



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

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

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**Responses to the list of issues and questions with regard to
the consideration of the third periodic report**

Switzerland*

* The present report is being issued without formal editing.



Replies to the questions by the pre-session working group with regard to the consideration of the third periodic report of Switzerland (CEDAW/C/CHE/3)

General remarks

In Switzerland's view, every form of discrimination is a serious breach of human rights. Accepting this principle means that every country needs to make a constant effort to avoid discrimination in its policies. Consequently, the current third periodic report by Switzerland and the answers given below to the questions put by the pre-session working group represent only snapshots taken along the way in an on-going process. This process is fuelled by open, constructive dialogue between all the players involved. Should certain questions raised by the rapporteur remain open or be only partially answered, the Swiss delegation will of course be pleased to provide further information when they present the report on 27 July 2009.

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1. General

Question 1:

According to paragraph 53 of the State party report, the Convention's provisions are directly applicable and the rights arising from it can be invoked directly before Swiss authorities at all levels. However, according to paragraph 76 of the report, the courts recognize only to a very limited extent the direct applicability of the Convention in individual cases. Please explain.

Answer:

The apparent contradiction between paras. 53 and 76 of the rapport alluded to in the question results from a misunderstanding in the interpretation of para. 53.

As explained in this paragraph, Switzerland applies the principle of monism which means that the provisions of the treaties to which Switzerland is a party can be invoked directly in the national courts, if and when these provisions are to be considered directly applicable. This is what we have tried to explain in para. 53, in stating that the rights affirmed in the Convention can be invoked directly before the Swiss authorities, to the extent that (i.e. for as much as) the corresponding provisions of the Convention are directly applicable.

It is for the courts themselves to decide what provisions they consider to be directly applicable, and they are not bound by any views on the subject that might be expressed by the executive authorities. The decision of whether or not a provision is directly applicable usually requires interpretation of the text of the provision concerned. As a general rule the provision concerned must be sufficiently clear and precise to make it possible to determine the rights and obligations of individuals so that it may serve as the legal basis for a decision.

Recently, the Federal Council addressed the question of the direct applicability of the provisions of CEDAW in the context of ratification of the Optional Protocol (OP CEDAW), which in Art. 2 states that communications may be submitted by or on behalf of individuals or groups of individuals under the jurisdiction of a State party claiming to be victims of a violation of any of the rights set forth in the Convention by that State party. In this context the Federal Council confirmed its view, that it already expressed in 1997 when the Convention was ratified (Dispatch to Parliament of 23 August 1995 concerning the 1979 Convention on the Elimination of All Forms of Discrimination against Women [BBl 1995 IV 901], 31) that since this Convention imposes obligations primarily on the State, the States parties must incorporate the Convention into domestic law, and as a rule its provisions are not directly applicable.

Furthermore, even then it was not ruled out that at least some of the content, such as the requirements of Art. 9 CEDAW (acquisition and loss of nationality) and Art. 15 CEDAW (equal rights, equality before the law, legal capacity in civil matters identical to that of men, equality in all legal proceedings, equal rights to freedom of movement and of residence/domicile) as well as of Art. 7 CEDAW (political and public life) and Art. 16 CEDAW (marriage and family relations) are sufficiently

specified, and thus can be considered as directly applicable *de facto* by the Federal Supreme Court and the other judicial authorities at the federal and cantonal levels.

Question 2:

Please provide information on the process of preparing the third periodic report, including details on the involvement of the various levels of power within the State party, the contributions of public institutions at the federal level and at the level of the federated entities, and details of consultations with non-governmental organizations.

Answer:

There are no standard procedures in Switzerland for the preparation of periodic reports to the United Nations Treaty Bodies. To begin with an internal draft is prepared for some reports before other units of the Federal Administration, the cantons, municipalities and non-governmental organisations become involved. As a rule however, a memo is first of all dispatched to all concerned administrative units at the beginning of the reporting process, in which the relevant contributions are requested. Depending on the report, contributions may also be requested from the cantons, municipalities and the non-State organisations directly concerned. Following preparation of the draft report, again depending on the report, a questionnaire of a technical nature is sent to the cantons and to the organisations that have been involved in preparation of the report. This questionnaire is used to check if the information provided in the report is correct and whether or not additional information is required. Before a report is submitted to the Federal Council for approval there is a consultation procedure involving the various federal offices concerned.

The third CEDAW report also emerged from several consultation procedures which involved the Federal Administration, the cantons and the various organisations concerned. In order to collect the up-to-the-minute information required for the report, the Directorate of Public International Law in collaboration with the Federal Office for Gender Equality consulted in the summer/autumn 2005 with the federal offices involved in the relevant fact-finding and dispatched a detailed questionnaire to the equal opportunities offices of the cantons and municipalities, and in most cases these provided detailed replies. In some areas (e.g. trafficking in women, violence against women) NGOs were approached for specific information. It is on this basis and with the help of information available to the public from women's and human rights organisations that it was possible to draw up a first draft of the report, for which in December 2006 all of the cantons and a select number of women's and human rights organisations were able to provide additional information and comments in the context of a "technical survey" (in two language versions [d/f]). 24 of the 26 cantons and 10 specialised organisations (including the NGO coordination group Post Beijing Switzerland, responsible for the Shadow Report) took more or less comprehensive positions. Their substantial additions and remarks were included in a revised version, which was then submitted in May 2007 to the federal offices (in a single language version) in the context of a formal consultation procedure.

The Directorate of Public International Law of the Federal Department of Foreign Affairs (FDFA), in consultation with the Federal Departments concerned (Justice and Police, Home Affairs, Economic

Affairs), developed a work tool based on both the intranet and the internet (“Reporting on Demand”) which should greatly simplify the preparation of periodic country reports in the future while also simplifying and improving interdepartmental coordination.

Question 3:

Please indicate whether the State party has any plans to withdraw its reservations to article 15, paragraph 2, and to article 16, paragraphs 1 (g) and (h) of the Convention, as recommended by the Committee in its concluding comments on the State party’s combined initial and second report (see A/58/38, sect. IV, para. 100).

Answer:

As soon as the new law on the right to choose a family name is adopted by parliament and takes effect (cf. Question 27) the reservation with regard to Art 16 para. 1 (g) can be withdrawn as unfounded. The reservation with regard to Art 15 para. 2 and Art 16 para. 1 (h) concerns transitional law. For as long as disputes concerning matrimonial property based on the law applicable prior to 1 January 1988 are to be expected, there can be no question of a withdrawal of this reservation. It can be assumed however that only a limited number of married couples are affected by this matter.

2. Legislative and institutional framework

Question 4:

Please provide statistical data with regard to the number of civil and criminal cases filed that are relevant to the Convention and the sanctions pronounced.

Answer:

There are no statistics available for civil cases. To date statistics on convictions are drawn from criminal records and do not include information about the victims.

With reference to the key provision of Art. 8 para. 3 of the Swiss Federal Constitution on the equality before the law of women and men, the Swiss Federal Supreme Court has conducted an inquiry which provides an approximate answer to the question raised. It should be noted in this context that in the absence of a specific indexing tool, decisions by the Swiss Federal Supreme Court in civil and penal cases concerning equality of treatment between men and women unfortunately cannot be accessed automatically, but only by means of manual examination. Since gender equality is governed by the above-mentioned Art. 8 para. 3 we conducted a thorough search of the Swiss Federal Supreme Court internet database with this article of the law as the key word. However, we ask you to please bear in mind that the results obtained in this way are approximate, due in particular to the impossibility of carrying out the search on the basis of precise criteria.

Nonetheless, between 2001 (time of the adoption of the initial report of Switzerland) and 2008, the Swiss Federal Supreme Court handed down 19 private law decisions relating to Art. 8 para. 3. Of these, 2 decisions were handed down in 2001, 2 in 2002, 1 in 2003, 4 in 2005, 5 in 2006, 3 in 2007

and 2 in 2008. None of the decisions involved criminal law. These rulings are summed up in the table below:

Summary of rulings relating to Art. 8 para. 3 for the period of 2001-2008 :

Year	Total	Cancellations	Inadmissibility	Rejection	Admission (partial)	Admission (full)
2001	2			5P.173/2001	4C.383/2002	
2002	2		5P.222/2002		4C.57/2002	
2003	1			4C.383/2002		
2004	0					
2005	4			7B.35/2005 5A.4/2005 5P.47/2005		4C.138/2005
2006	5			5C.77/2006 5P.274/2005 5P.52/2006 5C.7/2006 5P.343/2006		
2007	3			5A_75/2007 5C.11/2006		4A_12/2007
2008	2			5A_767/2007 5A_42/2008		

The following decisions involve reference to the Swiss Federal Act on Equality between Women and Men (GEA): 4C.383/2002, 4C.57/2002, 4C.138/2005 and 4A_12/2007. In three of these cases, wage discrimination as defined by GEA was alleged, and confirmed in each case. In the fourth case (4C.138/2005) the plaintiff's appeal that she was wrongfully denied promotion was upheld by Swiss Federal Supreme Court (discrimination with regard to promotion).

Reference should also be made to the www.gleichstellungsgesetz.ch database which contains various judicial proceedings as well as conciliatory proceedings based on the **Swiss Federal Act on Equality between Women and Men** from German-speaking Switzerland: the database contains 403 cases at present (8.3.2009). The www.leg.ch website of French-speaking Switzerland contains 56 decisions.

Question 5:

Please describe which mechanisms and remedies are available to women who wish to complain about gender-based discrimination. Please also indicate if Switzerland is considering establishing an independent national human rights institution in accordance with the Paris Principles (see General Assembly resolution 48/134, annex).

Answer:

To begin with it should be noted that in accordance with Art. 8 of the Federal Constitution women and men have a **constitutional right to equality**, which they can assert in law. The Swiss Federal Act on Equality between Women and Men prohibits gender-based discrimination in the workplace. Employees who feel they are being discriminated against can take the case to an arbitration board or to court. The Swiss Federal Act on Equality between Women and Men makes less stringent demands on the plaintiff in so far as the burden of proof is concerned. Switzerland does not have a law against discrimination as such.

