



SWITZERLAND – LIST OF ISSUES PRIOR TO REPORTING (BEFORE THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN)

Report on article 6 CEDAW (COB 28 and 29) by FIZ, in coalition with CSP Genève, ProKoRe, Swiss Refugee Council and TERRE DES FEMMES Switzerland

Sept. 2019

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INTRODUCTION

This input for the LoIPR focuses on article 6 CEDAW and elaborates on eminent issues concerning trafficking in women* as well as on the erotic industry in Switzerland for the consideration of the CEDAW members prior to the 76. pre-sessional working group.

The authors of this input emphasize the importance of a distinction between human trafficking for the purpose of sexual exploitation and sex work. While human trafficking for the purpose of sexual exploitation is a criminal offence and a severe violation of human rights, sex work in Switzerland is a legal business. By no means are all sex workers affected by human trafficking or exploitation.

TRAFFICKING IN WOMEN (ARTICLE 6 CEDAW)

Despite the concerns raised in COB 28 and the recommendations given in COB 29 the situation regarding trafficking in women* and exploitation in prostitution has not improved noticeably since 2016. Cantonal disparities in relation to identification, granting of residence permits, protection and/or adequate assistance are persistent. The situation in the asylum sector is particularly serious, mainly due to the lack of specialized and gender-sensitive support and assistance for victims of trafficking in women* in general and the lack of access to assistance and protection measures under the Victims Assistance Act (VAA) for those who were not exploited in Switzerland. Also, the new asylum procedures' very short deadlines and the prevalence of Dublin Procedures over the human trafficking protection framework are very problematic.

- ⇒ How does Switzerland ensure that all victims of trafficking in women* obtain access to protection and specialized assistance regardless of the place/country of exploitation, residence status or existence of criminal proceedings?
- ⇒ How does Switzerland guarantee the detection, protection and assistance of victims in the cantons where no specialized service exists?
- ⇒ How will Switzerland ensure an independent evaluation of the National Action Plan 2017-2020 as well as the adoption of a gender focus in the elaboration of the new one [COB §29 b)?

ASYLUM

Despite the increased number of detected (potential) victims of Trafficking in Women in the asylum sector, there are no measures in place aiming at a systematic, proactive, early identification. This is particularly the case when there are elements tending towards the application of the Dublin Regulation. In these cases, SEM will normally not conduct a thorough hearing, which will not allow the victim to expose the events experienced. There are cases in which victims of THB were not identified properly in the first stage of the asylum process and have thus received a negative decision or a dismissal of their application, without consideration of their being victims of THB.

- ⇒ What is Switzerland doing in order to assure early and proactive identification, also in cooperation with specialized victim organizations?
- ⇒ How many potential victims of trafficking in women* are identified by the state secretariat for migration per annum and how many of those are then sent away under the Dublin regulation, how many are granted asylum and how many do receive a provisional admission?

Even if victims of trafficking in women* are identified there are no established procedures to ensure access to specialized victim support and protection. In most cases, victims do not receive any special support from the authorities nor are they granted the right to a proper identification and protection/support through a specialized NGO; rather, these are not systematically contacted at all. On the contrary, the deadlines of the new, accelerated procedure still precede the investigations to be made in the event of suspicion of trafficking in women*. This practice was judged to be contrary to international obligations (e.g. article 10 Council of Europe Convention on Action against Trafficking in Human Beings (CoE Convention, CETS 197)) by the Federal Administrative Court in its decision from September, 6th 2019 (E-4184/2019).

- ⇒ How does Switzerland ensure that the special rights and protection [COB §29 c) take precedence over administrative deadlines under asylum law, including the Dublin Regime?
- ⇒ How does Switzerland ensure that all victims in the asylum sector (regardless of the place of their exploitation) have access to specialized victim support and victim rights?

- ⇒ How does Switzerland ensure that staff of the asylum sector working in the areas of care, accommodation, security, health care or legal advice who deal with victims of violence against women*, such as trafficking in women*, are mandatorily female and specially trained?
- ⇒ Do Swiss authorities and their mandated organisations have a concept on prevention, support and protection of violence against women*, such as trafficking in women*, which promotes the implementation of the gender perspective? How is its implementation evaluated?

