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Economic, social and cultural rights and the internet

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SWITZERLAND

HOW IMPORTANT IS THE ESCR COVENANT TO SWITZERLAND?



KEYWORDS: **ESCRs, far-right**

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A state of ambivalence

Switzerland is usually seen as an affluent and stable country. It hosts one of the major seats at the United Nations (the UN Office at Geneva, UNOG) and is the home of various UN conventions (Geneva Conventions I-IV) and depositary state for 79 international treaties – including the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹ Nevertheless, the country and its people have always had a distant and rather ambivalent attitude towards the UN and its organisations.

There are two exceptions. In 1994, the Swiss government intended to join the International Convention on the Elimination of All Forms of Racial Discrimination by introducing an article (Art. 261 bis) into its penal code, but it was challenged and contested by a referendum launched by right-wing circles. After heated debates all over the country, this referendum was dismissed by a tight majority of voters (54.6%) in September 1994.² Switzerland finally only joined the UN itself in September 2002³ after years of long and fierce debates. A long-lasting obstacle was the country's ethos of neutrality – a pillar of Swiss identity. After several attempts, the last people's initiative in this respect (*Volksinitiative*) was adopted by 54.6% of the voters in March 2002 in favour of joining the UN.⁴

Given this, it is not surprising that Switzerland was a latecomer when it joined the ICESCR in 1992 – a move that did not meet any public resistance, which is more the norm when it comes to the UN system of international treaties and obligations. Because of this disinterest, it is difficult to find any references about the ESCR covenant on official

websites for federal offices and NGOs or in the national media. There is hardly any public discourse on the ESCR covenant and its rights framework in the country.

Political, economic and policy context

Generally speaking, Switzerland is strong in terms of cultural rights. This can be seen in its multilingual and multicultural background, which includes several national and cultural minorities, and the provision of various rights-related benefits to these groups. This is part of the country's long-lasting national cultural coherence, another cornerstone of Swiss identity and pride. However, when it comes to economic and social rights, the picture looks more diverse, conflicting and controversial. Compared to neighbouring countries (Austria, Germany, France or Italy), union rights are low, with unions having marginal power compared to big enterprises and the notorious financial sector, which are always in a “pole position” – including having a major influence among bourgeois parties in the national parliament and enjoying broader public consent. While there are plenty of economic resources to achieve ESCRs in Switzerland, considered one of the richest countries in the world, observers and critics note a considerable lack of political will from its institutions to implement ESCRs – despite several areas of weakness, including the wealth gap, the rights of migrants and immigrants, discrimination against women, and public health insurance.

ESCRs: A kind of non-issue

When Switzerland ratified the ICESCR in 1992, the government and its offices in charge of implementing it found themselves in a dilemma again. Adopting international standards and laws (external affairs) is a first step only; complying with related obligations and commitments (the domestic level) becomes a major challenge afterwards. And nothing can be taken for granted in a complex country with a sophisticated political system (direct democracy with various instruments of recourse) supported by a traditionally minded and fairly conservative public. When Switzerland had to appear before the UN Committee on ESCRs in 2010 to provide an account of its efforts on the implementation of the covenant,

1 <https://www.eda.admin.ch/eda/en/home/foreign-policy/international-law/internationale-vertraege/depositary.html>

2 <https://de.wikipedia.org/wiki/Rassismus-Strafnorm>

3 Prior to this, Switzerland could sign conventions as a depositary state.

4 SWI. (2008, 14 February). Schweiz-UNO: späte Ehe. *swissinfo.ch*. www.swissinfo.ch/ger/schweiz-uno--spaete-ehe/5866536

it was the second and third country report since ratifying the covenant in 1992.⁵ Official reports submitted by governments are usually known to be apologetic or reflecting the governmental point of view only.

