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Implementation of the International Covenant on Economic, Social and Cultural Rights

**Second and third periodic reports of States parties under
articles 16 and 17 of the Covenant**

Switzerland*

[14 May 2008]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services

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Federal Department of the Interior, *Rapport sur les familles 2004: structures nécessaires pour une politique familiale qui répond aux besoins* (Report on families 2004: necessary arrangements for a family policy which responds to the needs) (Berne, 2004)

Federal Department of Foreign Affairs, *Deuxième rapport du Gouvernement Suisse sur la mise en oeuvre de la Convention-cadre du Conseil de l'Europe pour la protection des minorités nationales* (Second report of the Swiss Government on the application of the Council of Europe's Framework Convention for the Protection of National Minorities) (January, 2007)

OECD, *Examens de l'OCDE des systèmes de santé: Suisse 2006* (OECD health system surveys: Switzerland 2006)

** The annexes may be consulted in the Secretariat's files.

Introduction

1. Switzerland has been a party to the International Covenant on Economic, Social and Cultural Rights (hereinafter “the Covenant”) since 18 June 1992. The Covenant entered into force for Switzerland on 18 September 1992. States parties undertake under article 16 of the Covenant to submit periodic reports on the measures which they have adopted to ensure observance of the rights recognized in the Covenant.
2. The present report is an update of an initial version dated 8 May 1996. It describes the practical changes and the developments in Switzerland’s legal framework affecting the rights guaranteed by the Covenant which have taken place since the oral presentation of the initial report to the Committee on Economic, Social and Cultural Rights (hereinafter “the Committee”) on 20 and 23 November 1998. The total revision of the Federal Constitution and the many amendments to legislation enacted during the period under review imposed a need for a new and detailed presentation of Switzerland’s core legal principles. The authors of the present report took due account of the changes in the situation since the submission of the initial report. They drafted it in accordance with the Committee’s guidelines.
3. The Swiss Government regrets the delay in the preparation of the second and third periodic reports. It was caused by organizational and financial factors.
4. The present report should be read in conjunction with the following documents:
 - (a) The initial report of Switzerland on the application of the Covenant (E/1990/5/Add.33);
 - (b) Switzerland’s core document (HRI/CORE/Add.29) ;
 - (c) The Committee’s concluding observations (E/C.12/1/Add.30);
 - (d) The Committee’s revised general guidelines regarding the form and contents of reports to be submitted by States parties (E/C.12/1991/1).
5. The present report has two parts. The first, entitled “Background”, contains information about the legal and political developments in Switzerland in the areas covered by the Covenant since the presentation of the initial report. The second discusses these developments in the context of each of the provisions of the Covenant. The comments on articles 1 to 15 refer explicitly to the Committee’s concluding observations and explain the way in which its recommendations have been acted on. In order to make the report easier to read, the Committee’s recommendations on individual paragraphs have been reproduced in a box at the beginning of each section. The summary table “Recommendations of the Committee and replies of the Government”, following paragraph 7 below, facilitates a targeted reading of the Government’s replies to the recommendations.
6. The report is the fruit of collaboration between the Labour Directorate of the Secretariat of State for the Economy and the relevant services of the Federal Administration. A draft version of the report was submitted to the other stakeholders (social partners, civil society organizations, cantonal conferences) in order for them to state their views on it.
7. The report is to be published in German and French and may be downloaded from the Internet site of the Secretariat of State for the Economy.

Recommendations of the Committee (E/C.12/1/Add.30, paras. 25-37) and replies of the Government

<i>Recommendation</i>	<i>Concerning</i>	<i>Paragraphs</i>
25, 26	The federal structure and the Government's obligation to ensure the application of the Covenant	32-34 110-139 490-92 573
27	The direct applicability of the provisions of the Covenant	Error! Bookmark not defined
28, 29	Civil servants' right to strike	228-231
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Part I. Background

1. Accession of Switzerland to membership in the United Nations

8. On 3 March 2002, following an intensive democratic debate, both the people (by 54.6 per cent) and the cantons (by 11 cantons and two half-cantons against nine cantons and four half-cantons) approved the people's initiative "On the accession of Switzerland to membership in the United Nations".²

9. On 10 September 2002 Switzerland became a member of the United Nations. This move was among the Federal Council's priorities for the 1999-2003 Legislature.³

² According to article 140, paragraph 1 (b), of the Federal Constitution, accession to membership in collective security organizations and supranational communities must be submitted to a vote of the people and the cantons.

³ FF 2000 2168.

2. Switzerland in the Human Rights Council

10. Switzerland was elected to the Human Rights Council on 9 May 2006 by 140 votes out of 191. It took an active and constructive part in the work which led to the adoption of General Assembly resolution 60/251. Under this resolution:⁴

(a) Switzerland undertakes to cooperate fully with the new Human Rights Council in order to make it a strong, effective and fair organ of the United Nations for the promotion and protection of human rights. To this end Switzerland makes a firm commitment to work for the realization of civil, political, economic, social and cultural rights, including the right to development, and to treat all these rights on an equal footing;

(b) Switzerland reaffirms its support for the Office of the United Nations High Commissioner for Human Rights and the other relevant United Nations funds, programmes and agencies, in particular by contributing to the ongoing efforts to reform the treaty body system and by evaluating the usefulness of an expanded common core document supplemented by specific reports to be submitted to the relevant treaty bodies;

(c) Switzerland undertakes to promote human rights at the international level by assisting States to fulfill their human rights obligations by means of human rights dialogues, exchanges of experts, technical cooperation, and advice;

(d) Lastly, Switzerland recognizes its duty to promote human rights at the national level.

11. During its first year as an active member of the Council, Switzerland worked hard to ensure that the Council could function properly, with respect in particular to the creation of its institutions. For example, Switzerland participated actively in the establishment of the Council's periodic universal examination procedure.

3. Signature and ratification of international instruments on economic, social and cultural rights

12. Since the drafting of its first report, dated 8 May 1996, Switzerland has ratified or signed the following universal instruments:

- The Convention on the Rights of the Child of 20 November 1989: ratified on 24 February 1997 and entered into force for Switzerland on 26 March 1997;
- The Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979: ratified on 27 March 1997 and entered into force for Switzerland on 26 April 1997;
- The ILO Right to Organize and Collective Bargaining Convention (No. 98 of 1 July 1949): ratified on 17 August 1999 and entered into force for Switzerland on 17 August 2000;
- The ILO Minimum Age Convention (No. 138 of 26 June 1973): ratified on 17 August 1999 and entered into force for Switzerland on 17 August 2000;
- The ILO Tripartite Consultation (International Labour Standards) Convention (No. 144 of 21 June 1976): ratified on 28 June 2000 and entered into force for Switzerland on 28 June 2001;
- The ILO Worst Forms of Child Labour Convention (No. 182 of 17 June 1999): ratified on 28 June 2000 and entered into force for Switzerland on 28 June 2001;

⁴ See www.un.org/ga/60/elect/hrc/switzerland.pdf.

- The Optional Protocol of 25 May 2000 to the Convention on the Rights of the Child on the involvement of children in armed conflict: ratified on 26 June 2002 and entered into force for Switzerland on 26 July 2002;
- The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 14 November 1970: ratified on 3 October 2003 and entered into force for Switzerland on 3 January 2004;
- The second Protocol of 26 March 1999 to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict: entered into force for Switzerland on 9 March 2004;
- The Optional Protocol of 25 May 2000 to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography: ratified on 19 September 2006 and entered into force for Switzerland on 19 October 2006;
- The Protocol to Prevent, Punish and Suppress Trafficking in Persons, especially Women and Children of 15 November 2000 additional to the United Nations Convention against Transnational Organized Crime: entered into force for Switzerland on 26 November 2006;
- The Protocol against the Smuggling of Migrants by Land, Air and Sea of 15 November 2000 additional to the United Nations Convention against Transnational Organized Crime: entered into force for Switzerland on 26 November 2006;
- The Optional Protocol of 6 October 1999 to the Convention on the Elimination of All Forms of Discrimination against Women: signed on 15 February 2007.

13. Reference must also be made to the withdrawal of various reservations to agreements ratified by Switzerland: the Federal Council decided on 4 April 2007 to withdraw several reservations to the International Covenant on Political and Civil Rights and the Convention on the Rights of the Child. The withdrawals were made possible by the entry into force or amendment of a number of federal laws: it was possible to withdraw the reservation concerning article 14, paragraph 5, of the International Covenant and the reservation concerning article 40, paragraph 2 (b) (v), of the Convention on the Rights of the Child (right to have decisions reviewed by a higher judicial body) since the Federal Act on the Federal Criminal Court (LTPF),⁵ which had entered into force in the meantime, provides for the possibility of having judgments in criminal cases reviewed by a higher body – the Federal Court. The entry into force of this Act and the Federal Act on the Federal Administrative Court (LATF) gave effect to the guarantee of access to a judge provided for in article 29 (a) of the Federal Constitution, although the reservation concerning article 14, paragraph 1, of the International Covenant (the principle that the proceedings and judgements in criminal cases shall be made public) had become redundant and had therefore been revoked on 1 May 2007. Since the entry into force of the Federal Act on the criminal status of minors (Juvenile Crime Act (DPMin)), which provides that minors shall be kept separate from adult prisoners, the reservation concerning article 10, paragraph 2 (b), of the International Covenant, which stipulates that accused juvenile persons shall be separated from adults, has also become redundant. Lastly, since the entry into force of the Federal Act on the acquisition and loss of Swiss nationality (Nationality Act (LN)) stateless children, regardless of their place of birth, may submit an application for naturalization after five years' residence in Switzerland. This amendment makes it possible to withdraw the reservation concerning article 7, paragraph 2, of the Convention on the Rights of the Child.

⁵ The references to the systematic compilation of federal law (RS numbers) in the present report appear in the annexed list of abbreviations.

14. Attention is also drawn, with regard to regional legislation, to the signature, ratification and/or entry into force of the following instruments:

- The European Convention on the Protection of the Architectural Heritage of Europe of 3 October 1985: ratified on 27 March 1996 and entered into force for Switzerland on 1 July 1996;
- Protocol No. 11 of 11 May 1994 to the Convention on the Protection of Human Rights and Fundamental Freedoms restructuring the control machinery established by the Convention: ratified on 13 July 1995 and entered into force for Switzerland on 1 November 1998;
- Protocol No. 13 of 3 May 2002 to the Convention on the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances: ratified on 3 May 2002 and entered into force for Switzerland on 1 July 2003;
- The European Agreement of 5 March 1996 relating to persons participating in proceedings of the European Court of Human Rights: ratified on 27 August 1998 and entered into force for Switzerland on 1 January 1999;
- The European Charter of Local Self-Government of 15 October 1985: ratified on 17 February 2005 and entered into force for Switzerland on 1 June 2005;
- The European Charter for Regional or Minority Languages: ratified on 23 December 1997 and entered into force on 1 April 1998;
- The Council of Europe Framework Convention for the Protection of National Minorities: ratified on 21 October 1998 and entered into force on 1 February 1999;
- The Convention on Recognition of Qualifications concerning Higher Education in the European Region: ratified on 24 March 1998 and entered into force on 1 February 1999;
- The (Revised) European Convention on the Protection of the Archaeological Heritage of Europe: ratified on 27 March 1996 and entered into force on 28 December 1996;
- The Council of Europe Convention on Cybercrime: signed by Switzerland on 23 November 2001.

4. Bilateral agreements between Switzerland and the European Union

15. On 21 June 1999 Switzerland signed seven bilateral agreements with the European Union, which entered into force on 1 June 2002 (Bilateral agreements I). They address the following matters: scientific and technological cooperation; public procurement; joint studies on the assessment of conformity; trade in farm products; air transport; transport of goods and passengers by rail and road; and free movement of persons. The Swiss people agreed to extend the Agreement on the Free Movement of Persons (ALCP) to the 10 new members of the European Union on 25 September 2005.

16. The bilateral (or sectoral) agreements constitute a contractual basis for Swiss enterprises to operate in the internal European market on virtually the same terms as their European Union competitors in the seven areas concerned. They guarantee the reciprocal opening up of markets, in a gradual and controlled manner, beyond the scope of application of the 1972 free trade agreement, which dealt chiefly with the free movement of goods.

17. A second series of nine agreements was signed on 26 October 2004 (Bilateral agreements II). They address the following matters: Schengen/ Dublin; taxation of savings;

measures to combat fraud; processed farm products; environment; education/training; statistics; cinema; and pensions. In accordance with the proposal of the Federal Council, made in its message on the approval of the bilateral agreements between Switzerland and the European Union,⁶ Parliament decided to submit seven of the agreements to an optional referendum. The referendum failed to approve only the agreements on joining Schengen/Dublin. In the consultation of the people held on 5 June 2005 the people agreed to accede to these agreements.

18. The following agreements had entered into force by June 2007: the agreement on processed farm products (30 March 2005); the agreement on double taxation of European Union civil servants (31 May 2005); the agreement on the taxation of savings (1 July 2005); the MEDIA agreement on promotion of the cinema (1 April 2006); the statistics agreement (1 January 2007); and the environment agreement (1 January 2007).

5. The reform process

5.1. Constitutional reform

19. The constitutional reform embraces three projects: the updating of the Federal Constitution; the reform of citizens' rights; and the reform of the justice system.

20. The people and cantons of Switzerland adopted a new Constitution on 18 April 1999.⁷ It entered into force on 1 January 2000. The adoption of the new Federal Constitution marked the end of a long process of reforming and revitalising a Constitution dating from 1874. In fact, the written and unwritten material constitutional law was no longer contained in the old Constitution but rather in the sources annexed to it, such as jurisprudence and the international treaties ratified by Switzerland. The reform of the Constitution was thus designed to update the text of the Constitution itself so that it would reflect the whole body of constitutional law in force, in principle without introducing any material innovations in the text. The updating project was supported by two other separate draft texts, one on reform of citizens' rights and the other on reform of the justice system, which did introduce material innovations. These texts were adopted after the entry into force of the new Federal Constitution. The following are the most important innovations contained in new Constitution:

- (a) A clear new structure and the use of headings for each article, section, chapter and title;
- (b) Modern language, which still retains however the terms which forge the links to Switzerland's past when regulating such sensitive areas as the relations between the Confederation and the cantons;
- (c) Detailed provisions which no longer warranted inclusion in the Constitution were deleted (making it possible to reduce the length of the text by more than 30 per cent even though the Constituent Assembly included long passages of hitherto unwritten constitutional law;

⁶ Message of 1 October 2004 on approval of the bilateral agreements between Switzerland and the European Union, including the legislative acts on the transposition of the agreements (bilateral agreements II) (04.063).

⁷ On 18 April 1999, in a ballot in which 36 per cent of the people voted, the new Federal Constitution was accepted by 969,310 votes in favour (59.2 per cent) to 669,158 votes against (40.8 per cent), and at the cantonal level by 12 cantons and two half-cantons against eight cantons and four half-cantons (FF 1999 5306); it entered into force on 1 January 2000 (RO 1999 2555 *et seq.*; RS 101).

- (d) The principles governing the activities of the State, such as good faith, legality, and protection of the public interest, are now stated explicitly;
- (e) The text includes a full list of fundamental rights and expressly establishes the principle of equality of opportunities;
- (f) A new provision on social objectives;
- (g) Provisions establishing the responsibility of individuals and society and their responsibility towards future generations;
- (h) A chapter on the relations between the Confederation and the cantons;
- (i) A specific section on citizens' rights.

21. The fundamental rights, which had received little regulatory attention in the Federal Constitution of 1874, had been guaranteed by various international agreements or had been established as unwritten constitutional law by the jurisprudence of the Federal Court, are now brought together in a single listing (Constitution, arts. 7-36). The Federal Constitution makes express reference to the main fundamental rights, such as the rights to life and liberty of person, the right to obtain assistance in situations of hardship, the right to marry and found a family, the right to human dignity, the principle of non-discrimination, the freedom of opinion, and the freedom of association.

22. The inclusion of social objectives in the new Constitution (art. 41) is of particular importance in the context of the Covenant. The Constitution devotes a chapter to them and stresses the importance of the social dimension of the community. Article 41 sets out a constitutional commitment with regard to the social dimension of the State, which is repeated at several points in the text of the Constitution: in the powers of the Confederation with respect to social policy; and in the basic social rights, for example the right to obtain assistance in situations of hardship (art. 11) and the right to free judicial assistance (art. 29, para. 3), as well as in article 2 ("Purpose") and the list of social objectives (art. 41).

Article 41 of the Constitution reads:

"1. The Confederation and the cantons undertake, as a complement to individual responsibility and private initiative, to ensure that:

- (a) Everyone enjoys social security;
- (b) Everyone receives the necessary health care;
- (c) The family, as a community of adults and children, is protected and promoted;
- (d) Everyone fit to work can earn his or her living by means of work performed under fair conditions;
- (e) All persons seeking housing can find suitable and affordable accommodation for themselves and their families,
- (f) Children and young people and persons of working age can receive initial and continuing education and suited to their aptitudes;
- (g) Children and young people are encouraged to become independent and socially responsible persons and receive support in their social, cultural and political integration.

2. The Confederation and the cantons undertake to ensure that everyone is insured against the economic consequences of old age, disability, sickness, accidents, unemployment, and maternity, and of being orphaned or widowed.

3. They undertake to seek to attain the social objectives within their constitutional jurisdiction and to the extent of the resources available.

4. No subjective right to State benefits may be derived directly from the social objectives.

23. Article 41 of the Constitution addresses six core areas of social policy: social security; health; labour; housing; education; and youth. These six areas correspond broadly to the objectives set out in the Covenant. The positioning of article 41 and its content show clearly that the article (like article 2 of the Constitution, entitled “Purpose”) is defining an objective of the State. The list of social objectives contained in article 41 constitutes therefore a legal rule and helps to enhance the relevance of the Constitution. However, the scope of this list remains limited in relation to the constitutional rules on fundamental rights and duties. Article 41 establishes objectives for the Confederation and the cantons in terms of social targets but without entering into the questions of the route to be taken or the means to be used. It is for the Legislature to define the means which it deems appropriate for achieving a given objective. It is also the duty of the Legislature to establish in law, where necessary, the rights of individuals with regard to receipt of benefits.

24. In the case of the reform of citizens’ rights,⁸ a referendum was held on the international treaties on 1 August 2003 (Constitution, art. 141, para. 1 (d), and art. 141 (a)). Since that time the international treaties of unspecified duration, providing for accession to membership in an international organization or containing important provisions on rules of law or whose application requires the adoption of federal laws, have been submitted to optional referendums.

25. The reform of the justice system, the third component of the constitutional reform, was designed to improve legal protection, ensure the proper functioning of the Federal Court, and lay the foundations of a uniform procedural law in Switzerland. The reform was approved on 12 March 2000 by the people and the cantons.

5.2. Reform of the financial equalization system

26. Today the Confederation and the cantons perform many State functions jointly. The purpose of reform of the financial equalization system and the distribution of functions between the Confederation and the cantons (RPT) was designed to correct in a targeted manner the defects in the existing system:

- Modernization and consolidation of federalism by clarifying and untangling the functions and responsibilities of the Confederation and the cantons;
- Enhancement of the equalization system’s efficiency and hence reduction of the disparities between the cantons in terms of financial capacity and the taxes levied;
- Improvement of the efficiency of the performance of State functions by introducing arrangements for collaboration among the various federal levels and strengthening the cooperation among the cantons.

27. On 28 November 2004 the RPT was accepted by 64.4 per cent of voters and 20 cantons and one half-canton; the necessary constitutional basis for the reform measures was therefore established. Less than two years after the popular vote Parliament adopted the enabling legislation for the RPT prepared jointly by the Confederation and the cantons. Thirty pieces of federal legislation were amended and three new acts were adopted or

⁸ See para. 20 above.

totally revised. Attention is drawn to the following changes, which have a direct bearing on the Covenant:

- Adoption of the Federal Act on institutions for the promotion of the integration of persons with disabilities (Integration of Disabled Persons Act (LIPPI));
- Total revision of the Federal Act on supplementary benefits in respect of old-age, survivors' and disability insurance (Supplementary Benefits Act (LPC));
- Amendment of the functions of the Confederation and the cantons with regard to scholarships and student loans.

Part II. Comments on the articles of the Covenant with regard to their application in Switzerland

Article 1. Right of self-determination

28. Article 2, paragraph 4, of the new Constitution guarantees the sustainable conservation of natural resources. The Swiss people may freely determine the use of its natural wealth; in fact, the Constitution guarantees both ownership (art. 26) and economic freedom (art. 27).

29. Since its accession to membership in the United Nations in 2002, Switzerland has been able to play to the full its role of neutral mediator on the international stage. It also takes an active part in determining international human rights policy; and it works for the attainment of the Millennium Development Goals.

30. In its 2000 foreign policy report, dated 25 November 2000, the Federal Council emphasized five new objectives to provide continuity from the 1990s (see para. 11 of the initial report) while taking account of the economic and political changes taking place in a constantly evolving international situation:

- To promote the peaceful coexistence of peoples;
- To promote respect for human rights and democracy;
- To preserve natural resources;
- To protect Swiss economic interests abroad;
- To assist peoples in need and combat poverty.

31. The Gunpowder Act (i.e. the federal monopoly on the manufacture and sale of gunpowder) mentioned in paragraph 10 of the initial report was revoked on 1 April 1998 (repeal of article 41, paragraph 1, of the Constitution).

Article 2. Realization of the rights recognized in the Covenant

6. The federal structure and the obligation of the Federal Government to ensure application of the Covenant

Para. 25: *The Committee suggests that the State party take appropriate steps to give full legal effect to the Covenant, so that the rights covered by it may be fully integrated into the legal system.*

Para. 26: *The Committee recommends that the cantonal laws should be further harmonized, to ensure due respect for the provisions of the Covenant, particularly with regard to fundamental rights such as the right to work, education and culture.*

32. Switzerland is by tradition a monist country; this means that international public law and domestic law are parts of one and the same legal system. The international rules are therefore binding on all Swiss authorities without needing any alteration or transposition. The Covenant thus entered directly into force – on the same footing as all the other human rights agreements – and must be respected and applied by all the executive authorities. There is no strict hierarchical distinction in Switzerland between international public law and domestic law. The primacy of international treaties over the Federal Constitution is a controversial issue both in the doctrine and in the jurisprudence. However, the mandatory rules of international law (*jus cogens*) take precedence over domestic law and impose limits on Constitutional amendments (Constitution, art. 193, para. 4, and art. 194, para. 2). In principle, international law takes precedence over domestic law, except when the Legislature deliberately deviates from international law. It is generally acknowledged that international law takes precedence over communal and cantonal law and the regulatory powers of the Confederation. And international law also takes precedence over ordinary federal law (federal acts).⁹ In the end, the jurisprudence and doctrine have to find precise criteria for determining the relationship between international law and domestic law and to weigh the interests at stake in specific cases of conflict. The Federal Court endeavours to interpret the domestic rules in such a way that they conform with the international rules, in order to ensure the harmonization of the two bodies of law.¹⁰

33. The Constitution refers in several places to the relationship between international law and domestic law: for example in article 5, paragraph 4, which stipulates that the Confederation and the cantons shall respect international law, and in article 190, which stipulates that the Federal Court and the other authorities are required to apply international law.

34. Where foreign affairs are concerned, the power to conclude agreements is invested in the Confederation (Constitution, art 54, para. 1). The cantons are required to transpose and to apply the treaties concluded by the Confederation on the same footing as all other federal legislation. In exercise of its supervisory function the Confederation may enjoin the cantons to apply the international treaties correctly and promptly.¹¹ To this end it may send out circulars and publish recommendations and guidelines. In August 1997 the Federal Council sent a circular to the cantons concerning article 13 of the Covenant in order to

⁹ Federal Court Decision (ATF) 122 II 485, 486 *et seq.*

¹⁰ ATF 125 II 417, 424 E. 4c. See also the reply of the Federal Council dated 23 February 2005 to the Mörgeli question (04.3802) – European Convention on Human Rights and Swiss sovereignty.

¹¹ Message of 20 November 1996 concerning a new Federal Constitution (FF 1997 I 1), p. 231 *et seq.*

remind them of the obligations deriving therefrom. It drew particular attention to what the cantons had to do to in order to ensure that this provision was applied with respect to instruction in primary and secondary schools and in colleges of higher education (*hautes écoles*).¹²

7. Gradual realization

Para. 27: The Committee recommends that the State party accord equal treatment to both International Human Rights Covenants in terms of their domestic legal status and that if measures are taken to incorporate civil and political rights treaty obligations consideration be given to similar measures in relation to economic, social and cultural rights.

35. The Federal Council proposed an amendment to the Federal Constitution which would take the Committee's recommendation into account as far as possible. After the parliamentary debate and the balloting of Swiss citizens, the new Constitution has now entered into force. Article 2 of the new Constitution, which states its purpose, provides that the Confederation shall promote the common prosperity, a provision which follows on from the principles embodied in the federal constitutions of 1848 and 1874.¹³

36. Most of the recently revised cantonal constitutions contain, like the Federal Constitution, a number of economic, social and cultural rights and social objectives. Some of them contain the same guarantees as the Federal Constitution. Others go further, guaranteeing additional rights or extending the scope of application of the rights set out in the Federal Constitution. For example, paragraph 8.3 of the Constitution of the canton of Bâle-Ville (revised on 23 March 2005) guarantees persons with disabilities such access to public buildings and services as economic considerations may reasonably require, while article 11, paragraph 2 (a), embodies the right of parents to be able to send their children to an affordable day-care facility. Attention may also be drawn to article 33 of the Constitution of the canton of Fribourg, which establishes a right to material social security benefits for mothers before and after childbirth, whether or not they are gainfully employed. A similar provision is found in article 35 of the Constitution of the canton of Vaud. This Constitution too guarantees, *inter alia*, a right to public assistance for all persons lacking the necessary personal or family resources to obtain officially recognized initial vocational training (art. 37) and the right of any person in need to appropriate emergency accommodation. (art. 33).

37. The Federal Court has concluded from the accessory nature of the principle of non-discrimination set out in articles 2 and 3 of the Covenant that the provisions giving effect to this principle are not directly applicable. The Federal Insurance Court delivered the following ruling with regard to the principle of non-discrimination:

“With respect to article 2, paragraph 2, of the Covenant, which prohibits all forms of discrimination, including inequalities based on race, colour or sex, the Federal Insurance Court noted recently that this provision did not have autonomous scope but established guarantees only in conjunction with the programmatic obligations which States undertake to fulfil progressively, in particular the right of everyone to the social security and social insurance referred to in article 9 of the Covenant. Since the Covenant is not directly applicable, in particular with respect to social insurance, article 2, paragraph 2, could not be invoked in the courts by private

¹² See paragraph 491 *et seq.* above.

¹³ For detailed information about the new Constitution and its social objectives, see para 20 *et seq.* above.

individuals (ATF 121 V 246). The same applies to article 3, on the equality of men and women.”¹⁴

The Federal Court has also acknowledged that the rights embodied in articles 6-15 of the Covenant are in principle programmatic. The provisions giving effect to them are therefore not directly applicable.¹⁵ The Federal Court has repeated incessantly that:

“The provisions of the Covenant merely indicate to States, in the form of guidelines, the objectives to be attained in the various areas in question. They give States every latitude as to the measures to be carried out in order to attain these objectives. Therefore, according to the jurisprudence and the doctrinal view these provisions, with some exceptions (for example article 8, paragraph 1 (a), on the right to form trade unions and join the trade union of one’s choice), are not directly applicable rules.”¹⁶

38. However, the Federal Court allows that some of the provisions of the Covenant may be directly applicable. This may be the case for article 8, paragraph 1 (a), on certain aspects of the freedom of association.¹⁷ Furthermore, the Federal Court has confirmed its jurisprudence on article 13, paragraph 2 (c), of the Covenant, to the effect that a private individual may not invoke this provision directly in an action concerning university fees.¹⁸

39. Today both the doctrine and the practice recognize for the most part that the human rights guarantees, irrespective of their wording and their legal character as civil and political rights or as economic, social and cultural rights, imply an obligation either to act or, conversely, not to act.¹⁹

40. In the message on the new Federal Constitution²⁰ and in its reply of 27 November 2000 to a routine parliamentary question²¹ the Federal Council confirmed its position that most of the rights set out in the Covenant are programmatic rights. In short, the Federal Council adheres to the jurisprudential interpretation described above on the basis of the principle of the separation of powers.

41. The comments under articles 6 to 15 explain in detail the way in which Switzerland fulfils its commitments with respect to the realization of the Covenant.

8. Development cooperation and promotion of the realization of economic, social and cultural rights

42. Respect for human rights and the promotion of democracy are one of Switzerland’s five foreign policy objectives.²² In accordance with its Constitution, Switzerland works with commitment for a world in which peace, liberty and equality reign, to promote the

¹⁴ ATF 121 V 229 [232-233].

¹⁵ For example, ATF 120 Ia 1 [11-12]; ATF 121 V 246 [248-250]; ATF 122 I 101 [103]; ATF 126 I 240 [243-246].

¹⁶ 15 ATF 121 V 229 [232].

¹⁷ ATF 121 V 246, para. 2e; ATF 126 I 240, para. 2c.

¹⁸ ATF 130 I 113; see also ATF 126 I 240, para. 2d.

¹⁹ See *inter alia* Walter Kälin and Jörg Künzli, *Universeller Menschenrechtsschutz* (Basel/Geneva/Munich, 2005), p. 100 *et seq.*

²⁰ Message of 20 November 1996 on the new Federal Constitution (FF 1997 I 1), p. 203 *et seq.*

²¹ Reply of the Federal Council to a routine question from national councillor Gross (question 00.111).

²² “*Rapport sur la politique extérieure 2000: Présence et coopération: la sauvegarde des intérêts dans un monde en cours d’intégration*” (Foreign policy report 2000: Presence and cooperation: protection of interests in an integrating world) (15 November 2000) (FF 2001 237).

prosperity of all peoples, to bring relief to people in need, to combat poverty, and to preserve natural resources (Constitution, art. 2 of the Preamble and art. 54, para. 2).

43. In 1997 Switzerland published guidelines on the incorporation of human rights in Swiss cooperation. On the basis of its own bilateral and multilateral experience and the deliberations in the international community, Switzerland adopted in 2006 a new policy in which it sets out the Swiss rights-based approach and its linkage to poverty reduction issues. Strategy 2010 of the Directorate for Development and Cooperation (DDC) defines good governance both as one of the priority themes and as one of the two cross-cutting themes which include human rights.

44. Switzerland's development cooperation, always focused on combating poverty, has long since been supporting programmes and projects which have contributed, directly or indirectly, to securing respect for the economic, social and cultural rights of disadvantaged people in the partner countries. The 2006 Capitalization Conference demonstrated the diversity of Switzerland's experience in the field of human rights and the importance of the contribution of development cooperation to the realization of the economic, social and cultural rights in particular. Swiss cooperation boosts the attention given to vulnerable and marginalized groups, while at the same time seeking to support the efforts of the authorities to discharge their obligations. For example, the right to education forms an integral part of many programmes supporting reforms in the education sector (in Pakistan, Bhutan, Serbia and Montenegro, and Burkina Faso), while the right to health is a key element of Switzerland's sectoral policy. Switzerland takes an active part in the determination of rights-based development policies and strategies in the governing bodies of the funds, programmes and specialized agencies of the United Nations. In addition, Switzerland makes financial contributions to the various United Nations programmes concerned with water and sanitation and education and health, including sexual and reproductive health. As part of its economic cooperation for development Switzerland carries out technical cooperation projects to promote the core labour standards in order to give producers in the developing countries access to global production chains.

45. In its report for the period 2003-2007 on Switzerland's foreign policy with respect to human rights the Federal Council reaffirmed its determination to realize as far as possible the development potential of the economic, social and cultural rights, either in the context of its bilateral programmes to combat poverty and promote democracy, the rule of law and peace or as part of its multilateral activities.²³

46. Since 2006 Switzerland has been conducting a debate on the right to property both as a human right and as a tool of social and economic development. A book and a documentary film were produced on this right as a contribution to its realization.²⁴ The universality and interdependence of human rights means that the right to property plays an important role in relation to the right to housing, the right to water and food in particular, and the right to a decent life, as well as to the right of return of displaced persons.

²³ Report of 31 May 2006 on Switzerland's foreign policy with respect to human rights (2003-2006) (FF 2006 5799).

²⁴ Francis Cheneval and Hernando De Soto (co-editors), *Swiss Human Rights Book, volume I: Realizing property Rights* (2006); Kamal Musale, DVD *Property Rights are Human Rights, a film by Kamal Musale* (2007).

9. Non-discrimination

9.1. Legal bases²⁵

47. The principle of equality is embodied in article 8 of the new Federal Constitution, which reads:

- “1. All human beings are equal before the law.
2. No one shall suffer discrimination by reason, inter alia, of his or her origin, race, sex, age, language, social position, lifestyle or religious, philosophical or political beliefs, or by reason of a physical, mental or psychological defect.
3. Men and women are equal in law. The law shall provide for *de jure* and *de facto* equality, in particular with regard to the family, education and work. Men and women are entitled to equal remuneration for work of equal value.
4. The law shall introduce measures to eliminate the inequalities suffered by persons with disabilities.”

Unlike the old Constitution,²⁶ article 8 now refers to “all human beings” and not just to the Swiss. This change was made necessary by the fact that the jurisprudence of the Federal Court and the doctrine had long since granted to foreigners the rights previously conferred by article 4.²⁷ Although legal equality is thus extended to all persons, different treatment is still possible in the light of objective personal criteria or of nationality.

48. Equality before the law (Constitution, art. 8, para. 1) implies equality of treatment and legal differentiation in the legislation and in the application of the law, as the relations in question may require.

“A regulatory act infringes the principle of equality before the law [...] if it creates a legal difference without such an approach being reasonably justified by the circumstances or if it does not establish a difference which is rendered necessary by the circumstances. Equality before the law is infringed when *de facto* equality is not matched by equality of treatment, but also when *de facto* inequality does not create inequality of treatment, always provided that the unjustified *de facto* equality or inequality relates to an important matter. It is possible that a situation may be deemed a reasonable reason for legal differentiation in the light of the opinions prevailing at a given time, while the assessment would have been different at another time. Within the limits of these principles and of the prohibition of arbitrary action, the Legislature has ample room for manoeuvre.”²⁸

49. As a constitutional principle, the principle of equality of treatment manifests itself chiefly in the prohibition of unjustified distinctions. But to a certain extent the new Constitution also gives the Legislature the task of reducing social inequalities and promoting the development of the individual. For example, it also imposes on the Confederation the task of improving equality of opportunities.

50. Pursuant to article 35, paragraph 1, of the Constitution the fundamental rights must be realized throughout the legal order. Article 35, paragraph 3, requires the authorities to

²⁵ See the comments under article 2, paragraph 1, and article 26 in Switzerland’s third periodic report on the application of the International Covenant on Civil and Political Rights, dated 21 September 2007.

²⁶ Article 4, paragraph 1, of the Federal Constitution of 29 May 1874 reads: “All Swiss are equal before the law”.

²⁷ See document E/1990/5/Add.33, paragraphs 28 and 29.

²⁸ ATF 125 I 173, paragraph 6b.

ensure that the fundamental rights are also realized in the relations between individuals and not only in the relations between the citizen and the State.

51. With regard to the prohibition of discrimination and a possible horizontal impact on the relations between individuals, the traditional jurisprudence and doctrine exclude in principle the possibility that the prohibition of discrimination as established in article 8 of the Constitution may have a direct horizontal impact on the relations between individuals, except in a few specific cases.²⁹ It is on the other hand true that recent works on Swiss law and the jurisprudence of the Federal Court recognize the indirect horizontal effect of the personal freedoms embodied in the Federal Constitution. The doctrine is increasingly of the view that legal protection can and must be denied to a person who draws attention to himself by racist or discriminatory acts or language in private contractual relations.³⁰ Where contractual labour law is concerned, it should be pointed out in particular that a dismissal is regarded as wrongful, and thus triggers an obligation to pay compensation, when it is ordered by one party “for a reason inherent in the person of the other party” (CO, art. 336 para. 1 (a)). The same thinking applies to rental leases: a landlord is not entitled to reject a replacement tenant proposed by a leaseholder who terminates his lease early “on the ground of vague fears, antipathy or a negative attitude in principle towards a certain category of person”.³¹ The Federal Court considered that asylum-seekers, for example, were perfectly acceptable replacement tenants and that no one had the right to reject them simply by reason of their status.³²

9.2 Same-sex couples

52. The Federal Act on registered partnerships between persons of the same sex (Partnership Act (LPart)) allows same-sex couples to register their partnership with the civil registration authorities and to invest their relationship with a legal basis. Persons registering their partnership undertake to live together as a couple and to assume towards each other rights and duties which are subject to the same legal treatment as those assumed by married couples with respect to taxation, inheritance, and social and occupational insurance. But the Partnership Act does not permit two persons of the same sex to adopt a child. Nor can such persons resort to medically assisted procreation.

9.3 Equality for persons with disabilities

53. In Switzerland some 700,000 persons, or about 10 per cent of the population, have a disability. As a result of their disability, they may suffer disadvantages in several areas of daily life. The right of disabled persons to equality covers various measures designed to eliminate those disadvantages. The right is based on the idea that a disability cannot be reduced to an individual health problem but is influenced by everyday situations. It seeks therefore to change those disabling circumstances.

54. The prohibition of disability-based discrimination established in article 8, paragraph 2, of the Constitution, taken in conjunction with article 8, paragraph 4, gives the legislatures

²⁹ Georg Müller, article No. 4 in Jean-François Aubert and others (eds.), “*Commentaire de la Constitution fédérale de la Confédération suisse du 29 mai 1874*” (Commentary on the Federal Constitution of the Swiss Confederation of 29 May 1874) (Bâle and elsewhere, 1987) and the subsequent supplements.

³⁰ Martin Philipp Wyss, “*Gesetzgeberische Massnahmen zum Abbau von Diskriminierungen – Handlungsbedarf und Modelle für die Schweiz?*” in Walter Kälin (ed.), “*Das Verbot ethnisch-kultureller Diskriminierung*”. *Revue de droit suisse (RDS)*, fasc. 29 (Bâle and Frankfurt on Main, 1999), p. 115 *et seq.* and p. 133.

³¹ ATF 119 II 36 *et seq.* and 38 *et seq.* 159.

³² Free translation of an unpublished decision of the Federal Court dated 7 March 1995 (reproduced in “*mietrechtspraxis*” (Rental law practice), *Zeitschrift für schweizerisches Mietrecht* (1997), p. 155 *et seq.*).

of the Confederation and the cantons a mandate to take steps to eliminate discriminatory situations affecting persons with disabilities. The Federal Act of 13 December 2002 on the elimination of discrimination affecting persons with disabilities (Disabled Persons Equality Act (LHand)) entered into force on 1 January 2004, having been adopted on the basis of article 8, paragraph 4. The purpose of the Act is to prevent, reduce and eliminate inequalities affecting persons with disabilities and to create suitable conditions to facilitate their independent participation in the life of society. It provides inter alia that all buildings and facilities open to the public, if newly built or undergoing renovation, must be made easily accessible. Community services (at the federal, cantonal and communal levels) and public transport must also be adapted for persons with disabilities. The Act also prohibits private individuals who provide public services from treating such persons in a discriminatory manner by reason of their disability. The Act provides remedies and rights of legal action in order to make it easier for persons with disabilities to assert their rights. There are several pieces of federal and cantonal legislation regulating other questions of inequality, including questions of communication and primary education.

55. Under article 112 (b) and article 112 (c) (2), of the Constitution, which provide for general measures to encourage integration, the Confederation makes an important contribution to eliminating inequalities affecting persons with disabilities. These provisions have been implemented chiefly in the Federal Act on disability insurance (Disability Insurance Act (LAI)), which is designed to prevent, reduce and eliminate any limitation of capacity to work by means of simple and suitable rehabilitation measures, offset the permanent economic effects of incapacity to work by meeting living needs to an appropriate extent, and help insured persons to live independent and responsible lives. The Act gives particular emphasis to integration in the jobs market. In 2007 the Legislature approved a series of reintegration measures, including the establishment of a system for the early detection of incapacity to earn a living and the reinforcement of the rehabilitation measures.³³

56. The Federal Office on Equality for Persons with Disabilities (BFEH) was established early in 2004 to contribute to the attainment of these goals. It is attached to the Federal Department of the Interior; it has the following terms of reference:

- (a) To perform the Confederation's functions with regard to the elimination of inequalities affecting persons with disabilities;
- (b) To promote the equality of persons with and without disabilities in public places;
- (c) To endeavour to remove legal or de facto inequalities affecting persons with disabilities.

The BFEH is responsible mainly for information and counselling; it implements and supports programmes and campaigns for the integration of persons with disabilities and carries out or commissions scientific research. There are also specialized federal administrative services responsible for various functions in this field. The BFEH coordinates the activities of these specialized services. Disabled persons' organizations also play an important role in giving effect to the equality legislation. They collaborate closely with the specialized federal services and receive financial support from the Confederation for the provision of their services.

57. Swiss legislation on equality for the disabled rests on the same bases and pursues the same objectives as the United Nations Convention on the Rights of Persons with Disabilities, adopted in 2006. The Federal Council is in favour of signature and ratification

³³ Fifth revision of the Disability Insurance Act; see paragraph 312 below.

by Switzerland. However, in accordance with current practice it will not sign until the possible legal implications for the Confederation and the cantons have been studied and it can be sure that the obligations assumed under the Convention will be fulfilled.

9.4. Prohibition of racial discrimination

58. In its replies to parliamentary calls for the repeal of the criminal provisions on racial discrimination (art. 261bis of the Penal Code) the Federal Council stressed that anyone who publicly incites hatred of or discrimination against a person or group of persons by reason of their racial, ethnic or religious affinity, belittles them by attacking their human dignity, or refuses to provide them with services or who publicly advocates a racist ideology shall be punished.³⁴ The Council stressed that the freedom of expression was subject to limits, in particular when the dignity or honour of other persons was at stake.

59. In June 2005 the Lausanne Industrial Tribunal found a medical-social establishment in Morges, Vaud, guilty of racial discrimination for refusing to recruit a 33-year-old woman because of the colour of her skin. This was the first case of its type to be brought under Switzerland's labour legislation. In its statement of reasons the Tribunal stressed that there was no objective ground for refusing to recruit the person because she was Black.

60. More detailed information about racial discrimination will be found in the fourth, fifth and sixth periodic reports of Switzerland to the United Nations Committee on the Elimination of Racial Discrimination (September 2006) and in its third report to the Human Rights Council (paras. 34-57).³⁵

9.5. Integration of foreigners

61. Improvement of the integration of foreigners living in Switzerland is one of the big challenges facing politicians and society. Switzerland's integration policy regards integration as a reciprocal process implying both the wish of the foreigners to integrate and the openness of the Swiss people towards them. Integration must allow legally and permanently resident foreigners to participate in economic, social and cultural life, in accordance with article 4 of the Federal Act on aliens (Aliens Act (LEtr)). It follows that the purpose of integration is to establish equality of opportunities and the participation of foreigners in public life (LEtr, art.2, para. 2, and art 53, para. 2). In the revised Ordinance on the integration of aliens (Aliens Integration Ordinance (OIE)) the Legislature stresses expressly how important it is for foreigners to assume their share of the responsibility. They must respect the legal order and democratic principles and contribute actively to their own integration. This contribution manifests itself in particular in their learning the national language spoken in their place of residence and their knowledge of the Swiss way of life, as well as in their willingness to take part in economic life and obtain education (OIE, art.4). The granting of a long- or short-term residence permit may require attendance at a language or integration course. This obligation may be stated in an integration agreement. The principle applies equally to the granting of permits for the purpose of family reunification (LEtr, art. 54). The weight attached to the degree of integration in cases of return or expulsion or for the purposes of granting (sometimes ahead of time) a residence permit is now established in the legislation. The authorities may require persons coming from a third State to supervise religious matters or to teach courses in the language or culture of their country of origin to take a language and integration course before entering Switzerland (OIE, art. 5, in conjunction with LEtr, art. 4).

³⁴ Replies of the Federal Council to the motion tabled on 8 October 2004 by Bernhard Hess, "To repeal the antiracist criminal provision" (04.3607) and to the motion tabled on 28 February 2005 by the Groupe de l'Union démocratique du centre, "Repeal of the antiracist article" (05.3013).

³⁵ See: www.eda.admin.ch/eda/fr/home/topics/human/humrtr/humrep.html.

62. The Federal Migration Office (OFM) coordinates the measures taken by the authorities with respect to the integration of foreigners, especially in the areas of unemployment insurance, vocational training, and health, and is responsible for the exchange of information and experience with the cantons. The cantons are also required to designate a service to liaise with the Office on integration questions (OIE, art. 8, and LEtr, art. 57). The cantonal services must support programme-based language training projects. The Office concludes with the cantons service agreements based on these programmes. In addition, the migration authorities must now publicize the existing means of obtaining advice.

63. The Federal Commission on Migration Questions (CFM), which replaced the Federal Aliens Commission (CFE) and the Federal Refugees Commission, plays an important role in the integration of foreigners. It supports the promotion of integration by the Confederation and attends to matters connected with the cohabitation of the Swiss and foreign populations. It is responsible inter alia for the promotion of integration and for equality of opportunities. It studies in depth topics affecting integration, makes recommendations, monitors research projects, gives opinions on issues specific to migration and integration, and endeavours to inform and support and bring into contact with each other the public and private services concerned with integration.. In specific terms, the Commission recommends for example that emphasis should be given to providing information for children and young people and raising their awareness on the subject of forced or arranged marriages.

64. According to an OFM study published in 2005, there are about 90,000 persons currently living in Switzerland without permission (undocumented persons).³⁶ The Undocumented Persons Group was established on the proposal of the old CFE with the support of the pressure group “For a Swiss round-table on undocumented persons”. In the period 2005-2007 this body, as a group of independent experts, studied the case files of persons whose status was not clear in order to determine whether it was wise to recommend the regularization of their status to the competent cantonal authorities. It has also held discussions with the relevant services of the Confederation and the cantons in order to examine the possibilities of more intensive cooperation. Its work has focused mainly on the needs of younger undocumented persons. The Undocumented Persons Group concluded its work at the end of 2007.