Further, victims of trafficking in women* whose exploitation took place outside of Switzerland, most of them being in the asylum system, do still not have access to victim support under the VAA at all. This grievance has been addressed by two parliamentary interpellations ([17.3310](#) and [17.3805](#)) and has been acknowledged not only by the Federal Council in its replies to the aforementioned interpellations but also by Action No. 22 (Assistance to victims of crime abroad) of the Swiss National Action Plan against Trafficking in Human Beings (NAP, 2017-2020). In these cases specialized assistance and protective shelters are, if at all, financed by private donors (e.g. [FIZ project](#) for victims of trafficking in Human Beings within the asylum system). This situation leads to discrimination and contradicts Switzerland's obligations according to international law. The [study](#) by order of the Conference of Cantonal Social Directors (CCSD), which was carried out in fulfilment of Action 22 of the NAP 2017-2020, also comes to the same conclusion. The CCSD's general secretariat is now working together with experts from the fields of social affairs, migration and victim support to develop a concrete proposal for a Swiss practice for supporting these specific cases. Unfortunately, none of the specialized victim organizations on trafficking in women* has been included in the process so far, although their crucial role in victim protection and assistance is widely recognised.

- ⇒ How is Switzerland ensuring that the special needs and rights (e.g. under article 12 or 13 CoE Convention) of **all** victims of trafficking in women* are considered while being in the asylum system, ensuring among other things access to adequate and gender-sensitive counselling services, health care, psychosocial support, psychotraumatological care, independent transcultural interpreting services and specialized victim protection services offered by non-governmental organizations [COB §29 c)?
- ⇒ How will Switzerland ensure that the expertise and services offered by civil society organisations specialized in victims of trafficking in women* support are appropriately considered for the development of a Swiss practice for the supporting of cases lacking victim support under the VAA?

The decision of the Federal Court, from February, 14th 2019 ([2019 \(2C_373/2017\)](#)) recognizes the entitlement to a short-term resident permit also for victims of THB within the asylum procedure in cases where the victim was exploited in Switzerland and law enforcement authorities deem the presence and participation in the criminal proceedings necessary. Hence, recognizing the self-executing character of article 14 al. 1 lit. b CoE Convention. Unfortunately, the entitlement to a short-term resident permit is limited to cases where the prosecutor confirms that the presence of the victim is needed for the purpose of a criminal proceeding and depending on the victim's willingness to cooperate with the prosecution.

- ⇒ How does Switzerland ensure that all victims of trafficking in women* can benefit from protection and rehabilitation measures, regardless of their willingness or unwillingness to cooperate with the authorities? [COB §29 d)?

The Dublin procedure remains a key challenge in securing a human rights approach and providing adequate assistance to victims. The recovery and reflection period according to article 13 CoE Convention is perceived as a form of statutory period rather than a timeframe in which the victim's need for support and protection must be met. Furthermore, it is not granted systematically to all victims of trafficking in women* in the asylum sector but rather needs to be demanded for through the corresponding legal representation. Swiss authorities do not organize the recovery and reflexion period with access to special protection and support and the asylum procedure is not suspended for this period. If no criminal proceedings are ongoing and no cooperation is possible victims who have been exploited in Switzerland might still be sent to the responsible Dublin state. Others are deported to the responsible Dublin states irrespectively of having been exploited there or being at high risk of re-trafficking. There are also cases, where victims are sent to Dublin states due to them holding a visa of the respective state organized by their traffickers, without having any other ties to this state and never even having set foot on its soil. The sovereignty clause under article 17 of the Dublin-III Regulation, which allows the

state to refrain from transferring the asylum seeker to Dublin State and to assume responsibility for the asylum application itself, is applied very rarely and justified under “individual circumstances” only.

- ⇒ How does Switzerland ensure the systematic granting of the recovery and reflection period (article 13 CoE Convention), while ensuring a victim-centred approach in [COB §29 d]?
- ⇒ How is Switzerland enabling all victims of trafficking to avail themselves of protective and rehabilitation measures (e.g. article 12 and 13 CoE), irrespective of their willingness to cooperate [COB §29 c and d] also within Dublin procedures?
- ⇒ Why is Switzerland not applying the sovereignty clause under article 17 of the Dublin-III Regulation systematically in cases of suspected cases of THB?

Transfers within the asylum system, either from federal to cantonal competence, to responsible Dublin states or even to the country of origin are very sensitive. The lack of continuous victim protection measures leaves victims of trafficking in women* often at risk of severe destabilization, renders them more vulnerable for re-trafficking and often results in denying access to their rights as well as adequate and comprehensive protection, accommodation and assistance [COB §29 c and d].

