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**Menschenrechte Schweiz MERS**

## **NGO Report**

**on the First and Second Periodic Report of Switzerland  
regarding the Implementation of the Convention  
on the Elimination of All Forms of Discrimination  
against Women (CEDAW)**

**Edited by  
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**Bern, December 2002**

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- Solidarité sans Frontières/Solidarity without Borders
- SSM (trade union of the media industry)

**The following organizations support the NGO Report:**

- VPOD (public sector trade union)
- Forum gegen Rassismus/Forum against Racism

With thanks to the Europe Institute of the University of Basel for financial support.

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### Translator's Note:

- English names of organizations on page 2 are not official titles. They are intended to inform the English readers on the areas of work of contributing Swiss NGOs; many are affiliated to international NGOs represented at UN headquarters and UN Offices at Geneva and Vienna.
- Footnotes are translated in part: some article titles have been abridged or appear in German; names of periodic and research publications appear in German.

Translation by Lee Weingarten with thanks to the Women's International League for Peace and Freedom for making available its office facilities. Editorial advice by Marguerite Wieser (International Alliance of Women/adf/svf)

## I. Preliminary Remarks

This commentary by Swiss NGOs on the First and Second Periodic Report of Switzerland regarding the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) does not claim to be a complete parallel commentary on the Swiss Report. Our concern has been to point out gaps in the official Report; that is, to highlight those areas of the Swiss legal position and practice where conformity with the Convention appears questionable and which in our opinion are not given sufficient attention in the Report.

## II. Commentary on Specific Articles

### Articles 2 to 4 CEDAW

#### **Equality under the law, prohibition of discrimination and equal status of women and men in the Swiss legal system: the principles – General remarks regarding the status of the prohibition of discrimination in Switzerland**

With the ratification of the CEDAW in 1997, as well as the ratification of the International Covenant on Economic, Social and Cultural Rights (CESCR) and the International Covenant on Civil and Political Rights (CCPR) in 1992, Switzerland has, on the international level, strengthened its obligation to end all forms of discrimination between women and men and to achieve gender equality. The obligation to provide de jure and de facto equality between women and men was established at the constitutional level in 1981, and is to be found in Article 8 of the Federal Constitution of 1999.

Nevertheless, the prevention of discrimination in Switzerland is not fully ensured in the legal sense.

- For instance, Switzerland has entered a reservation to Article 26 (full protection under the law) of the CCPR of 1966 regarding civil and political rights. Thus the effectiveness of the civil and political rights contained in article 26 of the CCPR has been limited, witness the still remaining unequal treatment of women (as well as aliens) with regard to legal provisions for social security.<sup>1</sup> The result of the reservation has been that today an effective appeal in the sense of article 2 para. 3 of CCPR is not possible, either at the national level (due to article 191 of the Federal Constitution, which states that federal law is to be followed by public authorities in application of the law; see para. 32 Report of Switzerland) or at the international level due to the various federal laws that are not compatible with the

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<sup>1</sup> The reservation reads: “The equality of all persons before the law and their right to equal protection without discrimination under the law are ensured only in connection with other rights contained in this Convention.” Switzerland has twice been requested by the Commission on Human Rights to withdraw this reservation.

Convention. To this day, there has been no discussion concerning the compatibility of this reservation with the recognition in principle of the prevention of discrimination through the ratification of the CEDAW. The Federal Tribunal and the federal authorities take the standpoint that the women's convention contains fundamental – but not juridical – guarantees (see para. 33 Country Report of Switzerland).

- Switzerland has neither ratified nor signed Protocol 12 of the European Convention on Human Rights (ECHR) of November 4, 2000, which would also guarantee a comprehensive and independent prohibition of discrimination.
- Switzerland recognizes the possibility of lodging complaints at the international level only very reservedly; neither the Optional CEDAW Protocol of October 6, 1999 nor the Optional Protocol of the CCPR have been accepted. Recognition of the procedure according to Article 14 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD) is presently under discussion in Swiss decision-making bodies. This however, met with skepticism in the first round of negotiations within the Commission of the Council of States. In November 2002 the Commission adopted it since “the recommendations of the CERD do not have a legally binding character.” With the exception of individual complaints submitted to the Committee against Torture, women in Switzerland (as well as men) can turn only to the European Court of Human Rights, and there can only challenge discriminatory decisions which fall under the rights guaranteed by the European Convention on Human Rights and its Additional Protocols (insofar as they have been ratified by Switzerland). Switzerland has, for example, not ratified the Additional Protocol of the ECHR of March 20, 1952<sup>2</sup> that guarantees a.o. the right to education and to the provision of free and secret voting, both of which can be significant in the light of gender-equality considerations.

To the present day, the Federal Council does not see its way clear to full recognition of the prohibition of discrimination. It has rejected a policy of advancement towards the signing and ratification of the Optional Protocols of 1999 to the CEDAW as well as the Additional Protocol No. 12 of the ECHR on the grounds that the implications of the prevention of discrimination are not foreseeable. This policy is all the more regrettable since the Federal Council has repeatedly emphasized that the strengthening of the protection of the human rights of the individual is one of the central demands of its international human rights policy, which as a rule it seeks to support at international as well as at regional levels.

### **Federal structure as a detriment to equality**

A further basic problem regarding the application and achievement of obligations resulting from the ratification of the CEDAW is to be found in the federal structure of Switzerland. Many areas (fiscal policy, welfare, education, public health, family and child protection, police monitoring of aliens, civil and criminal law<sup>3</sup> etc.) are within the competence of the can-

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<sup>2</sup> Signed by Switzerland on 5-19-1976.

<sup>3</sup> Here efforts are being made for standardization on a federal level.

tons, sometimes even the municipalities. Human rights obligations are – if at all – interpreted very differently and there can be significant variations in the implementation of legal provisions among the individual cantons and municipalities. It is difficult to judge whether the cantons and municipalities have actually taken the implementation of the Convention in hand systematically and efficiently. The illustrative examples from various cantons and/or municipalities listed in the Country Report of Switzerland are not adequate to give a definitive picture of actions taken or to be taken by those entities in order to achieve conformity with the Convention.

The Human Rights Association of Switzerland (MERS), the NGO-Coordination Post Beijing, as well as numerous other human rights organizations have, for many years, advocated a Federal Human Rights Commission as well as a national Ombudsperson – two institutions that, among other things, could monitor the conversion to legal equality and the upholding of human rights within a federal state. A discussion concerning a Human Rights Commission is underway; the idea of an Ombudsperson has been opposed mainly by the federal government for over thirty years.

### **Inadequate awareness of discrimination on the part of the Swiss authorities**

Article 8 paragraphs 2 and 3 of the Federal Constitution commits Switzerland to abstain from all forms of discriminatory behavior and concurrently to take positive actions for the achievement of gender equality. For the time being, however, Switzerland sees itself as committed to a relatively restrictive model of equality. That is to say, the commitment to equality is limited to a broadly defined prohibition of discrimination, which, especially in the administration of justice by the Federal Tribunal, has in the final analysis been comparable to unequal treatment. It has led to a certain formal equality between women and men with the result that men, especially, have used the prohibition to their advantage. The actual purpose of the prohibition, to protect disadvantaged groups of society from being degraded *de jure* and *de facto* and to provide positive measures for equal treatment, was – as is mentioned in the Swiss Country Report, para. 5 – only recognized and made explicit in a recent decision of the Federal Tribunal.<sup>4</sup>

Furthermore, the inadequate awareness of discrimination on the part of federal authorities is demonstrated by the current debate of the Law regarding Handicapped Persons, particularly the provision that a complaint made by a handicapped person may be refused on the grounds of excessive costs.

The equality provision of the Federal Constitution has thus far mainly had the effect of changing legal inequalities and furthering *de jure* equality between women and men. However, regulations in the social security legislation and the law governing marriage still provide evidence of gender discrimination. Both on paper and in practice legal provisions are still governed by an out-dated family model, in which the man is the principal “breadwinner”.<sup>5</sup>

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<sup>4</sup> BGE 126 II 377, E.6.

<sup>5</sup> see f.e.g. Katerina Baumann/Margareta Lauterburg “Knappes Geld – ungleich verteilt. Gleichstellungsdefizite in der Invalidenversicherung” (Limited Funds, Unevenly Allocated. Limits on Equality in Disability Insurance), Basel/Geneva/Munich 2001

Equality before the law has resulted for women in the loss of certain privileges (e.g. earlier retirement), without any essential improvements of their position, for instance, on the job market (see under Article 11 CEDAW). The fact that women continue to be disadvantaged in almost all areas of society is still either not realized or else continues to be accepted as “natural”. Indirect discrimination is nowadays hardly discussed. Here there is a lack of consciousness-raising, especially in the legislatures, and of a systematic examination of the gender specific results of new legal provisions, as illustrated by the examples cited below under Articles 5 and 11 (especially regarding the social security and tax laws).

