corporal punishment as a way to discipline children was used in homes and in schools in Sweden, but attitudes towards this practice changed in the middle of the century. In 1979 Sweden became the first country in the world to legally forbid parents to use corporal punishment towards their children (prop. 1978/79:67, FB 6:1). This prohibition means that even minor corporal punishments are defined as physical abuse of children in Sweden. This prohibition has reduced the use of corporal punishment as a discipline method significantly in Sweden, with the prohibition having strong support amongst Swedish parents (Jansson et al., 2007, SOU 2001:18). But Sweden, as with many other countries, also has examples of tragic death of children caused by maltreatment by their parents or close relatives, which usually result in heavy media debates concerning the social services, with criticism concerning the assessment work, the education of social workers or the legal framework for protecting children. In 2006 the media reported on the case of a ten-year old boy named Bobby who was killed by his mother and step-father, which resulted in massive media debate and fund raising for maltreated children. Since the case was not known to the social services it was also debated how society could have failed to recognize the serious abuse of Bobby**.** This tragic event has recently (in 2008) resulted in a new law in Sweden (“Lex Bobby”) that makes The National Board of Health and Welfare responsible for investigating cases where children have been victims of deadly violence, with the purpose to discover defects in the system and prevent similar events (prop. 2006/07:108, SFS 2007:606). A similar suggestion had only a few years earlier been suggested by the Government to the Parliament, which at that time rejected the Bill (SOU 2001:72; prop 2002/03:53).

4.2.5.2 Early and preventive support to families

In general the national policies and strategies for protecting children in Sweden are based on the assumption that early and preventive services and support to families is the best way to protect children in time. This approach is based on the ideological ideas described earlier and manifested by the Social Service Act, but has also been strengthened by research and criticism concerning the ability of the state to provide

good care and outcomes for children in foster homes and in institutional care (for example Vinnerljung, 1996; Levin, 1998; Vinnerljung et al., 2001).

The municipalities have during the last 15-20 years developed more locally available support, both as a result of the scepticism concerning state care, but also as a result of the economic crisis that occurred during the 1990s which led to an ambition to reduce the costs for out-of home placements in the municipalities and to create alternatives on a service delivery whilst the child remained at home- basis (Forkby, 2005; Socialstyrelsen, 2006). A study of 106 municipalities/districts (out of a total of 336) showed, that two third of the municipalities/districts stated that they have political restrictions on the use of local interventions on a home-basis prior to out-of-home care (Socialstyrelsen, 2006). On average the municipalities/districts claimed to offer eight available interventions in day-care for children (0-12 years old) and ten for teenagers (13-20 years old) (a.a.). The Government has recently presented a giant national strategy for introducing general parental support in Swedish municipalities and financial support to research and evaluate the effects of different parent training programs (SOU 2008:131; prop. 2007/08:110). Many municipalities in Sweden can today offer these kind of training programs as a service support to parents (without previous investigation), or as an intervention for families where a child (or teenager) is assessed to be at risk. The expansion of home-based alternatives to state care can also been explained by an increased professionalization of social work (Forby, 2005). In Sweden most professionals titled “social workers” have a tree and a half year professional education from University (Bachelor’s degree), and this education is usually demanded by local authorities for workers undertaking assessments concerning family support.

4.2.5.3 The rights of parents versus the rights of the child at risk, shifting perspectives in cases of domestic violence and in joint custody decisions

In1993 a Commission was given the mission to investigate the legal system regulating violence against women and to prevent men’s abuse of women (SOU 1995:60). This Commission was the first official commission given the mission to work from a women’s’ perspective, to regard domestic violence as a problem that mainly identifying men as committers of violence and women as victims; it subsequently influenced law reforms in Sweden. As a whole the report made by the commission solely focuses on women and men when discussing domestic violence and little is mentioned concerning the fact that many battered women are “mothers” as well, and many violent men are “fathers” (Eriksson, 2003, p 79). Even social workers working with family law have been guided by a logic that separates men guilty of women battering from their role as a father since they were not regarded as a potential threat to the children (Eriksson, 2003). In the report by the Commission it is, however, mentioned that if a father in the presence of his children physically abuses a mother, it should be interpreted as a sign of neglect (SOU 1995:60, p 364).

Family law in Sweden, and many other western societies, has been guided by a principle where joint custody has been interpreted as being in the best interests of the child in recent times (Kurki-Suonio, 2000).

In Sweden this resulted in a legal change in 1998 that made it possible for courts to judge parents as having joint custody without their consent (prop. 1997/98:7). An investigation made a few years later showed that district courts used the right to grant parents joint custody to a very high extent even when parents had serious difficulties cooperating (SOU 2005:43). A legal revision was made and it is today also legally emphasized in family law that children might have a need to be protected from one parent (prop. 2005/06:99). Since 2006 children are, according to the Social Service Act, also defined as victims of crime if they have witnessed physical abuse (SoL 5:11). These changes illustrate some difficulties in interpreting the meaning of a "child perspective" in a Swedish context where the maintenance of biological relations is regarded to be of great importance for children. A child's legal right to its natural parents has, for example, been criticized for being used for safeguarding the interest of parents in practice. The rights of parents are, however, suggested to be slightly diminished in cases where children in need of social support require help; in a new legal proposal it is suggested that children should be able to get non-institutional support within the social services even if only one parent with custody consents (DS 2011:5).

4.2.5.4 Child Poverty – how class differences in society affects children

Other issues that have recently come to be discussed by researchers, media and politicians concerning the family support system, are that many children live under unsecure accommodation conditions or in families with economic difficulties and at risk of poverty (on social allowance or with an discretionary income below 60 % of the median) (Andersson & Swärd, 2007, Ds 2004:41, SOU 2005:88). Even if people in Sweden in general have a high standard of living, it was at the beginning of the 1990s discussed how accommodation problems and economic difficulties in families affected children. It was estimated that 1500-2000 children were exposed to an eviction from their home together with their parents during 2001 in Sweden (SOU 2005:88, p 16). Save the Children Sweden (www.rb.se) is an international organisation working for the rights of children according to the UN Convention. Save the Children has eleven regional offices in Sweden and helps to produce reports concerning the living condition in Sweden, for example the organisation since 2002 has produced annual reports concerning poverty amongst children in Sweden. The latest report showed that the risk for children growing up under financial difficulties increases five times for children who have a foreign background in Sweden (Rädda Barnen, 2010a). One out of four children in Sweden has a foreign background. One third of all children with a foreign background live in families that receive financial welfare support from the social services, or have a low standard of income (a.a.). The largest and most segregated cities in Sweden are characterized by a high levels of children living under poor economic circumstances, specifically Malmoe in the south of Sweden, where as many as one third of all children live under financial difficulties (a.a.). The Social Democratic Party in Sweden has recently declared that one of the political goals should be to "extinguish" child poverty in Sweden.

4.2.6 What role do voluntary and private organisations play in the development of legal and policy frameworks

Voluntary and private organisations do not serve as an alternative to the social services in Sweden; the municipalities have by the government the primary legal responsibility to protect children (SoL 2:1). Yet there are examples of voluntary organisations and private organisations and initiatives having an important role in the debate concerning child welfare, and some voluntary organisations offer important resources for children and families.

One example of a private initiative that have come to affect the legal system is the so called "grandmother riot" in the mid of 1990s. This originated in the case of a grandmother who wanted to take care of her grandchild but was denied doing so by the social services due to her age. The grandmother collected no less than a thousand signatures from people who like her, demanded better rights for relatives wishing to take care of children when parents lacked the ability to do so, and handed these to the minister of Health and Social Affairs. This led to a legal obligation in 1999 for the social services to at least consider relatives as foster cares when state care is necessary (SoL 6:5).

Another example is the private organisation called "Stolen Childhood", which started in 2005 when a documentary program on Swedish television, where middle-aged men reported that they had been subject of neglect and maltreatment within state care as children. This became the starting point for the establishing of a voluntary association of interest in 2006 by people who had been subject to maltreatment in state care, demanding justice and damages. In 2006, the Government in Sweden initiated an investigation of serious neglect and abuse within institutions and foster homes that had occurred in Sweden during the period of 1920-1995 (*The Inquiry in Child Abuse and Neglect in Institutions and Foster Homes* , S 2006:05). The investigation has been delayed several times due to the number of people contacting the commission who wanted to tell their story. When the final report is finished later this year (2011), about 1000 people who have been in state care between 1920- 1999 should have been interviewed. This massive response led to the starting of a parallel investigation concerning the question of how to handle the question of damages to these people (Upprättelseutredningen, S 2010:02). This investigation has recently come to the conclusion that people that had experienced serious maltreatment or neglect within state care between 1920-1980 in Sweden should be awarded compensatory damages worth 250 000sek each (SOU 2011:9). The Government should also acknowledge the maltreatment and give these people an official apology. It is also suggested that it needs to be further investigated if municipalities should be legally obliged to pay damages to children and young persons who have experienced serious maltreatment in state care (a.a.).

In July 2011 personnel within the social services will also have an increased legal obligation to report to their management any inconveniences (or risk of inconveniences) in state care (Prop. 2009/10:131, SoL 14:3). This can be interpreted as part of the previously mentioned debate on maltreatment in state care, but is suggested to mainly be viewed as a way to maintain quality in care and to make reports less dra-

matic for personnel, so that mistakes in care can be corrected before leading to maltreatment (Prop. 2009/10:131).

*The National Association for the Protection of Children's Right in Society (*Swedish abbreviation *BRIS*) is a voluntary organisation of adults in Sweden that was formed in 1971. BRIS acts as a representative for children and provides unofficial support to children in need through an anonymous call-in-service called the Children's Help Telephone and the BRIS-chat (www.bris.se). Approximately 600 people work as voluntary helpers in BRIS and today and today it also provides a call- in-service for adults (a.a.) For many years BRIS promoted the establishment of an Office of the Child Ombudsman , a national authority, which was established in Sweden in 1993 (Hort, 1997, p 107). The Child Ombudsman has a mission to preserve the rights and interests of children according to the UN Convention on the Rights of Children in Sweden, and can suggest changes in the legislation according to the Convention, and also writes annual reports to the government concerning the work (SOU 1991:70, www.barnombudsmannen.se).

4.3 State, local authority and nongovernmental provider relationships

4.3.1 The responsibility of family support

Sweden is divided into 290 municipalities, and it is the local social services in each municipality that have the "uttermost responsibility" that people in the municipality receive "the help and support that they need" (SoL 2:1). The municipalities in Sweden are legally and financially responsible for providing social services, but are free to decide how such social services should be organized and to plan what kind of local family support measures should be offered, according to the specific needs in the municipality. However, the social services in all municipalities are governed by the same laws regulating the family support system. According to the Social Service Act each municipality has a responsibility for offering children and adults in need of treatment outside home a place in foster care or in residential care (SoL 6:1). Children and young person's should, according to the law, also be able to receive a contact person or a contact family, but only if the social services assess that they are in need of this kind of support (SoL 3:6). A contact person/family consists of ordinary people (laypersons) with no special training, yet they must be officially approved and they are paid and supervised by the social services. Statistically a contact person or a contact family is regarded as the same kind of intervention, but in practice the interventions are quite different from one another. A contact family is a voluntary support which usually means that a child stays over night regularly in a family, for example one or two weekends each month. A contact family is mainly used to support parents with social difficulties and their young children (Andersson & Bangura Arvidsson, 2001, 2008). The contact-family may be a resource for a child during many years of childhood, and provides temporary accommodation on a regular basis and when the child's home environment is difficult. A contact person is primarily used as a support intervention for young persons with behavioural problems

and the contact person should connect with the child/teenager on a daily basis (a.a.). A contact-person can for example support the teenager with school-work, do leisure time activities together with the teenager, or support him/her in independent living. For many years a contact person or a contact family was the most used statutory support service for children and families, and this statutory service is still one of the most frequently used in-home supportive services in Sweden[128].

