



**Convention on the Elimination  
of All Forms of Discrimination  
against Women**

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**Committee on the Elimination of Discrimination  
against Women**

**Consideration of reports submitted by States parties under  
article 18 of the Convention on the Elimination of All Forms  
of Discrimination against Women**

**Third periodic report of States parties**

**Switzerland\***

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\* The present report is being issued without formal editing.



## Contents

	<i>Page</i>
A. Introduction .....	5
B. Survey of principal trends since 2001 .....	6
Demographic trends .....	6
The economy and the world of work .....	7
Education .....	8
Public health .....	10
Public affairs .....	10
Reconciliation of work and family life .....	11
Special situations .....	12
Women and violence .....	13
Trafficking in women .....	13
Gender equality: public institutions and instruments .....	14
C. Implementation in Switzerland of the provisions of the Convention .....	16
Article 1: prohibition of discrimination .....	16
1. Recognition of the principle of prohibition of discrimination according to article 1 of CEDAW .....	16
2. The general principle of equality between women and men .....	16
3. Symmetrical prohibition of discrimination .....	17
4. Implementation of equality: legislative mandate .....	19
5. General prohibition of discrimination .....	20
Art. 2 Measures designed to combat discrimination in legislation and in judicial decisions ..	21
1. Regional disparities and equalizing effect of the prohibition of discrimination ..	21
2. Implementation of the prohibition of discrimination in judicial procedures .....	23
3. Institutionalization of equality by federal and cantonal authorities .....	24
4. Gender mainstreaming and gender budgeting .....	26
5. Analysis and statistics .....	29
6. Combating discrimination against migrants and other groups .....	31
7. Combating violence against women .....	32
Art. 3 Measures designed to ensure the full development and advancement of women .....	42
Art. 4 Temporary special measures for women .....	43
Art. 5 Combating stereotyped roles and recognizing the common responsibility of men and women in the upbringing of their children .....	47

1.	Combating media dissemination of stereotyped roles . . . . .	47
2.	Combating role stereotypes in education and training. . . . .	48
3.	Encouraging equal sharing of domestic and family tasks between men and women	48
4.	“Zora la Rousse” . . . . .	51
5.	National Girls’ Day. . . . .	51
6.	Increasing awareness of the need for equality between men and women . . . . .	52
Art. 6	Combating the traffic in women and exploitation of prostitution . . . . .	53
1.	Current trends in detail. . . . .	53
2.	Confederation measures . . . . .	54
3.	Protection of foreign cabaret dancers . . . . .	56
Art. 7	Elimination of discrimination in political and public life . . . . .	58
1.	Encouraging women’s participation in political life . . . . .	58
2.	Improving women’s access to administrations and courts . . . . .	60
3.	Withdrawal of reservations under article 7. . . . .	61
4.	Promoting women’s participation in other States. . . . .	61
Art. 8	International representation and participation . . . . .	63
1.	Women in the diplomatic service . . . . .	63
2.	Women in international organizations and delegations to bilateral and multilateral negotiations . . . . .	64
Art. 9	Nationality. . . . .	65
Art. 10	Education. . . . .	66
1.	Level of education and access to educational programmes and institutions, combating role stereotypes for men and women in education and occupational choice. . . . .	66
2.	Access to scholarships and aid in education. . . . .	76
3.	Access to continuing education programmes . . . . .	76
4.	Abandonment of education . . . . .	77
5.	Especially disadvantaged categories . . . . .	77
6.	Cooperation for development . . . . .	78
Art. 11	Employment . . . . .	79
1.	Access to the labour market and equal pay: detailed statistical trends. . . . .	79
2.	Confederation measures . . . . .	84
3.	Social security. . . . .	87
4.	Protection of health and security in the workplace . . . . .	89

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5.	Reconciling work and family responsibilities . . . . .	90
6.	Measures taken by the Confederation and cantons as employers . . . . .	94
7.	Especially disadvantaged persons . . . . .	97
Art. 12	Health . . . . .	98
1.	Current trends . . . . .	98
2.	Women's access to general health services: Confederation measures . . . . .	100
3.	Access to sexual and reproductive health services for women . . . . .	101
4.	Access to health services by especially disadvantaged groups . . . . .	104
5.	Genital mutilation in Switzerland . . . . .	107
6.	Cooperation for development . . . . .	109
Art. 13	Other areas of economic and social life . . . . .	110
1.	Poverty among women . . . . .	110
2.	Family allowances . . . . .	112
3.	Access to recreational activities, sports and cultural life . . . . .	113
4.	Environment and sustainable development . . . . .	115
Art. 14	Rural women . . . . .	117
Art. 15	Equality before the law . . . . .	119
1.	Legal capacity . . . . .	119
2.	Freedom to choose place of residence and domicile, especially for foreign women . . . . .	119
Art. 16	Issues arising from marriage and family relationships . . . . .	122
1.	Statistical trends . . . . .	122
2.	Application of the new divorce law by the courts . . . . .	123
3.	Cantonal domicile rights and choice of family name . . . . .	125
4.	Forced marriages . . . . .	126
Art. 24	Necessary measures aimed at achieving full realization of the rights recognized in the Convention . . . . .	127
1.	Public information and implementation . . . . .	127
2.	Question of the ratification of the optional protocol to CEDAW (2000) . . . . .	128

## A. Introduction

1. The 1979 Convention on the Elimination of all forms of Discrimination against Women (CEDAW) entered into force for Switzerland on 26 April 1997 (RS 0.108). Conceived in 1979 in the framework of the United Nations, it has since been ratified by 185 States. The Convention laid down a prohibition against discrimination, spelling out different areas and situations, and requires States to take measures with a view to eliminating discrimination against women. States parties are required to submit periodic reports setting out the progress they have made in implementing the Convention. Those periodic reports are reviewed by a committee of experts which then discusses them with a delegation from the State party and formulates recommendations to the State party in the form of proposals aimed at improving the implementation of the Convention and the reports submitted in that regard.

2. In 2001, Switzerland submitted a first report on the implementation of the Convention, providing a detailed account of the situation in our country and the measures taken. Owing to its delayed submission, it was considered a combined first and second report (hereinafter, “first and second report”).<sup>1</sup> The competent committee of experts reviewed the report in January, 2003 and requested details from the Swiss delegation present. It formulated a series of recommendations addressed to Switzerland with a view to achieving improved implementation of the Convention.<sup>2</sup> The Federal Council took note of those recommendations in April, 2003 and transmitted them to the competent services recommending that they follow them up.

3. It is now time for Switzerland to submit a new periodic report. The third report is devoted mainly to factual changes that have occurred since the last report and to measures taken to follow up on provisions of CEDAW and recommendations of the Committee. This third report, based on information provided by the federal government, the cantons and specialized organizations, has been prepared by the Directorate for Public International Law in cooperation with the offices that have competence over the issues addressed.

4. The third report begins with an overview of the major trends observed since 2001 (Chapter B) and goes on to present in detail the measures which the Confederation and the cantons have taken to comply with the provisions of CEDAW and the recommendations of the Committee (Chapter C). It also contains information on the implementation of the recommendations contained in the Swiss plan of action for follow-up to the Beijing Conference. The third report reflects changes noted since 1 January 2008. Statistical data on the topics addressed will be found in the annex. This third report is also complemented by a basic document (requiring updating) dealing with general issues concerning the implementation of human rights treaties in Switzerland, which has already been submitted to various United Nations committees.<sup>3</sup>

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<sup>1</sup>[www.ddip.admin.ch/content/sub\\_dipl/f/home/arti/report/rapun/wom.ContentPar.0002.UpFile.pdf/rp\\_001201\\_cedaw\\_f.pdf](http://www.ddip.admin.ch/content/sub_dipl/f/home/arti/report/rapun/wom.ContentPar.0002.UpFile.pdf/rp_001201_cedaw_f.pdf).

<sup>2</sup>[www.ddip.admin.ch/content/sub\\_dipl/f/home/arti/report/rapun/wom.ContentPar.0004.UpFile.pdf/rp\\_310103\\_cedawco\\_f.pdf](http://www.ddip.admin.ch/content/sub_dipl/f/home/arti/report/rapun/wom.ContentPar.0004.UpFile.pdf/rp_310103_cedawco_f.pdf).

<sup>3</sup> <http://tb.ohchr.org/default.aspx>.

## B. Survey of principal trends since 2001

The present chapter presents an overview of the principal trends observed and measures taken in the areas contemplated by the provisions of the Convention.

### Demographic trends

5. In recent years, the population residing in Switzerland has continued to grow steadily, to reach 7.5 million people in 2006, of whom 51.0% are women. This demographic growth is explained primarily by a net increase in immigration and a distinct natural net increase in the foreign population. At present, the share of the population that possesses Swiss citizenship is increasing only through naturalizations. By comparison with other European States, the share of foreign persons in the Swiss population (20.6% as of 31/8/2007) is one of the highest. 47.2% of persons of foreign nationality living in Switzerland are women.

6. The **age pyramid** has changed considerably in recent decades. The share of young people (under 20) has distinctly declined, while the share of persons aged over 64 has grown by 16.2%. Especially salient is the growth in the number of elderly persons over 79), since that group today represents 4.6% of the population. Among older persons, women account for 58.2%, and even 66.2% among those over 79. Statisticians explain this imbalance by a steady increase in life expectancy. On average, women live 4.9 years longer than men. At birth, average life expectancy is 84.0 years for women and 79.1 years for men. Over the long term, however, this gradual increase in life expectancy will tend to attenuate. Indeed, since the 1990s, the gap in life expectancy between women and men has narrowed. Among the youngest, women are in a minority because more boys than girls are born (106 boys for 100 girls).

7. Over recent decades, the **number of births in Switzerland has gone into marked decline**. Taking the statistical average, 100 women aged 5 to 49 give birth to 144 children. To ensure generational renewal, 210 births would be needed. At the same time, the age of the mother at the time of birth of her children is rising: the proportion of children born of a mother aged under 25 is now only 10.9%. Large families are becoming rare and the average number of children per family is in decline.

8. **The number of households has grown** much faster than the population in recent decades. Over a third are single-person households. Nonetheless, the family remains the primary model for living together. In the year 2000, 79% of the population lived in family households. In relation to the number of households with children, households without children have significantly increased. In parallel with the growing number of divorces, the proportion of single-parent households has grown by 11.2% since 1990, to the point that 15.2% of family households with children now fall into this category. Most single-parent households are made up of children with their mother, who in about half of cases is divorced. Unmarried couples as a share of family households (with or without children) account for just under 10%. In most cases, couples living together do not have children; only one fifth have them. Cohabitation outside marriage is a preferred lifestyle for the younger generations. For many, nevertheless, cohabitation ends in marriage, at least as soon as the couple is expecting a child. Births outside of marriage thus remain relatively rare (about one out of seven in 2006).

9. The number of **marriages is in distinct decline** (it was 5.3 per 1000 inhabitants in 2006). The age of the spouses at the time of the first marriage has steadily risen for both men and women. The rate of divorce follows the same trend: if the divorce rate holds steady, 52% of marriages contracted in 2006 will statistically end in divorce –not to mention the risk that divorce may increase further still.

### **The economy and the world of work**

10. Since the start of the 1990s, the **employment rate** among women has increased almost continuously, while among men it was in decline. In 2007, 76% of men (1991: 81%) and 60% of women (1991: 57%) over 15 years of age were gainfully employed or were seeking employment. On average, the rate of employment for women is thus well below that for men (by more than 15 points). While the number of women in the active population is only slightly below that of men in the 15 to 24 age group, the spread then widens: from age 25, and for all later age groups, the proportion of women who are gainfully employed falls well below that of men. The differences between men and women in regard to employment appear mainly in degree of occupation: more than half (57%) of gainfully employed women **worked part time** in 2007, as against only 12% for men. Part-time work therefore remains a characteristic typical of women's career path.<sup>4</sup>

11. In general, the **occupational position** of women remains **inferior** to that of men: more women work as salaried employees without managerial functions, while men more often work independently or as salaried members of management, or perform an executive function. This inequality is present even when men and women have the same degree of education.<sup>5</sup>

12. Proportionally, women are more often affected by **unemployment** than men. In 2007, the unemployment rate was 4.8% among women and 3.4% among men. The 15 to 24 age group was hardest hit.<sup>6</sup>

13. On average, women's wages are well below those of men. In 2006, the **wage gap** in the private sector was 19.1%. From 1998 to 2002 that gap remained virtually constant. It narrowed by one point between 2002 and 2004 and again by 0.8% from 2004 to 2006. This is due in part to different structures in the workplace. Wage disparities between men and women exist in all industries but wages vary considerably from one industry to another. In those industries where wages are lowest, the wage gaps between men and women range from 8% to 28%. They are smallest in the hotel and restaurant industry, in which 58% of employees are women, and they are largest in the "leather and shoe industry", where 57% of personnel is female.<sup>7</sup>

14. Women are paid less than men in the private sector even when they have equivalent qualifications and occupy equivalent positions. Depending on training, they earn from 13% (secondary diploma) to 23% (university, college) less than their

<sup>4</sup><http://www.bfs.admin.ch/bfs/portal/fr/index/themen/20/05/blank/key/erwerbstaetigkeit.html>.

<sup>5</sup> idem.

<sup>6</sup> idem.

<sup>7</sup> <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/20/05/blank/key/loehne.html>.

male counterparts. Women with equal professional positions earn 13% (supervisor) to 24% (middle and upper management) less than men.<sup>8</sup>

15. In the public sector, in federal government service, salary disparities were still at 129% in 2006, which is significantly less than in the private sector. While the salary gap narrowed from 13.0% to 10.1% from 1994 to 1998, and again from 2000 to 2004, it widened again in 2006. As in the private sector, a part of the difference is due to the structure of the workplace. In the public sector of cantonal administrations, the extent of salary disparities resembles that of the private sector.<sup>9</sup>

16. In couple households with children under age 15, eight women out of ten bear the **main responsibility for domestic and family work**. It is rarer among middle-aged couples to share domestic chores than among young-couple households without children. It is only from retirement age on that one observes a slight increase in the number of couples who take responsibility for household tasks together. On the whole, women of working age devote nearly twice as much time as men to domestic and family duties (32 hours on average compared to 18 for men).<sup>10</sup> Unlike men, who prefer to engage in honorary or volunteer activities for associations or organizations, there are proportionally more women who provide free help to relatives or friends.<sup>11</sup>

17. The federal **Act on Gender Equality** ("Equality Act") has been in force since 1996. An assessment showed that the act had brought about an improvement in the position of people who were victims of workplace discrimination and that it was therefore responsible for the distinct progress achieved in the practical realization of equality. Problems identified in this context include fear of reporting discrimination, difficulty of gathering information when women suspect a discriminatory act, and legal uncertainties due to persistent gray areas in the case law and some divergences in interpretation by the courts in regard to important concepts and rules of procedure.

18. With regard to measures taken in this respect, see paragraph 265 at article 11, below.

### **Education**

19. In education, the disparities that existed between men and women have diminished over time. The proportion of people who did not remain in school after compulsory education has fallen by half since the 1980s. Today, many women finish professional/vocational education.

20. In principle, all forms of education and vocational training are open on equal footing to both sexes. In fact, however, differences begin to appear as early as the compulsory schooling years: boys are in a clear majority in special classes and among children who have to repeat a school year. In moving from primary school to the first year of secondary school, 65% of girls succeed in entering schools with additional requirements, as compared with 60% of boys. According to the results of the Programme for International Student Assessment (PISA) survey, Switzerland has

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<sup>8</sup> *idem.*

<sup>9</sup> *idem.*

<sup>10</sup> <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/20/04/blank/key/freiwilligen-arbeit/ueberblick.html>.

<sup>11</sup> <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/20/05/blank/key/Vereinbarkeit/04.html>.



a significant disparity between the performance of boys and that of girls, contrary to what is observed in many other countries where such differences are not present to the same extent. However, other factors, such as socio-economic conditions or migratory status, have a greater impact on scholastic achievement than gender.

21. In recent years, this (slight) advantage gained by girls has prompted some criticism alleging a “feminization” of compulsory education that is too restrictive to permit boys to develop fully. For a long time, however, the public school system was largely geared to the needs of boys. Certain features more beneficial to boys than to girls are often perceived as “neutral” while other measures more specifically designed to encourage girls remain controversial.

22. Be that as it may, the advantage gained by girls during compulsory schooling becomes less marked in post-compulsory (vocational) education and has not, at all events, sufficed to lastingly offset the disadvantages borne by women in the world of work. At the point of passage to **post-compulsory education** one finds distinct disparities between boys and girls. The share of women aged 25 to 64 in post-compulsory education is still well above that of men of the same age group (in 2006, 23% women and 13% men), but younger women are gaining ground. Contrary to the 1980s, when men still clearly outnumbered women in post-compulsory schooling, this disparity has almost completely disappeared of late. Young men generally opt for vocational training, while young women generally prefer to pursue their education at a secondary school (*gymnase*) or in a diploma-granting school. There are, however, marked differences between regions. Men are clearly under-represented in courses of study leading to a professional examination or a higher-level examination leading to specialization in the chosen field and to broader professional capacities. The share of women candidates for professional examinations is a third (34%) and still increasing. Among candidates for higher-level professional examinations, which provide independent access to management of an operation, the share of women is still very low (20% in 2006) although it has doubled since the mid-1980s. The diplomas granted by specialized higher-level schools are gaining in importance. The share of women is now 32% (with an upward trend, due to the incorporation of health-care careers as from 2007).

23. **The considerable differences between the occupational choices of men and women** have remained virtually unchanged since 1990. One finds no real shift in professional preferences either among young women or among young men. On the whole, managerial professions are the most coveted. In that category, the share of women is close to two thirds. Men prefer technical occupations or work in the metallurgical or machinery industries while young women tend towards the medical care, personal care and sales sectors. The situation is similar at the university level. The number of graduates grows steadily among both men and women, but disparities between the sexes are not diminishing and career path choices are still closely linked to the student’s sex: in technical and scientific courses of study, women remain distinctly under-represented.

24. The **proportion of women in teaching** varies greatly depending on the level of education. Women are maredly over-represented in the teaching of young children (95% for pre-school and 78.5% for primary) but are much less present in the second level of secondary education, where they account for only 40.2% of teachers in schools of general education (2004-2005 school year). However, it is in universities and colleges that they have the lowest share (2006: 13.4%). Recent

studies have revealed that if one compares the Swiss situation with that of other European countries women are also clearly under-represented in **scientific research** and development (27% in 2004).

25. With respect to measures taken, see para. 221 ff at art. 10 below.

### **Public health**

26. The third Swiss survey on health in 2002 disclosed that 86% of the population (84% of women and 88% of men) reported themselves to be in good or excellent health. While disparities between sexes are very small among the young (15-24 years) and among older persons (over 75 years), women aged 25 to 74 felt less well than men of the same age group. 16% of the population (18% of women and 14% of men) suffered from a chronic bodily or psychological health problem hampering their day-to-day activity. From 1992 to 2000 the number of women smokers increased sharply for the 15-24 age group (from 26% to 35%) while it increased less sharply for their male counterparts (36% to 40%). During the same period, the proportion of people of all ages who consumed alcohol daily fell off, but the proportion of persons who drank once or twice a week was increasing, sharply among men (from 29% to 33%) and slightly among women (from 26% to 27%). Eating disorders remained a serious problem, especially among young women: among young people aged 19 to 24, 43% of women and about 14% of men were underweight. Frequency of accidents does not affect the two sexes equally: with the exception of the over-75 age group, men much more often fall victim to accidents than women of the same age.

27. In 2002, the revision of the Penal Code designed to decriminalize abortion, already mentioned in the previous report, was accepted by referendum by a majority of 72.2%. According to the new articles 118 to 120 of the code, women may legally interrupt their pregnancy subject to certain conditions (see first and second report, paragraph 464). The abortion is not punishable if the woman requested it in writing and it is performed by a doctor during the first twelve weeks of the pregnancy. In the same referendum, an initiative seeking to enshrine in the Constitution a general ban on all abortions was rejected by an even larger majority (81.8% of voters in all cantons).

28. For further details, see para. 343 ff at art. 12 below.

### **Public affairs**

29. Since the introduction of women's suffrage at the federal level, **women are increasingly well represented in political institutions**. The proportion of women elected to office in the last elections in 2007 is 29.5% in the National Council and 21.7% in the State Council. The proportion of women in the cantonal Parliaments was 26.3% on average in June, 2007. In the cantonal governments, women occupied on average about one fifth of the seats (19.2%). One canton, Zurich, is even governed by a majority of women, while six cantonal executives are exclusively male. Of the seven seats comprising the Federal Council, three have been occupied by women since the election of December, 2007. The share of women in communal parliaments is 31.0% and their share in communal executives is 24.9% (as of 6 January 2004)).

30. A study by the Swiss Federal Statistical Office (OFS) on elections for the National Council in 2003 revealed that women were not only less often selected as candidates than men, but that they were also less often elected. Their chances of winning a seat as a deputy in the National Council were 1.6 times less than those of men. In the recent 2007 elections, women's chances were again 1.3 times less than those of men. The women who were most successful in the 2007 elections were those who ran for the Green party. They received the same number of votes as their male counterparts (50.0%). Next were the women who ran for the Socialist party (42%) and the Christian-Democratic party (39%). The farther to the right a party is situated, the smaller the share of women elected. The Democratic Union of the Centre (UDC) party, which represents the upper-middle-class right, thus has only 12.9% women among its elected members in the National Council (2007). In the State Council, most women belong to the Socialist (5) and Radical-Democratic (3) parties.

31. In the federal **administration** the proportion of women reaches 29.4%, representing an increase of 12.4 points over 14 years (1991: 17%). That result bears out the success of efforts exerted to advance equality of opportunity. Women continue, however, to be markedly under-represented in leadership positions, although a reversal of that trend is beginning to appear. Among senior officials, the share of women is 9.2% (1991: 3.8%) and among intermediate-rank officials it is 20.7% (1991: 4.4%). Although the equivalent figures for cantonal administrations are not truly comparable, the trend observed in many cantons is fundamentally positive, as the proportion of women has increased. Among intermediate officials and especially among higher officials, women are, however, still very much under-represented.

32. Recent surveys confirm that men and women are portrayed differently in the **Swiss media**. A quantitative study of several francophone dailies revealed that the "news" sections report about men much more often than about women, that the photos shown are of men three times more often than they are of women, and that the media presence of male politicians by far overshadows that of female politicians.<sup>12</sup>

33. Regarding measures taken in this regard, see para.188 ff at art. 7 and 8 below.

#### **Reconciliation of work and family life**

34. In 2004, the OECD published a study on reconciling work and family life based on a comparative analysis of the situations in New Zealand, Portugal and Switzerland. It recommended, among other things, that Switzerland increase public expenditure on child care services and after-school supervised time, and develop access to school structures covering the full day, with a view to encouraging (full time) participation of women in the labour market. It also suggested introducing individual taxation in order to encourage both adults in two-parent households to work. In regard to national legislation on additional services for families, the OECD recommended that such laws avoid compromising financial incentives to work.

<sup>12</sup> Sylvie Durrer, *Moins d'une sur cinq... Les femmes dans le discours journalistique* [Less than one in five: women in journalistic discourse] in: *Questions au féminin* 1. 2003.

Finally, the OECD felt it was advisable that working conditions be more favourable to the family.<sup>13</sup>

35. In Switzerland, development of measures aimed at reconciling work and family has been making slow progress. Many obstacles stand in the way of reconciling work and family, notably three interrelated obstacles: the expansion of competences; lack of information and preconceptions; and the problem of limited financial resources. Despite the fact that the Confederation has only limited competences and means of action in this area, it has taken significant steps in recent years.

36. In 2003, the Confederation established an eight-year programme aimed at encouraging the creation of **extra-familial child care facilities** (nurseries, after-school supervision, networks of daytime families). For the eight-year duration of the programme, Parliament appropriated 320 million Swiss francs. Applications for financial aid accepted up to 31 January 2007 permitted the creation of 13,000 vacancies (in this regard, see para. 316 ff below).

37. The fact that paid maternity leave was long unknown in Switzerland undoubtedly had a lasting negative effect on the compatibility of work with family life. After three failed attempts, the new **maternity allowance** was finally accepted by popular referendum on 26 September 2004 and introduced with effect from 1 July 2005. Since then, all women exercising a remunerated activity are entitled to receive, for up to 14 weeks (98 days) from the birth of their child, 80% of the earnings they received before giving birth, up to a maximum of 172 Swiss francs per day (an amount arrived at based on a benchmark salary of 6450 Swiss francs). Women agricultural workers and women working for the husbands' company receive the same allowance for loss of earnings if they have their own salary, paid in cash. The federal regulations represent a minimum standard. More favourable provisions (higher allowances, longer period of entitlement) may always be provided for in an individual contract of employment, in a collective agreement or by other provisions of public law, e.g. cantonal maternity insurance. Public administrations are often more generous and have kept in force advantages gained. In the private sector, additional benefits provided by employers have generally been maintained.

### **Special situations**

38. Clearly, the status of women is determined not only by their sex but by a multitude of other factors (such as their age, marital status, education, profession, state of health, nationality, or professional activity). Consequently, the measures necessary in order to reach women who are at greatest risk of discrimination must also be differentiated. In recent years, there seems to have emerged a growing awareness in particular regarding the situation of migrant women in several domains such as health, education, access to the labour market, protection against economic

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<sup>13</sup> Concilier travail et famille, no 1f, (études du Secrétariat d'Etat à l'économie et de l'Office fédéral des assurances sociales), Bébés et employeurs: comment réconcilier travail et vie familiale: version abrégée de l'étude comparative de l'OCDE portant sur la Nouvelle-Zélande, le Portugal et la Suisse: aspects suisses, Berne 2004. [Reconciling work and family, No. 1f (Studies by the State Secretariat for the Economy and the Federal Office of Social Insurance), Babies and employers: how to reconcile work and family life: abridged version of comparative OCDE study on New Zealand, Portugal and Switzerland, Swiss aspects, Berne, 2004].

exploitation and domestic violence, and access to asylum. Specific measures designed to foster their integration have been adopted at various levels.

39. For further details, see paras. 97 ff and 123 ff below.

### **Women and violence**

40. Recent studies have borne out the fact that a considerable proportion of women in Switzerland are victims of physical, psychological or sexual violence at one time or another in their lives. That does not mean that men are not often victims of acts of violence. Taking the example of battery, 85% of suspects and 63% of victims are men. A special survey on homicides and attempted homicides conducted by the Federal Statistical Office with police authorities revealed that, for the years 2000 to 2004, 40% of victims were women.<sup>14</sup> If one counts only the victims who actually lost their lives, that proportion rises to 50%. 71% of these women victims of homicide had a family or couple relationship with the perpetrator. 74% of them were killed by their partner or ex-partner. Male homicide victims are much more often killed by strangers or by acquaintances (leisure/travel). According to a representative national survey conducted by the University of Lausanne<sup>15</sup> in 2003, 26.6% of women questioned indicated that they had (during the course of their adult lives) suffered physical violence or the threat of physical violence from persons known or unknown. 25.2% were victims of sexual violence which, among 10.7%, took the form of rape or attempted rape. 39.4% of women questioned had suffered physical or sexual violence at least once during their adult lives. 9.8% of women questioned indicated that the physical violence or threats of physical violence came from their companion or ex-spouse, 3.6% of them having suffered sexual violence from their ex-spouse.

41. Combating domestic violence is definitely no longer taboo in Switzerland. It is an issue often discussed in the media, as well as in the parliaments of the Confederation and the cantons in recent years. The **revision of the Penal Code** adopted by the federal Parliament in 2004 reflects a shift in thinking about domestic violence. Until then, certain acts of violence against spouses were prosecuted only if charges were brought. Under the new rules, the prosecution is initiated by the prosecutor. In recent years, virtually all of the cantons have changed their **provisions governing police intervention** designed to protect victims of violence in the family setting. All, or nearly all, police officers now have the ability to expel a perpetrator of violence from the couple's domicile. Many cantons have created **new institutions** which also address domestic violence. (for further details on cantonal and Confederation measures, see para. 100 ff).

### **Trafficking in women**

42. Based on a survey conducted throughout Switzerland and on figures issued by other European countries, the Analysis and Prevention Service of the Federal Police estimated in 2002 that the number of potential victims of human trafficking in Switzerland was from 1500 to 3000 people. Contrary to these estimates, an average of 20 to 50 reported cases of human trafficking (Penal Code, article 182) per year

<sup>14</sup> <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/19/03/02/dos/02/01.html>.

<sup>15</sup> P. MARGOT, M. KILLIAS, *La violence contre les femmes en Suisse – Résultats d'une enquête internationale [Violence against women in Switzerland – Results of an international survey]* in Crimiscope, no 25, ESC-UNIL, Lausanne 2004.

were noted in 2005 and 2006 (as well as 12 convictions in 2005 and 5 in 2006), and approximately twice that number of reported cases (as well as 15 convictions in 2005 and 14 in 2006) of encouragement of prostitution. According to victim aid statistics, there were 80 reported consultations in connection with acts of human trafficking or illegal prostitution in 2006. Thus, in regard to trafficking in women, the number of unreported cases remains very high. The Swiss Coordination Unit against the Trafficking of Persons and Smuggling of Migrants created by the Confederation in 2003 has in recent years observed a trend towards professionalization: the criminal networks that are behind this traffic today generally provide impeccable papers to the women they target. The victims most often enter Switzerland as tourists or indicate that they have found work there as maids or servants. For the police, customs officers and the office of foreign residents, it is thus becoming increasingly difficult to identify instances of unlawful entry or employment in Switzerland. It happens that the police find minors among the women who are victims of sexual exploitation. Women from emerging or developing countries are the preferred targets of traffickers in human beings.

43. In September, 2001, the “Human Trafficking” interdepartmental working group published a report entitled “**Human trafficking in Switzerland**” (“Traite des êtres humains en Suisse”). The authors take stock of the situation and recommend various measures aimed at combating trafficking in human beings. Following the issuance of the report, some of the measures were implemented.

44. For further details, see para. 167 ff, at article 6 below.

#### **Gender equality: public institutions and instruments**

45. In recent years, the **Federal Bureau for Gender Equality** (BFEG) has concentrated its activity on fostering equal rights and equal opportunity with regard to earnings from employment. It has also worked on promoting international cooperation in combating violence aimed against women. It continues to advise the authorities, companies, organizations and individuals who turn to it and operates within the federal administration as a centre of recognized expertise on matters of equality. Through its publications and periodic symposia, as well as its documentation service, it strives to provide information and enhance awareness both among specific specialized target audiences and among public opinion in general. Finally, the BFEG supports consultation projects and services that contribute to equality between men and women in working life and participates in projects of nationwide scope.

46. The **Federal Commission on Women’s Issues**<sup>16</sup> is entrusted with advising the Government on matters of equality. It regularly makes statements on current topics and gives its view on legislative drafts having an impact on equality in the framework of consultation procedures organized by the federal authorities. It should be noted, however, that the Federal Council only rarely turns to the Federal Commission on Women’s Issues, or for that matter to other advisory commissions. The Commission addresses current issues relating to equality, makes recommendations in that regard and devotes its energies to educating the public.

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<sup>16</sup> Commission fédérale pour les questions féminines [Federal Commission for Women’s Issues], “Questions au féminin” no 2/2003.

47. Different federal agencies today have personnel or services specializing in the field of equality. The resources and goals of these services are, however, very unequal. For the most part, the services are entrusted with promoting equal opportunity among personnel in the federal administration.

48. Most cantons and some municipalities have established their own **gender equality delegate** offices. These offices deal primarily with issues of training (especially vocational training), employment and labour market issues, possibilities for reconciling work and family life, violence against women, and integration of immigrant women. Public equality offices existing at the federal, cantonal and communal levels are brought together within the **Swiss Conference of Gender Equality Delegates** (Conférence suisse des déléguées à l'égalité). Currently composed of 22 members, it supports, coordinates, plans and proposes activities on a regional or national scale.

49. The budgetary restrictions that must be complied with by a large part of the public authorities have not spared equality programmes at the federal, cantonal and communal level. In recent years, more than one service has faced budget cuts, staffing reductions, or at least political interventions calling for such measures. Consequently, the number of cantonal and communal services, and the means available to them, have been on the decline (for further details, see para. 80 ff below).

50. The federal administration, as well as certain cantons and communes (Berne, Basel-City, Basel-Country, Grisons, Lucerne), have in recent years launched pilot projects and gained initial experience in the field of gender mainstreaming and monitoring of equality, as applied to different sectors. However, in Swiss public administrations generally, sex-specific considerations have as yet been little discussed. Still, the political debate on taxation of married couples and equitable taxation of families, pursued at the federal and cantonal level, does have a sex-specific dimension. The most debated elements are joint taxation of couples –still practiced in Switzerland—and the insufficiency of deductions for child-care costs outside the family in calculating income tax.

51. In recent years, the Confederation and the cantons have taken a series of steps in support of equality, to combat discrimination, and for the advancement of women in a great variety of sectors. The range of instruments encompasses legislative reforms (revisions in the spheres of domestic violence, interruption of pregnancy, or maternity allowances), programmes aimed at equality in various areas (professional training, Confederation personnel policy), financial support for projects carried out by governmental or non-governmental institutions (e.g. Confederation financial aid under the Equality Act or start-up funding for child care facilities) and systematic information efforts aimed at combating stereotypes (e.g. The “Fairplay-at-home” and “Fairplay-at-work” initiatives launched by the BFEG).

52. The statistical data and in-depth analyses made available by the Federal Statistical Office constitute invaluable instruments for observation of equality between women and men. Since 2001, the OFS has presented several reports aimed at providing a detailed analysis of equality in different areas of life and bringing out both progress achieved in certain sectors and the lack of progress in others. The

OFS has also prepared a Swiss Atlas of Women and Equality which is available online.<sup>17</sup>

## C. Implementation in Switzerland of the provisions of the Convention

### Article 1: prohibition of discrimination

#### CEDAW Recommendation 23

*The Committee recommends that the State party take steps to include in its legislation a provision for non-discrimination on the grounds of sex, as defined in article 1 of the Convention.*

#### 1. Recognition of the principle of prohibition of discrimination according to article 1 of CEDAW

53. As indicated in the first report (paras. 30 ff), the Convention, like other international instruments acceded to by Switzerland, has become part of the Swiss legal order since its entry into force (monist principle). Insofar as the Convention's provisions are directly applicable, the rights arising from it can therefore be invoked directly before Swiss authorities at all levels (Confederation, cantons and communes). Article 1 of the Convention thus constitutes a legal provision that can be invoked in Switzerland.

54. The Federal Supreme Court (Tribunal fédéral) has interpreted the constitutional provisions on equality between men and women and prohibition of discrimination in a rich and complex body of case law of which an overview is presented below.

#### 2. The general principle of equality between women and men

55. As noted in the first and second report, the federal Constitution of 1874 already contained in article 4 a provision setting out the general principle of equal rights. The new paragraph 2 introduced in 1981 supplemented the general principle with a specific provision on equality between men and women. In the new Constitution dating from the year 2000, the general principle of equality (article 8, paragraph 1, Cst) and equality between the sexes (article 8, paragraph 3, Cst) were reiterated and supplemented by a provision inserted between them which sets out the principle of general prohibition of all discrimination, but which also expressly prohibits all discrimination by reason of sex (article 8, paragraph 2, Cst). The introduction of the concept of human dignity in the federal Constitution (article 7) is likewise new.

56. The general principle of equality (article 8, paragraph 1, Cst) requires that similar situations be treated similarly and that different situations be treated differently, both in legislation and in the application of law.

A rule of law infringes the principle of equality before the law... when it contains legal distinctions which the subject-matter it deals with cannot reasonably justify or when, on the contrary, it does not contain distinctions although such distinctions are warranted in light of the situation. There is infringement of the principle of equality before the law when the similarity of

<sup>17</sup> <http://www.equality-stat.admin.ch>.



similar conditions is not respected or when different situations are not distinguished in terms of their difference. It is important that the unfounded distinction or the unjustified equivalent treatment should pertain to essential elements. Answers to the question whether a legal distinction is reasonably justified by virtue of the subject matter may vary according to the era and according to the dominant conception at the time. Within the limits set by these principles and by the prohibition against arbitrariness, legislators enjoy very broad freedom of action. [translation from German] (ATF (Federal Supreme Court Rulings) 125 I 173, c.6b).

57. Accordingly, a decision applying the law infringes the principle of equal treatment when two situations that are actually similar are judged or treated as different without objective reason or when two situations that are fundamentally different are judged or treated identically without valid reason. The equal treatment required by the Constitution is relative insofar as it depends on legal beliefs that may evolve over time. The principle of equal treatment may, for example, be considered violated when the features of situations compared are so different that treating them equally would be arbitrary. According to the case law of the Federal Supreme Court, a decision is arbitrary if it is clearly at odds with the actual situation, if an unchallenged legal rule or principle has been flagrantly violated, or if a decision is felt to be profoundly unjust. Rules and decisions implying certain distinctions are thus not only tolerated but even necessary according to the situation. The objective reasons justifying equality or inequality of treatment have been spelled out in different areas of application by Swiss law and by the case law of the Federal Supreme Court (which nevertheless expressly observes restraint in its criticism of legislative rules and which accords considerable leeway to the legislator in interpreting equality).

58. In addition to the prohibition of discrimination provided by the federal Constitution, some cantonal constitutions likewise contain provisions relating to equality between women and men. The new constitutions of several cantons (Zurich, Grisons and Vaud) expressly recognize the principle of equality and seek to advance equality of opportunity between the sexes.

### **3. Symmetrical prohibition of discrimination**

59. Since the principle of equal rights between men and women was expressly introduced into the federal Constitution (1981), the Federal Supreme Court has often used the concept of discrimination as an antonym of equality in general and of equality between the sexes in particular (former article 4, paragraph 2, first sentence / article 8, paragraph 3, first sentence). It has interpreted the ban on discrimination between the sexes as a prohibition against distinguishing by sex or basing a distinction on sex, and thus as formally putting the sexes on absolutely equal footing, by contrast with the general legal equality, which is considered “relative”. The following appears in a decision of 2003:

...The principle of equality between the sexes, according to article 8, paragraph 3 of the Constitution... also requires that men and women be treated equally in all spheres, regardless of social conditions and conceptions. The Constitution rules out as a matter of principle any legal differentiation founded on sex. Differences in treatment between men and women are acceptable only if biological or functional differences preclude equal treatment absolutely.

Article 8, paragraph 3 of the Constitution prohibits not only discrimination against women but more generally all regulation that would apply only to one of the two sexes if it is not applied for biological or functional reasons. Regardless of whether it is men or women that are disadvantaged, the law must be neutral. [translation from German] (ATF 129 I 265, 268, with references).

60. The obligation to afford the same rights to men and women is therefore essentially understood as a prohibition against discriminating on the basis of sex, ensuring symmetrical protection for men and women against any disadvantage based on sex. The only reasons justifying unequal treatment according to sex are recognized biological or functional reasons. To date, however, the Federal Supreme Court has not yet spelled out what differences might be functional and thus objectively justify unequal treatment between men and women. It has, however, noted that “functional” reasons should not be based upon the traditional division of roles between men and women.

...The traditional division of roles between men and women cannot be invoked as an objective reason for unequal treatment under article 8, paragraph 3 of the Constitution, as this would be tantamount to attempting to justify the very order which this constitutional provision is intended to eliminate. [translation from German]

In the view of the Federal Supreme Court, functional reasons may be recognized only if they are closely related to sex and constitute an obstacle to absolute equality of treatment.<sup>18</sup> Accordingly, it has taken the view that an inequality of treatment between men and women in regard to the obligation to fight fires, or related to age of retirement, widows’ pensions, Sunday work, or school admission was unacceptable from a constitutional standpoint.<sup>19</sup> One thus does not find in the case law of the Federal Supreme Court functional reasons independently of biological reasons.

61. In recent years, the Federal Supreme Court has nevertheless nuanced the concept of formal equality. The federal insurance court, in its decisions pertaining to equal treatment between men and women regarding social insurance law, was already applying not only the formally neutral wording of regulations but the actual effects it had upon one sex or the other in social reality<sup>20</sup> In keeping with the case law of the Federal Supreme Court, the principle of legal equality also applies to **indirect forms of discrimination**. That case law has been developed in parallel with wage discrimination complaints based on the Equality Act. Article 3 of the Equality Act expressly prohibits all direct or indirect discrimination in working life.

There is indirect discrimination when a regulation that is formally neutral with regard to sex leads to a situation in which it clearly disadvantages one sex by comparison with the other, where that difference cannot be justified for objective reasons [translated from German] (BGE 124 II 409, E.7; see also 126 II 377, E. 5d)

62. The right of men and women to equal pay for work of equal value is expressly set out in article 8, paragraph 3, clause 3 of the Constitution. The Equality Act

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<sup>18</sup> ATF 123 I 56 c. 3a. p.58.

<sup>19</sup> Cf. Jörg Paul Müller, Grundrechte in der Schweiz, Berne 1999, p. 459.

<sup>20</sup> ATF 116 V 322, 117 V194, 121 V 336; 122 V 211, 125 V 470, 125 V 127.

provides for this right under the heading “Prohibition against discrimination”, which applies to all aspects of working life:

1. Discriminating between workers by reason of sex, directly or indirectly, particularly on the basis of marital status or, as regards women, their pregnancy, is prohibited.

2. The prohibition of discrimination applies specifically to hiring, assignment of tasks, arrangement of working conditions, remuneration, training and further training, promotion, and termination of work relationships. (article 3, paragraphs 1 and 2, Equality Act)

63. Article 4 of the Equality Act further proscribes all discriminatory conduct taking the form of sexual harassment: discriminatory conduct is understood to mean inappropriate conduct of a sexual nature or any other conduct based on sex which offends the dignity of a person in the workplace, particularly making threats, promising advantages, imposing constraints or exerting pressures of any kind on a person with a view to obtaining sexual favours from that person.

#### 4. Implementation of equality: legislative mandate

64. Article 8, paragraph 3, second sentence, of the Constitution contains a mandate to the legislator to secure equality in law and in fact between the sexes, notably in the area of education and in work and family life. That mandate is in principle addressed to the legislative branch. The Federal Supreme Court takes the view that the judicial branch should confine itself to ensuring equality from a formal standpoint, ensuring the neutrality of legal rules, and ensuring protection against all formal discrimination. It thus falls ultimately to the legislative powers (federal and cantonal) to create new legal rules in order to attempt to remedy inequalities between men and women that persist in social and economic reality and to ensure that unequal situations are treated differently.

