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**Study on Homophobia, Transphobia and Discrimination on  
Grounds of Sexual Orientation and Gender Identity**

**Sociological Report: Switzerland**

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## **[1] Executive summary**

1. Homosexuality is legal in Switzerland and widely tolerated in Swiss society and few incidents of homophobic crime or discrimination are reported.
2. There are two major organisations; LOS and Pink Cross for lesbians and gays, each formed as umbrella organisations for a multitude of local groups all over the country. Transgender Network Switzerland is an organisation advocating for transgender human rights – it started its activities in 2009 and officially registered in 2010. There are vibrant LGBT communities in most of the bigger cities.
3. The main battlefield for the LGB movement until 2005 was the acceptance of Registered Partnership. A referendum on the matter – the first of its kind in the world – was held in 2005 and 58 percent of the voters voted in favour. The law grants same-sex couples the same rights and protections as heterosexual couples in terms of next of kin status, taxation, social security, insurance, and shared possession of a dwelling. However, same-sex couples cannot adopt children (second parent adoption is only allowed for married partners), receive fertility treatments or take the same surname.
4. Parliament originally passed the law by a three-fourths majority in June 2004, but the conservative Federal Democratic Union collected signatures to force a referendum. Switzerland was the first country to introduce registered partnership through a referendum.
5. Same-sex marriages formed outside Switzerland are recognised as registered partnerships within Switzerland. Switzerland was the first nation to pass a same-sex union law by referendum.
6. The question of adoption was deliberately omitted from the referendum in 2005 to ensure a positive majority, but has been at the core of campaigning from the LGB movement ever since. However, effective lobbying is hampered by Switzerland's much federalised structure.
7. Single persons, including homosexual individuals, may however adopt and adoptions undertaken abroad are generally recognised, also for same-sex couples. Theoretically, transwomen could store their sperm for later use in a heterosexual relationship. As surrogate motherhood is absolutely forbidden, transgender men could not store their fertile eggs for future use.
8. A referendum held in 1992 eliminated all forms of discrimination, including against homosexuality from the penal code, in practice legalising homosexuality. The law was passed with a comfortable 73 percent of the votes.
9. However, there is no law or federal act specifically sanctioning acts of discrimination against LGBT-people, who are protected mainly by:
  - Art. 8 Swiss Constitution, Equality before the Law
  - Constitutional catalogue of the other fundamental rights and freedoms
  - Art. 28 ff. Civil Code, Protection of personality
  - Some regional constitutions mention sexual orientation explicitly

10. LGBT pride parades and other demonstrations of LGBT-people and organisations are accepted, granted permission and accompanied or - if necessary - protected by the police.
11. LGBT people are - like anyone else - protected by the Constitutional right to freedom of expression. State authorities' interference with LGBT activities are usually reasoned by suspicion of illegal activities. Unnecessarily harsh treatment especially by the police is often reported.
12. The general public is tolerant of LGBT people and thus bias motivated violence or discrimination is infrequent, although a few politically motivated examples of hate speech are recorded. Hate speech is classified as an offense and homo- or transphobia as motivation can lead to harder sanctions.
13. Persecution on grounds of sexual orientation and gender identity is recognised as a reason for granting asylum but usually asylum is denied for other reasons such as the issue of credibility of the asylum seeker. This applies as well for countries having the death penalty for LGBT people. This has been the subject of a recent campaign by Amnesty International's Queer group<sup>1</sup>.
14. Family reunification and asylum for persons living in a close relationship are allowed.
15. Same-sex couples living in a registered partnership are nearly equal to married couples. The main difference is the qualification of the surviving partner as widower in the case of one partner's death, resulting in less benefits for lesbian widows without children.
16. Children of couples living in a registered partnership enjoy nearly the same benefits as children of heterosexual parents.
17. Gender reassignment treatment is available only for a small group of transgender people, the rest having to resort to low quality treatment in public hospitals. Additional optional health insurance can be and is often denied to transgender persons and some insurance companies exclude gender reassignment surgery from coverage in the additional optional insurance categories. Often, transgender persons do not feel treated in a fair way, taken seriously, by public authorities.
18. Discrimination in employment is rarely heard of. On the contrary, many major companies and public bodies have "Pink groups" of employees promoting equal rights and consideration for LGBT people.
19. The constant specific awareness raising programmes focus mainly on HIV prevention among men having sex with men (MSM).
20. Key problems for transgender persons are
  - coercive sterilisation for name and / or legal gender change
  - forced divorce for legal gender change
  - unequal access to surgery in a satisfying quality, not satisfying quality of psychological treatment
21. There is a lack of neutral and sufficient information for parents of newborn intersex children resulting in forced operations not based on informed consent.

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<sup>1</sup> Ref. Gay.ch, [www.gay.ch](http://www.gay.ch), accessed 24 September 2010.

22. Switzerland has a high profile in taking LGBT issues into focus through its foreign policy, including international development aid policy.

