



# Gender Equality and Cultural/Religious Practices

A position paper by the Federal Commission for Women's Issues FCWI (June 2010)

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## I. Introduction

In recent years the Federal Commission for Women's Issues has been frequently confronted with matters regarding culture/religion and the violation of women's rights. In the consultation process for legislative amendments and Federal Council reports, the commission has been able to give its opinion on issues such as genital mutilation or forced marriage. There was also considerable discussion about women's rights in the media and public sphere in connection with the Minaret Initiative.

Parliamentarians at both cantonal and federal level have submitted a range of political proposals regarding the practice of covering the face. In addition, the most recent Federal Supreme Court ruling on mixed-gender swimming lessons (see under III 2.2.) or the

discussions about pluralistic legal systems (autonomous dispute settlements among migrants according to their own religious law) have raised questions about religion and gender roles and the effects of religious/cultural autonomy. The existence of religious private schools and homeschooling by strict religious groups should also be examined from a gender equality perspective.

In its recommendations on Women and Migration of 18 December 2009, the Federal Commission on Migration FCM made it clear that religious or cultural practices that discriminate against women should be condemned and opposed. At the same time, however, the commission added that we should not forget to look at society as a whole and those values still existing which reflect gender inequality. The UN Committee on the Elimination of Discrimination against Women CEDAW has also expressed its opinion on this issue. In its recommendations of August 2009 it urges Switzerland to oppose discrimination against migrant women and female members of religious or ethnic minority groups, both in society as a whole and within their own communities. Proactive measures should be taken to inform women of their rights concerning gender equality and non-discrimination.

The Federal Commission for Women's Issues FCWI approved the present position paper at its plenary meeting on 22 June 2010. Since 2009 it has been dealing intensively with the various issues involved and has discussed these at several plenary meetings.

## **II. Core issues**

The Federal Commission for Women's Issues FCWI lobbies hard to eliminate discrimination against women and promote gender equality. It is of the opinion that existing problems should not be played down. Even controversial topics such as the religiously or culturally motivated patriarchal behaviour, which still exists in some parts of society, should be placed firmly on the political agenda and discussed openly. Practices which violate the rights of women and girls should be clearly condemned and opposed, regardless of the need to «protect» religious or cultural minorities. However, the aim of this discussion is not to discredit entire population groups simply because they have a common religion or similar origins.

### **1. Gender equality rights must not be relativised**

Among the most important steps on the path to gender equality in Switzerland were the women's franchise, the revised marriage and divorce laws, the equal treatment of children born outside and within marriage in matters of alimony and inheritance, the state mandate to promote gender equality at school and the end of the traditional non-interference of the state

in preventing violence in the private sphere of marriage and the family. It is incumbent on the state to insist on maintaining and defending these achievements in the interests of girls and women and, if necessary, to do this in spite of the religious and cultural demands of both immigrant and indigenous groups. Religion and culture should not serve to discriminate against women, prevent them from enjoying their rights or provide a justification for violating these rights. The basic rights as laid down by the Federal Constitution – that people may not be discriminated against because of their gender, the protection of physical and mental integrity, freedom to marry whom one chooses or the right to primary education – are some of the most elementary legal tenets that the state must respect and protect.

## **2. New version of an old problem: Gender equality and religion/culture**

The acceptance of inequality between women and men and the resulting disadvantages suffered by women in the face of the law can essentially be traced back to traditional cultural mores and customs which, in Switzerland too, serve to uphold the existing inequality and privileges enjoyed by men. The emancipation from religious, patriarchal influences on morality, sexuality, choice of partner and role assignment in marriage is a recent and still fragile development, which continues to meet with much resistance. It would therefore be inappropriate to adopt a superior attitude regarding what has been achieved.

