

Committee on the Elimination of Discrimination against Women (CEDAW)
Human Rights Treaties Division (HRTD)
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson – 52, rue des Pâquis
CH-1201 Geneva (Switzerland)

Zurich, 22nd of March 2022

Alternative Report with regard to the Sixth Periodic Report from Switzerland on the List of Issues and Questions of the International Convention on the Elimination of all Forms of Discrimination against Women (ICEDAW)

To the attention of the Committee on the Elimination of Discrimination against Women (CEDAW)

Dear Madam/Sir

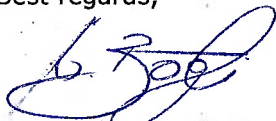
We would hereby like to share with you the alternative report relating to the sixth periodic review from Switzerland on the list of issues and questions of the International Convention on the Elimination of all Forms of Discrimination against Women (ICEDAW).

This alternative report focuses on the issues and questions number 14 and 15 of the List of Issues Prior to Reporting (LoIPR) by the CEDAW which consider Art. 6 trafficking and exploitation of prostitution of the afore mentioned convention. In elaborating on these, we refer strongly to the answers to the LoIPR as provided by the Swiss government.

The shared alternative report has been drafted by **FIZ Advocacy and Support for migrant women and victims of trafficking¹** and **ProcCore²**, the national network advocating the interests of sex workers in Switzerland. It is supported by the Aids Hilfe Schweiz³, Antenna MayDay Ticino⁴, ASTREE⁵, Brava⁶, cfd – die feministische Friedensorganisation⁷, CSP Genève⁸, humanrights.ch⁹, Plateforme Traite, the national platform against human trafficking¹⁰ and Sexuelle Gesundheit Schweiz¹¹.

We are kindly asking you to confirm receipt and thank you for attention.

Best regards,



Naomi Chinasa Bögli
Expertise and Advocacy



Doro Winkler
Member of Executive Board

¹ Cf. FIZ's webpage: www.fiz-info.ch

² Cf. ProcCore's webpage: www.procCore-info.ch

³ Cf. Aids Hilfe Schweiz's webpage: www.aidshilfeschweiz.ch

⁴ Cf. MayDay Ticino's webpage: www.mayday-ti.ch

⁵ Cf. ASTREE's webpage: www.astree.ch

⁶ Cf. Brava's webpage: www.brava-ngo.ch

⁷ Cf. cfd's webpage: www.cfd-ch.ch

⁸ Cf. CSP Genève's webpage: www.csp-genève.ch

⁹ Cf. humanrights.ch's webpage: www.humanrights.ch

¹⁰ Cf. Plateforme Traite's webpage: www.platform-human-trafficking.ch

¹¹ Cf. Sexuelle Gesundheit Schweiz's webpage: www.sexuelle-gesundheit.ch

Attachments:

- **Alternative Report with regard to the Sixth Periodic Report from Switzerland on the List of Issues and questions of the International Convention on the Elimination of all Forms of Discrimination against Women (ICEDAW)**

Alternative Report with regard to the Sixth Periodic Report from Switzerland on the List of Issues and questions of the International Convention on the Elimination of all form of discrimination against women (ICEDAW)

Reactions to the answers of Switzerland regarding the issues and questions 14 and 15 concerning Art. 6 Trafficking and exploitation of prostitution CEDAW

To the attention of:

The Committee on the Elimination of Discrimination against Women


Written by:

FIZ

• Advocacy and support for migrant women and victims of trafficking

ProCoRe

Supported by:

 AIDS-HILFE SCHWEIZ
AIDE SUISSE CONTRE LE SIDA
AIUTO AIDS SVIZZERO

cf d Die feministische
Friedensorganisation

Brava
Anciennement TERRE
DES FEMMES Suisse

CSP
CENTRE SOCIAL PROTESTANT

NGONG
POST BEIJING

 **humanrights.ch**

* **SANTÉ SEXUELLE
SEXUELLE GESUNDHEIT
SALUTE SESSUALE**
SUISSE SCHWEIZ SVIZZERA

ASTRÉE
Association de soutien
aux victimes de traite et d'exploitation


MayDay

Introduction

This alternative report focuses on reactions to the answers of the State of Switzerland regarding the issues and questions 14 and 15 of the LoIPR by CEDAW concerning Art. 6 Trafficking and exploitation of prostitution of the mentioned convention (Paragraph 83-94). It elaborates on eminent issues concerning trafficking in women as well as on the erotic industry in Switzerland for the consideration of the CEDAW members prior to the 83rd session.