65. According to the case law of the Federal Supreme Court, **affirmative measures** by the State designed to compensate for actual harm or historical discrimination borne by women through promoting their access to resources and political power are justified as a matter of principle on the basis of article 8, paragraph 3, clause 2 of the Constitution. This kind of measure, however, may infringe the constitutional right of men to equal treatment and non-discrimination on the basis of sex. Measures for the advancement of women are therefore acceptable insofar as they do not violate the constitutional rights of the men concerned in an unacceptable manner. In other words, they are acceptable on the condition that they rest on legal foundations, that they are appropriate and necessary to achieve the stated objective and that they are tolerable to the men concerned (ATF 131 II 361 c.52, 125 I 21 c.3e/cc; see also the comment below concerning quotas, para. 137 ff). In the sphere of working life, on the other hand, article 3, paragraph 3 of the Equality Act expressly provides that “appropriate steps” aimed at promoting equality in fact between men and women do not constitute discrimination. This legal basis, however, is not sufficient to justify public measures in favour of disadvantaged women.

## 5. General prohibition of discrimination

66. As previously indicated, the prohibition of discrimination appears expressly in the Constitution only since 1999 (article 8, paragraph 2). Before then, case law and jurisprudence had taken the view that the prohibition of discrimination was an integral part of the general principle of equality (article 4 of the former Constitution).

67. Taking up the international terminology with regard to discrimination, the Federal Supreme Court, in a decision of 2003 regarding equal treatment between Swiss citizens and foreign nationals, stressed the **asymmetric** character of the protection afforded to **disadvantaged groups** by virtue of the new prohibition against discrimination:

...There is discrimination within the meaning of article 8, paragraph 2 of the Constitution when the unequal treatment complained of by a person is due solely to membership in a group (...) which, in the past and in current social reality, tends to be excluded or treated less well than others (...). Discrimination is a qualified form of inequality of treatment of persons who are similarly situated in that its effect is to disfavour an individual in a way that may properly be considered humiliating or exclusive because it is based on distinctive features that are essential components of the identity of the person in question, who therefore cannot rid himself of them, or could only do so with difficulty (...). From that perspective, discrimination thus also diminishes human dignity (article 7). The prohibition against discrimination embodied in Swiss constitutional law does not, however, absolutely rule out any differentiation in terms of a criterion protected by the non-discrimination rule (origin, race, sex, language, etc.); initially it only renders the illegal differentiation suspect, a suspicion that can be removed only by a sufficient justification (...) Legally, the prohibition against discrimination thus has the effect of making inequalities of treatment subject to a specific obligation to show grounds for the differentiation. [translation from German]<sup>21</sup>

68. With regard to the prohibition of discrimination against disabled persons, the Federal Supreme Court held in a recent decision that the protection against all discrimination pursuant to article 8, paragraph 2 of the Constitution is designed essentially to “protect disfavoured groups and each of their members.” It indicated that potentially discriminatory inequalities of treatment should be based on objective reasons and could not simply rest upon the characteristic according to which the differentiation was made.

While discriminating against disabled children is as a matter of principle contrary to article 8, paragraph 4 of the Constitution, the mere fact of treating them differently is not, particularly in the school setting, given the fact that every disabled child must be educated in keeping with the child’s intellectual faculties. [translation from German]<sup>22</sup>

69. Still according to the Federal Supreme Court, the ban on discrimination within the meaning of article 8, paragraph 2 of the Constitution does not confer any right to

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<sup>21</sup> ATF 129 I 232, c.3.4.1, with references; see also ATF 129 I 217, 129 I 392, c.3.2.2, 126 II 377.

<sup>22</sup> ATF 130 I 352, c.6.1.2; regarding the prohibition of discrimination against disabilities, see also ATF 131 V 9.

establish equality in fact, by contrast with cases arising in the context of equality of the sexes.<sup>23</sup>

70. While the ban on discrimination in article 8, paragraph 2 of the Constitution also includes instances of discrimination based on sex, the Federal Supreme Court has not yet ruled on the scope of that prohibition as to equality between men and women. It has instead based its decisions exclusively on article 8, paragraph 3 of the Constitution, which operates here a *lex specialis*, thus laying down a symmetric conception of equal rights between men and women. For some years, one has encountered in the writings of Swiss jurists different and sometimes critical views on the case law of the Federal Supreme Court regarding equality of the sexes and the ban on discrimination.<sup>24</sup> Thus, the formal and absolute principle of equal rights between men and women upheld by the Federal Supreme Court has been called into question.<sup>25</sup>

## **Art. 2 Measures designed to combat discrimination in legislation and in judicial decisions**

### **1. Regional disparities and equalizing effect of the prohibition of discrimination**

#### **CEDAW Recommendation 25**

*The Committee recommends to the State party that it ensure uniformity of results in the implementation of the Convention within the Confederation, through effective coordination and the establishment of a mechanism to monitor compliance with the provisions of the Convention at all levels and in all areas.*

71. As shown by the equality index in the Swiss Atlas of Women and Equality published by OFS, there are regional differences in the attitude of the Swiss population to the concept of equality between men and women. These disparities come up regularly during referenda on projects relating to equality. The desire to eliminate existing inequalities is greater in the Latin regions and urban areas than in the rest of the country. As for equality between the sexes, one also finds clear regional disparities in the actual structures of families and households, in remunerated work and in volunteer work, as well as in education and the political system. Nevertheless, in its comparison of figures for the years 1990 and 2000, the equality index, composed of five parameters, reveals a definitely positive trend in equality, not only for Switzerland as a whole but for practically all the cantons.<sup>26</sup>

<sup>23</sup> Decision of the Second Court of Public Law (Arrêt de la Deuxième Cour de droit public) of 30 November 2000, 2P.77/2000/sch.

<sup>24</sup> See e.g., Andreas Rieder, Form oder Effekt? Art. 8 Abs. 2 BV und die ungleichen Auswirkungen staatlichen Handelns, Bern (Stämpfli) 2003; Bernhard Pulver, L'interdiction de la discrimination; Etude de l'article 8 alinéa 2 de la Constitution fédérale du 18 avril 1999; Basel (Helbing&Lichtenhahn) 2003; Bernhard Waldmann, Das Diskriminierungsverbot von Art. 8 Abs. 2 BV als besonderer Gleichheitssatz, Bern (Stämpfli) 2003; Ivo Hangartner, Diskriminierung, ein neuer verfassungsrechtlicher Begriff, ZSR 122/2003, S. 98ff.

<sup>25</sup> See e.g., Margrith Bigler-Eggenberger, Et si la Justice ôtait son bandeau? La jurisprudence du Tribunal Fédéral sur l'égalité entre femmes et hommes, Basel (Helbing&Lichtenhahn) 2003; Bernhard Pulver, L'interdiction de la discrimination; Etude de l'article 8 alinéa 2 de la Constitution fédérale du 18 avril 1999; Bâle (Helbing&Lichtenhahn) 2003, para.298ff.

<sup>26</sup> <http://www.bfs.admin.ch/bfs/portal/fr/index/regionen/thematischekarten/gleichstellungsatlas/synthese/gleichstellungindex.html>.

72. The core document (see para. 4) shows that Switzerland's federalist system is based on a distribution of tasks and State functions between the confederation and the cantons. In recent years, nothing has changed as regards the fact that federalism is considered to be one of the main pillars of Swiss democracy. In their areas of competence, the cantons have considerable political leeway, which the federal authorities in principle may not erode. The cantons are aware, however, that many problems falling within their purview cannot be resolved in isolation but call for overall solutions. Consequently, they have created many organs of coordination at different levels and in different domains. Although cooperation within these organs is optional, the cantons do make regular use of this option. Conferences initiated by the cantons in the fields of education, health, social aid and justice and law enforcement are used in this way to coordinate issues of equality. The Swiss Conference of Gender Equality Delegates serves as a forum for exchange of views among the specialized organs of the State at all levels and has the task of coordinating various projects and the adoption of positions.

73. The fact remains that legal and factual disparities between different cantons and regions remain considerable in domains relevant to the powers of the cantons. The provisions of the federal Constitution and international conventions ratified by Switzerland, however, set limits which cantonal and communal authorities do not have the right to overstep, despite their autonomy. According to the case law of the Federal Supreme Court, equality before the law, the ban on discrimination, equal rights between men and women (article 8, paragraph 3, clause 1) are a part of the constitutional law that is directly applicable, which individuals may invoke directly before cantonal or federal authorities and courts in administrative or judicial proceedings (see first and second report, para. 30 ff). The Federal Supreme Court plays an important unifying role in this respect. It can only do so, however, with respect to cases it is called upon to decide.

74. As a matter of principle, while the Federal Supreme Court reviews appeals referring to unequal treatment between men and women with complete freedom (at least from a legal standpoint), its case law leaves considerable leeway to cantonal authorities regarding consistency of decisions on gender equality under the Constitution.<sup>27</sup> Thus, the cantons have considerable freedom in the areas of training, education, health, and combating violence, areas that are especially sensitive in terms of equality between men and women. It should be noted, however, that since 1981, through the cases concerning equality and non-discrimination, some uniformity has emerged in the areas falling under cantonal jurisdiction. Examples of this are: allowances for families or for children, taxation of couples, remuneration of personnel in cantonal and municipal administrations, as well as political rights.

75. In certain other very important areas, such as the law of persons and family law, labour law, vocational training, social insurance and health insurance, legislative competence falls chiefly to the Confederation. In these areas, discrepancies between cantons regarding implementation of equal rights of men and women are naturally much smaller. Moreover, Confederation services specializing

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<sup>27</sup> See ATF 123 III 193, c.2c/cc. This position has come under criticism by legal scholars in particular because it is deemed difficult to understand in light of the formal equality already established; cf. Margrit Bigler-Eggenberger, *Et si la Justice ôtait son bandeau? La jurisprudence du Tribunal Fédéral sur l'égalité entre femmes et hommes*, Basel, (Helbing&Lichtenhahn) 2003, p.58ff.

in equality strive to create synergies and to coordinate work between specialized agencies and cantons.

## 2. Implementation of the prohibition of discrimination in judicial procedures

### **CEDAW Recommendation 21**

*The Committee recommends that the State party ensure effective enforcement of the rights enshrined in the Convention and provide women with appropriate remedies in the courts for violations of the rights protected by the Convention. It also recommends awareness-raising campaigns about the Convention aimed at parliamentarians, the judiciary and legal professionals. The Committee requests that the State party report on progress made in this regard in its next periodic report and provide information on whether the Convention has been invoked before domestic courts.*

76. Insofar as we can determine, the Federal Supreme Court has thus far invoked the Convention only once in its decisions referring to equality of the sexes or discrimination between men and women in regard to accepting affirmative action in Switzerland<sup>28</sup> (see para. 139 below). In its reasoning concerning equality, the Federal Supreme Court bases itself in the first instance on constitutional provisions regarding equality under law and equality between men and women (article 8, paragraph 3 of the Constitution), by contrast with other spheres of application, in which international and European conventions on human rights regularly serve as a basis for its decisions. The difference seems to stem from the fact that the courts recognize only to a very limited extent the direct applicability of the Convention in individual cases, basing themselves also on the explanations given in the message of the Federal Council of 1995 ratifying the Convention. In fact, even parties to judicial procedures at the cantonal or federal level rarely seem to invoke the Convention in their arguments.

77. The Confederation has taken different measures to inform authorities at the cantonal and national level, as well as the public at large, of the Convention and its meaning (see para. 439 ff at article 24 below).

78. In recent years, numerous appellants –both men and women—have based their appeals on the article of the Constitution that prohibits all discrimination in order to raise the issue of gender equality before a court in a wide range of areas (in particular, the law governing names, the law of divorce, criminal prosecution for sexual harassment, social insurance, and military service). Although exact figures are not available, it is thought that in Switzerland too, women tend less often than men to turn to judicial proceedings and use them differently.<sup>29</sup> What is striking is that many men have invoked the principle of equal rights (article 8, paragraph 3, clause 1 of the Constitution) and continue to do so, as shown in recent decisions of the Federal Supreme Court concerning affirmative action in the sphere of education. The Equality Act, which prohibits all discrimination concerning work, is by contrast invoked by women in 95% of cases (for an assessment regarding the Equality Act, see para. 286 ff below). The new law of divorce has given spouses the possibility of seeking divorce by common agreement, which has not been without consequences as regards the number of applications for divorce filed by women. In 2006, nine

<sup>28</sup> ATF 125 I 121, c.4b.

<sup>29</sup> Regula Kägi-Diener, Frauen in rechtlichen Verfahren? Prozesse unter der Lupe, AJP/PJA 12/2002, p.1387ss; Monika Binkert/Kurt Wyss, Die Gleichstellung von Frau und Mann im Ehescheidungsverfahren, Basel 1997.

divorce decrees out of ten were issued in response to an application by common agreement (see para. 429 ff below).

79. One of the aims of the law on victim assistance is to facilitate access by **victims of acts of violence** to judicial procedures and to improve their position under such procedures. Police crime statistics reveal that in 2006, 84% of victims of sex offenses recorded by the police authorities were female. Those figures are borne out by the figures for consultations by victims in 2006, which show that 86% of consultations regarding sex offenses were female and 91% of perpetrators were male.<sup>30</sup> Since 2001, the number of cases of sex offenses reported by the police has steadily risen. On the other hand, the number of convictions has remained small. Criminal judgment figures for 2006 indicate 117 convictions for rape (committed in 100% of cases by male perpetrators) out of 639 cases reported by the police. Although the number of reported cases has risen in recent years, the number of convictions has remained fairly stable.<sup>31</sup> This trend is accounted for at least in part by the fact that criminal judgments are recorded only as of the time they take effect. In the case of serious criminal offenses, that cannot always take place before the end of the year during which the judgment was entered. However, it is not known to what extent the decline is also due to difficulties certain female victims may face in access to judicial procedures.

### 3. Institutionalization of equality by federal and cantonal authorities

#### **CEDAW Recommendation 27:**

*The Committee recommends that the State party strengthen the existing machinery for gender equality by providing it with adequate human and financial resources at all levels. It also recommends that the State party enhance coordination among the existing institutions for the advancement of women and the promotion of gender equality in order to ensure gender mainstreaming at all levels and in all areas.*

80. The BFEG employs 17 persons (including 12 full-time) and managed a (reduced) budget of about 7 million Swiss francs in 2006 (including resources made available to the Federal Commission on Women's Issues - See para. 81). Of that amount, 4.3 million Swiss francs are earmarked for promotion of equality. Among the various issues addressed in that context, we should mention equality in the workplace, reconciling work and family life, choice of profession, sexual harassment, further training, and information and public education activities.<sup>32</sup> One of the main tasks of the BFEG is to intervene in the legislative process of the Confederation to call attention to potential discrimination and present its own proposals. Among the core themes in the last four years, we should note assessment of the Equality Act and monitoring of equal pay in the context of public procurement (see paras. 286 ff and 338 ff), advancement of research on the scope of domestic violence by the anti-violence service and national coordination among different stakeholders in this area.

<sup>30</sup> <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/19/03/01/key/ueberblick/01.html>.

<sup>31</sup> [http://www.bfs.admin.ch/bfs/portal/fr/index/themen/19/03/03/key/strafdaten/haeufigste\\_delikte.html](http://www.bfs.admin.ch/bfs/portal/fr/index/themen/19/03/03/key/strafdaten/haeufigste_delikte.html).

<sup>32</sup> <http://www.ebg.admin.ch/dokumentation/00012/00194/00204/index.html?lang=fr>.



81. Twice a year, the Federal Commission on Women's Issues<sup>33</sup> publishes a review entitled "Questions au féminin", which presents timely topics from different perspectives and also makes a valuable contribution to analyzing these questions, to informing the public and to fostering dialogue.<sup>34</sup> To finance its work, the Commission had a budget of approximately 180,000 Swiss francs in 2007. Its secretariat has one and one half posts. Its budget is encompassed by the budget of BFEG.

82. Certain units of the federal administration today have specialists or even offices specializing in issues of equality between men and women. Thus, one finds gender equality delegates in the Federal Department of Foreign Affairs (DFAE) (General Secretariat, Division of Human Security, Directorate of Development and Cooperation) and the Federal Personnel Office (under the title Diversity Management), in the General Secretariats of the Federal Department of the Environment, transport, energy, and communications, the Federal Department of the Public Economy and the Federal Department of Defence, Protection of the Population and Sports, as well as in various other federal offices. Many of these positions have recently been downsized or even eliminated (e.g. the post that existed in the General Secretariat of the Federal Department of Justice and Police) as a result of budget cuts. With some exceptions (see para. 85 below concerning gender mainstreaming), these specialized services of the federal government devote their energies essentially to promoting equal opportunity between men and women in personnel matters. In order to encourage interaction among these various posts assigned to equal opportunity, a networking day was organized in 2006 and in 2007. Plans have been made for this event to be repeated at regular intervals.

83. A study conducted by the Federal Commission on Women's Issues<sup>35</sup> indicates that the budgetary restrictions that public authorities have had to adopt have had repercussions on equality services at the federal, cantonal and municipal levels. In recent years, several of those services have faced budget cuts forcing them to reduce their personnel or at least undertake policy measures requiring such cuts. Consequently, the number of specialized cantonal services and the resources available to them are on a downward trend. The BFEG for equality between men and women has also undergone budget cuts as well as a staffing cut that substantially limits its activities. Certain parliamentarians are also seeking by means of a motion to restrict its scope of action with respect to integration of women migrants. That motion was adopted by the first Council in March 2007 and definitively rejected in December 2007. The cantonal office of equality of the canton of Argovia was eliminated in 2005 and replaced by a headquarters entrusted with advancing family issues. The mandate of the equality office of the canton of Valais was extended to family issues with no increase in its budget. The cantonal commission for gender equality issues was eliminated in the canton of Grisons. In the canton of Basel-Country, the people will have to decide upon an initiative of the

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<sup>33</sup> Commission fédérale pour les questions féminines [Federal Commission for Women's Issues], [http://www.frauenkommission.ch/home\\_f.htm](http://www.frauenkommission.ch/home_f.htm).

<sup>34</sup> In recent years, the Commission has focused on the following topics: child care, careers in health and social work, women in the information society, media and politics, institutional equality measures, poverty, campaign advertising, domestic violence, and migration; See: <http://www.frauenkommission.ch>.

<sup>35</sup> Commission fédérale pour les questions féminines [Federal Commission for Women's Issues], "Questions au féminin" no 2/2003, p.52.

Central Democratic Union party calling for the elimination of the equality office. In the canton of Lucerne, the equality office has been integrated into a service dealing with social questions. In the canton of Zurich, a motion calling for the elimination of the office of equality was roundly rejected by Parliament in 2006. That same year, the canton of Neuchâtel decided to lower the priority of the resources earmarked for activities outside of the administration and to focus cantonal policy on equality with regard to measures benefiting families and on equality among its own personnel. Among the subjects which cantonal and community offices for gender equality are primarily concerned with are questions of training (notably vocational training), professional life and the labour market, reconciling family life and work for both women and men, violence against women, and integration of women migrants.

84. The official services and offices entrusted with promoting equality at the level of the Confederation, cantons and cities are grouped together under the **Swiss Conference of Gender Equality Delegates**. Currently comprising 24 members, it supports, coordinates, plans and carries out activities nationally or regionally. The conference meets twice a year to discuss current issues, pursue projects and exchange information and experience.<sup>36</sup> For example, it carried out a project entitled 16+ whose aim is to educate girls and boys, parents and corporations about the possibility of vocational choices running counter to gender stereotypes. The launching of a national day for girls, held yearly, was quite successful.<sup>37</sup> In recent years, the conference has also published several studies and analyses devoted to current issues (notably in the areas of vocational training, education, divorce and violence against women).

#### 4. Gender mainstreaming and gender budgeting

85. The Federal Council tasked the inter-departmental working group on “Follow-up to the fourth UN world conference on women”, including representatives of all federal administrations, to propose means and enhance knowledge specifically relating to equality in all branches of the federal administration. In order to increase awareness of gender mainstreaming among federal personnel, the working group has created an insert<sup>38</sup> that is included with each earnings statement. It has also published a guide addressed to project managers<sup>39</sup>, containing indicators regarding the best way to take gender equality into account in the preparation, carrying out and assessment of a project. The guide also contains practical advice and numerous references to other sources of information.

86. Pilot projects have shown the feasibility of gender mainstreaming as well as its practical usefulness. The first experiences gained in specific areas (encouraging creation of apprenticeships, Youth and Sport, training and research, human security/Federal Department of Foreign Affairs) have shown that the gender mainstreaming approach required specific expertise, which the agencies in question

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<sup>36</sup> <http://www.equality.ch>.

<sup>37</sup> <http://www.journee-des-filles.ch>.

<sup>38</sup> <http://www.ebg.admin.ch/themen/00141/index.html?lang=fr>.

<sup>39</sup> <http://www.ebg.admin.ch/dokumentation/00012/00199/index.html?lang=fr>.

do not always have To fill this gap, a list of specialists willing to share their knowledge with the federal administration has been drawn up.<sup>40</sup>

87. There is no overall strategy or coherent approach to gender mainstreaming in the federal administration. Various agencies have, however, taken initiatives. In particular, the federal office of land development has introduced a competence centre for a gender mainstreaming approach in land-use planning and development. Viewing gender considerations as a cross-cutting endeavour, this agency has already taken it into consideration in various specific areas (notably in its compilation of information on mobility) and has organized a survey to test gender mainstreaming knowledge and levels of training among the major actors in transport planning, town and country planning, and sustainable development.<sup>41</sup> At the Federal Office of Public Health (OFSP) gender issues are a structural and thematic element that has been given consideration since 2001. It is now the Gender Health sector that deals with gender issues based on gender mainstreaming (see also para. 354 below). The office of the Secretary of State for the Economy has also taken initial steps to ensure that gender is better reflected in economic cooperation for development. The Directorate for Development and Cooperation (DDC), for its part, has developed a standardized checklist to define and quantify gender mainstreaming in documents relating to projects funded by it. It also analyzes the costs of measures to advance equality in the personnel area. In the field of peace-building, external policy on human rights, humanitarian policy and migrations, there is a senior management post entrusted with pursuing acquisition of competency regarding gender and ensuring that external policy activities in these areas carry the stamp of gender sensitivity or are even specifically designed in terms of gender. This office is currently working to implement an action plan on gender mainstreaming that was adopted in 2006.

88. In recent years, certain cantons and communes (Berne, Basel-City, Basel-Country, Grisons, Lucerne) have also taken the first steps regarding gender mainstreaming and monitoring of equality in different areas. The canton of St. Gall is addressing the subject in the framework of the cross-border project *LänderGender*, in cooperation with Liechtenstein and the Voralberg region. In 2002, the city of Zurich introduced gender mainstreaming into its administration as a whole and launched pilot projects in the areas of personnel policy, combating forms of dependency, the complementary labour market, and budgetary analysis. The cantons of Basel-Country and Grisons, for their part, have acquired mechanisms for monitoring equality, which they apply essentially in the educational domain. As part of a project which aimed at introducing a new model of public management into the administration of Basel-City and which in the end did not gain approval in parliament, the administration of Basel-City had developed guidelines to evaluate effects and to create concrete indicators.

89. Questions relating to the **levying and distribution of public revenues** also form part of gender mainstreaming, even though this aspect has not yet been given very much attention in Swiss governance. The political debate on individual taxation of spouses and equitable taxation of families, which can be witnessed at the level of the Confederation and cantons, comprises important sex-specific aspects to

<sup>40</sup> For further details on pilot projects and experiences, see:  
<http://www.ebg.admin.ch/themen/00142/index.html?lang=fr>.

<sup>41</sup> <http://www.are.admin.ch/dokumentation/publikationen/00023/index.html?lang=de>.

which offices for equality and women's organizations frequently draw attention. Their criticisms refer mainly to two points: joint taxation of married couples, which remains the rule in Switzerland, and the fact that little account is taken of child-care costs outside the family in calculating income tax. The cost of child care outside the family is not reflected directly in the federal direct tax law of 14 December 1990. According to article 72c of the federal law of 14 December 1990<sup>42</sup> on harmonization of direct taxes of cantons and communes (LHID), the cantons do have the possibility to provide for a deduction for child-care costs outside the family. This article, operating as a transitional provision, allows the cantons maximum flexibility with regard to deduction of child-care costs until the tax reform for couples and families enters into force. Since the last draft revision was rejected by a referendum of 16 May 2004, the question of a child-care deduction will have to be definitively dealt with in the LHID under the next reform of taxation of couples and families. With the exception of the cantons of Glaris, Neuchâtel, Schwyz and Ticino, all the cantons have provided in their tax laws a limited deduction for child care costs. This deduction applies only if the child care is provided by another person and is remunerated, and the costs must be documented. The highest deductions are those provided for by the cantons of Nidwald (10,000 Swiss francs), Schaffhausen (9,000 Swiss francs), Uri (8,000 Swiss francs), Zurich and Argovia (6,000 Swiss francs) as well as Basel-City and Basel-Country (5,500 Swiss francs). The cantons of Appenzell Outer Rhodes and Obwald are exceptional in that they allow a deduction for the whole amount of child care costs, without any ceiling.

90. From a gender perspective, joint taxation as it is currently practiced does not seem to be the best solution, in view of its negative effects on the economy: the higher taxation which goes hand in hand with increased income deters many married women from paid employment, whether part-time or full-time. On the other hand, it encourages undeclared work, with all the harmful consequences that may have on the person's social security. Any reduction in the tax burden for couples (whether by the splitting procedure or by granting a deduction for the second salary) tends to increase the rate of professional activity among married women. That would also be the case if one changed to individual taxation, as that system would make it possible to reduce the tax on the second salary. The remunerated activity would thus become more attractive by comparison with household activities or leisure activities. The effect will, however, depend largely on the specific provisions. The proposals for reform that have been put forward in recent years with regard to taxation of couples and families were very controversial since they are an expression of divergent conceptions: while proponents of joint taxation view married couples as an economic entity, supporters of individual taxation emphasize the economic independence of the spouses. Seeking a way out of the impasse in Parliament, the Federal Council, in early 2007, organized a referendum with a view to choosing a tax system for married couples. Its goal was to begin by obtaining a decision in principle from the federal chambers to develop a future system of taxation of married couples. The analysis of replies received is now complete. As soon as the Federal Council decides on follow-up to the procedures in 2008, work on preparing a detailed draft can begin. At that point, it will be important to very carefully consider means that could be implemented to alleviate the burden on families, giving particular consideration to how educational costs for children can be covered.

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<sup>42</sup> RS 642.14 (RS: Systematic Compilation of Federal Laws).

91. In the framework of gender mainstreaming, the office of equality of the city of Zurich has examined the municipal budget in cooperation with an expert from the department of finance in order to determine how public benefits are distributed between men and women. This budget analysis from a gender standpoint was aimed at bringing transparency into monetary flows and, ultimately, bringing out to what extent investments or budget cuts in some domains had impacts on the quality of life of men and women in the city of Zurich. The final report of the pilot project indicates that it is quite possible to analyze a budget according to gender, but that study did not respond to expectations since it did not make it possible to analyze the performance and effects of the specific municipal action for each sex. The authors of the report recommend that a perspective on the administration be adopted which is differentiated by sex and which leads to making available data differentiated by sex.<sup>43</sup> The canton of Basel-City too has adopted an instrument for analyzing public spending which can indicate how it is distributed between men and women. The publication entitled “Der kleine Unterschied in den Staatsfinanzen”, that refers to this instrument of analysis has prompted interest all around Europe.<sup>44</sup> Since 2005, the distribution of expenditure in the canton between men and women has been analyzed year by year. Over time, methods of presentation of this trend have improved and been refined. Indicators of key figures have been defined to permit a detailed sectoral analysis. Initial results are expected at the end of 2007 in the field of education and training.

92. The gender responsive budget (GRB) is a theme addressed by DDC both in the field (for example, in Pakistan, Ecuador, Tanzania, South Africa or Burkina Faso) and in its own administration. A feasibility study was completed in arch 2005. The first pilot projects, launched in the summer of 2005 centrally and in certain coordinating bureaus, were analyzed in 2006. Gender responsive budgeting is one of the priorities that DDC has set for the next three years in regard to implementation of CEDEF. The policy-making bodies of the Federal Department of Foreign Affairs have also introduced gender responsive budgeting into the spheres of peacemaking, foreign policy on human rights, humanitarian policy and migrations policy. When it allocates financial resources, it reviews the extent to which activities funded take the gender dimension into account.

## 5. Analysis and statistics

### **CEDAW Recommendation 54**

*... The Committee also urges the State party to collect and analyse comprehensive sex-disaggregated data pertaining to the Confederation, the cantons and the communes and to include such data in its next report.*

### **CEDAW Recommendation 37**

*... The Committee urges the State party to conduct regular and comprehensive studies on discrimination against migrant women and to collect statistics on their situation in employment, education and health and on the various forms of violence they experience so as to enable to Committee to form a clear picture of their de facto situation.*

<sup>43</sup> <http://www.stadt-zuerich.ch/internet/bfg/home.html>.

<sup>44</sup> <http://www.frauenrat-bs.ch/genderbudget/index.php>.

93. The Federal Statistical Office (OFS) has developed its outputs concerning equality and regularly provides an array of updated data disaggregated by sex to serve as indicators in the areas of training, unremunerated work, employment, reconciliation of work and family life, salaries and policy.<sup>45</sup> The OFS has, in recent years, in cooperation with the federal administration and the cantons, exerted major efforts to fill general lacunae in social statistics, due essentially to the federalist structure of competences in this area.

94. In recent years, the OFS has also carried out a series of studies relating to the scientific analysis of these data. In 2003, it published the third complete report on the situation of men and women in Switzerland, under the title “Towards equality ?” (“Vers l’égalité?”)<sup>46</sup> In the wake of the federal population of census of 2000, the OFS published in 2005 an analytical overview of changes that have occurred since 1970 from the standpoint of equality between men and women.<sup>47</sup> The Swiss Atlas of Women and Equality, which appeared simultaneously, reports about differences and similarities observed between regions in the field of gender equality. It contains maps, tables and graphs, supplemented by brief comments on the recent major changes.<sup>48</sup> Various studies have also been devoted specifically to analysis of segregation in the workplace based on sex and on nationality,<sup>49</sup> the division of tasks in households and couples<sup>50</sup> and the transition from training to working life.<sup>51</sup>

95. In recent years, the specialized services of public administrations, as well as various non-governmental organizations, have been examining trends regarding equality in numerous domains. Discussions about gender mainstreaming, however, have shown that it is in the administrations that the data, analyses and information needed to understand the facts and measures regarding equality are still lacking. Moreover, there is a dearth of sex-specific data enabling one to grasp in a differentiated way the situation of girls and boys.

96. In cooperation for development, the data and statistics are not yet sufficiently disaggregated by gender. As part of its plan of action to implement CEDAW, the Directorate for Development and Cooperation (DDC) has decided to improve differentiation of data regarding Swiss cooperation for development in terms of sex and to take better account of the gender dimension in analyzing contexts and problems. DDC proposes, more specifically, to pursue the efforts exerted by organizations and partner States to gather and analyze gender-sensitive data and information. With a view to enabling its personnel to read and interpret the statistics in light of the gender dimension, it has also created an instrument that facilitates the reading of the statistics.

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<sup>45</sup> <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/20/05.html>.

<sup>46</sup> <http://www.bfs.admin.ch/bfs/portal/de/index/themen/20/22/publ.html?publicationID=347>.

<sup>47</sup> <http://www.bfs.admin.ch/bfs/portal/de/index/themen/20/22/publ.html?publicationID=1704>.

<sup>48</sup> <http://www.bfs.admin.ch/bfs/portal/fr/index/regionen/thematique/gleichstellungsatlas.html>.

<sup>49</sup> Maria Charles, Evolution de la ségrégation professionnelle en Suisse en fonction du sexe et de la nationalité de 1970 à 2000 [Vocational segregation in Switzerland by gender and nationality, 1970-2000], bfs, Démos, Bulletin d’information démographique 3/2005.

<sup>50</sup> Silvia Strub / Evelyne Hüttner / Jürg Guggisberg, Arbeitsteilung in Paarhaushalten: Aufteilung von bezahlter und unbezahlter Arbeit in der Schweiz, Neuchâtel 2005.

<sup>51</sup> Regula Julia Leemann/ Andrea Keck, Der Übergang von der Ausbildung in den Beruf: die Bedeutung von Qualifikation, Generation und Geschlecht, Neuchâtel 2005.

## 6. Combating discrimination against migrants and other groups

### **CEDAW Recommendation 37**

*The Committee urges the State party to take effective measures to eliminate discrimination against migrant women. It encourages the State party to be proactive in its measures to prevent discrimination against them, both within their communities and in society at large, to combat violence against them and to increase their awareness of the availability of social services and legal remedies...*

97. For men as for women, immigration represents both opportunities and risks. Women migrants are often disadvantaged from several points of view: in addition to their gender there are other factors such as origin, affiliation with a cultural and religious minority, lack of training, poor remuneration and unfavourable economic situation –not to mention prejudices with respect to persons of foreign origin and the stereotypes that exist regarding the role of women, which are encountered also by migrants who have a good education. In a detailed analysis entitled “Women and men facing racism” (“Femmes et hommes face au racism”), the Federal Commission against Racism has noted that there are in Switzerland too complex links between racial discrimination and discrimination against women.<sup>52</sup>

98. In recent years, Switzerland has become aware of the fact that women migrants whose families refuse to compromise regarding the traditional image and role of women are often living in a painful plight. Deciding which forms of expression arising from cultural and religious traditions should be accepted, especially in respect to women of muslim origin, has given rise to lively controversies in recent years in the school setting and in the area of training or working life.<sup>53</sup> It is not always easy to strike a balance between the interest of parents and children in equal treatment between men and women, which is protected under human rights, and the public interest.

99. In recent years, the situation of migrant women has been openly discussed in a wide range of settings. The Confederation and the cantons have taken various measures to enable specific needs to be better taken into account (see comments concerning violence in the couple and in the family, para. 123 ff; trafficking in women, para. 167 ff; vocational training, para. 256 ff; health, para. 367 ff; residence permits, para. 417 ff, or integration into working life, para. 342 ff).

<sup>52</sup> Tangram, Bulletin de la Commission fédérale contre le racisme, no 10, Femmes et hommes face au racisme, mars 2001 [Bulletin of the Federal Commission against Racism, No. 10, Women and men confronting racism, March 2001]

[www.ekr.cfr.ch/ekr/dokumentation/shop/00018/00059/index.html?lang=fr&PHPSESSID=](http://www.ekr.cfr.ch/ekr/dokumentation/shop/00018/00059/index.html?lang=fr&PHPSESSID=)

<sup>53</sup> See, e.g., Judith Wyttenbach, Concilier les droits en matière d'égalité et les traditions culturelles et religieuses. Droits fondamentaux et humains des jeunes filles dans les familles de migrants [Reconciling equal rights and cultural and religious traditions. Fundamental and human rights of girls in migrant families.] Abstract in: Questions de femmes 1.2006.

## 7. Combating violence against women

### CEDAW Recommendation 31

*The Committee calls upon the State party to intensify its efforts to address the issue of violence against women, including domestic violence, as an infringement of their human rights. In particular, the Committee urges the State party to adopt laws and implement policies in accordance with the Committee's general recommendation 19, in order to prevent violence, provide protection, support and services to the victims and punish and rehabilitate offenders.*

### 7.1. Statistical data

100. Due in particular to the complex division of powers between the Confederation and the cantons, Switzerland does not have uniform statistical data, or for that matter regular reports on violence against women. It is difficult to provide accurate indications about the de facto situation, inter alia because the different statistics are not prepared according to uniform methods. The statistics and surveys below do, however, provide a picture of some aspects of the problem.

101. The **criminal police statistic** represents an aggregate of figures reported by cantonal police departments pertaining to a selection of criminally wrongful acts reported to the police. This figure indicates, for example, that the number of violations of sexual integrity recorded by the police from 2003 to 2006 has increased.<sup>54</sup> Currently under review, the criminal police statistic should soon also provide specific information on violence within couples and families. Some cantons (e.g. Zurich) have fairly recently developed their own police statistics on domestic violence. The Federal Statistical Office has conducted a specialized study on homicides and attempted homicides committed in the years 2000 to 2004, based on police data. It has thus surveyed not only all homicides and attempted homicides reported as such by the police during that period, but also the relationship between the victim and the perpetrator, enabling it to identify acts of domestic violence. From 2000 to 2004, it arrived at an annual average of 95 victims of homicide or attempted homicide committed by their partners or by a person living in the household with them.<sup>55</sup> If we consider only cases of homicide, the average was 41 during the period under consideration. Of those 41 victims, 28 were female and 13 male.

102. The **criminal convictions statistic** refers to all convictions entered into force and judicially recorded. The information to be found there, however, refers only to the perpetrator (sex, age, nationality, etc.) and indicate nothing about the victim and the possible relationship between the victim and the person convicted. For the year 2006, this statistic indicates that 86% of persons convicted are male. It indicates also that the number of convictions for rape (article 190 of the Penal Code) has slightly increased by comparison with 2005 (from 109 to 117) while the figure for sexual acts with minors (article 187 of the Penal Code) has slightly declined by comparison with 2005 (from 408 to 364).<sup>56</sup>

<sup>54</sup> <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/19/03/02.html>.

<sup>55</sup> This is a total including homicides and attempted homicides.

<sup>56</sup> [http://www.bfs.admin.ch/bfs/portal/de/index/themen/19/03/03/key/strafataten/delikte\\_im\\_einzelnem.Document.83251.xls#'187-200!A1](http://www.bfs.admin.ch/bfs/portal/de/index/themen/19/03/03/key/strafataten/delikte_im_einzelnem.Document.83251.xls#'187-200!A1).



103. The **statistic on aid to victims of offences (OHS)** has since the year 2000 surveyed all consultations with recognized victim assistance agencies as well as all decisions by cantonal authorities granting compensation and moral damages. Since aid to victims is not dependent upon the filing of charges with the police authorities, the victim assistance statistic also covers cases which do not appear in the police crime statistic. It contains information about the nature of the criminal offenses in question and the type of aid provided (protection, shelter, financial support). From 2000 to 2006 the number of consultations rose from 15,500 to 28,485. The OHS figure also indicates that aid to victims provided by the State is applied for primarily by women. In 2006, they accounted for 73% of consultations.<sup>57</sup> 40% of consultations were for victims of battery, 29% (including 15% children) were for victims of a violation of sexual integrity. In more than half of cases (2006: 52%) there was a family relationship between the perpetrator and the victim.

104. The **hospital medical statistic** gives an indication of the diagnoses upon discharge for patients who were hospitalized in Switzerland (including psychiatric hospitals). It would be possible, through this statistic, to also survey cases of mistreatment involving family members.

## 7.2. Revision of the Penal Code

105. Nowadays, the theme of combating intra-couple violence is no longer a taboo in Switzerland. In recent years, it has been frequently discussed in the media but also in the parliaments of the Confederation and the cantons. The revision of the Penal Code which entered into force in April 2004 reflects changing attitudes regarding this problem. Until that date, most Penal Code offenses committed within a couple were prosecuted only upon complaint. Since the entry into force of the revision, acts of violence committed within a couple, married or not, are prosecuted *ex officio*. Sexual coercion (article 189 of the Penal Code) and rape (article 190 of the Penal Code), among other offenses, are now prosecuted *ex officio* even if they were committed between spouses or within one year after divorce. In the case of unmarried domestic partners and separated couples, sexual coercion and rape were already offenses prosecuted *ex officio* according to the old law and thus remain so under the new legislation. Under the new rules, battery (article 123 of the Penal Code), repeated assault and battery (article 126, paragraph 2, clauses b and c of the Penal Code) and threats (article 180, paragraph 2 of the Penal Code) have thus become offenses that are prosecuted *ex officio* if they are committed between spouses or domestic partners. The new regulations thus apply both to married couples and to heterosexual or homosexual couples living in a common household, and they apply for an indeterminate length of time or up to one year following separation. In all other cases, the offenses in question continue to be prosecuted only upon complaint, unless the repeated batteries were committed against children. That specific offense has always been, and will continue to be, prosecuted *ex officio*. Acts of battery between spouses and domestic partners continue to be prosecuted upon complaint when the act was committed only once.

106. Contrary to what occurs with other violations of the Penal Code that are prosecuted *ex officio*, the competent authority may, in the case of battery, repeated assault and battery, and threats between spouses or domestic partners, temporarily suspend the proceedings if the victim so requests or agrees to the suspension (article

<sup>57</sup> <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/19/03/01/key/ueberblick/01.html>.

55a, paragraph 1, clauses a and b, Penal Code). The same applies to coercion. The competent authority may, however, continue the proceeding against the will of the victim. This rule is intended to prevent the perpetrator from exerting pressure upon the victim to request suspension of the proceeding; however, it requires considerable sensitivity and competence with regard to domestic violence on the part of the penal authority. Such a suspension of the proceeding is not possible, however, in cases of sexual coercion or rape. The proceeding will be resumed if the victim revokes her agreement, in writing or orally, within six months following the provisional suspension (article 55a, paragraph 2, Penal Code). Absent such revocation of the consent, the competent authority is required to direct a final nonsuit. Experience shows that since the entry into force of this provision, penal authorities tend to suspend the proceedings rather quickly. The additional protection that was intended to be given to victims by introducing the *ex officio* prosecution thus remains insufficient in practice.

107. By adopting this legislative revision, Parliament has shown that it considered violence within couples to be a serious matter, especially because a marriage or a domestic partnership creates close bonds of trust, and often bonds of dependency, which the stronger party does not have the right to exploit at the expense of the weaker party.

