



Bern, December 2024

Statement by the Swiss Federal Commission for Women's Issues FCWI on the Concluding Observations on the Sixth Periodic Report of Switzerland on the CEDAW Convention on the elimination of all forms of discrimination against women

I. General Remarks on the CEDAW Concluding Observations

The Swiss Federal Commission for Women's Issues (FCWI) is committed to monitoring the progress of gender equality and the implementation of the CEDAW Convention in Switzerland. The FCWI, in its November 2020 report to the CEDAW Committee, outlined key demands to promote gender equality in Switzerland as part of the country's sixth periodic report. The FCWI highlighted the need for an independent, well-funded National Human Rights Institution, emphasized the importance of equal political participation, and called for the integration of gender equality in education. It advocated for affordable childcare and fair post-divorce distribution of costs. Parental leave laws and mandatory pay analyses with sanctions and awareness campaigns were proposed to promote wage equality, while the FCWI opposed raising the retirement age for women until the factors that hinder equitable pension accumulation – such as wage discrimination, labor market segregation, and unequal distribution of unpaid care work – are addressed. The FCWI also supports quotas for women in leadership positions and recommended measures against digitalization biases. These initiatives aim to advance sustainable gender equality in Switzerland.

In October 2022, Switzerland presented its sixth periodic report to the CEDAW Committee. In response, the Committee issued recommendations in November 2022 (Concluding Observations on the Sixth Periodic Report of Switzerland).

The recommendations emphasize improving women's access to justice, eliminating gender bias, and increasing their participation in United Nations peace missions. Switzerland should implement gender-responsive budgeting, establish equality offices across all cantons, and prevent digital discrimination. Temporary quotas are advised to improve representation for migrant, refugee, and disabled women. Addressing media stereotypes, combating hate speech, supporting victims of female genital mutilation, setting a marriage age of 18 without exceptions, and removing any legal exemptions to this age minimum are essential steps.

Moreover, Switzerland must strengthen protections against gender-based violence, criminalize stalking, define rape based on lack of consent, and support women leaving abusive relationships. Enhancing legal protections and services for trafficking victims and establishing

exit programs for women in prostitution are also necessary. Gender quotas and anti-sexism measures in politics are recommended to ensure equitable representation. In education, fostering women's participation in STEM fields and removing stereotypes are crucial. Employment recommendations should include addressing wage inequality and improving conditions in female-dominated sectors. Equal access to healthcare, including contraception, must be ensured. Additionally, addressing unpaid care work, ensuring fair disability benefits, supporting women-led businesses, and extending social security to women in agriculture are identified as priorities. The recommendations further include adopting individual taxation and ensuring economic protection for women post-divorce.

Switzerland is asked to report to the CEDAW Committee on the implementation of recommendations 16 (a), 32 (a), 42 (d), and 42 (f). The FCWI will provide detailed commentary on these selected topics in the following sections.

II. On the selected recommendations of the CEDAW Committee 2022

1. No. 16a) Systematic Training on CEDAW Application for Legal Professionals

In its 2022 observations, the CEDAW Committee highlighted significant concerns about the inconsistent and limited application of the CEDAW Convention in Swiss legal proceedings. Despite Switzerland's ratification of the Convention, the Committee observed that cantonal courts rarely reference CEDAW or the decisions of the CEDAW Committee, leading to three primary concerns: (1) the limited direct applicability of the Convention, (2) the absence of judicial guidance for its application, and (3) the lack of data on cases where CEDAW has been directly invoked.

Recommendation 16(a) urges Switzerland to conduct systematic capacity-building for judges, prosecutors, lawyers, and law enforcement officials, ensuring they are adequately prepared to apply CEDAW directly in legal proceedings. This is crucial for bridging the gap between international standards and domestic practice and ensuring that the Convention is effectively used as a tool to achieve gender equality in the justice system.

