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Federal Commission for Women's Issues FCWI

**Statement by the
Swiss Federal Commission for Women's Issues FCWI
to the UN Committee on the Elimination of Discrimination
Against Women (CEDAW)**

concerning Switzerland's third periodic report to the Committee

New York, 27 July 2009

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1 Introduction

This report by the Swiss Federal Commission for Women's Issues FCWI provides an analysis of the situation of women in Switzerland as mandated by the Swiss Federal Council. The main focus is on the activities of the Commission. This report does not include a comprehensive review of the current situation as the limited resources available to the FCWI preclude the coverage of all the issues addressed by the Convention. In this regard we would refer the Committee to Switzerland's detailed third report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) submitted in 2008 and to the shadow report of the non-governmental organizations (issued by the NGO Coordination post Beijing Switzerland/Amnesty International, Swiss Section) of April 2008, both of which have already been submitted to the Committee.

The following discussions concentrate on questions that were in some cases addressed less than fully in Switzerland's third report, and on issues included in the list of questions posed by the CEDAW Committee in advance of the oral presentation of the country report in July 2009.

2 General assessment of the period 2003 – 2009

Since the presentation of the combined initial and second country report to the UN Committee in 2003, in certain areas of the law the situation of women has improved. Particular mention should be made of:

- the prosecution ex officio of crimes of violence in marriage and partnerships in 2004;
- the introduction of compensation for loss of earnings during maternity leave in 2004;
- the programme to promote supplementary childcare facilities outside the family running from 2003–2011;
- ratification of the Optional Protocol of 6 October 1999 to the Convention on the Elimination of All Forms of Discrimination against Women (OP CEDAW) in 2008.

Nevertheless, de facto equality between women and men is still a long way off. The continued discrimination against women contravenes the UN convention on women's rights which came into force in Switzerland on 26 April 1997 (SR 0.108), as well as the prohibition of discrimination prescribed by the two human rights treaties also ratified by Switzerland. It also contravenes article 8 paragraphs 2 and 3 of the Swiss Federal Constitution. Article 8 paragraph 2 forbids discrimination on the grounds of gender also. Article 8 paragraph 3 requires that gender equality be not only stipulated and formally prescribed de jure, but that it also be established de facto in society, above all in the family, in education and at work.

With respect to the de facto equality of women and men, however, there is still considerable need for action. Although stereotypical attitudes to gender roles are slowly beginning to weaken, women are still not equally represented in business, science, administration, politics and public affairs and they tend to hold far less influential positions than men. Conversely, women continue to perform the lion's share of unpaid work in the home and family. There is also a need here for legislative measures, among other things, to create economic and social equality of opportunity for the sexes. In recent years the courts have heard many complaints from women and men relating to gender discrimination in various areas of the law. With respect to claims brought under the Gender Equality Act alone, the website of the Swiss Conference of Gender Equality Delegates lists 403 cases in German-speaking Switzerland, and 56 cases for French-speaking Switzerland (as at 13 January 2009, see www.gleichstellungsgesetz.ch resp. www.leg.ch). 95 percent of complaints brought under the Gender Equality Act are made by women.

The principal reasons for the continued discrimination against women are as follows:

- the lack of political will among decision makers to make gender equality a priority;
- the role stereotypes still widely found in society;
- the lack of awareness among government agencies and organizations about the importance and the binding nature of international human rights treaties;
- the lack of efficient mechanisms for ensuring the implementation of CEDAW at the federal, cantonal and municipal level in federalist Switzerland in the long term and equally on all levels;
- inadequate resources for the Federal Commission for Women's Issues FCWI and the Federal Office for Gender Equality FOGE, as well as for the cantonal and municipal gender equality offices.

3 Work and positioning of the FCWI

The FCWI is an advisory commission of the Swiss Federation appointed by the Federal Council in 1976. Its mandate covers the following areas:

- analysis of the development of women's issues and equality policy in Switzerland and evaluation of action taken;
- the formulation of recommendations or gender equality policy proposals;
- consultative body for legislative proposals put forward by the Federal Government having relevance to equality;
- informing the general public and raising awareness;
- cooperation with government agencies, organizations and interested parties;
- carrying out work as mandated by the Federal Council or its federal departments.

