



Convention on the Elimination of All Forms of Discrimination against Women

Distr.: General
6 February 2003

Original: English

Committee on the Elimination of Discrimination against Women Twenty-eighth session

Summary record of the 590th meeting

Held at Headquarters, New York, on Tuesday, 14 January 2003, at 10.30 a.m.

Chairman: Ms. Acar

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The meeting was called to order at 10.40 a.m.

Consideration of reports submitted by States parties under article 18 of the Convention

Combined initial and second periodic reports of Switzerland (CEDAW/C/CHE/1-2)

1. *At the invitation of the Chairperson, the delegation of Switzerland took their places at the Committee table.*

2. **Ms. Schulz** (Switzerland), introducing her country's combined initial and second periodic reports, said that Switzerland had ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1997, but that preparing a detailed overview of the situation of women in Switzerland had taken longer than expected. That was why the initial and second reports had ultimately been combined into one. Since civil society in Switzerland was very closely linked to political life, the draft report had been submitted to numerous non-governmental organizations, and many of their suggestions had been incorporated into the final document. The reason why Switzerland had not ratified the Convention until 1997, despite having signed it 10 years before, was that the Swiss Government did not ratify international treaties until national and cantonal laws were considered to be compatible with the provisions of the treaty in question.

3. One of the main features of the Swiss political system was its three-tier structure, comprising federal, cantonal and local levels of authority. Each of the country's 26 cantons had its own elected parliament and its own courts, which applied both federal and cantonal law, and exercised considerable powers, notably in certain areas addressed by the Convention, such as health. A seven-member Federal Council held executive power, while a bicameral parliament held the legislative power. Switzerland was, moreover, a direct democracy. As well as being able to elect their representatives, Swiss citizens could also challenge federal laws through a referendum and challenge the Constitution through a popular initiative. The system ensured that the political process was rooted in the day-to-day lives of the people, and encouraged the flow of new ideas, but could sometimes slow the legislative process. The Federal Court, Switzerland's highest legal body, was responsible for applying both federal law

and international treaties, under article 191 of the Swiss Constitution.

4. Human rights were guaranteed under international treaties, the Federal Constitution, and cantonal constitutions. In the context of equality between the sexes, Switzerland had ratified, in addition to the Convention, the 1966 International Covenant on Economic, Cultural and Social Rights and the 1966 International Covenant on Civil and Political Rights; International Labour Organization Convention 100 on Equal Remuneration and Convention 111 on Discrimination (Employment and Occupation); as well as the European Convention on Human Rights. All the country's authorities were bound by international treaties as soon as they entered into force. Swiss citizens could invoke the provisions of such treaties before the courts, which must apply such provisions, unless they were deemed to be purely programmatic in nature. Moreover, because the Federal Court had explicitly confirmed the primacy of international law over domestic laws, a domestic provision that violated the Convention could be challenged in the courts. Although Switzerland had not yet ratified the Optional Protocol to the Convention, the Federal Council believed that it was essential to set up effective instruments for the promotion of human rights.

5. Article 8 of the revised Swiss Constitution, which had come into force on 1 January 2000, established general principles of equality and non-discrimination. Paragraph 3 of the article established equality between the sexes. Those basic rights must be implemented throughout the legal system, at the local, cantonal and federal levels, and violations could be invoked before cantonal courts or the Federal Court. Article 8 also provided that lawmakers could take positive measures to ensure *de facto* equality in accordance with article 4 of the Convention, and established the principle of equal pay for equal work and for work of equal value. Equality between the sexes was also laid down in many cantonal constitutions.

6. A number of specific institutions had been set up to promote equality. In 1976, the Federal Commission on Women's Issues had been created, while in 1988, the Federal Office for Gender Equality had been charged with promoting equality in all areas of life. Similar institutions had been set up in most cantons and in five major cities. All such institutions were part of the Swiss Conference of Gender Equality Delegates, which was responsible for designing, supporting,

coordinating, and implementing activities at the national and regional levels.