The following should be noted concerning the question of an **independent national human rights institution** (NHRI): in 2003, the Swiss government mandated the Federal Department of Foreign Affairs (FDFA) to act upon parliament's request to study the advisability of setting up a Swiss NHRI. The FDFA conducted a number of studies, drafted several models and carried out wide-ranging consultations in an effort to understand the positions and requirements of the various interested parties, including ministries, cantons, civil society and the private sector. In 2007, the government mandated a federal/cantonal working group to develop the concept further. The FDFA is currently considering several options on the basis of the working group's report. Moreover on 12 June 2008, in the context of the United Nations Human Rights Council's universal periodic review, Switzerland made the following voluntary commitment: "Switzerland is considering the possibility of setting up a national human rights institution in accordance with the Paris principles".

3. Stereotypes and education**Question 6:**

The report indicates that the State party has undertaken various initiatives, including the "Fairplay-at-home" and "Fairplay-at-work" campaigns, with a view to combating stereotypes relating to the roles and responsibilities of men and women in family and professional life. Please indicate whether an impact assessment has been carried out to identify the main achievements and difficulties of those initiatives and whether any remedial action has been taken.

Answer:

The above-mentioned campaigns have shown that the main difficulty for many couples is finding good, reliable and affordable child care outside the home. The current programme to stimulate the creation of additional places in day-care nurseries (see para. 316 ff. of the report) is therefore of the greatest importance for the success of campaigns to raise awareness of the need for reconciling work and family life. These efforts are being continued. In a number of cantons (Zurich, Bern, Lucerne) for example young couples as well as parents are being approached in an appropriate manner at weddings and family church events.

Efforts to create greater awareness also include the financing of suitable projects as per the requirements of the Swiss Federal Act on Equality between Women and Men, including radio

programmes, internet platforms and work tools for those responsible for human resources (see: www.topbox.ch).

Question 7:

Please provide detailed information on steps that have been taken to integrate gender equality and other human rights norms in the curricula of primary and secondary schools in the different cantons of the State party.

Answer:

The curricula in Switzerland differ at present from one linguistic region to another.

The cantonal laws governing education lay down the requirements for curricula. Some cantons impose legal requirements for equitable gender-related teaching in primary schools, e.g. canton Basel-Land: § 63 para. 1 (a) of the Education Act (SGS-Nr 640) stipulates the right of pupils to equitable gender-related teaching. § 2 places an obligation on both schools and the authorities to respect the principles of gender differentiation in their education methods.

In contrast to the current situation, in the future each linguistic region will have a single curriculum: for German-speaking cantons, “Lehrplan 21” and for French-speaking cantons, “Plan d’études romand [PER]”. The latter has already been prepared, and the draft of “Lehrplan 21” has been submitted for a process of consultation lasting from 28 January to 31 May 2009.

These two curricula have a similar structure and are skills-based. Each differentiates between specialised skills, general skills and general subject matter. The approach based on traditional disciplines or subjects has been rejected on the grounds that the term “subject area” expresses more accurately the broad perspective on and approach to world phenomena adopted by schools nowadays. The development of an independent character and the ability to continue a lifelong learning process is what is meant by general skills (acquisition of personal, social and methodological skills), which is an integral part of the curriculum. The structure of “Lehrplan 21” clearly includes the acquisition of social skills, including how to deal with diversity: accepting differences, experiencing diversity as enrichment, promoting equality.

Additional information can be found at the following links:

- Lehrplan 21:
<http://www.lehrplan.ch/dokumente/vernehmlassung/Bericht_zur_Vernehmlassung.pdf>
- Plan d’études romand :: <<http://www.consultation-PER.ch/html/SHS/SHSPresentation.html>>.

Suitable teaching materials have also been prepared, such as “L’école de l’égalité” for the French-speaking cantons (see: <http://www.egalite.ch/uploads/pdf/ecole-egal-descriptif-060814.pdf>) and there are various publications to help students decide on a career path without reference to stereotypes. Furthermore, the Canton of Geneva has published a teaching aid on CEDAW for higher levels, with

photographs to illustrate the various concepts in order make them easier to understand (see <http://www.geneve.ch/egalite/conventioninternationale/images-pour-egalite/>).

Finally, it is worth mentioning that the Federal Department of Foreign Affairs (FDFA) has taken steps to ensure the availability of teaching materials on the subject of human rights, for teachers at both the higher and lower levels. Each of the modules deals with the matter of discrimination, particularly against women, in a way appropriate to the school level concerned. The vulnerability of women and girls and the violence perpetrated against them is also covered in these texts. These teaching materials are available to teachers free of charge and can be downloaded on the internet for easy accessibility.

Question 8:

Please provide detailed information with regard to human rights education being offered to girls and women of foreign origin, ethnic minorities, especially immigrants, including asylum seekers and refugees, in general, and equality of the sexes, in particular, due to the specific difficulties faced by foreign women and girls.

Answer:

A great deal of attention is paid at all levels of government in Switzerland to these questions, i.e. migration-specific discrimination. The following looks at a few aspects of related government activities by way of example, with the understanding that these can be developed further in the course of a constructive dialogue.

At the federal level

Much attention needs to be paid to the aspect of “multiple discrimination” in the context of efforts to combat racism and discrimination. In its efforts to combat race-based discrimination the Service for Combating Racism is also required to take gender aspects into account.

In 2008, the Service for Combating Racism together with the Federal Office for Gender Equality and the Federal Office for the Equality of People with Disabilities organised a meeting of experts on the subject of “protection against discrimination” for the purpose of evaluating existing legal instruments and proposing improvements.

The Swiss Service for Combating Racism also supports the projects organised by other interested parties in this field. One example is *FemmesTISCHE* (2008):

FemmesTISCHE offers “discussion rounds” in which women meet privately to exchange views on a variety of social questions under the guidance of a moderator. The women who act as moderators are also cultural mediators. These meetings are carried out in a variety of languages.

In its own words, *FemmesTISCHE* brings together “people working with children who in informal, private discussion rounds look into such questions as education, behavioural roles and health.

Through information and exchange of experiences FemmesTISCHE introduces various possibilities for future action and opens new horizons. FemmesTISCHE helps to develop social networks, and it's fun!" There are at present 20 FemmesTISCHE meeting places that include immigrants throughout German-speaking Switzerland. The aim of the FemmesTische project is to enable participants to gain self-confidence (empowerment), to improve their knowledge in educational matters, healthcare and social skills, and to help them to integrate.

FemmesTISCHE is a low-threshold programme, which also offers migrant women, who would otherwise be difficult to reach, a platform for exchanges and a way out of isolation. FemmesTische is a long term effort. It has been successfully run in the form of local projects for more than 10 years. Subject areas that have been covered in recent years with the help of films, manuals and guidelines include: prevention of addiction in the family, living in a consumer society, reconciling work and family life, health, etc. (for additional information www.femmestische.ch and www.idoc-integration.zh.ch).

Experience shows that the FemmesTISCHE project has a major impact in getting things moving, and a considerable multiplier effect.

At the cantonal level

Addressing and developing migration-specific topics is a permanent concern of the Swiss Conference of Cantonal Ministers of Education (EDK). This work coincides with the Conference's efforts in other areas (language teaching, day structures, educational standards, etc.). Particularly worth noting here is the "*Intercantonal agreement on harmonisation of compulsory schooling*". This agreement harmonises the duration and the most important objectives at the various educational stages at the national level for the very first time as well as the modes of transition. For additional information on HarmoS-Konkordat visit the EDK website: <<http://www.cdep.ch/dyn/11659.php>>.

Also worth mentioning in this context is the "*2006 Swiss education report*". The report looks at three dimensions of the Swiss system: *Effectiveness* (impact), *Efficiency* (cost-effectiveness; relationship between input and output) and, of particular interest in this context, *Equity* (fairness and equality of opportunity). These dimensions are assessed (a) against political requirements (objectives), (b) on the basis of time-related comparisons (longitudinal studies, which in most cases rely on cyclical monitoring) and (c) through comparisons between cantons. A new report on education is due in 2010. Additional information on educational monitoring can also be found on the EDK website: <<http://www.cdep.ch/dyn/11663.php>>.

Another of the activities worth mentioning is the low-threshold language course for mothers and children (*MuKi-Deutsch*). Moreover there are also various "mentoring" programmes, especially for young women, including projects aimed specifically at women migrants: an example is *incluso*, a project aimed at migrant women seeking apprenticeships: this mentoring project brings young immigrant women into contact with women professionals who act as coaches and provide support in the choice of a career path and in the search for an apprenticeship. See related information from organisations that support the project: www.isabern.ch and www.caritas-zuerich.ch. Other examples in

this context are the project Crescenda Gründungszentrum für Migrantinnen, www.crescenda.ch, (a comprehensive teaching and coaching programme to enable immigrant women to establish their own businesses) and the cafe secondas, www.cafesecondas.ch.

4. Violence against women

Question 9:

Please provide statistical data and information on sexual and domestic violence for each canton, including marital rape, especially the number of complaints, investigations, prosecutions, convictions and penalties imposed, and any compensation awarded to victims or their families.

Answer:

Concerning police data, up to now each canton has compiled its own statistics, which are often uncoordinated. Standardised data concerning complaints and investigations from all cantons will become available only in 2010. There is no data concerning prosecutions. See under Question 4 above with regard to convictions.

