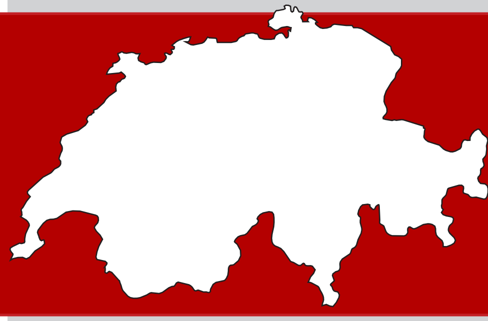
SWITZERLAND



State Responsibility for the Extraterritorial Impacts of Tax Abuse on Women's Rights

Earlier this year, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee) requested that Switzerland "provide information on the measures taken to ensure that the State party's tax and financial secrecy policies do not contribute to large-scale tax abuse in foreign countries, thereby having a negative impact on resources available to realize women's rights in those countries" (CEDAW, 2016). While Switzerland has taken steps in recent years to counter some forms of cross-border tax abuse, the State's conduct may still be at odds with its extraterritorial obligations under Article 2 of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) to refrain from, and to protect against, conduct that foreseeably undermines the ability of other States to raise and retain the resources needed to fulfill women's rights and substantive equality.

This factsheet summarizes how Switzerland's financial secrecy policies and lax rules on corporate reporting and taxation jeopardize women's rights overseas. It presents questions and recommendations that the CEDAW Committee may consider posing during its review of Switzerland at its 65th Session in Geneva in November 2016. The factsheet is based on a more detailed report originally submitted to the Committee by the five undersigned organizations in March 2016, and then updated in November 2016 ("Joint submission").

PUBLIC RESOURCE SHORTFALLS INHIBIT WOMEN'S RIGHTS AND SUBSTANTIVE EQUALITY

State parties to CEDAW require adequate public finances to realize women's rights and substantive equality. Revenue shortfalls shrink public budgets for social services, leading to spending cuts that disproportionately affect low-income populations, among whom women are overrepresented. Budget constraints also lead to chronic under-funding of key institutions and programs that promote gender equality and combat gender-based violence, as well as other crucial instruments for the advancement of women's rights, including education, healthcare, childcare and eldercare. When the State fails to make these services available and accessible to all, women are often left to fill the gaps with their unpaid work. This additional burden on women entrenches inequalities. Women are disadvantaged even further when, in an effort to make up revenue shortfalls, States increase their reliance on more easily administered but regressive taxes, such as consumption or value-added taxes on basic goods and services (Joint submission, ¶¶ 2.5 - 2.8).

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Financial Secrecy Index

1. Switzerland
2. Hong Kong
3. USA
4. Singapore
5. Cayman Islands
6. Luxembourg
7. Lebanon
8. Germany
9. Bahrain
10. UAE (Dubai)
11. Macao
12. Japan
13. Panama
14. Marshall Islands
15. United Kingdom
16. Jersey

Source: Financial Secrecy Index (FSI) 2015 results. The size of each flag in this graphic is proportional to the corresponding country's score on the FSI. www.financialsecrecyindex.com

CROSS-BORDER TAX ABUSE IS A KEY CAUSE OF REVENUE SHORTFALLS, PARTICULARLY IN DEVELOPING COUNTRIES

Taxation remains the most significant, predictable, and accountable source of financing available to governments to address inequalities, including gender inequality. Yet, tax policies are persistently undercut by various forms of tax abuse. Cross-border tax abuse, in particular, refers to the practices of individuals and corporations that enable them to reduce or avoid their tax payments in one jurisdiction through the use of favorable banking and tax laws or lax corporate regulations in another jurisdiction. The most common forms of cross-border tax abuse are controversial profit-shifting, fraudulent under-reporting of the value of taxable transactions, and the use of off-shore accounts to hide taxable income. Together, these three forms of abuse lead to an estimated loss of more than half a trillion dollars in tax revenues in developing countries every year (Joint submission, ¶¶ 3.3 - 3.7). Low- and middle-income countries, especially those with under-resourced tax administrations and weak negotiating positions vis-à-vis multinational companies, suffer disproportionately.

SWITZERLAND'S FINANCIAL SECRECY AND TAX POLICIES FORSEEABLY FACILITATE LARGE-SCALE CROSS-BORDER TAX ABUSE

Cross-border tax abuse—while committed by private actors—could not happen without the aid of States. Corporations and wealthy individuals are able to avoid taxes in certain countries because of the laws and policies in other countries that afford them the opportunities both to keep their financial transactions secret and to benefit from lax rules regarding taxation and reporting. In particular, Switzerland plays an outsized role in enabling private actors to avoid paying their fair share in other countries. In 2015, **Switzerland ranked number one on the Financial Secrecy Index** (TJN, 2015), which compares countries according to the degree of secrecy permitted by their banking, tax, and corporate laws, regulations, and international agreements, and their relative share of the global financial market. Largely as a result of this secrecy, over one-third of all unrecorded offshore financial wealth in the world is held in Switzerland, according to the best estimates. The Swiss National Bank itself reported that non-residents held a total of US $2.46 trillion in Switzerland as of 2014, and these offshore assets have continued to increase, with new inflows to Switzerland primarily from developing countries (Zucman, 2014).