This alternative report has been drafted by **FIZ Advocacy and Support for Migrant Women and Victims of Trafficking**¹ and **Procore**², the national network advocating the interests of sex workers in Switzerland. It is supported by the Aids Hilfe Schweiz³, Antenna MayDay Ticino⁴, ASTREE⁵, Brava⁶, cfd – die feministische Friedensorganisation⁷, CSP Genève⁸, humanrights.ch⁹, Plateforme Traite, the national platform against human trafficking¹⁰ and Sexuelle Gesundheit Schweiz¹¹.

FIZ Advocacy and Support for Migrant Women and Victims of Trafficking advocates for and supports migrant women affected by violence and victims of trafficking since over 36 years. The organization runs two support services: One is the Counselling Center for Migrant Women. In this frame FIZ provides advice to more than 700 women per year, mostly victims of violence within relationships, and to female workers (mostly in sex work) who have issues with their working or residence permission. The second service is the specialized Victim Protection Programme for Victims of Human Trafficking. We offer counselling, support services and safe housing for victims of trafficking, mostly women. FIZ also does educational and policy work. This is where the experience we gain from practical work with the recipients of the services becomes visible and effective.

ProCoRe was founded at the end of the 1990s and is a nationwide network representing the interests of sex workers in Switzerland. ProCoRe is committed to improving the living and working conditions of sex workers in Switzerland. At the same time, ProCoRe fights exploitation, human trafficking and stigmatisation in sex work. The association is politically and denominationally neutral and today consists of 27 member organisations and individuals from all language regions of Switzerland. The member organisations of ProCoRe work with sex workers on a daily basis and have decades of experience in counselling and outreach work. They inform, support, advise and accompany sex workers on social, legal, psychological and medical issues. In parallel to supporting the grassroots work of its members, ProCoRe sensitises the public and representatives of the authorities to the problems and concerns of sex workers. In addition, it actively campaigns for the concerns and rights of sex workers at the political level.

Our assessment is based on years of experience and practical knowledge acquired through our work in Switzerland.

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

We would like to express our gratitude for the opportunity to comment on the issue of trafficking in women and sex work by submitting our alternative report on the sixth Report from Switzerland on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Art. 6 (CEDAW), the attention of CEDAW's reviewing of Switzerland during its 83rd session (10 Oct 2022 – 28 Oct 2022).

¹ Cf. FIZ's webpage: www.fiz-info.ch

² Cf. Procore's webpage: www.procore-info.ch

³ Cf. Aids Hilfe Schweiz's webpage: www.aidshilfeschweiz.ch

⁴ Cf. MayDay Ticino's webpage: www.mayday-ti.ch

⁵ Cf. ASTREE's webpage: www.astree.ch

⁶ Cf. Brava's webpage: www.brava-ngo.ch

⁷ Cf. cfd's webpage: www.cfd-ch.ch

⁸ Cf. CSP Genève's webpage: www.csp-geneve.ch

⁹ Cf. humanrights.ch's webpage: www.humanrights.ch

¹⁰ Cf. Plateforme Traite's webpage: www.plattform-human-trafficking.ch

¹¹ Cf. Sexuelle Gesundheit Schweiz's webpage: www.sexuelle-gesundheit.ch

In the order of the questions of CEDAW (14 and 15) and answers in the State Report (paragraphs):

National Action Plan 2017-2020 and its follow-up

Para 83: *Informations on the measures taken to assess the impact of the national action plan against trafficking in persons for the period 2017–2020 and to adopt a new plan integrating a gender perspective.*

Evaluation of the National Action Plan (2017-2020) shows negligent implementation in terms of victim protection and access to specialized support for VOT

The 2nd National Action Plan against Human Trafficking (2017-2020) was evaluated in 2021.¹² The evaluation was led by fedpol, with FIZ, IOM Bern and the Federal Department of Foreign Affairs (FDFA, Peace and Human Rights Division) and the Swiss Forum for Migration and Population Studies (SFM) also involved in the process.

Key findings from the evaluation: Among the officially unachieved goals from the 2nd NAP are actions that are particularly central to ensuring good victim identification, protection and access to support. These include: The development/conceptualisation of a national victim protection programme (which should eliminate the cantonal inequalities and different degrees of specialisation and knowledge existing in the cantons with regard to victim identification and support), the adaptation of nation-wide statistics on human trafficking in order to finally have figures available, and actions to develop a training concept to raise awareness among professionals on the phenomenon of human trafficking. Other actions that are considered fulfilled according to the evaluation report have not yet been completed or it is currently open whether the announced completions will actually be made. These include, for example, a study on child trafficking in Switzerland and a comparative study on cantonal efforts to combat human trafficking.

The action regarding the improvement of the situation of trafficked persons in the asylum sector has been completed and a [final product](#) is available. However, important recommendations of the working group regarding victim protection and access to specialised accommodation and care were ultimately rejected by the implementing authority, the SEM, in a [management response](#). In this respect, this important action has completely failed to achieve its actual goal of improving access to victim protection in the asylum procedure (see also further explanations under para. 89).

