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ALTERNATIVE REPORT ON THE FOURTH / FIFTH REPORT FROM SWITZERLAND ON THE IMPLEMENTATION OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (ICEDAW)

REGARDING ART. 6 (TRAFFICKING OF WOMEN AND EXPLOITATION OF PROSTITUTION) ICEDAW

TO THE ATTENTION OF

THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

This alternative report on the implementation Art. 6 CEDAW by Switzerland has been drafted by FIZ Advocacy and support for migrant women and victims of trafficking¹ and is supported by PROKORE (Prostitution, Kollektiv, Reflexion)², a Swiss umbrella network advocating for and defending of sex workers' rights.

Our assessment is based on years of experience and practical knowledge acquired through our work across the cantons. FIZ has been an advocacy and support centre for migrant women and victims of trafficking **for over 30 years,** and has always helped and advised migrant women affected by violence. Our Counselling Centre for Migrant Women advises over 400 women yearly, who are victims of exploitation or violence within the sex trade mostly. Further, 12 years ago FIZ established FIZ Makasi – a specialised intervention and support centre for trafficked women. By today FIZ Makasi is mandated by eleven cantons to counsel and assist trafficked persons. Year by year FIZ Makasi supports and protects around 200 cases, since 2011 FIZ Makasi services are complemented by a specialised shelter home. FIZ combines its support work with political lobbying and with intensive efforts in the awareness raising and capacity building of involved authorities and other stakeholders.

We would like to express our gratitude for the opportunity to comment on the issue of human trafficking and sex work by submitting our *alternative report on the fourth / fifth report from Switzerland on the implementation of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), Art. 6 ICEDAW,* to the attention of CEDAW's reviewing of Switzerland during its 65th session (24 October – 18 November 2016).

¹ Cf. FIZ's webpage: www.fiz-info.ch.

² Cf. PROKORE's webpage: http://www.sexwork.ch.



HUMAN TRAFFICKING

The International Labour Organization, ILO, estimates (2012) that 21 million people around the world are victims of human trafficking and forced labour. Human trafficking happens in Switzerland, too; it is both a transit country and a destination. Nobody knows how many people in Switzerland are affected by this severe violation of human rights, as there are no reliable figures or current estimates of the situation in Switzerland. However, experts assume that only a fraction of victims have been identified and protected. One tangible figure is the number of women who have received support from FIZ over the last year; in 2015, the intervention centre for trafficked women handled 229 cases. Of these, 95 were new cases and 134 were ongoing from previous years.

Even though Switzerland ratified the Palermo protocol³ and the Council of Europe Convention against Trafficking in Human Beings and has a national action plan to combat human trafficking, those affected by it are often still not identified, have no residence status in Switzerland or a precarious one and have little opportunity to claim their rights. Protecting victims is woefully neglected; they suffer discrimination and unequal treatment time and again. This means that only a handful of human traffickers have to fear any consequences and those affected don't experience any justice from the Swiss legal system.

In our practical work with the victims of human trafficking, we witness again and again that there are gaps in the protection and support of victims in Switzerland and that action is needed in order to prevent this violation of human rights. The shortcomings in Switzerland that are relevant for the implementation of Art. 6 ICEDAW are explained below.⁴

Cantonal differences and insufficient funding impair the protection of victims

The worrying shortcomings regarding cantonal differences in the protection of victims and victim support determined by the 2009 CEDAW Committee and the lack of state funding for existing specialized services relating to this (cf N 29 et seq.) are still an issue today.

All relevant areas of law and powers to investigate perpetrators of human trafficking and to identify, protect and support victims of human trafficking are at the discretion of the Swiss cantons. **There are no uniform standards across Switzerland for this,** resulting in inequality, a lack of legal certainty and ultimately, discrimination / prejudice against victims. The government is shifting the responsibility onto the cantons and is not taking advantage of its scope of action; at the very least, they should be able to monitor and drive forward the implementation of national and international obligations regarding the protection of victims and victims' rights and take action against any non-compliance.

