



## **Women's rights and human rights: How can the existing international momentum be put to better use in Switzerland's gender equality policy?**

**Abridged version of the report on a study carried out on behalf of the Swiss Federal Commission for Women's Issues**

Erika Schläppi

**Abstract, lacking in practical relevance, no need for action in Switzerland – these are some of the most commonly expressed opinions we hear when it comes to human rights. This report deals with the current situation with regard to the provisions of international law for gender equality policy and their future potential, and it presents new lines of action for implementing human rights in Switzerland.**

### **1. Introduction: Purpose of this study**

The different situations of women and men and gender relations in society, economic life and politics are controversial topics that are being debated throughout the world today. Gender relations in various areas of life are also regularly on the agenda of the international community. The international debate on women's rights, human rights and gender discrimination has gained momentum during the past few years, though this has only been perceived to a limited extent in Switzerland.

Initially, the women's movement in Switzerland tended to follow international trends, especially in the 1970s and 1980s. The Swiss Women's Congress of 1975, for example, which was the starting point for the initiative calling for equal rights for men and women to be incorporated into the Swiss Federal Constitution, was primarily conceived as Switzerland's contribution towards the International Year of the Woman. Despite the intensive efforts of a number of women's organisations on the occasion of the Fourth World Conference on Women, that was held in Beijing in 1995, in the ongoing debate within Switzerland the international frame of reference has rather faded into the background. Today, many people who are actively campaigning for gender equality prefer to focus on solutions to specific problems. It appears that, for many of these players, the international debate is too abstract for them to be able to derive anything of practical use from it for their own efforts.

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But keeping up with the international debate does not preclude one from carrying out practical work aimed at furthering gender equality. The international dimension is not a new, additional topic with which Swiss gender equality policy also has to occupy itself. What counts here is making better use of international standards, instruments and mechanisms in order to strengthen Switzerland's commitment in the area of gender equality. In view of this, the Swiss Federal Commission for Women's Issues commissioned a study in order to examine how, in Switzerland, better use can be made of the potential of the various instruments and mechanisms, and what consequences this could have in particular for the work of the Commission. This condensed report provides an overview of the applicable standards and international monitoring mechanisms, and depicts some options for the systematic exploitation of this potential.

## 2. Human rights and women's rights: applicable international standards

### **Prohibition of discrimination and observance of gender equality are key elements in the international protection of human rights.**

All international and European human rights conventions explicitly **prohibit all forms of discrimination**. The virtually identical wording of Article 2 in both international human rights covenants<sup>1</sup> obliges the states parties to guarantee the human rights cited in these two conventions «without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status». Article 14 of the ECHR<sup>2</sup> contains similar clauses, while conventions 100 (Equal Remuneration Convention) and 111 (Discrimination [Employment and Occupation] Convention<sup>3</sup>) of the International Labour Organisation (ILO) deal with specific forms of discrimination. All these prohibitions of discrimination only apply in association with other human rights guarantees, e.g. the right to employment, education, social security, health and political activity (accessorial prohibitions against discrimination).

The equal rights provisions in the two UN human rights covenants (Article 3) oblige all states parties to guarantee **equality** for men and women in the exercise of all rights defined in these two documents. They are therefore accessorial, too. The requirement of **equality before the law** as defined in Article 26 of the International Covenant on Civil and Political Rights is an independent right and is therefore more general in nature. It calls for equality before the law and the entitlement to equal protection of the law. A similar provision is contained in Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, which was adopted by the Council of Europe in 2000 and entered into force in 2005.

Article 20 of the revised version of the European Social Charter (1996<sup>4</sup>) obliges the ratifying states to take appropriate measures to ensure or promote the «effective exercise of the **right to equal opportunities and equal treatment in matters of employment and occupation** without discrimination on the grounds of sex.»