65. Integration is a key concept of the Aliens Act (LEtr). The aim is to encourage peaceful coexistence based on respect for the values of the Constitution and on mutual respect and tolerance.³⁷ The provisions on integration were considerably expanded in the revised version of the Act. In order to facilitate the integration of children under the family reunification arrangements, the Act stipulates that reunification must take place within five years, and even within one year in the case of children in the 12-18 age group. This provision ensures that such children are enrolled as early as possible in Switzerland’s education system. Other requirements already in force previously, such as cohabitation in a single apartment, the family’s economic independence and its occupation of accommodation suited to its needs, remain applicable. The Act also facilitates the

³⁶ Gfs research institute, Bern (research into politics, communication and society), “*Sans papiers en Suisse: c’est le marché d’emploi qui est déterminant, non pas la politique d’asile* (Undocumented persons in Switzerland: it’s the jobs market that decides, not the asylum policy), final report commissioned by the Federal Migration Office, final version, dated 6 April 2005. Before this study was published, estimates of the number of undocumented persons living in Switzerland ranged between 50,000 and 300,000. In addition to correcting these figures, the study also corrected some people’s mistaken ideas about the phenomenon: the presence of undocumented persons is due not so much to the asylum policy as to the situation in the jobs market.

³⁷ Message of 8 March 2002 on the Aliens Act (FF 2002 3553).

occupational mobility of foreign workers from third States. There is an information function entrusted to the Confederation, the cantons and the communes, which consists, on the one hand, of informing foreigners about their rights and obligations and living and working conditions in Switzerland, as well as about the integration measures available to help them, and, on the other hand, of making the Swiss population aware of the special situation of these foreigners.³⁸ Since experience showed that a large majority of these persons remain in Switzerland for several years, or even indefinitely, improvements were made to their legal status with respect to access to the jobs market³⁹ and the possibility of participating in integration measures (OIE, art. 6, para. 1). The Act also authorizes family reunification for this group of persons three years after provisional entry is granted (LEtr, art. 85, para. 7). These integration measures are intended to help persons admitted provisionally to become economically independent and gain social acceptance. The fostering of their social acceptability also facilitates their possible return to their countries of origin.⁴⁰ In addition, the amended version of the Aliens Integration Ordinance (OIE) provides integration incentives by stipulating that the degree of integration shall be taken into account in decisions (taken early in certain circumstances) on the granting of a residence permit or return or expulsion. In exercise of its coordination function the OFM, in collaboration with the competent cantonal migration offices, drafted criteria defining the legal concept of “successful integration” to serve as guidelines for the authorities responsible for assessing specific situations.⁴¹

9.6. Nationality-based limitations on the principle of equality

66. On 1 November 1998 Switzerland established a binary recruitment system with a view to concluding bilateral agreements with the European Community (free movement of persons). The Agreement on the Free Movement of Persons (ALCP) concluded with the countries of the European Union and the European Free Trade Area (EFTA) has been in force since 1 June 2002. It gradually offers citizens of European Union countries free access to the Swiss labour market.⁴² Immigrants from the European Union are now treated on an equal footing with Swiss nationals in many respects in accordance with the principle of national treatment.

67. Up to the end of 2007 foreigners from “third States” were subject to the Federal Act on the permanent and temporary residence of aliens (Aliens Residence Act (LSEE)), which was replaced by the new Aliens Act (LEtr) on 1 January 2008. The Aliens Act limits the access of persons from countries other than the European Union and EFTA to highly skilled occupations. The ALCP concluded with those countries offers advantages to their citizens in the following matters: family reunification; common family residence, extension of stay beyond the period of work, and impact on decisions in respect of possible applications for social assistance or recognition of qualifications.⁴³

68. The admission of foreigners to higher education is governed by different conditions. The “Directives on the assessment of Swiss and foreign qualifications giving access to

³⁸ Message of 8 March 2002 on the Aliens Act (FF 2002 3558).

³⁹ Amendment of the Ordinance limiting the number of aliens (OLE), dated 1 February 2006, article 7, paragraph 3.

⁴⁰ Message of 4 September 2002 on the amendment of the Asylum Act (FF 2002 6359).

⁴¹ Circular of 1 February 2006 on the partial amendment of the Aliens Integration Ordinance, including the list of criteria: www.weisungen.bfm.admin.ch.

⁴² See paragraph 114 *et seq.* below.

⁴³ The effects of the bilateral agreements are examined in greater detail in subsequent chapters.

Swiss universities and colleges of higher education⁴⁴ serve as the basis for the assessment of foreign school-leaving certificates and other qualifications.

69. Where social security is concerned, the Federal Act on old-age and survivors' insurance (Old-Age and Survivors' Insurance Act (LAVS)), the Disability Insurance Act (LAI), the Federal Act on supplementary LAVS and LAI benefits (Supplementary Benefits Act (LPC)) and some of the cantonal legislation on family allowances specify differential treatment for Swiss nationals and foreigners. However, these differences have been totally (for European Union and EFTA nationals) or largely eliminated as a result of the international social security agreements concluded between Switzerland and 36 other countries, which cover about 90 per cent of the foreigners living in Switzerland.

Article 3. Gender equality

10. Legal bases

70. On 27 March 1997 Switzerland ratified the 1979 United Nations Convention on the Elimination of All Forms of Discrimination against Women. This Convention entered into force for Switzerland on 26 April 1997. Switzerland's reports on the application of the Convention contain detailed information about questions of gender equality.

71. Switzerland signed the Optional Protocol to the Convention on 15 February 2007.

72. The principles of legal equality (Constitution, art. 8, para. 1) and gender equality (art. 8, para. 3) were included in the new Federal Constitution. In addition, these principles were reinforced by a general prohibition of discrimination, including gender-based discrimination (art. 8, para. 2). The second sentence of article 8, paragraph 3, gives the Legislature a mandate to ensure *de jure* and *de facto* gender equality, in particular with regard to education, work and the family. In substantive terms, this principle of equality is a matter for the legislative branch of Government: according to the Federal Court, the Judiciary must limit itself to ensuring formal equality, non-sexist formulation of the regulations, and protection against formal discrimination. This approach has not found favour in part of the doctrine: the Federal Court's balancing of interests favours the personal dimension of the right to equality (for men not to have their situation called into question) to the detriment of the public benefit of securing an improvement in the situation of women, members of a group less well treated in practice.⁴⁵

73. The Federal Act on equality between men and women (Gender Equality Act (LEg)) entered into force on 1 July 1996.⁴⁶ Minor amendments to the Act were adopted on 8 October 2004. It is designed to promote *de facto* gender equality and applies to all areas of working life. Details of the Act's content will be found in paragraphs 50-54 of the initial report (E/1990/5/Add.33). The Act's principal positive effect in terms of equality has been to give emphasis to the problems of wage differentials and sexual harassment. Considerable jurisprudence has been established over the years.⁴⁷

⁴⁴ Issued by the Conference of Rectors of Swiss Universities on 31 January 1992 and supplemented on 17 February 1994.

⁴⁵ See Yvonne Hangartner in *Allgemeine Juristische Praxis* AJP/PJA 2005, p. 1414 *et seq.*; Christa Tobler, "Quoten zum Dritten: gesetzliche Grundlagen für Frauenförderungs Massnahmen und Entschädigungen für Diskriminierungen", *recht* 2005, p. 220 *et seq.*; and Regula Kägi-Diener in AJP/PJY 2006, p. 107 *et seq.*

⁴⁶ See E/1990/5/Add.33, paragraphs 50-57.

⁴⁷ See paragraph 173 below.

74. In response to a parliamentary question the Federal Council had an assessment made of the effectiveness of the Gender Equality Act.⁴⁸ Four separate written surveys were conducted between January 2004 and the spring of 2005. As part of the assessment, all court decisions relating to the Act were collected, listed and analysed. This comprehensive exercise produced 269 usable decisions, most of them (57 per cent) addressing wage differentials. This category was followed by sexual harassment (21 per cent) and arbitrary dismissal (19 per cent). All the 355 cases submitted to the cantonal conciliation offices were also listed. Thirty-seven per cent of these cases related to wage differentials and 26 per cent to sexual harassment in the workplace. The Federal Council submitted the findings of the assessment and stated its opinion on them in its report of 15 February 2006.⁴⁹ It concluded that the Act had indisputably produced positive effects during the first six months of its application. It equips persons affected by discrimination with the means of asserting their rights. It stated nevertheless that the Act alone could not achieve equality in labour relations. That would require amendment of the framework conditions at various levels and measures to persuade enterprises to make an active effort to discharge their responsibilities in the matter.

75. On the basis of this assessment report the Federal Council assigned several mandates to the Federal Gender Equality Office (BFEG) and the Federal Justice Office (OFJ). It placed the emphasis on the targeted dissemination of information and on awareness-raising. It also called for the rationalization of the work of the courts by making recommendations on the way in which expert reports on pay differentials are produced and for the conciliation offices to be empowered to demand the production of evidence. It also proposed that thought should be given to the possibility of introducing incentive labels for enterprises and creating an authority with powers to investigate and intervene. The Federal Council expressed the view that the universities, lawyers and courts should be invited to disseminate targeted information and to improve vocational training in relation to the Gender Equality Act. With regard to public procurement contracts, it proposed the establishment of a procedure for monitoring compliance with the equal pay legislation. However, it came out against extending the protection against dismissal, for such a move would not solve the problem of fear of losing one's job.⁵⁰

76. Divorce law, regulated by the Civil Code, was revised; the new legislation entered into force on 1 January 2000. This revision improved the economic situation of divorced women by dividing into equal shares the entitlements accumulated with an occupational insurance institution. Among the other measures to improve gender equality, attention should be drawn to the possibility of joint exercise of parental authority and the removal of the concept of fault in the calculation of maintenance entitlement following a divorce. This entitlement is now calculated on the basis of objective criteria, including the sharing of tasks during the marriage, the duration of the marriage, and the income and assets and age and health of the spouses.

77. Some of the federal social security legislation contains gender-based distinctions. For example, the legal age of retirement is fixed at 65 years for men and 64 years for women. In addition, the regulations on a surviving spouse's income under old-age and survivors' insurance schemes are more favourable to women in that the requirements for entitlement to a widower's pension are more restrictive than those applying to a widow's pension. This "positive discrimination" is due to women's less favourable position in the jobs market.

⁴⁸ Report of 15 February 2006 on the assessment of the effectiveness of the Gender Equality Act (FF 2006 3061).

⁴⁹ Report of 15 February 2006 on the assessment of the effectiveness of the Gender Equality Act (FF 2006 3061).

⁵⁰ See paragraph 175 below.

78. Since 2001 almost all the cantons have taken action to protect victims of domestic violence or are now in the process of doing so. The Civil Code treats the protection of the person in such a way that persons suffering violence, threats or harassment are entitled to request a court to ban the perpetrator from coming near them, frequenting certain places or making contact with them. Paragraphs 439 *et seq.* of the commentary to article 12 of the Code go into some detail on the subject of domestic violence.

79. Article 3, paragraph 2 (d), of the 1992 Federal Act on statistics (Statistics Act (LSF)) enjoins the Federal Statistical Office (OFS) to produce statistics disaggregated by sex to evaluate the implementation of the constitutional mandate on gender equality. The Office is carrying out this mandate by issuing numerous publications on the topic of gender equality.⁵¹ The series of reports entitled “*Vers l’égalité?*” (Towards equality?), for example, uses a set of some 50 indicators on the main areas of life and thus provides an overview of the situation of equality in Switzerland.⁵²

11. Male and female quotas in politics, training and employment

80. The second sentence of article 8, paragraph 3, of the Constitution gives the Legislature a mandate to ensure *de jure* and *de facto* gender equality, in particular with regard to the family, education and work. The jurisprudence of the Federal Court holds that the positive measures prescribed by law for establishing *de facto* equality are in principle justified. The proposals for introducing quotas in politics have not yet found majority support at either federal or cantonal level. However, the flexible quota rules, which give priority to candidates’ abilities and do not favour the underrepresented sex except when candidates are equally qualified, are applied in the areas of training and employment.

81. The Federal Court stated in a 1997 decision that regulations setting fixed quotas to secure the equal representation of women in Parliament, the Government and the courts without taking qualifications into consideration would constitute a disproportionate impairment of gender equality and that such regulations would therefore be unlawful. It stated further that the imposition of quotas in politics restricted the equal right of all citizens to elect and to be elected. Such a restriction would be admissible only if it was “determined by the voting system”; this is not the case for female quotas. In a second basic decision taken in 1999 the Federal Court stated that regulations on flexible quotas – ones which do not have to be applied in practice – which reserved a minimum of one third of the seats for the underrepresented sex did not exclude the consideration of candidates’ qualifications and abilities and that, accordingly, such regulations would not as such clash with the Constitution. It stated that restriction of the equality of votes and opportunities in the context of proportional ballots was also permissible for reasons determined by the voting system in the broader sense (for example, to protect regional or linguistic minorities) but only if the principle of proportionality was respected and when there was an overriding public interest. In view of the importance of the political rights in question, it stressed that it was, however, necessary to proceed with the greatest caution with regard to that type of restriction of fundamental rights and that any quota-based distribution of mandates assigned by popular vote constituted an inadmissible limitation of the legal right to elect and to be elected.

82. On the other hand, the Federal Court held female quotas with respect to authorities not elected directly by the people to be admissible, because in such cases there was no impairment of the freedom of choice and vote and that the regulations on which the Court was required to give its opinion were sufficiently flexible to be deemed consistent with the principle of proportionality in view of the underrepresentation of women in the cantonal

⁵¹ See: www.bfs.admin.ch/bfs/portal/fr/index/themen/20/05.html.

⁵² See annex.

authorities. It also declared inadmissible any quotas for candidate lists (nomination quotas) designed to balance the numbers of male and female candidates on the lists. The Federal Council's latest decision on this subject, handed down in 2005, concerned a regulation on quotas in labour relations, more specifically the recruitment of a relief lecturer by the University of Fribourg. In accordance with its general practice justifying intervention in constitutional rights (in this case a male candidate's right to equality of treatment) the Federal Court found that that to set female quotas as one of the measures for the advancement of women was admissible in practice in that it had legal justification and was consistent with the principle of proportionality; in other words, it was a suitable means of achieving equality, was necessary and could not be replaced by another measure which would be less prejudicial to the rights of the men concerned. It is also necessary for the relationship between the end and the means used to attain it to seem reasonable in terms of the interest at stake (proportionality in the strict sense). Fixed quota rules in favour of women are also described as "difficult to allow in view of the serious degree to which they undermine the formal prohibition of gender-based discrimination". The Federal Court stated in this case that the practice of automatically disregarding male candidates was not admissible, for want of legal bases to support such an "encroachment" on the rights of male candidates. It also questioned the appropriateness and the necessity of the fixed quotas rule applied by the University of Fribourg in order to promote equality, stating that the rule was particularly defective with respect to the principle of proportionality. This decision of the Federal Court is criticized in the doctrine.⁵³

12. The authorities

83. In recent years the Gender Equality Office (BFEG) has concerned itself chiefly with the topics of *de jure* equality, equality of opportunities in the world of work, equal remuneration, international cooperation, and combating violence against women. It also advises authorities (collaborating in particular in the drafting of legislation), enterprises, organizations and private individuals and it has established itself in the Confederation as a body offering skilled advice on equality issues. It organizes regular events and operates a documentation centre for the general public as a means of raising awareness, as well as publishing specialized works. It also supports projects and advice units which help to promote gender equality in labour relations.⁵⁴ Today the BFEG has a budget of 5.2 million francs (not including staff costs), which is double the amount allocated in 1995. A parliamentary assessment published in 2000 found that the BFEG was fulfilling its mandate most competently.

84. The BFEG took a central part in the drafting of the 1999 "Gender Equality" national action plan, which was established following the 1995 Beijing Conference. This plan has been partially implemented. It was evaluated by the Federal Council in 2002. At the Beijing+10 follow-up conference in New York in 2005 Switzerland completed the questionnaire on the implementation of the 1995 Beijing Platform for Action and described the progress which it had made with respect to gender equality over the past 10 years.⁵⁵ The

⁵³ See Christa Tobler, "*Quoten zum Dritten: gesetzliche Grundlagen für Frauenförderungsmassnahmen und Entschädigungen für Diskriminierungen. Ad arrêt du 14 mars 2005 du Tribunal fédéral dans la cause Tiziano Balmelli contre la Commission de recours de l'Université de Fribourg*", (*recht* 2005), p. 220-232; Margrith Bigler-Eggenberger, "*Justitias Waage – wagemutige Justitia ?*". *Die Rechtsprechung des Bundesgerichts zur Gleichstellung von Frau und Mann* (Helbing & Lichtenhahn, Bâle/Geneva/Munich, 2003), p. 492 *et seq.*

⁵⁴ The databank www.topbox.ch, which covers all the projects which have received financial support, provides links to a large number of practical results obtained by gender equality projects.

⁵⁵ The Federal Council's report on the implementation of the "Gender Equality" action plan by the federal authorities, in response to Committee request 00.3222 (00.016-CN, November 2002) (see: www.ebg.admin.ch/dokumentation/00012/00198/index.html?lanf=fr).

2002 report showed that most of the measures entrusted to the federal authorities had been carried out, some of them with far-reaching effect, with regard to training and the economy for example. It also emerged from the report that the gender mainstreaming approach, a priority of the action plan, was still not widely understood and that, in practical terms, it was interpreted differently by the various services.

85. The function of the Federal Commission on Women's Issues is to advise the Federal Council on matters of equality. It regularly states its opinion on current issues and takes part in the consultation procedures of the federal authorities concerning draft legislation affecting matters of equality. It drafts principles and recommendations on current equality topics and undertakes information activities for the general public.

86. Many of the services of the federal authorities now have specialized units or spokespersons on equality issues, whose main task is to promote equality of opportunities for the personnel of the Federal Administration.

87. Most of the cantons and some of the communes have also established specialized services on equality issues. Their work is focused chiefly on training, employment and the labour market, reconciliation of family and work for men and women, violence against women, and integration of immigrants. The federal, cantonal and communal equality offices meet at the Swiss Conference of Equality Representatives, which currently has 23 members and supports, coordinates, plans and carries out measures of national and regional scope.

13. Equality in everyday life

13.1. Background

Para. 32: The Committee recommends that the State party intensify its efforts to guarantee men and women equal access to employment and equal wages for work of equal value.

Para. 33: The Committee recommends that the State party play a more active role in promoting equal access to higher education for women, immigrants and ethnic minorities

88. The question of gender equality and the action taken to attain this goal in the fields of work (arts. 6 and 7), family life (art. 10), health (art. 12) and education (art. 13) are discussed in the comments on each of the articles in question. The present chapter is therefore limited to a brief presentation of the changes which have taken place since the initial report and to a few comments on women's representation in political life and the civil service and on the reconciliation of work with family life.

89. The changes which have taken place with regard to equality since the initial report may be described as a mixture of progress and stagnation. Equality has been comprehensively established in Swiss legislation. But glaring de facto gender inequalities persist in some fields. While it is true that very clear progress has been made in education and employment, the unequal gender distribution with respect to full-time and part-time work still exists to some extent. The choices of occupation available to young men and young women have also undergone little change in the last few decades.

90. All kinds of action has been taken in recent years to promote equality, combat discrimination, and improve the status of women. The tools used range from amendment of legislation (on domestic violence, voluntary termination of pregnancy, and introduction of a maternity allowance) to financial support for projects concerned with equality in governmental and non-governmental institutions (for example, federal financial assistance under the Gender Equality Act and initial funding for day-care facilities for children) and

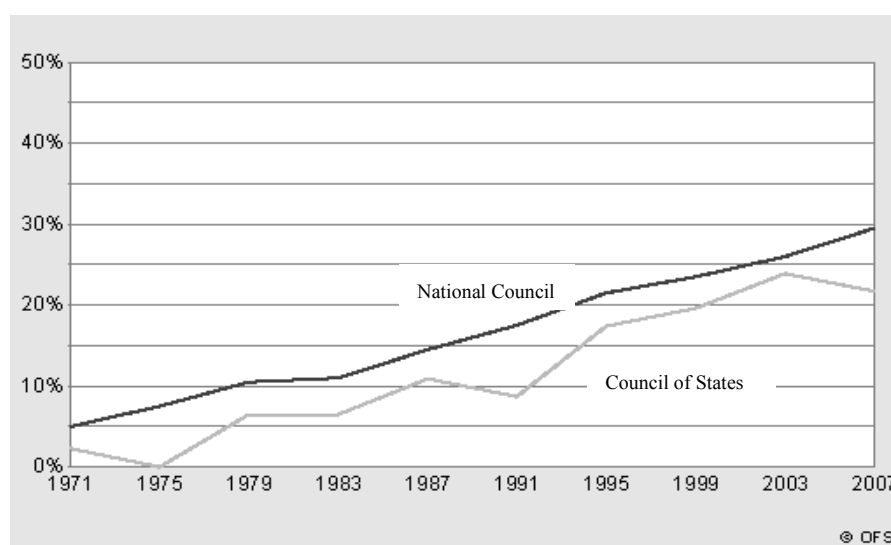
systematic information work to combat stereotypes (the “Fairplay-at-home” and “Fairplay-at-work” campaigns for example),⁵⁶ including specific equality programmes covering various activities under a single targeted policy (for example, in education or in federal personnel policy).

13.2. Representation of women in political life and the civil service

91. The proportion of women in political institutions has increased constantly since the introduction of women’s suffrage. Women provided 29.5 per cent of the members of the National Council elected in 2007 and 21.7 per cent of the members of the Council of States. Only one woman was successful in the 2004 elections to the seven-member Federal Executive, although two sitting federal councillors stood for election and another woman was chosen as her party’s official candidate. Following a by-election in June 2006 the Federal Council again had two women members, and there have been three women federal councillors since the general election in December 2007. In the autumn of 2007 women accounted for 26.3 per cent of the membership of the cantonal parliaments and 19.2 per cent of the membership of the cantonal governments. The only figures for the communes indicate that the membership of the communal executives included 24.9 per cent women in 2005 and that in 2004 women accounted for 31 per cent of the membership of the communal councils of towns of more than 10,000 inhabitants.

Graph 1.

Proportion of women in the National Council and the Council of States



92. The people’s initiative “For equitable representation of women in the federal authorities” (Initiative of 3 March), the aim of which was to secure the incorporation in the Constitution of the principle of due representation of women in all the federal authorities, was decisively rejected by the people on 12 March 2000 (82 per cent against).

93. At the federal level, the question of women’s underrepresentation in political bodies has been handled mainly by the Federal Commission on Women’s Issues. The question of the number of women politicians has frequently been brought up for discussion, in the media for example.

⁵⁶ See: www.fairplay-at-home.ch and www.fairplay-at-work.ch.

94. Before the National Council elections in 2003 the Federal Chancellery published a general explanatory note underlining the importance, where equality is concerned, of the political representation of women. A leaflet published by the OFS, the BFEG and the Federal Commission on Women's Issues presented information about the equality trends in federal and cantonal elections.⁵⁷ However, Parliament refused to insert in the Federal Act on political rights (Political Rights Act (LDP)) a provision making it possible to conduct regular campaigns to promote equality in federal elections.

95. Since 2000 the Federal Commission on Women's Issues has organized, financed and led a mentoring project in conjunction with the Swiss Youth Activities Council (CSAJ). Young women aged between 17 and 30 had an opportunity to shadow an experienced woman politician for a year and to receive valuable advice on planning their careers and on networking. This project, which ended in 2006, was awarded the "Young Active Citizens" award for innovation by the Council of Europe and underwent a technical evaluation.⁵⁸ The project's purpose was to increase the number of women active on the political stage and in political parties, provide new personnel to staff the associations, and promote communication and networking between generations.

96. Today, 29.5 per cent of the Federal Administration's workforce are women, as against 17 per cent in 1991. These figures testify to the success of the efforts made to achieve equality of opportunities. The proportion of women holding important posts is increasing: the proportion of women is declining in the lower pay categories but increasing at the managerial level. Of course, women, who hold only 10.7 per cent of managerial posts (salary grades 30 to 38) are still seriously underrepresented, even though the trend has been reversed in recent years. In 1991 the proportion of such women stood at 3.8 per cent and in 2001 at 6.8 per cent. At the middle-management level (salary grades 24 to 29) women now account for 21.4 per cent of staff (1991 – 4.4 per cent; 2001 – 13.3 per cent). The sharp increase at the middle-management level since 2001 is encouraging, for this is the level from which senior managers are recruited. The values have generally moved upwards in comparison with the preceding year and seem to be stabilizing at the present levels. Part-time staff account for 23.6 per cent of the total workforce; in the Federal Administration most of these workers are women in the lower salary grades.

97. As an employer the Confederation attaches great importance to equality of opportunities. New directives on equality entered into force on 1 March 2003. They stipulate inter alia that departments must create the necessary conditions for increasing the proportion of members of the underrepresented sex to reach parity in all areas of activity and at all levels. The administrative units must release the necessary human and financial resources for suitable measures to be taken at all levels. The directives also regulate the departments' powers, stress the responsibilities and duties of the Confederation's senior personnel and equality-of-opportunities representatives, and designate the Federal Personnel Office (OFPER) as the advisory body. The departments are required to produce every four years a list of measures to address their specific needs and to set priorities. The directives also include recommendations on staff recruitment, selection, assignment and evaluation. They provide in particular that the competent services shall accord priority, given equal qualifications, to candidates of the underrepresented sex until parity is attained in the recruiting unit in question. This principle applies in particular to appointments to

⁵⁷ *"Les femmes et les élections, 1999-2003: La difficile conquête du mandat de député"* (Women and elections 1999-2003: the hard task of becoming a woman deputy) (Neuchâtel, 2003).

⁵⁸ Daniela Gloor and Hanna Meier, *"Le mentoring en politique: Evaluation du projet pilote 'de femme à femme'; sur mandat de la Commission fédérale pour les questions féminines et du Conseil suisse des activités de jeunesse (CSAJ)"* (Mentoring in politics: Evaluation of the "woman to woman" pilot project; under a mandate from the Federal Commission for Women's Issues and the Swiss Youth Activities Council (CSAJ)), *Social Insight* (March 2006).

trainee and managerial posts. Lastly, the directives provide for regular monitoring by OFPER, which is required to report to the Federal Council every year on the qualitative trend and to summarize for the Council the departmental reports produced every four years.

98. According to the latest OFPER report, for 2004, almost 60 per cent of the personnel officers questioned confirmed that during the previous four years their office had not set the explicit objective of increasing the number of women by a specific percentage. The priority consideration to be accorded to the underrepresented sex, as stipulated by the directives, is applied in practice by a quarter of the offices. The achievement of equality of opportunities has been made a priority interdisciplinary task by 57 per cent of the office heads. However, only 34 per cent of the offices have a list of suitable measures and barely half have set specific annual targets for promoting equality of opportunities. Only 50 per cent of the equality-of-opportunities representatives have the necessary resources and financial authority or a specific mandate. A personal contribution to promoting equality is rarely included in the mission agreements of senior staff or properly evaluated. Such arrangements are very rare, or even non-existent, in 86 per cent of the offices.⁵⁹

99. In recent years OFPER has produced tools for reporting on the Federal Council's mandate in order to facilitate the communication of information about the distribution of the sexes by salary grade in the Federal Administration. It has also produced tools (handbooks and checklists) for the practical achievement of equality of opportunities in the various areas of the organization of the work of the departments and offices. The proportion of women is supposed to increase by 30 per cent in the higher salary grades and by 33 per cent in the other grades between now and the end of 2011.

100. Several cantons and some towns have taken steps to promote equality and increase the proportion of women in their administrations and administrative committees (Berne, Grisons, Lucerne, Neuchâtel, Vaud, Solothurn, Aargau, Jura, Zurich). Some cantons (Bâle-Ville, Berne, Jura, Zurich) have set specific targets in this regard and established monitoring arrangements. Some of the cantons have also looked in recent years into gender-blind work evaluation and into measures to combat pay differentials.

101. Women are not always required to perform military service. They may do so on a voluntary basis (Constitution, art. 59, para. 2). A total of 279 women undertook to perform military service in the Swiss army in 2006.

102. The promotion of women's rights and equality is a priority of Switzerland's foreign policy with regard to human rights. Switzerland makes a consistent effort to give consideration to issues of equality in its activities for the advancement of peace and for development cooperation (for example, by means of pilot projects on gender-sensitive budgeting). It should also be mentioned that since 2007 Switzerland has had a national plan for the implementation of Security Council resolution 1325 on women, peace and security. This plan provides among other things for a strengthened commitment to the participation of women in promoting peace, preventing gender-specific violence, and attending to the needs and protecting the rights of girls and women during and after violent conflicts.

13.3. Reconciliation of work with family life

103. In 2004 the Organization for Economic Cooperation and Development (OECD) published a study on ways of reconciling work with family life in New Zealand, Portugal and Switzerland. This study recommends inter alia that Switzerland should increase its public spending on the day-care of children of preschool and school age and boost the

⁵⁹ The information cited from the preceding evaluation report relates to 2004. A new report, for the period 2004-2007, will be submitted shortly to the Federal Council and then published on the Internet. This report will sum up developments with respect to equality of opportunities between men and women in the Federal Administration.

capacity of day-care centres in order to increase the number of women in (full-time) work. It also recommends separate taxation in order to encourage both the adult members of a household to work. And jobs should be made more “family-friendly”.⁶⁰

104. The design and implementation of measures for reconciling work and family is a complex operation in Switzerland and is encountering obstacles. There are three main factors complementing and interacting with each other: the fragmentation of authority; ignorance and prejudice; and a lack of financial resources.

105. The Confederation’s authority and possibilities are limited in this field. Nevertheless, important measures have been taken at the national level in recent years:

(a) In 2003 the Confederation (Federal Social Security Office/Centre for Family Issues) launched an eight-year promotional programme to facilitate the creation of additional places in day-care facilities for children (nurseries; after-school centres; coordination bodies for placement with day-care families). Parliament approved an investment commitment of 200 million francs for the first four years. For the second phase, from 2007 to 2011, it has released a framework credit of 120 million francs;

(b) The Confederation recently introduced a federal child-care qualification in order to make good the shortage of qualified child-care personnel and improve vocational training in this field;

(c) In February 2007 the Secretariat of State for the Economy published a handbook for small and medium-sized enterprises on reconciliation of work with family life. It suggested ways for such enterprises to offer a flexible response both to the needs of their employees and to those of the enterprise itself;⁶¹

(d) There is no doubt that the failure to provide maternity leave in Switzerland has long been having an adverse effect on the reconciliation of work and family life. Since 1 July 2005 all working mothers have been entitled to a maternity allowance;⁶²

(e) In order to initiate a debate in economic circles on the advantages of the introduction of family-friendly arrangements by enterprises, the Federal Department for the Economy took part in a private study entitled “Work and family”, which produced Switzerland’s first cost/benefit analysis of a family-friendly business policy. This study, which was produced by the Bâle company Prognos, showed that such a policy pays dividends;

(f) The BFEG carried out two awareness-raising campaigns to counteract the stereotypical distribution of domestic and employment roles. The “Fairplay-at-home” campaign launched in 2002 was designed to stimulate a debate among young parents and young couples wishing to have children concerning the distribution of domestic chores. The “Fairplay-at-work” campaign followed in 2003. As well as encouraging heads of enterprises and human resources departments to introduce a family-friendly personnel policy it also did something for fathers wishing to spend more time with their families by helping to communicate this message effectively to their employers.

⁶⁰ Secretariat of State for the Economy and Federal Social Security Office, “*Concilier travail et famille Nr. 1f*” (Reconciling work and family No. 1f) and “*Bébés et employeurs – Comment concilier travail et vie de famille*” (Babies and employers – how to reconcile work and family), a condensed version of the OECD comparative study on New Zealand, Portugal and Switzerland (Swiss aspects) (Berne, 2004).

⁶¹ Secretariat of State for the Economy, “*Manuel PME “Travail et famille: Mesures visant à concilier vie professionnelle et vie familiale dans les petites et moyennes entreprises”*” (SME “Work and family” handbook: measures for reconciling work and family in small and medium-sized enterprises) (February 2007) (www.the.Secretariat.of.State.for.the.Economy.admin.ch).

⁶² See paragraph 262 *et seq.*

106. Several cantons have also carried out activities connected with the reconciliation of work and family and the distribution of domestic and employment roles. Men and women and indeed enterprises and personnel officers have been made aware of this issue in a number of ways.

Article 4. Limitations on the exercise of rights

107. Switzerland's system of limitations is found in article 36 of the Constitution, which codifies the jurisprudence and the unwritten rules of constitutional law. Article 36 reads:

“1. Any limitation of a fundamental right must be based on a law. Serious limitations must be prescribed in a law. This provision shall not apply to situations of serious, direct and imminent danger.

2. Any limitation of a fundamental right must be justified by a public interest or by the need to protect a fundamental right of others.

3. Any limitation of a fundamental right must be proportional to the intended outcome.

4. The essential content of the fundamental rights is inviolable.”

108. Accordingly, the comments on article 4 of the Covenant contained in the initial report (E/1990/5/Add.33, paras. 66-72) are still valid.

Article 5. Prohibition of the abuse of rights, and primacy of the most favourable right

109. The information given in paragraphs 73-74 of the initial report (E/1990/5/Add.33) is still valid.

Article 6. Right to work

14. Background

Para. 26: The Committee recommends that the cantonal laws should be further harmonized, to ensure due respect for the provisions of the Covenant, particularly with regard to fundamental rights such as the right to work [...].

110. The new Constitution is based on the Committee's recommendation that the Constitution should establish as a goal for the Confederation and the cantons a commitment to ensure that everyone fit to work can earn his or her living by means of work performed under fair conditions (Constitution, art. 41, para. 1(d)). However, this does not amount to a subjective right to State benefits. Accordingly, the right to work, understood as a positive benefit provided by the State, is not guaranteed as such in the Swiss legal system. With regard to a common goal for the Confederation and the cantons, pursuant to the principle of federalism it is for the cantons to harmonize their respective legislations, in full sovereignty and as far as they deem necessary. As a result, the right to work is now guaranteed in some cantonal constitutions, in particular as an objective of social policy.⁶³ Although the Constitution does not establish a right to work as such, it does recognize such a right

⁶³ Constitution of the canton of Solothurn, article 22 (d) (Social objectives); Constitution of the canton of Bâle-Campagne, subparagraphs 7 (b) and (c); Constitution of the canton of Jura, article 30 (a) (Right to work); Constitution of the canton of Berne, article 30 (a) (Social objectives).

expressly in article 27 as an element of economic liberty, i.e. the free choice of occupation and free access to an economic activity and the freedom to pursue them.

15. Situation in the labour market

111. The situation in the Swiss labour market has changed since the submission of the initial report, as a result not only of the entry into force of the Agreement on the Free Movement of Persons (ALCP) between Switzerland and the European Union but also of the changes in the framework of the Federal Act on unemployment insurance (Unemployment Insurance Act (LACI)) and also because Switzerland went through a difficult economic period causing higher unemployment between 2003 and 2005. After a return to full employment in the first few years of this century, the situation deteriorated. The unemployment rate, which had been 1.7 per cent in 2001, rose to 3.9 per cent in 2004. This situation did not affect the country uniformly: it was the French-speaking regions which suffered the most serious unemployment (5 per cent in 2004). The canton of Geneva experienced a record rate of 7.5 per cent at the beginning of 2005.

112. The return to economic growth certainly got under way in the course of 2004, but the labour market had to wait until the end of 2005 to feel the first effects of the improvement of the economic situation. In 2006 the economic growth at last produced its full impact on the labour market: the number of economically active persons increased by 2.3 per cent (95,000 persons) over the preceding year. The increase in the number of jobs led to a sharp fall in the unemployment rate in 2006 (by 3.3 per cent), with variations from one region to another. This trend was confirmed in 2007, with the exception that all the regions now recorded lower unemployment. In 2007 the unemployment rate, adjusted for seasonal variations, stood at 2.7 per cent, a level not seen since the summer of 2002.

Table 1
Level and structure of unemployment, 2000-2006

	2000		2002		2004		2006	
	Number	Rate	Number	Rate	Number	Rate	Number	Rate
Total	71 987	1,8	100 504	2,5	153 091	3,9	131 532	3,3
By region								
German-speaking Switzerland	41 118	1,4	63 301	2,2	98 549	3,4	79 539	2,8
French-speaking Switzerland and Ticino	30 869	2,8	37 203	3,4	54 543	5,0	51 994	4,8
By sex								
Women	34 216	2,0	44 644	2,6	69 541	4,0	63 396	3,6
Men	37 772	1,7	55 861	2,5	83 551	3,8	68 136	3,1
By nationality								
Swiss	38 532	1,3	56 295	1,8	90 039	2,9	76 783	2,5
Foreigners	33 456	3,7	44 209	5,0	63 052	7,1	54 749	6,1
By age								
15-24 years	10 122	1,8	16 426	3,0	28 310	5,1	23 807	4,3
25-49 years	45 837	1,9	64 739	2,7	94 864	3,9	79 323	3,3
50 years or older	16 028	1,6	19 338	2,0	29 917	3,0	28 403	2,9
By branch of activity								

	2000		2002		2004		2006	
	Number	Rate	Number	Rate	Number	Rate	Number	Rate
Sector 1 (Agriculture, forestry)	809	0,6	903	0,7	1 468	1,1	1 346	1,1
Sector 2 (Industry)	15 766	1,9	22 944	2,7	33 074	3,9	25 223	3,0
Sector 3 (Services) including:	49 514	2,2	66 742	2,9	102 577	3,9	85 379	3,8
Retail trade	6 670	2,3	8 250	2,9	13 843	4,8	11 720	4,1
Hotels and restaurants	9 653	5,5	11 134	6,4	17 928	10,2	15 675	9,0
Finance, insurance	1 967	1,0	3 658	1,8	6 229	3,1	3 979	2,0
Information technology	569	1,2	1 910	3,9	2 744	5,6	1 534	3,1
Business services	7 468	3,0	12 310	4,9	17 286	6,9	13 558	5,4
Public administration, social security	3 939	2,7	3 791	2,6	5 339	3,7	5 526	3,8
Health and social services	4 855	1,5	5 082	1,5	8 711	2,6	8 359	2,5
Other services	3 318	2,4	4 197	3,1	6 074	4,5	5 723	4,2
Not specified	5 898	2,8	9 915	3,1	15 972	4,8	19 585	...
Total	71 987	1,8	100 504	2,5	153 091	3,9	131 532	3,3
By duration								
1-6 month	42 466	...	65 872	...	84 987	...	74 241	...
7-12 month	15 029	...	22 085	...	38 374	...	30 836	...
Over 12 month	14 492	...	12 548	...	29 731	...	26 455	...
By function								
Specialized	...	55,1	...	51,8	...	55,2	...	53,9
Auxiliary	...	36,7	...	36,0	...	30,9	...	32,0
Trainees/students	...	4,9	...	4,3	...	6,3	...	7,1
Others	...	7,4	...	7,9	...	7,6	...	7,1

Sources: Labour Directorate of the Secretariat of State for the Economy, "Marché du travail et assurance-chômage: Rapport annuel 2004" (Labour market and unemployment insurance: Annual report 2004) (May 2005, Bern) and "Le chômage en Suisse 2006" (Unemployment in Switzerland 2006) (2007), p. 63.

15.1 The Agreement on the Free Movement of Persons and the labour market

113. The Agreement on the Free Movement of Persons (ALCP) regulates the free movement of persons between Switzerland and the European Union.⁶⁴ Transitional periods and clauses are included in order to ensure the gradual opening up of labour markets. Workers, both employees and self-employed persons, acquire the right to engage in gainful employment and to settle in any of the countries parties to the agreement. This liberalization is accompanied by reciprocal recognition of qualifications and coordination of social security systems. Persons not gainfully employed also acquire the right to settle, provided that they are covered by a sickness insurance scheme and have sufficient financial means.

114. The ALCP concluded with the first 15 States members of the European Union and the European Community entered into force on 1 June 2002. An initial transitional period, during which the principle of priority for indigenous workers and the prior monitoring of

⁶⁴ See paragraph 15 *et seq.* above.

pay and working conditions remained in force, ended on 31 May 2004. In order to protect Swiss workers against any pay and social “dumping”, back-up measures applicable to the entire working population, including workers from the new States members of the European Union, then entered into force. Quotas for long and short stays were abolished on 1 June 2007 for the first 15 members of the European Union and for Malta and Cyprus but they may be reintroduced temporarily until 2014 in the event of mass immigration. Switzerland has to decide by 31 May 2009, by means of a federal order submitted to an optional referendum, whether to continue the Agreement.

115. For the 10 new member States which have joined the European Union since 1 May 2004 Switzerland and the European Union have agreed on a separate transitional arrangement, set out in a protocol additional to the ALCP. This protocol stipulates a transitional period enabling Switzerland to maintain the restrictions on access to its labour market (priority for indigenous workers, monitoring of pay) until a deadline of 30 April 2011. During this period Switzerland will apply annual short- and long-stay quotas, which will be steadily increased. The additional protocol extending the free movement arrangements to the new States members of the European Union and the revised supplementary measures were approved by Parliament on 17 December 2004 in the form of a single federal order subject to an optional referendum. The people voted in favour of the order (56 per cent “yes” votes) on 25 September 2005.

116. Where unemployment insurance is concerned, the ALCP provides for equal treatment of nationals and foreigners. In other words, all involuntarily unemployed persons are entitled to benefits if they satisfy the necessary conditions (length of contributions, for example) in the State in question. Before the ALCP came into force Community workers were placed at a disadvantage in Switzerland by the aliens legislation: workers with contracts of less than 12 months received unemployment benefits only up to the expiry of their residence permits at the outside, provided that they had paid contributions for the minimum period of 12 months required by Swiss law.

117. The totalisation principle stipulates that entitlement to unemployment benefits shall depend inter alia on the period of contributions, which must be sufficiently long. The new feature is that periods of contribution completed abroad are now also included in the calculation. However, the totalisation principle will not apply to workers holding short-term residence permits until a transitional period of seven years has elapsed.

15.2. Labour market situation of young people

118. Young people have an above-average unemployment rate. The deterioration in the situation in the labour market between 2000 and 2005 caused a sharp rise (from 4.8 to 8.8 per cent) in the youth unemployment rate (15-24 age group). This trend went into reverse at the end of 2005.

Table 2.

Overall and youth unemployment rates 1996-2007 (percentages)

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Overall rate	3,7	4,1	3,6	3,1	2,7	2,5	2,9	4,1	4,3	4,4	4,0	3,6
Youth rate (15-24 years)	4,7	6,0	5,8	5,6	4,8	5,6	5,6	8,5	7,7	8,8	7,7	7,1

Source: OFS, Swiss Working Population Survey (ESPA).

119. Young people in the 15-24 age group often fail to find jobs because they lack initial work experience: employers prefer to hire experienced staff when they can. The trainee

posts offered by enterprises do not always match the type of training that some young people may prefer, and at the end of their compulsory education young people do not necessarily find jobs or trainee positions in the field of their choice. Some of them thus become unemployed (23,800 posts in 2006 for some 33,500 job-seekers). This period of unemployment does not last long: its average duration was about four months in 2006.

120. Young foreigners suffer above-average unemployment. A study carried out under the “Integration and exclusion” national research programme (PNR 51) showed that the difficulty experienced by young foreigners in finding a trainee post has less to do with a lack of education than with the reluctance of training enterprises to offer training to young foreigners.⁶⁵

121. In 2003 the Federal Department of the Economy (DFE) established a task force to find new ways of reducing youth unemployment. The second half of 2005 saw an increase in the number of trainee posts and the initiation of coaching and mentoring programmes. Labour-market measures linked to youth-specific unemployment insurance were devised, such as periods of motivational training for young people completing their compulsory education, and work experience or training enterprises for young people who have completed a vocational training course.⁶⁶ The cantons also offer transitional arrangements for young people who have failed to find trainee posts. These arrangements focus on practical activities and the world of work in order to make good any educational or social deficits and prepare the young people for working life.

122. The Federal Administration is required by law to participate in Switzerland’s dual-component vocational training system by creating apprenticeships and trainee posts. In 2006 it provided about 900 apprenticeships and trainee posts under the vocational training legislation, in almost 40 recognized occupations.

15.3. Labour market situation of older workers

123. The aging of the population poses a sizeable demographic challenge for Switzerland. From 2020 at the latest the situation will turn serious owing to a shortage of labour. Older workers will become increasingly important as a result of this demographic development. For this reason, in November 2005 the Federal Council adopted a three-pronged series of measures:

- (a) Elimination of social security incentives for early retirement;
- (b) Encouragement of older workers to return to work;
- (c) Improvement of worker’s health and their capacity and motivation to work.

124. Older persons (over-50s) are distinguished from the rest of the population by their under-average unemployment rate. In fact, however, when they become unemployed they find it much more difficult to find alternative jobs than young people do. Thirty-two per cent of the long-term unemployed are aged over 50.

Table 3
Unemployment rates by age group (Second quarter, percentages)

Women	2007	Men	2007
Total	4,5	Total	2,9

⁶⁵ See Tangram No. 19, 5/2007 (www.ekr-cfr.ch/ekr/dokumentation/shop/00018/00196/Nr19.pdf?lang=fr).

⁶⁶ See paragraph 146 *et seq.* below.

Women	2007	Men	2007
Age group		Age group	
15-24 years	7,4	15-24 years	6,8
25-39 years	5,0	25-39 years	2,6
40-54 years	3,4	40-54 years	2,0
55-54 years	3,8	55-54 years	2,6
65 years or older	()	65 years or older	()
15-64 years	4,6	15-64 years	3,0

() = not shown for lack of reliable statistics.

Source: Federal Statistical Office, Swiss Working Population Survey (ESPA).

15.4. Labour market situation of foreigners

125. In 2006 one in four (25.6 per cent) economically active persons in Switzerland was a foreigner.⁶⁷ The Swiss Working Population Survey (ESPA) counts only permanent residents but does include detailed comments on foreigners' gainful activity: the proportion of foreign workers is particularly high, at 42 per cent, in the hotels and restaurants sector, for example. This is also the case in construction (30 per cent) and manufacturing (26 per cent). One foreign worker in five (22 per cent) works at the weekend.⁶⁸

126. The admission of citizens of the European Union and the European Free Trade Area (EFTA) to work in Switzerland has already been discussed at length in chapter 15.1. The admission of foreigners from third countries, i.e. other than from the European Union and EFTA, is regulated by the Aliens Limitation Ordinance (OLE). The Federal Council fixes periodic quotas for this purpose (OLE, art. 12). Priority is given to Swiss workers and to European Union and EFTA nationals (OLE, arts. 7 and 8).

Table 4

Foreign quotas 2002-2006

Agreement on the Free Movement of Persons (ALCP), EU-15 and EFTA						
Quota period	Autorization category					
	Holders of residence permit			Holders of short-term residence permit		
	Quota	Take-up	%	Quota	Take-up	%
1.6.02 au 31 mai 2003	15 300	15 300	100	115 700	66 800	58
1.6.03 au 31 mai 2004	15 300	15 300	100	115 700	70 200	61
1.6.04 au 31 mai 2005	15 300	15 300	100	115 700	78 600	68
1.6.05 au 31 mai 2006	15 300	15 300	100	115 700	95 800	83

⁶⁷ OFS, "Statistique de la population active occupée, 2007" (Working population statistics, 2007). These figures include all persons economically active in Switzerland (permanent residents, foreign frontier workers, persons holding short-term residence permits (under 12 months) and asylum-seekers.