New National Action Plan – much is still undecided

We welcome the fact that, according to the Federal Council, there will be a third National Action Plan. However, it is still unclear when this will be tackled and which actors will be involved in the drafting process and to what extent. In addition, the thematic priorities have so far only been described very roughly (human trafficking for the purpose of labour exploitation, criminal prosecution, victim support, cybercrime). It is not clear whether and to what extent the gender issue is included in the fight against human trafficking. We notice, however, a worrying trend towards the discourse of (inner) security and terrorism rather than towards a discourse of human rights on the federal level. This is also reflected in the fact that the third Action Plan shall be incorporated in the Swiss Security Network. How exactly the "situation analysis" mentioned by the Confederation in its responses to the questions and concerns of the CEDAW will take shape and when it will take place is not yet clear.

Demands:

- Conduct a transparent, seamless transition to the development of the third National Action Plan against Human Trafficking.

¹² Cf. the evaluation of the 2nd National Action Plan (2017-2020) against trafficking in human beings, Link: <https://www.fedpol.admin.ch/dam/fedpol/de/data/kriminalitaet/menschenhandel/nap-evaluation/ber-nap-evaluation-2017-2020-d.pdf> [Status: 15.12.2021]

- Involve grassroots organisations (such as FIZ, ASTREE, CSP Genève, Antenna MayDay Ticino etc.) that provide victim-centred and human-rights-based support, counselling and safe shelter to victims of trafficking.
- Focus on fostering victim identification, access to support and protection.
- Guarantee a gender-sensitive approach to the goals and measures of the third National Action Plan. Include the gender-dimension in human trafficking, especially also when putting an emphasis on labour exploitation.
- Provide sufficient financial resources both for participation in working groups and for the implementation of the actions.

Statistics

Para 84-86: statistical data disaggregated by nationality on: (a) the number of women and girls in the State party who are victims of trafficking, the number of investigations, prosecutions and convictions in cases of trafficking, the sentences imposed on perpetrators and redress provided to victims

Incomplete federal statistics on human trafficking

FIZ assisted a total of 303 trafficking cases in 2020 (255 cases in 2019).¹³ At around 88 percent, the majority are women (trans people: 7%; men: 5%). Most identified trafficked persons were from Romania, Hungary, Thailand, Nigeria, Ethiopia and Bulgaria. In total, victims were identified from over 60 different countries. In 2020, about 70–80 percent of the identified victims supported by FIZ cooperated with the authorities. Of these, the majority chose to press charges against the perpetrators. Despite this remarkably high rate of willingness to take action against the perpetrators, there have been only a few sentences in connection with human trafficking in recent years. There are various reasons for this: Many cases are dropped by the public prosecutor's office because of insufficient findings, too few resources, lack of awareness about the crime of human trafficking. Often the proceedings focus on other criminal offences that are less time-consuming or simpler to investigate. The criminal proceedings often take several years, are highly stressful for the victims, and the risk of retraumatisation is great during the questioning and proceedings. And in the end, the sentence for perpetrators is usually extremely low (a few years), despite months or years of exploitation. In 2019, a perpetrator was sentenced to 10.5 years in prison (unconditional) and found guilty of human trafficking in 75 cases.¹⁴ This was a major exception in the level of sentencing. However, in view of the number of victims of trafficking (VOT), this sentence is also shockingly moderate. In addition, victims, most of whom are severely traumatised, receive only very small amounts of compensation – if at all.

The following statistics show that, in general, only very few convictions are handed down in Switzerland each year for human trafficking (Art. 182 Swiss Criminal Code):

Year	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Trafficking in human beings (Art. 182 StGB)	11	6	10	13	13	15	19	11	6	4	7	...

Reference: Strafurteilsstatistik SUS 2019

Especially the number of convictions for human trafficking for the purpose of labour exploitation is particularly small: between 2008 and 2018, there were only 10 convictions. In many trials, the final conviction is for usury (Art. 157 Swiss Criminal Code) instead of human trafficking. Usury is a pure offence against property ("Vermögensdelikt") where there is no direct entitlement to victim protection and assistance, and residence permit. Therefore, in such cases VOTs do not have access to victim services and rights and only in

¹³ Cf. Statistics in FIZ Annual Report 2020, Link: https://www.fiz-info.ch/images/content/Downloads_DE/Publikationen/Jahresberichte/2020FIZ_Jahresbericht_Digital.pdf [Status: 15.12.2021]

¹⁴ C.f. Decision of the High Court of the Canton Bern from 6th of march 2020 SK 19 57 and media articles such as https://www.swissinfo.ch/eng/court_thai-madame-sentenced-for-human-trafficking/44250046 or <https://www.srf.ch/news/regional/bern-freiburg-wallis/bernisches-obergericht-wende-im-groessten-menschenhandel-prozess-der-schweiz> [Status: 15.12.2021]

a few cases they can experience that a kind of "justice" is done in the trial against their perpetrator.