Social rights are of too little importance

One would assume that Switzerland, as one of the richest countries in the world and with a well-developed social system, does not have to fear too much criticism. But even before the first country report, the Committee on ESCRs voiced its worries about the distribution of wealth and prosperity in Switzerland. Another important issue was discrimination against women (e.g. with regard to salaries and promotion) or the very high costs of the health insurance system. Further criticism mentioned the fact that there is a lack of data in many fields.

In its concluding observations in November 2010, the UN committee welcomed some “positive aspects” such as the ratification of Optional Protocols and International Labour Organization (ILO) conventions, besides Federal Acts on vocational training, social security law and family allowances. However, the report states:

The Committee regrets the State party’s persistent position that most of the provisions of the Covenant merely constitute programmatic objectives and social goals rather than legal obligations. Consequently, some of those provisions cannot be given effect in the domestic legal order of the State party and cannot be directly invoked before domestic tribunals and courts of the State party.

The committee recommended that Switzerland:

(...) take steps to agree upon a comprehensive legislation giving effect to all economic, social and cultural rights uniformly between the Federal Government and the cantons; establish an effective mechanism to ensure the compatibility of domestic law with the Covenant; and, guarantee effective judicial remedies for the violations of the rights enshrined in the Covenant.⁶

NGO shadow report

A broad-based coalition of Swiss NGOs, headed by Humanrights.ch, forwarded an assessment on the implementation of social rights in Switzerland – a so-called shadow report – to the Committee in November 2010.⁷ The *Coalition suisse romande sur le droits économiques, sociaux et culturels* (Swiss Francophone coalition on economic, social and cultural rights) also submitted a report for the attention of the committee.⁸

The coalition, which included Swiss human rights and relief organisations, as well as trade unions, complained that:

There exist various problems and shortcomings within the [Swiss] system. [The government claims], in particular, that social rights are only of minor importance because, in comparison with classic fundamental rights, they are not included in the Swiss Federal Constitution as rights but as programmatic provisions only. Therefore, they are only enforceable to a very limited degree (see Art. 41 of Federal Constitution).

The coalition also expressed concern about the “grave shortcomings in the implementation of the economic, social and cultural rights of foreign persons and minorities.”⁹ For example, Switzerland has neither signed nor ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW).¹⁰

Switzerland’s next periodic country report to the committee was due in June 2015, but, a year later, it has not been submitted. Such a delay somehow shows that ESCRs and their implementation in the country are not figuring among the government’s priorities. “Haste makes waste” is a common saying in the country, but sometimes this can feel like an excuse. While the government delays, numerous issues persist, such as women’s rights in the

5 Economic and Social Council. (2009). Implementation of the International Covenant on Economic, Social and Cultural Rights, Second and third periodic reports of States parties under articles 16 and 17 of the Covenant: Switzerland. www.humanrights.ch/upload/pdf/110720_Implementation_CESCR.pdf

6 Committee on Economic, Social and Cultural Rights. (2010). Consideration of reports submitted by States parties under Articles 16 and 17 of the Covenant. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Switzerland. [humanrights.ch/upload/pdf/101123_Sozialpakt_Concluding_Obs_Switzerland.pdf](http://www.humanrights.ch/upload/pdf/101123_Sozialpakt_Concluding_Obs_Switzerland.pdf)

7 Swiss NGO Coalition. (2010). NGO Report on the second and third periodic reports of Switzerland concerning the International Covenant on Economic, Social and Cultural Rights. www.humanrights.ch/upload/pdf/100929_Sozialpakt_Swiss_NGO_report_CESCR_engl.pdf

8 Coalition suisse romande sur le droits économiques, sociaux et culturels. (2010). 2nd and 3rd Shadow Report on the International Covenant on Economic, Social and Cultural Rights. www2.ohchr.org/english/bodies/cescr/docs/ngos/CSR_Switzerland45.pdf

9 Humanrights.ch. (2010, 27 October) Switzerland to appear before the UN Committee on Economic, Social and Cultural Rights. www.humanrights.ch/en/switzerland/internal-affairs/social-policies/social-rights/switzerland-appear-committee-economic-social-cultural-rights-and-swiss-ngo-coalition. (2010). Op. cit.