### 7.3. Protection of victims by police and by civil law; criminal liability of perpetrators

108. According to estimates, some 10,000 women each year call the police out of fear of domestic violence.<sup>58</sup> In the exercise of its mandate (to preserve public order and security), the police (organized by canton) has the obligation to intervene in cases of danger or disturbance of some kind. The cantons of St. Gall and Appenzell Outer Rhodes were the first cantons which, since 2003, provided express authority to their police authorities to **expel the person who committed the violence from the common domicile**. This special measure, which is not linked to any formal requirement, is limited in duration to ten days (and can be extended to a maximum of 20 days under certain conditions). An assessment of initial experience since the introduction of these new powers in the cantons of St. Gall and Appenzell Outer Rhodes has shown that this new approach (not only to provide a cooling-off period but also to assign responsibility, not only to protect the victim but also to intervene against the perpetrator) was considered positive by all the authorities concerned and had led to greater awareness about the issue by the population. Interdisciplinary parallel measures (exchange of information and coordination between administrative services concerned, guidance for victims of violence in finding appropriate counselling services) are critical to the success of the new police strategy.<sup>59</sup>

109. Since that time, virtually all of the cantons have adopted similar rules allowing expulsion of violent persons (Glaris, Lucerne, Grisons, Neuchâtel, Berne, Geneva, Schaffhausen, Schwytz, Solothurn, Uri, Argovia, Zurich, Basel-Country, Obwald) or are currently considering introducing such rules (Basel-City, Fribourg, Nidwald,

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<sup>58</sup> Brochure "Stop! Violence domestique" from Prévention Suisse de la Criminalité (PSC) 2003, [www.kriminalpravention.ch/1/downloads/fr/violence\\_domestique\\_fr.pdf](http://www.kriminalpravention.ch/1/downloads/fr/violence_domestique_fr.pdf).

<sup>59</sup> Eva Wyss, Gegen Gewalt: Interventionsprojekte in den Kantonen St.Gallen und Appenzell Ausserrhoden: Erste Erfahrungen mit der Umsetzung der polizeilichen Wegweisung, Report in German with abstract in French (evaluation commissioned by the BFEG office to combat violence), 2005; [www.against-violence.ch/f2/dokumente/schlussbericht\\_sg%20.pdf](http://www.against-violence.ch/f2/dokumente/schlussbericht_sg%20.pdf).

Thurgovia, Ticino, Vaud, Zug, Jura)<sup>60</sup> Most cantons have chosen to modify their police legislation or their penal procedure, while others have adopted special laws on protection against violence. The canton of Zurich, for example, adopted in June of 2006 a very comprehensive law on protection against violence which was designed on the basis of an inventory of police and judicial measures available as well as assistance available in the context of domestic violence in the canton of Zurich.<sup>61</sup>

110. Expulsion of a person from the common domicile (combined with an injunction against returning) should not be confused with **deprivation of liberty**, which constitutes a more serious restriction of personal liberty and which is therefore subject to stricter conditions: thus, for example, the police law of the canton of St. Gall provides that a person may be temporarily (for a maximum of 24 hours) detained by the police if that person represents a serious and immediate danger to himself or others and if the danger cannot be otherwise eliminated. The examining magistrate has the option of extending the duration of the detention up to a maximum of eight days, but only if the person detained represents a danger to others. Any longer incarceration is subject to the conditions for preventive detention (provided for in the cantonal penal codes).

111. In recent years, police action in cases of domestic violence has become commonplace in many cantons. What is not known, however, is whether there are also more perpetrators being **held accountable for their actions under the penal law**. The statistic on convictions, in any case, does not point to a trend in that direction. At all events, it will take several years to arrive at a detailed evaluation. Since 2004, it has been possible to quantify convictions for battery, for assault and battery, or for threats between spouses and between heterosexual or homosexual domestic partners, but these new statistics do not tell us anything about the sex of the victims.

112. Police measures against domestic violence are effective only in the short term. In an effort to protect victims also over the medium and longer term, the Commission on Legal Affairs of the National Council has prepared a draft aimed at improving **protection of the person under civil law** (article 28 b of the Civil Code) by adding a specific provision against violence. That provision enables judicial authorities to expel a violent person from the common domicile for a fixed period of time. The judge may also prohibit the perpetrator from approaching the victim or entering into contact with her. This measure can also be effective to combat the forms of violence which often occur after the separation of a couple (for example, stalking).<sup>62</sup> Parliament adopted the draft on 23 June 2006 and it entered into force on 1 July 2007. This revision of the Civil Code promises to provide very effective new instruments to combat domestic violence. The practical effects of the new rule, however, will only become apparent in years to come.

<sup>60</sup> Data as of July 2006.

<sup>61</sup> Cornelia Kranich Schneider/ Marlene Eggenberger/Ursula Lindauer, *Gemeinsam gegen häusliche Gewalt: eine Bestandesaufnahme im Kanton Zürich* (im Auftrag von IST Interventionsstelle gegen häusliche Gewalt des Kantons Zürich), Zürich etc. 2004.

<sup>62</sup> Initiative parlementaire "Protection contre la violence dans la famille et dans le couple", Rapport de la Commission juridique du Conseil national, 18 août 2005., [Parliamentary initiative on "Protection against domestic violence", Report of the Legal Commission of the National Council], 18 August 2005, FF 2005 6437ff.

#### 7.4. Shelter, support and compensation of victims, reparation of moral injury

113. At present, 18 **women's shelters** in Switzerland specializing in emergency help for victims of violence make available some 200 beds (in under 100 rooms) as temporary shelter. Additional space is made available by similar institutions but the exact number is unknown. According to Council of Europe recommendations, the number of places in shelters for women and children in Switzerland should be 980. In 2003, a study of the situation regarding women's shelters commissioned by the BFEG anti-violence service indicated that there were 41,000 person-nights available in the fourteen facilities surveyed. These person-nights were distributed to 1,375 women and children. The shelters had to turn away, on average, 52% of women seeking protection, most often because they had no vacancy, but also sometimes because their services were not adequate (e.g. women suffering from mental illness or drug addiction), or for security reasons. The average rate of occupancy was 65%, a figure which the authors of the study explained by the inadequacy of service offered (privacy insufficiently respected in rooms with several beds, which is especially troubling to victims of violence, and rooms too small to house women with children).<sup>63</sup> It is not known how many places in shelters are made available to victims of violence by other such services, and what the rate of occupancy is there.

114. Social aid and help to victims of acts of violence remains within the purview of the cantons. Due to the absence a legal basis under federal legislation, the Confederation does not participate in the financing of shelters for women. Federal law does not oblige the cantons to make available or to finance shelters, so that the support given by the State to shelters for women continues to **vary from one canton to another**. Short-term stays (under 15 days) are normally borne by the cantonal institution for aid to victims. The study referred to above revealed that, on average, 60% of the funding of shelters for women was provided by public funds, the rest being provided by private sources (donations, contributions by associations, etc.)

115. Pursuant to the federal law on aid to victims, persons who, due to an offense, have suffered a direct infringement of their bodily, sexual or psychological integrity, may seek **aid to victims** (counselling and support, protection of certain rights against the alleged perpetrator of the offense in the framework of criminal procedure, compensation and moral damages).<sup>64</sup> The cantons are required to ensure that public or private counselling services are available to victims and that they provide free of charge, either directly or by referring them to other institutions, medical, psychological, social, material and legal aid. As previously noted, the number of consultations and of persons seeking aid has grown steadily in recent years and three fourths of the victims applying are women. In cases where there is a family relationship between the violent person and the victim, the proportion of female victims is 86% (2005). Domestic violence was involved in 53% of all consultations (2005).<sup>65</sup> In addition to victim aid services and other services specializing in helping the victims of sexual violence, the hospitals of certain cantons (Berne, Geneva) also have medical services specializing in treatment of victims of violence.

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<sup>63</sup> Theres Egger, *Maisons d'accueil pour femmes; analyse des besoins: Résumé de l'étude préliminaire, réalisée sur mandat du Service de lutte contre la violence du Bureau fédéral de l'égalité entre femmes et hommes (BFEG)*, [Safe Houses for Women: analysis of needs: preliminary summary conducted for BFEG office against violence], November, 2004.

<sup>64</sup> <http://www.bj.admin.ch/bj/fr/home/themen/gesellschaft/opferhilfe.html>.

<sup>65</sup> <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/19/03/01.html>.

116. Subsidiary payments made by the cantons as **compensation** to victims and **moral damages** under the law on aid to victims amounted to over one million Swiss francs in 2006 for compensation and six million Swiss francs for moral damages. Nearly two thirds of these sums (58%) were paid to female victims. The complete revision of the federal law on aid to victims of violations<sup>66</sup>, which entered into force on 23 March 2007, provides for a ceiling on sums paid as moral damages, since that amount was higher than expected in the last few years.

117. It has been an oft-repeated theme in recent years that in order to be effective prevention of domestic violence should imply penal prosecution of perpetrators but not be limited to that alone: prevention, counselling and aid services should, where the perpetrators are concerned, be aimed primarily at potential perpetrators as well as potential recidivists. In Berne, Zurich, Lausanne, Lucerne and St. Gall, there are now counselling services addressed in particular to men.<sup>67</sup> With the support of public and private funds, different institutions are advancing programmes of re-education designed for men who display violent behaviour in the family or couple.<sup>68</sup> For lack of a legal basis, however, it is still not possible to oblige perpetrators to participate in such programmes before the penal proceeding is concluded.

#### 7.5. Coordination and institutionalization of knowledge

118. In recent years, services known as **intervention services** have been created by several cantons. Generally reporting to the cantonal departments of justice and police, their task is to coordinate the interventions of police, justice, social services, women's shelters, counselling services for violence victims, hospital emergency services, etc. They most often work in close cooperation with cantonal or municipal equality delegates. Recently, one also finds in some cantons **round tables** of cooperating agencies, introduced to enhance cooperation between the different authorities in the spheres of security, criminal prosecution, social aid and aid to victims, immigration, and human trafficking.

119. Since May, 2003, the BFEG has included an **Anti-violence Service**.<sup>69</sup> This service currently has 1.25 posts and an operating budget of nearly 230,000 Swiss francs per year.<sup>70</sup> Its priority aim is to combat violence within couples. It also has the task of informing and documenting public agencies, private organizations, the media and individuals. Through seminars and other events, it encourages networking and exchange of experience between the various specialized agencies of the cantons. With regard to research, it commissions and publishes small-scale studies and evaluations. Finally, it takes part in projects of national importance. The Anti-violence Service has published a series of information brochures which provide an introduction to the subject and aim to enhance public awareness.<sup>71</sup>

<sup>66</sup> <http://www.bj.admin.ch/bj/fr/home/themen/gesellschaft/gesetzgebung/opferhilfegesetz.html>.

<sup>67</sup> <http://www.maenner.org/schweiz/linkberatungsstellen.html> (in German only).

<sup>68</sup> See, e.g., Susanne Lorenz/ Christian Anglada/ Pierre Avanzino/ Philippe Bigler, Générer un changement chez les hommes ayant des comportements violents dans le couple et la famille: modalités et contextes d'intervention [Changing the conduct of men who show violence in the family: modalities and contexts of intervention], Lausanne (Service Violence et Famille) 2004.

<sup>69</sup> <http://www.against-violence.ch>.

<sup>70</sup> Figure valid for 2006.

<sup>71</sup> <http://www.ebg.admin.ch/themen/00009/00089/00093/index.html?lang=fr>.

## 7.6. Awareness-raising and prevention

120. For some time, the coordinating service for crime prevention (which is a joint agency of the Conference of directors of cantonal justice and police services - CDDJP) has been working to prevent violence. After a campaign waged under the theme “United against violence”, addressed primarily to young people, the service conducted a campaign from 2003 to 2005 entitled “**Stop domestic violence!**” commissioned by the CDDJP.<sup>72</sup> Its aim was to elicit in public opinion an attitude of zero tolerance against the phenomenon of domestic violence, an attitude which it was hoped would have a preventive effect. The first pillar of the campaign was a further training programme attended by 70 members of cantonal police departments. The aim was to give them a common vision of the phenomenon in order to arrive at a strategy for combating domestic violence that would be the same throughout Switzerland. It was expected that participants should then generate a multiplier effect and act as an information platform in their respective police departments. Subsequently, the target audience was broadened in order to make known the role of the police and the role of agencies cooperating with the police in the social sphere. The project ultimately led to the publication of a brochure containing information and recommendations, and to the holding of a symposium entitled “Domestic violence: expulsion of the spouse and prohibition of return”. This event, which took place in 2003, allowed various models of intervention tried out in Switzerland or abroad to be presented. In order to reach the immigrant population as well, specific media were used, as well as grass-roots organizations and fora keyed to the foreign population in Switzerland.<sup>73</sup>

121. As a general rule, the cantonal intervention services referred to above have a mandate to increase awareness among the authorities and the public. **Awareness-raising and information** are the areas in which many cantons are investing. Various intervention services publish information brochures that present basic documentation as well as news about the subject. Several cantons (Argovia, Basel-Country, Basel-City, Lucerne, Berne) organize training courses or refresher courses addressed to professional groups specifically concerned with the issue of domestic violence within the police, judicial authorities or hospitals.

122. Recent years have seen efforts not only to combat domestic violence but also to **analyze** it. In the year 2000, the Federal Commission on Women’s Issues devoted an issue of its biennial publication “Questions au féminin” to the subject “Domestic violence: how to intervene?” in which it addressed the subject from several perspectives and reported about different experiences. In 2004, the city of Zurich published a study on the phenomenon of domestic violence and strategies set up to

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<sup>72</sup> [http://www.kriminalpraevention.ch/1/fr/5violence/520\\_campagne\\_stop\\_violence\\_.php](http://www.kriminalpraevention.ch/1/fr/5violence/520_campagne_stop_violence_.php).

<sup>73</sup> Peter Giger, Die polizeiliche Präventionskampagne “Stopp! Häusliche Gewalt”, dans: Questions au féminin no 1.2005, p.41ff.

eliminate it.<sup>74</sup> Other studies deal with the initial experiences gained through new strategies of intervention by the police.<sup>75</sup> In 2004, a study carried out at the request of the Zurich women's shelter analyzed the way in which domestic violence was presented by the print media in German-speaking Switzerland.<sup>76</sup> In 2005, the Federal Commission on Women's Issues looked at the problem of domestic violence from the standpoint of migration and published a series of articles on the subject by experts of both sexes.<sup>77</sup>

### 7.7. Violence against migrant women

#### **CEDAW Recommendation 35**

*The Committee recommends that revocation of the temporary residence permits of foreign married women who experience domestic violence, and any legislative changes with regard to residency requirements that may be under consideration, be undertaken only after a full assessment of the impact of such measures on those women.*

123. Although the conclusions of recent studies on domestic violence indicate that it is no more frequent among foreign couples than among Swiss couples, the police and counselling service statistics point to a different reality: women of foreign origin are more often put up in shelters than Swiss women and they are often victims of domestic violence calling for intervention by the police. The perpetrators with whom the police find themselves dealing on the scene are also more often of foreign origin than of Swiss nationality. Frequency studies thus tend to underestimate the number of cases of domestic violence among foreign couples while police statistics tend to overestimate them.

124. The **reasons** why foreign families are thought to be more often subject to violence than Swiss families are **complex**: firstly, many migrants hail from countries and social milieux marked by poverty and often also by violence. Resort to violence as a means of resolving family conflicts there enjoys a social legitimacy different from that which is found in the Swiss population. The legislation currently in force makes the wife coming to Switzerland under a family reunification scheme conditional upon her living in the household with her employed husband, thus facilitating abuse of power and use of violence by the spouse and weakening the position of the potential victim. Moreover, the often difficult circumstances of

<sup>74</sup> Silvia Steiner, *Häusliche Gewalt: Erscheinungsformen, Ausmass und Bewältigungsstrategien in der Stadt Zürich*, Zurich 2004.

<sup>75</sup> Eva Wyss, *Gegen häusliche Gewalt. Interventionsprojekte in den Kantonen St.Gallen und Appenzell Ausserrhoden: Erste Erfahrungen mit der Umsetzung der polizeilichen Wegweisung – Evaluation*, Berne 2005; Cornelia Kranich Schneiter/ Marlene Eggenberger/ Ursula Lindauer, *Gemeinsam gegen häusliche Gewalt: eine Bestandesaufnahme im Kanton Zürich*; Peter Frei, *Wegweisung und Rückkehrverbot im st.gallischen Polizeigesetz: Eine Bestandesaufnahme. Erfahrungen im ersten Jahr aus juristischer Perspektive*, in: *Aktuelle Juristische Praxis* 5/2004, S.547ff.; Corinna Seith, *Öffentliche Interventionen gegen häusliche Gewalt. Zur Rolle von Polizei, Sozialdienst und Frauenhäusern*.

<sup>76</sup> Beatrice Büttner/ Sonja Perren/ Rainer Hornung, *Häusliche Gewalt in den Printmedien der Deutschschweiz. Darstellung häuslicher Gewalt im Jahr 2002 in sämtlichen grösseren Printmedien der Deutschschweiz*, (im Auftrag der Stiftung Frauenhaus Zürich), 2004.

<sup>77</sup> Commission fédérale pour les questions féminines [Federal Commission for Women's Issues], "Questions au féminin" 1.2005, *Violence domestique et migration* [Domestic violence and migration].

immigrants are rife with considerable risk of violence: the adaptations demanded of people coming from abroad, the fact that they find themselves at the bottom of the social hierarchy, to which they may not be accustomed, the lack of economic resources, the absence of a social and family network, the obligation to adapt to new social norms, expectations with regard to social role and value judgments constantly challenge the identity of immigrant women and men and create potential conflict within the family.<sup>78</sup> Specialists caution, however, against any generalization consisting of viewing violence in immigrant families as an issue of patriarchal tradition and thus as a “cultural” problem. Prejudices cloud the complex reality and can make one forget the true reasons for domestic violence; they nevertheless continue to influence the authorities in their interventions in support of victims of domestic violence. Efforts aimed at information and awareness-raising by the authorities regarding specific aspects of violence in foreign families have been pursued at several levels in recent years.<sup>79</sup> There are also various aid and counselling organizations which specifically address victims of foreign origin.<sup>80</sup>

125. Although the procedures for police intervention are the same regardless of the nationality of the persons concerned, the effects they produce may be only limited for migrant women originating from a country that is a non-member of the EU and who have come to Switzerland as part of a family reunification measure (in order to “restore a family community”). In case of domestic violence, women who have lived in Switzerland for less than three years may fear that they will lose their residence permit if they separate from or divorce their violent husband. As already noted in the first and second report<sup>81</sup>, foreign women are often especially exposed to the violence of their partner, despite the intervention of the police, when they cannot leave him out of fear of having to return to their country without their children and without any right over them, and fearing that they will be ostracized by society because their marriage has failed. The new legislation on foreigners only partly remedies this situation.<sup>82</sup> (see para. 47 ff under article 15).

<sup>78</sup> Katharina Belser, La violence domestique survient dans tous les milieux – mais dans certains peut-être un peu plus souvent [Domestic violence happens in all settings, but perhaps a bit more often in some], Questions au féminin 1.2005, p.9; cf. aussi Silvia Steiner, Häusliche Gewalt, Erscheinungsformen, Ausmass und polizeiliche Bewältigungsstrategien in der Stadt Zürich 1999-2001, Zurich etc. 2004.

<sup>79</sup> See, e.g. the empowerment project set up by the wisdomna migrant women’s workshop: Julia Betschart-Velazquez, Sensibilisierung und Weiterbildung zu häuslicher Gewalt und Migration, dans: Questions au féminin 1.2005, p.45ss; voir aussi campagne “Stop! Violence domestique”.

<sup>80</sup> E.g. FIZ women’s information centre in Zurich; Violetta, Centre d’accueil pour migrantes à Zurich.

<sup>81</sup> See first and second report, para. 94ff.

<sup>82</sup> Annemarie Sancar/Hildegard Hungerbühler/Beatriz Pavia Keller, Les migrantes dans le canton de Berne, enquête réalisée pour le compte du Bureau cantonal de l’égalité entre la femme et l’homme [Migrant women in the canton of Berne, survey for BFEG], Berne 2001; Carola Reetz, C’est l’agresseur qui peut rester, Situation juridique des migrantes victimes de violences [It is the attacker who is allowed to remain: legal situation of migrant women victims of violence], in: Question au féminin, 1.2005, p.29 ss; Christina Hausammann, Migrants. Droit de séjour et violence conjugale, Récapitulation de la réglementation et Recommandations adressées par la Commission cantonale de l’égalité aux autorités cantonales de police [Migrant women, residence permits and domestic violence, Recapitulation of regulations and recommendations by the cantonal commission on equality to the cantonal police]; Maja Minder, Violence domestique et migration – Pour une approche professionnelle et objective excluant la culturalisation du problème [Domestic violence and migration – towards a professional, objective approach excluding culturalization of the problem], in: Questions au féminin 1.2005, p. 22 ff.



126. With regard to female circumcision, see paragraphs 380 ff under article 12 below.

### 7.8. Combating violence against women abroad

127. For some years, advancing women's rights and combating violence against women have been part of the **priority objectives of Swiss international policy with regard to human rights**. In the context of bilateral contacts, violence against women is a subject that is increasingly discussed, even at the highest level. In the various bilateral dialogues pursued about human rights (at present with Iran, China and Vietnam) –which encompass exchanges of views, discussions and concrete projects for promotion of specific human rights—violence towards women is one of the priority themes. In the margins of the 60th session of the United Nations Commission on Human Rights, Switzerland also organized a meeting of ministers of foreign affairs on the theme of violence against women. The women ministers who were present adopted a declaration in which they reaffirm their special commitment against this scourge. On the occasion of the international day for the elimination of violence against women in November 2003, the Department organized, in cooperation with the BFEG, a public event in the presence of the Minister of Foreign Affairs and numerous Swiss and foreign public figures engaged in combating gender-specific violence. The statement by Mrs. Irene Khan, Secretary General of Amnesty International, and Mrs. Yakin Ertürk, United Nations Special Rapporteur on Violence against Women, were especially noted. In the framework of the Human Rights Council of the United Nations, Switzerland also regularly organizes meetings of the informal network of women ministers to discuss questions relating to women's rights.

128. On the occasion of International Women's Day, on 8 March 2004, the Minister of Foreign Affairs launched an initiative for "godmothers' sponsorship" with Swiss women parliamentarians. By this means, deputies give their support to organizations combating violence against women and in support of their rights. The "godmothers" intervene with political and administrative authorities to obtain the protection and promotion of these organizations. Two "godmother" arrangements of this kind are currently under way, one in favour of the *l'Organización Femenina Popular* of Colombia and another in support of the *Vive Zene* therapeutic centre in Bosnia-Herzegovina.

129. In several States, Swiss **cooperation for development** and the service entrusted with peacebuilding, external human rights policy, humanitarian policy and migrations have devoted considerable energy to combating violence against women, for example by supporting projects to combat trafficking in women in Eastern Europe (Russia, Ukraine, Serbia), the Middle East (Syria), Asia (Mongolia, Vietnam) and Latin America (Brazil), by promoting campaigns against domestic violence in Tajikistan and Vietnam, or by projects against genital mutilation of girls in different African countries. In the framework of its plan of action to implement CEDAW, the DDC has decided to further step up its efforts to combat violence against women in partner States.

130. For further details on development cooperation measures against female circumcision, see para. 186 at article 12 below.

**Art. 3 Measures designed to ensure the full development and advancement of women**

131. At the federal level, financial aid is given on a priority basis to programmes and projects that support equality in working life. Since 1996, the Equality Act has provided the necessary legal basis for financing of such projects. The credits which Parliament has voted since that time have increased from year to year, rising from 1.6 million Swiss francs (1996) to 4.5 million Swiss francs (2005). These resources have, however, been reduced with a view to streamlining the budget of the Confederation and will probably undergo further reductions. The BFEG is entrusted with distributing these subsidies. It is competent to decide on requests for up to 200,000 Swiss francs and issues prior notice concerning requests above 200,000, which are decided upon by the general secretariat of the Federal Department of the Interior.

132. Support is granted to structures providing counselling and innovative projects of a practical orientation. Out of 600 requests received since 1996, 346 have been granted. An external evaluation published in 2006 showed that financial aid was a crucial instrument in enhancing equality in professional life. The money made available by the Confederation for the projects had a very significant multiplier effect: the 27.4 million Swiss francs paid by the Confederation generated additional resources of 15.7 million Swiss francs from other agencies and 6.1 million Swiss francs from third parties. The evaluation of financial aid and of the Equality Act have shown that the financial aid is effective and achieves its goal, and that this effectiveness could be further enhanced if enterprises were given access to these credits. Assessment of the results and effects has shown that the projects supported had strengthened the panoply of existing instruments in the sphere of equality in a substantial and varied way. Occupational qualifications for women had greatly benefited. The projects in question had enabled women to take a more active part in professional life. They brought about improvements in working conditions and terms of employment and had facilitated the work of those who wished to pursue a professional life and a family life: they favoured an equitable distribution of tasks and roles within the family and creation of structures that lightened the burden on families.

133. A distinction is drawn between the types of projects supported according to their outputs: **media products** (e.g. an electronic compendium of decisions under the Equality Act), **educational and further training measures** and **competence centres**, which offer multidimensional outputs. The data bank [www.topbox.ch](http://www.topbox.ch) allows anyone to access a voluminous collection of projects in the sphere of equality that have benefited from Confederation financial support. Professionals and specialists who work in administration and the economy, training and media, thus have an instrument enabling them quickly and easily to form an idea of the models, services and instruments available for use.

134. The Confederation also supports easily accessed **consultation services** from which women can request advice when they have questions of a professional nature concerning working life in general, and which can help people (men and women) seeking to resume work after having left off working in order to take care of their family. The consultations can deal with topics as varied as employment procedures, salary and career issues, training and further training, and employment law, but also issues of discrimination or sexual harassment.

135. With regard to financial assistance for aid to migrants projects, see para. 343 under article 11 below.

136. In other sectors too, the Confederation and the cantons have taken various measures for the advancement of women (notably in the areas of vocational training as well as tertiary training and research; see para. 221 ff below). The Confederation and several cantons support efforts aimed at encouraging women applicants for public office (see para. 188 under article 7 below). There are some cantons that financially support NGOs or other public or private institutions pursuing gender equality in society and in politics, especially in the areas of training and reintegration into working life. Other cantons encourage exchanges of views between women as well as counselling and support activities for women in managerial positions or positions that transgress job stereotypes.

#### Art. 4 Temporary special measures for women

##### **CEDAW Recommendation 41**

*The Committee encourages the State party to take sustained measures to increase the representation of women in elected and appointed bodies, including temporary special measures in accordance with article 4 paragraph 1, of the Convention, in order to realize women's right to equal participation in public and political life. The Committee also recommends that adequate measures be taken with the aim of achieving balanced participation of women and men in the various areas and levels of public life, particularly in administration, the judiciary and the diplomatic service.*

##### **CEDAW Recommendation 45**

*The Committee urges the State party to ensure de facto equal opportunities for women and men in the labour market through, inter alia, the use of temporary special measures in accordance with article 4, paragraph 1, of the Convention. The Committee recommends that efforts be made to eliminate occupational segregation, both horizontal and vertical, through, inter alia, education, training and retraining, and effective enforcement mechanisms. It also recommends that job evaluation systems based on gender-sensitive criteria be developed with the aim of closing the existing wage gap between women and men. The Committee recommends that measures allowing for the reconciliation of family and professional responsibilities be adopted and implemented and that equal sharing of domestic and family tasks between women and men be promoted.*

137. As indicated in the comment to article 3 of CEDAW, the Confederation and cantons encourage and support women, in areas where they are disadvantaged, by applying different methods. These incentives find their justification in the de facto inequalities that still exist, which means that they will lose their justification when the inequalities will have disappeared. In the terminology of the Committee, these “temporary special measures” are measures which should be taken with a view to *specific objectives*, in order to arrive at a **de facto equality** between the sexes.<sup>83</sup>

<sup>83</sup> See: Recommandation générale no 25 concernant le premier paragraphe de l'article 4 de la Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes, portant sur les mesures temporaires spéciales [General recommendation 25 concerning article 4 (1) of CEDAW on temporary special measures], n. 18ff [www.un.org/womenwatch/daw/cedaw/recommendations/index.html](http://www.un.org/womenwatch/daw/cedaw/recommendations/index.html).

According to the general recommendations issued by the Committee on this subject, the range of temporary special measures is very broad.<sup>84</sup> In Switzerland, measures that fall into this category are measures taken by the Confederation and by many cantons as employers favouring employment of women (see para. 331 below), measures encouraging creation of apprenticeships (see para. 221 ff below), or measures taken by universities in the field of research (see para. 225 ff below).

138. In the cantons and communes, different measures have been taken to increase the proportion of women in various areas through systems of **(flexible) quotas**. Thus, several cantons have adopted quotas for representation of both sexes (at least 30% favouring the under-represented sex) in the context of appointing political commissions (Berne, Jura, Zurich). There are also an increasing number of cantonal laws expressly providing for “equitable” representation of the sexes in political bodies and in the administration. The Confederation and some cantons (Berne, Solothurn, Basel-City, Neuchâtel, Vaud), in their personnel policy, apply the principle of giving priority to the under-represented sex (given equal qualifications), notably for recruitment of managers (see in this connection para. 330 ff under article 11 below). There are also cantons (Geneva, Argovia, Fribourg) where recruitment of teaching personnel is subject to quotas, especially at the university level. The law on the university of the canton of Geneva, for example, provides that, qualifications being equal, priority is to be given to the candidate of the under-represented sex in the recruitment of faculty at the university level. In other cantons (Thurgovia, Ticino), access to technical apprenticeship vacancies in the cantonal administration is subject to a 50% quota for each sex. Some fault this system, however, because it cannot be applied for lack of candidates.

139. Within the debate on equality between men and women, the introduction of female quotas into the fields of politics, education and working life regularly gives rise to **heated debates**. Thus far, all attempts to introduce strict quotas in the political domain have failed both at the federal and at the cantonal levels and have even been roundly rejected in referenda (see first and second report, para. 187 ff; regarding the trend of representation of the sexes in political life, see para. 188 under article 7 below). The formula of flexible quotas, on the other hand, which consists of initially considering the competences of the candidates and granting the priority to representatives of the under-represented sex where qualifications are equal, has been applied or at least seriously considered, especially in regard to training and working life. The requirement of “equal qualifications” is subject to interpretation and often reflects the sex-specific preconceptions of the hiring authority, so that the risk of discrimination persists.

140. Pursuant to article 8, para. 3, clause 3 of the federal Constitution, the legislature has the duty to provide for equal rights in fact, particularly in the areas of the family, education and work. The Federal Supreme Court has therefore taken the view in its cases that **certain affirmative measures aimed at establishing equality in fact were in principle acceptable** provided that they rested on a legal basis. In the reasoning for its decision, the Federal Supreme Court expressly referred to the array of incentive measures provided for in CEDAW (ATF 125 I 21 c.4b). In its first decision in principle (the “soleurois decision”) it had taken the view that “rigid”

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<sup>84</sup> “...a wide variety of legislative, executive, administrative and other regulatory instruments, policies and practices, such as outreach or support programmes, allocation and/or reallocation of resources, preferential treatment, targeted recruitment, hiring and promotion, numerical goals connected with time frames; and quota systems”, n.22.

quotas requiring parity for women in organs of the legislative, executive and judicial branches, without taking qualifications into account, were not acceptable because they represented a disproportionate infringement of the principle of prohibition of gender discrimination. In its second decision in principle, it clarified the first decision, accepting the principle of flexible quotas in favour of women provided the qualifications and competences of male and female candidates were not disregarded from the outset (ATF 125 I 21 c. 5b-c).

141. In its (second) decision of principle of 1999 regarding the lawfulness of quotas in the political sphere (“uranais decision”), the Federal Supreme Court expressly held that quotas were not ruled out even if they ran the risk of contravening the principle of absolute equality between the sexes arising from article 8, paragraph 3, clause 1 (then still article 2, clause 1) of the Constitution.

So understood, equality between men and women places the first and second clauses of article 4, paragraph 2 of the Constitution in opposition. Affirmative measures to advance equality can run afoul of the obligation to ensure equal rights between the sexes. The Constitution gives us no indication enabling us to give priority in principle to one part or the other of article 4, paragraph 2. In its “soleurois decision”, the Federal Supreme Court has recognized that the contradiction had to be resolved by a balancing of interests... The principle of proportionality takes on decisive importance in this context [translation from German] (ATF 125 I 21, c.3cc).

142. The Federal Supreme Court emphasizes the importance of the principle of practical concordance, especially with regard to balancing interests in the context of political quotas: none of the opposing interests should be realized entirely at the expense of the other. In its first decision of principle of 1997 (“soleurois decision”) the Federal Supreme Court stressed that the introduction of political quotas was a restraint upon the principle of free and equal voting. It spelled out that such a restriction could be accepted only if it was “inherent to the electoral system”, which is not the case for female quotas. In its “uranais decision” the Federal Supreme Court agreed that restriction upon the right to vote and to be elected could also be accepted in elections with proportional voting if they were inherent to the electoral system in a larger sense (for example, for protection of regional or linguistic minorities). Further, the Court held that it is indispensable that the principle of proportionality then be respected and that the restriction be justified by a compelling public interest. Since the political rights affected by such a measure are considered as having great value, the Court felt that such restrictions should be allowed only with the greatest caution and that the issuance of popular mandates in terms of quotas represented in all cases an unacceptable infringement of the principles of liberty and equality applied in the context of elections (ATF 125 I 21, c.3dd).

143. The Federal Supreme Court has, on the other hand, held that quotas for women are acceptable in authorities that are not directly elected by the people, since voting rights are not directly restricted and since the regulations submitted to the Court are sufficiently flexible not to be considered disproportionate in light of the under-representation of women in cantonal authorities. The Court also confirmed the acceptability in principle of quotas applied to electoral lists that balance the proportion of men and women for elections.

144. Among the major decisions, the latest pertains to **employment quotas**. Specifically at issue was an associate professor position at the University of

Fribourg which was filled in the framework of federal measures seeking to encourage renewal of the university workforce. In keeping with its general case law relating to violations of constitutional rights (here, the right of a male candidate to equal treatment), the Federal Supreme Court held that the rules for quotas based on gender were acceptable as measures for the advancement of women inasmuch as they stood on a legal basis and were in keeping with the principle of proportionality, that is, that they were (a) designed to achieve their goal, (b) necessary and constituting the least obtrusive means to achieve that goal, particularly as regards their effect on men's fundamental rights, and (c) appear to be a reasonable means to reach the goal in light of the interests at stake (proportionality in the narrow sense, ATF 131 II 361, c.5.4). The rules and quotas set in favour of women are here again qualified as "difficult to accept", "in view of the gravity of the infringement they produce in light of the formal prohibition against discrimination by reason of sex." In the event, the Federal Supreme Court took the view that the automatic exclusion of male candidates, decided upon in principle, was not acceptable because it did not rest on a sufficient legal basis. It also cast doubt on whether the University of Fribourg's application of a rigid quota scheme was a measure appropriate, under these facts, to promote equality between men and women and stressed that the quotas applied should be rejected especially from the standpoint of proportionality in the narrow sense.

If, at the time the quota is applied, a substantially larger number of men than of women aspire to an academic career and are in a position to apply for the positions, the measure then causes them definite harm. That harm is all the greater here in that the posts available in the university faculty are relatively limited and, depending on the faculty or specialization considered, it is not uncommon to have to wait several years before a post becomes vacant. Finally and above all, it is scarcely defensible, from the standpoint of common sense and the public interest, to disregard competences and qualifications of candidates for professorial positions with high qualifications. In this case, only one woman with the necessary competences submitted her application for the disputed post. [translation from German] (ATF 131 II 361 c. 6.6).

145. Some of the commentary on this decision has been critical.<sup>85</sup> The criticism (especially in light of article 4 of CEDAW) refers essentially to the way in which the Federal Supreme Court balanced the interests at stake and especially the fact that it gave significantly more weight to the individual dimension of the rule on equality (right of the male candidate excluded from the selection process) than to the (public) interest in preferential treatment for a group disadvantaged in fact. The authors of these commentaries felt that the decision practically prohibited public educational institutions, in which men are always substantially over-represented – at least if one considers the higher echelons - from adopting an active equality policy (see para. 269 below).

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<sup>85</sup> See Yvo Hangartner, in *Allgemeine Juristische Praxis AJP/PJA* 2005, p.1414ss; Christa Tobler, *Quoten zum Dritten, Gesetzliche Grundlagen für Frauenförderungsmassnahmen und Entschädigungen für Diskriminierungen, recht* 2005, p.220ss; Regula Kägi-Diener, dans *AJP/PJA* 2006, p.107ff.

## Art. 5 Combating stereotyped roles and recognizing the common responsibility of men and women in the upbringing of their children

### CEDAW Recommendation 29

*The Committee urges the State party to design and implement comprehensive programmes in the educational system, including human rights education and gender training, and to disseminate information on the Convention, with a view to changing existing stereotypical attitudes on women and men's roles, including advancing the notion of parenting as a social responsibility of both mothers and fathers. It recommends that awareness-raising campaigns be addressed to both women and men and that the media be encouraged to project a positive image of women and of the equal status and responsibilities of women and men in the private and public spheres.*

#### 1. Combating media dissemination of stereotyped roles

146. The federal law on radio and television obliges broadcasters to ensure that their broadcasting is not injurious to human dignity or public morality, that it is not discriminatory and that it does not seek to justify violence or inure audiences to it. These rules apply to advertising as well as to programming per se, and they cover pornographic programmes, portrayal of violence, and the need to protect young people. Monitoring of programmes falls to the Independent Complaints Authority for Radio and Television (l'Autorité indépendante d'examen des plaintes en matière de radio-télévision (AIEP)). The Federal Office of Communications (OFCOM), for its part, is empowered to take action under its general oversight powers. In that regard, OFCOM has regularly conducted specific reviews. Despite an in-depth analysis of some broadcasts, OFCOM has never yet been obliged to intervene as a monitoring authority or to file a complaint with AIEP due to pornographic or violent content. So long as broadcasts do not offend public morality, OFCOM must respect the principle of autonomy of programming and thus cannot influence the manner in which the roles of men and women are presented on radio and television.

147. A study published in 2001 showed that the share of women among journalists had clearly increased in recent years (1998: 32%). That proportion varies, however, depending on which linguistic region, age or category one considers. While women journalists today have access to all the media and all spheres of activity, management positions remain a male preserve, since more than four out of five are occupied by men. It also appears from salary statistics that men are on average much better paid than women.<sup>86</sup>

148. With regard to the analysis of the role of the media in the context of political elections, see the comments on article 7 in paragraph 188.

149. In Switzerland as in other countries, women began to make use of new information and communications technologies later and less intensively than men. Today, women have caught up. In 2006, 56% of women used the internet several times per week (compared to 73% of men).<sup>87</sup> Young women more often surf the net than older women: no gender-specific difference is perceptible in the age group

<sup>86</sup> Mirkko Marr, Femmes journalistes – malgré les obstacles, leur nombre augmente [Women journalists; despite obstacles, their number is increasing], in: Questions au féminin 1.2003, p.17ff.

<sup>87</sup> [http://www.bfs.admin.ch/bfs/portal/fr/index/themen/16/04/key/approche\\_globale.indicator.30106.301.html?open=4#4](http://www.bfs.admin.ch/bfs/portal/fr/index/themen/16/04/key/approche_globale.indicator.30106.301.html?open=4#4).

under 25. As of age 25, a significant difference can be observed between women and men with regard to internet use, which tends to increase with age. In 2004, three fourths of women aged 25 to 34 used this instrument at least once per month, which is nonetheless well below use by men (90%).<sup>88</sup> The contents of new information and communication technologies (e.g. computer games) often reproduce traditional stereotypes with regard to the roles of men and women, which reinforces them.

150. In the information technology sector, women are in a minority (23%), the proportion being even lower in specialized training courses. While the proportion of women enrolled in training in information and communications was only about 10% in 2005, the number of women initially enrolling in university studies has significantly increased. In the (less technical) areas of communication and media studies offered by specialized higher schools and universities, women have even become a majority.<sup>89</sup>

## 2. Combating role stereotypes in education and training

151. Stereotypes with regard to social roles and norms leave their mark on the development of personality, especially during childhood and adolescence. They influence the image that girls and boys have of their lives, their course of schooling, their choice of leisure activities and their professional choices. They often have greater weight than aptitudes and individual tastes. In many cantons, equality between the sexes is a question that is explicitly addressed in legislation pertaining to education and which is taken into account in the principles that govern the school curriculum, the training of teachers, and also in the production of teaching materials (see para. 247 ff). Many measures are aimed at combating stereotypes in vocational/professional training (see para. 221 ff below).

## 3. Encouraging equal sharing of domestic and family tasks between men and women

### **CEDAW Recommendation 45**

*...The Committee recommends that measures allowing for the reconciliation of family and professional responsibilities be adopted and implemented and that equal sharing of domestic and family tasks between women and men be promoted.*

### **CEDAW Recommendation 47**

*...The Committee recommends the undertaking of awareness-raising campaigns for developing a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children. Such campaigns should also stress the role of men and pave the way for a debate on the issue of paternity and parental leave as important factors in the sharing of family responsibilities and guaranteeing equality for women in the labour market and in social life.*

<sup>88</sup> <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/16/22/publ.html?publicationID=2487>.

<sup>89</sup> Maja Huber, Accès des femmes aux technologies de l'information et de la communication. Vers l'appauvrissement des différences liées au sexe? [Women's access to information technology. Are gender differences on the wane?], in: Questions au féminin 2.2002, p.19ss; Barbara Stöckli, Einstieg ohne Aufstieg? Frauen in der Journalismusausbildung, dans: Questions au féminin 1.2003, p.21ff.



152. Public debate about maternity insurance and child care (see para. 316 below) shows that many people in Switzerland today see reconciling family and work as an important social and political goal. Making it possible to have both a family life and a professional life is indeed an essential condition for making equality a reality in all spheres of life. Several studies have been devoted to this question in recent years. One of them, conducted as part of the National Research Programme 52 (Children, youth and inter-generational relations in a changing society) analyzed the phenomenon of egalitarian division of roles from a long-term perspective while taking into account children's perception of it. The interviews revealed that in families in which the father and mother share family tasks and employment activity both parents and children have a positive perception of the egalitarian roles model. Children growing up in traditional families often regret that their father is so little present in their daily lives and, at the same time, that their mother is overly present. The model based on sharing of roles seems to work mainly to the advantage of girls: they have a less stereotyped behaviour than others and draw a definite benefit from the close relationship they may have with their father.<sup>90</sup>

153. The BFEG has carried out two consistent campaigns promoting public awareness aimed at combating the stereotyped division of roles and tasks in family life and in professional life. The FAIRPLAY-AT-HOME campaign, launched in 2002, aimed at prompting young couples with children, or planning to have children, to think about the distribution of tasks in the family and in working life. In 2003, the second campaign, entitled FAIRPLAY-AT-WORK, was launched. It aimed at encouraging company managers and personnel managers to design their personnel policy in a way favourable to the family. It was also addressed to fathers who wished to spend more time with their family, supporting them in their approach towards their employer.