The local authorities in the municipalities are solely responsible for investigating children in need and providing services to include, if necessary, state care. But when compulsory care is assessed to be necessary, the final decision is made by the administrative court. The National Board of Health and Welfare is a government agency in Sweden under the Ministry of Health and Social Affairs. The National Board of Health and Welfare is responsible for supervising the social services in the municipalities, as well as institutional care (SoL 13:1). The agency also collects and analyzes information, provides statistical data and work to ensure good health and welfare for the population. Another state agency under the Ministry of Health and Social Affairs was founded in 1992 and is called The National Institute of Public Health (Swedish abbreviation: FHI). This agency has the Governments mission to investigate health issues in Sweden and to be a center of knowledge, methods and strategies within this area (www.fhi.se).

Since the municipalities have the primary responsibility for the inhabitants need for social support, the non-governmental influence in the Swedish family support system is limited but may, as mentioned earlier, be an important complement to state interventions. In many municipalities in Sweden there exist voluntary organisations for offering support to women and their children when there is a violent or abusive husband (women's shelters). These organisations started in 1978 and expanded nationally during the 1980s, and today there are approximately 115 local organisations in different cities in Sweden (www.kvinnojour.com). These women's shelters can usually offer a woman and her children temporary accommodation and protection, but the primary responsibility for their support is even so the social services in the municipality. The shelters usually cooperate with the social services and have become an important resource for the social services in domestic violence cases. Another important organisation is the Red Cross, which provides a wide range of activities and services in Sweden, such as different meeting places and support for unaccompanied children and youth that migrate to Sweden without relatives (www.redcross.se). The church in Sweden can also be a resource for supporting families with social or economic difficulties.

For understanding the different responsibilities between the state and the municipalities, it is necessary to describe the existing institutions providing out-of home care in Sweden. In a previous overview of Child Welfare in Sweden, the care for children and youth in Swedenwere divided in three main categories: *foster care*, *residential care* and *homes for special supervision* (Hessle & Vinnerljung, 1999, p 27). Since foster care is a well-known concept, we will focus here on describing the institutions within the Swedish child welfare system.

[128] For more information about contact person/contact family, see Andersson, 2006 pp 176, 180-183).

4.3.1.1 Residential care

With the Social Service Act traditional concepts in the legislation for children´s homes were replaced with the word "HVB- home" (Homes for Care or Accommodation) which has blurred the dividing line between institutions and foster homes in Sweden (Sallnäs, 2000). In this text we will however refer to these homes as *residential care units*. Sweden has a large number of residential care units, which can be owned publically (by the municipality or the county council) or by private persons or companies. Most residential care units are run privately in on small-scale, which have been described as somewhere in between foster homes and institutions, and as a new kind of "hybrid-home" (a.a.).

Residential care units that are privately run need to apply for permission from The National Board of Health and Welfare. The National Board of Health and Welfare is responsible for supervising residential care units and the social services in the municipalities (SoL 13:1). A national survey of 363 residential care (50 publically run) units for children and youth in 2006-2008 showed that most of these homes (219) were deficient in some aspect; in 112 units the short-comings were assessed as serious (Länsstyrelserna & Socialstyrelsen, 2009). Publically run residential care units in particular have found it hard to reach the standard goals, which may be explained by the fact that these units do not need permission from The National Board of Health (a.a.). Research has resulted in criticism that many residential care units apply rules and routines that may not be beneficial to young people and have no actual legal support (Eneroth 2008). One example are the use of "contracts" were young persons are forced to give their consent to drug tests, and examination of their clothes or rooms. It is argued in the national report that the responsibility for children in voluntary out-of-home care in these homes need to be clarified concerning the parents, social services and residential care units (Länsstyrelserna & Socialstyrelsen, 2009).

4.3.1.2 Homes for special supervision

In Sweden it is possible for young people to receive state residential care in one of the approximately twenty five *homes for special supervision*[129]. The homes for special supervision are run by a state authority called "The National Board of Institutional Care" and the state finance one third of the costs. The homes for special supervision have special authority and legal support to, for example, have locked units and to isolate violent persons for a maximum of 24 hours (LVU 15- 20 §§). The homes for special supervision are mainly used as a compulsory care intervention for young persons (12-21 years) with serious psychological problems, often with elements of criminal behaviour and substance abuse. These institutions vary in size but offer a total of approximately 600 care places. Different treatment methods are used and many institutions can also offer an initial assessment of the young person. Some homes for special supervision offer treatment to young persons who have been sentenced to care by the Criminal Act at special closed

[129] These institutions are sometimes called "Special approved homes" (www.stat-inst.se).

units. A study concerning the use of isolation in homes for special supervision has shown that this sanction was not always used as intended, but used as a punishment, which has led to criticism from the United Nations (BO 2010). The Child Ombudsman in Sweden has since argued that the use of isolation in state institutional care should be abolished, and demanded legal changes that emphasizes and secures the rights of children in out-of-home care (BO 2010, BO 2111).

The use of homes for special supervision in Sweden has received a lot of criticism over the last decade. Research has for example stressed the lack of effectual treatment and the poor or even impaired results of state institutional care (Levin, 1998; Andreassen, 2003; Hill, 2005). This has led to the development of new and more evaluated methods within the homes for special supervision during recent years. Long term care in these institutions is also avoided if possible. But still these state institutions remain a common intervention for young persons with serious behavioural problems, and approximately 1000 young people receives care in these institutions each year (www.stat-inst.se). In fact, even if the ambition has been to decrease the number of children in institutional care in Sweden and despite the fact that locally non-institutional services have increased over the last two decades, this has surprisingly not resulted in a decrease in the number of children in institutional care (Socialstyrelsen, 2006).

4.4 National data bases

The National Board of Health and Welfare publishes annual statistics concerning some of the *interventions* that social services offer to children and their families. Unfortunately there is as yet no statistics concerning the number or content of mandatory reports or concerning investigations on a national level, but local authorities register this information and research have given some information about this process, as presented earlier.

4.4.1 Interventions

The most common service for families in Sweden is personal support, which usually means supportive meetings/conversation with a social worker. Approximately 25,300 children had *personal support* at some point during 2009 (Socialstyrelsen, 2010, pp 29-30). Approximately 21,000 children received support by a *contact person/family d*uring 2009, and 9800 children received more structured support through a *treatment program* during 2009 (a.a.). There is a trend in Sweden to offer support to families as a service without previous investigation and registration (Socialstyrelsen, 2006). This is in many ways a good development since being registered and handled as a “social service case” may decrease the willingness to seek help. On the other hand this trend makes it difficult to survey the supportive interventions in day-care on a national level.

Approximately 17,900 children received out-of home care during 2009 as a voluntary support according to the Social Service Act, and a total of 8,300 children were placed outside their home by compulsory care the same year (Socialstyrelsen, 2010, p 22). The majority of children who enter state care in Sweden are teenagers between 13-21 years old.

On November 1st 2009, approximately 16,000 children/young people received out-of-home care, and only one third (5,055 children) were age 0-12 years (Socialstyrelsen, 2010, p 62). A majority of these placements were made according to the Social Service Act with the consent of clients, only one third of the placements were a result of a compulsory care decision (a.a.). A majority of the children were placed in foster homes (p. 63).

4.4.2 Abused children

The definitions concerning maltreated and abused children differ between countries. Since physical punishment is prohibited in Sweden, this means that even minor offences in this area can be reported as a case of child abuse.

The Swedish National Council for Crime Prevention (BRÅ) is an organisation that works on the commission of the government to produce data and knowledge concerning crimes and crime prevention (www.bra.se). The reports from BRÅ have shown that police reports concerning physical child abuse increased during the 1990s, especially concerning small children (0-6 years) (BRÅ 2000). Police reports concerning child abuse where the offender was familiar to the child increased from 330 reported crimes in 1990 to 709 reported crimes in 1998 (a.a.).As a result of this, an official commission "The Committee against Child Abuse" investigated the issue of child abuse and related issues. The commission presented a report concerning child abuse in 2001 and a legal Bill was presented in 2002 with the purpose to legally strengthen the protection of children (SOU 2001:72, prop 2002/03:53). This has resulted in some legal changes, for example more authorities have also become legally obliged to report suspicion of maltreatment to the social services, and the best interests of the child are regarded as the paramount consideration when assessing the need for compulsory care. The Social Welfare Board is now also obligated to review if foster parents should receive to receive legal custody of the child, if the child has lived in the same foster home for three years (a.a.). The National Board of Health and Welfare is (as mentioned earlier) since 2008 responsible for investigating cases where children in need of protection have been victims of deadly violence, and for producing a report every other year. The first report from the National Board of Health and Welfare regarding child deaths reviews report that ten cases of child death were reported between 2008 - 2010 in Sweden, and five of these were investigated (Socialstyrelsen, 2010b). Two cases of child deaths from 2006 and 2007 were also included in the report. The conclusions from this report mostly states well known facts, for example the importance of authorities to actually report any suspicious of maltreatment of children to the social services, and that these are investigated properly. But the report also stresses the importance of transferring information between municipalities when a family moves from one

municipality to another, when the child is assessed as being at risk of maltreatment (a.a.) The total number of children exposed to deadly violence in Sweden have however decreased since 1970s, in the beginning of the 1990s ten children between 0-15 years were killed each year due to violence, compared to five children each in the 2000s (Socialstyrelsen 2010b, BRÅ 2008, p 26, BRÅ 2011).

A report made by BRÅ shows that in 2010 a total of 11,530 cases of suspected physical child abuse were reported in Sweden concerning children 0-15 years (BRÅ 2010). Reports concerning the rape of children have also increased, but in Sweden a changed definition of "rape" was introduced in 2005, which can explain the increasing number of children being statistically reported as being victims of rape. All sexual acts with children below 15 years are categorized as rape in Sweden, even if there has been no element of threat of violence (BrB 6:4). Sexual acts with children 15-17 years are also defined as rape if the offender is the child's parent, or if the child is being brought up by this person (BrB 6:4).