⁶⁸ OFS, "Enquête suisse sur la population active 2006" (Working Population Survey 2006) (Neuchâtel, 2006).

Third countries (OLE)						
Période contingitaire	Autorization category					
	Quota period One-year residents (OLE, art. 14)			Short-term stays (OLE, art. 20)		
	Quota	Take-up	%	Quota	Take-up	%
1 June 2002 to 31 October 2002	2 000	1 300	65	2 500	1 300	52
1 November 2002 to 31 October 2003	4 000	2 200	55	5 000	3 100	62
1 November 2003 to 31 October 2004	4 000	2 200	55	5 000	3 400	68
1 November 2004 to 31 October 2005*	4 700	2 700	57	7 500	7 200	96
1 November 2004 to 31 October 2005*	4 700	3 000	64	7 500	3 400	99

*In the period between the date of the signature of the protocol extending the ALCP and its entry into force, 700 B-permits and 2,500 L-permits were issued for EU-10 nationals (schedule in force from 1 November 2004 to 31 March 2006).

** EU-8 nationals were assigned to the quotas for third States (OLE) up to 31 March 2006, with the exception of quotas for about 4,000 trainees.

Source: Federal Migration Office, 2007.

127. The statistics show that in 2002 more than one half (53.8 per cent) of Swiss workers but only one third (34.5 per cent) of foreign workers had a monthly income higher than the national average gross income of 5,417 francs a month. There are various reasons for this pay differential: education, work experience, length of service in the enterprise, age structure, and branch of the economy. However, the most recent studies reveal that the main reason is that more foreign workers are employed in simple and repetitive jobs in the low-wage branches and that fewer of them are found in the high-wage branches which offer more complex work to highly qualified manpower. But it is also found that in some branches of the economy Swiss and foreign workers are remunerated differently for work requiring the same skills, especially in the case of foreign workers holding short-term residence permits.⁶⁹

Table 5
Unemployment rates by sex and nationality, resident population (average annual percentages)

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Total	3,9	4,2	3,6	3,0	2,7	2,6	3,2	4,2	4,4	4,5	4,0
Swiss	2,6	2,8	2,4	2,1	1,9	1,9	2,3	2,9	3,1	3,2	2,8
Foreigners	8,0	9,1	7,7	6,6	5,5	4,8	6,1	8,6	8,9	8,8	8,1
Men	3,6	4,3	3,2	2,6	2,2	1,9	3,0	3,9	4,0	3,9	3,4
Swiss	2,5	2,6	2,0	1,6	1,4	1,3	2,1	2,7	2,8	2,7	2,4
Foreigners	7,2	9,6	7,0	5,9	4,8	3,9	5,6	7,5	7,6	7,4	6,6
Women	4,2	4,1	4,0	3,5	3,2	3,4	3,4	4,8	4,9	5,1	4,8

⁶⁹ OFS, "La population étrangère en Suisse" (Switzerland's foreign population) (2004 edition), p. 62.

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Swiss	2,8	3,1	2,8	2,6	2,4	2,7	2,5	3,1	3,4	3,7	3,3
Foreigners	9,4	8,3	8,7	7,6	6,6	6,3	6,9	10,1	10,8	10,8	10,4

(): Not entirely reliable statistically/omitted because too unreliable statistically.

Source: OFS, "La statistique des personnes sans emploi" (Unemployed persons statistiques).

128. The one-year work ban imposed on asylum-seekers by the Federal Council was lifted by the Government on 1 September 2000. Since then the old regulations have again been applicable: during the first three months following the submission of an asylum application the applicant is not entitled to engage in any gainful employment (Asylum Act, art. 43). The revised Asylum Act approved by the people on 24 September 2006 entered into force in two stages, the first on 1 January 2007 and the second on 1 January 2008. Article 43, paragraph 3bis, of the revised Act provides that the Government may impose a temporary work ban on certain categories of asylum-seeker. The aim is to enable the Federal Council to react swiftly to certain situations or to crises without having to resort to the emergency legislation. The main purpose of this measure is to combat secondary immigration from other host countries.

129. The employment rate (34 per cent) of foreigners admitted provisionally is barely half that of foreigners holding residence permits. Experience shows that a large majority of these persons remain in Switzerland for lengthy periods, even permanently. In order to enable this category of persons to obtain work as quickly as possible and to keep the social assistance costs down, the labour market legislation was brought into line with the new article 7, paragraph 5ter, of the Aliens Limitation Ordinance (OLE) through the partial entry into force of the new Asylum Act on 1 January 2007. In the case of persons seeking their first job, priority is given to Swiss nationals and to foreign job-seekers already living in Switzerland and authorized to work. Persons granted provisional entry are now treated on an equal footing.

15.5. Labour market situation of women

130. Despite the entry into force, on 1 July 1996, of the Gender Equality Act, which was designed to eliminate discrimination against women in employment, it must be admitted that many inequalities persist in this area. The total amount of work performed by women as gainful employment is still clearly smaller than the amount performed by men. Compared with other countries, Switzerland has a very large number of women working part-time.⁷⁰ While the proportion of women working full-time has fallen by 3.6 per cent since 1991, the proportion of women working between 50 and 89 per cent of a full week has risen by 5 per cent, as against 0.5 per cent in the case of women working less than 50 per cent. It is thus mainly in the category of women working between 50 and 89 per cent that the increase in women's participation in working life has taken place. The increase in the number of working women over the past 10 years is attributable chiefly to middle-aged women and mothers. The number of women combining work and family is increasing. In 1991, 59.8 per cent of women with children aged under 15 years worked; the 2007 figure was 73.6 per cent.

131. A 2003 analysis of precarious working conditions by socio-demographic criteria showed that women are about three times more likely than men to be affected by such

⁷⁰ OFS, "Le marché du travail en comparaison internationale: L'activité professionnelle des femmes et des hommes" (International labour market comparisons: Female and male employment) (Neuchâtel, 2007).

conditions.⁷¹ Several reasons are put forward to explain this state of affairs: some people see it as a consequence of the labour market situation of women, which is generally less favourable than the situation of men; others argue that most insecure jobs are taken to bring in a second wage, and mostly by women.

132. The occupational situation of women is generally worse than that of men. Six women in 10 work as “employees without managerial functions”, as against four men in 10. The proportion of women taking managerial posts or becoming involved in running an enterprise increased from about 16 per cent in 1991 to 22 per cent in 2007; for men, this figure rose from 32 to 37 per cent. This gap can be explained only partially by differences in levels of education, and there is no doubt that it is due mainly to the fact that most of the family responsibilities still fall on women.

133. The Swiss social security system does not contain any direct discrimination against women. However, qualification for cover in some branches of social security depends on the performance of a gainful activity, and the benefits are calculated on the basis of the income from that activity. It would thus be possible for women, owing to their labour market situation (lower earnings, part-time work, career breaks) to receive lower benefits under some social security schemes. However, recent reforms have improved the situation in this regard (including the lowering of the threshold for access to occupational old-age, survivors’ and disability insurance, in force since 1 January 2005).⁷²

134. The gap between men and women not holding jobs (unemployed or not) has changed little over the years, but there are still more women in this situation: their figure of 3.2 per cent in 2000 rose to 4.8 per cent in 2006, whereas the figure men without jobs increased from 2.2 to 3.4 per cent in the same period. This trend is closely linked to family situation. The no-job rate is clearly higher for women with children aged under 15 years than it is for men. The gap is widest in the case of persons with children of preschool age (aged six or under). These differences are due largely to the fact that women clearly interrupt their careers more often than their partners for family reasons and that they then seek to return to work after several years of “family break”. An additional factor is that mothers are often able to work only a limited number of hours, which makes them less flexible in their job search. However, the no-job rate is much the same for men and women without children.

135. Gender pay differentials persist in Switzerland. Further comments on this subject will be found under article 7 (para. 168 *et seq.*).

15.6. Labour market situation of persons with disabilities

136. Great importance is attached to promoting jobs for persons with disabilities, in particular under the Disabled Persons Equality Act (LHand) and the Disability Insurance Act (LAI).

137. The Disabled Persons Equality Act does not contain any specific rules for eliminating inequalities and promoting equality in the labour market. However, it does provide that the Confederation, in its capacity of employer, should play a pioneering role and encourage the recruitment of persons with disabilities (LHand, art. 13, para. 1). The Act also provides for the possibility of supporting pilot projects designed to promote the employment of persons with disabilities in addition to the measures taken under the disability insurance system.

⁷¹ Secretariat of State for the Economy, “*Emplois précaires en Suisse*” (Precarious jobs in Switzerland), a summary of the study commissioned by the Supervisory Committee of Unemployment Insurance Compensation Funds (2003), p. 16 (of the full German version).

⁷² See paragraph 316 below.

138. The principle aim of the fifth revision of the Disability Insurance Act, which entered into force on 1 January 2008, is to maintain persons with or threatened with disabilities in their jobs or find them jobs, in order to avoid payment of a pension. To this end the fifth revision provides *inter alia* for the establishment of an early detection and intervention system, the introduction of preparatory reintegration measures for vocational rehabilitation, and the expansion of the existing vocational rehabilitation measures.⁷³

139. Further information will be found in the report of 30 November 2004, submitted by Switzerland to the International Labour Organization (ILO), on the application of the Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159).

16. Public placement services

16.1. Collaboration between the Confederation and the cantons

140. As a result of the 1995 revision of the Unemployment Insurance Act (LACI) the cantons were obliged from 1997 to establish regional employment offices (ORP). In the first few years the Secretariat of State for the Economy endeavoured to influence the cantonal decisions by issuing numerous circulars containing detailed information on the financial benefits provided under unemployment insurance.

141. On 1 January 2000 a “2000 agreement on benefits based on the findings of the regional employment offices, the logistical services for labour market measures and the cantonal authority” referred in detail to the functions which the cantons had to perform and listed the counterpart benefits funded by the Confederation. A new agreement, valid until 2005, entered into force on 1 January 2003. The no-claims-bonus/surcharge system was discontinued under this agreement. The third agreement, valid from the start of 2005, also omitted the no-claims-bonus/surcharge system.

16.2. Collaboration with private employment agencies

142. Collaboration with private employment agencies was initiated in order to improve placement for job-seekers. Both the ORPs and the private agencies inform job-seekers about available paid work, as well helping employers to find staff. Collaboration between these two entities is thus welcome. Under an agreement between the Secretariat of State for the Economy and the Swiss Union of Employment Services (Swissstaffing) private agencies have had since 1997 Internet access to the personal details of job-seekers entered by the Secretariat of State, provided that the persons concerned have given their written consent. Job-seekers may in fact decide whether they wish to have their personal details remain anonymous or to allow their names and addresses to be communicated to third parties. Private agencies wishing to access this information must satisfy certain conditions and also register with the Secretariat of State.

143. For the most part, the collaborative activities are not conducted through this database but through the direct contacts which each ORP maintains with private agencies. It is a common practice in several cantons for ORP advisers to provide job-seekers with a list of addresses of private agencies and to advise them to register with these agencies as well. Many persons follow this advice. There is also intensive collaboration with regard to placement in temporary jobs. Employers needing to recruit staff for work of a specific duration often prefer to turn to a specialist staffing agency than to try to find potential recruits themselves. The ORPs in fact often have recourse to such staffing agencies since

⁷³ See paragraph 312 *et seq.* below.

they do not provide this kind of service themselves. Some cantons have specific agreements regulating temporary recruitment through private staffing agencies.

144. There is no doubt that the measures introduced 10 years ago have borne fruit. The ORPs, together with the substantive revision of labour market measures, have significantly improved the effectiveness of the public employment service.

17. Employment-promotion measures

17.1. Background

145. There are three categories of employment-promotion measures: training measures, employment measures, and special measures. In addition, in 2006 the Confederation adopted a new method of funding of labour market measures (MMT). The cantons now have a fixed maximum amount determined by the number of registered job-seekers in their jurisdiction. Spending on these measures totalled 608.9 million francs in 2006, a decrease of 8.8 per cent over the preceding year. The figure for 1996 was 408.7 million.

17.2 Training measures (MF)

146. Unemployment insurance finances training measures designed to improve the matching of the qualifications structure of the unemployed to the demands of the labour market (LACI, arts. 60-62). In order to respond to the specific needs of the unemployed the labour market authorities offer them three types of training measures: training courses, training enterprises, and work experience:

(a) Further training and retraining courses. There are two types of course: collective and individual. The collective courses are specially organized for insured persons, while the individual courses are offered to all on the open training market. Both types of course are designed to improve the likelihood of the trainees finding jobs in the labour market. As far as possible, the further training and retraining courses have to be run on a collective basis. However, if a further training or retraining measure is not best suited to a collective course, an individual course can be arranged. The fields covered include, for example, information technology, languages, commercial refresher courses, technology, graphic arts, hotels and restaurants, etc.;

(b) Training enterprises (EE). These enterprises are regarded as offering further training courses. This measure is designed to provide participants with initial work experience or to improve their occupational skills chiefly in the commercial sector but also in other sectors such as handicrafts, technology, etc. The aim is to make it easier for insured persons to find a first job or a different job using the learning-by-doing method and giving them experience in a quasi-practical environment;

(c) Work experience. The main purpose of work experience is to supplement the insured person's occupational skills in a targeted manner in areas in which he or she has some deficiencies, with a view to improving their skills. Work experience takes the form of a further training or retraining course in an enterprise. A training agreement is concluded between the participant, the training enterprise and the competent authority. A training report is drawn up for the competent authority at the end of the agreed period.

147. A total of 91,615 of the 162,648 beneficiaries of labour market measures in 2006 underwent one or more types of training. The cost (305.4 million francs) was 9.4 per cent lower than in the preceding year (339 million). These costs had totalled 205.6 million francs in 1996. The courses constitute a major part of the training measures, but there are also training enterprises in which insured persons from the commercial sector, among others, can develop their skills. Three-month training courses in private enterprises or public bodies are also available.

17.3. Employment measures (ME)

148. Unemployment insurance finances three types of employment measure (LACI, art. 64 (a) and (b)):

(a) Temporary employment programmes (PET). These programmes are intended principally for persons with poor qualifications who need to acquire a structure for their daily lives in the form of a specific job. They also help such persons to make good certain occupational deficiencies and to keep in touch with the jobs market through networking. A new quality certificate ensures that this measure is implemented properly and tailored to the participants' needs;

(b) Work experience (SP). These courses, run in an enterprise or public body, enable the participants to consolidate or extend their job skills by applying their knowledge in practice. These courses constitute one of the most effective of the labour market measures, for the persons who take them are in direct contact with the primary labour market. They also help to reduce youth unemployment;

(c) Periods of motivational training (semo). This is a measure designed specially for young people who have completed or interrupted their schooling or training course and have not yet established a clear idea of their work future. The purpose of the measure is to help these young people to find a training mode and a trainee position. It promotes their social integration and enables them to maintain or even improve their basic qualifications (languages, mathematics).

149. A total of 27,601 persons participated in an employment measure in 2006. The cost of these measures amounted to 255.2 million francs, compared with 281.8 million in 2005 and 166.9 million in 1996.

17.4. Special measures

150. Unemployment insurance covers the following special measures (LACI, arts. 65-71 (d)):

(a) Initial recruitment allowances (AIT). These allowances are designed to make it easier for insured persons who are having difficulty in finding a job to be recruited by an enterprises despite their greater need for initial training. During the initiation period, which usually lasts six months (up to 12 months in difficult cases), unemployment insurance covers an average of 40 per cent of the wage bill;

(b) Training allowances (AFO). These allowances enable insured persons aged over 30 who lack basic training or whose occupation has become obsolete to take a training course leading to a recognized qualification which meets the requirements of the labour market and attracts a wage higher than a mere trainee wage;

(c) Support for an independent activity (SAI). This measure is designed to facilitate a shift from the status of employed person to that of self-employed person. Unemployment insurance helps insured persons who are considering taking this step by paying them up to 90 daily allowances while they are preparing to become self-employed. In addition, if the insured person obtains the backing of a guarantee cooperative, unemployment insurance may in turn provide an additional guarantee of 20 per cent of the potential losses or even back a micro-loan;

(d) Contribution to daily or weekly travel and accommodation expenses (PeSe). This measure is designed to enhance the mobility of insured persons and thus make it easier for them to take up job opportunities. Unemployment insurance can cover, for a maximum of six months and subject to certain conditions, the travel expenses or the cost of board and lodging away from home of insured persons who, having failed to find suitable employment

in their home region, agree to go to work away from home rather than remain unemployed and who suffer thereby a loss of income in relation to their earlier financial position.

151. A total of 9,780 persons participated in one or more special measures in 2006, compared with 10,155 in 2005. The cost of these measures amounted to 48.4 million francs (48.7 million in 2005 and 36.2 million in 1996).

Table 6
Cost of labour market measures (MMT) (millions of francs)

<i>Year</i>	<i>MF</i>	<i>ME</i>	<i>AIT</i>	<i>AFO</i>	<i>PeSe</i>
2000	168,3	141,4	25,1	4,5	1,2
2001	153,3	117,5	16,3	3,8	1,2
2002	211,8	157,1	16,9	3,8	1,7
2003	314,3	190,0	29,7	5,1	2,7
2004	356,7	267,6	36,3	7,0	3,6
2005	339,0	281,8	37,6	8,4	3,6
2006	305,4	255,2	35,8	9	3,6

(i) SAI: the payment includes daily allowances paid during the planning stage which are not counted as MMT costs.

Source: Secretariat of State for the Economy, “*Marché du travail et assurance-chômage: Rapport annuel 2006*” (Labour market and unemployment insurance: Annual report 2006) (Berne, May 2007), p. 35.

17.5. Free choice of employment

152. The ALCP guarantees nationals of the European Union and EFTA the right of job mobility, including self-employment (ALCP, art. 4 and annex 1, art. 2).

153. The new Aliens Act (LEtr) approved by the people on 24 September 2006 provides that holders of residence permits and residents may change their occupation and job without seeking authorization.

17.6. Vocational training and guidance

154. Vocational training is a responsibility of the cantons. The Federal Ordinance of 18 June 1999 on measures to improve the availability of trainee posts and expand vocational training provides the legal basis for an active commitment by the Confederation to increase the number of trainee posts.⁷⁴ Special emphasis is placed in this context on equal treatment of the sexes. For example, finance is provided for projects to enable girls to choose their vocational training from among a broad range of occupations. On the basis of this Ordinance the Government supports various additional activities in this area. It has supported regional “vocational training shows”, for example, in order to introduce young people to the region’s various economic sectors, occupations and enterprises. Grants have been made at the national level for the establishment of an Internet site with links to pages on occupations, branches and schools and to the cantonal trainee-post exchanges.⁷⁵

155. A new Federal Act on vocational training (Vocational Training Act (LFPr)) entered into force in January 2004. The purpose of this Act is to strengthen vocational training, which – in terms of participation – is Switzerland’s most important type of training. A fundamental feature of the new Act is that all vocational training matters are now addressed

⁷⁴ Second Ordinance on trainee posts (RS 412.100.4).

⁷⁵ See: www.orientation.ch/.

in a single piece of legislation. Another particularly innovative feature is that the Act separates the training procedures from the qualification procedures; the assessment of knowledge and experience is thus encouraged and facilitated. In addition, the Act strengthens the collaboration among the three vocational training partners: business organizations, the cantons and the Confederation.

156. With regard to employment services, it should be pointed out that since 1997 unemployment insurance has been one of the biggest consumers of continuing education and training in Switzerland. In fact, since the revision of the unemployment insurance legislation the emphasis has been on tracking and training unemployed persons who need training in order to find a new and stable job as swiftly as possible.

157. Switzerland's report of 30 November 2004 on its application of the ILO Human Resources Development Convention (No. 142) contains detailed information on matters of vocational training and guidance.

17.7. Home work

158. Pursuant to the Federal Ordinance on the promotion of home work,⁷⁶ the Confederation encourages this type of work when it plays a social role or is useful to the country, in particular when it is likely to improve the lives of mountain dwellers. The promotional activities are limited to manual and mechanical work in handicrafts and industry.

17.8. Action to combat undeclared employment (moonlighting)

159. On 17 June 2005 Parliament adopted the Federal Act on measures to combat undeclared employment (Moonlighting Act (LON)), which entered into force on 1 January 2008. The Act and its regulatory ordinance address the problem of insufficient coordination of information by the authorities responsible for establishing the necessary legal framework on moonlighting (legislation on social security, aliens, and taxation at source). The cantonal supervisory bodies have extensive monitoring powers and perform a coordination function. The heavier penalties are designed to be an effective means of preventing moonlighting.

Article 7. Right to just and favourable conditions of work

18. Remuneration and promotion

18.1. Minimum wages

160. Swiss labour law is still based on the principal of freedom of contract. The law does not prescribe minimum wages.⁷⁷ However, collective agreements do sometimes contain minimum wage provisions. The minimum wages fixed in collective labour agreements in 2005 ranged, depending on the branch, between 2,200 and 4,200 francs [a month] for unskilled workers and between 2,800 and 5,300 francs for skilled workers.

161. According to the 2004 Swiss Pay Structure Survey, the gross average monthly income was 5,548 francs. Persons in the bottom 10 per cent of the range earned under 3,687 francs, while those in the top 10 per cent earned over 9,718 francs.

162. In 2004 there were 244,000 low-paid jobs in Switzerland, i.e. jobs attracting a gross wage of under 3,699 francs a month for a 40-hour week. The number of persons in such jobs is estimated at 315,900, with women strongly overrepresented (221,600 or 70.1 per cent).

⁷⁶ Federal Ordinance of 12 February 1949 on the promotion of home work (RS 822.32).

⁷⁷ See E/1990/5/Add.33, paragraph 134.1.

Table 7
Standardized gross monthly wage (central value) in francs, by level of qualification required for the job and by sex (Cantonal public sector/Confederation/Private sector, 2004)

	<i>Qualificacion leveln</i>											
	<i>Total</i>			<i>1+2</i>			<i>3</i>			<i>4</i>		
	<i>Total</i>	<i>Women</i>	<i>M e n</i>	<i>Total</i>	<i>Women</i>	<i>M e n</i>	<i>Total</i>	<i>Womens</i>	<i>M e n</i>	<i>Total</i>	<i>Womenç</i>	<i>M e n</i>
Cantonal public sector	7156	6503	8018	8794	7792	9605	6429	6126	6846	5134	4851	5532
Confederation	6378	5908	6535	9016	8105	9190	6456	6073	6522	5238	5000	5301
Private sector	5500	4735	5910	7290	6241	7722	5323	4870	5550	4235	3593	4588
Private sector (firms with fewer than five employees)	4883	4326	5262	5694	5067	6044	4607	4263	4837	3727	3495	4084
Private sector (firms with at least 1000 employees)	6024	4829	6975	9100	7742	9493	5624	4968	6169	4271	4000	4766

Level of qualification required for the job :

1 = The most demanding work and most difficult tasks

2 = Self-employment and highly qualified work

3 = Specialized professional knowledge

4 = Simple and repetitive work

Source: OFS, "Enquête Suisse sur la structure des salaires 2004" (Swiss Pay Structure Survey 2004).

163. The supplementary measures on the free movement of persons⁷⁸ which entered into force on 1 June 2004 should prevent wage and social dumping. They allow the fixing of minimum wages and facilitate declaration of the general binding nature of collective labour agreements. Employees of foreign enterprises are also subject to the Federal Act of 8 October 1999 on the minimum conditions of work and minimum wages applicable to persons seconded to work in Switzerland (Seconded Workers Act). This Act regulates the minimum conditions of work and minimum wages. Its provisions cover minimum levels of remuneration, working hours and rest periods, minimum periods of leave, workplace safety, health and hygiene, protection of pregnant women and mothers of newborn babies, and discrimination. The Code of Obligations has since been supplemented by an article 360 (a) on the conditions for fixing minimum wages.

164. This new provision was introduced by the Seconded Workers Act but did not enter into force until 1 June 2004. It provides that if, within an economic branch or occupation, the usual wages in the locality, branch or occupation are improperly and repeatedly set at excessively low levels and in the absence of an applicable collective labour agreement containing minimum wage provisions, minimum wages may be established by means of standard labour contracts.

165. Monitoring of the situation showed that the customary conditions of work and wages in Switzerland were used in a large majority of labour contracts. Violations were found in only 6 per cent of the cases examined. Failure to comply with the current wage-dumping regulations was found in only 2.5 per cent of cases.

166. The Federal Act on the status of civil servants (StF) referred to in the initial report (E/1990/5/Add.33, para. 136) was replaced by the new Federal Act on the personnel of the Confederation (Federal Personnel Act (LPers)) on 1 January 2001 (1 January 2002 in some units of the Federal Administration). The new Act constitutes the legal basis for modern

⁷⁸ See paragraph 114 above.

personnel management in the Federal Administration, the Post Office and the Federal Railways.

18.2. Equal remuneration for work of equal value

Para. 32: *The Committee recommends that the State party intensify its efforts to guarantee men and women equal access to employment and equal wages for work of equal value.*

167. According to the 2004 Pay Structure Survey, women's standardized (average) gross monthly pay in the private sector was 4,735 francs, compared with 5,910 francs for men, a wage gap of 19.9 per cent. This gap had been 23.8 per cent in 1998. This wage gap is found in all branches of the economy; wages also vary widely from one branch to another. In the branches paying the lowest wages the gap varies between 8 and 30 per cent. The hotels and restaurants branch, where 56 per cent of the workforce are women, has the smallest wage gaps. The gaps are biggest in the clothing and furs industry, where 78 per cent of the workforce are women. The wage-gap variations are smaller in the better-paid branches, where women earn between 21 and 36 per cent less than men.

168. Depending on level of education, women earn 14.2 per cent (with vocational training) and 22 per cent (with university/college education) less than men. Women's remuneration is 14 per cent lower than men's in the lower grades and 24 per cent lower in the middle and higher grades. These figures show that the wage gap widens as the level of education and grade increase.

169. The gaps are clearly narrower in the public sector than in the private sector throughout the country. In 2004 women's standardized (average) gross monthly wage was 5,908 francs in the Federal Administration, compared with 6,535 francs for men, a difference of 9.6 per cent. In the cantonal administrations, however, the differences were similar to those found in the private sector (a wage gap of 18.9 per cent in 2004). It is difficult for the moment to assess the way in which the merit system of remuneration introduced in many public administrations will affect the wage differentials between men and women.

170. Article 15, paragraph 1, of the Federal Personal Act (LPers) provides that the remuneration of employees of the Confederation shall depend on their function and experience and the work performed. The Ordinance on the personnel of the Confederation (OPers) defines this principle as follows: the assessment of function shall take account of training, job description, level of demands and responsibility, and the risks attached to the function. These criteria apply to all posts. In conjunction with the graduated assessment procedure, they help to secure compliance with the principle of equal remuneration for work of equal value. In an assessment system such as the one used by the Confederation it is thus more difficult to give weight to personal factors, such as sex, not based on the function-linked criteria. When applied correctly this system prevents deliberate under-assessment of female employees and the posts occupied mostly by women.

171. Initial wage levels are fixed by general directives and depend on the qualifications required and the relevant job experience. Wage increases depend on assessment and progress, judged by performance, within a range of 0-6 per cent. The annual monitoring reports on the application of the remuneration system show that, three years after the system was introduced, there is no fundamental difference between women and men with respect to their distribution among the assessment grades. In the initial phase men were a little more likely than women to receive A+ assessments. But since 2004 the assessments have become more homogeneous. Heads of service are always given training to enable them to make non-discriminatory assessments. The results of the assessment of personnel show that there are indeed differences in the treatment of the sexes, in particular in the distribution of the

top assessments. Men are likely to receive better assessments than women. The gender distribution is also unequal when it comes to the award of bonuses. Only a quarter of the recipients of performance bonuses are women, and this proportion falls to one eighth in the case of recognition. According to the Federal Personnel Office (OFPER), this situation is due in part to the fact that many women are currently advancing through the hierarchy but have not yet reached the top step in their salary grade, so that they receive their “bonuses” in the form of ordinary performance-based pay. It should nevertheless be stressed that OFPER will have to continue to keep a critical eye on this aspect of things in order to prevent any discrimination. There is in fact no reason for supposing that the work done by women is less worthy of recognition or that women perform less well than men - the only reason which would justify their not receiving the same bonuses as men.

172. An analysis of the Gender Equality Act, produced on instructions from Parliament, showed that the Act provided workers with useful tools for defending themselves against gender-based discrimination.⁷⁹ A number of problems persists despite the progress produced by the Act. As in the past, for victims of discrimination the fear of losing one’s job remains an obstacle to their assertion of their rights. The difficulty of obtaining information in cases of presumed discrimination persists as well. In addition, it has been established that the Act has not been applied sufficiently often. This is due in part to the fact that the Act is still relatively recent; it is certainly known, but not widely enough. It is more often the workers, despite being the group targeted by the Act, who are unfamiliar with the remedies available. In addition, the possibilities offered by the Act are not sufficiently well known to lawyers and judges. Lastly, since the Legislature chose to let the persons directly concerned defend their rights themselves (subject to the rights of organizations to take legal action to contest an allegation of discrimination), there is no State or independent authority empowered to intervene to secure enforcement of the Act.

173. The number of cases of wage discrimination brought before the courts has increased considerably since the Gender Equality Act entered into force in 1996. The courts have handed down some 270 decisions since that time. Before the introduction of the Act there had been only about 15 complaints based on the articles of the Constitution establishing equality of remuneration (art. 4, para. 2, and art. 8, para. 3). Most of these complaints related to labour relations in the public sector. There are Internet sites which publish all the judgments and decisions handed down under the Act: www.gleichstellungsgesetz.ch and www.leg.ch.

174. On the basis of the evaluation report the Confederation assigned several mandates to the Federal Gender Equality Office (BFEG) and the Federal Justice Office (OFJ). It emphasized the targeted dissemination of information and awareness-raising. It also requested rationalization of the work of the courts by issuance of recommendations on the production of expert assessments on questions of equal remuneration and for the conciliation offices to be empowered to request the submission of evidence. It proposed further that consideration should be given to the possibility of introducing certificates of compliance for enterprises and the creation of an authority invested with powers of investigation. Where public procurement is concerned, the Federal Council is proposing to establish arrangements for monitoring compliance with the equal-pay legislation.⁸⁰

175. Since 2003 the BFEG has placed on the Internet (www.topbox.ch) a whole series of gender-equality projects which have proved their worth. More than 100 projects conceived in all areas of Switzerland appear on this site in three languages. They include a number specifically concerned with equality of remuneration (the campaign “Fairplay – equal pay

⁷⁹ See paragraph 75 *et seq.* above.

⁸⁰ See paragraph 75 above.

now!” carried out by the Swiss Trade Union Association).⁸¹ The “*info Maternité*” project informs women about the legal and health aspects of maternity and gainful employment. This project is aimed at poorly qualified female workers, a category comprised mainly of foreigners.

176. Pursuant to article 8, paragraph 1(c), of the Federal Act on public procurement (Public Procurement Act (LMP)) public procurement officials may award procurement contracts only to bidders who guarantee their male and female employees equal treatment. Enterprises which do not satisfy this criterion may be excluded from public tendering procedures. This provision, which entered into force for practical purposes in 1996, has not been enforced for want of mechanisms and procedures for monitoring pay equality in the enterprises in question. The intention is to correct this defect as part of the revision of the Act. The BFEG and the Federal Procurement Commission have issued instructions for a mechanism to be introduced to monitor enterprises’ compliance with the equal-pay principle. This mechanism was tested in a pilot project between 2001 and 2003. Substantial gender-based inequality was found in two of the five enterprises monitored. However, monitoring requires a supply of detailed statistical information. The BFEG puts enterprises in touch with recognized experts to support them in their own monitoring. It is counting primarily on enhancing the enterprises’ sense of their responsibility, which it seeks to foster by familiarizing them with and making them more aware of the problem. It has also introduced a mechanism to enable enterprises to make rapid self-assessments with regard to equality of remuneration.⁸²

177. The equal pay provision in the Public Procurement Act applies only to services performed in Switzerland. The Directorate for Development and Cooperation (DDC) is in the process of incorporating a similar provision in all procurement contracts awarded for services provided abroad.

178. Switzerland’s report of 5 October 2006 on its application of the ILO Equal Remuneration Convention (No. 100) contains detailed information on the equal remuneration situation in Switzerland and on the measures taken by the Confederation to guarantee equal pay.

18.3. Promotion of equality

Para. 33: *The Committee recommends that the State party play a more active role in promoting equal access to higher education for women, immigrants and ethnic minorities.*

179. Women and men have different working lives. Women are increasingly found in the non-manual and scientific occupations, and there ever more women managers. However, fewer women than men are found in positions of responsibility. Their work status is generally inferior to that of men. In 2005, 17 per cent of male workers were self-employed, as against only 11 per cent of female workers. The proportion of women taking managerial posts or helping to run an enterprise has increased from about 16 per cent in 1991 to 22 per cent; the figure for men in the same situation has increased from 30 to 37 per cent. This inequality is due only partly to different levels of education. Even when education levels are equal there are differences between the work situations of men and women. The proportion of workers without any managerial duties is higher among women than among men, irrespective of level of education. The main reason for these differences is certainly family responsibilities, which always fall largely on women and which are difficult to reconcile with a working career. Few managers work part-time: only one manager in five (19 per

⁸¹ See: www.egalitedessalaires.ch.

⁸² See: www.ebg.admin.ch/dienstleistungen/00017/index.html?lang=fr.

cent) worked part-time in 2005, while for workers without managerial duties this figure was almost twice as high at 43 per cent. While few male managers work part-time (6 per cent), almost half of female managers choose to do so (46 per cent). The number of part-time workers holding senior positions of responsibility has increased over the past 15 years: between 1991 and 2005 the number of part-time posts carrying managerial duties more than doubled (up by 111 per cent), while the increase was only 21 per cent for the other categories of worker.⁸³

180. For further information, see the comments under article 3 (para. 71 *et seq.*) and article 13 (para. 548 *et seq.*).

19. Health and safety at work

19.1. Background

181. The Fourth European Working Conditions Survey⁸⁴ found that 91 per cent of Swiss workers were satisfied or very satisfied with their working conditions. However, the survey also stressed that there was room for improvement. For example, 19 per cent of Swiss workers stated that they had been absent from work for health reasons during the preceding 12 months. Thirty-one per cent considered that their health was impaired by their work. The commonest problems cited were back pain (18 per cent), stress (17 per cent) and muscular pain in the shoulders or neck (13 per cent). Most of the workers in agriculture and forestry and in the industrial and construction sector reported more than average health problems. The private services sector was in line with the national average, while the education and social sectors were slightly below the average.

182. Working harder always means more mental and psycho-social problems for the worker. An additional factor is that about 60 per cent of Switzerland's population combines, to a greater or lesser degree, work, marriage or partnership, children, domestic chores, and care of parents away from home. According to representative data produced by the Swiss Households Panel in 2000, 13.7 per cent of the persons questioned experienced difficulty in reconciling their working and private lives.

19.2. Occupational accident and sickness statistics

183. The number of occupational accidents has been falling steadily, while the number of non-occupational accidents is on the rise, to the point where, in 2003, the risk of loss of life as a result of an accident was twice as high during non-working hours (467) as in the workplace (162).

Table 8

Occupational and non-occupational accidents, by sex, 1992 and 2004

	<i>Accidents professionnels</i>		<i>Accidents non professionnels</i>	
	<i>Hommes</i>	<i>Femmes</i>	<i>Hommes</i>	<i>Femmes</i>
Total 1992	271 594	51 373	315 768	143 190
Total 2004	202 620	54 251	289 543	167 882

Source: Accident Insurance Statistical Service.

⁸³ Alain Vuille, "Le travail à temps partiel en Suisse" (Part-time work in Switzerland) (OFS, 2006).

⁸⁴ European Foundation for the Improvement of Working Conditions, Fourth European Working Conditions Survey (www.eurofound.europa.eu/pubdocs/2006/98/fr/1/ef0698fr.pdf).

Table 9

Disability and death claims accepted by insurers, 1993-2005 (occupational and non-occupational accidents)

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Disability	3123	3500	3390	2923	3308	3725	3512	3771	3756	3266
Death	753	711	734	604	729	639	670	649	605	628

Source: Accident Insurance Statistical Service.

Table 10

Occupational diseases, by legal basis and type (private and collective insurance)

	2004	2005
Diseases caused by harmful substances (Accident Insurance Ordinance (OLAA), art. 14, annex 1.1, and Accident Insurance Act (LAA), art. 9.2)	1387	1448
<i>Skin diseases</i>		
Composites of chrome	18	14
Epoxy resins (casting resins)	52	67
Additives for rubber	14	14
Mineral oils	121	106
Nickel	36	17
Paints, varnishes, adhesives	20	20
Particulates	30	29
Pharmaceutical and disinfection products	40	50
Cosmetics, hair and skin-care products	32	46
Paint strippers, impregnation and cleaning products	74	102
Unidentified substances	37	46
Cement	54	62
Others	190	231
<i>Diseases of the respiratory system</i>		
Particulates	23	29
Others	233	230
<i>Poisons</i>	60	42
<i>Other harmful substances causing diseases</i>		
Asbestos dust (without pneumoconiosis)	77	89
Others	58	43
<i>Other work-related health problems</i>		
Locomotor problems	206	194

	2004	2005
Others	12	17
Disorders caused by physical agents (OLAA, art. 14, annex 1.2a)	1279	1252
Chronic bursitis	223	209
Peripheral nervous paralysis	24	18
Tendovaginitis (peritendinitis crepitans)	238	192
Major hearing damage	696	698
Diseases caused by non-ionizing radiation	62	79
Others	36	56
Other disorders (OLAA, art. 14, annex 1.2b)	931	794
Quartz-related pneumoconiosis	16	16
Infectious diseases	823	661
Tropical diseases	11	13
Others	81	104
Total	3597	3494

* Including cases of unemployed persons participating in employment programmes, training courses, and other training measures.

Source: Accident Insurance Statistical Service (www.unfallstatistik.ch).

184. A total of 3,494 occupational diseases was recorded in 2005, a decline of 16 per cent over 1996. The commonest problems concerned the locomotor apparatus, followed by skin diseases, which together accounted for almost 70 per cent of occupational diseases. Noise-related deafness and respiratory diseases occupied third and fourth places. Almost every branch of the economy was affected by occupational diseases in some form, a result of the great diversity of substances and activities causing health problems.

Table 11
Number of occupational-disease claims accepted, 1996-2005

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Cas	4152	3997	3966	3644	4072	3706	3589	3668	3597	3494

Source: Accident Insurance Statistical Service.

19.3. Promotion of health at work

185. The Federal Act on employment in industry, crafts and commerce (Employment Act (LTr)) replaced the notion of hygiene by the notion of health protection.

186. As part of the revision of the Employment Act some changes were made in its scope of application. A new article 3 (a) made the application of the Act's health protection provisions mandatory for certain categories of enterprise and worker previously excluded from the scope of the Act. The provisions in question are to be found in article 6, on the health protection obligations of employers and workers, article 35, on health protection during maternity, and article 36 (a), on the possibility of prohibiting certain categories of

worker from performing heavy or dangerous work or of imposing special conditions on the performance of such work. The enterprises and workers concerned include the Federal Administration and the cantonal and communal administrations, workers performing a senior management function, an independent artistic activity or a scientific activity, social workers, etc.

187. It should be noted that the cantonal functions are set out in article 79 of the new Employment Act Ordinance (OLT 1) and that the functions of the Confederation are now entrusted to the Secretariat of State for the Economy, which has absorbed part of the agency previously performing this function – the Federal Office for Industry, Arts, Occupations and Employment (OFIAMT). The federal labour inspectorates and the Work and Health Agency (formerly known as Occupational Medicine and Hygiene) are still part of this body and are still performing the same functions (set out in OLT 1, art. 75). Furthermore, the federal labour inspectorates have now been formed into two units (instead of four), based in Lausanne and Zurich and covering areas of similar size.

188. The proportion of workers exposed to passive smoking in the workplace (including during breaks) fell from 54 to 42 per cent between 2001/2002 and 2006. Eleven per cent of full-time workers are so exposed for at least three hours a week. In 2006, seven persons in every 10 worked in enterprises in which opportunities for smoking were severely restricted. Seventy-eight per cent of workers, including 63 per cent of smokers, are in favour of a total ban on smoking in the workplace.⁸⁵ In order to tackle the problem of passive smoking in the workplace the Federal Public Health Office (OFSP), the Secretariat of State for the Economy and *Promotion Santé Suisse* (Swiss Health Promotion) launched a “Smokeless workplaces” campaign as part of the “Smoking does you harm” campaign.⁸⁶ The aim was to ensure that as many Swiss enterprises, companies, authorities and organizations as possible provided their employees with a smoke-free workplace.

189. Article 4 of the Gender Equality Act defines sexual harassment in the workplace as discrimination. The Act enjoins enterprises to create a harassment-free working environment. If in the event of a dispute the enterprise concerned is unable to prove that it had taken action to prevent sexual harassment, the court or the administrative authority may order it to pay compensation to the victim. The Secretariat of State for the Economy and the Federal Gender Equality Office (BFEG) have commissioned a study to determine the extent of the phenomenon of sexual harassment in Swiss workplaces. Additional measures of prevention will then be introduced in the light of this study.

190. An evaluation of the Gender Equality Act⁸⁷ found that the prohibition of sexual harassment in the workplace and the obligation imposed on employers to take measures to prevent sexual harassment are the best known provisions of the Act. However, two thirds of enterprises have not introduced any measures of this kind. Sexual harassment has been shown in all the surveys to be the second commonest form of discrimination, preceded only by pay differentials. In 90 per cent of the cases of sexual harassment brought before the courts the labour relationship had been broken off before the verdict was reached. Qualitative analyses confirm that complainants rarely remain in their jobs after having initiated an action for sexual harassment in the workplace and that victims rarely want to keep their jobs. It is also found that sexual harassment often gives rise to health problems and that women are unwilling to bring actions for sexual harassment for fear of losing their job. The information and awareness-raising projects receiving funding under the Act are listed at www.topbox.ch.

⁸⁵ OFSP, “*Informations de base sur le tabagisme passif*” (Basic information on passive smoking) (December 2007) (www.ofsp.admin.ch).

⁸⁶ See: www.arbeitsplatz-rauchfrei.ch.

⁸⁷ See paragraph 75 *et seq.* and paragraph 173.

191. Since 1998 *Promotion Santé Suisse* has been running a priority programme on health and work and is spending about one million francs a year to promote health at work.

19.4. Safety at work

Para. 30: *The Committee further recommends early ratification of ILO Conventions Nos. 98 and 174.*

192. In its report of 15 May 1996 on the conventions and recommendations adopted in 1993 and 1994 by the ILO at the eightieth and eighty-first International Labour Conferences⁸⁸ the Federal Council submitted to Parliament a detailed analysis of the Prevention of Major Industrial Accidents Convention (No. 174). The report concluded that the general objectives of Convention No. 174 overlapped with those of the Ordinance on the prevention of occupational accidents and diseases (Accident Prevention Ordinance (OPA)), but that, where worker protection was concerned, the Swiss legislation did not fully satisfy the requirements of the Convention. The Federal Council decided therefore not to submit ratification of the Convention to Parliament for approval.

193. A parliamentary intervention⁸⁹ invited the Federal Council to examine the possibility of removing the obstacles to ratification of the Prevention of Major Industrial Accidents Convention resulting from the duality of the applicable legislation (environmental legislation and legislation on the prevention of occupational accidents and diseases). The work done by the Federal Administration failed to produce a positive outcome owing to the extent of the necessary legislative amendments and the difficulties of implementation resulting from the duality of the applicable legislation; Parliament therefore shelved postulate 96.3537 in 2003. It should be pointed out that under Switzerland's ratification policy the ratification of an ILO convention is proposed only if Switzerland's existing legislation satisfies the convention's requirements.

194. It should be noted that accident insurance was introduced for unemployed persons in 1996.

195. Since 1998 articles 6 and 6 (a) of the Accident Prevention Ordinance (OPA) have provided that workers are entitled to be informed about safety measures and to be consulted on all matters relating to safety at work. Since the beginning of 1997 employers have been required to call on the services of occupational medicine practitioners and other work-safety experts when the protection of their workers' health and safety so require (OPA, art. 11, paragraphs (a) to (g)).

196. Since 1 January 2000 enterprises have been required under the Ordinance to call on the services of experts when necessary to protect their workers' health and ensure their safety.⁹⁰ The general obligations (OPA, art. 3 and OLT 3, arts. 3-9) stipulate that all employers must monitor the health and safety risks to which their workers are exposed and introduce the measures of protection and the other arrangements required under the established rules of the technology in question.

⁸⁸ Report of the Federal Council of 15 May 1996 on the conventions and recommendations adopted in 1993 and 1994 at the eightieth and eighty-first International Labour Conferences (FF 1996 1137).

⁸⁹ Postulate 96.3537. Social Security and Public Health Committee CN (96.037): International Labour Organization (ILO). Convention 174.

⁹⁰ See the directive of the Federal Work Safety Coordination Committee (CFST) on resort to the services of occupational medicine practitioners and other work-safety experts (Directive MSST) (www.cfst.ch).

197. For further information see the reports submitted by Switzerland to the ILO monitoring bodies for the relevant conventions on health and safety at work, including Conventions Nos. 62, 81, 115, 120, 136 and 139.

20. Rest, leisure, working hours and paid leave

20.1. Rest

198. A new article 15 (a) was inserted in the Employment Act when it was revised in 2000. This article establishes the right of workers to daily rest of at least 11 consecutive hours. For adult workers this period may be reduced to eight hours on one occasion a week, provided that the average rest period over two weeks is at least 11 hours.

20.2. Sunday work

199. Some amendments were introduced as part of the revision of the Employment Act (LTr). The fundamental ban on employing workers on Sunday is still in place, Sunday being counted as running from 11 p.m. on Saturday to 11 p.m. on Sunday (LTr, art. 18). The procedure for authorizing exceptions has been changed, in particular with respect to the powers of the authorities. For example, while the cantons still have the power to issue temporary Sunday work permits (when there is a duly established urgent need and the workers consent, subject to payment of a pay supplement of at least 50 per cent), but they have lost all their prerogatives with regard to regular or periodic Sunday work, which falls within the exclusive jurisdiction of the Labour Directorate of the Secretariat of State for the Economy. (LTr, art.19, para. 4).

