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Committee on the Elimination of Discrimination against Women

Twenty-eighth session

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Extract from the Report A/58/38 (Part I), paragraph 87 to 141

Consideration of reports of States parties

Switzerland

1. The Committee considered the combined initial and second periodic report of Switzerland (CEDAW/C/CHE/1-2 and Add.1) at its 590th, 591st and 596th meetings, on 14 and 17 January 2003 (see CEDAW/C/SR.590, 591 and 596).

Introduction by the State party

2. In introducing the report, the representative of Switzerland noted that, while her country had ratified the Convention in 1997, the process of compiling a comprehensive overview of the situation of women in Switzerland and collecting detailed information had taken longer than originally envisioned. That was why the report before the Committee was a combined one. She also stated that the report had been prepared with collaboration from the cantons, social partners and national NGOs and incorporated many of their proposals and views.

3. The representative explained that the Swiss political system was a federalist one composed of three levels: the Confederation, cantons and municipalities. While the Confederation was responsible for the application of federal and international law, the 26 cantons maintained their own political and judicial bodies, including parliaments and tribunals. Many of the areas dealt with in the Convention — for example, health — were within the purview of the cantons, but in other areas, such as education, parallel responsibilities were exercised by the Confederation and the cantons.

4. The revised Federal Constitution, which entered into force on 1 January 2000, confirms the guarantee of equality between men and women and, more specifically, the principle of equal pay for work of equal value, which had been enshrined since 1981 in the Constitution. The representative noted that jurisprudence indicates that the inclusion of that guarantee in the Constitution authorizes the legislature to impose temporary special measures to achieve equality between women and men, as provided for in article 4 of the Convention.

5. Among the structural measures taken by Switzerland towards achieving equality between women and men was the creation, in 1976, of the Federal Commission for Women's Affairs and, in 1988, of the Federal Office for Equality between Women and Men, with responsibility for the promotion of equality in all areas of life. Analogous institutions had been created in most cantons and in five major cities.

6. The National Plan of Action for Equality between Women and Men had been developed in consultation with NGOs and had been launched in 1999. Results of the plan included the creation at the federal level of a gender health service, a service to combat violence, particularly against women, and a service to combat trafficking in persons (including migrants). The representative added that, at the level of international cooperation, gender issues were systematically taken into consideration in the planning of programmes and projects. However, gender mainstreaming was not yet systematized in all activities at the federal level and more work had to be done in terms of awareness-raising, training and the development of new methodologies.

7. The representative gave examples of legislation reviewed and amended by Switzerland to achieve "formal" (de jure) equality between women and men. They included: the matrimonial law of 1988 (which recognized marriage as a partnership and the value of unpaid work); the new divorce law of 2000; the nationality law of 1992; the federal law of old age and survivors' benefits of 1997; and the equality law of 1996, which dealt with non-discrimination between women and men in the workplace. The representative noted, however, that no body had been created with the authority to initiate investigations or bring a complaint in matters of alleged discrimination under that law — the victim herself having to exercise her rights before the relevant tribunals. The representative also noted that complete de jure equality had not yet been achieved and that inequalities still existed in respect of family names and the choice of domicile, which, in general, were those of the husband.

8. With regard to the balancing of work and family responsibilities, the representative stated that differences in income and working hours between women and men were primarily a result of the difficulty women faced in managing both career and family, rather than as a result of differences in levels of training or qualification. Several measures had been employed to address the problem, including the provision of financial aid for projects aimed, inter alia, at assisting in the balancing of family and work life and at the reintegration of women into the workforce after an interruption for family reasons. Between 1996 and 2002, 400 applications for financial assistance had been made, 246 approved and approximately 22 million Swiss francs disbursed. Another initiative had been the "Fair play at home" campaign executed by the Federal Office for Equality and aimed at encouraging young parents to share household and family responsibilities equitably. No federal legislation had yet addressed the issue of paid maternity leave but a proposal of 14 weeks' leave at 80 per cent of pay would be debated by Parliament in the spring.