7. In response to the 1995 Fourth World Conference on Women, the Swiss Government had published, in 1999, a national plan of action for equality between men and women, which had achieved very satisfactory results and led to the creation of the Office for Gender Health, the Office for Combating Violence, especially violence against women, and the Office for Coordinating Measures to Combat Trafficking in Human Beings and the Smuggling of Migrants. The activities of the various authorities had focused in particular on training and the economy, and need to ensure a balance between men and women was always taken into account when programmes and projects were prepared. Nonetheless, gender mainstreaming had not yet been fully integrated into all activities undertaken by federal authorities. Efforts were being made to provide information and ongoing training, as well as to develop new instruments in this regard.

8. The Federal Constitution had provided for equal treatment for men and women since 1981. During the intervening 20 years, that had provided the basis for notable advances in legislation in the areas of marital law, divorce, nationality, and state pensions. The 1996 Equality Act was designed to promote *de facto* equality between men and women in their professional lives. It explicitly outlawed all discrimination based on sex and recognized sexual harassment as a particularly degrading form of sex-based discrimination. As there was no specific authority responsible for bringing cases to court, women were obliged to assert their own legal rights. In general terms, the Swiss delegation was aware that legal equality had not yet been fully achieved. Surveys had also shown that women still did not enjoy *de facto* equality. The wage difference between men and women was 21.3 per cent, women spent twice as much time as men performing unpaid domestic and family-related tasks, and only 21.3 per cent of women workers occupied senior management positions. That was due to the difficulties of balancing family and career, and not to differences in training, since women had caught up in the area of training over the past 20 years.

9. Switzerland had taken a number of steps to tackle that situation, including the allocation of financial subsidies for projects designed to harmonize family and working lives. Other initiatives had sought to encourage job-sharing at the management level and

equal participation by parents in domestic life. Paid maternity leave was not yet enshrined in federal law, but Parliament would be discussing a new proposal in this context in that regard in the spring. Switzerland should introduce further measures to help reconcile paid and unpaid work, and the cantons must take further steps to reconcile school and working hours.

10. **Ms. Freivogel** (Switzerland), addressing the subject of women in political life, noted that women in Switzerland had not been given the right to vote until 1971. Among the reasons for that was the fact that an amendment to the Constitution had been required to give women the vote, and certain cantons had been quicker than others to embrace women's political rights. Between 1971 and 1999, the percentage of women in the Lower House had risen from five per cent to 23.5 per cent, while the proportion of women in the Upper House had climbed from 2.2 per cent to 19.6 per cent. That progress had also been reflected at the cantonal and local levels. The first woman had been elected to the Federal Council in 1984, and two of the Council's seven members were currently women. Within cantonal executive bodies, women accounted for 24 per cent of members, on average. Thus, although women remained underrepresented in political life, significant progress had been made. However, efforts to introduce quotas for women's participation in political life had thus far been rejected. Political parties must take action in this regard, and the media also had an increasingly important role to play. The Federal Commission on Women's Issues had also launched a mentoring project aimed at increasing women's participation in political entities and functions.

11. **Ms. Dusong** (Switzerland) said that women's organizations had for 20 years been focusing public attention on the issue of violence against women, especially in private life. One in five Swiss women had been subjected to physical or sexual violence by their partner at least once in their lives. Trafficking in women was also a serious problem. In order to tackle those issues, certain legislative changes were being planned, and offices set up to coordinate efforts to tackle such violence. Many cantons had acted during the 1990s to tackle domestic violence, introducing coordinated projects involving the police, the courts, the social services, shelters for battered women, victim-assistance centres, doctors, and offices for equality. At the federal level, the Government had decided to set up an Office for Combating Violence,

which would be operational in May 2003, charged with raising public awareness about violence suffered by women and with coordinating actions in that area. Training was also provided at the Federal level to staff of victim-assistance centres, and police were also receiving training in that issue as part of a national campaign.