The statistics from the Canton of Zurich will serve as a guideline and a basis for discussion (any questions can be addressed in the course of the constructive dialogue): the Zurich law on protection against violence of 19 June 2006 (Zürcher Gesetzessammlung LS 351) came into force on 1 April 2007. One year later the following statistics were published on police measures for protection against domestic violence in the period from 1 April 2007 to 31 March 2008 (for the report see the following link:

<http://www.ist.zh.ch/internet/ji/ist/de/home.SubContainerList.SubContainer1.ContentContainerList.0021.DownloadFile.pdf>);

Police measures for protection against domestic violence — first year of law on protection against violence (1 April 2007-31 March 2008)

	Zurich cantonal police (KAPO)	Zurich municipal police (STAPO)	Winterthur municipal police (WIPO)	Total
Total protective orders	764	284	84	1132
Of which expulsions	483 (63%)	158 (56%)	50 (60%)	691 (61.0%)
Court decisions	60 (8%)	10 (4%)	6 (7%)	76 (6.7%)
Petitions for extension	267 (35%)	110 (39%)	22 (26%)	399 (35.2%)
Approvals	240	99	17	356 (89.2%)

Renewed protective measures	35 (5%)	9 (3%)	8 (10%)	52 (4.6%)
Criminal proceedings initiated				
Without criminal proceedings	111 (15%)	7 (2%)	8 (10%)	126 (11.1%)
Misdemeanour rulings	94	14	14	122 (10.8%)
Misdemeanours/felonies	554	259	62	875 (77.3%)
Total criminal proceedings initiated	653 (85%)	277 (98%)	76 (90%)	1006 (88.9%)
Reports of endangerment involving children	440 (58%)	121 (43%)	47 (56%)	608 (53.7%)
Endangerment by youths	8 (1%)	4 (1%)	0%	12
Endangerment by women	62 (8%)	19 (7%)	3 (4%)	84 (7.4%)

Police intervention in cases of domestic violence 2007/2008

(including cases involving protective orders):

Total police interventions 1,608 (2007) 1,392 (2006)

of which

attempted murders

18 11

serious cases of assault and battery

30 14

Question 10:

Please provide information on any plans to encourage the cantons to make available or to finance women's shelters.

Answer:

The question of responsibility for the protection of women and the availability of women's shelters was addressed in the framework of the latest discussions on the sharing of responsibilities between the Confederation and the cantons, when it was clearly affirmed that responsibility remained with the cantons. Several years ago an effort was made to conclude an agreement (concordat) between the cantons for meeting costs reciprocally. Unfortunately these efforts came to nothing.

The totally revised Victim Support Act (VSA), which came into force on 1 January 2009, is worth noting in this context, and in particular Art. 13 ff: in accordance with Art. 14 para. 1 of the VSA victim support counselling centres will arrange emergency shelter for victims and their next of kin when necessary. Art. 9 of the VSA makes the cantons responsible for the provision of independent private or public counselling centres. When arranging for counselling, the special needs of the different victim categories are to be taken into account.

Question 11:

Please provide information regarding the results of the efforts undertaken by the State party to prevent violence and other forms of abuse of women migrants. Are there linguistically and culturally accessible services for migrant women and girls who are victims of gender-based violence? Please also indicate whether these services are run by women.

Answer:

There are specialised counselling services for migrant women, including for example counselling centres for spouses of different nationalities (Frabina Bern); and in relation to family questions, the law, finance, health, for migrants of both sexes in a variety of languages (Infodona Zurich); as well as for the integration of foreigners in general (Fabia Lucerne). Other counselling services include for example Appartenances, Pluriels, Camarada and the Centre de santé Migrants in Geneva. An organisation that specialises in violence and migration is **FIZ information centre on trafficking in women and migration** in Zurich. It counsels women who have been victims of trafficking and of violence, who want separation or divorce, and who have residence status problems and/or find themselves in a position of illegality.

FIZ Makasi is a centre which specialises in counselling and supporting victims of trafficking in women. This includes legal and psychosocial support as well as assistance with residence status in Switzerland and with perceived dangers in relation to the country of origin. FIZ Makasi receives 25 per cent of its financing from various cantons on the basis of performance agreements (www.fiz-info.ch). Last year 167 victims of trafficking in women were assisted by FIZ Makasi, compared with 133 the year before, an increase of 25 per cent. The victims come from 28 countries. Particularly noticeable is the rising proportion of women from Central and Eastern Europe, which in the previous year accounted for a third of the victims and is currently the source of one half.

Countries of origin of victims of trafficking in women: Africa 9%: 15 persons (Cameroon 7, Morocco 2, Ethiopia 1, Nigeria 1, South Africa 1, Tanzania 1, Central African Republic 1, Zimbabwe 1); Asia 14%: 23 persons (Thailand 21, Kirgizstan 1, Philippines 1); Latin America und Caribbean 27%: 45 persons (Brazil 26, Dominican Republic 14, Colombia 2, Mexico 2, Venezuela 1); Eastern Europe 50%: 84 persons (Romania 41, Bulgaria 10, Hungary 6, Ukraine 5, Moldova 4, Russia 4, Kosovo 3, Poland 3, Serbia 3, Slovakia 3, Albania 1) and France 1 person.

Police controls in a number of cantons where FIZ Makasi is involved in caring for the victims, have revealed that it is above all women from Romania who are being exploited. These are the biggest group of victims in the care of FIZ Makasi. Trafficking in women is found in the cities as well as in rural areas: FIZ Makasi is caring for victims from 14 cantons. Whereas in 2006 a third of the women were brought to the organisation by the police, in the following year the proportion had risen to almost half. This increase is a result of improved cooperation between the police and FIZ Makasi, and possibly also greater awareness among the police.

The Canton of Zurich has a special **Violetta Shelter for Migrant Women**, which offers accommodation in a protected space, legal and psychosocial counselling as well as a telephone counselling service for women who are victims of violence, next-of-kin and professionals. Violetta offers professional counselling by an intercultural team specialised in migration-related questions. The services include courses in German and integration. The counselling is available in Arabic, Farsi (Persian), Spanish and Serbian.

Swiss women's shelters are also open to foreign nationals, for whom counselling is available in a variety of languages, as in the "Frauenhaus Winterthur" where there is counselling in Farsi, Spanish, Polish, Turkish and English as well as French and German.

Emergency telephone counselling services and counselling centres (such as **bif** Zurich) in cases of domestic violence are also able to advise migrant women in a number of languages.

This kind of work with women and children requires appropriate transcultural skills, which can be acquired in various ways including through specific training. Even women's shelters that unlike Violetta do not deal specifically with migrant women are increasingly able to call upon the services of specialists who have a migration-related background.

Generally speaking only women are employed in women's shelters. Depending on the local concept, men may be employed in the framework of specific projects such as the organisation of children's activities.

5. Trafficking and exploitation of prostitution of women

Question 12:

Please provide updated information on any prosecutions and convictions under the new article 182 of the Penal Code, which entered into force in December 2006.

Answer:

The Working Group on Human Trafficking and Human Smuggling (AGMM) decided in 2007 to introduce an overview list of preliminary investigations and criminal proceedings in connection with human trafficking and the promotion of prostitution. The cantons report these proceedings on a voluntary basis — there is no legal basis for this reporting requirement — and the information remains on the list until a judgement in the first instance has been passed. The Commissariat for Human Trafficking and Human Smuggling of the Federal Criminal Police maintains this list in order to obtain an overview of ongoing police proceedings and to collate the ongoing police proceedings with its own coordination activity. As this overview list is still in the compilation stage, not all proceedings concerning human trafficking in Switzerland are registered on it.

According to the list, in 2008 at least 25 criminal proceedings concerning human trafficking for the purpose of sexual exploitation (primarily) and exploitation of labour were instituted or were referred to the courts. These proceedings were instituted by the cantonal criminal prosecution authorities and in one instance by the federal authorities. Investigations concerning human trafficking for the purpose of sexual exploitation in Switzerland are on the increase.

Convictions in accordance with the new Art. 182 Penal Code:

The following figures for the year 2007/2008 are based on the registration of convictions for human trafficking and the promotion of prostitution as reported to the Federal Office of Police (fedpol) in accordance with Art. 1 para 3 of the Ordinance on the Communication of Cantonal Convictions (Communication Ordinance, SR 312.2). These figures are provisional, as different cantonal procedures mean that there is a delay in the reporting of convictions, and for technical reasons the Federal Office of Statistics has not presented definitive figures for the years 2007 and 2008.

In the period 2007/2008, 8 criminal convictions were handed down on the basis of Art. 182 Penal Code. Further convictions were also pronounced in 2007, which were still based on the previous article, Art. 196 Penal Code. The sentences imposed for human trafficking ranged from a six-month suspended sentence to 2.5 years. Fines imposed ranged from Fr. 900 to Fr. 2,400. The sentence of 2.5 years imprisonment was based on Art. 182 Penal Code. The maximum sum of damages awarded to victims was Fr. 2,100 and the highest compensation sum was a maximum of Fr. 15,000.

Question 13:

Please describe the results obtained by the programme of action against human trafficking created in 2003 by the Swiss Coordination Unit against the Trafficking of Persons and Smuggling of Migrants.

Answer:

The main results of the progress report of the KSMM of 2007 are summarised in the following:

Legislation:

- On 26 November 2006, the Protocol to prevent, suppress and punish trafficking in persons, especially of women and children, supplementing the United Nations Convention against Transnational Organized Crime, entered into force for Switzerland.
- On 19 October 2006, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, entered into force for Switzerland.
- On 08 September 2008, Switzerland signed the Council of Europe Convention on Action against Trafficking in Human Beings. The ratification process is still ongoing.
- The instruments envisaged by criminal law to fight against human trafficking have been improved. The new article 182 of the Swiss Penal Code(SCC) now criminalises not only human trafficking for the purposes of sexual exploitation but also trafficking for the purposes of labour exploitation or the removal of an organ. Human trafficking for financial gain and the trafficking of minors are now regarded as aggravating circumstances for this element which constitutes an offence.
- Thanks to the new Foreigners Act (LEtr, RS 142.20) and its provisions for implementation which entered into force on 1 January 2008, residence by victims and witnesses of human trafficking during the period of reflection and the judicial proceedings is governed by the law (Art.30 line.1, letter.e ; and by Art.35, the ordinance concerning the admission, residence and exercise of a remunerated activity; RS 142.201). The LEtr also envisages the possibility of assistance with return and with re-integration (Art.60).
- The complete revision of the law on aid to victims, which entered into force on 1 January 2009, imposes the requirement on cantons, when proposing offers of assistance, to take into account the specific needs of different categories of victims, in particular of victims of human trafficking. This measure encourages the provision of specialised aid to victims.