At least at the federal level it has been possible through the Swiss Action Plan, “Follow-up to the Fourth World Conference on Women held in Beijing” (mentioned in para. 52 of the Country Report), to develop an instrument for improving the situation of women. We regret, however, that the Plan of Action can only make recommendations and does not envisage binding objectives. Working towards the equality of women and men has remained essentially the responsibility of the Offices for Equality, many of which struggle against downsizing or outright elimination.<sup>6</sup> A November 2002 report of the Federal Council on the Implementation of the Action Plan confirms that the difficulties of implementation are caused especially by the lack of finances and personnel. This is particularly true where new measures calling for increased spending are concerned. In its summary, the report states, rather soberly, that “the Action Plan – despite many efforts on behalf of equality – is seldom used as a working instrument. Measures are generally undertaken without direct reference to the Action Plan. Official offices and departments fail to develop implementation strategies regarding the Action Plan. Therefore the Action Plan has not served as a means of consciousness-raising for those who are not especially well versed in matters relative to equality.”<sup>7</sup>

It would be most welcome if Switzerland were to commit itself to a binding policy of equality between women and men. In order that gender equality may become the requirement in all policy areas, including those traditionally considered as “gender neutral” (e.g. State budgetary questions, military questions), we consider it essential that binding gender mainstreaming instruments be anchored throughout Swiss government policy.

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<sup>6</sup> A current example of the limited recognition of the significance of the Office of Equality is given by the Burn Motion, which called for the closing of the specialized office in Bern. An in-depth description of the results of limited means for the implementation of the Action Plan is to be found in the Evaluation Report of the Federal government, EBG entitled “Bericht über die Umsetzung des Aktionsplans der Schweiz ‘Gleichstellung von Frau und Mann’” (Report on Implementation of the Swiss Action Plan ‘Equality of Women and Men.’), Bern 2002

<sup>7</sup> Ibid, 2002, p. 3,4

## **Temporary special measures (Article 4 CEDAW)**

Various special measures for the advancement of women, especially in the area of education, were adopted at the Federal level in the past few years (see Article 10). The Country Report, in para. 84, however, gives an overly optimistic picture of women's participation, later corrected in para. 187 and the following pages, especially para. 192 (Articles 7 and 8 CEDAW). Suggested special measures have been regularly turned down as not being compatible with the equality provision of Article 8 of the Federal Constitution. Although quotas have a long tradition in Switzerland, especially for guaranteeing adequate representation of the various language groups in the legislative, executive and judicial branches of government, quotas for women are generally met with refusal. The Country Report fails to clarify in how far the cantons and municipalities are effectively using quotas and other positive special measures for the advancement of women (particularly for the advancement of especially vulnerable groups of women, e.g. foreign women, handicapped women or single women and mothers). In our opinion, a good deal more should be done (see also commentary on Article 7 and 8 CEDAW).

## **Prevention of discrimination against women in special circumstances (paras 85 pp; see also paras 570 pp, esp. paras 579 pp. Country Report).**

Given the fact that a third of the population of Switzerland consists of women immigrants and the descendants of immigrants – one quarter to be counted among the second and third generation<sup>8</sup> – we would have hoped for having more consideration given to the situation of foreign women and girls. The laws concerning foreigners, as will be outlined briefly below, contain various dangers of discriminatory treatment affecting women especially.

Until recently, Swiss immigrant policy was based on a single Law on Aliens and the so-called “three circles model” (Drei-Kreise-Modell). Inherent in this concept was a graduated discrimination and disparagement of non-Swiss persons according to geographic background. European Union (EU) citizens were disadvantaged vis à vis Swiss citizens, but they ranked higher than citizens of non-EU countries. This immigration policy has been changed with the ratification of a EU convention on the free passage of persons in June 2002. The “three circles model” has been dropped in favor of a binary system – two legal codes for aliens exist side by side:

1. EU rights are based on a wide-ranging principle of equality between EU-citizens and Swiss citizens.
2. The Law on Aliens for non-EU citizens is based on a clear 2-class system in which patriarchal structures come into play.

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<sup>8</sup> Federal Office for Statistics, SAKE-News, Nr. 10/2002 (September 2002)



Non-EU citizens constitute one-third of the foreign population. They are a discriminated minority, some living in particularly disadvantageous conditions due to low incomes. The law currently under revision with regard to non-EU citizens (AuG) will ease immigration policies for highly-qualified workers such as executive personnel and technicians, but will at the same time massively raise the hurdles for other would-be immigrants. Prolongation of residence permits, geographical mobility and residence rights for family members are dependent on salary scales. Only the well-paid have rights. Non-EU citizens holding short-term permits must leave Switzerland after two years for at least a year's interval.

For women, these new entry criteria constitute an indirect discrimination. The one-year interval required by holders of short-term permits, as well as the career conditions mentioned above, discriminate especially against women with children. Non-EU women allowed to enter Switzerland legally will mainly be women without children and the wives of highly qualified male workers. Numerous female immigrants from non-EU States will remain in the country illegally when their short-term permits expire, greatly increasing the risk of exploitation and sexual abuse (see Article 6).

Immigrant women from non-EU States without long-term residence permits have to abide by strict limitations in order not to lose their permit. They are strait-jacketed, their existence is tightly bound to one, unchangeable objective. An "individual right of residence" for alien wives, long advocated by women's and immigrant's organizations, as mentioned in para. 580, was not included in the draft of the new Law on Aliens (AuG). The current discussion pertains only to the possibility of waiving the denial or the non-prolongation of the residence permit in hardship cases. Whether a hardship obtains, however, is decided by the cantonal authorities.

Immigrant women as well as Swiss women married to aliens from non-EU States are forced to adhere to traditional life styles and roles. Residence permits are extended only for married couples living in a joint household, only for marriages concluded in civil ceremonies and only for heterosexual partnerships. The draft of the new Law on Aliens (AuG) contains even tighter restrictions concerning marriages of convenience in that an alien wife, regardless of whether she is married to a Swiss or to a foreigner, must live with him for at least five years even under the most adverse conditions. If she fails to do so, she must convince the police that she has solid reasons and that the marriage continues. This obliges immigrant wives to allow the public authorities at any time to check on their private lives. This is especially crass with regard to marriage: in future civil authorities will be considered competent to "...refuse to perform a marriage when it has been determined that one of the parties clearly does not wish to live as a couple,..." (Message of 3-8-2002, p. 47 relative to the AuG). New also in the AuG draft is that whoever enters into or arranges a sham marriage is subject to imprisonment or a fine of up to CHF 20,000.-. The AuG draft is characterized by systematic mistrust against both female and male immigrants from non-EU countries, especially where their private lives are concerned. The State intends to build up its investigations in this area. In the area of commercial sex, on the other hand, the government does not wish to forego the presence of women from non-EU countries. The Swiss Special Regulation for Nightclub Entertainers – in our opinion a massive and embarrassing example of discrimination against women (see para. 572, Country Report) – is to be maintained in the new Law on Aliens. This despite the fact that some women in the Parliament, immigrant organizations and other

NGOs have lobbied for putting night-club entertainers on an equal footing with other foreign workers. The government is afraid of women entering Switzerland to work as nightclub entertainers in order to later find other employment.<sup>9</sup> Nightclub and cabaret entertainers are, however, prohibited from accepting other types of employment. The Federal Council thus merely recommends intensified supervision, improved advisory services and – under the heading of “exceptions to licensing regulations” (hardship case approval) – the provision of un-specified protection in cases of exploitation of persons working in vulnerable professions. The Special Regulation for Nightclub Entertainers frequently leads to residence irregularities and situations infringing on human rights (see also the commentary in this report regarding paras 148–151.)

### **The Struggle against Violence against Women (paras 87 pp. Country Report)**

The Offices for Equality in the cantons and municipalities as well as the Federal Office for Equality have made considerable efforts in the last years with regard to consciousness-raising concerning the problems of violence against women and have seen to it that the theme of violence, especially violence in the immediate community, is kept on the agenda.

### **Violence against women in marriage and in partner-relationships**

Many recent studies made in the framework of a National Research Program provide the following evidence<sup>10</sup>: Couple relationships in Switzerland are often far from being a place of trust, love and security; violence is often inherent in the daily life of a couple; women face a considerably higher risk of becoming the victim of violence inside an intimate relationship than outside; society and the State are largely silent on the issue of violence against women in the private sphere. Authorities seldom intervene to protect women who have been subjected to violence. Police intervention as a rule concentrates on immediate measures to limit injury. Measures to bring the offender to justice are seldom taken. Three out of four cases concerning domestic violence are dismissed. The lack of effective sanctions against offenders frequently furthers recidivism and the notion of household violence as a minor affair.

### **Violence against foreign women**

Here we also see gaps, especially in connection with the protection of foreign women against violence and exploitation. The above-mentioned legal regulations concerning foreigners discriminate against foreign women indirectly, as these are forced to remain with their husband even in a situation fraught with violence; otherwise they risk being expelled from Switzerland. The residence category “living with spouse” constitutes a built-in dependence of the foreign husband and or wife with his or her partner (further to this, see commentary under Article 6).