9. Other issues of concern to the Committee and the measures taken by Switzerland to address them were touched upon. They included the fact that women remained underrepresented in political life, but proposals for the imposition of quotas to ensure such representation had been rejected by the people at both the federal and the cantonal levels. However, the Federal Commission for Women's Affairs had been involved in a

number of initiatives, including the commissioning of a study on the coverage given to women and men candidates by Swiss radio and television during the 1999 federal elections, and the launching of a project that provided mentoring for young women by women politicians.

10. The Government was taking steps, including training for those who worked or dealt with victims and perpetrators, and public awareness-raising campaigns, to address problems related to violence against women and trafficking in women. However, the number of victims of trafficking in Switzerland (a country of destination) had not been determined. With regard to other women's health issues, the representative stated that, in June 2002, the revised penal code, which allows voluntary termination of a pregnancy in the first 12 weeks, had been approved after many years of debate on the issue. In conclusion, the representative noted that the Government had also been working on issues of women's sexual and reproductive health, the health of older women, social assistance for poor women and equality of opportunity for women in education and employment.

Concluding comments of the Committee

Introduction

11. The Committee expresses its appreciation to the State party for its combined initial and second periodic report, which, although delayed, complied with the Committee's guidelines for the preparation of initial reports, and was frank, informative and comprehensive.

12. The Committee commends the State party on its delegation, made up of representatives of different departments with responsibility for the implementation of the Convention as well as a representative of one of the cantons. It expresses appreciation to the State party for the oral presentation, which highlighted significant parts of the report, and for the written responses and further clarification to the questions orally posed by the Committee.

13. The Committee notes with satisfaction that the State party's policies in respect of the achievement of gender equality have been planned and evaluated in the context of the Beijing Platform for Action and the outcome document of the twenty-third special session of the General Assembly, entitled "Women 2000: gender equality, development and peace for the twenty-first century".

14. The Committee notes that reservations have been made by the State party to article 7 (b) concerning Swiss military legislation prohibiting women from performing functions involving armed conflict, except in self-defence; article 16, paragraph 1 (g) concerning regulations on family name; and article 15, paragraph 2 and article 16, paragraph 1 (h) concerning interim provisions of the matrimonial regime. The Committee urges the State party to accelerate efforts to review the reservations regularly with a view to withdrawing them and to indicate in its next periodic report, if possible and if still relevant, a timetable for their withdrawal.

Positive aspects

15. The Committee commends the State party for including the principle of gender equality in its Federal Constitution, which explicitly mandates legislators to ensure women's de jure and de facto equality, particularly in the areas of family, education and work, and authorizes legislators to take steps to ensure equality in line with article 4, paragraph 1, of the Convention. The Committee notes with appreciation that the Swiss legal order ensures the primacy of international treaties, including the Convention, in domestic law.

16. The Committee notes with appreciation the significant law reform undertaken in the State party in several areas in conformity with the Convention, particularly: the Marriage Law (1988), which replaced the husband's preponderant role in the family with a partnership based on equality of rights and obligations on the part of each spouse; the amended Federal Act on the acquisition and loss of Swiss nationality (1992), with identical conditions for both sexes; the new Equality Act (1996), prohibiting discrimination against women in labour relations, which applies to both public and private employers; the tenth revision of the Federal Act on oldage and survivors' insurance (1997), establishing a system of individual pensions independent of civil status; and the new Divorce Law (2000), regulating the economic consequences of divorce. The Committee also notes with appreciation the adoption of the National Plan of Action for Equality between Women and Men (1999) in order to further the advancement of women and gender equality.

17. The Committee acknowledges the work systematically undertaken by women's non-governmental organizations in raising awareness and mobilizing public opinion with regard to equality issues and appreciates the common efforts and cooperation between the State party and civil society in advancing the cause of equality in conformity with the National Plan of Action. The Committee commends the State party for its interaction with civil society in the preparation of the report and for the extensive publicity given to the report in Switzerland.

18. The Committee commends the State party for systematically integrating a gender dimension into the various aspects of its development cooperation programmes.

19. The Committee commends the State party for having accepted the amendment to article 20, paragraph 1, of the Convention on the Committee's meeting time.