#### **A. Data Collection**

23. Data have been collected for this report through:

- A study of available online and print data on the situation regarding homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity in Switzerland.
- Data collection through interviews in Bern and Zürich 24 - 25 March 2010 with:

##### Authorities:

- Federal Department of Justice, Bern
- Ministry of Foreign Affairs, Human Rights Section; Bern

##### Experts:

- Alecs Recher

##### NGOs:

- Lesbenorganisation Schweiz – LOS, Bern
- Lesbenorganisation Schweiz - LOS, Zürich
- Pink Cross – National Gay organisation for Schweiz, Bern

## **B. Findings**

### **B.1. Public opinion and attitudes towards LGBT people**

24. The general attitude towards LGB persons is vaguely positive. It is not regarded as any big issue, according to the lesbian/gay organisations. Several leading politicians are openly gay – including the lesbian mayor of Zürich and several ministers at regional as well as national levels. Their sexual orientation has not hindered their political career or used negatively in election campaigns.<sup>2</sup> Attitudes towards transgender persons have not been systematically researched.
25. The campaign and subsequent positive referendum on the Registered Partnership in 2005 was a very important milestone, not only in a legal sense, but also in getting gays and lesbians out in the open and having their concerns discussed in public.
26. The LGB-movement was very active in lobbying for the legislation that passed with a comfortable 58 percent of the votes and with only a few very conservative cantons in Eastern Switzerland having a majority against. According to all parties, the experiences with the registered partnership have been positive, both for the gay and lesbian couples but also in changing public opinion on homosexuality.<sup>3</sup>
27. Only very few and only verbal incidents of hate speech are reported by LOS and Pink Cross, explaining that Switzerland is a very "polite" country with very little violence in general and that sexual orientation is no longer a burning issue, except for some conservative religious groups who may demonstrate their opposition but in a peaceful manner.<sup>4</sup>
28. LOS and PC reports that opposition to homosexuality still exists especially in conservative religious groups, be they Christian or Muslim. However, the opposition is confined to general statements and prayers and has not taken any violent form for many years.<sup>5</sup>
29. The attitude of the religious communities is also changing towards a more relaxed if not positive attitude to homosexuality. The Ministry of Justice estimates that although the majority of Catholic churches in the country are against homosexuality, they are probably not in line with their own Parish councils which seem more positive and as demonstrated by the fact that only two small cantons had a majority no-vote to the registered partnership referendum in 2005.<sup>6</sup>

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2 Interview with Lesbenorganisation Schweiz – LOS; Bern and Pink Cross – National Gay organisation for Schweiz, Bern, 24 March 2010 and Lesbenorganisation Schweiz - LOS, Zürich, 25 March 2010.

3 Interview with Lesbenorganisation Schweiz – LOS; Bern and Pink Cross – National Gay organisation for Schweiz, Bern, 24 March 2010.

4 Interview with Lesbenorganisation Schweiz – LOS; Bern and Pink Cross – National Gay organisation for Schweiz, Bern, 24 March 2010 and Lesbenorganisation Schweiz - LOS, Zürich, 25 March 2010.

5 Interview with Lesbenorganisation Schweiz – LOS; Bern and Pink Cross – National Gay organisation for Schweiz, Bern, 24 March 2010.

6 Interview with the Ministry of Justice, 24 March 2010. The referendum vote was on 5 June 2005, [www.admin.ch/ch/d/pore/va/20050605/index.html](http://www.admin.ch/ch/d/pore/va/20050605/index.html), accessed 24 September 2010.

## B.2. Freedom of assembly and association

30. Lesbenorganisation Schweiz - LOS and Pink Cross each organise their part of the LGB community and are in the process of establishing a common secretariat to strengthen work with Parliament and the Federal Government (Bundesrat).
31. Both Pink Cross and LOS are umbrella organisations for varying local organisations. Pink Cross has 2,250 members, 44 associations and 33 enterprises that support them. LOS has 1,300 members. Both are entirely funded by members and sponsors. However, Pink Cross cooperates with the Ministry of Health on MSM-HIV/AIDS campaigns.
32. Transgender persons are poorly organised and with limited contact to LOS and Pink Cross. However, one LOS board member is a transgender woman and some contacts in relation to Parliament are also established with legal expert and transgender activist Alecs Recher, who according to both LOS and Pink Cross is trying to establish a transgender group to represent them, at least in Zürich.
33. Given that about 20 percent of the population are foreigners, there has been remarkably little activity within the LGBT movement to involve other nationalities in the country in the LGBT movement. Neither has there been much work in reaching out to, for example, youth from countries and cultures with a very negative attitude towards LGBT. A "Gay-Migs" [standing for gay-migrants] group exists in Zürich involving foreigners, but most if not all are European. Pink Cross recognises that there is probably a very great potential of support work that is not being done to counsel and support such youth to come out in the open.<sup>7</sup>
34. The LG(B) movement is mainly organised in the major cities, notably Zürich but also Geneva, Bern and Basel. Groups in the smaller and more rural areas are few and it is considered difficult to come out in the smaller rural communities "for risk of social stigma rather than for risk of abuse or rejection".<sup>8</sup> This seems to be a particular problem in the southern, Italian speaking area where there is only one gay group.<sup>9</sup>
35. In general, the LG-movement has lost steam and membership since the adoption of the registered partnership law that came into effect in 2007. Efforts to mobilise the LG community on the right to adoption is progressing but at a much lower level than the campaign in 2004-2005 that led to the registered partnership law. The organisations are sceptical themselves whether it might be too early to push for a right to adoption.<sup>10</sup>
36. A Swiss parliamentary group for LGB persons has been established within the SVP of three - four open and LOS expects that there are about 15-20 closeted lesbians and gays in Parliament.<sup>11</sup>
37. LGBT pride parades and other demonstrations of LGBT-people and LGBT-organisations are accepted, granted permission and accompanied or - if necessary - protected by the police. Like any other demonstrations, LGBT-demonstrations need permission.<sup>12</sup>

