

Swiss NGO-Report:

**COMMENTS ON THE SWISS
GOVERNMENT REPORT**

TO THE

**COMMITTEE ON THE RIGHTS OF
THE CHILD**

SUMMARY	4
FAMILY	6
Working poor	6
Single parent families (§ 242 onwards)	6
Families in poverty (§ 249 - § 252)	7
Creches and day-care nurseries (§ 481 onwards)	9
Child minders (§ 488)	9
State support and assistance for parents (§ 229 onwards)	9
Maternity insurance (§ 241)	9
Advice Centres for parents (§ 229 onwards)	10
Health	11
Measures relating to invalidity insurance (§ 389 onwards)	11
Health promotion and related measures (§ 409 onwards)	11
Mortality of children and youth in Switzerland (§ 419 and § 420)	12
The interdiction to mutilate female sexual organs (§ 450 onwards)	12
PROTECTION OF CHILDREN	14
Child abuse	14
Legal protection against bodily injury (§ 365)	14
Information in schools (§ 372e)	15
Systems of prevention and intervention (§ 372c)	15
Sexual exploitation and sexual violence (§ 744 onwards)	15
Child custody	16
Legislative measures (§ 370)	16
MIGRATION	17
Integration	17
Liberty and civil rights (§ 133 onwards)	17
Naturalisation	17
Foreign children (§ 557 onwards)	18
«Sans papiers»	18
Asylum	19
Refugee children (§ 612 onwards)	19
Representation (§ 625)	19
Enrolment in school and vocational training (§ 627)	20
Questioning the motives for asylum (§ 628)	21
Determination of age (§ 623)	21
Support, care and accommodation (§ 626)	22

GENERAL MEASURES OF IMPLEMENTATION (§ 10 onwards) _____ 23

Existing mechanisms to guarantee the implementation of the convention on the rights of the child, to co-ordinate the children's policy and to sustain achieved improvements (§ 17 onwards) _____ 23

The Swiss federal system _____ 24

RESPECT FOR THE OPINION OF THE CHILD (§ 102 onwards) _____ 25

Direct involvement of children and young people in democratic life (§ 106 onwards) _ 25

On federal level (§ 107) _____ 25

On cantonal level (§ 106) _____ 25

On municipal level (§ 111) _____ 26

RESERVATION _____ 27

Reservation concerning article 5 (§ 216 onwards) _____ 27

Reservation concerning article 7 _____ 27

Reservation concerning article 10 (§ 274) _____ 28

Reservation concerning article 37 (§ 677 onwards) _____ 29

Reservation concerning article 40 (§ 679) _____ 29

SUMMARY

The organisations would like to express their thanks to the Swiss Government for having drafted the present report. The report shows that — in international comparison — children¹ in Switzerland enjoy a comfortable life. Switzerland has to a large extent established the legal basis that is required to ensure that children can grow up in a child-friendly and stimulating environment, and the Swiss standard of living is relatively high.

The official report of the Swiss Government illustrates to what extent the Convention on the Rights of the Child has been implemented in Switzerland. Unfortunately, the report of the Swiss Government is not easy to read. Its structure lacks clarity and does not present a clear overview of the measures that have been taken. For this reason the organisations consider the report a summary of various assessments about the situation of children in Switzerland. The organisations regret that — due to the lack of hard data — the report says only little about real improvements for children in Switzerland that have been achieved since the ratification of the Convention on the Rights of the Child. The organisations express their hope that the next report of the Swiss Government will focus more strongly on this aspect. There is strong need for action and the organisations are always prepared to actively support this process.

The organisations state that shortcomings mainly occur in the implementation of existing legal provisions. This situation requires increased efforts on the side of the Swiss Confederation as well from the cantons and the municipalities. The following report intends to explain these shortcomings which are briefly summarised below:

- › **Family:** Children are increasing the poverty risk for the family.
Due to the lack of supplementary benefits increasing numbers of families in Switzerland are being pushed close to the poverty line. The child is turning more and more into a poverty risk for the family. Between 100 000 and 190 000 children, that is between 7 and 12% of all minors, are affected by the shortage of financial means.
- › **State support and assistance for parents:** Family allowance is linked to gainful employment and differs from canton to canton, resulting in unequal treatment of children and their families.
The allocation of family allowance is linked to the occupational situation of the parents. A single parent without independent income is particularly at disadvantage in this system. Children of single parent families who receive insufficient support or no support at all are inadequately protected.
- › **Child care facilities:** Parents find it hard to place their child in a crèche.
Families needing two salaries to make ends meet are particularly affected by the insufficient number of crèches and day nurseries. The number of latchkey-kids in Switzerland is rising.
- › Switzerland offers a wide network of advice centres for parents. Often these centres find it hard to reach the desired target groups.

¹ The following report does not distinguish between young people and children, but — in accordance with the Convention on the Rights of the Child — consistently uses the term «child»/«children» for people between the age of 0 and 18 years.

- › **Traffic:** Switzerland has one of the highest mortality rates for child victims of traffic accidents. The report of the Swiss Government does not elaborate on that fact.
- › **Child abuse:** In Switzerland a certain level of corporal punishment of children is permitted. Even today, the country does not have any decree or regulation prohibiting corporal punishment or similar humiliating treatment of children.
- › **Child custody:** The system of guardianship needs to become more professional.
- › **Foreign children:** The integration of foreign children into society appears insufficient. Foreign children often do not receive adequate assistance with integration. They are above average represented in special needs classes.
- › **Asylum proceedings:** The present asylum proceedings do not consider the special needs of asylum seekers below the age of 18 years.
- › **Implementation of the Convention on the Rights of the Child in Switzerland:** The Swiss federal system hinders the elaboration of a homogenous children and youths policy. There is no federal administrative body that supervises and evaluates how the Convention on the Rights of the Child is implemented on federal, cantonal and communal level.
- › **Participation:** Certain forms of children's participation do exist. However, they only bear fruit if adults actively and firmly support the participation process and make sure that participation is not limited to certain isolated issues.
The numerous children's parliaments have had but little impact on the decision making process of adults.

FAMILY

Working poor

The report of the Swiss Government fails to elaborate on the problem of the working poor, i.e. on the problem of families where both or one parent are in gainful employment, but the family as a whole is still poor. The social security benefits which are mentioned in the report (§ 229 onwards and § 459 onwards) do not apply in all cases since their provision is linked to preconditions such as gainful employment and contribution fees. Low salaries and the lack of supplementary benefits push increasing numbers of families towards the poverty line. The shortage of child-care centres makes it more difficult for both parents to seek gainful employment in order to increase the family income. Bringing up a child aggravates the poverty risk for parents. Therefore the livelihood of the child might no longer be safeguarded. Between 100 000 and 190 000 children, that is between 7 and 12% of all minors, live in families whose means are insufficient.² Increasing numbers of couples decide not to have children since founding a family is insufficiently recognised by society and generally entails a reduction of standard of living. 22,4% of all married couples remain childless.³

Many families with children feel threatened by the prospect of social decline and many suffer under uncertain economic conditions. Research into family poverty has shown that mothers and fathers between 20 and 39 years of age (and hence their children) are particularly affected by poverty. These working poor often consist of families where both parents are gainfully employed for up to 90%, but still fail to draw a combined salary high enough to guarantee a life in dignity. In view of the noticeable slow erosion of the middle class, the poverty risk may well spread further. The shortage of financial means hampers the full development of a child's physical and psychological potential, restricts educational choices and hinders the process of socialisation (living conditions, immediate environment, leisure activities).