	2000		**2002**		**2004**		**2006**		**2008**		**2010**	
	N	/100 000	N	/100 000	N	/100 000	N	/100 000	N	/100 000	N	/100 000
Abuse of Children 0-6 years	938	11	1 021	11	1 147	13	1 351	15	1 906	21	2 550	27
Rape of child below 15 years	300	3	387	4	479	5	1 134	12	1 421	15	1 826	19

Table 13: Reported Crimes concerning physical abuse of children (0-6 years) and rape of children below 15 years (BRÅ)

Between 2009-2010 police reports concerning physical abuse of children age 0-6 years increased by 17 % and concerned a total of 2,540 crime reports (BRÅ 2010 p. 7). Former analyses have interpreted this phenomenon as an increased tendency amongst the public to report child abuse, since the increase primarily concerns the less serious cases and parents who are reported are more often socially well established (SOU 2001:18, BRÅ 2000 p 46-47). It has been estimated that 1 % of children and adolescents are subjected to very severe and unusual forms of punishments (SOU 2001:72, p 48). Unfortunately the court processes have difficulty in managing reports concerning physical child abuse in decent time (Rädda Barnen 2010b, SOU 2000:42).

In 2005 six municipalities started "Children's Advocacy Centres "on the initiative of the Government. These centres provide a place where the police, prosecutor, attorney, social worker and medical staff can cooperate in one location in helping abused children. The purpose has been to reduce the number of meetings for children in a vulnerable situation, and to offer a place where it is possible to investigate the crime and the child's need for protection, increase the quality of investigations, and also offer treatment and support. An evaluation of the first cities that started these centers showed that whilst they may

strengthen a child's rights perspective, the court-process and the legal authorities remain the central focus; the centres were also primarily directed to children below 15 years old (Åström & Rejmer,2008). At least 22 Children´s Advocacy centres now exist in different cities in Sweden, and an evaluation of these centres have shown that collaboration between authorities is improved and that children had positive experiences of the treatment they received in the centres, although the crime investigations may not improve (Kaldal et al., 2010).

4.4.3 Securing good outcomes for children

Sweden, as a traditional example of a welfare state, in many aspects has a well-functioning and highly developed family support system, even if there are areas of the system that have been criticized by research. In this case study we have focused on describing the part of the family support system that is directly focused on children at risk and the authority of the social services, but it would have been possible to present and include other authorities more in detail as importing actors in securing good outcomes for children in Sweden, for example the Health Care System and the School system and the day-care centers for small children. In Sweden early parental support for all parents is promoted on a national level (SOU 2008: 131). Different parental training programs have also become a common service for parents with small children or teenagers as a way to prevent future social problems in families. These programs are based on a manual and are examples of early preventative interventions that have proven many good results in international studies. However, such programs have yet to be proven to be evidence-based in a Swedish context (SBU 2010), with researchers currently evaluating some of these programs and their outcomes in Sweden.

When discussing "good outcomes" it is necessary to discuss what this means and how it can be interpreted. If we, for example, look at the long-term effects of state care, research has shown that long-term foster care does not improve outcomes in adult age when compared to growing up in an insufficient family environment (Vinerljung, 1996). Their social positions and educational level in adult age, compared to the general population, are also below average (Vinnerljung, 1996, 2006; Vinnerljung et al.; 2005). Growing up in state care can according to such research be regarded as a risk factor, which is important to remember, since these children often need further support during their childhood by other authorities as the School and Health Care system. It is also a reminder of the importance of early and preventative support. As a result of this knowledge, and the awareness of the fact that poor school results are a major risk factor, a project called "Skolfam" started in 2005 in Helsingborg in Sweden in collaboration with researchers. "Skolfam" is an abbreviation for School and Family (Foster) Care and provides a model for testing and strengthening the school results of children in foster care, since they usually have missed important time in education. The model has shown very positive results and is hopefully going to be introduced in other municipalities in Sweden.

A longitudinal qualitative study of 26 children in foster care, however, also shows that state care can result in pretty good outcomes for children, taking into account their difficult experiences prior to coming into state care and their opportunities compared to the general population (Andersson, 2005, 2008). When defined in three categories, ten persons were described having a *good* social adjustment in adult age, nine persons had a *moderate* social adjustment and seven persons had a *bad* social adjustment (Andersson, 2005). Concerning the outcomes and quality while in foster care, research has shown that an inclusive attitude from foster families toward the child's parents promote a sense of security for children in foster care and helps them cope with their situation even in periods of re-placement or reunion (Andersson ,2009). Children in foster can also achieve a safe sense of belonging to the foster family, or to both the foster family and their biological family, even without any changes being made in custody (Andersson, 1998).

When discussing social support and state care it is also necessary to achieve safe and stable support and care for children and youth. Unfortunately this is not always the case, former research has shown that children in contact with social services usually have many different interventions and reoccur for investigation and interventions several times during childhood (Sundell et al., 2004). This can partly be explained by the fact that voluntary services are the core of the child support system in Sweden until compulsory care is regarded absolutely necessary and consent to state care is not possible. A large Swedish research study has also shown that approximately 30-37 % of teenage-placements in Sweden are prematurely terminated and antisocial behaviour and a mental health problems increase this risk (Vinnerljung et al., 2001, Sallnäs et al., 2004). However, kinship care reduces the risk of breakdown in care and indicates that the use of relatives as foster cares might improve stability in state care (a.a).

4.5 Analysis and recommendations

The family support system marks the dividing between the state and parents legal responsibility for children, it also makes people aware of the existence of maltreated children in society , and consequently the system will always be debated and revised. In this analysis and recommendations I will focus on areas that may be identified as examples of good practice in Sweden, as well as problem areas that have been debated and discussed by researchers.

4.5.1 Example of good practice in Sweden

***The preventive and non-stigmatizing service orientation model**

It is important to provide early support to children and parents in a broad sense, which may involve general and specific services from different authorities in society, such as Health Care and Schools. The possibility for parents to receive preventative support as a service without previous investigation may also increase help-seeking in time.

***Keeping children and youth out of prisons**

A child perspective is necessary even when children commit serious crimes in a society. Usually children who commit serious crimes have social or psychological difficulties, and should be perceived as children at risk. This means that treatment provided by the social services is usually more adequate than prison sentences.

***Focus on maintaining relative relationships in out-of-home care**

The discussion of how to achieve continuity in care has developed differently in different countries. In Sweden the relation orientation perspective is manifested, since it is argued that this helps the well-being of children in a long perspective.

However, if long-term foster care is considered a possibility, it is now a legal obligation for the social services to review if foster parents should receive custody of the child. This is a good development since it can promote stability in care when needed, and at the same time the child can keep in contact with their parents. The promotion of kinship foster homes (when possible and regarded as the best interest of the child) may also be a way to promote stability in care and maintain relative relationships.

4.5.2 Problem areas

These problem areas are not to be seen as “bad examples”, in fact theyare connected to the structure that also provides the good examples mentioned above, which means that these complex areas are recurrently discussed from different perspectives.

***The blurry dividing line between support and control**

This is perhaps mainly a problem in the most serious cases of child abuse and neglect. The focus on consent in the Swedish legal system means that many voluntary out-of-home placements can be as serious as compulsory care cases, but yet they are defined as voluntary since parents have given their consent to state care. In doing so, compulsory care can usually be avoided. This *can* be problematic, since the different interests of the child and their parents are visualized in compulsory care cases, since they are represented by different lawyers serving their interests in the court process that follows. Since children have no legal right to plead to court until 15 years old, all children below 15 children in voluntary out-of-home care

are represented by the voice and the will of their parents (Mattsson, 2006).). The ability and legal obligation for social workers to predict and assess the "apparent risk" in compulsory care cases concerning children have also been debated (Claezon, 1987). There is also a tendency amongst social workers in Sweden to avoid compulsory care since they have difficulties in discerning when voluntary support is not sufficient and since compulsory care is regarded as a "risk" process, partly since the administrative court makes the final decision (Ponnert, 2007). The focus on achieving parents "consent" to state care during the assessment work might decrease a child perspective (a.a) as well as the idea that all parents can be rehabilitated.

Earlier research has also shown that social workers tend to assess cases were parents cooperate with the social services as less serious (for example: Dingwall et al., 1983;Verner Fruin, 1986; Andersson, 1991; Egelund & Thomsen 2002; Grinde, 2004: De Roma et al., 2006). This has been described as a "rule of optimism" guiding the assessment work concerning children and their families (Dingwall et al.; 1983, pp 79-102).

***The focus on teenagers in the child welfare system.**

Since youth delinquency (0-18 years) is also a task for the social services in Sweden, investigations concerning teenagers are major tasks within the social services in Sweden, even in cases when there is no sign of maltreatment. Interventions for criminal teenagers due to the cooperation with the district court might give the social services (and the interventions provided for criminal teenagers) a punitive character.

***The use of homes for special supervision**

Sweden still provides many state institutions for youth with behavioural problems, even if the treatment effects and the methods have been debated and criticized. These institutions have special statutory powers and usually provide secure/locked divisions. Since criminal youth are a responsibility for the social services, these institutions remain as an intervention within the child welfare system in Sweden, for better and for worse.

***Continuity in care.**

Research has shown that children in state care in Sweden usually experience several placements in different institutions or foster-homes during childhood (for example, Vinnerljung et al., 2001; Sundell et al. 2004). This might be interpreted as a conflict between social workers strives towards reunifying the child with his/her birth parents, and the child´s need for a stable placement out-of home (Sinclair et al. 2005 a, 2005b, Thoburn et al., 2000).

4.6 Conclusion

When discussing and analyzing systems providing child welfare in different countries, two major questions are of central interest for understanding the differences that emerge. One question concerns the *intake aspect:* what children and what social problems should be the target group of social services? Should the social services focus on maltreated children only, or should teenagers displaying an antisocial behaviour also be considered to be children at risk? What should be the legal threshold for investigation and for voluntary and compulsory interventions? The second question concerns how to best promote *continuity in state care* for children in need of long-term foster care. In Sweden, being an example of a family support system, the social services emphasize on maintaining parental contact and reunion with birth parents (Fanshel & Shinn, 1978). In other countries, for example UK and USA being examples of child protection systems, foster parents are regarded as the psychological parents of children when children are in need of long-term foster care (Goldstein et al., 1983). These perspectives are based on different assumptions concerning children's needs for a healthy development, yet both perspectives aim at promoting stability in care for children.

How these questions are addressed and legally structured is based on the history of child welfare and the development and structure of social policy in each country, and different perspectives involves different advantages and different risks. By discussing some of the problem areas and good examples of the Swedish family support system, I hope to create some understanding and debate concerning the advantages as well as the challenges with a family support system.