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<sup>9</sup> Message of the Federal Council regarding the AuG, 3–8–2002

<sup>10</sup> NFP 40, Bulletin 6, “Gewalt im Alltag und organisierte Kriminalität” (Violence in Daily Life and Organized Crime)

### **Violence against women as a right to asylum (paras 96–100, para. 582 Country Report)**

During the last total revision of the Asylum Law, effective since October 1999, the recognition that women had specific reasons for fleeing was a contentious issue. A broad spectrum of women's organizations actively supported the concept that gender-based persecution be accepted as ground for the right to asylum. Conservative parliamentarians and the Federal Justice and Police Department (EJPD) were opposed to this provision. The Federal Council was also totally opposed to the acceptance of the gender factor as a motive for persecution and as a refugee definition in Article 3. The matter was eventually resolved as follows: in the article defining a refugee (Art. 3), reasons for taking refuge specific to women are mentioned only in para. 2, where the types of persecution are indicated ("Reasons for flight specific to women are to be taken into consideration"), not, however, in para. 1, where the motives for persecution are defined. This compromise solution is contradictory, given that reasons for fleeing are related to the motive as well as the method of persecution.

The then Chairman of the EJPD, Federal Councillor A. Koller, pointed out that the above judicial formulation would hardly change anything in practice for refugee women. This, however, had not been the intention of the women who had advocated the changes. In practice, despite the legal embodiment of their specific reasons for flight, the definition of the right of asylum where women are concerned remains highly unsatisfactory.

- Officials dealing with refugees tend to characterize violence, including sexual assaults endured by refugee women as occurrences that are part of a woman's life and that women simply have to put up with them.
- The Federal Office for Refugees argues that women who flee from a threat of violence made by a "private third party" (for instance, threats on their lives made by a husband), may have acceptable grounds for flight but these are within the context of a personal relationship, and are a daily experience of innumerable women throughout the world. The Office persists in viewing "household violence" as private, without relevance for the granting of the right of asylum. Possibilities for protection are hardly considered.
- The Federal Office for Refugees is aware that a traumatized individual generally tries to avoid everything reminding her or him directly or indirectly of the traumatizing experience. However, in practice this is frequently ignored. It often happens that women who have been subjected to rape do not succeed in breaking through this suppression mechanism for some time. Delayed accounts of experienced violence are then disqualified as implausible.
- Medical reports and certificates are often the only pieces of evidence that refugee women who have been raped can produce. But the assessments contained in medical reports on cases of torture and rape are often rejected as unimportant by asylum-granting authorities, even when physical and psychological signs of such experiences would lead to the same conclusions. The Federal Office for Refugees has thus far refused to consult with competent and critical medical examiners in connection with such medical reports.
- Despite the directives of Asyl 22.1.AH 7, the Federal Office for Refugees has in most cases refused to make use of competent women in interviews where indications of gender-specific violence are evident. Reports from women refugees who have experienced sexual vio-

lence often contain inconsistencies that, read without taking into consideration psychological knowledge regarding post-traumatic stress, are frequently interpreted as implausible. Especially due to the acceleration of the asylum process and the interviews leading to refusals, insufficient attention is paid to gender-specific reasons for asylum as they pertain to women.

### **Recommendations**

- Ratification of the Optional Protocol of the Convention on the Elimination of All Forms of Discrimination against Women
- Withdrawal of the reservation to Article 26 of the International Convention on Civil and Political Rights
- Ratification of the Additional Protocol of the European Convention on Human Rights
- Temporary special measures are to be taken at the cantonal and municipal levels to bring about de facto equality between women and men. Gender-mainstreaming should be widely used as a strategy towards this aim.
- The current revision of the Law on Aliens must emphasize much more the discriminatory effects of certain regulations on women and girls. Women from non-EU States especially need to be assured of guaranteed prohibition of discrimination.
- Women- or gender-specific reasons for seeking asylum need to be recognized in a manner so as to be enforceable in casework decisions.

### **Article 5 CEDAW: Avoidance and Modification of Role Stereotypes**

Stereotyped thinking about women and men runs all through the Swiss legal system. Juridical foundations mirror and fortify current attitudes towards gender-roles that daily confront women and men. Three examples will illustrate this: the taxation system, encouraging the single-income family; the judicial practice in divorce, which ignores de facto inequality, and the image of women in the Swiss media.

#### **The tax systems as a role strengthening factor (para. 128 Country Report)**

The present Swiss tax system has a role-strengthening effect. The principle of taxing families generally results in single-income couples being favored over couples with two incomes. This, in practice, encourages the maintenance of the classic single-earner marriage. The Federal Parliament is currently discussing a revision of the federal tax structure.<sup>11</sup> What seems to be emerging is that – instead of the recommended taxation on an individual basis – married couples will continue to be taxed together, even though there has been repeated

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<sup>11</sup> Federal Law of December 14, 1990 concerning the direct Federal Tax, SR 642.11, AS 1991 1184

criticism concerning the role-strengthening factor of such a development.<sup>12</sup> In addition, deductions for child-care costs are as a rule acceptable. Considering current consultations, we must assume that in this area Switzerland is not taking seriously its commitment to avoid stereotyping of roles.

### **Marriage law (para. 129 Country Report)**

De facto equality in the area of the family has hardly been realized (comp. para. 334). As a result, divorced women are sometimes confronted with a higher risk of poverty. When the divorce court does not take account of the de facto inequality, but instead relies on the pro forma equality between men and women as postulated in the Marriage Law, the woman is expected to contribute to her own livelihood as well as to the expenses of the children. In view of her discrimination on the job market (lack of child care facilities, low salaries, etc.), she can hardly meet this expectation (comp. commentary to Article 16). Thus single mothers belong to those members of society most touched by poverty. Single fathers as a rule are in a financially better position.<sup>13</sup>

### **The media (para. 133 Country Report)**

The woman's image in the media has hardly improved. On the contrary: in the last years it has returned to the old model of victimization and downplaying of women, as well as returning to the stereotyped attitudes of their place in home and family. According to a study women appear in the media four times less frequently than men; also, they appear more often in photos than in texts.<sup>14</sup> Unfortunately, no effective measures against pornography and violence against women in the media have found their way into proposal for a new Radio and Television Law. The Commission on Integrity in Advertising is more than ever a toothless club with little resonance, possibly a result of its legal mandate.

Women are under-represented in the journalistic profession, especially at the leadership level. At the educational level, male instructors dominate now as before; the gender-perspective in the initiation to the communications sciences is, with few exceptions, non-existent. According to the trade unions SSM and comedia, there is no one in the field responsible for women's and equality questions, as they were, with few exceptions, let go by the Swiss Radio and Television Corporation (SRG). We doubt that sufficient efforts are being made by the government to effect the needed improvements in the SRG, the media, among media workers and in learning centers.

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<sup>12</sup> see Neue Zürcher Zeitung NZZ of 9–18–2002, pp. 13 and 17, compare also Prof. Markus Reich, "Neuordnung der Familienbesteuerung" (A New Order for Taxing Families), Jusletter, 9–17–2001

<sup>13</sup> Tom Notz, "Alleinerziehende Väter: Welche Unterstützung erhalten alleinerziehende Väter von ihrem sozialen Netzwerk?" (Single Fathers: What support can a single father expect from his social network?) Thesis, Basel 1997

<sup>14</sup> Silvie Durrer, "La presse romande est-elle sexiste? Oui!" (The Press in French-speaking Switzerland – Is it Sexist? Yes!) Bulletin of the Association suisse de linguistique appliquée, nr. 72. "Sprachliche Gleichbehandlung in der Schweiz: Bilanz und Perspektiven" (Equality in language in Switzerland: Balance and Perspectives), Autumn 2000, pp. 107–123

## **Recommendations**

- In the Federal Tax Revision, give preference to individual over joint taxation
- In divorce cases, the de facto disadvantages of women in the job market must be taken into account.
- In order to overcome stereotyped gender-roles in the media, women should be given increased opportunities in this field and in training for media work, especially at the executive level.

## **Article 6 CEDAW: Elimination of Traffic in Women and the Exploitation of Prostitution of Women**

Switzerland has no effective protection against traffic in women. Therefore one of the most abominable human rights abuses largely occurs with impunity. The creation of a pertinent legal basis is only in the beginning stages. The police and penal authorities, therefore, use considerable discretion in their assessment as they deal with the women concerned. Restraints are called for to allow these women to obtain their rights as victims rather than being criminalized. Nightclub entertainers as well find themselves in a precarious situation regarding the right to remain in the country. The only effective way to stop their exploitation would be to put them on an equal footing with other workers as well as giving them the right to change their profession.