12. Legislation regarding foreign women who had been subjected to violence by their husbands was currently being revised with a view to protecting the women concerned and preventing abuse. The Government had created a police unit called the Department for Coordinating Measures to Combat Trafficking in Human Beings and the Smuggling of Migrants. Also, the Federal Government's draft law on foreigners included a provision for allowing victims of trafficking the right to temporary residence and assistance with their return to their country of origin. Switzerland was in the process of ratifying the Protocol to the Convention against Transnational Organized Crime on Trafficking in Persons and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

13. **Ms. Schulz** (Switzerland), turning to women's health, said that health care was organized by the cantons, and that women and men had equal access to services. At the federal level, recent legislation had made health insurance mandatory for all residents of the country, including non-citizens. Also, in June 2002, after years of debate, voluntary termination of pregnancy during the first 12 weeks had been decriminalized. Measures for preventing AIDS and drug abuse targeted specifically at women had been introduced. The national women's health strategy, instituted in 1999, stressed sexual and reproductive health, elderly women, preventive care, healthy lifestyle and research.

14. Although the population was ageing, the social protection system had eliminated the fear of poverty in old age for most women and men in Switzerland. Problems remained however, in ensuring the continuation of the system in the face of rising costs, and ensuring the protection of single mothers and their children, who were currently the most vulnerable group. The best way to end poverty in the long term was to invest in job creation and training, especially for women. Compulsory education up to age 16 was under the jurisdiction of the cantons, with the universities and

technical schools under federal jurisdiction. Equal access to all educational institutions was provided under law, and in fact slightly more women than men obtained a secondary-level diploma leading to university admission.

15. Gender stereotypes persisted, however, in the choice of fields of study, with few women preparing for the professions or such technological areas as computer science. An information campaign to encourage girls to expand their range of choices had been conducted, and the Federal Government had encouraged equal representation of women and men in apprenticeship programmes and had set a quota of 40 per cent of university places for women. In conclusion, she said that Switzerland had begun a long process leading to the objective of gender equality. The changes which had taken place over the past 20 years had been welcome, and the Convention would support the continuation of that change.

General observations

16. **Ms. Gaspard** said that Switzerland, as a neutral country, had played a very important role in international affairs. It was a paradox, however, that, as an advanced democracy, it had given women the right to vote only in 1971, and she wondered if that had an impact on the attitude in society towards women's rights and gender stereotypes. She would also like to know how the Federal Government would respond if a canton did not respect the rights guaranteed under the Convention in areas where it had jurisdiction, for instance, criminal law.

17. **Mr. Melander** said that he would be interested in hearing more about the relationship between international and domestic law, and whether it was up to the Swiss courts to decide when a provision of an international instrument was juridical or programmatic, and hence not subject to domestic application. The new Constitution prescribed equal rights for men and women, but did not contain a definition of discrimination like the one in article 1 of the Convention. He also wondered why the Federal Council was hesitating to adopt the Optional Protocol.

18. **Ms. Gabr** said that she would have preferred to receive the initial report of Switzerland by the deadline, but appreciated the thoroughness and detail of the combined initial and second periodic reports. It was her impression that, despite the efforts made, the

human rights of women were not a top priority for the Government and that women's status still lagged behind that of men. She would like to hear more about the results of the implementation of the new package of equal rights legislation.

19. **Ms. Shin** acknowledged the contribution of the community of non-governmental organizations to the preparation of the report, as Government partnership with that sector was very important. She asked if the Federal Government was considering the ratification of the Optional Protocol and withdrawal of its reservations to some articles of the Convention.

20. **Mr. Flinterman** asked what positive measures could be taken by the Federal Government, for instance in the form of technical assistance, to ensure that the cantons complied with international obligations, and failing that, what sanctions were available. He would like to hear the results of the consultation at the canton level regarding ratification of the Optional Protocol, and whether the Federal Government could ratify it without their support. It would also be useful to know how many times the Convention had been invoked before the courts, and whether any efforts had been made to make the legal profession aware of the obligations under international human rights instruments.

21. **Ms. Šimonović** welcomed the broad participation of Government departments, civil society and non-governmental organizations in the preparation of the report and asked whether the report had been reviewed and approved by the Government before it had been transmitted.

22. **Ms. Saiga** observed that, although it was a committed advocate of international human rights, Switzerland had been slow to ratify the Convention. She wished to know whether Switzerland had an established network of national machinery to implement the Convention and the Beijing Platform for Action, and inquired whether the Federal Office for Gender Equality constituted that machinery. She also requested further information on the relationship between the Federal Office, the cantonal offices dealing with gender equality and the Federal Commission on Women's Issues.

