

Switzerland

1. Discrimination in the family

a) Overarching legal framework for marriage

Marriage in Switzerland is governed by the Swiss Constitution (1999) and Swiss Civil Code (1907), which guarantee the right to marry and have a family for all Swiss citizens. Registered partnerships, previously only allowed for same-sex couples, were made available to opposite-sex couples in 2016 (Mariage et partenariat enregistré, 2017).

Forced marriage is defined as the use of force, threat or other restriction to compel another to enter into a marriage or same-sex partnership (Criminal Code, Art. 181; 1937). Forced marriages are criminalized by the Swiss Criminal Code and the 2013 Federal Act on Measures Against Forced Marriage, and subject to a custodial sentence of up to five years or a monetary penalty (Criminal Code, Art.181). The government reported in 2014 that forced marriage continues to be an issue in Switzerland, particularly for young foreign women between 18 and 25 years of age (CEDAW, 2014). The law prescribes that foreign victims of forced marriage have the right to remain in Switzerland (CEDAW, 2014).

b) Child marriage

The Swiss Civil Code (1907) sets the statutory minimum age of marriage for women and men at 18, without exception (Civil Code, Art. 94 (1)). The 2013 Federal Act on Measures Against Forced Marriage also seeks to prevent early marriage, including by training and sensitizing civil status officers, and by making marriage annulment automatic rather than prescriptible, even in the cases of marriages with minors (CEDAW, 2014).

The Centre of Competence Against Forced Marriage, a Zurich-based support organization, has found a rise in marriages involving minors in recent years (Zwangsheirat, 2016). The Centre found the majority of victims are immigrants to Switzerland originating from the Middle East and North Africa (Zwangsheirat, 2016).

c) Household responsibilities

According to the Swiss Civil Code, spouses share responsibilities for providing money, looking after the household and caring for children (Civil Code, Art.163). Both spouses represent their marital union with regards to the day-to-day needs of the family (Civil Code, Art.166). Children are the joint responsibility of both the father and mother – regardless of the parents' civil status - until they attain the age of majority (Civil Code, Art. 296, 298; CEDAW, 2014). As per the Constitution and the Civil Code, spouses jointly decide where to establish the marital home (Federal Constitution of the Swiss Confederation, Art. 101; Civil Code, Art. 162).

Women in Switzerland spend much longer than men on most household and family tasks, and caregiving remains overwhelmingly the domain of women (CEDAW, 2014). The assumption of the responsibility for unpaid caregiving has a negative impact on women's ability to pursue careers, and increases the risk of poverty for women (CEDAW, 2014).

d) Divorce

The Civil Code establishes equal rights for men and women to petition for and finalize divorce (Civil Code, Art.114 and 109). The court regulates parental rights following divorce, and by law considers all circumstances to the child's wellbeing without the gender of the parents playing a role (Civil Code, Art.133). Prior to a 2014 amendment, the assumption of joint custody was not automatic, and mothers were frequently awarded sole custody (PERFAR, 2014). However, since 2014, both parents regardless of their marital status are awarded joint custody without the need for a prior agreement or the approval of a judge (PERFAR, 2014).

The government reported in 2014 that a new law on pension splitting seeks to improve the situation for divorced women who were primarily involved in domestic work and child-raising during the marriage (CEDAW, 2014). In addition to forced marriage, the government reports that prevention of divorce, being forced to stay married, also poses an issue for older immigrant women (CEDAW, 2014).

a) Inheritance

The Swiss Civil Code grants men and women equal inheritance rights (Civil Code, Art. 457 and Art. 462). Property grabbing is criminalized in the Swiss Criminal Code, and punishable by custodial sentence or monetary penalty (Civil Code, Art.137).

The government reports that rural women are a particularly vulnerable group with regards to inheritance and divorce. They frequently are not formally registered as co-owners or joint holders of the land they share with their husband, and therefore face difficulty proving their stake in the farm in the case of divorce with or death of a spouse (CEDAW, 2014). Consequently, they struggle to access their share of the family property, recover investments in the farm and access unemployment insurance benefits (CEDAW, 2014).