The FCWI comprises 20 representatives of major women's organizations, social partners, academia and other professionals concerned with women's issues and equality. The Commission maintains a secretariat with three permanent positions (equivalent to 150% full-time posts).

As a permanent extra-parliamentary commission at the federal level, the FCWI enjoys a position that is close to administrative power, but is not subordinate to it. This combination of structural proximity and political independence gives it different scope for action than either the Federal Office for Gender Equality FOGE, which is integrated in the Federal Administration, or non-governmental organizations. The FCWI unifies non-governmental, governmental, political and administrative perspectives. Since 1976 the Commission has promoted cooperation with international organizations as well as the ratification and implementation of international human rights treaties.

To mark its 30th anniversary, in the autumn of 2006 the FCWI reviewed the situation as regards gender equality and formulated the following recommendations:

- accession of Switzerland to the Optional Protocol of 6 October 1999 to the Convention on the Elimination of All Forms of Discrimination against Women (OP CEDAW);
- establishment of the institutional basis for long-term implementation of obligations under international and constitutional law as well as raising awareness among government agencies, business and civil society for the protection of women's rights and human rights in Switzerland;
- targeted measures to counter role stereotypes in vocational education and choice of occupation;
- enforcement of the constitutional right to equal pay for work of equal value;
- suitable structures to be put in place to enable women and men to better balance the needs of work and family;

- development of needs-based provision of childcare supplementary to families and schools up until the end of compulsory schooling and anchoring such childcare in the Swiss Constitution as an unlimited ongoing duty of the State;
- revision of tax legislation to promote equality issues;
- action to ensure a balanced representation of the sexes in economic and public life, in particular in public administration, the judiciary, the diplomatic service and in the upper echelons of company management;
- equal representation of women in parliaments and governments at the federal, cantonal and municipal or communal level;
- equality initiatives at universities and universities of applied sciences;
- legal and other measures to combat specific discrimination against woman of foreign origin, the promotion of equal opportunities for migrant women with respect to education, work and society;
- more efficient combating of violence against women, specifically domestic violence, trafficking of women, forced marriage and female genital mutilation, by means of more intensive prevention, intervention and victim protection measures.

📖 «30 Jahre EKF: Viel erreicht – viel zu tun.» («30 years FCWI: Much achieved – much still to do.») Interim report and recommendations of the Swiss Federal Commission for Women's Issues. Berne, 27 November 2006 (available in German, French and Italian).

📖 Periodical «Frauenfragen / Questions au feminine / Questioni femminili» (Women's Issues) No. 2.2006: «Viel erreicht – viel zu tun» («Much achieved – much still to do.») with speeches and articles about women's rights and human rights.

📖 Factsheet «Viel erreicht – viel zu tun. Frauenpolitik und Gleichstellung seit 1971» («Much achieved – much still to do. Women's politics and equality since 1971») (available in German, French and Italian)

📖 Annual reports on activities and article on 25 years of FCWI, available at www.comfem.ch.

In order to better publicize and implement CEDAW, in particular the FCWI took the following steps:

- **«Women's rights and human rights» study.** In 2007 Dr. iur. Erika Schläppi, consultant for international human rights issues and governance, conducted a study on behalf of FCWI which set out the international human rights instruments and mechanisms relevant to Swiss equality policy. It identified challenges for the implementation of international standards in Switzerland and examined the potential for a more systematic harnessing of the international dimension. In addition to a broad-based review of the current situation, the study also included concrete recommendations («action lines») to actors involved in Swiss equality policy.

📖 The study «Women's rights and human rights» is available at www.comfem.ch (under Publications): full version (in German and French) and abridged version (in English, German, French and Italian).

- **Workshop for rights experts.** In September 2007 the results of the study «Women's rights and human rights» were presented at a workshop to 50 experts from politics, public administration and non-governmental organizations. The purpose of the workshop was to discuss the recommendations put forward in the study and to consider how these could be realistically implemented in Swiss equality policy.