In addition, Switzerland's legal framework does not define and criminalize in line with international conventions and protocols relevant to combatting human trafficking: The Swiss trafficking in Persons Act (Art. 182 Swiss Criminal Code) explicitly mentions offences in four different roles as well as the object of crime/attack, the human being. However, in contrast to the international definition of human trafficking (Art. 3 lit a Palermo Protocol), the means of committing the offence ("Tatmittel") are not specified. The principle of the irrelevance of the victim's consent ("Einwilligung") to exploitation in the case of the use of an instrumentality is also not mentioned in the Swiss trafficking in Persons Act (cf. Art. 3 lit. b Palermo Protocol and Art. 4 lit. b Council of Europe Convention). At least, the Federal Supreme Court explicitly refers to the formulation of the international definition of trafficking in human beings in its case law (cf. e.g. BGer 6B_469/2014).

No comprehensive, consistent picture of state statistics on the situation regarding human trafficking (number of victims, country of origin, prosecution, etc.)

Comparing the statistics reported in the State Report regarding human trafficking in paragraphs 84 to 86 (and 87) and the statistics listed by FIZ alone in the same year, it is evident that the figures are divergent. In addition, there are the figures of other victim protection organisations, which are probably not fully recorded either. The members of the Swiss Platform against Human Trafficking therefore made an effort to jointly offer more reliable nation-wide figures (see [figures in the press release](#)).

It can be assumed that by far not all identified victims of human trafficking are recorded by the federal and cantonal statistics offices. Their statistics concerning human trafficking are accordingly questionable.

Demands:

- Statistics concerning the numbers and characteristics of victims from protection organisations must be taken seriously and systematically included in the official national statistics on human trafficking.
- Raise awareness through further training for law enforcement professionals on the issue of human trafficking, focussing on the mechanisms and factors that support successful prosecution, such as specialised victim protection for trafficked persons (psycho-social counselling, accompaniment and safe accommodation).
- Raise awareness to get more verdicts related to trafficking in human beings and appropriate sentences for perpetrators
- The Swiss Confederation and the cantons should make more resources available for prosecution in order to take appropriate account of complex investigations, as in the case of human trafficking.
- Revision of the article on human trafficking in the Swiss Penal Code (Art. 182) in order to comply with international requirements (written in obligations and recommendations) and with the actual phenomenon of human trafficking.

Asylum-seeking VOT (statistics, residence permit, identification of VOT)

Para. 87: *Number of victims of human trafficking receiving asylum or a temporary residency*

Very small number of asylum or other residence permits for VOTs

As the delivered numbers suggest, very few VOTs receive asylum in Switzerland. Those receiving a temporary residency permit do so only because of medical or psychological conditions which interfere with a return to the country of origin. Switzerland does not apply the [UNHCR guidelines for international protection](#) for VOTs and is much stricter. A vivid illustration is the [case](#), in which the Federal Administrative Court (FAC) denies the belonging to a specific social group and thus the grounds for asylum in a case of a Nigerian woman. Even though the element of the belonging to a social group is the core of the complaint, the FAC does not elaborate on it nor considers it in its argumentation. This shows a lack of the consideration of the gender dimension of VOTs in Nigeria as a social group. In general, it is very difficult to receive asylum status in Switzerland based on

gender-based persecution. There are several appeals pending at the CEDAW with exactly this topic.

No access to a regular asylum procedure and Dublin-returns back to the place of exploitation

Another central issue is the fact that 80-90% of potential VOTs in the asylum system are denied access to the procedure within the Swiss asylum system in the first instance due to the Dublin regulation. Switzerland applies the Dublin regulation extremely strictly, even in cases of VOTs who have been exploited in the corresponding Dublin country and are at a severe risk of being re-trafficked there. It is only after a complaint at the FAC and the reference to the legal guarantees of VOTs that their case is being allowed to enter the regular Swiss asylum system. However, there are currently again transfers back to Italy and Greece (backed up by the FAC), even though it is well known that the reception conditions in those countries in no way comply with the minimal standards for VOTs as foreseen in Art.12 by the European Convention against Human Trafficking (e.g. Explanatory Report). This is especially troubling considering the fact that the Swiss authorities and the court do not consider the special needs of women and children in this situation. This is underlined in a recent Federal Administrative Court decision in which a woman who has been victim of sexualised violence in Greece after having received protection status from Greece authorities. The Court states drily: "The fact that the complainant has been the victim of a sexual assault in Greece in the past makes her appear to be vulnerable, but cannot lead to the inadmissibility of the transfer to Greece, considering the concrete circumstances. Unfortunately, no state is able to protect its inhabitants from criminal activities at all times and in all places. Greece is then a constitutional state with a functioning police and judicial system."¹⁵ This is even more absurd when considering the fact that in Germany, for example, not even healthy young men are sent back to Greece due to the lack of housing, access to the job market and the social welfare system.¹⁶