### **The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) defines women's rights and specifies the obligation on all states parties to ensure equal treatment between men and women.**

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>5</sup> was adopted by the UN in 1979. It has meanwhile been ratified (and thus recognised as leg-

<sup>1</sup> International Covenant on Economic, Social and Cultural Rights (1966), SR 0.103.1; International Covenant on Civil and Political Rights (1966), SR 0.103.2; cf. [www.admin.ch/ch/d/sr/0.10.html](http://www.admin.ch/ch/d/sr/0.10.html)

<sup>2</sup> European Convention on the Protection of Human Rights and Fundamental Freedoms (1950), SR 0.101

<sup>3</sup> Cf. [www.ilo.org/ilolex/english/convdisp2.htm](http://www.ilo.org/ilolex/english/convdisp2.htm)

<sup>4</sup> Cf. <http://conventions.coe.int/> > European Social Charter

<sup>5</sup> Convention on the Elimination of All Forms of Discrimination Against Women (1979), SR 0.108

ally binding) by 185 countries, though in many cases with substantial reservations. It defines the term «discrimination» asymmetrically in that it protects only women against discrimination. Article 4 stipulates that «special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination». It also specifies in detail the obligations that the states enter into upon ratification. For example:

- To include the principle of gender equality in their national constitutions or similar legislation and to ensure, through law and other appropriate means, the practical realisation of this principle (Article 2a);
- To take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise (Article 2e);
- To take all appropriate measures to guarantee women the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men (Article 3)
- To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women (Article 5).

Elsewhere it specifies the obligations on states parties to implement the prohibition of discrimination against women in various areas of public and private life.

**The above provisions are also applicable for Switzerland, with a few restrictions.**

Switzerland ratified the general human rights instruments very late in comparison with its neighbouring European states. For example, it only ratified the European Convention on the Protection of Human Rights and Fundamental Freedoms in 1974, and the two UN human rights covenants in 1992. It has not ratified the European Social Charter, and has only ratified some of the protocols to the European Convention.<sup>6</sup> The general discrimination prohibitions and the various obligations to take a proactive role in realizing equal rights are also applicable to Switzerland today, as are those arising from ILO Conventions 100 and 111 relating to employment and occupation, in particular in the area of remuneration.

In its ratification of the Covenant on Civil and Political Rights, Switzerland expressed a **reservation** concerning Article 26. Referring to the still existing inequalities between the sexes under Swiss law, it expressly limited the entitlement to equality before the law to the rights guaranteed in the Covenant. Furthermore, Switzerland has to date neither signed nor ratified Protocol 12 to the European Human Rights Convention (2000), which also contains an independent obligation of equality before the law.

When it became a state party to CEDAW in 1997, Switzerland expressed two reservations (originally three) concerning regulations on family name and interim provisions of the matrimonial regime.

### **3. International promotion and monitoring**

**The international community – including Switzerland – regularly expresses at the political level, the need for taking measures to ensure de facto gender equality.**

The concluding document to the **1993 World Conference on Human Rights** was the starting point for a more pronounced focus on gender mainstreaming in a variety of areas of activity within the UN. At the above Conference it was declared that the human rights of women are «an inalienable, integral and inseparable part of general human rights.» The concluding declarations of the World Conferences on Women are, of course, of particular relevance in terms of gender equality policy. **The 4th World Conference on Women**, which was held in **Beijing in 1995**, focused on the results of the strategies that had been formulated in

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<sup>6</sup> Cf. Lists and texts of ratified conventions and protocols in SR 0.101.xx, [www.admin.ch/ch/d/sr/0.10.html](http://www.admin.ch/ch/d/sr/0.10.html)

Nairobi in 1985. It adopted a platform of action listing comprehensive and detailed measures to eliminate discrimination against women and promote women's rights in all areas of life.

In Switzerland, the 1995 Conference was also an opportunity to ratify CEDAW. The Federal Council submitted a Message to Parliament to this effect a few days before the Conference was opened. To set in motion the implementation of the platform of action adopted in Beijing, the Federal Council established an inter-departmental working group which drew up a comprehensive **national action programme** in 1999.<sup>7</sup> This programme proposed a variety of measures and passed on specific recommendations to involved federal and cantonal authorities, non-governmental organisations and private entities. Over the past few years, various reports on the implementation of the action programme have been published by the Federal Council and NGO Co-ordination Post Beijing<sup>8</sup> (a coalition of several NGOs active in this field).