23. **Ms. Ferrer Gomez** recalled that Swiss legislation, including the Constitution, provided for the equal treatment of women and men but observed that, according to the report, differentiated treatment was

permissible if it was based on objective reasons. She was concerned that, according to the report, those reasons could vary depending on the views prevalent at a given moment and were influenced by value judgements that might evolve over time and depended on the dominant world view, since that might pave the way for the persistence of discriminatory practices which existed within the dominant world cultures. She had been alarmed to learn from the report that the question of the extent to which "functional" differences between women and men could really justify inequalities of treatment remained obscure and that the underlying principle itself was somewhat controversial, and therefore she requested clarification as to the precise definition of those "functional" differences which could provide justification for unequal treatment.

24. Turning to the legislative powers exercised by the cantons, she wished to know how many cantons had amended their constitutions to incorporate the principle of equality between women and men and how many had established mechanisms to promote the advancement of women. Finally, she requested further clarification about paragraph 43 of the report, which referred to public criticism of the system of family taxation in Switzerland.

25. **Mr. Melander** said that illegally trafficked women arriving in Switzerland were immediately expelled and forced to return to their countries of origin. Unfortunately, such women were not adequately protected by their Governments and feared repeated persecution by traffickers. Therefore, he wished to know whether the Swiss Government had contemplated granting trafficked women refugee status.

26. **Ms. Gnacadja** said that she was concerned about an apparent contradiction within the Swiss legal system which could constitute a barrier to the implementation of the Convention. That contradiction resided in the fact that, although international human rights instruments were directly applicable within the domestic legal order, the provisions of the Convention were principally addressed to the authorities and were regarded as largely "programmatic" and, as such, not directly applicable. She would be grateful for clarification in that regard. Furthermore, she observed that the three-layered executive and legislative system in Switzerland and the diversity of legislation within that system meant that it was difficult to ascertain which authority was ultimately responsible for the

direct application of the Convention. The reporting State should provide further information on that issue

27. **Ms. Šimonović** said that article 8, paragraphs 1, 2 and 3, of the new Swiss Constitution contained excellent provisions regarding gender equality, the prohibition of discrimination and equal rights. In that connection, she wished to know how individuals could enforce those Constitutional rights before the courts. She also asked how Switzerland ensured that its legislation was compatible with the Constitution, in particular article 8.

28. **Ms. Patten** expressed her satisfaction with the way in which Switzerland's report had been drafted and was particularly pleased that all the major stakeholders had been involved. Referring to paragraph 33 of the report, she said that she was concerned about the Federal Council's view of the Convention, and recalled that a similar opinion had been expressed in 1998 by the Committee on Economic, Social and Cultural Rights. She enquired as to the Government's reaction to those statements.

29. In view of the fact that not all 26 cantons had adopted specific legal standards relating to measures for the promotion of de facto equality, the reporting delegation should indicate whether the Federal Government envisaged discharging its legal responsibility to ensure the implementation of the Convention and whether it regarded the federal structure as an impediment to that implementation. She was also concerned about the incompatibility between Switzerland's constitutional commitment to equal rights and the reservation that it had entered in respect of article 26 of the International Covenant on Civil and Political Rights. She wondered how that incompatibility would affect gender equality in Switzerland and whether the Government was planning to address it.

30. **Ms. Schöpp-Schilling** said that she was perturbed by the apparent lack of political will on the part of the Swiss Government to address problems in the area of gender equality. Although the report acknowledged the existence of several such problems, it made no mention of any attempts to rectify them. With regard to Switzerland's reservations to various provisions of the Convention, she recalled that the Committee had requested all States parties to provide detailed explanations of the reasons for their reservations and to submit timetables for lifting them.

She asked for further details regarding that issue. It was unfortunate that the report did not present a clear picture of the situation in each of the 26 cantons. She hoped that future reports would contain detailed analyses of the measures taken by each and every canton in the area of gender equality.