### **Prostitution and traffic in women (paras 135–138 Country Report)**

Switzerland lacks a legal basis for penalizing trafficking in women, and the practices of police and penal authorities render the arrest of the traffickers more difficult. Victims of trafficking are often accused of “illegal residence” or “illegal work” and are expelled from the country instead of being given the protection and security enabling them to give evidence against those responsible for their plight and to claim their rights as victims. Where court proceedings do take place, the woman concerned is immediately sent back after the court hearing to her country of origin without either means or protection. The case may later be dismissed or result in acquittal because the main witness is no longer able to take part in the proceeding. Under these conditions, the women concerned dare not cooperate with the authorities and give evidence against traffickers, because they would put themselves at risk, as well as their families in their homelands. The repressive practice against victims makes it impossible to effectively combat the offense of trafficking in women and to bring the perpetrators to justice.

Trafficking in women is not confined to the sphere of prostitution; it also occurs in areas such as marriage, or household and maintenance work. The penal provisions now in force concerning trafficking in persons should be revised so as to mirror current realities and to penalize every form of trafficking. A step in the direction of a new definition of such traf-

ficking was already taken by Switzerland in its adherence in April 2002 to the Additional Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which complements the UN Convention against Transnational Organized Crime (para. 153 of the Country Report). National law must now be adapted as soon as possible to the international convention. In this connection, “milieu” criminality referred to in para. 137 must not be seen as identical to organized crime.<sup>15</sup>

Trafficking in women is closely connected with Switzerland’s restrictive immigration policy allowing immigration of women from non-EU countries only for marriage or sex work. The report of the Working Group on Traffic in Persons of the Federal Justice and Police Department (autumn 2001) has also recognized this. This working group produced some sensible and important suggestions for improvement, but these have been partly or entirely rejected by the Federal Council in its Message concerning the Law on Aliens – especially with respect to residence rights. However, precarious or insufficient residence possibilities often lead to illegality and dependence, an ideal breeding ground for traffic in women.

#### **Legal and police measures (paras 139–145 Country Report)**

The experience of the Women’s Information Center (FIZ), nationally the main source of expertise in matters of trafficking in women in Switzerland, shows clearly that in the struggle against this offense the civil, political, economic, cultural and social rights of women as persons, workers and immigrants must be guaranteed. Measures are required which guarantee basic legal protection as well as the possibility of compensation. Here one must take into consideration:

- Residence guarantee before, during and after court procedures
- Creating conditions that enable the women concerned – regardless of their status and their employment – to take legal action against dealers
- Protection against intimidation or reprisals on the part of dealers and others responsible before, during and after court procedures, possibility of protection through change of identity
- Access to health care, secure accommodation, financial support and/or possibility of access to the labor market

Present police and juridical authorities criminalize the victims. In the experience of the FIZ there has been no case in which a woman subjected to trafficking has been recognized by the police as a hardship case and who has on that basis been granted a residence permit (comp.

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<sup>15</sup> The term ‘organized crime’ results in the perpetrators being thought of as part of mafia structures. In the experience of the FIZ (Women’s Information Center), women are often subjected to trafficking by single dealers. By putting trafficking in women on a par with organized crime, these loosely organized perpetrators are overlooked and therefore seldom pursued as such. This makes it more difficult for police and legal authorities to get hold of amalgamation profiteers from trafficking in women.

para. 144 CR). Normally such women, if they have no residence permit, are at most tolerated by the authorities, without their residence being regularized.<sup>16</sup> Measures taken against trafficking in women must respect the rights of the affected women.

### **Protection of foreign nightclub entertainers (paras 148–151 Country Report)**

Legal regulations are, among other factors, responsible for the force and violence that characterize the working conditions of nightclub entertainers. The status of these women, who receive the residence permit “L”, means that they are heavily dependent on the owners of the cabarets and nightclubs. Their employment is on a monthly basis; the police permit and place of residence are tied to their employment. The women have no right to family reunion, they are obliged to pay unemployment insurance (ALV) but have no right to compensation in case of unemployment, and their short-term residence permit is good for a maximum of eight months, with no possibility of changing to another kind of employment. Additional problematical aspects are prostitution and the stimulation of alcohol consumption among clients (comp. para. 138). NGOs and women parliamentarians have long lobbied in favor of eliminating this discrimination and of strengthening of the position of the affected women.<sup>17</sup> These endeavors for improvement of the situation have up until now not been fruitful.

Finally, it should be noted that the information provided by the Federal Office on the Equality of Women and Men (EBG) is substantial but not adequate. Information booklets should be given to women coming into Switzerland as nightclub entertainers when they pick up their entry visas at the Swiss Consulates in their country of origin (para. 150). However, when they visit the Women’s Information Center (FIZ), many of these women state that they are seeing the booklet for the first time. They often come from Romania and Ukraine (end of 2001: 699 out of 1,778). They do not know enough Russian or English to understand the contents, which are available in German, French, English, Thai, Russian, Spanish and Portuguese.

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<sup>16</sup> The new Law on Aliens (AuG) supposedly offers an improvement. It provides for a residence arrangement for victims of trafficking – without the right to legal recourse, so that these women are again at the mercy of police discretion. Furthermore, the conditions for such an arrangement are so restrictively formulated, that this regulation will hardly be used. According to the report accompanying the new law, women who came into the country through the help of a trafficker are explicitly excluded. This restriction turns the entire decision into a paper tiger, because the women in question, who enter Switzerland without the proper permit are almost always dependent on a trafficker. The procurers are themselves traffickers or they make an arrangement with a trafficker. The refusal to recognize women as victims of trafficking therefore causes them to be indirectly punished for violation of residence rights.

<sup>17</sup> The long-standing demand for the right to change employment or type of employment is formulated, for example, in a motion made the 6–13–1996 by parliamentarian Ruth-Gaby Vermot-Mangold: Expansion of Work Permit for Foreign Dancers. It seeks, a.o. to prevent women from Africa, Asia, Latin American and Eastern Europe from being restricted to sex work. Also worth noting is the petition of the FIZ for the implementation of a protection program for victims of trafficking in woman which served as the basis for the above motion of Ruth-Gaby Vermot.



**Recommendations:**

- of a legal basis for the prevention of trafficking in women
- Practices of police and penal authorities should be curbed so as to put an end to the criminalizing of women who have been the subject of trafficking and in order that their rights are taken into account.
- Nightclub entertainers should be given a normal short-term residence permit and they should be allowed to change their profession.

**Articles 7 and 8 CEDAW: Participation in Political and Public Life**

Equal participation of women in public life, in political office and in the administration is far from being achieved. Statistics show that the proportion of women in recent years has improved slightly (see paras 158 pp. Country Report). The proportion of women in the National Council was 23.5% in 1999 (1991: 17.5%), in the Council of States 19.5% (1991: 8.7%); in cantonal parliaments on average 24% (1993: 19.3%), in cantonal governments 20% (1995: 11%). In the juridical branch women make up 21% (in the Federal Tribunal only 18%). Shocking is the under-representation of women in the administration: higher salaried positions in the federal administration are held by only 6.5% women (1996: 5.2%, see paras 172 pp.). The critical mass of 30–35%, which would be the indication of a lasting effect, has not been reached in any of the areas mentioned. Equal possibilities of political participation would therefore seem to be the absolute prerequisite to advance to a general process of equality.

Efforts to introduce generally binding mechanisms for an active promotion of women have usually been unsuccessful. The quota initiative at the federal level mentioned in the Country Report (para. 46) was rejected by popular vote; similar efforts at the cantonal and municipal levels met the same fate. A proposal by the Federal Council to introduce quotas of 30% into party lists during three successive elections was voted down by the Parliament. Only recently the Federal Parliament turned down a minimal proposal for an awareness-raising campaign prior to federal elections. Contrary to the Country Report, which in para. 188 considered that gender quotas are being applied, we see few official efforts to help women gain their rights in public life.<sup>18</sup>

**Recommendation**

- Switzerland should strengthen and implement its measures to promote a balanced participation of both sexes in all relevant decision-making bodies.

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<sup>18</sup> Except for the awareness-raising and educational work being done on the part of the federal and cantonal Offices of Equality as well as the Federal Commission on Women.

## **Article 10 CEDAW: Elimination of Discrimination in Education**

The Swiss educational system does not contain special provisions for prohibition of gender-based discrimination. Reality, however, shows that the educational environment continues to be filled with structures detrimental to women. This can be seen in incentive measures taken in the professional education sector but also at the university level. The foreign degrees of women immigrants should be recognized. Single-parent families need to be supported rather than being disadvantaged when distributions of study grants and other forms of educational assistance are made. Sexual education in the schools remains in a dire state.

### **Elementary schools (paras 249 pp. Country Report)**

In some cantons, the changeover from elementary schools to the so-called “partially autonomous school” means a new de facto discrimination against women. In the Canton of Zurich, for example, the former elementary schools had no hierarchical structure; members of the teaching staff would alternately take on the temporary function of principal. This was not considered to be of professional advancement. The Partially Autonomous Schools, however, have a formal school leadership with special competence. According to an evaluation made in March 2002 in the traditional schools, 51% of the principals were women, whereas in the new-type schools only 34.1% were responsible for running the school.<sup>19</sup>

On the basis of a study carried out in the Canton of Zurich girls and boys at the elementary school level continue to behave according to gender stereotypes.<sup>20</sup> Therefore, we urge the cantons as well as the Swiss Conference of Cantonal Directors of Public Education to put increased emphasis on their most welcome commitment to promote gender-equality between girls and boys in educational materials, in teaching, in the development of schools, as well as in vocational and professional training.