Single parent families (§ 242 onwards)

Single parent families as well as families with two parents, whose income remains below the poverty line, require supplementary benefits to secure the livelihood of their children. The burden is particularly heavy for a parent who raises children on his or her own. A single parent runs a higher risk (2,18 times elevated compared to the average population) to fall below the poverty threshold.⁴ The existing system of advanced child support payments and subsequent collection does not suffice in all cases. Roughly 200 000 children in Switzerland do not receive any family allowance because their parents are either not gainfully employed or are self-employed. A large number of children only receive partial family allowance because their parents are in part-time employment.⁵

² Kinder und Jugendliche in der Schweiz: Bericht zu ihrer Situation, published by: UNICEF Switzerland, Coordination Suisse "Droit de l'enfant", Pro Familia Switzerland, Foundation for the Kinderdorf Pestalozzi, Schweizerischer Kinderschutzbund (*Swiss association for the protection of the child*) and pro juventute, November 1999, p. 9, below quoted as «Kinder und Jugendliche in der Schweiz»

³ Kinder und Jugendliche in der Schweiz, p. 8

⁴ Parliamentary initiative 00.442, Jacqueline Fehr in the National Council, 2nd of October 2000.

⁵ Parliamentary initiative 00.430, Jacqueline Fehr in the National Council, 23rd of June 2000.

- The report of the Swiss Government states (§ 244) that the entitlement to family allowance is linked to the occupational situation of the parents.
- The Swiss Federal Supreme Court prohibits the fixing of child support payments if such payments jeopardise the minimum standard of living of the person who is liable to provide child support. Therefore many children are not granted any child support payments. But without either contractually or judicially stipulated child support payments there will be no advances on child support payments either. Furthermore, the advance payments are not allowed to exceed the stipulated child support payments which in turn are often not high enough to cover the livelihood of the child.
- In 2000, the youth welfare office in Zurich issued a recommendation which pitches the required average monthly maintenance costs (food, clothing, housing) for a single child between 1190 and 1620 francs.⁶
- Only rarely can a single parent responsible for the upbringing of a child expect such a high child support payment.
- Orphans generally receive an orphan's pension of up to 804 francs per month. But since the orphan's pension is considered a social security pension, an orphan is at least legally entitled to receive this payment which at least contributes to safeguarding his or her livelihood.
- Since family allowances fall within the authority of the cantons it is they who decide on the amount a family is entitled to. As a result of this, the allocated amounts differ widely from canton to canton. In the canton of Vaud the amounts are smaller than elsewhere, 140 francs per month. The highest amount is paid in the canton of Valais. In September 2001 this amount was raised from 210 to 260 francs per month.⁷

Demands:

- The organisations urge the Swiss Government to take measures in order to harmonise the family allowance across Switzerland.
- The entitlement to, as well as the amount of family allowance must no longer be linked to the occupational situation of the parent.
- Children of all single parent families have to be treated equally with respect to their social security. Equal treatment is one step towards fighting an important and widespread cause of poverty.

Families in poverty (§ 249-§ 252)

The benefits provided by social security institutions do not prevent families - despite their regular income – from falling below the minimum standard of living fixed by the Swiss Conference for Social Welfare (Schweizerische Konferenz für Sozialhilfe – SKOS).

The report of the Swiss Government lists various benefits which families affected by poverty are entitled to claim. These families are generally considered as beneficiaries or recipients of services. However, these families certainly do not merely passively endure their situation. It is an established fact that families struck by poverty actively contribute to attempts to overcome their hardship.

⁶ Parliamentary initiative 00.442, Jacqueline Fehr in the National Council, 2nd of October 2000.

⁷ Federal Office for Social Security, Arten und Ansätze der Familienzulagen, Stand 1. Januar 2001, p. 4 and NZZ, 24th of September 2001, No. 221, p. 10.

The experience of organisations such as ATD Fourth World Movement demonstrates that families who have been subjected to poverty over a long period of time, consider their right to live together as a family constantly challenged by their particular living conditions.

Despite efforts and hopes of their parents, children of such families are in some cases placed in foster families or children's homes. This humiliating experience stands in sharp contrast to their hope of receiving help and assistance.

Due to the federal system in Switzerland, the cantons apply different models and measures to safeguard the livelihood of families. In this context the canton of Ticino is particularly progressive. The organisations support the nation-wide implementation of the model of supplementary benefit as it was introduced by the canton of Ticino. Experience in the canton of Ticino has demonstrated that the granting of supplementary benefit and its focussing on safeguarding the livelihood of the child does indeed lighten the financial burden of the family.

As a result of two parliamentary initiatives, the National Council's Committee for Social Security and Health (Kommission für Soziale Sicherheit und Gesundheit des Nationalrates) was instructed in spring 2001 to draft a law intending to introduce across Switzerland a supplementary benefit system in line with the model drawn up by the canton of Ticino.

The Ticino-model calls for two forms of supplementary benefit:

1. Infant supplementary benefit for children up to the age of 3 years; infant supplementary benefit covers the maintenance costs of the family.
2. Child supplementary benefit for children up to the age of 15 years; child supplementary benefit covers the maintenance costs of the child.

In both cases the supplementary benefit covers the difference between the disposable income within the meaning of the Federal Law on Supplementary Benefits Bundesgesetz über Ergänzungsleistungen) and the income limit for the entitlement of supplementary benefit. The benefits neither have to be paid back nor are they limited in time.⁸

Demands:

- The organisations urge the Federal Councils to implement a need-oriented social security package in line with the model of the canton of Ticino across Switzerland as quickly as possibly.
- The Swiss Government is urged to endeavour to obtain statistical data and family reports (monographs) concerning families who had to give children into care for reasons of poverty.

⁸ Parliamentary initiative 00.442, Jacqueline Fehr in the National Council, 2nd of October 2000. The relevant legal basis is laid down in the parliamentary initiative 00.437, Lucrezia Meier-Schatz in the National Council, 19th of September 2000. 1. Low-income families shall receive a supplementary benefit for children between 0 and 14 years of age, which covers the necessities of the child according to the minimum amounts of the supplementary benefits. 2. Should the family income - despite the allocation of supplementary benefit - remain below the poverty threshold, an additional infant supplementary benefit will be paid to households with children under the age of three years. The infant supplementary benefit shall cover the difference between the disposable income of the family and the poverty threshold according to the supplementary benefit of OASI/II (AHV/IV). 3. The maximum amount of the infant supplementary benefit is limited to an amount representing the quadruple of the minimum old-age pension.

CRECHES AND DAY-CARE NURSERIES (§ 481 onwards)

The short supply of crèches and day-care centres in Switzerland causes many parents to renounce a double income and puts a particular strain on the economic existence of single parent families. The economic security of a family largely depends on the parents having the possibility to work full-time.

- The report of the Federal Council (§ 481) rightly points out that the number of places in crèches throughout Switzerland is insufficient. However, the report fails to explain how the Swiss Government intends to solve the growing problem of insufficient crèches.
- In spring 2001, the National Council has agreed to a demand to provide initial funding for child-care centres amounting to 100 million francs per year over a period of ten years. At present the Committee for Social Security and Health of the National Council is drafting the federal decision which is likely to be adopted by the two Councils during the coming year.