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Protocol to Prevent, Suppress and Punish Trafficking in Human Beings, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime dated 15 November 2000 (SR 0.311.542).

You can find more information on the trafficking of women in Switzerland on our website (www.fiz-info.ch) and in the GRETA report (<a href="Report by Switzerland concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, First evaluation round, GRETA(2015)18).



There are huge differences from canton to canton in the number of identifications, even though there are some similar prevailing situations. The highest number of victims are still identified in the Canton of Zurich, followed by Solothurn and Lucerne. Other cantons only identify isolated cases. No cantons, except Zurich and Vaud, have institutionalized, non-repressive police units specializing in human trafficking; the significance of this can be seen in the number of cases, although situations continually occur in which victims are not identified or their rights as a victim are violated.

In their recommendations (no 30), the CEDAW committee explicitly calls on Switzerland to ensure the protection and recovery of victims of human trafficking by allocating sufficient funds to specialist centres. In the medium- and long-term, Switzerland is only partly fulfilling this request, as victim protection services for the victims of human trafficking have still not been ensured for the long-term.

The FIZ is an advocacy and support centre specializing in human trafficking and with a comprehensive victim protection programme for female trafficking victims. We provide advice and support for more than 200 cases each year. Canton contributions to the programme still don't cover all the costs; as a result, we had to finance more than 30% of our costs in 2015 through donations and limited project contributions. In 2015, we benefited for the first time from the financial support detailed in the 2014 CEDAW report from Switzerland in accordance with the Ordinance on Measures to Prevent Offences in connection with the Trafficking of Human Beings (N 51). This relieved some of the pressure and enabled us to ensure our services throughout 2015. However, as the support is only for one year and we have to a submit a new application each year, we cannot plan securely for the future.

Another weakness in victim protection is the lack of suitable accommodation for the victims of human trafficking.⁶ In Switzerland, there are currently too few protection programmes specializing in the victims of human trafficking that provide accommodation. In order to handle the specific situations and needs of the female victims of human trafficking appropriately, suitable accommodation and specialized support is needed. Again, there is a lack of funding for this.

Furthermore, the number of human trafficking cases involving asylum-seeking women is increasing and specialist support and advice for them, as well as medical, therapeutic and legal support, receives no funding. Central government and cantons are shifting the responsibility onto each other.

Protection by residence status for victims of human trafficking remains uncertain

Switzerland is not fulfilling recommendation N 30 of the CEDAW Committee, in which they are called upon to pursue and punish perpetrators of human trafficking and, in particular, to ensure the protection of its victims; as part of this, they are also requested to consider extending temporary residence permits and other measures.

According to FIZ statistics 2015.

⁶ Cf also GRETA report, N 139.



The 2014 CEDAW report by Switzerland explicitly references the option of issuing a hardship permit (Article 30 (1)(e) AuG⁷ and Article 36(6) VZAE⁸), or residence permit irrespective of any criminal proceedings and the victim's cooperation with the authorities. It also mentions an underlying paradigm shift towards the protection of victims taking priority over criminal prosecution in cases of human trafficking. **This is refuted and countered with the following argument:**

Legally speaking, residence does not have to be granted due to cooperation with law enforcement agencies or victims' personal circumstances (hardship) but it is 'permitted'. With regard to residence of victims of human trafficking, the Foreign Nationals Act only suggests the possibility, in accordance with Article 30(1)(e) of the Foreign Nationals Act: "Derogations from the admission requirements (Art. 18-29) are permitted in order to regulate the period of stay of victims and witnesses of trafficking in human beings." There is thus no legal clarity. Residence rights are protected, or not, at the discretion of the authorities, leading to striking differences in the 26 cantons when it comes to residence decisions.

