

Submission to the
Committee on the Elimination of Discrimination against Women
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Suggestions for the List of Issues:

Switzerland

to be considered in connection with the combined fourth and fifth periodic reports
(CEDAW/C/CHE/4-5)

State Responsibility for the Impacts of Cross-border Tax Abuse on Women's Rights & Gender Equality

Submitted on February 22, 2016 by:

Berne Declaration

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CENTER FOR ECONOMIC AND SOCIAL RIGHTS
SOCIAL JUSTICE THROUGH HUMAN RIGHTS



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I. EXECUTIVE SUMMARY AND PROPOSED QUESTIONS

This submission summarizes how cross-border tax abuse by corporations and wealthy individuals jeopardizes CEDAW-protected rights, particularly in developing countries, and illustrates Switzerland's particular contributions to this corrosive phenomenon through its financial secrecy laws and lax rules on corporate reporting and taxation. In light of this information, the submitting organizations respectfully request that the Committee on the Elimination of Discrimination against Women include among the issues that Switzerland should address at the review of its combined fourth and fifth periodic reports during the Committee's 65th Session in October 2016, the impact of Swiss banking and tax policies on the resources available for the fulfillment of women's rights in developing countries.

Public revenues are essential to the realization of women's rights. Over the past two decades, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) has established that State parties to CEDAW need to raise and spend adequate resources, in a non-discriminatory manner, in order to fulfill their treaty obligations to ensure substantive equality for women. When government budgets fall short, women often suffer disproportionately from underfunded services, spending cuts, increased reliance on regressive revenue sources, and greater dependence on largely unpaid care work that women often perform. One of the most significant drains on public budgets today, which disproportionately affects developing countries, is the loss of tax revenue to cross-border tax abuse by corporations and individuals seeking to avoid or minimize their tax payments. Such abuse is enabled by the conduct of States that maintain financial secrecy laws and lax rules on corporate reporting and taxation.

This submission highlights the role played by Switzerland, as one of the world's leading financial secrecy jurisdictions, in facilitating large-scale cross-border tax abuse that deprives other States of the public resources needed to fulfill women's rights and promote their substantive equality. It argues that Swiss policy and practice in the tax and financial domains calls into question Switzerland's compliance with its obligations under Article 2 of CEDAW, read in conjunction with its duties as a State party to other international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), to realize women's rights both within and outside its territory. These obligations include Switzerland's duties: to refrain from making laws and policies which directly or indirectly result in the denial of women's equal enjoyment of their rights, extraterritorially as well as within its jurisdiction; to protect against private conduct that has such effect, including through the regulation of the banking sector and other private actors subject to its jurisdiction; and to cooperate internationally to mobilize the maximum available resources for the universal fulfillment of women's economic, social, and cultural rights and to create an international enabling environment conducive to this goal.

Cross-border tax abuse refers to the practices of individuals and corporations that aim to reduce or avoid their tax payments, for example through 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 activities lead to the loss of hundreds of billions of dollars in tax revenues

worldwide every year. Those losses hit developing countries hardest, given their overall limited resources and greater reliance on corporate taxes as a share of their national revenue.

Cross-border tax abuses are enabled by laws and policies in some countries that afford individuals and companies undue secrecy regarding their financial transactions and offer lax rules regarding taxation and reporting. Switzerland plays an outsized role in this context. In 2015, Switzerland ranked number one on the Financial Secrecy Index, which compares countries according to the degree of secrecy permitted by their banking, tax, and corporate laws, regulations, and international agreements, and how important they are in the global market for offshore financial services. Despite recent commitments to reform its banking and tax laws, Switzerland has not to date taken steps to ensure that the countries hit hardest by tax abuse will benefit from measures to increase financial transparency. Many developing countries are effectively excluded from agreements to exchange tax information because of insurmountable administrative burdens. Furthermore, terms in tax agreements with many developing countries reportedly encourage the shifting of profits to Switzerland to exploit tax advantages. Switzerland does not require public disclosure of vital information regarding corporate ownership, revenues, and tax payments, and offers no legal protections to tax justice whistleblowers who disclose information in the public interest. As a result of such practices, many developing States, in particular, suffer significant revenue losses that directly impede their capacity to generate the maximum available resources for the fulfillment of women's rights and promotion of substantive gender equality.

The loss of revenues to cross-border tax abuse contributes to the underfunding of essential services, institutions, and infrastructure on which women depend, from health care and education to public courts and transportation systems, as well as programs designed specifically to protect and promote women's rights. Inadequate spending on social services often takes a heavy toll on women in particular, as they typically bear the burden of care-giving and performing unpaid work when public institutions fall short.

Likewise, loss of revenue to cross-border tax abuses often results in a disproportionate tax burden on women, particularly low-income women in developing countries. To make up for missing tax payments by companies and elites, governments often increase their reliance on more regressive forms of revenue generation, including consumption taxes. Such taxes can impose a disproportionate burden on women in at least two ways. First, because women are over-represented among lower-income segments of society, they are particularly disadvantaged by taxes that impose a greater burden on the poor. Second, because of entrenched gender roles in many countries, women frequently spend a greater share of their incomes on consumer goods, such as food and household products, so taxes on these forms of consumption hit women hardest. As detailed in various recent reports by UN, academic, and civil society experts, the cumulative effects of limited public spending on essential services, together with the disproportionate tax and care burden women often bear, conspire to frustrate the structural possibilities for substantive equality.

Switzerland's appearance before the CEDAW Committee provides an important opportunity to assess the extent to which the State party's financial secrecy laws and rules on corporate reporting and taxation contribute to, or undermine, women's rights and gender equality extraterritorially. It also provides an opportunity for the Committee to ensure that women's rights are central in ongoing policy debates—both in Switzerland and internationally—about measures to tackle tax abuse, which presents a structural barrier to substantive equality. **As part of the Committee's review of**

Switzerland's compliance with its obligations under the Convention, the submitting organizations respectfully recommend that the Committee ask Switzerland to respond to the following questions:

1. **What steps is Switzerland taking to ensure that its financial secrecy policies and rules on corporate reporting and taxation are consistent with its extraterritorial obligations under Article 2 of the Convention and do not contribute to large-scale tax avoidance and evasion, which deprive many developing countries, in particular, of resources needed to realize women's rights and tackle discrimination?**

More specifically, we respectfully recommend that the Committee request the following of Switzerland:

2. Please provide information on whether the State party has conducted (or is planning to conduct) **a "spillover" assessment of the extraterritorial impacts of its financial secrecy policies and rules on corporate reporting and taxation, particularly in developing countries**, consistent with its extraterritorial human rights duties and its new commitments to implement Sustainable Development Goal 5 on gender equality, and to ensure policy coherence under the Addis Ababa Action Agenda on Financing for Development. If so, what has been done to ensure that this analysis includes assessments of impacts on human rights, generally, and women's rights and gender equality specifically?
3. Please provide information on Switzerland's **commitments to exchange of taxpayer information, either automatically or on demand**. In particular, please explain the impact that information exchange is expected to have on revenue mobilization for women's rights in developing countries, which countries will benefit and what concessions, if any, Switzerland is seeking from developing countries in return for expanding provisions on the exchange of tax information.
4. Please provide information on what is being done to ensure that **the country-by-country-corporate reporting requirement**, which Switzerland has agreed to implement beginning in 2017/18, **will have a positive impact on revenue mobilization in developing countries**. Please explain whether this essential financial information will be publicly disclosed, as is becoming international best practice. Pursuant to its due diligence obligations under CEDAW Article 2, what efforts does or will Switzerland undertake to ensure that Swiss subsidiaries or affiliates of multinational corporations are not improperly avoiding or evading taxes in other countries where they operate?
5. Please provide detailed information about any **measures to ensure that whistleblowers who disclose information in the public interest regarding tax abuses are protected** against unjustified punishment and retaliation.

II. INADEQUATE PUBLIC RESOURCES INHIBIT WOMEN'S RIGHTS AND SUBSTANTIVE GENDER EQUALITY

This section provides context for understanding the extraterritorial human rights impacts of Swiss financial secrecy policies and rules on corporate reporting and taxation. Those impacts occur when cross-border tax abuses, facilitated in part by the Swiss tax and financial regime, drain public revenues in other countries. As this Committee has emphasized in its jurisprudence regarding gender-responsive budgeting and fiscal policy, tax revenues affect women's rights. This section highlights the consequences of tax abuse—including constraints on public budgets, cuts in public spending, and reliance on alternative revenue sources to make up for shortfalls—and explains how these effects often disproportionately harm women, particularly in developing countries. The foreseeable burden that tax abuses place on women through their impacts on public budgets implicates Switzerland's extraterritorial obligations under CEDAW to ensure that its laws and policies do not contribute to, or facilitate, such infringements of women's rights.

Under CEDAW Articles 2 and 3, States must mobilize revenues to resource women's rights. Fulfillment of the rights and duties set forth in the Convention requires adequate resources; consequently, inadequate funding for rights-realizing goods, services, and institutions jeopardizes women's rights and entrenches inequalities, frustrating implementation of the Convention. CEDAW Article 2 commits State parties to “pursue by *all appropriate means* and without delay a policy of eliminating discrimination against women.”¹ According to the Committee, that policy “must be linked to mainstream governmental budgetary processes in order to ensure that all aspects of the policy are adequately funded.”² Article 3 of the Convention similarly requires State parties to “take in all fields, in particular in the political, social, economic and cultural fields, *all appropriate measures*, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”³ As the Committee has recognized, such measures are not possible without sufficient public resources. The Committee has often cited the lack of adequate resources—both for “national machinery, institutions and procedures” dedicated to women's rights⁴ and for general public services on which women rely, such as health care⁵ and access to judicial remedy⁶—as an impediment to implementation of the Convention. Indeed, nearly every set of concluding observations on State party reports in 2015 addressed budgeting considerations and the adequacy of public resources.⁷

All too often, women suffer disproportionately when States lack adequate resources to pay for public goods and services, such as health care, education, water and sanitation systems, effective courts, and accountable police forces. The disproportionate impacts on women occur in at least four ways.