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7 Interview with Lesbenorganisation Schweiz – LOS; Bern and Pink Cross – National Gay organisation for Schweiz, Bern, 24 March 2010 and Lesbenorganisation Schweiz - LOS, Zürich, 25 March 2010.

8 Interview with National Gay organisation for Schweiz, Bern, 24 March 2010.

9 9 percent of the Swiss population is Italian speaking; 70 percent German, 20 percent French and 1 percent Retro-Roman.

10 According to both LOS, Pink Cross and the Ministry of Justice the right to adoption was removed from the registered partnership bill quite late in the political process lest it would have led to a negative vote on the overall law, which was then passed with a comfortable 58 percent of the vote in a referendum.

11 Interview with Lesbenorganisation Schweiz – LOS; Bern, 24 March 2010.

12 A fine example of tolerance was a spontaneous demonstration of queer people during the day of Europride 2009 in Zürich that was not part of the official parade, had no permission but was tolerated by the police.

38. Counter-demonstrations are allowed to happen as well. In the last couple of years, several times fundamental Christian organisations have organised demonstrations and/or prayers against homosexual persons and homosexuality close to a gay parade<sup>13</sup>. During the Europride 2009 in Zürich such organisations handed out flyers to spectators and even to pride participants. However, there were no attempts to stop or interfere with the parade. Similarly, a Pride in Sion in Valais nine years ago was also met by religious groups counter-demonstrating.<sup>14</sup>
39. Recently, a group related to Pink Cross applied for a Pride this summer in Fribourg. This has however been refused as the city celebrates its bicentenary anniversary and already has a full programme of activities which does not leave room for a Pride.<sup>15</sup>
40. Pink Cross and LOS have also experienced problems in getting permissions to hold Prides in Zürich, although both the city council and the tourism organisation support the Prides. The problem is not particular for LGBT but for all civic manifestations as the demand is generally much bigger than the number of demonstrations that the city finds convenient.<sup>16</sup>

### **B.3. Freedom of expression**

41. There are basically no major problems with freedom of expression.
42. The police may occasionally interfere with LGBT activities like gay clubs, chat rooms, etc. But interventions are not based on or referring to sexual orientation but to potential illegal activities taking place. It is possible that in some cases the authorities, especially single police (wo)men, may exceed their authority when interfering with LGBT activities.<sup>17</sup> A case in point was police control with gay bars “dark rooms”, which were controlled by police but eventually accepted and a common solution found.<sup>18</sup>
43. Much of communication between LGBT persons has moved to chat-forums, dating sites etc. on the internet and is outside control of the authorities and organisations. This has also reflected back on the level of activities within the LGBT movement itself, as fewer LGBT persons are actively taking part in such work.<sup>19</sup>

### **B.4. Hate crime - hate speech**

44. The Swiss authorities do not collect data on hate crimes on the grounds of sexual orientation or gender identity.<sup>20</sup>
45. Both Pink Cross and LOS report on very little open homophobia and can only mention four cases over the last years, all on verbal abuse. Although this may reflect that victims are afraid of reporting such incidents and that the police have not always given the issue due

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13 Sion 2001, Lucerne 2005.

14 Interview with Lesbenorganisation Schweiz – LOS; Bern and Pink Cross – National Gay organisation for Schweiz, Bern, 24 March 2010 and Lesbenorganisation Schweiz - LOS, Zürich, 25 March 2010.

15 Interview with Pink Cross – National Gay organisation for Schweiz, Bern, 24 March 2010.

16 Interview with Lesbenorganisation Schweiz – LOS; Bern, 24 March 2010.

17 Please refer to legal report by Aleks Recher.

18 Interview with Pink Cross – National Gay organisation for Schweiz, Bern, 24 March 2010

19 Interview with Lesbenorganisation Schweiz – LOS; Bern, 24 March 2010

20 OSCE/ODIHR, *Hate Crimes in the OSCE Region - Incidents and Responses. Annual Report for 2008, 2009.*



attention, the organisations find that gays and lesbians are generally well accepted and that a Swiss mentality of tolerance and restraint may contribute to this.<sup>21</sup>