### **Access to vocational training (paras 262–265 Country Report)**

In order to expand the limited number of apprenticeships the federal government approved two special credits in support of motivation and information campaigns of vocational opportunities for disadvantaged target groups (Apprenticeship Decisions I and II). Equality was explicitly mentioned. An evaluation shows that, in fact, young women did not receive their fair share in the implementation. Out of 405 approved projects only 47 were for training offers, marketing apprenticeships, awareness-raising projects for vocational choices for

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<sup>19</sup> Heinz Rhyh, Thomas Widmer, Markus Roos, Bruno Nideröst, “Zuständigkeiten und Ressourcen in Zürcher Volksschulen mit und ohne Teilautonomie” (Competance and Resources in Zurich Elementary Schools with and without Partial Autonomy), Kompetenzzentrum für Bildungsevaluation und Leistungsmessung and Institut für Politikwissenschaft, University of Zurich 2002

<sup>20</sup> Fachstelle für Gleichberechtigungsfragen des Kantons Zürich, “Gleichwertige Förderung von Mädchen und Knaben in der Volksschule im Kanton Zürich.” (Equal Opportunities for Girls and Boys in the Elementary Schools of the Canton of Zurich), mandated by the Education Council of the Canton of Zurich, Zurich 2001

women. From the total of funds promised by the federal government and the cantons in amount of 86 million francs, a mere 10 million were allocated for women.<sup>21</sup> On the whole we very much welcome the supportive funds offered within the framework of the Apprenticeship Decision II and the related measures regarding gender equality. However, we regret that in the end such a limited amount was directed towards the promotion of gender equality. At the same time we wonder whether the sustainability of gender-oriented projects is assured once project experience and results are evaluated and translated into every-day life in school and classroom. The Federal Office for Vocational Training and Technology and the cantonal vocational training departments are urged to create instruments for the institutionalization of gender mainstreaming in professional life (vocational counseling, schools, on the job). It follows that special attention should be given to including gender-competence in the training of instructors in vocational schools as well as for persons responsible for training apprentices.

With regard to the possibility of completing vocational training later in life, as outlined in Article 41 para. 1 of the Law on Vocational Training, a study made by the Institute for Vocational and Continuing Training Research (ECAP) in 1995 shows that in actual fact a considerable number of immigrant women having only completed secondary school remain excluded.<sup>22</sup>

### **Access to advanced technical schools and universities (paras 266–272 Country Report)**

The federal government needs to energetically promote an awareness of questions of equality and the raising of the proportion of women in advanced technical schools, with the goal of eliminating the massive under-representation of women in technical and computer science training as well as overcoming impediments to the optimum use of available resources due to gender stereotyping. To this end a Swiss network of equal opportunities offices has been built up in advanced technical schools. A variety of projects for the promotion of equality of opportunity are underway. The efforts of the federal government should, however, be strengthened, in order to under gird these still growing structures and the awareness-raising work. The present amount of 10 million francs foreseen for this purpose should be raised for the coming period. Favorable conditions for women are central to overcoming their under-representation in the fields of technology, computer sciences and economics.<sup>23</sup>

Immigrant women find it especially difficult to find entry to advanced technical schools and universities despite the initiation of some apprenticeship projects for girls and young

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<sup>21</sup> In projects in the grant area c the following measures for the promotion of women's equality were pursued: single-sex educational offers (computer classes for girls, introductory weeks, special courses in technical occupations); production and circulation of information and motivation materials, of vocational choice and instruction materials; coaching and tutoring materials; networking, advisory and information measures for project directors, teaching staff, parents; positioning the goal "equality" in all areas of the Apprenticeship Decision II according to the basics of gender mainstreaming.

<sup>22</sup> Luciana Rovis, "Nachholen der Lehrabschlussprüfung für ausländische Arbeitnehmerinnen gemäss Art. 41 Abs. 1 des Berufsbildungsgesetzes", ECAP, Basel 1995

<sup>23</sup> Message Education, Investigation, Technology

women, including immigrant women with residence permits. This, however, is of no help to the large number of women with advanced professional training whose residence situation remains unstable (asylum-seekers, persons admitted temporarily or without papers). Many recognized refugees have a university degree that is not accepted in Switzerland. Many have years of professional experience behind them. They are forced to repeat parts of Swiss secondary education and professional training. The hurdles are extraordinarily high, expensive and vary significantly from canton to canton. Thus, medical doctors, judges and other highly qualified women work in the maintenance or restaurant branches. With such restrictions in the admission of immigrant women to highly qualified professions and professional training, Switzerland is wasting a valuable potential. The acceptance of foreign diplomas and university degrees held by non-EU nationals should be significantly facilitated.

A further frequent hurdle for women wishing to enter institutions of advanced study is the lack of childcare. With the Federal Program for Equal Opportunities (para. 269), the government has made available 4,8 million francs for the period 2000–2003 for the improvement of childcare facilities. We support the efforts to prolong this program for the years 2004–2007. This and further measures to make possible external childcare facilities are an urgent necessity, as shown by a study proving that the capacities of presently existing university nurseries have reached their limit.<sup>24</sup> For example, the care center of the University of Bern with a total student body of 10,000 has only 45 places and these are to be split between university staff and students.

We also note a lack of women on the university staff. The higher one goes in the hierarchy, the lower is the proportion of women. A recent study of the Swiss Foundation for Scientific Research came to the conclusion that women and university graduates from lower segments of society in general have less opportunity for an academic career.<sup>25</sup> Despite the measures of the Federal Program Equal Opportunities 2000–2003, aiming for a doubling of the number of women professors from 7% to 15% by the year 2006, women continue to be massively under-represented in tenured and non-tenured positions. We welcome the extension of the Federal Program and we also strongly recommend the continuation of the Federal Program for Promotion of Young Academics. Both strive for the goal of a more balanced representation of women and men in institutions of higher learning. In this respect a larger proportion of women in bodies concerned with educational and academic policies is vital.<sup>26</sup>

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<sup>24</sup> The study of the Commission d'Egalité of the Verein Schweizer Studierender (Comm. for Equality of National Union of Students in Switzerland) is to be found at [www.vss-unes.ch](http://www.vss-unes.ch)

<sup>25</sup> Regula J. Leemann, "Chancenungleichheiten im Wissenschaftssystem" (Unequal Opportunity in the Academic System), SNF, Bern 2002

<sup>26</sup> For example in the Rektorenkonferenz (Rectors Conf.) and the Schweizerische Universitätskonferenz (Swiss University Conf.)

### **Gender studies in Switzerland (para. 278 Country Report)**

In the granting of funds, e.g. for national research priorities, the social sciences and humanities come out on the short end. As women are in general involved in these areas, the scantier funding and prestige imply a further disadvantage. This is especially problematical considering that women's and gender studies are still barely institutionalized in Switzerland. Only the universities of Basel and Geneva have courses in gender studies, but no degrees can be earned in this field. At other universities efforts are being made to at least include gender and women's studies as part of other disciplines. The Federal Program Equal Opportunities for 2004–2007 envisages some funding for the creation of faculty posts for gender studies. This step is urgently needed, as the institutionalization of women's research and gender studies has – in comparison with, for example, Germany and the United Kingdom – lagged far behind.

### **Scholarships and educational grants (paras 279–281 Country Report)**

Single-parent families are treated differently from two-parent families regarding the availability of scholarships and educational grants. In some cantons (e.g. Bern) child support is not treated as part of the family income, but as separate income of the child. Thus children of single-parent families are considered to have their own income – in contrast with children of two-parent families – which is more determinative for the allocation of scholarships than the family income. This leads to massively lower scholarships for children of single-parent families who shoulder a heavier financial burden. The Swiss Action Plan for the Equality of Women and Men therefore urges the same treatment for two-parent and one-parent families in the distribution of scholarships. It should be noted that child support is treated as income when the applicant is a single parent raising a child.

### **Continuing education programs (paras 282–292 Country Report)**

According to the press communication of the Federal Office of Statistics of June 2001, commercial firms invest selectively in the continuing education of their male and female employees. In 1999 every third man and only every fourth woman was given the benefit of continuing education within the firm. Company managers (43%) and supervisors (38%) are more generously awarded than the other employees (24%), better-paid staff more than lower income employees, skilled workers more than non-skilled personnel. As women are rare at the managerial levels, are less often given supervisory positions, and are significantly over-represented amongst lower-income workers, they are greatly disadvantaged in matters of training opportunities. The federal government and the cantons are urged to impress this situation on professional and employers' federations.