In this respect, the influx of immigrants with, in some cases, a conservative religious background poses a further challenge in the context of an old problem. Even before the arrival of Muslim immigrants, Switzerland was not a religiously homogeneous country. Besides the major Christian confessions, the Jewish communities and the free churches, Switzerland has long been home to other religious groups such as the Seventh Day Adventists, members of the Salvation Army, Jehovah's Witnesses and, of course, atheists as well. Nor can the major Christian confessions be called homogeneous in any way. Radical or traditional branches as well as more moderate or progressive believers can be found in all religious communities. In particular, conflict is inherent in the relationship between traditional conservative faiths and gender equality. In some branches of European religions, for instance in the Catholic, Orthodox or Protestant churches, but also in orthodox Judaism and certain branches of Islam, the understanding of morality is marked by strict role stereotyping, the subordination of women and close control over their moral behaviour. Examples of this range from regulations regarding clothing or chastity which only apply to women to strict rules regarding choice of partner and marriage or the exclusion of women from positions of leadership in the religious community. Even today, due to the political aspects of religion, the state does not always remain impartial. An example of this can be found in the Catholic Church, which enjoys public status with the corresponding privileges in the cantons. Only

men may become priests, even though an employment contract exists between the priest and a public body, which should therefore actually be subject to anti-discrimination laws.

### **3. Attitudes to female sexuality**

The assignment of gender roles and, in particular, attitudes towards female sexuality reflect how far a society has developed in terms of equal opportunities and rights for men and women. Perceptions of sexuality are part of the overall picture of a society; attitudes towards female sexuality demonstrate the place women have in that society. Some conservative religious groups have strict role stereotypes and taboos surrounding sexuality which also have a negative effect on boys and men.

In western society a series of phenomena have had far-reaching effects on society and its understanding of the individual freedoms of men and women. These include the Enlightenment, the various feminist movements which fought for the rights of women and girls in politics, education, working life and the family, and not least the so-called sexual revolution of the 1960s and the accompanying access to modern methods of contraception. The result is a society which is considerably more open and in which individuals enjoy a great deal of individual freedom – and this includes women. This process has brought about a change in people's attitudes to the importance of religious teachings in their private lives. The major Christian religious communities now have a markedly weaker influence on gender roles, family life, sexuality and reproduction, at least in people's everyday lives, if not always in church doctrine. A comparable development towards the secularization of private life can be seen in particular within some moderate Moslem immigrant communities in western countries.

This does not mean that the sexualisation of women in modern secular western society is no longer an issue. Whereas religions control and suppress women's sexuality, women in our 'modern' societies are often portrayed as sexual objects in the media and advertising. This also has a damaging effect on the sexual development of girls and young women, albeit in a different way. The media and advertising are not, however, the subject under discussion in this position paper.

### **4. Restrictions on religious/cultural practices to protect the rights of women and girls**

Not all discriminatory practices can be classed at the same level. It is clear that the state must protect women and girls against obvious violations of human rights, e.g. child marriage, forced marriage, genital mutilation or acts of violence, whether they are religiously or culturally motivated or not. More complex are situations in which adult women submit

themselves to certain moral customs (e.g. wearing a wig, headscarf or the chador), or when parents' religious views on upbringing interfere with a girl's right to education and freedom of development. In such cases it is necessary to weigh up the religious conviction of the parents or adult woman on the one hand and, on the other, society's interests in terms of gender equality and its need to protect citizens from degrading practices and violations of their rights.

The Federal Commission for Women's Issues FCWI is strongly against role stereotypes and degrading gender-specific practices. It is the duty of the state to protect women and girls from practices which are discriminatory and misogynistic and cannot be reconciled with the basic values of the constitution. In deciding whether certain bans or rulings are justified in individual cases, the state must weigh up both the interests it wishes to protect and the opposing interests. An adult woman's religious freedom and her ability to decide for herself, as well as parental authority, should also be taken into account. Furthermore, banning or imposing certain practices should not apply to particular religions only, unless there are specific reasons for this. Finally, legislators have to decide whether existing regulations are sufficient or if additional measures must be taken by the state.