- ⇒ How are Swiss authorities guaranteeing the provisions under article 16 CoE Convention are guaranteed, hence ensuring that their rights, dignity and security are considered at all times?

Switzerland’s practice of granting asylum for victims of trafficking is only considering trafficking for the purpose of sexual exploitation, dealing with such claims exclusively under the aspect of gender-specific prosecution and therefore also excluding men and boys in general. Further, the social group criteria is categorically denied when assessing asylum claims of victims of trafficking in women*.

- ⇒ Why does the State Secretary for Migration’s practice in dealing with asylum claims of trafficking victims only consider trafficking for the purpose of sexual exploitation [COB §29 e]?
- ⇒ Why does the State Secretary for Migration categorically deny the application of the social group criteria when assessing the asylum claims of trafficking victims, even though this practice contradicts respective guidelines of the UNHCR [COB §29 d]?

VICTIMS OF TRAFFICKING IN CHILDREN

Specific assistance for child victim of trafficking are not formally established and their support remains challenging due to the lack of clear responsibilities. What is more, there are no specific shelters or assistance services for them.

- ⇒ How is Switzerland assuring the identification and support for children victim of trafficking in human beings or at risk of trafficking [COB §29c].
- ⇒ How is Switzerland assuring adequate access to adequate protective and rehabilitation measures [COB §29 c and d]?

TRAFFICKING FOR THE PURPOSE OF LABOUR EXPLOITATION

Identification of cases of trafficking for the purpose of labour exploitation is still rare. In order to ensure a consistent human rights approach, the process must go beyond a preliminary identification of labour exploitation opening the perspective for potential victims of THB. It must include the cooperation with specialized civil society organizations as well as follow- up scenarios for those affected so they can benefit from the rights and assistance foreseen by the CoE Convention and Swiss law respectively. The restrictive migration regime inhibits victims from coming forward and disclosing their situation, making them even more prone to extortion and exploitation. Indeed, often it is the victims themselves who receive fines for working illegally in Switzerland and must leave the country. There are not many cases, where the recovery and reflection period is granted in cases of THB for the purpose of labour exploitation. In some cantons, such as Geneva, the granting of recovery and reflection periods for victims of trafficking in women* for the purpose of labour exploitation does not pose major problems. Nevertheless, problems arise at the latest when applying for a residence permit in a case of personal hardship.

- ⇒ What measures in the field of trafficking for the purpose of labour exploitation are taken by the state in order to enhance identification and ensure support and protection of victims of trafficking for the purpose of labour exploitation?
- ⇒ How many recovery and reflection periods according to article 13 CoE Convention were granted by what canton over the last 5 years for victims of trafficking for the purpose of labour exploitation?
- ⇒ How many residence permits in a case of personal hardship for victims of trafficking for the purpose of labour exploitation were granted by which canton?
- ⇒ What measures in migration law and politics are taken in order to strengthen safe and legal migration and therefore to prevent and combat THB for the purpose of labour exploitation?

The lack of a common definition of what constitutes THB for the purpose of labour exploitation does not only inhibit identification, but also complicates criminal prosecution. Even though Switzerland has included trafficking in human beings for the purpose of labour exploitation in the criminal code in 2006, condemnations are still rare and some forms of it, such as trafficking for the purpose of illegal activities, are often not even considered by the authorities. GRETA (the Council of Europe Group of Experts on the Action against Trafficking in Human Beings) considers that stating explicitly in the definition of THB, as contained in the criminal code, the notions of forced labour or services, slavery, practices similar to slavery, and servitude as types of exploitation could improve the implementation of this provision. Indeed, it is very difficult to prove the facts constituting the offence of THB for the purpose of labour exploitation. In cases where the offence is acknowledged to go beyond labour exploitation, but not amounting to THB for labour exploitation, it fell under article 157 Swiss Criminal Code that penalizes offences against property/profitteering (usury). Yet, this offence does not imply access to victim support services. Thus, recent discussions have raised the question whether an additional article in the Swiss Criminal Code (SCC) is needed in order to counterbalance the vagueness of the current wording of the penalization of THB for the purpose of labour exploitation (article 182 SCC).

- ⇒ How is Switzerland planning on improving article 182 SCC implementation and ensuring access to special rights and specialized victim protection services to all (potential) victims of THB, including victims of THB for the purpose of forced labour [COB §29 c]?
- ⇒ How is Switzerland preventing and combating other exploitative practices assimilated to trafficking [COB §29 e]?
- ⇒ What measures in the field of trafficking for the purpose of labour exploitation are taken by the state in order to enhance collaboration among relevant actors and involve civil society?