In the area of criminal proceedings:

- The collaboration between the prosecuting authorities and organisms responsible for victim protection has improved in numerous respects. At the end of 2007, nine cantons had put in place round tables or other mechanisms of institutional cooperation which enable the police, the justice authorities and the authorities responsible for migration and for the public and private centres of consultation for victims to cooperate in the fight against human trafficking.
- As a result of this increased collaboration, the fight against human trafficking and related crimes is now conducted more effectively than in the past. In 2005 and 2006, the average number of persons sentenced for these crimes practically tripled compared with the figures for the first few years after 2000.

- Specialisation and implementation procedures are being developed within the institutions concerned. Since April 2007, the Swiss Police Institute has been holding courses on human trafficking for police forces, border guards and authorities responsible for migration issues. At the police level, an inter-cantonal working group was set up in 2007. All the cantons are represented, with two representatives from each concordat area. Cantons that are not members of a concordat also send delegates, as does the Federal Office of Police (fedpol), which is represented by the Commissariat on Human Trafficking/Migrant Trafficking and by the KSMM. The purpose of the working group is to exchange operational information and to improve measures to combat human trafficking.

In the area of victim protection:

- In recent years numerous victims of human trafficking who are living in Switzerland illegally have benefited from protection in the form of a right to stay that is granted for the period of reflection or for the legal proceedings. In 2005 and 2006, there were almost a hundred such cases who benefited from these measures, mainly in cantons where cooperation mechanisms exist. The possibility of staying in the country for a limited period makes it possible to put in place social and legal support and to prepare an assisted return to the country of origin. In a number of rare cases, the right of permanent residence in Switzerland has been granted.
- In the cantons, an increasing number of victims of human trafficking now receive specialist assistance from FIZ Makasi, the only consultation centre in Switzerland which specialises in support for women victims of trafficking. In 2006, FIZ Makasi supported 133 victims of human trafficking. This is five times the number for 2002.

In the area of prevention:

- Every year, the Confederation invests between two and three million francs in prevention and protection of victims in their countries of origin. The fight against human trafficking is a priority in Switzerland's international measures within international organisations and in the field of development cooperation.
- In Switzerland, the "Euro 08 against Trafficking in Women" campaign launched by the association of the same name before and during the 2008 European football championship aimed to create an impact with the general public and to improve prevention. The Confederation supported the project with an initial grant of CHF 100,000. Various cantons also provided financial support for the campaign.

Switzerland is now better prepared to face the problems posed by human trafficking than it was five years ago. The Office for the Coordination of the Fight against Human and Migrant Trafficking (SCOTT) is responsible for harmonising measures in this area. SCOTT consists of the Confederation and cantonal bodies responsible for combating this phenomenon and the representatives of interested inter-governmental and non-governmental organisations. It has a permanent directorate in the Federal Office of Police (fedpol).

Question 14:

Please provide information on measures taken to prevent and combat child pornography, especially considering the specific vulnerability of girls, and on cases of Swiss citizens being prosecuted, in or outside the State party, for sexual crimes committed abroad, especially involving children.

Answer:

The following section will focus initially on legislative measures. This will be followed by a selection of further major political and actual measures and by a summary of parliamentary proposals on the subject of child pornography in the broadest sense.

Legal measures:

- The Federal Act of 5 October 2001 (AS 2002 408; BBl 2000 2943) saw the addition of Article 197 Paragraph 3bis of the Swiss Penal Code stipulating that the acquisition, purchase or possession of items or exhibitions in the sense of Art. 197 para. 1 (pornographic written documents, sound or video recordings or photographs, illustrations, other items of this nature or pornographic exhibitions and propagation on radio or television) containing sexual acts with children or animals or violent sexual acts are punishable by prison sentences of up to one year or by fines.
- On 19 September 2006, Switzerland ratified the optional protocol to the Convention on the Rights of the Child dated 25 May 2000 relating to the sale of children, child prostitution and child pornography (SR 0.107.2.) The optional protocol entered into force in Switzerland on 19 October 2006.
- The new Art. 182 of the Swiss Penal Code contains, in addition to the extension of scope, longer sentences for cases of child trafficking and of commercial trafficking. Furthermore the penal standard was widened to include so-called one-time offenders; it also encompasses the initial recruitment stage as a committed criminal offence.
- The scope of applicability of the Swiss Penal Code was broadened by Art. 5 Para. 1a of the Penal Code (offences against minors abroad) so that offences committed abroad — specifically, sexual abuse of children — may be prosecuted in Switzerland to a greater extent than previously. Further measures include partial revisions of the Swiss Penal Code extending the period by which liability for criminal offences against children lapses and relating to the criminal nature of the acquisition and possession of depictions of violence and hard pornography, as well as the revision of the Victim Support Act (SR/RS 312.5) enabling improvements related specifically to children in the area of criminal proceedings. Parliamentary efforts are also under way to criminalise the use of depictions of child pornography. The enacting law of the Hague Adoption Convention of 2001 involved numerous improvements in the area of international adoptions.

- According to the revised Victim Support Act (SR 312.5), in force since 1. January 2009, children who have been victims of certain grave criminal acts (e.g. Art. 187, 188, 189 of the Penal Code) may now submit a claim until the age of 25. The regulations relating to the questioning of children have been retained without any changes.

Other measures:

- The Federal Council adopted a strategy paper in August 2008 which called 'For a Swiss policy on youth and children'. This strategy advocates various measures in the field of child protection, the rights of the child and policy on youth and children. The Federal Council wishes to create a clear legal basis allowing the Confederation to develop activities in the area of intervention and awareness raising about the rights of the child, as well as of preventing mistreatment and violence against children. Note: the individual cantons have the predominant authority in the area of child protection. With regard to youth promotion, the Federal Council is proposing a total revision of the federal legislation on the promotion of activities for young people, in particular by extending it to work in an open environment.
- An improvement can be seen in the co-ordination and support of interstate and international investigation proceedings as well as police operations against human trafficking/smuggling and in combating child pornography. Improvements were made in the processing of files, cantonal co-ordination, operation procedures, debriefing and PR work when independent professional coordination units in the areas of human trafficking/smuggling (MM) and paedophilia/pornography (PP) were established and developed by the Federal Criminal Police in end-2003 and mid-2007. Both units are representing Switzerland in national and international working groups of Interpol and Europol.
- The Paedophilia and Pornography Coordination Unit (Federal Criminal Police) is currently involved in developing a procedure for reporting cases of child abuse abroad. Since 9th of September 2008 observations concerning suspicion of sex tourism involving minors can be reported by filling out a reporting form on the internet and competent authorities can start to investigate (www.stop-childsextourism.ch). This procedure is unique in the world and has been developed together with ECPAT Switzerland (Swiss Foundation for Child Protection). Up to now, there have been half a dozen reported cases, which have been dealt with by the Pornography Coordination Unit.
- On 1 January 2003, the national Coordination Unit for Cybercrime Control (KOBIC) was established by the Conference of Swiss Cantonal Justice and Police Directors and the Swiss Federal Department of Justice and Police. KOBIC has taken on information and co-ordination duties in the area of cybercrime and among other things has been instructed to make an important contribution to the criminal prosecution of sexual abuse and depictions of child pornography by way of active internet research and monitoring.
- In order for prevention to be effective, first and foremost parents need to be made aware of the issue of sexual abuse and of sexual exploitation. Worth mentioning in this context are training

courses for parents, such as the Fédération Suisse pour la Formation des Parents / Der Schweizerische Bund für Elternbildung (Swiss Federation for Parent Education). However, assisting and supporting parents in their duties also constitutes an excellent means of prevention and makes it possible to prevent them neglecting their children, using violence against them or abusing them. The partnership counselling, family planning, sexual education and counselling centres for mothers and children, as well as meeting places (in cases of conflicts in the practice of the right of parental contact) also play a vital role in this regard.

- Sports associations aim to give a clear signal condemning sexual assault in the sports area. Swiss Olympic and the Federal Office of Sport approach the subject by providing information and practical support to young people, coaches, persons in charge within the associations, and also to parents.
- Swiss Olympic's internet platform 'fairplay' features information, guidelines and practical advice, as well as a list of counselling services all around Switzerland.
- Information on the mistreatment and sexual exploitation of children, on children's rights and on ways in which children can protect themselves is incorporated in educational action and in school programmes. Thus child protection associations and health groups collaborate with schools to discuss the problem of mistreatment and ways of overcoming it. Schools also have on-call staff at their disposal for cases of ill-treatment or, in a more general role, medical staff (school nurses in particular) that can help children who have been mistreated. Preventive measures have been taken in a number of cantons, including: distributing practical leaflets, information meetings, newsletters, and training for teachers, youth workers and those working in childcare. Similar measures have been implemented in the form of plays, films and/or travelling exhibitions visiting schools. For example, the Swiss Child Welfare Association's interactive exhibition «Mon corps est à moi!» ('My body belongs to me!') is touring Switzerland, allowing primary school pupils in Years 2 to 4 to extend their skills and self-defence strategies (see also questions 2 and 4.)
- "Kinderschutz 2020", Switzerland's national child protection programme: in 2007, the Swiss Association for the Protection of the Child (ASPE/Kinderschutz Schweiz) has been tasked with the elaboration of a national concept for child protection. The aim of this concept is an enhanced cooperation among the different private and public entities in the area of child protection in Switzerland.

Current parliamentary proposals:

Various current parliamentary proposals deal with the topic of child pornography (e.g. the motion by Doris Fiala [08.3609] of 2.10.2008 "Increase of penalties in cases of child pornography"; motion by Rolf Schweizer [06.3884] of 20.12.2006 "No commercial pornography on mobile phones" and the initiative by the Canton Basel-Land [06.301s] of 30.1.2006 "Punishability of the consumption and the distribution of child pornography and other prohibited pornography. Increase of the legal penalty [Art. 197 para. 3bis Penal Code]").