## **5. Opposing practices which discriminate against women and girls – but not the members of particular religious groups in general**

In discussions over recent months it has been noticeable that the rights of women are now being misused to repress the interests of some religious minorities, even in issues which have nothing to do with gender. Serious violations of women's human rights such as forced marriage or honour killings are deliberately taken as arguments in these polarising debates, although the majority of migrants in Switzerland have moderate religious tendencies and clearly reject such practices. Discrimination and stereotypical role assignment existing in (Christian) mainstream society are deliberately overlooked in the debate. Ironically, those factions who feel called upon to champion the cause of Muslim women against patriarchal influence, thereby catching the attention of the media, are the very ones who in the past lobbied most vehemently against improvements in the legal and actual status of women in Switzerland. However, the exploitation of these issues for political purposes by xenophobic groups should not mean that those institutions concerned with gender issues on a political level are afraid to state clearly their opposition to all misogynistic practices. Another of the key concerns of the Federal Commission for Women's Issues FCWI is to allow the voices of progressive Muslims, both men and women, to be heard to a greater extent.

### **III. Discussion of specific issues**

Here the commission states its position on selected current issues. Moreover, as part of the consultative process it has expressed its position on the Federal Council's two reports on forced marriage and the genital mutilation of girls and women. See [www.frauenkommission.ch](http://www.frauenkommission.ch).

#### **1. Head covering and full-body covering**

Religious symbols are worn for different motives. Some would like to affirm their membership of a group as a political statement; others wear them out of religious conviction or because they feel under pressure to do so from their cultural environment. The social pressure applied by family and environment can play a major role in obliging girls and young women to cover their heads or wear other articles of clothing designed to protect women from the being looked at by strange men. When adult women choose to cover their heads for reasons of religion, this decision should be respected in order to preserve the women's religious freedom, just as is the case when other religious symbols are worn. However, Muslim women's headscarves and other head coverings worn only by women, such as the wig (scheitel) worn by married Orthodox Jewish women, should not be compared with the veil. Whereas headscarves, hats or wigs cover the hair and perhaps also the neck, burkas or niqabs also cover the face and body. In the FCWI's view, face covering is an extremely oppressive practice. Women and men, girls and boys should be able to move freely in public and show their face; this is an important element in the interaction between the sexes and fundamental to a free society. It is also an expression of the fact that women and men have an equal right to use the public space. Since only women are required to cover their faces, the custom negates their identity and individuality and isolates them socially. It is an expression of degrading attitudes towards female sexuality and the position and role of women in society. In the end, it is the consequence of a misogynistic sexualisation of women. Furthermore, it portrays men in a way which the majority of men in Switzerland find negative and debasing.

For reasons of gender equality the commission therefore unconditionally rejects the wearing of face covering in public. It is incumbent on the state to oppose practices which express a deep-lying discrimination against women. Religious freedom is not unrestricted and cannot be used as an excuse to violate basic human rights or tolerate discrimination against women. The FCWI is therefore of the opinion that the state should not allow the veil to be worn either in schools or in positions of public service, and the cantons and communes must insist that a person's face be visible and identifiable when that person wishes to access

a state institution or service provided by the state. Employers may also insist on their employees showing their faces at work in their dealings with customers and work colleagues.

However, the FCWI considers that it is unnecessary to make covering the face in public a criminal offence. In Switzerland there have as yet been no difficult situations which would justify criminalising this practice. Such measures are therefore unnecessary and would be disproportionate.

In the Commission's view it is important that state and society confront the issue of face covering, even though there are few women in Switzerland as yet who wear a veil.<sup>1</sup> Indeed, the discussion should not be restricted to face covering alone, but should look at the situation of women in general in strict Muslim immigrant communities and in other conservative religious groups. Often, these women live completely cut off from society and are difficult to reach, despite the state's efforts to integrate their communities.