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Legal framework

(Swedish abbreviation for the law within brackets)

Act with special provisions for young offenders (LUL 1964:167)

Care of Young Persons Act (LVU 1990:52)

Care of Young Offenders Act (LBU 1964:167)

Children and Parents Code (*FB* 1949:391)

Penal Code (BrB 1962:700)

Social Services Act (SoL 2001: 453)

Webpages

www.barnombudsmannen.se

www.bra.se

www.bris.se

www.kvinnojour.com

www.rb.se

www.redcross.se

www.stat-inst.se

5 Child protection in Germany by Heinz Kindler

5.1 Prolog

After WWII Germany has created a democratic society and achieved considerable wealth. As a consequence international comparisons on child well-being indicators normally place Germany in the upper half or even the upper third of industrialized countries (e.g. Bradshaw & Richardson 2009). Data on subjective well-being are not so positive but still place Germany in the middle region of comparable countries (e.g. Bradshaw et al. 2011). Sociologists, political scientists and economists from Germany have also contributed to international comparisons regarding policy approaches to combat child poverty and enhance child well-being (e.g. Olk 2010; Bäckman & Ferrarini 2010, for an overview see Kamerman et al., 2010). Participation in international comparisons and discussions can be seen as common for political scientists and economists in Germany and is growing in German sociology of childhood (Zeiher 2010).

An orientation towards international debates however still is not very prevalent among social work researchers in Germany. Despite some contributions from medical scholars (Thyen 2010; Herrmann & Eydam 2010), developmental psychologists (Kindler 2009) and legal professionals (Meysen et al. 2009) to child protection debates, social work research is of central importance for this area of research in Germany. As a result there are few descriptions of the German protection system in non-German languages (for exceptions see Kindler 2008; Hagemann-White & Meysen 2010) and most of the comparative literature on child protection systems does not include Germany (e.g. Van Nijnatten 2000; Benbenishty et al. 2003; Khoo 2004; Tchengang 2006; McAuley et al. 2006; European Network on National Observatories on Childhood 2007; Brunnberg & Pećnik 2007; Healy & Oltedal 2010). If Germany is included, it is sometimes solely on the basis of programmatic statements with weak connections to child protection reality (e.g. Baistow & Wilford 2000; Freymond & Cameron 2006). Among data driven exceptions are European reports on legal structures in child protection (Hageman-White et al. 2010), maltreatment related child deaths (UNICEF 2003) and out-of home placements of children (Thoburn 2007).

There are probably several reasons for this lack of data and contributions from Germany to the international debate on child protection. First, and most important even within Germany, there is not much empirical research on child protection (Kindler 2008). Academics doing social work education are the most interested group regarding child protection research. They are however predominantly located at so called applied universities often with little scientific training and until recently with little access to research grants. Moreover empirical research aimed to improve the child protection system in Germany has become a federal policy priority only within the last years and only within prescribed areas, especially early intervention/prevention, institutional abuse and serious case reviews.

Second, the language barrier combined with the size of Germany, which is large enough to create its own national discourses on child protection, has prevented the majority of social work academics in Germany

from learning about progress made in international child protection research. In some areas however seminal international research has become influential (e.g. the “nurse – family partnership” evaluations: Olds 2006 in the field of early prevention or the Social Care Institute of Excellence (SCIE) approach: Fish et al. 2008 in developing a method for serious case reviews in Germany) and has stimulated research in Germany. In addition, the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) has financed the creation of two evidence oriented handbooks on child protection practice and foster care services (Kindler et al. 2006; Kindler et al. 2011) with the aim of making international research available to front-line workers.

Finally, there is a deep-rooted tradition of idealistic philosophical thought in Germany. The influence of this tradition has vanished in most university departments but it is definitely alive in some schools for social work located at applied universities. Idealistic philosophy in social work, ranging from Phenomenology (for an introduction see Anderson, 2003) to so called “Critical Theory” (for an introduction see Rush, 2004), exhibits a wide variety of positions, but generally the empowerment of professionals by helping them to understand and reflect upon important ideas, aims, experiences, societal developments and their clients position within these processes are considered as central. Idealistic philosophy has nourished a lot of mistrust against instrumental reason and methodologies that should help to approach objective knowledge because a critical reflection on the aims, uses and underlying basic categories is not automatically included in this research. But more important time consuming and cost intensive empirical study of narrow concrete problems (e.g. work with neglectful families) is not valued very much within this line of thought because in effect practitioners are seen as able to reflect upon their experience on their own even in the absence of reference points in empirical research.

Media attention to and creation of child protection scandals (e.g. the “Kevin” case in the city of Bremen or the “Jessica” case in the city of Hamburg), in addition to of a lot of negative effects, has also had the positive effect in Germany of eroding the belief that practice can create a strong knowledge base on its own. In addition, several empirical studies have shed light on more systematic problems within the German child protection system. These include:

- Low reliability in case worker and team decisions regarding maltreatment risk and an intervention strategy (e.g. Pothman & Wilk 2009);
- High numbers of overburdened case workers (Seckinger et al. 2008);
- High numbers of children in out-of home placements combined with quick case worker decisions regarding long-term placement and weak efforts to restore parents parenting capacity (Thoburn 2007; Kindler et al. 2011);
- High numbers of under-served children with mental health problems and of children with problematic educational trajectories in out of home placement (Kindler et al. 2011)
- High numbers of families with recurrent maltreatment even after a child protection intervention (Kindler et al. 2008a, b).

There is however not only evidence regarding problems within the German child protection system that has to be reported in this nation report but also some evidence regarding progress. This is especially true for the early intervention/prevention field (e.g. Sann 2010) and the legal rights of parents and children to receive preventive and supportive child welfare services (Hagemann-White et al. 2010). Moreover some progress has been made in the areas of risk assessment (Kindler et al. 2008a) and in the prevention of institutional abuse (Helming et al. 2011).

5.2 Historical background

Defined as organized activity to help children at risk of significant harm, child protection has many histories because it started at a local level. Especially in Germany with its weak or even non-existent central state for a long period of time, states (Länder) had an important role before 1900. The first national child protection law was created in 1900 in Wilhemine German. After WWII, and until reunification in 1989, two German states existed with very different approaches to child protection. As an authoritative history of child protection in Germany has yet to be written this description of the historical background is sketchy and incomplete.

5.2.1 History of the recognition of different forms of child maltreatment

As a form of child neglect the abandonment of children by their parents seem to have been the first child protection problem that led to organized responses in Germany (Meumann 1995; Niederberger 1997) as well as in other European countries. First in the realm of religious charity organisations: in the second half of the eighteenth century several orphanages and foster care agencies organized by city councils are documented. Death rates for children, especially very young children, in orphanages or foster families were high and there were several reform attempts that aimed to guarantee proper care for these children. There are also documented cases of children who were taken back by their birth parents after they regained the resources to care for them (Frie 2010) and of foster children who were adopted by their foster parents and became respected members of society.

From the end of the eighteenth century onwards there was a steady debate in Germany on the fate of children who were not abandoned by their poor parents but left uncared for in the family or who had to do hard and dangerous work. This discourse should not solely be seen as a sign of the progressive recognition of children's rights because in part it was a reaction to a decline in living conditions in Germany at that time shown by anthromometric data (Ewert 2006; Cinnirella 2008; Coppola 2010). The mainstream response in Germany shortly after 1900 was the introduction of social policy especially social security systems that should protect male breadwinners (and secondary their families including children) against life risks (Wehler 1995). This approach was accompanied by legislation regulating but not completely banning

child labour. As however some vulnerable families still had difficulties to care for their children an additional social work discourse emerged. This discourse was about supporting and controlling families especially mothers to combat physical child neglect. A reading of the writings of central proponents of this mostly private charity movement (e.g. Frieda Duensing: Duensing 1903) shows the balance between an emphasis on support and an emphasis on control was constantly shifting and mixed with moral discussions regarding whether these families, or which of them, deserved help.

Around 1870 new voices were to be heard in the German child protection discourse emphasising not so much physical neglect but a neglectful socialisation and inadequate monitoring of minors. A special German term "Verwahrlosung" with a heavy moral connotation was introduced as a label for under-socialised children and adolescents with especially rigid norms being applied to the sexual behaviour of girls and young women. It is not clear why this new focus emerged as criminal statistics do not show a significant rise in youth crime during that time (Oberwittler 1997; Wegs 1999). One opportunity seems to be that mainstream society more and more felt threatened by social movements in the working and under class and wanted to tighten control. During that time the number of out of home placements was on a sharp rise (Ross Dickinson 2002) and concepts for the education of children and adolescents seen as under-socialised emphasised obedience to authority as a core basis for character development. Therefore rigid and violent systems of authority and control were installed in residential care facilities.

On the road leading to the Third Reich parts of German society developed a set of values (e.g. obedience) nowadays discussed under the headings of "authoritarian personality" (Adorno et al. 1950) or "Nazi conscience" (Koonz 2003) that contributed to a further radicalisation of inhuman educational practices in institutional settings (Berger & Rieger 2007). In addition, a child psychiatry claiming genetic roots of "Verwahrlosung" gained influence (e.g. Gregor & Voigtländer 1918) and was used as a further argument to separate and exclude these children and adolescents from society. While the child protection discourse in a radical way turned against children seen as "verwahrlost" or antisocial ("asozial") it is important to remember colleagues resisting that turn (e.g. Aichhorn 1925, Wilker 1925). Moreover for a complete history it is also necessary to note that racist and eugenic thoughts transformed child welfare services but the Nazi state kept investing large amounts of money to "rescue" children (e.g. through adoption services: Mouton 2005) seen as worth it.

After WWII, criteria for the placement of children and ways of treating them in residential care did not change very much at first. Again, the focus of the child protection discourse was on child neglect or children and adolescents behaving in a way seen as "verwahrlost" with some of the books written on this topic between WWI and WWII going into press again and again. Examining educational practices especially violence against children and adolescents in residential homes, Kuhlman (2010) concluded that there was only slow progress until the end of the sixties. At that time however things started to change in important ways.

First, child physical abuse and a little later child sexual abuse gained importance as forms of child maltreatment implicating not only criminal prosecution but child protection action. Before that time archive data suggest that criminal prosecution was the dominant response if a child was seriously injured by its parents (e.g. Richter 2011). Although less clear, the same may be true for intra-familial sexual abuse (Ross Dickinson 2007). After the 1970s and 80s, at least for child physical abuse, prosecution was seen as less helpful and a slogan “Hilfe statt Strafe” (help instead of punishment) was introduced into the child protection discourse.

Second, in the 1970s and 80s new ideas on how to respond to neglecting families and how to place and treat children started to emerge emphasising not authority and obedience but positive relationships, shared goals and practical support. There was a sharp increase in numbers of social workers and placement patterns changed to a pattern preferring foster care placements (Hansbauer 2002). However, despite a more cooperative approach to families, the total numbers of children in out of home care kept increasing from 83 per 10.000 under the age of 18 in 1970 to 93 per 10.000 in 1980 (with a slight decrease thereafter).

As a detailed and comprehensive historical analysis of German child protection discourses during that turning point is missing not all the contributing factors are clear. But a greater acceptance of democratic values as well as a rush towards social reform optimism in German society may have been important. Also studies from sociology and psychology, some of them (e.g. Wahl et al. 1980) from the German Youth Institute (current author’s institutional affiliation), were published describing positive attachments even between children and neglectful or violent parents, who due to their life circumstances and life histories were not able to take good care of their children. These studies worked to undermine perceptions of neglecting or violent parents as morally bad or insane. Regarding the recognition of physical child maltreatment as important for child protection, the first translations of the work of Kempe & Kempe (1980) was also influential.