The **Council of Europe** has also assumed a leading role in promoting gender equality in its member states, and has created a variety of related institutions and forums.<sup>9</sup> During the past few years, the **International Labour Organisation** (ILO) has focused on promoting and implementing fundamental labour standards. In 1998 it published its «Declaration on Fundamental Principles and Rights at Work», which establishes priorities among the almost 200 ILO conventions. One of the four areas in which these principles explicitly apply is equality at the workplace.<sup>10</sup>

**International treaty bodies (independent committees of experts) monitor the implementation of human rights standards within each member state.**

The various human rights conventions become binding for states after they have expressly acknowledged this fact by (voluntarily) ratifying them. Once a convention enters into force, each state assumes responsibility for implementing the accepted standards within its own sovereign territory under international supervision. Various international conventions (or their optional protocols) provide for private **individuals** to submit communications or **complaints** to the respective international treaty body in the event that a state party fails to meet its international obligations. This applies to the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as to the International Covenant on Civil and Political Rights, the conventions against torture and against racial discrimination, and CEDAW. For the International Covenant on Economic, Social and Cultural Rights, an optional protocol dealing with the option of individual complaints is currently in preparation.

Like the majority of the other member states of the Council of Europe, Switzerland has acknowledged the authority of the European Court of Human Rights to pronounce binding rulings on individual complaints. It is now possible for these to be submitted from Switzerland to the Committee Against Torture and the Committee Against Racial Discrimination.

However, Switzerland has not yet ratified the optional protocols to the International Covenant on Civil and Political Rights and CEDAW, which provide for the option of individual complaints.

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<sup>7</sup> Swiss Federal Office for Gender Equality, follow-up activities relating to the 4th World Conference on Women, Beijing (1995), gender equality: Swiss action plan, 1999, [www.equality-office.ch/d2/dokumente/aktionsplan.pdf](http://www.equality-office.ch/d2/dokumente/aktionsplan.pdf)

<sup>8</sup> Report on the situation in Switzerland in 2005, 10 years after Beijing, for the attention of the UN, in: <http://www.un.org/women-watch/daw/Review/responses/SWITZERLAND-French.pdf>; Report of the Swiss Federal Council on the implementation of the 2002 action plan, [www.humanrights.ch/home/upload/pdf/030121\\_www\\_bericht\\_aktionsplan.pdf](http://www.humanrights.ch/home/upload/pdf/030121_www_bericht_aktionsplan.pdf); and evaluation of the NGO Co-ordination Post Beijing, 2002, [www.humanrights.ch/home/upload/pdf/030121\\_evaluation:aktionsplan.pdf](http://www.humanrights.ch/home/upload/pdf/030121_evaluation:aktionsplan.pdf)

<sup>9</sup> Cf. [www.coe.int/T/E/Human\\_Rights/Equality](http://www.coe.int/T/E/Human_Rights/Equality)

<sup>10</sup> <http://www.ilo.org/ilolex/english> >Declaration on Fundamental Principles and Rights at Work

**At the end of November 2006, the Federal Council submitted a message to Parliament proposing that Switzerland should ratify the optional protocol to CEDAW, thereby accepting the individual complaints procedure for violations against this Convention.**

It is unclear when and how Parliament will decide on this message.

Following ratification of most human rights conventions (with the exception of the European Convention on Human Rights), each state also undertakes to submit regular reports to the respective treaty body concerning the status of implementation within its own jurisdiction. Unlike the individual complaints procedure, the **country reporting procedure** monitors the implementation of the convention concerned without taking account of individual violations, and thus permits a more comprehensive assessment of the efforts by each state to comply with the international provisions.

The UN treaty bodies discuss these reports with representatives of the state concerned at open meetings, and adopt what are referred to as «concluding observations» in which they propose improvements and formulate recommendations for the state concerned. To supplement country reports, the various committees also accept additional information from non-governmental sources (shadow reports), since the committees themselves only have limited means at their disposal for examining the situation in a given country.

**Switzerland, too, submits periodical country reports on its implementation of human rights obligations, which always also have a gender-specific dimension.**

From the point of view of gender equality, the following reports are especially worthy of mention:

- The first report to the **Committee on Economic, Social and Cultural Rights** was submitted in 1996. In its concluding observations concerning this report, the Committee formulated a number of criticisms regarding the economic and social situations for women in Switzerland, and recommended a variety of measures.<sup>11</sup> The second report was due in 1999, and third in 2004, but a (delayed) combined second and third report is currently in preparation.
- The combined first and second report to the **Committee on the Elimination of Discrimination Against Women** was adopted by the Federal Council in 2001. The Committee discussed this report (and a «shadow report» submitted by various organisations in Switzerland) in 2003, and adopted some substantial concluding observations.<sup>12</sup> The third report was due in 2006, and the Federal Council expects to be able to adopt it in spring 2008.