Despite some progress, including the FCWIs publication of a CEDAW guide for legal practitioners, these efforts remain insufficient to fully address the challenges at hand. The FCWI recognizes the persistent gap between the ratification of CEDAW, and its implementation at all federal levels, with courts rarely using the Convention to strengthen gender equality. This can be seen as a systemic failure in integrating CEDAW's provisions into the national legal framework, undermining its potential to protect women's rights in Switzerland. Key issues still include:

- Limited Direct Application and Discretionary Use: In Switzerland, international conventions generally become applicable law upon ratification («monistic» theory), but norms are only considered direct applicable («self-executing», justiciable) if they are e.g. sufficiently concrete, allowing individuals to derive direct rights and obligations from them.¹ Since CEDAW lacks provisions for direct applicability, the FCWI urges Switzerland to recognize CEDAW's justiciability as essential for ensuring that de jure and de facto equality can be enforced

¹ CEDAW-Leitfaden für die Rechtspraxis. Das Übereinkommen CEDAW und sein internationales Mitteilungsverfahren. Nützliches und Wissenswertes für die Anwaltspraxis. 2019

through the courts. To date, however, the Convention is inconsistently applied, with courts rarely referencing it, and judges having broad discretion, leading to uneven interpretation and enforcement of gender equality standards.

- Insufficient Judicial Training and Guidance: A major barrier to the Convention's implementation is the lack of systematic and mandatory training for judges and other legal practitioners on its provisions and direct applicability. Currently, training programs on CEDAW are sporadic and lack consistency across different regions. This absence of comprehensive judicial guidance or national jurisprudence leaves legal professionals ill-equipped to apply CEDAW effectively in their work. The FCWI remains particularly concerned that the Convention's potential to transform legal standards and strengthen protections for women's rights is not being realized due to a lack of knowledge and awareness among the judiciary.
- Absence of Data: The lack of data on cases where CEDAW has been directly applied represents a significant gap. Without clear records, it is impossible to measure the extent to which the Convention is being used to protect women's rights in the justice system. This lack of transparency not only limits the accountability of the judiciary but also hinders efforts to assess and improve the implementation of international gender equality standards in national law.
- Cultural Resistance and Reluctance to Change: Cultural resistance within the legal system also plays a role in the underutilization of CEDAW. Many legal professionals continue to perceive CEDAW as an external or supplementary instrument, rather than a binding source of law with direct relevance to their work. In this regard, the FCWI highlights that for international human rights conventions ratified by Switzerland, Article 35, paragraph 2 of the Federal Constitution applies: anyone performing public duties is bound by these rights and obligated to contribute to their realization. Without a shift in legal culture, combined with comprehensive and mandatory training, the Convention will continue to be underutilized as a tool for advancing gender equality in Switzerland.

The FCWI calls for action to address the gaps in the implementation of CEDAW within the Swiss legal system. First, systematic, nationwide capacity-building programs must be introduced for all legal professionals, including judges, prosecutors, and law enforcement officials. These programs should be mandatory and integrated into both initial and ongoing professional development, ensuring that legal practitioners are fully equipped to apply CEDAW in their daily work. Second, the government must establish clear judicial guidance on the interpretation and direct applicability of CEDAW in domestic law, reducing judicial discretion that allows the Convention to be inconsistently applied.

2. No. 32a) Harmonizing Cantonal Funding and Establishing Gender Equality Offices

The Committee concluded that Switzerland must address cantonal disparities in funding for women's rights and gender equality implementation, ensuring that each canton has a dedicated gender equality office. Currently, the regulation of women's rights and gender equality varies significantly across cantons. Some, such as Appenzell Innerrhoden, Glarus, Uri, Schwyz, and Thurgau, lack gender equality offices entirely. Others, including Aargau, Zug, Obwalden, and Nidwalden, have closed theirs in recent years (e.g., Zug, where the gender equality commission was disbanded in 2010²). Cantons like Neuchâtel, Fribourg, and Valais merged their offices with broader services, while Zurich³ maintains its gender equality commission. Schaffhausen is a notable exception, transforming its office for combating violence

² See also Federal Court Decision 1C_549/2010 from 21. November 2011.