Demands:

- The Federal Councils are urged to improve the child-care facilities as quickly as possible.
- The cantons and municipalities are urged to increase their financial support for existing child-care centres which often lack funds and are dependent on private donations.

Child minders (§ 488)

The report of the Swiss Government (§ 488) indirectly quotes the Federal Regulation on the Placement of Children into Care (Bundesverordnung über die Aufnahme von Pflegekindern PKV) of 1977 and points out that childminding is being supervised. This regulation stipulates that places provided by a child minder have to be registered but they are not subject to approval. Therefore a systematic supervision of the quality of care places is presently not guaranteed and the comments in the report of the Swiss Government need to be put into perspective.

Demands:

- The organisations would appreciate if the Swiss Government could improve the quality control of child care places.

STATE SUPPORT AND ASSISTANCE FOR PARENTS (§ 229 ONWARDS)

Maternity insurance (§ 241)

On the 13th of June 1999 the Swiss electorate has once again and for the third time running rejected the introduction of maternity insurance. However, the majority of the political parties and associations agree that maternity protection needs to be improved.⁹ At present the Federal Authorities and the Parliament are discussing various different schemes.

⁹ Parliamentary initiative 01.426, Pierre Triponez in the National Council, 20th of June 2001.

Demands:

- The Federal Councils are urged to set up as soon as possible a maternity insurance in line with the proposals of the initiative of National Councillor Pierre Triponez (FDP¹⁰).

Advice Centres for parents (§ 229 onwards)

Advice centres for mothers and fathers are both, social and preventive health care measures providing information to parents about medical care or psycho-social concerns. They offer basic services free of charge, and are highly appreciated by parents in their capacity to act as a complement to the services of a pediatrician or family doctor. Advice centres for mothers and fathers also play a major role in the early diagnosis of physical or psychological developmental disorders of babies and infants.

- There is a panoply of advice centres for parents in Switzerland. They are listed in the report of the Swiss Government (§ 229 onwards).
- The report mentions the various kinds of advice centres. The large numbers of different advice centres on municipal, cantonal and federal level make it difficult for the Swiss Government to fully grasp the details of their work as well as their quality. Improved coordination and communication with the respective organisations on municipal, cantonal and federal level need to be established.
- The report of the Swiss Government allocates but a marginal role to parental education within the framework of the advice centres. It is important that Switzerland considers parental education as an integral part of adult education and that adequate means are provided by the State. Parental education substantially contributes to the prevention of addictions and violence and fosters the general health of children.
- The report of the Swiss Government fails to point out that parental education does not always reach the desired target groups. Working mothers with good general education for example rarely take advantage of the services provided by parental education institutions.¹¹
- New projects have to be developed in order to widen the range of target groups to include fathers, working poor, poverty-affected populations as well as population groups that generally do not take advantage of educational programmes. The successful implementation of such new projects depends on governmental support.
- The target groups ought to be involved in the preparation of such projects. Early involvement enhances the chance that programmes are better tailored to the needs of the target group and are therefore more widely used.
- In particular, programmes for male and female immigrants need to be adapted to the cultural and social traditions of their respective home country.
- Furthermore, there is a need to extend the services for parents of children between the age of two and seven years (start of school). The majority of the cantons offer only very limited advice services for parents of pre-school children.
- As the report of the Swiss Government points out (§ 237) there is a striking difference in the scope of advice services in urban and rural areas.

¹⁰ Freisinnig-demokratische Partei

¹¹ Kinder und Jugendliche in der Schweiz, p. 14 onwards.

Demands:

- Measures need to be taken to ensure that desired target groups are more directly addressed.
- In rural areas advice services as well as parental education services have to be decentralised in order to provide equal access for everyone.

HEALTH

Measures relating to invalidity insurance (§ 389 onwards)

At present the Federal Office for Social Security pays contributions to II-remedial schools (Invalidity Insurance – Invalidenversicherung IV). The present development strongly suggests that in the context of the New Revenue Sharing (Neuer Finanzausgleich – NFA) between the Confederation and the cantons, the Confederation will in future withdraw its support. If this is the case, relevant laws have to be established on cantonal level and quality standards have to be guaranteed. Furthermore, and contrary to the statement in the report of the Swiss Government (§ 403), private organisations do not receive any substantial support from the cantons at present. The report of the Swiss Government also mentions contributions towards home care (end of § 391). However, in this respect the report is somewhat misleading since not all disabled children are entitled to receive this form of special care. Only children who were born disabled can claim home care, children who became disabled as a result of a disease or an accident are not entitled.

Demands:

- It has to be ensured that children suffering from a disability can – if so required – be educated until the age of 20 years. It is not acceptable that disabled children have to leave school straight after having completed the obligatory schooling, i.e. once they are 16 years of age, as the NFA might entail.
- The Law of Non-discrimination of the Disabled (Behindertengleichstellungsgesetz) has to include measures that foster the integration of disabled people into the working life as well as measures that improve the integration of disabled children into school.
- Children who become disabled as the result of a disease or an accident have to be accorded the same rights and entitlements as children who were born with a disability. According to article 4 of the Invalidity Insurance Regulation (Invalidenversicherung-Verordnung) it is only the latter group who is entitled to receive home care.

Health promotion and related measures (§ 409 onwards)

- Statistical data on the situation of children and young people in Switzerland is on the whole patchy and unsystematic. On the one hand there is a lack of sound information about certain aspects of children's life because existing data has not been evaluated. On the other hand there is only a limited possibility to compare the results of local, cantonal or regional studies of the past since the studies were based on different methodological or analytical approaches. The lack of information concerns, amongst others, the areas of health, nutrition and the standard of living of children.

- Coherent data is urgently required in the area of health care in order to implement an appropriate and goal-directed health care policy. Without up-to-date information it will be impossible to effectively supervise important aspects such as the rate of immunisation in Switzerland. Due to inefficient control, equal access to health care services is not guaranteed. Furthermore, a comparison between health care services in Switzerland and those in other countries can not be carried out.
- The report of the Swiss Government (§ 411) admits that data concerning the immunisation rate in Switzerland is presently not available. However, the report does not elaborate on which measures will be taken in order to remedy this shortcoming.
- Due to the fact that health service issues are dealt with by cantons, the various needs of ill children of different ages and developmental stages are considered differently from canton to canton. There is a lack of regulations and quality standards that are binding to the country as a whole.

Demands:

- The organisations request a comprehensive and systematic collection of relevant data with the aim to establish a coherent data base for evaluation.
- The organisations also request access to already existing data and studies to be facilitated by means of improved coordination and information-sharing.

Mortality of children and youth in Switzerland (§ 419 and § 420)

Compared to other industrialised countries, Switzerland has one of the highest rates of fatal accidents.

- For children between five and 16 years of age, accidents – in particular traffic accidents – constitute the most frequent cause of death.¹²
- Sweden provides an example of how the traffic accident rate amongst children can effectively be reduced through wide-spread prevention campaigns.

Demands:

- The Swiss Government is urged to elaborate measures to reduce the accident rate amongst children and youth in Switzerland.

The interdiction to mutilate female sexual organs (§ 450 onwards)

In view of the growing number of immigrants from countries where female circumcision is practised, it is necessary to establish guidelines for medical staff and design prevention campaigns addressing the relevant target groups.