10 www.humanrights.ch/en/switzerland/un-conventions/non-ratified/international-convention-protection-rights-migrant-workers-members-families-icrmw

workplace,¹¹ problems with the country's banking sector and secrecy (2012),¹² and challenges regarding the rights of sexual minorities (2015),¹³ all of which have been written about in previous GISWatch country reports.

A more recent but relatively unknown initiative was launched in March 2016 by the Center for Economic and Social Rights (CESR) in cooperation with the Swiss NGO Berne Declaration, aimed at bringing Switzerland's financial secrecy under the human rights spotlight. The focus of this initiative is tax avoidance and evasion, which "represent a systemic drain on government revenues needed for the fulfilment of women's rights and gender equality." The initiative, based in Geneva, outlines "Switzerland's role in facilitating cross-border tax abuse and the impact this has on women's rights in countries such as Zambia, which loses billions each year in potential revenue due to tax abuse facilitated in part by Switzerland's lax tax and financial rules." It also highlights "critical policy safeguards – such as impact assessments, exchange of taxpayer information, country-by-country corporate tax reporting and whistle-blower protections – which Switzerland should put in place to prevent such abuse and to mitigate its harmful human rights impacts."¹⁴

For the moment there is no further shadow report on the status of ESCR's implementations foreseen, as Ruedi Tobler, one of the editors of the last NGO report confirmed. One minor, but important achievement was however reported in the summer of 2016: the Federal Council finally approved the creation of an independent human rights institution that will be funded by the Confederation. With this, a long-term demand and struggle by national human rights groups became true.¹⁵ A main target of this new institution will be monitoring and consultancies like comparable entities in Germany and Norway.

The role of the internet

As previous GISWatch reports over the years have shown, the internet and related communication tools and channels are of major importance for any social and economic growth or change in the country. Generally, Swiss citizens have access to internet infrastructure and a variety of content, such as educational content – including those who have lower incomes. But the picture is still complex and diverse. Many small and almost marginalised social and political groups which have hardly any access to the traditional media have become efficient in using the internet to promote their views and needs and to create networks of support. What this means is that the traditional media and their gatekeepers no longer have the same influence and control over a more diversified public opinion. Thanks to the internet, minorities and political opposition have become much more visible and influential than ever before.

Yet, arguably, this visibility has had little impact on driving ESCRs onto the public agenda in any sustained way. UN issues and concerns – like European affairs and topics – remain the interest of "elitist" groups in the country. Average Swiss citizens and voters, or the mainstream Swiss media, simply do not care much about the UN, or topics such as ESCRs and the country's related obligations.

The website run by Humanrights.ch is still among the few reliable sources of information on international law and rights obligations. However, similar resources cannot be found on official websites.

Conclusion

Ironically, the country's UN obligations may receive more public recognition in the near future, but for the wrong reasons. Currently, the popular right-wing Swiss People's Party (SVP/UDC), the strongest political force in the country and part of the government,¹⁶ is openly and repeatedly challenging the Swiss political and constitutional system and any international laws and commitments.¹⁷ In August 2016 the party handed in the signatures collected for its people's initiative "Swiss Law Instead of Foreign Judges" at the Federal Chancellery in Bern. For this occasion, the NGO coalition Schutzfaktor M¹⁸ launched the "Show the Red Card" campaign on social media channels. In a press release,

11 Ludwig, W. (2013). Women's rights, gender and ICTs. In Finlay, A. (Ed.), *Global Information Society Watch 2013*. www.giswatch.org/en/country-report/womens-rights-gender/switzerland

12 Ludwig, W. (2012). Facets of an unimposing problem. In Finlay, A. (Ed.), *Global Information Society Watch 2012*. www.giswatch.org/en/country-report/internet-and-corruption/switzerland