154. FAIRPLAY-AT-HOME was addressed to young parents, seeking to make them aware of the fact that the birth of a first child is a key moment in the distribution of roles, a moment when the traditional division becomes established in the couple and can become entrenched. This campaign sought to prompt young couples to discuss and plan the division of remunerated work and domestic work early on. A brochure was made available and a scientific study dealing with the distribution of tasks between the sexes was prepared and published<sup>91</sup>, postcards and stickers were distributed and symposia were held on the topic of work-life balance.<sup>92</sup> The campaign gleaned much attention in public opinion by its presence in the media. It was specifically addressed to target-groups (TV spots, mailings of documentation to key individuals and institutions such as civil registry offices, articles in specialized publications such as family magazines, internet sites, presence of representatives at various specialized events, wedding shows, etc.) Different cantonal and communal equality offices organized special events devoted to the theme. The results of the evaluation of the campaign are mixed: while the message was sent out to the public

<sup>90</sup> Margret Bürgisser, *Egalitäre Rollenteilung: die Langzeitperspektive und die Sicht der Kinder*, Results of the study, 2005,

[http://www.nfp52.ch/f\\_dieprojekte.cfm?Projects.Command=details&get=12](http://www.nfp52.ch/f_dieprojekte.cfm?Projects.Command=details&get=12).

<sup>91</sup> Silvia Strub, *Teilzeitarbeit in der Schweiz, Eine Untersuchung mit Fokus auf der Geschlechterverteilung und der familiären Situation der Erwerbstätigen*, Büro für arbeits- und sozialpolitische Studien BASS, Bern 2003.

<sup>92</sup> For further details, see: <http://www.fairplay-at-home.ch>.

and reached the target audience, it still seems very difficult to lastingly sensitize men to this problem.<sup>93</sup>

155. FAIRPLAY-AT-WORK, the second phase of the campaign, was launched in the spring of 2003. Addressed primarily to company managers and heads of personnel, it informed them about concrete measures to facilitate the task of men and women who wished to succeed in both their professional and their family life and the advantages to be gained not only for co-workers but also for the employer: motivation, flexibility, fewer resignations by female workers for family reasons, and improvement of the company's capacity for innovation.

156. FAIRPLAY-AT-WORK is also addressed specifically to men, especially to fathers aged 20 to 35. While most women with children today are employed part-time in parallel with their domestic and family tasks, men continue to devote most of their time and energy to their work. In households made up of two parents and one or more children under age seven, men devote on average 41 hours a week to their work and 32 hours to domestic and family work, while women devote on average 12 hours to their employment and 59 hours to domestic and family work.<sup>94</sup> One sixth of men with full-time jobs preferred to work part time. From 1991 to 2007, the proportion of men with children under age fifteen working part time increased slightly (from 2.4% to 7.3%). However, the overwhelming majority of fathers (well over 90%) continue to be employed full time. In absolute figures, this means that in 2005 some 48,000 fathers of children under age fifteen worked part time (1991: about 15,000).<sup>95</sup> Many women would like to develop their careers but cannot do so because their partner does not want it or does not want to devote more time to family tasks, or because the couple cannot find any other adequate child-care solution. Men who want to reduce their work activity to devote more time to their family have to overcome more obstacles than women in the same position. The aim of the campaign was to help those men in their search for a better work-life balance by giving them information and practical advice. Brochures addressed to fathers and companies as well as a series of postcards repeating the slogan "FAIRPLAY-AT-WORK" were distributed to various target audiences, and the campaign was introduced at several events, its impact in the media being secured through a series of articles and internet information modules. Brochures informed parents working part time about factors to be considered from the standpoint of social insurance. Evaluation of the second phase of the campaign revealed that directly targeting the target groups implied a great deal of work but was nonetheless worthwhile. It also showed that this subject always inspired some reticence among men, although the campaign contributed substantially to expanding the scope of the discussion on reconciling work and family.<sup>96</sup> Since 2005, the material available has been used in a targeted way. The State Secretariat for Economic Affairs (SECO), with the support of the Union of Swiss Guilds (Union suisse des arts et métiers) and the Swiss Employers' Association (Union patronale suisse) published a "Guide to work and

<sup>93</sup> Flurina Derungs, In die Breite gehen: FAIRPLAY-AT-HOME de juin 2002 à janvier 2003:

Evaluation de la campagne du BFE sur la compatibilité de la profession et de la famille [Evaluation of BFEG campaign on reconciling work and family life], 2003.

<sup>94</sup> <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/20/05/blank/key/Vereinbarkeit/04.html>.

<sup>95</sup> <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/03/02/blank/data/03.html>.

<sup>96</sup> Irene Böckmann, Evaluation of FAIRPLAY-AT-WORK campaign, March 2003-January 2004, BEG 2004.; Martina Hofer, Evaluation of FAIRPLAY-AT-HOME and FAIRPLAY-AT-WORK campaigns, February 2004 – December 2003, BEG 2005.

family for small and medium-sized enterprises” (“Manuel PME Travail et famille”).<sup>97</sup> It is intended to help small and medium-sized enterprises to take steps to organize work in a way that also takes duly into account family responsibilities of their personnel and the economic constraints on the enterprise.

157. Activities designed to make work and family life more compatible and to encourage equitable distribution of remunerated work and work in the family setting are multiplying also in the cantons. A variety of approaches is being taken to sensitize men and women, enterprises and personnel managers to this issue.

#### 4. “Zora la Rousse”

158. Since 1991, the BFEG had been awarding the “Zora la Rousse” Prize of 10,000 Swiss francs to reward cultural creations in the sphere of the media for children and youth that addressed equality between girls and boys or between women and men and called traditional roles into question or illustrated innovative forms of social organization. The works rewarded could be plays, music, exhibits, posters or graphic creations, but also literary works for children or young people, comic strips, films or videos, television or radio broadcasts. The prize was eliminated in 2006 due to budgetary restrictions.

#### 5. National Girls’ Day

159. In 2001, the Swiss Conference of Gender Equality Delegates organized for the first time, with the support of the Federal Office for Education and Science (Office fédéral de la formation professionnelle et de la technologie) a National Girls’ Day which has since become a yearly event.<sup>98</sup> It is a day during which girls accompany their father or mother to work to gain a clear idea of the workplace environment. This prompts them to think about their own professional prospects and about careers which might interest them. With a view to the 2005 National Girls’ Day, some 7000 teen-age girls and boys presented their visions of the future as part of a contest organized to mark the fifth year of the event. An analysis of the descriptions shows that a majority of girls wished someday to be the boss and live with a man who shouldered a part of the domestic tasks. Six boys out of ten could perfectly well see sharing their time between their family and their work. Nearly all girls and boys would like someday to have children. The success of Girls’ Day, an event that inspires much appreciative comment, has gradually eclipsed its original goal, which was to promote equal opportunity. Many companies today open their doors not only to girls but also to boys and have changed Girls’ Day into a Kids’ Day or an open house for children. The canton of Basel-Country organized a “Gender Day” (*Gendetag*) dealing with the career and life prospects of girls and boys. Other cantons continue to hold a Girls’ Day with the original goal and are supporting schools that sponsor specific projects for boys during days when girls are accompanying the father or mother to work. Some employers closely linked to public services (Post, CFF Rail Service) are keeping Girls’ Day in its original form.

<sup>97</sup> <http://www.seco.admin.ch/themen/00385/02021/index.html?lang=fr>.

<sup>98</sup> [http://www.journee-des-filles.ch/cms/front\\_content.php?idert=1&changelang=7](http://www.journee-des-filles.ch/cms/front_content.php?idert=1&changelang=7).

## 6. Increasing awareness of the need for equality between men and women

160. A number of events have been devoted to human rights in general and to CEDAW in particular. In 2002, for example, the BFEG organized a symposium on the topic “Towards the frontiers of equality” (“Vers l’égalité sans frontière”) whose aim was to shed light on the impact of UN and Council of Europe instruments on the development of equality in Switzerland. In this context, the BFEG published a detailed analysis of what the international instruments for the advancement of human rights mean for equality in Switzerland.<sup>99</sup> The Federal Department of Foreign Affairs, for its part, organized and encouraged various public events and conducted internal refresher courses on human rights in general and women’s rights in particular.

161. In 2005, the annual conference of Swiss ambassadors devoted a half-day programme to the topic of promoting equality between women and men in foreign policy. Particular attention was given to resolution 1325 of the United Nations Security Council and its implications for civilian peace-building activities by Switzerland.

162. Equality between men and women is a subject that is taken up in refresher courses by various cantonal agencies, especially in seminars for managers.

163. See also the discussion on issues of equality an enhancement of competencies in the university domain under the heading of “gender studies”, in paras. 239 ff.

164. In the area of **cooperation for development**, the gender office and the equal opportunity delegate of the Directorate for Development and Cooperation (DDC) are responsible for providing personnel with information about CEDAW and prioritizing measures for implementation by DDC. Resources and personnel have been increased to support these efforts. The Directorate has reviewed the measures proposed and approved a plan of action for the next three years aimed at systematically implementing CEDAW. An administrative circular has been issued requesting all DDC personnel to take greater account of CEDAW principles in their work. A survey conducted among all the personnel provided a means to take stock of the situation in order to define areas of intervention, and to serve as a basis for the preparation of the plan of action.

165. The DDC continues to offer courses on gender but has left off general training courses in favour of courses focused on specific subjects. Courses have taken place on the topic of “Gender Responsive Budgeting”. These were supplemented by various regional courses addressed to coordination bureaux and partner organizations. Some categories of DDC personnel such as Junior Programme Officers also receive tailor-made courses.

166. With regard to specific measures to enhance awareness of CEDAW, see para. 439 ff under article 24 below.

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<sup>99</sup> Christina Hausammann, *Menschenrechte – Impulse für die Gleichstellung von Frau und Mann in der Schweiz Ratifizierung der Menschenrechtsverträge – der Einfluss auf den Gleichstellungsprozess in der Schweiz*, Basel 2002.

## Art. 6 Combating the traffic in women and exploitation of prostitution

### CEDAW Recommendation 39

*The Committee urges the State party to continue its efforts to combat trafficking in women and girls. It recommends the formulation of a comprehensive strategy, which should include measures of prevention, the prosecution and punishment of offenders and increased international, regional and bilateral cooperation. It calls on the State party to ensure that trafficked women and girls have the support they need, including residence permits, so that they can provide testimony against their traffickers. It further urges that training of border police and law enforcement officials be pursued so as to enable them to render support to victims of trafficking. The Committee recommends the development of programmes of action for women forced into prostitution by poverty and the adoption of all appropriate measures to combat and eradicate the exploitation of prostitution, including the prosecution of, and strong penalties for, those who exploit prostitutes. The Committee requests the State party to provide in its next report comprehensive information and data on the trafficking of women and girls and the exploitation of prostitutes.*

### 1. Current trends in detail

167. In recent years, a non-governmental organization in Zurich, the Women's Information Centre for women from Africa, Asia, Latin America and Eastern Europe (FIZ), together with the FIZ Makasi project, has been providing specialized consultation and help to victims of human trafficking. FIZ has observed a definite increase in the number of victims coming to seek advice. It believes that the stronger cooperation in combating human trafficking that resulted from the cantonal round tables was one of the main factors accounting for this increased demand. It notes that a large proportion of victims of human trafficking have been exploited sexually. These women are for the most part from Eastern Europe or Latin America. FIZ also notes an increase in the number of victims who are female minors.

168. Although the number of investigations initiated for human trafficking has recently increased, these cases still represent only the tip of the iceberg: the hidden figure is high. This situation can be explained in part by the pressures exerted upon the victims. Because of the job they are engaged in, the great majority of victims are present in Switzerland illegally. They often suffer physical or psychological violence and fear reprisals from the perpetrators, who may threaten them directly or may threaten their families in their country of origin if they cooperate with the prosecutorial authorities. The lack of uniform legal provisions governing protection of witnesses outside the trial is one of the main reasons why it is extremely difficult to induce victims to testify against traffickers in criminal proceedings.

169. In large establishments that have been opened in recent years, the many controls carried out by the authorities reduce the risk of human trafficking and the working conditions for employees are often better than they are elsewhere. In the area of illegal prostitution, bars, saunas and massage parlours, which often do not appear at first sight to be brothels, are more conducive to development of criminal activities. Women from emerging or developing countries are especially at risk of sexual exploitation.

170. Human trafficking aimed at exploiting the victim's labour has been criminally punishable only since the entry into force of the new article 182 of the Penal Code

in December, 2006. Consequently, data on the scope of this phenomenon are still virtually non-existent. There is a danger of labour exploitation of women in private homes, hotels, restaurants, private enterprises and agriculture.

## 2. Confederation measures

171. In September, 2001, an inter-departmental working group on human trafficking published a report entitled “Trafficking in Human Beings in Switzerland” (“Traite des êtres humains en Suisse”). This report contains a summary of the present situation as well as a series of recommendations for combating human trafficking. After taking note of the report, the Federal Council decided to implement part of the measures recommended.

172. Pursuant to the recommendations contained in the report “Trafficking in Human Beings in Switzerland”, in 2003 the **Swiss Coordination Unit against the Trafficking of Persons and Smuggling of Migrants** (Service de coordination contre la traite d’êtres humains et le trafic de migrants (SCOTT)) was created. SCOTT serves as the focal point for the Confederation and the cantons for activities of information, coordination and analysis in the sphere of human trafficking and migrant trafficking. It develops strategies and measures to combat trafficking in human beings and trafficking in migrants with a focus on prevention, law enforcement and aid to victims. SCOTT is made up of representatives of the main federal and cantonal agencies concerned, as well as other governmental or non-governmental organizations that take part in combating human trafficking. The SCOTT secretariat is linked to the command centre of the federal police department. In 2004, a new police division for “Paedophilia, human trafficking and trafficking in migrants” was created within the federal judicial police, followed in 2007 by a special “Pornography/paedophilia” division. At the same time, the resources of the “Human trafficking and migrant trafficking” division were increased.

173. Based on the position taken by the Federal Council in response to the report “Trafficking in Human Beings in Switzerland” and the reactions of the cantons to the consultation procedures organized in that connection, the executing organ prioritized the recommendations in the report and adopted them in the form of a SCOTT programme of action in November, 2003. That programme of action against human trafficking contains a list of measures which SCOTT and the services concerned are to carry out during the next two years. Those priorities were reviewed and adapted in the spring of 2005 and the fall of 2007. At the top of the list are training programmes specifically focused on combating human trafficking and improving cantonal cooperation mechanisms. The report of 8 November 2007 prepared by the SCOTT secretariat recounts the progress achieved, takes stock of the situation and sets future priorities for combating human trafficking in Switzerland.

174. Responding to the need to make the best use of the flexibility allowed by the law on residence of foreigners in the interests of the victims of human trafficking, the OFM in August 2004 sent a **circular to cantonal migration offices**. It describes the possibilities available under the legal bases in force to regularize the stay of victims of human trafficking. It also formulates recommendations regarding the granting of a period for deliberation, regarding permission to remain during the judicial proceeding, and regarding the granting of residence on humanitarian grounds.

175. Criminal prosecutions in cases of human trafficking regularly involve several cantonal authorities and NGOs. The prosecution is conducted by the authorities in charge of the investigation, residence issues fall to the immigration authorities, and aid to victims is provided by NGOs. The handbook “Cooperation mechanisms to Combat Trafficking in Human Beings” published by SCOTT in 2005 shows how cooperation between different agencies of one canton can be improved. The round table is an appropriate instrument to discuss cooperation between justice authorities police, immigration authorities and victim aid agencies, and to reach binding agreements on cooperation. Many cantons have already concluded cooperation agreements or have organized round tables to discuss them. It is striking to note that the cantons in which the number of investigations of human trafficking is on the rise are those that have introduced round tables.

176. Switzerland ratified the additional protocols to the United Nations Convention against Transnational Organized Crime, aimed at preventing, suppressing and punishing trafficking in persons and the control of unlawful trafficking in migrants, on 27 October 2006 (they entered into force on 26 November 2006). It ratified the optional protocol to the Convention on the Rights of the Child concerning the sale of children, child prostitution and child pornography on 19 September 2006 (entry into force 19 October 2006). In parallel, article 196 of the Penal Code concerning trafficking in human beings was replaced by **new article 182 of the Penal Code**. In its old version, article 196 criminalized only human trafficking for the purposes of exploiting prostitution and did so only if the act was committed repeatedly. The new penal rule against trafficking in human beings, now embodied in Penal Code article 182, was adapted to the definition contained in the UN additional protocol against trafficking in persons: it criminalizes also the exploitation of the victim’s labour, as well as trafficking in human beings for the purpose of harvesting organs. Moreover, it will no longer be required that the act be committed repeatedly. The act of recruiting a person for these purposes is treated as tantamount to trafficking. This amendment of the Penal Code entered into force on 1 December 2006.

177. During the preparation of the new law on foreign persons, various provisions were created to enable human trafficking to be more effectively curbed. Thus, article 30, paragraph 1 (e) of the Law on Foreign Persons (Loi des Etrangers), which entered into force at the beginning of 2008, provides that the authorities may derogate from the general conditions of admission to the country in order to regulate stays by human trafficking victims and witnesses. According to article 35 of the ordinance governing admission, stay and exercise of a remunerated activity (RS 142.201), the authorities must grant victims of human trafficking a deliberation period of 30 days. If the victim decides to cooperate with the authorities, she is granted a limited residency for the anticipated duration of the proceeding. During that time, she may be authorized to exercise gainful employment in Switzerland. The new Law on Foreign Persons also contains certain provisions regarding trafficking in human beings which broaden the legal scope of discretion for granting persons an appropriate immigration status. Their application remains, however, within the purview of the competent cantonal authorities (see detailed comments on the new Law on Foreign Persons in paras. 417 ff, under article 15). Under the new Law on Foreign Persons (article 116), the penalties for aggravated forms of trafficking in human beings have been increased and offenses of this type now fall into the category of felonies. Article 118 criminalizes deception of the authorities to fraudulently obtain a permit to enter or remain in Switzerland.

178. The International Organization for Migration (IOM) in Berne has launched a pilot project entitled “**Return, Rehabilitation and Reintegration Assistance for Victims of Human Trafficking in Switzerland**” (“Aide au retour, à la réhabilitation et à la réintégration des victimes de la traite d’êtres humains en Suisse”). The IOM helps victims to organize their return journey (sometimes accompanied), provides assistance at the airport and in transit, services upon arrival and transport to place of origin. It seeks appropriate rehabilitation and reintegration measures in the country of origin (medical help or psychological support, opportunities for training or refresher courses, legal counselling, return assistance payments) and ensures follow-up of these measures. According to article 60, paragraph 2 (b) of the Law on Foreign Persons, Confederation programmes of aid for return and reintegration can also benefit persons involved in cases of human trafficking as victims or as witnesses. In 2007, the Federal Migration Office worked on the development of a pilot project for a limited period of two years to begin in the first half of 2008. That project will provide support on return for persons concerned once their residence authorization expires and will contribute to their reintegration in their country of origin.

179. On 3 November 2005, SCOTT organized a national symposium on human trafficking in Switzerland. That meeting was aimed at enhancing awareness of the gravity of the problem among agencies concerned, especially at the cantonal level, in order to increase criminal prosecutions related to these kinds of offenses, as well as improved aid to victims. It also provided an opportunity to intensify existing contacts or create new ones with a view to improving coordination between the cantonal agencies concerned. This symposium was part of the training measures aimed at stepping up the fight against trafficking in human beings.

180. A working group was established to develop a **training programme** addressed to specialists in the police and justice departments, immigration officers and other services participating in the fight against trafficking in human beings. The Swiss Police Institute (ISP) organized an initial training course for specialists in combating human trafficking in 2007. That training is addressed to members of the police, border guards and immigration authorities. Persons taking the course learn, among other things, to recognize and question victims and to cooperate with other authorities. The number of enrolments in this training programme was so large that the course had to be doubled. New courses are scheduled as part of this training initiative, but also for different target audiences.

### 3. Protection of foreign cabaret dancers

#### **CEDAW Recommendation 37**

*... The Committee requests the State party to review and reconsider the special visa regulations for cabaret dancers and to study their de facto situation in the light of the potential dangers and risks that their situation may entail. It also requests the State party to take appropriate measures to protect the women concerned from all forms of exploitation and to take action aimed at changing men’s and society’s perception of women as sex objects.*

181. Women from third States have the possibility of obtaining a **short-term residence permit (L permit)** which enables them to stay legally in Switzerland in order to work there as cabaret dancers. The L permit was introduced to provide



these women with a degree of legal protection against exploitation. The FIZ in Zurich (an NGO specializing in the situation of migrant women in Switzerland) believes that there are about 350 cabarets in Switzerland. According to the Federal Migration Office (OFM), the trend is for such stays to become shorter and more numerous, so that the number of visas issued is increasing while the number of women working in Switzerland remains constant. The central registry of foreign persons indicates that 1531 people (1521 of them women) had been granted an L permit at the end of 2006. In addition there are other women who hold a short-term or long-term residence permit and Swiss women working as cabaret dancers. At the end of 2006, the statistics indicate that three fourths of the dancers with an L permit came from Eastern Europe (nearly half from Ukraine) and most other women from America (especially the Dominican Republic) and Morocco. A study of the living and working conditions of cabaret dancers in Switzerland conducted in 2006 and based on a survey among the subjects and among specialists in the problem reveals the full complexity of the factors involved.<sup>100</sup>

182. In January, 2004, the Swiss association of cabaret managers, ASCO, reviewed the model employment contract which is to be applied by all managers who employ dancers. Adapted to the new rules of protection introduced in the labour legislation concerning night work, the new contract now allows only 23 days of work per month rather than 26 (with no reduction in wages) and provides for improved compensation in terms of rest time. Since 2006, the OFM has been able to oblige employers to transfer the women's salaries to their account in Switzerland. The cantonal authorities regularly monitor compliance with the new requirements. The OFM regularly organizes meetings of a working group with all interested sectors to permit discussion of all questions relating to the status of cabaret dancers.

183. According to a FIZ survey of various consultation services for cabaret dancers, and according to the aforementioned study, **the problems do not seem to have disappeared**. It happens that contract clauses are not respected in practice or that they are accompanied by additional clauses that unilaterally disadvantage employees. Although the law prohibits encouraging consumption of alcoholic beverages, some cabaret managers violate the law by requiring their dancers to get customers to drink. It also happens often that they exert pressure on the women to provide services of a sexual nature. The dancers who refuse to do more than the dance performance agreed upon risk losing their job and their permit at the same time. Cabarets generally offer their dancers a one-month contract. To obtain an entry visa as a cabaret dancer, the applicant has to present three employment contracts. The women generally can obtain these contracts only through agencies in Switzerland or, illegally, in their country of origin. It is not unusual for the agencies to demand exorbitant commissions, which put the women under pressure and make them financially dependent.

184. In 2004 the BFEG published an updated **brochure** addressed to cabaret dancers in sixteen languages. It provides them with information on their rights as well as contact addresses in Switzerland. The brochure is distributed to all women

<sup>100</sup> Janinne Dahinden / Fabienne Stants, La situation des danseuses de cabaret en Suisse [The situation of cabaret dancers in Switzerland], Swiss Forum for Migration and Population Studies SFM 2006. The FIZ publication "Champagne, stress et travail précaire" [Champagne, stress and insecurity] by Charlotte Spindler et Marianne Schertenleib, Zurich 2006, summarizing main results of the study and presenting proposals for improvement.

who approach a Swiss representation abroad to apply for an L permit.<sup>101</sup> Several cantons also distribute other information documents specifically addressed to holders of L permits. These brochures contain addresses of cantonal aid and consultation services.

185. The “Cabaret Dancers” working group of SCOTT, which is composed of male and female representatives of different federal offices, cantonal authorities and non-governmental organizations, has reviewed means to **improve protection for cabaret dancers** and formulated a series of recommendations. These recommendations include measures by the Aliens’ Police, measures to be taken by enterprises, and health measures for cabaret dancers, addressed to cantonal migration offices.

186. In 2005, the Federal Department of Foreign Affairs adopted a series of measures designed to protect cabaret dancers. Swiss representations overseas are required to apply these measures when they process visa applications. It is hoped that the information brochures, personal talks, and obligations placed upon applicants to sign the contract at the consulate will make it possible to avoid dancers having a false idea about the activity awaiting them in Switzerland and to alert them to the potential dangers they face.

187. The new Law on Foreign Persons and the implementing regulations deriving from it also contain a whole series of **provisions intended to protect cabaret dancers**. For example, the permit is granted only if the applicant can demonstrate an engagement lasting at least four consecutive months. In the event of exploitation, the new provisions relating to victims and witnesses of human trafficking (article 30, paragraph 1 (e) of the Law on Foreign Persons) are applicable. Assistance for return and reintegration as provided for in article 60, paragraph 2 (b) can also be granted to cabaret dancers.

#### **Art. 7 Elimination of discrimination in political and public life**

##### **CEDAW Recommendation 41**

*The Committee encourages the State party to take sustained measures to increase the representation of women in elected and appointed bodies, including temporary special measures in accordance with article 4 paragraph 1, of the Convention, in order to realize women’s right to equal participation in public and political life. The Committee also recommends that adequate measures be taken with the aim of achieving balanced participation of women and men in the various areas and levels of public life, particularly in administration, the judiciary and the diplomatic service.*

#### **1. Encouraging women’s participation in political life**

188. At the Confederation level, it is primarily the Federal Commission on Women’s Issues that has been concerned with the persistent under-representation of women in political organs and, especially, **media coverage of women politicians**. Already in the 1990s, the Commission, in cooperation with the *SRG SSR idée suisse* broadcasting corporation had analyzed pre-electoral broadcasts from the standpoint of gender equality. With a view to the 2003 federal elections, it published thirteen

<sup>101</sup> <http://www.ebg.admin.ch/dokumentation/00012/00200/index.html?lang=fr>.

recommendations to media professionals in hopes of achieving a more egalitarian coverage of elections than in the past (highlighting under-representation of women, parity in coverage of candidates of both sexes on the media, equitable distribution of air time, presentation of new candidates, same interview subjects), coverage of equality as a cross-cutting theme and equitable representation of women among experts consulted.<sup>102</sup> At the request of the *SRG SSR idée suisse* broadcasting corporation, of the Federal Commission on Women's Issues, and of the Federal Communication Office, information broadcast by national television and radio networks with a view to the 2003 elections was analyzed in detail from the standpoint equality between men and women. By comparison with 1999, the share of air time given to women had increased on all public television networks. Especially in French-speaking Switzerland, women appeared prominently among television journalists. On the radio, however, female candidates received less air time than they had in 1999 on all the public networks of all three linguistic regions. Women were also under-represented in the election coverage of all private radio and television stations.<sup>103</sup> Another survey was done on coverage of election campaigns by the print media. It focused on the presence of female candidates in the media, the sex-specific dimension of topics discussed in the campaign, and political journalism as a profession. The study concluded that the electoral campaign coverage had had the effect not only of preserving masculine dominance in the political arena but indeed had strengthened it: the media gave priority to male candidates and to topics viewed as masculine to a greater extent than one would suppose from the political issues and the prominence of male political figures. Among the encouraging developments noted by the report was a slackening of the tendency to assign political themes to one sex or the other, and the fact that themes traditionally considered "feminine" such as social policy were becoming more important and thus enabling women specialized in those areas to project their image.<sup>104</sup>

189. With a view to the 2003 National Council elections, the Federal Chancellery devoted two pages of its explanatory notice to the importance of political representation by women in the realization of equality. The OFS, the BFEG and the Federal Commission on Women's Issues, for their part, issued a brochure on the representation of women in politics and in federal and cantonal elections.<sup>105</sup> Parliament, on the other hand, declined to attach to the federal law on political rights a provision which would have enabled the launching at regular intervals of campaigns to promote equality in federal elections.

190. In cooperation with the Swiss Council for Youth Activities, the Federal Commission on Women's Issues had since 2000 been organizing, managing and

<sup>102</sup> Perspective genre: 13 recommandations aux professionnel-le-s des médias en vue des élections fédérales [13 recommendations to media professionals regarding the federal elections], 2003, [www.frauenkommission.ch/pdf/wahlen03\\_medien\\_f.pdf](http://www.frauenkommission.ch/pdf/wahlen03_medien_f.pdf).

<sup>103</sup> Sonja Stalder, *Votations fédérales 2003: médias, genre et politique* [2003 federal elections: Media, gender and politics].

<sup>104</sup> Sibylle Hardmeier/ Anita Klöti, *Doing gender dans les médias pendant la campagne électorale? Analyse de la représentation de personnes des deux genres dans la couverture médiatique des élections fédérales 2003* [Doing gender in the media during electoral campaigns ? Analysis of portrayals of persons of both genders in media coverage of 003 federal elections], in: *Questions au féminin 2.2004*, p. 11ss; see also Marie-Christine Fontana, *Die Selbstdarstellung von Kandidatinnen und Kandidaten im Wahlkampf*, in: *Questions au féminin 2.2004*, p.35ff.

<sup>105</sup> *Les femmes et les élections, 1999-2003: La difficile conquête du mandat de députée* [Women in elections, 1999-2003, the difficulty of winning a seat in the legislature], Neuchâtel 2003.

financing a **mentoring project**: young women aged 17 to 30 were given the opportunity over a year's time to accompany an experienced woman politician in her activities and benefit from her advice regarding career plans and networking. The project, which ended in 2006, was aimed at helping to enhance the proportion of women performing political functions, providing for renewal in associations and fostering communication and networking between generations. The project benefited 131 young women from all parts of the country from 2000 to 2006. It had two dimensions: an individual aspect proper to each mentoring duo, and a general information aspect addressed to all participants. In 2003, the Council of Europe recognized the project by awarding it the "Active Young Citizens" prize. The project was also scientifically evaluated.<sup>106</sup> The Swiss Council for Youth Activities has launched a new mentoring project entitled "Woman to the Second Power" ("Femme puissance deux") comprising 25 mentors and 25 mentees.

191. Some cantons are reporting measures being taken to encourage participation by women in politics. Among the instruments often used one can mention consciousness-raising, information, training and mentoring of candidates to political functions, or definition of minimum quotas for representation of women in political organs (in the form of fairly non-binding targets).

192. With regard to the acceptability of political quotas, see para 135 above.

## **2. Improving women's access to administrations and courts**

193. The new legislation governing personnel of the Confederation entered into force on 1 January 2002. This legislation expressly defines equal opportunity for men and women as a personnel policy goal for the Confederation. Pursuant to the new rules, the Federal Council is also obliged to ensure periodically that the goals set in the law are being achieved and that employers are applying an appropriate system of controls. On 22 January 2003, the Federal Council adopted new guidelines aimed at promoting equal opportunity between men and women. The guidelines require departments to take steps to achieve parity in all areas of activity and at all levels, and periodically to set targets for that purpose (temporary special measures within the meaning of article 4, para. 1 of CEDAW, see paras. 137 ff above).

194. Many cantons have taken steps to increase the proportion of women in administrations, notably at the management level and to promote equal treatment within administrations (with regard to the Confederation and the cantons as employers, see paras. 330 ff under article 11 below).

195. The information available about the proportion of women in the Swiss courts is not systematic. Some cantons report that women are still clearly under-represented (as professionals) in the judiciary, others say the contrary. Of the 37 judges of the Federal Supreme Court, all of whom are elected by Parliament, there are ten women (in 2007). That same federal court employs 45 female clerks and 92 male clerks.

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<sup>106</sup> Cf. [www.frauenkommission.ch](http://www.frauenkommission.ch).

### 3. Withdrawal of reservations under article 7

#### **CEDAW Recommendation 14**

*The Committee urges the State party regularly to review its reservations and to make greater efforts to withdraw them. Should the significance of the reservations continue, the next report should propose a timetable for the withdrawal of reservations.*

196. When it ratified the Convention, Switzerland lodged reservations under article 7 (b) because Swiss legislation at that time prohibited women in the armed forces except for self-defence. Women had the choice between armed service and non-armed service, but they could not, even if they chose armed service, assume functions implying combat. In other words, several units of the Swiss army were off limits to them. Since the “Army XXI” reform plan and the revision of the ordinances and directives resulting therefrom, women now have access to all types of service. Consequently, Switzerland has **withdrawn the reservations** it had lodged on 21 April 2004.

### 4. Promoting women’s participation in other States

197. As part of its commitment to support civilian peace-building and human rights, Switzerland takes its cue to a large extent from the goals defined in United Nations Security Council **Resolution 1325**, “Women, peace and security” and therefore takes into account the needs and rights of women in armed conflicts. On 8 March 2007 Switzerland published a national plan of action adopted by the Federal Council for the implementation of the resolution. The national plan of action provides for specific measures aimed at strengthening participation by women in peace-building, in preventing sexist violence, and in ensuring greater respect for the needs and rights of women and girls during and after armed conflicts, as well as integrating the gender perspective into all peace-building projects and programmes. Most of the measures provided for in the national plan of action, which is the product of inter-departmental cooperation, will be implemented by the services of the Federal Department of Foreign Affairs and by the Federal Department of Defence, Protection of the Population and Sports.

198. Switzerland is a member of the “Friends of resolution 1325 group” which comprises 27 States. The aim of this group is to advocate the implementation of the resolution in practice. It takes measures to encourage its members to adopt the requirements of the resolution as the framework for their endeavours and works with other UN organs, as well as other inter-governmental organizations, to elicit their support for the requirements of the resolution.

199. In accordance with the priorities set in the **National 1325 plan of action** and in light of the objectives it was already pursuing in regard to gender, Switzerland supports political participation by women in other countries through programmes of civilian peace-building and promotion of human rights. In the framework of the Stability Pact for South Eastern Europe, for example, Switzerland financially supported the Gender Task Force (GTF) until 2003. The GTF encourages the establishment of national mechanisms and institutions to promote equality for women. In the occupied Palestinian territory, Switzerland has since 2002 supported the activities of the non-governmental organization MIFTAH (Palestinian Initiative for the Promotion of Global Dialogue and Democracy). One of the projects

supported aims at improving the chances of success of women candidates in local elections as well as parliamentary elections. Another project supported by Switzerland aims at increasing women's participation in the peace negotiations. In the Democratic Republic of the Congo, Switzerland supported the inter-Congolese dialogue (DIC) which led in December 2002 to the signature of the Global and All-Inclusive Agreement, by which the parties undertook to bring an end to the conflict and create a dynamic of national reunification and reconciliation. Swiss experts have actively advanced the principle that the parliament should comprise at least 30% women. That rule has been enshrined in the transitional constitution. In Burundi, Switzerland helped women's organizations to improve their networking with local decision-makers in order to have their interests represented in the political process. In 2004, Switzerland supported a project to promote participation by women politicians in Mozambique's elections. Another goal of that project was to unite women politicians around an overarching theme that cut across political lines - in this case, violence against women - in order to lead them to play a mediating role in cases of conflicts between parties. In 2005, Switzerland also supported a project of the OSCE Office for Democratic Institutions and Human Rights aimed at strengthening women's participation in democratization in the Caucasus and Central Asia.

200. Participation in political and social decision-making is an important subject also in the context of development cooperation. The DDC encourages **empowerment projects** aimed at enhancing women's political participation. The DDC's gender toolkit makes available instruments for measuring the rate of participation by men and women. This analysis serves as a basis for planning and action (e.g. strengthening or extending women's participation, changing priorities, etc.). In some countries, the DDC has launched sex-specific initiatives in hopes of increasing women's participation at all levels (micro, meso and macro). In the health sector, aid is provided in certain countries applying the Community Based Health Initiative (CBHI) approach, which is based essentially on participation by stakeholders and especially on empowerment of women.

201. In other countries, women are prepared for assuming governmental functions or tasks in other organs (e.g. at the communal level) through workshops and training courses. In conflict zones, special importance is given to participation by women or by NGOs for the advancement of women in peace negotiations. Under-representation of one sex or unequal participation in the development process is a subject that DDC workers have to take up in their contacts with partner organizations.

## Art. 8 International representation and participation

### CEDAW Recommendation 41

*The Committee encourages the State party to take sustained measures to increase the representation of women in elected and appointed bodies, including temporary special measures in accordance with article 4 paragraph 1, of the Convention, in order to realize women's right to equal participation in public and political life. The Committee also recommends that adequate measures be taken with the aim of achieving balanced participation of women and men in the various areas and levels of public life, particularly in administration, the judiciary and the diplomatic service.*

#### 1. Women in the diplomatic service

202. Women's presence at all levels of the diplomatic service has grown significantly since 2000. In 2007, 22.6% of people employed in the diplomatic service are women (2000: 16.5%). The most definite progress occurred in the lower and intermediate ranks. The proportion of women ambassadors did not change for a long time, with 8 women out of nearly 100 people having the rank of ambassador. In 2007, 11 women had the rank of ambassador (116 men), which is 9.4% in percentage terms. The slow growth in the proportion of women at the upper ranks is due to a formalistic system of promotion which does not permit the proportion of women to be increased quickly at that level. Indeed, the proportion of women at the top ranks can be increased only if they make headway at the recruitment level. At this level, the progress noted is considerable: the share of women recruited has reached 50% since 2003 (even 53% in 2007).

203. In the consular service, the proportion of women has risen from 35.7% at the end of 2000 to 44.2% in 2007. The share of women in consular graduating classes has been generally above 50% since 1990. In 2004, two women were working in the consular service as consuls general.

204. In order to improve the situation of women in the department, the Federal Department of Foreign Affairs in September, 2000, employed a full-time equal opportunity officer and prepared a quadrennial programme comprising specific goals and measures, in keeping with instructions of 1991 and 2003 of the Federal Council. Before the period under review, the DDC had already established a position of officer for the advancement of women and adopted a policy of promoting equal opportunity.

205. The department's quadrennial programme includes measures aimed at the following objectives:

- Ensuring equal opportunity in all personnel management processes (recruitment, selection, assignment, evaluation and career development);
- Establishing general conditions responsive to the needs of women and men (with a focus on reconciling family and work with the organizational culture).

206. The implementation of the quadrennial programme for 2000-2003 was subjected to a painstaking analysis. The report was submitted to directors and to the head of the department. It served as the basis for formulation of a new quadrennial programme.

207. In the domain of personnel management processes, stress has been placed on absence of discrimination in evaluations. Training has been included in courses on conduct, within competent commissions for admissions and promotions in the diplomatic and consular service, as well as for persons entrusted with conducting assessments. Companies entrusted with conducting assessments must show their competence in the field of gender reports. Finally, multiple-choice questions used for admission examinations in the diplomatic service have been reviewed to ensure that they do not contain discriminatory prejudices.

208. In order to strike a better work-life balance, the department has created during the review period a second child-care centre with 10 full-time places. At the end of 2006, the Federal Department of Foreign Affairs can offer 18 full-time places. A number of measures have been taken to create more flexible working schedules, such as introduction of tele-commuting. Flex-time scheduling, which has been practiced in the central office for a long time, has been optimized by reducing the period of mandatory presence. In some cases, couples have been able to share a post, including overseas and management posts. Part-time work, which has been institutionalized, is now subject to regulations, and discrimination linked to part-time work (e.g. with regard to promotion) has been eliminated. Periods of maternity leave or parental leave are taken into account, for a maximum duration of one year, for purposes of promotion. However, mobility requirements continue to complicate the problem of reconciling family and work for couples both of whom are pursuing a career. In 2007, a working group was entrusted with identifying and defining measures that would facilitate professional activity of spouses. In 2005, the DDC received the "Equality Prize" of the Swiss society of commercial employees, in recognition of its development of future-oriented potentials (targeted encouragement of renewal and planning of renewal over the long term with concrete goals and systematic monitoring).

## **2. Women in international organizations and delegations to bilateral and multilateral negotiations**

209. The directives of the Federal Council of 1 February 2006 concerning the assignment of delegations to international conferences as well as the preparatory and follow-up work relating to them indicate under the heading "Composition of the delegation" that the federal office in charge will ensure that women are equitably represented in the delegation. The aim is to achieve parity between male and female members.

210. The federal administration does not have data enabling it to determine the total share of women within the delegations that Switzerland sends to international negotiations. A survey done in 2004 among directorates and services concerned in the Federal Department of Foreign Affairs yielded results that provide some clues. For several years, the proportion of women in delegations has been steadily growing in most areas; however, it remains modest in certain other areas, for example in negotiations dealing with Switzerland's relations with European and North-American States.

211. There is also a lack of complete figures indicating the proportion of women among the Swiss personnel in international organizations. Switzerland is a member of 120 organizations which, in 2003, employed about 41,000 people, of whom 565 were of Swiss nationality. The 24 organizations that publish figures broken down by gender (including the European Organization for Nuclear Research – CERN)



employ 134 people of Swiss nationality, of whom 39 are women. The share of women in these organizations thus represents 29.1%.

212. In the sphere of peace policy, Switzerland attaches special importance to the role of women. In keeping with the objectives of its national plan of action for the implementation of UN Security Council Resolution 1325, it is provided, for example, that the proportion of women in the Swiss pool of experts for civilian peace-building should be increased to 40% and that this percentage should also be observed with regard to delegations of experts sent into the field. In mid-2007, 31% of the members of the Swiss pool of experts for civilian peace-building and 41% of persons actually engaged on the ground were women.

213. The gender dimension is an integral part of the conceptual and operational approach of Switzerland in the sphere of long-term peace-building. Operational or strategic services and outputs in this area must take into account the gender dimension. This requirement also applies to the choice of experts and consultants, male and female. Peace-building activities should not only take into account the particular needs of women and ensure their respect, but also make increasing room for the roles of men and women in political and institutional processes, in crisis prevention, in the promotion of dialogue and reconstruction, and take into consideration the specific needs of men and women in cases of conflict. The opportunities that may arise in a conflict to redefine the respective roles of men and women should also be seized.

#### **Art. 9 Nationality**

214. In 2006, 46,700 foreign persons obtained Swiss nationality; just over half were women (24,350). The figures for previous years also indicate a slightly higher number of women.<sup>107</sup>

215. A partial revision of the law on nationality (LN, RS 141.0) entered into force on 1 January 2006. It eliminated all legal differences between women and men with regard to acquisition of nationality. Thus, the distinction between Swiss women who acquired nationality by consanguinity, adoption or naturalization on the one hand, or by marriage on the other hand has been eliminated (article 1, para. 1, abrogating articles 57a and 58b, LN). The same applies to the provision according to which the child of a mother who acquired Swiss nationality by a prior marriage with a Swiss could not himself acquire Swiss nationality unless he could not acquire any other nationality at birth or had become stateless before reaching majority. According to the new law, children in this position receive Swiss nationality at birth. This change entailed the abrogation of the provision which facilitated the naturalization of children of a mother who acquired Swiss nationality through a prior marriage with a Swiss. Similarly, the conditions that had to be fulfilled by women who had acquired Swiss nationality through a prior marriage in order to recover Swiss nationality have been eliminated.