- The report of the Federal Council points out the need to take counter measures once it has been established whether mutilation of female sexual organs is practised in Switzerland.
- UNICEF Switzerland and the Schweizerische Gesellschaft für Gynäkologie und Geburtshilfe (*Swiss Association for Gynaecology and Obstetrics*) have carried out a study amongst Swiss

¹² Kinder und Jugendliche in der Schweiz, p. 18. The high number of road casualties amongst children between one and 14 years of age is also mentioned in: Innocenti Report Card, Issue No.2: A League Table of Child Deaths by injury in rich nations, February 2001, p. 10.

gynaecologists. The study results suggest that female circumcision is indeed being practised in Switzerland. Two of the 1162 gynaecologists who participated in the study were requested to circumcise a girl. Research among the populations concerned has confirmed that female circumcision is carried out by foreigners coming to Switzerland.

- The research carried out by UNICEF Switzerland and the Schweizerische Gesellschaft für Gynäkologie und Geburtshilfe has further established that gynaecologists in Switzerland are surprisingly often asked to attend and treat women who have been circumcised. 20% of gynaecologist have already treated circumcised women and 8% have been requested to re-infibulate a woman after she had given birth.

Demands:

- The Swiss Government is urged to immediately take appropriate measures in order to put a stop to this practice in our country.

PROTECTION OF CHILDREN

CHILD ABUSE

Legal protection against bodily injury (§ 365)

- The report of the Swiss Government points out that the criminal law of the country protects individuals from bodily injury. Article 126 of the Penal Code (Strafgesetzbuch) stipulates that hitting and similar physical actions, which do not result in an impairment of the individual's body or health, are also to be considered physical violence. According to a ruling of the Federal Supreme Court (Schweizerische Bundesgericht, BGE 117 IV p. 14 onwards) actions such as a parental slap in the face or similar acts against children are only considered physical violence if they exceed the level generally accepted by society.
- Even today, Switzerland does not have any laws or regulations that prohibit corporal punishment or similar humiliating treatment of children. A motion (96.3176 - Rechtliches Verbot der Körperstrafe und erniedrigender Behandlung von Kindern - Statutory prohibition of corporal punishment and humiliating treatment of children) was forwarded by the Committee for Legal Affairs of the National Council (Kommission für Rechtsfragen des Nationalrates), but up to now there is no indication that a respective law is being enacted. The Convention on the Rights of the Child obliges the State Parties to do their utmost to improve the protection of children against violence. The inactivity of Switzerland (for example with respect to the interdiction of corporal punishment) stands in sharp contrast to the obligation Switzerland has agreed to.
- Furthermore, many cantonal school laws do not contain any interdiction of corporal punishment inflicted by teachers. On the contrary: The Regulation concerning obligatory Schooling in the Canton of Zurich (Verordnung betreffend das Volksschulwesen des Kantons Zürich) considers corporal punishment «excusable in special cases, in particular when the teacher has been provoked». Many other cantonal school laws or regulations do not explicitly mention the subject of corporal punishment.

Demands:

- Should the Federal Supreme Court refrain to reconsider its generous interpretation of what has to be considered physical violence, the Penal Code should be redefined less widely with the well-being of the child in mind.
- The gap in federal and cantonal law and regulations with respect to corporal punishment has to be filled. The differences in the various school laws and regulations have to be harmonised and a general interdiction of corporal punishment and chastisement implemented.
- If parents and guardians do not fulfil their obligation to provide for the well-being of the child, the child may be threatened by neglect. In Switzerland the discussion about child neglect has to be opened up amongst all groups concerned. Measures to prevent child neglect have to be taken.

Information in schools (§ 372e)

- The report points out that information about child abuse and sexual exploitation of children as well as information about the Rights of the Child are integrated into the curricula. However, it remains entirely up to the teachers whether or not they want to treat these subjects in class. There is no consistent and systematic coverage of these issues. But experience shows that in the majority of schools these subjects are not being addressed.

Demands:

- The Confederation and the Eidgenössische Erziehungsdirektorenkonferenz EDK (*Federal Conference for Education Directors*) are urged to ensure that cantons and municipalities will increasingly cover these issues, for example by firmly establishing them as an integral part of the curriculum.

Systems of prevention and intervention (§ 372c)

- The report of the Swiss Government (§ 372 c) mentions that several cantons have improved their systems for prevention and intervention as far as the area of child abuse is concerned. The attached list of municipalities and cantons which have taken such measures is however very short.
- Furthermore, this list does not provide any information on whether the remaining cantons have taken any measures at all and if so, what they consist of.

Demands:

- According to the experience of the organisations, the systems for the prevention of child abuse are not sufficient in some cantons and regions. Therefore the organisations demand cantonal surveys to be carried out in order to evaluate to what extent the respective cantonal system for the prevention of and intervention in child abuse cases meets the objectives.

Sexual exploitation and sexual violence (§ 744 onwards)

The report of the Swiss Government points out (§ 747) that the Swiss Penal Code forbids pornography in connection with children. However, the report fails to address the increasing problem of child pornography in the Internet and does not propose potential counteracting measures that are required.

- Since late 1999, Switzerland no longer has a federal office that deals with the prevention of and fight against criminality on the Internet and hence with the combat against child pornography.
- According to the Control Committee (Geschäftsprüfungsdelegation) in charge of state security there is high time for action.

Demands:

- The formerly existing Internet monitoring offices should be re-established on federal level; compared to its neighbouring countries, Switzerland appears to be rather inactive in this respect.

CHILD CUSTODY

Legislative measures (§ 370)

- Under the heading «Legislative measures» (Massnahmen auf gesetzlicher Ebene) the report mentions various measures contained in the Civil Code that can be implemented with the aim to protect the child. Switzerland has a sufficient legal basis for the protection of children. But as far as the execution of the law is concerned there is need for action. In the majority of the municipalities, measures for the protection of the child lie within the authority of non-professional bodies that act in their capacity as members of the local authorities. However, since the law does not specify which professional competence the local authorities ought to have, no quality standards are being defined for the intervention of such bodies.

Demands:

- In the framework of the revision of the Guardianship Act (Vormundschaftsgesetz), regulations concerning the required professionalism and regionalism of administrative bodies that are responsible for child protection measures relating to the civil law have to be laid down. Such regulations may – amongst others – include desired quality standards.
- Some cantons apply quality profiles for a guardian, but the profiles may differ from canton to canton. Transparent and precise quality profiles for guardians have to be developed. The presently fragmented profiles of the various cantons should be harmonised as much as possible.

MIGRATION

INTEGRATION

LIBERTY AND CIVIL RIGHTS (§ 133 onwards)

Naturalisation

In its chapter «Liberty and civil rights»(Freiheiten und bürgerliche Rechte) the report omits to mention that in the recent past Swiss municipalities have increasingly refused to accept requests for naturalisation. The fact that refusals increasingly affect individuals of certain nationalities suggests that the basic rights of the applicants are no longer being respected. The Federal Council is obliged to ensure the implementation of basic rights on all levels of government activity. In the context of naturalisation this includes that discrimination-free naturalisation procedures have to be guaranteed for everyone.