In the German Democratic Republic, the socialist second German state from 1949 to 1989, not only a democratic turn, but any child protection discourse was missing because child maltreatment was seen as a problem confined to non-socialist societies. If child maltreatment was acknowledged as a social problem it tended to be explained as psychopathology of individual parents (Gries 2002). Focusing on re-education of children seen as problematic and without a legal obligation to respect parental autonomy, the placement of children and adolescents in residential care was a common form of intervention. In these institutions rigid, harsh and sometimes cruel forms of treating children and adolescents seem to have been common (e.g. Zimmermann 2004; Sachse 2010).

Even after the reunification, the child protection discourse in Germany until now has not paid much attention to psychological abuse and emotional neglect as forms of child maltreatment. Although both forms are listed in introductory publications, there are very few publications or training courses focusing on psychological maltreatment and/or emotional neglect (Kindler et al. 2006). This is astonishing because attach-

ment theory which can be seen as a guiding theory in understanding the detrimental effects of both forms of maltreatment in early childhood has become influential not only in developmental psychology in Germany, but also in the child and youth welfare services area. Currently, however most publications inspired by attachment research deal with the situation of foster children while suggestions regarding the assessment of emotional neglect and psychological abuse are missing.

5.2.2 History of child protection legislation in Germany

In 1896 a civil code (Bürgerliches Gesetzbuch - BGB) for the German Reich was passed including a section (§ 1666) regulating state interference with parental rights. Before that time there had been some laws in some German states (Länder) regulating state interference. For example, there was a law in the state of Hessen listing criminal behaviour of the child or the adolescent, physical neglect, repeated and heavy physical maltreatment and a present danger of moral corruption of the child serious enough that positive parental and school influence alone seem inadequate as reasons to place a child even without parental consent. Moreover in some states (Länder), there were also other relevant regulations regarding child labour, special ways of handling criminal charges against minors and the control of institutions or foster families where children were placed. The penal code books analyzed in the literature did not include special sections on the physical maltreatment of children. If prosecuted at all physical maltreatment of children probably was seen as bodily injury. There were however some special regulations regarding infanticide which, as a phenomena, captured the attention and imagination of contemporaries (e.g. Peters 2001). Within the state penal codes there were also some laws against immoral behaviour including sexual violence against children but sometimes in the way laws were formulated or applied there seemed to have been some confusion about who was to blame if sexual violence happened (Künzel 2003).

Section 1666 of the civil code of 1896 introduced the term “Kindeswohlgefährdung” (child endangerment) as a threshold for state interference with paternal rights. Section 1666 focused solely on fathers who were traditionally seen as family heads. If a situation was seen as child endangerment the court had to act and protect the child. Doing this the court could place the child outside the family. Child endangerment was defined as severe misuse of parental powers (e.g. severe physical maltreatment, inciting a child to steal or modeling other criminal behaviors), child neglect or parental behaviour without honour or morality (e.g. alcoholism, adultery). During the nazi dictatorship there were several quite bizarre published court decisions which expanded the term child endangerment even further to include situations where a non-jewish, german father wanted a child to live with a jewish family or where a father denied the child membership in the “Hitlerjugend” (Hitler youth). After WWII and the formulation of the German constitution, the so-called German basic or fundamental law (Grundgesetz – GG), courts developed a much more restricted understanding of the term child endangerment. In a famous definition formulated by the Bundesgerichtshof, the highest civil court in Germany, child endangerment was restricted to situations where it can be foreseen with a high degree of certainty that there will be considerable harm to the child or adolescent. Therefore the decision whether there is child endangerment or not still is a prognostic one, but the mere possibility of

future harm is not enough. Also immoral parental behaviour does not constitute child endangerment if it cannot be shown that there are important negative consequences for the child. In general considerable harm is defined as danger for the children's life or health or as a way of rearing the child that prevents him or her from developing the competencies necessary for an independent life within society. But there was not only a restriction in the definition of child endangerment there was an expansion as well. Based on a central section of the constitution on the protection of human dignity excessive physical punishment of children was seen much more critically and therefore more often classified as child endangerment (Parr 2005). Since WWII there have been several changes to section 1666 BGB. In 1958 mothers were included. In 1980 there were several changes in section 1666 BGB. First the reasons for state interference were reconceptualised. Misuse of parental power and child neglect remained unchanged but parental behaviour without honour or morality was omitted. Two other possible reasons for child endangerment were added: Parenting breakdown without fault of the parents (e.g. due to mental illness or addiction) and failure of the parents to protect the child from dangerous other persons. Moreover a second requirement for state interference was formulated. It had to be shown that the parents were unwilling or unable to take action (with or without parenting support) against present dangers for their child's best interest. This of course had the consequence that such help had to be offered and tried before - as a possible next step - there was an involuntary child protection intervention by the state. Third the law explicitly stated that dangers to the mental health and emotional well-being of the child should also be considered not only dangers to physical health or cognitive development. The most recent changes to section 1666 BGB were made in 2008 in response to the suggestions of a commission (including the author of this report). The list of possible reasons for child endangerment was dropped altogether from the law because the courts should focus on the situation of the child as a whole. Instead a list of possible court measures (e.g. court orders, removal of some or all parental rights) if state intervention is needed was included because courts wanted to get involved in child protection cases earlier to avoid complete removal of parental rights more often.

"Child protection in Germany is not only regulated through family law and – indirectly – through criminal law; many of its central statutes are to be found in social law". This statement of Thomas Meysen one of Germany's leading juridical experts on child protection is included in another country report on the German child protection system (Hageman-White et al. 2010, p. 45). A national youth welfare act passed in 1922 may be seen as a starting point for the development of this social law although there were some earlier regulations in several states (Länder) and even at a local level. The first national law formulated a obligation for all cities and counties to create a child and youth welfare authority (Jugendamt) responsible for interventions in families whose children might be in danger but also for the supervision of foster parents and the care for abandoned, orphaned and poor children (for a more detailed description see Uhlendorff 2003 p. 308ff). Collaborating with the police and the court, the main focus was on control and intervention but there was also the idea of prevention and support for families and children in need. Especially regarding prevention and support but also in the area of care for children in out of home placement the child and youth welfare authority had an obligation to collaborate with non-governmental organizations (NGO's) ("Freie Träger", e.g. a residential home run by a church) and to stand back if a service could be

delivered by one of them (principle of subsidiarity). The national youth welfare act was also important because it made some kind of training mandatory for the workforce in child and youth welfare authorities.

After WWII, a new law on child and youth welfare services was introduced in 1962. But it changed and modernised only some outdated terms and regulations. A big change did not happen until 1990 when the Act on Child and Youth Welfare Services (Kinder- und Jugendhilfegesetz – KJHG) was passed. Thereby the Social Code Book VIII (Sozialgesetzbuch VIII – SGB VIII) was created. In that law an additional and new threshold for child and youth welfare services was created and linked to a right of parents to receive child and youth welfare services. The threshold (parents cannot guarantee the child's best interest) was set below the child endangerment threshold to make sure that services can be received before problems escalate to a point where an involuntary child protection intervention will be inevitable. Moreover an array of different child and youth services became listed in the law and local child and youth welfare authorities were obliged to hold these services available (e.g. family counselling, social pedagogical family help, foster care, residential care). Finally an obligatory service planning procedure (Hilfeplan) incorporating parents and children was introduced. The Act on Child and Youth Welfare Services had a clear focus on prevention and collaboration with families. Therefore it created a break with older more authoritarian traditions.

Although in general the law received very positive feedback there was some critique that it had little to say about how to handle cases where child endangerment is suspected. The issue first was raised in scholarly debates but soon afterwards there were also some "child protection scandals" reported in the mass media. In reaction, a new law was made in 2005 (Law on the Further Development of the Child and Youth Welfare System: Kinder- und Jugendhilfeweiterentwicklungsgesetz – KICK). In this law it was emphasised that all child and youth welfare workers, whether their workplace is at a child and youth welfare authority or at a NGO active in that field, have a duty to protect children from endangerment. Moreover a section of the law formulated an obligation to perform an assessment if there were concrete hints for any form of endangerment (mandatory assessment). Children and parents should be given the opportunity to participate during the assessment. Co-workers or experts have to be consulted during the assessment. If as a result of the assessment it is concluded that there is child endangerment and if there is a need for child and youth welfare services these have to be offered. If due to lack of cooperation of the parents the assessment cannot be completed or if child endangerment cannot be eliminated the case has to be taken to court. With the Law on the Further Development of the Child and Youth Welfare System for the first time quality standards for the handling of child maltreatment cases were introduced in the German child and youth welfare system. This on the one hand created a big challenge for workers and organisations in the field. On the other hand it was accepted as a necessary step towards improving quality in the German child protection system.

Even more recently, there were additional laws at the federal as well as the state level aiming to improve the way other institutions (e.g. the family court, pediatric clinics and schools) handle cases in which child endangerment may be suspected. In a law reforming family court procedures (Gesetz über das Verfahren

in Familiensachen – FamFG), a section regulates that some cases including cases of possible child endangerment have to be handled with priority. More than half of the states in Germany have also passed laws to make clear under which preconditions medical and school personnel reporting the child and youth welfare authorities about a suspicion. Only in two states are there obligations to do so (mandatory reporting). A national law on this issue is in preparation. Most of the states also passed laws that made baby-well visits (regular pediatric examinations) mandatory including a notification to the local child and youth welfare authority if - despite reminders - parents did not bring their child to the baby-well visit. With respect to child protection however this turned out to be ineffective because only very few cases of child endangerment (probably at a rate not significantly above the base rate) were detected (Kindler 2010).

As a last element in the history of child protection legislation in Germany a law banning the corporal punishment of children by parents passed in 2000 should be mentioned. Because a violation of this law does not implicate any sanctions for parents the main purpose is to give parents guidance. In contrast to most other laws in the child protection field this law has been evaluated (although with a weak correlational design) showing an association between the new law and a further decrease in the acceptance and use of corporal
punishment by parents (Bussmann 2004).

5.3 Legal and policy Frameworks

Although policy analysis can be seen as a field of political science with well developed methods (e.g. Fischer et al. 2007; Weimar 2010) I am not aware of any study who has tried to do a methodological sound analysis of German child protection policies. Even in the more restricted field of legal framework analysis one has to say that there are hardly any publications that include family law, social law and criminal law. This may suggest that child protection in Germany is rarely perceived and analyzed under a systems perspective. There is however an unfolding debate on quality criteria on a systems level for the German child protection system (e.g. Amt für Soziale Dienste & Kronberger Kreis für Qualitätsentwicklung 2010; Kindler in prep.).

5.3.1 What is meant by the term child protection?

There is a narrow, a broad and an extended meaning of the term child protection in Germany. In the narrow view child protection is about organized activities to detect and handle cases of child endangerment, which as a legal term includes cases where maltreatment has already happened and there is a risk of recurrence as well as urgent cases where there is a danger that maltreatment will happen. The handling of the case has four aims:

- protect the child,

- rehabilitate parent’s parenting capacity if possible,
- help the child to stabilize or regain a positive developmental path, and
- protect the rights of parents and children during any child protection procedure.