46. LOS and Pink Cross have entered into cooperation with the Police in Zürich<sup>22</sup> where a "Pink Cop" group was established in 2008. The Pink Cops work with changing attitudes towards LGBT persons within police concerning reporting incidents and assisting victims. Zürich Police has established a home-page for reporting violence ( [www.8ig.tv](http://www.8ig.tv)) and Pink Cross/LOS has established a Rainbow telephone line to report on incidents (but mainly used for private counselling of closeted LG persons). There are no figures on usage of the hot-line.<sup>23</sup>
47. The role of states authorities differs. For example in 2009 a concert in a club which is supported financially by the city of Zürich was forbidden to perform by state authorities unless the band signed the Reggae Compassionate Act.<sup>24</sup>
48. During the last election campaigns, the party SVP in Wallis (Valais), aired negative opinions on lesbians and gay men, which was taken up in the local courts by local LG persons. The case was rejected at the first instance, referring to the fact that there is no law in Switzerland protecting against discrimination of minorities – only a general non-discrimination provision in the Constitution. However, the case is now pending in the intermediate court and may be taken all the way to the Council of Europe Human Rights Court in Strasbourg in order to force through a revision of the Swiss legislation in this field.<sup>25</sup>

## **B.5. Family issues**

### *Law on Registered Partnership*

49. The Law that entered into force in 2007 puts registered couples and married couples at par on most matters and is regarded as a tremendous improvement for LG couples wanting to secure their family life. Registered partnership is only open to same-sex couples just as marriage is only open to heterosexual couples. Hence registered partnership will label homosexual people as such and may lead to cohabiting couples preferring not to profit from the new law because of fear of forced coming-out.
50. Additionally, several practical issues are not yet solved in a satisfying, respectful manner. For example, several cantons still use the same tax declaring forms for married and registered couples - calling one partner husband, the other wife.<sup>26</sup>

### **Regional legislation**

51. Different legislation pertaining to same-sex partnerships exists in different cantons. The Canton of Geneva introduced "Registered Partnership" or "PACS" (Pacte civil de

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21 Interview with Lesbenorganisation Schweiz – LOS; Bern and Pink Cross – National Gay organisation for Schweiz, Bern, 24 March 2010 and Lesbenorganisation Schweiz - LOS, Zürich, 25 March 2010.

22 The police is a regional matter.

23 Interview with Lesbenorganisation Schweiz – LOS; Bern and Pink Cross – National Gay organisation for Schweiz, Bern, 24 March 2010.

24 Ibid.

25 Interview with Lesbenorganisation Schweiz – LOS; Bern and Lesbenorganisation Schweiz - LOS, Zürich, 25 March 2010.

26 Interview with Lesbenorganisation Schweiz – LOS; Bern and Pink Cross – National Gay organisation for Schweiz, Bern, 24 March 2010.

solidarité), as early as 2001, giving most of the same rights as the present, country-wide system. In 2002, the canton of Zürich passed a same-sex partnership law by referendum (63 percent yes) that goes further than Geneva's law, but requires couples to live together for six months before registering.<sup>27</sup> In July 2004, the canton of Neuchâtel passed a law recognising unmarried couples.

#### *Differences between marriage and registered partnership*

52. To quote the official Swiss report to the UN Human Rights Council for 2008: "Registered partnership, whereby same sex couples can have their relationship recognised in law, registered partners have the same status as married couples. However people in registered partnership are not allowed to adopt children or to use medically assisted reproduction..."<sup>28</sup>
53. Registered partnership between a Swiss and a foreign partner does not give the foreign partner the same rights to Swiss citizenship as a married foreigner would have, but is at par with the rights of a single foreigner with a permit to stay in the country.<sup>29</sup>

#### *Review of experiences with registered partnership*<sup>30</sup>

54. A review of the experiences with the new law covers registrations in 2007 and the first quarter of 2008.<sup>31</sup> During those 15 months, a total of 2,230 couples of which 1,599 male and 631 female were registered. This corresponds to approximately 3 percent of the number of marriages in the same period. Since this is a smaller percentage than the perceived percentage of homosexuals in the country, it demonstrates that a substantial part of same-sex couples still preferred to live in cohabitation, at least during this first, rather brief period.
55. The figures also show that more than half the couples were between Swiss and non-Swiss citizens. Whether this is a trend that has continued and whether the same is true for non-registered same-sex couples cannot be seen from the report. However, the frequency of foreign partners is surprising given, as described above, that registered partnership does not provide a fast track to Swiss citizenship as does marriage.
56. The survey shows an overwhelming support and satisfaction with the law (more than 90 percent positive) with only a few critical remarks which are directed at poorer tax and social insurance rules; risk of societal stigmatisation and the inability to become a fully recognised stepfather/mother for your partners' born child. The positive attitude is of course a reflection of the newness of the registered partnership at the time.
57. Discussions about allowing same-sex marriage are beginning in Switzerland and some politicians from the [Swiss Social Democratic Party](#), the [Greens](#) and the [Liberals](#) support it.

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27 With the introduction of the national registered partnership legislation, the canton of Zürich has decided to withdraw the regional legislation as per 1 January 2010.