 The evaluation report on the workshop «Frauenrechte und Menschenrechte: Wie kann die schweizerische Gleichstellungspolitik die internationale Dynamik besser nutzen?» («Women's rights and human rights: how can Swiss equality policy make better use of international dynamics?») can be found at www.comfem.ch (under Publications, available in German and French).

- **Legal symposium.** On 5 March 2009, jointly with the Swiss Federal Department of Foreign Affairs FDFA, the FCWI held a national symposium entitled «Die Relevanz des UNO-Frauenrechtsübereinkommens CEDAW für die juristische Praxis. Aktuelle Fragen und Handlungsperspektiven». (The relevance of the UN CEDAW convention on women's rights for legal practitioners. Current issues and perspectives for action). The one-day event was aimed at the judiciary, legal practitioners, attorneys, public administrators and academia.

 The presentations given at the symposium «Die Relevanz des UNO-Frauenrechtsübereinkommens CEDAW für die juristische Praxis. Aktuelle Fragen und Handlungsperspektiven» («The relevance of CEDAW for legal practitioners. Current issues and perspectives for action») on 5 March 2009 in Berne are available at www.comfem.ch (original versions in German resp. French). Published in «Frauenfragen/Questions au féminin/Questioni femminili» No. 1.2009

4 Comments on developments with respect to the CEDAW Committee's recommendations to Switzerland

4.1 Art. 2 CEDAW: Measures to combat discrimination in legislation and practice

Institutional enshrinement of gender equality

Recommendation 27 of the CEDAW Committee / question no. 5 in the list of questions

For years the Swiss Federal Commission for Women's Issues FCWI has criticized the completely inadequate resourcing of the women's and gender equality offices at the federal, cantonal and municipal or communal level. The FCWI has also been campaigning for years for both the better enshrinement of its own mandate and also generally for the strengthening of human rights institutions in Switzerland. In June 2008 it submitted a request to the *International Coordination Committee of National Human Rights (ICC)* of the UN High Commission for Human Rights to receive accreditation as a national human rights institution (NHRI). The FCWI submitted this accreditation request not least also in order to improve its domestic status and its extremely limited resources by achieving greater recognition and official inclusion in the international context. The Swiss Federal Department of Foreign Affairs FDFA supported this application. Since to date the sole institution in Switzerland to be recognized by the ICC as a NHRI (status B) is the Swiss Federal Commission against Racism FCR, the common human rights issues and the respective specific questions were defined in a Memorandum of Understanding between FCR and FCWI. In accordance with the decision reached by the ICC on 28 May 2009, the FCWI was accredited with status C. The reason given for this particular level of accreditation was the insufficient fulfilment of the Paris Principles.

The FCWI demands:

- **Strengthening the mandate of and increasing resources for the Swiss Federal Commission for Women's Issues**
- **Greater resources for the gender equality offices at the federal, cantonal and municipal or communal level**
- **Establishment of a national human rights institution which wholly complies with the Paris Principles and which explicitly addresses the central issue of combating discrimination against women.**

Violence against women

Recommendations 31 and 35 of the CEDAW Committee / questions 9-15 in the list of questions

On 13 May 2009 the Federal Council issued a report on violence in couple relationships which set out its causes and the action the Confederation intends to take against violence in couple relationships. The report is based on a postulate submitted by National Councillor Doris Stump on 7 October 2005 (Po. 05.3694) which, in addition to a report on the causes of violence in intimate relationships, also called for the development and implementation of an action plan to prevent such violence. However, the Federal Council, and subsequently also the National Council, accepted only the first part of the postulate (the drafting of a report) and rejected the second part (the creation of an action plan). A number of offices are involved in the implementation of the measures envisaged in the report. The FGG violence prevention unit in the Federal Office for Gender Equality (FOGE) has also been tasked with leading an interdepartmental working group to strengthen cooperation and coordination of the offices and departments involved at the federal level. For financial reasons, however, the Federal Council rejected any commitment beyond the measures already set in train.