Under current law (Art. 36 of the Ordinance on Admission, Residence and Employment (VZAE), particularly paragraph 5), and according to common practice, victims of human trafficking who are not ready to give evidence (or victims, whose evidence is not considered to be relevant, or where proceedings have not been initiated or have been stopped) generally have to leave Switzerland and are therefore not able to claim the victim support services due to them as legal residents. There is no option to have time to consider their position (in which the victim may, for example, decide out of fear against making a statement) and then obtain legal residence, quickly and unbureaucratically and limited to a few months, so that the victim can claim the support, victims' rights and protection as defined in the Victim Support Act (OHG).

According to Swiss law, such a case would require an application for a humanitarian permit on the grounds of hardship. Issuing permits on the grounds of hardship is also the responsibility of the cantonal migration offices. Requests are handled differently across cantons and very few permits are granted. Even though the State Secretariat for Migration (SEM)⁹ has issued relevant guidance for granting hardship permits in human trafficking cases, the process in some cantonal authorities is often shaped by ignorance of existing legal principles, their discretionary powers and an individual civil servant's personal assessment. The legal basis is too weak and has not been firmly established at an institutional level. Furthermore, since this guidance was revised in July 2015, the situation for victims of human trafficking has gotten worse. The guidance may still state that it should be possible to issue hardship permits or residence on humanitarian grounds regardless of whether the victim is willing to cooperate with law enforcement, but a range of documents are now required for the application, including police reports, written complaints and relevant criminal convictions. Effectively, this results in even hardship permits being reserved for those victims who are cooperating with Swiss law enforcement authorities in criminal proceedings.

⁷ SR 142.20, Federal Law on Foreign Nationals (Foreign Nationals Act, AuG) dated 16 December 2005 (as at 1 February 2014).

SR 142.201, Ordinance on Admission, Residence and Employment (VZAE) dated 24 October 2007 (as at 1 January 2015).

SEM Guidelines version 06/01/2016, in: https://www.bfm.admin.ch/dam/data/bfm/rechtsgrundlagen/weisungen/auslaender/weisungen-aug-d.pdf, Chapter 5.6.2.2.5: 'Victims and Witnesses of Trafficking in Human Beings'.



The situation is particularly serious when proceedings are stopped. Cantonal Victim aid and migration offices in particular view this as evidence that there is no case of human trafficking and that the person involved cannot be deemed a victim. This then means that even a hardship request, which was previously the only remaining option, in practice is not available.

With regard to the amount of time allotted for the victim to recover and consider their options, it has become apparent to FIZ that this is often limited to the absolute minimum, with the decision of whether to cooperate with the authorities or not is wrongly given priority over the victim's recovery. Revised SEM guidelines now state that the period for the victim to recover and consider their options should be at least 30 days, 'but not longer than 3 months'. *This runs counter to the spirit of the CEDAW Committee recommendation regarding the extension of residence permits.*

Fundamentally, aspects of foreigners' rights (punishment in the event of violation of the Foreign Nationals Act, residence only if a testimony is given) are one of the greatest hurdles to those affected by human trafficking being able to access victims' rights, as these aspects are given greater priority than protecting and supporting the victims of human trafficking. Police checks focusing on 'Violations of the Foreign Nationals Act' and deportation continue to make it impossible to identify and protect victims. Despite well-founded suspicions of human trafficking and contrary to international law, they are deported.

The way that Swiss law is structured and current practices by authorities, the judiciary and the police have retained the focus on prosecutions, thereby fail to implement the CEDAW's recommendation.

No application of international regulations regarding human trafficking in the area of asylum

SEM's (State Secretariat for Migration) measures detailed by the government to improve the situation of victims of human trafficking in the area of asylum are fundamentally welcomed by FIZ. These include structural changes within the State Secretariat (e.g. the creation of a position focusing on human trafficking) and providing training and events to raise awareness for key civil servants.