³ At the municipal level, there are initiatives in Zurich, Lucerne, and Bern.

against women into a permanent equality office in 2023.

The FCWI considers the establishment of gender equality offices (*Gleichstellungsbüro* or *Fachstelle*) as an effective means to implement the mandate for equality at the cantonal level and to contribute to real gender equality. A specialized office, when equipped with adequate personnel and financial resources, can provide expertise on gender equality issues. Existing equality offices in cantons have broadened their scope thematically, addressing LGBTQI issues, and the needs of other marginalized groups in society. This thematic diversity is an important enrichment to equality work. However, to ensure that gender equality efforts are not overlooked, adequate financial support is essential. Therefore, the FCWI calls for strengthening equality institutions at all levels and providing sufficient financial resources. This will ensure that, at the cantonal level, the necessary expertise, competencies, and resources are available to effectively fulfil and implement the tasks required by the CEDAW Convention.

3. No. 42d) Reforming the Legal Definition of Rape and Eliminating Judicial Discretion for Sexual Offences

The FCWI appreciates the CEDAW Committee's Recommendation No. 42(d) addressing the reform of Switzerland's legal definition of rape to align with international standards by basing it on the absence of consent. The Commission welcomes the Swiss Parliament's recent legislative steps, which revise the definition of rape to include all forms of non-consensual penetration, regardless of gender or method, and address previously outdated stipulations requiring victims to demonstrate resistance. Although the FCWI advocated in the past for the consent solution, the commission appreciates that under this new law, «no means no», with considerations for circumstances such as a victim's inability to express refusal due to fear («freezing»), which can still result in prosecution of the offender.

Additionally, the legislation criminalizes «stealthing» and non-consensual distribution of sexual content («revenge porn»), while making necessary provisions for minor consent in the creation and possession of self-images, recognizing changing societal contexts among youth. The reform marks significant progress in defining rape based on consent rather than physical force or threat; a crucial shift in Swiss legal and social standards.

The Commission further acknowledges the importance of recent amendments to Articles 192 (2), 193 (2), 187 (3), and 188 (2) of the Swiss Criminal Code, which address judicial discretion in sentencing for certain sexual offences. These provisions no longer allow judges to reduce sentences or acquit perpetrators of sexual offences that are deemed less severe than rape based on their marital or partnership status with the victim. By removing this potential for reduced sentencing, Switzerland strengthens its commitment to equitable and consistent application of justice for all victims of sexual offences, irrespective of relational context. This reform represents a significant shift toward eliminating tolerance for violence within intimate partnerships, and reflects the country's alignment with international standards set by the Istanbul Convention.

However, the FCWI underscores the importance of comprehensive measures to ensure the law's effectiveness in combating gender-based violence and shifting societal attitudes. Parliament must now act to ensure that training and awareness-raising for police and prosecution authorities is provided, and assistance to survivors strengthened. Consent must also be placed at the center of sex education, detailed public statistics on sexual violence must be

made available, and effective information and prevention campaigns must be launched.

The FCWI reiterates the need for vigilance in ensuring that reforms extend beyond legal definitions and promote institutional accountability and cultural change. Switzerland's alignment with the Istanbul Convention and the spirit of Recommendation 42(d) depends on robust implementation that empowers and protects survivors, reinforces consent as the standard, and educates the public.

4. No. 42f) Protecting Residency Rights for Victims of Domestic and Sexual Violence

The CEDAW Committee urges Switzerland to strengthen its efforts to combat gender-based violence, particularly focusing on disadvantaged women and girls. Among its recommendations, the Committee emphasizes the need to amend Art. 50 of the Federal Act on Foreign Nationals and Integration (FNIA) to ensure that victims of domestic or sexual violence can leave their abusive partners without risking their residence status, regardless of the severity of the violence or their partner's nationality or residency status. It also recommends withdrawing the reservation to Art. 59 of the Istanbul Convention and enhancing training for immigration authorities.