Although the legal and other measures taken to date to combat domestic violence are very welcome, they are insufficient to provide effective protection and prevention generally. There is no comprehensive federal law covering the prevention of violence and protection against violence which on the one hand serves as the legal basis for the various measures at the federal level (support for campaigns, promotion of the coordination and networking structures of work with victims and perpetrators, collating of statistics on a national level, secure funding of the FGG, etc.) and on the other hand also creates an obligation for the cantons (establishment of intervention units to coordinate measures at the cantonal level, funding of women's refuges, strengthening of work with perpetrators and victims by advisory centres, and anti-violence programmes).

The FCWI demands:

- **Enactment of a federal law on protection against violence which, as a supplement to the existing federal and cantonal legislation, strengthens protection against violence**
- **An increase in the number of staff at the violence prevention unit (FGG) in the Federal Office for Gender Equality (FOGE)**
- **A long-term, comprehensive national campaign on the prevention of violence and on combating violence, as well as provision of the required funds to run such a campaign.**

📖 «Frauenfragen/Questions au féminin/Questioni femminili» (Women's Issues) No. 2.2008 (November 2008) provides a review of how domestic violence is currently treated, among others in an article by Peter Möschi Payot entitled «Die aktuelle rechtliche Situation im Umgang mit häuslicher Gewalt in der Schweiz: Neuerungen, Hintergründe und Herausforderungen.» («The current legal situation with regard to domestic violence in Switzerland: changes, background and challenges.») This takes particular account of the new criminal prosecution ex officio and conditional suspension in accordance with Art. 55a of the Swiss Penal Code. This article is also available at www.comfem.ch (in German, French and Italian).

4.2 Art. 4 CEDAW: Temporary special measures

Recommendations 41 and 45 of the CEDAW Committee / questions 16-18 in the list of questions

The Swiss courts, and specifically also the Federal Supreme Court (cf. the most recent judgment Balmelli in BGE 131 II 361 (french) and Pra 2006 No. 53 (german)), continue to ignore the report of the CEDAW Committee and do not concern themselves with CEDAW and any interpretation of national law in conformity with international law, despite the fact that international law which is concerned with the protection of human rights, as CEDAW is, takes strict precedence over national law. In contrast to the obligations of CEDAW, which expressly recognizes the (group-based) compensatory character of special measures, the Federal Supreme Court continues to treat such measures as a departure from the (individual) right to formal equal treatment and consequently as an infringement of the rights of the men concerned. Special measures are consequently not examined by the courts on the basis of the principle of proportionality, but are subject to much stricter scrutiny in terms of the formal legal prohibition of discrimination. As a result, even national legislation that incorporates the obligation of the CEDAW state parties and relates to special measures intended to bring about actual gender equality (as article 3 paragraph 3 of the gender equality law expressly does for the area of employment), is interpreted extremely narrowly. The courts have not taken on board the CEDAW Committee's censure that for the most part Switzerland incorrectly interprets CEDAW as programmatic.

The FCWI demands:

- **Application of international standards of interpretation of the law in relation to special measures (having a compensatory character) when interpreting national law.**

4.3 Art. 7 CEDAW: Eradicating discrimination in political and public life

Recommendation 41 of the CEDAW Committee/question no. 19 in the list of questions

Despite the slowly increasing representation of women in parliaments and governments at the federal, cantonal and municipal or communal level, the under-representation of women in politics remains a fundamental deficit of Swiss democracy. The low numbers of women in some centre-right parties is of particular concern. The Commission has very little scope for action with respect to political parties. As a result of its mandate and its very limited resources, it is unable to exercise direct influence at the cantonal level, which is crucial for the federal elections.

The report published in April 2008 of the Organization for Security and Cooperation in Europe (OSCE/ODHIR), which for the first time sent a delegation to Switzerland as observers during the elections to the National Council in October 2007, contains a number of recommendations to Switzerland. These include the recommendation to take steps to increase the proportion of female candidates and to increase the participation of women in politics. Although the Federal Commission for Women's Issues has indicated its willingness to cooperate, the Federal Council subsequently refused to consider any measures with respect to the elections in 2011.

The FCWI demands:

- **A nationwide publicity campaign to get more women into politics in advance of the Swiss federal elections in 2011, along with the provision of the required funds for such a campaign.**
- **Targeted and long-term promotion of learning about human rights at all levels of schooling.**

FCWI's periodical «Frauenfragen/Questions au féminin/Questioni femminili» (Women's Issues) No. 1.2008 «More women in politics» (June 2008) contains an analysis of the October 2007 election results, a survey among party women about action taken by the parties to promote women, along with articles about the historical development of participation in elections by women and men plus examples of good practice in the cantons.