In the area of asylum, however, there are still some fundamental shortcomings that have been overlooked:

If there is a suspicion of human trafficking, Switzerland's **obligations to protect and support** in accordance with the European Convention on Human Rights (ECHR) and the Council of Europe Convention on Action against Trafficking in Human Beings apply immediately; those affected must therefore be provided with specialized accommodation, receive the medical care they need and be supported by specialist victim advice centres. Currently in Switzerland, only an information leaflet with contact details for the cantonal victim support centres specializing in human trafficking is handed out. According to the experience of FIZ and international opinion¹⁰, this is inadequate; very few victims register with these centres on their own. GRETA (Group of Experts on Action against Trafficking in Human Beings, the Council of Europe's monitoring body

¹⁰ Cf http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Broschueren/iom-projektbericht-menschenhandel-asylverfahren.pdf? blob=publicationFile (as amended on 13/08/2015).



regarding human trafficking) also urgently calls upon Switzerland in their 2014 report on Switzerland to improve identifications in the area of asylum and ensure that all victims of human trafficking receive the support and protection that is due to them.¹¹

Some international regulations such as the recovery and reflection period, the possibility of issuing a residence permit and thus the provision of sufficient support are, to some extent, covered in the Foreign Nationals Act. However, due to the exclusivity principle in our asylum law (Asylum Act, Article 14(1)), these regulations do not apply to victims of human trafficking seeking asylum. Instead, the revised SEM guidelines explicitly state regarding residence of victims of human trafficking that standards regarding the law on foreign nationals do not directly apply to asylum cases; as a result, Switzerland is not implementing their international obligations. This is particularly devastating in Dublin cases or if the suspicion of human trafficking occurs immediately before deportation. *Victims can only assume their rights if Switzerland grants them residential protection, if they can legally stay in Switzerland and if they can therefore gain access to support and protection.*

Another violation of international regulations (such as Article 10(2) of the Council of Europe Convention on Action against Trafficking in Human Beings) is that in Switzerland, people who have been identified as victims of human trafficking, but where **the act took place abroad, do not receive any specialized support or protection from Switzerland**. This is despite the fact that international law does not differentiate between victims based on the location of the act.

Moreover, identified victims of trafficking in human beings falling within the Dublin Regulation are transferred to the competent Member State, regardless of any criminal proceedings on their behalf in Switzerland and their cooperation with the authorities. If needed for testimony a visa can be issued.

No focus on exploitation of labour

Article 182 of the Swiss Criminal Code, which came into force in 2006, makes trafficking in human beings for the purposes of sexual exploitation, exploitation of labour and organ trafficking criminal offences. Indeed, some steps have been taken to address the issue of human trafficking for the purposes of exploitation of labour, but progress has been extremely limited. The cantonal round tables, for example, and police investigations continue to focus on human trafficking for the purposes of sexual exploitation. Employing foreign workers in exploitative conditions is often still seen as a trivial offence. No matter how poor the working conditions may be in Switzerland, they'd be much worse in their country,' is often the attitude of the public and many authorities. More intensive awareness-raising initiatives are required, as well as legal employment opportunities for third-country nationals in line with demand in Switzerland. It is shocking that the latter are available for certain expert roles, but not for low-wage workers. There needs to be greater cooperation, particularly with key areas such as employment agencies, and more training for the relevant

¹¹ Cf GRETA report on Switzerland, recommendation 15, Appendix I, p 52.

GRETA is of the opinion that Switzerland should strengthen their efforts against human trafficking for the purposes of the exploitation of labour (cf. e.g. GRETA report, recommendation 4, Appendix I, p. 50).



areas, in order to enable the identification of victims and the development of intervention mechanisms that benefit them. To date, we have only heard of four convictions for human trafficking for the purposes of labour exploitation.

Contrary to the statement in the 2014 CEDAW report by Switzerland (N 48), laws against undeclared employment have so far not been viewed as a measure against trafficking in human beings for the purposes of exploitation of the workforce. Even the current, ongoing revision of the law against undeclared employment is missing the opportunity to strengthen worker protection and play a part in contributing to the identification of victims of human trafficking. Instead, the law focus on the damage to the national economy and the Treasury and neglects to give labour inspectors an explicit legal mandate to monitor and report¹³ violations of Article 182 of the Swiss Criminal Code¹⁴.