First, inadequate budgets for social services or cuts to existing programs disproportionately affect low-income populations, among whom women are overrepresented.⁸ The Committee has frequently expressed concern about “the feminization of poverty,”⁹ noting that in many countries, “women constitute a large proportion of single-parent families and of the working poor,”¹⁰ and “are often disadvantaged in terms of the benefits of economic and social development, in particular education and employment, and suffer disproportionately from poverty, malnutrition and inadequacy of health care.”¹¹ Because women are more likely to be dependent on public services, they are frequently more affected, and their rights more at risk, when weak government revenues shrink State budgets.¹² In the wake of the global financial crisis in 2008, for example, the

Committee has repeatedly observed the negative effects of budget cuts on the protection and promotion of women’s rights.¹³

Second, budget constraints mean that institutions and programs designed to promote gender equality and support women’s advancement often go unfunded or underfunded, and constantly face the risk of spending cuts. The Committee has repeatedly expressed concern about the lack of funding allocated to gender issues and institutions focused on women’s rights.¹⁴ Similar concerns have arisen before other international human rights bodies. For example, the 2015 Universal Periodic Review of Spain highlighted how the government made deep budget cuts to equality and gender-based violence programs despite the existence of financing alternatives, such as combatting tax evasion.¹⁵ While increased tax revenues in government coffers will not automatically lead to increased resources for women’s rights initiatives, these programs are most threatened during times of fiscal stress, given existing gender bias and inequalities in influence over the design of fiscal policies.

How Revenue Shortfalls in the Ebola Public Health Crisis Affected Women’s Rights

The 2014–2015 Ebola crisis in West Africa highlights the dire consequences, particularly for women, of budget shortfalls exacerbated by tax abuse. As the CEDAW Committee has noted, an overwhelming percentage of the over 11,000 Ebola victims in West Africa—up to 75%—were women. This was due principally to the traditional caregiving roles women are assigned in those countries¹⁶ and the serious financial constraints on public spending, particularly in Liberia, during the outbreak.¹⁷ Even before Ebola erupted, CEDAW noted the lack of access to adequately funded healthcare for women in Sierra Leone,¹⁸ as well as the inadequate funding of other public institutions aimed at serving women’s needs in both Sierra Leone and Guinea.¹⁹ In the decade before Ebola, Guinea, Liberia, and Sierra Leone spent on average only \$140 million per year on public health, leading to a further decrease in the number of community health workers per capita from 0.11 per 1,000 people in 2004 to 0.02 per 1,000 in 2010.²⁰ Meanwhile, these three countries experienced an annual average of US\$ 1.37 billion in illicit financial outflows, the bulk of which was reportedly due to corporate tax evasion.²¹

Third, when the State fails to provide adequate services due to budget constraints, women often fill the gaps in caregiving, education, and other family supports, typically without remuneration.²² In General Recommendation 23, the Committee recognized that the lack of public services constitutes one of “the most significant factors inhibiting women’s ability to participate in public life,” compounding women’s disproportionate burden of household and caregiving work.²³ Approximately 75% of the world’s total unpaid care work is performed by women.²⁴ As women’s rights organizations have documented, in times of fiscal crisis, women are “the safety nets of last resort to sustain their families and social structure.”²⁵ The lack of sufficient government revenue for public services thus effectively perpetuates traditional, unequal gender roles, reinforces women’s disproportionate responsibility for care and prevents them from enjoying other realms of life equally with men.²⁶

Finally, in an effort to make up for revenue shortfalls, many States increase their reliance on easily administered but regressive forms of taxation, such as consumption or value-added taxes (VAT) on basic goods and services, which often disproportionately burden women. African countries, for example, rely more heavily on indirect consumption taxes, such as VAT, than do other developing countries, and significantly more so than do well-resourced governments.²⁷

This trend is intensifying, with 93 developing countries reportedly slated to increase or expand the use of consumption taxes, such as VAT.²⁸ Regressive tax structures can place disproportionate burdens on women in at least two ways.²⁹ First, regressive taxation tends to unduly affect poorer households,³⁰ which are disproportionately headed by women.³¹ Second, in many countries, women spend more of their income on household goods and therefore carry a larger burden of consumption taxes,³² given their entrenched gender roles as (often unpaid) caretakers.³³ Some studies have also shown that value-added taxes may not only disproportionately affect women as consumers, but also as producers and small-business owners.³⁴ These and other inequitable taxes compound pre-existing structural inequalities between women and men.³⁵

The Committee's review of Switzerland is an opportunity for it to build on its work to date in the field of fiscal policy and women's rights by examining how Switzerland's role in facilitating cross-border tax abuses undermines the ability of other States to raise and retain revenues to fulfill CEDAW-protected rights, and thereby could contravene Switzerland's own extraterritorial duties under the Convention. The sections that follow summarize the kinds of tax abuses that drain public budgets, and Switzerland's particular role in those practices.

Recent Advances in Applying Human Rights Norms to Tax Policy

Human rights bodies and UN experts are increasingly applying norms of human rights, including women's rights, to tax policy. The Committee for Economic, Social and Cultural Rights has addressed tax policy in various ways,³⁶ most recently by releasing an unprecedented letter to State Parties explaining the need to seek all alternatives to retrogressive budget cuts, including through progressive tax policies, in times of economic and financial crisis.³⁷ The Committee on the Rights of the Child has also noted the adverse effects of tax evasion on the implementation of treaty obligations,³⁸ and is in the process of developing a General Comment on public spending and the rights of the child, which will consider tax policy.

Likewise, various UN Special Procedures have taken up these issues. In her report on tax policy and human rights, the former UN Special Rapporteur on Extreme Poverty and Human Rights clarified that revenue collection is a "critical tool for States in tackling and redressing systemic discrimination and ensuring equal access to economic, social and cultural rights..., including gender inequalities... [A] State with a very narrow tax base or that fails to tackle tax evasion may result [sic] in its inability to fund social protection or adequate and accessible public services, a situation that is likely to create or entrench inequalities."³⁹

In a recent report on illicit financial flows (IFFs) and human rights, the UN Independent Expert on Foreign Debt and Human Rights stated: "[I]n our globalized world, policies implemented in one country can have impacts in other countries. This includes taxation policies, which can undermine the enjoyment of human rights abroad. International law requires that States should refrain from conduct that harms the enjoyment of human rights outside their own territory."⁴⁰

Member States in the Human Rights Council have endorsed the UN Guiding Principles on Extreme Poverty and Human Rights, which assert unequivocally that “States should take into account their international human rights obligations when designing and implementing all policies, including ...taxation.”⁴¹ These Principles further explain that States must “cooperat[e] to mobilize the maximum of available resources for the universal fulfillment of human rights.”⁴² A Human Rights Council resolution, meanwhile, suggests the establishment of an inter-governmental working group on IFFs and human rights.⁴³

At the regional level, the Council of Europe’s Human Rights Commissioner recently emitted a series of recommendations on safeguarding human rights in times of economic crisis, including tax policy transparency, the need for *ex ante* and *ex post facto* human rights and equality impact assessments, and human rights audits of financial and tax policies, including for their cross-border spillover effects.⁴⁴ Further, the Inter-American Commission on Human Rights recently held its first-ever thematic hearing on tax and fiscal policy in the Americas.⁴⁵ CEDAW is well-positioned to bring women’s rights and gender equality into the growing conversation among authoritative bodies about the human rights consequences of tax abuse.

III. CROSS-BORDER TAX ABUSE IS A SYSTEMIC CONSTRAINT TO RESOURCING WOMEN’S RIGHTS AND SUBSTANTIVE GENDER EQUALITY

Tax and fiscal policies remain among the most significant, predictable, and accountable tools governments have to address inequality in their countries, including gender inequality.⁴⁶ Whether a State can raise sufficient resources to budget for women’s rights depends on both domestic and external factors. The Special Rapporteur on extreme poverty and human rights has observed that “without absolving any State of its obligation to raise the maximum available resources domestically to ensure the progressive realization of economic, social and cultural rights, there are limits to national-level actions in the absence of global reforms. Many States are undoubtedly hamstrung in their efforts to enact progressive taxation and combat illicit financial flows that could fight inequality and enhance the realization of economic, social and cultural rights.”⁴⁷

A growing body of research reveals that one of the chief contributors to budget constraints, particularly in developing countries, is the loss of public revenue to various forms of tax abuse.⁴⁸ Generally speaking, **tax abuse** can be defined as “tax practices that are contrary to the letter or spirit of domestic and international tax laws and policies ... [including] tax evasion, tax fraud and other illegal practices [as well as] tax practices that may be legal, strictly speaking, but are currently under scrutiny because they avoid a ‘fair share’ of the tax burden and have negative impacts on the tax revenues and economies of developing countries.”⁴⁹ While some tax abuses are committed solely within the territorial confines of one State, the most egregious forms of tax abuse involve the exploitation of inter-State transactions to evade, avoid, or minimize due payment of taxes in ways which are harmful to the public purse. This practice is what this submission refers to as “cross-border tax abuse.” Low- and middle-income countries, especially those with under-resourced tax administrations, precarious negotiating positions vis-à-vis multinational companies and vulnerable customs enforcement agencies, suffer disproportionately from the various sophisticated forms of tax abuse that are difficult to detect and control.

Cross-border tax abuse can take distinct forms, three of which are especially common. First, **trade mis-invoicing**, a form of corporate tax evasion based on fraud, is the cause of significant revenue loss in many developing countries.⁵⁰ Properly taxing these particular forms of illicit financial flows

could garner anywhere from \$217 billion (developing countries only) to \$692 billion per year (all countries) in additional public revenue, according to an important academic study.⁵¹

A second way governments lose revenue due to cross-border tax abuse relates to the efforts of multinational companies and their tax advisors to shift profits across their global affiliates in order to lower their tax bills, especially in countries that impose high corporate tax rates. Developing countries are estimated to lose \$212 billion per year in direct public revenue from various cross-border tax avoidance techniques often described as **base erosion and profit-shifting (BEPS)**.⁵² Such techniques, while not facially illegal in every jurisdiction, are designed to minimize tax burdens and exploit loopholes, often undermining the spirit of tax laws. Low- and middle-income countries suffer disproportionately from this harmful corporate profit-shifting.⁵³ By some estimates, the revenues lost to these practices on average exceed 10% of existing tax revenues in developing countries.⁵⁴

A third source of revenue losses is the “offshoring” of income and assets by **high-net worth individuals and households** in order to shield themselves from personal income tax liabilities in their own countries by placing their money into protected accounts in other countries. While it is difficult to estimate exact amounts, anywhere between \$7 and \$32 trillion is held unrecorded, and often untaxed, in offshore accounts,⁵⁵ with more being squirreled away every year.⁵⁶ Even if untaxed assets amounted to only a fraction of those estimates, it would still represent a significant revenue source lost. One important study estimates the total annual revenue losses from this offshore wealth at between \$190 and \$280 billion.⁵⁷ Like other forms of cross-border tax abuse, the offshoring of private wealth also affects low- and middle-income countries disproportionately. While only 4% of US financial wealth and 10% of EU wealth is held offshore, 22% of financial wealth in Latin America is held offshore, and fully 30% of African financial wealth sits in other countries.⁵⁸

Given the continuing failure of governments to ensure full international tax transparency, the exact amount of public revenue lost to these three forms of cross-border tax abuse is publicly unknown at present. Yet even the conservative estimates cited above suggest that the total “cost” of cross-border tax abuse to developing countries far exceeds the amount of official development assistance they receive, which at its height in 2014 was a relatively paltry \$135.2 billion.⁵⁹ The Economic Commission for Latin America and the Caribbean estimates that evasion and avoidance of personal and corporate income tax cost Latin America more than US\$ 190 billion, or 4% of GDP, in 2014.⁶⁰ As discussed, these revenue losses hit developing countries hardest, and within those countries, women typically suffer disproportionately from the resulting budget shortfalls and increased dependence on regressive forms of revenue generation.