4.4 Art. 11 CEDAW: Employment

Reconciling family and work

Recommendation 45 of the CEDAW Committee

According to a review of the current situation in the latest report of the Swiss Federal Coordinating Committee for Family Affairs (CCFA) of 2009, there is still a severe shortage of supplementary childcare places outside families and schools. In addition, there are great differences in provision between cantons and the language regions. A large number of schoolchildren between the ages of seven and twelve are left at home unsupervised because their parents need to work and there are no childcare facilities available outside school hours. According to a study carried out by the Swiss UNESCO Commission, education in early childhood in Switzerland is trailing behind, in particular there is no coherent education policy for children under six.

State financial assistance for supplementary childcare which was limited to eight years is due to come to an end in 2011. In March 2009 the National Council approved a motion of the Committee for Science, Education and Culture (CSEC) calling for an extension to the Confederation's start-up funding for the expansion of supplementary childcare facilities. The Federal Council is consequently called upon to lay before parliament a revision of the legislation on financial assistance for supplementary childcare.

The FCWI demands:

- **The expansion and optimization of start-up funding for supplementary childcare**
- **Until the legal foundations are put in place, the term of the present law should be extended, and the Federal Decision on the grants programme for the next four years should be presented.**
- **A clear new regulation of powers which makes the provision of childcare and education structures supplementary to family and school an unlimited ongoing duty of the entire body politic. In the opinion of FCWI, an appropriate addendum to article 62 paragraph 3 (relating to education) to this effect should be incorporated in the Swiss Constitution.**

FCWI's response to the Federal Council's Message regarding the Federal Decision on financial assistance for supplementary childcare of 27 March 2006 at www.comfem.ch (in German and French)

4.5 Art. 12 CEDAW: Health

Female genital mutilation

Recommendation 33 of the CEDAW Committee / question no. 25 in the list of questions

In contrast to other European countries, as yet Swiss law has no specific penal provision for female genital mutilation (FGM). The categorization of the various types of FGM as simple or aggravated bodily injury under existing legislation creates a number of differentiation issues. In a parliamentary initiative in 2005, National Councillor Maria Roth-Bernasconi called for a criminal law which makes genital mutilation of women or incitement to mutilation punishable in Switzerland. This legislation should also apply to residents of Switzerland even if the offence were committed abroad. The Committee for Legal Affairs of the National Council submitted draft legislation to this effect for consultation from 12 February to 22 June 2009.

In its response to the consultation, the FCWI supports the proposal of the Committee for Legal Affairs of the National Council to create a new separate criminal offence. An offender who commits the offence abroad should also be punishable, irrespective of whether or not it is an offence in the country in which the crime was committed. The FCWI demands, however, that the provision which grants impunity should an adult consent to genital mutilation be deleted without substitution.

The FCWI demands:

- **The creation of a specific legal norm prohibiting female genital mutilation**
- **The elimination of any possibility, without substitution, which allows a female adult to consent to her own genital mutilation**
- **Greater commitment on the part of the Confederation and the cantons to raising awareness and informing the public by providing more resources for prevention and information.**

 FCWI's response to the report of the Committee for Legal Affairs on the parliamentary initiative to prohibit sexual mutilation (05.404 n, Roth-Bernasconi) of 12 February 2009 available at www.comfem.ch (in German and French)

4.6 Art. 13 CEDAW: Other areas of economic and social life

Poverty among women

Recommendation 49 of the CEDAW Committee / questions no. 20 and 29 in the list of questions