In Switzerland the subject of child abuse is not only discussed under the heading of child pornography. The list of proposals that deal more comprehensively with the problem of preventing sexual abuse is a long one: e.g. extension of the professional ban in accordance with Article 67 Penal Code (Motion Sommaruga 08.3373; Parliamentary Initiative of the Legal Affairs Committee of the National Council 08.448) or obligatory post-imprisonment care of sex offenders (Parliamentary Initiative of the SPP Fraction 06.481). It should also be pointed out that child pornography is a partial segment of “network crime”. In parliament there are a number of pending proposals dealing in one form or another with the subject of “network crime.” On 27 February 2008 the Federal Council stated its position on these proposals and at the same time set out a strategy for combating Internet crime in the coming years.

Question 15:

Please indicate what rehabilitation and reintegration programmes are in place in Switzerland for women and girls who are victims of trafficking, including for those who wish to leave prostitution. Please provide details of resources allocated to programmes designed to rehabilitate victims of trafficking into society, including through job training, legal assistance and confidential health care.

Answer:

Victims of human trafficking are entitled to the services of Victim Aid. They receive counselling and are accommodated in women’s shelters. There are also specialised counselling services (see “FIZ Makasi” in question 13). They can also claim confidential medical treatment.

Various ideas and projects relating to these issues are currently being discussed in depth at various levels. For example a pilot project of the Swiss office of the International Organisation for Migration IOM, which has a programme of return assistance entitled “*Rückkehrhilfe AuG*”:

For ten years the Federal Office for Migration (FOM) has run a programme of return and reintegration assistance for the voluntary departure of persons in the asylum context. The new Federal Foreigners Act (AuG) for the first time provides access to return assistance for certain groups of persons in the foreigner category. The FOM is now conducting a pilot project for persons who can now receive return assistance in accordance with Art. 60 para. 2b AuG. This programme is mainly intended for **victims and witnesses of human trafficking** and for **cabaret dancers** who are subjected to exploitation in Switzerland. The pilot phase lasts from 1 April 2008 to 31 March 2010. The aim of the pilot projects is to support entitled persons with voluntary return and with reintegration in their home state (or a third state). See http://www.ch.iom.int/fileadmin/media/pdf/programme/counter_trafficking/allg_infos/Flyer_Pilotprojekt_AuG-d_1_.pdf).

6. Participation in political and public life and decision-making

Question 16:

The data provided in the annex to the report, on the representation of women in the foreign service, reveals that women's participation continues to be significantly low. Please indicate the results of the measures taken to increase the female presence in the diplomatic service, described in the State party report.

Answer:

In addition to the remarks in paras. 202 ff. of the report and the measures described to increase the proportion of women, the following updated results (as of December 2008) confirm the trend described in the report:

Measures:

- increased and targeted information to the target group women with the goal of increasing the proportion of women in the recruitment process.
- (Informal) goal of 50 per cent women in the recruitment of diplomats.
- The gender equality officer is a member of the selection committee for diplomats.

Results:

- Since 2003 the proportion of women **recruited into the diplomatic service** has been 50 per cent (2008: 50 per cent). The overall proportion of women in the **diplomatic service** has been increasing slowly but steadily since 2004 (2004: 18.8 per cent women; 2007: 21.7 per cent women; 2008: 23.4 women);
- in the **consular service** the proportion of women is also steadily increasing: 2004: 41.4 per cent women, 2007 43.7 per cent women, 2008: 45.3 per cent women). The 2008-2009 intake includes 55 per cent (currently in the system as interns). This tendency should increase, as 57 per cent of applications for the 2009 selection process are from women.

Given the career system in the diplomatic service and the formalised promotion opportunities as described in the state report, it is difficult to increase the proportion of women at this level in a short period of time. It will take some time for the female diplomats recruited in recent years to become visible, or alternatively a more flexible career system is required. The latter possibility is currently under discussion as part of the formulation of the new FDFA gender equality strategy.

A number of measures that have now been taken to alleviate this problem should be mentioned here. To keep young diplomats on the payroll, issues concerning the compatibility of professional and of family life are constantly being discussed, for example in the framework of the Ambassadors' Conference of 2006 and 2007. In this context recommendations are being formulated and a formal working group has been mandated to implement them. A current project to support the professional activity of accompanying persons should also be mentioned.

Question 17:

Please provide statistics on the representation of women in the judiciary at both the federal and cantonal levels.

Answer:

The following breakdown makes a distinction between judges in cantonal courts and those in the Swiss Federal Supreme Court.

Judges and public prosecutors by major regions and cantons (2000)

For an overview of the number of female judges and state prosecutors by large regions and cantons, see the following latest available overview from the Federal Office of Statistics. The figures are taken from the 2000 federal population census and provide a good indication of the present situation.

Judges and public
prosecutors by major regions
and cantons, 2000

	Total	Men	Women	Proportion of women in %
Switzerland	2171	1503	668	30.8
Lake Geneva region	446	310	136	30.5
Canton Vaud	248	166	82	33.1
Canton Valais	40	34	6	15.0
Canton Geneva	158	110	48	30.4
Mittelland	392	295	97	24.7
Canton Bern	215	165	50	23.3
Canton Fribourg	68	49	19	27.9
Canton Solothurn	47	35	12	25.5
Canton Neuchatel	45	34	11	24.4
Canton Jura	17	12	5	29.4
North West Switzerland	225	139	86	38.2
Canton Basel City	57	34	23	40.4
Canton Basel- Land	62	38	24	38.7
Canton Aargau	106	67	39	36.8

Zurich	598	399	199	33.3
East Switzerland	275	185	90	32.7
Canton Glarus	9	6	3	33.3
Canton Schaffhausen	27	20	7	25.9
Canton Appenzell AR	8	6	2	25.0
Canton Appenzell IR	-	-	-	
Canton St. Gallen	137	80	57	41.6
Canton Graubünden	40	36	4	10.0
Canton Thurgau	54	37	17	31.5
Central Switzerland	183	133	50	27.3
Canton Lucerne	95	69	26	27.4
Canton Uri	8	5	3	37.5
Canton Schwyz	29	22	7	24.1
Canton Obwalden	8	7	1	12.5
Canton Nidwalden	7	6	1	14.3
Canton Zug	36	24	12	33.3
Tessin	52	42	10	19.2

Source: Federal Population
Census 2000
Information: Information
Centre, Demography and
Migration Section, 032 713
67 11,
info.dem@bfs.admin.ch

Representation of women in the Swiss Federal Supreme Court:

In the Federal Supreme Court, the following developments have occurred since 2001:

Year	Judges	Clerks of the court	Administrative personnel
2001	5 (16.7%)	31 (33.3%)	93 (71.5%)
2002	6 (20.0%)	33 (35.9%)	104 (68.4%)
2003	6 (20.0%)	30 (33.0%)	104 (66.7%)
2004	7 (23.3%)	26 (28.9%)	93 (66.4%)
2005	7 (23.3%)	25 (27.8%)	97 (64.7%)
2006	7 (23.3%)	30 (31.9%)	95 (62.9%)
2007 ¹	9 (23.7%)	46 (33.8%)	128 (65.3%)
2008	9 (23.7%)	49 (35.8%)	130 (65.3%)
31.01.2009	10 (26.3%)	50 (37.3%)	128 (65.6%)

Question 18:

Please indicate the results of the temporary special measures referred to in the State party report (quotas). Please provide information for the Confederation and for each canton.

Answer:

The following updated information has been received from a number of cantons on the promotion of gender equality in the cantons and the current developments 2001-2008:

Aargau

The percentage of women in the central administration in 2005 was 40.0 per cent and in 2008 42.1 per cent. This represents an increase of 2.1 per cent.

The proportion of women in senior positions (salary grades 17-23) in 2005 was 16.7 per cent and in 2008 it was 19 per cent (+2.3 per cent). The proportion of women in leading positions fell from 15.4 per cent in 2005 to 10.9 per cent in 2008 (-2.7 per cent). Part-time posts held by women amounted to 75 per cent in 2005 and to 73.5 per cent in 2008.

The number of child care days per month for the year 2005 is not known. The figure for 2008 was 97. The canton Aargau has drafted a catalogue of measures to implement gender equality.

¹ 1 January 2007: merger between the Swiss Federal Supreme Court and the Federal Insurance Court (TFA).

Bern (canton and city)

The proportion of women at all hierarchical levels (not including the education directorate) in the cantonal administration was 38.5 per cent in 2001 and rose to 42.8 per cent in 2007.

There has also been an increase in the proportion of women at senior management levels: from 17 per cent in 2001 to 19.3 per cent in 2007.

The proportion of part-time employees (not including the education directorate, all levels) rose from 54.2% (2001) to 57.6 per cent (2007) for women. In the same period the figure for men rose from 12.2 per cent to 15.5 per cent.

The proportion of women in the communal administration of the City of Bern was 30.8 per cent in 2000 and rose steadily to 38.7 per cent in 2007.

In 2002 the proportion of women in senior management was 16.8 per cent. This rose only slightly to 18.1 per cent in 2007.

In 2000, 7.1 per cent of all male employees and 60.8 per cent of all women employees worked part-time. The corresponding figures for 2007 were 11.7 per cent of all male employees and 61.8 per cent of all female employees.

In the case of women, the average percentage settled at around 60 per cent, while for men it rose from 7.1 per cent to 11.7 per cent.

As for wage differentials, only the figures from the 2006 analysis in the city administration are known: *“On the whole, women in the Bern city administration earn on average 8.6 per cent less than men. The amount of non-explainable, gender-specific wage inequality or wage discrimination amounts to -2.8 to the detriment of women.”*

Basel City

The proportion of women employees has increased further (2004: 53.97 per cent; 2007: 54.74 per cent). The proportion of women in senior positions increased slightly. The interim total not including hospitals was 2004 23.28 per cent in 2004 and 23.62 per cent (+0.33 per cent) in 2007.