## **Family health and family planning (paras 298, 461 Country Report)**

Sexual education in the schools shows serious gaps.<sup>27</sup> Although the French-speaking areas of Switzerland have more or less institutionalized sexual information through specially appointed qualified educators, sexual education in German-speaking Switzerland is largely left to the individual teacher and is correspondingly deficient. Not all cantons have made it compulsory and the agreement of school commissions and parents is required with the result that such education is not guaranteed for all children. All too often the information made available is focused on AIDS prevention, while family planning and contraceptives are neglected. In this connection it is alarming to note that in some cantons since the 1990s there seems to be a rising tendency in the number of abortions by girls below the age of 20. The availability of counseling centers for family planning is totally insufficient and also too little advertised.<sup>28</sup>

### **Recommendations**

- Despite Apprenticeship Decision II the promotion of women's access to vocational training continues to be insufficient. Purposeful mechanisms and selected funding are required. Additionally, gender mainstreaming should be utilized more consistently in the sensitive area of vocational training.
- Recognition of foreign diplomas and advanced studies credits of non-EU nationals needs to be facilitated.
- Prolongation of the Federal Program Equal Opportunities and Promotion of Young Academics
- Advancement of the institutionalization of gender studies
- Equal treatment of single- and two-parent families in the allocation of scholarships and study grants
- Introduction in all schools of compulsory sexual education

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<sup>27</sup> IUMSP, "Politiques et pratiques cantonales en matière de prévention VIH/SIDA et d'éducation sexuelle à l'école" (Cantonal policies and practices regarding prevention of HIV/AIDS and sexual education in schools), Lausanne 2002

<sup>28</sup> According to a survey made by the Swiss Foundation for Sexual and Reproductive Health (PLANeS) in 1996 there are approximately 90 fully staffed centers in all of Switzerland. In comparison: In Germany there is a requirement of one center per 40,000 female inhabitants, which in Switzerland would come to 180.

## **Article 11 CEDAW: Elimination of Discrimination in Professional Life**

Discriminating against women in the job market means to limit their access to resources. The absence of any legal basis for paid maternity leave is unacceptable. The proposals currently under consideration in this respect are still far behind the standards applying all over Europe. A welcome development, on the other hand, is the effort to establish care facilities designed to help women to combine family and professional responsibilities. The prospective incentive program will, however, not make up for the crying lack of care facilities.

### **Right to (part-time) work (paras 314–338 Country Report)**

In spite of the introduction of the Law on Equality (para. 314) and positive social changes (e.g. the rising educational level of women), women continue to struggle against forms of discrimination in working life. Some forms are indirect and are structural (e.g. family responsibilities, discrimination in allocation of job responsibilities, and the precariousness of the job market). Structural inequalities cannot be removed by the Law on Equality based on the principle of “equal pay for equal work”. A court decision from the year 2000 indicates that the Law on Equality can be disregarded. The Federal Tribunal based its decision to maintain the lower salary of a woman instructor for psychiatric nursing on “market conditions” (see paras 368–371 CR). The same tribunal justified a salary differential of 10% for a male teacher in business with the better position of men on the job market. The decision was met with shock and indignation.

In 2001 the percentage of women rose to 42% of the total working population. The full-time employment figure for women in 2001 came only to 37%, as 50% of women were employed part-time (for men, 12%).<sup>29</sup> The trend in the direction of part-time employment of women remains unbroken. Many trade union studies confirm that part-time employment involves various (indirect) forms of discrimination (see also commentary on pensions). Hence the launching by the unions of an Initiative “For Reduced Working Time”, meant to put full-time and part-time work on an equal footing. The text of the Initiative stated that part-time workers should not be discriminated against in favor of full-time workers. This related particularly to hiring practices, allocation of responsibility, working conditions, professional training and continuing education, promotion, dismissal, and social security including pension rights. The Initiative was rejected by voters in 2002.

### **Unemployment and unemployment insurance (paras 339–342 and 410–411 Country Report)**

In Switzerland women are harder hit by unemployment than men; yet there is a lack of job offers in employment offices that are specifically geared to women.<sup>30</sup> The Swiss Action Plan for Equality urges the improvement of gender-specific advisory services in the regional

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<sup>29</sup> Federal Office of Statistics, Press communication of 11–21–2002

<sup>30</sup> May 31, 2001: 2.1% women compared to 1.4% men

employment centers and relevant training of advisory personnel regarding women's and equality questions. An on-going research project examining the practice of regional employment centers has, however, come to the preliminary conclusion that advisory services and information oriented to women hardly exist. Advisory staff lacks sufficient awareness of this question. Cantonal employment programs specifically oriented to women are mostly limited to traditional women's work.<sup>31</sup>

Instead of facilitating women's access to paid employment, the on-going revision of Unemployment Insurance is characterized by reductions in employment benefits. In the Unemployment Insurance Act the situation of unemployed women (omission of compatibility with family/child care responsibilities, higher levels of unemployment, etc.) has not been substantially improved (excepting some support during maternity owing to the lack of maternity insurance).<sup>32</sup>

Care must also be taken that the support measures offered at the federal and cantonal level do not discriminate against immigrant women. Foreign women make up more than one-third of the women registered as lacking work. In this area there is still great need for action, but few tools are available. An encouraging example is Apprenticeship Project 16-Plus designed to motivate young women to make their professional choice free of role stereotypes. It includes a preparatory year for young women immigrants.

### **Salary scales (paras 364–371 Country Report)**

The question of lower salaries for women is and remains a central theme. In Switzerland the difference between female and male pay in 2000 was 21.3%, amounting to a monthly income difference of CHF 1,194.–. In government jobs the difference was 10.5% at the federal and 21.1% at the cantonal level. Studies have shown that wage discrimination is rarely the result of objective factors such as educational levels.<sup>33</sup> Indirect wage discrimination is a frequent cause. We need relevant analyses of the mechanisms of indirect discrimination. A study which appeared in 2000 indicated that marriage has a negative effect especially on women's income: men earn more after marriage whereas the women's wages fall. Thus for women – in contrast to men – it is extraordinarily difficult to raise children and have a good income.<sup>34</sup> Various studies have analyzed the problem of lower wages for women in women-dominated, so-called women-specific branches.<sup>35</sup> The current minimum wage campaign led

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<sup>31</sup> Chantal Magnin, "Chance oder Zumutung? Eine soziologische Untersuchung der Praxis von regionalen Arbeitsvermittlungszentren – unter Berücksichtigung geschlechtsspezifischer Aspekte" (Chance or Imposition? Examination of Practices of Regional Employment Centers; Gender-Specific Aspects), Nationales Forschungsprogramm NFP 45 (Interim report at [www.sozialstaat.ch](http://www.sozialstaat.ch))

<sup>32</sup> The regulation presently in force has an unequal effect with regard to women's unemployment. See: Béatrice Despland, Fed. Off. f. Equality (Publ.), "Familienarbeit und Arbeitslosenversicherung – ein Widerspruch?" (Housework and Unemployment Insurance – a Contradiction?). Basel 2001

<sup>33</sup> Fed. Off. f. Equality, Fed. Off. f. Statistics, "Auf dem Weg zur Lohngleichheit; Vergleich der Frauen- und Männerlöhne anhand der Lohnstrukturerhebungen von 1994 und 1996" (Towards Equal Pay; Comparison of Women's & Men's Wages in Wage Structure Statistics). Abridged version 2000

<sup>34</sup> Tobias Bauer, "Die Familienfalle" (The Family Trap), 2000

<sup>35</sup> Office for the Equality of Women and Men of the City of Zurich (Publ.), "Qualifikation: Flexibel. Eine Analyse im Niedriglohnbereich am Beispiel von 7 Zürcher Firmen" (Qualification: Flexible. Analysis of Low-



by trade unions focuses on low wages – which affect women especially – and demands a minimum wage of CHF 3,000.– (net, 13 month year). At the same time, the situation regarding women’s wages should be improved through collective bargaining. An analysis of equality in collective bargaining has been made for the year 2001. It shows that a great deal still needs to be done, but that such measures have potential.<sup>36</sup>

Experience shows that incentive bonuses discriminate especially against women and prevent wage transparency and comparisons. The study “When two do the same ... nondiscriminatory job evaluation” confirms the negative results of incentive bonuses. It exposes a new potential for discrimination against women (indirect discrimination, lack of transparency) and suggests methods for nondiscriminatory job evaluation.<sup>37</sup> Job evaluation systems free of gender-based criteria should work against income discrimination.<sup>38</sup> Wage complaints, however, show that in practice adherence to such criteria is extremely complex. The main question is how much weight is given to specific criteria.