Para. 88: Identification of VOTs in the asylum sector

Lack of training and inadequate accommodation settings for asylum seeking VOT

It is not clear when and by whom the mentioned trainings to the staff of the State Secretariat for Migration (SEM) are currently conducted. It is only known that the «Schulungskonzept» (Education/training concept) which was formulated as a measure following the [report of the Federal Council regarding the situation of women and girls refugees in Switzerland](#) in 2019 is still not elaborated. The same applies to the elaboration of the concept for the accommodation of vulnerable persons in the asylum structures. Its lack has severe negative impact on the treatment of potential VOTs in the accommodation and support structures of the federal asylum centres.

Retraumatizing auditions and no facilitation of access to specialized victim support

Concerning the special audition for potential VOTs it must be said that this audition can be very re-traumatizing since at the moment of the audition, there is no access to support or counselling regarding human trafficking beforehand. The audition aims at receiving information for the federal/cantonal police and not at gaining an insight into the personal situation and needs of the potential victim. It is against the idea of a recovery and reflection period to issue these 30 days only after this in-depth, potentially re-traumatizing interview, whereas the very purpose of a recovery and reflection period consists in the stabilization which is needed in order to endure such a hearing. Furthermore, it is insufficient that access to a specialised victim organization is given only after the in-depth audition. Also, the information concerning such organization is only given in form of a flyer with telephone numbers rather than enabling a direct contact to a specialized victim protection organisation. In case the trafficking and exploitation has occurred during the migration route or in another Dublin country, the access to a specialized victim support organisation is not financed and thus not encouraged (see para. 92).

Inadequate accommodation conditions for VOTs (and other traumatised refugees)

¹⁵ Decision of the Federal Administrative Court D-3873/2021 from September 3rd, 2021.

¹⁶ See decision of the chamber in Bremen No. AZ 1LB 371/21.

The accommodation conditions in the federal reception centres remain absolutely inadequate for VOTs. Even though concerns have been raised via interpellations from politicians or a letter to the SEM by the legal representatives in the asylum system in collaboration with the [Swiss Platform Against Human Trafficking Plateforme Traite](#), the SEM refuses to allow the accommodation of VOTs outside the federal reception centres. The SEM keeps referring to the elaboration and implementation of the concept for the accommodation for vulnerable asylum seekers which is promised since 2019 and still not in place.

Para. 89: Working group on VOTs in the asylum sector base on the National Action Plan to combat Human Trafficking, no. 19

No amelioration of the situation of VOTs in the asylum sector despite the NAP

Even though the recommendations of the working group have been finalised in May 2021 and may have led to an improvement of the internal efficiency regarding the asylum process of VOTs at the SEM, the final product does not ameliorate the situation of the VOTs themselves (see also para. 88 and 83). There are some severe divergences between some members of the working group (see also [the media release](#) by the involved NGOs) and the SEM who have also been part of the working group ([media release](#) by SEM). The critique of the NGOs addresses especially access to specialised counselling, treatment of potentially minor VOTs and accommodation at the Federal reception centres.

Demands:

- No Dublin-transfers of VOTs to countries where the exploitation took place, the protection is not guaranteed or the risk of re-trafficking is given.
- Proactive facilitation of access to specialized victim organizations by the migration authorities of SEM as well as the financing of these services irrelevant of the place of exploitation
- Application of the UNHCR international protection guidelines for VOTs.
- Consideration of the gender specific persecution.
- Quick finalization and application of educational training for professionals as well as the accommodation concept for vulnerable persons in the asylum system in cooperation with specialized civil society organizations.

Measures to protect and support sex workers

Para. 90: protect women in prostitution from trafficking and exploitation, in particular migrant women, and provide exit programmes, alternative income-generating opportunities and support services for women who wish to leave prostitution (para. 29 (f))

Multiple discrimination of sex workers

While it is very important to differentiate between human trafficking for the purpose of sexual exploitation and sex work (as mentioned in the introduction of this paper), most sex workers in Switzerland face multiple discrimination: As women*, as migrants and as workers in a precarious, stigmatized profession. Due to fear of rejection and experiences of discrimination, many keep their work a secret even from their closest relatives. This double life is described as very stressful and can make people ill.