In sum, the loss of public revenues to tax abuse deprives States of the maximum available resources that could be used to realize substantive equality, respect and protect all women’s rights, and progressively fulfill their economic, social and cultural rights, in accordance with their obligations under CEDAW and ICESCR. Tax abuse also has a more direct impact on the enjoyment of rights, insofar as it exacerbates inequalities and thereby runs counter to the principles of equality and non-discrimination. The largely State-sanctioned ability of wealthy individuals and corporations to avoid their tax liabilities tilts the relative tax burden toward the poor. When lower-income segments of society are taxed via consumption and income taxes, while wealthier actors are able to skirt tax liability by moving their income and assets overseas, the result is an entrenchment of economic and gender divides.

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

The case of Zambia illustrates how cross-border tax abuse can contribute to budget shortfalls that undermine women's rights. Despite its relatively strong fiscal governance,⁶¹ insufficient public revenues constrain public spending on social services and infrastructure necessary to advance women's equality, as the CEDAW Committee has recognized.⁶² Tax revenues are lower in Zambia than in nearby countries with comparable economies,⁶³ and corporate tax avoidance, especially in the mining sector, represents a significant drain on Zambia's revenues, with losses estimated at \$2 billion per year according to official sources.⁶⁴

Zambia has an under-resourced tax administration and limited capacity to monitor and assess multinational companies' real taxable income. Financial secrecy in Switzerland makes it even more difficult for the Zambian government to tax its mining sector effectively. Despite efforts by the Zambian Revenue Authority (ZRA) to investigate underpayments of taxes by mining companies,⁶⁵ its earnings from the country's copper industry remain paltry compared to company gains. At the height of the recent copper boom in 2011, Zambia earned \$240 million in tax revenue on copper exports worth \$10 billion—equivalent to only 2.4% of export value.⁶⁶ More than half of those copper exports pass through Swiss trading companies like Glencore,⁶⁷ a commodity trading and mining company headquartered in Switzerland. Swiss financial secrecy and lax corporate reporting standards make it very difficult for Zambian authorities to detect any possible tax abuse by Glencore and its affiliates. A leaked independent audit of Glencore's Mopani mine, however, alleged various irregularities in how the local company accounted for its sales and expenses, and thus its taxable income.⁶⁸ The company's ability to shift its earnings—gained in Zambia but recorded in Switzerland—reportedly cost Zambians millions of dollars in public revenues.⁶⁹

While Swiss conduct was not solely responsible for these alleged incidents of corporate tax avoidance in Zambia, the financial center's secrecy practices and lax rules regarding corporate reporting and taxation have contributed to the Zambian government's inability to mobilize sufficient resources for women's rights and gender equality.

IV. SWITZERLAND'S ROLE IN ENABLING CROSS-BORDER TAX ABUSE

Switzerland plays an outsized role in facilitating the types of cross-border tax abuses described above through its financial secrecy laws and lax rules on corporate reporting and taxation. Based on the depth of its financial opacity and the scale of its offshore financial activities,⁷⁰ Switzerland was ranked first in the world by the Financial Secrecy Index in 2015.⁷¹ **“Financial secrecy jurisdictions”** like Switzerland are countries that “intentionally create regulation for the primary benefit and use of those not resident in their geographical domain that is designed to undermine the legislation or regulation of another jurisdiction and that, in addition, create a deliberate, legally backed veil of secrecy that ensures that those from outside the jurisdiction making use of its regulation cannot be identified to be doing so.”⁷² In other words, “a secrecy jurisdiction provides facilities that enable people or entities to escape (and frequently undermine) the laws, rules and regulations of other jurisdictions elsewhere, using secrecy as a prime tool.”⁷³

Switzerland's robust and long-standing financial secrecy laws and policies, together with its low tax rates and various preferential tax regimes, make it an ideal jurisdiction for high-net worth individuals and corporations to avoid or evade their tax responsibilities in the countries where they derive their economic gains (whether those gains are earned legally or illegally). The inevitable result is lower tax

revenues in affected countries.⁷⁴ Switzerland’s long-standing **protection of financial secrecy and facilitation of tax abuse, in other words, foreseeably undermines the ability of other States to mobilize the maximum available resources for the progressive realization of women’s economic, social and cultural rights and the elimination of gender-based discrimination.** The abuse of financial secrecy jurisdictions to exploit legal loopholes and arbitrage between national tax authorities thus results in a sort of **international “reverse Robin Hood” effect**, in which largely wealthy financial secrecy jurisdictions siphon money from poorer countries to enrich already wealthy individuals and corporations⁷⁵—displacing tax burdens from wealthy to poor- and middle-income households, many of which are led by women.

Swiss Leaks Reveal Extent of Offshore Financial Wealth Held in Switzerland

As an example of the role that Swiss financial secrecy plays in fueling cross-border tax abuse, over one third of all unrecorded offshore financial wealth in the world is held in Switzerland— much of it untaxed.⁷⁶ According to the Swiss National Bank, non-residents held a total of \$2.46 trillion in Switzerland as of 2014.⁷⁷ This is an all-time high, with the amount held in Switzerland increasing by an average of 4.6% annually since 1998.⁷⁸ Recent transparency and enforcement actions do not seem to be affecting this trend to date. Since 2009 when G-20 countries declared the era of bank secrecy over,⁷⁹ offshore assets managed in Switzerland have increased 15%, with new inflows coming primarily from developing countries.⁸⁰

A landmark investigation in 2014 of more than 100,000 client accounts at one single bank in Switzerland—the Geneva branch of HSBC—uncovered billions of dollars unreported to various tax authorities.⁸¹ A total of \$21 billion was apparently hidden from U.K. tax authorities, and \$12 billion from the French. Though less widely covered in the press, assets concealed in this branch reportedly represented significant losses for low- and middle-income countries (see below). Sierra Leone, for example, may have lost \$4.95 million in revenues to private accounts in HSBC, Geneva. If true, this equates to roughly 19% of the country’s health budget—from holdings in just one bank in just one financial secrecy jurisdiction.⁸²

Financial secrecy makes it difficult to know what fraction of the total offshore funds held in Switzerland evades or avoids taxes elsewhere. According to data published by the Swiss tax authority, around 80% of the wealth held by Europeans in Switzerland is suspected of evading taxes.⁸³ While the U.S. government managed to negotiate the release of information pertaining to accounts of its residents held at Swiss Bank UBS,⁸⁴ smaller countries do not have the same clout. To date, however, Swiss efforts to improve tax and financial transparency are not designed to benefit all countries equally.⁸⁵

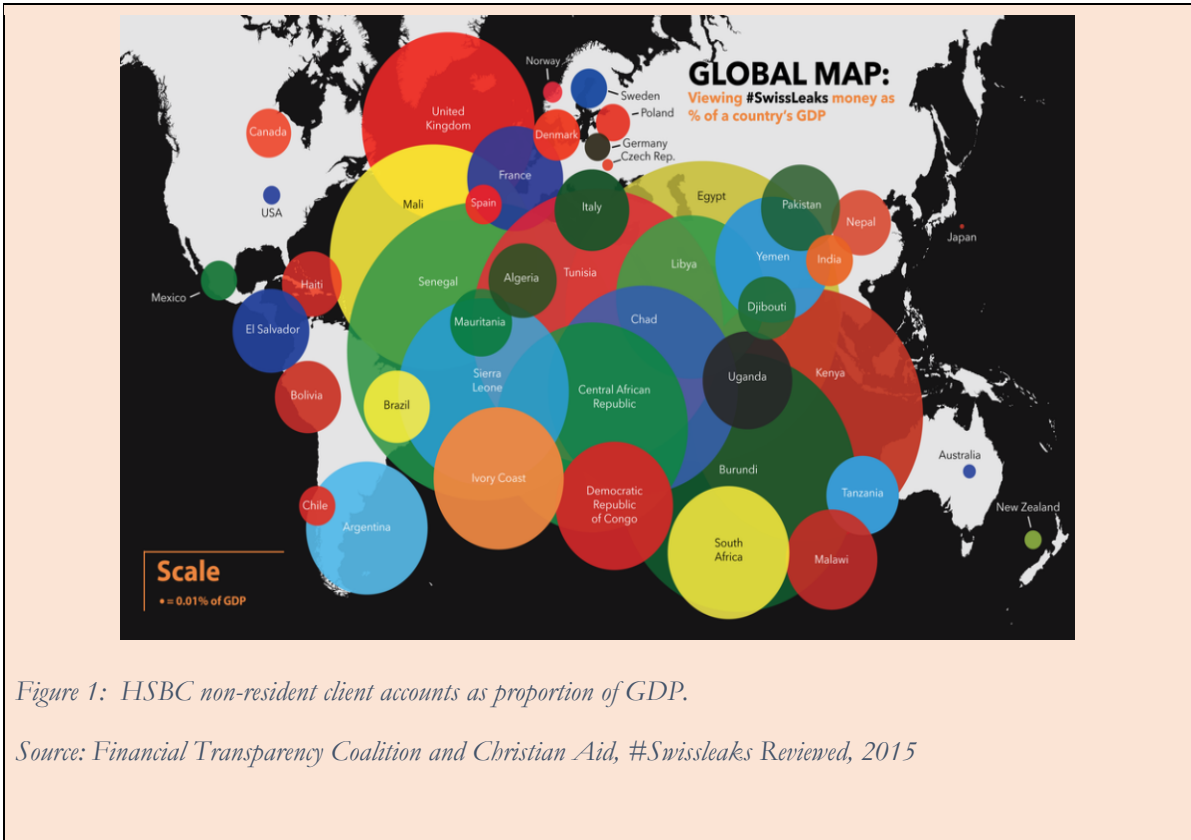


Figure 1: HSBC non-resident client accounts as proportion of GDP.