### **The right to social security (paras 374–398 Country Report)**

Various equality requirements have been met through the 10th Revision of the Swiss social security system (Old-age and Survivors’ Insurance or AVS), (paras 374–392), especially by the creation of independent pension rights for women, through the so-called “splitting” whereby half the income earned during the marriage is credited to the individual account of the other spouse, and through the introduction of bonus credits for child-rearing and other assistance tasks adding to the income on which the social security benefits are calculated. At the same time, however, the retirement age for women was raised. The 11th AVS Revision, currently underway and principally concerned with the financial consolidation of social security funds, envisages an adjustment of the retirement age for women to 65 by 2009. The millions thus saved are intended to cover costs of increased flexibility of retirement, although many women will not be able to afford early retirement. They work for lower wages and under precarious conditions, such as part-time work, short-term employment or on-call jobs. Women constitute 44% of the Swiss work force, carry out 37% of all gainful employment, but receive only 31% of total wages paid. 42% of employed women receive no more than CHF 3,000.– monthly (only partly due to shorter working hours); this would apply to only 10% of male workers. Formal equality is also supposed to be achieved through an

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Wages in 7 Zurich Firms), Zurich 2001; T. Bauer, “Wie aussagekräftig sind die offiziellen Lohnerhebungen für den Detailhandel? Kurzauswertung der Lohnstrukturerhebung 1996 und der Schweizerischen Arbeitskräfteerhebung 1995” (How meaningful are official Salary Statistics in Retail Business?), mandated by Trade Union VHTL, Bern 1999, T. Bauer, “Lohnstruktur und Lohnentwicklung im Detailhandel und Gastgewerbe. Eine Analyse der Schweizerischen Arbeitskräfteerhebung 1991–98” (Salary Structures in Retail and Restaurant Trade; an Analysis), mandated by Trade Union UNIA, Bern 1999

<sup>36</sup> Lilian Fankhauser, “Verankerte Gleichstellung? Eine branchenübergreifende Gleichstellungsanalyse von Gesamtarbeitsverträgen” (Equality Embodied in Law? A Cross-Branch Analysis of Collective Contracts), SGB-Dossier Nr. 15, 2002

<sup>37</sup> Kathrin Arioli, “Die Anwendung des Gleichstellungsgesetzes auf öffentlichrechtliche Arbeitsverhältnisse”, Basel 1999

<sup>38</sup> The Job Evaluation System ABAKABA (Arbeitswertungssystem nach Katz und Baitsch, 1996) defers to gender-equality.

adjustment of widows' pensions to those of widowers, but which really means a drastic cut of the former. Generally, the revision seems to improve the financial situation of the Swiss social security system at the expense of women's equality.

The lower income of women has a particularly negative effect on occupational insurance.<sup>39</sup> Since workers of either sex earning less than CHF 24,720.– per year are not obliged to participate in pension plans offered by employers, we must assume that approximately half of all women are without pension provisions.<sup>40</sup> At present, the negotiations in view of the revision of the pension law (paras 393–398), aim at lowering the salary threshold for entry into work-related pension plans from CHF 24,720.– to CHF 18,540.– This minimal reduction for low-income workers, predominantly women, may result in their losing the right to apply for supplementary social security benefits – which would, in turn, deprive them of the right to relief from other societal obligations, such as income tax payments. If the coordinated deduction were to be abandoned or at least significantly adjusted to the level of employment, a majority of women would be able to benefit from the “second pillar”. Work-related pension plans tend to individualize the pension system and to undermine the solidarity principle on which the government social security rests. The latter at least takes into consideration a certain portion of the socially indispensable unpaid work performed most often by women.

### **Paid maternity leave (paras 428, 429 Country Report)**

Fifty-seven years ago Switzerland included the right to maternity leave in its constitution. To this day there is no law to implement it. The revisions of the Code of Obligations proposed by the Federal Council are totally insufficient and in no way meet the legitimate claim for financial security during maternity.<sup>41</sup> At the moment they are in the background of the political debate which now focuses on the Parliamentary Initiative Triponez (01.426) envisaging a salary deduction for wage-earning women within the framework of the Employment Compensation Regulations Act; this is more in line with the way we would like to proceed. The category of persons with a right to benefits under Employment Compensation would be extended to mothers who during their pregnancy would be insured as employees or as self-employed persons for a period of 14 weeks and would be based on 80% of average earnings. This proposal, however, remains far behind provisions for paid maternity leave prevailing in other European countries.

A maternity insurance worthy of the term would still need to assure a 100% income over a period of 16 weeks. It would have to be financed so as not to discriminate against women in the job market. Equally urgent is the introduction of “parental leave” for either mother or father at their own choice within a specified period.

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<sup>39</sup> Fed. Comm. for Women's Questions, First revision of the Federal Law on Professional Protection Plans for Old-age, Surviving Dependants and Invalids, f, Frauenfragen Nr. 1.1999, pp. 15–16

<sup>40</sup> Anne-Catherine Menétrey, “Den realen Benachteiligungen der Frauen Rechnung tragen”, in Femco (Publ.), “Zukunft der AHV – Perspektiven aus feministischer Sicht” (Future of the AVS – Perspectives from a Feminist Viewpoint), 2001, Nr. 1, pp. 13 pp.

<sup>41</sup> Fed. Comm. for Women's Questions, Revision of the Code of Obligations (Maternity Leave), Position of the Fed. Comm. for Women's Questions, f, Frauenfragen 2001, Nr. 2.2001

### **Childcare outside the home (paras 441–446 Country Report)**

There is still a great lack of childcare facilities. A program giving fresh impetus to the creation of day-care places, initiated by the Parliamentary Initiative Fehr (00.403), should make some difference. The Federal Parliament recently decided to foresee CHF 200 Mio. for a period of 4 years. The Initiative lodges responsibility for the creation of facilities with municipalities and cantons and calls for gradual extension. The municipalities must give proof for the need of the funds. At the same time, working conditions for day-care staff (a classic women's job) need to be improved to ensure qualified personnel.<sup>42</sup>

The UN Commission on the Rights of the Child welcomed this Initiative in May 2002; yet, it registered its concern that the present availability of childcare facilities is far from fulfilling the need. (CRC/C/15/Add. 182, paras 34 and 35).

#### **Recommendations**

- Wage discrimination must be eliminated at all levels. Part-time and full-time work must be on an equal footing.
- Women – and especially immigrant women – are in large part affected by unemployment. Support measures and women-oriented employment offers are required.
- Approximately 50% of women have no professional pension. Our suggestion for a solution is the elimination of the coordinated deduction.
- A legal basis for paid maternity leave is still non-existent.
- In spite of the incentive program for the creation of childcare places, the need for facilities will not be covered. Additional measures are required.

### **Article 13 CEDAW: Discrimination in other Areas of Economic and Social Life**

Despite the generally high standard of living in Switzerland there still is a considerable gap between privileged and disadvantaged groups within the population. Up to 10% live below the poverty level. In addition many live just above the subsistence level. Women immigrants, families with many children, single parents, as well as employees in typical women's retail and service jobs are the worst off.<sup>43</sup>

#### **Poverty among women (paras 521–525 Country Report)**

In Switzerland single mothers are most exposed to poverty. They not only constitute the highest proportion of the “working poor”; they also top the list of “full-time working poor”

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<sup>42</sup> Fed. Comm. for Women's Questions, Health and social welfare professions and the new Law on Vocational Training, f, Frauenfragen Nr. 1.2002

<sup>43</sup> Federal Office for Statistics, Press Information of 11–4–2002

with a good 42%.<sup>44</sup> Low wages, children, and rising living costs (due to drastic increases in medical insurance, rents and taxes) are the main reasons for remaining poor despite enjoying paid employment. Poor households continue to be taxed at a relatively high level. Depending on their family situation, the working poor pay taxes on an average amounting to 5.4% to 7.1% of their gross earnings. Reasons for the dramatic increase in the working poor quota among single parents and large families in the 1990's are the limited possibilities for families to improve their financial situation by widening their range of employment opportunities. Single mothers are especially dependent on flexible working conditions compatible with their childcare arrangements. Such jobs are very often badly paid. Even when they need the increased income, single mothers have limited flexibility for accepting additional working hours; rather, their unfavorable working conditions compel them to accept reduced working hours.<sup>45</sup> Thus the proportion of single mothers receiving welfare benefits rose once more by 1.6% in 2001 – on top of a significant rise in the year 2000.<sup>46</sup>

The present system of advance and cash payments for alimonies and advance payments (para. 525) is of least help to those who need it most: without a contract, or a ruling by a judge, there can be no advance payments, and the advances cannot be higher than the established alimonies. These, however, are often so low that they cover only a fraction of a child's living costs.<sup>47</sup> Alimony and advance payments are handled differently in the various cantons, leading to unequal treatment. Many cantons set ceilings for child alimonies: when a single mother increases her work load in order to ensure a better living standard for her family, she runs the risk of losing the child advance payments. On the other hand, an increase in working hours increases childcare costs while the higher income increases the tax load – a vicious circle with no escape from a difficult financial situation.