The **ILO**, too, monitors the implementation of its numerous conventions within each state party in principle on the basis of country reports. Each state is required to report every two years on legal and practical measures it has taken in order to implement the eight principal conventions (including Nos. 100 and 111), and has to submit a report on its implementation of all other conventions every five years. The Committee of Experts on the Application of Conventions and Recommendations (CEACR) examines these reports and formulates observations concerning fundamental implementation aspects or direct requests for additional information. Switzerland regularly submits its reports on its implementation of ILO Conventions 100 and 111 to the respective ILO committees. Since 1990, the CEACR has addressed numerous observations and direct requests to the Swiss authorities, referring to Conventions 100 and 111 and noting – in a variety of contexts and often in great detail – the lack of gender equality at the workplace. Its observations include under-representation of women in senior management and at top salary levels, unequal pay, unequal educational and professional training opportunities, and inequalities in the area of social insurance.<sup>13</sup> And in its direct requests relating to other ILO conventions (e.g. No. 128, Invalidity, Old-Age and Surviv-

<sup>11</sup> [www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/E.1990.5.Add.33.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/E.1990.5.Add.33.En?OpenDocument). This report was adopted by the Federal Council on 8 May 1996.

<sup>12</sup> Cf. various texts under [www.humanrights.ch/home/de/Schweiz/UNO-Abkommen/Frauenrechtskonvention/Bericht-2003/idart\\_4835-content.html](http://www.humanrights.ch/home/de/Schweiz/UNO-Abkommen/Frauenrechtskonvention/Bericht-2003/idart_4835-content.html)

ors Benefits Convention), the Committee asks the federal government questions relating primarily to gender equality. However, in Switzerland discussions about state reports and the observations of the ILO are normally restricted to a triangle of players comprising the federal authorities, trade unions and employers' associations. The reports of the relevant federal authorities (Swiss Federal Department of Economic Affairs/SECO) are not published. In accordance with the requirements of the ILO, the Federal Council regularly notifies Parliament whether or not it intends to ratify other conventions. In 2001, for example, it petitioned Parliament to refrain from ratifying the revised ILO Maternity Protection Convention (No. 183) due to the legal situation that existed at that time (and which has since changed).<sup>14</sup>

#### **4. Challenges for the international human rights system**

**Despite the political instrumentalisation of human rights and women's rights, and often inadequate international monitoring mechanisms, in many countries the issue of international human rights is nonetheless an important item on the domestic political agenda.**

In the international political arena, human rights arguments are not infrequently put forward in order to conceal other – often significantly less altruistic – objectives. For example, discrimination against Afghan women was one of the arguments used by the USA to justify its military intervention in Afghanistan. Thus human rights concepts are often perceived nowadays as tools of Western power politics instead of as standards of international law. In many countries, however, international human rights play an important role on the domestic political agenda for promoting peaceful political reform. Reform-oriented players use them as a legitimate basis and as binding frames of reference for their efforts to prevent abuses of power within their own country, and to remind the state authorities (and the social elites that support them) about their duties towards individuals living within their sovereign territory. International committees of experts and monitoring mechanisms bodies can play a limited but nevertheless important support role in national reform processes if their efforts are actively incorporated into such reform debates.

**Many feminists are sceptical when it comes to the roles of the state and the legal system in the promotion of gender equality.**

Criticism by feminists sometimes extends to the international human rights system, and some criticised aspects are especially apparent at the international level. Some of the main criticisms are as follows:

- Provisions of international law primarily apply to states and government authorities. They therefore often appear to be abstract, a matter for governments (that are dominated by men), and a long way away from the reality of life experienced by countless women today.
- In the same way as domestic law, the principles of international human rights too have been formulated by men primarily on the basis of the reality of life experienced by men, and pay very little attention to the situation and needs of women. As a rule, the proportion of women in international institutions is even lower than in national decision-making bodies. And with the exception of the Committee on Discrimination Against Women and the Committee on the Rights of the Child, the treaty bodies (and thus the practical interpretation of standards) are dominated by men.
- Conventional human rights primarily protect the private sphere – and thus the private exercise of power by men over women. For example, Article 23 of the International Covenant on Civil and Political Rights provides protection to families, stating that «the family is the natural and fundamental group unit of society and is entitled to protection

<sup>13</sup> The ILO search engine shows five observations and ten direct requests concerning ILO No. 111, and eleven direct requests for ILO No. 100 ([www.ilo.org/ilolex/](http://www.ilo.org/ilolex/))

<sup>14</sup> BBI 2001 pp. 5867 ff.

by society and the state». While this perspective can grant special protection also to women, it focuses on their reproductive role as mothers (cf. Article 10 of the International Covenant on Economic, Social and Cultural Rights).

Over the past few years, the debate on international human rights has undergone dynamic development – a process that has qualified some feminist reservations.

Below is a brief summary of some recent trends:

- The state is also being held responsible to an increasing extent for the application and protection of human rights in the private sphere (e.g. domestic violence, labour law provisions).
- Contrary to the view that is still broadly held in Switzerland today, human rights not only encompass traditional civil liberties, they have also evolved into a more integral concept that includes economic, social and cultural rights.
- Some cases (e.g. changes in the perception of the private sphere) show that it is possible to deconstruct male preconceptions within the scope of a dynamic interpretation, and thus to change the meaning of rights so that they more closely correspond to the realities and needs of women.
- New implementation methods take account of structural causes for human rights violations (e.g. gender budgeting, implementation monitoring via country reports instead of protection of individuals through legal proceedings).
- Gender mainstreaming: The lengthy period of relatively strict institutional separation of women's rights and human rights culminated in the marginalisation of gender equality in the UN. With its commitment to gender mainstreaming, the Beijing platform of action also underscored among other things the importance of universal human rights principles and mechanisms for gender equality, without questioning the central role played by specific institutions in the implementation of equal rights.

## 5. Importance of obligations for the Swiss legal system

Which specific obligations are to be derived from human rights provisions and how much scope for manoeuvre is open to ratifying states are questions of interpretation of the relevant provisions. Interpretation follows certain rules. By applying the principle of dynamic interpretation, the treaty bodies of the various human rights conventions have rendered the often abstract provisions of these instruments more tangible through their handling of individual complaints, their observations concerning country reports and in their General Comments.

In monistic structures such as that of Switzerland, international conventions become legally binding upon their ratification. In other words, they are automatically incorporated into Swiss law without the need for any additional legislative procedures. Article 190 of the Swiss Federal Constitution states that federal legislation and international law are equally applicable for the authorities which implement the law.

**In accordance with the doctrine of the Swiss Federal Supreme Court, the provisions of international law in principle take precedence in cases in which Swiss legislation is in conflict with international obligations.**

The Federal Supreme Court has even gone so far as to state that this conflict rule is even more applicable «if the interpretation of precedence is derived from a provision of international law that serves to protect human rights»<sup>15</sup>. Thus in cases of doubt, Swiss law should be interpreted in a manner that is **in conformity with international law**.

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<sup>15</sup> BGE 125 II 425, 122 II 485, with additional references

**Depending on their specific content, human rights provisions are addressed to government, the legislature or the judiciary, and are binding on all administrative levels (in Switzerland's case, the federal government, cantons and municipalities).**

As long as the provisions are sufficiently clear and precise to form a basis for a decision in a given case, they may be applied directly in court or used by administrative authorities as a legal foundation (principle of direct applicability, or justiciability). It is the duty of the courts and authorities responsible for administration of law in general to decide on the direct applicability in a given case. Traditional doctrine regards all civil and political rights as directly applicable, and generally rejects justiciability for economic and social rights. However, a more differentiated approach has become established at the international level.

**Generally speaking, doctrine and practice now acknowledge that all human rights go hand in hand with obligations that differ however in terms of their specificity, and thus in their degree of direct applicability.**

To date, the Swiss Federal Supreme Court has not expressed its opinion whether the provisions of CEDAW are directly applicable. In its Message to Parliament concerning the ratification of this Convention, the Federal Council assumed that the majority of the provisions were not sufficiently precise for this purpose. But in its assessment of individual complaints that can now be submitted to it, the Committee on Discrimination Against Women applies numerous provisions without hesitation, thereby confirming their direct applicability.