FIZ's recommendations are:

- Combating human trafficking requires a Swiss-wide solution. Recognizing that combating organised crime needs a transnational approach should, obviously, also be carried over to the Swiss cantonal structure or should lead to an inter-cantonal strategy for the fight against human trafficking. Switzerland needs to introduce compulsory standards for all cantons, so that identifying and protecting victims isn't handled arbitrarily and in different ways from canton to canton.
- Switzerland should follow the recommendation of the CEDAW Committee and provide funding for a comprehensive victim protection programme with sufficient accommodation and appropriate integration measures. Reliable, long-term government funding is needed for NGOs who offer specialized victim protection for the victims of human trafficking.
- > The recommendations of the CEDAW Committee should be implemented. In particular, protecting victims should be assigned more importance and protection regarding residence rights should be strengthened.

The serious violation of human rights involved in human trafficking should be enough reason to get a long-term residence permit. In most cases, victims are severely traumatised and **should be able to stay in Switzerland simply because of the protection that is required and the medical, therapeutic and other rehabilitation services that they need.**

The recovery and reflection period should be interpreted and granted in their interest. During this time, the police should not interview or interrogate them etc. and the victim's data should not be shared. A clear legal basis is required here as well as additional awareness-raising and training, particularly for the police, the Prosecution Service and migration authorities.

Switzerland should also ensure residence rights for all victims of human trafficking, regardless of criminal proceedings and their willingness to cooperate and provide evidence. This is the only way to ensure that victims receive the protection and assistance due to them in accordance with the Victim Assistance Act.

Swiss Criminal Code (SR 311).

¹³ Cf. FIZ report on the revision of the Federal Law on Measures to Combat Undeclared Work (BGSA) dated 30/07/2015, available from: http://fiz-info.ch/images/content/VernehmlassungBGSA StellungnahmeFIZ.pdf .



The phrase 'derogations...are permitted' in Article 30(e) of the Foreign Nationals Act is insufficiently precise and leads to stark differences in how the law is applied. In practice, the residence of victims of human trafficking depends on the canton, the type of exploitation, the authority and the individual civil servant; a Swiss-wide standard needs to be established.

- International regulations regarding the protection of victims and human trafficking should also be implemented and applied in Swiss asylum law. In addition to making efforts to increase and improve identification of those involved in the asylum process, it is vital that Switzerland exercise their obligations to provide protection and support as soon as there is a suspicion of a case of human trafficking. Those affected by human trafficking should be able to access protection, support and their rights as a victim. In addition, potential victims in the asylum process should be granted time to recover and consider what they want to do next and have contact with specialist victim advice centres.
 - In **Dublin cases, the suspicion of human trafficking should establish Switzerland's responsibility** and result in the asylum request, taking into account the specific situation of human trafficking victims, being materially reviewed by Switzerland.
- Switzerland focuses mainly on combating human trafficking for the purposes of sexual exploitation. Very few victims of human trafficking for the purposes of exploitation of labour are identified. We have only ever heard of FOUR convictions for human trafficking for the purposes of exploitation of labour. Switzerland should urgently promote involving and training new people and centres such as labour inspectors, employees and trade unions; inspectors must have an explicit remit for their checks regarding human trafficking

MEASURES IN THE EROTIC INDUSTRY

FIZ and PROKORE emphasize the importance of differentiating between sexual exploitation and sex work. While sexual exploitation is a criminal offence and a severe violation of human rights, sex work in Switzerland is a legal industry. By no means all sex workers are affected by human trafficking or exploitation.

Experts estimate that 13,000 to 20,000 people work in the erotic industry in Switzerland. Most female sex workers in Switzerland are migrants, with around 70% from European countries, 15% from West Africa, mainly Nigeria, Sierra Leone and Ghana, 10% from Latin America and 5% from Asia. Migrants working in prostitution face a range of problems; women who are not legally resident are affected by layers of exclusion and structural violence. People who are deemed to have an irregular status and criminalised are mistrustful towards the police and other authorities, they don't ask for help even if they need it and cannot defend themselves against exploitation and violence. Sex workers who come to FIZ for advice think that the main problem is social exclusion and stigmatization. The mental stress that results from this stigmatization is huge and can have an impact on their health.