### **Social welfare and the struggle against poverty (paras 526–528 Country Report)**

Social security protection for all children in single parent families, when the other parent contributes insufficiently or not at all, does not exist. This adds considerably to the poverty risk of single mothers. Within the framework of the Convention on the Rights of the Child this constitutes unequal treatment of children who after the death of one parent receive a partial orphans pension, while children who for other reasons live in a single parent house-

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<sup>44</sup> Single parents amount in 1999 to 29% of the working poor compared to 7.5% of the total population. Low-income households with at least 36 hours employment per week are considered full-time working poor. See also: Elisa Streuli, Tobias Bauer, "Working poor in der Schweiz. Eine Untersuchung zu Ausmass, Ursachen und Problemlage" (The Working Poor in Switzerland. An Examination on the Extent, Causes and Situation), Info social Nr. 5, Neuchâtel 2002

<sup>45</sup> Office for the Equality of Women and Men of the City of Zurich (Publ.), "Qualifikation: Flexibel. Eine Analyse im Niedriglohnbereich am Beispiel von 7 Zürcher Firmen", Zurich 2001, cf. footnote 35

<sup>46</sup> "Kennzahlenvergleich Sozialhilfe in Schweizer Städten" (Comparative Data on Social Welfare in Swiss Cities), Report of 2001, on behalf of Swiss City Initiative "Yes to social security".

<sup>47</sup> The average living costs for a single child up to 6 years of age is CHF 1,190.– monthly and this is without childcare costs, that are unavoidable for an employed single parent, recommendations for the calculation of maintenance contributions for children of the Office for Youth and Vocational Advice of the Canton of Zurich, 2000

hold do not enjoy such benefits. This discrimination results in a correspondingly heavy financial burden for single, divorced or separated mothers raising a child or children alone. Single mothers can count less and less on government support. An example of more severe handling of social aid is the partial elimination of “grants by decree” by the Canton of Bern, a straight-forward welfare payment to persons and families which otherwise need no special support but have gotten into financial straights through no fault of their own. As of summer 1998 such subsidies have gone only to persons receiving social security (AVS) or disability (AI) benefits; single parents and tax-exempt persons, so far 13% and 4% of the recipients respectively, have been excluded.

### **Family allowances (paras 532–535 Country Report)**

Supplementary benefits, while based on income, are nevertheless guaranteed by law and thus an improvement over dependence on social welfare. But measures geared to the specific causes of need are still needed to cope with the poverty affecting single parents. An evaluation of supplementary benefits for needy families in the Canton of Ticino shows that this model helps about three out of four couples living in a common household to cover their living costs, but barely one half of single parents. The reasons are the lower initial incomes of single mothers frequently with only one child whereas the system gives preference to families with many children.<sup>48</sup> A particular need for single parents is the standardization of advance payments and the collection of child alimonies at the federal level, and the introduction of a basic income for all children in single parent families where there is no or an insufficient contribution of the other parent to cover a child’s living costs. Above all, discrimination must be eliminated and the lacking financial support of the other parent must be taken into consideration. Insufficiencies must be compensated by supplementary benefits designed to assist needy families. The significantly higher living costs of a first child for a single mother must also be recognized.

### **Recommendations**

- In order to help poverty-stricken single mothers, child alimony payments must be standardized at federal level and pay more attention to the needs of single parent families.
- Social security protection is to be introduced for all children in single parent families where there is no or insufficient contribution from the other parent to cover the child’s living costs.

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<sup>48</sup> Eveline Hüttner, Tobias Bauer, “Abklärungen zu einem gesamtschweizerischen System von Familien-Ergänzungsleistungen” (Clarifications regarding an All-Swiss Plan for Supplementary Benefits for Families), Report made for the Fed. Coordinating Commission for Family Questions, 2002

## **Article 14 CEDAW: Special Problems of Rural Women**

Swiss agriculture is under-going far-reaching changes. The typical rural woman who is occupied full-time on the farm is becoming a rarity. More and more often farm women continue to work in their former profession, either because they need the money or feel like it. According to the latest surveys about 50% of rural women work outside the farm.<sup>49</sup> The book keeping and administration of the farm, however, often remains in their hands. Moreover, women often develop new independent activities such as direct sale of produce or agro-tourism and taking in guests. Such diversification frequently exacts physical and psychic strains. Lack of time and fatigue due to a heavy workload prevent many rural women from taking advantage of educational opportunities. Training for rural women has, however, been adapted to the changes in agriculture. An educational program is available offering access to the so-called “second chance”, designed to complete secondary school requirements. Non-farm women may also participate. It is possible to take specific courses designed for helping rural women in their daily tasks.

Farm women continue to be denied an independent professional status. The farm in most cases belongs to the husband; thus everything is done in his name. The wife has the status of a non-employed housewife. Women’s organizations therefore got involved in this field. A working group set up by the Swiss Association of Farm Women has launched a project known as “Knowing how to be a farm woman”. This vast project attempts to help couples in finding the best way to ensure legal protection for the farm woman (e.g. joint ownership, a work contract between husband and wife, registration as a self-employed person). The recognition of the professional input of the farm woman would solve many problems, especially with regard to old-age insurance.

In assessing a farm either as a primary or secondary source of income, the state takes only the work of the farmer into account without considering the work of the wife. This is a clear indication that the couple is not in equal partnership. Loans are only to be granted to the head of the enterprise. A farm wife attempting diversification through a new form of production is unable to obtain credit.

### **Recommendations**

- Farm wives must be given professional recognition.
- Farming wives and husbands must be recognized as equal partners in their enterprise.

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<sup>49</sup> Federal Office for Agriculture, “Die Rolle der Frauen in der Landwirtschaft” (The Role of Women in Agriculture), Bern 2002

## **Article 16 CEDAW: Elimination of Discrimination in Marriage and the Family**

The revised Law on Divorce has brought improved gender equality. Nevertheless divorce often leads to disadvantages for the housekeeping and childraising woman.

### **Divorce (paras 598–601 Country Report)**

When a marriage is dissolved by divorce (para. 601), the allocation of alimonies discriminates against the housekeeping and childraising spouse, generally the woman. The law-makers have refused to include a clause in the revised Law on Divorce stipulating that in cases of insufficient financial means an eventual deficit should be equally split between both parties. This discrimination is one of the specific causes for the high risk of poverty affecting single mothers. First experiences with the Law show that the financial potential of the party responsible for payment rather than the needs of the party receiving the payments is the determining factor for alimony settlements.<sup>50</sup> The prevailing practice under the former law granting maximum advance child maintenance payments even in low-income cases is losing its meaning. It is noteworthy in this connection that divorced fathers often present their financial situation less favorably than it actually is.<sup>51</sup>

Women who are divorcing frequently do not claim their half portion of the occupational benefits to which they are legally entitled. A study shows that in approximately one third of cases women forego their benefits entirely (para. 598). Even when the benefits are split, it is seldom on a 50–50 basis. As a rule, the full duration of the marriage is not taken into consideration, so that the women receive less than what they are entitled to. This happens because they do not sufficiently insist on their rights, or because lawyers are ineffectively representing their clients, or because the court has not sufficiently examined the facts.<sup>52</sup>

### **Rights and responsibilities with regard to children (paras 604–607 Country Report)**

Unlike parental custody, parental support, in most cases the responsibility of the father, hardly receives consideration. The legal custodian assigned on behalf of the child of divorced parents, has no say in this field. Fathers receive no assistance to help them meet their obligation of support. Thus, child support duties do not count for assessment of social welfare benefits. Parental custody is, however, foremost in the child's interest, as the support

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<sup>50</sup> "Das neue Scheidungsrecht wird von vielen kritisiert" (Many Criticize New Divorce Law). Zeitschrift für Sozialhilfe Nr. 4, April 2001, p. 49

<sup>51</sup> L. Decurtins, "Gekränkt, ausgenommen und ausgeschlossen. Trennung und Scheidung aus der Perspektive des Mannes" (Offended, Fleeced and Excluded. Separation and Divorce from the Man's Perspective), NZZ Nr. 87, 4–14–2001

<sup>52</sup> Margareta Lauterburg, Katerina Baumann, "Evaluation Vorsorgeausgleich – Teilung der zweiten Säule im neuen Scheidungsrecht." (Equalization of Pension Benefits – Division of the Second Pillar in the New Divorce Law), Programm NFP 45 Sozialstaat Schweiz, interim report 2002

includes everything the child needs for its subsistence and development (Art. 302 para. 1 ZGB). Under these circumstances it is not surprising that many divorced fathers regard child alimony payments as an undue burden and therefore tend to downplay their financial situation. Unmarried parents face identical problems at the moment of separation.

### **Choice of family name (paras 609, 610 Country Report)**

One of the remaining legal reforms of unequal treatment, namely the equal rights of men and women in the choice of family name, has just recently failed because the two Councils of the Parliament could not come to an agreement about the revision of the corresponding regulations in the Swiss Civil Code. They disagreed on the point that the Custody Authority should decide on the family name of children in the case that the married parents were unable to agree.

### **Recommendations**

- Revision of the Law on Divorce so that in cases of insufficient means, an all-inclusive deficit will be equally divided between both parties.
- Integration of support responsibilities in the calculation of social welfare benefits
- Equality in the choice of the family name