Principal areas of concern and recommendations

20. The Committee notes with concern that, although the doctrine of monism is applied in the State party, the Federal Council has expressed the view that the Convention is largely programmatic and that its provisions are not, in principle, directly applicable. The Committee is therefore concerned that Swiss law may not provide women with the necessary means to enforce all their rights under the Convention.

21. The Committee recommends that the State party ensure effective enforcement of the rights enshrined in the Convention and provide women with appropriate

remedies in the courts for violations of the rights protected by the Convention. It also recommends awareness-raising campaigns about the Convention aimed at parliamentarians, the judiciary and legal professionals. The Committee requests that the State party report on progress made in this regard in its next periodic report and provide information on whether the Convention has been invoked before domestic courts.

22. The Committee is concerned that there is no definition in domestic law of “discrimination against women” reflecting article 1 of the Convention. It is concerned at the information given in the report that differentiated treatment of women and men is permissible in cases where equality of treatment is ruled out by biological or “functional” differences.

23. The Committee recommends that the State party take steps to include in its legislation a provision for non-discrimination on the grounds of sex, as defined in article 1 of the Convention.

24. The Committee is concerned that the different levels of authority and competencies in the State party create difficulties in respect of the implementation of the Convention throughout the Confederation and with regard to coordination and accountability. The Committee is also concerned that the federal structure and the form of grass-roots democracy practised in the State party have slowed progress in eliminating discrimination against women and achieving gender equality.

25. The Committee recommends to the State party that it ensure uniformity of results in the implementation of the Convention within the Confederation, through effective coordination and the establishment of a mechanism to monitor compliance with the provisions of the Convention at all levels and in all areas.

26. While appreciating the work undertaken by the machinery for gender equality at the national, cantonal and communal levels, namely the Federal Commission of Women’s Issues, the Federal Office for Equality between Women and Men and the Gender Equality delegates and services, the Committee is concerned that such institutions may lack sufficient power, visibility and resources, both human and financial, to carry out their specific tasks and to ensure coordination of gendermainstreaming efforts in all areas of governance.

27. The Committee recommends that the State party strengthen the existing machinery for gender equality by providing it with adequate human and financial resources at all levels. It also recommends that the State party enhance coordination among the existing institutions for the advancement of women and the promotion of gender equality in order to ensure gender mainstreaming at all levels and in all areas.

28. The Committee is concerned about the persistence of entrenched, traditional stereotypes regarding the role and responsibilities of women and men in the family and in society at large which are reflected in women’s educational choices, their situation in the labour market and low participation in political and public life.

29. The Committee urges the State party to design and implement comprehensive programmes in the educational system, including human rights education and gender training, and to disseminate information on the Convention, with a view to changing existing stereotypical attitudes on women and men's roles, including advancing the notion of parenting as a social responsibility of both mothers and fathers. It recommends that awarenessraising campaigns be addressed to both women and men and that the media be encouraged to project a positive image of women and of the equal status and responsibilities of women and men in the private and public spheres.

30. While recognizing current legal and other efforts by the State party to address violence against women, including the creation of a gender health service and a centre to fight violence against women and the training of staff called upon to deal with cases of violence, the Committee is concerned about the prevalence of violence against women and girls, including domestic violence.

31. The Committee calls upon the State party to intensify its efforts to address the issue of violence against women, including domestic violence, as an infringement of their human rights. In particular, the Committee urges the State party to adopt laws and implement policies in accordance with the Committee's general recommendation 19, in order to prevent violence, provide protection, support and services to the victims and punish and rehabilitate offenders.

32. The Committee is deeply concerned by the significant number of cases of female genital mutilation among migrant women of African descent.

33. The Committee recommends that the State party urgently take all appropriate measures, including legislation, to eradicate the harmful traditional practice of female genital mutilation.

34. The Committee is concerned about the particular situation of foreign women who experience domestic violence and whose residence permits depend on their living together with their spouse. The Committee is concerned that fear of expulsion will be a deterrent for these women to seek assistance or take steps to seek separation or divorce.