- The Swiss naturalisation procedure involves naturalisation on three levels (municipality, canton, Confederation). The Swiss Federal Constitution (Bundesverfassung BV) obliges the Confederation merely to issue minimum regulations concerning the naturalisation of foreigners (article 38 BV). This has led to highly diverse practices resulting in unequal access to Swiss citizenship.¹³
- For some time we have been witnessing political efforts on municipal level that are aimed to submit the naturalisation of an applicant to popular vote. The frequent rejection of naturalisation requests in Emmen in the canton of Lucerne shows a clear discrimination against members of certain ethnic groups or nationalities, presently foremost against applicants from former Yugoslavia and Turkey. This practice encroaches on the constitutional rights to the dignity of man, equality before the law and protection against arbitrary acts. Xenophobic elements within our society support a naturalisation procedure that is submitted to a referendum thus exposing us to the risk to violate the interdiction of racism.
- On the 29th of March 2000, the Administrative Court (Verwaltungsgericht) of the canton of Basle-Country has stated that rejecting a naturalisation demand on the ground of the applicant's nationality only, violates the principle of equality before the law as well as the interdiction of arbitrary treatment.

Demands:

- In the context of naturalisation procedures, a more open attitude towards the applicant is desired. In order to guarantee the safeguarding of constitutional rights within the naturalisation procedure, the Federal Council is requested to prepare the necessary measures on legislative and administrative level.
- Particularly the naturalisation of young foreign applicants who were born and bred in Switzerland needs to be simplified. The same should to apply to children who have come to Switzerland in view of adoption, but whose adoption has failed.

¹³ Motion 00.3092, Regine Aepli Wartmann in the National Council, 22nd of March 2000.

- Article 34 of the Refugee Convention obliges the State Parties to guarantee simplified naturalisation for recognised refugees. Simplified naturalisation is not granted in Switzerland. The Swiss Government is urged to take appropriate measures to guarantee the implementation of article 34 of the Refugee Convention.

Foreign children (§ 557 onwards)

School plays a central role in the integration of foreign children. In order to facilitate their integration, foreign children can participate in schemes such as intensive classes and special needs classes. Despite these services, foreign children - due to their different mother tongue and their weaker socio-economic status - still have fewer educational opportunities than their Swiss peers.

- The report of the Swiss Government confirms this fact by pointing out that foreign children are above-average represented in special needs classes (§ 559 and § 563). The report states the inequality of educational opportunities very clearly.
- However, only very few articles mention measures that could be applied in order to counteract this discrimination (§ 562-§566). The few measures listed seem insufficient to rectify the situation and establish equal educational opportunities for foreign children.

Demands:

- The organisations urge the Swiss Government to consider a fundamental change in their guiding principles concerning the integration of immigrant populations, in line with the principle change that the town of Basle has already demonstrated. Basle's guiding principle concerning integration no longer focuses on deficiency but concentrates on the full development of the educational potential of the immigrant population.¹⁴
- Many towns with a high percentage of foreign children have school classes that consist almost entirely of foreign children. In such cases the integration of the foreign child can not be guaranteed. In June 1999, the Federal Council has stated that the creation of separate classes for foreign children is not compatible with the constitution (§ 565). Measures have to be taken in order to ensure that also in those cases, where separate classes for foreign children seem to have developed «naturally», appropriate integration can take place.

«Sans papiers»

The report of the Swiss Government fails to elaborate on the special situation of the so-called «sans papiers» whose situation is characterised by the lack of protection and rights.

The exact number of «sans papiers» in Switzerland is obviously not known. The group of «sans papiers» includes temporary workers whose work and stay permits have expired, immigrant women whose work force is appreciated in private households, in the catering trade and in caring for the old, but who - for various reasons - do not or no longer have a valid stay permit as well as children and young people who are not entitled to family reunification.

¹⁴ Kinder und Jugendliche in der Schweiz, p. 42.

- The Swiss Government recommends that parents of children who are illegally in the country are entitled to enrol their children in school without the school being obliged to file charges for illegal stay in Switzerland (see report of the Swiss Government, § 567).
- However, children and parents residing in Switzerland illegally are not entitled to claim any social security benefits such as invalidity insurance etc. The Swiss constitutional right to have one's livelihood safeguarded can not be enforced for the group of «sans papiers».

Demands:

- The Swiss Government is urged to immediately establish and implement appropriate legal measures in order to abolish the vulnerable and rightless situation of the so-called «sans papiers» and their children.

ASYLUM¹⁵

Refugee children (§ 612 onwards)

The number of unaccompanied minor asylum seekers has grown in recent years. The special needs of asylum seekers under the age of 18 years have to be considered and taken into account throughout the entire asylum proceeding.

- The report of the Swiss Government (§ 619) states that the Asylum Act (Asylgesetz) which has come into force on the 1st of October 1999 contains special standards for the adequate consideration of the special situation of unaccompanied minor asylum seekers during the asylum seeking proceeding. However, the report does not answer how these standards should be put into practice.

Demands:

- Measures have to be taken in able to ensure that asylum proceedings take into consideration the special needs and requirements of asylum seekers below the age of majority.

Representation (§ 625)

- The report of the Swiss Government states (§ 625) that unaccompanied minor asylum seekers will be accompanied by a representative throughout the course of the asylum proceeding.
- However, many Swiss cantons consistently abstain from taking any custodial measures for unaccompanied minor asylum seekers. The application of consistent custodial measures is only common practice in the cantons of Geneva and Vaud.¹⁶ The lack of applying such

¹⁵ The following chapter is principally based on the publications of the Schweizerische Flüchtlingshilfe (*Swiss Refugee Council, OSAR*). In particular: Die Bedeutung der Kinderrechtskonvention im Asylbereich, Kurzkommmentar der Schweizerischen Flüchtlingshilfe, Juni 2000; Entwurf einer Teilrevision des Asylgesetzes und der damit zusammenhängenden Änderung des Bundesgesetzes über Aufenthalt und Niederlassung der Ausländer (ANAG) und des Bundesgesetzes über Krankenversicherung (KVG), Stellungnahme der Schweizerischen Flüchtlingshilfe, 4. September 2001. Entwurf des Bundesgesetzes für Ausländerinnen und Ausländer, Stellungnahme der Schweizerischen Flüchtlingshilfe, October 2000.

¹⁶ See: Doppelt schutzlos, vide rf., survey carried out by UNICEF Switzerland, Pro Familia, pro juventute, Coordination Suisse "Droit de l'enfant" and Swiss association for the protection of the child as well as Kinder und Jugendliche in der Schweiz, p. 79

measures for unaccompanied minor asylum seekers constitutes a discrimination against other foreign or Swiss children.

- In view of this fact, the Asylum Appeal Commission (Asylrekurskommission) has decided «to assign for the length of the asylum proceedings (at least) one individual versed in the law to the discerning, unaccompanied and unrepresented minor, before the first questioning about the reasons for asylum is carried out».¹⁷ This measure aims to guarantee that the interests of the unaccompanied minor with respect to the asylum proceedings are being respected. This policy decision taken by the Asylum Appeal Commission needs to be acknowledged as an attempt to cushion the unlawful lack of custodian measures by means of imperatively assigning a legal representative to the minor asylum seeker.
- It is true, the Asylum Act of 1st of October 1999 envisages the assignation of a confidant until custodian measures have been ordained, however, the law does not clearly state whether this confidant will legally represent the minor during the asylum proceedings. Due to this indistinct situation, the legal representation of unaccompanied minor asylum seekers is not guaranteed.