Source: Financial Transparency Coalition and Christian Aid, #Swissleaks Reviewed, 2015

Historically, Switzerland has been renowned for its banking secrecy.⁸⁶ Throughout much of the 20th century, secrecy was the premise on which Switzerland attracted global investment and grew into one of the financial capitals of the world. Its banking law provides robust protections against disclosure of account-holder information, the breach of which can result in criminal prosecution.⁸⁷ In recent years, however, under intense public pressure, Switzerland has begun bringing its financial secrecy and corporate tax laws in line with OECD standards.⁸⁸ Although the Swiss banking statute still contains stringent secrecy provisions, Switzerland has expanded the range of exceptions under which disclosure of financial information may be permissible or required by law.⁸⁹ Some exceptions apply to investigations of criminal conduct under Swiss law, including mandatory reporting of suspected money laundering. Other exceptions to financial privacy are permitted under bilateral agreements that provide for Swiss assistance to other States investigating tax crimes abroad, including tax evasion as well as tax fraud,⁹⁰ and/or allow a country to request tax information under the Swiss statute on administrative assistance in tax matters.⁹¹ Crucially, most developing countries are not party to such agreements.⁹² The current debate turns on the adequacy of existing exceptions to secrecy, and whether they allow the States that arguably need it most full access to the information necessary to stop tax abuse by entities with a presence in Switzerland.

Moreover, secrecy is not the only cause for concern. Public scrutiny has increasingly focused on the ways in which Swiss reporting standards and tax incentives for corporations facilitate the use of Switzerland as a commercial and financial center to avoid paying taxes in other countries. Although the Swiss government has announced planned reforms of corporate tax rates that treat non-resident companies differently from those domiciled in Switzerland, there are doubts that these changes will alter the incentives for abusive profit-shifting via Switzerland.⁹³ And while recent announcements

that companies will be required to report their activities and earnings on a country-by-country basis are welcome, there are indications that this information, crucial to tackling tax abuse, will be exchanged only between select countries, not made uniformly or publicly available.

In light of the above concerns, the practical effects of ongoing reforms remain unclear, especially for many developing countries disproportionately affected by tax abuse. To ensure that the policy changes safeguard CEDAW-protected rights abroad, as Switzerland is required to do under the Convention (see section V below), then they should be designed with the express intent of helping to improve the mobilization of domestic public revenue in the countries most concerned, thereby enabling those governments to dedicate sufficient resources for women's rights and gender equality. Five legal and policy areas are of particular relevance to determining the impact of Swiss State conduct on women's rights in developing countries:

a) Assessing impacts of tax and financial policies overseas

In light of the tremendous costs of cross-border tax abuse, especially in developing countries, the IMF, OECD, UN and the World Bank called on G-20 countries in 2011 to “undertake ‘spillover analyses’ of any proposed changes to their tax systems that may have a significant impact on the fiscal circumstances of developing countries...[including] remedial measures to be incorporated...”⁹⁴ Both the Netherlands⁹⁵ and the Republic of Ireland⁹⁶ have since commissioned studies to assess the effects of their corporate tax policies and practices on developing countries. While the methodologies of these two studies could be improved in various ways, they illustrate the feasibility of assessing the overseas impacts of a country's tax and financial secrecy policies as a means of fulfilling the State's extraterritorial human rights duties as well as recent commitments in the Addis Ababa Action Agenda, an international framework for development financing agreed in 2015.⁹⁷ While it has expressed voluntary commitments to close financing gaps that hinder progress toward gender equality (including by committing to ensure that financial and investment agreements are conducive to this aim),⁹⁸ Switzerland has not publicly expressed interest in evaluating the effects of its own tax and financial secrecy regime on the human rights of people abroad—particularly in developing countries. This calls into question the extent to which the State party is satisfying its extraterritorial obligations under CEDAW and other human rights conventions.

b) Exchange of taxpayer information and international cooperation on tax matters

Switzerland has faced tremendous international pressure to share relevant information regarding non-resident account holders with other governments, which would help determine those account holders' tax liabilities abroad. In response, Switzerland has joined several international agreements on the **automatic exchange of tax information** (AEOI),⁹⁹ and has committed to introducing automatic exchange with some countries by 2018, pursuant to the OECD Common Reporting Standard.¹⁰⁰ While laudable, these reforms may be of limited help to developing countries whose budgets are most disproportionately affected by cross-border tax abuse.¹⁰¹

To begin with, the geographic coverage of the AEOI agreements will exclude many developing countries either outright, or by making the process for accessing tax information and mutual assistance from Switzerland for investigations and prosecutions of tax abuse unduly burdensome. Switzerland has indicated that it will include only countries “with which there are close economic and political ties and which, if appropriate, provide their taxpayers with sufficient scope for regularization.”¹⁰² Switzerland will enjoy considerable discretion in determining with which countries

it will share tax information.¹⁰³ It could refuse to share tax information with a country, for example, if it believes the country lacks the capacity to provide reciprocal data about Swiss resident taxpayers, abide by confidentiality requirements or implement additional safeguards for protection of personal data. The administrative burden to access tax information may be simply too high for many under-resourced tax administrations in developing countries. Moreover, Switzerland has reportedly sought more favorable terms from some developing countries, such as lower withholding taxes for Swiss-based companies, in return for including these expanded information-sharing provisions when it renegotiates tax agreements.¹⁰⁴ This type of *quid pro quo* could potentially lead to a net decline in domestic resource mobilization in some developing countries rather than an increase.

Countries that do not benefit from automatic information exchange could in theory access financial data concerning their taxpayers with accounts in Switzerland on demand, through double taxation agreements (DTA) with Switzerland, or through the Federal Act on International Mutual Assistance in Criminal Matters (IMAC).¹⁰⁵ As noted above, however, these mechanisms are limited and pose various practical hurdles which prevent them from being very useful, especially for developing countries. With regard to judicial assistance on tax matters, although Switzerland has expanded the range of suspected tax crimes for which information may be provided to support foreign investigations or prosecutions, it remains difficult for some countries to provide enough specific details on suspected tax criminals to receive financial information from Switzerland. The system for administrative assistance in tax matters likewise effectively excludes many developing countries. Only countries that have agreements with Switzerland which envision administrative information exchange can access information on accounts held by their taxpayers (or would-be taxpayers) in Switzerland through the Tax Administrative Assistance Act (TAAA).¹⁰⁶ According to a Swiss government report, however, the majority of African States do not have such qualifying agreements with Switzerland.¹⁰⁷

In sum, many developing countries that believe they may be owed taxes by individuals and corporations with accounts and financial activities in Switzerland have limited means to obtain any relevant information from the Swiss government. Most low-income States lack the leverage that other countries, like the United States, have exercised to pressure Switzerland to lift the veil of financial secrecy when information is not available through automatic exchange or on demand through tax agreements. In such instances, developing countries losing revenue to tax abuse enabled by Swiss conduct face next-to-insurmountable obstacles in mobilizing available resources for the realization of women's rights and gender equality.

Barriers to Accessing Tax Information in Switzerland: India's Experience

The “Swiss leaks” information discussed above revealed the names of many Indian nationals with HSBC accounts in Geneva, who were allegedly dodging taxes they owed to India. The list included the names of past or present politicians, among others. Some sources estimate the overall amount of undeclared Indian money in Swiss accounts to be as high as \$2 or \$3 trillion,¹⁰⁸ though the actual amount is unconfirmed. Yet, India—despite having a relatively robust and well-resourced tax authority—has faced numerous obstacles when attempting to obtain additional information to enable its investigations into these cases of tax evasion. First, India’s request for information via administrative assistance under the Swiss TAAA proved unsuccessful, as the request was based on information whose accuracy was never questioned but whose origin was deemed illegal under Swiss law, because it was leaked by a whistleblower.¹⁰⁹ India also failed when it tried to obtain the information via judicial assistance under the convention on mutual assistance in criminal matters (IMAC), because the Indian authorities were investigating tax avoidance and evasion, rather than tax fraud—conduct not then considered a crime in Switzerland, and not yet covered by the countries’ bilateral tax agreement. The Swiss government has acknowledged this problem and promised that reforms are underway to address it.¹¹⁰ To date, however, the IMAC has not been amended to include expanded grounds for judicial assistance.¹¹¹ And the Indian authorities have yet to obtain the information they need to pursue those nationals holding accounts at HSBC-Geneva. Given these significant obstacles—even for a State with a strong tax authority and apparent political will—it is questionable whether other less-resourced tax or law enforcement authorities in poorer countries will be able to meaningfully benefit from recent reforms in Switzerland.

c) Corporate tax transparency

Switzerland is among¹¹² several countries that have recently signed the Multilateral Competent Authority Agreement, developed under the OECD BEPS project, on country-by-country reporting standards.¹¹³ These new rules are intended to ensure that multinational companies disclose to tax authorities basic financial information, such as revenue, profits, taxes, and number of employees, consolidated for *each* jurisdiction in which they operate.¹¹⁴ This disaggregated reporting standard¹¹⁵ offers the type of information tax authorities need to assess irregular corporate tax practices and more transparently determine which country has the right to tax which business activity. If made public, this information would also allow official oversight institutions, civil society organizations, investigative journalists, judiciaries and academics a way to expose and substantiate multinational tax avoidance with real evidence.

To date, however, Switzerland has not required that this information be publicly disclosed. The failure to make country-by-country reports on corporate activity available to the general public, including the press, limits opportunities for citizens and journalists to independently monitor and expose corporate tax abuse and thereby help under-resourced governments prevent further revenue losses. Moreover, there is no guarantee that these country-by-country reports on corporate activity will be shared with developing countries. Switzerland announced that it “will determine at a later stage with which partner countries it wishes to make such exchanges.”¹¹⁶ If excluded, developing country tax authorities could be left largely unequipped to challenge the harmful tax planning practices of multinational companies operating in their jurisdictions.

d) Whistleblower protections

Given the limited means for developing countries to access information about their taxpayers’

holdings in Switzerland, the disclosure of tax information by private individuals acting in the public interest has in practice been one of the few alternative ways for developing countries to discover abusive tax practices (see discussion above about India). Yet, Switzerland's vigorous protections to ensure the banking secrecy of legal and natural persons actively discourage such disclosures. Intentionally revealing information related to a bank account holder can lead to a prison term of three to five years or a fine.¹¹⁷ Although existing laws require financial intermediaries in Switzerland to report suspicious banking activity to the money laundering reporting office, these requirements do not yet apply to abusive tax practices that fall short of criminal activity.¹¹⁸ In fact, Switzerland recently increased the maximum prison sentence for some kinds of disclosures of protected financial information.¹¹⁹ Criminal prosecution for unauthorized disclosure might not be a problem in itself, so long as there is an exception or affirmative defense available for information released that furthers the public good and the realization of human rights. Without such an exception, however, existing policies have a chilling effect on whistleblowing activities aimed at revealing, preventing, and redressing tax abuses in the public interest.¹²⁰

In this context, the failure to provide any exceptions under law to protect whistleblowers who disclose information in the public interest from punishment or retaliation may contravene Articles 32 and 33 of the United Nations' Convention Against Corruption,¹²¹ as well as Article 19 of the International Covenant on Civil and Political Rights in some cases. Switzerland has ratified both conventions.¹²²

In sum, despite its laudable international commitments to promote greater financial transparency, in making it burdensome to report tax abuse or illicit practices and to request related information, Switzerland effectively minimizes the likelihood of detecting cases of abusive tax practices which undermine the ability of other States to fulfill CEDAW-protected rights. The benefits of ongoing reforms are likely to accrue principally to the tax authorities of already wealthy governments with large economies rather than those low-income countries disproportionately affected. Some observers have characterized the policy changes as a "Zebra strategy," according to which rich, powerful countries benefit from greater tax transparency ("white" money) while low-income, developing countries do not ("black" money).¹²³ As detailed below, Switzerland is obliged under CEDAW and other international human rights treaties that it has ratified to take further steps to ensure that it is not contributing to incidents of tax abuse that undermine the rights of women, particularly in developing countries, as well as to cooperate in international efforts to cease tax abuses everywhere.