Increased regulation of the sex industry in cantons

We welcome the repeated clear refusal of the Swiss Federal Council to ban prostitution and to criminalize clients. This confirms that sex work in Switzerland is a legal work. 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.¹⁷ Sex work is work, the motivation for it usually is economic. But sex work is precarious work in Switzerland. In many cantons of Switzerland sex work is over-regulated,

¹⁷ A study by the ZHAW and an expert report by ProCoRe found that during the first COVID 19 lockdown in Switzerland and the ban on sex work at that time, the situation of sex workers became much more precarious. Cf. ZHAW study here: https://digitalcollection.zhaw.ch/bitstream/11475/23652/3/2021_ZHAW_Schlussbericht-Sexwork-und-Corona.pdf [Status: 27.12.2021] and ProCoRe expert report here: https://procore-info.ch/wp-content/uploads/2021/06/ProCoRe_Expertinnenbericht_Covid19_Sexarbeit-1.pdf [Status: 27.12.2021]

involving high bureaucratic hurdles and high costs in order to be able to work legally. The increased regulation of the sex industry in these cantons is creating more repression towards sex workers and less trust towards the police. Due to the power imbalance between sex workers and clients as well as salon/brothel operators, but also because of the social stigma and the lack of trust towards the police, sex workers are vulnerable to exploitation and violence. Furthermore, many cantonal authorities focus on controls with the focus of immigration law instead of improvements in working conditions, therefore (labour law) protection in sex work is low. Sex workers often fall through all the cracks of the government support network and their access to health care is difficult. Low-threshold counselling and support services provided by non-governmental organisations are essential and close this gap. The 27 member-organizations of ProCoRe have been working with sex workers at grassroots level for up to 40 years and provide important support on a daily basis in all regions of Switzerland. In parallel, to supporting the grassroots work of its members, ProCoRe campaigns at the national level for the destigmatization of sex workers and for their rights and protection. We sensitise the public, representatives of the authorities and politicians to the problems and concerns of sex workers.

Financial support by the national government to prevent sex workers from exploitation and violence

It is therefore of great value that on January 1st 2016 the Ordinance on Measures to Prevent Offences in Connection with Prostitution (SR 311.039.489) entered into force. Based on this ordinance, fedpol has financially supported ProCoRe and some of its member organizations in our efforts to protect sex workers from exploitation and violence.

The best protection measure: legal migration and working opportunities

Sex work in Switzerland is often precarious work, sex workers face social stigmatization and are vulnerable to exploitation and violence. Providing alternative income-generating opportunities is therefore important. However, the prerequisites for this are legal migration and working opportunities, since according to estimates by NGOs, up to 90% of sex workers in Switzerland are migrants. Rather than focusing on exit programs, which are undoubtedly important for those who want to and are able to leave sex work, government should focus on improving sex workers' working conditions by acknowledging their work as a profession, providing access to support, health care, and justice in all cantons of Switzerland. We therefore very much welcome the court ruling that enables sex workers to sue clients and employers for unpaid wages in court (decision of the federal court 6B_572/2020). It is an important step in the right direction and has a signalling effect. Sex workers previously had the obligation to pay taxes and obtain permits to legally work in the sex industry, but they did not have the right to sue for lost wages. This grievance has been lifted, a long overdue step that reflects the change of mindset in society (acceptance of sex work as work). Even if the hurdles for a lawsuit for sex workers are high and therefore there will not be countless proceedings, this legal improvement means a strengthening of the negotiating position of sex workers vis-à-vis their clients and salon/brothel operators.

It is indisputable that the best way to protect sex workers against exploitation and violence is to grant and strengthen their rights.

Demands:

- Improve sex workers' working conditions by acknowledging their work as a profession, demand that the cantonal authorities focus their controls on working conditions of sex workers instead of their immigration status.
- Provide access to support, health care, and justice for sex workers in all cantons of Switzerland.
- 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.
- Provide legal labour migration opportunities for women working in the low-wage sector.

Accessibility to victim protection services for VOT, identification of VOT and residence permits

Para. 92: *Effective access to protection and specialized, gender-sensitive support and assistance to victims of trafficking*

The State Report to CEDAW states, that it does not matter whether a VOT in Switzerland has a legal residence status or not (cf. para. 92). This is a gross simplification. It depends on the procedure (e.g. asylum) and the level of knowledge of the authorities regarding human trafficking whether a person is (and should be) recognised as a victim or not. Residence issues often take precedence over possible signs of a situation of coercion and violence. It also depends on the residence title, e.g. how a person who is present and working irregularly in Switzerland is dealt with. Also then, the question of whether they are in a situation of coercion and violence is rarely in focus. This lack of sensitivity to human trafficking and exploitation leads to unequal treatment. Likewise, this unequal treatment is not least also a political prioritisation and position, e.g. demonstrated in the different practices and priorities of the cantons.

