

TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

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Key facts¹

Ratified CEDAW	Reservations	Party to Optional Protocol?	Submission of State party report	Other core treaties ratified
1997	Articles 15(2) , 16(1)(g) and 16(1)(h)	Yes, 2008	Due: 26 April 2006 Submitted: 24 April 2008	CAT, ICCPR, ICERD, ICESCR, CRC

Opening remarks by the delegation

The delegation of Switzerland was led by Ms. Marion Weichelt, Deputy Director, Directorate of International Public Law, Federal Department of Foreign Affairs. She was supported by a large delegation consisting of representatives of the Departments of the Interior, Police and Justice, and Foreign Affairs.²

Ms. Weichelt's opening remarks outlined the legislative progress made since Switzerland's last report to the Committee and the actions taken based on the previous concluding observations. She highlighted the ratification of the Optional Protocol, the withdrawal of the previous reservation to Article 7(b), alterations to the Criminal Code to crack down on domestic violence and to criminalise battering and marital rape, and progress made in the employment field with regard to maternity leave and child care facilities for working parents. Ms. Weichelt was honest about obstacles the State party still faced, including a 9.7 percent

¹ The information in this table is sourced from the Office of the High Commissioner for Human Rights (OHCHR), and is available at www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx.

² The list of members of Switzerland's delegation is available at <http://www2.ohchr.org/english/bodies/cedaw/cedaws44.htm>

employment gap between men and women in the private sector, the ongoing under-representation of women in scientific and technical fields, and difficulties in fully implementing the Convention into domestic law due to the diversity of approach amongst the cantons.

Overview of key issues

The delegation engaged cooperatively with the Committee, responding to most questions in detail but ran out of time to fully respond to all questions. The Committee appeared less than satisfied with government measures taken to implement the Convention into domestic law, particularly with regard to the lack of uniformity of legal provisions across cantons. Anti-trafficking measures and the prosecution of migrant practitioners of female genital mutilation were also issues given great attention.

Legal status and implementation of the Convention

Concluding observations:

16. The Committee urges the State party to further clarify the issue of the direct applicability of the provisions of the Convention within the national legal order of Switzerland. The Committee reiterates its previous concluding observations of 2003 and recommends that the State party conduct awareness-raising campaigns about the Convention aimed at judicial and legal professionals and at the general public. The Committee also encourages the State party to provide systematic training to members of the legal profession and the judiciary on the scope and significance of the Convention with a view to encouraging them to utilize the Convention in legal proceedings. The Committee further encourages the State party to include the Convention and its Optional Protocol as a mandatory component in the education and training of the legal profession, including judges, lawyers and public prosecutors.

20. The Committee underlines that the Federal Government has the primary responsibility for ensuring the full implementation of the State party's obligations under the Convention. In line with its previous concluding observations of 2003, the Committee recommends that the State party ensure, particularly through effective coordination, the coherent and consistent application of the Convention at all levels and in all areas.

** See also concluding observations No.18 (proper application of the principles of equality and non-discrimination against women) and No.42 (redressing gender and economic disparities upon divorce in new divorce law).*

Stressing that work still needed to be done on the incorporation of the Convention into domestic law, Mr. Flinterman (Netherlands) commended the State party for its ratification of the Optional Protocol. He inquired about efforts to disseminate information about the Optional Protocol and the Convention, and what further measures the government had taken to bring all cantons into full compliance with their obligations under the Convention. Ms. Simonovic (Croatia) echoed these observations and recommended both the cantons and federal government adopt a uniform approach to the implementation of the Convention. She and Ms. Zerdani (Algeria) also asked whether there were any new commitments with regard to the withdrawal of reservations.

The head of the delegation replied that no particular law was needed to enable the full incorporation of the Convention into domestic law because the Convention was directly applicable in Switzerland. She then went on to clarify this by noting that some provisions of the Convention were self-executing and therefore directly applicable, while others were non-self-executing and required interpretation by the courts and subsequent legislation. While admitting that there were differences in gender equality interpretations among the cantons, Ms. Weichert stated that this could be viewed as a positive strategy to individually tailor programmes to each canton's local needs and identify best practices.