2. Restricted Physical integrity

a) Violence against women

Switzerland has signed but not ratified the Istanbul Convention on preventing and combating violence against women and domestic violence (CEDAW, 2016). The government reported that it hopes to ratify the Convention by 2018, as well as submit a federal bill to improve protection for victims of violence to Parliament in 2017 (CEDAW, 2016).

b) Domestic violence

Presently, domestic violence is covered by various sections of the Swiss Criminal Code, which includes provisions on physical harm, physical injury, sexual violence, and psychological pressure (Law n. 119/13; Criminal Code 572, 577, 609, and 612). The 2007 Federal Law on Aid for Victims of Offenses

amended 23 local laws, and holds cantons responsible for establishing Centres de Consultation (Counseling Centers) which offer support to victims, and training personnel and police to be responsive to victims of domestic violence (Loi fédérale sur l'aide aux victimes d'infractions, 2007). Under this law, victims of violence also have the right to be informed of the current legal status of the perpetrator (Loi fédérale sur l'aide aux victimes d'infractions, 2007).

Switzerland does not have a specific anti-stalking law, but stalking may be prosecuted under sections of the Criminal Code on threats and the misuse/abuse of communication systems (Criminal Code, Art.198).

c) Rape

The Swiss Criminal Code criminalizes sexual violence, distinguishing between rape, sexual acts with persons incapable of resistance, and sexual acts with dependent persons such as minors, persons in institutional care and prisoners (Criminal Code, Art.190-191, 193).

Rape is defined as "forcing a person of the female sex by threats or violence, psychological pressure or by being made incapable of resistance to submit to sexual intercourse" and is punishable by one to ten years imprisonment (Criminal Code, Art. 190). The law imposes a minimum sentence of three years if the offender acts with cruelty and/or uses a weapon or dangerous object (Criminal Code, Art. 193).

In 2014, the government reported that Swiss victims of violence often do not decide to report occurrences of sexual and domestic violence to the police (CEDAW, 2014).

d) Sexual harassment

As per the Swiss Criminal Code, sexual harassment, including physical harassment, harassment through the use of indecent language or the performance of a sexual act in the presence of another, punishable by a fine (Criminal Code, Art. 198).

The 1995 Federal Act on Gender Equality further criminalizes sexual harassment, with a particular emphasis on harassment in the workplace (Art.4). In this Act, sexual harassment is stated to include the promise of job advantages in return for sexual favors, offensive remarks and sexist jokes, unwelcome physical contact or touching, and particular threats (Art.4). However, penalties or measures for implementation of the Act are not clearly stated in the legislation.

The Federal Office for Gender Equality (FOGE) makes publications available to inform employers of issues related to sexual harassment, and advises employers on the rights of sexual harassment victims (CEDAW, 2014).

e) Female genital mutilation

Female Genital Mutilation (FGM) is addressed by the Swiss Criminal Code, which states that any person who mutilates the genitals of a female person is liable to a prison sentence of up to ten years, or to a monetary penalty (Criminal Code, Art.124). The U.S. Department of State reported in 2015 that

Swiss women and girls affected by FGM originated primarily from Eritrea, Ethiopia and Egypt and that case were brought to court very infrequently (U.S. Dept. of State, 2015).

f) Abortion

The Swiss Criminal Code legalizes abortion in Switzerland up to 12 weeks (Criminal Code, Art.118). Legal abortion requires either a written request from the pregnant woman or her legal representative claiming that she is in distress, or the judgment of a physician (Criminal Code, Art.118). Physicians must have a detailed consultation with the pregnant woman prior to the termination of the pregnancy (Criminal Code, Art.118). Women under 16 years of age do not require parental consent for an abortion, and must be directed to consultation centres equipped to treat minors (Criminal Code, Art.118).

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In 2016, the Prévention Suisse de la Criminalité, a body supported by a network of cantonal directors and police, conducted a prevention campaign called “*Stop! Violence Domestique*” (Stop! Domestic Violence) to raise awareness on the issue and inform Swiss citizens of their rights (UN Women, 2017). Several cantons are in the process of developing threat management systems for domestic violence situations (CEDAW, 2014).

The Federal Office for Gender Equality (FOGE), together with the cantonal emergency services, regularly present analyses, seminars, publications, exhibits and training offers as well as networking and information exchange activities to raise public awareness of domestic violence (CEDAW, 2014). FOGE also organizes an annual, national conference on domestic violence (CEDAW, 2014).

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

Women and men enjoy equal access to land (Swiss Civil Code, Article 919) and non-land assets (Swiss Civil Code, Article 119 - 134; 919 - 941). Marital status does not affect these rights. Both married and unmarried men and women, for instance, are able to engage in joint land titling (Swiss Civil Code, Art. 646).