Organized activity may refer to the way a case worker is acting (including reflection and documentation) using the resources of his or her organisation and taking into consideration the regulations relevant for the case or it may refer to the activities of an organisation or several organisations together (e.g. family court and child and youth authority together). Most of the time the term “child protection” in a narrow sense is used with clear reference to real cases, but can sometimes include activities to plan the way in which services will be provided (e.g. a talk on cooperation between a pediatric clinic and a child and youth welfare activity on the handling of suspicious cases).

It is important to note that even in a narrow sense child protection both voluntary and involuntary interventions. For example, child protection interventions can include placement of the child against the will of the parents. However, if there is joint understanding between parents and the child and youth welfare authority on what is needed to prevent future maltreatment (e.g. social pedagogical family help) this can be done without any involuntary act or withdrawal of some or all parental rights.

There are some quality standards in law for the way in which narrowly defined child protection intervention provided by child and youth welfare services must be performed (e.g. section 8a of social code book VIII). For example, assessment of the situation of the child, participation of parents and child, and reflection with experienced co-workers. There are some additional regulations in other fields applying to professional activities in this narrow sense of child protection (e.g. permission to break confidentiality for medical personnel, priority that has to be given to child protection cases at the family court).

In a broad view all forms of psychosocial support for families with parenting difficulties or at risk for parenting difficulties are included in the term child protection. Although it is clear that most of these families would never maltreat a child even in the absence of any support it is equally evident that in some families psychosocial support may help to prevent child endangerment. In effect research outside Germany has shown exactly such effects (e.g. Reynolds et al. 2009; Prinz et al. 2009) but for most of the professionals within the German child and youth welfare system this is practice wisdom. It is important to note that in Germany families with parenting difficulties “who cannot ensure the child’s best interest” (section 27 social code book VIII) have a right to receive child and youth welfare services. They also have some procedural rights, such as the right to participation, and the right to choose between different providers and/or different forms of support if they are equally adequate and not too different in costs. Regarding families at risk for parenting difficulties (e.g. poorly educated families with a newborn) early support services (e.g. home visiting) are available in an increasing number of areas within the country (Sann 2010), but families do not have a right to receive such services. The inclusion of preventive services in the concept of child protec-

tion is not uncontested. For example, Schone (2010) argues that a narrow focus on the prevention of child maltreatment is inappropriate for case workers and managers and may work to make such services less attractive for families who may fear they wil be seen as potential child abusers.

Sometimes but not regularly the term child protection is also used in an extended way covering the protection of children from pornography and extreme violence in the media, fighting child poverty or preventing child sexual abuse outside the family (e.g. through stricter control of convicted sexual offenders) and institutional abuse. For example in the moment the German Bundestag (our federal parliament) is debating a Federal Child Protection Law (Bundeskinderschutzgesetz) which will include an obligation of all institutions providing child care to check the penal clearance certificate for their workforce and prevent persons with a conviction for a sexual offense from working with children. An obligation for residential care facilities and comparable institutions to develop procedures to prevent and handle institutional abuse will also be included.

Differing from at least some European countries, cases which require interventions after criminal or rule breaking behaviour of adolescents often are not considered to be child protection cases although child protection laws are applicable until the age of 18. Instead, at least at a case worker level, these cases are often seen as ordinary child and youth service cases (without any possibility of involuntary actions) or as cases for a special service called juvenile court assistance (if there are any criminal proceedings). For example, last year the society for communal studies (Verein für Kommunalwissenschaften 2011), the scientific organisation of the cities and counties in Germany, organized a symposium under the heading “Child protection also for adolescents?” which makes clear that it cannot be taken for granted that adolescents whose antisocial behaviour puts their own future at risk, can be the focus of a child protection intervention.

The meaning of the term child protection is also a state of flux in relation to which cases should be included as the scientific understanding of factors that can cause significant harm is changing. This may be illustrated regarding cases of high conflict divorce and cases of partnership violence. Regarding both case groups it has been demonstrated that at least some children show long-term and substantial detrimental effects (e.g. Fichtner et al. 2010; Kindler 2006). As a result there have been several statements and court decisions about child protection interventions in contemporary cases of this nature.

It is clear that a narrow, a broad and a extended understanding of child protection are not mutually exclusive and can coexist, especially if used in different contexts. There may however also be tensions and conflicts. For example the recent emphasis on how to handle cases where child maltreatment has to be suspected (e.g. section 8a now included in the social code book VIII) has been understood as a critique and correction of a broad understanding of child protection that in practice lead to an attitude that was not attentive enough to cases where maltreatment was ongoing despite the provision of some kind of supportive service (Hensen & Schone 2010). On the other hand, there is also the critique that an over-emphasis on a narrow understanding of child protection may lead to shortage of resources for preventive interven-

tions, may change the public image of child and youth welfare services and may discourage parents to ask for support which in turn may lead to even more cases of child endangerment. Therefore in effect a balanced view of child protection is needed.

5.3.2 Legal framework to protect children

Based on social law (section 27 social law code book VIII – SGB VIII) all parents who cannot ensure their child's best interest have a right to receive child and youth welfare services. This is a lower threshold than the child endangerment threshold, which justifies involuntary child protection interventions if the parents are unable or unwilling to avert the danger. Therefore the right to receive services is important under both a broader and a more narrow understanding of the term child protection because in both case groups parents have the right to receive child and youth welfare services which may help to prevent or avert child endangerment. Whether the threshold of section 27 is exceeded has to be judged by the local child and youth welfare authority. In cases of conflict an administrative court has to make a decision. If the local child and youth welfare authority agrees that parents have the right to receive child and youth welfare services or if the authority does proactively offers services parents and children have some procedural rights regarding the selection and enactment of services. For example the parents have the right right to choose between different providers and/or different forms of support if equally adequate and not too different in costs. By law there is also an obligation for most services (excluding family counselling) to make a plan, which has to be evaluated periodically. This plan should encompass the views of all relevant family members including children and should contain information about family needs and services to be provided.

If a child and youth welfare professional has strong suspicions that any form of child endangerment is occurring in a family he or she works with (child and youth welfare provider) or in a family he or she is responsible for (child and youth welfare authority) an assessment has to be made regarding whether there is child endangerment. If the assessment finds there is child endangerment, then the assessment must also indicate what has to be done to avert the danger. Section 8a of the social law code book VIII outlines the rules for this kind of assessment:

First, the assessment has to be completed. If this is not possible due to parental non-cooperation a provider of child and youth welfare services has to inform the child and youth welfare authority. If a child and youth welfare authority cannot complete such an assessment the family court must be informed.

Second, a provider of child and youth welfare services doing such an assessment does not have an obligation to inform the child and youth welfare authority immediately. If there is no emergency but more support is needed the parents may first be encouraged to talk to the child and youth welfare authority on their own.

Third, children (if old enough) and parents have the right to participate during the assessment if this does not pose an additional significant risk. If professionals conclude that there is child endangerment parents however do not have to agree.

Fourth, co-workers or experts have to be consulted during each assessment.

Fifth, if as a result of the assessment it is concluded that there is child endangerment and that there is a need for child and youth welfare services, these have to be offered (child and youth welfare authority) or parents have to be encouraged to ask for additional services (child and youth welfare service provider).

If pediatricians, day care or school personnel have a strong suspicion of any form of child endangerment they have special rights or duties in some of the states (Länder). However, a duty to report (mandatory reporting) only exists in a small minority of states (e.g. Bavaria for medical personnel). In most state pediatricians, day care or school personnel have a right but no obligation to inform the child and youth welfare authority if there is no other way to make sure that the child is protected. Until now there is no comparative evaluation of different regulations regarding reporting. A draft-law that probably will be passed by the German Bundestag soon will make clear that professionals working with parents or children will have no obligation but the right to inform the child and youth welfare authority if they have a strong suspicion of any form of child endangerment ("a weighty ground to assume child endangerment") and there is no no other way to make sure that the child is protected. Professionals will have a right to receive anonymous counseling if they are insecure about what to do.

If a child protection case is taken to the family court or if the court initiates a proceeding on its own the court has to clarify two things (section 1666 civil code): whether or not there is child endangerment and whether or not the parents are unable or unwilling to avert present dangers. Child endangerment has been defined by the highest German civil court as a situation where it can be foreseen with a high degree of certainty that there will be considerable harm to the child or adolescent. It is easy to see that this definition is future oriented. If there has been maltreatment in the past it has to be considered whether there is a risk of recurrent maltreatment. Considerable harm has been defined as danger for the children's life or health or as such an inadequate way of rearing the child that he or she cannot develop the competencies necessary to be independent within society. If the court does find the presence of child endangerment and of parental inability or unwillingness to avert present dangers the court has to act to protect the child. Possible court actions include court orders (e.g. to use services offered by the child and youth welfare authority or by health care institutions or to ensure that the child attends school), restraining orders, or the removal of some or all parental rights and the appointment of a guardian who then for example can make a decision that the child has to live in a residential home. The court has an obligation to act in accordance with the principle of proportionality. There are of course some regulations regarding the court proceeding (e.g. that if the child is above the age of three, there must be a hearing with the child), that the parents and also the child and youth welfare authority have to be heard or that the court has to the possibility to appoint a court expert to answer some questions relating to evidence.

The family court is the only institution legally entitled to interfere with parental rights. There is however an exception for cases of emergency. In such cases the child and youth welfare authority has the right to take a child into care (section 42 social code book VIII). The parents have to be informed (e.g. if the child is at the school when taken into care) and if they oppose the child must be returned to their care or the case has to be taken to the court without delay.

Social and civil law on child protection in Germany do not differentiate between physical abuse, neglect and sexual abuse. Psychological abuse and emotional neglect, in principle, are also included in the definition of child endangerment. However, in reality psychological abuse and emotional neglect are unlikely to be responded to under child endangerment laws. Regarding criminal law there are some differentiations and restrictions between different forms of maltreatment. For example regarding sexual abuse any sexual activity with children (persons below the age of 14) is punishable. The same is true under the age of 18 for biological or adopted children. The corporal punishment of children is punishable only if it trespasses the threshold of bodily injury (section 223 of the penal code). As the child's best interest is not in the focus of criminal proceedings there is no criminal complaint in most child protection cases. This may be seen as an important aspect of the German child protection system. For example Thomas Meysen states: "The separation between child protection and prosecution is central to the German approach to child maltreatment" (Hagemann et al. 2010, p. 45) and goes on to say: "Child protection is based on the view that for effective protection and assistance, it is vital to win the trust and cooperation of the families whenever possible. Criminal prosecution may impair this relationship, especially if the abuse occurred within the family" (Hagemann et al. 2010, p. 45). Therefore neither the child and youth welfare authority nor the family court have an obligation to make a criminal complaint even if a punishable act of abuse or neglect is suspected. The child and youth welfare authority however has the right to make a criminal complaint if this seems to be necessary to protect the child and does not interfere with or reduce the chance of child and youth welfare services being provided (section 64 social code book VIII).