31. With reference to the direct applicability of the Convention, she enquired whether any review of its provisions had taken place in order to determine which of them were directly applicable and which were of a programmatic nature. The delegation should indicate the extent to which international law was included as a mandatory feature of university legal courses and whether, since Switzerland's ratification of the Convention, legal professionals had been given further training in that field. Finally, she wondered whether there had been any developments in the long-running discussion about the creation of a human rights commission. The Committee would be grateful to know whether a timetable had been drawn up for its establishment, what if any, obstacles were impeding its progress, and the extent to which a gender dimension would be incorporated into the work of the commission.

32. **Ms. Shin** asked whether systems for monitoring potentially discriminatory legislation, policies and programmes had been introduced at all three administrative levels (communal, cantonal and federal) and enquired whether a structure was in place to ensure that the Convention was implemented at all three levels. With regard to the Act on Gender Equality, she remarked that it related primarily to the area of employment and wished to know what means of redress were available to women who had been discriminated against in other areas of their lives.

33. **Ms. Saiga** observed that the new Swiss Constitution was quite advanced as it mandated the lawmaker to ensure both de jure and de facto equality. However, it was not clear what kind of action should be taken by lawmakers to guarantee de facto equality, which was a rather difficult concept to assess. Further information on the implementation of that particular aspect of the Constitution would be appreciated.

34. **Ms. González Martínez**, referring to paragraphs 2 and 3 of the report, said that she would be grateful for additional clarification as to the meaning of "differentiated treatment" and the objective reasons which might justify such treatment. She also enquired

about the types of situations which would justify similar treatment and those which would justify differentiated treatment.

35. **Ms. Ferrer Gomez** requested further information about the Swiss Conference of Gender Equality Delegates, in particular the number of male and female delegates and how they were elected, the Federal Commission for Women's Issues and the Federal Office for Gender Equality. The Committee would be grateful to know more about the relationships between those bodies themselves and between them and non-governmental organizations. With reference to the 1999 Equality Plan of Action, adopted with a view to concretizing the Beijing Platform for Action, she asked about its period of validity and wondered how it had been evaluated and by whom.

36. **Ms. Morvai** requested more statistics on trends in the Swiss economy since ratification of the Convention in 1997. Was the overall situation of the population and the situation of women in particular improving? More information would be appreciated on the numbers of working women as well as disabled, unemployed, foreign women, etc. The statistics provided in paragraph 522 of the report painted a situation which could have alarming consequences for women and, while they had been provided in the context of article 13, dealing with States' obligation to ensure equal economic rights, she believed that article 3, which guaranteed the right to development, was also applicable to economic questions. States must ensure that women enjoyed their fair share of economic prosperity on the same terms as men. More detailed statistics would allow the Committee to determine the true situation of women and whether it was in fact improving in parallel with the overall economic situation.

37. **Ms. Gaspard** wondered about the real power and effectiveness of the Federal Office for Gender Equality in ensuring that the various branches of the federal Government promoted gender equality and integrated gender mainstreaming into federal policies. Given the general inadequacy of financial resources for equality measures noted in paragraph 74 of the report, she hoped some explanation for the lack of resources as well as an indication of measures taken to remedy the situation would be provided in the next report.

38. **Ms. Popescu Sandru** enquired about the relationship between the various structures created to

promote gender equality at both the federal and cantonal levels. Many of those structures had been created before 1997, and she wondered if any changes had been made to their focus or methods since 1997, how they functioned and what structures could be considered to be part of the national machinery mentioned in the Beijing Platform for Action. She asked specifically to what extent federal and cantonal bodies cooperated and whether the federal Government could impose guidelines or take steps to ensure that cantons implemented measures to ensure gender equality. The Committee wished to know about the scope of the national plan of action and to what degree the provisions of relevant legislation and the Convention were implemented at the federal and cantonal levels.

39. Furthermore, the delegation should indicate which institutions dealt with implementation of and follow-up to other international gender equality instruments such as those of the International Labour Organization or the provisions of the European Convention on Human Rights and how they functioned. Were any measures under way or envisioned to improve gender equality at the federal as well as cantonal levels and to integrate gender mainstreaming into the economy, society and culture? Finally, she requested more information on cooperation and participation mechanisms between the federal and cantonal authorities and civil society aimed at implementing the Convention and the national plan of action.