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<sup>107</sup> <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/01/07/blank/key/03/01.html>.

**Art. 10 Education****CEDAW Recommendation 29**

*The Committee urges the State party to design and implement comprehensive programmes in the educational system, including human rights education and gender training, and to disseminate information on the Convention, with a view to changing existing stereotypical attitudes on women and men's roles, including advancing the notion of parenting as a social responsibility of both mothers and fathers. [...]*

**1. Level of education and access to educational programmes and institutions, combating role stereotypes for men and women in education and occupational choice**

**CEDAW Recommendation 43**

*The Committee recommends that the State party intensify its efforts to encourage diversification of the educational choices of boys and girls, mainly through counselling, to help them to fully develop their personal potential.*

**1.1. Current figures and trends in detail**

216. Formally, access to education in all schools and professional training institutions is open to both sexes without discrimination. In fact, differences begin to appear early in schooling. In 2003/2004, boys were strongly over-represented in special education classes. They are also in a majority among students repeating a grade. In the transition from primary school to the first level of secondary school, the school system selects one third of the boys as against only one fourth of the girls to go on to schools with elementary requirements; 65% of girls and 60% of boys go on to schools having extended requirements.<sup>108</sup> According to the PISA study, girls display reading competencies higher than those of boys at the end of compulsory schooling. In mathematics, on the other hand, boys have better results. In natural sciences, the differences in performance between the sexes are small but significant, by contrast with many other countries, where these differences are absent. Nevertheless, the differences of performance are greater within each sex than between the sexes and factors such as socio-economic setting and migratory status have a much greater influence on school results than belonging to one sex or the other.<sup>109</sup>

217. There are always more young women than young men lacking post-compulsory education. After compulsory schooling, young men more often choose vocational/professional training while young women opt rather more for general education, such as the gymnasium or school leading to a diploma. There are, however, regional disparities: in 2006, 85% of young men and 73% of young women in German-speaking Switzerland chose vocational/professional training, as

<sup>108</sup> <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/15/02/key/ind5.indicator.50302.513.html?open=4#4>.

<sup>109</sup> Programme pour le Suivi des Acquis des élèves de l'OCDE, Office fédéral de la statistique (OFS) / Conférence des directeurs cantonaux de l'instruction publique (CDIP), PISA 2003: Compétences pour l'avenir – Premier rapport national, Neuchâtel 2004; Silvia Grossenbacher, Unterwegs zur geschlechtergerechten Schule: Massnahmen der Kantone zur Gleichstellung der Geschlechter im Bildungswesen, Aarau (Schweizerische Koordinationsstelle für Bildungsforschung) 2006, p. 55.

against 67% of young men and 48% of young women in French-speaking Switzerland and 66% of young men and 50% of young women in Ticino.<sup>110</sup> Young men are significantly over-represented in educational programmes leading to professional examinations and higher professional examinations that enable one to specialize, to deepen knowledge gained by apprenticeship, and to expand the range of one's professional skills. At the level of vocational/professional diplomas, the share of women, which is increasing, reaches one third (200: 34%). With regard to higher professional diplomas, which entitle their holder to manage an enterprise, representation of women reaches 20% (2006), a figure which remains low although it has doubled since the mid-1980s.<sup>111</sup> Diplomas from a higher specialized school of the same level are growing. The proportion of women at present is 32% (with a definite upward trend, due to the inclusion of health careers as from 2007).

218. Overall, young people prefer office jobs, where the share of women is nearly two thirds. Young men generally prefer technical jobs, especially in the metal and machine industries, while young women prefer vocational/professional training in the areas of sales, medical care and beauty care. Slightly more women than men begin a career in the hotel and restaurant industry, where the distribution between the sexes is fairly balanced. The difference in declared employment preferences between the sexes has remained virtually unchanged since 1990: the changes observed among both boys and girls are minimal.

219. In higher education, the situation is different. Since 2002, more young women than young men have enrolled in university studies. Graduate schools (Hautes écoles spécialisées) including the Teachers College (Haute école pédagogique) achieved parity between the sexes for the first time in 2005. In 2006, the share of women graduates accounted for 51% in the universities (bachelor, *diplôme*, *licence*) and 47% in the graduate schools. While men are in a majority among persons having received a doctorate, the rate for women has been above average for several years. The proportion of women among persons having received a doctorate, which was only 22% in 1990 and 28% in 1995, reached 39% in 2006. The choice of orientation, however, still remains closely linked to sex. Women remain clearly under-represented in scientific and technical careers and natural sciences. Thus, the share of women in the total number of students in university graduate schools and specialized graduate schools in the fields of construction, technical sciences and exact and natural sciences is 25%.<sup>112</sup>

220. The share of women in the **teaching profession** is directly proportional to the level of teaching. Women are strongly over-represented in the lower levels: they represent 95% of teachers in pre-school education and 78.5% in primary teaching. On the other hand, they are much less present in the second level of secondary education, where they account for only 40.2% of teachers in general education establishments (2004/2005 school year). Their representation is at its lowest among professors in university graduate schools (13.4% in 2006). Recent studies show that

<sup>110</sup> Office fédéral de la statistique (OFS), vocational training indicators published on the internet: <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/15/04/ind4.html>.

<sup>111</sup> Office fédéral de la statistique (OFS), Final examinations, 2005: Secondary II and tertiary, Neuchâtel 2006.

<sup>112</sup> Statistics by university, diploma and area of study: <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/15/06/key/introduction.html>.

women are markedly under-represented in **scientific research** and development by European standards (27% in 2004).<sup>113</sup>

## 1.2. Confederation measures

221. The promotion of equality between women and men was a central goal of the **programme of action relating to Decision No.2 on apprenticeship places**, which took place from 2000 to 2004. The decision on apprenticeship places was an investment in future-oriented projects for secondary education of the second degree which would be offered by the cantons, professional associations and the Confederation. The Confederation thus disbursed 100 million Swiss francs for innovative projects between 2000 and 2004. Of this amount, approximately 10 million Swiss francs were earmarked for projects in the field of awareness-raising for the advancement of women.

222. Decision No. 2 on apprenticeship places served in particular to finance the “16+” project for apprenticeship promotion which the Swiss Conference of Gender Equality Delegates conducted from 2000 to 2004 with a budget of 8 million Swiss francs. The goal of “16+” was to educate the public at large about issues of equality in vocational training and to disseminate information on that subject. It aimed also to sensitize authorities and project managers to the implications of gender equality so that they would take it into consideration in their work. Finally, “16+” sought to encourage networking and use of synergies between different projects and institutions. Thus, “16+” pursued a broad range of projects and created outputs addressed to a primary target group (girls and young women) or to intermediaries (parents, apprenticeship managers, guidance counsellors, enterprises offering apprenticeships). These projects and outputs, which help to inform the target groups, can give them a basis for action. The publication “Gender in Perspective” (“Le Genre en vue”) offers an overview of issues of equality that arise in choosing a vocation and moving from the first degree to the second degree of secondary school.<sup>114</sup> Several partial projects and publications of “16+” are devoted to vocational choice, involvement in basic vocational education, or entry into working life.<sup>115</sup>

223. The new federal law of 13 December 2002 on vocational training lays the groundwork for more gender-sensitive vocational training. Based on lifelong learning, vocational permeability and mobility, it affords numerous possibilities for linking up to systems of qualification, which can be of special benefit to women without training or a vocational career path. Recently, the regulation of health care careers, which have traditionally had a large proportion of women, has also come under the competence of the Confederation.

224. The federal law on vocational training permits **financial support** to be granted for specific purposes that are in the public interest. This includes measures aimed at achieving effective equality between women and men in vocational training. Under

<sup>113</sup> She Figures 2006 – Women and Science, Statistics and Indicators, [www.europa.eu.int/comm/research/science-society/women/wssi/publications\\_en.html](http://www.europa.eu.int/comm/research/science-society/women/wssi/publications_en.html).

<sup>114</sup> Swiss Conference of Gender Equality Delegates (éd.), *Le Genre en vue – Les filles et les jeunes femmes face à la formation: pistes et tendances, 2004* [Girls and young women confronting education: trends, 2004].

<sup>115</sup> Cf. [http:// www.16plus.ch](http://www.16plus.ch).

this policy of encouragement, the Federal Office for Professional (Vocational) Education and Technology has approved several projects with a gender dimension:

- “Model F” seeks to facilitate the continuing training of women. This project helps training institutions to develop their programmes of continuing training to make them also accessible to women and men with family responsibilities.
- “Profile +- Career plan and life plan” prepares young people who have finished an apprenticeship to enter working life in a targeted way, through different modules for each sex.
- “Gender and training mix” studies non-mixed offers proposed for vocational entry or re-entry by women who have experienced migration or lost contact with the world of work.
- National Girls’ Day of the Swiss Conference of Gender Equality Delegates (see para. 159 above, under article 5).

225. The **Federal “equal opportunity” programme in (cantonal) universities** rests on the law relating to encouragement of universities. It is part of the federal policy of encouraging training, research, and technology.<sup>116</sup> Launched in 2000, its aim is to double the number of female regular and adjunct university professors by comparison with 1998 in order to raise it to 14% in 2006. To achieve that goal, a system of incentives has been set up: a given amount is shared each year between the universities and is prorated to the number of women who achieved professor status. The aim is to encourage search committees to define selection criteria that take gender into account and to encourage women, in a targeted manner, to submit their applications. The second aspect of the federal programme deals with mentoring. It puts forward a range of support and networking projects as well as advisement and further training offerings addressed not only to future doctors and *agrégées* but also to students, *privat-docentes*, professors and *gymnasiennes*. Finally, resources are allocated for support of services for children of persons engaged in study or work at the universities. For its two phases (2000-2003 and 2004-2007) the programme has an overall budget of 32 million Swiss francs for encouragement of equality of opportunity in the universities. The sum of 20 million Swiss francs planned for 2004-2007 has been reduced to 16 million due to expenditure limitations voted by Parliament.

226. The proportion of women achieving professor status in the universities has markedly improved (2004: 22%) and the federal programme has achieved its main goal, namely 14% women among university professors in 2006. That same year, the share of women reaching professor status for the first time achieved 29%, a percentage which nonetheless fell off again the following year (18%). Assessment of the first phase shows that the programme is well established, that it is well accepted (except for the system of incentives for recruitment of women professors, which is challenged by some) and that it has triggered a positive trend. During the next period for financing incentives for training, research and innovation, the share of women professors in Switzerland’s university graduate schools should reach 25%.

<sup>116</sup> See: Message of the Federal Council on encouraging education, research and technology, 2004-2007, of 29 November 2002.

The programme will be renewed from 2008 to 2011, again with a credit of 16 million Swiss francs.

227. The **federal programme to encourage renewal of the university teaching staff** at the intermediate level reached its conclusion in 2004. This incentive scheme imposed a quota of 40% women, which was observed and even exceeded at times. It was therefore a success for women. However, fixed-term appointments for women professors or assistant professors under this programme led to fixed appointments somewhat less often for women than for men.<sup>117</sup> In 2004, the programme was replaced by the programme for professorial fellowships from the Swiss National Science Foundation (Fonds national suisse), which was slightly increased.

228. The agreement concluded between the Confederation and the **Federal Polytechnic Schools** (Ecoles Polytechniques Federales - EPFs) provides that equal opportunity must be built into human resources management at all levels and in all processes, as well as in all instruments and measures. For the period under way, 10 million Swiss francs are budgeted for that purpose. The indicator is the proportion of women at all functional levels, but no specific goal has been set. The EPFs have mirrored the mentoring and child-care provisions of the federal equal opportunity programme. To encourage female students to pursue their studies or even to work towards their doctorate, the EPF of Lausanne offers courses, workshops, round tables and visits to enterprises. Internet courses, research weeks and mathematics workshops are specially organized for women students in order to arouse their interest in the technical and natural sciences.

229. With a mandate and financing from the Confederation, the **Swiss National Science Foundation** encourages scientific research in Switzerland. Several incentive instruments serve, directly or indirectly, to promote equal opportunity. Generally, non-linear careers are given better consideration and conditions for the granting of subsidies and personal scholarships are more flexible.

230. The **Marie Heim-Vögtlin subsidies** are intended for women researchers who, for family, personal or other reasons, have had to interrupt or reduce their research activity. They enable the beneficiaries to pursue research work in order to maintain and improve their career prospects. Until 2002, this programme was open to doctoral candidates and holders of doctoral degrees in mathematics, natural sciences, engineering, medicine and biology; since 2003, it is also open to doctoral candidates in human or social sciences. From 2004 to 2007, the programme had an annual budget of 4 million Swiss francs, which permits funding of some thirty researchers for two years.

231. In order to encourage renewal in science, the Swiss National Science Foundation grants **fellowships to men and women researchers at the beginning or advanced levels** to enable them to undertake training or further training abroad. In order to maintain equal opportunity, the age limit of 33 for beginning researchers and 35 for advanced researchers was suspended for women between 2002 and 2007. As of 2008, the formal limits set in terms of biological age will be eliminated outright. Mandates for services agreed upon with the Confederation set a target quota of 40% women. The figures published in annual reports show that this quota

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<sup>117</sup> Romain Felli et al., Evaluation of the "relève" programme of the Confederation 2000-2004, les cahiers de l'observatoire n° 15, 2006.

has not yet been achieved. Despite good prospects of success, there are on the whole too few women submitting applications.

232. Since 2006, the Swiss National Science Foundation has been extending financial support to **doctoral programmes** termed “Pro-Docs”. Here again, the Confederation wishes the proportion of women to reach 40%. Thanks to the fellowship programme for professors, the Swiss National Science Foundation enables talented men and women researchers up to age 40 to form a research team to conduct a personal research project for a period of four to six years. It is possible to obtain a part-time post and the age limit is flexible in cases justifying it. The target quota of 30% women has been exceeded in recent years: 37% in 2003, 36% in 2004, and 32% in 2005.<sup>118</sup>

233. For the Swiss National Science Foundation, the Confederation has set as a goal that 20% of **subsidies supporting free research** for the period 2004-2007 should be granted to women in all disciplines. Although the gap between successful applications by women and men has narrowed in recent years (2004: 59% women and 63% for men), applications for subsidies from women are much less numerous than from men. In 2002, only 13% of applications came from women; this figure rose to 19% in 2004 and returned to 17% in 2005. In 2004, the Swiss National Science Foundation conducted a pilot study on the theme of gender as a factor of inequality of opportunity in obtaining subsidies from the Swiss National Science Foundation. It emerged that sex plays a role not so much in the selection as upstream, even before the submission of the application<sup>119</sup>. A second study will analyze this trend in greater depth. The **National Research Focal Points** (Pôles de recherche nationaux (PRN)) introduced in 2002 should address the issue of gender equality and submit specific encouragement measures as from the application stage. All the PRNs approved are to designate a contact person for equality issues. In 2001, the Swiss National Science Foundation instituted a Commission on Equality and created a “Bureau for Equality of the Swiss National Science Foundation for Scientific Research”. In its 2004-2007 multi-year programme, the Swiss National Science Foundation declared that gender mainstreaming was part of its principles of organization and decision-making. Finally, the Swiss National Science Foundation is working to improve work-life balance for all researchers receiving its funding by providing paid maternity leave, allowing part-time work, and making allowances for the delay that family obligations can cause in a career.

234. The federal equal opportunity programme also fosters the promotion of equality in **graduate schools** (Hautes écoles spécialisées (HES)). 10 million Swiss francs are set aside for that purpose in the period 2004-2007. The HES programme of action is aimed at increasing the proportion of women among students, teachers and in research, and making equal opportunity a criterion of quality and a full-fledged element of the HES strategy. Mainstreaming the gender perspective should be translated into conduct and should be subject to controls. Finally, faculty members, managers and men and women students should be encouraged to develop their competences with regard to gender, and research in this area should be

<sup>118</sup> Statistics including gender from the Swiss National Science Foundation:

<http://www.snf.ch/F/actuel/Dossiers/Seiten/egalite.aspx>.

<sup>119</sup> Yvonne Jänchen/ Christina Schulz, *Geschlecht als Faktor ungleicher Zugangschancen zu Ressourcen der Forschungsförderung*, Genève 2005:

[http://www.snf.ch/downloads/wom\\_ber\\_GEFO.pdf](http://www.snf.ch/downloads/wom_ber_GEFO.pdf).

encouraged. Specific measures taken in the HES deal primarily with development of general conditions responsive to the needs of both sexes (personnel recruitment and development, part time work for both sexes, child care services, mentoring for women in mid-range faculty positions), as well as enhancing the proportion of women in male-dominated disciplines (by information and motivation initiatives).

235. Since its inception in 2000, the programme entitled “Equal opportunity between women and men in graduate schools” (“Egalité des chances entre femmes et hommes dans les Hautes écoles spécialisées”) (hereinafter “federal HES equal opportunity programme”) has fulfilled its mission by helping to “secure effective equality between women and men” (article 3, LHES of 5 October 2005). The HES equal opportunity office has launched initiatives, financed and followed up about 170 projects in all the schools, organized technical days to encourage girls to undertake studies in technical areas, encouraged women to undertake studies and become professionally involved in technical fields and natural sciences, subsidized child care centres, etc. Assessment of the 2004-200 federal HES equal opportunity programme shows that “[...] all the schools today have a coordinator and an equality delegate in their affiliated establishments”.<sup>120</sup> The first study for the assessment shows that the principal challenges have been met, notably increasing the number of female students in technical and economic fields. The projects supported by the federal HES equal opportunity programme, especially the technical days for girls and the technical courses of study, have helped to bring about these changes.

236. The funds of the Equal opportunity programmes at universities and HESs are used to help finance **equality services**. Thus, for example, the federal HES equal opportunity programme is currently funding 50% of the post of the equal opportunity delegate in each of the graduate schools. Each HES today has an equality delegate or a commission for equality, for which they have developed the resources for several years. They have become initiators, coordinators and interlocutors essential to the implementation of measures in support of equality. Almost all the structures in charge of equality have the status of central services and are therefore accountable to the rector or directorate of the university or graduate school. Their mandates and competences, however, are quite varied and their future — which requires long-term financing — is not always secure. Nor are they always invited to take part in developing general university policy (in order to incorporate the gender perspective). The domains of the university graduate schools, federal polytechnic schools and HESs have different organizational structures, which is why the equality delegates of those establishments have formed a network under the aegis of three lead organizations: the Conference of Gender Equality and Women’s Delegates at Swiss Universities and Colleges of Higher Education (Conférence des déléguées à l’égalité et aux questions féminines auprès des universités et des hautes écoles suisses (CODEFUHES)), the working group on equal opportunity in federal polytechnic schools (groupe de travail Egalité des chances dans le domaine des EPF (AG Chancengleichheit im Bereich ETH)), and the commission on equality of the conference of rectors of Swiss graduate schools (commission d’Egalité de la Conférence des Recteurs des Hautes Ecoles

<sup>120</sup> Bureau BASS / Marie-Louise Barben / Elisabeth Ryter, Evaluation du programme fédéral “Egalité des chances entre femmes et hommes dans les hautes écoles spécialisées 2004-2007” [Evaluation of federal programme on equal opportunity between men and women in the higher specialized universities, 2004-2007], Berne 2005. Summary in French.



Spécialisées Suisses). Equality delegates can also react in a targeted way in response to needs and structures in their respective establishments. They cooperate closely on the issue of funding. In order to present consolidated proposals for the 2008-2011 phase of the federal equal opportunity programme, the BFEG has set up a working group which has produced a common position paper by the equality delegates of all the institutions.<sup>121</sup>

237. **Representation of the sexes in the management and decision-making bodies** of higher education and research institutions is still unsatisfactory. The Swiss National Science Foundation has the goal of bringing women's representation in its review bodies up to 20% and plans subsequently to further raise the goal. Moreover, knowledge of gender issues needs to be developed in order to bring out sex-specific aspects of the operation of review and decision-making bodies in the Swiss National Science Foundation but also in the graduate schools (HES).

238. The **Bologna reform** is a new challenge for equality, as it calls for a complete overhaul and formal introduction of uniformity in tertiary education with the aim of enhancing international competitiveness. The Bologna process, which is international, aims in particular at eliminating inequalities related to sex. Guidelines for the implementation of the Bologna Declaration have been developed by the Swiss Universities Conference and the HES Council of the Swiss Conference of Cantonal Ministers of Education. The guidelines provide that it should be possible to study part-time, which is a significant stride in the area of equality policy. More detailed recommendations relate to aspects of the reform referring to equality and stress the need to observe the reform process in order to take steps that may prove necessary. The guidelines developed within each institution refer generally to the importance of equality and provide for concrete measures in this area.

239. In the Swiss university landscape, gender studies do not yet enjoy full institutional recognition by international standards. They are strongest in Basel, Geneva and Lausanne, where courses of study and specific chairs have been set up for them. The universities of Zurich, Berne, Fribourg, Lucerne and Saint-Gall do not yet have gender studies curricula or departments and most of the HESs do not have institutionalized gender studies. However, certain women scholars with a teaching mandate are proposing activities in relation to gender within the context of their teaching.

240. Today, promotion of gender studies takes place primarily at the inter-university and national level. Priority is given to encouraging renewal and to establishing course offerings. But the subsidies provided for, which come from the credit earmarked for encouragement of training, research and technology, have undergone a significant cut, as they have been reduced to 3.2 million Swiss francs (whereas they were initially set at 6 million). The **project for cooperation on gender studies** in Switzerland aims at creating a harmonized set of course offerings in Switzerland. The Swiss universities conference also supports the cooperation project entitled *Graduiertenkollegien Gender Netzwerk Schweiz* (Swiss doctoral gender studies network), in which the universities of Berne, Fribourg, Genève, Lausanne and Zurich are participating, under the leadership of the University of Basel. This

<sup>121</sup> Egalité des chances entre femmes et hommes et études genre dans le secteur tertiaire, situations et mesures, Secrétariat d'Etat à l'éducation et à la recherche SER, 2007. [Equal opportunity for women and men in the tertiary sector, situation and measures, State Secretariat for Education and Research SER, 2007.].

project operates with a federal subsidy of about 1.2 million Swiss francs (rather than the 3.4 million initially requested). Budget cuts did not allow the necessary funds to be obtained to grant scholarships, which distinctly limits the project's effectiveness. The two projects for cooperation are being pursued in parallel. For the years 2008-2011, financing in the amount of 6 million Swiss francs has been secured.

241. In its 2004-2007 multi-year programme, the Swiss National Science Foundation expressed its intention to give priority encouragement to superior quality gender studies projects and to strengthen competences in regard to gender in its evaluation bodies. The results of that policy are not yet very visible. One reason — and not the least — is that the often interdisciplinary approach to gender studies does not fit well into the categories of basic research and applied research practiced by the Swiss National Science Foundation. Analysis of national research programmes shows that the question of gender is approached in only one third of the projects presented. Another third touches on the gender dimension, but the research activity does not focus on it. The remaining third of projects does not contain any gender aspect.<sup>122</sup> Clearly, mainstreaming the gender perspective is not sufficiently important in the eyes of the scientific community and the Confederation, which makes the selections, to be systematically taken into account. To arouse interest in gender, the Swiss National Science Foundation partnered with the BFEG in 2005 to publish a brochure on gender studies in Switzerland.<sup>123</sup>

242. In Switzerland's HESs, incorporating gender studies and encouraging gender competence are unsystematic and depend on the interest and commitment of teachers or researchers. The Teachers College of Zurich (Pädagogische Hochschule Zürich, ZFH) offers a module of training on gender competence in teaching, research and counselling. The graduate school of visual and applied arts of Zurich (Hochschule für Gestaltung und Kunst, HGKZ; in future, Zürcher Hochschule der angewandten Künste) offers a master's programme in cultural studies and gender studies. The graduate school of North-Western Switzerland (HES-NO) offers a post-diploma course on integration of the gender perspective and diversity management. Every two years, the HES of Solothurn offers a post-diploma course in gender competence.

243. The law on HES graduate schools and its implementing regulations, in the revised version that entered into force on 5 October 2005, stipulate that gender studies constitute a discipline which the Confederation can support. The Federal Office for Education and Science (OFFT) wishes, on that legal basis, to continue financing measures aimed at ensuring equality between women and men, as well as promoting gender studies. For the 2008-2011 period, OFFT also intends to extend support for gender research. It already provides support to gender studies at the HES of Zurich, which is a pioneer in promoting research and teaching in the field of

<sup>122</sup> Martine Chaponnière "Femmes, hommes, formation et emploi: la variable genre dans les travaux du PNR 43" [Women, men education and employment: the gender variable in the work of the PNR 43] in: Programme national de recherche formation et emploi: les synthèses en question, Zurich (éditions Rüegger) 2005, p. 85 – 93.

<sup>123</sup> <http://www.ebg.admin.ch/dokumentation/00012/00201/index.html?lang=fr>; see also Irene Rehmman, *Frauen in der Wissenschaft: Groupe d'Helsinki, rapport national de la Suisse sur la politique de la recherche et les politiques de promotion de la femme dans la science* [Swiss group on research policy and advancement of women in science], Berne (Office fédéral de la formation et de la technologie) 2004.

gender studies. It also contributes to institutionalizing applied research in gender studies.

244. Finally, the Confederation is supporting distance learning through the Swiss Foundation for Distance Learning (FS-CH), which in 2004 received accreditation as a university institution entitled to subsidies. The Confederation has signed a services agreement with the foundation which invites the foundation to seek to ensure equal opportunity and apply the necessary means to that end. Women account for 43% of people studying part-time and 40% of people studying full-time.<sup>124</sup> A distance-learning course of study in the field of organization and communication has been developed with the support of the federal HES equal opportunity programme.

### **1.3. Measures taken by the cantons**

245. In the area of compulsory education, which falls within their purview, the cantons have taken a variety of measures based on the 2003 Recommendations for gender equality in education adopted by the Swiss Conference of Cantonal Ministers of Education (CDIP). In a recent study, the Swiss Coordination Centre for Educational Research (CSRE) reviewed cantonal measures and noted that gender equality is expressly included in the educational legislation of half the cantons. In some cantons, it is based in one way or another on the guidelines applying to curricula, and forms of aid have been designed to contribute to the measures' realization. Several cantons have published guides on teaching practices adapted to each gender and have developed new teaching materials (for example the "school of equality" project of the cantons of French-speaking Switzerland). The study does not discuss how gender equality is incorporated into the teaching methods. However, certain cantons have developed instructions and criteria applicable to the choice of teaching methods from the standpoint of equality policy. Many cantons offer specific further training and continuing education courses for teachers. Many cantons concentrate on preparation for the choice of a profession. Several cantonal equality offices publish documentation which emphasizes combating stereotypes in this area and concrete measures have been taken by several cantons (Basel-City, Basel-Country, Berne, Zurich). However, the marked under-representation of men in training for primary education, as exemplified by the canton of Fribourg, shows the persistence of stereotypes in the realm of training and education.

246. Certain cantons have examined the situation in cantonal schools and the cantons of Zurich and Basel have adopted quality standards for a co-educational school.

247. Many cantons report multiple projects aimed at implementing gender equality in private schools at the cantonal level. Eighteen cantons offer schools and teaching personnel advice concerning implementation of the CDIP recommendations and half of the cantons have specialized structures for equality issues.

248. Many training institutions for teachers have taken initiatives to promote equality in different areas, often prompted to do so by a woman teacher or, more rarely, a male teacher or a group of persons conscious of the issues. Since the transition to the graduate pedagogical studies system, gender equality has been explicitly based on training teachers, female and male. Often, gender issues are approached in the framework of broader modules dealing with diversity. Several

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<sup>124</sup> FS-CH, Jahresbericht Universitäre Fernstudien Schweiz, Brigue 2006.

broad national networks practice exchanges of information and experience in the sphere of co-educational teaching (e.g. the working group “Geschlechterrollen und Gleichstellung auf der Sekundarstufe II”, which deals with stereotypes and equality at the secondary level of secondary school) or approach issues of gender with boys (schoolwork for boys network - RTSG).<sup>125</sup>

## 2. Access to scholarships and aid in education

249. The total amount of scholarships paid in 2006 is distributed more or less evenly between women and men. The same applies to the number of recipients. Women and men share cantonal scholarships almost evenly (54% for women, 46% for men). Since the gender proportion of the corps of teachers and the student body in secondary and tertiary education is exactly the inverse (47% women and 53% men) one can conclude that women are slightly over-represented among scholarship recipients.<sup>126</sup> The cantonal regulations that govern age limits, modalities of reimbursement and scholarships for a second training still differ enormously.

## 3. Access to continuing education programmes

250. In 2006, 43% of the population (aged 20-74) took an informal continuing education course, as against 36% in 2003. But the intensity of continuing education training is not very great: in 2006, the great majority of participants in informal continuing education took only one (58%) or two (27%) courses. Time devoted to continuing education is rather limited: for half of the participating men and women, it did not exceed one hour per week (32 hours per year). Overall, women do not do much less continuing education than men, but they always receive much less company support, especially if they are managers or if they practice a not very highly qualified occupation. The two sexes attach great importance to vocational training. However, only 29% of women practice it, compared to 38% of men. On the other hand, a greater proportion of women take an interest in general subjects (women: 18%; men: 10%).

251. These distinct differences in behaviour between men and women in the area of continuing education relate above all to the fact that women are less fully integrated than men into the world of work. If one repeats the comparison limiting it to women and men who are working full time, one no longer finds any disparity.

252. Deep differences also appear when one compares levels of training. The higher the level, the more likely it is that the person will pursue continuing education. Among persons with tertiary education, two thirds go on to further training (65%) while among persons with no post-compulsory education only one out of six do so (17%). From a macro-social standpoint, continuing education thus does not have a re-balancing effect (see table in annex).<sup>127</sup>

253. In the federal administration, 27.1% of women took advantage of an offer of continuing education addressed to federal personnel in 2004. Provision is being

<sup>125</sup> Silvia Grossenbacher, *Vers l'égalité des sexes à l'école – Que font les cantons pour instaurer l'équité entre hommes et femmes dans le système éducatif ?* [Towards gender equality at school – what are the cantons doing to introduce gender equity into the educational system], Rapport de tendance CSRE n° 10, Aarau 2006.

<sup>126</sup> [http://www.bfs.admin.ch/bfs/portal/fr/index/themen/bildung\\_und\\_wissenschaft/uebersicht/blank/publikationen.html?publicationID=2282](http://www.bfs.admin.ch/bfs/portal/fr/index/themen/bildung_und_wissenschaft/uebersicht/blank/publikationen.html?publicationID=2282).

<sup>127</sup> <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/15/02/key/ind5.indicator.50402.504.html>.

made to monitor in-house training of Confederation personnel, with a view to pilot in-house training according to gender criteria.

#### 4. Abandonment of education

254. Today, there is a higher rate of abandonment of education among women than among men only for vocational training. The difference is especially flagrant in higher-level vocational training. Today, more women than men complete secondary education (*maturité*). Similarly, more women than men enrol in studies and parity is achieved at the level of bachelors, diplomas and *licenses*. On the other hand, women still receive fewer HES diplomas. Nevertheless, OFS forecasts show that parity will be achieved in the HESs in 2008. That is due to the integration of many Teachers Colleges (Hautes écoles pédagogiques) into the HESs and to the completion of integration of health care and social work careers into the HES system. Rates of abandonment, however, are not significantly different between women and men. A study done at the University of Fribourg showed that while there were no fundamental sex-specific differences for the university as a whole, the gaps between rates of abandonment of men and women could be significant in certain faculties. The same study revealed that sex-specific differences had virtually disappeared if one considered bachelor and *licence* degrees, but that there were still fewer women than men with doctorates.<sup>128</sup>

255. Confederation measures taken in the framework of its programmes to support equal opportunity (mentoring, child care centres, see para. 225 above) should have a positive influence on completion of studies. Mechanisms for evaluation established by some universities to optimize choice of disciplines should reduce rates of abandonment. Finally, it is also hoped that the bachelor curriculum introduced by the Bologna reform, leading to a first diploma after three years, will also have a positive influence on abandonments. Moreover, obtaining a bachelor diploma provides the opportunity to continue studies later.

#### 5. Especially disadvantaged categories

256. In vocational training, young women **from immigrant backgrounds** have more difficulty in finding an apprenticeship opportunity than other young people. As part of the “16+” project to promote equality in apprenticeships (see para. 222 above) a detailed analysis was done on the situation of young migrants of both sexes at the time of entry into vocational training.<sup>129</sup> For immigrant women, the gender disadvantage is often aggravated by other factors. Young foreign women graduating from secondary schools with elementary requirements (*Realschule*) are especially disadvantaged in seeking a training vacancy. Young people in a poor socio-economic situation, especially if they come from the Balkans, Turkey and Portugal, have the fewest chances of finding training after compulsory schooling. The obstacles within the school system, lack of relations facilitating access to information and training opportunities, and the low level of education of parents are considered as important reasons for the failures of this category of the population.

<sup>128</sup> Universität Freiburg, Gleichstellung von Frauen und Männern an der Universität Freiburg, Situationsanalyse 2005/2006.

<sup>129</sup> SS. Hupka et B. E. Stalder, Jeunes migrantes et migrants à la charnière du secondaire I à la secondaire II [Migrant youth in the transition from secondary I to secondary II]. In Conférence Suisse des déléguées à l'égalité (Ed.), Le genre en vue. Les filles et les jeunes femmes face à la formation: pistes et tendances, 2004.

Immigrant women in Switzerland often work at jobs for which they are overqualified, especially because the qualifications they received in their countries of origin are not recognized. The OFS has found that cases of over-qualification among persons who are not of European origin are three to four times as frequent as among persons originating in Switzerland, the European Union or North America. In addition, women are more affected than men.

257. From 2001 to 2006, financial aid was provided under the Equality Act, among other things to support measures aimed at encouraging access by young women migrants to apprenticeship and acquisition by foreign women workers of qualifications in gastronomy, sales and personal care.

258. The new law on vocational training gives the Confederation the possibility of encouraging projects in support of equality, disadvantaged categories or integration of young people with schooling, social and linguistic difficulties. Since the beginning of 2004, the Federal Office for Education and Science has been funding numerous mentoring and coaching projects (for example, mentoring young women from immigrant backgrounds by the organization Caritas) as well as temporary job offers.<sup>130</sup>

259. Many cantons also support integration projects managed by public or private agencies to encourage information, mentoring, exchanges of views and counselling services, to co-finance language courses especially designed for migrant women, and to promote temporary job offers for young migrant women in order to help them find their way into working life.

260. There are no statistics on the general situation of **handicapped women** in the domain of education.<sup>131</sup> One can nevertheless surmise that the forms of gender discrimination that exist within the educational system strike at disabled women at least as much as non-disabled women and that the disability can aggravate the discrimination. The law on equality for the disabled<sup>132</sup>, which entered into force in 2004, obliges the Confederation and the cantons to take steps to eliminate inequalities affecting disabled persons in the field of education. These measures must take into account the specific needs of disabled women.

## 6. Cooperation for development

261. Switzerland is actively working with partner countries to encourage access by women and girls to education. It uses various means to that end. Its bilateral programmes of aid in the sphere of education deal primarily with access by women and girls to education and, more generally, with gender issues. Thus, in the framework of literacy programmes supported by the Directorate for Development and Cooperation (DDC), the opening of literacy centres is dependent on the requirement that parity of access between women and men be ensured. Moreover, provisions such as child-care centres are established to enable women to participate in the programmes.

<sup>130</sup> Beatrice Ledergerber / Regula Ettlin, *Mentoring für Jugendliche zwischen Schule und Beruf*. Ein Handbuch für Programmverantwortliche und MentorInnen, Zurich 2006.

<sup>131</sup> Pour ce qui est de la situation des étudiants handicapés, voir l'étude de l'OCDE, à laquelle la Suisse a participé: *Students with Disabilities, Learning Difficulties and Disadvantages*, [http://www.oecd.org/document/45/0,3343,en\\_21571361\\_38039199\\_35669868\\_1\\_1\\_1\\_1.00.html](http://www.oecd.org/document/45/0,3343,en_21571361_38039199_35669868_1_1_1_1.00.html).

<sup>132</sup> Loi fédérale du 13 décembre 2002 sur l'élimination des inégalités frappant les personnes handicapées (loi sur l'égalité pour les handicapés, LHand), RS 151.3.

262. In the sphere of elementary education of children and adolescents, the DDC encourages many innovative projects, such as neighbourhood schools where equality between boys and girls in enrolment and attendance is achieved through a sustained dialogue with parents and neighbourhood inhabitants. The DDC seeks to actively promote equality between the sexes in preparing national policies and implementing them. For example, the DDC advocates recognition of and financing for informal educational structures (literacy programmes and elementary education for children, young people and adults who do not or did not have access to primary school); very often, these structures serve mainly girls and women.

263. The DDC also encourages development of gender competence among its teams present in partner countries. The overwhelming majority of people entrusted with education have received training in this area. The DDC also ensures that its partners (NGOs or other institutions) entrusted with training trainers have the necessary competences to address issues of gender in education.

264. Finally, the DDC supports multilateral organizations, especially UNICEF, which attach great importance to the training of girls.

## Art. 11 Employment

### CEDAW Recommendation 45

*The Committee urges the State party to ensure de facto equal opportunities for women and men in the labour market through, inter alia, the use of temporary special measures in accordance with article 4, paragraph 1, of the Convention. The Committee recommends that efforts be made to eliminate occupational segregation, both horizontal and vertical, through, inter alia, education, training and retraining, and effective enforcement mechanisms. It also recommends that job evaluation systems based on gender-sensitive criteria be developed with the aim of closing the existing wage gap between women and men.*

#### 1. Access to the labour market and equal pay: detailed statistical trends

##### 1.1. Gainful employment

265. The growing participation of women in the labour market is closely linked to the trend toward a services economy and the concomitant spread of part-time work. Women's gainful employment today is centred in the services sector more markedly than in the past. Their presence in that sector is somewhat greater than that of men (53% in 2007). In total, 86% of women engaged in remunerated activity work in the tertiary sector. One can also observe that the services sector proportionally offers many more part-time jobs than the industrial sector. In 2007, 38.5% of persons with a remunerated activity in the tertiary sector were working part time, as against only 13.4% in the secondary sector.<sup>133</sup>

266. While the share of women working full time has fallen off by 3.6% since 1991, part-time employment has been rising: the increase is 5.0% for those employed from 50% to 89% of the time, and 0.5% for those employed less than 50% of the time. Increased participation by women in the labour market thus mainly takes the form of

<sup>133</sup> Vuille Alain: Le travail à temps partiel en Suisse [Part time work in Switzerland], Office fédéral de la statistique (OFS), Neuchâtel 2006.

part-time jobs ranging from 50% to 89% of full-time work. The overall volume of paid work by women remains, however, much less than that of men.

267. The growth in women's participation in the labour market that has been noted during the last ten years is accounted for primarily by middle-aged women and mothers. The number of women who combine work with family life is growing. Thus, women aged 15 to 64 with children under age 15 accounted for 60% of paid employees in 1991, as against 74% in 2007. Most mothers work part time: only one mother out of five (19%) works full time (proportion of fathers with children under age 15 who work full-time: 93%). Over a third of mothers (37% compared with 6% of fathers) are employed from 50% to 89% of the time, whereas 44% (compared to 1% of fathers) are employed less than 50% of the time.<sup>134</sup>

268. Regarding the situation of immigrant women, see para. 342.

## 1.2. Occupational status

269. Women and men exercise their employment under different conditions. One finds a growing number of women in the intellectual and scientific professions as well as in management. However, they occupy positions of responsibility less often than men. Generally, they occupy positions of lower rank than men. In 2007, 16% of men practiced an independent activity, as against only 11% of women. The proportion of salaried women with managerial functions or belonging to the management of their enterprise increased from about 16% in 1991 to 22%; among salaried men, the proportion increased from 32% to 37%.<sup>135</sup> This unequal distribution is due only in part to differences in level of education. One can in fact also observe a difference in the professional situation of men and women with the same level of education. The proportion of persons exercising a professional activity without managerial functions is, independently of their level of training, higher among women than among men. The main reason for that difference is definitely family responsibilities, which continue to fall largely to women and which are difficult to reconcile with a professional career. Part time work is still rare among managers: only one manager out of five (19%) worked part time in 2005, while that figure is twice as high among persons employed without managerial functions (43%). Among male managers, there are few who work part time (6%) while nearly half of women managers fall into that category (46%). For the last fifteen years, part time work has been growing in positions of high responsibility: from 1991 to 2005, the number of persons working part time and performing managerial functions more than doubled (+111%) while the increase was only 21% for other categories of employed persons.<sup>136</sup>

270. One also finds clear differences between sexes with regard to the occupations they practice (ISCO classification). In 2007, men worked mainly in manual and similar trades (23%), teaching or similar professions (23%) and technical occupations (17%). Women worked mainly in technical and related occupations (26%), followed by sales and services (20%), commerce (18%) and service and

<sup>134</sup> L'enquête suisse sur la population active (ESPA):

<http://www.bfs.admin.ch/bfs/portal/fr/index/themen/03/02/blank/data/03.html>.

<sup>135</sup> [http://www.bfs.admin.ch/bfs/portal/fr/index/themen/20/05/blank/key/erwerbstaetigkeit/berufliche\\_stellung.html](http://www.bfs.admin.ch/bfs/portal/fr/index/themen/20/05/blank/key/erwerbstaetigkeit/berufliche_stellung.html).

<sup>136</sup> Vuille Alain: Le travail à temps partiel en Suisse [Part time work in Switzerland], Office fédéral de la statistique (OFS), Neuchâtel 2006.



sales jobs (20%). If one looks at economic activities (according to the NOGA classification), men work primarily in processing industries (22%), real estate and renting, information technology, research-and-development (14%), in commerce and repairs (12%) and in construction (11%). Women are active mainly in health and social services (21%), commerce and repairs (15%), teaching (11%) and real estate, information technology and research-and-development (10%).