None of the laws cited in this section of the case study does make an explicit reference to the UN convention on the rights of children. The same is true for the definitions of all the legal terms with central importance to the German child protection system (e.g. child endangerment). There is however a fundamental concordance between the German legal framework and the values of the UN convention on the rights of children which of course does not preclude violations in some cases (e.g. AGJ 2010).

5.3.3 National policies and strategies for the protection of children

Because of the importance of local actors and the principle of subsidiarity in the German child protection system there is no organisation or authority with the power to formulate national policies or strategies for the protection of children. Moreover child protection and child and youth welfare services often are not very distinctive topics in professional debates. Principles seen as important for successful child and youth welfare services are in general also seen as important for successful child protection. An orientation to-

wards a broad understanding of the term child protection (see above) may be one of characteristics of a German approach to child protection (this general orientation is of course not without exceptions).

In an attempt to describe ideas for child protection capable of winning a majority of professionals in the field I have searched a German literature database on child and youth welfare services (Literaturdatenbank der Arbeitsgruppe "Fachtagungen Jugendhilfe" im Deutschen Institut für Urbanistik: www.fachtagungen-jugendhilfe.de/literaturdatenbank/ldb/index.phtm) using several combinations of work principles with the term "Kinderschutz" (child protection) and counting the number of hits. I have also discussed the question with several colleagues at the German Youth Institute.

By far the most prevalent combinations were "child protection and networking" and "child protection and participation". This was in accordance with colleagues views. Reading the literature the appreciation for "networking" as a principle in child protections seems to be based on the assumption that neither the detection nor the safeguarding of maltreated children can be achieved by child and youth welfare authorities alone. Therefore cooperative relationships with other professionals (e.g. pediatricians) and with members of the child's family have to be built. Serious case reviews in Germany as well as in other countries have shown that a lack of cooperative relationships may have adverse consequences for children at risk (Fegert et al. 2010). Moreover practice projects have shown that professionals engaged in round tables feel they are helpful for their work with families (e.g. Kindler 2011). However, to date in Germany there have been no quasi-experimental or experimental studies showing that networking projects do have any effect on case detection, case flow and case outcome.

Participation has a strong legal basis in the German child and youth welfare system including assessment procedures regarding child endangerment. The rational behind the importance attributed to participation lies with the idea that dangers within the family can only be averted if parents can accept interventions and feel encouraged to cooperate. Even if there is an out of home placement it may be easier for the child to cope with this if the parents do not strongly oppose the placement (e.g. Strijker et al. 2009) or if the child does not feel overlooked. There are some correlational studies (although no study with a child protection sample) showing that participation predicts better case outcomes. It is however unclear whether this reflects a selection effect or a causal effect. Therefore experimental studies in this area are needed (e.g. training case workers to encourage participation). Intervention studies would be possible because critical reviews of service as usual show that the theoretical importance attributed to participation often is not reflected in practice (e.g. Ackerman et al. 2010).

5.4 State, local authority and nongovernmental provider relationships

Germany is a federal state. The federal government has to ensure comparable living conditions in all parts of Germany. This in the past has been the justification for federal laws in the area of child protection. The leading ministry for laws addressing the child and youth welfare services system (e.g. the National Child Protection Law – Bundeskinderschutzgesetz) has been the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (Bundesministerium für Familie, Senioren, Frauen und Jugend – BMFSFJ) while the leading ministry for laws addressing the court system (e.g. Law on Family Court Interventions in Cases of Child Endangerment – Gesetz zur Erleichterung familiengerichtlicher Maßnahmen bei Gefährdung des Kindeswohls) has been the Federal Ministry of Justice (Bundesjustizministerium – BMJ). The Federal Ministry of Education and Research has been active during the last two years as one of the organizing ministries of a round table discussing measures of support for victims of institutional abuse in the past and measures against the institutional abuse of children now. Neither the Federal Ministry of Health nor the Federal Ministry of the Interior have been active in the area of child protection to date. The leading role is with the Chancellor who has had two talks with the governors of all German states on child protection.

Beside a role in initiating laws especially the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth has influenced child protection policies in Germany through the funding of research or practice projects. Relevant projects in the last years include a project “child protection and high conflict divorce”, two randomized control trials on the effects of early prevention programs and a project on the effects of quality development workshops on local child protection networks. The Federal Ministry of Education and Research recently has joined funding activities and is funding two research programs: A basic research program on causes and effects of child maltreatment and a applied research program on the prevention of child sexual abuse, particularly in institutions.

The states (Länder) have competencies to regulate on their own some areas relevant to child protection (e.g. public health care) and they have the competence to supplement federal law. Nearly all of the states have passed some laws with relevance for child protection (for an overview see Nothhafft 2009). For example, in most states well-baby examinations (regular pediatric examinations) have been made mandatory including a notification to the local child and youth welfare authority if - despite reminders - parents do not bring their child to the well-baby visit. The local child and youth welfare authority then visits the child and its parents at least once to check whether the child and the family are in need of support. Moreover all of the states have an obligation to organize one or several providers (“überörtlicher Träger”) responsible for counselling local child and youth welfare authorities. These providers also have an oversight function for residential care facilities. The states are responsible for the court system, e.g. the number and training of family judges. However, because judges and courts are independent, state jurisdictions have limited power to influence the judges and courts understanding of child protection issues. Even judiciary participation in training is voluntary. Some states have been able to fund demonstration projects. One example is

an e-learning project on child protection for home visitors funded by the state of Baden-Württemberg. In Bavaria the state has co-funded professionals for networking in early prevention in every county and city.

Cities and counties in Germany are responsible for the translation of the regulations of the social code book VIII in practice. That means they have to organize a child and youth welfare authority with responsibility for ensuring that a range of services as listed in the social code book VIII are available (although the authority does not have to provide these services on its own if NGO's are willing to do this). Moreover on a single case basis the child and youth welfare authority case workers have to plan child and youth welfare services together with parents and children and have to decide whether a family has the right to receive certain child and youth welfare services. They have to do assessments regarding the presence of child endangerment if there are strong suspicions that any form of maltreatment is occurring and they have to take the case to court if they cannot work out a plan together with the parents on how to avert present dangers. Finally, in cases of emergency they have to take children or adolescents into care ("Inobhutnahme"). In some cities and counties there is also a public health department that is active in the area of child protection most often providing some kind of early prevention (Sann 2010). In some cities and counties there are child protection round tables discussing ways to collaborate between different authorities, departments and providers. Some states have even made such round tables and networks mandatory. Regardless whether they are mandatory or not, these networks are most often organized by the local child and youth welfare authority. Although the financial situation of most cities and counties is not good, some have invested in practice projects. For example the first validation of a German risk assessment tool for child and youth welfare services was financed by the cities Stuttgart and Düsseldorf (Reich et al. 2009).

NGO's ("Freie Träger") have a strong position within the German child and youth welfare system. Because of the principle of subsidiarity the child and youth welfare authority does not provide certain types of services on its own if there are NGO's willing and able to provide this type of service. Moreover parents should have a right to choose between different service providers (section 5 social code book VIII). However the activities of NGO's are not unregulated. They have to enter into contracts with the child and youth welfare authority on the quality of services provided and the money they receive. There also has to be a contract on the quality of assessment procedures in cases of possible child endangerment. Finally (excluding family counselling) on a single case basis aims and services provided are agreed upon in a case conference with the child and youth welfare authority, the provider, the parents and (if possible) the child participating.

In summary the states and the federal state have legislative powers and an enabling or guiding role (e.g. through demonstration projects). There is nothing like the UK inspectorate system. States and the federal state do not control (except for residential care facilities) the provision and quality of local child and youth welfare services. To date there has been little comparability between cities and counties regarding the quality of the local child protection and child and youth welfare system, although some cities and counties have organized discussion groups and some measurable quality criteria are in discussion. The most important actors for child protection are on a local level: The child and youth welfare authority, the family

court and the NGO providers of child and family welfare services. Although most often there is some kind of collaboration it is important to note that the health care system, the educational system and the police have no strong institutional position within the German child protection system. The child and youth welfare authority and the NGO providers of child and family welfare services have an obligation to cooperate (section 4 social code book VIII). In the end however the responsibility for the functioning of the child protection and the child and youth welfare system lies with the child and youth welfare authority. In single child protection cases with conflicting views the final decision regarding whether there must be an involuntary child protection intervention lies with the family court. The family court however has no right to advise the child and youth welfare authority to pay for certain services. Therefore the court and the child and youth welfare authority need to work together otherwise cases can become paralyzed (e.g. if the court does not want to place a child but thinks, ambulant family support is needed whereas the child and youth welfare authority does not want to pay for ambulant family support because from their point of view it is not enough to protect the child). One effect of the strong role of local actors are substantial differences in nearly all aspects of the child and youth welfare system ever measured (e.g. staffing, number of children in out-of home placement, number of children taken into care, number of children reunified with their parents after placement: Seckinger et al., 2008; Kindler et al. 2011). Studies have shown that these differences cannot be explained using indicators of the social situation of the population served (e.g. Van Santen et al. 2000). Therefore it is likely that teams or whole child and youth welfare authorities develop "traditions" regarding specific aspects of their work (e.g. their attitude towards out-of-home placement). This variation however has not been used as a kind of natural experiment for effects on children's well-being.

5.5 National data bases

In the social code book VIII there are some regulations regarding statistical data that have to be collected in the same way in all child and youth welfare authorities. These data therefore can be aggregated at different levels (e.g. the federal level). Most of these data however focus on services provided (e.g. foster care placement).

For several reasons it is not possible to estimate the number of child maltreatment cases that become known to child and youth welfare authorities based on these service data. First, the same services may be provided for different reasons. Second, children and families may receive more than one service at a time and several services in sequence. As there are no identification numbers in these data sets we cannot reconstruct case trajectories. Third, the number of cases where a service is provided and the number of children per case may vary. Fourth, child maltreatment reports and substantiations are not counted. Fifth, the German child protection system mixes cases where maltreatment has happened with cases where maltreatment is likely to happen.

For all this reasons we do not know how many maltreated children or how many endangered children become known to child and youth service authorities every year. Recently a question was added to the data collection sheet asking whether the reason the current services were provided was due to child endangerment. Initial data show that in about 15% of all child and youth welfare services, child endangerment was named as a reason for granting this service (Fendrich & Pothman 2010). As this is a new statistic it may be especially error prone at the moment. If it is assumed that there is only one child per service and that there are no children with two or more services per year 64 per 10.000 children in Germany take part in a child and youth welfare service because of maltreatment or a recent danger of maltreatment. Compared to international data this figure lies in a middle range (e.g. around 30 for England, 75 for Australia, 120 for the US, 211 for Canada) (Fluke et al., 2008).

A perhaps more trustworthy statistical system counting maltreatment reports and the results of child endangerment assessments according to section 8a social code book VIII on a national level is being developed.

There are some official data from the child and youth welfare statistic on the number of children taken into care in an emergency situation and the number of children with a court intervention due to child endangerment. These figures, respectively, are 10.6 and 11.6 per 10.000 children in 2007 (Fendrich & Pothman 2010). Both figures have risen during recent years (an increase of 82% between 2005 and 2008 for children taken into care in an emergency situation and 48% for children with a court intervention due to child endangerment). It is clear however that both statistics only capture a small part of all cases of child endangerment because chronic forms of endangerment (e.g. neglect) or cases where parents and child and youth welfare authority agree on a plan regarding how to avert present dangers are not included.