200. The provisions on compensatory time off for Sunday work (LTr, art. 20) underwent some amendment when the Act was revised. For example, compensatory time off of the same duration must be awarded within a time limit of four weeks for a period of Sunday work of less than five hours (OLT 1, art. 21, para. 7). If more than five hours are worked, it is mandatory for a compensatory day off (24 hours before or after the regular rest day, i.e. a total of at least 35 hours off between 6 a.m. and 8 p.m.) to be awarded during the preceding or following week (LTr, art. 20, para. 2, and OLT 1, art. 21, para. 5).

201. On 27 November 2005 the Swiss people approved a bill on Sunday work in the main railway stations and airports. Pursuant to this bill amending the Employment Act (LTr, art. 27, para. 1ter) shops and service enterprises located in busy railway stations and airports may employ staff on Sundays. The criteria defining “busy railway stations and airports” are set out in OLT 2, article 26 (a). The changes came into effect on 1 April 2006. In addition, following a parliamentary initiative in 2003 (Wasserfallen parliamentary initiative, 03.463) the National Council and the Council of States adopted, on 26 September 2007 (National Council) and on 5 December 2007 (Council of States) respectively, an amendment adding a new paragraph 6 to article 19 of the Employment Act, which reads: “The cantons may designate a maximum of four Sundays a year on which staff may go to work in shops without a permit being required.”

20.3. Night work

202. The revised version of the Employment Act (LTr, art. 10) introduced a new division of the 24-hour working day into day work (from 6 a.m. to 8 p.m.), evening work (from 8 p.m. to 11 p.m.) and night work (from 11 p.m. to 6 a.m.). Day work and evening work do not require permits (but the workers must be consulted before evening work is introduced), and in principle night work is always prohibited. The starting and ending times of day and evening work may be fixed at any time between 5 a.m. and midnight if the workers’ representatives, or a majority of them, so agree. Day work and evening work must always

be fixed within a space of 17 hours. The day work and evening work of each worker must be completed within a space of 14 hours, including breaks and overtime.

203. The provisions on waivers for regular or periodic night work and for temporary night work remain more or less unchanged (LTr, art. 17). The same applies to the 25 per cent pay supplement for temporary night work (LTr, art. 17 (b) (1)); however, compensatory time off of 10 per cent was introduced for regular or periodic night work (LTr, art. 17 (b) (2)). No changes were made to the provisions on appeals concerning permits and on exemptions from the Employment Act Ordinance (OLT 2).

204. Persons working at night for a long period are entitled to a medical examination, including both an evaluation of their state of health and advice on ways of reducing or eliminating any work-related health problems (LTr, art. 17 (c)). This examination was made compulsory for young people who regularly or periodically work between 10 p.m. and 6 a.m. (OLT 5, art. 12, in force since 1 January 2008), for persons employed on night work involving considerable amounts of heavy or dangerous work, and for persons working at night without alternating day shifts. (OLT 1, art. 45).

205. Lastly, in the case of regular night work, employers must introduce additional measures, relating inter alia to the organization of transport, opportunities for rest and meals, and provision of child care (LTr, art. 17 (e)).

206. A total of 1,597 night work permits were issued by the Secretariat of State for the Economy in 2006 (172 in 1999).⁹¹ The provisions on the issuance of permits, judicial remedies, and most of the exemptions from the Employment Act Ordinance (OLT 2) were not changed.

20.4. Working hours

207. The working-hours provisions of the Employment Act were not amended in the revision. The information contained in the initial report (paras. 184-188) remains valid.

208. A federal people's initiative "For shorter working hours" was put forward on 5 November 1999 by the Swiss Federation of Trade Unions (USS). This initiative called for a gradual reduction of working hours to a maximum of 1,872 hours a year, which means about 36 hours a week. The Swiss people rejected this initiative in the ballot held on 3 March 2002.

209. The latest figures on actual weekly working hours in Switzerland indicate a working week of 41.7 hours in 2006. Table 12 shows weekly working hours since 2002, by economic sector.

Table 12

Duration of normal working week in enterprises, since 2002

Duration of normal working week in enterprises, by economic sector

Annual average weekly working hours

<i>Economic sector</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>
Agriculture, forestry	43,0	43,0	42,8	42,8	42,9
Mining	42,1	42,0	42,0	42,0	42,7

⁹¹ For example, exemptions were granted in the following cases: clinics and hospitals; hostels and boarding schools; hotels, restaurants and cafés; airline ground staff; kiosks and other services for travellers; electricity, gas and water supply companies; editorial staff of newspapers and magazines; radio and television broadcasters; professional theatres; surveillance and caretaking personnel; and sports installations and amenities.

<i>Economic sector</i>	2002	2003	2004	2005	2006
Manufacturing	41,2	41,2	41,2	41,2	41,2
Electricity/gas/water production and distribution	41,2	41,1	41,2	41,2	41,3
Construction	41,9	41,8	41,7	41,7	41,7
Commerce; repair of vehicles and domestic appliances	41,9	41,9	41,9	41,9	41,8
Hotels and restaurants	42,2	42,2	42,1	42,1	42,1
Transport and communications	42,0	42,0	42,0	42,1	42,1
Finance; insurance	41,5	41,5	41,5	41,5	41,4
Real estate; rentals; information technology; R&D	41,7	41,7	41,7	41,8	41,7
Public administration, defence, social security	41,6	41,6	41,6	41,5	41,3
Education	41,4	41,5	41,4	41,5	41,5
Health and social work	41,6	41,6	41,5	41,5	41,5
Other collective and personal services	41,8	41,9	41,7	41,6	41,8
Total	41,7	41,7	41,6	41,6	41,7

Source: Federal Statistical Office

20.5. Regular paid leave

210. The information contained in the initial report (paras. 189-192) is still valid.

211. The provisions on annual leave for personnel of the Federal Administration are set out in special regulations, which provide for at least four weeks leave (OPers, art. 67, para. 1). Similar regulations govern the cantonal and communal administrations.

212. Further information will be found in Switzerland's report of 16 September 2003 on its implementation of ILO Convention No. 132.

20.6. Payment for public holidays

213. Following the discussions mentioned in paragraph 194 of the initial report, a final decision on payment for Switzerland's national day was taken as part of the comprehensive revision of the Constitution. Pursuant to article 110, paragraph 3, of the Constitution, 1 August is treated as a Sunday, and all workers in Switzerland are paid for it (including part-time and hourly paid workers).

Article 8. Trade union rights

21. Freedom of association

Para. 30: *The Committee further recommends early ratification of ILO Conventions Nos. 98 and 174.*

214. Switzerland complied with the Committee's recommendation on 17 August 1999 by ratifying the Right to Organize and Collective Bargaining Convention (No. 98). This Convention entered into force in Switzerland on 17 August 2000. Switzerland's reports of 27 September 2001, 30 November 2004 and 1 December 2006 contain detailed information on the implementation of Convention No. 98.

21.1. Right to form and to join trade unions

215. As a result of the updating of the Constitution, the right to form trade unions is no longer derived from the article on freedom of association but from article 28, which is devoted solely to trade union freedom. This new provision no longer refers to “citizens” as the holders of this right but to employers and workers (see para. 196 of the initial report).

216. The freedom of association is guaranteed by article 23 of the Constitution. Generally speaking, the comments in paragraphs 200 and 201 of the initial report are still valid, except that it is now article 110, paragraph 2, which guarantees that the extension of the scope of application of collective labour agreements shall not impair trade union freedom.

217. On 14 May 2003 the Swiss Federation of Trade Unions (USS) lodged a complaint with ILO against the Swiss Government alleging non-compliance with the freedom of association guaranteed by ILO Convention No. 98 (case No. 2265). The USS criticized the sanction provided for in the Federal Act of 30 March 1911 supplementing the Code of Obligations (Swiss Civil Code, Book Five: Code of Obligations (CO)) in the event of wrongful dismissal for anti-union reasons, stressing that the sanction was not a sufficient deterrent, and requested the reinstatement of the workers concerned. The Swiss Government exhaustively and repeatedly explained that Swiss law provided suitable and sufficient protection of workers and an appropriate balance between sanction and flexibility in the labour market.⁹² In a recommendation adopted on 15 November 2006 the ILO Governing Body requested the Swiss Government to take steps to protect trade union representatives against improper dismissal, as stipulated in the equality legislation, and to ensure that the workers concerned were reinstated. The content of this recommendation and the possible courses of action are being examined and discussed in conjunction with the social partners.

21.2. Right to establish federations and to join international trade union organizations

218. The information contained in paragraph 202 of the initial report is still relevant.

21.3. Right of trade unions to function freely

219. The Federal Act authorizing the extension of the scope of application of collective labour agreements (LECCT) was amended in the light of the related measures contained in the Agreement on the Free Movement of Persons (ALCP) at the time of the Agreement’s extension to the new States members of the European Union. In fact, the extension of the scope of application of collective labour agreements appeared to be a very good means of combating the wage and social dumping which might happen as a result of the discontinuation of the prior checks required for the issuance of work permits to foreigners in the Swiss labour market. An easing of the extension conditions (by means of quorums) was then introduced for cases of proven improper and repeated underpayment. In the first phase⁹³ the first quorum (50 per cent of the employers bound by the collective agreement before extension) was reduced to 30 per cent; the second quorum (50 per cent of the workers bound by the collective agreement before extension) was eliminated in its entirety; the third quorum (an employer bound by the collective agreement must employ more than half the workers) was reduced to 30 per cent. In the second phase⁹⁴ the third quorum (member employers employing at least 30 per cent of the workers) was the only one still in force but it was restored to 50 per cent of the workers.

⁹² See the reports of 31 March 2004 and 26 June 2006 submitted by the Federal Council to the ILO monitoring bodies.

⁹³ Amendment of 8 October 1999; entered into force on 1 June 2004.

⁹⁴ Amendment of 17 December 2004; entered into force in principle on 1 January 2006.

220. Recent years have seen an increase in the number of requests for extension of collective labour agreements (see table 13 below).

Table 13.
Number of federal and cantonal CCTs extended

	1997 98	1998 99	1999 00	2000 01	2001 02	2002 03	2003 04	2004 05	2005 06	2006 07
Federal CCTs	12	12	17	18	18	24	20	25	21	28
Cantonal CCTs	12	14	16	21	15	21	17	20	26	41
E	35'719	57'270	62'700	66'100	64'217	69'070	60'976	69'510	62'931	56'889
T	228'120	338'500	336'900	349'600	373'538	461'090	489'798	520'040	458'623	44'1084

CCT = collective labour agreement; E = total number of employers covered; T = total number of workers covered.

All the dates run from 1 July to 1 July of the following year.

The cited numbers of employers and workers are as of 1 July of the second year.

221. In a decision of 15 November 2002 the Federal Court ruled that the right to establish federations did not give occupational associations the right to participate in the legislative procedure concerning public-law service relations.⁹⁵ To confer such a right on associations would impair the legislative sovereignty of the State. Associations nevertheless have the right to be heard with regard to the amendment of laws and regulations affecting their members' conditions of work.

21.4. Information on the number and structure of trade unions

222. Some changes have been made with respect to the voluntary bodies of which the majority of the country's trade unions are members. The USS is still present, with 16 member trade unions representing about 380,000 workers. In 2002 the Confederation of Christian Trade Unions and the Federation of Swiss Workers' Associations merged into a single organization – Travail.Suisse – which has 12 trade union members representing about 160,000 workers.

223. On 1 January 2005 the Industry and Construction Trade Union (SIB), the Industry, Construction and Services Trade Union (FTMH) and the Commerce, Transport and Food Federation (FCTA) merged to form Unia, which has some 200,000 members.

224. There are also some changes to report in associations of employers. The Central Union of Swiss Employers' Associations (UPS) now comprises 36 employers' associations and 41 regional associations. The Swiss Trade and Industry Union merged with the Association for the Development of the Swiss Economy to form *economiesuisse*. This association defends its members' economic interests (framework conditions, international economic policy, safety, competition, etc.) and acts as an economic interlocutor with the general public. The Swiss Arts and Occupations Union (USAM) is still operating in the same form in support of small and medium-sized enterprises.

22. Right to strike

225. The controversy over recognition of the right to strike in Switzerland ended following the updating of the Constitution. Article 28, paragraph 3, of the Constitution declares strikes and lockouts to be lawful, provided that they relate to conditions of work and are consistent with the obligations to preserve labour peace and to resort to conciliation. Article 28, paragraph 4, maintains the legal prohibitions relating to certain categories of person.

⁹⁵ ATF 129 I 113.

226. The issue of recognition of the right to strike has now been settled, but the controversy over its scope persists. In a decision of 28 June 1999⁹⁶ the Federal Court imposed the following conditions with regard to the lawfulness of strike action:

1. The strike must be supported by an organization having the capacity to negotiate collective labour agreements;
2. It must be called for purposes which can be regulated by such agreements;
3. It must be in compliance with the obligation to preserve labour peace;
4. It must be in compliance with the principle of proportionality. (This controversy – not yet resolved for want of jurisprudence – relates to the question whether article 28 of the Constitution also entails compliance with conditions 1 and 4 above.)

227. The jurisprudence of the Federal Court relating to the relevant private-law provisions of labour contracts (CO, arts. 319 *et seq.*) recognizes that, when a strike is lawful, the principal obligations resulting from the labour contract are suspended and that any routine dismissal in connection with a lawful strike is improper. Furthermore, immediate dismissals would be unjustified.⁹⁷

Table 14
Work stoppages

	1996	1997	1998	1999	2000	2001	2002	2003	2004
Number of work stoppages	3	2	7	5	8	3	4	9	8
Days lost	7 266	435	24 719	2 675	4 757	20 098	21 447	6 141	38 915
Employers affected	5	3	12	129	19	702	535	189	1 117
Workers affected	5 888	327	16 125	2 255	3 894	20 098	21 947	8 111	24 399

22.1 Restrictions on civil servants and serving military personnel

Para. 28: *The Committee recommends that the draft legislation concerning the right of civil servants to strike be adopted as soon as possible, in line with the State party's obligations under article 8, paragraph 2, of the Covenant.*

Para. 29: *The Committee also recommends that any modification to the statute on civil servants be formulated in such a way as to safeguard the acquired rights of civil servants, as guaranteed in the Covenant.*

228. The right to form trade unions and the right to establish federations referred to in articles 23 and 28 of the Constitution are guaranteed to all citizens. The essential content of these constitutional rights may not be limited by a law or be suppressed for certain categories of citizen. This applies in particular to civil service personnel, who also have the right to form and join associations.

229. The Federal Civil Service Statute used also to deny the right to strike to civil servants who did not exercise any authority on behalf of the State. The repeal of the Federal Act on the status of the civil service meant the elimination of the prohibition of strikes by federal civil servants. The new Federal Personnel Act of 24 March 2000⁹⁸ provides for the

⁹⁶ ATF 125 I 277, translated into French in JT 2000 I 240.

⁹⁷ ATF of 23 March 1995, case 5/95; confirmed in ATF 125 III 277, p. 284-285.

⁹⁸ See paragraph 167 above.

possibility of a limited restriction of the exercise of the right to strike, i.e. only when the security of the State, the protection of important external relations interests or the provision of vital goods and services to the country so require. The exercise of the right to strike is regulated by article 96 of the Ordinance of 3 July 2003 on the personnel of the Confederation (OPers), which reads:

“The right to strike may not be exercised by members of the categories of personnel listed below who perform functions essential to the protection of the security of the State, the safeguarding of important external relations interests or the provision of vital goods and services to the country:

- (a) Senior civil and military managerial personnel of the departments;
- (b) Federal criminal prosecution authorities;
- (c) Personnel of the Federal Department of Foreign Affairs subject to the transfer regulations and working abroad;
- (d) Members of the border-protection services and civilian customs personnel;
- (e) Members of the surveillance service, military personnel of the air-traffic safety service, and members of the military professional training service.”

All other employees of the Federal Administration have the right to strike.⁹⁹

230. In the case of Swiss Federal Railways and the Post Office the question of limitation of the right to strike is regulated by the collective labour agreements of each of these bodies.

231. There have been no strikes by employees of the Federal Administration either before or since the entry into force of the new legislation on the personnel of the Confederation. No judicial decisions affecting the Federal Administration have been handed down on this question.

Article 9. Right to social security

23. Background

232. Several branches of social security have undergone changes since the submission of the previous report. Some of these changes (sickness and maternity insurance) are far-reaching, while others (old-age insurance, disability insurance, family allowances, occupational insurance) focus on specific aspects, adapt the social insurance schemes to the new living and working conditions, and introduce measures to simplify and harmonize the regulations. The various legislative reforms demonstrate the concern of the Government and Parliament to maintain a sound social security system. The establishment of insurance arrangements to provide mandatory care for everybody by the exercise of public authority in respect of persons in poor economic circumstances, the introduction of a maternity allowance, and the incorporation in old-age and survivors' insurance of individual pensions and supplements for performing educational and caring activities, the improvements to occupational insurance, the universal provision of family allowances regardless of the parents' degree of employment, and the Government's proposal to introduce a pre-retirement benefit for persons on low incomes – all these moves testify to the determination

⁹⁹ For further information see the report of 20 September 2002 on the implementation of the ILO Freedom of Association and Protection of the Right to Organize Convention (No. 87).

of the federal authorities to reach out to all segments of society, in particular its poorest members.

233. The Federal Act on the general aspects of social security law (LPGA) entered into force on 1 January 2003. It coordinates federal social security law by defining the principles, concepts and institutions of that law. It also establishes the rules of a uniform procedure and regulates the organization of the judicial system in this area; it harmonizes social security benefits and regulates the legal remedies against third parties under the social security legislation.

234. In addition, since 1 January 2007, the date of the entry into force of the Federal Act of 18 June 2008 on registered same-sex partnerships, such registered partnerships, throughout their duration, are treated as marriages in social security law; surviving members of registered partnerships are treated as widows or widowers; and the dissolution of a registered partnership is treated as a divorce (LPGA, art. 13 (a)).

Table 15
Social security expenditure, in millions of francs¹⁰⁰

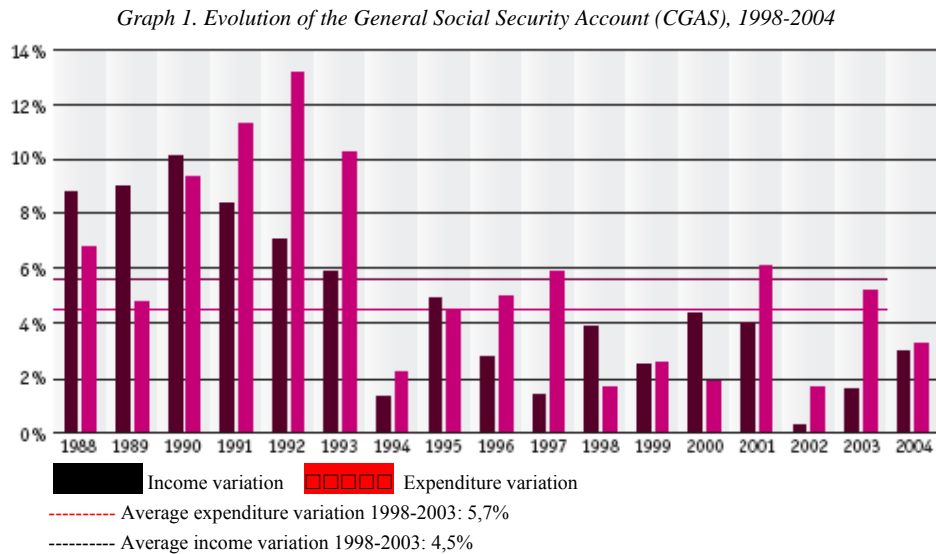
<i>General social security account (CGAS)* 2004, in millions of francs</i>				
	<i>CGAS income*</i> 2004	<i>CGAS expenditure*</i> 2004	<i>CGAS results*</i> 2004 [†]	<i>CGAS capital*</i> 2004
Old-age and survivors *	31 686	30 423	1 263	27 008
Supplementary old-age and survivors *	1 651	1 651	–	–
Disability *	9 511	11 096	- 1 586	- 6 036
Supplementary disability *	1 197	1 197	–	–
Occupational *	48 093	35 202	12 892	491 900
Sickness *	18 285	17 446	840	8 008
Accident *	6 914	5 364	1 551	33 563
Loss of earnings *	880	550	330	2 680
Unemployment *	4 802	7 074	- 2 272	- 797
Family allowances *	4 823	4 790	33	...
Total social insurance*	127 065	114 015	13 050	556 326

* Signifies throughout: according to the definitions of the General Social Security Account (CGAS). Income does not include variations in the value of capital; expenditure does not include contingency accounts and reserves.

** Before the establishment of contingency accounts and reserves.

¹⁰⁰ OFAS, “Statistique des assurances sociales suisses 2006” (Swiss social security statistics 2006): www.bsv.admin.ch/dokumentation/zahlen/00095/00420/index.html?lang=fr.

Graph 1.
Percentages of GDP spent on social security benefits



24. Medical care

235. The Federal Act on sickness insurance of 13 June 1911(LAMA) was repealed and replaced by the Federal Act on sickness insurance of 18 March 1994 (Sickness Insurance Act (LAMal)), which entered into force on 1 January 1996. It has been amended.

24.1. Scope of application

236. The principal innovation introduced by the new Sickness Insurance Act was to make insurance for medical care and medicines compulsory for the whole population (LAMal, art. 3, para. 1).

237. The Act establishes an obligation to insure oneself but not automatic insurance. The entire population ought in fact to be enrolled in a scheme as a result of the checks carried out by the cantons, routine enrolment (LAMal, art. 6), the impossibility of leaving one insurer without being enrolled by another (art. 7, para. 5) and the financial “penalty” imposed for late enrolment (art. 5, para. 2). Persons having an obligation to insure themselves have a period of three months in which to do so (or to insure a minor domiciled in Switzerland) with an insurer within the meaning of the Act. If this time limit is complied with, the insurance becomes retroactive from the date of domicile (or birth) in Switzerland (art. 5, para. 1).

238. The system of individual insurance has been retained in the new Act; this means in practice that a premium is charged for each individual insured. Furthermore, the premiums (contributions) for sickness insurance are not proportional to the insured person’s income.

24.2. Nature and amount of benefits

239. The Act regulates sickness insurance. It has two components: insurance for medical care and medicines, called “medical insurance”, and insurance against loss of earnings.

240. With regard to medical insurance, the Act applies only to “basic” insurance. A clear distinction is drawn between social insurance, which offers a full range of benefits, and supplementary insurance, which covers a number of individual wishes such as

hospitalization in a private or semi-private room or provides additional benefits. Supplementary insurance is regulated by the private insurance legislation.

241. Social sickness insurance covers illness, accidents and maternity. However, accidents are covered only to the extent that they are not covered under an accident insurance policy, either mandatory or private. Sickness insurance plays a subsidiary role in such cases; in other words, it can be used to meet costs not covered under an accident insurance policy.

242. Since the benefits provided under basic insurance are uniform in nature, the Legislature extended the range of these benefits in order to fill the main gaps in the old system. But the essential innovation introduced by the new Act in relation to the old one was to set outpatient and inpatient treatment on an equal footing; this means that in the event of hospitalization the insurance scheme will pay benefits for an unlimited period; the limit of 720 days under the old Act has thus been eliminated. In addition, the new Act also covers hospital stays in a public ward. The reference here is to what are known as “hotel costs”, i.e. the cost of accommodation and food in the hospital. Another innovation was the inclusion of care at home in the list of benefits. This benefit covers care provided outside the hospital, known by the abbreviation “SPITEX”. The Act’s regulatory legislation designates the types of care covered under this heading, which are more extensive than the few home care services already covered under the earlier Act; however the care in question must always be prescribed by a doctor.

243. The following benefits are provided under mandatory medical insurance (LAMal, arts. 25-31):

(a) In the event of illness, maternity, accident (not covered by a separate accident policy), congenital illness (not covered under disability insurance) or lawful termination of pregnancy:

(i) Examinations, treatment and care on an outpatient basis or provided in the patient’s home or in a hospital or semi-hospital situation or in a medical-social establishment by doctors or chiropractors or persons providing services on prescription or on medical instructions;

(ii) Analyses, medicines, diagnostic and therapeutic instruments and equipment prescribed by a doctor or, within the limits fixed by the Federal Council, by a chiropractor;

(iii) Payment of part of the cost of spa treatment prescribed by a doctor;

(iv) Rehabilitation measures carried out or prescribed by a doctor;

(v) Hospital stays in a public ward;

(vi) Stays in an institution providing semi-hospital care;

(vii) Payment of part of the cost of transport required for medical purposes and of emergency rescue costs;

(viii) Pharmacists’ services (advice) in connection with the supply of prescribed medicines;

(b) Certain examinations for early detection of illness and preventive measures for particularly vulnerable insured persons;

(c) The following specific maternity benefits:

(i) Periodic checks carried out by a doctor or midwife or prescribed by a doctor, during and after pregnancy;

- (ii) Payment of part of the cost of a group course run by a midwife in preparation for confinement;
 - (iii) Delivery at home, in a hospital or in an institution providing semi-hospital care, and attendance by a doctor or midwife;
 - (iv) Any necessary advice about breastfeeding;
 - (v) Care of babies born healthy for as long as they are in hospital with their mothers;
- (d) Dental care needed as a result of a serious and unavoidable problem of the mastication system of some other serious illness or its aftermath (AIDS or leukaemia, for example). Payment of the cost of treating damage to the mastication system caused by an accident not covered by any accident policy.

244. The services provided must be effective, appropriate and economical; their effectiveness must be established by scientific methods (LAMal, art. 32, para. 1).

24.3. Financing

Para. 36: The Committee recommends that the State party, in accordance with article 12, paragraph 3 (d), of the Covenant, review its systems of health care to prevent the high costs of these from having a negative effect on the standard of living of families, which is incompatible with article 11, paragraph 1, of the Covenant.

245. The sickness insurance system is financed on a cost-sharing basis, including the maintenance of a reserve fund by the insurer. The system's financing is also based on the principle of mutuality, which means that insurance funds may not be used for purposes other than insurance; any profit motive is thus prohibited. The new Sickness Insurance Act has retained a three-component system in the form of per capita premiums, payment of part of the costs by the insured, and public subsidies. However, the form of the public contribution has changed radically: subsidies are no longer paid to the insurers, as they were in the past; instead, a system of subsidies for the insured has been introduced in order to reduce the contributions of persons of limited economic resources.

246. Each insurer fixes the level of premiums needed to cover expenditure. The premiums are the same for all the persons insured by the same insurer. Premiums can therefore not be graduated according to various criteria (age or sex, for example) or according to the insured person's income. It goes without saying that equal premiums mean equal benefits (the Act stipulates equal benefits).

247. However, regional gradation of premiums by the same insurer is permitted since there may be regional tariff differences and public health costs may depend on the health-policy measures adopted by the cantons. In view of the relationship between health costs, in particular hospital costs, and cantonal taxes, it is the insured person's place of residence rather than place of work which determines the regional gradation of premiums. The differences in premiums must be consistent with the regional cost differences and not determined by commercial considerations of the insurers. These cost differences must also be supported by evidence.

248. Children's premiums constitute a further exception to the equal-premium principle. The Act provides that insurers must set a lower premium for insured persons aged 18 years or under than for older persons. They are authorized to do so for insured persons aged 25 years or under (LAMal, art. 61, para. 3).

249. The Act provides further that an insured person may, in agreement with the insurer, limit the choice of service providers designated by the insurer by reason of their better services. The insurer pays only the costs of services furnished or commissioned by these providers, since the legally mandated services are guaranteed in all cases. In return, the insurer reduces the premiums for this type of insurance offering a limited choice of service providers (art. 41, para. 4, and art. 62, para 1). The Act also provides for a form of insurance under which the amount of the premium paid by the insured depends on whether he or she has been receiving benefits for a certain period (art. 62, para 2 (b)).

250. Insured persons pay part of the costs of the benefits which they receive. Their share includes an amount fixed annually and known as the “*franchise*” (excess/deductible) plus 10 per cent of the costs over and above the *franchise*, this sum being known as the “*quote-part*” (share). The Federal Council fixes the minimum amount of the *franchise* (currently 300 francs) and the maximum annual amount of the *quote-part* (700 francs). No *franchise* may be imposed in the case of children and the maximum amount of the *quote-part* is reduced by half for them. Several children from the same family who are insured by the same insurer pay together the maximum *franchise* and *quote-part* payable by an adult (currently 1,000 francs) (art. 64, paras. 1- 4).

251. In the event of hospitalization, insured persons pay an additional contribution to the cost of their stay, graduated by number of dependants. The Federal Council fixes the amount of this contribution, which is currently 10 francs a day (art. 64. para. 5). Insured persons sharing a household with one or more persons to whom they are related under family law, as well as women in the case of maternity benefits, are exempt from payment of this contribution, a factor which impinges on its effective scope.

252. In addition, the Federal Council may stipulate a bigger contribution for certain benefits. It may also decide that the contribution shall be increased when the benefit has been provided for a specified period or has reached a specified cumulative amount. It may also reduce or eliminate the payment of part of the cost of long-term treatment and the treatment of serious illnesses. Lastly, the insurer may not demand any contribution to the cost of maternity benefits.

253. As in the past, medical insurance attracts public subsidies, but the mode of these subsidies has changed completely: they are no longer used, as they were in the past, to reduce the premiums paid by all insured persons regardless of their financial position (the “*arrosoir*” (watering-can) system) but instead to reduce the premiums paid by poorer persons. This new system thus helps to correct the inequalities arising from charging the same individual premiums regardless of income or number of dependants. The cantons are responsible for organizing the premium-subsidy system and determining the range of beneficiaries. As a result of the first revision of the new Act, which has been in force since 2001, the cantons are required to keep insured persons regularly informed of their entitlement to reduced premiums; they have to use the most recent tax information to determine entitlement to such reductions and ensure that premium-reduction subsidies are paid to insured persons before their premiums are due for payment. In addition, the cantons have also been required since 2006 to organize their premium-reduction systems in such a way that the premiums in respect of children and young adults on education or training courses are reduced by half for middle- and low-income families. Pursuant to article 66 of the Act the Confederation grants the cantons annual subsidies for reduction of premiums. The cantons are required to make a small additional contribution for this purpose. The Federal Council fixes the amount to be paid by each canton on the basis of the size of its resident population and its financial capacity. The amount of these federal subsidies was fixed at 2,658 million francs for 2007.

254. To sum up, compulsory medical insurance includes a sizeable element of solidarity. The introduction of compulsory insurance was the first plank of this solidarity. It guarantees

access to medical insurance without any age limits or any restriction of coverage. The system of equal premiums also contributes to solidarity. The single premium charged by insurers is a guarantee of the solidarity among different risk groups (the elderly and young people, men and women). The arrangements for reducing the premiums of poorer persons constitutes an element of solidarity among different income groups. This is an important social corrective of the “per capita” premium. Furthermore, it should be remembered with regard to families in particular that the premiums in respect of children and young adults are lower, that no *franchise* is applicable to children, that the maximum amount of their *quote-part* is reduced by half, that the total contribution of all the children of one family insured by the same insurer is capped, and that families do not pay the contribution to the cost of hospital stays. Lastly, the cantons have to reduce by at least 50 per cent the premiums in respect of children and young adults on education or training courses paid by middle- and low-income families.

25. Sickness benefits paid in cash

25.1. Scope of application

255. Insurance against loss of earnings remains optional. Any person aged over 15 but under 65 years who is domiciled or engages in a gainful activity in Switzerland may take out a loss-of-earnings policy with an insurer within the meaning of the Act (LAMal, art. 67, para. 1). However, an insurance obligation may arise under an individual labour contract, a standard labour contract or a collective labour agreement. Loss of earnings may be covered under a collective policy. Collective policies may be taken out by employers (for their workers and for themselves), by employers’ organizations and occupational associations (for their members and their members’ workers), and by workers’ organizations (for their members) (art. 67, para. 3).

25.2. Nature and level of benefits

256. Insurers may exclude from cover under a policy, by an exceptions clause, any illnesses existing at the time of a person’s admission to the scheme. The same applies to earlier illnesses if experience shows that a relapse is possible (art. 69, para. 1). Such exceptions expire after five years at the latest. If an insured person changes insurer, the new insurer must, with respect to the same illness, deduct from the duration of the exception which he is entitled to impose the period already elapsed under the previous policy. However, the new insurer is not entitled to impose new exceptions if the insured person has changed insurer because his or her labour relationship or its termination so requires or because he or she is leaving the sector of activity insured by the previous insurer or because that insurer ceases to offer sickness insurance under the social security system (art. 70, para. 1). Insured persons who are no longer covered under a collective policy because they no longer belong to the group of insured persons defined in the policy or because the policy has been cancelled are entitled to individual cover by the insurer. New exceptions clauses may not be imposed in such cases unless the insured person takes out a policy providing increased benefits. The qualifying age of admission specified in the collective policy remains the same (art. 71, para. 1).

257. The insurer agrees with the insured the amount of the loss of earnings covered under the policy. Entitlement to payment for loss of earnings is triggered when the insured person’s capacity to work is reduced by at least 50 per cent. Unless otherwise agreed, the entitlement begins on the third day following the onset of the incapacity. The payment of benefits may be deferred by means of a corresponding reduction in the amount of the premium. Compensation for loss of earnings must be paid, in respect of one or more illnesses, for at least 720 days in any a period of 900 days (art. 72).

25.3 Financing

258. Insurers may gradate premiums according to age of entry if it is established that the costs vary from one canton or region to another. They fix the amount of the premiums to be paid by insured persons, but equal insured benefits must be matched by equal premiums. If the payment of compensation for loss of earnings is subject to a waiting period, the insurer must reduce the premiums accordingly (art. 76). In the case of collective policies, insurers may charge premiums differing from those charged for individual cover. The amounts of such premiums must be sufficient to ensure that they cover at least the cost of the collective insurance benefits (art. 77).

259. Like the former Act, the new Sickness Insurance Act does not provide for any public contribution in respect of insurance against loss of earnings.

26. Maternity benefits

Para. 31: *The Committee recommends that adequate social security protection be provided to pregnant women and recent mothers. The Committee further emphasizes the importance of educational campaigns to develop awareness of the problem of discrimination and recommends that all possible measures be taken, in particular at the social infrastructure level, to make it easier for women who wish to work outside the home to do so.*

260. Maternity benefits in kind are provided under the Sickness Insurance Act (LAMal)¹⁰¹ and maternity benefits in cash are paid under the Federal Act on loss of earnings by reason of military or civilian service or maternity (Loss of Earnings Act (LAPG)).

261. The Swiss Government and Parliament had never succeeded in introducing paid maternity leave for all working women although the Constitution has contained a provision to this effect for almost 60 years (art. 116, para. 3, and art. 34quinquies, para. 4). Some women enjoyed paid leave under a collective labour agreement or under a voluntary individual loss-of-earnings policy in the context of sickness insurance. Many attempts were made to introduce maternity insurance since the incorporation of this provision in the Constitution. But none of them was successful: some of the bills were withdrawn, others failed to cross the hurdle of discussion in Parliament, and others were voted down by the people. The last attempt was made in 1999. Following that failure, Parliament immediately took up the case again with a view to settling the issue of paid maternity leave by amending a 1952 Federal Act on compensation for loss of earnings. A referendum was called on this amended Act, but the Swiss people approved it on 26 September 2004. It entered into force on 1 July 2005.

262. This maternity benefit was incorporated in the loss-of-earnings schedule, which had originally been designed to provide allowances for persons serving in the army or civil protection units or performing civilian service. The amendment of the legislation made it possible to establish standard paid maternity leave without thereby excluding more generous arrangements, such as a longer period of leave or other benefits (applicable in the event of adoption, for example) provided under some collective labour agreements.

263. Women engaging in gainful employment (employees and self-employed) receive a maternity benefit equal to 80 per cent of their most recent pay/income, up to a maximum of 172 francs a day, for the 14 weeks following childbirth. To qualify for this benefit a woman must have been insured during the nine months preceding the birth and must have been gainfully employed for at least five months during that period.

¹⁰¹ See paragraph 240 *et seq.* above.

264. The federal regulations set a minimum standard. More favourable treatment (higher allowances, longer duration) can always be provided for in an individual labour contract, in a collective labour agreement, or in other public-law instruments - in cantonal maternity insurance policies, for example. The cantons may in fact provide for the award of a maternity allowance in a bigger amount or for a longer period and for the introduction of an adoption allowance, levying individual contributions to fund these benefits (the canton of Geneva, for example, does so).

265. The public authorities, which are often more generous, have maintained any acquired rights.

266. The additional benefits provided by employers in the private sector have generally been maintained.

27. Basic federal old-age, survivors' and disability insurance (first pillar)

267. Article 111 of the Constitution stipulates that "the Confederation shall take steps to provide old-age, survivors' and disability insurance, occupational insurance, and individual insurance."

268. Article 112 requires the Confederation to adopt legislation on old-age, survivors' and disability insurance; this insurance has to be compulsory, and the pensions which it pays must cover essential needs in an appropriate manner.

269. Old-age and survivors' insurance is regulated by the Old-Age and Survivors' Insurance Act (LAVS) of 20 December 1946. Since its entry into force, on 1 January 1948, this Act has been amended 10 times. It entered into force, as amended for the tenth time, on 1 January 1997; the tenth revision radically amended the existing system. A draft eleventh revision is currently being considered by Parliament. It was submitted by the Government in two packages: the first introduces inter alia an equal retirement age for men and women (65 years) and greater flexibility in the modalities of taking retirement; the second provides for the introduction of a pre-retirement benefit (bridging allowance) paid between the ages of 62 and 65 to insured persons in modest economic circumstances.

270. Disability insurance is regulated by the Disability Insurance Act (LAI) of 19 June 1959, which entered into force on 1 January 1960. This Act has been revised five times. The fifth revision entered into force on 1 January 2008.¹⁰²

27.1. Scope of application

271. Persons domiciled or gainfully employed in Switzerland are subject to compulsory insurance under the two Acts (LAVS, art. 1 (a), para. 1, and LAI, art. 1 (b)).

27.2. Nature and level of benefits

Pensions

272. Contributory pensions are called "ordinary pensions", as distinct from "special pensions", which are non-contributory.

Old-age pensions

273. There are three old-age benefits:

- The old-age pension as such (LAVS, art. 21);
- The supplementary pension (LAVS, art. 22bis);

¹⁰² See paragraph 312 above.

- The children's allowance (LAVS, art. 22ter).

274. Men and women may claim an old-age pension on reaching the age of 65 and 64 years respectively. Men and women who have been in receipt of a supplementary disability pension until the birth of an entitlement to an old-age pension continue to receive the supplementary pension until such time as their spouse may claim an old-age or disability pension. Persons awarded an old-age pension are entitled to an allowance for each of their children who, on the parents' death, would be entitled to an orphan's pension.

Survivors' pensions

275. There are two survivors' benefits:

- The widow's or widower's pension (LAVS, art. 23);
- The orphan's pension (LAVS, art. 25).

276. Widows and widowers are entitled to a pension if, at the time of the death of their spouse, they have one or more children. Under certain circumstances they may also claim a pension when there were foster children living in the household before the death. Widows are also entitled to a pension if, at the time of the death of their spouse, they have no children or foster children but have reached the age of 45 and have been married for at least five years. Entitlement to a widow's or widower's pension is extinguished by the holder's remarriage or death; entitlement to a widow's pension is also extinguished when the youngest child reaches the age of 18.

277. Children whose father or mother has died are entitled to an orphan's pension. Children both of whose parents have died are entitled to two orphan's pensions. This entitlement is extinguished when the holder reaches the age of 18 (25 for students) or if the holder dies.

Disability pensions

278. There are two disability benefits:

- The disability pension (LAI, art. 28);
- The children's allowance (LAI, art. 35).

279. On reaching age 18 an insured person is entitled to a pension if he or she has at least 40 per cent disability. The disability pension is graduated by degree of disability: insured persons with at least 40 per cent disability are entitled to a one-quarter pension, with at least 50 per cent disability – a half-pension, with at least 60 per cent disability – a three-quarters pension, and with at least 70 per cent disability – a full pension.

280. A person receiving a disability pension is entitled to an allowance for each of his or her children who would be entitled to an orphan's pension if the pensioner died.

Ordinary old-age, survivors' and disability pensions

281. An ordinary pension is awarded to insured persons, and to their survivors, who can be credited with one full year's contributions. The amount of the pension is calculated on the basis of average annual income and number of years of contribution (LAVS, art. 29, para. 1, and art. 29bis, para. 1).

282. Average annual income comprises earnings from gainful activity and supplementary allowances for bringing up children or for caring (LAVS, art. 29quater).

283. The amount of earnings from gainful activity is calculated on the basis of earnings on which contributions have been paid. Contributions by persons not pursuing a gainful activity are reconverted and counted as earnings. The income of spouses during their calendar years of married life is split equally between them. The income is split in this way

when both spouses are entitled to an old-age pension or when a widow or widower is entitled to a pension or when the marriage has been dissolved by divorce (LAVS, art. 29quinquies).

284. Insured persons may claim a supplementary child-raising allowance in respect of the years during which they exercise parental authority over one or more children aged under 16. A father and mother holding joint parental authority may not claim two cumulative supplementary allowances. This allowance amounts to three times the minimum old-age pension, calculated at the time of the birth of the pension entitlement. A supplementary allowance awarded for the calendar years of married life is split equally between the spouses (LAVS, art. 29sexies).

285. Insured persons who take care of ascendant or descendant relatives or of any brothers or sisters who are in receipt of benefit under old-age and survivors' or disability insurance in respect of an average or greater degree of disability and with whom they live in a common household may claim a supplementary carer's allowance. A carer's allowance may not be awarded if, during the same period, there is an entitlement to a child-raising allowance. The supplementary allowance amounts to three times the minimum old-age pension, calculated at the time of the birth of the pension entitlement. A supplementary allowance awarded for the calendar years of married life is split equally between the spouses (LAVS, art. 29septies).

286. A contributions period is deemed complete when the person concerned has the same number of years of contribution as insured persons in his or her age group; the person is then entitled to a full pension. If this period is incomplete, he or she is entitled to only a partial pension. The following periods are regarded as years of contribution: years during which a person has paid contributions; years during which a person's spouse (the person in question not being gainfully employed and not receiving a cash income if working in the spouse's enterprise) has paid at least double the minimum contribution; years for which supplementary child-raising or carer's allowances can be credited (LAVS, art. 29ter).

287. The monthly old-age pension consists of a fixed amount, which is a fraction of the minimum old-age pension, and a variable amount, which is a fraction of the applicable average annual income. The minimum pension (1,105 francs a month) is paid when the average annual income does not exceed 12 times the amount of the minimum pension, and the maximum pension (2,210 francs or double the minimum) is paid when the applicable average annual income is at least 72 times the amount of the minimum pension. The sum of the two pensions paid to a couple may not exceed 150 per cent of the maximum amount of the old-age pension (3,315 francs) (LAVS, art. 34).

288. The full disability pension is paid in the same amount as the old-age pension.

289. If an insured person with a full contributions record has not reached his or her twenty-fifth birthday at the time when the disability strikes, the disability pension due to such person and any supplementary allowances total at least 133.33 per cent of the corresponding full pension.

290. The children's allowance and the orphan's allowance amount to 40 per cent of the corresponding old-age pension (a minimum of 442 francs and a maximum of 884 francs). The widow's and widower's pension amounts to 80 per cent of the corresponding old-age pension (a minimum of 884 francs and a maximum of 1,768 francs).

291. The Federal Council usually adjusts the amounts of ordinary pensions every two years to bring them into line with pay and price movements, the adjustments taking effect at the start of the next calendar year. It makes such adjustments earlier if the Swiss consumer price index increases by more than 4 per cent in the course of a year (LAVS, art. 33ter).

Special pensions

292. Special pensions are paid to Swiss citizens domiciled and habitually resident in Switzerland who have the number of years of contribution required for persons in their age group but are unable to claim an ordinary pension because they do not satisfy the requirement of having paid contributions for at least one full year. As regards disability and survivors' pensions, these are cases in which, in view of the youth of an insured person who has a disability or has died, that person cannot be credited with a full year of income or a child-raising or carer's allowance. The amounts of special pensions are equal to the corresponding minimum ordinary pensions (LAVS, arts. 42 and 43).

Other benefits under the Disability Insurance Act (LAI)

293. Recipients of an old-age pension or supplementary benefits¹⁰³ domiciled and habitually resident in Switzerland who have a serious or moderate disability are entitled to a disability allowance. Persons already in receipt of a disability benefit under disability insurance are entitled to an old-age and survivors' disability benefit in at least an equal amount. The benefit amounts to 80 per cent of the old-age pension for a serious disability and to 50 per cent for a moderate disability. (LAVS, art. 43bis).

294. Recipients of an old-age pension or supplementary benefits domiciled and habitually resident in Switzerland who need expensive equipment in order to move around, interact with other people or maintain their independence are entitled to physical aids (LAVS, art. 43ter).

Other old-age and disability benefits

295. The primary purpose of disability insurance is to secure the rehabilitation of insured persons and their return to work. That is why the Act addresses rehabilitation measures before anything else (LAI, art. 8 *et seq.*). A disability pension is paid only if the rehabilitation measures fail, wholly or partially, to attain the desired goal or if they have no chance of success from the outset. Entitlement to these benefits is extinguished when the person concerned reaches the age of entitlement to an old-age pension.

296. The rehabilitation measures come in several forms:

(a) **Medical measures:** these measures are not designed to treat the disability as such; they are measures which are directly necessary for occupational retraining or retraining with a view to performing normal work and are likely to produce a lasting and major improvement in earning capacity or the capacity to perform normal work or to prevent a significant diminution of those capacities. In such circumstances, disability insurance pays for the cost of medical treatment (as an outpatient or in a public hospital ward), the services of paramedical personnel, and the medicines prescribed by a doctor. It should be noted that insured persons aged under 20 years suffering from a congenital disorder are subject to special conditions: disability insurance pays for the necessary medical treatment of the disorder, regardless of the prospects of return to work or performance of usual work; the Federal Council maintains a list of congenital disorders recognized as such;

(b) **Vocational measures:**

(i) Vocational guidance for insured persons whose disability makes it difficult for them to choose a new occupation or pursue their previous one;

¹⁰³ See paragraph 300 *et seq.* above.

- (ii) Payment of the additional costs resulting from the disability for the purposes of initial vocational training, preparation for a secondary job or for work in a protected workshop, training in a new occupation, or a refresher course;
- (iii) Placement in a new occupation, if this is necessary as a result of the disability, and retraining in that occupation;
- (iv) Active support in the search for a suitable job and continuing guidance in retaining an existing job;
- (v) Provision of financial aid under certain circumstances in order to enable the insured person to take up or develop an independent activity and to cover the cost of any changes to his or her business necessitated by the disability.