This is why the National Victim Protection Programme mentioned above (see page 2f.) would have been so important to pursue, so that the differences between the cantons can be reduced or even eliminated. In the present situation it is decisive for the authorities whether a victim is willing to testify against the perpetrators and cooperate with the authorities or not. Only cooperating persons are granted a short-term residence permit.

Recovery and reflexion period without binding standards

There are still no binding standards on how to organize the recovery and reflection period in a victim-centred way, e.g. which services the victims are entitled to receive during this period (counselling, trauma therapy, etc.) and which accommodation is adequate. The recovery and reflection period does not consist of a mere residence permit but must include victim protection measures. For the obstacles and issues regarding the recovery and reflexion period for VOTs in the asylum procedure, see reactions on para. 88.

Access to residence permit dependent on the willingness or ability to cooperate with authorities

A renewable residence permit can be given in exchange for a victim's collaboration, but also if their stay is necessary owing to their personal situation. In Switzerland, the only possibility for renewal is the application for a residence permit in a case of personal hardship, a kind of humanitarian visa. This process, which is left to the discretion of the cantonal migration authority, is very long and extensive and is in contradiction with the need for stability. Therefore, contrary to the assertion in the State Report under para. 92, it actually does matter whether criminal charges were filed or in what form criminal proceedings were initiated and conducted. Further, it has to be noted that all these provisions remain non-binding for execution in the cantons and are formulated as possibilities rather than as clear obligations for adhering to article 14 CoE Convention against Human Trafficking.

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

No access to victim aid in case of exploitation abroad

As already mentioned above, victims of trafficking (in women) whose exploitation took place outside of Switzerland, most of them being in the asylum system, do still not have access to victim support under the Victims Assistance Act (VAA) at all. The crucial point is that it depends on the place where the trafficking and exploitation took place (see para. 88). Therefore the statement in the State Report on free counselling by victim counselling centres for *all* victims (cf. para. 92) is not given in the case of a victim who was exploited

in Italy or Greece, for example. The majority of VOTs in the asylum sector has been exploited abroad, mostly during their flight, and has thus no access to victim aid in Switzerland even though this is foreseen by multiple internationally binding conventions (such as the Istanbul Convention, Convention to combat human trafficking).

Currently it is possible for victims who have been identified by FIZ, to receive specialized assistance (psycho-social support, provision of translators in respective language accompaniment etc.) financed by private donors (e.g. FIZ project for VOT in human beings within the asylum system). This situation is a kind of discrimination and contradicts the requirements of international law for Switzerland.

Services for minor victims of human trafficking are insufficient

Specific assistance for child victims of trafficking are not formally established in Switzerland and their support remains challenging due to the lack of clear responsibilities. What is more, there are no specific shelters or assistance services for children. Within the framework of the NAP against human trafficking (2017-2020), a study on the situation of child trafficking in Switzerland (Action No. 24) was commissioned, but has not yet been published, and it remains unclear when this will happen, and if the study will be finished at all.

In 2021, Kinderschutz Schweiz¹⁸ published a [revised manual on child trafficking](#). Although this provides an important basis for practitioners, the gaps and challenges mentioned above remain.

Demands:

- Victim protection must be granted - in accordance with the fundamental right of legal equality and international law - regardless of the place of the crime and the asylum procedure.
- Close the gap in the Swiss Victim Aid Act for victims who have been exploited abroad.
- Access to permanent residence permits for victims of trafficking – independent on their willingness or ability to cooperate with state authorities.
- Ensure that support, assistance and residence permits are granted in all cantons, without differences or discrimination, to enable victims of THB to make use of protective and rehabilitation measures, irrespective of their willingness to cooperate.
- Ensure nationwide binding standards to allow victims to stay in the country if necessary due to their personal situation.
- Assure the identification and specialized support for child victims of trafficking in human beings or at risk of trafficking.

Para. 93-94: *Provision of support services to women and girls who are VOT in all cantons of the State party. Cantonal disparities in the identification of trafficking victims and their referral to appropriate services and in granting temporary residence permits irrespective of victims' willingness or ability to cooperate with the prosecution authorities.*

Cantonal disparities in support service and financing specialized victim protection remain

Cantonal disparities in relation to identification, granting of residence permits, protection and/or adequate assistance are still persistent. The COMPETO process, mentioned in the State Report under para. 93, is a step in an important and good direction (harmonisation of processes among the cantons, granting of residence permits, etc.). Nevertheless, its scope is limited since it is not implemented as consequently in every canton, while also the action of the Second National Action Plan against Trafficking concerning the National Protection Program for VOTs has not been fulfilled (cf. answers to para. 83). While in some cantons VOTs are detected, there are others where the number of victims is zero or close to zero. The decisive factor for these different statistics is the knowledge and awareness of the cantonal and communal law enforcement authorities (especially the police) as well as the financial resources that the cantons dedicate to the fight against human trafficking. In

¹⁸ Cf. Kinderschutz Schweiz's webpage: <https://www.kinderschutz.ch/>

those cantons with sensitized professionals (especially police), the general number of victims who find their way to the specialised victim protection units has risen sharply in recent years. It remains a political decision whether victims in a certain region/canton have access to their rights and protection or not.