35. The Committee recommends that revocation of the temporary residence permits of foreign married women who experience domestic violence, and any legislative changes with regard to residency requirements that may be under consideration, be undertaken only after a full assessment of the impact of such measures on those women.

36. The Committee expresses concern at the situation of migrant women in Switzerland, particularly the discrimination in education and employment they experience and the risk of exploitation and violence that they face. The Committee is concerned that foreign women sometimes encounter additional difficulties in obtaining access to health care and that the percentage of women with HIV/AIDS is increasing among foreign women, those from sub-Saharan Africa being the most affected. The Committee is also concerned about the special visa regulations for foreign cabaret dancers and the potential dangers and risks that their situation may entail. The Committee is further concerned that the State party

has yet to carry out studies on the extent of discrimination against migrant women and the multiple discrimination they often face on the basis of their race, sex, ethnicity and religious affiliation.

37. The Committee urges the State party to take effective measures to eliminate discrimination against migrant women. It encourages the State party to be proactive in its measures to prevent discrimination against them, both within their communities and in society at large, to combat violence against them and to increase their awareness of the availability of social services and legal remedies. The Committee recommends that foreign women's health needs, in particular as regards information on preventing HIV infection, be fully addressed. The Committee requests the State party to review and reconsider the special visa regulations for cabaret dancers and to study their de facto situation in the light of the potential dangers and risks that their situation may entail. It also requests the State party to take appropriate measures to protect the women concerned from all forms of exploitation and to take action aimed at changing men's and society's perception of women as sex objects. The Committee also urges the State party to conduct regular and comprehensive studies on discrimination against migrant women and to collect statistics on their situation in employment, education and health and on the various forms of violence they experience so as to enable the Committee to form a clear picture of their de facto situation.

38. While recognizing the efforts made by the State party to address the issue of trafficking in women and girls, the Committee remains concerned about the prevalence of this grave problem, which is a human rights violation. The Committee is also concerned about the exploitation of prostitutes in the State party. It considers that measures to address these phenomena are insufficient and that information on these issues is lacking.

39. The Committee urges the State party to continue its efforts to combat trafficking in women and girls. It recommends the formulation of a comprehensive strategy, which should include measures of prevention, the prosecution and punishment of offenders and increased international, regional and bilateral cooperation. It calls on the State party to ensure that trafficked women and girls have the support they need, including residence permits, so that they can provide testimony against their traffickers. It further urges that training of border police and law enforcement officials be pursued so as to enable them to render support to victims of trafficking. The Committee recommends the development of programmes of action for women forced into prostitution by poverty and the adoption of all appropriate measures to combat and eradicate the exploitation of prostitution, including the prosecution of, and strong penalties for, those who exploit prostitutes. The Committee requests the State party to provide in its next report comprehensive information and data on the trafficking of women and girls and the exploitation of prostitutes.

40. The Committee is concerned that, while women make up 54 per cent of the electorate, they are significantly underrepresented in elected and appointed posts in political decision-making bodies. While acknowledging some positive developments, the Committee is also concerned at women's low rate of participation in the administration, the judiciary and the diplomatic service as well as their low representation at the international level. The Committee is further concerned that, while regional, linguistic

and other quotas are generally accepted, the adoption of quotas in political life that would aim at gender balance has been systematically rejected in the State party.

41. The Committee encourages the State party to take sustained measures to increase the representation of women in elected and appointed bodies, including temporary special measures in accordance with article 4, paragraph 1, of the Convention, in order to realize women's right to equal participation in public and political life. The Committee also recommends that adequate measures be taken with the aim of achieving balanced participation of women and men in the various areas and levels of public life, particularly in the administration, the judiciary and the diplomatic service.

42. The Committee is concerned that, despite the constitutional mandate to ensure gender equality in the field of education, gender inequality prevails in the stereotyped choices both sexes make regarding vocational training and higher education, particularly technical education. The Committee is also concerned that similar patterns can be found among teaching staff, both as regards their professional level and the traditional subjects they teach.