With regard to remaining reservations to the Convention, one delegate responded that the reservations to Articles 15 and 16 concerning transitional laws on matters of matrimonial law and property would be withdrawn.

In following-up on the delegation's responses, Mr. Flinterman and Ms. Simonovic inquired about the direct applicability of the Convention in domestic law. Mr. Flinterman focused on the lack of consideration given to the Convention by the Supreme Court in its decision-making processes, citing cases where the Supreme Court arrived at narrower definitions on issues of discrimination, equality and temporary measures than it would have, had it taken into account provisions of the Convention. Ms. Simonovic asked for a clarification on the legal status of corporal punishment.

The delegation responded that the government, not the judiciary, had determined that the provisions of treaties were not self-executing, leaving it up to the courts at the federal, cantonal and communal level to decide which provisions were directly applicable. Admitting that certain court decisions could have reached a different result had the Convention been considered more strongly, Ms. Weichelt agreed that efforts should be taken to make the Convention better known among the judiciary and throughout the legal system. In terms of capital punishment in schools, Ms. Weichelt stated that it was illegal under the Penal Code and that commissions existed to monitor these acts in Swiss schools.

National machinery for the advancement of women and gender mainstreaming

Concluding observations

22. The Committee recommends that the State party ensure that the existing national machinery for the advancement of women is provided with the necessary authority, visibility and human and financial resources for the effective promotion of gender equality and the advancement of women at all levels. The Committee also recommends the establishment of gender equality offices in all cantons and the strengthening of coordination between all relevant institutional structures and mechanisms, including through the establishment of a dedicated coordination mechanism at the federal level. The Committee further recommends that the State party develop and implement an integrated gender mainstreaming strategy, including through the use of gender-budgeting processes, with effective monitoring and accountability mechanisms across all sectors and levels of government.

Numerous Committee experts addressed gender issues throughout the interactive dialogue. In response to a report of a shrinking budget and staff in the federal government's gender office and the close of several cantonal gender institutions, Ms. Xiaoqiao (China) questioned the commitment of the cantons and federal government to gender issues and advised of the importance of having adequately funded and staffed institutions. Ms. Ameline (France) asked how gender equality under the Constitution was implemented while respecting local autonomy and whether the government could harmonise gender equality regulations country-wide. Taking this line of questioning further, Ms. Neubauer (Slovenia) inquired about the number of cantons with gender-equality institutions with executive powers and whether Parliament or the cantons had working bodies tasked with incorporating a gender equality perspective. Ms. Neubauer also asked why gender budgeting was so well addressed in Switzerland's overseas development agenda, but not at a domestic level. Ms. Popescu (Romania) inquired as to whether political parties had used quotas on their electoral lists and why only some cantons were using temporary special measures to address gender disparities. Ms. de la Vega (Spain) asked for more information on gender mainstreaming at universities, expressing the view that significantly more could be done in this regard. Ms. Gabr (Egypt) pointed out that the media's portrayal of women perpetuated gender stereotypes and that temporary special measures should be used to counter negative stereotypes.

Addressing the federal budget for gender institutions and programmes, a delegate stated that the budget had increased from 5.5 million francs and eight full-time staff in 2000 to 7.9 million francs and 12 full-time staff in 2008. In response to Ms. Xiaoqiao's concerns, the delegate stated that while there were budget cuts at the canton level, they were standardised for all canton programmes and were not specifically aimed at gender programmes. The delegation stated that smaller cantons had one full-time post for gender personnel, but

larger cantons such as Zurich had five full-time posts. Also, the Federal Government had published a detailed brochure on the Convention and its Optional Protocol.

The delegation addressed questions regarding temporary special measures by explaining that it was difficult to balance the need to provide temporary special measures to counter gender biases against women with the need to uphold men's rights. However, the delegation advised that the government had used temporary special measures to increase the number of women in senior university posts. Further, the Supreme Court had held in numerous cases that affirmative action measures taken by the State were lawful under the Constitution.

In conclusion, the delegation explained that there was no central parliamentary structure to deal with gender issues, but all of parliament's gender matters were required to pass through the office of the head of judicial services of the Federal Bureau of Equality between Men and Women of the Minister of the Interior.