## **2. Schools**

### **2.1. Clothing and symbols**

In 1997 the Federal Supreme Court ruled that, in the interests of confessional neutrality in public schools, teachers should not be allowed to wear so-called overtly religious clothing and symbols. The Federal Commission for Women's Issues FCWI also considers it vitally important for reasons of gender equality that schools should be religiously neutral both in outward appearance and in terms of educational content. This also means that teachers should not propound their personal religious views in the classroom. This should apply equally to all teachers in public schools, regardless of their religion. The FCWI therefore believes that teachers in public schools – unless they give specific religious instruction – should not wear religious clothing, that is to say, neither headscarf, nor monk's or nun's habit, nor deacon's apparel etc.

As for the pupils themselves, the cantons have so far taken a pragmatic, tolerant line. Religious head covering such as kippas or headscarves without a veil are tolerated in the same way as the Christian cross in the form of a necklace or brooch. The FCWI believes that religious clothing or ornaments should be accepted among pupils so long as they do not interfere with the children's social and educational development or interaction with each other. There should be no tolerance of articles of clothing which are gender-specific and the manifestation of a degrading, controlling attitude towards women and their sexuality and which express an understanding of gender roles fundamentally contrary to gender equality as understood by the state. Religious symbols such as necklaces or brooches or the kippa worn by Jewish boys are therefore not viewed in the same way as clothing which designates even young girls as sexual beings and is intended to shield them partially from view or make

them unrecognisable. From this viewpoint, face covering and full-body covering are considered unacceptable and should be banned. As practices which discriminate against women, they lead to considerable disadvantages for the girls who have to wear them. Their contact with others in the classroom is restricted in a way that is not reconcilable with learning social skills, developing a healthy image of oneself as a female or providing equal opportunities.

Clothing regulations of strict religious streams such as the wearing of headscarves, long skirts, special stockings etc. may also have a negative effect on a girl's social interaction with others at school. Unlike the turban or kippa, such practices are clearly linked to female sexuality and the female gender role, which is controlled or determined early on in a girl's life by clothing regulations which apply only to females. This does not only mean restrictions and difficulties for the girls who are required to follow such a religiously motivated dress code. Girls whose parents may not require them to dress in such a way but who come under strong social pressure at school if they do not (for instance, they may be called or treated as a 'tart'), also suffer. This phenomenon is well known in religious streams which still see women and girls either as 'holy' or a 'whore', even today. This obvious obstacle to the free development of many girls at school is absent when they are not permitted to wear a headscarf whilst at school. No girl can then be treated either respectfully or disrespectfully only because she wears or does not wear such an item of clothing. There are good reasons for cantons and communes to impose more restrictive regulations in order to counteract social and family pressure on girls. The FCWI recommends the cantons, communes and school authorities to take suitable measures against such clothing and to ban in compulsory public schools the wearing of headscarves and other items of clothing which are the manifestation of a controlling, discriminatory attitude towards women and their sexuality.

## **2.2. Dispensation from specific lessons in school (sex education, swimming lessons etc.)**

In the name of religious freedom, schools are to respect the religious convictions of parents and pupils, in as far as these can be reconciled with the normal running of the school and the right of the children to education. Furthermore, these convictions should not conflict with the pupils' right to develop freely regardless of their gender. Parents and children of all religions should feel they are accepted to an equal degree in the public school system, provided they in turn respect the basic values of our society. This means that children from a Muslim, Jewish or other faith background may receive dispensation for major religious festivals or that their special holidays may be taken into consideration when examinations are to be sat.

On another level, applications are often made for dispensation from certain lessons such as sex education, swimming or physical education. Here there arises a conflict between the



religious convictions of parents and children, the education mandate of the State, gender equality issues in public schools, and the children's right to education. In 2008 the Federal Supreme Court ruled that mixed sports lessons and school camps help to further socialisation and a general dispensation would be contrary and detrimental to integration efforts. Furthermore, all children should become used to "the natural interaction with the opposite gender as is usual in our society". In this the Federal Supreme Court supported the position of the cantonal school authorities which had refused dispensation from swimming lessons for two boys.<sup>2</sup>