The total of part-time employees was increased by about 5 per cent. Part-time women employees 2004: 71.91 per cent, 2007: 74.11 per cent (+2.2 per cent).

Part-time male employees 2004: 26.89 per cent, 2007: 29.91 per cent (+3.02 per cent).

The average salary differential between women and men was reduced by about 1.5 per cent: 2004: -10.54 per cent, 2007: -8.98 per cent.

In the framework of the institutionalisation and further improvement of gender equality, the existing objectives of the cantonal government were again confirmed by the cantonal government resolution of 1 July 2008.

Fribourg

The Canton Fribourg is conducting a study on salary equality and on the distribution of men and women in the administration. An appraisal of the “logib” analysis is under way but the results are not yet ready to be published.

Lucerne

The following figures refer — unless stated otherwise — to the year 2007 in the Lucerne cantonal administration: Of these 40.6 per cent are women and 59.4 per cent are men.

The gender distribution in senior management positions is 4 per cent women and 6 per cent men. In middle and lower management it is 7 per cent women and 24 per cent men. The proportion of women without line functions is 89 per cent (the corresponding figure for men is 69 per cent).

Distribution according to percentages worked is as follows:

41 per cent of women work 90-100 per cent (82 per cent of men).

41 per cent of women work 50-89 per cent (only 14 per cent of men).

19 per cent of women work 0-49 (4 per cent of men).

Average salaries from 2007 to 2008 have developed as follows:

Women 2,31 per cent, men 1,84 per cent

The salary figures for women are well below those of men, approx. CHF 20,000 and lower. The majority of women are in wage classes up to 8, whereas men are in wage classes 10 and above.

St. Gallen

In the past it was practically only women in staff posts or at the head of section level who worked less than 100 per cent. Now some men are also reducing their percentages in order to look after new-born children.

The number of *women in senior management positions* has increased by a few percentage points in recent years and now totals 29 per cent. (These figures also include secondary school teachers.)

The number of *nursery* places has increased considerably but is still insufficient and is being extended.

Vaud

In 2008, the average percentage of activity for women in the Vaud cantonal administration (ACV) was 74.6 per cent, while that for men was 94.2 per cent. Unless otherwise stated, teachers, personnel in training, hospice personnel, pastors and priests are not included in these statistics.

The figures below show that the proportion of women in management posts is constantly increasing.

Salary classes 24-32 occupied by women amounted to 26.0 per cent and to 34.1 per cent in 2008.

Although the number of women in senior posts is constantly increasing, the situation varies considerably according to the level and the department.

The average percentage of activity for women in 2005 was 78.3 per cent and in 2008 74.6 per cent. That for men was 94.2 per cent in 2005 and 95.1 per cent in 2008.

Thanks to promotion efforts, about ten services currently apply the annual timetable or the annualisation of working hours. Other services are in the implementation or reflection phase.

Zurich (canton and city)

The government council of the canton has defined better compatibility between professional and family life as a legislative goal for the years 2007 to 2011 (legislative goal 12).

In 2001, 51 per cent of all employees were part-time and 49 per cent were full-time.

In 2007 the proportion of part-time employees rose by 3 per cent to 54 per cent. In 2007, 22 per cent of women and 25 per cent of men were promoted in the lowest third of salary classes. In the middle third the corresponding figures were 31 per cent men and 30 per cent of women and in the upper third 32 per cent of men and 31 per cent of women. These figures show an improvement compared to the years 2000 to 2004. In these four years, significantly more men than women were promoted in all wage classes: 114 per cent of men as against 81 per cent of women.

In 2007, Zurich city council decided to accede to the European Charter for Equality of Women and men in Local Life.

The proportion of women in city employment (not including teachers and personnel in training) was increased from 49.5 per cent to 51 per cent from 2002 to 2007.

The objective set by the city council in 1994 of at least a 30 per cent of each gender in city committees will be just about reached in the electoral proposals for the 2006-2010 legislature (33 per cent women, 67 per cent men).

The city council is determined to push on with progress toward wage equality for men and women by introducing the City Wage System SLS by 1 July 2007 and by accelerating the accompanying flanking measures.

Question 19:

Please indicate if the State party has taken any measures to increase the participation of women in political parties since the annex to the State party report indicates very low participation of women in some political parties.

Answer:

At the federal level, no official measures were taken except for awareness-raising and information in the run-up to the elections. Before the elections to the National Council in 2003, the Federal Chancellery published a general set of electoral instructions that referred to the under-representation of women in parliament and to the importance of adequate political representation of women. In the election brochure for 2007, the Federal Chancellor also stated that she would welcome the election of a larger number of women.

In cantonal elections to the executive and the legislative, equality offices have carried out information and awareness-raising campaigns (Zurich 2007, <http://www.gleichstellung.zh.ch/internet/ji/ffg/de/schwerpunkte/politik.html>, as well as commissioning studies on the under-representation of women (cf. Graubünden, META, www.stagl.gr.ch/). Moreover women have been encouraged to take on political responsibility (cf. Fit fürs Rathaus (Fit for the Council), Wahltraining für Frauen (Election Training for Women, Canton Bern).

7. Employment and poverty

Question 20:

According to the State party report (para. 387), the category of women raising children alone remains the one that presents the highest degree of poverty. Please indicate the results of the measures taken to combat the problem and provide updated information on the initiative described in paragraph 390 of the State party report, to introduce a system of benefits for low-income families.

Answer:

One of the main objectives of Swiss family policy is to include supporting low-income families and to improve the compatibility of work and family life so that individuals can earn a living and avoid the poverty trap.

The latest developments in this context are described below.

By 31 January 2009, thanks to the eight-year programme to promote the development of child care centres launched in 2003, a total of over 21,500 new child care places had been created. In a period of

six years, 11,195 daytime child care places of a collective nature (crèches, day nurseries) have been created and 10,307 parascholastic child care places. In the same period support has been provided to 85 structures for the coordination of day care centres, either to train child minders and coordinators, or for projects to improve coordination or the quality of child care services. Including requests currently being processed, some 24,000 places will have been created, equal to an increase of nearly 50 per cent in child care places since the start of the programme.

As of 1 October 2007, it has been possible to provide support for pilot projects for the introduction of day nursery vouchers. A system in which vouchers will be provided for children placed in collective child care structures is being launched in April 2009 by the City of Lucerne in the framework of one of the first pilot projects.

A parliamentary committee has tabled a motion asking for the extension of this stimulus programme. The federal government has recommended that parliament adopt the motion. A parliamentary debate on the matter is due in the spring session.

The proposal for the creation of additional services for families caught in the poverty trap, as mentioned in paragraph 390 of the third Swiss report, is still under scrutiny in parliament. Otherwise there have been no new developments since the report was adopted.

In so far as support to defray a part of the cost of rearing children is concerned, the Federal Act on Family Allowances, which came into force on 1 January 2009, sets new minimum allowances for Switzerland as a whole: a minimum of CHF 200 per month for children aged 0 to 16, and a minimum of CHF 250 per month for children aged 16 to 25 either attending school or pursuing a vocational training. The cantons are free to increase these allowances. The Act applies to all wage earners and the allowance must be granted in full regardless of whether or not the employment is full or part time [previously certain cantons reduced the allowances for part-time workers]. The Act also stipulates that persons who are not gainfully employed and whose annual income does not exceed CHF 41,040 are entitled to family allowances. At present the law does not apply to the self-employed, but the cantons may nonetheless include them [currently 13 cantons do so] and a parliamentary initiative now under consideration calls for extending coverage to this category.

With problems associated with poverty increasing, the government has been asked by parliament to develop a national strategy to combat poverty by the end of 2009 with the participation of the main actors concerned. This strategy, which addresses the three levels of the Swiss state (federal, cantonal and municipal) as well as all social partners, is designed to combat poverty more effectively, both with the existing measures and through the introduction of new measures. The strategy takes the form of a six-point Action Plan. One of the points specifically targets the families of the working poor and single-parent families. The aim is to put in place both financial and structural measures that will enable single parents to be integrated in the world of work. The strategy is to be presented at a special conference on poverty, where it will be discussed prior to implementation.

At the level of taxation the government is planning a reform that should bring about a rapid improvement in the situation of families with children. The proposed measures are as follows: an

increase in the deductions allowed for children in direct federal tax, and the introduction of a deduction for child minding by third parties. Furthermore, the taxation of single-parent families and of parents who are separated must reflect the earning power of those concerned.

Since these developments are very recent or still at the project stage, their impact cannot as yet be measured.

Question 21:

The report indicates (see paras. 13 and 272) that women's wages are well below those of men; and that the wage gap in the private sector was 19.1 per cent in 2006. Please provide statistics indicating the results of measures taken to reduce the salary gap between men and women, in both the private and public sectors, and explain why such a gap still exists in the public sector. Please also indicate any measures taken to increase the number of women in leading positions in the private sector.

Answer:

In an effort to win greater support for projects promoting gender equality in the **private sector**, as of 1 January 2009 the Confederation also provides financial support for in-house company projects. The "wage equality dialogue" project was launched to eliminate wage practices that discriminate against women in the private sector. Employers' and employees' associations have joined forces with the relevant federal offices — the Federal Office for Gender Equality (FOGE), the State Secretariat for Economic Affairs (SECO) and the Federal Office of Justice (FOJ) — to support the efforts of companies and indeed of whole economic sectors to review wage policies and where appropriate take steps to eliminate discrimination. This project, which was launched on 2 March 2009, is expected to last five years, after which there will be an evaluation. Further information on the wage equality dialogue can be obtained online at: www.lohnvergleichsdialog.ch.