(c) **Special education measures:** these are subsidies paid for the special education of insured persons aged under 20 who, as a result of a disability, are unable to attend a public school and cannot be expected to do so. Special education includes school education as such and, for children incapable or hardly capable of assimilating elementary subjects, measures designed to develop either their manual skills or their ability to perform the ordinary acts of everyday life or to interact with the members of their families;

(d) **Physical aids:** disability insurance covers the physical aids which persons with disabilities need in order to take a paid job or perform their usual work, to maintain or enhance their earning capacity, to study, to learn an occupation or take a refresher course, or to perform everyday functions. Such aids include prostheses, hearing aids, guide dogs for the blind, wheelchairs, motorized vehicles, and means of adapting the work station;

(e) **Compensation for loss of earnings:** insured persons are entitled to compensation for loss of earnings during the period of rehabilitation if the measures in question prevent them from engaging in gainful employment for at three days in succession or if, in their usual jobs, they have an incapacity to work of at least 50 per cent. Such compensation is paid to insured persons during initial vocational training and to insured persons aged under 20 who have not yet had a paid job when they become unable to earn their living a result of their disability.

297. Insured persons domiciled and habitually resident in Switzerland who have a minor, moderate or severe disability are also entitled to a disability allowance (LAI, art. 42). This allowance amounts to 80 per cent of the maximum amount of the old-age pension for severe disability, 50 per cent for moderate disability, and 20 per cent for a minor disability (LAI, art. 42ter).

298. Nationals of countries with which Switzerland has not concluded a social security agreement are entitled, like Swiss citizens, to rehabilitation measures and disability allowances, provided that they have their domicile in Switzerland and habitually reside there and that, before the insured contingency arises, they have at least one full year's contributions to their credit or have completed 10 years of uninterrupted residence in Switzerland (LAI, art. 6, para. 2).

Supplementary benefits under old-age, survivors' and disability insurance

299. Pursuant to article 196, paragraph 10, of the Constitution (a transitional clause to article 112), if the federal insurance benefits are insufficient to cover essential needs the Confederation provides the cantons with assistance to finance supplementary benefits. The requirements which the cantons must satisfy in order to obtain this financing are set out in the Supplementary Benefits Act (LPC). All the cantons have enacted legislation on supplementary benefits. The cantons may also award insurance benefits or assistance, and establish the conditions for their award, in addition to the benefits stipulated in the Act (LPC, art. 2, para. 2).

300. Supplementary benefits are non-contributory benefits paid by the cantons, as far as resources allow, to the elderly, survivors and persons with disabilities. They have two components: the annual supplementary benefit, paid in monthly instalments; and reimbursement of the costs of illness and disability (LPC, art. 3). Payments are determined by personal circumstances. As a general rule, these benefits are paid to supplement pensions awarded under age-old, survivors' and disability insurance. In some cases, they are paid independently of a pension. Beneficiaries must be domiciled and habitually resident in Switzerland. Foreigners may claim supplementary benefits only if they have lived in Switzerland without interruption during the 10 years immediately preceding the date from which benefit is claimed (LPC, art. 5). The provisions of the Agreement on the Free Movement of Persons (ALCP) concluded with the European Union and the revised EFTA Agreement are reserved.

301. The annual supplementary benefit corresponds to the difference between a beneficiary's income and expenditure, up to a maximum of 53,040 francs for persons living at home and 31,745 francs for persons living in some kind of sheltered accommodation. The income taken into account includes allowances, pensions and other periodical benefits, the yield on assets, the amount of assets, income from a gainful activity, family allowances, food allowances, and the resources and shares in assets which an eligible person has relinquished.

302. The recognized costs of persons living at home include inter alia an amount to cover essential everyday needs. The following annual amounts are payable: 18,140 francs for a single person; 27,210 francs for a couple; 9,480 francs each for the first and second child; 6,320 francs each for the third and fourth child; and 3,160 francs each for the fifth and any other children.

27.3. Financing of basic old-age, survivors' and disability insurance

303. Old-age and survivors' insurance is financed from the contributions of insured persons and employers, the subsidies paid by the public authorities, the interest earned by the old-age and survivors' insurance equalization fund, the revenue from actions of recourse against liable third parties, and by the revenue from the gaming tax (LAVS, arts. 102 and 103).

304. This system of financing is based on the principle of distribution, according to which revenue during a year is used to pay current pensions, with the addition of a capitalization component represented by the equalization fund, the amount of which is not supposed to fall below the amount of the year's expenditure.

305. Article 3 of the Old-Age and Survivors' Insurance Act (LAVS) provides that insured persons are required to pay contributions for as long as they are gainfully employed, starting at the earliest on 1 January of the year following the year of their seventeenth birthday. The obligation to contribute lasts until gainful employment ceases, but at the earliest until the end of the month in which a woman reaches the age of 64 and a man the age of 65. For insured persons who are not gainfully employed, the obligation to pay contributions starts on 1 January of the year following the year of their twentieth birthday and ceases at age 64 for women and age 65 for men. Unemployed spouses of insured persons who are gainfully employed and persons working in their spouse's business without cash remuneration are deemed to have paid contributions themselves, provided that their spouse has paid contributions equal to at least double the minimum contribution. The deductions from pay amount to 8.4 per cent for old-age and survivors' insurance (4.2 per cent from the employee and 4.2 per cent from the employer). This amount is 7.8 per cent for self-employed persons, but a descending scale is applied to incomes below 53,100 francs a year. Contributions are based on total income and are not subject to an income ceiling.

Lastly, persons who are not gainful employed pay contributions of between 370 and 8,400 francs a year, depending on their circumstances.

306. The contribution of the public authorities represents a percentage of the expenditure under the scheme, currently set at 16.36 per cent for the Confederation and 3.64 per cent for the cantons (LAVS, art. 103).

307. In addition, 13.33 per cent of the annual revenue from value added tax is allocated to old-age and survivors' insurance.

308. Disability insurance is financed on the same basis as old-age and survivors' insurance (LAI, art. 77). The scope of the Act is the same. A contribution of 1.4 per cent is deducted from income from gainful activity. Insured persons who are not gainfully employed pay contributions of between 62 and 1,400 francs a year (LAI, art. 3).

309. The public authorities contribute 50 per cent of the annual expenditure under disability insurance; three quarters of this amount is paid by the Confederation and one quarter by the cantons.

310. The cantons which pay supplementary benefits receive from the Confederation grants funded from general revenue. The amount of these grants depends on the financial capacity of the canton in question (LPC, art. 9)

27.4. The fifth revision of the Disability Insurance Act

311. On 6 October 2006 Parliament adopted the fifth revision of the disability insurance system. The Swiss people approved it in a popular ballot held on 17 June 2007. This revision entered into force on 1 January 2008. Its principle objective is to maintain the earning capacity of insured persons and thus check the increase in the number of new pensions. To this end the fifth revision provides for the introduction of an early detection and intervention system and of rehabilitation measures in preparation for vocational retraining, and for the extension of the existing vocational rehabilitation measures. These arrangements ought to make it possible to detect vulnerable persons sufficiently early and enable them to stay in their jobs, thus avoiding as far as possible the obligation to pay them pensions. As a counterpart to the extension of the rehabilitation measures, pension entitlement has been restricted by amending the concept of disability and by increasing the minimum period of contributions for such entitlement. The fifth revision also provides for the elimination of reverse incentives: in order not to discourage beneficiaries from resuming gainful activity, only a fraction of their new earnings is taken into account in the calculation of the revised benefit. It also introduces a number of measures to reduce expenditure: discontinuation of the career supplement (an amount added to the income used as the basis for calculating the benefit for insured persons who become incapable of working before age 45) and the current supplementary current spouse's pension (the supplementary spouse's pension was eliminated in the fourth revision of the Act; the fifth revision has now eliminated the current spouse's pension as well), and for the transfer to health insurance of the medical rehabilitation measures for insured persons aged over 20. Lastly, the Confederation's supervisory powers have been strengthened in order to ensure unified application of the disability insurance legislation throughout the country.

27.5. New financial equalization measures

312. The amendment of the legislation on financial equalization and distribution of functions between the Confederation and the cantons (RPT)¹⁰⁴ will have the following consequences for the first pillar:

¹⁰⁴ See paragraphs 26 *et seq.* above.

(a) Only the Confederation will contribute to the financing of old-age and survivors' insurance;

(b) In the case of disability insurance, the Confederation will be entirely responsible for the funding and provision of individual benefits (rehabilitation measures, pensions, disability allowances), and the cantons will be entirely responsible for the funding and provision of collective benefits (grants for the construction of sheltered accommodation and workshops and institutions for vocational and medical rehabilitation);

(c) Where supplementary old-age, survivors' and disability benefits are concerned, the Confederation will be responsible for payments to meet essential needs, and the cantons will be entirely responsible for the costs of residence in sheltered accommodation.

The revised RPT legislation entered into force on 1 January 2008.

28. Occupational old-age, survivors' and disability insurance (second pillar)

313. Article 113 of the Constitution provides that the Confederation shall enact legislation on occupational insurance, in accordance with the following principles:

(a) In conjunction with old-age, survivors' and disability insurance, occupational insurance shall enable insured persons to maintain their previous standard of living in an appropriate manner;

(b) Occupational insurance shall be compulsory for employed persons;

(c) Employers shall insure their employees with an insurance institution;

(d) Self-employed persons may take out optional occupational insurance with an insurance institution;

(e) Occupational insurance may be made compulsory for some categories of self-employed persons, on the basis of general cover or to cover particular contingencies;

(f) Insurance institutions must satisfy the minimum requirements imposed by federal law.

314. The Federal Act of 25 June 1982 on occupational old-age, survivors' and disability insurance (Occupational Insurance Act (LPP)) entered into force on 1 January 1985. It has been revised only once; the main provisions of this revision entered into force on 1 January 2005.

28.1. Scope of application

315. Employed persons aged over 17 who receive from the same employer annual remuneration in excess of 19,890 francs are subject to compulsory insurance. Recipients of compensation for loss of earnings under unemployment insurance are subject to compulsory insurance of the contingencies of death and disability (LPP, art. 2). Employees and self-employed persons who are not subject to compulsory insurance may take out optional insurance on the same terms as apply to compulsory insurance (LPP, art. 4, para. 1). Only persons insured under an old-age and survivors' scheme can take out insurance under the Occupational Insurance Act (LPP, art. 5, para 1).

28.2. Nature and level of benefits

316. The Act provides insured persons with a minimum of protection. Registered insurance institutions must provide at least the legal minimum benefits, but they are free to

offer more extensive cover and often do so. They may offer, for example, a higher guaranteed income or a more generous benefits plan.

317. The part of annual remuneration between 23,205 and 79,560 francs must be insured. This part of remuneration is known as “coordinated pay” (LPP, art. 8, para. 1).

318. The Act deals with old-age, survivors’ and disability benefits. It also includes arrangements for financing the purchase of property for the insured person’s own occupancy. The Federal Act of 17 December 1993 on freedom of transfer between old-age, survivors’ and disability schemes (Freedom of Transfer Act (LFLP)) regulates transfers from one insurance institution to another for the purpose of maintaining cover.

319. Men are entitled to old-age benefits on reaching age 65 and women at age 65 (LPP, art. 13, para. 1). The regulations on insurance institutions may stipulate that entitlement to old-age benefits is triggered on the day when the gainful activity ceases, but the general rule is for it to be triggered at the earliest five years before the legal age (by adjusting the pension conversion rate). Lastly, recipients of an old-age pension under the Act are entitled to an additional allowance for each child who, if the recipient died, could claim an orphan’s pension.

320. Survivors’ benefits are payable under the Act only if the deceased person was insured at the time of the onset of the incapacity to work which led to his or her death or was receiving an old-age or disability pension from the insurance institution at the time of death (LPP, art. 18)

321. The Act provides for the following survivors’ benefits:

- The surviving spouse’s pension (art. 19);
- The orphan’s pension (art. 20).

322. A surviving spouse is entitled to a pension if, at the time of the death of the husband or wife, he or she is maintaining at least one child or if he or she is over age 45 and the marriage had lasted at least five years. The surviving spouse’s pension amounts to 60 per cent of the full disability pension which the insured person would have been entitled to claim at the time of his or her death. The deceased’s children are entitled to the orphan’s pension. This benefit amounts to 20 per cent of the full disability pension which the insured person would have been entitled to claim at the time of his or her death. (LPP, art. 21).

323. Persons who have a disability of at least 40 per cent within the meaning of the Disability Insurance Act and are insured at the time of the onset of the incapacity to work which led to their disability have entitlement to the disability pensions provided for in the Act (LPP, art. 23). Disability pensions paid under the Act are subject to the same gradation as pensions paid under the Old-Age and Survivors’ Insurance Act: quarter-pension; half-pension; three-quarter pension and full pension. The disability pension is calculated on the basis of the same conversion rate as is used for the old-age pension payable at age 65. The age credit then includes the age credit acquired by the insured person on the birth of the entitlement to the disability pension and the sum of the age credits relating to future years, up to the normal retirement age, without interest (LPP, art. 24). Recipients of a disability pension are entitled to a supplement for each child who, if the recipient died, would be entitled to an orphan’s pension; the amount of this supplement is the same as the orphan’s pension (LPP, art. 25).

324. Disability and survivors’ pensions which have been paid for more than three years are linked to the price index until the ordinary retirement age. Old-age pensions are index-linked within the limits of the financial capacity of the insurance institutions (LPP, art. 36).

325. Persons who quit their insurance institution before any of the insured contingencies (old-age, death or disability) has arisen are entitled to an exit benefit or free transfer (LFLP,

art. 2). The purpose of this benefit is to maintain the existing level of insurance. It is generally paid to the new insurance institution. Insured persons exiting a premium-based insurance institution are entitled to receive the amount of the old-age pension credit or the mathematical reserve which they have accumulated in the institution. In other words, they receive the contributions which they and their employers have made, any other contributions, and the whole of the interest on these amounts (LFLP, art. 15). In premium-based institutions the free transfer benefit corresponds to the amount which, according to actuarial calculations, would be needed to buy back in the same institution the insured person's accumulated entitlements at the time of exit. In all cases, the Act guarantees a minimum amount for the free transfer benefit. This amount includes the contributions paid by the insured person increased by four per cent for each year of age after his or her twentieth year, up to a maximum of 100 per cent (LFLP, art. 17).

28.3. Financing of occupational old-age, survivors' and disability insurance.

326. This insurance is financed in principle on the basis of the capitalization system: insured persons possess an old-age pension credit which is increased by the amounts of interest and the old-age supplements fixed by law. The benefits are calculated on the basis of this old-age pension credit.

327. In principle, insurance institutions must at all times provide guarantees of their capacity to meet their commitments. They establish their own contributions and funding systems in such a way that the benefits provided for in the Occupational Insurance Act (LPP) can be paid as soon as they become payable (LPP, art. 65). Under the compulsory scheme the employer's contribution must be at least equal to the total contributions of the enterprise's entire workforce (LPP, art. 66).

29. Private insurance (third pillar)

328. Article 111, paragraph 4, of the Constitution provides that the Confederation, in conjunction with the cantons, shall encourage private insurance, including by means of fiscal measures and a policy of facilitating the purchase of property. Accordingly, the third pillar is constituted by the recognized forms of occupational insurance (insurance policies linked to insurance and banking institutions), which enjoy favourable tax treatment (component 3 (a)), by certain types of private insurance, such as life insurance and personal savings (component 3 (b)), and by ownership of housing.

329. Employees and self-employed persons may deduct from their taxable income any contributions paid in respect of the recognized forms of insurance under component 3 (a). On annual basis:

- Employees may deduct up to 6,365 francs;
- Self-employed persons may deduct up to 20 per cent of their earned income, up to a maximum of 31,824 francs.

30. Occupational accidents and diseases

330. Article 117 of the Constitution provides that the Confederation shall enact legislation on accident insurance. It may declare such insurance compulsory in general or for certain categories of person.

331. Compensation for loss of earnings and pensions are calculated on the basis of the sum insured. In the calculation of compensation for loss of earnings the sum insured is deemed to be the insured person's most recent pay level before the accident: the pay earned during the year preceding the accident is the decisive factor in the calculation of benefits.

The maximum amount of the sum insured is fixed by the Federal Council. It is currently 126,000 francs a year.

332. Further information will be found in Switzerland's report of 5 October 2006 on the application, in the period from 1 June 1999 to 31 May 2006, of the ILO Workmen's Compensation (Occupational Diseases) Convention (No. 18).

31. Unemployment benefits

333. The general principle of the Unemployment Insurance Act (LACI) holds that anyone who has paid 12 months of unemployment insurance contributions in the two years before he or she registers as unemployed is entitled to unemployment benefits. There are obviously exceptions to this principle, with regard in particular to young people having just completed their education, mothers who have to return to work, etc.

334. Further information will be found in the comments under article 6 of the Covenant (para. 141 *et seq.*) and in Switzerland's report of 5 October 2006 on the application of the ILO Employment Promotion and Protection against Unemployment Convention (No. 168).

32. Family allowances

335. Article 116 of the Convention provides that the Confederation shall take the needs of the family into account in the performance of its functions. It may support measures to protect the family, enact legislation on family allowances, declare mandatory affiliation in general or for certain categories of person, and make its financial support dependent on a fair contribution by the cantons.

336. For the moment, it is the cantons which have jurisdiction over family allowances (see paras. 376-387 of the initial report). There are therefore 26 different bodies of cantonal legislation specifying the modalities and amounts, the beneficiaries and the structure of family allowances. All the cantons provide family allowances for employees. Ten of them (Aargau, Appenzel Rhodes-Intérieures, Geneva, Grisons, Lucerne, St. Gallen, Schaffhausen, Schwyz, Uri, Zug) also provide family allowances for self-employed persons; five cantons (Fribourg, Geneva, Jura, Schaffhausen, Valais) also pay family allowances to persons who are not gainfully employed. Nine cantons (Geneva, Jura, Neuchâtel, St. Gallen, Schaffhausen, Solothurn, Vaud, Valais, Zurich) pay supplementary allowances to persons working in agriculture. Only persons working in agriculture and employees of the Confederation are paid family allowances under federal legislation.

337. There have been several political moves to harmonize family allowances.¹⁰⁵ On 24 March 2006 Parliament adopted the Federal Act on family allowances (Family Allowances Act (LAFam)), which harmonizes a number of provisions for the whole country. The cantons retain jurisdiction over all matters not regulated by the Act. The Act harmonizes *inter alia* the requirements for the award of family allowances, the range of children providing entitlement, the age limit, and the rules to be applied when several persons can assert a right to family allowances in respect of the same child. However, the Act covers only employees and persons without gainful employment. The self-employed are not included among the persons eligible under the Act, but the cantons may grant them family allowances. The Act provides for a children's allowance paid from birth until age 16 in an amount of at least 200 francs a month, together with a vocational training allowance of at least 250 francs a month payable from age 16 until the child completes his or her education but not beyond age 25. Only full allowances are paid, irrespective of the parent's degree of employment. The cantons may pay higher amounts and provide childbirth and adoption

¹⁰⁵ Fankhauser parliamentary initiative 91.411; people's initiative "For fairer children's allowances".

allowances. Subject to a few changes, family allowances for agricultural workers remain regulated by the Federal Act on family allowances of agricultural workers). The Family Allowances Act was put to a referendum and was approved by the people by a large majority (68 per cent) on 26 November 2006. It is to enter into force in 2009, in order to give the cantons time to bring their family allowances arrangements into line with the federal regulations.

338. Family allowances have been increased since the initial report. The leaflets “Types and amounts of family allowances” (as of 1 January 2008)¹⁰⁶ contain detailed information about the levels of family allowances in the different cantons.

Article 10. Protection of the family, mothers and children

33. Background

339. Since the drafting of the initial report Switzerland has ratified six agreements relating to article 10:

- The Convention on the Rights of the Child of 20 November 1989 (entered into force on 16 March 1997);
- The Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979 (entered into force on 26 April 1997);
- The ILO Minimum Age Convention (No. 138) (entered into force on 17 August 2000);
- The ILO Worst Forms of Child Labour Convention (No. 182) (entered into force on 28 June 2001);
- The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict of 25 May 2000 (entered into force on 26 July 2002);
- The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child pornography and child prostitution of 25 May 2000 (entered into force on 19 October 2006).

34. Protection of the family

34.1. Legal bases

340. Articles 41 and 116 of the Constitution contain the principal provisions on family policy. Article 41 lists the social objectives of family policy, while article 116 stipulates that the Confederation shall take the needs of the family into account in the performance of its functions and may support measures to protect the family.

341. The right to marry and found a family is established in article 14 of the Constitution. Swiss law contains no broadly applicable definition of the family, but the Federal Court has handed down many decisions on questions of immigration and family reunification. Further information on this subject will be found in paragraph 253 of Switzerland’s third periodic report on the application of the International Covenant on Civil and Political Rights.

¹⁰⁶ OFAS, “*Genres et montants des allocations familiales*” (Types and amounts of family allowances) (www.bsv.admin.ch/themen/zulagen/00059/00582/index.html?lang=fr).

342. Article 8, paragraph 3, of the Constitution enjoins the Legislature to establish gender equality in the family; this provision has given rise in recent years to a number of amendments to the Civil Code:

- The new provisions adopted in 1994, which standardized and lowered the age of majority and the age of marriage, entered into force in 1996;
- The new Divorce Act of 1998, which entered into force in 2000. It contains inter alia a revision of the grounds for and the economic consequences of divorce.

34.2 The situation of families

343. The structure of households and the forms of family life have seen many changes in recent years. In 2000, households consisting of a married couple and children accounted for 44.6 per cent (52.5 per cent in 1990) of persons living in a family environment. The proportion of single-parent families remained stable (5.1 per cent of all households), but the proportion of unmarried couples increased (1.1 per cent, as against 0.9 per cent in 1990). The age at which people marry has also risen, for both women and men, as has the age at which the first child is born (an average of 29 years for women and 32 years for men). The tendency to defer the decision to have a child is due in part to an increase in the time which women spend studying, the increased importance of financial considerations, and the persistent difficulty of reconciling work, education and family.

344. The diversity of family lifestyles in households formed by couples has increased sharply in recent years. The commonest arrangement in today's Switzerland is for both parents to work, the father full-time and the mother part-time. More women have jobs than 10 years ago, but their family situation has a big impact on the hours they work. Marriage, and especially the arrival of children, puts great pressure on working women but not on working men.

345. Some 80 per cent of women living in a household with children aged under 15 years bear the burden of domestic chores alone. Fewer middle-aged couples share the housework than is the case among younger childless couples. It is not until retirement age that the proportion of spouses sharing domestic chores increases slightly. In total, women spend more than twice as much time as men on housework and the family (an average of 30 hours a week, compared with 17 hours for men). Men are more involved in unpaid or charitable activities in associations and organizations, while it is clear that many more women than men offer free help to relatives and acquaintances (29 against 17 per cent).

346. At the end of 2000 a third of the families living in Switzerland were there as a result of immigration. The number of families in which the father or mother was born abroad or does not have a Swiss passport has increased by a third since 1970.

347. Families, in particular single-parent families and couples with two or more children, are clearly more likely than the rest of the population to fall victim to poverty. Almost a quarter of single-parent families live below the poverty threshold. They resort to social assistance much more than the rest of the population. These families have lower incomes and spend more of their incomes than childless families. The cost of accommodation and child-related expenses are the biggest items in their budgets.¹⁰⁷

¹⁰⁷ OFAS, "*Rapport sur la situation des familles 2000: Structures nécessaires pour une politique familiale qui répond aux besoins*" (Report on the situation of families 2000: arrangements needed for a family policy which responds to the needs), 2004 (annexed hereto).

34.3. Right to marry without coercion

348. As stated in the initial report, the age of civil majority and the legal age of marriage were lowered to 18 years by an amendment of the Civil Code (which entered into force on 1 January 1996) (Civil Code, art. 96). This age provision applies to men and women without exception. More detailed information about the changes in matrimonial law will be found under article 3 (para. 77) and under article 23 in Switzerland's second and third periodic reports on the application of the International Covenant on Civil and Political Rights (second report, paras. 192-196; third report, paras. 287-289).

349. There are currently no reliable statistics on forced or arranged marriages in Switzerland. The only study carried out to date found that the number of such marriages totalled about 17,000. One third of the victims were minors.¹⁰⁸ In its reply of 20 September 2006 to the motion of City Councillor Rania Bahnan Buechi "Fewer forced marriages in the City of Berne", the City of Berne Executive stated that the municipal aliens police had instituted proceedings in 80 cases of forced marriage in 2005 in the federal capital. It estimated the actual number at about 450 cases over the previous five years, with a tendency for the problem to increase.

350. In its postulate of 9 September 2005 the Political Institutions Committee of the National Council commissioned the Federal Council to study how to provide for the criminal and civil sanction of forced and arranged marriages between persons living in Switzerland and to submit its conclusions in a report. In this report, which was delivered on 14 November 2007, the Federal Council proposed a number of measures, including legal measures, to combat the problem. It proposed the insertion in the Civil Code and the Civil Status Ordinance an explicit provision on the absolute necessity for both the prospective spouses to give their free consent before a marriage takes place. Coercion at any time should also constitute a ground for annulment. Lastly, marriages between persons aged under 18 should no longer be accorded international recognition. However, the Federal Council considered that the criminal law is already well armed: violators are liable to automatic prosecution under article 181 of the Penal Code and may be sentenced to deprivation of liberty for up to three years or to fines. The extent to which forced marriages between two foreigners concluded outside Switzerland falls under the jurisdiction of Swiss criminal law remains to be established. Such marriages might perhaps be treated in the same way as sexual offences committed abroad against children aged under 14 (Penal Code, art. 5, para. 1 (b)).

351. The Federal Council also outlined other measures, including information and awareness campaigns, aimed at immigrant communities and persons who may encounter forced marriages in the course of their work. Specific information might also be given to prospective spouses during the period before the marriage and to foreigners of both sexes, before or immediately after their arrival in Switzerland. Other proposals address the question of support for initiatives by migrant organizations and cooperation between the authorities themselves (rights and duties of communication) and between the authorities and elements of civil society. If necessary, it may be possible to introduce integration agreements containing a requirement for married couples entering Switzerland for family reunification to learn one of the national languages, provide specific advice and assistance, establish telephone hotlines, disseminate information on the Internet, and furnish targeted and confidential assistance by various means to proven and potential victims of forced

¹⁰⁸ Surgir Foundation, "*La prévalence du mariage forcé en Suisse: Rapport de l'enquête exploratoire*" (The incidence of forced marriages in Switzerland: Report of the exploratory survey) (Lausanne, 2006), p. 11.

marriage. The Federal Council pointed out in conclusion that the provisions of the criminal, civil and aliens legislation must be enforced systematically.¹⁰⁹

34.4. Family protection measures

352. Most of the family policy measures adopted by the Confederation address economic matters: taxation, family allowances, needs-linked benefits, and maternity benefits. The socio-economic areas addressed include the promotion of housing construction, financial support for the provision day-care facilities for children, and the Confederation's commitment with regard to pregnancy checks, protection of children and protection against domestic violence.

353. The new Family, Generations and Society Unit, which replaced the Centre for Family Matters on 1 January 2006 (see the initial report, para. 415), has federal jurisdiction over matters relating to the family (family allowances, financial support for the provision of day-care facilities, family reporting, secretariat of the Federal Commission for Coordination of Family Questions, etc.), to children (children's rights, protection of children, etc.), to young people (out-of-school activities, Youth Parliament, secretariat of the Federal Commission for Children and Young People, etc.), to the elderly (assistance for the elderly), to relations between the generations, and to social policy in general.

354. Since family taxation is based on the principle of the joint taxation of the spouses' incomes, married couples who both work suffer discrimination in relation to unmarried couples in the same economic circumstances (see para. 400 of the initial report). Following the failure of several attempts at reform, Parliament adopted in the autumn of 2006 an emergency measure designed to reduce this discrimination sharply. A consultation exercise was launched early in 2007 on the fundamental reform of the taxation of married couples and families (shift to individual taxation or retention of the joint taxation of spouses). However, this exercise did not produce a clear result in favour of either method of taxation. Accordingly, the forthcoming reform is now to address the question of tax relief for families with children.

355. Detailed information on the family allowance arrangements will be found under article 9 (para. 336 *et seq.*).

356. In recent years 11 cantons (Zurich, Lucerne, Glarus, Zug, Fribourg, Schaffhausen, St. Gallen, Grisons, Aargau, Ticino, Vaud) have introduced benefits for the mothers – and sometimes the fathers – of small children when the family is experiencing financial difficulties. These “in case of need” benefits are based on the model of supplementary benefits.¹¹⁰ They represent a sort of compromise between social security and social assistance: there is of course an entitlement to benefits when the legal requirements are met; but, unlike insured benefits, entitlement to needs-related benefits and their amount depend on the beneficiary's income and assets.

357. A system of federal financial aid for the provision of day-care facilities for children has been introduced. The Federal Act of 4 October 2002 on financial aid for the provision of day-care facilities for children entered into force on 1 February 2003. It established an eight-year promotional programme to encourage the provision of day-care places and thus make it easier for parents to reconcile family with work or education. Parliament allocated a credit of 320 million francs for the eight years of the programme. The requests for financial aid approved up to 31 January 2007 have resulted in the creation of 13,000 day-care places.

¹⁰⁹ “Répression des mariages forcés et des mariages arrangés” (Suppression of forced and arranged marriages), Report of the Federal Council of 14 November 2007 in response to postulate 05.3477 of 9 September 2005 of the Political Institutions Committee of the National Council (www.dffp.admin.ch).

¹¹⁰ See paragraph 300 *et seq.* above.

Since 1 October 2007 the Confederation has also been authorized to provide financial aid under this programme for pilot projects run by the cantons and communes which issue day-care vouchers to private individuals.

358. Pregnancy and sex counselling is now offered by 75 family planning centres, 22 counselling centres run by Swiss Aid against AIDS, and some 20 private organizations. Attention should also be drawn to several private initiatives. The Swiss Foundation for Sexual and Reproductive Health (PLANES)¹¹¹ is a voluntary organization which brings together and represents experts in these fields, in particular from family planning centres and sex counselling centres. Its publications include a regularly updated list of bodies recognized under the Federal Act on pregnancy advice centres and cofinanced by the Confederation.

359. The cantons and communes (more specifically the parental counselling centres and youth and social services) and private organizations also offer parental counselling and other advice as well as various other family services. Voluntary organizations working in this field receive financial support from the Confederation.

35. Protection of maternity

360. After three failures, the maternity benefit was finally approved by popular vote on 26 September 2004. It came into effect on 1 July 2005. Further information will be found under article 9 (para. 261 *et seq.*).

361. Information on violence against women will be found under article 12 (para. 439).

36. Protection of children and adolescents

36.1. Protection of children

362. The provisions of the new divorce legislation, which entered into force on 1 January 2000, provide a better guarantee of children's welfare. Divorced parents are now able to request joint custody of their children. This legislation also applies to unmarried couples. Couples divorced before 1 January 2000 may also seek joint custody. Parents must agree on their degree of participation in the custody of their children and on the division of maintenance. Joint parental authority must also be compatible with the child's welfare. Under certain circumstances the courts may now order the appointment of a guardian to ensure the protection of the interests of the children affected by the divorce. Lastly, the new divorce legislation establishes children's fundamental right to be heard.

363. The Family, Generations and Society Unit of the Federal Social Security Office (OFAS)¹¹² attends to the Office's information and coordination functions and accords particular attention to prevention activities, in collaboration with child-protection organizations. These activities include, for example, the provision of information about assistance and training and of support for projects on the prevention of the maltreatment of children and for the conduct of research.

364. Information on the maltreatment of children and on the child-protection measures will be found under article 12 (para. 417 *et seq.*).

36.2. Protection of young workers

365. Since the submission of the initial report Switzerland has ratified the ILO Minimum Age Convention (No. 138 of 1973) and the Worst Forms of Child Labour Convention (No.

¹¹¹ www.planes.ch.

¹¹² See paragraph 354 above.

182 of 1999). Further information will be found in Switzerland's reports to the ILO monitoring bodies on the application of these two instruments.¹¹³

366. Since the entry into force of the revised Employment Act (LTr) the minimum age provisions have applied equally to farming, horticulture, fisheries and private households (LTr, art. 2, para 1 (d) to (g)).

367. The Ordinance on the protection of young workers (Employment Act Ordinance 5 (OLT 5) of 28 September 2007, which has been in force since 1 January 2008, prohibits the employment of young people aged under 18 in hazardous work (OLT 5, art. 4). Authorization may be granted if the hazardous work is performed as part of vocational training recognized by the competent authorities and is necessary for the attainment of the purposes of initial vocational training. This is why the performance of such work is regulated by the training ordinances, which contain provisions specifying the safety measures governing the authorization of hazardous activity specific to the occupation in question. The list of activities regarded as hazardous is contained in the Ordinance on the performance of hazardous work by young people issued by the Federal Department of Labour on 4 December 2007. Authorization may be granted only in respect of young people aged over 16. The definition of hazardous work is based on ILO Convention No. 182 and the United Nations Convention on the Rights of the Child.

368. The children of Traveller families often start to participate in the family's economic activity (usually small handicrafts and small-scale trade) before the end of their compulsory schooling. The minimum age provisions of the Employment Act (LTr, art. 4, para. 1) are not applicable to these children since they work in exclusively family enterprises.¹¹⁴ "Exclusively family enterprise" means an enterprise in which the only employees are the spouse of the head of the enterprise, his or her ascendant and descendant relatives and their spouses, and the spouse's children or adopted children. If a family enterprise employs persons other than members of the family, article 29, paragraph 1, and articles 30 and 31 of the Employment Act apply equally to the child members of the family (OLT 1, art. 3). The enterprise is regarded in such cases a mixed family enterprise. However, children are not left without protection against the risk of exploitation in an exclusively family enterprise. The guardianship authority is required to take the necessary steps to protect children if their development is threatened and their parents do not take corrective action themselves (Civil Code, art. 307 *et seq.*).

Article 11. Right to an adequate standard of living

37. Living standards and poverty

37.1. Developments in the situation

369. Switzerland has always been highly ranked among the countries members of the Organization for Economic Cooperation and Development (OECD), with a per capita GDP of \$35,650 in 2005, but it has very marked inequalities of income and especially of assets. In 2005 the richest 10 per cent of households received almost a quarter of total income, while the poorest 20 per cent received only 9 per cent.¹¹⁵ The inequalities in the distribution

¹¹³ The most recent reports are dated 26 September 2005.

¹¹⁴ Circular of the Secretariat of State for the Economy on the Act of November 2000 on child labour and the protection of young workers: entry into force of ILO Conventions Nos. 138 and 182.

¹¹⁵ OFS, "Enquête sur les revenus et la consommation (ERC 2005)" (Incomes and consumption survey) (Neuchâtel, 2007).

of assets are even more marked. A 2002 study found that the richest 3 per cent had assets equal to the total assets of the remaining 97 per cent.¹¹⁶

370. The poverty rate oscillated between 7.2 and 9.1 per cent in the first half of the present decade. In 2005, 8.5 per cent of the population (360,000 persons) were living below the poverty threshold.¹¹⁷ More women than men are affected by poverty. In 2005 the poverty rate in the 20-59 age group was 10 per cent for women and 7.2 per cent for men.¹¹⁸ This difference is explained in part by the fact that women are over-represented in some of the particularly vulnerable groups such as single-parent families and persons employed in low-paying branches of the economy (for example, hotels, sales, domestic workers). A very large number of families have incomes at the poverty threshold, so that a slight shift of the threshold causes a significant change in the poverty rate.¹¹⁹

371. The following categories are particularly vulnerable to poverty: children and adolescents, young adults, single-parent families, large families, foreigners, and persons experiencing employment difficulties (long-term unemployment, insecure jobs, etc.). However, sound protection against poverty in old age is provided by the social security system.

372. Unemployment, in particular long-term unemployment, and the increasing forms of insecure employment are leading causes of loss of financial independence, but more and more families are having to turn to social assistance to supplement incomes which are insufficient despite full-time employment. In recent years it has been the working poor¹²⁰ and their families who have attracted most attention in the poverty debate in Switzerland. There are 125,000 persons classified as working poor in the 20-59 age group – a rate of 4.2 per cent (2005 figures).¹²¹ In 2004, 7.6 per cent of the women working full-time and 1.5 per cent of the men received a net monthly income of 3,000 francs or less. These rates were 41.2 per cent for women and 13.6 per cent for men receiving a net monthly income of up to 4,000 francs.¹²²

¹¹⁶ U Mäder and E. Streuli, “*Reichtum in der Schweiz, Portraits – Fakten – Hintergründen*” (Rotpunktverlag, Zurich, 2002).

¹¹⁷ The poverty threshold is calculated on the basis of the revised rules of the Swiss Confederation of Social Action Institutions (CSIAS), which posit a lump sum of 960 francs for maintenance of one person. Basic medical costs and the cost of housing are added to this amount, plus 100 francs for each member of the household aged 16 or older. This produces for a single person an average poverty threshold for Switzerland of 2,200 francs. This threshold is 4,600 francs for a couple with two children. All persons in the 20-59 age group living in a household whose income, after deduction of social security contributions and taxes, is below the poverty threshold are deemed to be poor.

¹¹⁸ OFS, “*La pauvreté des personnes en âge de travailler. Taux de pauvreté et de working poor parmi les personnes âgées de 20 à 59 ans, en Suisse, entre 2000 et 2005*” (Poverty and persons of working age. Poverty and working-poor rates in the 20-59 age group in Switzerland between 2000 and 2005) (Neuchâtel, 2007). (See preceding footnote.)

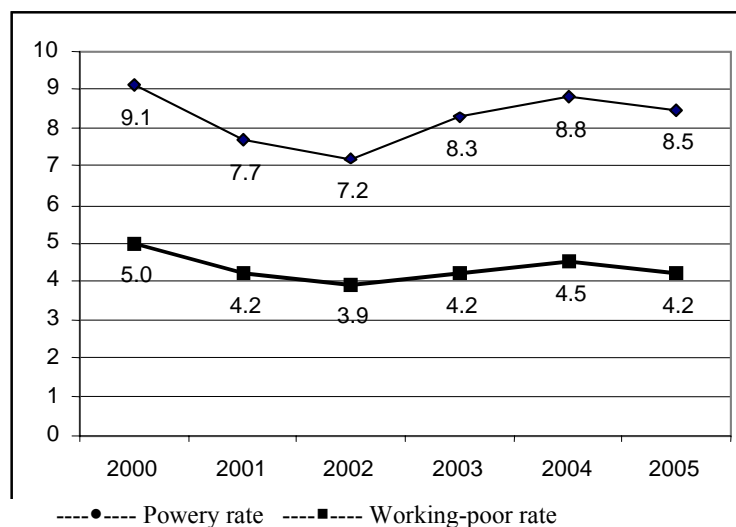
¹¹⁹ The figures given here are based on the new threshold defined by the Federal Statistical Office and are much lower than the figures presented in Switzerland’s initial report, which were calculated on a different basis.

¹²⁰ The working poor are economically active persons (working at least one hour a week) in the 20-59 age group who live in a household which has at least one full-time income but whose total income is below the poverty threshold.

¹²¹ (See footnote 117.)

¹²² OFS, “*Enquête suisse sur la structure des salaires*” (Swiss survey of pay structure) (Neuchâtel, 2006).

Graph 2.
Evolution of poverty and working-poor rates



Source: OFS, Swiss Working Population Survey (ESPA), 2000-2005.

373. A few years ago the elderly constituted the category most seriously affected by poverty, but now poverty is more of a young person's problem. The number of children affected by poverty in Switzerland is not known, but the social assistance statistics show children to be particularly vulnerable: they account for about one third of beneficiaries and constitute the largest group. In the 10-17 age group, a very large number of children of foreign origin suffer poverty.¹²³

374. For some years now adolescents and young adults have also appeared among the groups most vulnerable to poverty. A large proportion of them (4.5 per cent) receive social assistance. This rate is as high as 7.3 per cent in the towns. Furthermore, 4.3 per cent of women in the 18-25 age group receive social assistance benefits.¹²⁴ This state of affairs is due in particular to a shortage of trainee posts in the labour market and to the difficulty of finding a first job. Some 70 per cent of the young adults in the 18-25 age group in receipt of social assistance have no qualifications. Adolescents and young adults from immigrant backgrounds are especially vulnerable to poverty for various reasons: language problems, poor integration, parents' lack of education, etc.

375. A study produced at the request of the Federal Commission on Women's Issues published in June 2007 found that women are twice as likely as men to fall into poverty following separation or divorce when the couple's income is insufficient to support two households. This is the reason for the courts' current practice of not encroaching on the

¹²³ OFS, "Statistique Suisse de l'aide sociale 2005" (Swiss social assistance statistics 2005) (Neuchâtel, 2007). The number of beneficiaries of social assistance should not be confused with the poverty rate. Such beneficiaries are persons who submit a successful application to the social services of their commune. There are certainly families which do not receive social assistance benefits even though they would be entitled to them. The poverty statistics measure, among a representative sample, the number of persons on low incomes living below a previously determined threshold.

¹²⁴ OFS and BFEG, "Facteurs de risque chez les jeunes femmes à l'aide sociale, analyse approfondie de la statistique Suisse de l'aide sociale en 2004" (Social assistance risk factors among young women, detailed analysis of Swiss social assistance statistics in 2004) (Berne/Neuchâtel, 2007).

essential minimum income of the person required to pay maintenance, who in most cases is the man as a result of the traditional division of roles between the sexes. Accordingly, divorced women are more likely to be receiving social assistance than divorced men, and in much larger amounts.¹²⁵

376. A study published in 2003 and updated in 2007¹²⁶ highlighted the fact that in Switzerland poverty also depends on where people live. Families of the same size with the same gross income find themselves with extremely variable amounts of disposable income, depending on their canton of domicile, once all the applicable transfers and tax deductions have been taken into account. The federal system is the cause of considerable disparities.

37.2. Measures taken or contemplated

377. Since 1995, when Decision 121 I 367 was adopted, the Federal Court has recognized the right to minimum conditions of subsistence as an unwritten constitutional right. This judicial ruling was codified in article 12 of the new Federal Constitution of 18 April 1999. Article 12 accords to all persons in situations of hardship who are unable to provide for their needs the right to attention and assistance and to be furnished with the essential means of living a life of human dignity. This fundamental right guarantees only the benefits needed for maintaining a decent standard of living and avoiding the beggarly status unworthy of the human condition.¹²⁷ It is intended to benefit the outcasts of society and newly arrived asylum-seekers and, as the Federal Court ruled on 18 March 2005, asylum-seekers who have been denied entry on the ground of “non-consideration” (*non-entrée en matière*) but refuse to comply with deportation orders.¹²⁸

378. Social protection is based in Switzerland on a social insurance system operated under the aegis of the Confederation. This system has two types of means-tested benefit which are of great importance for low-income families:

- *Supplementary benefits* under old-age and survivors’ insurance (AVS) and disability insurance (AI) are paid when pensions and other income are insufficient to cover essential needs (recognized expenditure), up to a maximum amount and with a distinction made between persons living at home and persons living in sheltered accommodation. In 2005, 12 per cent of the recipients of old-age or survivors’ pensions and 29 per cent of the recipients of disability pensions were in receipt of a supplementary benefit;¹²⁹
- Compulsory health insurance financed by individual premiums not based on income, which vary considerably by canton and insurer. These premiums constitute a considerable burden on households, on families in particular. The legislation accords to the cantons responsibility for awarding *premium reductions* to insured persons of modest resources in the form of public (federal and cantonal) subsidies. In the case

¹²⁵ Elisabeth Freivogel, “*Contribution à l’entretien après le divorce – soutien financier par des proches parents – aide sociale. Lorsque après une séparation ou un divorce le revenu familial ne suffit pas pour deux ménages: jurisprudence relative aux cas de déficit et modifications nécessaires*” (Contribution to maintenance after divorce – financial support by close relatives – social assistance. When after a separation or divorce the family income is insufficient for two households: jurisprudence of cases of deficit and changes needed) (2007) (www.frauenkommission.ch).

¹²⁶ C. Knupfer and K. Wyss, “*Couverture du minimum vital dans le fédéralisme en Suisse*” (Meeting minimum subsistence needs in the Swiss federal system) (CSIAS, Berne); C. Knupfer and O. Bieri, “*Impôts, transferts et revenus en Suisse*” (Taxes, transfers and incomes in Switzerland) (CSIAS, 2007).

¹²⁷ ATF 121 I 367.

¹²⁸ ATF 131 I 166.

¹²⁹ OFAS, “*Statistique des prestations complémentaires à l’AVS et à l’AI 2005, 2007*” (AVS and AI supplementary benefit statistics 2005) (Neuchâtel, 2007).

of children and young adults from low-income families still in education, the reduction must be at least 50 per cent.

379. Awareness of the problem of poor workers and the risk of job insecurity associated with having children caused family policy, a chiefly cantonal matter, to be placed on the federal agenda. Parliament is considering a bill on the introduction of supplementary benefits for low-income families. In addition, a programme to promote the creation of day-care places for children was established in 2003 to make it easier for people to reconcile work and family.

380. Social assistance, which was conceived as a support system for individuals and families unable to provide for their basic needs by their own means or from public allowances or private support, increased considerably during the 1990s. The number of beneficiaries and the volume of spending on social assistance doubled during that decade. A total of 237,500 persons were receiving social assistance in 2005,¹³⁰ and spending amounted to 3 billion francs.

381. Social assistance is a cantonal matter; responsibility for its provision rests chiefly with the communes. It is intended not only to guarantee a minimum level of subsistence for needy persons but also to facilitate their economic and personal independence and, even more, to secure their social integration. There is in principle no subjective right to a specific social assistance benefit.

382. In the absence of a framework federal social assistance act, the parliamentary initiatives and debates have produced no result, and social assistance schemes vary considerably from one canton to another. However, the Swiss Conference of Social Action Institutions (CSIAS), a private organization, publishes recommendations for the social security authorities of the cantons and communes. Although not binding, these recommendations are generally incorporated in cantonal legislation and are put into practice. They establish inter alia the amounts required to cover essential needs. This coverage goes further than the constitutional right to a life compatible with human dignity; it sets a standard amount of assistance above the minimum subsistence level.¹³¹ The recommended amount is 960 francs a month for a single person (2005), to which are added housing and basic medical costs. The CSIAS rules were revised in 2005 and now give more emphasis to integration in society and encouragement to take up paid work. Persons without gainful employment who make efforts in the direction of social integration or finding a job receive an additional integration allowance. Persons who are unable to make an effort at social integration although willing to do so receive a minimum integration allowance. Earnings from gainful activity are subject to tax relief.