### 1.3. Unemployment

271. From 1991 to 2006 the rate of layoffs for women remained steadily higher than that for men, with the exception of 2003. Layoffs affect women more than men still today (2006 unemployment rate: 3.6% for women, 3.1% for men). The gap grows bigger if one looks at the number of people who are without jobs (2006: 4.8% for women, 3.4% for men). Moreover, the gender distribution varies according to categories of unemployed people. The highest unemployment rate is that for people aged 15 to 24.<sup>137</sup> While 45% of jobless women are enrolled with an employment office as unemployed and applying for unemployment compensation, 53% of unemployed men fall into that case. The risk of becoming jobless is higher for women, although fewer women have recourse to structures designed to help people who have lost their jobs. Structural and cultural factors may explain this paradox, such as the lack of legal knowledge, adequate earnings by one's partner, and greater difficulty in meeting the conditions for unemployment compensation due to family dependents (e.g. the requirement to immediately accept a job offered by the placement office).

The population with no professional activity (2007: 40% of women and 24% of men over age 15) consists mainly of retirees (60% of women and 74% of men with no professional activity). Housewives (23%) and a very few stay-at-home men, as well as people undergoing training or further training (12% of women and 18% of men) are a minority among people with no professional activity. The overwhelming majority of women with no professional activity between ages 15 and 64 are housewives, followed by persons undergoing training or further training and retirees. Men with no professional activity in the same age bracket are mainly persons undergoing training or further training or retirees.<sup>138</sup> Like unemployment, underemployment affects many more women than men. According to the Swiss survey of the working population (Enquête suisse sur la population active (ESPA)) for 2007, 6.2% of persons with a professional activity would like to work more and would be available to do so. Of those persons, 78% are women.

### 1.4. The wage gap

272. The (median) standardized gross monthly salary of women in the private sector was 4,857 Swiss francs in 2006, compared with 6,023 for men. That represents a 19.1% gap. Since 1994, salaries have been rising for both men and women. From 1996 to 1998, women's salaries rose a bit more, narrowing the gap between women and men from 23.8% to 21.5%. The gap remained virtually constant from 1998 to 2002. It is due in part to different structures in the workplace.<sup>139</sup>

<sup>137</sup> <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/03/03/blank/data/01.html>.

<sup>138</sup> <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/20/05/blank/key/erwerbstaetigkeit/nichterwerbspersonen.html>.

<sup>139</sup> <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/20/05/blank/key/loehne/privatwirtschaft.html>.

273. According to a study funded by the Survey on salary structure (Enquête sur la structure des salaires (ESS)) from 1998 to 2002 which was conducted by the BASS Bureau and the University of Berne under a mandate from the OFS and the BFEG, 60% of the differences noted are attributable to objective factors such as age, training, years of service or economic sector. The remaining 40%, on the other hand, are the result of salary discrimination. In 2002, the salary differences resulting from true discrimination were about 8%.<sup>140</sup> The salary gap between women and men exists in all sectors of activity; however salaries differ greatly from one industry to another. In industries where salaries are lowest, the salary gap between women and men fluctuates between 8% and 28%. It is smallest in the hotel and restaurant industry, which employs 58% women, and largest in the leather and shoe industry, which employs 57% women.

274. Whatever the level of job requirements, women are systematically less well paid than men: the wage gap varies from 12% to 19% depending on job requirements. Where training and professional position are equal, women receive a standardized gross monthly salary below that of men in private enterprise. According to their level of training, women earn from 13% (schooling diploma) to 23% (university degree or the like) less than men. According to their professional position, the gap with men's salaries varies from 13% (lower management) to 24% (middle to upper management).<sup>141</sup>

275. The (median) standardized gross monthly salary of women in the federal administration was 6090 Swiss francs in 2006, compared with 6989 Swiss francs for men, which represents a gap of 12.9%. The salary differences between sexes have fallen from 13.0% in 1994 to 10.1% in 1998. Between 2000 and 2004, the salary gap narrowed very little and then widened again in 2006. As in the private sector, a part of this is due to different structures in the workplace. In cantonal administrations, the gaps are similar to those in the private sector. In 2006, the (median) standardized gross monthly salary of women was 6595 Swiss francs, compared to 8124 Swiss francs for men. The gap, which stands at 18.8%, has been declining regularly since 1998 (22.5%).<sup>142</sup> It remains to be seen how the system of performance pay that many administrations have adopted will influence the salary gap between the sexes.

276. The two industries which had the lowest standardized gross monthly salaries (about 4000 Swiss francs per month) in 2006 were personnel services and the hotel-restaurant industry. 58% to 78% of employees in these industries are women. In the private sector and the public sector (Confederation), about 1.5% of men employed full time have a salary below 3000 Swiss francs, as compared with 67% of women employed full time.<sup>143</sup>

### **1.5. Unpaid work**

277. About eight out of ten women living in a household with children under age 15 bear full responsibility for the domestic work. Middle-aged couples are

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<sup>140</sup> The analysis of ESS results for 2004 et 2006 will appear in 2008.

<sup>141</sup> [http://www.bfs.admin.ch/bfs/portal/fr/index/themen/20/05/blank/key/loehne/anforderungsviveau\\_des\\_arbeitsplatzes.html](http://www.bfs.admin.ch/bfs/portal/fr/index/themen/20/05/blank/key/loehne/anforderungsviveau_des_arbeitsplatzes.html).

<sup>142</sup> [http://www.bfs.admin.ch/bfs/portal/fr/index/themen/20/05/blank/key/loehne/oeffentlicher\\_sektor\\_bund\\_.html](http://www.bfs.admin.ch/bfs/portal/fr/index/themen/20/05/blank/key/loehne/oeffentlicher_sektor_bund_.html).

<sup>143</sup> <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/20/05/blank/key/loehne/niedrigloehne.html>.

proportionally more numerous in doing the housework together than younger couples who do not yet have children. In 2007, 17% to 18% of couples in which the husband was from 40 to 64 years old shared domestic tasks; among people under 25, that figure was 29%, and 27% for those aged 25 to 39. From retirement age on, about 24% of couples share domestic tasks.<sup>144</sup>

278. Among all persons of employable age (15-63 years for women and 15 to 64 years for men), women devote almost twice as much time as men to domestic and family tasks (on average, 32 hours a week, as against 18 hours for men). Women living in a couple with children under age 7 devote 59 hours per week to domestic work, i.e. much more than the “normal” work week of an employed person. Their male partners devote 32 hours per week to domestic work in addition to their jobs. Women who are raising children under 7 alone also devote much time to household and family tasks (54 hours per week). People living alone and young people living with their family, on the other hand, devote much less time to this type of activity.<sup>145</sup>

279. Although the roles in terms of work and family are not equitably distributed in our society, the burden of work which falls upon men and women in family situations in comparable family situations is on the whole virtually the same. Women and men living as couples with children under age 7 work on average 71 and 73 hours per week. That average is similar in single-parent families.<sup>146</sup> However, the ratio between paid work and unpaid domestic work is very different for men and women. That difference has many negative effects on the position of women, for example as to their social security (which is linked to employment), their ability to re-enter the work force (for which only paid work generally counts as experience) or in the event of divorce (which brings to light their economic dependence on the working partner).

280. During their working years, men living alone devote on average 51 hours per week to domestic tasks and their jobs and women living alone 47 hours. The persons who have the smallest work load are young people living with their parents.<sup>147</sup>

281. About one fourth of the population residing in Switzerland takes part in organized volunteer work or does at least one volunteer activity in an association or organization. In total, men (28%) are more active in this area than women (20%). While men tend to become engaged in areas that are related to their professional activity or which enable them to assume functions that confer a certain prestige (sports clubs, cultural associations, communities of interest, public services, political parties and official functions), women seem to prefer social, charitable or church activities. Men are more strongly represented than women in all areas, with the exception of social-charitable and religious ones.<sup>148</sup>

<sup>144</sup> <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/20/05/blank/key/Vereinbarkeit/02.html>.

<sup>145</sup> <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/20/05/blank/key/Vereinbarkeit/04.html>.

See also Sivia Strub/ Eveline Hüttner/ Jürg Guggisberg, Arbeitsteilung in Paarhaushalten: Aufteilung von bezahlter und unbezahlter Arbeit in der Schweiz, Neuchâtel (Office fédéral de la statistique) 2005.

<sup>146</sup> <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/20/05/blank/key/Vereinbarkeit/04.html>.

<sup>147</sup> *Idem*.

<sup>148</sup> <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/20/04/blank/key/freiwilligen-arbeit/institutionalisierte.html>.

282. While men prefer to provide voluntary or honorific services to associations or organizations, women are proportionately more numerous in providing free assistance to relatives or acquaintances (26% of women, compared to 15% of men). Among women, this kind of assistance relates primarily to child-care for acquaintances or relatives, followed by services to relatives or acquaintances, such as domestic work, transport or gardening.<sup>149</sup>

### 1.6. Child care

283. In 2007, one third (34%) of couple households with one or more children under age 15 made use of child care services outside the family. The proportion is distinctly higher for single-parent households (51%). About half of all these households turned to help from relatives –most often grandparents—and 8% of couples and 12% of single-parent households turned to help from acquaintances or neighbours. Among couple households with one or more children under age fifteen, about one out of four (27%) used the services of a nursery, kindergarten or day school; among single-parent households, one out of five (22%) did so. 15% and 19% respectively prefer to use day-mothers or host families. Mid-day lunchrooms and supervised homework are a solution chosen respectively by only 4% and 8% of single-parent households.<sup>150</sup> The need for facilities outside the family setting was also the subject of a study done as part of the National research programme PNR 52 of the Swiss National Science Foundation for Scientific Research. The authors estimate that there is a need for 50,000 places in child care centres or host families in Switzerland.<sup>151</sup>

## 2. Confederation measures

284. The Equality Act of 1995 spelled out the concept of the **right to equal pay**, as well as other rights related to equality in working life. Articles 6 to 12 of the law allow claims to be more easily sustained by lightening the burden of proof and by granting standing to women's associations and unions, by requiring that rejections of job applications be in writing, by protecting against retaliatory layoffs, and by providing conciliation services and a simplified procedure.

285. Cantonal equality offices, with funding provided for in the Equality Act (see under article 4 above), have begun to publish a compendium of practice of the courts concerning the Equality Act. The offices of the German-speaking region have collected the documentation available on the Internet since 2001 on Zurich cases, which they have supplemented by judicial decisions from ten other German-speaking cantons. The equality offices of the French-speaking and Italian-speaking regions have put their databases online. Access to case law has thus been considerably improved. At the beginning of 2008, the database of the German-speaking region relating to equality (comprising the cantons of Argovia, Appenzell Outer Rhodes, Appenzell Inner Rhodes, Berne, Basel-City, Basel-Country, Glaris, Grisons, Lucerne, Nidwald, Obwald, Schaffhausen, Schwyz, Solothurn, St. Gall,

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<sup>149</sup> <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/20/04/blank/key/freiwilligen-arbeit/informelle.html> Cf. Jacqueline Schön-Bühlmann, *Les prestations de soins non rémunérées des ménages et des particuliers* [Unpaid care-giving by individuals and households], Berne 2005.

<sup>150</sup> <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/20/05/blank/key/Vereinbarkeit/05.html>.

<sup>151</sup> Susanne Stern, *Analyse scientifique sur les besoins d'accueil de la petite enfance* [Scientific analysis of child care needs of young children], Infrac 2005, <http://www.infrac.ch/f/>.

Thurgovia, Uri, Zug and Zurich) contains descriptions of 336 cases<sup>152</sup>, while its Latin counterpart offers 46 cases (from the cantons of Vaud, Geneva, Valais, Fribourg, Neuchâtel, Jura, Berne and Ticino). As these collections illustrate, the provisions of the Equality Act relating to protection against discrimination have been invoked before the courts by many people in recent years.<sup>153</sup>

286. In response to a motion by National Councillor Vreni Hubmann, the Federal Office of Justice conducted an **assessment** of the effectiveness of the 1995 Equality Act. In this context, 319 decisions handed down by competent courts throughout Switzerland were the subject of a summary assessment and the decisions issued in four cantons (42% of the total) were analyzed in depth. Specialists addressed questions to the conciliation offices instituted by the Equality Act as well as trade unions, professional associations, women's and men's organizations, specialized counselling centres, and the equality offices. A representative survey was conducted with more than 5000 personnel managers to learn the views of employers.

287. In general, the results of the assessment show that the Equality Act has improved the situation of persons who were victims of discrimination in the workplace and that it therefore represents a clear improvement in the realization of equality in fact. But the report also points to problems. Among them are fear of defending oneself against discrimination, but also the difficulty of gathering information in cases of alleged of discrimination, as well as legal uncertainties due to unclear case law and substantial differences in interpretation from one court to another concerning important procedural concepts and provisions. The problems noted pertain in part to the approach taken in the Equality Act, which gives the responsibility for equality in the company setting to persons and associations who must take legal action in order to defend themselves against discrimination. The authorities do not have a legal mandate or competence to play an active role in monitoring respect for the legal provisions concerning equality.

288. The assessment report concludes that the need for action in the sphere of equality is viewed very differently by workers' organizations and by personnel managers of companies. A majority of companies (especially small and medium-sized companies) have not taken steps to promote equality in fact; this stands in contradiction with the view expressed by most of them that an active equality policy would constitute a competitive advantage. According to workers' organizations, disputes in the companies pertain mainly to wage discrimination, followed by sexual harassment, discrimination in promotion and discrimination in assignment of tasks.

289. Within companies, disputes are generally approached through talks, but generally nothing is done or the persons concerned resign. The conciliation offices established by the Equality Act are not uniformly equipped and accessible to give the advice provided for (due in large part to the organizational autonomy of the cantons). The effective conciliation offices are those that have sufficient specialized services. The cantonal conciliation offices reviewed 355 disputes, dealing mainly with wage discrimination (37%), cases of sexual harassment in the workplace (26%) and discriminatory layoffs (17%). On average, 40% of conciliation proceedings were carried through to a conclusion, but the figures are very different from one canton to another. The work of the conciliation offices is obviously complicated by the fact that employers have no interest in disclosing relevant documents.

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<sup>152</sup> [www.gleichstellungsgesetz.ch](http://www.gleichstellungsgesetz.ch).

<sup>153</sup> [www.leg.ch](http://www.leg.ch).

290. During the period under review, the Swiss courts took up 176 cases, some of which went through several levels of appeal. Nearly one third of the cases were situated in the canton of Zurich, followed by Geneva, Vaud and Solothurn. Complaints brought by organizations are relatively few (32) but their results moved things forward on several fronts. The lawsuits dealt mainly with issues of wage equality, and much less often with sexual harassment or discriminatory layoffs. Less than half of the judicial decisions were favourable, in whole or in part, to female or male workers or their organizations; 44% of the decisions were completely unfavourable. About half of the decisions dealt with civil service work relationships. Fear of dismissal, but also lack of transparency in wages and generally difficult access to necessary internal data seem to be the major obstacles to using judicial remedies.

291. Analysis of the contents shows that the civil courts are loath to apply the doctrine of *proprio motu*. Lightening the burden of proof is generally found useful, but instances of discrimination remain difficult to prove. Uncertainty still prevails regarding the interpretation of the concept of “plausibility of the discrimination” and regarding the grounds to be presented.

292. Cases brought by groups or class actions, as well as complaints filed jointly by organizations and individuals engaged in typically feminine occupations, have brought about important changes in systems of compensation, especially in the cantons. Four suits filed in parallel by organizations and individuals in the Zurich health-care industry were in themselves sufficient to bring about a wage catch-up for several thousand people amounting to a total of about 280 million Swiss francs.

293. It has emerged that the provisions for protection against dismissal were not well understood by employers or employees. Analysis of the court decisions shows that, in this area too, great uncertainty prevails among members of the bar and among judges. Discriminatory and retaliatory layoffs are not often recognized as such, which precludes invoking the protection which the Equality Act affords against dismissal. In any event, it is significantly easier for persons in civil-service work relationships to take action against discrimination without losing their jobs. Many people employed in the private sector turn to conciliation offices only after their employment relationship has been terminated.

294. Sexual harassment arises often in all aspects of proceedings and is particularly frequent in the French-speaking region of Switzerland. These cases have the highest rate of resolution through conciliation proceedings. In the public sector, sexual harassment accounts for only a small fraction of suits, while it is the most frequently raised complaint in private sector cases. It is also noteworthy that in 90% of sexual harassment cases brought to court, the employment relationship had previously been terminated.

295. Based on the assessment report, the Federal Council issued different mandates to the BFEG and to the Federal Office of Justice, laying emphasis on targeted information and awareness-raising actions. Judicial procedure will be rationalized thanks to recommendations on the mode of preparation of expert evidence regarding equal pay and thanks to empowerment of conciliation offices to request submission of evidence. Measures labelled incentives are envisaged for companies, as well as the introduction of an investigative authority. In the field of public procurement, the Federal Council wishes to define a procedure enabling oversight of compliance with legal provisions regarding equal pay. It refuses, on the other hand, to extend

protection against layoffs, taking the view that this would not solve the problem of fear of dismissal.

296. To help in the **re-integration of job seekers**, unemployment insurance subsidizes the use of measures in the labour market. This pertains to offers of training and employment for women, in particular after an interruption in employment, and for poorly-qualified foreign women. These offers range from business-school offerings to further training in the domains of health care or data processing, including programmes for training in sales.

297. With regard to encouraging **occupational choice** free of gender stereotypes, see under article 10 (training).

### 3. Social security

298. The Swiss social security system does not contain direct discrimination based on sex. However, in some areas, the system covers only persons engaged in paid employment and its benefits depend on the level of wages earned. It is the differences in the career paths of men and women (for women, lower rate of occupation, longer interruptions, more part-time work, limited vocational choice, lower earnings — see paras. 265 ff above) which explain different social benefits: in some areas, benefits for men are higher than those for women. Recent reforms, however, have led to an improvement in the situation (see chapter 3.3 below).

#### 3.1. Revision of old age and survivors' insurance (AVS)

299. In May, 2004, the first draft of the 11th revision of old age and survivors' insurance (AVS) (dating from 3 October 2003) was rejected by the people by a wide margin. The government prepared a new draft of the 11th revision of AVS and submitted it to Parliament on 21 December 2005 in two packages. The first package lays down an equal retirement age for men and women (which increases women's retirement age from 64 to 65), more flexible modalities for going into retirement (introducing the possibility of early or deferred partial benefits), and measures aimed at improving the application of AVS. The second package introduces a pre-retirement "bridge benefit" ("rente-pont") from ages 62 to 65 for low-income insured persons. Among the proposals in the first package is a provision to increase entitlements for care-giver duties (a fictitious income credited to accounts of persons who act as care-givers for invalid family members and which is factored into the calculation of the benefit) that will have a rather favourable impact on women, since it is they who most often devote their time to caring for family members. The 11th revision of AVS is now being debated in Parliament.

#### 3.2 Revision of disablement insurance (AI)

300. The fourth revision of the **disablement insurance** (AI) scheme took effect on 1 January 2004. It contains no provisions specifically addressed to women. It is aimed at the following four goals: to consolidate the finances of AI, to adapt benefits in a targeted manner, to strengthen oversight by the Confederation, and to simplify organization and procedure.

301. The **fifth revision of AI**, was accepted by the people in June, 2007 and took effect at the beginning of 2008. This revision should lighten the AI budget by an average of 596 million Swiss francs per year up to the year 2025, achieving that

goal in two ways: firstly, by a 20% reduction in the number of new benefits paid through early detection of persons unable to work, by introducing early intervention and strengthening other measures designed to enhance recovery capacity. Secondly, targeted restrictions on benefits will contribute to financial downsizing: abandonment of the career supplement (a supplemental income serving to calculate the benefit granted to insured persons becoming disabled before age 45), transfer of medical rehabilitation measures for insured persons over age 20 to the medical insurance scheme, and elimination of complementary benefits for spouses. The system for early detection and intervention is specially designed for persons suffering from psychological conditions. Since a proportionally larger number of women suffer from disability due to these conditions, they will more often benefit from the system.

302. The Swiss National Science Foundation financed a study on disabled persons in Switzerland. The purpose of the study was to determine the living conditions of recipients of disablement insurance benefits. The study provided data on differences linked to sex in the financial situation of persons covered by AI. It concluded that the present system favours unequal benefits between women and men. Women even today generally have fewer years of employment to their credit, they work more often part-time and have on average lower incomes, which exposes them to a higher risk of having to subsist solely on AI benefits.<sup>154</sup> It should be noted, however, that if the AI benefit is not sufficient to cover a person's basic needs, that person may apply for additional benefits from AVS/AI.

### 3.3. Revision of employee old-age, survivors and disablement insurance

303. The key provisions of the **first revision of the federal law on employee old-age, survivors and disablement insurance (LPP)** took effect on 1 January 2005. This revision helps to minimize indirect discrimination towards women: the threshold amount to apply for employee insurance has been reduced from 25,320 Swiss francs to 19,350 Swiss francs. With this measure, it is estimated that the employee insurance scheme will have 135,000 additional insured, including 100,000 women. It is estimated that there are some 580,000 uninsured wage-earners under the employee insurance scheme, including 410,000 women.

304. The coordinated deduction has changed from 25,320 Swiss francs to 22,575 Swiss francs, which increases the salary insured. This measure makes it possible to accumulate a higher old-age entitlement until one reaches retirement age. Moreover, the retirement age for women is now the same for the mandatory employee insurance scheme and for AVS, i.e. 64 years since 1 January 2005.

305. As regards coverage, benefits are henceforth payable to widowers under the same conditions as widows.

306. In the area of optional employee insurance coverage, the LPP henceforth defines the persons in respect of whom insurance schemes may provide for payment of benefits upon the death of the insured, in particular, subject to certain conditions, surviving domestic partners.

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<sup>154</sup> Daniel Gredig / Sabine Deringer / Melanie Hirtz / Roman Page / Heinrich Zwicky, Les personnes handicapées en Suisse: conditions de vie des personnes bénéficiant des prestations de l'assurance-invalidité [Handicapped persons in Switzerland: living conditions of recipients of disablement insurance], Zurich 2005, p. 172 of German *in extenso* version, p. 5 of French abstract.



307. With regard to the distribution of assets in an employee insurance scheme in the event of divorce, see paras. 429 ff below.

### **3.4. Reforms of sickness and accident insurance**

308. The Federal Council has proposed two sets of reforms for the second revision of the Health Insurance Act (LAMal). On 26 May 2004 it adopted the draft concerning the first set, which refers primarily to freedom to contract between health insurers and service providers in the field of ambulatory care, reduction of premiums, and co-pays. The second set of reforms, which deals with the financing of hospitals and the introduction of a new form of insurance implying a limited choice of service providers, the “comprehensive care network” (“réseau de soins intégrés”), was adopted on 15 September 2004. Parliament has already adopted a legislative amendment relating to the reduction of premiums which took effect on 1 January 2006: for low-income and middle-income persons, the cantons must reduce by at least 50% the premiums for children and young adults attending school. The other points under revision are currently before Parliament.

309. Finally, the introduction of a maternity allowance on 1 July 2005 as part of the system to compensate for loss of earnings (see paras. 321 ff below) rendered obsolete insurance contracts which provided for daily maternity allowances (see para. 405 of first/second report).

### **3.5. Unemployment insurance**

310. The revision of 22 March 2002 of the Unemployment Insurance Act (LACI) introduced in article 9b a provision enabling insured persons who devoted their time to educational tasks following the birth of a child to prolong by two years their framework period of compensation (délai-cadre d'indemnisation) on the condition that a framework period of compensation was in effect at the beginning of the educational period devoted to a child under age ten and that such persons had a sufficient contributory period at the time of their re-enrolment. Moreover, the framework period of contribution of an insured person who has devoted her time to the education of her child is four years if no framework period of compensation was in effect at the beginning of the educational period devoted to a child under age ten. The extension of these framework periods does not imply an increase in the maximum number of daily allowances provided by law. The initial idea of the legislature was to facilitate the re-integration of insured persons who have temporarily interrupted their employment at the birth of a child and to preserve, for a limited time, the rights acquired before the birth of the child.

## **4. Protection of health and security in the workplace**

311. The ordinance of the Federal Economic Department on difficult and dangerous duties for pregnant women and nursing mothers took effect in 2001.<sup>155</sup> The aim of that ordinance is to describe the substances, micro-organisms and activities which present risks within the meaning of article 62, paragraphs 3 and 4 of ordinance 1 relating to the Labour Act. For example, regular movement of loads of over 5 kg and occasional movement of loads of over 10 kg are considered dangerous during the first six months of pregnancy; as of the seventh month of pregnancy, women should

<sup>155</sup> RS 822.111.52.

no longer move such loads at all (article 7 of the ordinance). Ordinance 1 relating to the Labour Act provided, well before the entry into force of the 2001 ordinance on protection of pregnant women, a list of dangerous tasks including tasks involving lifting, carrying or moving heavy loads; the ordinance on protection of pregnant women now lays down specific criteria to define which tasks are dangerous. It also provides maximum values for exposure to noise, cold, heat, humidity, radiation, and chemical substances. Where work of this kind is being done, the employer must, if possible, propose equivalent work without risk. If he cannot propose such work, the woman worker has the right to stop working and receive 80% of her wages.

## 5. Reconciling family and health responsibilities

### **CEDAW Recommendation 45**

*... The Committee recommends that measures allowing for the reconciliation of family and professional responsibilities be adopted and implemented and that equal sharing of domestic and family tasks between women and men be promoted*

### 5.1. Information and awareness-raising

312. Different measures have been taken in order to challenge the stereotyped conception of distribution of roles between women and men and to variously promote reconciling family and work responsibilities. The two information and awareness-raising campaigns mounted by the BFEG under by titles “FAIRPLAY-AT-WORK” and “FAIRPLAY-AT-HOME” were very important in this regard (see paras. 153 ff above). To actively promote equal opportunity between women and men in working life, the Confederation has provided for financial aids in the Equality Act (see para. 80 above). In this context, the BFEG is supporting some innovative, practically-oriented projects having a lasting impact, which encourage reconciling work and family.

313. The State Secretariat for the Economy (SECO) and the Federal Office of Social Insurance have commissioned a study to determine how much additional purchasing power a household acquires when it obtains an additional income by its work. This study is a first attempt to gather more detailed information with a view to learning to what extent parents (couples or single-parent families) have a financial incentive to increase their income-earning activity. The results of the study show that an increase in income from work, or a change in the sharing of income-earning activity within the couple, can have very different financial repercussions depending on the place of domicile of the couple or single-parent family in question. Depending on the situation, one can also find considerable differences between different categories of income or between married couples and domestic partners.

314. In order to prompt a discussion in business circles about the advantages companies themselves may derive from adopting pro-family measures, SECO has partnered with a private initiative entitled “Work and Family” (“Travail et famille”) which conducted the first cost-benefit analysis done in Switzerland of a corporate policy favourable to families. This study, carried out by the Basel firm Prognos, shows that an enterprise policy favourable to families is profitable. A mathematical model based on realistic initial assumptions shows that, for a set of measures favouring families, the return on investment is 8%. It should be noted that this study sought to be conservative and it was decided not to take into account other positive repercussions of the measures, even when they are fully recognized by personnel

managers. The study also gives examples of measures favourable to families and provides indications of costs and benefits for each measure.

315. Seeking, *inter alia*, to pursue its efforts at awareness-raising supportive of working conditions favourable to the family, the Federal Economic Department has since January 2007 offered its own personnel a series of measures designed to bring about a better work-family balance: models of flexible work schedules, offsite work, and financial support and advice regarding child care outside the family. In February, 2007, SECO published a manual for small and medium-sized enterprises entitled “Work and Family” (“Travail et famille”). This working instrument based on practice aims at helping small and medium-sized enterprises to adopt an attitude favourable to families in their day-to-day work. With the help of the Swiss union of guilds and the Swiss employers’ association, the manual has been promoted and distributed through local sections.

## 5.2. Child care outside the family

316. In 2003, the Federal Office for Social Insurance established an eight-year programme designed to encourage the creation of child-care places outside the family (nurseries, school child care facilities, networks of day families). The federal law of 4 October 2002 on financial aid for child-care facilities outside the family took effect on 1 February 2003.<sup>156</sup> Since 1 October 2007, the Confederation is also able, in the framework of this programme, to provide financial aid to pilot projects of cantons and communes in which vouchers for child-care in daytime facilities are issued to *individuals*. For the first four years, Parliament granted an initial credit of 200 million Swiss francs. For the second period, from 2007 to 2011, a framework credit of 120 million Swiss francs has been appropriated.

317. Applications for financial aid accepted under this programme as of 31 January 2007 permitted the creation of more than 13,000 child care slots.

318. To deal with the shortage of qualified personnel faced by child care facilities, the Confederation (Federal Office for Education and Science) recently contributed to improving professional/vocational education through the creation of a new federal qualification certificate (certificat fédéral de capacité) for professions in the area of child care.

319. In addition to funding through the Confederation programme, a number of cantons and communes have taken initiatives to improve the supply of child care facilities outside the family. Today, more and more cantons actively support the creation and operation of child care centres operated by communes or privately (for example, the cantons of Argovia, Basel-Country, Basel-City, St. Gall, Grisons, Berne, Geneva, Uri, Schwyz and Glaris).

320. In many communes today, full-time schools, cafeterias, and continuous hours are helpful to parents in reconciling family and work responsibilities. In 24 out of 26 cantons, continuous hours have been introduced in schools — in different forms and generally not in all schools — in order to help parents seeking to reconcile work and family life. However, not all schoolgirls and schoolboys of the cantons concerned have the possibility of regularly benefiting from these new regulations. For that reason, members of the federal Parliament have launched five

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<sup>156</sup> RS 861.

parliamentary initiatives with virtually identical wording seeking to introduce into the Constitution a provision obliging the cantons to make available to schoolchildren and pre-school children daytime facilities adapted to demand. As part of inter-cantonal efforts at harmonization of compulsory schooling (HarmoS), the cantons have already developed an agreement by which they undertake, in particular, to introduce a full-school day schedule, to organize child care beyond class hours, and to lower the age of school attendance.

### 5.3. The new paid maternity leave

#### **CEDAW Recommendation 47**

*The Committee calls upon the State party to ensure the speedy enactment of the draft legislation on maternity leave with pay that was adopted by the Federal Council and the National Council in November and December 2002 and to provide information on its implementation in the next periodic report.*

321. In Switzerland, protection of nursing mothers who are employed has long been haphazard, leading to inequalities of treatment. Women who were not actively employed for several years or who had often changed jobs did not enjoy adequate guarantees. However, after three failed attempts, the new paid maternity leave benefit overcame its final test and was accepted by popular vote on 26 September 2004; it took effect on 1 July 2005.

322. The maternity allowance is not a new social institution: it was integrated into the already-existing system of allowances to compensate for loss of earnings. The fund for allowances compensating for loss of income, which was heretofore designed to compensate for income lost as a result of military service, civil service or civil defence service, will in future also cover loss of income due to motherhood. This fund will continue to be replenished by shared contributions from employees and employers, proportionally to salaries, as well as by contributions from independent workers and persons without gainful employment. During the first two or three years of operation of the maternity allowance, its costs will be covered by the reserves of the system for compensation of loss of earnings; the level of the aforementioned contributions will thereafter need to be increased.

323. Since the second half of 2005, all employed women in Switzerland have thus been entitled during the 14 weeks (98 days) following the birth of a child, to an allowance amounting to 80% of their last salary, up to a maximum of 172 Swiss francs per day (corresponding to an average monthly salary of 6450 Swiss francs). Women farmers and women working in their husband's company also receive an allowance, provided they have an income subject to AVS.

324. The federal regulations represent a minimum standard. More favourable provisions (higher allowances, longer entitlement period) can always be provided for by a contract of employment, a collective contract or other provisions of public law, for example under cantonal maternity-insurance schemes. Cantons can provide for the granting of a higher maternity allowance or for a longer entitlement period and for the introduction of an adoption allowance and can, in order to finance such benefits, withhold contributions from individuals. That is the case for the canton of Geneva, which has had a cantonal maternity insurance system since July of 2001. In April, 2005, the Parliament of Geneva adopted the new cantonal law introducing maternity and adoption insurance, which took effect on 1 July 2005. It supplements

the federal regime and maintains in Geneva a regime of maternity allowances that is more generous as to duration (16 weeks) and as to amount (minimum allowance of 54 Swiss francs per day, maximum allowance of 237 Swiss francs per day). The allowance received through the federal scheme is deducted. Moreover, Geneva maintains the allowance in case of adoption: the adopting mother or father is entitled to an adoption allowance equal to the maternity allowance for 16 weeks following the placement of the child. The new Constitution of the canton of Fribourg provides that mothers who are not employed also receive an allowance.

325. The public administrations, often more generous, have maintained acquired rights. In the cantons of Vaud, Basel-City, St. Gall and in the city of Berne in particular, the 16-week leave with 100% of salary has been preserved. In St. Gall, it has been extended to civil servants who leave their jobs after the birth of a child and who were entitled only to eight weeks. Regarding Confederation personnel, the system of 16 weeks' leave with 100% of pay has been maintained and extended to women employed for less than six months before childbirth; previously, they were entitled to only two months. On the other hand, only two weeks can be taken before childbirth, as against four weeks previously. The canton of Thurgovia decided, in June, to keep its provisions, namely 16 weeks paid at 100% but limiting the allowance to 172 Swiss francs per day at most, as per the federal standard.

326. In the private sector, additional benefits offered by employers have generally been maintained. Some enterprises and certain cantons provide for a paternity leave benefit, which is, however, of limited duration and often without pay.

#### **5.4. Taxation of couples and families**

327. After the rejection of the tax package by the people in 2004, the Federal Council gave the federal tax administration the mandate to propose immediate provisional measures for married couples with two incomes in the form of tax deductions, and in a second stage to consider an in-depth reform of the federal direct tax. In May, 2006, the Federal Council adopted for submission to Parliament what it termed a combined solution: in addition to a moderate increase in the deduction for couples with two incomes (50% of the secondary income up to a maximum of 12,500 Swiss francs) it provided for the introduction of a new deduction of 2,500 Swiss francs for all married couples. Parliament adopted the Federal Council's draft without change at its 2006 fall session. A referendum not having been requested, the Federal Council decided to allow the legal provisions to take effect as of 1 January 2008.

328. The adoption of urgent measures must now be followed, in a second stage, by the preparation of a fundamental reform of the taxation of couples and families (see para. 90 ff above).

329. The differences between the cantonal tax regimes for couples and for families are considerable. Various instruments have been set up to lighten the burden on couples with two incomes (deductions for the second salary, splitting, special rates for couples with children). Unlike the federal direct tax, most cantonal tax regimes today allow more or less large deductions for costs of child care outside the family.

## 6. Measures taken by the Confederation and cantons as employers

### 6.1. Equal opportunity

330. As an employer, the Confederation strives to ensure equal opportunity between the sexes. New instruments for the achievement of equal opportunity entered into force on 1 March 2003. They provide in particular that departments should create necessary conditions to increase the percentage of the under-represented sex, until parity is achieved in all areas of activity and at each level (principle 15). Moreover, in keeping with principle 14, administrative units should provide necessary human and financial resources to achieve appropriate measures at all levels. These instructions also govern competences in each department, underscore responsibilities and tasks relating to equal opportunity which are incumbent on hierarchical superiors and equality delegates within the federal administration, and entrust to the Federal Office of Personnel (OFPER) an advisory mission in this field. Every four years, departments are expected to draw up a catalogue of measures adapted to their specific needs, within which they will assign priority to certain measures. The instructions also contain provisions concerning recruitment, selection, appointment and evaluation of personnel. They provide in particular that, qualifications being equal, recruitment services will give priority attention to candidates of the under-represented sex, until parity between men and women is achieved at the level of the organizational unit concerned, this provision applying especially to apprenticeship posts for managers. Finally, the instructions introduce regular monitoring by OFPER, which is entrusted with submitting a yearly report to the Federal Council on the development of equal opportunity from the quantitative point of view and summarizing for the Council the quadrennial reports drafted by departments.

331. The statistic for personnel of the federal administration<sup>157</sup> shows that women account for 29.5% of staff. Comparing these data over several years, one notes a steady increase in that proportion: since 1991, the percentage of women has increased by 12.5 points. But the picture is different when one looks at the proportion of women in different categories of salary scales: at the highest salary levels, one finds 10.7% women in 2007 (6.8% in 2001), in the high levels they represent 21.4% of personnel (which represents growth of nearly 8 points since 2000) and in the middle levels about one quarter. It is in the lower salary grades that women are best represented (39.4%). 23.6% of Confederation employees work part time; these are mainly women and persons belonging to the lower salary grades.

332. The results of personnel evaluations betray certain differences between the sexes: men obtain an A+ rating somewhat more often than women. The distribution of bonuses and allowances<sup>158</sup> by sex (men 81%, women 19%) does not tally with their proportions in federal personnel as a whole (men 70.5%, women 29.5%). In the federal administration payment of bonuses and allowances depends in particular on the salary grade, the work schedule, and the criteria for progression from the minimum to the maximum grade. Since women tend to be placed in the lower salary

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<sup>157</sup> “Chiffres clés en matière de gestion du personnel 2007” [Personnel management: key figures] (data as of January 2007).

<sup>158</sup> Federal Office of Personnel, “Compte d’Etat 2006: Documentation complémentaire concernant le personnel” [State accounts for 2006: additional documentation concerning personnel] (data as of 2006).

levels, tend more often to work part-time, and tend to be in the process of climbing the salary scale, they qualify less easily for bonuses and allowances. However, when women receive a bonus or allowance (calculated on the basis of full-time work), it is generally somewhat higher for them than for their male colleagues.

333. According to the last report of the Federal Personnel Office<sup>159</sup>, nearly 60% of personnel managers asked indicated that their office had not expressly adopted the goal, in the last four years, of increasing the number of women in management by a given percentage. The principle that preference should be given to candidates of the under-represented sex, which appears in the instructions of the Federal Council, is applied as such in only one quarter of offices. 57% of directorates have defined the achievement of equal opportunity between men and women as an important cross-cutting task in their office. However, only 34% of offices have adopted a catalogue of measures in this area and barely half of offices have set concrete annual goals for encouraging equal opportunity between women and men. Only half of equality delegates have necessary resources, whether it be financial authority or a concrete mandate. It is rare to find a personal contribution to promoting equal opportunity between the sexes included among managers' agreed goals and it is therefore equally rare to find them factored into an evaluation: 86% of offices do so rarely or never.

334. In recent years, the Federal Office of Personnel, acting on a mandate of the Federal Council, has developed a system of periodic reports in order to be in a position to draw conclusions about federal staffing in terms of sex and salary grade. It has also developed instruments (guides and checklists) with a view to achieving equal opportunity in different areas of organization of work, within departments and offices. For the 2008-2011 legislative term, the Federal Council decided to define quantitative goals in particular as regards the trend of salaries and the proportion of women. By the end of 2011, the proportion of women in the higher salary grades will have increased by 30%.<sup>160</sup> Everywhere else, it will attain 33%.

335. Several cantons report measures being taken to promote equal opportunity and increase the proportion of women in the administration and in administrative commissions (Grisons, Berne, Lucerne, Basel-City, Neuchâtel, Argovia, Vaud, Solothurn, Jura, Zurich). Some cantons (Basel-City, Berne, Zurich, Jura) have even set specific goals and developed monitoring mechanisms. Personnel legislation in quite a few cantons (e.g. Lucerne, Jura, Basel-City, Argovia, Vaud, Neuchâtel, Fribourg) also spell out measures intended to improve working conditions in such a way that work will be more easily reconcilable with family (flexible schedules, part-time work, offsite work) For some years, certain cantons have also been concerned with ensuring work evaluations that are gender-neutral and combating salary gaps.

## 6.2. Combating wage disparities in the federal administration

336. With the new legal provisions on Confederation personnel, a **new salary system** has also been introduced. According to article 15, paragraph 1 of the law on personnel of the Confederation, the salaries of Confederation employees depend on

<sup>159</sup> Federal Office of Personnel, "L'égalité des chances entre femmes et hommes dans l'administration fédérale" [Equal opportunity for men and women in the federal administration], Assessment report, Berne, 2004.

<sup>160</sup> In relation to the situation in 2005 (proportion of women in classes 30 – 38: 9.2%), which corresponds to a target value of 12%.

function, experience and service provided. The Personnel Regulations (ordonnance sur le personnel) of the Confederation lay down this principle in the following manner: The determining criteria for evaluation of the function are the education required and the scope of tasks and level of requirements, responsibilities and risks inherent in the function. Each function is evaluated in terms of these criteria. With the evaluation system currently in effect within the federal administration, it is much more difficult to assign a person to a salary grade on the basis of subjective criteria completely unrelated to the function, such as sex. If the system is correctly applied, it prevents female employees, or functions primarily occupied by women, from being arbitrarily under-valued in the assignment of a salary grade.

337. Entry-level salaries are determined on the basis of general provisions, in terms of education required and professional and extra-professional experience declared. Changes in salary thereafter depend on personal evaluations: depending on the services provided by the person concerned, the annual salary increase will range from 0 to 6%. Managers continue to receive further training that should help them to achieve non-discriminatory personal evaluations.

### **6.3. Public contracts**

338. According to the federal law on public contracts, the adjudicating authority must grant the contract to an enterprise which ensures respect for the principle of equal treatment between women and men with regard to wages. According to the law in force, enterprises which do not abide by their commitments in that regard may be sanctioned (by a contractual penalty, by exclusion from the procurement process, or by revocation of the contract). This provision entered into force in 1996, but it was not immediately applied because the necessary instruments and procedures to ensure respect for wage equality in enterprises concerned were not in place. At the initiative of the BFEG and the Procurement Commission (Commission des Achats, CA) of the Confederation, a monitoring instrument was developed to ensure respect for wage equality in enterprises. This monitoring instrument was tested from 2001 to 2003, in the framework of a pilot project: in two of five enterprises reviewed, significant gender-related wage disparities were found. The use of this instrument, however, requires advanced knowledge of statistics. That is why the BFEG makes experts available to the enterprises concerned, in order to help them exercise internal controls. Moreover, the BFEG has developed an internal control instrument named "Logib" which enables enterprises themselves to perform a quick diagnosis regarding wage equality, without having special statistical knowledge and without resort to experts. The "Logib" software can be downloaded free of charge from the Internet. The BFEG relies on corporate responsibility, which it seeks to strengthen through information and awareness-raising.

339. The Public Contracts Act (ordonnance sur les marchés publics (OMP)) provides that the BFEG may be entrusted with carrying out controls regarding observance of the clause on equal treatment. The legal provisions now in force, however, lack clarity in certain respects. The monitoring process will be more precisely defined in the framework of the current revision of the federal law on public procurement.

340. The clause on equal pay included in the law on public contracts applies only to services rendered in Switzerland. But the DDC, for its part, is in the process of



incorporating an equal pay clause into procurement contracts within its sphere of competence with respect to services rendered abroad.