The FCWI believes that lesson content, school subjects and school events such as camps or trips should be compulsory for all schoolchildren and that essentially no dispensation should be given to anyone. The state should ensure that all pupils can benefit in the same way from the educational opportunities and social events provided. It must insist on its education mandate and the right of schoolchildren to the same basic educational opportunities, even in the face of parents' extreme religious or moral concerns. This is particularly important when parents have concerns which are gender-motivated, i.e. which affect girls "because they are girls". The FCWI welcomes a more restrictive attitude in the cantons to this issue. From the point of view of girls' development, it is particularly important that they have the opportunity to participate in subjects in which sex education and health issues play a role. Basing its argument on the importance of sex education for developing a responsible and confident attitude towards sexuality, in its latest report the Federal Commission for Child and Youth Affairs also requires that there should in general be no dispensation from such lessons at school.<sup>3</sup>

### **2.3. Religious private schools and homeschooling**

In Switzerland it is permitted to found and run a private school along religious lines, as long as the minimum standards laid down by the relevant canton (e.g. the syllabus objectives) are respected. In some cantons, for example in Bern, homeschooling is also widespread amongst Christian groups. In principle, all religious communities may receive permission to set up a private school. Religious private schools or homeschooling permit parents to give their children a stronger religious foundation in their schooling. However, it also provides them with the opportunity to avoid certain subject content and values which are taught in public schools (sex education, the theory of evolution etc.).

In Switzerland there is a contradiction between the more recent, stricter practice of dispensation in public schools on the one hand (swimming) and the freedoms enjoyed by private schools. Social skills, which are automatically learnt in public schools, may be neglected in religious private schools in some circumstances. For instance, there may be little or no interaction with children of other religions or between boys and girls educated in

single sex classrooms. Religious private schools and homeschooling therefore contradict to a certain extent the postulate that compulsory education should have an integrating function, bringing together the different cultures, religions and social classes. In addition, article 8 of the Federal Constitution clearly places the responsibility for promoting equality in education and training in the hands of the state.

The FCWI holds the view that the cantons should ensure that state education objectives are respected in religious and other private schools and that children in these schools are taught values which are important both for individuals and for social cohesion in a liberal democracy. This includes ensuring that girls are not held back or discriminated against either in the educational process itself or in their social actions. The FCWI is also of the opinion that the practice of long-term homeschooling is problematic in terms of gender equality, social integration and interaction. Authorisation to homeschool should only be given in exceptional cases for adequate objective reasons (circus families, Romany/Sinti/Yenish peoples) or only for short periods of time.

#### **2.4. Need for research**

In Switzerland there are various problem areas which have as yet been too little researched. For example, the issue of the integration at school and in society of girls from strictly religious families needs to be examined more closely, both from the educational and the gender perspective. Furthermore, too little research has been done into the relationship between public schools and private schools, e.g. what influence does a more strongly secularised public school system have on the formation of new religious private schools, what is the relationship between integration or gender equality on the one hand and religious private education on the other, and what role do or should the cantons assume?

### **3. Legal pluralism**

In one of its publications, the Federal Commission against Racism FCR looks at different models of pluralist legal systems.<sup>4</sup> Legal pluralism is understood as the possibility for individual religious or ethnic groups within a state to resolve legal disputes - e.g. involving family, divorce, inheritance or child law issues – in their own courts and according to their own (religious) rules instead of in the state courts. In Canada and England immigrant communities have attempted to establish such parallel structures.

The FCWI believes that the basic tenet of a unified secular, state legal system, in particular for issues relating to family and criminal law, must be respected. In the interests of women and to prevent the development of parallel societies, proposals for establishing

autonomous dispute settlement systems within migrant groups or religious communities should be clearly rejected.