The government reports that rural women are a particularly vulnerable group with regards to inheritance and that this may impact their land rights. They frequently are not formally registered as co-owners or joint holders of the land they share with their husband, and therefore face difficulty proving their stake in the farm in the case of divorce with or death of a spouse (CEDAW, 2014). Consequently, they struggle to access their share of the family property, recover investments in the farm and access unemployment insurance benefits (CEDAW, 2014).

b) Secure access to formal financial resources

As per the Swiss Constitution, women and men enjoy equal access to financial resources, including credit and starting a business (World Bank, 2017). There is no evidence that customary, religious or traditional practices impede women’s access to formal financial resources.

c) Workplace rights

Switzerland has ratified the majority of the key ILO conventions on workplace equality, with the exception of the Workers with Family Responsibilities Convention (ILO, 2017).

The Swiss Constitution and the Federal Act on Gender Equality mandate non-discrimination on the basis on sex, marital status, pregnancy and family situations (Federal Constitution of the Swiss Confederation, Art. 8; Federal Act on Gender Equality, Art. 3). The mandate includes prohibitions on discrimination in hiring, allocation of duties, pay, training, promotion and dismissal (Federal Act on Gender Equality, Art.3). The Swiss Constitution also mandates equal remuneration for equal work as a fundamental right for all citizens (Federal Constitution of the Swiss Confederation, Art. 8).

Women receive 14 weeks of paid maternity leave after they give birth (Federal Regulations for Income Compensation Act, Section 16e). During the eight weeks leading up to the birth, employers are not allowed to demand women work night hours (between 20:00 and 6:00). There are no legal provisions mandating paid parental or paternal leave.

As per the Federal Act on Gender Equality, the federal government grants financial aid to private institutions to provide advice and information to working women, and encourage the reintegration of women and men who left work to fulfil family duties (Switzerland, 1995). The government identified gender equality in working life as one of its thematic priorities in implementing CEDAW, with research projects and temporary special measures administered by the Federal Office for Gender Equality and the Gender Equality National Research Programme (CEDAW, 2014).

Despite these measures, a gender gap in employment remains present, particularly at the executive level, with women's positions generally less senior than men's (CEDAW, 2014). Caregiving and housework in Switzerland remains overwhelmingly the domain of women (CEDAW, 2014).

4. Restricted Civil liberties

a) Citizenship rights

Under the Federal Constitution and the Federal Act on the Acquisition and Loss of Swiss Citizenship, women and men enjoy the same rights to acquire, change, retain and confer their nationality regardless of their marital status (Art. 1). One distinction is that women who acquired Swiss citizenship by marriage retain their citizenship after the marriage has been declared invalid, provided they married in good faith (Art. 271).

The Constitution guarantees freedom of movement as a fundamental right for all Swiss citizens (Art. 10 (2)). Both women and men have equal access to obtaining passports and identity cards (Equality Now, 2016).

There is no evidence for the existence of discriminatory, customary or traditional practices that deny women access to their citizenship rights.

b) Voting

The law provides both all women and men over 18 with the right to vote, regardless of marital status (Federal Constitution of the Swiss Confederation, Art. 34 and 136). There is no evidence for the existence of discriminatory, customary or traditional practices that deny women access to their voting rights.

c) Political voice

Under the Constitution, Swiss men and women enjoy equal access to running for and holding public and political office (Art. 136). No legal quotas exist to promote women's political participation at either the local or national level (Quota Project, 2017). Some political parties impose internal gender quotas (CEDAW, 2014).

In 2014, the government reported it is promoting women's political participation by media monitoring to encourage equal-opportunity coverage of female candidates (CEDAW, 2014). In addition, 18 cantons reported they made their own efforts to strengthen women's political participation, taking measures to increase women's presence on electoral rolls (CEDAW, 2014). Since 2010, women ministers have outnumbered men in the Swiss Parliament (CEDAW, 2014).

d) Access to justice

Women and men enjoy equal access to justice, including the right to sue and be sued and have their testimony heard and considered, under the Federal Constitution and the Swiss Criminal Procedure Code (Federal Constitution, Art. 29, 29a3; Switzerland; Swiss Criminal Procedure Code, Art. 3).

The Criminal Procedure Code protects victims of sexual offenses by allowing them to refuse to answer questions relating to their private domain and ask to be questioned by a person of the same sex (Swiss Criminal Procedure Code, Art. 3).

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The Federal Statistical Office is granted the mandate to refresh and expand gender equality statistics, including gender indicators, such as data on violence against women and the situation of foreign women (CEDAW, 2014).

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