The increased regulation of the sex industry over the last few years has **not led to the promised increase in protection for** women, but instead has resulted in more repression and pressure! impediments to overcome in order to practice sex work – indoor as well as street sex work – are so high that it has been rendered

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Discussion paper on sex work: facts, positions and visions from a feminist perspective, Terre des femmes, FIZ Advocacy and Support for Female Migrants and Victims of Trafficking, cfd, XENIA, Pro Co Re, August 2014, p. 5.



almost completely illegal. The consequence is that sexwork has been forced underground, making the work more dangerous, more difficult and riskier for women, and making them dependent on large brothels or welfare, which many sex workers try to avoid at all costs.

In their 4th / 5th periodic report, the Swiss Federal Council presents the measures they plan to take to protect sex workers and others working in the sex industry. It is welcoming to see that these include stronger support for NGOs' prevention work and the revision of the Foreign Nationals Act; if a sex worker becomes a victim of a criminal offence during her/his work, she/his can receive return assistance and help with residence arrangements. However, a key measure which has already been carried out is the abolition of the cabaret dancer status. This abolition, which came into force in 2016, does not increase the protection of those involved, but rather weakens it considerably. Migrants from third-country states who currently work in a cabaret will no longer be able to rely on any protection of their residence and labour rights, making them much more vulnerable than before.

In order to fulfil several requirements of the national Parliament, the Swiss Federal Council recently published a report on 'Prostitution and Trafficking in Human Beings for the purposes of Sexual Exploitation'. In this report, the Swiss Federal Council makes specific suggestions for additional protective measures in the erotic industry.

FIZ welcomes the clear refusal of the Swiss Federal Council to ban prostitution and to criminalize clients. This confirms that sex work in Switzerland is a legal industry. A ban on prostitution, such as in Sweden, would drive the sex industry underground. This would result in sex workers having to work in secret and being less protected against exploitation and violence. Some of the measures in the report are also to be welcomed, such as the creation of a national panel of experts on prostitution and combating rack rents.

However, by far the majority of the Federal measures would not achieve their desired aims but would instead place sex workers under a huge amount of pressure, stigmatize them and restrict their legal employment opportunities. They include strengthening the police presence in certain areas, making it illegal to rent rooms to sex workers and introducing an ID card for them. Other measures, such as making it obligatory to use a condom, are not viable. New prostitution laws may regulate the work, but neither the obligation for sex workers to have a permit nor the business plans required for brothels and independent sex workers strengthen their rights.

FIZ regrets that the report does not make any concrete suggestions to strengthen sex workers' rights and improve their working conditions. It is indisputable that the best way to protect against exploitation and violence is to grant and strengthen rights.

In their concluding remarks regarding the elimination of discrimination against women, the Swiss Committee recommends 'considering the introduction of provisions enabling women to move from the erotic industry into other employment' (N32). Switzerland has not followed this recommendation. None of the planned measures allow female migrants to undergo legally protected, practical re-training so that they can work in Switzerland legally in an industry other than the erotic industry.



FIZ calls for the following measures for sex workers:

- > Sex work must be considered as equal with other industries across Switzerland. The argument of immorality deserves to be removed. Contracts in sex work are seen as immoral in almost all of Switzerland and courts cannot enforce them. It is not clear why people conducting a legal trade cannot enforce their claims in a court of law.
- > Sex workers should have the freedom to choose whether they are employed or self-employed. This freedom is currently restricted; in some cantons, sex workers are only allowed to be self-employed, whilst in others they can only work as employees.
- > 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.
- Sex workers and the 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 industries in Switzerland and there is no reason why men and women who work in the erotic industry should not speak for themselves.

FIZ Advocacy and Support Centre for Female Victims of Trafficking, October 2016