NON-PUNISHMENT PROVISION

There is no explicit non-punishment clause translating article 26 CoE Convention into Swiss law. Nevertheless, the Swiss government is pointing out that this guarantee is already implemented through article 19 and 52-55 SCC and the violation of the non-punishment provision merely due to lack of identification. While the gaps in identification remain a sore point especially in the context of exploitation for criminal activities such as theft, fraud or illicit begging, illegal entry into the country, there remains too much leeway for interpretation and no clear standards as on when the non-punishment clause should be applied.

- ⇒ What measures were taken by Switzerland in order to enhance the implementation of the non-punishment clause?
- ⇒ How many times and in what cases in the context of THB was the non-punishment clause applied by the public prosecutor's office?

RECOVERY AND REFLEXION PERIOD

There are still no binding standards on how to organize the recovery and reflection period in a victim-centred way, e.g. which services the victims are entitled to receive during this period (counselling, trauma therapy, etc.) and which accommodation are adequate. The recovery and reflection period does not consist of a mere residence permit but must include victim protection measures.

- ⇒ How does Switzerland ensure that the recovery and reflection period is carried out with a victim-centred approach and without disparities between the cantons [COB §29 b and d]?

Even though, the recovery and reflexion period is not conditional on co-operation with investigative or prosecution authorities, due to the possibility foreseen in article 35, para 3 OASA it is regularly ended prematurely when the victim does not consent to collaborate with the authorities.

- ⇒ How is Switzerland ensuring that the recovery and reflection period is non-conditional on co-operation [SOB §29 d)?

RESIDENT PERMITS

A renewable residence permit should not merely be given in exchange for a victim's collaboration, but also if their stay is necessary owing to their personal situation. In Switzerland, the only possibility in this regard is the application for a residence permit in a case of personal hardship. This process, which is left to the discretion of the cantonal migration authority, is very long and extensive and is in contradiction with the need for stability during this period. Further, it has to be noted that all these provisions remain non-binding for execution in the cantons and are formulated as possibilities rather than as clear obligations for adhering to article 14 CoE Convention.

Hence, even the victim that decided to cooperate with the authorities and/or press charges run the risk to receive a negative decision on the renewal of the permit and a deportation order. In fact, even after several years, the renewal of the residence permit can be refused once the presence of the victim is no longer deemed necessary for the criminal proceeding or it is finished. In many cases integration's conditions are deemed not to be met (for example if the victim is not able to work and touch some form of social help).

- ⇒ How is Switzerland ensuring that residence permits are granted in all cantons, without differences or discrimination, to enable victims of THB to avail themselves of protective and rehabilitation measures, irrespective of their willingness to cooperate [COB §29 d)?
- ⇒ What measures are taken in order to ensure nationwide binding standards to allow victims to stay if necessary due to their personal situation?

COMPENSATION AND LEGAL REDRESS

Where victims of trafficking appeal, they shall bear the risk of costs in the event that they are defeated in the proceedings. Even if they only demand confirmation of the previous judgement, this risk still exists. The only way to avoid this is for the victim to expressly declare that they will abstain from submitting their own application. In this way, the victim of a crime cannot exercise the right to have a first instance judgment reviewed without having to reckon with costs. The victims' rights are thus difficult to defend, as any statement is associated with the risk of costs. If a victim does not have free legal assistance, this can lead to enormous costs.

- ⇒ How does Switzerland ensure that protection and remedies are afforded to victims of trafficking?

The compensation and reparation paid to victims of trafficking in women* are generally too low and varies greatly from case to case. This is particularly true in cases where the victims have already worked in prostitution in their country of origin or knew that they would work in prostitution.

Although there are signs of an increase in at least some cantons compared to previous years, the compensation amounts are still often lower than those paid, for example, in the case of rape, although trafficking in women* for the purpose of sexual exploitation is in fact equivalent to multiple rapes. The psychological and physical violence caused by the perpetrators result in multiple psychological damage demanding for an increase in compensation.

- ⇒ What measures are taken by Switzerland in order to increase the payments of compensation and reparation and establish common and binding standards?