Violence against women

Concluding observations:

28. Recalling its previous concluding observations of 2003, the Committee urges the State party to continue to intensify its efforts to address the issue of violence against women and girls. In particular, the Committee calls upon the State party to enact comprehensive legislation against all forms of violence against women, including domestic violence, as soon as possible. Such legislation should sanction all forms of violence against women and should ensure that women and girls who are victims of violence have access to immediate means of redress and protection and that perpetrators are prosecuted and punished, but should also provide for the establishment of additional support services for victims, including shelters, as well as the provision of government funding for such services. In line with its general recommendation 19, the Committee also calls for the expansion of training activities and programmes for parliamentarians, the judiciary and legal and public officials, in particular law enforcement personnel and health-service providers, in order to ensure that they are sensitized to all forms of violence against women and can provide adequate support to victims. It also recommends the expansion of public awareness-raising campaigns on all forms of violence against women. The Committee requests the State party to standardize data and trends on the prevalence of various forms of violence, as well as on the number of complaints, investigations and prosecutions of cases.

The Committee posed questions about a broad range of forms of violence against women including gender-based violence, child pornography, abuse of minors, and sexual exploitation of girls. Ms. Rasekh (Afghanistan) blamed the lack of progress in the fight against gender-based violence on the government's failure to adequately collect and analyse data on this issue. She also asked about efforts to prevent child pornography and other forms of sexual exploitation of girls. Ms. Rasekh also was disappointed by the limited number of shelters (18) for victims of violence as well as the lack of information available on other services available to victims of violence. Along with Ms. Begum (Bangladesh), she pointed to the importance of shelters especially for migrant women who may be afraid of reporting domestic violence due to dependency on their husbands. Ms. Begum and Ms. Pimentel (Brazil) asked whether mechanisms existed to protect elderly women against domestic violence. Ms. Xiaoqiao (China), asked why, if it was illegal in Switzerland to perform female genital mutilation (FGM), people taking women and girls abroad to have FGM performed were not punished upon their return.

The delegation admitted that the report did not include statistics on gender based violence, but explained that schools and non-government organisations played a major role in educating the public and aiding victims with regard to issues of child pornography and sexual exploitation of minors. Further, the delegation stated that several cantons had taken preventive measures such as publishing and printing informational material and using games, films and exhibitions to educate children and adults about violence against women and children.

Responding to questions about sexual abuse of children, the head of the delegation referred to a number of preventative strategies that were in place, including an informational internet site and a national conference held last year, hosted by the Swiss Alliance to Prevent Sexual Exploitation. Ms. Weichelt stated that there was also a service set up by cantonal justice directors and the police to fight cyber-crime, which had led to the prosecution of several offenders. The delegation also stated that no specific FGM legislation existed beyond general laws prohibiting physical harm. Although specific legislation had been proposed, it was controversial mainly because it only targeted girls and not boys. Ms. Weichelt did state that preventive work was underway in communities where FGM was practiced. As for the abuse of elderly women, Ms. Weichelt stated that there had been a public outcry against such crimes, and they were punishable by the penal code.

Trafficking and prostitution

Concluding observations:

30. *The Committee encourages the State party to ensure the quick ratification of the Council of Europe Convention on Action against Trafficking in Human Beings. It urges the State party to strengthen its measures to combat all forms of trafficking in women and children, including through increased international, regional and bilateral cooperation with countries of origin and transit, in line with article 6 of the Convention. In this respect, the Committee urges the State party not only to ensure the prosecution and punishment of trafficking, but also the protection and recovery of victims of trafficking, including through the allocation of adequate resources to existing specialized services and the establishment of additional services in all cantons. The Committee also urges the State party to consider the extension of temporary residency permits and other measures to be in compliance with the Recommended Principles and Guidelines on Human Rights and Human Trafficking developed by the Office of the United Nations High Commissioner for Human Rights in 2002. The Committee calls upon the State party to collect and analyse data on all aspects of trafficking, disaggregated by age and country of origin, in order to identify trends and root causes, as well as priority areas for action, and to formulate relevant policies. It requests that such information, as well as information on the impact of the measures taken to combat trafficking, be included in the State party's next periodic report.*