There are also official data on the number of child in out-of home placement. The rate is about 74 per 10.000 children under 18 with about the half of these children living in foster families (Kindler et al., 2011). Compared to international data the rate of children in out of home placement is quite high in Germany (Thoburn 2007), which in part seems to be an effect of high numbers of long-term placements resulting from very low numbers of adoptions and low numbers of reunifications (Kindler et al. 2011) (See Figure 47).

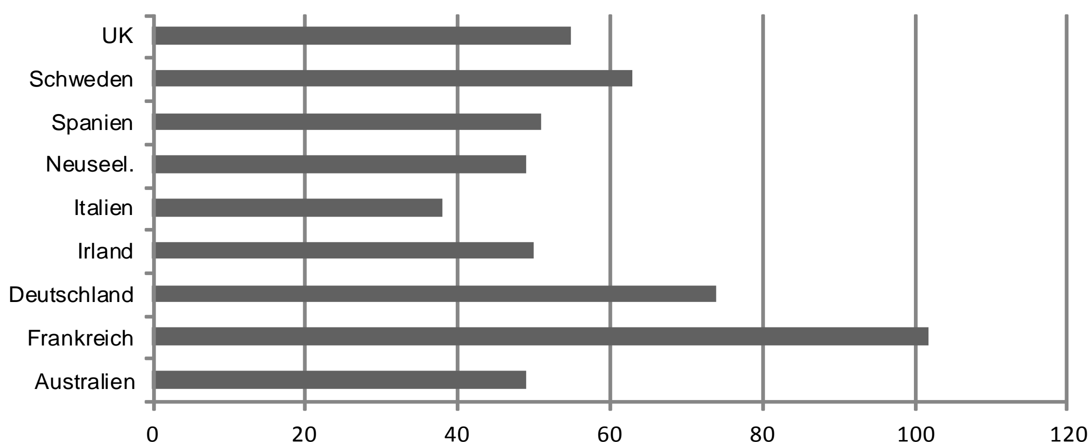

Figure 47: Rates of children (below 18) in out-of home placement during a year (Thoburn 2007)

The high rate of children in out-of home placement is astonishing because Germany has had high investments in ambulant services (e.g. social pedagogical family help). There are also official data on maltreatment related child deaths including international comparisons (Unicef 2003) placing Germany in the middle range of developed nations.

Regarding population rates of maltreatment there are two representative studies with adults (Häuser et al. 2011, Wetzels 1997) but no representative studies with children and/or adolescents, although such a study is in preparation. Representative published studies using standardised measures of child maltreatment risk are also missing, but unpublished data screening more than 90% of all births in county and more than 80% of all children attending kindergarten in another county found three to five percent of cases with multiple risks (Project risk epidemiology: Künster, Kindler, Thurn et al.). One representative study has looked at the number of sexual abuse cases that become known in schools and residential care facilities (Helming et al. 2011). According to that data more than half of all residential homes and about a third of all schools had to deal with at least one case of possible child sexual abuse during the last three years. Most cases were only detected because a child had disclosed the abuse to an adult person working in the school or the residential home. This was true regardless of type of sexual abuse (sexual abuse by a professional, by another child or adolescent inside the institution or outside the institution).

As already mentioned child maltreatment reports as well as endangerment assessments and their results have not been counted and therefore cannot be monitored on a state or federal level. Some counties and cities however have started to collect such data and have installed monitoring systems (Wohlgemuth 2009). Because the number of years and communities with available data is small, stable trends cannot be described and rising figures should not be over-interpreted. Together with rising figures of children taken into care in emergency situations and rising figures of court interventions due to child endangerment it may be speculated that the child and youth welfare system has to handle more and more child protection cases. It is however unclear whether population rates of maltreatment are rising in Germany for ex-

ample because adults with mental problems more often become parents. It is however quite clear that attention processes and fear of professionals also are important factors. For example the number of children going into out of home care had its highest growth rate in the state of Bremen after a child abuse scandal happened there.

Some studies have looked at the ratio of different forms of maltreatment (sexual abuse, physical abuse, neglect and psychological abuse) within German samples of cases taken to the family court (Münder et al. 2000) and within samples of children in out-of-home care due to child endangerment (e.g. Kindler et al. 2011). Consistent with the international literature, child neglect was much more common than physical abuse and sexual abuse with psychological maltreatment being a common co-factor but rarely the sole reason for a significant child protection intervention. In most child protection cases there was more than one form of child maltreatment. Given this data one might wonder why few professionals see themselves as specialists for child neglect or try to do research on this form of child maltreatment (Behl et al. 2003).

In Germany research on the effects of child and youth welfare interventions is still rare. Existing studies (e.g. Schmidt et al. 2002) do not differentiate between cases with or without one or more forms of child maltreatment and do not use child maltreatment recurrence as one of the outcome criteria. Focusing on behaviour problems these studies find weak to medium sized positive effects. This is in accordance with comparable other European studies on service as usual (e.g. see the meta-analyses of van Yperen et al. 2010). Focusing on child protection cases and service as usual Kindler et al (2008a, b) found child maltreatment recurrences within three years (average) in more than two thirds of the cases and out of home placements in more than half of the cases. Examining children who were placed in foster families after child maltreatment in the birth family more than a third of the children showed signs of psychopathology and more than half of the children showed educational problems (Kindler et al. 2011). More than half of the children with mental health problems turned out to be untreated.

Based on these data it is hard to avoid the impression that there is room for improvement in the German child protection system. Several strategies for improvement seem to be promising. One strategy to reduce maltreatment recurrence may be to introduce short but validated risk assessment tools combined with more emphasis on child safety in cases at higher risk. There are at lot of risk assessment tools in Germany but few of them are easy to handle and only one tool has been validated (Kindler et al. 2008a). A second strategy may be to invest more in case analysis and the fit between detectable risk mechanisms working in the family and intervention strategy. For example based on literature review more than seven mechanisms that may work towards physical abuse and or neglect have been proposed (e.g. inadequate internal working models based on parents life history guiding their perception of the child's signals and needs, conflict between caregiving and other developmental tasks of the parent, overlearned antisocial behaviour pattern of a parent, emotional dysregulation) requiring different forms of intervention (Kindler et al. 2008c). Third, intensified cooperation with mental health professionals may be necessary to provide better services to children. As one of the first controlled intervention studies within the field of child protec-

tion in Germany has shown (Goldbeck et al. 2007) the inclusion of mental health professionals is helpful for the development of supportive strategies for children. Finally, case workers need resources. Below a certain level high quality child protection work will be impossible or case workers will start to avoid working in the child protection field. Unfortunately there are no studies in Germany at present that have looked at the relationship building processes in child protection cases although this may turn out as another important factor for improving the child protection system.

5.6 Analysis and recommendations

The following recommendations for consideration in the Swiss context are drawn from the experience of child protection service provision in Germany. It is important to note that, due to a lack of rigorous scientific evidence on effective child protection service provision; these recommendations are based on the available scientific evidence and my experiences as researcher, trainer and court expert in the child protection field in Germany. The relevance of these recommendations for the Swiss context will need to be further assessed by the Swiss expert reference group. Not withstanding these limitations, I have made the following six recommendations.

1. **Start a discussion on quality criteria for child protection and try to use intra-country variability as a chance to detect and foster good practice**: Without quality criteria on a systems level there is a serious risk that secondary but available criteria (e.g. costs) or rare but impressive events (e.g. child maltreatment deaths) drive the discussion and lead to a system development path oscillating between more and less control or more and less investment in the system. Adequate quality criteria however might not be easy to find, because there are some tensions and complexities between possible criteria. Moreover some necessary criteria (e.g. the development of children after a child protection intervention) cannot be assessed in an easy and quick way. Instead time and cooperation with science are needed. On the other hand quality criteria on a system level are a very powerful tool for system development. Moreover Switzerland could learn from international experiences and could join Germany in the discussion we want to launch there.

2. **Emphasize the need for a multi-stage approach to child protection**: As there are continuums of need, risk and danger the flexibility of a child protection system to deal with different families may be a key to successful services. A preventive and cooperative approach to families is needed as a basic approach because prevention of child maltreatment is preferable under a child and family well being perspective. As prevention and cooperation may fail strategies to deal with more dangerous situations have to exist too. At a given point in time it may be necessary for quality development processes to focus on a broader or on a more narrow understanding of child protection. There should be however a deeper integrative understanding of child protection. In Germany for example we initially focused on procedures to handle strong suspi-

cions of child maltreatment (narrow understanding). Subsequently, we focused on the development of early prevention services (broad understanding of child protection).

3. **Advocate strong rights for children and parents to receive services and to participate during decisions regarding service delivery**: Within child protection conflicts of interest between parents and children and between parents and the state do emerge but not as a rule. In most cases a consensus regarding what needs to be done to prevent (recurrent) maltreatment can be reached. This however has not only the precondition that parents have to understand that they must change, it has also the precondition that the state has an obligation to adjust to the demand and to respect parents and children as clients.

4. **Invest in the development of easy to handle, valid tools and in the availability of case oriented training**: Working with child protection cases raises intensive emotions and includes dealing with a lot of situations with incomplete, concealed, conflicting or ambiguous information. Therefore cases workers need all the help and support they can get. Although not without risks (e.g. over-bureaucratization) the development of assessment tools can be a supportive strategy if there is an extensive testing of the tools using validity, reliability and user-friendliness as quality criteria. Tools may cover different areas e.g. the assessment of child and family needs, maltreatment recurrence risk and case progress. In Germany, front-line workers report positive experiences with at least some tools. Case oriented trainings with experienced and successful case workers may be another approach to support front-line workers.

5. **Look at case trajectories**: Number of referrals, the time families have to wait, cases lost between systems and the number of cases with adverse events or escalating problems tell you a lot about the strengths and the weaknesses of the child protection system in Switzerland. Therefore these kinds of analyses are very informative. In Germany, for example, a study on the trajectories of cases of possible sexual abuse (Fegert et al. 2001) has had this function. Do not invest to much time in debates on structures if this in not complemented with research on case trajectories because there is a high risk that such debates are just about cloud-castles.

6. **Emphasize the need for solid scientific evidence**: In a country like Germany with big intra-country differences in service delivery it is not uncommon that everybody appeals to his or her case experience. Even former authors describing inhumane practices with children and adolescents seen as “verwahrlost” justified their deeds with their clear case experience. Therefore controlled forms of experience = that is scientific evidence – is needed. There are several proposals for hierarchies of evidence appropriate for social work (e.g. Veerman & van Yperen 2007). Moreover from my point of view not only “what works” is important but also “what works for whom” because there are very different mechanisms underlying child maltreatment. It would also be helpful if Switzerland could join comparative international studies on the effects of child protection interventions because this form of research is not only cost intensive but needs varied replications to produce robust findings.

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