But the non-justiciable «programmatic» dimension of the obligations is also of legal significance: these obligations are not addressed directly to the courts, but rather to Parliament, the government and the administration, which have a certain obligation of conduct. They are required to take action within the scope of their competencies, and to take steps to secure the implementation of the rights in question at the national level. And as already noted, whether they are justiciable or not, international human rights are of central importance for the interpretation of domestic provisions, for example the prohibition of discrimination.

## **6. How can we use the international debate for promoting gender equality in Switzerland?**

The international dimension is not a universal remedy, but it does offer perspectives and instruments that could contribute to the political debate in Switzerland.

Even if international mechanisms have certain weaknesses, they have one important advantage: they exist. It is therefore important to focus on their strengths. The following aspects are especially important:

### **International standards create additional legitimacy for an active gender equality policy.**

At the international level, Switzerland regularly professes its faith in gender equality and has officially accepted the main legal provisions. This creates additional legitimacy for the constitutional right to equality, not least in consequence of the primacy of international treaties. Gender equality and the prohibition of discrimination are embedded in a binding international reference and interpretation framework. When measures are taken to ensure gender equality, this is not an act of political generosity, but rather compliance with binding international obligations.

In addition to international rulings, non-binding critical comments and recommendations made by international expert committees with regard to country reports (e.g. concerning CEDAW) could also create additional legitimacy for similar criticism at the national level if they would be used for this purpose by the interested public. For example, the criticisms put

forward by the Committee on Economic, Social and Cultural Rights in its assessment of the 1998 state report by Switzerland, which largely refer to the disadvantages faced by women in Switzerland, have more or less remained unnoticed here.

**International mechanisms create international responsibility and – if they are used by the general public in Switzerland – they also create national responsibility.**

In its various country reports, Switzerland frequently and publicly has to report on progress and obstacles. As Switzerland's representative body at the international level, the Federal Council is obliged to publicise its own assessment and evaluation of gender equality in Switzerland, to report on measures taken at the federal, cantonal and municipal levels, and to comment on the need for action. These statements can also be used in the debate on gender equality in Switzerland.

While international individual complaint procedures are used comparatively frequently in Switzerland, this does not apply to specific issues relating to women. One of the reasons for this is that reservations and non-ratification of some conventions limit or prevent the applicability of some of the most important international standards and mechanisms in the area of gender equality. (It was mentioned that Switzerland has not yet ratified the optional protocol to CEDAW; Protocol no. 12 to the European Human Rights Convention; and the optional protocol to the International Covenant on Civil and Political Rights; and it has also expressed reservations concerning Article 26 of the latter Covenant.) Another reason is that, where international individual complaints are possible, women tend to assess the chances of success and the cost/benefit ratio as too low. But from the political point of view, the benefits can be significantly greater: if public attention can be drawn to a structural problem without unduly burdening those involved in the concrete case, international individual complaint procedures can also fulfil an important function to support gender equality at the national level. However, in each individual case the legal situation has to be carefully clarified and the potential for generalisation needs to be closely examined.

The International Labour Organisation (ILO) provides the option of what it calls «representations» against member states by trade unions and employers' associations, but the question whether promising options also exist for representations concerning women's issues (e.g. right to equal pay) needs to be examined more closely.

**State reports create unique opportunities for assessing the situation throughout the country and in all relevant areas.**

In Switzerland, the responsibilities for promoting gender equality are assigned to different state levels. There are primarily the cantons that are responsible for policy areas of particular relevance to gender equality (e.g. education, social security, public health). The federal government therefore does not have any competency today for a comprehensive gender equality policy that would incorporate the areas of responsibility that belong to the cantons. But this also means that the ability of the federal government to assess the women's situation in Switzerland is limited.