28 Swiss first Universal Periodic Review Report to the UN Human Rights Council (2008).

29 Interview with Lesbenorganisation Schweiz – LOS; Bern and Pink Cross – National Gay organisation for Schweiz, Bern, 24 March 2010.

30 The above section is based on input from the legal report by Alecs Recher.

31 *Premiere experiences en rapport avec l'application de la loi federale sur le partenariat enregistré entre personnes de meme sexe* par Michel Montini; Ministry of Justice 2009.

### *Adoption and insemination*

58. The new challenge for the LGBT-movement relates to adoption and – to a lesser degree – the right to insemination. LOS points to the absurdity that adoption is possible – at least in principle – for single women and (perhaps) men – but not for registered couples. Although in practice, there are so few children to adopt in Switzerland that they are in practice 'reserved' for married couples.<sup>32</sup>
59. Couples who have adopted a child while living abroad can generally keep it there as a recognised adopted child, even if living in a registered partnership family. Questions may be asked if a same-sex couple go abroad only for a short while for the adoption, but the Ministry of Justice knows of no such cases where this has been challenged in practice - this opening/shortcoming in the legal framework remains to be tested or clarified.<sup>33</sup>
60. Second parent adoption is allowed after five years of marriage (Art. 264a III Civil Code), but not in the case of a registered partnership. Ensuring that the non-biological mother in a lesbian partnership has the same rights to take custody of the child in case the biological mother dies may be a challenge as the question of custody will be decided upon by the relevant authorities based upon an assessment of the best interests of the child, unlike the child in a marriage where the surviving parent remains in custody. However, neither LOS nor the Ministry of Justice are aware of cases where such a child has been taken away from its second mother.<sup>34</sup>
61. According to LOS; lesbian couples with children have until recently mostly comprised of one or two mothers who had the children from a previous heterosexual marriage. The new "trend" is that young lesbian couples want to have children also, leading way to a quest for assisted insemination as for heterosexual couples.<sup>35</sup>
62. Insemination is in principle illegal, but relatively easy to have done, either privately or by going abroad. Obviously this will entail a cost for the woman, whereas assisted reproduction is free or government supported for married couples.<sup>36</sup>
63. The LGB community is lobbying for having adoption extended to registered couples through contacts in the federal parliament. The likelihood of getting a majority in Parliament is slim and it is considered even more unlikely that the Swiss population is ready to carry this through the referendum that would invariably be the result of such a campaign.<sup>37</sup> It is therefore likely that some more years will most likely have to pass before this is realistic. "It takes at least ten years to change anything in Switzerland"<sup>38</sup>
64. However, LOS refers to a lesbian couple that intend to bring the discrimination in adoption law all the way to the Strasbourg court in order to have the law declared in violation of the European Human Rights Convention, in which case Switzerland would be obliged to amend the legislation. Whether the Court accepts such a case at all is questionable and it would in any case take several years before any decision would be taken. But the case is considered important as "Switzerland does not react to change legislation until a verdict from the Court in Strasbourg"<sup>39</sup>.

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32 Interview with Lesbenorganisation Schweiz – LOS, 24 March 2010.

33 Interview with Ministry of Justice, 24 March 2010.

34 Interview with Lesbenorganisation Schweiz – LOS; Bern and Ministry of Justice, 24 March 2010.

35 Interview with Lesbenorganisation Schweiz – LOS; Bern, 24 March 2010.

36 Ibid.

37 It was only in 1992 that a referendum lifted the previous criminalisation of homosexuality.

38 Interview with Lesbenorganisation Schweiz – LOS, 24 March 2010.

39 Interview with Pink Cross – National Gay organisation for Schweiz, Bern, 24 March 2010.

### *Change of names*

65. Switzerland is in the process of amending its hitherto very restrictive name-laws whereby a married couple must have the same surname and change of both first and surname being very complicated. It is even very difficult to have the first name changed. In case of a transgender person, some cantons require that the person has undergone gender reassignment surgery.<sup>40</sup>

### **B.6. Asylum and refugee issues<sup>41</sup>**

66. Asylum claims relating to sexual orientation and gender identity are recognised under the 1951 Convention ground of membership of a particular social group.
67. In practice, asylum is only granted very seldom in general, even in cases of LGBT persons who would be subject to serious homophobia/transphobia if returned. The reason for rejection would be that other conditions for asylum are not met. Hence, LB refugees are not granted sufficient protection. Concerning transgender people there are hardly any cases to make a statement.
68. Theoretically, persons "in a close relationship" to a refugee can get asylum. This includes same-sex partners no matter if the couple is living in a registered partnership or not. Whether asylum is granted in practice is hard to say because of lack of case law.
69. It has not been possible to verify the situation for LB asylum-seekers in asylum centres, but available data point to a lack of awareness among the staff and hence a lack of measures.<sup>42</sup> Amnesty is addressing the issue with asylum authorities and undertook a campaign on the matter in spring 2010.
70. Only recently, the authorities approached a transgender activist, asking for proper protection measures for a transgender woman asking for asylum.
71. As written above, there are no official statistics available. In the period 1993-2007 about 50 cases concerning the questions of homophobia or fear of acts of homophobia were decided by the Federal Office in charge. The number since has increased but asylum is granted extremely rarely: four persons were granted asylum, two of them because of their sexual orientation and two persons were granted temporary protection for reasons relating to their sexual orientation.<sup>43</sup>
72. A working group of LOS, Pink Cross and Amnesty International is lobbying Parliament to change asylum law to specifically mention sexual orientation. So far the attempts have failed, including a vote in 2009 on the issue that failed. The explanation given by the Bundesrat (federal government) that "the issue is covered anyway" meaning that homosexual persons are included in the notion of "social group" in the UN Refugee Convention - but in practice the notion of "belonging to a particular social group" is very seldom used in cases of LGBT asylum seekers.<sup>44</sup>