Four dimensions of Swiss conduct provide fertile ground for tax abuse overseas. First, **strict privacy protections for holders of Swiss bank accounts attract financial assets to Switzerland.** The country has begun to bring its bank secrecy laws into line with international anti-corruption and human rights standards. The few existing statutory exceptions to secrecy, however, are administratively burdensome and narrow, and consequently cannot be used by many developing countries seeking information about their nationals' taxable income and assets held in Switzerland. Second, Switzerland's decision to **maintain weak corporate reporting standards and tax privileges for multinational corporations** encourages profit-shifting and other forms of harmful tax avoidance by global

The Impacts of Swiss-enabled Cross-border Tax Abuse on Women's Rights in India

The insufficiency of public resources—exacerbated by financial secrecy and tax competition driven by countries like Switzerland—significantly hampers the implementation and realization of CEDAW rights in India. In the famous "Swiss Leaks" data, made public by the International Consortium of Investigative Journalists, India ranked 16th out of 200 countries in terms of the amount of offshore wealth held by residents in HSBC's branch in Geneva, Switzerland. The files showed that 2,699 separate bank accounts at HSBC connected to 1,668 Indian citizens or corporations held a combined total of US $4.1 billion (ICIJ, 2015). While it is difficult to ascertain the exact percentage of these funds that were un-taxed in India, reasonable estimates **suggest that the Indian government lost out on between US $492 million and $1.2 billion in direct tax revenue from the funds held in just one bank branch in Switzerland – comparable to as much as 44% of the expenditure on women's rights, and 6% of total social spending** in the country in 2016 (Joint submission, Box 5).

Revenue shortfalls, due in part to such tax avoidance, have led to significant cuts in public spending, especially for services that particularly affect women. For example, despite the CEDAW Committee's call for an increase in resources allocated to the Ministry for Women and Child Development in its last Concluding Observations on India (CEDAW, 2014), this Ministry's budget was cut by a striking 51% (Hindustan Times, 2015), undermining funding for core programs like domestic violence protection. At the same time, to make up for budget shortfalls due in part to tax avoidance by corporations and wealthy individuals such as those with accounts in Switzerland, India relies heavily on regressive, indirect taxes as well as user fees for public services, both of which jeopardize women's equality (Joint submission, Box 5).

Despite its robust tax authority and political will to tackle tax evasion, India has faced numerous obstacles in attempting to obtain information from the Swiss government about these HSBC accounts. In particular, Switzerland's continued refusal to respond to information requests based on "stolen data" from Swiss Leaks prevents the Indian tax authorities from obtaining the information they need to pursue investigations into tax evasion by those nationals holding accounts at HSBC Geneva (Joint submission, Box 5).

businesses. While the proposed Corporate Tax Reform III bill, introduced in June 2016, would abolish the more egregious preferential tax regimes for foreign companies, at the same time it would shape new loopholes and decrease the effective corporate tax rate, which could prompt companies to shift their profits to Switzerland. Although Switzerland signed a multilateral agreement requiring multinational companies to disclose basic financial information—such as revenue, profits, taxes, and the number of employees in each jurisdiction in which they operate—this country-by-country reporting will be mandatory only for the largest companies, and will only be available to certain countries' tax authorities, excluding most low and middle-income countries from accessing the information they need. As importantly, journalists and the public will continue to be left in the dark, unable to scrutinize corporate tax dodging effectively. Third, Switzerland **imposes criminal penalties for disclosure of financial information by whistleblowers,** without public interest exceptions. The result is a chilling effect on people who reveal information that assists authorities in preventing and redressing tax abuses harmful to human rights. Finally, despite growing momentum for wealthy countries to undertake tax 'spillover analyses,' and despite overwhelming evidence that Swiss conduct poses a real risk to domestic revenue mobilization overseas, **Switzerland has not taken any measures to evaluate the effects of its tax and financial secrecy regime** on the human rights of people abroad—particularly in developing countries (Joint submission, ¶¶ 4.3 – 4.14). A report on illicit financial flows, published by the Swiss government in October 2016, demonstrates Switzerland's awareness of the problem, but stops short of scrutinizing Switzerland's own contribution to it (Swiss Federal Council, 2016).

SWITZERLAND MUST DO MORE TO TACKLE CROSS-BORDER TAX ABUSE, IN LINE WITH ITS OBLIGATIONS UNDER CEDAW

Swiss policy and practice on tax and financial secrecy call into question Switzerland's compliance with its obligations under Article 2 of CEDAW to realize women's rights both within and outside its territory. The obligations enumerated in CEDAW bind Switzerland not only with respect to its treatment of all people and entities under its jurisdiction but also with respect to its activities affecting human rights extraterritorially. As the Committee has made clear, "States parties are responsible for all their actions affecting human rights, regardless of whether the affected persons are in their territory" (CEDAW, 2010).