383. The objective of integration has generally gained ground in social policy. For some years now the collaborative efforts made by social insurance institutions (in particular the institutions providing unemployment and disability insurance) and social assistance and vocational guidance bodies have been designed to facilitate the reintegration of unemployed persons. The possibilities of prevention and early intervention were moreover addressed in the fifth revision of the disability insurance legislation.¹³² The collaboration among the

¹³⁰ OFS, “*Statistique de l’aide sociale 2005*” (Social assistance statistics 2005) (Neuchâtel, 2007).

¹³¹ CSIAS, “*Aide sociale: concepts and normes de calcul*” (Social assistance: concepts and rules for its calculation) (Berne, 2005 edition).

¹³² See paragraph 312 above.

cantons with regard to the social integration and employment of young people has been strengthened.¹³³

384. The National Council's Committee on Social Security and Public Health (CSSN-CN) has taken up the problem of poverty several times in recent years and in January 2006 it tabled several motions in Parliament.¹³⁴ As a result, Parliament decided to draft a national plan to combat poverty. A strategy to tackle poverty is currently being drafted under the auspices of the Federal Social Insurance Office (OFAS), with the support of the various public and private agencies concerned. This work is focused on children of school and preschool age, young people in education and about to take their first job, and single-parent and working-poor households.

385. Switzerland has developed its poverty statistics considerably over the past 10 years, for it is essential to have reliable data for obtaining an overview of the problem, analysing it and taking effective measures to correct it. The following sources may be mentioned in this connection:

(a) Social assistance statistics, which provide detailed annual information on beneficiaries and benefits;

(b) Statistics on the working poor, established every year on the basis of the Swiss Working Population Survey (ESPA), which provide information about poor workers;

(c) Statistics on the quality of life, which provide information about changes in the standard of living, living conditions, and the population's social integration on the basis of various population and household surveys conducted by the Federal Statistical Office (OFS).

Nevertheless, a comprehensive overview of the phenomenon of poverty in Switzerland is not as yet available. The OFS is trying to fill this gap by means of various projects designed to provide additional data in the medium term. Several studies carried out under the "Problems of the social State" national research programme have thrown light, from different angles, on the relationship between the labour market, integration and the subsistence minimum.

38. Right to adequate food

386. Average food consumption in the period 2001-2002 amounted to 2,958 calories, i.e. 89 grammes of protein per person per day, including 38 per cent vegetable products and 62 per cent animal products (13 per cent of total energy), 380 grammes of carbohydrates (52 per cent of total energy) and 101 grammes of fat (36 per cent of total energy). The changes in eating habits over the past 20 years have been marked by a decrease in the consumption of milk and fruit.

Table 56

Typical evolution of eating habits in Switzerland (in kg per inhabitant)

	1979/80	1987	1994/95	2001/02
Céréales et riz	69,9	72,2	74	72,7
Pommes de terre	47,6	44,3	47,1	43,8

¹³³ See "Insertion professionnelle et social des jeunes: position CDIP, CDAS et CDEP" (Social integration and employment of young people: position of CDIP, CDAS and CDEP) dated 13 September 2007 (www.sodk-das-cdos.ch/neu/Dokumente/pdf/Positionspapier_f.pdf).

¹³⁴ Report of the Committee on Social Security and Public Health of 13 January 2006 concerning motions 06.3001 and 06.3002 and postulate 06.3003.

	1979/80	1987	1994/95	2001/02
Sucre	40,9	43	43,1	47,7
Légumes	83,1	91,8	91,9	90,2
Fruits	101	88,5	84,8	83,7
Viande	62,8	65,7	57,7	52,7
Poisson	5,8	7,7	7,9	7,9
Oeufs	12	12,9	10,6	10,5
Lait de consommation	122,4	110,7	96,8	83,9
Yogourt	13,4	16,7	16,9	16,5
Fromage	13,8	14,4	16,9	20,7
Crème	8,8	10,1	9,6	9,3
Huile et graisses animales	9,9	9,4	8,6	7,3
Huiles et graisses végétales	15,0	12,3	13,6	15,3

387. The fifth report on nutrition in Switzerland was published in 2005. It contains a comprehensive and detailed analysis of the nutritional situation and related problems. Campaigns to raise awareness of the need for a healthy diet were carried out in many cantons by the Federal Public Health Office (OFSP).¹³⁵

388. The number of cases of food poisoning due to salmonella declined from 7,732 to 2,233 in the 10-year period 1992-2003.

389. In principle it is the function of private enterprise to keep the country supplied with essential goods and services. Article 104, paragraph 1 (a), of the Constitution provides that the Confederation shall ensure that agriculture makes a substantial contribution to the security of the population's food supply by delivering an output which satisfies both the requirements of sustainable development and market demand. The authorities exercising oversight the country's economic supply system (AEP) are responsible for preventing crises of supply. They have to ensure that economic activity continues in the event of shortages which the private sector cannot make good.

390. The AEP strategy is determined by the country's economic needs and the current risks. Nowadays this strategy focuses only on short-term sectoral disruptions in the core areas of supply such as food, energy, and medical products and, to a lesser extent, infrastructure. In the event of a supply crisis, 100 per cent of the requirements of the foodstuffs market (i.e. 3,000 kilocalories) can be met for six months. The aim is to prevent sudden unpredictable drops. This aim has to be achieved by means of supply-side measures (drawing on mandatory stockpiles, import incentives, and channelling of farm and foodstuffs production). If 100 per cent of the market requirements still cannot be met after six months, the volume of foodstuffs marketed and consumed may be limited by means of demand-side measures (introduction of quotas, rationing and similar measures). Commercial margins may also be cut in order to avoid damaging price rises. The tools and measures for guaranteeing the food supply must be selected in such a way as to facilitate the attainment of the objectives as far as possible: the priorities must be set only when a crisis arises and reflect the means best suited to the situation and the requirements.

391. On the international scene, Switzerland made a firm commitment at the beginning of the present decade to the development of voluntary guidelines to support the gradual realization of the right to adequate food in the context of national food security. It has taken

¹³⁵ See paragraph 411 above.

an active part in the negotiations conducted on this subject under the auspices of the Food and Agriculture Organization of the United Nations (FAO). It has accorded particular importance to the participation of civil society in these negotiations. It has also advocated that attention should be paid to the international aspects of national food security and to the commitments arising under international humanitarian law, the Geneva Conventions in particular.

39. Right to housing

39.1. Housing conditions

392. At the end of 2000 Switzerland had 1,462,167 housing units, i.e. 13 per cent more than in 1990. Most of this housing was owned by private individuals. In 2000, the owners of the property occupied by 18.4 per cent of households were not Swiss. The proportion of rental tenants, 59 per cent in the case of Swiss nationals, was much higher in the case of foreigners (85 per cent).

393. Accommodation has become a rare commodity, especially in the towns and large built-up areas. The average size of households, i.e. the number of its members, has continued to decline. The figure was 2.3 persons in 2000 (2.4 in 1990). The average household living space increased from 88 to 99.4 square metres between 1980 and 2000. The figure for Swiss nationals alone is 103.2 square metres; it is only 82.7 for foreign households. Per capita living space increased from 39.2 to 43.6 square metres between 1990 and 2000.

394. Rents have continued to rise in recent years. A three-room apartment rented for an average of 761 francs in 1990 but the same apartment cost 976 francs in 2000. Large regional disparities persist: average rents are 11.6 per cent lower in rural areas than in the towns.

395. The proportion of disposable household income spent on housing has changed little in recent years. At an average of about 21 per cent, it represents the biggest item in consumer spending. However, the proportion is much higher, at 41 per cent, for low-income families, which must therefore make sacrifices in other important areas.¹³⁶

396. The proportion of persons satisfied or very satisfied with their accommodation increased between 1998 and 2002 from 77 to 81 per cent. Rural dwellers and the elderly are generally speaking more satisfied with their accommodation than city dwellers and young people.

397. A typical feature of the housing situation of Travellers in Switzerland is the lack of sites for short- and longer-term stays. Detailed information on this problem will be found in paragraphs 29-45 of Switzerland's second report on its application of the Council of Europe's Framework Convention for the Protection of National Minorities.¹³⁷

398. Persons with disabilities are generally not disadvantaged by having to live in smaller quarters. There is certainly no appreciable difference between persons with disabilities and other persons in terms of the ratio of adults per household to number of rooms, but this consideration does not address the fact that persons with disabilities often need more space.

¹³⁶ OFS, "Enquête sur les revenus et la consommation" (Incomes and consumption survey). Low-income families are families in the bottom 20 per cent of the overall distribution of gross income.

¹³⁷ Second report of Switzerland on the application of the Council of Europe's Framework Convention for the Protection of National Minorities, January, 2007.

Graph 4.
Housing conditions, 1980 and 2000

						
	No. of housing units		Living space m ² per person		Rent Francs per m ²	
	1980	2000	1980	2000	1980	2000
Overall average	9,3	8,5	34,0	43,6	6,0	13,3
Single parent	↘	↘	↘	↘	↗	↗
Swiss	↘	↘	↗	↘	↗	↗
Foreigners	↘	↓	↘	↓	↘	↘
Single young people	↘	↘	↘	↓	↗	↗
Swiss	↗	↗	↘	↓	↗	↗
Foreigners	↘	↘	↓	↓	↗	↗
Single young people	↘	↘	↑	↑	↓	↓
Swiss	↘	↘	↑	↑	↓	↘
Foreigners	↓	↓	↗	↑	↓	↓
Old people	↗	↘	↑	↑	↗	↑
Swiss	↗	↘	↑	↑	↗	↑
Foreigners	↘	↓	↑	↑	↘	↗
Swiss	↗	↗	↗	↗	↗	↗
Foreigners	↘	↘	↘	↓	↘	↘
Central and West Europe	↘	↘	↗	↗	↓	↓
South-west-Europe	↘	↘	↓	↓	↗	↗
Former Yugoslavia / Turkey	↘	↘	↓	↓	↗	↗
Africa	↓	↓	↘	↓	↓	↓
Asia	↓	↓	↘	↓	↓	↓

Source: OFL and OFS, "Logement 2000 – Etude détaillée du recensement des bâtiments et des logements"
(Housing 2000 – Detailed analysis of the buildings and housing census) (Granges, 2005), p. 58.

39.2 Action taken by the Confederation

399. On 14 March 1997 the Swiss Tenants' Association proposed a people's initiative on fair rents. The Federal Council and Parliament rejected this proposal and tabled counter-initiatives. The people and the cantons rejected the initiative dated 18 May 2003. The counter-initiative tabled by Parliament, on which tenants' associations had successfully

called for a referendum, was submitted to a vote on 8 February 2004. It was also rejected by the people.

400. Ever since 1975 the Confederation has been encouraging housing construction and ownership under the Federal Act on the promotion of housing construction and ownership (LCAP). The last applications for federal aid under the Act were approved in December 2001. The loans granted under the Act will continue for another 25 to 30 years, and the Act will remain their legal basis.

401. On 21 March 2003 Parliament adopted a new Federal Act on the promotion of low-cost rental accommodation (Housing Act (LOG)). The new Act provides for direct and indirect support, but the direct loans furnished by the Confederation were suspended until the end of 2008 pursuant to decisions taken under the 2003 budget reduction programme. Early in 2007 the Federal Council decided that the Housing Act should be revised in order to authorize only indirect federal support for housing construction.

402. The Confederation and the cantons, and sometimes third parties, provide financial assistance on the basis of the Federal Act of 20 March 1970 on the improvement of housing in mountain regions (LALM). Financial assistance was furnished in this way until the entry into force of the revised financial equalization arrangements and the new distribution of functions between the Confederation and the cantons (RPT). This matter has been entirely in the hands of the cantons since 2008, and the Confederation will not provide any more loans apart from those guaranteed for a term of up to 20 years.

403. The Federal on agriculture (Agriculture Act (LAgr)) of 1998 authorizes the Confederation to make interest-free loans to farmers, chiefly for the construction or refurbishment of their housing. On average, these loans are repaid within 16 years. Over the past 10 years an annual average of 38.7 million francs was lent under this Act for the construction or refurbishment of 400 houses.

Article 12. Right to health

40. Health of the general population

40.1. Physical health

404. A joint study of the Swiss health system made by the Organization for Economic Cooperation and Development (OECD) and the World Health Organization (WHO) concluded that most of the population are in good health.¹³⁸ This conclusion is consistent with the findings of the Swiss Health Survey 2002,¹³⁹ according to which 86 per cent of the population aged 15 years or older considered that their health was good or very good (84 per cent of women and 88 per cent of men). However, 16 per cent of the population (18 per cent of women and 14 per cent of men) had a chronic physical or mental health problem which constituted a handicap in their everyday life.

405. Life expectancy at birth is increasing steadily: between 1990 and 2005 it rose from 74 to 78.7 years for men and from 80.8 to 83.9 years for women. These extra years are due mainly to an increase in life expectancy at age 65. In 2005, for example, life expectancy at age 65 was 18.1 years (15.3 years in 1990) for men and 21.6 years (19.4) for women. In 2002, life expectancy for persons born without disability was 73.7 years (65.9 years in

¹³⁸ OECD, "OECD health systems studies: Switzerland 2006".
(www.bag.admin.ch/org/01044/03338/index.html?lang=fr) (See annexes.)

¹³⁹ OFS, "Enquête suisse sur la santé 2002" (Swiss Health Survey 2002 (Neuchâtel, 2003).

1981) for men and 76.8 years (69.7) for women, representing on average 93 per cent (90 per cent) of total life expectancy. For the whole population, diseases and disabilities preventing a normal independent existence reduce life expectancy by an average of about five to seven years.

406. The mortality rate has continued to decline in recent years. The commonest causes of death remain cardiovascular disease (34 per cent of all deaths in 2004 for men and 40 per cent for women), followed by malignant tumours. Infections of the respiratory system are the third commonest cause of death, just ahead of accidents and other injuries.

Table 6
Mortality rate, by main causes of death, 2004

<i>Mortality rate (per 100.000)</i>	<i>Hommes</i>	<i>Femmes</i>
All causes	656,0	416,0
Infectious disease	7,0	4,4
AIDS	1,6	0,4
Tuberculosis	0,2	0,1
Cancer, all formes	193,0	118,0
Cardiovascular diseases	216,0	141,0
Respiratory diseases, all forms	44,3	21,3
Sugar diabetes	14,3	10,8
Cirrosis	8,7	2,7
Accidents, al kinas	53,5	23,4
Accidents, motor vehicle	9,8	2,4
Suicides	21,4	9,3

Source: Federal Statistical Office.

407. In Switzerland as well, the number of persons of all ages who are overweight has increased alarmingly in recent years, and the “dietary gap” is widening. While vast segments of the population overeat and are therefore overweight, the number of groups presenting signs of deficient diet, in either quality or quantity, is increasing. In 2002, 37 per cent of the adult population was overweight or obese, as against 30 per cent in 1997. This means that in absolute terms 2.2 million persons aged over 15 years living in Switzerland were overweight. There are more overweight men (45 per cent) than overweight women (29 per cent). For both sexes, overweight and obesity increase steadily with age, but more slowly among men from age 50. The problem is commoner in the poorer social strata. Young people are more likely to be underweight, in particular young women in the 15-24 age group, 44 per cent of whom are underweight, compared with 19 per cent of young people as a whole.

408. Twenty per cent of children in the 6-12 age group in Switzerland are already overweight, and 5 per cent of this age group are obese. These figures have increased by a factor of 5 since 1980, and the increase has been even bigger among obese children. This development is all the more worrying since the majority of overweight children will remain overweight as adults.

409. In 2001 the costs associated with overweight and obesity in Switzerland and with the resulting pathologies were estimated at 2.7 billion francs a year (plus or minus 20 per cent); this represents 5 per cent of the total health bill. The pathologies associated with

overweight, such as type-2 diabetes (not insulin dependent), coronary heart disease, high blood pressure, and depression, account for 98 per cent of this bill.

410. In order to tackle the problem of obesity the Confederation has carried out in recent years, in conjunction with various partners, several campaigns and several projects to make the population more aware of the importance of a healthy diet and physical exercise.¹⁴⁰ The national “Food and physical activity” programme (2008-2012), which is currently being finalized, is designed to prevent chronic health problems and their risk factors, in particular by emphasizing prevention of overweight and obesity, especially among the young.¹⁴¹

40.2 Mental health

Para. 35: *The Committee also requests the State party to provide more detailed information in its next report on the situation of the mental health of the population and in particular mental patients in the country and on progress achieved in this field.*

411. According to the Swiss Health Survey 2002, more than half the population (55 per cent) is mentally well balanced (44 per cent in 1992-1993); however, this finding should be broken down by age group: in the 15-24 age group, only 41 per cent of the persons questioned stated that they felt “well in their head”, while almost two thirds of over-65s gave this answer. This difference may indicate, firstly, that young people are more worried than over-65s about their futures and that they often have difficulty in finding a place in adult society, and, secondly, that when it comes to personal resources older people are better able to cope. With 45 per cent of all the persons questioned stating that they were only moderately or not at all happy, there is a fairly clear deficit of mental well-being. Treatment for mental problems has increased sharply in recent years.

412. The suicide rate has been declining steadily since the mid-1990s. However, it remains high in Switzerland when compared with other countries. The number of recorded suicides has declined in the 15-74 age group but is rising among the over-80s.

413. In 2000 the Federal Council declared the promotion, maintenance and restoration of mental health to be one of the priorities of its future health policy, and it placed these goals on its political agenda. Since then, work has been done in this field by several agencies of the Federal Administration:

- The Swiss Health Observatory regularly publishes updated data on the mental health of people living in Switzerland and on recourse to psychiatric care;
- For some years now the Secretariat of State for the Economy has been carrying out a series of measures to reduce the factors causing stress in the workplace;¹⁴²
- At the request of WHO, the Federal Public Health Office (OFSP) has been commissioned to produce a national report on the mental health of the Swiss, including a summary of the existing strategies and policies.

414. In collaboration with the Swiss Conference of Cantonal Health Directors (CDS), the OFSP supports, in a coordination role, the establishment by the cantons of a programme of action based on reliable data for the early detection of depression and provision of the best treatment for it. Five cantons have already set up an Alliance against Depression.

¹⁴⁰ See, for example: “Swissbalance” (www.suissebalance.ch) and “5 par jour” (5 a day) (www.5amtag.ch).

¹⁴¹ See paragraph 474 *et seq.* above.

¹⁴² See www.stressnostress.ch.

415. Several cantons are working on appropriate means of improving mental health, both by incorporating mental health in the cantonal health-promotion and sickness-prevention strategies and, in the case of several cantons, by re-examining their basic arrangements for providing psychiatric care.

40.3. Situation of vulnerable groups

Babies and children

Para 34: *The Committee requests the State party to provide up-to-date information in its next report on measures taken to combat the phenomenon of domestic violence and that of paedophilia.*

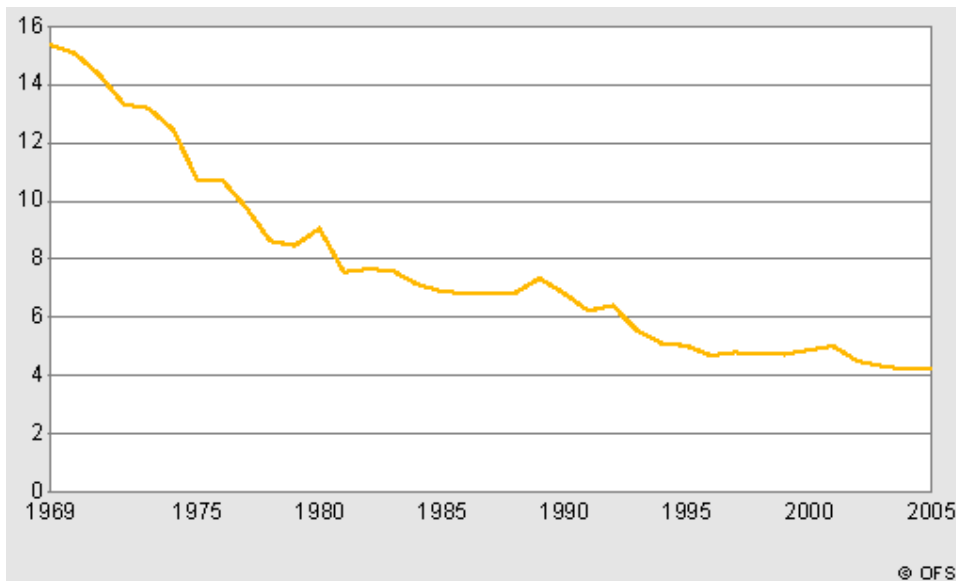
416. The infant mortality rate (boys and girls together) remained stable between 1996 and 2001 at slightly under five deaths per 1,000 births. A new upward trend has emerged since 2001. The probability of an infant dying in the first year of life was 3.9 per 1,000 in 2005. The main causes of infant mortality in Switzerland are perinatal problems (premature births) and congenital deformities. The number of sudden cot deaths has been in sharp decline for some years.

Graph 5

Infant mortality in Switzerland

Infant mortality

Rate per 1,000 births



Source: OFS, “*Statistique des causes de décès: Mortalité, causes de décès 2003 et 2004*” (Cause-of-death statistics: Mortality, causes of death 2003 and 2004)..

417. The extent of the phenomenon of child abuse has not yet been truly measured in Switzerland. However, there are some epidemiological studies which give some indication of the extent of physical abuse and corporal punishment; they show that these practices are more widespread than usually admitted. In 2004 a study was made of physical abuse and punitive behaviour on the part of parents. The findings point to the persistence of the

problem at a high level of intensity, even though the incidence of corporal punishment is in decline when compared to the findings of a similar study produced 12 years earlier. It is still the youngest children who suffer physical punishment most frequently. According to one estimate, some 1,700 children under the age of two and a half years are hit with objects, while 13,000 children in the same age group are slapped or spanked on their bottoms. Research has also revealed that fathers are more likely to use corporal punishment or bans, while mothers are more likely to punish their children by withholding affection.

418. Where sexual abuse is concerned, there is agreement that at least one girl in five and one boy in 10 suffer such abuse before the age of 18 years. A survey of 1,130 young Genevans in the 13-17 age group produced the conclusion that 33.8 per cent of all girls and 10.9 per cent of all boys were sexually abused before the age of 16, including, more specifically, 60.4 per cent of girls and 30 per cent of boys who suffered sexual groping (i.e. 20.4 per cent of the girls and 3.3 per cent of the boys questioned in the survey).¹⁴³ It should be pointed out that 35 per cent of the abusers were aged under 18, thus minors, at the time the offence. A research work published in 1998 contained similar findings.¹⁴⁴ This representative survey of 980 women in the 20-40 age group in German-speaking Switzerland showed that at least a third of women have experienced, before the age of 16, an act or an approach of a sexual nature classifiable as an offence against sexual integrity. The more recent the research, the higher the estimates of the phenomenon, probably owing to increased acknowledgement of the situation by society. Figures show that children are being abused at ever younger ages, but this finding may be due to improved recognition of the symptoms and thus to earlier reporting. While parents and professionals fear and recognize more easily abuse committed by unknown persons and usually act more appropriately to it (reporting, support and care of victims), this kind of abuse represents *only* 10 per cent of all cases. Ninety per cent of acts of abuse are committed by parents, members of the family or other persons known to the child. Many acts of abuse are ignored and go unpunished, and the victims receive no care and attention. Father-daughter incest accounts for 84 of the abuse committed by members of the family.

419. Many children also suffer neglect, lack of care and affection, and mental abuse. All maltreatment, in particular sexual abuse, causes mental suffering.

420. The legal framework for the protection of children against maltreatment has been changed and strengthened in recent years in order to improve its effectiveness:

(a) Article 5 of the new general part of the Penal Code of 13 December 2002 now recognizes the jurisdiction of the Swiss authorities to investigate and prosecute sexual offences committed against children abroad by any person living in Switzerland and not extradited. The requirement of double criminality has thus been abandoned and Switzerland's quasi-universal jurisdiction recognized;

(b) Since 1 April 2002 the acquisition or reception, by electronic or other means, or the possession of pornographic material depicting children, animals or acts of violence is punishable by imprisonment for up to one year or a fine;

(c) Since 1 October 2002 the statute of limitation for sexual acts committed against children or dependent minors, as well as on an exhaustive list of offences against under-16s (murder, sexual coercion, abduction and kidnapping, etc.) runs in all cases until the day of the victim's twenty-fifth birthday;

¹⁴³ D. Halperin and others, "*A contre-coeur, à contre-corps. Regards pluriels sur les abus sexuels d'enfants*" (Hard to bear, in mind or body. Several perspectives on the sexual abuse of children) (Ed. Médecine et Hygiène, Geneva, 1997).

¹⁴⁴ J. M. Niederberger, "*Sexueller Misbrauch von Mädchen in der Schweiz*" (Ed. Soziothek, Köniz).

(d) On 19 September 2006 Switzerland ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. In this same context, a new and more stringent version of article 182 of the Penal Code (trafficking in persons) entered into force on 1 December 2006.

421. On 1 March 2006 the *Marche Blanche* association tabled a people's initiative calling for the abolition, by means of a constitutional amendment, of the statute of limitations on punishable acts of a sexual or pornographic nature committed against a minor child. The Federal Council considered this initiative to be disproportionate and unlikely to improve the prevention of paedophile offences and decided to submit an indirect counter-initiative to Parliament. On 27 June 2007 Parliament adopted a bill allowing children aged under 16 who are victims of a serious sexual offence or a serious attack on their life or physical integrity a longer period of reflection than is currently the case, for the purposes of lodging a criminal complaint. The statute of limitation for these offences will begin to run when the victim reaches the age of majority. Victims will thus be able to lodge complaints until their thirty-third birthday.

422. A motion was tabled in Parliament on 11 December 2007¹⁴⁵ calling inter alia for the Federal Council to draft an amendment to article 197, paragraph 3bis, of the Penal Code to criminalize the intentional use of hard pornography as well.

423. Several services and offices of the Federal Administration have responsibility and jurisdiction with regard to the prevention of child abuse. The Federal Social Security Office (OFAS) has a number of coordination functions in this area. For example, it provides information on options for assistance and training, coordinates the research work, and supports projects on the prevention of maltreatment (national awareness campaigns, training courses, assistance for young people by telephone or on the Internet, study days, pamphlets, videos, research, Internet prevention site, exhibitions, education courses in non-violent behaviour, etc.). It operates an online listing of the child-protection assistance and counselling services available in Switzerland. It also commissioned the production of a "Model for the comprehensive prevention of the maltreatment of children", which was published in October 2005; this study advocates a number of measures for the cantons and the Confederation and for professional and parents as well. The OFAS also supports voluntary organizations working with children and families and the national telephone hotline which children and young people can call for assistance (Dial 147).

424. The Federal Police Office (Fedpol) is involved in the efforts to prevent paedophilia on the Internet. A new Commissariat for paedophilia, human trafficking and trafficking in migrants, attached to the Federal Criminal Investigation Police, started operating on 1 November 2003. Two other commissariats have taken over since January 2007: the Commissariat for paedophilia and pornography and the Commissariat for trafficking in persons and migrants; their function is to coordinate the complicated operations connected with the investigations conducted in the cantons and abroad. These two commissariats are the Swiss Interpol contact points for cases of child pornography and trafficking in persons or migrants; they are represented in the Interpol Standing Working Group on Offences against Minors.

425. The Coordination Service to Combat Internet Crime (SCOCI) came into being on 1 January 2003. People may report suspicious Internet sites to this service. SCOCI conducts a preliminary examination of all reports of suspicious sites, including anonymous reports, and transmits cases in which suspicion is justified, together with a brief legal assessment of each case, to the competent criminal prosecution authorities in Switzerland and abroad. SCOCI itself searches for illegal content on Internet sites. It processes the reports as they

¹⁴⁵ Motion 06.3170 – Schweiger Rolf: "Cybercrime – Protection of children".

come in (currently about 7,500 a year), using a powerful software programme. Since 2003 some 50 to 80 cases have been referred every month to the criminal prosecution authorities; almost 90 per cent of these referrals have led to criminal proceedings; in most cases these proceedings have revealed prohibited material and have resulted in the conviction of the suspects. SCOCI receives widespread media attention and it puts its message across to the general public in media articles and at conferences. Increasing importance is being attached to the development and consolidation of networking among high schools, police units, economic agencies, non-governmental organizations, etc.

426. Switzerland also plays an active role in the Council of Europe in the work of the Expert Committee on Cybercrime. The Council of Europe's Convention on Cybercrime is the first international instrument to address offences committed via the Internet and other computer networks. Its main purpose is to ensure a common crime-fighting policy which will protect society against cybercrime, including through the adoption of suitable domestic legislation and the strengthening of international cooperation. Switzerland signed this Convention on 23 November 2001.

427. Switzerland is a member of working groups on this topic, including those of Interpol and Europol. Police officers are seconded to attend to the procedures, maintain contacts and ensure coordination and exchange of information in certain key countries such as Brazil, Germany, Italy, Thailand, the Czech Republic and the United States of America. Large-scale operations against paedophilia and child pornography on the Internet have been successfully carried out by the Swiss police, working in collaboration with the authorities of various other countries.

428. The Federal Sports Office launched a national campaign to prevent sexual abuse in sport, in conjunction with Swiss Olympic (a voluntary organization of Swiss sports federations).

429. Switzerland's federal system and the autonomy of its local authorities mean that the cantons and the communes play a vital role both in the intervention activities and the care of child victims and in prevention. The cantonal youth protection services deal with virtually all aspects of children's development (medical, psychological, social, financial, legal, and cultural and recreational). The main public services for maltreated children are the youth offices, the health and youth protection services, the guardianship services, the teaching and child psychiatry hospitals, the children's hospitals, the counselling centres established under the Federal Act on assistance for victims of crime (Victims of Crime Act (LAVI)), and the police.

430. Several cantons have improved their child abuse prevention and intervention systems, which include, for example, child abuse prevention officers, child abuse and neglect teams in the hospitals, cantonal child protection committees, and multi-disciplinary groups offering support and advice in connection with child abuse. Information about the sexual abuse and exploitation of children, as well as about children's rights and the means for children to defend themselves, is included in education campaigns and school curricula. For example, child protection associations and health groups work together with the schools to address the problem of abuse and the means of combating it. The schools also have personnel available to deal with cases of abuse and, more generally, with health problems (including male and female nurses), who can attend to maltreated children. Preventive activities are carried out in some cantons: distribution of leaflets containing practical information, information meetings, circulars, teacher training, and instructors and teachers working with children. The prevention work may also take the form of stage plays, films or mobile exhibitions which visit the schools.

431. A national campaign to combat Internet crime (pornography and paedophilia) was launched throughout the country in 2005 with the support of the Confederation and the

cantons. In the first year the emphasis was on the offence constituted by the consumption of child pornography. In the following two years the main effort was to be focused on measures aimed at parents, children and education personnel, as well as on potential perpetrators.

432. SCOCI and Swiss Crime Prevention (an agency of the cantonal justice and police departments) are trying, by means of joint action with Swiss Internet providers, to make it more difficult to access Internet sites which market child pornography; the providers have been invited to block more than a thousand different sites. Users seeking to open one of these pages are automatically redirected to the Fedpol site, which informs them that the site which they trying to access is illegal. Internet providers are required to retain their data for at least six months to enable the persons in question to be identified, if necessary.

433. Non-governmental organizations, with financial support from the Confederation, launched in 2005 a three-year campaign to combat the sexual abuse of children. They also established, in May 2007, the Swiss Alliance to prevent sexual violence against children and adolescents, with a view to improving prevention, detection and intervention. In May 2007 this Alliance created an Internet site (in French, German and Italian) aimed at persons directly or indirectly involved in this problem.

Women

Para. 34: *The Committee requests the State party to provide up-to-date information in its next report on measures taken to combat the phenomenon of domestic violence and that of paedophilia*

434. The life expectancy gap between women and men has narrowed: on average, women live 5.2 years longer than men (2005). The median gap is five years. Maternal mortality, from all causes, totalled four deaths for some 73,000 births in 2004. The rate increases with age and is higher for women living in rural areas.

435. The number of perinatal checks averages 4.5 for women in the 15-34 age group and 2.9 in the 35-49 age group, or 4.1 checks for all women aged between 15 and 49.

436. Since 1 October 2002 Switzerland has applied the regulations on the time limits for voluntary termination of pregnancy approved by the people on 2 June 2002, which stipulate that during the first 12 weeks the woman herself may decide whether she wants to terminate an unwanted pregnancy. Termination may be authorized from the thirteenth week if a medical opinion shows that it is necessary in order to eliminate the risk of serious impairment of the woman's health or of serious emotional distress. A total of 10,774 terminations was recorded in Switzerland in 2005, i.e. 147.8 terminations for every 1,000 live births.

437. The first "Gender Health" national report was published in 2006. It contains a detailed epidemiological assessment of the state of men's and women's health in Switzerland.¹⁴⁶

438. Recent studies and surveys confirm that a large number of women in Switzerland suffer mental, physical or sexual abuse at some time in their life. According to a study made by the Forensic Science School of the University of Lausanne, 26.6 per cent of the women questioned in 2003 stated that at some point in their adult life they had suffered or had been threatened with physical abuse at the hands of persons known or unknown to them: 25.2 per

¹⁴⁶ OFSP, "Rapport Gender Health Suisse, 2006" (Swiss Gender Health Report, 2006) (www.bag.admin.ch).

cent said that they had suffered sexual abuse, including rape or attempted rape in 10.7 per cent of the cases.

439. Switzerland's "Gender Equality" national action plan, adopted in 1999, includes action to combat violence against women. It lists a number of objectives and measures, some of which have been implemented by the Confederation and the cantons, while others are still being implemented. The legal remedies available at the federal level for combating violence against women, i.e. violence in their close social circle, have been improved.

440. On 1 April 2004 simple bodily injuries, sexual coercion and marital rape or rape committed by a partner in a registered relationship became offences subject to automatic prosecution (Penal Code, arts. 123, 189 and 190). In the case of simple bodily injuries (art. 123, section 2, paras. 3-5), repeated assault (art. 126, paras. 2 (b), 2 (b)bis and (c)), threats (art. 180, para. 2) and coercion (art. 181), the criminal justice authorities may suspend the proceedings temporarily if the victim is the perpetrator's wife or former wife, or partner or former partner, and the offence was committed during the marriage or partnership or during the year following divorce or judicial separation or if the victim requests such suspension or consents to a proposal for suspension. The interests of the victim is not the only factor to be taken into consideration; the authorities must in fact assess before anything else the advantage in proceeding with the criminal prosecution. The proceedings are resumed if the victim withdraws his or her request or consent within a time limit of six months from the date of the suspension (Penal Code, art. 55 (a), in force since 1 April 2004).

441. Persons who have suffered, by reason of an offence, a direct attack on their physical, mental or sexual integrity may be granted the benefits and assistance provided under the Victims of Crime Act (LAVI), whether or not the perpetrator of the offence is known and whether or not the perpetrator's acts are wrongful. The Act has three components: counselling, protection of victims and their rights during criminal proceedings, and compensation and moral redress. The cantons must provide victims with access to counselling centres offering medical and psychological care and social, material and legal assistance. The services of these centres are provided free of charge. The authorities must protect the victim's physical and emotional integrity at all stages of the criminal proceedings: in the case of offences against sexual integrity, a confrontation may be ordered only if the defendant's right to be heard makes it absolutely necessary, and the confrontation must take place behind closed doors if the victim so requests. Furthermore, any victim of an offence committed in Switzerland is entitled to compensation and moral redress from the State, provided that the victim satisfies the conditions laid down in the Act.

442. The Penal Code specifies the measures for protecting victims' physical and emotional integrity: in order to protect victims of violence, threats or harassment, the courts may prohibit the perpetrator from approaching the victim, visiting certain places or making contact with the victim (Penal Code, art. 28 (b)). These measures do not apply only in the case of victims of domestic violence: persons subjected to stalking may request the same protection. The courts may also order a violent person to move out of accommodation shared with the victim for a specified period. The cantons are required to put in place arrangements for intervening in urgent cases. Most of them have already done so.

443. Starting in the mid-1990s, notably under the extended information and awareness campaign on domestic violence carried out country-wide in 1997, intervention projects were launched in a number of cantons with the aim of encouraging institutions and authorities to act more vigorously against perpetrators of violence.¹⁴⁷ Since 2001 practically all the cantons have adopted measures to protect victims of domestic violence; the remaining few are about to do so. Amongst other things, they have added new provisions to

¹⁴⁷ See paragraph 79 above.

the existing police regulations, amended their codes of criminal procedure, and, in some cases created their own victim-protection regulations. The commonest measures used are immediate expulsion of the violent person, prohibition of return, and, sometimes, the imposition of treatment orders. Some cantons also use total bans on contact with the victim and, in individual cases, police custody. Since 1 July 2007 the Victims of Crime Act has provided the legal basis for these measures (Penal Code, art. 28 (b)).

444. A report produced by the Domestic Violence Service of the Federal Gender Equality Office (BFEG) contains a detailed list of the measures taken by the cantons in recent years to combat domestic violence and offers an overview of the changes in the federal legislation and comments on the implementation of these changes in the cantons.¹⁴⁸ Another report, analyzing violence, suicides and accidents in gender terms and making recommendations for researchers and field personnel, is being prepared.

445. Attention should also be drawn to the national campaign to combat domestic violence carried out between 2002 and 2004 by Swiss Crime Prevention at the request of the Conference of Cantonal Directors of Justice and Police Departments.

The elderly

446. In 2003, between 109,000 and 126,000 old people in Switzerland needed care¹⁴⁹ according to the ADL criteria.¹⁵⁰ This figure represents 9.8 to 11.4 per cent of all over-64s. As a result of demographic change in Switzerland, characterized by the gradual aging of the population, the country's health system is going to have to cope with new tasks over the coming decades.

447. In August 2007 the Federal Council adopted the general outline of a strategy for a policy on ageing, covering health among other matters. In order to encourage an active life in old age, the report presents ways of facilitating universal access to health information and benefits, stressing the role of prevention throughout life and encouraging the development of living arrangements which facilitate social integration and the maintenance of independence and control of one's life in old age. This strategy is designed both to exploit the resources and potential of old people and to ensure that their needs are met, especially when it comes to long-term care. The outline is being considered by Parliament, which has to decide what action to take on it.

448. The Federal Public Health Office is to formulate by the end of 2008, in collaboration with the cantons and with private associations and organizations specializing in assistance for the elderly, a national strategy to encourage the elderly to remain independent and improve their health. This approach includes delaying the moment at which old persons begin to need care, thereby improving their independence and quality of life; the aim is also to check the rising cost of long-term care associated with the current demographic trend.

Migrants

449. Foreigners who come to live in Switzerland are, on average, more likely to fall ill than the Swiss and more likely to have mental problems. In any given year they are off work for almost twice as long as the Swiss (about 17 days in 2002). A very large proportion of migrants are found in the socially more disadvantaged groups, are more vulnerable to ill

¹⁴⁸ Marianne Schwander, "Violence domestique: Analyse juridique des mesures cantonales, 2006" (Domestic violence: Legal analysis of cantonal measures, 2006).

¹⁴⁹ Swiss Health Observatory (OBSAN), "Les besoins en soins des personnes âgées en Suisse – Prévisions et scénarios pour le 21^e siècle" (Care needs of the elderly in Switzerland: Forecasts and scenarios for the 21st century).

¹⁵⁰ Activity-of-daily-living criteria: whether capable or incapable of dressing and undressing without help, going to bed and getting up, attending to one's toilet, and moving around in one's home.

health, and take less care of their health than the Swiss. Given these circumstances, the Confederation launched in 2002 a national “Migration and health” strategy, including the implementation of measures in the following fields:¹⁵¹

- (a) Targeted training, refresher courses and further training of interpreters and health professionals;
- (b) Health information, prevention and promotion measures for migrants;
- (c) Health care: “Migrant-Friendly Hospital”, for example;
- (d) Provision of treatment for asylum-seekers traumatised by war and torture;
- (e) Basic practical research and extensive surveys of migrants’ health.

Persons with health problems or chronic disabilities

450. The Swiss Health Survey 2002 found that about 14 per cent of men and 18 per cent of women aged over 15 and living in Switzerland had a chronic illness or disability. Some 3 per cent of them had severe functional limitations and 1 per cent were disabled in activity-of-daily-living terms.

451. There is still little information on the specific situation of persons with disabilities in the health system (waiting times for medical treatment, satisfaction with the treatment received). There is no doubt that disabled persons have more frequent recourse to health care in all areas. And they clearly take more advantage of what is available in terms of prevention.

452. The fourth revision of the Disability Insurance Act (LAI), in force since 2004, included the insertion of a provision designed to increase the independence of persons with disabilities: a new disability benefit, replacing the old one, to offset the cost of special care for disabled children and the cost of home care. Any person who, owing to impaired health, is in permanent need of the assistance of another person or personal supervision in order to perform the basic functions of everyday life is deemed disabled. This new benefit is now paid also to persons living in their own homes who need support in coping with the necessities of life; it is also granted to disabled children (formerly only from age 18). Furthermore, the amount of the benefit paid to persons living at home was doubled.

453. In addition, the Government adopted in June 2005 an ordinance establishing the “Budget support” pilot project. Participants in this project receive, instead of the disability insurance benefit, individual budget support to enable to make their own choice of the type and extent of the assistance which they need. The Government hopes that this budget support will lead in the long term to a reduction of the demand for placement in an institution, as a result of more people living at home, even from persons needing extensive assistance and that it will produce savings on the supplementary benefits paid under old-age, survivors’ and sickness insurance schemes. The pilot project was launched on 1 January 2006, for three years; it is being implemented in three cantons: Bâle-Ville, St. Gallen and Valais. All recipients of disability benefits may take part in it. A total of 400 participants is expected. The budget support scheme meets an essential claim of persons with disabilities: the right to make their own decisions about their type of accommodation and their living conditions. The project will be evaluated in order to decide whether budget support should be incorporated in the basic legislation.

¹⁵¹ See on this subject, “*Problèmes de l’intégration des ressortissants étrangers en Suisse*” (Problems of the integration of foreign nationals in Switzerland) (July 2006).

41. Diseases

41.1. Epidemic diseases

454. Vaccination is the principal means of combating communicable diseases. In practice, the vaccinations recommended by the federal authorities are available as mandatory services under basic sickness insurance. The coverage rate of the basic recommended vaccinations is generally high in Switzerland. However, it remains too low in the case of the MMR vaccine (measles, mumps and rubella).

Table 18.

Incidence of certain communicable diseases per 100,000 inhabitants, 1997-2005

	1997	1998	1999	2000	2001	2002	2003	2004	2005
Malaria	4,5	4,8	4,4	4,4	4,4	3,7	3,1	3,1	2,8
Mézales	51	25	20	17	17	12	5	3	7
Mumps	77	112	239	389	138	37	22	18	13
Rubella	90	28	11	8	10	7	15	3	2
Acute hepatitis A	3,9	5,1	4,8	4,0	2,4	1,9	2,6	2,6	2,0
Acute hepatitis B	3,7	2,6	2,8	2,0	1,8	2,3	1,5	1,2	1,3
Acute hepatitis C	1,0	0,8	1,0	1,3	1,1	1,8	1,2	1,1	1,0
<i>Campylobacter</i>	84	77	94	105	92	92	77	75	73
<i>Salmonella</i>	51	42	39	34	37	34	30	26	26
Invasive mééningococcal infections	1,5	1,7	2,3	2,5	2,3	1,6	1,2	1,1	1,1
Tuberculosis	10,5	10,5	10,8	8,7	8,4	9,0	8,5	8,0	7,8
AIDS	5,0	3,9	3,9	2,9	3,0	2,7	2,7	2,8	2,2

Source: Federal Public Health Office, May 2007 statement.

41.2. HIV/AIDS

455. With 113 cases per 100,000 inhabitants, the cumulative number of cases of AIDS recorded in Switzerland is among the highest in Europe. A total of 8,418 cases of AIDS was reported to the Federal Public Health Office (OFSP) between 1983 and December 2006; 5,671 of the sufferers had already died by 2006. The annual diagnosis of new cases increased steadily up to 1994, then fell year by year, with a very sharp downturn after 1995, chiefly as a result of the use of very effective combined retroviral treatment of seropositive patients at the pre-AIDS stage. After a temporary pause between 2000 and 2003 the downtrend seems to be resuming. According to estimates, the number of persons who have tested positive for HIV totals between 16,000 and 18,000 (not counting those who have died).

456. The number of new HIV diagnoses increased by 25 per cent in 2002, in contrast to the steady decline since 1992. The groups most seriously affected by this change are men engaging in homosexual relations (65 per cent Swiss and 10 per cent foreigners from European countries) and persons infected by heterosexual means (38 per cent Swiss and 42 per cent nationals of countries with high HIV rates). The total number of persons testing positive has stabilized since 2003, but with differences between the transmission groups. The number of men engaging in homosexual relations and testing positive increased by 50 per cent between 2004 and 2006, while the number testing positive fell in the other groups, among persons infected by heterosexual means in particular. Most of the new infections in

Switzerland are transmitted by sexual means (homosexual and heterosexual contacts). Since the early 1990s heterosexual contacts have accounted for a larger proportion of the new cases diagnosed (over 50 per cent of cases since 1997).

457. Since the outset, the efforts to prevent HIV/AIDS in Switzerland have been evaluated and adjusted in the light of the results obtained. Since 1987 the evaluation of the overall situation has been a responsibility of the Prevention Programmes Evaluation Unit of the Institute for Social and Preventive Medicine of the University of Lausanne. This evaluation includes the monitoring of behaviour, which was restructured, together with the HIV/AIDS reporting system of the Federal Public Health Office, in accordance with the Second Generation Monitoring provisions of the Joint and Cosponsored United Nations Programme on HIV and AIDS (UNAIDS). The evaluation shows that prevention based on encouragement of the use of condoms helps the general population to protect itself better but does not change sexual behaviour. The number of casual partners has not increased in the 17-30 age group. AIDS prevention has not led to earlier sexual activity among young people and their abortion rate has not increased, while at the same time condom use has generally been rising.

41.3. Occupational diseases

458. This subject is addressed under article 7 (para.182 *et seq.*).

42. Health and the environment

459. An Environment and Health Action Plan (PAES) was drawn up by the Federal Administration and brought to the attention of Parliament.¹⁵² The aim is to persuade the public at large to make the connection in their daily lives between behaviour affecting the environment and behaviour affecting their health, as a means of contributing to sustainable development. Measurable progress has to be made in three directions: nature and well-being, mobility and well-being, and habitat and well-being.

460. The scorching summer of 2003 claimed some victims in Switzerland as well. Some 975 more people died than usual. Most of them were elderly. Since 2005 the competent services have been publishing information materials on “What to do in extremely hot weather” in order to make the public aware of the health risks of intense heat and to inform them about the precautions to be taken.