Demands:

- When choosing the statutory confidant it has to be ensured that he/she is versed in the law; otherwise a legal representative has to be made available to the unaccompanied minor asylum seeker who assists the applicant during the asylum proceedings free of charge.
- In order to better understand the scope of the issue, statistical data concerning the number and character of custodian measures that have been ordained for unaccompanied minor asylum seekers should be collected.

Enrolment in school and vocational training (§ 627)

Minor asylum seekers have to be enrolled in school as soon as possible after their arrival.

- The report of the Swiss Government (§ 627) points out that unaccompanied minor asylum seekers usually start school within three months after their arrival in the country.
- The practice however shows that asylum seekers generally do not start school within three months, but might have to wait for up to one year before they can enrol in school.
- A further problem arises for foreign asylum seekers and temporarily accepted children who are no longer covered by the Swiss school system. Their chances to be integrated into Swiss society are slimmer. The Schweizerische Flüchtlingshilfe (*Swiss Refugee Council, OSAR*) welcomes the proposal by the Panel of Experts on Migration (Expertenkommission Migration) to provide special integration programmes for children concerned. It is important to ensure that these integration programmes are clearly aimed at facilitating a future insertion into the job market and are not simply aimed at keeping the individual occupied. The definition of deadlines for departure should give priority to a possible completion of vocational training.
- Young asylum seekers at pre-school age often have no possibility to attend a playgroup, crèche or kindergarden and are therefore missing out on important social contacts. This lack might seriously affect their entire future development.

¹⁷ EMARK 1998/No. 13, Regeste, p. 84, Decision of principle.

Demands:

- The Swiss Government is demanded to urge the cantonal authorities responsible for the enrolment of unaccompanied minor asylum seekers to enrol such children immediately (tolerable delay of two weeks).
- Minor asylum seekers and temporarily admitted children should be given the possibility to take up vocational training. All young people who have been in Switzerland for more than one year and who are not earmarked for expulsion, should have access to an apprenticeship. They should be entitled to complete their apprenticeship without being subjected to restrictions from the aliens department.
- Children and young people who have been in Switzerland for more than four years should be granted the right to abode (for themselves and their families). Since they have «put down roots in Switzerland», this right should be granted independently of the asylum decision.
- In order to understand the scope of the issue, statistical data concerning the requirements for starting an apprenticeship or other vocational training need to be collected. There is also a need to have data on how many minor asylum seekers and temporarily accepted children have actually started an apprenticeship.

Questioning the motives for asylum (§ 628)

- The report of the Swiss Government (§ 628) points out that the person responsible for the questioning needs to do his/her utmost to ensure that the questioning takes place in a suitable atmosphere. However, the implementation of the legal requirements is not always guaranteed.

Demands:

- In accordance with article 12 of the Convention of the Rights of the Child, the organisations demand that minor asylum seekers shall always be questioned by personnel that has the necessary psychological training to deal with children.
- A special questionnaire has to be developed for minor asylum seekers. Up to now their questioning is based on the questionnaire used for adults.¹⁸
- The assessment of the asylum seeker's credibility always has to consider the maturity of the child or young person in question. In order to correctly assess the asylum application, comprehensive investigations in the asylum seeker's home country have to be carried out.

Determination of age (§ 623)

- The report of the Swiss Government (§ 623) mentions that registration centres are urged to determine (especially by means of medical examination) the age of the asylum seeker.
- Article 17, par. 4 of the newly revised Asylum Act, the consultation procedure of which ended on the 20th of September 2001, stipulates that in case the asylum seeker objects to the determination of his/her age, he/she has to be assumed to be of legal age.

Demand:

- In case of doubt the asylum seeker should principally be considered below the legal age.

¹⁸ Kinder und Jugendliche in der Schweiz, p. 82 and Swiss Refugee Council.

Support, care and accomodation (§ 626)

- The report of the Swiss Government points out (§ 626) that minor applicants (in particular young unaccompanied minor asylum seekers)- after consideration of their age and their developmental stage - should be placed in reception families or asylum centres.
- The cantons are in charge of caring for unaccompanied minor asylum seekers and temporarily accepted children. In reality this task is carried out in various different ways. It can be assumed that in most cases young asylum seekers are placed in collective centres together with adult applicants and that no special care is provided. In view of the well-being of the child, joint accommodation with adults in collective centres is not desirable. Here children are often left to their own devices and run the risk of neglect.

Demands:

- The accommodation of unaccompanied minor asylum seekers has, in accordance with article 39 of the Convention on the Rights of the Child, to be adapted to their age and special needs. However, the report of the Swiss Government (§ 626) fails to demonstrate that special accommodation for unaccompanied minors has indeed been created.
- The new institutions need to ensure that minor asylum seekers receive a level of care and education that is appropriate for their age and they need to foster the applicants' integration into Swiss society as well as allowing them to maintain their religious, cultural and linguistic identity.
- Rehabilitation centres for child victims of torture, violence or armed conflicts are to be promoted.
- In order to fully grasp the scope of the issue, statistical data concerning the forms and capacity of existing cantonal care and accommodation centres for unaccompanied minor asylum seekers and temporarily accepted children need to be collected.

GENERAL MEASURES OF IMPLEMENTATION (§ 10 onwards)

EXISTING MECHANISMS TO GUARANTEE THE IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD, TO CO-ORDINATE THE CHILDREN'S POLICY AND TO SUSTAIN ACHIEVED IMPROVEMENTS (§ 17 onwards)

In the course of the last few years, several Swiss committees on municipal, cantonal and federal level have been instructed to look after the special needs of young people in particular.

Institutions such as youth committees, youth commissioners and children's bureaus were established. They are active in the field of ombuds-work in the large sense of the word. The Youth Promotion Act (Schweizer Jugendförderungsgesetz) supports projects for the benefit of young people. The Federal Youth Commission (Eidgenössische Jugendkommission) focuses its activity on young people between 16 and 24 years of age.

The scope of the Convention on the Rights of the Child however, covers children between the age of 0 and 18 years. The implementation of the Convention therefore requires appropriate measures for this age group as a whole, i. e. also for younger children. Children and young people have different needs and requirements. Their living environment, need for autonomy or security as well as their problem solving strategies differ and change as they grow up. The same applies to children's and young people's capacity to participate. Discussions on how to promote the implementation of the Convention on the Rights of the Child have to take these different conditions into consideration.

The non-governmental organisations notice with increasing concern that the needs of younger children in particular are not adequately considered, for example with respect to fostering their ability to participate. The existing committees tend to include tasks relating to younger children into their existing frame of work. But they fail to take the necessary consequences as far as the volume of work, the composition of the committee and the financial requirements are concerned. Furthermore, the continuous evaluation, supervision and promotion with respect to the implementation of the Convention differs significantly from the scope of activities, that youth promotion services have covered so far. Extending the field of activity of the existing committees to include responsibility for the well-being of younger children as well, adds a further target group to their existing clientele. And the needs of this new group could not be more different than the ones the committees are used to! As a result of this development, the committees are now responsible for the well-being and promotion of a population between the age of 0 and 28 years. The present confusion about who is being talked about – children or young people – reflects this development.

Demands:

- The non-governmental organisations urge the Swiss Government to establish appropriate committees that supervise and accompany the implementation of the Convention on the Rights of the Child and provide them with the necessary funds in order to ensure that all children under the age of 18 years receive the appropriate support.
- In order to promote projects for children of an age-group so far not covered by the Youth Promotion Act, the Act has to be revised accordingly.