40. **Ms. Shin** enquired as to the level of cooperation between the Federal Commission on Women's Issues, the Federal Office for Gender Equality and the Swiss Conference of Gender Equality Delegates, and expressed concern at the relative lack of resources allocated to the Commission and the Office. How did the system work in practice, did the national plan of action include a specific time frame or was it ongoing, and what were its main areas of focus? Finally, how did the Federal Office for Gender Equality intend to overcome remaining obstacles and coordinate with other branches of the Government to ensure gender mainstreaming and gender equality?

41. **Ms. Schöpp-Schilling** asked which of the 26 cantons had in fact implemented the requirements of the 1981 Constitution concerning de jure and de facto equality and raised questions about the notion of proportionality in the context of affirmative action for

women as interpreted by the Federal Supreme Court. The latter seemed to have rendered contradictory decisions by refusing to permit gender-based electoral quotas but allowing quotas for the administration.

42. She welcomed plans to ensure gender equality within the federal administration, but wondered how much time would be required to ensure true equal representation. Why only two thirds of the units evaluated had drafted a plan to ensure equality, and whether all units had in fact been evaluated? Could sanctions be imposed on departments which did not implement gender equality recommendations; when would the central monitoring apparatus described in paragraph 359 of the report be in place and was there a target for the number of women executives in 2003.

43. Although paragraph 360 of the report described measures adopted by various cantons, she requested a specific description of measures taken in all 26 cantons and further asked how many of the cantons had made it a priority to both recruit and promote women candidates in cases where they were as qualified as the men candidates. More information on plans to improve the institutional framework and on concrete results achieved would be welcome.

44. **Ms. Tavares da Silva**, referring to temporary and special measures, which seemed to be allowable under article 8 of the Constitution, requested more information on the principle of proportionality cited by the Federal Supreme Court and mentioned in paragraph 84 of the report, which dealt with quotas and referred to paragraph 181, which did not in fact mention quotas. Paragraph 187 of the report noted that quotas were by no means a novelty in Switzerland, but paragraph 188 said that efforts to introduce gender-based quotas in politics had been rejected, which seemed contradictory. Measures for affirmative action for women seemed to be possible in theory but rejected but in practice. The existence of quotas for religious and linguistic minorities made it even stranger and more unacceptable that quotas to promote women had been rejected.

45. Turning to the issue of violence against women, she inquired about the current status of proposals being drafted to amend the Penal Code to make sexual offences committed with violence or bodily harm inflicted within the context of marriage or a similar relationship automatically indictable rather than requiring a complaint by the victim. She also wondered

whether there had been any follow up to the parliamentary initiative to protect women victims of violence in the family by expelling the perpetrator from the home. If so, what was the scope of that follow-up? More information would also be welcome on action by the Supreme Court to oblige the cantons to adopt or modify legislation with a view to guaranteeing the principle of gender equality.

46. **Ms. Patten** asked if the cantons had in fact implemented temporary or special measures to protect women's rights, in particular those of vulnerable groups such as disabled women, the elderly, single mothers and foreigners. She also expressed concern at the apparent contradiction between the principles enshrined in the Constitution and those based on case law and asked if any thought had been given to creating a constitutional court.

47. She was alarmed by the problem of violence against women and by the gap between the number of complaints made and the number of convictions. No measures appeared to have been adopted to address that problem and there did not seem to be a clear political will to do so on the part of the federal authorities. Despite the provisions of the Constitution of 1997, no specific legislation had been enacted and the penal code had not been amended. What measures were being taken to improve the legislative framework and develop federal mechanisms to prevent violence against women; for example, had any steps been taken to train law-enforcement personnel in gender issues?

48. She noted that the Federal Act on Assistance to the Victims of Offences protected both men and women victims. With regard to the advice centres to be created in the cantons, she enquired whether such centres existed in every canton and whether the inhabitants of the various cantons enjoyed access to the same level of services. Lastly, more specific gender disaggregated data on the number of victims and use by them of available services would be welcome.

The meeting rose at 1.05 p.m.