Women in Switzerland are affected more than men by poverty for a variety of reasons. A study conducted by the Swiss Federal Commission for Women's Issues FCWI in 2007 found that in the case of separation and divorce, courts did not usually allow any alimony or maintenance payments (for (ex-)wife or children) to erode the minimum basic standard of living of the person paying such maintenance – generally the husband – if the income is insufficient for two households (known as shortfalls). As a result, divorced women and their children are more frequently and more heavily dependent on social assistance than divorced men. Accordingly, it is the wife who has to make repayments, and only her original family may need to provide financial assistance. This legal practice is one reason why the risk of poverty is almost twice as high for divorced women as it is for divorced men. The Federal Supreme Court reconfirmed this controversial legal practice discriminatory to women in a recent judgment of 5 December 2008. The court admits that the situation is unsatisfactory and recognizes that the family law provisions for maintenance and alimony in the Civil Code (article 163) include the principle of equal distribution of the available resources and that the constitutional requirement for de jure equality also supports such a solution. Nevertheless, the Supreme Court does not consider that there are grounds for changing jurisdiction within the legal system as it currently

stands. It held that legislators were responsible for finding a workable solution. In Motion 09.3519 «Divorce and separation. Equal treatment in the event of shortfalls», submitted by National Councillor Anita Thanei on 9 June 2009, the Federal Council was requested to draft a bill ensuring that, during the decision making process about maintenance or alimony payments following a divorce or separation, any financial deficit be appropriately distributed among both spouses respectively parents.

The FCWI demands:

- **Gender-equal treatment in relation to the economic consequences of separation and divorce with respect to post-marital maintenance and alimony, namely the distribution of the deficit between both partners**
- **National framework legislation for social assistance.**

📖 «Empfehlungen: Für eine geschlechtergerechte Aufteilung der wirtschaftlichen Folgen von Trennung und Scheidung.» («Recommendations: for gender-equal treatment in relation to the economic consequences of separation and divorce.») Recommendations of the Swiss Federal Commission for Women's Issues 2007. Available at www.comfem.ch (in German, French and Italian).

📖 The study «Nachehelicher Unterhalt – Verwandtenunterstützung – Sozialhilfe. Wenn das Familieneinkommen nach Trennung oder Scheidung nicht für zwei Haushalte ausreicht: Rechtsprechung und Änderungsbedarf bei Mankofällen. Eine Analyse von Gerichtsurteilen, Sozialhilfegesetzgebung und –praxis» («Post-marital maintenance and alimony – support from relatives – social benefits. If the family income does not suffice for two households after separation or divorce: jurisdiction and need for change in the event of shortfalls. An analysis of court judgments, social welfare legislation and practice») by Elisabeth Freivogel is available in full in German and an abridged version is also available in German, French and Italian at www.comfem.ch.

Citizenship, choice of family name

Recommendation 51 of the CEDAW Committee / questions no. 3 and 27 in the list of questions

Following the failure of parliament to enact equality-compliant legislation in 2001 and again in March 2009, de jure inequalities still exist in relation to the choice of family name and the acquisition of cantonal and municipal or communal citizenship by marriage. The draft legislation proposed by the Committee for Legal Affairs of the National Council, which is based on the *Parliamentary Initiative of National Councillor Susanne Leutenegger Oberholzer. Name and citizenship of spouses. Equal status of 7 October 2004 (03.428 n)*, envisaged that in future spouses would in principle retain their previous name and their previous citizenship (of a particular community). The National Council rejected this proposal on 11 March 2009. The matter was sent back for revision to the Committee for Legal Affairs, which decided in May 2009 to draft a minimal version only which allows the husband – just like a wife can already do today – to use a double-barrelled name. Such a provision which prescribes the choice of a common family name does not make sense from a gender equality perspective as, owing to the gender stereotypes still widely found, women come under pressure to accept the name of their future husband as the family name and consequently there is no free and equal choice.

The FCWI demands:

- **Equality-compliant rules for names where the marriage no longer has an impact on names and citizenship**
- **Withdrawal of Switzerland's reservation regarding article 16 paragraph 1 provision g of CEDAW.**

📖 FCWI's response to the consultation on the parliamentary initiative Leutenegger Oberholzer. Name and citizenship of spouses. Equal status of 7 October 2004 (03.428 n) available at www.comfem.ch (in German and French)

Forced marriage

Question no. 28 in the list of questions

Forced marriages are not an expression of cultural diversity, but are a form of violence against women and a serious violation of human rights. The problem of forced marriages is increasingly being encountered in Switzerland too. The Federal Council intends to revise the Swiss Civil Code and federal legislation on international private law in order to provide greater protection against forced marriage. It held a consultation period on the proposed changes to the law between 5 November 2008 and 15 February 2009. In its response, the FCWI criticized the inadequacy of the measures proposed by the Federal Council.