Switzerland's extraterritorial obligations under CEDAW and other international human rights treaties by which it is bound encompass three aspects. First, Switzerland has an obligation to **respect the rights of women abroad** by taking into consideration the foreseeable effects of its conduct on Convention rights, and refraining from any policy or act that perpetuates discrimination against women. Second, it has a **duty to protect against private conduct** that may undermine women's rights and substantive equality, including actions by private individuals and business enterprises that take advantage of Swiss jurisdiction to avoid their proper tax liabilities within the countries where they reside or operate. Third, Switzerland must **contribute to an international enabling environment** that supports the ability of States to take all appropriate measures to fulfill and ensure enjoyment of Convention-protected rights, including through international cooperation in the mobilization of resources (CEDAW, 2010; Maastricht Principles, 2012). **By enabling tax abuses in other countries, Switzerland's financial secrecy laws and lax corporate tax and reporting rules pose a foreseeable risk of undermining the capacity of other states, especially those already short of revenues, to mobilize the maximum available resources for the fulfillment of women's rights, and to ensure substantive equality in the enjoyment of the rights guaranteed under the Convention** (Joint submission, ¶¶ 5.4 –5.10).

The Impacts of Swiss-enabled Cross-border Tax Abuse on Women's Rights in Zambia

Insufficient public revenues constrain government spending on social services and infrastructure necessary to advance women's equality in Zambia, as the CEDAW Committee recognized in its Concluding Observations (CEDAW, 2011). Corporate tax avoidance, especially in the mining sector, represents a significant drain on Zambia's resources. At the height of the copper boom in 2011, **Zambia earned only US $240 million in tax revenue on copper exports worth US $10 billion—equivalent to only 2.4% of export value** (Africa Progress Panel, 2013). More than half of those exports pass through Swiss companies such as Glencore, a commodity trading and mining company headquartered in Switzerland. Financial secrecy and lax corporate reporting standards in Switzerland hamper the ability of the Zambian Revenue Authority to detect possible tax abuses by Glencore and its affiliates. A leaked independent audit of Glencore's Mopani mine revealed that the company's ability to shift its earnings—gained in Zambia but recorded in Switzerland—reportedly cost Zambians millions of dollars in public revenues (Grant Thornton, 2010). Ongoing research by CESR estimates that **combined losses from profit-shifting in the copper mining sector may amount to as much as US $326 million annually, equivalent to about 60% of Zambia's health budget in 2015**. While Swiss conduct is not solely responsible for these reported incidents of corporate tax avoidance in Zambia, the financial center's secrecy practices and lax rules on corporate reporting and taxation may well prevent the Zambia Revenue Authority from understanding the full financial situation of its resident companies, thereby constraining the government's ability to mobilize sufficient resources for women's rights and gender equality.

SWITZERLAND MUST DO MORE TO TACKLE CROSS-BORDER TAX ABUSE

PROPOSED QUESTIONS AND RECOMMENDATIONS

Switzerland's appearance before the Committee provides a critical opportunity to address the impact of Swiss financial secrecy laws and rules regarding corporate reporting and taxation on women's rights and gender equality overseas. In October 2016, the Swiss Federal Council released a study which demonstrates the government's awareness of the adverse impact that illicit financial flows have on sustainable development overseas, yet the report falls short of assessing how Switzerland itself is responsible for facilitating such tax abuse (Swiss Federal Council, 2016). What's more, the State party has failed to respond to the Committee's official request to "provide information on the measures taken to ensure that the State party's tax and financial secrecy policies do not contribute to large-scale tax abuse in foreign countries" (CEDAW, 2016). In this context, the Committee may consider addressing the following questions to the Swiss government delegation during its interactive dialogue:

> *How will the reforms to financial secrecy and corporate tax policies in Switzerland further the realization of women's rights and substantive equality overseas, particularly in developing countries?*

> *Does the State party intend to conduct an independent study of the impacts of its tax and financial secrecy policies on the resources available for the fulfillment of women's rights and substantive equality overseas, in line with its obligations under CEDAW?*

Consistent with the obligations set forth in CEDAW Article 2, we urge the Committee to recommend that Switzerland ensure that its financial secrecy and tax policies do not impinge upon the ability of other governments to mobilize resources for the fulfillment of women's rights. In particular, the undersigned organizations recommend that:

> **Switzerland undertake independent, participatory and periodic impact assessments of the extraterritorial or "spillover" effects of its financial secrecy and tax policies on women's rights and substantive equality.** Such assessments should be conducted in an impartial manner, and both the methodology and findings should be publicly disclosed. The State party should also ensure that its findings guide future policy reforms with the aim of enhancing revenue mobilization for women's rights and gender equality, particularly in developing countries.

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ABOUT THIS FACTSHEET

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