#### 6.4. The “pro-family index” (IPF)

341. A study by the Swiss Conference of Gender Equality Delegates compared the parental leave regimes of municipal, cantonal and federal administrations and, on that basis, established a “pro-family index” (“indice pro-famille” (IPF)). That index was calculated in terms of criteria such as paid maternity leave (which has become mandatory under the new maternity insurance scheme), provisions aimed at encouraging compatibility between salaried employment and child care, financial benefits offered to that end and the non-discriminatory character of measures taken in this context. The study brought to light huge differences between cantons: Geneva rated 19 points (out of 20), followed by the canton of Ticino and the city of Zurich, while the cantons of Appenzell Inner Rhodes and Glaris came in last, with 4 points. The average number of points obtained by the Latin cantons is clearly higher than that of the German-region cantons. Moreover, the cities reviewed (Berne, Zurich, Basel, Lausanne and Winterthur) have on average higher rankings than their corresponding cantons. Finally, the study concluded that one cannot establish significant correlations between the financial capacity of the cantons and their IPF index. Provisions favourable to families thus depend more on decisions taken in the area of social policy than on the objective existence of the financial resources required.<sup>161</sup>

#### 7. Especially disadvantaged persons

342. In 2005, the positive net balance of employed foreign population amounted to 35,000 people 38% of them women.<sup>162</sup> According to the Swiss survey of the working-age population (ESPA 2007)<sup>163</sup>, the rate of employment of women of foreign nationality, which stands at 64.8%, is higher than that of women of Swiss nationality, which is 58.8% (the rate of employment of men of foreign nationality being 81.4%). Of 353,000 foreign women, 68,000 worked in the health care and social sectors, 54,000 in the industrial sector and 53,000 in commerce and repairs. By way of comparison, let us note that of 523,000 men of foreign nationality, 31,000 worked in the health care and social sectors, 72,000 in commerce and repairs, and 121,000 in the industrial sector. If we consider the occupations of women of foreign nationality, we find that the largest groups are those in services and sales with 86,000 women workers, technical and related jobs, with 62,000 women workers, and auxiliary personnel, with 57,000 foreign women. 49,000 employees are engaged in academic careers. During the year 2006, the gross income of women of foreign nationality was 4,374 Swiss francs (average value for the

<sup>161</sup> Gesine Fuchs, Les administrations publiques, pourvoyeuses d’emploi attractifs pour les parents – Comparaison des régimes de congé parental de la Confédération, des cantons et des municipalités, Étude sur mandat de la Conférence suisse des déléguées à l’égalité entre femmes et hommes [Public administrations, providers of attractive jobs for parents – Comparison of parental leave regimes of the Confederation, cantons and municipalities, study conducted for the Swiss Conference of Gender Equality Delegates], Basel, July 2004.

<sup>162</sup> <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/03/02/blank/data/04.html>.

<sup>163</sup> [http://www.bfs.admin.ch/bfs/portal/fr/index/infothek/erhebungen\\_\\_quellen/blank/blank/enquete\\_suisse\\_sur/00.html](http://www.bfs.admin.ch/bfs/portal/fr/index/infothek/erhebungen__quellen/blank/blank/enquete_suisse_sur/00.html).

private and public sector standardized by month<sup>164</sup>), while that of Swiss women was 5,127 (for men, the figures are 5,397 Swiss francs for foreign persons and 6,474 Swiss francs for Swiss).

343. In recent years, financial aid from the Confederation provided for under the Equality Act (see para. 80 above) has also been earmarked for the financing of information campaigns addressed to migrant women (using the languages of their countries of origin, and relating to the rights of migrant women in regard to pregnancy and maternity, and the content of the laws on equality and work), for various offers of training aimed at strengthening their competences and for encouraging their entry into working life. Since 2001 the Confederation has also allocated financial aid specifically for encouraging integration of migrant women and men.

344. With regard to integration of handicapped women into the labour force, see para. 376 under article 12.

## **Art. 12 Health**

### **1. Current trends**

345. The third **Swiss survey of health** was carried out in 2002<sup>165</sup>. Nearly 19,700 people agreed to answer a series of questions concerning their state of health, their lifestyle and their needs for services from the health system. The survey reveals that 86% of the population (84% of women and 88% of men) consider themselves in good or in very good health. While one can find little difference between the sexes among young or elderly Swiss people (aged 15 to 24 and over 75), women between ages 25 and 74 feel themselves to be less healthy than men of the same age. 16% of the population (18% of women and 14% of men) suffer from a chronic health problem of a bodily or psychological nature which handicaps the in daily life. Different theories have been advanced to explain these differences between the sexes. Men and women differ in their manner of describing their state of health. One finds a strong interaction between education and psychological well-being. Among men, the higher the level of education the greater the number of people who feel they have a good psychological balance, but that proportion goes down significantly among women with a high level of education. Women continue to contend more with the problems of reconciling work and family responsibilities, and those problems are probably more acute among professions requiring a high level of education than among other occupational categories.

346. Among youth and young adults, it is psychological problems that come to the fore. In the 2002 Swiss survey of health, 6.7% of young people aged 15 to 24 described their psychological health as poor or rather poor. In the overall population aged over 15, 4.5% of men and 5.3% of women do not feel in good psychological health.

347. Figures on the **consumption of psychoactive substances** show that the proportion of smokers among young women aged 15 to 24 has markedly increased from 1992 to 2002 (rising from 26% to 35%) while the percentage of smokers among men of the same age group has increased less (from 36% to 40%). The

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<sup>164</sup> [http://www.bfs.admin.ch/bfs/portal/fr/index/themen/03/04/blank/data/01/06\\_01.html](http://www.bfs.admin.ch/bfs/portal/fr/index/themen/03/04/blank/data/01/06_01.html).

<sup>165</sup> <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/14/02/01/key/01.html>.

number of persons of all age groups who consume alcohol daily declined during the period from 1992 to 2002. However, there has been an increase in the number of people who drink once or twice a week: that increase is clear among men (from 29% to 33%) but less so among women (26% to 27%). On the other hand the proportion of people who abstain from drinking has grown among both men and women. The proportion of people aged 15 to 39 who consumed hashish at the time of the survey had strongly increased from 1992 to 2002: it grew from 6.2% to 10.5% among men, and from 2.6% to 4.5% among women. A trend that is familiar worldwide is also borne out in Switzerland<sup>166</sup>: women consume significantly more medicines than men. In 2002, 12% of the Swiss population (15% of women, 9% of men) took at least one analgesic, one sleeping pill or one sedative several times per week. That percentage has risen to 30% for women and 19% for men aged 75 and above.

348. Behavioural problems related to eating remain an important public health problem, especially among young women. In the year 2002, for the 19 to 24 age group, 43% of women and 14% of men are underweight.<sup>167</sup> Most are satisfied with their weight (that is the case for 81% of women and 71% of men). But nearly a quarter of young women in this situation would like to lose even more weight, which is not the case for young men. Being overweight is a problem of growing seriousness in Switzerland. More than half of men of all age groups from 45 onwards are affected by it. Among women, excessive weight also increases up to age 74, but less than half of women are affected by it. On the other hand, among women aged over 74, one even finds a decline in excessive weight. Nearly 69% of the resident population claim that they are careful about their eating habits, women (76%) more than men (62%). 59% of women and 68% of men practice a physical activity to the point of perspiration during their leisure time at least once a week. 49% of women and 36% of men travel daily on foot or by bicycle for at least 30 minutes per day.

349. As the 2002 Swiss health survey shows, women and men are also differently affected by **accidents**. Men are significantly more often the victims of accidents than women of the same age group — except those aged over 75 — and for that reason they bear larger hospital costs due to accidents. Among women, the main causes of accidents are sports activities and housework and gardening activities, and among men sports activities followed by on-the-job accidents. Among elderly persons, accidents caused by falls are a special problem: they generally lead to costly treatments and later markedly impair the quality of life of the persons affected. Women over 65 are much more often victims of falls than men of the same age. Elderly women also much more often suffer dizziness, which is one of the causes of falls.

<sup>166</sup> Maffli E., Bahner U. (1999): Gebrauch von Medikamenten mit Abhängigkeitspotential in der Schweiz. Forschungsbericht Nr. 33. Institut suisse de prévention de l'alcoolisme et autres toxicomanies, Luusanne: IPSA-Press.

<sup>167</sup> Office fédéral de la statistique (OFS), *Santé et comportement vis-à-vis de la santé en Suisse 1992–2002 [Health and behaviour in Switzerland, 1992–2002]*, Swiss survey of health, Neuchâtel, <http://www.bfs.admin.ch/bfs/portal/fr/index/news/publikationen.Document.65197.pdf>. In the OFS study, “underweight”, “normal weight” and “overweight” are defined by an index of bodily mass, IMC. A person’s IMC is measured as follows: weight in kilos divided by (height in metres)<sup>2</sup>. An IC under 20 indicates the person is underweight. Persons with normal weight have an IMC of 20 to 25, and an IMC over 25 indicates overweight, which may range up to obesity.

350. The 2002 Swiss health survey also confirmed that **workplace uncertainties** generate many anxieties which have an impact on health. 47% of men and 41% of women suffer from stress and high nervous tension at their place of work. Those tensions can trigger many health problems: 38% of women and 21% of men suffer from high nervous tension and complain of significantly bodily pains. 11% of employed people asked during the 2002 Swiss health survey indicated that they experienced fear of losing their job. It was men between ages 45 and 54 and women between ages 35 and 54 who felt that fear most strongly. 24% of men and 38% of women who feared job loss suffered from somatic problems such as insomnia, headaches or backaches that could be considered severe. But only 13% of men and 26% of women who did not fear job loss complained of similar ailments.

351. A comparison between the Swiss health surveys of 1992 and 2002 shows that the percentage of **medical consultations** by ambulatory patients has remained constant (71% for men and about 82% for women). On the other hand, there is a tendency to consult less often in the 25 to 54 age group (especially among women) and more often in the age group over 55. In 2005, 12% of the resident population were hospitalized one or more times (11% for men, 13% for women). Women aged 20 to 39 had many hospital stays for childbirth. While women of that age group represent half of the resident population, 68% of people in that group who were hospitalized were women. The rate of hospitalization for men of the same age group was thus considerably lower, but this ratio between the sexes becomes reversed as age increases.

352. In 2006, the birth rate in Switzerland had declined to only 1.44 children per woman. The number of **births** declined most sharply among women under 25. Post-natal mortality is higher among boys than among girls (4.8 compared with 3.7 per 1000 live births in 2005). Perinatal and post-natal mortality among children born of Swiss mothers is lower than that of children born of foreign mothers (4.2 compared with 4.4 per 1000 in 2005). Overall, the high quality of care for pregnancies and births contributed greatly to lowering morbidity and mortality of mothers and children. A decline in cases of sudden death of newborns is an important factor in the lower mortality rate for newborns that has been observed in recent years. In 2005 births by caesarean section accounted for 29.4% of births, which is one of the highest rates in Europe. That same year, 62% of mothers were still nursing their child six months after birth, 24% using only natural breast-feeding with no nutritional supplement. Women affected by post-partum problems or illnesses often keep them a secret out of feelings of modesty or guilt; consequently, treating physicians are not in a position to diagnose them. One can therefore evaluate the extent of only the three best-known psychological problems. The least severe for known as “baby blues” seems to affect 25% of young women, post-partum depression affects about 10% to 15% of women, and post-partum psychosis about 0.01% to 0.02%.

353. 58% of men and 55% of women reported using a means of **contraception** in 2002. The means used most often is the hormonal contraceptive, followed by the condom. In 2006, there were 10,499 (legal) abortions in Switzerland. That figure remained virtually unchanged from 2003 to 2005. The figure declined slightly from 2005 to 2006. By comparison with 2000 the figure has shown a downward trend. In 2006, 6.8 out of 1000 women of childbearing age underwent an abortion. This group generally includes women aged 15 to 44. Childbearing age was defined in order to be able to make international comparisons, and it is within that age range that 99%

of abortions are performed. Neither the entry into force on 1 October 2002 of the waiting-period regime, nor the authorization to use the abortion pill (Mifegyn, RU 486) at the end of 1999 led to an increase in abortions. Nearly 53% of **abortions** take place by means of the abortion pill.

## 2. Women's access to general health services: Confederation measures

354. In 2001, the Federal Office of Public Health (OFSP) created a service for equal opportunity in health between women and men known as **Gender Health**, which in October, 2004, became an independent sector within the new "Equal opportunity in health" section of OFSP. This administrative unit works to support an equitable health policy for both sexes, assuming to that end coordination, specialized counselling and information tasks. It pursues various projects which seek to make the supply of health care, promotion of health and prevention equally accessible to all women and men. Its personnel resources represent 60% of one post and its budget is about 200,000 Swiss francs per year.

355. The first report on women's health dealing with the situation in Switzerland as a whole was published in 1996. The **2006 National Health and Gender Report** gives a general overview of the state of health of women and men in Switzerland. It presents epidemiological data from the gender perspective, interprets the results taking into consideration discussions on the importance of (biological) sex and (social) gender, and formulates recommendations. It thus contributed to the discussion of issues of health from the gender standpoint and makes scientific results accessible to the public at large.<sup>168</sup> The thematic report "Gender Health", to be published in 2008, undertakes, on the basis of the 2006 National Health and Gender Report, to analyze in depth the three domains of violence, suicide and mental health, including aging in good health. The guidelines aim at equal opportunity for men and women in the area of health and improvement in the quality of the health system.

356. In Swiss scientific research one finds few research projects which take gender into account, and this applies to the health sector as well. Research in the domain of health is still often based on a viewpoint which implicitly presupposes, as the health standard for all human beings, a masculine conception of health. The Gender Health sector of the Federal Office of Public Health (OFSP) therefore created in 2003 a **Gender Health Research Network**, which seeks to bring men and women researchers working in the field of men's health and women's health into contact with each other. Since then, the network has organized three national conferences, all devoted to questions of gender health. OFSP has also published a manual on poverty among women, work and health, which brings to a conclusion the research done on that topic and reports about links that may exist between women's poverty, work and health. By giving many practical examples and proven recommendations, the manual provides the most important information for designing projects and initiatives.<sup>169</sup>

357. The need to develop public health policies for women **victims of violence** has been recognized, yet such women must often turn in the first instance to doctors and regular hospital services for help. Several hospitals have created help and counselling services for victims of violence. In recent years, two major hospitals in

<sup>168</sup> <http://www.bag.admin.ch/themen/gesundheitspolitik/00394/00402/index.html?lang=fr>.

<sup>169</sup> [www.bag.admin.ch/shop/00056/00222/index.html?lang=de](http://www.bag.admin.ch/shop/00056/00222/index.html?lang=de) (in German only).

Zurich and Basel have done in-depth studies on the subject. In collaboration with the equality office of the city of Zurich, the Triemlihospital (maternity) hospital developed a working model for cases of domestic violence treated by clinics. The aim of the project was to give personnel the means to identify cases of domestic violence, to react in a competent manner, and to provide adequate support. Guidelines of conduct for treatment of domestic violence cases, based on detailed questionnaires, were developed.<sup>170</sup> A study by the Basel university hospital, mandated by the “Halt Gewalt” (“Stop Violence”) intervention service, reviewed the way in which the hospital deals with cases of domestic violence, which concern all departments, and proposed measures for improvement.<sup>171</sup> The institute of social and preventive medicine of the University of Lausanne and the equality office of the canton of Vaud have developed instruments for detection of mistreatment of adults and protocols for intervention addressed to different health services.<sup>172</sup>

### 3. Access to sexual and reproductive health services for women

#### 3.1. Family planning

358. 75 family planning services, 22 consultation centres of Swiss Aid against AIDS (Aide Suisse contre le Sida) and nearly 20 private consultation centres are today offering health advice concerning pregnancy and sexuality. In accordance with federal law on pregnancy consultation centres, OFSP publishes an updated yearly list of recognized cantonal consultation services. However, the public is often not aware of what services are offered by the different centres. In a postulate submitted in 2000, National Councillor Ruth Genner requested the Federal Council to prepare a report on how to improve the supply of counselling in the sphere of sexuality and reproductive health. The University of Lausanne was entrusted with carrying out a study on the subject. Published in 2002, the study noted that a broad array of services was available, in the form of information and consultations, but that all the offers lacked coordination and were not sufficiently well known. It seems that the information reaches only certain groups of people who have special needs.<sup>173</sup> The Swiss foundation for sexual and reproductive health, PLANeS<sup>174</sup>, [Swiss foundation for sexual and reproductive health, PLANeS<sup>175</sup>] is the lead organization which brings together and represents specialized centres in this field, notably family planning and sexual education consultation centres. Pursuant to an OFSP mandate, it is developing an Internet information site called “Sexual and

<sup>170</sup> Daniela Gloor/ Hanna Meier, *Frauen, Gesundheit und Gewalt im sozialen Nahraum*, im Auftrag des Gleichstellungsbüros der Stadt Zürich und der Maternité Inselhof Triemli, Zurich 2004.

<sup>171</sup> D. Gloor/ H. Meier, *Häusliche Gewalt bei Patientinnen und Patienten. Eine sozialwissenschaftliche Studie am Universitätsspital Basel*, Schriftenreihe des Justizdepartementes Band 8, Basel 2005.

<sup>172</sup> M.-C. Hofner/ N. Viens Python, “C’est assez” Programme de détection de d’orientation des adultes concernés par la violence. Origines et développements 2000 – 2004, Hospices cantonaux-DUMSC [“Enohgh”, Programme for detection and guidance for adults affected by violence. Origins and development 2000-2004, Cantonal Shelters-DUMSC], Lausanne 2004; idem, *Violence et maltraitance envers les adultes. Protocole de dépistage et d’intervention [Adult violence and mistreatment. Identification and intervention protocol]*. Centre interdisciplinaire des urgences CHUV Lausanne, avril 2005 (manual of further training for health care personnel handling emergencies).

<sup>173</sup> Karen Klaue/ Brenda Spencer/ Hugues Balthasar, *Santé sexuelle et reproductive en Suisse [Sexual and reproductive health in Switzerland]*, Lausanne 2002.

<sup>174</sup> <http://www.plan-s.ch>.

<sup>175</sup> <http://www.plan-s.ch>.

Reproductive Health Consultation Centres” (“Centres de consultation en santé sexuelle et reproductive”). This instrument facilitates exchanges of information and experience between staff of consultation centres. But it will also enable people more easily to access the type of advice they need. The site covers not only consultation centres for family planning and pregnancy, but also regional branches of Swiss Aid against AIDS and other consultation centres in the domain of sexual and reproductive health, as provided by federal law.

### 3.2. Abortion

360. After long years of debate and controversy about interruption of pregnancy, the revision of the Penal Code designed to de-criminalize interruption of pregnancy, already described in the previous report, was adopted by popular vote in 2002, by a clear majority of 72.2% of votes cast. According to the new articles 118 to 120 of the Penal Code, it is now possible to interrupt a pregnancy without incurring punishment, subject to certain conditions (see in this regard 1st and 2<sup>nd</sup> report, para. 464). In this same popular vote, a popular initiative was roundly rejected (by 81.8% of voters of all cantons). That initiative sought to authorize interruption of pregnancy only in the case of grave danger to the mother’s health<sup>176</sup>.

361. Article 119, paragraph 5 of the Penal Code obliges cantons to keep statistics on the frequency of legal interruptions of pregnancy. OFS is currently working with the cantons in order to harmonize collection of data. To that end, it has prepared two model forms: a short form containing the minimum data and a long form presenting detailed socio-demographic data. Some cantons have been using these forms since 1 January 2006. The cantons which use their own forms must standardize them by 1 January 2008 in such manner that they will supply at least as much information as the OFS short form. In addition, OFS has set up an internet signalling system which became operational on 1 January 2006.

362. The Geneva Graduate School of Health (Haute École de Santé de Genève) is currently conducting a study which attempts to analyze how the waiting-period regime is applied and to examine whether the introduction of the new legal provisions brought about a simplification of procedures. In addition, the Institute of Social and Preventive Medicine of the University of Basel is developing national statistics on interruptions of pregnancy.

363. Figures currently available show that since the legalization, the number of interruptions of pregnancy in Switzerland has not increased; on the contrary, it has even decreased slightly since 2002.<sup>177</sup>

### 3.3. HIV/AIDS: prevention and treatment

364. The number of cases of AIDS reported up to the end of 2004 was 8021; 24.7% of those cases (1983 cases) affected women. In 69% of cases (5533 people), the person died of the disease. After reaching a peak in 1995 (with 735 cases reported),

<sup>176</sup> Popular referendum of 2 June 2002 on revision of the Penal Code (abortion) and on the federal initiative “For mothers and children – protecting the unborn child and helping the mother in distress.”

<sup>177</sup> <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/14/02/03/key/03.html>.

the number of AIDS cases reported in Switzerland declined until 2002 (199 cases reported), then began growing slightly in the following two years.<sup>178</sup>

365. At present, Swiss policy to combat HIV/AIDS takes its cue from the 2004-2008 National HIV/AIDS Programme adopted by the Federal Council in 2003. That programme provides for preventive work within target groups counselling activities, and other measures. The different living conditions and needs of women and men are taken into account in developing specific prevention and information measures for each sex. The OFSP, in cooperation with Swiss Aid against AIDS, a private organization, also publishes various information brochures on AIDS specifically addressed to women; these can be downloaded from the internet or ordered free of charge.<sup>179</sup>

366. The programme already mentioned in the first and second report (para. 483), “Preventing AIDS among prostitutes” (Apis) is continuing. Since this programme is increasingly well known, both by prostitutes and by managers of sex establishments, the demand with regard to prevention activities has steadily increased in recent years. Thus, in 2003, the number of contacts made with women active in the sex trade (15,000 contacts) represented a virtual doubling of the contacts made in 2000 (8,000 contacts).<sup>180</sup>

#### 4. Access to health services by especially disadvantaged groups

##### 4.1. Foreign women

###### **CEDAW Recommendation 37**

*The Committee recommends that foreign women’s health needs, in particular as regards information on preventing HIV infection, be fully addressed.*

367. In the area of health and immigration, the Confederation has taken several initiatives in recent years. The national strategy on “Migration and Health 2002 to 2007” (“Migration et santé 2002 à 2007”), developed under the leadership of OFSP, is the product of a far-reaching analysis of the situation among migrant groups. The Federal Council has now decided to begin phase II of this **strategy for the years 2008 to 2011**. Today, it serves as a basis for various sectoral measures and projects. Its aim is to foster the opening up of standard health services to migrants and to improve the cross-cultural competence of health care personnel, in order to enable them better to respond to specific situations and needs of migrant women and men, who will be allowed easier access to health services. Emphasis is being placed on the areas of training (basic training and further training), information, prevention, health promotion, health care services, therapeutic care for persons seeking asylum and refugees suffering trauma, and research. Within the “Equal health opportunity” section of OFSP, the “Migration and Health” sector is tasked with setting this strategy in motion, and it has already entrusted several projects to executing agencies.<sup>181</sup>

<sup>178</sup> [http://www.bag.admin.ch/hiv\\_aids/index.html?lang=fr](http://www.bag.admin.ch/hiv_aids/index.html?lang=fr).

<sup>179</sup> [http://www.aids.ch/shop/produkte/infomaterial/frauen/artikelliste\\_frauen.php?lang=f](http://www.aids.ch/shop/produkte/infomaterial/frauen/artikelliste_frauen.php?lang=f).

<sup>180</sup> <http://www.aids.ch/f/ahs/apis.php>.

<sup>181</sup> <http://www.miges.admin.ch>.



368. The study “**Monitoring the state of health of the migrant population in Switzerland**” has provided statistical data on the state of health of migrant persons, their health behaviour, and their opportunities for access to the health system, comparing them with corresponding data for the indigenous population. In this way, it complements the Swiss survey on health, which contained a gap in this regard because, being conducted in only three languages — French, Italian and German — it only partially covered men and women migrants with other native languages, as those persons are still poorly integrated.

369. To enable national campaigns for prevention and health promotion better to reach the migrant population, the project “**Migesplus** — health information for migrants” was launched. The project’s aim is to create and administer the website [www.migesplus.ch](http://www.migesplus.ch), which provides an overview of health information specifically addressed to migrant persons, available in over 25 languages, in the form of brochures or other media. “Migesplus” also encourages the production of new information brochures reflecting the specific situation of migrant women and men, and provides for financial incentives for that purpose. In addition, the “Migrant-Friendly Hospitals” project seeks to build and manage a network of health facilities which strive to offer the migrant population competent care; the project provides financial support to hospitals which develop this kind of competence. A much-appreciated manual has been published as part of the project, which contains a road-map addressed to managers of health institutions who wish to improve the quality of services available to the migrant population.

370. As previously noted in the first and second report (paragraph 510), persons lacking a residence permit (**undocumented persons**) are also subject to mandatory sickness insurance. Having learned of certain cases in which insurers had refused to insure undocumented persons, the competent federal office published a directive on the subject. This text draws the attention of health insurers to the fact that they are not free to decide whom they may insure: they have an obligation equally to insure persons without immigration papers, provided they are domiciled in Switzerland. Moreover, for reasons pertaining to data protection, insurers are not authorized to transmit to the Aliens’ Police personal data of persons lacking a residence permit.

371. Health care services, however, continue to be a problem for many undocumented persons. Indeed, they have difficulty in finding access to doctors and hospitals, or they may fear that a consultation may have negative repercussions on their stay in Switzerland. Moreover, in most cases, they lack the necessary financial resources to cover the costs of medical treatment. They frequently suffer from mild or chronic pains but, due to their fear of financial and administrative problems, such pains are treated only when they have become serious, or even acute. It is in the area of gynaecological care (pregnancy, interruption of pregnancy, birth, gynaecological pains) that women are most often led to consult a doctor or hospital service. With regard to medical care specifically addressed to undocumented persons, there are doctors who perform examinations and consultations for very low fees. Moreover, there are specialized services in public hospitals and certain NGOs that are especially sensitive to the needs and situations of undocumented persons of offer specific services for them.<sup>182</sup>

<sup>182</sup> Office fédéral des assurances sociales, Forschungsbericht Nr. 24/03, *Leben ohne Bewilligung in der Schweiz: Auswirkungen auf den sozialen Schutz*, p. 27 [available in German only – French abstract, pp. XI-XIV].

372. Several surveys show that the care available in the area of **reproductive and sexual health** for migrant women is not as good as the care available to indigenous women. Accordingly, several projects and research endeavours have been undertaken in the domains of sexuality, pregnancy, birth and counselling of mothers and fathers, as part of the Confederation's national "Migration and health" strategy (phases I and II)<sup>183</sup>. The studies done in the area of sexual and reproductive health among migrants were expected to help ascertain whether there are specific gaps to be filled. These projects showed that there exists in Switzerland an array of services for migrants devoted to a wide range of health aspects but that coordination and regional outreach are insufficient. The studies done did not make it possible clearly to identify the groups particularly at risk or the domains that called for urgent intervention. Among service providers (especially doctors) one finds a need for greater cross-cultural competence and better general information about sexual and reproductive health. The main recommendations emerging from these studies emphasize better integration of health services offered to migrant men and women into standard health services. The authors of the research recommend that services be based more on the knowledge and recommendations formulated thus far (notably as to coordination and continuing training) and be more widely applied, and that contacts be developed between integration policy and health policy. The "Migration and sexual and reproductive health" exchange forum and network has been created for that purpose. One of the main goals of OFSP remains improving the recognition of migrant women in the health system through measures of coordination and consciousness-raising focused on the theme of sexual and reproductive health of immigrant persons.

373. Raising awareness among immigrant women and men to the question of HIV/AIDS is an issue in itself. In a brochure entitled "What are AIDS and HIV?" available in 14 languages, the OFSP provides updated information on these diseases. A documentary film on HIV/AIDS addressed to migrant persons is available in 16 languages. The authors tried to take into consideration the different cultural and social contexts proper to the target audience, as well as possible taboos. The film is an integral part of Confederation measures with regard to border health services and it is shown to all asylum applicants entering the country. In the context of the AFRIMEDIA project for HIV/AIDS prevention among persons originating in Sub-Saharan countries, an effort is also made to reach the especially vulnerable group of women, by using mediators originating from those same countries, as well as by supporting and encouraging mutual aid initiatives of women concerned and specific micro-projects. Finally, pursuant to a mandate given to Swiss Aid against AIDS, regular continuing training is offered to male and female mediators active in the world of migration: this training seeks in particular to develop their competence in aspects of mediation work related to sexual difference.

#### 4.2. Older women

374. A sex-specific study by the Swiss Health Observatory entitled "Health in the Second Part of Life" reports about the state of health of the older population. The longer life expectancy for women leads to a kind of "feminization of old age", although women are more often affected by health problems. These contrasts can be explained by the difference in lifestyles of the two sexes. Generally, that of women

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<sup>183</sup> <http://www.miges.ch>.

is healthier. The study concludes that promotion of health and prevention should already be addressed to younger people and should continue, as long as possible, throughout life. Health and health-related behaviours are closely linked to the life histories of the people concerned, so that promotion of health should be focused on the specific situation of each generation and should adapt to its needs and possibilities, while targeting specific groups.<sup>184</sup>

#### 4.3. Handicapped women

375. Handicapped women are at risk of falling victim to twofold discrimination. The new law on equality for the disabled<sup>185</sup> took effect in 2004; it obliges the Confederation and the cantons to prevent reduce or eliminate all inequalities of which disabled persons may be victims. The OFS has begun work on the design of a statistic on equal treatment of disabled persons. This information is expected to provide an accurate picture of the situation of this group by comparison with the group of non-disabled persons. A first report is scheduled to be published towards the end of 2008. As part of this statistic, the problem will also be studied from the standpoint of gender.

376. Article 5, paragraph 1 of the Equality Act for disabled persons provides expressly that the special needs of disabled women are to be taken into consideration. Accordingly, the Federal Bureau on Equality for Disabled Persons gives particular attention to projects that specifically concern women when it allocates financial aid to projects designed to integrate disabled persons. Thus far, aid has been granted for preparatory work aimed at creating a competence centre named "Disabled women and girls" as well as to prepare a mentoring programme aimed at facilitating entry into working life by disabled young women. These projects being as yet incomplete, it is too soon to draw initial conclusions.

377. The fourth revision of the AI disablement insurance scheme (see para. 300) replaced the old disablement allowances, contributions to costs of special care for disabled minors and contributions to costs of home care by a new disablement allowance, in order to increase the autonomy of disabled persons. This new allowance is now also paid to persons living at home who need to be accompanied in order to deal with the necessities of life. It is also granted to disabled minors (formerly, only from age 18). The amount of the disablement allowance paid to persons living at home is doubled.

378. Since the beginning of 2002, a new association has emerged in Switzerland called *Avanti Donne* ([www.avantidonne.ch](http://www.avantidonne.ch)), which seeks to promote equality in society for disabled women and girls. To that end, the association has created a contact and coordination centre for those persons. The association believes that there is a need to improve the quality of life of this group of people and encourage their autonomy and mutual aid.

379. Not long ago, Switzerland still lacked unified legal provisions concerning the sterilization of disabled persons. But a new law on sterilization<sup>186</sup> entered into force in 2005. This law regulates the conditions under which sterilization is authorized

<sup>184</sup> Kurt Wyss, *Themenmonitoring: Gesundheit in der zweiten Lebenshälfte*, Neuchâtel (Observatoire suisse de la santé) 2005 [available in German only].

<sup>185</sup> RS 151.3; LHand.

<sup>186</sup> RS 211.111.1.

and the rules of procedure that must be respected. A draft law on compensation of victims of abusive sterilization and castration has been rejected by Parliament.

## 5. Genital mutilation in Switzerland

### CEDAW Recommendation 33

*The Committee recommends that the State party urgently take all appropriate measures, including legislation, to eradicate the harmful traditional practice of female genital mutilation.*

380. It is believed that nearly 12,000 women originating from areas where female genital excision is practiced are living in Switzerland. Of that number, 6000 to 7000 women are concerned or threatened by this practice. Two distinct studies that have addressed the issue in recent years have shown that in our country there are still gaps to be filled in several areas<sup>187</sup>. An interdisciplinary working group on female genital mutilation, made up of specialists from a wide variety of organizations (UNICEF, Caritas Suisse, Iamaneh Suisse, Terre des Femmes Suisse, PLANeS), was entrusted by OFSP with preparing background material addressed to different target groups. In a second stage, this material can be utilized for targeted information efforts, awareness raising and prevention, among health care personnel and among women originating in the countries concerned.

381. The civil law requires the authorities to protect girls from genital mutilation. According to articles 307 to 317 of the Swiss Civil Code, the child protective authorities are required to take necessary steps to protect a child whose development is threatened and whose parents do not wish to remedy the situation themselves or are not able to do so. The authority is then required in all cases to intervene when cases of mistreatment are reported to it by health institutions, schools or other services. Cases are known in which cantonal authorities have taken steps along these lines.

382. Genital mutilation is also punishable under the penal law. An expert legal opinion commissioned by UNICEF Switzerland concluded that genital mutilations should be characterized as grave bodily injury within the meaning of **article 122 of the Swiss Penal Code**. It is in the first instance the person who carries out the mutilation that is subject to punishment. Third parties, notably the parents are, however, in most cases, also subject to punishment as instigators, co-perpetrators or accomplices. If the mutilation takes place abroad, the persons who contribute to it in Switzerland, for example those who sent the girl back to the country of origin for this purpose, are also subject to punishment. Such participation in the act, however is punishable in Switzerland only if the act itself is also punishable in the country where it was committed. For this condition to be met, it is sufficient that a law in force renders the act punishable, even if that law is not applied consistently or throughout the territory of the country concerned<sup>188</sup>. The statistic on criminal convictions mentions only the article of the Penal Code that was applied (in the

<sup>187</sup> Jaeger/Schulze/Hohfeld: Female genital mutilation in Switzerland; a survey among gynaecologists, Swiss Med Wkly, pp. 132 et 259-4, 2002, ainsi que Thierfelder: Female Genital Mutilation and the Swiss Health Care System, 2003.

<sup>188</sup> Stefan Trechsel/ Regula Schlauri, Les mutilations génitales féminines en Suisse, Expertise juridique pour l'UNICEF Suisse, [Female genital mutilation in Switzerland, Legal expert opinion for UNICEF Switzerland], Zurich 2004.

event, the article concerning grave bodily injury) and it therefore does not permit conclusions to be drawn about the number of convictions for genital mutilation. The parents of a thirteen-year-old girl are suspected of having had an excision performed on her in Switzerland. This is the first case raising the issue of an excision performed in Switzerland.

383. In 2005, National Councillor Roth-Bernasconi sought by a parliamentary initiative the adoption of a specific penal rule punishing the performance or encouragement of female genital mutilations. She argued that experiences of other States show that the number of genital mutilations declined sharply once the act was made punishable by a heavy sentence. This initiative is still pending.

384. In the **asylum procedure**, genital mutilations have thus far played a limited role. Article 3, paragraph 2 of the Asylum Act provides that as part of the procedure leading to recognition of the status of refugee “account may be taken of motives for flight specific to women”. Thus, if an asylum applicant makes out a plausible case that she is threatened with undergoing a genital mutilation in her country of origin, a second review is conducted to ascertain whether she should be granted refugee status pursuant to article 3 of the Asylum Act, i.e. whether she is exposed to serious harm or a justified fear of being seriously harmed by reason of her “membership of a particular social group”. Fear of a future female genital mutilation rather than one already suffered is a determining factor in regard to asylum insofar as the State of origin does not provide adequate protection against such action (theory of protection). Thus, there are two distinct situations: the first concerns women asylum seekers from countries where the government is active in this area and has taken measures of a legal or other kind to prohibit female genital mutilations. In those cases, the applications are in principle rejected in view of the fact that the women concerned can obtain assistance and protection from their State of origin and thus do not depend on Switzerland for protection. The second situation encompasses those women from countries that do not have any legal measure to prohibit female genital mutilations or do not enforce such measures. In such cases, refugee status is in principle recognized since no protection can be afforded in the country of origin. As previously mentioned, persons who fear becoming victims of a female genital mutilation are considered as belonging to a specific social group. Young girls or little girls can thus be recognized as refugees for this reason. On the other hand, when mothers or parents advance this ground on behalf of their girl(s), because they could not protect her from a genital mutilation, their motivation is treated as a kind of opposition and it is conducive to granting refugee status. On the basis of existing legal provisions and the case law that has developed, some girls and women from various African countries have thus far been granted refugee status on the basis of fear of future genital mutilation. Since genital mutilations are viewed in Switzerland as inhuman treatment within the meaning of article 3 of the European Convention on Human Rights (CEDH), the Swiss authorities recognize that genital mutilations to which a girl or woman might be subjected if removed to her country of origin are grounds for objecting to such removal.

## **6. Cooperation for development**

385. The Directorate for Development and Cooperation (DDC) fundamentally supports the principle of the right to health, a right which also, and indeed especially, concerns disadvantaged women. Moreover, it supports the development of resources that help to include in the health policies of partner States aspects

specifically related to gender differences, in the sense of an integrated approach to equality, i.e. gender mainstreaming. In several African countries (Rwanda, Tanzania, Mali), in Nepal, in Ukraine and Tajikistan, the DDC supports programmes which facilitate access by women to health services and measures to promote health. Thus, in the Great Lakes region, there is a programme which enables women victims of rape to gain access to psycho-social services. In the sphere of health, mention should also be made of gender mainstreaming in the DDC policy towards AIDS (e.g. in Mozambique), as well as certain sex-specific projects such as the project to provide care to mothers and children being conducted in Ukraine, or measures to improve the health situation in Russian prisons.

386. The DDC has been committed to combat female genital mutilations (FGM) since the mid-1990s. It supports projects aimed at the abolition of FGM through multilateral action, by providing financial aid to activities of UNICEF, UNFPA, UNIFEM AND WHO (e.g. for a symposium on genital mutilation of young girls organized in 2001 by UNICEF and the Swiss Foundation for Sexual and Reproductive Health (PLANeS), and for a symposium of experts and an international conference on FGM organized by UNICEF in Zurich on 7 March 2005). Moreover, DDC cooperation bureaux in the countries concerned provide their support to local endeavours against FGM.

### **Art. 13 Other areas of economic and social life**

#### **1. Poverty among women**

##### **CEDAW Recommendation 49**

*The Committee recommends that the State party closely monitor the poverty situation of women in the most vulnerable groups and implement effective measures and training programmes that will allow them to fully enjoy the benefits of the State party's development.*

387. Statistics show that in 2006 people living below the poverty line accounted for 9% of the resident population of working age (persons aged 20 to 59). Of that 9% there are 4.5% working poor, i.e. working people aged between 20 and 59 who live in a poor household whose overall income from work represents less than the equivalent of one full-time job.<sup>189</sup> An OFS report published in 2002, "Income and Well-being" ("Revenu et bien-être"), compares the living conditions of persons living in households with low, medium and high incomes: it is single-parent families, persons of foreign nationality, large families and persons working in sales and service jobs who live under the least favourable conditions. In relation to the rest of the population, these groups suffer from many disadvantages. According to the OFS poverty statistic<sup>190</sup>, the category of women raising children alone remains the category which presents the highest degree of poverty (poverty affects about one quarter of the people in that category, as of 2005). When the number of children increases, the risk of poverty increases considerably, not only for single-parent families, but also for couples. Mothers who are raising their children alone are, with a rate of 11.1%, the category which accounts for the greatest number of poor

<sup>189</sup> See, in this regard, the trend in the percentage of poor workers:

<http://www.bfs.admin.ch/bfs/portal/fr/index/themen/20/03/blank/dos/01.Document.104311.pdf>.

<sup>190</sup> New OFS results, heretofore unpublished, are presented below.

workers, following that of large families, which accounts for 17.9%. In 2000, the percentage of poor workers was still 5%. According to the latest figures from OFS, the proportion of poor workers in the first five years of the 21st century is nevertheless lower than that recorded in the previous five years.

388. The fact that women are more often affected by poverty than men is closely linked to the fact that women's work is not always gainful. As observed in a recent study, gainful employment in Switzerland is a cornerstone not only of the income and social status of the person concerned but also of her protection against social risks she may encounter in the course of her life. For example, one can list five factors which increase women's risk of falling into poverty:

- The traditional division of roles between women and men and the always difficult task of reconciling family and work obligations, whose primary consequences for mothers are a loss of income and poor integration into the labour market;
- Part-time work, which often, and especially in low-wage jobs, goes hand in hand with poor job security (short-term contracts, lack of guarantees of minimum employment, stopgap social protection );
- Substantial wage differences between men and women;
- A higher unemployment rate for women;
- The fact that social insurance is linked to income from work, which disadvantages persons who are not active or makes them dependent on their spouse, thus exposing them especially to the risk of falling into poverty, particularly at an advanced age.

The study in question draws the conclusion that combating poverty implies above all promoting participation by women in gainful activities on equal footing with men.<sup>191</sup>

389. In the area of individual social services, which is the competence of the cantons, there are scant differences between the sexes regarding the proportion of people depending on such aid, although among people of foreign nationality the share of women is slightly larger than that of men. In Switzerland, 3.8% of households receive social aid payments, persons raising children alone being the leading recipients: they account for 20.7% of all households receiving social aid. In relation to Swiss households in general, this means that more than one single-parent family out of six depends on social aid.

390. At the federal level, a number of measures are contributing to combating poverty, notably poverty among women. The measures in the educational field (article 10) and in employment (article 11) help to reduce the risk of poverty linked to the position of women in the labour market. In particular, measures conducive to a better balance between work and family tasks (article 11, para. 5.2) constitute a response to the problem of underemployment among women. In the area of social insurance, extension of old age and survivors' employee insurance to lower income categories offers better coverage for a category of working women who had theretofore been excluded from the second pillar (article 11, para. 3.3). The introduction in 2005 of a maternity allowance for working women filled a gap in

<sup>191</sup> Silvia Strub/ Heidi Stutz, *Macht Arbeit Frauen arm ?* in: *Frauenfragen* 1.2004, pp.15 sqq.

protection of others (article 11, para. 5.3). Still under consideration following parliamentary initiatives, a system of benefits subject to resources for low-income families should provide targeted support for families in precarious situations.<sup>192</sup> Benefits which partly compensate for child-related costs provide support for women who bear those costs (family allowances, see article 13, para. 2).