During the CEDAW reporting cycle, the Political Institutions Committee of the National Council (PIC-N) submitted a parliamentary initiative (21.504) in November 2021 to amend the art. 50 FNIA to improve the legal situation for victims of domestic violence. The FCWI also issued a consultation statement on this in March 2023.⁴ Following parliamentary debates from November 2021 to June 2024, the amended law came into effect after the referendum deadline on October 3, 2024.⁵ The FCWI's statement on art. 50 FNIA highlights that some of its demands have only been partially implemented in the legislative amendment. The FCWI explicitly welcomes the extension of the hardship provision to all types of residence permits (B, C, L) as well as temporary admitted persons. Similarly, the FCWI supports the change of the term «spousal violence» to «domestic violence» to also include children, registered partnerships, and cohabitations, which has also been implemented in the law.

The FCWI criticizes that the amended law recognizes primarily publicly funded support centres (service spécialisé), even though other centres with the necessary expertise in domestic violence should also be eligible, regardless of whether they are publicly or privately funded. The law states «généralement [typically] financé par des fonds publics», and the FCWI emphasizes that this provision should not be interpreted in legal practice as «only» publicly funded services. The FCWI welcomes the explicit listing of indicators for domestic violence in the amended law but stresses that effective improvement for victims requires further training for immigration authorities and courts.

The draft act proposed extending the timeframe for meeting integration criteria for individuals with independent residency rights under Art. 50 para. 2 FNIA, providing more time for integration. The FCWI supported this in its 2023 consultation, highlighting that many victims face integration barriers due to physical, psychological, and social isolation. It stressed the need for accessible support and additional resources in certain cantons. However, this pro-

⁴ 21.504 Parlamentarische Initiative «Bei häuslicher Gewalt die Härtefallpraxis nach Artikel 50 AIG garantieren» Vernehmlassungsstellungnahme der Eidgenössischen Kommission für Frauenfragen EKF (März 2023)

⁵ Bundesgesetz über die Ausländerinnen und Ausländer und über die Integration (Ausländer- und Integrationsgesetz, AIG) (Härtefallregelung bei häuslicher Gewalt), Änderung vom 14. Juni 2024, BBl 2024 1449.

vision was removed during the parliamentary debate, citing the existing case-by-case assessment under Art. 58 para. 2 FNIA, which considers special circumstances. The FCWI urges that this assessment also be applied to cases under Art. 50 FNIA.

III. Final Remarks

The FCWI welcomes recent legislative and policy steps towards advancing gender equality and fulfilling CEDAW obligations in Switzerland. However, substantial gaps remain in achieving full alignment with the Convention's standards. To ensure that Switzerland meets its commitment to gender equality, we underscore the following recommendations:

The FCWI emphasizes the need for systematic training on CEDAW for legal professionals to improve its application in court proceedings. Additionally, it calls for cantonal funding and the establishment of equality offices to ensure and coordinate consistent support for gender equality initiatives. The FCWI acknowledges the positive direction of recent legislative efforts in Switzerland, which aim to advance gender equality and protect women's rights. However, it is essential to ensure that these laws do not remain ineffective in practice. Emphasis must be placed not only on the letter of the law but also on its consistent implementation across all levels, from law enforcement to judicial proceedings. The FCWI calls for robust measures to ensure that legislation is fully operationalized and that enforcement authorities are effectively trained to meet the standards set by the CEDAW regulations.

In conclusion, while Switzerland has made commendable strides, significant work remains. The FCWI is committed to advocating for these essential reforms and will continue to monitor Switzerland's progress in implementing the CEDAW Committee's recommendations. These initiatives are critical for fostering a just and equitable society, where gender equality is firmly embedded across legal, social, and institutional frameworks.