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40 The section is based on the legal report by Alecs Recher.

41 Ibid.

42 For further information see: Preiswerk, S., *Queer refugees - Homosexualität als Asylgrund*, Bachelorarbeit Soziale Arbeit, Zürich 2008; for an extract in German see

[www.queeramnesty.ch/docs/AA\\_Preiswerk\\_Simone\\_FS08\\_Zusammenfassung.pdf](http://www.queeramnesty.ch/docs/AA_Preiswerk_Simone_FS08_Zusammenfassung.pdf) , accessed 18 February 2009.

43 Bertschi in Ziegler et al. (ed.) *Rechte der Lesben und Schwulen in der Schweiz*, Bern 2007, p.344.

44 PINK CROSS, [www.pinkcross.ch/index.php?option=com\\_content&task=view&id=767&Itemid=162](http://www.pinkcross.ch/index.php?option=com_content&task=view&id=767&Itemid=162), accessed 16 March 2010.

73. However, experience shows that it is very difficult for asylum seekers to talk about their sexual orientation.

#### **B.7. Social security, social care and insurance<sup>45</sup>**

74. Basic social security is a matter of insurance in Switzerland and hence not related to the sexual orientation of the insurance taker. As part of their risk calculation, insurance companies may ask any proposer questions about his/her health condition. However, several major insurance companies have organised "Pink Groups" among their staff and the discrimination against homosexual persons and registered couples is gradually diminishing.<sup>46</sup>
75. Though refusing transgender persons (like any other person) to be included in the basic health insurance is not allowed under Swiss law, there is evidence that some insurance companies refuse to include transgender people in their additional insurances. Additional insurances may involve much higher premiums in order to have gender reassignment surgeries reimbursed.
76. What are heard of more often are complaints by transgender persons.<sup>47</sup> At least in their experience, they are treated as mentally ill, not taken seriously and any other issue like depressions, unemployment, invalidity caused by accidents, relationship problems etc. are seen in the light of the fact that they are transgender. No matter if these other circumstances in their lives are caused by their gender identity as secondary problems or are in no relation to it, (negative) interrelations are usually made without properly analysing and discussing these issues with the respective person. A transgender identity is used to justify decisions that are in no relation to the respective person's gender identity and can - from an impartial point of view - not be justified that way. Very often, this strikes transgender persons who have either no money, nor the necessary energy or support to defend themselves in a successful manner.

#### **B.8. Education<sup>48</sup>**

77. The Cantons are responsible for the system of school education. This leads to 26 different educational systems and 26 different school curricula.
78. LOS and Pink Cross have a working group on education and education material who cooperate with the relevant authorities. As a first step they have scanned all the curricula and presented an ideal curriculum to all the cantons for comment and eventual application.
79. A central institute (in Lausanne) is responsible for coordinating initiatives with regards to school curricula in general. The matter has been discussed and reviewed by a federal congress of the canton education ministries.
80. In the French speaking part of the country, the review by the federal congress is almost finished. The outcome is not known. For the German speaking parts of the country the work of reviewing the school curricula is about to start and LOS and Pink Cross are trying to influence the process.

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45 It has not been possible to obtain additional information on Trans-issues over and above Alecs' description as he seems to be the only reference point for Transgender issues in the country!

46 Interview with Lesbenorganisation Schweiz – LOS, 24 March 2010.

47 These statements base only on anecdotal evidence collected by Alecs Rechner.

48 Interview with Lesbenorganisation Schweiz – LOS; Bern and Pink Cross – National Gay organisation for Schweiz, Bern, 24 March 2010 and Lesbenorganisation Schweiz - LOS, Zürich, 25 March 2010.

81. Some Cantons do mention sexual orientation and / or gender identity in their curriculum concerning sexual education, for example, in Bern and Zürich (as well as in two cantons in the central part of the country), mentioning LGBT is included in the curriculum for secondary school (12-16 years).
82. In conclusion, some good progress in terms of proper teaching material has taken place during the last couple of years.
83. At university level, there is no specific requirement of teaching sexual orientation and gender identity, except in gender studies. Whether the issue is covered in other social and humanistic sciences will depend on the university and / or the individual professor.