MEASURES IN THE EROTIC INDUSTRY (ARTICLE 6 CEDAW)

The authors emphasize the importance of differentiating between human trafficking for the purpose of sexual exploitation and sex work. While human trafficking for the purpose of sexual exploitation is a criminal offence and a severe violation of

human rights, sex work in Switzerland is a legal business. By no means all sex workers are affected by human trafficking or exploitation.

ELIMINATE STIGMATISATION AND DISCRIMINATION

The main problems of sex workers who come to FIZ for advice are social exclusion and stigmatization. The mental stress that results from this stigmatization is huge and can have an impact on their health.

This is all the more true for migrants working in prostitution. They face a range of problems; women* who have no legal residence permit are affected by layers of exclusion and structural violence. Illegalised and criminalised migrants might fear punitive actions from police and other authorities; thus, they can't ask for help even if they need it. Therefore, they are less likely to defend themselves against exploitation and violence.

The state must provide a low-cost service enabling sex workers to leave the sex industry if they choose to do so and subsequently assist them in obtaining legal residence and legal work in Switzerland. However, this measure must not negatively affect women* who want to continue to work in the sex industry.

- ⇒ What measures are taken by Switzerland in order to eliminate stigmatization of and discrimination against sex workers and to foster their social inclusion?
- ⇒ How does Switzerland provide alternative income-generating opportunities for sex workers [COB §29 f]?
- ⇒ How is Switzerland providing for other legal labour migration opportunities for women* working in the low-wage sector?

STRONGER RIGHTS AND BETTER WORKING CONDITIONS FOR SEX WORKERS

The increased regulation of the sex industry in the last few years has not led to the promised increase in protection for sex workers, but instead has resulted in more control, repression and criminalisation. The consequence is that sex work is more dangerous, more difficult and riskier for women*. To address these trends, organisations have launched the [appeal "Sex work is work"](#), which calls for the rights of sex workers and demands: No stigmatization of sex workers! Fair and self-determined working conditions for sex workers! No ban on the purchase of sexual services! Improved protection against violence for sex workers!

Regulations in the sex business give the state authorities more power, which is unfortunately also abused by some actors. Further, regulations without monitoring and/or evaluation are more at risk of misuse. The regulations can also lead to criminalisation: In Zurich e.g., sex workers are fined and even expelled from the country after being fined several times if they do not have a permit or look for clients in places where it is prohibited.

- ⇒ How is Switzerland strengthen sex workers' rights and improving their working conditions?
- ⇒ How does Switzerland involve Sex workers and organisations representing them in the monitoring of these regulations and their consequences?

Experience shows that it is often best for sex workers to be able to work self-employed. However, it should always be possible for sex workers to choose whether to be self-employed or to seek employment. In Switzerland, there are cantons in which all sex workers are considered self-employed. In other cantons, all sex workers are regarded as gainfully employed. This not only contradicts the real circumstances in the employment relationships concerned and the legal requirements concerning self-employment/employment, but also leads to legal uncertainty, exploitability and discrimination regarding social insurance and taxes.

- ⇒ What is Switzerland doing to ensure equal treatment of the sex work with other businesses regarding self-employment/non-self-employment?
- ⇒ What is Switzerland doing to ensure that employers in the sex trade fulfil their employer obligations regarding the payment of social security contributions, the issue of pay slips and wage statements, etc.?

Sex workers and grassroots organization should be involved and have a say in the discussion of new measures. Until now, the state decides on the regulation of sex work and those involved are insufficiently included. This is not consistent with the procedure for regulating other businesses in Switzerland and there is no reason why women* who work in the erotic industry should not speak for themselves.

- ⇒ How is Switzerland ensuring that sexworker and their concerns are taken into account in the discussions and elaboration of new measures aiming at their protection?

SEX WORK – AN UNCONSCIONABLE BUT LEGAL BUSINESS

Sex work must be considered as equal with other industries across Switzerland. The argument of unconscionability needs to be removed. Contracts in sex work could theoretically be seen as unconscionable and which in consequence would hinder courts from enforcing them. It is not comprehensible why people conducting a legal business should be facing the risk of not being able to enforce their claims in a court of law. As intended by an ultimately rejected [cantonal initiative](#), sex work should be explicitly declared “not unconscionable”. To leave this decision to the discretion of the courts could lead to legal uncertainty and unequal treatment, also between cantons.

- ⇒ How is Switzerland ensuring, that sex workers can claim their rights, irrespectively of the canton they are working in?

FIZ, 30.09.2019