THE SWISS FEDERAL SYSTEM

Due to the federal system in Switzerland, the implementation of the Convention on the Rights of the Child is in certain areas incoherent and this often to the disadvantage of children. For certain areas affecting the child, the implementation of federal legislation lies within the authority of the cantons. The same applies to the cantonal legislation which is primarily implemented by the municipalities. One example is the school law. Schooling falls within the competence of the canton, the federal authorities merely issue relevant recommendations and the municipalities are in charge of ensuring the teaching as well as the implementation of the cantonal legislation and regulations. This situation entails that the federal authorities, despite having ratified the international treaty, do not always have the competence to ensure its implementation. Therefore the competence of the federal authorities is often limited to issuing recommendations, supervision and co-ordination only.

In the opinion of the organisations, the main tasks of the federal authorities are to supervise the implementation of the Convention on the Rights of the Child and to maintain discussions with the cantons. Furthermore, in accordance with the widely applied principle of subsidiarity, non-governmental organisations are frequently made in charge of implementing measures decided by the Swiss State. The organisations take on tasks on federal, cantonal and municipal level. If just for this reason alone, the Confederation has to intensify its supervision and co-ordination of the implementation of the Convention on the Rights of the Child.

In several places the report of the Swiss Government refers to the federal structure of Switzerland¹⁹ and in doing so at times shirks responsibility. In this context the organisations would in particular like to mention § 17 and § 18, where the Swiss Government reaches the same conclusion.

¹⁹ §17, §18, §25, §59, §93, §243, § 249, §255. §372, §494, §499, §594, §608, §628, §713 in the report of the Swiss Government.

RESPECT FOR THE OPINION OF THE CHILD (§ 102 onwards)

First signs of encouraging the active involvement of young people in the social and political life in our country date back to the early seventies. The basic right of children to involve themselves is undisputed and often it is the adults who take the lead and encourage them to do so. Setbacks and problems generally arise when it comes to defining and implementing the concerns of children. Far less well established than the thought of general involvement is the concept of children's participation. Up to now there are only very few laws and regulations on cantonal respectively municipal level that stipulate the participation of children and young people thus promoting their active involvement (such as the local authority regulations of the towns of Berne and Lucerne).

In Switzerland there is no real movement towards establishing local representation of interests for children and young people that would favourably compare with respective developments in Germany or Austria in the course of the last ten years. One major prerequisite for the successful promotion of children's participation and increased consideration of children's concerns in local politics – ensuring the continuity by establishing a dedicated forum within the community – has therefore not (yet) been achieved.

DIRECT INVOLVEMENT OF CHILDREN AND YOUNG PEOPLE IN DEMOCRATIC LIFE (§ 106 onwards)

On federal level (§ 107)

The report of the Swiss Government (§ 107) mentions the Federal Youth Session (Eidgenössische Jugendsession) as an example of how young people can participate in democratic life. Since 1991, the Youth Session takes place once a year.

- It is true, the Youth Session has developed into a respectable possibility for shaping the political opinion of young people, its influence on national policy, however, is marginal. With very few exceptions petitions passed by the Youth Session have subsequently not been discussed by Parliament.²⁰ Real participation possibilities for young people are therefore very limited indeed.

On cantonal level (§ 106)

The report of the Swiss Government (§ 106) mentions the existence of youth parliaments in various cantons.

- However, on cantonal level there are hardly any relevant participation possibilities neither for children nor for young people, the few existing cantonal youth parliaments²¹ being an exception.

²⁰ Kinder und Jugendliche in der Schweiz, p. 106.

²¹ In October 2001 there are only nine youth parliaments on cantonal level in Switzerland, namely in the cantons of Argovia, Basle-Country, Basle-Town, Fribourg, St. Gall, Schwyz, Thurgovia, Valais and Zug.

On municipal level (§ 111)

On municipal level, youth parliaments offer the most widely available form of youth participation. Youth parliaments are principally open for all young people.

Working with youth parliaments might well involve a certain level of friction. Critical voices within the administration or the public complain about recurrent problems such as the motivation of young people, the legitimation of members and the continuity of their work.

Demands:

- Young people need practical tasks that quickly show results.
- Participation of children and young people is successful if it is integrated into a child- and youth-oriented system and supported by dedicated bodies (such as children and youth commissioners, ombudspersons and committees) ensuring its continuity. Such dedicated bodies have to be created on all political levels.
- The participation of children and young people need special forms and methods that are adapted to the level of maturity of young people. Political and administrative procedures have to accommodate these forms.
- Involving young people in the planning phases of projects helps to bring projects closer to the youth and promotes a target-oriented implementation.
- Without real influence participation remains but an alibi. Real influence needs to be embodied in law. Therefore, direct participation of children and young people needs to be statutory on all political levels.

RESERVATIONS

In Switzerland the Convention on the Rights of the Child has come into force on the 26th of March 1997. Five reservations were made. Until today none of these reservations has been withdrawn. The reservations concern the following articles of the Convention on the Rights of the Child:

RESERVATION CONCERNING ARTICLE 5 (§ 216 onwards)

Switzerland has made a reservation concerning article 5 of the Convention. This reservation has to be withdrawn since it is not based on an incompatibility between the Convention on the Rights of the Child and the Swiss legislation, but was politically motivated. Initially the government did not intend to formulate a reservation concerning this article. However, some factions within Parliament expressed principal opposition against Switzerland acceding to the Convention. Their opposition was mainly directed against Article 5 which, in their opinion, erodes parental authority. The reservation against Article 5 was formulated with the intention to appease the opposition. In March 2000, the Federal Council answered a parliamentary demand as follows: «It is generally believed that due to the political, not judicial motivation of this reservation, it is to be considered a not genuine and interpreting reservation». The organisations appreciate the willingness of the Swiss Government to consider the withdrawal of this reservation if the Committee on the Rights of the Child so recommends.

RESERVATION CONCERNING ARTICLE 7

Upon ratification of the Convention on the Rights of the Child, Switzerland has made a reservation concerning article 7 on the grounds that the Swiss legislation on nationality does not grant the right to acquire Swiss nationality. This also applies to children without a nationality. The problem of statelessness may affect refugee children as well foreign children who have come to Switzerland in view of future adoption.²² In the spirit of the Convention it would be desirable if at least simplified naturalisation would be made available for stateless children as it is already possible for young foreigners in certain cantons. The revision of the Swiss Federal Constitution conferred the Swiss Confederation the possibility to simplify the naturalisation of stateless children (Article 38, par. III BV.) A revision of the Swiss legislation on nationality - which would have the task to specify this - would reconcile the Swiss legislation with article 7 of the Convention on the Rights of the Child. The Swiss Confederation has commented this situation as follows: «If and perhaps to what extent this reservation will still be valid, will have to be examined once the amendment of the relevant law has taken place.»²³

²² Kinder und Jugendliche in der Schweiz, p. 60.

²³ Statement of the Federal Council on 13.02.2000 concerning the motion 99.3627, Didier Berberat im Nationalrat, 22.12.1999.