V. SWITZERLAND'S DUTIES UNDER CEDAW TO ADDRESS ITS CONTRIBUTION TO CROSS-BORDER TAX ABUSE

The obligations enumerated in CEDAW bind Switzerland, as a State party, 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.¹²⁴ As the Committee made clear in General Recommendation 28, reiterated in General Recommendation 30, and recently reaffirmed in a State party review,¹²⁵ "States parties are responsible for all their actions affecting human rights, regardless of whether the affected persons are in their territory."¹²⁶

The nature and extent of States parties' extraterritorial obligations are structured by CEDAW's non-discrimination framework. This framework is intended to be "comprehensive,"¹²⁷ meaning that CEDAW's protections apply across all human rights.¹²⁸ This encompasses rights enshrined in the

U.N. Charter, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD)—all of which Switzerland has ratified,¹²⁹ and all of which have been interpreted to involve substantial extraterritorial dimensions.¹³⁰ Accordingly, Switzerland must fulfill its obligations under those other treaties—including the extraterritorial obligations they impose—in a manner consistent with CEDAW’s non-discrimination and substantive equality framework, as affirmed in paragraph 11 of the Committee’s General Recommendation 30.¹³¹

Switzerland’s extraterritorial obligations under CEDAW and other international human rights treaties by which it is bound encompass three categories: the duty to respect, the duty to protect, and the duty to take action through international cooperation to realize CEDAW-protected rights.¹³² To understand more fully how these extraterritorial obligations apply, it is instructive to refer to the broad body of jurisprudence on extraterritoriality, including the Maastricht Principles on the Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights Principles (“Maastricht Principles”).¹³³

First, under Article 2, “the obligation to *respect* requires that States parties refrain from making laws, policies, regulations, programmes, administrative procedures and institutional structures that directly or indirectly result in the denial of the equal enjoyment by women of their civil, political, economic, social and cultural rights.”¹³⁴ In the extraterritorial context, this norm requires State parties to take into consideration the foreseeable effects of their conduct on the enjoyment of human rights, whether within or outside their territory, including “situations in which the State is in a position to exercise decisive influence or to take measures to realize economic, social and cultural rights extraterritorially, in accordance with international law,” as crystallized in the Maastricht Principles.¹³⁵ CEDAW has similarly focused on foreseeability in its jurisprudence related to extraterritorial impacts.¹³⁶ CEDAW obligates all States parties to undertake positive measures to ensure substantive equality between men and women—which requires the allocation of significant resources. Therefore, conduct, such as Switzerland’s financial secrecy policies and rules on corporate reporting and taxation, which foreseeably undermines other States’ abilities to marshal those resources, constitutes interference with the fulfillment of CEDAW rights.

Second, Article 2 requires that Switzerland *protect* women from discrimination.¹³⁷ The duty to “take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise also extend[s] to acts of national corporations operating extraterritorially.”¹³⁸ This obligation compels States to take measures to prevent third parties such as individuals and business enterprises from using their jurisdictions to abuse human rights,¹³⁹ for example by avoiding their proper tax liabilities within the countries where they operate. Such measures need not be extraterritorial and might involve, for example, corporate governance reforms and tax disclosure.

Third, Switzerland is required to create and maintain, through international cooperation and participation in global governance processes, an international enabling environment that supports the ability of States to take all appropriate measures to ensure enjoyment of Convention-protected rights, including through cooperation in the mobilization of the resources necessary to ensure substantive equality between women and men.¹⁴⁰ The basis for the duty of international cooperation to mobilize available resources stems from Article 2(1) of the Covenant on Economic, Social and Cultural Rights.¹⁴¹

As the International Bar Association’s Human Rights Institute found in its detailed analysis of tax abuse, State conduct “that encourage[s] or facilitate[s] tax abuses, or that deliberately frustrate[s] the efforts of other States to counter tax abuses, could constitute a violation of their international human rights obligations, particularly with respect to economic, social and cultural rights.”¹⁴²

By enabling tax abuses in other countries, Switzerland’s financial secrecy laws and lax rules on corporate reporting and taxation have the foreseeable *effect* of undermining the capacity of developing countries, many of which are already resource-deprived, to properly protect against tax abuse by the private sector and by wealthy individuals, and to ensure substantive equality in the enjoyment of the rights guaranteed under the Convention.¹⁴³

For the reasons discussed in sections II and III of this submission, any State’s ability to mobilize sufficient resources to realize CEDAW-protected rights within its territory depends not only on its own tax policies, but also significantly upon cooperation from other States in being able to implement and enforce those tax policies. In relation to cross-border tax abuse, the Special Rapporteur on extreme poverty and human rights has emphasized that:

*“high-income States that enable or fail to tackle tax abuse and illicit financial flows should shoulder some responsibility for the shortcomings of the tax and public finance systems in developing countries and related poverty rates, lack of enjoyment of human rights and economic inequalities.”*¹⁴⁴

As an important global financial and commercial hub, Switzerland acts as a crucial gatekeeper for vital information about the tax practices of multinational corporations and wealthy individuals. Against this backdrop and in view of its duties as a member of the international community, Switzerland should be asked to reconcile its role in facilitating global tax abuse with its obligations under CEDAW.

VI. PROPOSED QUESTIONS FOR CEDAW’S REVIEW OF SWITZERLAND

As this submission has attempted to show, budget shortfalls driven by cross-border tax abuse pose significant structural barriers to the full realization of women’s rights and substantive gender equality. Despite being a long-time proponent of financial secrecy and a beneficiary of financial activity designed to minimize tax liability in other countries, Switzerland has duties as a State party to CEDAW to ensure that its public policies, including its financial secrecy policies and rules on corporate reporting and taxation, support rather than undermine the mobilization of maximum available resources for the fulfillment of women’s rights, both domestically and extraterritorially.

At this critical juncture, when Switzerland is beginning to reform its financial secrecy architecture, the CEDAW Committee’s intervention could have particularly meaningful impact. The Committee is uniquely positioned to ensure that women’s rights, particularly in developing countries, are a central consideration in future reforms of Swiss banking and tax policies, and of the global tax system as a whole.

The action or inaction of the Swiss government in the coming years will have a direct impact upon the ability of developing countries to resource efforts to combat discrimination and guarantee substantive equality for women. In the face of continued uncertainties about the ultimate effects of promised reforms on the current international environment of abusive tax practices, Switzerland

should urgently clarify how proposed measures will further its obligations under CEDAW to assess and address the impact of its conduct, especially on the lives of the most disadvantaged women in low-income countries.

As part of the Committee’s review of Switzerland’s compliance with its obligations under the Convention, the submitting organizations respectfully recommend that the Committee raise the following questions with the State party regarding the extraterritorial effects of its financial secrecy and tax regime on the rights guaranteed under CEDAW:

- 1. What steps is Switzerland taking to ensure that its financial secrecy policies and rules on corporate reporting and taxation are consistent with its extraterritorial obligations under Article 2 of the Convention and do not contribute to large-scale tax avoidance and evasion, which deprive many developing countries, in particular, of resources needed to realize women’s rights and tackle discrimination?**

More specifically, as follow-up to this overarching question, we respectfully recommend that the Committee request the following of Switzerland:

- 2. Please provide information on whether the State party has conducted (or is planning to conduct) a “spillover” assessment of the extraterritorial impacts of its financial secrecy policies and rules on corporate reporting and taxation, particularly in developing countries,** consistent with its extraterritorial human rights duties and its new commitments to implement Sustainable Development Goal 5 on gender equality, and to ensure policy coherence under the Addis Ababa Action Agenda on Financing for Development. If so, what has been done to ensure that this analysis includes assessments of impacts on human rights, generally, and women’s rights and gender equality specifically?
- 3. Please provide information on Switzerland’s commitments to exchange of taxpayer information, either automatically or on demand.** In particular, please explain the impact that information exchange is expected to have on revenue mobilization for women’s rights in developing countries, which countries will benefit and what concessions, if any, Switzerland is seeking from developing countries in return for expanding provisions on the exchange of tax information.
- 4. Please provide information on what is being done to ensure that the country-by-country-corporate reporting requirement,** which Switzerland has agreed to implement beginning in 2017/18, **will have a positive impact on revenue mobilization in developing countries.** Please explain whether this essential financial information will be publicly disclosed, as is becoming international best practice. Pursuant to its due diligence obligations under CEDAW Article 2, what efforts does or will Switzerland undertake to ensure that Swiss subsidiaries or affiliates of multinational corporations are not improperly avoiding or evading taxes in other countries where they operate?
- 5. Please provide detailed information about any measures to ensure that whistleblowers who disclose information in the public interest regarding tax abuses are protected** against unjustified punishment and retaliation.

VII. SUBMITTING ORGANIZATIONS

Berne Declaration (BD) is a not-for-profit, independent organization with about 25,000 members, which has been campaigning for more equitable relations between Switzerland and developing countries for more than forty years. Among our most important concerns are the global safeguarding of human rights, socially and ecologically responsible conduct of business enterprises and the promotion of fair economic relations.

The **Center for Economic and Social Rights (CESR)** was established in 1993 with the mission to work for the recognition and enforcement of economic, social and cultural rights as a powerful tool for promoting social justice and human dignity. CESR exposes human rights violations through an interdisciplinary combination of legal and socio-economic analysis. The capacity of governments to meet their economic and social rights obligations is particularly conditioned by the resources available to them. For this reason, CESR has focused for many years on the link between fiscal policy (the generation and allocation of resources) and the fulfillment of human rights. The Center advocates for changes to economic and social policy at the international, national and local levels so as to ensure these comply with international human rights standards.