391. The difficulty of collecting support payments following a divorce is another source of insecurity for single mothers. In the case of divorce, support payments due to children are calculated in terms of the financial situation of the debtor (usually the father). Costs for child care outside the family are often not taken into account at all. The portion of the costs that is not covered by support payments is borne by the parent who has custody of the children (usually the mother), while the parent who does not have custody but is obliged to pay support has his minimum subsistence income guaranteed. When support payments (and advances, when applicable) as well as personal assets are not sufficient, the parent raising children alone is reduced to applying for social aid, which is subject to an obligation of reimbursement. Cantonal provisions regarding advances and recovery are very different and do not all provide the same level of protection. The upper limits for advances vary greatly from one canton to another. A parliamentary commission has asked to Federal Council to submit a report containing proposals with a view to harmonizing them at the federal level.<sup>193</sup>

392. Immigrant women are at greater risk of poverty than foreign men or Swiss people of either sex. Although there are some distinctions to be made in terms of the reason for immigration and the nationality of the persons concerned, it can be said that foreign women tend to be the people most often affected by unemployment. The explanation is their low level of education and lack of recognized professional/vocational qualifications: foreign women more often complete only short-term training courses or have no post-compulsory education. Lacunae in their knowledge of languages and a strong proportion of these people in structurally weak industries also contribute to this high rate of unemployment. Moreover, unemployment insurance does not cover the costs of training aimed at filling the lacunae in elementary education, which means that unemployed foreign women who have such lacunae remain virtually excluded from the labour market. Women will also benefit from the efforts of the Federal Office for Education and Science with regard to recognition of foreign diplomas and professional/vocational experience gained abroad.

393. Since 1999, the ordinance on integration of foreigners gives the federal immigration authorities the possibility of granting financial aid to projects encouraging integration. Special importance attaches in this regard to benefits aimed at foreign women and those addressed to children and young people of foreign nationality. Women are considered an especially important target group. Thus, specific benefits are provided to encourage integration of foreign women reuniting with their husbands in Switzerland as part of a family reunification measure and who, because of their family position as mother and housewife, are not entering the labour market, or are not doing so immediately. Since employment is an essential

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<sup>192</sup> Iv.pa. Fehr (00.436) et Iv.pa. Meier-Schatz (00.437) Prestations complémentaires pour des familles. Modèle tessinois [Supplementary benefits for families. The Ticino model].

<sup>193</sup> Po Commission de la sécurité sociale et de la santé publique du Conseil national (06.3003) Avances et recouvrement des pensions alimentaires. Harmonisation.



consideration in immigration, such benefits are of particular importance to this group of immigrant women.

## 2. Family allowances

394. At present, 26 different sets of cantonal regulations govern the type and amount of family allowances. But following an initiative by Member of Parliament Frankhauser in 1991, Parliament adopted the federal law on family allowances (LAFam), approved by popular vote by the people on 26 November 2006. The new law will take effect on 1 January 2009. LAFam harmonizes a number of provisions at the national level. The cantons retain competence for all matters not governed by LAFam. The new law regulates the conditions under which family allowances are granted, the children that give rise to the entitlement, the age limit, and the rules applying when several people can assert entitlement to allowances in respect of the same child. Those entitled are employees and persons without employment. For the latter, however, the allowances depend in taxable income and are funded by the cantons. Independent workers are not included among those entitled within the meaning of the LAFam, but the cantons may grant them family allowances.

395. The LAFam provides for an allowances per child, granted as from birth through the child's 16th birthday, in the amount of 200 Swiss francs per month and a vocational training allowance of at least 250 Swiss francs per month, granted from the 16th birthday until the end of the child's education, but not beyond age 25. Only full allowances are paid, and the degree of occupation of the parents is no longer a factor. The cantons may grant higher allowances and provide for allowances on birth or adoption. Other benefits must be funded outside the regime of family allowances. The children who give rise to the entitlement to family allowances are children born of married or unmarried parents, children of a spouse, foster children, and brothers, sisters and grandchildren of the entitled person if that person provides most of their support. Family allowances in the farming sector remain governed by the federal law of 20 June 1952 on family allowances in agriculture (LFA), with the exception of certain cantons. The cantons have time to adapt their regime of family allowances to the federal scheme until its entry into force in 2009.

## 3. Access to recreational activities, sports and cultural life

### 3.1. Cultural life

396. Differences between the sexes with regard to access to financial **aid from the Confederation to encourage culture** have been somewhat reduced in recent years. Thus, in the federal art competition of 2005, 17 women and 18 men won awards. The delegations sent to major international art biennials have also been fairly balanced between the sexes (6 women and 8 men). However, among the recipients of the Meret-Oppenheim Prize, granted exclusively to artists over age 40, one finds 14 men and only 6 women. Subsidies granted to individual creative artists in the area of design have been granted more or less equally to women and men, even though the fields of graphics, industrial design and architecture have traditionally been dominated by men, while those of fashion, jewellery, textiles and ceramics have been rather dominated by women. In promotion of the cinema there are no figures available reflecting gender. However, ore and more women are working as film directors or producers. Although filmmaking is no longer a male preserve, men do continue to be over-represented at the top levels of international competitions. In

a study entitled “Kulturförderung unter der Gleichstellungslupe” (“Looking at cultural promotion through the prism of equality”), a team of male and female researchers examined cultural subsidies granted to individuals or groups by the city of Berne. The study showed that, taking all cultural domains in the aggregate, male creative artists receive support substantially more often. In 2003, women submitted on average fewer applications for cultural grants than men. But, at the same time, they have since 1998 accounted for a majority of students in advanced schools of plastic arts, music and theatre, and nearly half of the members of artists’ associations. In some areas, however, there is no gender-disaggregated information available, which obliged the authors of the study to restrict the scope of their research. A questionnaire addressed to the commission which approves the grants showed that most members, regardless of their gender, felt that art is gender neutral and that it is not the sex of the applicant but the quality of his or her work that determines the approval of a grant.<sup>194</sup>

### 3.2. Sports and recreational activities

397. Statistics show that, in all age groups, men practice physical activities during their leisure time more often than women. But things are different in everyday life: among people who travel on foot or by bicycle daily for at least 30 minutes, there are clearly more women than men.<sup>195</sup>

398. The majority of organized sports activities in Switzerland today are still practiced separately by the two sexes. Some sports are practiced almost entirely by women (in 2006: equestrian stunting, synchronized swimming, fitness and dance), or by men (in 2006: street-hockey, rugby and Swiss wrestling). It is in the sports of hiking and fitness that women are the most numerous in absolute numbers (in 2006, 34,887 and 31,105).

399. Women less often belong to sports associations (16%) than men (28%). In the last ten years, the proportion of women among active members of **sports associations** in Switzerland has risen by two points, reaching 33.5%. In the age brackets under 20, the percentage of young women has distinctly declined, but adult women have contributed to the increase in the overall percentage. Yet, women are clearly under-represented at the peak of the hierarchy of sports associations and sports public services, where they account for 10% of managers. It is true that the situation has improved slightly from 2001 to 2004, but the proportion of women at that level is still low, in comparison with the number of women who practice sports or the percentage of women among members of sports associations.<sup>196</sup>

400. The Confederation, in a subsidiary role, encourages sports activities regardless of the gender of the persons practicing them. All measures of this kind are open to both women and men, but women less often apply, whether for membership in sports associations, training schools for elite sports practitioners, or offerings under the “Jeunesse + Sport” **youth sports** programme, by which the Confederation, in cooperation with the cantons, promotes sports suitable for young people. To that end, it grants financial aid and organizes basic training and continuing education for

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<sup>194</sup> Iris Frey/ Judith Estermann/ Thomas Beyeler, Kulturförderung unter der Gleichstellungslupe, Berne 2005.

<sup>195</sup> <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/14/02/02/key/01.Document.21594.xls>.

<sup>196</sup> Lamprecht/ Murer/ Stamm, Probleme, Strategien und Perspektiven der Schweizer Sportvereine, Zurich, 2005.

men and women sports coaches. In the last 15 years, the proportion of girls and women participating in sports training for youth under the “Jeunesse + Sport” programme has remained relatively constant, with a rate of participation just under 40%, while women participating in courses for coaches have accounted for 35% of the total.

401. At gathering places for young people and in work with young people generally, girls and women are under-represented. Although girls are fully as active as boys in youth associations, they are under-represented among monitors and in positions of responsibility. To remedy this, the Swiss Council for Youth Activities, an umbrella organization, has established mentoring projects and has decided to introduce gender mainstreaming into all of its activities.

402. In the organization of leisure activities, sex-specific features do not play a prominent role. The observable differences in the area of leisure activities are much more attributable to income, level of education and, above all, age than they are to sex. In 2005, over 70% of women and men report that they read or go out or meet with friends or acquaintances at least once a week. The percentage of people who say that they go out to a restaurant, bistro or bar at least once a week is 56.9% among men and only 41.3% among women. A similar situation prevails regarding attendance at sporting events: 10.5% of men and 5.8% of women attend such events at least once a week. By contrast, women participate more often in courses (languages, cooking, crafts, etc.): 12.9% of women attend a class at least once a week, compared with only 6.1% of men.<sup>197</sup> Nearly half of women (44%) take active part in an association or similar organization and are thus somewhat less numerous in doing so than men (55%). Here one finds particularly low percentages in the category of women over 75 (about one third) and among foreign women (about one fourth). Although there are no major differences between men and women in organizing leisure activities and participation in clubs and associations, such differences are considerable in the area of volunteer work: this area is strongly differentiated by gender. (see para. 281)

#### **4. Environment and sustainable development**

403. Women are specifically affected by the deterioration of the environment and demonstrate specific knowledge and freedom of action on environmental issues which deserve greater recognition and which could be put to better use. In other countries, analyses done on the basis of sociological surveys have concluded that there are significant differences between the sexes in behaviours that influence the environment, e.g. in consumption and in volunteer social commitment. A study done in Switzerland has also brought out important differences between the sexes regarding mobility. Since these differences could play a role in a range of environmental issues in Switzerland, it is important, in order to provide better guidance for environmental policy, to prepare statistical extracts of these data and to analyze the mechanisms underlying these differentiated behaviours. The national statistics regarding areas influencing the environment are disaggregated by gender only for certain selected aspects (social policy, health, political participation), but not with regard to access to resources and consumption. Gender mainstreaming is still to be done with regard to statistics concerning the environment. In federal

<sup>197</sup> <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/20/03/blank/key/04/01.html>.

offices with competence over environmental problems, there is little understanding of the links that exist between gender and sustainable development.

404. The proportion of women in environmental research is probably higher than in physical and natural sciences. That is at least the conclusion suggested by the relatively high (46% in 2004) percentage of women studying environmental sciences at the Zurich federal polytechnic (EPFZ), a percentage that has nearly doubled over 15 years (25% in 1990). On the other hand, there are still virtually no women among the faculty, even in this area: at EPFZ, one finds among the regular professors 23 men and only one woman. University education and research in the physical and natural sciences is facing a problem of student recruitment: the number of students is declining. At the same time, "horizontal segregation" is especially noteworthy in a number of disciplines: the federal policy for graduate schools intends to concentrate, insofar as physical and natural sciences are concerned, on creating centres of excellence and research in the two federal technical universities (EPFs), which could lead to a weakening of these sciences in the cantonal universities. But the cantonal universities, given their wide range of course offerings, are much more conducive than the EPFs to creation of interdisciplinary programmes, such as combining social sciences with physical and natural sciences. These kinds of programmes correspond especially well to the professional opportunities and career goals of women; that is why, from the standpoint of promoting equality between women and men, it is unwise to weaken the physical and natural sciences in the universities.

405. The choice of topics for scientific research is generally guided by questions that do not take into consideration the difference between the sexes. Even in areas where this difference is relevant, related issues are often disregarded or given short shrift. Issues of mobility, town and country planning, education, employment and sustainable development are examples of issues in which gender difference is relevant.

406. As of today there are no reliable data on the question of equal pay in the environmental sector. A survey done by the Association of Women Environmental Professionals (Association des professionnelles en environnement (PEE)) and the Swiss Association of Environmental Professionals (Association suisse des professionnels de l'environnement (ASEP)) has attempted to shed light on the subject; the results are currently being evaluated. In the forestry and wood products industry, a project aimed at awareness-raising among managers entitled "silviasilvio" is currently under way and is receiving financial aid under the Equality Act.

407. Research being done at the federal level (*Ressortforschung*) in the environmental sphere is aimed at providing answers to timely, urgent issues. As mentioned above, women are distinctly in a minority in research in the physical and natural sciences, which in fact complicates consideration of female candidates for research grants in this area. In issuing external grants, the Federal Office for the Environment does, however, give particular consideration to enterprises which include a certain proportion of women (also in managerial positions). The new Master Plan for Environmental Research for 2008-2011 will highlight the need to further encourage the presence of women in environmental research.

## Art. 14 Rural women

### 1. Urban-rural differences

408. As is the case the world over, living conditions for rural women in Switzerland differ from those of urban women. However, together with the differences, the statistics also point to some similarities. Following the federal population census of 2000, in 2005 the OFS published a Swiss Atlas of Women and Equality. This document, which can be found online,<sup>198</sup> reports on trends in indicators of equality and highlights differences and similarities between regions since 1970 with regard to gender equality in Switzerland. The data it contains allow distinctions to be drawn between the three major linguistic regions of the country and between rural and urban communities (see statistical data in annex 1F).

409. Differences between city and country are considerable with regard to the form of families and households. The lowest percentages of married women are found in the cities, the highest in the country. Nevertheless, the gaps between city and country narrowed significantly from 1990 to 2000. In rural areas there are a growing proportion of women who are not, or are no longer, married. If we consider single-parent families throughout Switzerland, the proportion of women who are raising their children alone increased slightly from 1970 to 2000 (from 86% to 89%). It is in the country that the proportion is the lowest. A clear increase in the number of childless women has been observed primarily in the cities of German-speaking Switzerland.

410. The number of women employed part-time has grown substantially in both urban and rural areas. Likewise, the proportion of women among part-time employees in Switzerland grew from 74% to 76% between 1985 and 2001. Part-time work is predominantly female in all linguistic regions, in both city and country. The disparities between regions have narrowed over recent years. For Switzerland as a whole, the proportion of women gainfully employed full-time has stagnated at just under 30% and local differences have shown little change. It is in the major cities of southern Switzerland that one finds the highest percentage of women employed full-time. The lowest percentages are found in areas near the cities of German-speaking Switzerland.

411. For the year 2000, the federal census discovered that there is a proportion of 15% women in the management of companies throughout Switzerland. Differences between regions and industries are considerable. The higher the proportion of women among the employees in an industry, the higher the percentage of women one finds in management of those companies. The sector of health and social services, where personnel is 80% female, is thus the sector which has the highest proportion of women in company management (31%). The situation is similar in the hotel and restaurant industry, in personnel services, and in education. Local differences noted in the percentage of women occupying management positions can be explained at least in part by the inequality of regional economic structures.

412. Differences between regions are quite definite with regard to equal pay: it is within the German-speaking area that wage gaps between men and women tend to be smallest and in eastern Switzerland that they tend to be largest. Unemployment

<sup>198</sup> [http://www.bfs.admin.ch/bfs/portal/fr/index/regionen/thematische\\_karten/gleichstellungsatlas.html](http://www.bfs.admin.ch/bfs/portal/fr/index/regionen/thematische_karten/gleichstellungsatlas.html).

rates vary markedly depending on whether one is in the city (2000: 2.8%) or in the country (2000: 0.6% in rural communities). Since 1990, the unemployment rate for women has always exceeded that for men. The population census also reveals that the number of persons who subjectively consider themselves unemployed is distinctly higher than that indicated by the official unemployment statistic. Among these subjectively jobless people, one finds substantially more women than men in all cantons.

413. With regard to reconciling work and family, the Swiss Atlas of Women and Equality distinguishes four models and presents their frequency of occurrence in Switzerland. The traditional bourgeois family model (father working full time and mother at home) was still the norm in 1990, since it was followed by nearly 60% of Swiss families with children under age seven, but it was to be found only among 37% of families in the year 2000. The model is clearly losing ground in all regions. It is in suburban communities that the model remains most prevalent today (42%). The contemporary bourgeois model (father working full time and mother working part time) is now the most widespread form of division of labour in French-speaking Switzerland (both city and country) and in the urban areas of German-speaking Switzerland among couples with young children. From 1970 to 1990, the percentage of households with two parents working full time remained virtually stable if one considers the Swiss average (between 11% and 12%). Higher proportions were observed in the city of Geneva and in certain rural areas devoted to watchmaking, textiles or tourism. It should be noted that in agricultural areas, the proportion for this family model rose from 14% to 16% between 1990 and 2000. The fastest rates of growth (albeit based on a modest level) were recorded for the egalitarian model focused on the family (the man and the woman share the family tasks and the paid work). Since 1990, the proportion of households in which the man and the woman both work part time has grown from 1.5% to 3.4% (2000). The growth was strongest in the cities of German-speaking Switzerland.

414. In the year 2000, the proportion of women among students in secondary level II aged from 15 to 21 was 47% on average for Switzerland. In urban areas, the percentage of women in secondary level II is generally higher (49%) than in rural areas (41%). This gap between city and country shows that it is harder for women than for men to obtain education at secondary level II when they live in the country. These urban-rural differences are found in all linguistic regions, but it is in Italian-speaking Switzerland that they are most marked. The regional differences in level of education of the population are minimal, but nonetheless characteristic: communities with higher tax revenues tend to have a higher level of education than rural communities. In both the 30 to 39 and 50 to 59 age brackets, men have more years of education than women of the same age (13.1 as against 12.4 and 12.8 as against 11.6 years). This holds true in the city and in the country. Women's educational deficit has nevertheless declined from 1.2 to 0.7, the largest reduction being in French-speaking Switzerland.

## **2. Women farmers**

415. Women farmers in Switzerland face a difficult situation today. Income from their labour declines from year to year and many farms are overburdened with debt. Women often work on their husband's farms without pay. In the event of divorce, women thus often find themselves in a financially precarious position: they lose their income but cannot rely on help from the unemployment insurance scheme to

provide them with sustenance and re-training, since they were not considered as being employed prior to the divorce. Often, they also do not have the possibility of recovering the personal assets which they had invested in the common farming enterprise. The position of farm women can be equally difficult when the husband dies. For the sake of keeping the farm in operation, laws governing real property give priority to heirs who take over the farm at the expense of other heirs, including the wife, even if the wife had invested years of labour and other resources in the farm.

## **Art. 15 Equality before the law**

### **1. Legal capacity**

#### **CEDAW Recommendation 14:**

*...The Committee urges the State party to accelerate efforts to review the reservations regularly with a view to withdrawing them and to indicate in its next periodic report, if possible and if still relevant, a timetable for their withdrawal.*

416. When it acceded to the Convention, Switzerland lodged a reservation pertaining to the regime of marital property applicable to marriages concluded before 1988 and in which the contract of marriage provided for a regime other than the ordinary regime. As noted in the first and second report (para. 53 ff), there are still today marriages subject to the old discriminatory rules concerning management of the marital assets. In those cases, it is in principle the husband who administers the woman's contribution to the common property. The reservation which Switzerland entered concerning article 15 of CEDAW thus relates only to transitional provisions adopted in 1988 and affects, in a transitional manner, only couples who have chosen a solution other than the ordinary regime, either by a marriage contract or by a joint written statement recorded before the entry into force of the new marriage regime. This reservation is therefore still justified, but its importance has declined, since it refers to fewer and fewer marriages. Marriages contracts after 1988 are subject without qualification to the new law. Moreover, the maintenance of the old regime of community property, which contains these discriminatory rules regarding management of assets, rests on an express joint written declaration by the two spouses concerned (article 9, paragraph 1, final title, Civil Code). And wives who no longer agree to their husband administering their assets can at any time petition the court to order a separation of property on the basis of article 185 of the Civil Code.

### **2. Freedom to choose place of residence and domicile, especially for foreign women**

#### **2.1. Residence permits for foreign women under family reunification**

417. Not long ago, the law governing foreign persons still provided that foreign women and men from countries outside the European Union and the European Free Trade Association who came to Switzerland under a family reunification policy could not seek an extension of their residence permit following the dissolution of their marriage, but that the residence permit could nevertheless be extended in certain cases, notably for reasons of hardship. The new law on foreign persons makes some improvements in this regard. In particular, it recognizes in principle certain subjective rights after the dissolution of marriage for persons who may claim

entitlement to a residence permit and extension of duration of its validity. That is the case for foreign members of the family of a male or female Swiss national and the foreign spouse and children of a holder of a **long-term residence permit** (autorisation d'établissement). After the dissolution of the marriage or the family, the right of the spouse and children to receive a residence permit and to extend its duration of validity survives, if the conjugal union has existed for at least three years and if the spouse and children are well integrated or remain in Switzerland for weighty personal reasons. Such reasons may be invoked in particular when the spouse has been the victim of domestic violence or when her reintegration into her country of origin appears to be strongly compromised.

418. Extending one's stay in Switzerland can also be necessary, for example, when a spouse living in Switzerland dies or when the failure of a marriage makes it very difficult for the family to be reintegrated in the country of origin. The same holds true when the couple have children in common with whom each parent has a close relationship and who are well integrated in Switzerland. But one must also always take into account the circumstances that led to the dissolution of the family unit. If it appears that life as a family represents a serious threat for the spouse who came to Switzerland as part of a family reunification, and that one cannot therefore reasonably ask that person to continue living within the marriage, this situation must be given particular weight.

419. On the other hand, return to the country of origin can reasonably be required when the person concerned spent only a short time in Switzerland, has not forged close bonds with the country, and reintegration in the country of origin is not particularly problematic. It is important to examine people's situation in each particular case. Recognizing a right to the granting and extension of a residence permit will also lead to harmonization of practice between different cantons.

420. With regard to the foreign spouse and children of the holder of a long-term residence permit, the law does not provide for the right, in the event of family dissolution, to obtain a short-term residence permit or its extension, but provides only the possibility for the authorities to grant one. The implementing provisions imposed material conditions comparable to those described above (see article 77 of the new ordinance of 24 October 2007 pertaining to admission, residence and employment).

## **2.2. Gender-specific aspects of asylum law**

421. The discussion taking place on the international level regarding persecution directed specifically against women or related to gender has found an echo in Switzerland and has influenced the latest complete revision of the Asylum Act. Without going so far as to expand the concept of refugee status, constituent elements of persecution have been spelled out by reference to sex. In article 3 (2) of the Asylum Act of 26 June 1998 (LAsi; RS 142.31) the phrase "motives for taking refuge that are specific to women should be taken into consideration" has been added as the result of a compromise and tends mainly to specify the forms of injury that are suffered exclusively by women. The reference to reasons "specific to women" is intended to facilitate greater awareness of the injuries to which they may fall victim by comparison with those which men may suffer scarcely if at all. Moreover, special procedural provisions concerning asylum proceedings initiated by women have been enacted by ordinance. Article 5 of Ordinance 1 on Asylum (OA1)



lays down the principle of the right to an individual proceeding, and article 6 of OA1 provides that when there are concrete indicia in persecution of a sexual nature, the applicant for asylum is to be heard by a person of the same gender.

422. The revision of the Asylum Act of 16 December 2005 makes no change from the standpoint of gender-related persecution.<sup>199</sup> However, it should be pointed out in this context that the practice of the Federal Migration Office (OFM) was in the past based on the theory of attributability (“Zurechenbarkeitstheorie”) whereas that of the majority of other States parties to the convention on refugees<sup>200</sup> is based on the theory of protection (“Schutztheorie”). Discussions have been taking place since 2000 about a possible change of practice in Switzerland and announcements have been made in that regard by the OFM and the Federal Council, which takes the view that such a change would not require a legal modification. During parliamentary debates conducted as part of the revision of the Asylum Act, that view has not been called into question. On that basis, the Swiss asylum review commission (Commission suisse de recours en matière d'asile (CRA, now the federal administrative tribunal), by a ruling of 8 June 2006, proceeded to a reversal of the case law by deciding to adopt the theory of protection in place of the theory of imputability. From now on the central question will be whether a person who is the victim of persecution by others can obtain protection from her State of origin of the State from which she came. In the area of gender-related persecution, this change has particular impact upon persons who come from a State that is incapable of providing protection or a State that has ceased to exist. Those persons will in future be recognized as refugees. The practice of OFM regarding gender-related persecution will evolve further in light of the new case law and will be refined while permitting better account to be taken of the situation of women victims of persecution by others. The relevance of the allegations in connection with asylum is reviewed individually in light of the recognized grounds of persecution. When persecution is related to gender, it is linked to the concept of “membership of a particular group”, which is one of the grounds for asylum set out in article 3 (1) of the Asylum Act. It is generally held that such a group cannot be defined by gender alone. In some special circumstances, a group of people defined according to certain criteria will, however, take on the characteristics of such a group, i.e. when on the basis of inherent characteristics it is clearly distinguished from other groups and by reason of those characteristics the group is, or fears becoming, a victim of persecution. Once membership in that group is established, the other requirements for recognition of refugee status must also be met: the allegations must be credible, the persecution must be targeted and take on a certain intensity, it must be attributable directly or indirectly to the State, and the option of internal flight must be non-existent. When the allegations of gender-related persecution are not relevant, the existence of possible obstacles to removal within the meaning of article 3 European Convention on Human Rights and [...sic...]

423. In practice, gender-related persecution has been considered relevant in the following cases: *sexual abuse* (when the acts are based on the reasons referred to in article 3 of the Asylum Act and/or when the State from which the person comes does not discharge its duty of protection); *homosexuality* (well-founded fear of persecution solely by reason of sexual orientation); *genital mutilation* (well-founded

<sup>199</sup> FF 2005 6943; This law is made subject to an optional referendum and subject to voting on 24 September 2006.

<sup>200</sup> Convention of 1951 concerning the status of refugees. SR O.142.30.

fear of a future sexual mutilation when the State provides no protection against such an act); *domestic violence, including forced marriage and honour crimes*; *discriminatory legislation* (when an attitude of opposition adopted or a refusal to respect a discriminatory law is treated as analogous to the concept of political opinion and leads to serious harm within the meaning of the law); and *persecution by association* (women persecuted because close relatives are persecuted on grounds that are valid for purposes of asylum).

424. Recently the decisional law regarding asylum (decision of the Commission for Asylum Review (Commission de recours en matière d'asile, CRA) of 9 October 2006) took a further step in the area of persecutions specific to women. By interpretation of the additional provision contained in article 3 (1) of the Asylum Act, it is now accepted that an act of persecution can be subsumed under refugee status without being linked to one of the particular grounds of persecution, since in the final analysis it is the persecutor alone who decides whom he persecutes, for what reasons, and how he defines, for example, the races or social groups whom he persecutes. Consequently, according to this decision, the decisive element for defining a persecution specific to women is based more on inherent characteristics, such as those set out in the constitutional provisions pertaining to discrimination. Simple discrimination is distinguishable from persecution under the asylum law by the intensity of the injury. A ground of persecution can therefore be recognized when persecution is based solely on gender, independently of whether and to what extent a woman together with other women constitutes a social group within the meaning of article 3 (1) of the Asylum Act. From that perspective, the persecution must attain a certain intensity and be linked, in a discriminatory manner, to the characteristics of the person persecuted, characteristics of which gender forms an integral part. In conclusion, the forms of persecution specific to women that can lead to the granting of refugee status comprise also discriminatory measures inflicted by reason of gender alone. In other words, refugee status can be recognized when it appears that the fact of being a woman, subjected for that reason to certain discriminations in her country of origin, leads to measures of persecution by reason of the behaviour that woman has adopted.

425. The statistics by gender for asylum seekers show that the rates of recognition of refugee status and of provisional admission are higher for women than for men. These figures tend to show that following the various changes made since 1998, the specificities related to the situation of women seeking asylum are taken into account in the asylum procedure. That process has not been completed and continues to evolve.<sup>201</sup>

#### **Art. 16 Issues arising from marriage and family relationships**

##### **1. Statistical trends**

426. According to statistics, marriage and the birth of the first children are taking place ever later in life. Average age of a first marriage and the birth of the first child are steadily rising, largely in parallel. In 2006, women were on average 28.7 years old at their first marriage and men were already over 30 (31.0). Women had their first child at an average age of 29.6 years.

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<sup>201</sup> The position of women under asylum policy – Report of the Federal Council following upon the Menétrey-Savary postulate == .3659.

427. In 2006, the number of civil marriages increased slightly by comparison with the previous year. There is, however, a general trend towards decline since 1992 which had interruptions only in 1999, 2002 and 2005. As a result of the increase in the number of divorces, marriages by divorced persons have been gaining by comparison with those of single people. In 2006, 34.3% of marriages were remarriages, i.e. one or both of the partners had been divorced or widowed. Since 1991 the number of remarriages has increased by 12 points. In 2006 there was a slight decline in the number of divorces by comparison with the previous year: with 52.7 divorces per 100 marriages. The divorce rate had fallen from 1999 to 2001, which can be attributed to the introduction of the new law on divorce.

428. The number of women who were not married at the time of the birth of their children has virtually doubled since 1990. In 2006, 11,300 women were unmarried at the time of the birth of their children. That same year, the percentage of births out of wedlock again increased by 1.7 points, reaching 15.4%. In this trend, the number of children born to single mothers increased more sharply than the number for divorced or widowed mothers.

## **2. Application of the new divorce law by the courts**

429. The Swiss Conference of Gender Equality Delegates published in information brochure on the new divorce law, which took effect in the year 2000. There was keen interest in this publication, which called the attention of women in the process of being divorced to the rights they enjoyed in the area of social insurance and pension funds.<sup>202</sup>

430. It has emerged that the new divorce law which took effect in 2000 already had to be revised with regard to certain details. The four-year period following separation after which one spouse could seek divorce against the will of the other was felt to be excessively long and irksome, especially in cases where the spousal relationship had been troubled for a long time. One parliamentary initiative submitted in 2001 by National Councillor Lili Nabholz requested that the four-year separation following which one spouse can unilaterally seek divorce according to articles 114 and 115 of the Civil Code be shortened to two years. That reduction of the separation period to two years responds to a need, although not encouraging the spouses to opt for divorce hastily and without consideration. The revision of the divorce law which introduced this amendment took effect in 2004. Several parliamentary questions seeking other revisions are still pending. They aim at making more flexible the mandatory waiting period that is today imposed on spouses even in cases of divorce by mutual consent, and address the question of offset of employee insurance benefits in case of divorce. Since the revision of the law on divorce, employee insurance assets are to be shared between the man and the woman. Under the old law, assets held with a pension fund (which often represent a couple's only substantial asset) did not have to be shared. The absence of such sharing often had disastrous consequences for the economic situation of divorced women at retirement age or in cases of invalidity, since many of them did not themselves have employee insurance assets, or did not have enough, because their family obligations had permitted them to pursue no gainful employment or only

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<sup>202</sup> Katerina Baumann / Margareta Lauterburg, Divorce, caisse de pension, AVS/AI – Ce qu'il vous faut savoir [Divorce, pension fund, AVSAI – What you need to know]. Berne (Swiss Conference of Gender Equality Delegates) 2004/2007.

part-time employment, and because they were disadvantaged by unequal pay. Moreover, courts were often overly sanguine or unrealistic when they attempted to assess the chances of a divorced woman rejoining the labour force and achieving financial independence.

431. A postulate of National Councillor Jutzet entrusted the Federal Council with requesting of practitioners (judges, lawyers and other competent persons) reports on their experiences in the application of the new divorce law and proceeding to an analysis of those reports. An initial step was to evaluate the application of the provisions of the new divorce law concerning offset of employee insurance (article 122 ff, Civil Code). That assessment reached the conclusion that the practice of the courts regarding offset of insurance was not satisfactory from the standpoint of gender equality. It takes the view, in particular, that the following points are problematic: first, the principle of sharing of insurance proceeds is most often interpreted not as a mandatory rule but as a discretionary one; second, there is no realistic criterion for determining the cut-off date in calculating the sharing of the terminal benefits or basis for setting an equitable compensation. According to article 124, such compensation is due when it is not possible to share the employee insurance benefits.<sup>203</sup>

432. In a second stage, the Federal Office of Justice asked 160 courts of first and second instance, 1510 members of the Swiss bar specializing in the issue and all the members of the association of mediators to convey their experiences with the new divorce law. The conclusions of the 950 replies received (36% from women and 64% from men) show that the specialists on the issue do not feel that a substantial revision of the law is necessary but agree that specific reforms are needed: the waiting period of two months provided for under article 111 of the Civil Code is generally considered as a pointless hiatus in divorce proceedings by mutual consent and, with regard to the offset of employee insurance benefits (article 122 of the Civil Code), the replies point to lacunae in the legal provisions and a need for clarification. The points found to be wanting relate in particular to the issue of determining the cut-off date for calculating the offset of employee insurance benefits (effective date of divorce) and the issue of the lack of explicit rules for deciding conflicts of law. Another gap is felt to be the fact that when an equitable amount of compensation is allocated in accordance with article 124 of the Civil Code, the judge does not have the option of addressing to the debtor a notice as provided by article 132 (1) of the Civil Code. The practitioners also express criticism of article 123 of the Civil Code: that article gives the spouses the possibility of waiving the right to offset and allows the judge to reject the sharing of employee insurance assets when such sharing is manifestly unfair for reasons relating to the liquidation of the matrimonial estate or the economic situation of the spouses after divorce. The practitioners would wish to see greater flexibility allowing for fuller consideration of specific cases, contrary to the school of thought described above, which seeks a more restrictive formulation of this provision.<sup>204</sup>

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<sup>203</sup> Katerina Baumann/ Margareta Lauterburg, Evaluation Vorsorgeausgleich: eine empirische Untersuchung an sieben Scheidungsgerichten, Bern 2004; version abrégée: [www.sozialstaat.ch/d/sicherheit/lauterburg.html](http://www.sozialstaat.ch/d/sicherheit/lauterburg.html).

<sup>204</sup> Département fédéral de justice et police, Rapport consécutif au sondage portant sur l'application du droit de divorce, MaiMai 2005... <http://www.ejpd.admin.ch/ejpd/fr/home/dokumentation/mi/2005/2005-07-01.html>.

433. Following these surveys, the Federal Council announced its readiness to examine more closely the points of the law susceptible to improvement and to propose necessary reforms to Parliament. It also confirmed this position in its reply to various parliamentary questions.

434. In June, 2007, the Federal Commission on Women's Issues published a study on the effects of the new divorce law, followed by recommendations. The study analyzes the decisions of the courts with respect to regulating maintenance after divorce in cases of deficit, financial support for close relatives, and the repercussions of the case law in the sphere of social assistance.<sup>205</sup>

### 3. Cantonal domicile rights and choice of family name

#### **CEDAW Recommendation 51**

*The Committee calls upon the State party to ensure that the legislation that regulates cantonal and communal domicile rights is brought into harmony with the Convention.*

#### **CEDAW Recommendation 14:**

*...The Committee urges the State party to accelerate efforts to review the reservations regularly with a view to withdrawing them and to indicate in its next periodic report, if possible and if still relevant, a timetable for their withdrawal.*

435. Switzerland lodged a reservation with respect to article 16 (1) (g) of CEDAW to take into account Swiss legal provisions regarding family name (see first and second report, para. 609 ff). As already mentioned in the first and second report, the parliamentary initiative of National Councillor Suzette Sandoz, which sought to ensure equality between women and men in regard to choice of family name, was rejected by Parliament in 2001. On 7 October 2004, the National Council accepted a new parliamentary initiative of National Councillor Susanne Leutenegger Oberholzer. Parliament will develop a new legal provision on the subject, but that provision is not yet available. Switzerland must therefore maintain, at least provisionally, the above-mentioned reservation. The proposed change in the law is adopted, the Federal Council will consider withdrawing this reservation.

436. The provision of marriage law providing that the wife –and she alone— acquires through marriage the cantonal and communal domicile rights of the husband, without losing the domicile rights she had theretofore, violates the principle of equality between the sexes according to the case law of the Swiss Federal Supreme Court.<sup>206</sup> This provision, however, has no effect on the nationality of the spouses and is in practice of limited scope, since today cantonal and communal domicile rights no longer have significant legal consequences. The Leutenegger Oberholzer parliamentary initiative should also resolve this disparity and place the spouses on equal footing.

<sup>205</sup> Elisabeth Freivogel, Contribution d'entretien après le divorce – soutien financier par des proches parents – aide sociale, Berne 2007.

<sup>206</sup> ATF 125 III 209 ff.; cf. 1<sup>er</sup> et 2<sup>e</sup> Rapport, n. 593.

#### 4. Forced marriages

437. Forced marriages are a phenomenon that is increasingly perceived in Switzerland as presenting a real problem. In order to better identify the scope of the problem, the SURGIR foundation conducted a survey with some fifty institutions and associations that have been faced with cases of forced marriage in several cantons. The organizations consulted had dealt with over four hundred cases, to which 140 new cases were added during the period of observation of the study (18 months).<sup>207</sup>

438. By a postulate submitted on 9 September 2005, the Commission on Political Institutions of the National Council asked the Federal Council to examine possibilities of criminal and civil sanctions for forced marriages and arranged marriages of persons domiciled in Switzerland. The report of the Federal Council on the subject was submitted on 14 November 2007.<sup>208</sup> Wishing to protect individuals against forced marriages, the Federal Council proposes different preventive and enforcement measures, of a legislative or other nature. Thus, it suggests including in the Civil Code and in the Ordinance on Civil Status a provision providing that free consent is essential to the validity of a marriage. It is also contemplated that forced marriage be considered an absolute ground for annulment. Finally, in international relations, the authorities will no longer recognize marriages of persons under age 18. Regarding penal provisions, the Federal Council is of the view that it is not necessary to create new rules, as forced marriages today already fall under article 181 of the Penal Code (coercion). This offense is already prosecuted ex officio and can be punished by a sentence of imprisonment of three years or a fine. Nevertheless, it remains to be seen whether forced marriages contracted abroad also fall under Swiss criminal law and whether they should be regulated in a manner analogous to acts of a sexual nature with children under age 14 committed abroad (article 5 (1) (b), Penal Code). The Federal Council is also considering the following steps: information campaigns addressed to migrant communities and awareness-raising campaigns addressed to persons who could be faced with forced marriages at work, information targeted to fiancé(e)s by civil registry offices during the procedure preparatory to marriage, information targeted to foreign men and women before or after their arrival in Switzerland, support for initiatives taken by immigrant organizations, improvement of cooperation between authorities (right to information and duty to inform) and with other networks of civil society; as required, conclusion of conventions on integration providing for acquisition of a national language by the spouse benefiting from family reunification, counselling and monitoring services, telephone hot lines, online counselling and other methods of help that are confidential and easily accessed, addressed to persons affected by or threatened with a forced marriage. Finally, the Federal Council recalls that the legal provisions of civil law, penal law and foreign legislation on foreigners should be applied and implemented in a consistent manner.<sup>209</sup>

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<sup>207</sup> <http://www.surgir.ch/data/surgir/content/document/188.pdf>.

<sup>208</sup> Press release of the Federal Department of Justice and Police and report of the Federal Council of 14/112007. [http://www.bj.admin.ch/bj/fr/home/dokumentationen/medieninformationen/2007/ref\\_2007-11-142.html](http://www.bj.admin.ch/bj/fr/home/dokumentationen/medieninformationen/2007/ref_2007-11-142.html).

<sup>209</sup> Office fédéral de la justice, press release, *Agir de manière conséquente contre les mariages forcés, Le Conseil fédéral présente un rapport [Acting consistently against forced marriages, the Federal Council presents a report]*. November, 2007, <http://www.news.admin.ch/message/index/html?lang=fr&msg-id-15632>.

**Art. 24 Necessary measures aimed at achieving full realization of the rights recognized in the Convention**

**1. Public information and implementation**

**CEDAW Recommendation 55**

*The Committee requests that the text of the present concluding comments be widely disseminated in Switzerland in all official languages so as to inform the public, in particular administrators, officials and politicians, of the measures taken to guarantee de jure and de facto equality between men and women and of the supplementary measures to be adopted in that area. The Committee also urges the State party to continue to give broad publicity to the Convention, its Optional Protocol, the general recommendations of the Committee, the Beijing Declaration and Platform for Action, and the results of the twenty-third special session of the General Assembly, entitled “Women 2000: gender equality, development and peace for the twenty-first century”, which was held in June 2000, particularly among women’s associations and human rights organizations.*

439. The Federal Council was apprised of the recommendations of the Committee in April, 2003 and transmitted them to the competent offices of the federal administration, recommending that they be implemented. The Federal Bureau for Gender Equality (BFEG) has informed the cantons, cantonal services concerned, and other concerned parties of the recommendations of the Committee. Moreover, those recommendations (as well as the first and second report of Switzerland) have since been available in electronic form, in French, German and English, on the internet sites of the Directorate of public international law and of BFEG. Thus, by comparison with other instances in which Switzerland has reporting obligations, the recommendations of the Committee have been quite actively conveyed to interested circles.

440. The BFEG contacted all departments to discuss implementation of the recommendations of the Committee. Since then, the general secretariat of Federal Department of Foreign Affairs has organized symposia twice a year within the department devoted to CEDAW and Switzerland’s Beijing Plan of Action. Representatives of administrative units of the Department who have responsibilities in this area are invited to the symposia

441. In the context of the Swiss Conference of Gender Equality Delegates, the BFEG regularly informs the competent cantonal and communal services regarding international affairs and the advancement of the implementation of CEDAW. The policy of certain cantons with regard to equality (for example, Basel-Country), refers expressly to the Beijing Plan of Action and uses CEDAW as a frame of reference.

442. Finally, the Confederation lends support to the coordination of women’s associations following and monitoring the implementation of the programme of action of the UN World Conference on Women in Beijing (“Coordination of Swiss NGOs post-Beijing”), providing it with annual aid of 20,000 Swiss francs for its public information work through publications and symposia.

443. Regarding other measures aimed at awareness-raising in the sphere of human rights and gender equality, see para. 160 ff above.

**2. Question of the ratification of the optional protocol to CEDAW (2000)**

**CEDAW Recommendation 52**

*The Committee urges the State party to ratify the Optional Protocol to the Convention.*

444. The Federal Council is of the view that the ratification of the optional protocol of CEDAW of 6 November 1999 would constitute an important contribution to the protection of women against all forms of discrimination. The consultation procedure concerning ratification of the optional protocol has been completed and the counting of the results is closed. On 29 November 2006, the Federal Council approved the report of the consultation and, subject to approval by the Federal Chambers, decided to ratify the optional protocol. The first council approved the ratification on 3 December 2007 by 102 against 63 votes. The second council will take a decision on ratification of the protocol during the year 2008.

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