43. The Committee recommends that the State party intensify its efforts to encourage diversification of the educational choices of boys and girls, mainly through counselling, to help them to fully develop their personal potential.

44. The Committee is concerned that, although women's rate of participation has been steadily rising and notwithstanding the constitutional mandate to establish gender equality in work and the constitutional provisions on the right to equal pay for work of equal value, as well as the Equality Act, women remain disadvantaged in the labour market. The Committee is particularly concerned at the pay differentiation between women and men and some criteria used to justify it, particularly as regards considerations of a social nature, such as family responsibilities. The Committee is further concerned by the high prevalence of women in part-time work, the higher rate of unemployment among women as compared with men, and the difficulties mainly faced by women in reconciling their personal and family lives with professional and public responsibilities.

45. The Committee urges the State party to ensure de facto equal opportunities for women and men in the labour market through, inter alia, the use of temporary special measures in accordance with article 4, paragraph 1, of the Convention. The Committee recommends that efforts be made to eliminate occupational segregation, both horizontal and vertical, through, inter alia, education, training and retraining, and effective enforcement mechanisms. It also recommends that job evaluation systems based on gender-sensitive criteria be developed with the aim of closing the existing wage gap between women and men. The Committee recommends that measures allowing for the reconciliation of family and professional responsibilities be adopted and implemented and that equal sharing of domestic and family tasks between women and men be promoted.

46. The Committee expresses concern over the delay in introducing paid maternity leave in the State party and notes that several proposals to introduce paid maternity leave have been rejected by popular vote.

47. The Committee calls upon the State party to ensure the speedy enactment of the draft legislation on maternity leave with pay that was adopted by the Federal Council and the National Council in November and December 2002 and to provide information on its implementation in the next periodic report. The Committee recommends the undertaking of awareness-raising campaigns for developing a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children. Such campaigns should also stress the role of men and pave the way for a debate on the issue of paternity and parental leave as important factors in the sharing of family responsibilities and guaranteeing equality for women in the labour market and in social life.

48. The Committee is deeply concerned that, in spite of the high level of development of the State party, there are groups of women, mainly those who are single heads of household and elderly women, who have been particularly affected by poverty.

49. The Committee recommends that the State party closely monitor the poverty situation of women in the most vulnerable groups and implement effective measures and training programmes that will allow them to fully enjoy the benefits of the State party's development.

50. The Committee is concerned that, under Swiss law, the status of spouses is still unequal as regards cantonal and communal domicile rights. It notes that attempts to abolish that inequality were defeated in Parliament in June 2001.

51. The Committee calls upon the State party to ensure that the legislation that regulates cantonal and communal domicile rights is brought into harmony with the Convention.

52. The Committee urges the State party to ratify the Optional Protocol to the Convention.

53. Taking account of the gender dimensions of declarations, programmes and platforms for action adopted by relevant United Nations conferences, summits and special sessions (such as the special session of the General Assembly to review and appraise the implementation of the Programme of Action of the International Conference on Population and Development (the twenty-first special session), the special session of the General Assembly on children (the twenty-seventh special session), the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Second World Assembly on Ageing), the Committee requests the State party to include information on the implementation of aspects of these documents relating to relevant articles of the Convention in its next periodic report.

54. The Committee urges the State party to respond in its next periodic report to the specific issues raised in the present concluding comments. The Committee also urges the State party to collect and analyse comprehensive sexdisaggregated data

pertaining to the Confederation, the cantons and the communes and to include such data in its next report.

55. The Committee requests that the text of the present concluding comments be widely disseminated in Switzerland in all official languages so as to inform the public, in particular administrators, officials and politicians, of the measures taken to guarantee de jure and de facto equality between men and women and of the supplementary measures to be adopted in that area. The Committee also urges the State party to continue to give broad publicity to the Convention, its Optional Protocol, the general recommendations of the Committee, the Beijing Declaration and Platform for Action, and the results of the twenty-third special session of the General Assembly, entitled “Women 2000: gender equality, development and peace for the twenty-first century”, which was held in June 2000, particularly among women’s associations and human rights organizations.