The states reports within the context of the Beijing World Conference on Women and all the more so the combined first and second state report by Switzerland on CEDAW (dated 2001), were the first opportunities for taking stock of gender equality. They showed how difficult it still is to obtain an overview of the gender equality situation in Switzerland, even though the Swiss Federal Statistical Office in particular has made a great deal of progress with the collection and evaluation of data relating to gender equality (e.g. in the areas of employment, equal pay, family situation, education) over the past few years.<sup>16</sup> But unless an overall picture of the situation can be obtained, reform strategies have little chance of success, and there

<sup>16</sup> Cf. comprehensive data in the gender equality atlas, [www.bfs.admin.ch/bfs/portal/de/index/regionen/thematische\\_karten/gleichstellungsatlas.html](http://www.bfs.admin.ch/bfs/portal/de/index/regionen/thematische_karten/gleichstellungsatlas.html)

are insufficient arguments for generating the necessary political will for change. The international dimension, and in particular the country reporting procedure, provide a regular opportunity for obtaining a more detailed overview of the situation throughout the country and beyond the bounds of policy areas. In other words, country reports also serve as benchmarking tools and make it possible to identify and evaluate reforms of relevance to gender equality, as well as the impact of implemented measures.

### **Obligations under international law produce legal arguments for the implementation of gender equality.**

In many areas, Swiss constitutional law corresponds to international legal standards, and at first glance, international provisions do not create any additional rights in Switzerland. However, they are certainly not meaningless: Swiss courts are obliged to interpret Swiss legislation in conformity with international law. Thus international practice relating to international law yields important arguments for the interpretation of applicable Swiss law at all levels when it comes to defending the specific interests of women in court proceedings or administrative processes. All international standards, whether directly applicable or not, are binding directives for drawing up legislation and defining policy: an important argument in favour of once and for all liberating gender equality policy from the aura of sociopolitical luxury.

The gender equality article in the Swiss Federal Constitution is a good example of the potential effects of international argumentation. The Swiss Federal Supreme Court has interpreted gender equality (Article 8, paragraph 3 of the Federal Constitution) as the symmetrical protection of both sexes against unequal treatment. An interpretation of this constitutional provision in conformity with international law (i.e. the provisions of CEDAW and the two international human rights covenants) would however call for an asymmetrical effect of the prohibition of discrimination in Article 8, paragraph 3 of the Swiss Federal Constitution (in favour of women).<sup>17</sup> In view of the international obligations, the practice of the Swiss Federal Supreme Court concerning the admissibility of specific promotional measures in favour of women might fundamentally change: according to the present-day logic of the Swiss Federal Tribunal, quotas are regarded as an interference in the right of the men concerned to be protected against discrimination. By contrast, in accordance with Article 4 of CEDAW men are not covered at all by the prohibition of gender discrimination.

In recent years, international doctrine and practice have interpreted the area of applicability of many human rights from the point of view of women's interests, and triggered discussions on the male preconceptions on which the applicable standards are based. This is also of relevance for Switzerland and could offer new perspectives and argumentation aids for political debate, for example on topics such as violence against women and equal pay.

### **Experiences in other countries can provide new ideas and arguments for gender equality policy in Switzerland.**

As far as gender equality and women's rights are concerned, looking beyond the country's borders is nothing new. However, the notion that Switzerland is a «special case» has also had a considerable influence that is perhaps strengthened by the fact that Switzerland is not part of the European Union and participates to its integrative dynamics only to a limited extent. Experiences in other countries can often be used for gaining a clearer picture of the situation at national level and may point to major factors that can help with the formulation of a successful gender equality strategy. Comparisons with other countries could be done more systematically. All too often the focus is on the positive or negative experiences of specific institutions and remains relatively superficial and anecdotal, or else comparisons with other countries are limited to mere ratings.

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<sup>17</sup> The Federal Tribunal attributes an asymmetrical effect of the general prohibition of discrimination (in favour of a historically disadvantaged group, e.g. an ethnic minority) in Article 8, paragraph 2 of the Swiss Federal Constitution

## 7. Obstacles to the use of the international dimension

To date, the depicted potentials have only been understood to a limited extent in Switzerland. The main obstacles are as follows:

- The interested public is barely informed about Switzerland's obligations under international law and the importance of them in the areas of human rights and gender equality. This is to some extent because of the notion of Switzerland as a «special case» and polemic against «foreign judges».
- International debates on topics of relevance to gender equality appear to be far away and separate from Swiss reality, even though they often touch on the same issues (e.g. violence against women, poverty of women, equal pay, participation in decision-making bodies, gender mainstreaming).
- The preconception that «abstract» human rights have little to do with everyday reality is deep-seated: In this view, preoccupation with human rights would mean lots of paperwork and even hinder real and visible commitment.