In so far as developments in the **public sector** are concerned, in addition to the information provided in the report, which is still valid, for additional information see the *Comparative analysis of wages for women and men on the basis of wage structure statistics from 1998 to 2006* ["*Vergleichende Analyse der Löhne von Frauen und Männern anhand der Lohnstrukturerhebungen 1998 bis 2006*"]. This is based on research carried out by the University of Bern and the Centre for Labour and Social Policy Studies BASS in 2008, as part of an evaluation of the effectiveness of the Gender Equality Act (final report on behalf of the Federal Statistics Office and the Federal Office for Gender Equality, see: www.bfs.admin.ch / Themen / 03 Arbeit, Erwerb / Löhne, Erwerbseinkommen / Indikatoren / Lohnniveau nach Geschlecht / Vertiefte Analyse) .

According to this study the wage differential in the public sector, as well as in the private sector, is to some extent due to differences in workplace structures. About 80 per cent of the wage differential in the federal public sector is the result of objective factors such as individual or workplace related characteristics, activity area, region and other factors that determine remuneration. The remaining 20 per cent is due to discrimination. Thus in the federal public sector the difference that results from *wage discrimination* amounted to around 3 per cent in 2006 (compared to 9 per cent in the private

sector). No in-depth analysis has been made as yet in the public sector of the cantons and local authorities.

Based on this analysis of the 1998-2006 period the following changes or additions need to be made to the report:

- Para. 273: the statistics up to 2006 indicate that discrimination accounts for around 9 per cent.
- Para. 15: a survey of the local authorities public sector was carried out for the first time in 2006.
- Here the differential (-9.4 per cent) is slightly less than in the federal public sector. In the cantonal public sector on the other hand the differential (-18,8 per cent) is on a par with the private sector.

The analysis is available online at:

http://www.bfs.admin.ch/bfs/portal/de/index/themen/03/04/blank/key/lohnstruktur/nach_geschlecht.Document.112211.pdf

As an employer, the Federal Administration attaches high importance to the principle of **equal pay for equal work**, which is indeed the keystone of the wage policy of the Confederation. The salary structure of the Federal Administration has thus been designed to ensure that there is no discrimination, direct or indirect, as a matter of principle. To date however no study has been made specifically on the subject of wage discrimination between women and men within the Federal Administration. The various administrative units have however been encouraged to test the equality of pay between the two sexes with the help of the *Logib* instrument. Developed on behalf of the Federal Office for Gender Equality (FOGE), this software is based on a method for testing the degree to which the principle of equal pay between women and men is observed in the public markets of the Confederation. By the beginning of 2009 the *Logib* test had already been carried out in various federal departments and offices (Economic Affairs ; Transport, Energy and Communications; Foreign Affairs; Home Affairs). To support the management of the administrative units, the Federal Office of Personnel, with expert support from the FOGE has prepared a *Logib* user's manual. This manual is due for publication in electronic form in March 2009.

Question 22:

The report notes that the unemployment rate is higher among women than men (see para. 271) and that there is a higher proportion of women in part-time employment. Please indicate what specific measures have been taken to combat this phenomenon in order to ensure that women have access to full-time and permanent jobs.

Answer:**General**

Complementary to the information contained in the report and for a better understanding of the different ways in which unemployment develops for women and men, it helps to distinguish between frictional, structural and cyclical unemployment.

Frictional unemployment (a result of the minimum time needed to find employment following a period of unemployment, or after the unexpected loss of a job) is higher among women, who for family reasons tend to opt out of employment more frequently than men and later seek to re-enter the job market.

At the level of structural unemployment (due to discrepancies between the skills available and those in demand, or the lack of geographical mobility of the unemployed), the risk also seems to be greater for women than men. On average women are less well qualified and following a period of unemployment for family reasons sometimes have difficulty selling their skills to potential employers, and are often tied to the region in which their partner works.

As for cyclical unemployment, it is the men who are most likely to suffer from this in periods of economic sluggishness due to their traditional strong presence in the secondary sector (industry and construction). The secondary sector is in fact more susceptible to a slump in the economy than is the service sector (See Federal Statistical Office: Arbeitsmarktindikatoren 2008, Kommentierte Ergebnisse für die Periode 2002-2008, Neuchâtel Juli 2008, S.8, <http://www.bfs.admin.ch/bfs/portal/de/index/news/publikationen.Document.111095.pdf>).

In order to reduce the differences in unemployment as well as underemployment between women and men, Switzerland needs to further improve the **ability to reconcile work and family life**. Women of an employable age (15-63, and for men 15-64) spend nearly twice as much time working in the home and in family-related work as men (average of 32 hours per week, compared with 18 hours, see para. 278).

Reconciling work and family life

In Switzerland, efforts to develop measures that would make it easier to reconcile work and family life are proceeding slowly. Implementation of the national objectives in these areas faces a number of interrelated hurdles, of which the three main ones are as follows:

- Lack of coherence between responsibilities at the federal and cantonal levels
- lack of information, and prejudices
- the problem of financial resources.

Action at the federal level

Of the three levels of government it is the federal level which has the most limited powers when it comes to efforts to reconcile work and family life. The federal government is currently concentrating its efforts in four main areas:

1. Information, creating awareness, and advice (paras. 153ff and 312ff)
 1. Federal subsidies based on the law on equality
 2. Efforts by the Federal Department of Economic Affairs (DEA), and specifically the State Secretariat for Economic Affairs (SECO), to provide information and increase awareness
 - i. OECD, Babies and Bosses — Balancing Work and Family Life
 - ii. Study “Wie viel bleibt einem Haushalt von einem zusätzlichen Erwerbseinkommen übrig? (available in German only) [English: How much of an additional income is left for a household?]
 - iii. Prognos study, cost-benefit analysis of a corporate policy favorable to the family
 - iv. Manual for small-to-medium sized enterprises “Work and family”; Measures aimed at reconciling work and family life
 - v. In the area of “work-family reconciliation”, the DEA has been showing the way as an employer since 2007. A “work-family reconciliation” internet platform is due to be launched in the spring of 2009. Regularly updated, this platform will provide information on the measures put in place by the cantons and local authorities. By presenting the existing measures in a way that is practical, rapid and synoptic, this instrument aims to contribute to a transfer of ideas and

experiences. The platform is intended as a service provided by the Confederation to the cantons and municipalities, as well as to the other concerned parties.

2. Child care outside the family (see para. 36)
 - Child care structures: federal stimulus package of financial aid
 - Child care staff: creation of new training opportunities
3. Maternity leave: introduction at the federal level (see paras. 37 and 321ff)
4. Taxation: preparation of a reform of direct federal taxation (taxation of couples and families (see para. 327ff)

The Federal Administration as an employer encourages flexible work hours and part-time work to make it easier to reconcile work and private life, without compromising the needs of the service. In 2008, 49.7 per cent of women were in part-time employment compared to just 9.4 per cent of men (definition: less than 90 per cent of full-time). It is above all women in the lower wage categories who rely on part-time work. There is however a slight increase in part-time work in all wage categories and for both sexes, with the highest increases at the medium-to-high salary levels. Part-time employment is an efficient way for the Federal Administration to make itself more attractive and to achieve greater staff loyalty, and is encouraged for this reason. It is left to each department and division however to determine the specific part-time posts it will offer. In particular, the DEA supports the practice of part-time employment through the publication of vacant positions (80 to 100 per cent).

Also worth mentioning is the introduction of a one week paternity leave for members of the federal staff which came into force on 1 January 2008. A project is also under study to improve the financial assistance for child minding available to federal staff members. This is due for completion some time in 2009.

Question 23:

Please provide information on the implementation and results of the projects designed to integrate disabled persons into working life.

Answer:

The main objective of the fifth revision of the Federal Act of 19 June 1959 on Invalidity Insurance (IV/AI), which took effect 1 January 2008, was to help keep the insured in the normal labour market. Among the new measures it introduced, the following are particularly worth mentioning:

- An early warning system has been introduced for the purpose of predicting the disablement of persons with a work disability of at least 30 days without interruption or who for health reasons have been repeatedly absent from work for short periods in the course of the year. The

personal situation of the insured will be examined to determine whether or not early intervention measures are needed.

- Measures to intervene at an early stage without any prior investigation, such as adaptation of the job requirements, training courses, job placement, vocational guidance, and socio-vocational rehabilitation must help to keep disabled persons in the workplace or make possible their rehabilitation for a new position, in the same company or elsewhere. If such measures are unable to achieve these objectives and there is the risk of a lasting work disability, efforts are being made to examine the question of whether or not the conditions for granting ordinary rehabilitation measures under the law are met.
- The early warning and intervention system is designed in particular for persons suffering from psychological conditions. Since there are proportionately more women who suffer such disabilities, women will be the first to benefit from this system.

In the course of 2008, a total of 10,800 cases were notified to the invalidity insurance authorities in the context of early warning, in most cases either by employers or by the persons themselves.

- New reintegration measures have been introduced which prepare the way for vocational rehabilitation and the existing measures have been extended. In the case of measures that apply to companies, these are adopted and implemented in close collaboration with the employer; the invalidity insurance authorities are able to pay the employer a job initiation allowance in cases where an employee remains with the company in the context of these measures.

In addition to the above-mentioned measures in the framework of invalidity insurance, the Confederation also supports projects to improve the vocational integration of persons with disabilities in the framework of the Federal Act of 13 December 2002 on the Elimination of Discrimination against People with Disabilities (EPDA).

In this context priority is given to projects that demonstrate how adaptations to the work environment can help to achieve equal employment opportunities for persons with disabilities. Special attention must be paid in this context to the situation of women with disabilities. Particularly worth mentioning in this context is a project designed to show how to combat gender specific impediments in the education and training of girls and women with disabilities that has been developed and implemented by the women concerned. As with most projects for the promotion of vocational integration supported in the framework of EPDA, this project still awaits completion.

8. Health

Question 24:

The report states (see para. 372) that access to quality health care in the area of reproductive and sexual health for migrant women is not as good as the care available to Swiss women and that coordination and regional outreach are insufficient. Please describe any steps taken by the State party to combat that discrimination against migrant women.