## **IV. Conclusion**

### **1. Full-body covering / burka / niqab**

The Federal Commission for Women's Issues FCWI holds the view that covering the face negates the identity and individuality of women and expresses a sexualisation of women that is degrading and misogynistic. Furthermore, it portrays men in a way which the majority of men in Switzerland find negative and debasing. However, to ban face covering in public spaces outright would be inadvisable. Such a measure is unnecessary and disproportionate. On the other hand, the FCWI is of the opinion that the state should not allow the veil to be worn either in schools or in positions of public service, and that cantons and communes must insist that a person's face be visible and identifiable when that person wishes to access a state institution or service provided by the state. Employers may also insist on their employees showing their faces at work in their dealings with customers and work colleagues.

### **2. Religious clothing among teachers in state schools**

In order to promote gender equality in public schools, the FCWI considers it to be of vital importance for schools to be religiously neutral, both in their outward appearance and in terms of educational content. Teachers of all religions should therefore not be permitted to wear religious clothing – unless they give specific religious instruction – that is to say, neither headscarf, nor monk's or nun's habit, nor deacon's apparel etc.

### **3. Religious clothing among pupils in state schools**

The FCWI is of the opinion that religious clothing and jewellery worn by pupils may be accepted so long as social and educational development and interaction among the children are not impeded. Clothing which is clearly gender-specific and the expression of a degrading, controlling attitude towards women and female sexuality should not be tolerated. Such clothing is the manifestation of an understanding of gender roles which runs directly counter to that of our society. From this point of view, face covering and full-body covering should not be permitted. Clothing regulations of strict religious streams such as the wearing of headscarves, long skirts, special stockings etc. may also have a negative effect on a girl's social interaction with others at school. The FCWI recommends the cantons, communes and

school authorities to take suitable measures against such clothing and to ban in compulsory public schools the wearing of headscarves and other items of clothing which are the manifestation of a controlling, discriminatory attitude towards women and their sexuality.

#### **4. Dispensation from specific lessons in state schools**

Schools should only be required to respect a person's faith so long as there is no violation of a child's right to free development, irrespective of gender. Lesson content, school subjects and school events such as camps or trips should be compulsory for all schoolchildren and essentially no dispensation should be given to anyone. The FCWI welcomes a more restrictive attitude to this issue in the cantons.

#### **5. Religious private schools and homeschooling**

The FCWI believes that the cantons should ensure that state education objectives are respected in religious and other private schools and that children in these schools are taught the values which are important both for individuals and for social cohesion in a liberal democracy. This includes ensuring that girls are not held back or discriminated against either in the educational process itself or in their social actions. The FCWI is also of the opinion that the practice of long-term homeschooling is problematic in terms of gender equality, social integration and interaction. Authorisation to provide homeschooling should only be given in exceptional cases in which adequate objective reasons exist (circus families, Romany/Sinti/Yenish peoples) or only for short periods of time.

#### **6. Parallel legal systems (legal pluralism)**

The FCWI believes that the basic tenet of a unified secular, state legal system, in particular for issues relating to family law and criminal law, must be respected. In the interests of women and to prevent the development of parallel societies, proposals for establishing autonomous dispute settlement systems within migrant groups or religious communities should be clearly rejected.

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#### **Notes**

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<sup>1</sup> Answer by the Federal Council to Darbellay's interpellation 09.4308 of 24.2.2010, §5.

<sup>2</sup> Decisions of the Swiss Federal Supreme Court BGE 135 I 79

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<sup>3</sup> Federal Commission for Child and Youth Affairs, *Jugendsexualität im Wandel der Zeit. Veränderungen, Einflüsse, Perspektiven (Youth Sexuality in changing times. Changes, Influences, Perspectives)*, Bern 2009, p. 99.

<sup>4</sup> Christian Giordano, *Der Rechtspluralismus: Ein Instrument für den Multikulturalismus? (Legal pluralism: An instrument for multiculturalism?)* German translation can be found at [www.ekr.admin.ch/shop/00008/00068/index.html?lang=de](http://www.ekr.admin.ch/shop/00008/00068/index.html?lang=de); Italian original entitled *Il pluralismo giuridico: uno strumento legale nella gestione del multiculturalismo?* in *Tangram* 22 (2008), 74–77.