## 8. Proposed action lines for gender equality policy

The action lines described below are broad outlines that need to be modified for the various players in the area of Swiss gender equality policy, taking their particular roles and duties into account.

### ***Action line 1***

#### **Strengthen the country reporting system (especially for CEDAW) and systematically use it for taking stock of domestic policy**

The objectives here should be as follows:

- To secure and constantly improve the quality of country reports (especially relating to CEDAW, but also concerning gender-related aspects in reports on the two human rights covenants and ILO conventions) and «shadow reports» by NGOs;
- To participate in the dialogue with the Committee on the Elimination of Discrimination Against Women (presentation of report, questions and answers) and other treaty bodies (above all the Committee on Economic, Social and Cultural Rights);
- To make the conclusions and recommendations of the various treaty bodies available for (critical) debate in the Swiss public.

### ***Action line 2***

#### **Call for the various authorities to assume their responsibility to implement their obligations under international law in the area of gender equality**

The objectives here should be as follows:

- To ensure, support and review on a regular basis the legal and political implementation of the various obligations (legislation, action plans, financing);
- To inform the federal and cantonal authorities (administration, parliaments, courts) about their obligations (and about the interpretation of these obligations by the respective treaty bodies) and to sensitise them to these duties.

### ***Action line 3***

#### **Use international standards, country reports and the recommendations of treaty bodies (especially the Committee on the Elimination of Discrimination Against Women) when defining own priorities and methods**

The objectives here should be as follows:

- To make systematic use of international standards and country reports as references for internal activities, e.g. by referring to the obligations, analyses and declarations of intent of the federal and cantonal authorities contained in the country reports;

- To use the general comments and country-specific recommendations of treaty bodies as references for defining priorities and methods.

#### **Action line 4**

##### **Promote the use of provisions of international law in domestic legislation and the use of international mechanisms**

The objectives here should be as follows:

- To inform authorities that implement the law (e.g. administration, law courts), as well as lawyers, about the importance of international provisions (e.g. relating to the prohibition of discrimination), particularly for the interpretation of Swiss legislation;
- To identify on a systematic basis the potential of international instruments (e.g. individual complaints procedure, complaints to UN treaty bodies and the European Court of Human Rights, representations to the ILO) in certain problem areas;
- To campaign for the ratification of the optional protocol to CEDAW (individual complaints), Protocol no. 12 to the European Convention on Human Rights, and the optional protocol to the International Covenant on Civil and Political Rights (individual complaints), as well as for the withdrawal of the reservation concerning Article 26 of the International Covenant on Civil and Political Rights.

#### **Action line 5**

##### **Foster exchanges with gender equality institutions in other countries, and utilise synergies to a greater extent (e.g. international campaigns and topics)**

The objectives here should be as follows:

- To participate in forums that promote the international networking of important current topics on a continual and regular basis;
- To exchange and process information and experiences with institutions and organisations in other countries relating to current topics in Switzerland (e.g. unequal pay, childcare, trafficking in women) and the implementation of international gender equality standards in national legal systems.

#### **Note on the author**

Erika Schläppi holds a PhD in Law. As a consultant on international human rights and governance she has contributed to, among other things, Switzerland's third report on CEDAW, working on behalf of the Swiss Federal Department of Foreign Affairs (FDFA).

#### **Follow up on this study: Workshop**

The Swiss Federal Commission for Women's Issues intends to use this study as an instrument for promoting the more effective and systematic use of the potential of human rights in activities relating to gender equality. The study and proposed action lines were the subject of a workshop held by the above Commission on 11 September 2007. Approximately 50 gender equality experts from non-governmental organisations, politics, administration and universities discussed the following key issues:

- What potential can be seen in the increased use of the international dimension?
- Which obstacles do we have to overcome?
- What are the conclusions we can draw for Swiss gender equality policy?

A brief evaluation of the workshop was posted on the Commission's web site ([www.comfem.ch](http://www.comfem.ch)) in December 2007.