#### **B.9. Employment<sup>49</sup>**

84. The Constitution and the Federal Act on Gender Equality protect the right to equal remuneration and equal factual treatment in all fields of employment as well for LGBT people. There is an option for complaints. The specific Federal Office for Gender Equality does not see itself as in charge of LGBT-issues.
85. Discrimination based on sexual orientation in employment and business matters is rare and non-reported. According to a study from 1999 this may partly be caused by victims of discrimination on grounds of sexual orientation who rarely take legal action.<sup>50</sup>
86. Since 2008, LOS and Pink Cross have been working to introduce a Diversity Charter in companies to promote understanding and the acceptance of sexual minorities. In many major private as well as public companies (insurance, pharmaceutical, banking as well as Bundesbahn - "Pink Train" etc) "Pink groups" of employees have been formed to raise awareness.
87. In addition, several groups of gay and lesbian business managers have been established with the same purpose of fighting discrimination, including in business matters. For example, registered partnership and marriage has been put at par in insurance coverage and "Pink Train" has been instrumental in securing that family rebates on train tickets explicitly also cover same sex couples.
88. The Trade Unions are not seen as active in promoting LGBT rights over and above as an implicit part of gender rights and non-discrimination.
89. Migrants working as sex workers are at a higher risk to harassment; especially transgender persons are at a high risk of getting no other job than sex work.
90. Since 2003, the army has allowed openly gay soldiers and officers and a group of gay officers is in existence. Although there is therefore no official discrimination anymore, it is possible that gay conscripts may suffer verbal discrimination in practice. However, there are today groups of gay officers in many parts of the military.
91. Pink Cross refers to a case, where a gay officer on a mission to the Balkans was being discriminated by the local populace and where the commanding officer had to make a firm stand on the side of the officer and against any hate speech.<sup>51</sup>

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49 Interview with Lesbenorganisation Schweiz – LOS; Bern and Pink Cross – National Gay organisation for Schweiz, Bern, 24 March 2010 and Lesbenorganisation Schweiz - LOS, Zürich, 25 March 2010.

50 VoGay, 1999 in Ziegler et al. (ed.), *Rechte der Lesben und Schwulen in der Schweiz*, Bern 2007, p.366.

51 Interview with Pink Cross – National Gay organisation for Schweiz, Bern, 24 March 2010.

## **B.10. Housing<sup>52</sup>**

92. Homophobia and transphobia in the field of housing, rent, or eviction is no big issue. It is likely that some private flat owners do not like to rent their flat to LGBT persons, but usually sexual orientation or gender identity does not lead to dismissal. In Switzerland, most people live in rented apartments / houses and their protection before the law is on a good level.
93. Advertisements for housing credits have started to show both heterosexual as well as (male) same-sex couples, who form a wanted target group for some banks and house-owners in specific demand for "DINK's" (= Double Income, No Kids).

## **B.11. Health care**

94. Special awareness raising programs are constantly run by the Federal Office of Public Health trying to prevent especially MSM from HIV in varying degrees of cooperation with Pink Cross. In the bigger cities, private organisations offer HIV- and other STIs tests for free or a low price addressing their offer explicitly as well or only to MSM, and a LGB-group called "Medigay" offers a list of therapists / doctors who are LGB themselves or explicitly LGB-friendly.<sup>53</sup>
95. Despite all these measures, a higher number of LGB people suffer from psychological and/or medical problems and a higher number of them do not visit a specialist. A study on sexual orientation and suicide shows that LGB persons have a significantly higher tendency to have suicidal thoughts than heterosexuals. Lesbians have a higher prevalence of suicidal thoughts whereas gay men have a higher prevalence of actual suicides.<sup>54</sup>
96. A highly debated issue is the prohibition to donate blood for all men who have had sexual contact with other men after 1977.<sup>55</sup>
97. Several public university hospitals are offering psychological care, hormonal and surgical treatment for transgender people in so-called "Centres of Competence".<sup>56</sup> Often, these centres do not provide transgender persons with supportive and dignified treatment from psychologists.
98. Gender reassignment surgeries are available, mainly at private clinics, which will charge a sum often above the ability of the transgender person seeking operation. For operations performed at public clinics, the track-record is quite unsatisfactory in terms of conditions and quality.

## **B.12. Access to goods and services**

99. There are no accounts of discrimination in relation to access to goods and services, besides possible disadvantages that, for example, registered partners may suffer in relation to married couples on family rebates. However, even such rebates are generally gender neutral.

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52 Interview with Lesbenorganisation Schweiz – LOS; Bern and Pink Cross – National Gay organisation for Schweiz, Bern, 24 March 2010.