The **Global Justice Clinic at NYU School of Law (GJC)** works to prevent, challenge, and redress rights violations in situations of global inequality. Working on cases and projects that involve cross-border human rights violations, the deleterious impacts of activities by State and non-State actors, and emerging problems that require close collaboration between actors at the local and international levels, students engage in human rights investigation, advocacy, and litigation in domestic and international settings. Serving as legal advisers, counsel, co-counsel, or advocacy partners, Clinic students work side-by-side with human rights activists from around the world. The Global Justice Clinic endeavors to carry out its work in a rights-based manner and uses methods from across the disciplines.

The **Tax Justice Network (TJN)** operates as a centre of expertise for wider issues of fair taxation, in particular with respect to financial secrecy (the role of ‘tax havens’), the taxation of multinational companies, and the importance of tax as a tool for effective development – including in supporting the delivery of the Sustainable Development Goals, and the broad human rights that underpin these. TJN’s core role is in providing high-level research, international advocacy – including with national governments but above all with international organisations such as the OECD and international media engagement.

ENDNOTES

- ¹ Convention on the Elimination of All Forms of Discrimination against Women, art. 2, Dec. 18, 1979, G.A. Res. 34/180, U.N. Doc. A/34/46, 1249 UNTS 13 [hereinafter CEDAW].
- ² Comm. on the Elimination of Discrimination against Women (CEDAW Comm.), *General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, ¶ 28, U.N. Doc. CEDAW/C/GC/28 (Dec. 16, 2010) [hereinafter CEDAW Comm., *Gen. Rec. No. 28*]. The Committee has repeatedly called for States to analyze the impacts of their budgets on women. *See, e.g.*, CEDAW Comm., *Concluding comments: China*, ¶¶ 16, 36, U.N. Doc. CEDAW/C/CHN/CO/6 (Aug. 25 2006); CEDAW Comm., *Concluding observations: Portugal*, ¶¶ 19, 26, 27, U.N. Doc. CEDAW/C/PRT/CO/7 (Apr. 1, 2009); CEDAW Comm., *Report of the Comm. on the Elimination of Discrimination against Women for the Twenty-Second and Twenty-Third Sessions*, ¶¶ 64,111,131,149,226,234,250,340,382,393, U.N. Doc. A/55/38 (Aug. 17, 2000); CEDAW Comm., *Concluding comments: Jamaica*, ¶ 38, U.N. Doc. CEDAW/C/JAM/CO/5 (Aug. 25 2006).
- ³ CEDAW, *supra* note 1, art. 3.
- ⁴ CEDAW Comm., *General Recommendation No. 6: Effective national machinery and publicity*, ¶ 1, U.N. Doc. A/43/38 (1988).
- ⁵ CEDAW Comm., *General Recommendation No. 24: Article 12 (Women and health)*, ¶ 17, U.N. Doc. A/54/38/Rev.1, Ch. 1 (1999).
- ⁶ CEDAW Comm., *General Recommendation on Women's Access to Justice*, ¶ 39, U.N. Doc. CEDAW/C/GC/33 (July 23, 2015).
- ⁷ *See, e.g.*, CEDAW Comm., *Concluding observations on the combined seventh and eighth periodic reports of Liberia*, ¶ 17, U.N. Doc. CEDAW/C/LBR/CO/7-8 (Nov. 20, 2015); CEDAW Comm., *Concluding observations on the combined fourth and fifth periodic reports of Croatia*, ¶ 12, U.N. Doc. CEDAW/C/HRV/CO/4-5 (July 28, 2015); CEDAW Comm., *Concluding observations: Tuvalu*, ¶ 26(e), U.N. Doc. CEDAW/C/TUV/CO/3-4 (Mar. 11, 2015); CEDAW Comm., *Concluding observations on the combined fourth and fifth periodic reports of the Maldives*, ¶ 14, U.N. Doc. CEDAW/C/MDV/CO/4-5 (Mar. 11, 2015); CEDAW Comm., *Concluding observations on the fourth periodic report of Kyrgyzstan*, ¶11, U.N. Doc. CEDAW/C/KGZ/CO/4 (March 11, 2015). Similar issues have been raised in the past, with the Committee expressing concern over the lack of any dedicated budget for women's rights and urging States to increase budget allocations for the advancement of women's rights. *See, e.g.*, CEDAW Comm., *Report of the Comm. on the Elimination of Discrimination against Women for the Twenty-Eighth and Twenty-Ninth Sessions*, ¶¶ 225, 226, 248, 253, 254, 262, 284, 294, 329, 351, 357, 391, 394, U.N. Doc. A/58/38 (Mar. 13, 2003); CEDAW Comm., *Concluding observations: Samoa*, ¶ 14, U.N. Doc. CEDAW/C/WSM/CO/4-5 (July 27, 2012); CEDAW Comm., *Concluding observations: Congo*, ¶¶ 19–20, U.N. Doc. CEDAW/C/COG/CO/6 (Mar. 1, 2012); CEDAW Comm., *Concluding observations on the sixth periodic report of Angola*, ¶ 13, U.N. Doc. CEDAW/C/AGO/CO/6 (Mar. 1, 2013); CEDAW Comm., *Concluding observations on the combined seventh and eighth periodic reports of Cuba*, ¶ 16, U.N. Doc. CEDAW/C/CUB/CO/7-8 (July 30, 2013).
- ⁸ Women for Tax Justice, *Show Us the Statistics* (Mar. 26, 2015), <https://womenfortaxjustice.wordpress.com/2015/03/26/showusthestatistics/>; Financial Transparency Coalition et al., *Why Tackle the Links Between Illicit Capital Flows, Tax, Policies, and Gender Justice?*, at 1 (Oct. 14, 2014), <http://www.daghammarskjold.se/wp-content/uploads/2014/12/Initiative-Statement.pdf>.
- ⁹ *See, e.g.*, CEDAW Comm., *Concluding observations: Ethiopia*, ¶ 39, U.N. Doc. CEDAW/C/ETH/CO/6-7 (July 27, 2011); CEDAW Comm., *Concluding observations: Netherlands*, ¶ 44, U.N. Doc. CEDAW/C/NLD/CO/5 (Feb. 5, 2010); CEDAW Comm., *Concluding observations: Bhutan*, ¶ 29, U.N. Doc. CEDAW/C/BTN/CO/7 (Aug. 7, 2009); CEDAW Comm., *Concluding comments: Republic of Korea*, ¶¶ 31–32, U.N. Doc. CEDAW/C/KOR/CO/6 (Aug. 10, 2007); CEDAW Comm., *Concluding Comments: Georgia*, ¶ 27, U.N. Doc. CEDAW/C/GEO/CO/3 (Aug. 25, 2006); CEDAW Comm., *Concluding comments: the Republic of Moldova*, ¶ 20, U.N. Doc. CEDAW/C/MDA/CO/3 (Aug. 25, 2006); CEDAW Comm., *Concluding comments of the Committee on India's Initial State Report*, ¶ 51, U.N. Doc. A/55/38(SUPP) (Aug. 17, 2000).
- ¹⁰ CEDAW Comm., *Report of the Comm. on the Elimination of Discrimination against Women for the Twenty-Sixth Session, Twenty-Seventh Session, Exceptional Session*, ¶ 387 (Concluding observations: Russia), U.N. Doc. A/57/38 (2002); *see also id.* ¶ 54 (Concluding observations on Fiji's Initial State Report).
- ¹¹ *Id.* ¶ 428 (Chapter VII, Implementation of article 21 of the Convention, Decisions of the 26th Session: Gender and sustainable development).
- ¹² *See* Special Rapporteur on Extreme Poverty and Human Rights, *Report of the Special Rapporteur on extreme poverty and human rights*, U.N. Doc. A/HRC/26/28, ¶¶ 44–49 (May 22, 2014) (by Magdalena Sepúlveda Carmona) [hereinafter SR Report on Fiscal Policy].
- ¹³ *See, e.g.*, CEDAW Comm., *Concluding observations: Spain*, ¶ 8, U.N. Doc. CEDAW/C/ESP/CO/7-8 (July 29, 2015); CEDAW Comm., *Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland*, ¶ 20, U.N. Doc. CEDAW/C/GBR/CO/7* (July 30, 2013) (Reissued for technical reasons on Nov. 13, 2013).
- ¹⁴ *See* CEDAW Comm., *Concluding observations on the seventh periodic report of Greece*, ¶¶ 12, 30, U.N. Doc. CEDAW/C/GRC/CO/7 (Mar. 26, 2013) (expressing concern that reductions in the budget of the General Secretariat of Gender Equality would undermine implementation of Convention obligations, and that cuts in the health sector budget mainly affect women's and girls' health); *see also* CEDAW Comm., *Concluding observations: Myanmar*, ¶¶ 16–17, U.N. Doc. CEDAW/C/MMR/CO/3 (Nov. 7, 2008); CEDAW Comm., *Concluding observations on the combined fourth and fifth periodic reports of Maldives*, ¶ 14, U.N. Doc. CEDAW/C/MDV/CO/4-5 (Mar. 11, 2015).
- ¹⁵ Center for Economic and Social Rights (CESR), *Spain: Factsheet No. 14* (2014), http://www.cesr.org/downloads/FACTSHEET_Spain_2015_web.pdf; OHCHR, *Spain: Universal Periodic Review*, <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/ESSession8.aspx> (accessed Feb. 3, 2016).