The FCWI demands:

- **Stronger protection against forced marriage in criminal law, either by defining it as serious coercion in article 181 of the Swiss Penal Code or by creating a separate offence of «forced marriage»**
- **Greater commitment on the part of the Confederation and the cantons to raising awareness and informing the public by providing more resources for prevention and information.**

 FCWI's response to the consultation on the legal measures against forced marriages (06.3658 Motion Heberlein) available at www.comfem.ch (in German and French)

4.7 Art. 15 CEDAW: Equality before the law

Residence rights of foreign women in relation to family reunification

According to the new provisions of the Foreign Nationals Act (FNA) which came into force on 1 January 2008, following the dissolution of a marriage legal rights now exist in principle for the issuing of a residence permit and extension of its period of validity. These rules apply both to foreign family members of a person with Swiss citizenship and to foreign spouses and children of a person with a residence permit. Specific problems arise in connection with female migrants who have come to Switzerland to be reunited with their family and who have become the victims of domestic violence. There is only a right of residence if the marriage has existed for at least three years and the person concerned has integrated successfully, or if significant personal reasons necessitate continued residence in Switzerland. Although being a victim of domestic violence counts as a significant personal reason, it is unclear to what extent the cantons take this into consideration in their legal practice. That is why the FCWI, together with further federal Commissions and other institutions, approached the Federal Office for Migration back in October 2008 and asked for information about the extent to which the new regulations took domestic violence into consideration, and whether national and international obligations were being observed by the cantons and government agencies. We have not yet received a response.

The FCWI demands:

- **The situation of female migrants affected by violence should be taken into consideration in the hardship ruling in the context of the federal law on foreign nationals.**

4.8 Art. 24 CEDAW: Measures for the full implementation of the Convention

PR work and implementation

Recommendations 21 and 55 of the CEDAW Committee

CEDAW adds a new dimension to anti-discrimination law in Switzerland. However, its implementation has to date been prevented by the jurisdiction of the Supreme Court and the current understanding in Switzerland of the legal nature and the direct applicability of international law in the area of fundamental rights, especially women's rights. Too little is known about the Convention and its importance not only among the general public, but also in government agencies and among legal practitioners, judges and attorneys. To date it has not been possible to reach such groups that remain indifferent to or sceptical about the Convention.

The FCWI demands:

- **Awareness raising and informing national and cantonal agencies (administrative bodies, parliaments, courts) about their obligations under CEDAW**
- **Ongoing and regular monitoring of the implementation of CEDAW recommendations**
- **Establishment of education and training courses for judges, attorneys and agencies concerned with the implementation of law on the importance of international standards for the interpretation of national law**
- **Awareness raising and education of the relevant actors with the aim of harnessing the opportunities provided by international instruments, for example the individual complaints procedure.**

📖 The evaluation report on the workshop «Frauenrechte und Menschenrechte: Wie kann die schweizerische Gleichstellungspolitik die internationale Dynamik besser nutzen?» («Women's rights and human rights: how can Swiss equality policy make better use of international dynamics») can be found at www.comfem.ch (under Publications) (available in German and French).

📖 The presentations given at the symposium «Die Relevanz des UNO-Frauenrechtsübereinkommens CEDAW für die juristische Praxis. Aktuelle Fragen und Handlungsperspektiven» («The relevance of CEDAW for legal practitioners. Current issues and perspectives for action») on 5 March 2009 in Berne are available at www.comfem.ch. Published in «Frauenfragen/Questions au féminin/Questioni femminili» No. 1.2009 (original versions in German resp. French).

5 Concluding remarks

Following the hearing in July 2009, the Swiss Federal Commission for Women's Issues FCWI will take the recommendations of the Committee into account for its own planning for the next few years and will continue to play a supporting role in monitoring the implementation of the recommendations by the various actors in Switzerland.