Understanding identification as a process

It is crucial that the identification of victims of human trafficking is understood as a process, especially by the first responders (professionals and people who come into contact with a potential victim of human trafficking and ultimately report the suspicion to victim protection organizations). For example, it is important that police officers do not primarily look at the residence status and work permit during a routine check and take the next - often repressive - steps accordingly (e.g. deportation to Dublin-Country, place of exploitation), but first ask about the work condition and life circumstances of the person being controlled. Accordingly, Switzerland's very restrictive migration policy is also strongly noticeable during controls, whereby particularly vulnerable persons (e.g. women who work in low-wage and informal sectors due to low educational opportunities, do not speak the local language and are at greater risk of being exploited) who find themselves in a situation of coercion and exploitation must fear not to be recognized as victims. Identification often requires specialised knowledge about human trafficking, a safe environment for the potential victim and information about their rights - elements which are often not necessarily given in Switzerland's or Cantons' practice. It requires victim-centred and standardised procedures.

Rare identification of victims of trafficking for the purpose of labour exploitation and only a few verdicts on this crime

Identification of cases of trafficking for the purpose of labour exploitation is still rare. In order to ensure a consistent human rights approach, the process must go beyond a preliminary identification of labour exploitation by opening the perspective for potential cases of VOT. Especially in feminised sectors (care, private households, etc.) much action is still needed. This is because these sectors are particularly poorly regulated and difficult to access for inspections, which makes it difficult to detect VOT and requires awareness-raising.

It must include the cooperation with specialized civil society organizations as well as follow-up scenarios for victims so that they can benefit from the rights and assistance foreseen by the CoE Convention Against Human Trafficking and Swiss law respectively. The restrictive Swiss migration regime inhibits VOT from coming forward and disclosing their situation, making them even more prone to coercion and exploitation. Indeed, often it is the victims themselves who receive fines for working illegally in Switzerland and must leave the country.

In addition, the lack of a common definition of what constitutes THB for the purpose of labour exploitation does not only inhibit identification, but also complicates criminal prosecution (cf. reactions to para. 84-86, p. 3). Even though Switzerland has included trafficking in human beings for the purpose of labour exploitation in the Swiss Criminal Code (SCC) in 2006, condemnations are still rare and some forms of it, such as trafficking for the purpose of illegal activities, are often not even considered by the authorities (lack in applying the non punishment principle regarding CoE Convention on Action against Trafficking in Art. 26). GRETA (the Council of Europe Groupe of Experts on the Action against Trafficking in Human Beings) considers that stating explicitly in the definition of THB, as contained in the criminal code, the notions of forced labour or services, slavery, practices similar to slavery, and servitude as types of exploitation could improve the implementation of this provision.

Indeed, it is very difficult to prove the offence of THB for the purpose of labour exploitation. In cases where the offence is acknowledged to go beyond labour exploitation, but not amounting to THB for labour exploitation, it fell under article 157 Swiss Criminal Code that penalizes offences against property/profitteering (usury). Yet, this offence does not imply access to victim support services. Thus, recent discussions have raised the question whether an additional article in the Swiss Criminal Code (SCC) is needed in order to counterbalance the vagueness of the current wording of the penalization of THB for the purpose of labour exploitation (Art. 182 SCC).

Demands:

- Ensure adequate access to needs-oriented protective and rehabilitation measures and services in all cantons.
- Guarantee the detection, protection and assistance of victims in the cantons where no specialized service exists.
- Enhance identification and ensure support and protection of victims of trafficking for the purpose of labour exploitation, focussing on women in private and informal sectors (care work).
- Strengthen safe and legal migration, especially for migrant women, and with this prevent and combat THB for the purpose of labour exploitation.
- Provide and/or intensify trainings on human trafficking, and in particular on vulnerable groups of people (e.g. female migrant workers in the informal working sector) throughout Switzerland for professionals who come into contact with potential VOT, with the involvement of specialised victim protection organizations.
- Provide training on the non-punishment rule for law enforcement agencies, especially also for public prosecutors. The scheme is to be seen as a form of victim protection; there must be a definitive exemption from punishment in case of coercion or exploitation (regarding the migration and work permission as well as criminal activities exercised by victims).
- Improve article 182 SCC implementation and ensure access to special rights and specialized victim protection services to all (potential) victims of THB, including victims of THB for the purpose of forced labour.
- Prevent and combat other exploitative practices assimilated to trafficking.