- ¹⁶ See CEDAW Comm., *Concluding observations on the combined seventh and eighth periodic reports of Liberia*, ¶ 9, U.N. Doc. C/LBR/CO/7-8 (Nov. 20, 2015); *Concluding observations on the combined seventh and eighth periodic reports of Guinea*, ¶ 48, U.N. Doc. C/GIN/CO/7-8 (Nov. 14, 2014); UNICEF, *Women Most Affected Ebola Outbreak in W. Africa*, United Nations Radio (July 30, 2014), <http://www.unmultimedia.org/radio/english/2014/07/unicef-women-most-affected-ebola-outbreak-in-w-africa/#.VqQOx5orJdj>; Caelainn Hogan, *Ebola Striking Women More Frequently Than Men*, Wash. Post (Aug 14, 2014), https://www.washingtonpost.com/national/health-science/2014/08/14/3e08d0c8-2312-11e4-8593-da634b334390_story.html; see also Martha Anker, World Health Organization, Department of Gender, Women, and Health, *Addressing Sex and Gender in Epidemic-prone Infectious Diseases* 29 (2007), <http://www.who.int/csr/resources/publications/SexGenderInfectDis.pdf?ua=1>.
- ¹⁷ See CEDAW Comm., *Concluding observations on the combined seventh and eighth periodic reports of Liberia*, ¶¶ 39–40, U.N. Doc. C/LBR/CO/7-8 (Nov. 20, 2015).
- ¹⁸ CEDAW Comm., *Concluding observations on the sixth periodic report of Sierra Leone*, ¶ 33b, U.N. Doc. C/SLE/CO/6 (Mar. 10, 2014).
- ¹⁹ CEDAW Comm., *Concluding observations on the sixth periodic report of Sierra Leone*, ¶¶ 14, 15b, U.N. Doc. C/SLE/CO/6 (Mar. 10, 2014); CEDAW Comm., *Concluding observations on the combined seventh and eighth periodic reports of Guinea*, ¶¶ 22–23, U.N. Doc. C/GIN/CO/7-8 (Nov. 14, 2014).
- ²⁰ Special Rapporteur on the Effects of Foreign Debt and Other Related International Financial Obligations of States, *Illicit Financial Flows, Human Rights and the Post-2015 Development Agenda*, ¶ 28, U.N. Doc. A/HRC/28/60 (Feb. 10, 2015) (by Juan Pablo Bohoslavsky) (citing WHO, Global health expenditure database, General Government expenditure on health 2012 in US\$, <http://apps.who.int/nha/database/Home/Index/en>).
- ²¹ *Id.* (citing Dev Kar and Joseph Spanjers, Global Financial Integrity, *Illicit financial flows from developing countries: 2003–2012*, at 28–29 & n.5 (Dec. 2014)).
- ²² See generally Kate Donald & Rachel Moussié, Institute for Development Studies, Policy Brief 109: *Redistributing Unpaid Care Work – Why Tax Matters for Women’s Rights* (Jan. 2016), <http://www.csr.org/article.php?id=1804>.
- ²³ CEDAW Comm., General Recommendation No. 23 on Article 7 (Political and Public life) (adopted at the Sixteenth Session of the CEDAW Comm.), ¶¶ 10–11, U.N. Doc. A/52/38 (1997) (citing “lack of services” as among “the most significant factors inhibiting women’s ability to participate in public life,” and observing that the “double burden of [domestic] work and... economic dependence [on men]” prevents women from engaging “more fully in the life of their communities” and in public life).
- ²⁴ See Donald & Moussié, *supra* note 22, at 1.
- ²⁵ Association for Women’s Rights in Development (AWID), *AWID Think Piece on Fiscal Policy, Women’s Rights and Gender Equality*, 3 (Sept. 16, 2013), <http://www.ohchr.org/Documents/Issues/Poverty/ContributionsFiscaltaxpolicy/AWID.pdf>.
- ²⁶ Donald & Moussié, *supra* note 22, at 1.
- ²⁷ African Tax Administration Forum, *Good Tax Governance in Africa* 35 (Feb. 2012) (citing Volkerink, B., *Tax Policy in Sub-Saharan African: A Survey of Issues in a Number of Countries* (Centre for Taxation and Public Governance Working Paper Series, No. 2009-01)), http://www.l4bb.org/reports/ataf_good_tax_governance_in_africa.pdf.
- ²⁸ See Donald & Moussié, *supra* note 22, at 3 (citing Isabel Otiz, et al., The South Centre, Initiative for Policy Dialogue Columbia University, International Labor Office, *The Decade of Adjustment: A Review of Austerity Trends 2010-2020 in 187 Countries*, at 41 (ESS Working Paper No. 53, 2015), <http://socialprotection-humanrights.org/wp-content/uploads/2015/11/The-Decade-of-Adjustment-A-Review-of-Austerity-Trends-2010-2020-in-187-Countries.pdf>).
- ²⁹ See The Women’s Working Group on Financing for Development, *Submission To the Report of the Secretary-General to the Economic and Social Council on options for further strengthening the work and operational capacity of the Committee of Experts on International Cooperation in Tax Matters* 2 (March 2015), http://www.un.org/esa/ffd/wp-content/uploads/2015/03/ICTM2015_wwg.pdf.
- ³⁰ See Donald & Moussié, *supra* note 22, at 3.
- ³¹ See, e.g., Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, *Report on Mission to Latvia*, ¶ 22, U.N. Doc. A/HRC/23/37/Add.1 (2012) (by Cephias Lumina) (noting that the regressive tax regime imposed by the Latvian government in response to the economic crisis disproportionately affected lower income households which were obliged to devote a larger portion of their income to accessing essential goods and services).
- ³² See SR Report on Fiscal Policy, *supra* note 12, at 12; see also Erika Dayle Siu, *BEPS and the Politics of Tax Power*, Women for Tax Justice (Nov. 12, 2014), <https://womenfortaxjustice.wordpress.com/2014/11/14/beeps-and-the-politics-of-tax-power/>.
- ³³ See Donald & Moussié, *supra* note 22, at 3 (“For women, VAT can be especially regressive due to their gendered roles as primary caregivers with responsibility to purchase food and household goods. In South Africa the Women’s Budget Group lobbied to remove VAT on paraffin bought by poor and rural women for cooking, while in Kenya and the UK, women’s groups mobilised against charging VAT on sanitary towels and tampons.”); see also Financial Transparency Coalition et al., *Why Tackle the Links Between Illicit Capital Flows, Tax, Policies, and Gender Justice?*, at 1 (Oct. 14, 2014), <http://www.daghammarskjold.se/wp-content/uploads/2014/12/Initiative-Statement.pdf>; Women for Tax Justice, *Show Us the Statistics*,” (Mar. 26, 2015), <https://womenfortaxjustice.wordpress.com/2015/03/26/showusthestatistics/>.
- ³⁴ Christian Aid, *Taxing Men & Women: Why Gender is Crucial for a Fair Tax System* 14 (July 2014), <http://www.globaltaxjustice.org/wp-content/uploads/2014/11/taxing-men-and-women-gender-analysis-report-july-2014.pdf>.
- ³⁵ See generally Taxation and Gender Equity: A Comparative Analysis of Direct and Indirect Taxes in Developing and Developed Countries (Caren Grown & Imraan Valodia, eds., 2010).
- ³⁶ See e.g., Economic Social Council, Comm. on Economic, Social and Cultural Rights, *Concluding observations: Ireland*, ¶ 11, U.N. Doc. No. E/C.12/IRL/CO/3 (2015) (recommending the State to “consider reviewing its tax regime, with a view to increasing its revenues

to restore the pre-crisis levels of public services and social benefits, in a transparent and participatory manner.”); Comm. on Economic, Social and Cultural Rights, *Report on the Twenty-Second, Twenty-Third and Twenty-Fourth Sessions*, ¶ 82, U.N. Doc. E/C.12/1/Add. 58 (2001) (expressing concern about the negative effect of Georgia’s taxation system on poverty); *id.* ¶ 370 (praising Australia’s progressive tax reforms to reduce income tax for most working Australians).

³⁷ See Letter from Ariranga G. Pillay, Chairperson, Comm. on Economic, Social and Cultural Rights to All State Parties to the ICESCR (May 16, 2012), <http://www2.ohchr.org/english/bodies/cescr/docs/LetterCESCRtoSP16.05.12.pdf>. The letter set out retrogression criteria, noting, in particular, that proposed austerity policies “must comprise all possible measures, including tax measures, to support social transfers and mitigate inequalities that can grow in times of crisis and to ensure that the rights of disadvantaged and marginalised individuals and groups are not disproportionately affected.” See also CESR, UN Urges Governments to Prioritize Human Rights Over Austerity (June 15, 2012), <http://www.cesr.org/article.php?id=1305>; Aoife Nolan, *Putting ESR-Based Budget Analysis into Practice: Addressing the Conceptual Challenges*, in Human Rights and Public Finance: Budgets and the Promotion of Economic and Social Rights 41, 50 (Aoife Nolan, Rory O’Connell & Colin Harvey eds., 2013).

³⁸ Comm. on the Rights of the Child, *Concluding observations: Georgia*, ¶¶ 18–19, U.N. Doc. No. CRC/C/15/Add.124 (2000) (“While the Committee notes that the civil and political unrest, the economic crisis and the structural adjustment programme have had adverse effects on social investment, it is concerned that in light of article 4 of the Covenant, not enough attention has been paid to allocating budgetary resources in favour of children ‘to the maximum extent of ... available resources’. Concern is also expressed at the widespread practices of tax evasion and corruption which are believed to have an effect on the level of resources available for the implementation of the Covenant... The Committee recommends that the State party undertake all appropriate measures to improve its system of tax collection and reinforce its efforts to eradicate corruption.”); see also Comm. on the Rights of the Child, *Concluding observations: Georgia*, ¶¶ 13–14, U.N. Doc. No. CRC/C/15/ADD.222 (2003) (following up on the 2000 observations and expressing continuing concern).

³⁹ See SR Report on Fiscal Policy, *supra* note 12, ¶ 17 (citing to CEDAW Arts. 5 and 16). See also Special Rapporteur on Extreme Poverty and Human Rights, *Mission to Ireland*, U.N. Doc. No. A/HRC/17/34 (by Magdalena Sepúlveda Carmona), (“A human rights approach ... requires States to take steps to eliminate the prevalence of tax evasion, a problem that reduces the resources available for measures to realize human rights.”)

⁴⁰ Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, *Advance Edited Version: Final Study on Illicit Financial Flows, Human Rights and the 2030 Agenda for Sustainable Development*, ¶ 43, U.N. Doc. No. A/HRC/31/61 (2016) (by Juan Pablo Bohoslavsky).

⁴¹ U.N. Human Rights Office of the High Comm’r, U.N. *Guiding Principles on Extreme Poverty and Human Rights*, ¶ 61, http://www.ohchr.org/Documents/Publications/OHCHR_ExtremePovertyandHumanRights_EN.pdf.

⁴² *Id.* ¶ 96.

⁴³ U.N. Human Rights Council, *The Negative Impact of the Non-Repatriation of Funds of Illicit Origin to the Countries of Origin on the Enjoyment of Human Rights, and the Importance of Improving International Cooperation*, ¶ 8, U.N. Doc. A/HRC/25/L.14 (2014), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/25/L.14.

⁴⁴ Council of Europe Comm’r for Human Rights, *Safeguarding Human Rights in Times of Economic Crisis* 10, 30, 41–42, 48–49 (2013), <https://wcd.coe.int/ViewDoc.jsp?id=2130915>.

⁴⁵ *From the Margins to the Center: Fiscal Policy and Human Rights*, CESR (Oct. 26, 2015), <http://www.cesr.org/article.php?id=1779>.