461. In January 2006 Switzerland adopted an action plan to combat fine particles which damage people’s health, with the principal aim of reducing the volume of diesel soot and of the fine dust produced by burning wood. Several measures have already been implemented since that time.

462. Practically 100 per cent of households in Switzerland are currently connected to the drinking water system. Drinking water is strictly monitored and controlled in Switzerland. In their capacity as big enterprises in the public supply sector, water distributors are required by law to maintain the highest possible product quality. To this end they operate their own systematic controls. Independent cantonal laboratories also take samples for testing. Consumption of drinking water has been declining steadily for some years now in Switzerland. But connections to the waste water system have continued to increase. Ninety-six per cent of consumers of water in Switzerland are now connected to purification plants.

463. Proud of its own history in this regard, Switzerland is a militant advocate in international organizations of managing water resources in such a way as to take good care of both aquatic and terrestrial ecosystems. Supplies of good-quality water depend in fact on

¹⁵² See www.apug.ch.

ecosystems which, like forests, wetlands and the soil, collect, filter, store and distribute water. Switzerland wants ecosystems to be regarded as primary infrastructure for ensuring water supply, removal of waste water, food, and management of flood waters.

464. In recent years Switzerland has been working hard in a number of international bodies to secure the establishment of a right to water supply and the removal of waste water. It is one of the backers of the study “The right to water, from concept to implementation”. In the context of its development assistance it helps partner countries to formulate their water policies and constitute the resources to provide everyone, including members of vulnerable groups and victims of discrimination, with access to sufficient quantities of unpolluted drinking water and to suitable installations for the removal of waste water. Switzerland wants access to drinking water and the removal of waste water to be regarded as a fundamental human right and thus be accorded increased space in the poverty reduction strategies of its partner countries; it is supporting programmes to fund suitable infrastructure and put it in place.¹⁵³ Switzerland is convinced that public-private partnerships, provided that they are intelligently designed and operated, can make a vital contribution to improving the provision of infrastructure.

43. The health system

43.1. Background

Para. 36: The Committee recommends that the State party, in accordance with article 12, paragraph 3 (d), of the Covenant, review its systems of health care to prevent the high costs of these from having a negative effect on the standard of living of families, which is incompatible with article 11, paragraph 1, of the Covenant.

465. The Federal Constitution obliges the Confederation, within the limits of its jurisdiction, to take action to protect health: article 118 establishes the principle that the health of humans and animals must be protected against direct damage; indirect damage resulting from air quality, noise, water and other environmental factors is addressed in the article on protection of the environment.

466. Following Parliament’s rejection of the second revision of the Sickness Insurance Act (LAMal) at the end of 2003, the Government decided in 2004 to include in a comprehensive strategy the elements of that revision on which there was no fundamental disagreement. It submitted these elements to Parliament in the form of two packages of legislation in separate bills. In the case of the reforms already in place, the regulations on the reduction of premiums were amended in 2006: for people on low and middle incomes the cantons had to reduce by at least 50 per cent the premiums in respect of children and young adults in education. The other draft amendments are still being debated in Parliament:

(a) Hospital funding: the Government is proposing to replace funding by establishment to funding by service. At present it is the costs of operating a hospital as such which are funded; in future it will be the costs of the services provided which will be reimbursed. In addition, the services provided by all the hospitals subject to cantonal planning, regardless of their legal status, will have to be financed half by the cantons and half by the sickness insurance companies (“dual fixed” financing);

(b) Managed care: the Government wishes to encourage particular forms of insurance involving a limited choice of service provider and the introduction of a new

¹⁵³ See the Federal Council’s reply to the Sommarunga motion (06.3276).

model – the “integrated care network”. Under this model the same care network would attend to all aspects of a patient’s diagnosis and treatment. The aim is to promote the use of such models without imposing them on insurers;

(c) Cost sharing: in order to make insured persons more aware of their responsibilities and more attentive to costs, the Government wishes to increase from 10 to 20 per cent the amount paid by adults; the amount due in respect of children (10 per cent) would not change, nor would the minimum excess/deductible (300 francs) or the maximum share of costs paid by the insured (700 francs);

(d) Elimination of the obligation to write outpatient policies: instead of re-imposing the current freeze on new policies, the Government wishes to introduce freedom to write outpatient policies.

Insurers and service-providers must be free to choose their contractual partners. However, the Government wishes to fix, by canton, the minimum and maximum numbers of service-providers necessary to meet the demand for outpatient services (ranges). The cantons would determine the number of service-providers needed, within these ranges and taking into account local conditions and the services available in neighbouring cantons. The Government has also put forward in a separate bill proposals for the reform of the funding of health care. This bill has two aims: to improve the social situation of certain population groups which need health care; and to avoid imposing an even heavier financial burden on sickness insurance, which, under the present system, is paying for an increasing number of old-age health benefits. The bill’s key proposal is that sickness insurance should cover the entire cost of treatment (curative or palliative measures to treat an illness or mitigate its consequences) but should pay only part of basic-care costs (care designed to enable patients perform everyday functions unaided). The proposed model would apply to all insured persons in respect of care provided in their own homes or in a medical-social institution but not in respect of treatment in a hospital.

467. The joint OECD/WHO report on the Swiss health system, mentioned at the beginning of this section, concluded that the population of Switzerland has access to a broad range of health services, many of which provide the latest medical treatment, and that most patients are satisfied with the care received. The weak points noted in this report are the high cost of health care, the scant, or in some cases non-existent, coordination of prevention measures, and problems with the management of the health system. The difficulties in this latter area are due, at least in part, to the federal structure of the Swiss health system. A “National Health Policy” was introduced in 1998 in order to improve the coordination of the cantonal and federal policies.¹⁵⁴

468. Since 1 January 1996 (when the Sickness Insurance Act (LAMal) entered into force) all persons residing in Switzerland are in principle required to take out mandatory health insurance (LAMal, art. 3). The sickness insurance system guarantees all persons residing in Switzerland access to quality health care. It guarantees medical treatment in the event of illness or accident, provided that the accident is not covered under an accidents policy. Insured persons have a free choice of insurer and may take out additional insurance over and above the mandatory cover.¹⁵⁵

43.2. Distribution and coverage of health services

469. In 2005 Switzerland had 204 doctors for every 100,000 inhabitants (as compared with 157 in 1991). Two densely populated urban cantons led the way: Bâle-Ville with 375 (280), followed by Geneva with 329 (244), while the last places were occupied by the

¹⁵⁴ See www.nationalegesundheit.ch.

¹⁵⁵ See paragraph 236 *et seq.* above.

essentially rural cantons of Nidwald and Obwald, with 118 doctors each (87 and 94 respectively in 1991). The country had 50 dentists per 100,000 inhabitants in 2005. There were 343.7 hospital beds per 100,000 for the whole country; the figure was 210.3 beds in the case of specialized clinics. The number of beds in general hospitals varied from canton to canton: Bâle-Ville again led the way with 669.49, followed by Appenzell Rhodes-Intérieures (608.3), while Appenzell Rhodes-Extérieures and Zug came last with 215.4 and 199 beds respectively.

Table 19
Medical-social institutions: number of beds per 100,000 inhabitants, by type of institution, 2005

<i>Type of institution</i>	<i>Beds</i>
Care homes	398,3
Medical-social institutions	732,8
Old people's homes	36,1
Institutions for the disabled	279,0
Institutions for drug addicts	30,2
Institutions for psycho-social patients	47,7
Spa and convalescence centres and other institutions	22,6
Total	1546,7

Source: Federal Statistical Office.

Table 20
Use of certain medical services, by sex and age (age-group percentages)¹⁵⁶

<i>Service</i>	<i>Women</i>				<i>Men</i>		<i>Total</i>
	<i>15-39</i>	<i>40-69</i>	<i>70+</i>	<i>15-39</i>	<i>40-69</i>	<i>70+</i>	
Control of high blood pressure	75,2	82,4	90,8	61,0	75,4	93,1	76,2
Cholesterol measurement	38,4	55,1	73,4	30,7	55,6	78,6	49,8
Cancer diagnosis	-	-	-	-	21,8	30,9	23,4
Prostate ¹	52,7	51,5	19,6	-	-	-	47,6
Cervical smears ²	3,2	21,0	12,8	-	-	-	13,6
Mammography ²							
Visits to doctor	82,0	80,1	88,1	66,7	71,5	89,6	76,9
Visits to dentist	67,4	70,7	55,8	61,2	65,9	55,6	65,0
Physiotherapy	13,7	18,9	15,9	11,9	13,9	10,6	14,6
Hospital stays, 1-14 days	12,4	14,3	16,7	11,2	11,9	17,2	12,6
Hospital stays, 15 days or more	(0.02)	(0.4)	(0.6)	(0,1)	(0.3)	(0.3)	(0.3)

¹ Men aged 40 or older.

² Women aged 20 or older.

¹⁵⁶ During the 12 months immediately preceding the survey.

43.3. Health spending

470. Health costs amounted to 51.6 billion francs in 2004, equivalent to 11.5 per cent of GDP. The resources allocated to goods and services in the health sector continue to increase in Switzerland.¹⁵⁷ The three main service providers are the hospitals (35 per cent), outpatients facilities (30 per cent), and medical-social institutions (18 per cent), which include old people's homes, institutions for the chronically sick, and institutions for persons with disabilities. In 2004, inpatient treatment (in hospitals and medical-social institutions) accounted for slightly over half of the cost of health services, followed by outpatient treatment (30 per cent) and purchases of goods (9.5 per cent). Social security insurance covers 42 per cent of the cost, including 34 per cent covered under the Sickness Insurance Act (basic cover). Thirty-two per cent of the cost is borne by private households, while the State, mainly through the cantons, contributes 17 per cent.

471. The total health bill rose by 172 per cent between 1985 and 2004. The biggest increase was in spending on prevention (244 per cent), where the proportion of total expenditure rose from 1.7 per cent in 1983 to 2.2 per cent in 2004, a development explained by the increase in preventive action, in particular to combat communicable diseases (AIDS), to provide protection against radiation, and to improve diets. *Promotion Santé Suisse* (Swiss Health Promotion), whose spending comes under the heading of prevention, also came into being with the Sickness Insurance Act.

Table 21
Health spending as a percentage of GDP

1960	1970	1980	1990	2000	2004
4,9	5,6	7,4	8,3	10,4	11,5

Source: Federal Statistical Office.

472. The joint OECD/WHO report on the Swiss health system, mentioned earlier, notes in its conclusions that Switzerland pays a high price for its health care, one of the highest when compared with other countries. For some years now health costs have clearly been rising faster than incomes. The reasons for this development are complicated and relate both to the benefits in kind and the services offered by the health sector and to the demand for these benefits and services. There is no doubt that using the current possibilities of medicine to the full requires a volume of financial resources which society is increasingly reluctant to provide and which increasing numbers of households can hardly afford. Switzerland does have a premium-reduction system and there is the possibility of exemption from payment of part of health care costs; it is nevertheless true that there are big differences between the cantons with regard to the amount of the premium reduction and the applicable conditions. However, the premium-reduction system was improved as a result of the first revision of the Act, which came into force in 2001: the cantons are required to keep insured persons regularly informed of their possible entitlement to reduced premiums and they must use the most recent tax data to determine entitlement to this reduction, as well as ensuring that the arrangements for paying the premium-reduction subsidy are such that the recipients do not have to pay their premiums before the subsidy is received. In addition, since 2006 some cantons have also been required to organize their premium-reduction system so as to ensure

¹⁵⁷ OFS, "Coûts et financement du système de santé 2004" (Health system costs and financing 2004) (Neuchâtel, 2006).

that, for persons on low and middle incomes, the premium in respect of children and young adults in education is reduced by half.¹⁵⁸

43.4 Prevention

473. In past decades health policy has focused primarily on curative medicine and the financing of the care systems; it is now focused, at the national and cantonal levels, on strengthening disease and accident prevention and health promotion. This approach is fully in keeping with the OECD/WHO report on the Swiss health system, which asserts a need for better coordination of the prevention measures and notes an imbalance between prevention and cure.

474. Switzerland has many institutions and organizations working on questions and projects connected with sickness prevention and health promotion. They are concerned chiefly with alcoholism and tobacco addiction, physical exercise and diet, drug use, communicable diseases and epidemics, health and safety in the workplace, recreational accidents, and health protection. However, there is no body to set common prevention goals and coordinate the activities of the various stakeholders. Poor management in this area leads to duplication of effort, overlapping jurisdictions, and gaps in the prevention work. New legal rules applicable to prevention and promotion activities in the health sector are currently under study.

Table 22

Spending on prevention by the Federal Public Health Office (OFSP)

<i>OFSP spending in 2004</i>	<i>In francs (to nearest 100,000)</i>
AIDS	10 000 000
Alcohol	4 200 000
Drugs	6 700 000
Diet	300 000
Health and environment	2 200 000
Youth (cannabis and supra-f programme)	5 500 000
Migration	3 600 000
Tobacco	1 800 000
Vaccination promotion	600 000
Vaccination and prevention of tuberculosis (frontier health measures)	1 000 000
Radiation protection (radon, UV, INR)	700 000
Total	36 600 000

Source: OFSP, Legal bases, institutions and public financing of prevention and promotion measures at the federal level, April, 2002.

44. Tobacco, alcohol and drug use

44.1. Smoking

475. The smoking habits of the Swiss have changed little in recent years. In 2002, 31 per cent of the Swiss population aged 15 or older smoked (30 per cent in 1990 and 33 per cent in 1997), while 50 per cent have never smoked (49 and 48 per cent) and 20 per cent have given up smoking (21 and 19 per cent). More men than women smoke (36 per cent against

¹⁵⁸ See paragraph 246 *et seq.* above.

26 per cent in 2002), but the proportion of women smokers increased over the period from 24.5 to 28.5 per cent, before falling back to 26.5 per cent). In 2002, about one third of non-smokers were exposed to passive smoking for at least one hour a day, 21 per cent for three hours, and 6 per cent for over three hours. Men, adolescents and young adults suffered the greatest exposure. More than 8,000 persons die prematurely in Switzerland every year from the effects of tobacco addiction, including 47 per cent from cardiovascular disease caused by smoking, 22 per cent from lung cancer, 17 per cent from diseases of the respiratory system, and 12 per cent from other forms of cancer.

476. The National Smoking Prevention Programme 2001-2007 sets out a strategy. One of its principal components is the strengthening of the legal framework, with regard to taxation levels, advertising restrictions, content declaration, and access to tobacco products. The rules on content declaration and the warnings on tobacco products have become more detailed and stringent in recent years. Packets of fewer than 20 cigarettes have been banned, as have the descriptions “Light” and “Smooth”. Several cantons have now banned poster advertising. On this point, the Federal Court decided in spring 2002 that the canton of Geneva could, without infringing federal law, restrict the open and public display of posters advertising tobacco products in public places even if they are affixed to private property.¹⁵⁹ An Anti-Smoking Fund fed by a 2.6 centime tax on every packet of cigarettes was established in 2003. In Ticino, the people voted in March 2006 in favour of an amendment to the Bars and Restaurants Act banning smoking in restaurants and public places.

477. Several projects have been carried out since the adoption of the National Anti-Smoking Programme, including the “Sport without smoking” campaign, which led to a sizeable reduction in the presence of tobacco manufacturers in the world of sport, a vast programme of refresher courses for doctors on how to help their patients break the habit, a number of Internet sites and pamphlets to help people break the habit, and a competition on the subject of smoke-free classrooms.

478. At the international level, on 23 June 2004 Switzerland signed the WHO Framework Convention on Tobacco Control.

44.2 Alcoholism

479. Per capita alcohol consumption has been declining for some years now. It seems to have stabilized since 2006, at a level which is still too high. The number of persons consuming alcohol one or more times a day has declined noticeably in recent years.

480. Almost a million people in Switzerland use alcohol in a way which is highly detrimental to their health and imposes a heavy burden on society. Some 11 per cent of the population is responsible for almost 50 per cent of the country’s alcohol consumption. With a current per capita consumption of 8.6 litres a year Switzerland is also classified as a high-consumption country in both international and European comparisons. Some 3,500 deaths were attributed to alcohol in 2002. For men, 5.2 per cent of deaths are due to alcohol, compared with 1.4 per cent for women.

481. In the study “Health Behaviour in School-Aged Children” (HBSC), an international survey of the health-related behaviour of children of school age, 25.8 per cent of boys and 17.6 per cent of girls aged 15 stated that they drank alcohol at least once a week. Weekly alcohol use was less common among girls than boys. The difference of attitude of the two sexes to drinking has narrowed considerably over the past 20 years.¹⁶⁰ At age 15, 28.1 per cent of boys and 19 per cent of girls have already been drunk at least twice in their lives.

¹⁵⁹ ATF 128 I 295.

¹⁶⁰ H. Schmid, Jordan M. Delgrande, E. Kuntsche, H. Kuendig and B. Annaheim, “*Evolution de la consommation de substances psychotropes chez les jeunes en Suisse*” (Changes in the use of psychotropic substances by young people in Switzerland) (2007).

Beer is the most popular drink for boys, while girls prefer mixed drinks of the alcopop variety. Even though the current figures point to a downturn, they are still clearly higher than the figures for the years up to 2002, the year in which the curve reached its highest point, with 40.5 per cent of boys and 25.8 per cent of girls aged 15 stating that they drank alcohol every week.

482. Switzerland's anti-drinking policy has a federal structure. The Confederation is competent to enact legislation and establish the overall policy framework. A national programme is being prepared; it is to set out the objectives, a strategy and measures for the period 2008-2012 and assign the responsibilities.

483. Following the amendment of the Radio and Television Act, the advertising of beer and wine is allowed on privately-owned local networks.

484. Relaxation of the regulations on shop opening hours means that it is now easier to buy alcoholic drinks in Switzerland.

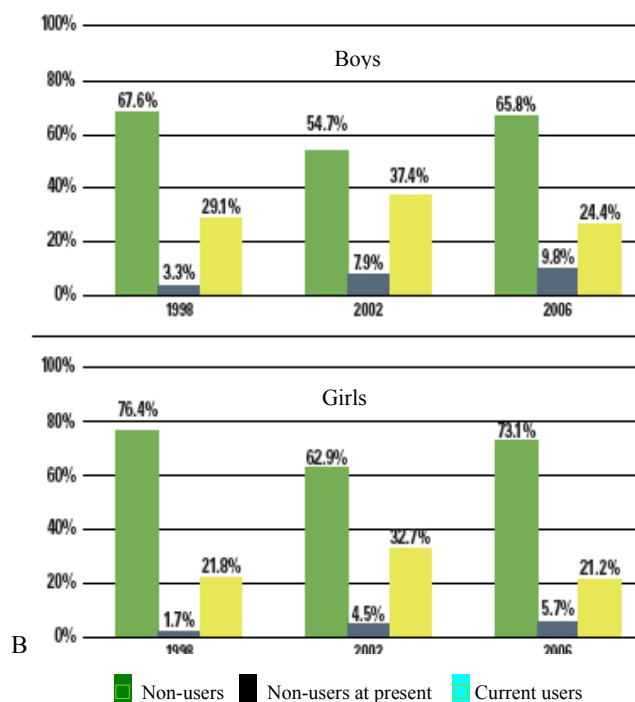
44.3. Drug addiction

485. The latest Swiss Health Survey was conducted in 2002. The next set of data (use of illegal drugs by persons in the 15-70 age group and older persons) is expected in October 2008. The latest information available is provided by the HBSC international survey of 2006. This study was focused on schoolchildren in the 11-15 age group. This being a young age-group, the data relates mainly to the use of cannabis.

486. In 2006, 34 per cent of boys and 27 per cent girls aged 15 stated that they had already used cannabis. About 25 per cent of boys and 21 per cent of girls said that they had smoked joints in the 12 months preceding the survey. For most of them it was a question of "trying it out"; in other words, they tried it once but then stooped because they had a bad trip (became nauseous) or because they were no longer interested.

Graph 6 Cannabis use

Proportions of 15-year-olds who have never used cannabis or who no longer use it, and proportion of current users



Source: Swiss Institute for the Prevention of Alcoholism and Other Addictions (ISPA), "Fumer des cigarettes ... Boire de l'alcool ... Consommer du cannabis ..." (Smoking cigarettes...Drinking alcohol...Using cannabis...) (Lausanne, 2007).

487. A small minority of 15-year-olds (about 5 per cent of boys and 2.6 per cent of girls) smoked joints 40 or more times during the 12 months preceding the survey. Such frequent use is particularly worrying when it is a means of forgetting one's problems. In terms of long-term evolution, following a peak in 2002 the rate of cannabis use is now almost the same as in 1998. The steady upward trend observed since 1986 has thus come to an end. Most of the 15-year-olds who use cannabis obtain it today "from friends or acquaintances" (90 per cent) or "at parties" (30 per cent).

488. Since 1994 the Confederation has based its drugs policy on what is usually called "the four pillars"; the main result has been a considerable decline in the numbers of drug-related deaths and accidents, an improvement in the health of drug-dependent persons, and the disappearance of public drug use.

489. A revision of the drugs legislation is now being considered by Parliament. The chief aim is to include the four-pillars policy in the legislation, boost the protection of young people (by means of strengthened measures for early detection and treatment of young people at risk and through secondary prevention), and to support treatment with prescription heroin as a recognized option. Heavier criminal penalties are also envisaged for persons who supply drugs to children under 16.

Article 13. Right to education

45. Background

Para. 26: *The Committee recommends that the cantonal laws should be further harmonized, to ensure due respect for the provisions of the Covenant, particularly with regard to fundamental rights such as the right to [...] education [...].*

490. The right to adequate and free basic education is embodied in article 19 of the new Federal Constitution as a fundamental right. This a legally enforceable right which imposes an obligation on the community to provide a service (Constitution, art. 62, para. 2). According to the jurisprudence of the Federal Court, article 19 guarantees every child the right to a basic and free education suited to the child's individual aptitudes and the development of his or her personality in public schools for at least nine years.¹⁶¹ The new Constitution does not contain a true right to education. However, the promotion of education, regarded as a social objective, is mentioned as a pointer to action to be taken by the community (art. 41 (f)).

491. The right to education is mentioned in the constitutions of many of the cantons. Some cantons (Berne, Appenzell Rhodes-Extérieures, St. Gallen, Aargau, Ticino, Vaud, Neuchâtel) limit this right to basic education, some (Solothurn, Jura) recognize every child's right to education, and in others (Schaffhausen, Vaud) there is a right to education suited to the aptitudes of the children and adolescents. The constitution of the canton of Bâle-Campagne even establishes a right to education until the completion of secondary II.

492. The distribution of functions between the Confederation and the cantons was retained in the new Federal Constitution.¹⁶² Pursuant to article 62 of the Constitution, public education has been until now a matter for the cantons alone. The Constitution merely enjoins the cantons to provide adequate and free basic education accessible to all children. This education is compulsory and subject to administration and supervision by the public authorities (art. 62, para. 2). As a result of the distribution of functions mentioned above, there are always major differences between the cantonal education systems. It is precisely in times of great mobility that these differences create increasing problems.

Table 23

Distribution of educational functions under the new Constitution

	<i>Confederation</i>	<i>Cantons</i>	<i>Communes</i>
Preschool		R	A
Compulsory education			
- Primary		R	A
- Secondary		R	A
Secondary II			
- General education schools	R/F	R/A/F	A
- Vocational training		A/F	A

¹⁶¹ ATF 2P.276/2005 of 7 May 2007; ATF 129 I 12, paragraph 4.

¹⁶² A new distribution of functions was introduced in 2006 in the revised version of the articles on education. See paragraph 494 below.

	<i>Confederation</i>	<i>Cantons</i>	<i>Communes</i>
Tertiary			
- Advanced vocational training	R/F	A	A
- Specialized colleges of higher education	R/F	A/F	
- Cantonal universities	F	R/A	
- Federal polytechnics	R/A		

R = Regulatory jurisdiction. A = Control and main funding.

F = Grant aid.

Source: Secretariat of State for Education and Research.

493. In an attempt to harmonize the education system by regulating the division of functions between the Confederation and the cantons, Parliament adopted on 16 December 2005 a federal order amending the articles of the Constitution dealing with education.¹⁶³ On 21 May 2006 the people approved by a big majority (85 per cent) this constitutional amendment designed principally to compel the Confederation and the cantons to coordinate their activities and cooperate with each other on matters of education, from primary to university level. As a result, the age of initial enrolment in school, the duration and the aims of the different levels of education, and the recognition of qualifications are to be harmonized throughout the country. If the cantons cannot reach agreement, the Confederation may issue the necessary instructions. Joint institutions of the Confederation and the cantons will be created at the higher education level: they will have broad powers, especially where finance is concerned. Lastly, the Confederation may introduce regulations on continuing education.

494. In the Federal Administration the functions are divided between the Secretariat of State for Education and Research (formerly the Federal Office for Education and Science (OFES)), which reports to the Federal Department of the Interior and is responsible for matters connected with research, university policy, the scholarships system and international cooperation, and the Federal Technical Training Office (OFFT), which reports to the Federal Department of Education and has responsibility for matters connected with vocational training, the specialized colleges of higher education, and the promotion of innovation. The OFFT is also responsible for international cooperation in these three areas. This distribution of functions is sometimes found at the cantonal level as well, but vocational training is usually a responsibility of the departments of public education. The possibility of regrouping all the federal services having education, research or innovation functions is being studied in the context of the restructuring of Switzerland's system of specialized colleges of higher education. Particular attention is being given to interfaces at the tertiary level and between vocational training, the specialized colleges and the economy.

495. On 14 June 2007 the cantons adopted an inter-cantonal agreement on the harmonization of compulsory education (HarmoS), under which the signatory cantons will undertake to harmonize the institutions and aims of compulsory education. This has implications for the future of compulsory education in Switzerland: school attendance from the age of four, with curricula suited to the child's capacity; three years of secondary education; binding national standards of education; standardized curricula for each language region; block timetables in primary; and an appropriate provision of daytime institutions.

¹⁶³ Federal order of 16 December 2005 amending the articles of the Constitution dealing with education (FF 2005 6793).

This agreement is subject to ratification by the cantons and will enter into force when at least 10 cantons have acceded to it; this is expected to happen by the end of 2008.

46. Preschool education

496. The cantons and/or the communes are responsible for organizing and funding preschool education. Up to now preschool education has generally been optional and free and available to children in the 3-7 age group, with variations from one canton to another. Efforts have been made in recent years to bring preschool education closer to the primary level. While preschool, especially in German-speaking Switzerland, used to emphasize play, the teaching and learning methods now resemble those used in the early years of primary. Many cantons have introduced new preschool curricula. Preschool activities now include teaching and learning processes which systematically pursue the mandatory aims. As preschool moves closer to primary the transition should become more flexible.

497. The trend in the cantons is towards compulsory preschool education.. Several cantons have in fact already introduced compulsory preschool education or are currently carrying out projects or conducting discussions on such a move. Block timetabling is becoming increasingly common. More than half the cantons have already made a start by introducing block periods of at least three hours on five mornings, on either a trial or a permanent basis, in some communes or even throughout the canton. The adoption of the HarmoS agreement will lead to the integration of preschool education in the compulsory education system.¹⁶⁴

498. Switzerland has hardly any regulated preschool training or preschool activities before enrolment in primary. For this reason, the period of intensive learning up to age 6 is still generally underexploited and there are in fact insufficient institutions for doing so, apart from the nursery and day-care facilities. Meanwhile, political attention has turned to the topic of preschool education, and several approaches are currently being developed (by the city of Berne in particular).

47. Compulsory education (primary and secondary I)

47.1. Primary

499. The provision of universal free primary education is a binding constitutional obligation of the cantons (Constitution, art. 62, para. 2). The cantons usually delegate to the communes responsibility for and supervision of the provision of basic education while retaining control of the core options, institutions and curriculum content by means of binding directives.

500. In 2005/06 Switzerland had 454,100 primary pupils (49.2 per cent of them girls). The average class-size was 19. Foreigners accounted for 23.1 per cent of the enrolment. Only 2.6 of primary schoolchildren attended a private school not receiving public funding.

¹⁶⁴ See paragraph 496 above.

Table 24
Educations levels – overview

	<i>Enrolment 2005</i>		<i>Teachers 2004/05</i>		<i>Schools 2005/06</i>	<i>Public expenditure 2004</i>	
	<i>Total</i>	<i>Women %</i>	<i>Total</i>	<i>Women %</i>	<i>Total</i>	<i>Private</i>	<i>Millions of francs</i>
Preschool	156 129	48,4	13 700	94,6	4 982	274	896,4
Compulsory education	806 905	48,7	73 200 ¹	65,1	5 954	597	11 297,3
Secondary II (general education and vocational training schools)	317 417	47,3	11 500 ²	40,0	982	305	5 317,1
Tertiary (advanced vocational training universities, specialized and teacher training colleges)	206 404	46,9	33 644 ^{3,4}	32,0	344 ⁵	...	7 462,2

1. Not including special education schools
2. Only general education schools, without vocational training
3. Without advanced vocational training
4. The data on specialized and teacher training colleges relate to the 2005 calendar year
5. Universities and specialized colleges (only integrated ones)

501. Preschool education is being harmonized and made compulsory under the HarmoS project (2003-2007/08) of the Swiss Conference of Directors of Public Education.¹⁶⁵

502. Study of a first foreign language (one of the Swiss national languages or English) currently begins between the third and fourth year of primary. The cantons have decided to introduce a first foreign language (two foreign languages from 2010, in the third and fifth years at the latest) in order to improve language learning in general (including the first national language), to exploit to a greater extent the advantages offered by early learning of languages, to remain competitive in the European context, and to respect the country's multilingualism. The order in which these languages are introduced will be coordinated at the regional level.

503. Some children are unable to cope with a normal school curriculum (making either elementary or more advanced demands). They receive special attention in their original class or are placed in a special (smaller-sized) class or a special school. In 2005/06 there were about 49,000 children (3.3 per cent) in special classes or schools nationwide, compared with only 2.7 per cent in 1980. This increase was due to the larger numbers of children of foreign origin transferred to special classes.¹⁶⁶

504. The international survey "Programme for International Student Assessment (PISA)", which was produced for the first time in 2000, highlighted the aspects of the Swiss education system which might be improved. While Swiss students obtained good results in mathematics, their reading skills and performance in scientific subjects were only average. With regard to the possibility of integrating general and vocational education it is particularly worrying to note that an above-average proportion of young people have very poor reading skills. According to the 2000 PISA survey, more than 20 per cent of children complete their compulsory education without being able fully to understand simple texts or

¹⁶⁵ See paragraph 496 above.

¹⁶⁶ OFS, "Annuaire statistique de la Suisse 2007" (Swiss Statistical Yearbook 2007) (Neuchâtel, 2007).

to interpret their content without distorting the meaning.¹⁶⁷ Children from poor socio-cultural or immigrant backgrounds encountered more than the average amount of problems during their school careers.¹⁶⁸ In the light of the findings of the PISA survey, the Swiss Conference of Directors of Public Education adopted in 2003 a list of measures to improve the effectiveness of the Swiss education system. This list covered action in five areas:

- Quality control;
- Teaching profession;
- Promotion of reading for all;
- Improvement of the languages skills of children experiencing difficult learning conditions;
- Increased availability of preschool and out-of-school education.

The PISA surveys carried out three and six years later, in 2003 and 2006, confirmed the findings of the first survey. They noted some minor improvements in reading skills produced by the measures which had been implemented. In 2006 Switzerland found itself for the first time below the average of the OECD countries in this regard.

505. In autumn 2004 the Confederation and the cantons decided to introduce and develop national monitoring of the education system. Every four years, researchers produce a report on Swiss education which covers all levels of education and training. This report indicates what the system offers in terms of services and highlights its strong and weak points. It enables the officials responsible for education planning and policy to take informed decisions on the system's management. The first report on the Swiss education system (a pilot report) was published in December 2006.¹⁶⁹

47.2. Secondary I

506. Most of the cantons have reworked their secondary I curricula in recent years. The new curricula are more rigorous and contain specific details of the performance expected from pupils. A framework curriculum was devised in French-speaking Switzerland with a view to harmonizing the region's curricula. This framework curriculum, known as "PECARO", sets out the aims in the form of skill levels and stipulates the minimum performance expected of pupils and schools.

507. The plans for the coordinated development of language teaching provide for the early introduction and the monitoring of the study of the local language (first language) and the acquisition of a good knowledge of a second national language and English, as well as for the possibility of learning a third national language.

508. Some cantons carry out activities in the last year of secondary I designed to improve the preparation of older children for vocational training. These activities include graduation-linked work, project-based teaching, individual counselling based on an ability profile determined by testing, and targeted remedial work to make good any deficits.

¹⁶⁷ This applied to no more than 16 per cent of students in the 2000 PISA survey.

¹⁶⁸ See OFS, "*PISA 2000: Synthèse et recommandation*" (PISA 2000: summary and recommendation), 2003 (www.lire-et-ecrire.ch/doc/pisa_2000.pdf).

¹⁶⁹ See www.rapporteducation.ch.

48. Secondary II: general education and vocational training

48.1. Background

509. Secondary II has two streams: general education and vocational training. In proportional terms vocational training is the most important element of post-compulsory education in Switzerland. Almost two thirds of young people opt for vocational training when they finish their compulsory schooling; the other third go on to general education secondary schools. In 2006, 87 per cent of persons in the 25-34 age group held at least a secondary II certificate.

48.2. General educations schools

510. Enrolment in schools preparing students for the baccalaureate has increased over the past 20 years: in 1987 the enrolment in such schools totalled over 52,300; the 2006 enrolment was about 70,300. The proportion of girls has exceeded the proportion of boys since the 1993/94 school year. In 2006/07 girls accounted for 56 per cent of secondary enrolment. Eight per cent of children attended a private school offering the baccalaureate course.

511. The new regulations on recognition of baccalaureate certificates (RRM), introduced in the period 16 January to 15 February 1995, ended the division of courses by type of baccalaureate and established a system of options which included the writing and presentation of a piece of independent work of a specified length (baccalaureate project) and a new framework curriculum. The baccalaureate course now consists of seven basic subjects, one specified special subject and an additional optional special subject. Students must also complete a written baccalaureate project before their final examinations. The provisions of the new regulations constitute minimum standards which secondary students must attain if they wish their secondary qualifications to be recognized throughout Switzerland.

512. In an extensive survey of the operation of the new baccalaureate arrangements (EVAMAR survey) the stakeholders (students, teachers, head teachers, cantonal officials) judged the reform to be quite successful. They approved in particular the introduction of the baccalaureate project, the specific and optional special subjects, and the more flexible concept of this level of education. Eighty per cent of students considered that, despite their sometimes short duration, the new arrangements enabled them to feel “well” or “fairly well” prepared for university education. The second stage of the EVAMAR survey, to be completed in 2008, will focus primarily on the quality of the new baccalaureate.

513. The inclusion of teacher training in Switzerland in the tertiary level led to the disappearance of the teacher training establishments mentioned in the initial report.¹⁷⁰

514. The education provided in general culture schools is a continuation of the education provided in the schools offering baccalaureate courses and it replaced that system in the summer of 2004. The regulations on recognition of the certificates issued by general culture schools entered into force on 1 August 2004. The cantonal curricula are based on the framework curriculum for general culture schools adopted by the Swiss Conference of Directors of Public Education. These schools prepare students for advanced vocational training courses (in advanced technical training schools and specialized colleges of higher education) in health, social sciences, teaching, communication and information (applied linguistics), art and design, music, theatre, and applied psychology. The first-diploma course lasts three years. Award of the next diploma (specialized baccalaureate) requires additional study (supplementary courses).

¹⁷⁰ See paragraph 539 below.

48.3. Vocational Training

515. The new Constitution strengthens the Confederation's powers in the field of vocational training. In general terms the Confederation, as stipulated in article 42 of the Constitution, performs the functions assigned to it in the Constitution. It is responsible for matters requiring uniform regulation. It enacts legislation on vocational training (art. 63). All vocational training is now regulated by the same federal act, which entered into force on 1 January 2004.

516. This new Federal Act on vocational training (Vocational Training Act (LFPr)) and its regulatory ordinance (Vocational Training Ordinance (OFPr)) entered into force on 1 January 2004. For the first time, all occupations not requiring a university qualification became part of the same system, so that they can now be compared with each other. The new Act covers agriculture and forestry occupations, which had previously been regulated by other federal instruments. In addition, health, social sciences and the arts, previously regulated by the cantons, now fall under the jurisdiction of the Confederation.¹⁷¹

517. The expenditure-based system of subsidies has been replaced by a services-based system which pays lump-sums to the cantons. The Confederation's share of public sector spending has increased to more than 25 per cent. This increase is due both to the extension of the Confederation's powers and to its wish to bear a larger share of the costs resulting from the reform of the vocational training system.

518. Almost two thirds of young people in Switzerland opt for initial vocational training. This training imparts the skills and knowledge required for a given occupation. It may be certified by a federal vocational training qualification (two-year course) or by a federal skilled craftsman qualification (three- or four-year course). The practical skills are taught by the training establishment. Vocational training schools also provide academic (general and vocational) education. A study made by the Education Funding Research Centre of Berne University found that in 2004 Swiss enterprises spent almost 4.7 billion francs on courses for trainees.

519. Towards the end of the 1990s the supply of vocational training places was sufficient, so that all the young people who wished to learn an occupation could do so. The economic crisis at the turn of the century brought that situation to an end. The combination of difficult economic circumstances and long-term demographic and structural changes caused an overall shortage of training places, even though there were wide differences between regions and branches of the economy. In 2003 the Confederation created a task force known as "Trainee places 2003" to tackle this critical situation. The aim was to introduce short-term measures to make good the shortage of places. This task force was disbanded in 2004. Early in 2006 the Confederation, in conjunction with the cantons and business organizations, launched "*chance06*" (opportunity06) campaign for more traineeships.¹⁷² This campaign was designed to make the whole population aware of the vocational training problem.

520. The three or four years' of basic training can be supplemented by taking the federal vocational baccalaureate course. Ten years on, the incorporation of the vocational baccalaureate in the Swiss education system may be regarded as a real success. In fact, since 1995 more than 80,000 young people have been awarded the vocational baccalaureate. More than 10,600 certificates were registered in 2006, as against 3,685 in 1993/94. Almost 85 per cent of these certificates were awarded in technical and commercial occupations. The proportion of women has increased from 6 per cent to over 40 per cent

¹⁷¹ See E/1990/5/Add.33, paragraph 667 *et seq.*

¹⁷² www.chance06.ch.

today. A majority (57 per cent) of the students awarded commercial qualifications are women.

49. Non-university tertiary education

521. Advanced vocational training is also regulated by the Vocational Training Act. It consists of federal vocational courses and advanced vocational courses and training in an advanced vocational training establishment.

522. At present, the system offers 370 vocational and advanced vocational courses. Almost 12,000 certificates and 3,000 diplomas are awarded every year.¹⁷³ A large majority of the qualifications are awarded in only a small number of occupations. The following are the most popular courses leading to federal vocational qualifications: marketing, personnel management, accounting, and information technology. The most popular advanced vocational training courses are information management, sales management, financial analysis, and agriculture. Health, social sciences and arts courses, regulated up till now by the cantons, will be added shortly.

523. The courses taught in the higher education establishments lead to a federally recognized qualification. These courses are based on the minimum requirements established by the State and on the directives of the Federal Technical Training Office derived from these requirements, which relate to framework curricula and the procedures for recognition of qualifications. In addition to the courses taught in the national languages, courses offered in English have also been recognized since 2005.

50. Colleges of higher education (*hautes écoles*)

50.1. Background

524. Switzerland's system of colleges of higher education is undergoing far-reaching changes. The Confederation and the cantons have launched a "Swiss college system" project to reform the entire system. The aim is to bring together in a single system all types of colleges of higher education (cantonal universities, federal polytechnics, specialized colleges, and teacher training colleges). The new article 63 (a) of the Constitution, which deals with colleges of higher education and was accepted by the people and cantons on 21 May 2006, forms the basis of the new system. It provides for the Confederation and the cantons to take over responsibility for the coordination and quality control of higher education under various agreements and for the powers in question to be transferred to joint bodies.

525. Colleges of higher education play a vital role in research and development. Further information will be found under article 15 (para. 600 *et seq.*).

50.2. Universities

526. Two new universities have been added in recent years to the eight mentioned in the initial report. They are the University of Lucerne and the University of Italian-Speaking Switzerland. They offer specialized and less "universal" courses.

527. The number of new admissions to ordinary colleges of higher education (cantonal universities and federal polytechnic colleges (EPF)) has increased by 21 per cent since

¹⁷³ "Formation professionnelle supérieure: final examinations in 2005" (Advanced vocational training: final examinations in 2005) (OFS).

1990. In 2006 the enrolment was 114,961, including 49.3 per cent women. The university degree rate stood at 14 per cent in 2005.¹⁷⁴

528. Since the winter term of 2001/02 Swiss universities have been endeavouring to bring their courses into line with the Bologna Declaration.¹⁷⁵ The academic qualifications which may be obtained under the new system are the bachelor's degree, awarded at the end of the first cycle of higher education (three years of full-time study or 180 European Credit Transfer System (ECTS) credits) and the master's degree (corresponding to the *licence* under the old system), awarded at the end of the second cycle of higher education (18 months to two years of full-time study or 90-120 ECTS credits). Only holders of a bachelor's degree may go on to take a master's degree. Admission to study for a doctorate requires a master's degree and satisfaction of additional conditions (including good average marks). The universities may also award postgraduate master's degrees. Award of the master of advanced studies degree requires a minimum of one year's full-time study (60 ECTS credits).

529. In addition to funding its own colleges of higher education (the federal polytechnics) the Confederation has gradually been providing funding for the universities, initially for research but subsequently (from 1966) in the form of direct general grants. Under the Federal Act on university grants and cooperation with regard to colleges of higher education (University Grants Act (LAU)) the Confederation provides basic funding and makes additional contributions for projects and programmes designed to encourage innovation and collaboration among colleges, as well as contributions to investment projects. The universities receive further support from the Confederation through the National Scientific Research Fund (FNS) and in the form of funding for participation in European and other international programmes. The support obtained by individual universities from outside sources constitutes a further source of funding. Although such support covers only a relatively small part of university budgets, it continues to grow in importance.

530. The major part of financial resources is still provided by the cantons which have universities, while the other cantons contribute in proportion to the number of students which they send. Equality of access to Swiss universities, irrespective of canton of origin, is guaranteed under the Inter-Cantonal University Agreement of 20 February 1997.

531. In view of the increasing demand for a limited number of places, admission to the faculties of medicine and veterinary medicine of the universities of Bâle, Berne, Fribourg and Zurich is regulated by application of a quota system.

532. The question of a possible increase in university fees has given rise to fierce controversy in recent years. The university registration fee has remained unchanged or virtually unchanged over the years. It usually represents only a tiny part of cost-of-living expenditure. Poor students can apply for aid in the form of scholarships and loans. In many colleges students may also apply for full or partial reimbursement of the fees paid if they cannot afford them.

533. The Federal Court has confirmed its earlier jurisprudence¹⁷⁶ relating to article 13, paragraphs 2 (b) and (c), of the Covenant to the effect that persons may not cite these provisions directly with respect to university fees.¹⁷⁷

¹⁷⁴ This rate corresponds to a percentage of a notional age-group which received degrees (net degree rate). The net degree rate is not influenced by changes in the population group concerned or the typical age at which a degree is obtained. It is calculated by dividing, for each birth year, the number of degrees by the corresponding population and adding this rate to the number of birth years.

¹⁷⁵ For details of the Declaration's application see www.bolognareform.ch.

¹⁷⁶ ATF 120 I A 1.

Table 26
University fees by term, 2006/07 (in francs)¹⁷⁸

	<i>Lausanne Poly</i>	<i>Zurich Poly</i>	<i>BS</i>	<i>BE</i>	<i>FR</i>	<i>GE</i>	<i>LA</i>	<i>LU</i>	<i>NE</i>	<i>SG</i>	<i>ZH</i>	<i>USI</i>
Course costs	633	580	700	600	500	435	580	765	425	800	640	2000
Term fees	0	64	0	55	105	65	0	0	75	120	49	0
Additional fees for foreign students	0	0	0	0	150	0	0	0	275	150	100	2000
Total for foreign students per term	633	644	700	655	755	500	580	765	775	1070	789	4000
Total for foreign students per year	1266	1288	1400	1310	1510	1000	1160	1530	1550	2140	1578	8000

50.3. Specialized colleges of higher education

534. The Federal Act on specialized colleges of higher education (Specialized Colleges Act (LHES)) mentioned in paragraph 687 of the initial report entered into force on 1 October 1996. It provides that the Confederation and the cantons shall ensure the efficiency and sustainability of the funding and management of specialized colleges and issue joint planning directives to this end. The Confederation bears one third of the colleges' operating costs. The cantons are responsible for the colleges and pay two thirds of the costs.

535. Specialized colleges have become, alongside the universities, a mainstay of Switzerland's college system. Their courses attract considerable interest. Almost one third of Swiss students currently attend specialized colleges. The number of degrees awarded has quadrupled over the past five years.

536. The international system of bachelor's and master's degrees was introduced in the specialized colleges in the autumn of 2005. Seventy per cent of the courses offered in 2005 were already in conformity with the Bologna reform.

537. The subjects taught in the specialized colleges, formerly regulated by cantonal legislation (health, social security, the arts), have been regulated since 2005 by the Confederation. The colleges supplement the education dispensed in the fields of technology, economics and design. The teacher training colleges, which are a responsibility of the cantons, are also part of the specialized college system.

538. Most teacher training in Switzerland is provided by the teacher training colleges, which, pursuant to their terms of reference, have the status of specialized colleges.

51. Continuing education

539. In 2003, 1.8 million persons, or 36 per cent of the resident adult population, took continuing education courses.¹⁷⁹ This percentage declined slightly between 1999 and 2003 (39 per cent in 1999). Attendance at courses depends very much on proximity to place of work. Eighty-four per cent of the persons taking courses are in employment. In 2003, 3.5 million persons (69 per cent of the resident population) resorted to individual forms of learning in order to improve their education. In the period 1999-2003 resort to individual

¹⁷⁷ ATF 121 V 229; ATF 122 I 101; ATF 123 II 472; ATF 126 I 240; and ATF 130 I 113

¹⁷⁸ Conference of Rectors of Swiss Universities (CRUS): www.crus.ch.

¹⁷⁹ Regula Schröder-Naef, "Education des adultes en Suisse: Etat des lieux 2004 et nouvelles recommandations" (Adult education in Switzerland: 2004 situation and new recommendations) (UNESCO, Berne, 2005).

forms of learning increased by about one twelfth, from 64 to 69 per cent.¹⁸⁰ However, a quarter of the population is not involved in continuing education in any form.