RESERVATION CONCERNING ARTICLE 10 (§ 274)

Due to restrictive regulations in the Aliens Act (Ausländergesetz) a reservation concerning article 10 was made upon ratification of the Convention on the Rights of the Child. This is the legal background against which the situation of children without a stay permit has to be viewed. It concerns children of seasonal workers, short-term or annual residents and asylum seekers. How many children without the right of residence are presently living in Switzerland is not known. Equally unknown is from which countries these children originate. Children without the right to abode are presently admitted to attend government schools. However, not all of them come out of hiding for fear of being reported. But many problems persist even for those children who do attend school, mainly as far as their socialisation is concerned.

Harder is the situation for children in pre-school age. They often have no possibility to attend a playgroup, crèche or kindergarden and are therefore missing out on important social contacts. This lack might seriously affect their entire future development.

A further problem arises in the area of social insurance. Children without the right to abode rarely have health or accident insurance and therefore potential costs are not covered. Should an accident happen or the child fall ill, financial ad-hoc solutions may have to be found or a consultation may have to be postponed, the latter jeopardising the health of the child.

Furthermore, the right to family reunification is not guaranteed in the asylum proceedings.

Temporary accepted persons have no right of family reunification and temporarily accepted and accepted refugees have to wait three years before they are allowed to bring their families into the country. The organisations are of the opinion that – in view of article 10 of the Convention on the Rights of the Child – temporarily accepted persons should be entitled to reunite with their family and temporarily accepted refugees should be granted the right to family reunification without reservation.²⁴

The deportation proceeding does not respect the unity of the family either. According to article 34 of the Asylum Regulation 1 (Asylverordnung 1) a family may be separated if considered necessary.

In its decision 124 III 361 E. 3b, the Swiss Federal Supreme Court concluded that article 10 of the Convention on the Rights of the Child does not confer the absolute and enforceable right to family reunification to all foreigners, but grants the State Parties a certain scope of discretion. The upcoming revision of the Alien Act will have to look closer into the questions of family reunification as well as into the reservation concerning article 10. However, in view of the Swiss asylum policy, the Federal Council seems reluctant to withdraw the reservation entirely since comprehensive permission of family reunification might lead to increasing numbers of asylum seekers, which in turn would have financial repercussions.²⁵

²⁴ See: Die Bedeutung der Kinderrechtskonvention im Asylbereich, Kurzkomentar der Schweizerischen Flüchtlingshilfe, June 2000, p. 2-3 as well as Entwurf einer Teilrevision des Asylgesetzes und der damit zusammenhängenden Änderung des Bundesgesetzes über Aufenthalt und Niederlassung der Ausländer (ANAG) und des Bundesgesetzes über Krankenversicherung (KVG), Stellungnahme der Schweizerischen Flüchtlingshilfe, 4th of September 2001, p. 16 and 55.

²⁵ Statement of the Federal Council on 13.02.2000 concerning the motion 99.3627, Didier Berberat im Nationalrat, 22.12.1999.

RESERVATION CONCERNING ARTICLE 37 (§ 677 onwards)

The separation of children deprived of liberty from adults is not unconditionally guaranteed. The draft of the new Juvenile Penal Code (Jugendstrafgesetz) envisages the complete separation of young people and adults. This applies to pre-trial detention as well as to detention as a measure of punishment. The Federal Council has already announced that the revision of this law might well result in the withdrawal of the reservation (BBI 199 2279). However, since the cantons will be granted a transitional period of ten years, it will – despite of the scheduled revision – take a long time before the reservation will be withdrawn.

RESERVATION CONCERNING ARTICLE 40 (§ 679)

This reservation concerns the right to assistance and separation, where personnel or organisation is concerned, between the examining and the sentencing authority, the exception to the right to a conviction and sentence being reviewed by a higher tribunal where the person concerned was tried by the highest tribunal in the first instance as well as the entire exemption from any costs for the assistance of an interpreter. The revision of the Juvenile Penal Code and the harmonising of the Federal Rules of Criminal Procedure (Strafprozessrecht) might provide the possibility to adapt the new legislation to the regulations of the Convention.

Demands:

- All reservations have to be withdrawn as soon as possible. In the course of the pending revisions, consistent emphasis has to be geared towards the withdrawal of the reservations.

THE PRESENT STATEMENT WAS SIGNED BY THE FOLLOWING ORGANISATIONS:

Amnesty International, Swiss Section

Arbeitskreis Tourismus + Entwicklung - *Working group on tourism and development*

Association internationale pour la défense de la liberté religieuse – *International association for the defence of religious liberty*

Association Paidos

Association Suisse de Parents Adoptif

ATD Forth World Movement

CO-OPERAID

Coordination Suisse „Droit de l'enfant“ - *Swiss coordination for the rights of the child*

Dachverband Schweizer Lehrerinnen und Lehrer -*Swiss teacher's association*

ECPAT Switzerland /arge kipro

Enfants du Monde

Kinderlobby Schweiz – *Swiss children's lobby*

Konferenz der Elternvereinigungen behinderter Kinder (KVEB) – *Conference for associations of parents of disabled children*

Kovive

Kraftpunkt

Interessengemeinschaft geschiedener und getrennt lebender Männer (IGM Schweiz) – *Pressure group of divorced and separated men*

Internationale Gesellschaft für Erzieherische Hilfen (FICE) – *International association for educational support*

Menschenrechte Schweiz (MERS) – *Human Rights Switzerland*

Opferberatung der Frauenzentrale – *Victim counselling of the Women's Centre*

Pflegekinderaktion Schweiz – *Swiss foster care organisation*

Pro Familia Switzerland

pro juventute

Radix- Promotion de la Santé – *Radix –promotion of Health*

Schule und Elternhaus Schweiz – *School and parental home Swizerland*

Schweizerische Elternvereinigung für für blinde und sehbehinderte Kinder – *Swiss Parents association for blind and visually impaired children*

Schweizerische Flüchtlingshilfe (SFH) – *Swiss Refugee Council, OSAR*

Schweizerische Konferenz für Sozialhilfe (SKOS) – *Swiss Conference for Social Aid and Welfare*

Schweizerische Vereinigung für Kinder- und Jugendpsychologie (SKJP) – *Swiss association for child and youth psychology*

Schweizerische Vereinigung zugunsten cerebral Gelähmter (SVCG) – *Swiss association for cerebral palsy*

Schweizerischer Bund für Elternbildung (SBE) – *Swiss association for parental education*

Schweizerischer Friedensrat – *Swiss peace council*

Schweizerischer Kinderschutzbund – *Swiss association for the protection of the right of the child*

Schweizerischer Kinderschutzbund, Tessin - *Swiss association for the protection of the right of the child, Ticino*

Schweizerischer Verband alleinerziehender Mütter und Väter – *Swiss association for single mothers and fathers*

Schweizerischer Verband Die dargebotene Hand, Telephon 143 – *Swiss association “The helping hand”, Telephone 143*

Schweizerischer Verband für Frauenrechte – *Swiss association for women’s rights*

Schweizerischer Verband Kind und Spital – *Swiss association child and hospital*

Schweizerisches Arbeiterhilfswerk (SAH) - *Swiss Labour Association, SLA*

Swiss AIDS Federation

Swiss Committee for UNICEF

Swiss Guide and Scout Movement

Foundation for the Kinderdorf Pestalozzi

terre des hommes Switzerland

Verband des Personals öffentlicher Dienste (VPOD) – *Swiss public services union*

World Vision Switzerland

Zürcher Elternverein für blinde und sehbehinderte Kinder – *Parents association for blind and visually impaired children Zürich*