32. *In light of their precarious situation, the Committee encourages the State party to continue to regularly review the visa and other regulations for cabaret dancers, and to consider including provisions that would allow women to change to a different sector of work.*

Ms. Awori (Kenya) had many questions on the issue of trafficking of women. Along with Ms. Gabr, Ms. Awori asked for further information regarding the kind of support and protection available for victims of trafficking at a federal level rather than just a cantonal level. Continuing this line of questioning, Ms. Chutikul (Thailand) also asked what measures could be taken in the cantons to provide better support for victims of trafficking. She expressed extreme displeasure with the requirement that victims must cooperate with investigations of trafficking as a condition of receiving protection, and asked whether the Swiss programme assisting other nations in the fight against trafficking had been renewed. Ms. Awori also inquired as to the status of Switzerland's progress in ratifying European measures against trafficking.

The delegation explained that the government decided to ratify the Council of Europe Convention in 2008 and had also begun work on a new law for victim protection, the first draft of which the cantons and the rest of civil society would see before the end of the year. The delegation anticipated that the draft law would go to parliament for adoption by the end of 2010 and would hopefully be ratified by 2011.

With regard to residency and protection of foreign victims of trafficking, the delegation stated that victims of trafficking were entitled to residence permits in Switzerland whether or not they cooperated with police so long as there was a special need for the person to stay. Further, a migrant woman married to a Swiss man for more than three years also had the right to stay. The delegation cited the lack of a unified statistical system for police work as an obstacle to obtaining consistent and useful data on trafficking, but explained that a new system for data collection was being created, which would provide more accurate figures in 2010.

As for special assistance to victims of human trafficking, the delegation stated that the only advisory centre that worked specifically on these problems was located in Switzerland and only provided services across Switzerland. Further, the delegation explained that the government did not directly provide financial assistance to NGOs for anti-trafficking efforts, rather it provided related funding to the cantons.

The delegation admitted that sentences for trafficking were, indeed, lighter in Switzerland than the rest of Europe and that this was a matter of great concern to them. The delegation stated that new training for all actors in the criminal justice system was being carried to improve the prosecution of trafficking cases, including cases currently being prosecuted. The delegation also mentioned that the government had developed a brochure for women admitted under visas for cabaret dancing to inform them about their rights and the dangers of trafficking.

Other issues

Not included in the Committee's concluding observations were the Committee's questions about programmes and services to promote women's health. Ms. Arocha (Cuba) and Ms. Xiaoqiao pointed out a need for increased funding and attention to be put toward the prevention of breast and uterine cancers. Ms. Arocha also asked about specific health care services for pregnant migrant women and requested gender-specific information on mental health, violence and suicide among men versus women. Ms. Rasekh inquired about the availability of family planning services for migrant and foreign women as well as women with post-traumatic stress disorder, especially when related to FGM. She also emphasised the unacceptable situation of undocumented people, particularly women, who did not have access to insurance or health care.

Ms. Weichelt responded that the "migration and health" programme had made major progress in improving the maternal health of migrant women. However, due to insufficient time, there was no response to the question about healthcare for the undocumented or efforts to improve programmes on prevention of breast and uterine cancers.

Conclusions and next steps

In the final minutes of the oral presentation, Ms. Weichelt thanked the Committee, commenting that it had been a constructive dialogue and that the delegation would take the issues discussed back home. She further stated that the delegation looked forward to returning before the Committee and was optimistic about the progress that would be made during the next four years.

In closing, the Committee Chair emphasised the importance of raising the visibility of the Convention in the domestic law, more equitable sharing of family responsibilities, and greater equality in employment. She also encouraged Switzerland to overcome its reluctance to use temporary special measures and employ this tool more effectively in future. The Chair acknowledged the importance of accepting cultural differences with regard to certain migrant practices, but clearly stated that FGM and other dangerous traditions must be attacked. Finally, the Chair reminded the State party that since it had opened its arms to the Schengen Agreement, it must be more mindful of trafficking and treat it as a gross violation of women's rights.

The Committee invited the State party to submit its combined fourth and fifth periodic report in April 2014.

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