540. A study published in 2006 revealed that many members of Switzerland's resident population have serious deficits in their basic skills: some 800,000 adults (16 per cent of the 16-65 age group) are unable to read well enough to understand a simple text and some 400,000 adults (8 per cent of the same age group) cannot express themselves in the language of the place where they live.¹⁸¹ The most decisive influences on life skills are education level, age, ability in the mother-tongue test language, Swiss or foreign birth, and sex, and indeed parents' standard of education. The study "Adult Literacy and Life Skills" reached the same conclusion in 2003.

541. In order to improve basic skills, almost all the cantons offer persons with the poorest qualifications access to courses established by private associations with the support of the public authorities. At the national level, the Federal Cultural Affairs Office has established a literacy network comprising all the relevant institutions and associations.

542. The Continuing Education Forum, which brings together many of the stakeholders (federal and cantonal offices, social partners, etc.), was founded in 2000. It aims to create in Switzerland arrangements to foster lifelong learning, improve the quality and institutions of continuing education, and offer everyone access to this form of education as their individual abilities and needs require.

543. Since 1997 the unemployment insurance system has been one of the major clients of continuing education in Switzerland. Following the revision of the unemployment insurance legislation, emphasis has been given to tracking and training of unemployed persons who need training if they are quickly to find a steady job. Further information on this subject will be found in the section of Switzerland's report of 30 November 2004 to the ILO monitoring body on the application of the Human Resources Development Convention (No. 142) concerning the role of career guidance and vocational training in human resources development.

52. Public spending on education

544. Public spending on education increased from 16.2 to 26.7 billion francs between 1990 and 2004. After a lull in the growth of public education expenditure in the early 1990s, the resources allocated began to increase again 1997. In 2004 Switzerland spent 6 per cent of its GDP on education and research. The share of public spending on education was 18.7 per cent in 1990 and 19.3 per cent in 2004. The cantons and their communes provide most of the resources in this area: in 2004 they contributed funding of 22.5 billion francs, representing 84 per cent of public expenditure on education. The Confederation's contribution in that same year was 4.2 billion francs (16 per cent).

545. More than half of the public spending related to compulsory education (including preschools and specialized teaching). This amounted to 13.4 billion francs in 2004. The funding is provided by the cantons and their communes (with a federal contribution of 0.2 per cent). The funding for the secondary II level is also provided mainly by the cantons. In 2004 the Confederation contributed 15.7 per cent of expenditure on secondary II vocational training and 0.5 per cent of expenditure on general culture schools. In 2004 the cantons bore about 95.6 per cent of the cost of advanced vocational training, with the Confederation's contribution amounting to 3.5 per cent. The Confederation contributed about 50 per cent

¹⁸⁰ OFS, "*La formation continue en Suisse 1996-2003*" (Continuing education in Switzerland 1996-2003) (Neuchâtel, 2004).

¹⁸¹ OFS, "*Lire et calculer au quotidien: Compétences des adultes en Suisse*" (Everyday reading and writing: Life skills of adults in Switzerland) (Neuchâtel, 2006).

(3.6 billion francs) of the spending on colleges of higher education (vocational training colleges, cantonal universities, federal polytechnics). At the university level, the Confederation financed over 90 per cent of the cost of the federal polytechnics in 2006. In the case of the cantonal universities, the Confederation's contribution amounted to about 26 per cent.

53. Equality of opportunities

53.1 Background

546. By applying the principle of equality of opportunities the education system plays an important role in ensuring social equality. But it does not always succeed in making good the disadvantages of a culturally deficient background. The PISA survey showed that the educational level and job status of children's parents and their access to various resource tools (the Internet, for example) are closely associated with their performance. Persons from the lower social classes are underrepresented at the college level. According to an OFS study, one third of students in Switzerland come from families in which at least one of the parents had attended a college of higher education. However, there are marked differences between students attending specialized colleges and those attending university.¹⁸²

53.2 Gender equality

Para. 33: *The Committee recommends that the State party play a more active role in promoting equal access to higher education for women, immigrants and ethnic minorities.*

547. In formal terms, access to all academic and vocational training courses is guaranteed to both sexes in equal proportions. In fact, however, differences are already apparent from the start of compulsory education. The findings of the PISA survey show a considerable gender variation in performance. However, such factors as "socio-economic background" and "migrant status" clearly have a bigger influence than gender on performance in school.

548. Females are the chief beneficiaries of the sharp expansion of education in recent years. Gender differences have become increasingly blurred. Today, there are almost as many women as men beginning and completing post-compulsory education. However, there are still many more women than men in the 25-64 age group who have no post-compulsory education (23 per cent against 13 per cent in 2006). Moreover, men still continue in education for longer and have a higher rate of admission to the tertiary level. Girls perform better than boys in compulsory education: they have fewer repeated years, fewer of them are placed in special classes, and they are relatively more likely to take a more demanding secondary I curriculum. On the conclusion of compulsory schooling, as the PISA surveys show, girls have better reading skills than boys but are less good at mathematics. It is thought, not without reason, that their poorer performance in mathematics is connected with traditional attitudes to the gender-separation of roles.

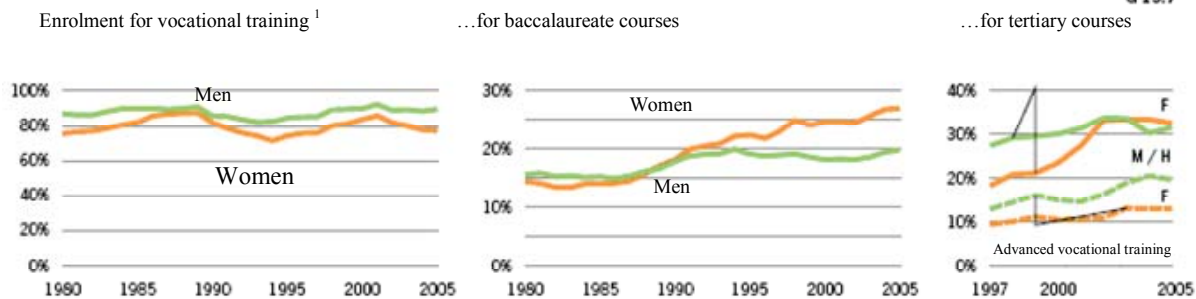
549. The clear distinction between the occupations chosen by men and by women has changed little since 1990. Young men are more likely to choose occupations in the metallurgical industry or machine manufacturing, while more young women are found in commerce, followed by medical services, the beauty industry, and sales. There are still many fewer women taking technical courses. Despite widespread information and

¹⁸² OFS "La Suisse en comparaison européenne: la situation sociale et économique des étudiants-e-s des hautes écoles" (Switzerland compared with Europe: the social and economic situation of college students) (Neuchâtel, 2007).

awareness-raising campaigns encouraging young women to diversify their vocational choices, these choices remain heavily influenced by decades-old stereotypes.

Graph 7
Gender differences in education

Gender differences in education



¹ The total enrolment exceeds 100% because the same person may enrol several times

Source: OFS, "Annuaire statistique Suisse 2007" (Swiss Statistical Yearbook 2007) (Neuchâtel, 2007), p. 346.

550. The number of women attending university in Switzerland doubled in the space of 20 years and has continued to rise, with the result that it may overtake the male enrolment in the course of the next decade. The increase in the male enrolment has been much smaller. In 2006 there were already more women than men in the majority of universities. Only four institutions were out of step with this trend: Uni Svizzera italiana (USI), the University of St. Gallen, and the Zurich and Lausanne polytechnics. But the very much larger number of male students in these two polytechnics is the reason for the slightly smaller proportion of female students nationwide. In terms of the subjects studied, more women are found in the humanities and social sciences, medicine and pharmacy, and law. The more "technical" subjects are still a predominantly male domain. The gender distribution is not regular at all levels. For example, fewer women than men obtain a doctorate, a situation due partly to the fact that more theses are submitted in the "technical" subject areas, where women are less well represented.

551. The enrolment in specialized colleges of higher education has almost doubled over five years. The number of male students certainly increased strongly, but women were chiefly responsible for the doubling of the enrolment. Women accounted for only a third of the enrolment in specialized colleges in 2000 but they constitute almost a half today. Parity should be reached in the next few years. This development is due to the opening of new colleges in which the subjects taught (health, social work, etc.) attract more women. It has also been strongly influenced by the large numbers of women enrolling in the teacher training colleges. However, enrolment is increasing in all of Switzerland's specialized colleges. The "technical" subjects, such as architecture, economics and, above all, technology and information technology, are taken overwhelmingly by men. Health and applied linguistics are the commonest subjects for women.

552. The federal Gender Equality Programme¹⁸³ also applies to the specialized colleges. Ten million francs have been allocated for each of the periods 2004-2007 and 2008-2011. The corresponding action programme ought to increase the numbers of female students, teachers and researchers and ensure that equality of opportunities becomes a quality criterion in the specialized colleges and an integral part of their strategies. The action

¹⁸³ See the comments under article 3.

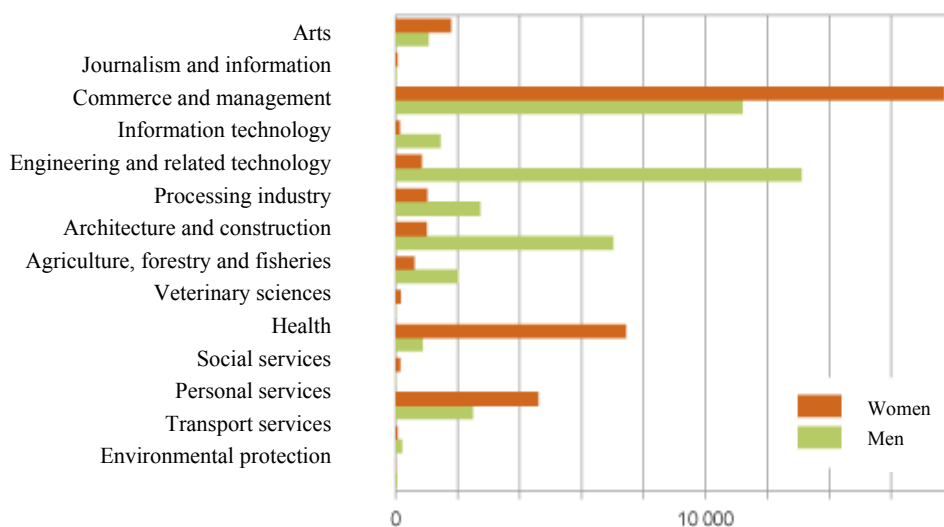
programme also encourages research on gender topics and on the functions of teachers, managers, and students in this regard.

553. The launching of the series of “Discover technical occupations” days was designed make women more aware of the possibility of studying or working in a technical or scientific field. The Federal Vocational Training Office (OFFT) has co-financed more than 160 projects of this kind since 2000. In addition, subsidies have been allocated for places in day-care centres, and equality-of-opportunities representatives have been appointed and committees established.

Graph 8.

Vocational training enrolment, 2006/07

Ingresos en una formación profesional de varios años en 2006 y 2007

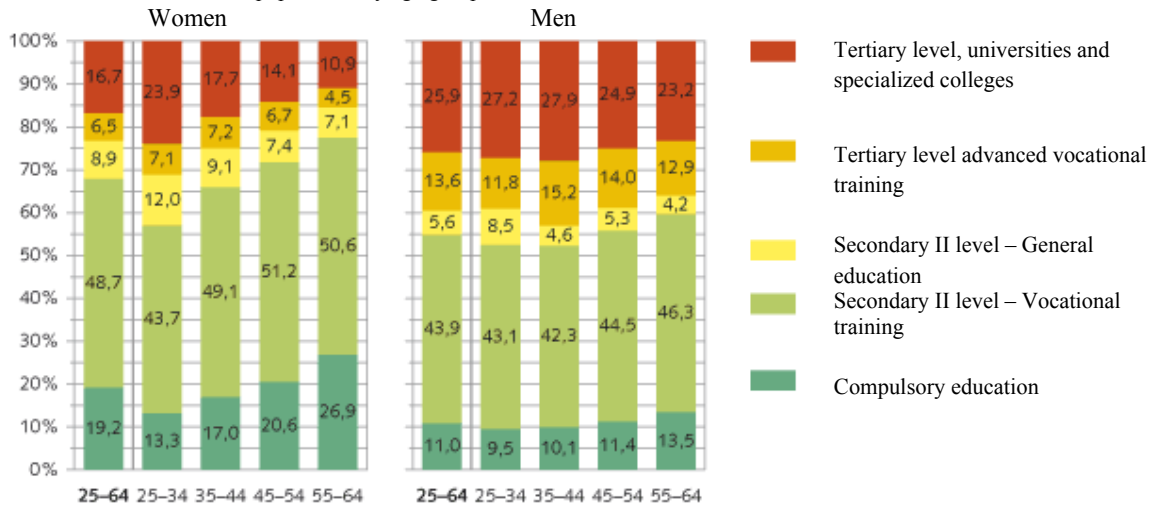


Source: Statistics on schoolchildren and students.

Graph 9.

Education level of resident population, by age group, 2007

Education level of resident population, by age group, 2007



Source: Swiss Working Population Survey.

554. The number of women in the teaching profession depends very much on the level in question: the higher the level and the better the pay, the smaller the number of women teachers. This situation has changed little in recent years. With the exception of the preschool level, which employs almost exclusively women, the proportion of women has increased at all levels over the past decade. However, the increase has been very small in secondary II general education. The annual increase in the number of women teachers at the university level has been insignificant since 2000. The smallest proportion of women teachers is found in the universities. In order to reverse this trend, in 2000 the cantonal universities introduced a programme to promote equality of opportunities. This programme has resulted in an increase in the number of women teachers from 7 to 14 per cent in the space of six years. The specialized colleges of higher education had only 5,400 women in a total staff of 17,200 basic-grade teachers in the subjects recognized by the Federal Vocational Training Office.

53.3. Children of foreign origin

555. In the 2005/06 school year 23.7 per cent of the children enrolled in compulsory education were of foreign origin. Almost half of the foreign children are found in the lower streams, compared with a quarter of the Swiss children. Foreign students account for 17 per cent of the secondary II enrolment and for 19.2 per cent at the tertiary level. The high proportion of foreign students at the tertiary level is due principally to the fact that large numbers of foreign students come to study in Switzerland. Only 25 per cent of the foreign students attending Swiss colleges completed their elementary education in Switzerland.

556. The PISA 2000 survey showed that immigrant status has a considerable influence on performance. As many as 48.5 per cent of young people from families in which both parents were born abroad have serious difficulty in understanding simple texts in the ninth grade, compared with 11.1 per cent of young people from families in which the parents are

Swiss and 22 per cent from families in which the parents are of different origins.¹⁸⁴ The PISA survey “PISA 2006: Science Competencies for Tomorrow’s World” showed that students’ performance in science subjects is linked to their socio-economic background and cultural origin. Immigrant children living in socially and culturally disadvantaged families in which the test language for mother tongue is not spoken, are less likely to perform well in Switzerland than their fellows from better-placed families.

557. As a general rule, children from immigrant families are taught directly in ordinary classes. School has a crucial impact on the effectiveness of their integration. It is therefore important for foreign children to enrol in school as soon as possible. With a view to improving their integration in the school system, special measures have been introduced in almost all the cantons for children who have a foreign language as their mother tongue, both at the preschool level and in the cycle of compulsory education. In German-speaking Switzerland, courses in the language of instruction are offered under the heading “German for speakers of foreign languages” and “German as a second language”. In some German-speaking cantons children having a foreign language as their mother tongue are also encouraged to learn the local dialect. In addition to the in-school measures for the integration and support of such children, efforts have been made to include their families in integration process.

558. The cantons have appointed representatives for matters of intercultural education. The Swiss Conference of Cantonal Directors of Public Education (CDIP) attends to the national coordination of education and migration matters. It has an Education and Migration Committee (CEM), on which the Federal Migration Office (ODM) has been represented since 2003. It formulates positions and recommendations and provides specialized support for the cantonal agencies. Every two years the CDIP secretariat organizes a national colloquium on topics of education and migration (CONVEGNO).

559. The labour market situation with respect to trainee places is particularly difficult for young people from immigrant backgrounds. It is even more difficult in times of economic slow-down. At the end of August 2004, 83 per cent of young Swiss had obtained a trainee contract, as against only 56 per cent of their foreign counterparts.¹⁸⁵

560. The Vocational Training Act (LFPr) authorizes the Confederation to encourage, as part of its project-support work, local measures for specific groups and regions (LFPr, art. 7 and art. 55, para. 1 (3)) and vocational training measures for young people experiencing educational, social or language problems (art. 55, para. 1 (f)). A total of almost 10 million francs was allocated to some 30 integration projects between 2004 and 2006.

53.4. Children with disabilities

561. The Disabled Persons Act (LHand), which entered into force in 2004, obliges the cantons to ensure that “disabled children and adolescents receive basic education suited to their specific needs”. The cantons are also required to encourage the enrolment of such children in normal schools by suitable means “provided that this is possible and fosters the well-being of the disabled child or adolescent”. The Act provides that subject to certain conditions it may be possible to request a court or the administrative authorities for the inequalities in the provision of education to be eliminated.

562. More and more children with learning difficulties or disabilities are being educated in normal classes instead of in special classes or schools. For the moment, most of the cantons are reconsidering this approach on the basis of the experience gained so far and are

¹⁸⁴ Federal Migration Office, “*Problèmes d’intégration des ressortissants étrangers en Suisse*” (Integration problems of foreign nationals in Switzerland) (June, 2006), p. 24.

¹⁸⁵ See paragraph 119 above.

amending their directives in order to apply the legislation on the right to equality of persons with disabilities.

53.5. Religious minorities

563. The freedom of conscience and belief (Constitution, art. 15) requires the State to remain neutral in religious and denominational matters. This neutrality is of particular importance in the public schools, for education is compulsory for all without any distinctions between confessions (art. 62, para. 2). Private schools are not bound by the principle of religious neutrality.

564. Public schools are entitled to include religious education as a curriculum subject but they may not make it compulsory (art. 15, para. 4). They must either offer it as an optional subject or allow exemptions.

53.6. Traveller children

565. Compulsory attendance at the same school is not easily compatible with the Traveller lifestyle. The collective right to pursue a traditional lifestyle clashes at this point with the individual right to education. It seems, however, that thanks to the flexibility of the education authorities and the teaching profession efforts are often made to find a pragmatic solution to this conflict. In many cantons Traveller children of school age attend school regularly in the place where the family spends the winter (their place of domicile). They attend normal classes during the winter months. In summer, when they are off with their parents on the road, they are usually released from school by the education authorities. They are given the necessary school materials for this period and they can send their homework and exercises in to their teachers for correction. The back-up measures to fill any gaps in their knowledge vary in extent. The children's periodic absences certainly mean that they perform less well in terms of formal education, especially if their parents do not offer them any particular encouragement.

54. Award of scholarships

566. The scholarship system is designed to ensure equality of opportunities in education. It is used to support students in their post-compulsory education. It is thus concerned with secondary II (secondary general and vocational schools) and tertiary establishments (for example, universities and specialized colleges of higher education). The courses in question must lead to a qualification recognized by the State.

567. Pursuant to article 66 of the Constitution, the award of scholarships is a responsibility of the cantons. The cantons awarded students 283 million francs in the form of scholarships and 31 million francs in the form of student loans in 2004. This expenditure, in particular the expenditure on scholarships, was subsidized by the Confederation in the amount of 79 million francs. In 2004, 10.2 per cent of post-compulsory students obtained a scholarship. The approximately 52,000 recipients of student loans received an average of 5,400 francs. This amount varied from canton to canton: it was 7,700 francs in Zurich and 2,700 francs in Neuchâtel. The higher the education level, the bigger the scholarship. Students in colleges of higher education receive proportionately more financial support from the cantons. Since the entry into force in January 2008 of the reform of the financial equalization system (RPT)¹⁸⁶ the Confederation no longer subsidizes cantonal spending on scholarships at the tertiary level.

568. The financial support provided by parents constitutes the main pillar of students' incomes, and 90 per cent of students receive such support. Furthermore, 77 per cent of

¹⁸⁶ See paragraph 26 *et seq.*, above.

students combine studying with paid work. Four out of five students with jobs continue them during term time.¹⁸⁷ However, as the burden of course work becomes increasingly heavy, it is increasingly difficult to combine studying with a job.

55. Situation of the teaching profession

569. In the 2004/05 school year there was a total of 76,800 teachers working in the public schools of the compulsory education system and 11,500 in secondary II schools. The university teaching staff totalled 45,546 in 2006 (including 3,129 professors; the figure for the specialized colleges was 31,151 (including 5,471 professors).

570. Most teachers work part-time. This is particularly true in the compulsory education system (56.5 per cent) and in secondary II general education schools. Only the preschool level has a majority of full-time staff. Two-thirds of schools use partially qualified teachers, usually to ease recruitment problems.

Article 14. Compulsory and free primary education

571. Article 19 and article 41 (f) of the new Constitution establish the right to primary education. The information contained in paragraph 740 of the initial report has not changed. The attendance rate in the compulsory education system is still 99 per cent on average.

572. According to the jurisprudence of the Federal Court, article 19 of the Constitution guarantees every child the right to at least nine years of free basic education in public schools suited to their individual aptitudes and their degree of personal development.¹⁸⁸

Article 15. Right to culture

56. Right to participate in cultural life

56.1. Background

Para. 26: *The Committee recommends that the cantonal laws should be further harmonized, to ensure due respect for the provisions of the Covenant, particularly with regard to fundamental rights such as the right to [...] culture.*

573. The adoption of the new Federal Constitution established a legal basis for the Confederation to promote culture and closed the gap between the practical promotion of culture and its constitutional justification as such. The new article 69 provides that, while culture remains a cantonal responsibility, the Confederation has a subsidiary responsibility to promote cultural activities of national interest. The cinema industry is an exception, for here the Confederation has the primary jurisdiction (art. 71). However, article 69 is only one element of the new constitutional provisions on culture. Consideration must also be given to the goal posited in article 2, paragraph 2, which provides that the Confederation shall promote, amongst other things, “the country’s cultural diversity”. Article 4 specifies the four national languages. Article 18 establishes the freedom of language, article 20 the freedom of science, and article 21 the freedom of the arts. Article 5 enjoins the Confederation to realize the fundamental rights. The following are the other articles of the

¹⁸⁷ OFS, “*La Suisse en comparaison européenne: la situation sociale et économique des étudiant-e-s des hautes écoles*” (Switzerland compared with Europe: the social and economic situation of college students) (Neuchâtel, 2007).

¹⁸⁸ ATF 2P.276/2005 of 7 May 2007; ATF 129 I 12, paragraph 4.

Constitution which relate to culture: article 70 (languages), article 71 (the cinema), and article 78 (the protection of nature and the national heritage). These provisions on culture require the Confederation to give due consideration to cultural content, not only when devising means of promoting culture but also when regulating other fields.

56.2. Expenditure on culture

574. In 1996 expenditure on culture by the public sector (the communes and cantons and the Confederation) amounted to some 1.8 billion francs. In 2001 this figure came close to 2.3 billion francs. There are no consolidated figures available for the period since 2001. However, in view of the difficult situation of the public finances it may be assumed that public spending on culture has declined slightly in recent years. Financial support for cultural activities by private individuals, private businesses and foundations totalled almost 310 million francs in 1996. This contribution has increased since then. In 2001, spending on cultural activities by private businesses (not including foundations) amounted to 370 million francs.¹⁸⁹

56.3. Promotion of the cultural identity of minorities

575. Article 70, paragraph 5, of the Federal Constitution gives the Confederation a mandate to promote Romansh and Italian. Pursuant to the Federal Act of 6 October 1995 on financial support to safeguard and protect the Romansh and Italian languages and cultures, every year the Confederation grants the cantons of Grisons and Ticino financial aid to safeguard their cultural and linguistic identities. In 2007 this financial aid totalled 4,447,700 and 2,224,400 francs respectively. The existing legislation on the promotion of Romansh and Italian has been incorporated in the new Languages Act.

576. On 5 October 2007 Parliament adopted the Federal Act on national languages and understanding among the linguistic communities (Languages Act (LLC)). This Act regulates the use of the official languages within the federal authorities and between them and the citizenry (Constitution, art. 70, para. 1). The equality of the official languages is stated explicitly in the Act, which also stipulates the status and use of Romansh as a semi-official language of the Confederation. The mandate assigned by the Act with respect to understanding among the linguistic communities (art. 70, para. 3) is carried out under the languages policy by means of a series of concrete measures for encouraging individual and social multilingualism. The Act requires the cantons to teach one of the national languages as a first foreign language. It also makes provision for federal support for the multilingual cantons (art. 70, para. 4) and incorporates the existing legislation on the promotion of Romansh and Italian (art. 70, para. 5).

577. At the time of ratifying the Council of Europe's Framework Convention for the Protection of National Minorities of 1 February 1995 the Federal Council stated explicitly that Switzerland's Travellers constituted a national minority within the meaning of the Framework Convention. Switzerland is thus committed to promote conditions for the members of this national minority to practise and develop their culture. In all consistency, the Federal Council stated, when adopting Switzerland's second report under the European Charter of Regional or Minority Languages of 5 November 1992, that Yenish was a regional or minority language not spoken throughout the country and confirmed the right of the Yenish to the benefit of measures to promote their language. Accordingly, the Confederation officially recognizes Yenish as an integral part of Switzerland's national culture. In 2007 the Association of Travellers drafted measures for promoting Yenish with the financial support of the Federal Culture Office.

¹⁸⁹ OFS, "*Financement de la culture par les entreprises*" (Funding of culture by businesses) (Neuchâtel, 2001), p. 6.

56.4. Role of the media

578. The fully revised version of the Federal Act on radio and television (Radio and Television Act (LRTV)) entered into force on 1 April 2007. It provides for and promotes the airing of programmes of national utility (public service broadcasting). Broadcasters producing public service programmes, a function which entails giving considerable attention to cultural matters, are accorded public funding (a percentage of the revenue from the licence fees charged to the public). The Act also provides for greater flexibility with regard to the broadcasting of private programmes not funded by public money and not requiring access to the limited broadcasting infrastructure (radio frequencies, for example). Such programmes will no longer require the award of a concession.

579. Switzerland's array of media outlets (printed, audiovisual and Internet) is expanding at explosive speed, as is their use by the general public. Radio and television audience figures have naturally fallen in recent years: in 2006 every television viewer in German-speaking Switzerland spent an average of 146 minutes a day in front of the television (102 minutes listening to the radio), compared with 170 and 97 minutes respectively in the French-speaking cantons and 180 and 96 minutes in the Italian-speaking part of the country. The amount of time spent listening to the radio has declined steadily since 2001 in all the linguistic regions, at a rate of about three minutes a year. This development has gone hand-in-hand with a considerable increase in Internet use. In 2006, for example, 63 per cent of the population used the Internet at home (43 per cent at work), increases of 27 and 9 per cent respectively.

Public broadcasting services of the Swiss Radio and Television Corporation (SSR)

580. Pursuant to article 24, paragraph 1 (a), of the Radio and Television Act (LRTV) the SSR provides the whole population with radio and television programmes, unabridged and of equal cost, in the three national languages (German, French and Italian). The current service includes seven television and 16 radio broadcasts. The SSR increased the number of television programmes by a factor of 1.5 between 1995 and 2004. Programming devoted to cultural topics increased from 4,078 hours in 1995 to 6,253 hours in 2004. The SSR broadcasts at least one radio programme for French-speaking Switzerland. It also airs regular television programmes for the 40,000 or so speakers of Romansh.

581. The statutory provision of a public service imposed on the SSR by the State will continue to be financed by radio and television licence fees (about 1.1 billion francs a year), financing which currently represents a little over 70 per cent of the SSR's income (the remainder coming from advertising and sponsorship). Internal financial equalization arrangements in the SSR ensure that the less densely populated regions have sufficient resources for programme production. For example, German-speaking Switzerland, which accounts for 75 per cent of the total population, receives only 45 per cent of this financing, while Italian-speaking Switzerland, with only 4.2 per cent of the population, receives over 22 per cent of SSR resources.

Public broadcasting by private stations partially financed from licence fees

582. Public services entrusted to private broadcasters under concessions have been extended still further by the new Radio and Television Act. The proportion of the licence fees paid to local radio stations and regional television networks has been increased to 4 per cent of total revenue for each of them.

583. In return, the private broadcasters awarded concessions must provide specific programming. This includes, pursuant to article 38, paragraph 1 (a), of the Act, not only extensive news programmes on the political, economic and social scenes but also an extra contribution to the cultural life of the area served. The Radio and Television Ordinance (ORTV) assigns specific obligations to non-profit radio and television stations which

broadcast an additional programme in urban areas. Their programme must take into consideration, amongst other things, the linguistic and cultural minorities living in the area served (ORTV, art. 36, para. 1, second sentence).

The press

584. Since the publication, in 2007 by the Federal Statistical Office (OFS), of a study on the diversity of the press in Switzerland,¹⁹⁰ there has been a steady decline in the number of independent newspapers sold for a cover price. As a result of the concentration taking place in the newspaper market, the production of these newspapers is increasing in the hands of big publishing houses.

585. The answer to the question whether the decline in the number of daily newspapers has an impact on the diversity of public opinion and thus on the development of Swiss society cannot be found by reference to the changes in the press sector alone. However, it is clear, even when comparisons are made across the various media, that the supply of professional journalism for which the Swiss people is willing to pay has stagnated. The most significant new development in the news press in recent years has been the launching of free newspapers, which have become dailies in newspaper terms.

56.5. Protection of cultural property

586. The European Convention for the Protection of the Architectural Heritage of 3 October 1985, which is mentioned in the initial report, entered into force on 1 July 1996. The (Revised) European Convention for the Protection of the Archaeological Heritage of Europe of 16 January 1992 entered into force on 28 September 1996. The European Landscape Convention of 2000 (Florence Convention) has been signed by Switzerland but not yet ratified.

587. UNESCO has included four new Swiss sites in the World Cultural Heritage List since 1995. They are two cultural and two natural sites: the châteaux of Bellinzona (listed in 2003), the Jungfrau-Aletsch-Bietschorn region (2001), Mont San Giorgio (2003), and the terraced vineyards of Lavaux (2007). The steady increase in the number of Swiss sites on the World Heritage List testifies to the importance which the Swiss people and authorities attach to their cultural and natural sites and of their determination to preserve them.

56.6. Freedom and diffusion of the arts

588. The freedom of the arts is stated expressly in the article 21 of the new Federal Constitution and is no longer protected merely as an element of the freedom of expression. The freedom of the arts as a fundamental right is a defence against State interference. It protects not only the creators of works of art but also such intermediaries as museums, publishing houses and cinema owners. In this regard, the question of whether the “creator” or the “intermediary” is working for profit has no effect on the scope of the protection of the freedom of the arts. Both profit and non-profit purposes are included in the scope of the protection. Like any fundamental right, the freedom of the arts is not unlimited. Some restriction of this freedom is possible, in particular for reasons of the moral protection of third parties or reasons of the criminal law (the prohibition of pornography, for example). The freedom of the press, previously established in article 55 of the Constitution, is now included in article 17, on the freedom of the media.

56.7. Vocational training in the field of culture and the arts

589. Under article 69, paragraph 2, of the Constitution the Confederation may also encourage artistic and musical expression by means of education. The exercise of this new

¹⁹⁰ OFS, “*La diversité de la presse en Suisse*” (The diversity of the press in Switzerland) (Neuchâtel, 2007).

federal function still has to be harmonized and equalized with the cantons, since education is mainly a cantonal responsibility. The regulation of training in the creative arts has been a responsibility of the Confederation since the entry into force of the new Vocational Training Act (LFPr) on 1 January 2004 and the partially amended Specialized Colleges Act (LHES) on 5 October 2005.¹⁹¹

590. The following creative-arts courses are offered in Switzerland's specialized colleges of higher education: instrumental and vocal music; interpretation and performance; school music and church music; conducting, special musical fields; interpretation of stage works; direction of stage works; visual arts; and teacher training in the applied arts and the visual arts.

57. Maintenance, development and diffusion of scientific progress

591. Switzerland invests vast amounts in research. The proportion of its GDP allocated to spending on research and development (R&D) is one of the highest in the world. Almost two thirds of research spending is funded by the private economy. Pursuant to its mandate under article 64 of the Constitution, the Confederation encourages free basic research, in particular through the National Swiss Fund (FNS). This Fund supports practical research in areas in which resources have to be pooled owing to a lack of institutions in the science sector and in areas in which economic or social needs call for specific scientific solutions.

592. Switzerland's higher education institutions are the mainsprings of basic research. In addition to providing practical job-oriented instruction, the specialized colleges of higher education also focus on applied R&D. They promote in particular exchanges of know-how and technology with small and medium-sized enterprises, which are an important element of the Swiss economy. The essence of this approach is the rapid, pragmatic and market-oriented application of the results of R&D in terms of products, services and production processes.

593. As a result of the popular vote of 21 May 2006, article 64, paragraph 1, of the Federal Constitution now also provides that the Confederation shall encourage innovation in addition to scientific research. The collaboration between the colleges of higher education and the private economy has undergone extensive development in this area over the past 10 years. The Agency for the Promotion of Innovation (CTI) is largely responsible for this development. It supports at three levels exchanges of know-how and technology between the colleges and the private economy. Firstly, it finances innovative R&D projects and cooperation between the colleges and Swiss enterprises. Secondly, it promotes, by means of vast training programmes, the acquisition of knowledge by students and researchers in business fields and backs green-shoots projects by providing the services of advisers with experience in financing and market penetration. The "venturelab" advice and training programme is designed to stimulate the entrepreneurial spirit. Thirdly, it encourages participation by Swiss partners in national and international programmes with a view to consolidating the status of Swiss innovation.

58. Maintenance, development and diffusion of culture

594. The freedom of the arts established in article 21 of the Constitution does not imply any individual right to the provision of a service by the State. However, the State is required to provide appropriate infrastructure necessary for the exercise of this freedom.¹⁹² The mandate contained in article 69 of the Constitution is to be given concrete form and

¹⁹¹ See paragraph 515 above.

¹⁹² Message of 20 November 1996 on a new Federal Constitution (FF 1997 I 1), p. 166.

implemented in a new Federal Act on the promotion of culture (Promotion of Culture Act) and by amendment of the Federal Act on the Pro Helvetia Foundation (Pro Helvetia Act (LPH)). The Confederation's existing measures for the promotion of culture are thus being strengthened and provided with a formal legal basis. The two bills in question are currently being considered by Parliament. The promotion of culture bill sets out the principles according to which the Confederation will perform the cultural functions assigned to it in the Constitution. This means coordinating the federal functions with those of the cantons, communes and towns, which have the primary responsibility for the promotion of culture, regulating the division of functions between the federal offices responsible for promoting culture and the Pro Helvetia Foundation, and introducing managerial arrangements for promoting culture and targeting promotional measures under these instruments. The main purpose of amending the Pro Helvetia Act is to modernize the Foundation's organizational structures.¹⁹³

595. The current-expenditure ceiling of the Pro Helvetia Foundation for 2004-2007 provides for allocations by the Confederation to the Foundation totalling 137 million francs. This represents a nominal increase of about 30 per cent over the 1992-1995 financing period.

59. Protection of intellectual property rights

596. The Federal Act on patents (Patents Act (LBI)) is being revised. In the context of this revision, on 12 June 2006 Switzerland deposited the instruments of ratification of the amendment of the European Patent Convention and the Optional Protocol concerning languages. These two international instruments constitute the foundation of the reform of the European patent system. On 22 June 2007 Parliament adopted a second substantial segment of the revision of the Act. This segment, on the protection of biotechnology patents, seeks to ensure that Swiss patents law takes technological progress and international developments into consideration to the fullest extent possible, in order to continue to protect the moral and material interests of inventors and authors in accordance with article 15 of the Covenant. Parliament adopted this segment of the revision on 22 June 2007.

597. On 5 October 2007 the Federal Chambers approved a partial amendment of the Federal Act on copyrights and associated rights (Copyright Act (LDA)). This amendment is designed to ensure the balanced protection of creative works in keeping with the needs of the information society. It guarantees on the one hand the possibility of taking part in cultural life by including in the Act, for example, a copyright waiver in the case of persons with disabilities, while on the other hand ensuring the protection of artists by establishing the right of public performance and the protection of technical processes and by consolidating performers' rights. It thus plays a very large role in safeguarding the rights mentioned in article 15 of the Covenant.

598. The new Federal Act on the protection of designs (Designs Act (LDes)) entered into force on 1 July 2002, replacing the old Federal Act on industrial designs and models of 30 March 1900. The new Act boosts the protection of designers and thus contributes, like the amendment to the Copyright Act, to the application of article 15, paragraph 1 (c), of the Covenant.

¹⁹³ Message of 8 June 2007 on the Federal Act on the promotion of culture (FF 2007 4579); Message of 8 June 2007 on the Federal Act on the Pro Helvetia Foundation (FF 2007 4617).

60. Freedom of research

599. Article 20 of the Constitution establishes the freedom of scientific education and research. However, the freedom of science, and thus the freedom of research, is not unlimited. Article 119 of the Constitution, on medically assisted procreation and human genetic engineering, places restrictions on embryo research. The prohibition of embryo research contained in article 119 imposes an absolute constitutional limit on the freedom of science.

600. The issue of the freedom of research aroused intense debate in the run-up to the popular vote of 28 November 2004 on the Federal Act on Stem-Cell Research (Stem-Cell Research Act (LRCS)). Opponents of the Act argued that the use for research purposes of surplus embryos resulting from artificial fertilization constituted impairment of human dignity. However, a majority of voters (66.4 per cent) considered that it was better to regulate rather than to ban the research.

61. International cooperation

61.1. International scientific cooperation

601. The Confederation's international cooperation activities in the field of research and innovation include:

- Participation in the building of the European research and innovation space by collaborating in European programmes and with European organizations in the field of research and promotion of innovation;
- Collaboration in existing and new international programmes and projects and participation in their formulation;
- Provision of support for Swiss colleges of higher education in their international scientific and technological cooperation and for research and innovation institutions in their cooperation with foreign partners, in particular by establishing and encouraging bilateral partnerships with a number of countries and regions;
- Collaboration in the training bodies of various multilateral organizations (Council of Europe, OECD, UNESCO, etc.) which undertake training-related R&D projects.

602. Switzerland carries out economic cooperation activities with developing countries and countries with economies in transition. This cooperation has a dual purpose: it contributes to the development of the research capacity and other scientific activities of the countries in question and helps them independently to create, manage, diffuse and apply development know-how. Switzerland's work in this area includes:

(a) Participation in international and multilateral research programmes which study the inherent problems of sustainable development, especially those of developing countries and countries with economies in transition (for example, by contributing to international research in the fields of health and agriculture);

(b) Provision of support for bilateral scientific cooperation with developing countries and countries with economies in transition with a view to establishing and improving their research capacity.

603. The booklet "*La Suisse dans les programmes et organisations de recherche internationaux*" (Switzerland in international research programmes and organizations)

contains a detailed list of Switzerland's many undertakings in the field of international scientific cooperation.¹⁹⁴

61.2. International cultural cooperation

604. The Confederation's cultural cooperation activities include:

(a) Participation in the MEDIA programmes of the European Union promoting the production, distribution and marketing of audiovisual works (MEDIA Plus) and audiovisual training and refresher courses (MEDIA Training);

(b) Collaboration in the cultural committees of various multilateral organizations (UNESCO, Council of Europe, International Organization of la Francophonie (OIF), International Network on Cultural Policy (INCP)) which undertake cultural projects, and ratification of their principal agreements;

(c) Bilateral cooperation in support of cultural exchanges, especially in the field of cinema (co-production agreements with neighbouring countries and with Canada).

605. The Federal Act on the international transfer of cultural property (Transfer of Cultural Property Act (LTBC)) and its regulatory ordinance (Ordinance on the transfer of cultural property (OTBC)) entered into force on 1 June 2005. This Act regulates the import into Switzerland of cultural property, its transit and export and the return of cultural property present in Switzerland. The Confederation intends the Act to make a contribution to the protection of the cultural heritage of mankind and prevention of the theft, plundering and unlawful import and export of cultural property. By adopting the Act Switzerland is fulfilling its obligations under the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 14 November 1970. Lastly, Switzerland was the first country in the world to prohibit, as part of the economic measures which it imposed against the Republic of Iraq, the import, transit, export, trade, brokerage, acquisition and any other form of transfer of Iraqi cultural property stolen in Iraq, removed from the control of its rightful owners in Iraq against their wishes, or illegally exported from Iraq since 2 August 1990 (art.1 (a) of the Ordinance imposing economic measures against the Republic of Iraq).

606. Pro Helvetia currently has cultural centres in Paris, Rome and New York and liaison offices in Cairo, Cape Town, Warsaw and New Delhi. It plans to open other offices: in Shanghai (in about 2010) and Moscow (in about 2013). In the many countries in which it operates, the Directorate for Development and Cooperation (DDC) promotes local cultural creativity and cultural diversity. Its biggest programme is the Swiss Cultural Programme for South-East Europe and Ukraine (SCP), which is run by Pro Helvetia under a DDC mandate in Albania, Bosnia, Kosovo, Macedonia, and Serbia.

607. The Fribourg Declaration on Cultural Rights, adopted in Fribourg on 7 May 2007, is the most recent instrument on cultural collaboration. The purpose of this Declaration, which emanated from civil society, is to compile and explain the cultural rights already recognized, albeit in fragmented form, in other instruments. It is a reworked version of a draft text produced for UNESCO by an international working group known as the "Fribourg group" (organized by the Interdisciplinary Institute for Ethics and Human Rights of the University of Fribourg).

¹⁹⁴ Federal Office for Science and Research (now the Secretariat of State for Education and Research), "*La Suisse dans les programmes et organisations de recherche internationaux*" (Switzerland in international research programmes and organizations) (2001).

Additional requests: dissemination of texts

Para. 37: The Committee requests the State party to disseminate its concluding observations widely among all levels of society and to inform the Committee on all steps taken to implement them. It also urges the Government to consult with non-governmental organizations in the preparation of the second periodic report

608. The Swiss Government disseminates its national reports and the Committee's concluding observations on the Internet sites of the Secretariat of State for the Economy, the Federal Department of the Economy, and the Directorate for International Public Law of the Federal Department of Foreign Affairs. Information on this subject can also be found on the Internet sites of a number of Swiss non-governmental organizations working for the protection of human rights. The University of Berne, with financial support from the Confederation, has produced a universal index of human rights. This is an online databank giving instant access, by country and for every human right, to the human rights information issued by the United Nations system. It includes all the observations and recommendations relating to Switzerland adopted by the treaty bodies (since 2000) and the special procedures (since 2006).

609. The reports are available in French and German and the concluding observations in French and English.

610. Before the present report was finalized, a draft version was submitted to the inter-cantonal conferences, civil society organizations and social partners so that they could say what they thought of it. Twenty-four voluntary organizations and associations were contacted. Nine of them submitted their views in writing. The comments received were carefully examined and incorporated, as far as possible, in the draft report. The civil society organizations announced that they would publish their own report.

Abbreviations and acronyms

Legal instruments

CO	Federal Act of 30 March 1911 supplementing the Civil Code (Book five: Law of obligations)
LACI	Federal Act of 25 June 1982 on mandatory unemployment insurance (Unemployment Insurance Act)
LAFam	Federal Act of 24 March 2006 on family allowances (Family Allowances Act)
LAI	Federal Act on Disability Insurance (Disability Insurance Act)
LAMal	Federal Act of 18 March 1994 on sickness insurance (Sickness Insurance Act)
LAVI	Federal Act of 4 October 1991 on assistance for victims of crime (Victims of Crime Act)
LAVS	Federal Act of 20 December 1946 on old-age and survivors' insurance (Old-Age and Survivors' Insurance Act)
LEg	Federal Act of 24 March 1995 on equality between men and women (Gender Equality Act)
LEtr	Federal Act of 16 December 2005 on aliens (Aliens Act)
LFLP	Federal Act of 17 December 1993 on freedom of transfer between old-age, survivors' and disability insurance (Freedom of Transfer Act)
LFPr	Federal Act of 13 December 2002 on vocational training (Vocational Training Act)
LHand	Federal Act of 13 December 2002 on the elimination of inequalities affecting persons with disabilities (Disabled Persons Equality Act)
LPart	Federal Act of 18 June 2004 on registered partnerships between persons of the same sex (Partnership Act)
LPC	Federal Act of 19 March 1965 on supplementary old-age, survivors' and disability benefits (Supplementary Benefits Act)
LPers	Federal Act of 24 March 2000 on the personnel of the Confederation (Federal Personnel Act)
LPP	Federal Act of 25 June 1982 on occupational old-age, survivors' and disability insurance (Occupational Insurance Act)
LTr	Federal Act on employment in industry, crafts and commerce (Employment Act)
OIE	Ordinance of 13 September 2000 on the integration of aliens (Aliens Integration Ordinance)
OLE	Ordinance of 6 October 1986 limiting the number of aliens (Aliens Limitation Ordinance)
OLT 1	Ordinance 1 of 10 May 2000 on the Employment Act
OLT 2	Ordinance 2 of 10 May 2000 on the Employment Act (special provisions for certain categories of enterprise and worker)

OLT 3	Ordinance 3 of 18 August 1993 on the Employment Act (hygiene)
OLT 5	Ordinance 5 of 28 September 2007 on the Employment Act (protection of young workers)
OPA	Ordinance of 19 December 1993 on the prevention of occupational accidents and diseases (Accident Prevention Ordinance)

General

AEP	Oversight of the economic supply system
ALCP	Agreement on the Free Movement of Persons
ATF	Compendium of Decisions of the Swiss Federal Court
BFEH	Federal Gender Equality Office
CFE	Federal Aliens Commission
EPF	Federal polytechnic college
ESPA	Swiss Working Population Survey
FF	Official Gazette
ILO	International Labour Organization
INR	ionizing nuclear radiation
OECD	Organization for Economic Cooperation and Development
OFAS	Federal Social Security Office
OFFT	Federal Vocational Training Office
OFM	Federal Migration Office
OFJ	Federal Justice Office
OFPER	Federal Personnel Office
OFS	Federal Statistical Office
OFSP	Federal Public Health Office
ORP	regional employment office
PISA	Programme for International Student Assessment
RO	Official Compendium of Federal Acts
RS	Systematic Compendium of Federal Law
R&D	research and development
SCOCI	Coordination Service to Combat Internet Crime
SSR	Swiss Radio and Television Corporation
UNESCO	United Nations Educational, Scientific and Cultural Organization
USS	Swiss Federation of Trade Unions
UV	ultraviolet