53 Interview with Pink Cross – National Gay organisation for Schweiz, Bern, 24 March 2010.

54 Leu C., *Suizidalität und Sexuelle Orientierung*, Fachgruppe Bildung PINK CROSS, LOS und fels, 2010.

55 Interview with Pink Cross – National Gay organisation for Schweiz, Bern, 24 March 2010.

56 This and the following paragraph are based on the legal report by Alecs Recher.

100. There are few reports on same-sex couples not being allowed into restaurants:
101. "I was not allowed to eat at this place because I was kissing my girlfriend and was asked to leave again."<sup>57</sup>

### **B.13. Media**

102. There are no restrictions to airing radio or television programmes with LGBT-content. Which happens quite frequently - be it movies, soap operas, interviews, news etc. Even the "Yellow" media as "Blick" run stories presenting same-sex couples with children in a positive way.<sup>58</sup> This has increased after the campaign for registered partnership in 2004-2005 and is demonstrated i.a. by the fact that the mayor of Zürich, who is openly lesbian, did not encounter any negative campaigning from opposition parties.<sup>59</sup>
103. Discrimination in the media is specifically prohibited by the Federal Act on Radio and TV and the (private) Ethnic Code of Journalists. Complaints can be brought before the Ombudsman Service and the Independent Complaints Authority; complaints under the Civil or the Penal Code can be presented to Civil and Penal Courts.

### **B.14. Transgender issues**

104. According to Swiss law, a person can only have his/her name changed to one that is attributed to the opposite sex after gender reassignment has taken place. Also, transsexual persons are required by some cantons in Switzerland to be unmarried ('divorce requirement').<sup>60</sup>
105. An organisation advocating for the human rights of transgender persons, TransGender Network Switzerland, started its activities in 2009 and got officially registered in August 2010.

### **B.15. Other areas of concern**

#### **B.15.1. Sports**

106. Homophobia in sports, in particular male football is an area of concern. Gay supporter groups exist for some of the major football clubs and the issue of sexuality is being included into education of football trainers. Pink Cross has a group that is preparing a curriculum for this subject which they expect to be able to introduce at several courses later in 2010 or perhaps 2011.<sup>61</sup>
107. LOS reports that whereas twenty years ago a woman football club was closed because it came out that several players were lesbians, this is no longer a problem, and there are lesbian strongholds within several sports, including in particular women's football.<sup>62</sup>

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57 Interview with Lesbenorganisation Schweiz - LOS, Zürich, 25 March 2010."

58 Interview with Pink Cross – National Gay organisation for Schweiz, Bern, 24 March 2010.

59 Interview with Lesbenorganisation Schweiz - LOS, Zürich, 25 March 2010.

60 This section is based on the legal report by Alecs Recher.

61 Interview with Pink Cross – National Gay organisation for Schweiz, Bern, 24 March 2010.

62 Interview with Lesbenorganisation Schweiz - LOS, Zürich, 25 March 2010.



### **B.15.2. Bisexual persons**

108. There is a group of bisexual and gay fathers in Zürich. There are initiatives in the surrounding cities of Zürich where there are numerous activities: sports, chorus, film-festival, (also Bern and Basel) , hiking group in Zürich and Geneva. There are many different local groups (see [www.lacetsroses.ch](http://www.lacetsroses.ch)).

### **B.15.3. LGBT in Swiss policies<sup>63</sup>**

109. Considering Switzerland's high international profile in humanitarian work, it may be surprising that the country does not have an Independent National Human Rights Institute in accordance with the Paris Principles. This is partly due to the regionalised structure of the Swiss government.
110. Attempts are being made to establish such a body linked to a leading University, but details are not yet clear.

#### *International cooperation*

111. The Swiss government is increasingly taking an active stance to promote anti-discrimination against sexual minorities abroad. This was demonstrated and unfolded by a speech made by the Swiss Ambassador in charge of Human Rights matters in the Human Security division of the Foreign Ministry on the occasion of the Europride in Zürich in August 2009.<sup>64</sup>
112. The speech develops the thoughts of the Swiss government in terms of promoting LGBT rights at international fora, notably UN Human Rights Council and other international gatherings as well as in direct bilateral relations, where Switzerland has entered a rather activist path towards countries with massive LGBT discrimination, including partners of Swiss development cooperation.
113. In addition, the Ministry of Foreign Affairs has the facility to support certain projects and initiatives globally. Among activities supported are film festivals, LGBT Prides etc.
114. The MOFA meets every 6 months with PC and LOS to discuss matters of general concerns and the possibilities that the Ministry of Foreign Affairs has to address and assist.<sup>65</sup>
115. Switzerland participated in the Council of Europe expert committee DH-LGBT which prepared the Committee of Ministers Recommendation on LGBT.

### **B.16. Data availability**

116. There are very little official data on LGBT issues and rights violations in Switzerland. However, the data collected makes it possible to outline a substantiated analysis of the situation regarding homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity in Switzerland.

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63 Interview with the Ministry of Justice, 24 March 2010 and Lesbenorganisation Schweiz - LOS, Zürich, 25 March 2010.

64 *Human rights of lesbians, gays, bisexuals and transgenders in Swiss foreign policy* speech by ambassador Thomas Greminger on 4 June 2009.

65 Interview with the Ministry of Foreign Affairs, 25 March 2010.

117. The Ministry of Justice provided a study on the experiences from the first 15 months with the Registered Partnership in 2007-2008.

The Ministry of Foreign Affairs provided the Switzerland 2008 report to the UN Human Rights Council and the text of a speech held in June 2009 by the MOFA Human Rights ambassador Thomas Greninger on the occasion of the Europride in Zürich, outlining Swiss foreign policy on LGBT.