13 Ludwig, W. (2015). Sexual rights: Still a long way to go. In Finlay, A. (Ed.), *Global Information Society Watch 2015*. www.giswatch.org/country/switzerland

14 Center for Economic and Social Rights. (2016, 1 March). Switzerland's financial secrecy brought under human rights spotlight. www.cesr.org/article.php?id=1812

15 Humanrights.ch. (2016, 27 July). The field is clear for a national human rights institution. www.humanrights.ch/en/switzerland/internal-affairs/national-institution/news/field-clear-a-national-human-rights-institution

16 https://en.wikipedia.org/wiki/Consociationalism_z

17 Humanrights.ch (2016, 24 August). SVP Anti Human Rights Initiative submitted. www.humanrights.ch/en/switzerland/internal-affairs/law/svp-anti-human-rights-initiative-submitted

18 www.schutzfaktor-m.ch

Schutzfaktor M warns that the initiative may try to terminate Switzerland's adherence to the European Convention on Human Rights (ECHR).¹⁹ If this right-wing attack (like others before) is accepted by the majority of Swiss voters, the consequences for the country's international relations, commitments and reputation could be disastrous. During the last *Volksinitiative* campaigns on comparable issues ("anti-minarets", "stop mass immigration" and the like) social media became more and more important for the broader mobilisation of citizens – but this has not yet resulted in an obvious change in public engagement and opinion.

Action steps

The recommendations stated in the NGO shadow report in September 2010 are still valid today, and worth highlighting. They include:

- Ratifying the Optional Protocol to the ICESCR.
- Ratifying the European Social Charter.

- Drafting an action plan for the implementation of social rights in cooperation with cantons, communes (in particular cities) and civil society.
- Passing a federal law obligating the cantons to implement human rights.
- Writing ESCRs into law – including revising constitutional provisions on the right to work, education, health and social security.²⁰

As the Swiss NGO report has shown, there is still a long way ahead for the Swiss government and its institutions to properly implement the covenant in the country. And as in various other fields, the internet could be better used as a strong tool and enabler to promote ESCRs in Switzerland – on the governmental side and for civil society.

¹⁹ www.schutzfaktor-m.ch/newsalert-vom-12-08-2016

²⁰ These points are adapted from Schweizer NGO-Koalition. (2009). Vorschläge für die „List of issues“ zur Behandlung des zweiten und dritten Schweizer Berichts zum Sozialrechtspakt (Pakt I). www.humanrights.ch/upload/pdf/091030_PaktI_NGO_List_of_issues_deutsch.pdf and Swiss NGO Coalition. (2010). Op. cit.

Economic, social and cultural rights and the internet

The 45 country reports gathered here illustrate the link between the internet and economic, social and cultural rights (ESCRs). Some of the topics will be familiar to information and communications technology for development (ICT4D) activists: the right to health, education and culture; the socioeconomic empowerment of women using the internet; the inclusion of rural and indigenous communities in the information society; and the use of ICT to combat the marginalisation of local languages. Others deal with relatively new areas of exploration, such as using 3D printing technology to preserve cultural heritage, creating participatory community networks to capture an “inventory of things” that enables socioeconomic rights, crowdfunding rights, or the negative impact of algorithms on calculating social benefits. Workers’ rights receive some attention, as does the use of the internet during natural disasters.

Ten thematic reports frame the country reports. These deal both with overarching concerns when it comes to ESCRs and the internet – such as institutional frameworks and policy considerations – as well as more specific issues that impact on our rights: the legal justification for online education resources, the plight of migrant domestic workers, the use of digital databases to protect traditional knowledge from biopiracy, digital archiving, and the impact of multilateral trade deals on the international human rights framework.

The reports highlight the institutional and country-level possibilities and challenges that civil society faces in using the internet to enable ESCRs. They also suggest that in a number of instances, individuals, groups and communities are using the internet to enact their socioeconomic and cultural rights in the face of disinterest, inaction or censure by the state.

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