Answer:

Switzerland is taking concrete measures to ensure equality of treatment in relation to healthcare, and to improve access to healthcare and related preventive measures for migrant women. These are the objectives of the Federal Office of Public Health (FOPH) in the framework of its **Migration and Health Strategy 2008-2013**.

This strategy will promote *equality of opportunity in healthcare* for migrant women and the elimination of avoidable disadvantages in relation to health:

The following key objectives have been determined in the context of efforts to improve attitudes to health, the state of health and access to the healthcare system:

- Acquisition of additional knowledge on migration and health
- Health promotion and disease prevention programmes that include the migrant population
- Access to health information for migrant women enabling them to adopt behaviour conducive to health
- Training of health workers in migration specific (transcultural) skills
- Increasing reliance on professional intercultural translation, to reflect the real needs

Sexual and reproductive health: healthcare

Communication between health workers and clients needs to be improved through the development of transcultural skills among the former, as well as through the increasing utilisation of professional intercultural translators (e.g. Migrant Friendly Hospitals Project).

Sexual and reproductive health: prevention

The health information platform www.migesplus.ch offers information in various languages in relation to sexual and reproductive health: brochures on HIV/Aids, women's health, preventive checkups for breast and uterine cancer, pregnancy/motherhood, prenatal classes, maternity information, maternity ID, female genital mutilation (FGM), contraception, breastfeeding/baby care.

The information platform of the Swisscounselling centres for sexual and reproductive health (www.isis-info.ch) which contains data on migration specific skills of various professionals is accessible online and continuously updated.

Rapid Assessment with regard to the state of sexual and reproductive health and migration allows measures to be taken to create the necessary awareness in the regulatory institutions (e.g. family planning bureaux). Moreover discussions are due to take place in 2009 with the Cancer League on specific measures for the prevention of breast and uterine cancer among migrant women.

Question 25:

The report mentions female genital mutilation of girls (paras. 380 to 384). Please provide statistical data with regard to its occurrence and indicate what specific measures have been taken to prevent and combat such practices in specific parts of the immigrant population, and with what results.

Answer:

To begin with the following updates should be made to the **country report**:

- In paragraph 382 of the report:

To date there have been two criminal trials in Switzerland concerning female genital mutilation. In the Canton of Fribourg in June 2008 the half sister of a girl, who at the time was 13 years old, was given a suspended prison sentence of six months for failing in her duty as guardian to look after the child's welfare (Art. 219 Penal Code). Since the offence in question took place in Somalia where genital mutilation is not punishable by law, the half sister could not be prosecuted for causing grievous bodily harm, on the grounds of double incrimination. In the first case of its kind involving genital mutilation carried out in Switzerland the Court of Appeal of the Canton Zurich, also in June 2008, gave the parents of a girl, who at the time of the offence was two years old, a suspended sentence of two years imprisonment for the infliction of grievous bodily harm (Art. 24 i.V.m. Art. 122 Penal Code) on their daughter.

- In paragraph 383 of the report:

The National Council's Legal Affairs Committee in May 2008 created a sub-committee mandated to examine the various possibilities for implementing the parliamentary initiative to clarify related questions, and to report back. In January 2009 the sub-committee adopted a preliminary draft report for submission to the full committee, which was expected to take a decision in February 2009.

For the relevant political and administrative **measures at the federal level**, it is worth mentioning the efforts of the Federal Office of Public Health (FOPH) in this context:

- The FOPH is among other things responsible for the implementation of Roth-Bernasconi Motion 05.404, which calls for measures to create awareness of the problem of female genital mutilation (FGM) and the need for preventive measures.
- Furthermore, the FOPH provides financial support to a national information agency for the prevention of female excision in Switzerland. This agency has the following duties:
 1. Networking and creating awareness among professionals active in the areas of integration, social work and education;
 2. Training women from the countries in which FGM is practised, as mediators in charge of direct efforts to prevent this practice in the communities concerned (in this context increased efforts are being made to involve men also);
 3. Preparation and distribution of information materials on the subject of FGM;
 4. Leading a national group of FGM experts.
- The Federal Office of Public Health will also attempt in 2009 to clarify the need for coordination with the Federal Office for Migration and the Federal Office of Justice as well as the Federal Department of Foreign Affairs (FDFA), and look into the information needs of the cantons.

Finally, it is worth mentioning a study on possible preventive legal measures: on the basis of a mandate from UNICEF Switzerland, the University of Basel Centre for Family Research conducted a study entitled “Civil law child protection and the prevention of female genital mutilation in Switzerland”. This shows the scope and limitations of civil law child protection and looks at different ways to prevent female genital mutilation.

Question 26:

Please explain the scope and main provisions of the new law mentioned in paragraph 379 of the State party report on the sterilization of disabled persons, which entered into force in 2005.

Answer:

The field of application of the Federal Act of 17 December 2004 on the conditions and procedures governing the sterilisation of persons (Sterilisation Act, SR 211.111.1) is comprehensive. Its main concern however is regulation of the sterilisation of persons permanently incapable of discernment (Art. 7 f. Sterilisation Act).

The physician can only perform the operation with the approval of the custodial authorities (Art. 7 para. 2 g with Art. 8 para. 1 Sterilisation Act). In making their decision the authorities must ensure that the following preconditions are met on a cumulative basis:

- Other possible preventive methods must be given precedence (Art. 7 para. 2 b Sterilisation Act).
- The person concerned must be at least 16 years old (Art. 7 para. 1 Sterilisation Act).
- Medical opinion must hold that the person concerned — with no prospect of attaining the power of judgement (Art. 7 para. 2 e) — is permanently incapable of discernment (Art. 7 paras. 1, and Art. 8 para. 2 c Sterilisation Act).
- The operation must be carried out in the interest of the person concerned, taking all things into consideration (Art. 7 Abs. 2 Bst. a Sterilisation Act).
- Sterilisation is only permissible when the conception and birth of a child is to be expected (Art. 7 para. 2 c SterG) and when pregnancy would seriously endanger the health of the woman concerned (Art. 7 para. 2 d Sterilisation Act).

9. Marriage and family

Question 27:

Please provide updated information on the parliamentary initiative concerning choice of family name (para. 435), including any plans to withdraw the reservation to article 16 (1) g of the Convention.

Answer:

The National Council's Legal Affairs Committee on 22 August 2008 adopted the draft of an **amendment of the Civil Code**, ceding the choice of family name to the husband and wife. They may choose either the name of the husband or that of the wife as the family name, or they can decide against adopting a common family name. In the latter case, the husband and wife keep their ancestral names. Bridal couples who decide to keep their own names must decide at the time of marriage which of their unmarried names to give their children. If the Registry Office officials feel there is suitable justification they may free the bridal couple from making this declaration. Parliament is due to discuss this amendment shortly.

On the question of possible withdrawal of the reservation, cf. Question 3.

Question 28:

Please provide information concerning the suggestions of the Federal Council with regard to forced marriages, mentioned in paragraph 438 of the State party report, including free consent necessary for a marriage to be valid and no recognition of marriages of persons under age 18. Please also provide clarification as to whether forced marriages contracted abroad fall under Swiss criminal law.

Answer:

On 5 November 2008 the Federal Council sent a draft bill of the **Federal Act on Measures to Prevent Forced Marriage** for a public hearing consultation lasting until 15 February 2009:

This would amend the **Civil Code** in relation to announcement of the banns and other procedures necessary prior to marriage, modifying the provision so as to require the Registry Office to determine whether or not any reasons exist that might indicate that the application has not been made according to the free will of the betrothed. Furthermore the grounds that would make it possible to nullify the marriage at any time would be extended to include two new elements. One is in the case of a marriage that has been contracted without the free will of the spouses, and the other is if one of the spouses had not reached the age of 18 at the time of the marriage.

Efforts are to be made at the level of **private international law** to prevent forced marriages by toughening the regulations that govern marriages in which a minor is involved. Such marriages are no longer permitted in Switzerland even in the case of foreigners. In the case of forced marriages contracted abroad, current Swiss legislation only allows prosecution if the offence is also punishable in the *locus delicti* (double incrimination); or, if there is no penal power in the said *locus delicti*, the offender is in Switzerland or is extradited on the basis of this offence; or, although Swiss law allows for extradition in such cases, the offender is not extradited (Art. 7 para. 1 Penal Code, principle of subsidiary criminal justice). These requirements must be met if the offender and/or the victim hold Swiss citizenship. If neither offender nor victim are Swiss citizens, the offence will only be subject to prosecution in Switzerland if in addition the foreign State has made a request for extradition and this has been rejected for a reason that does not concern the nature of the offence, or if the offender has committed a crime that is considered particularly serious and has been proscribed by the international legal community (Art. 7 para. 2 Penal Code). The penalties imposed by Swiss law must not in the aggregate be more stringent than those required by the law of the *locus delicti* (Art. 7 para. 3 Penal Code).

It has now been proposed not to amend the Penal Code, notably since forced marriages can be effectively prosecuted as “coercion” under existing law. The discussion of “forced marriage” as a statutory offence will have to wait.

Question 29:

Please provide information on the type of property that is distributed on the dissolution of relationship. Please also indicate whether the law provides for the distribution of future earning capacity and human capital or considers enhanced earning capacity or human capital in any manner in the distribution of property upon dissolution (e.g., through a lump-sum award reflecting the other spouse's estimated share in this type of asset or by allowing for an award of compensatory spousal payment).

Answer:

A (legal) claim for alimony is possible only following the dissolution of a marriage, or as the case may be of a “registered partnership”. The amount of the claim for maintenance will be determined after the consideration of a number of factors. These include the professional qualifications and related earning power of the spouses (Art. 125,. 7 Civil Code). The provisions concerning the respective pension rights are currently being revised (Art. 122-124 Civil Code). Among the questions being discussed in this context is the possibility of awarding more than a half share to compensate reduced employment prospects if one of the divorced spouses is encumbered with parental responsibilities. The draft legislation is expected to be ready for consultation at the end of 2009.