⁴⁶ See Christian Aid, *Briefing: Tax and the Post-2015 Agenda* 4 (Mar. 2013), <http://www.christianaid.org.uk/images/tax-and-the-post-2015-agenda.pdf>; see also United Nations Development Program (UNDP), Issues Brief, *Gender Equality and Poverty Reduction: Taxation* 4 (Apr. 2010), <http://www.undp.org/content/dam/undp/library/gender/Gender%20and%20Poverty%20Reduction/Taxation%20English.pdf>.

⁴⁷ SR Report on Fiscal Policy, *supra* note 12, ¶ 74.

⁴⁸ Int’l Bar Ass’n, *Tax Abuses, Poverty and Human Rights* 8 (Oct. 2013), http://www.ibanet.org/Tax_Abuses_Poverty_and_Human_Rights_Report.aspx.

⁴⁹ *Id.*

⁵⁰ This submission uses the following definition of trade mis-invoicing: “a method for moving money illicitly across borders which involves deliberately misreporting the value of a commercial transaction on an invoice submitted to customs.” *Trade Mis-invoicing*, Global Financial Integrity, <http://www.gfintegrity.org/issue/trade-misinvoicing/> (last accessed Feb. 20, 2016).

⁵¹ The \$692 billion figure is global, with just over \$210 billion from developing countries, according to 2012 estimates. Valpy FitzGerald, Queen Elizabeth House Working Paper Series, Oxford U., Working Paper No. 196, *International Tax Cooperation and Innovative Development Finance* 8 (2012).

⁵² Ernesto Crivelli, Ruud A. de Mooij & Michael Keen, IMF, *Base Erosion, Profit Shifting and Developing Countries* (Int’l Monetary Fund, Working Paper No. 15/09, 2015), http://www.sbs.ox.ac.uk/sites/default/files/Business_Taxation/Docs/Publications/Working_Papers/Series_15/WP1509.pdf.

These figures are broadly consistent with those found by Cobham, Janský, *Measuring Misalignment: the Location of US Multinationals’ Economic Activity Versus the Location of their Profits* (ICTD Working Paper 42 2015), in: <http://www.ictd.ac/ju-download/2-working-papers/91-measuring-misalignment-the-location-of-us-multinationals-economic-activity-versus-the-location-of-their-profits>. These figures are not captured in GFI’s analysis of “illicit financial flows.” The distinction between “tax avoidance” and “tax evasion,” which exists in English but not in all languages, is a murky one. Tax “avoidance” is conduct that is facially compliant with existing laws, although its effect may be to undermine or circumvent the letter or spirit of the law. Tax evasion, however, is illegal noncompliance

with existing tax law. In many instances, however, there is no bright-line legal analysis that separates one from the other; what is considered legal are practices that tax lawyers estimate would win in a court of law 25% of the time. In other words, probability of enforcement of the law is often the determining factor.

⁵³ See, e.g., Sol Picciotto, Tax Justice Network, *Briefing on Base Erosion and Profit-Shifting (BEPS): Implications for Developing Countries 2* (2014) <http://www.taxjustice.net/wp-content/uploads/2013/04/TJN-Briefing-BEPS-for-Developing-Countries-Feb-2014-v2.pdf> (observing that, although international tax reform is led by developed countries, the issue impacts developing countries more severely, with corporate tax revenues making up about 20% of developing countries' total tax revenues, compared to 8 to 10% for developed countries); see also Int'l Monetary Fund (IMF) Fiscal Affairs Dep't, *Spillovers in International Corporate Taxation*, 2014 Int'l Monetary Fund Pol. Papers 20 ("Compared to OECD countries, the base spillovers from others' tax rates are two to three times larger, and statistically more significant. . . . The apparent revenue loss from spillovers . . . is also largest for developing countries."), <http://www.imf.org/external/np/pp/eng/2014/050914.pdf>; Action Aid, *A level playing field? The need for non-G20 participation in the BEPS process 3* (2014), https://www.actionaid.org.uk/sites/default/files/publications/beps_level_playing_field_.pdf; Oxfam, *Business Among Friends: Why corporate tax dodgers are not yet losing sleep over global tax reform 6* (2014), http://www.oxfam.org/sites/www.oxfam.org/files/bp185-business-among-friends-corporate-tax-reform-120514-en_0.pdf.

⁵⁴ See, e.g., Picciotto, *supra* note 53, at 2; see also Tax Justice Network, IMF: *tax havens cause poverty, particularly in developing countries*, (June 25, 2014), <http://www.taxjustice.net/2014/06/25/imf-tax-havens-cause-poverty-particularly-developing-countries/>.

⁵⁵ See Gabriel Zucman, *The Missing Wealth of Nations: Evidence From Switzerland, 1914-2010*, at 24 (Paris-Jourdan Sciences Economiques, Working Paper No. 2011-07, 2011), <http://halshs.archives-ouvertes.fr/docs/00/56/52/24/PDF/wp201107.pdf> (estimating that 8 % of global household net financial wealth, or \$7.6 trillion, is held in offshore accounts); Boston Consulting Group, *Global Wealth Report 2014: Riding a Wave of Growth* (2014), www.bcgperspectives.com/content/articles/financial_institutions_business_unit_strategy_global_wealth_2014_riding_wave_growth (estimating, based on interviews with wealth managers, a total of \$8.9 trillion in offshore accounts); James S. Henry, Tax Justice Network, *The Price of Offshore Revisited: New Estimates for 'Missing' Global Private Wealth, Income, Inequality, and Lost Taxes* (2012), http://www.taxjustice.net/cms/upload/pdf/Price_of_Offshore_Revisited_120722.pdf (estimating that offshore wealth may amount to \$32 trillion).

⁵⁶ Gabriel Zucman, *Taxing across Borders: Tracking Personal Wealth and Corporate Profits*, 28 J. Econ. Perspectives No. 4, 121, 141 (2014) <http://gabriel-zucman.eu/files/Zucman2014JEP.pdf> (describing the upward trend in offshoring of wealth, reportedly increasing 28 % from end-2008 to end-2013).

⁵⁷ Henry, *supra* note 55.

⁵⁸ Zucman, *Taxing Across Borders*, *supra* note 56, at 141.

⁵⁹ *Development aid stable in 2014 but flows to poorest countries still falling*, OECD (Apr. 8, 2014),

<http://www.oecd.org/dac/stats/development-aid-stable-in-2014-but-flows-to-poorest-countries-still-falling.htm>.

⁶⁰ Alicia Bárcena & Winnie Byanyima, Economic Comm'n for Latin America and the Caribbean, *Latin America Is the World's Most Unequal Region: Here's How To Fix It* (Jan. 25, 2016), <http://www.cepal.org/en/articles/2016-latin-america-worlds-most-unequal-region-heres-how-fix-it>.

⁶¹ See GINI Index, World Bank Estimate, <http://data.worldbank.org/indicator/SI.POV.GINI> (last accessed Feb 20, 2016); Transparency International, *Corruption Perceptions Index 2014: Results*, <https://www.transparency.org/cpi2014/results> (last accessed Feb. 20, 2016); International Budget Partnership, *Open Budget Survey 2015: Zambia* (last accessed Jan. 13, 2016).

⁶² CEDAW Comm., *Concluding observations: Zambia*, ¶¶ 15–18, U.N. Doc. C/ZMB/CO/5-6 (Sept. 19, 2011).

⁶³ Zambia's tax-to-GDP ratio of 16% is lower than that of several comparable countries in Africa, including Kenya (23%), Mauritius (19%), and Tanzania (17%), and is well below the OECD average of 33.7%. See Admit Zerihun Wondifraw, African Development Bank, *African Economic Outlook: Ethiopia 2015*, at 5 (2015), http://www.africaneconomicoutlook.org/fileadmin/uploads/aeo/2015/CN_data/CN_Long_EN/Ethiopia_GB_2015.pdf; OECD, *Revenue Statistics Tax to GDP Ratio Changes Between 1965 and 2001*, <http://www.oecd.org/ctp/tax-policy/revenue-statistics-ratio-change-all-years.htm>.

⁶⁴ *Zambia's Tax Losses*, Financial Times (Apr. 30, 2015), <http://www.ft.com/cms/s/0/93b47d9a-b196-11e2-b324-00144feabdc0.html#axzz3yxQOxiY0>.

⁶⁵ Action Aid, *Tax Responsibility, An Investor Guide 8* (Feb. 2013),

http://www.actionaid.org.uk/sites/default/files/publications/tax_guide_for_investors_final.pdf.

⁶⁶ Africa Progress Panel, *Equity in Extractives: Stewarding Africa's Natural Resources for All 64* (2013), http://app-cdn.acwupload.co.uk/wp-content/uploads/2013/08/2013_APR_Equity_in_Extractives_25062013_ENG_HR.pdf.

⁶⁷ The Berne Declaration, *Commodities: Switzerland's Most Dangerous Business*, 104 (2011),

https://www.ladb.ch/fileadmin/files/documents/Rohstoffe/commodities_book_berne_declaration_lowres.pdf.

⁶⁸ Grant Thornton, *Pilot Audit Report – Mopani Cooper Mines Plc, International Tax Team Report to the Commissioner of Domestic Taxes, Zambia Revenue Authorities* (2010).

⁶⁹ See generally War on Want, *Extracting Minerals, Extracting Wealth: How Zambia is Losing \$3 billion a Year from Corporate Tax Dodging* (Oct. 2015), http://www.waronwant.org/sites/default/files/WarOnWant_ZambiaTaxReport_web.pdf.

⁷⁰ Switzerland leads the world in cross-border asset management, with 28% of the global market share. Swiss banks manage approximately \$6.5 trillion in assets, 51% of which reportedly originates from abroad. See Swiss Bankers Association, *The Economic Importance of the Swiss Financial Centre*, SwissBanking (Dec. 31, 2014), http://www.swissbanking.org/en/home/finanzplatz-link/facts_figures.htm.

⁷¹ *Financial Secrecy Index – 2015 Results*, Tax Justice Network, <http://www.financialsecrecyindex.com/introduction/fsi-2015-results> (last accessed Feb. 20, 2016).

⁷² For detailed discussion of the differences between the terms “tax haven” and “financial secrecy jurisdiction,” and the preference for the latter when assessing State conduct, see Alex Cobham, et al., *The Financial Secrecy Index: Shedding New Light on the Geography of Secrecy*, Center for Global Development, Working Paper 404, 2015), <http://www.cgdev.org/publication/financial-secrecy-index-shedding-new-light-geography-secrecy-working-paper-404>.

⁷³ Tax Justice Network, Financial Secrecy Index, *What is a secrecy jurisdiction?*, <http://www.financialsecrecyindex.com/faq/what-is-a-secrecy-jurisdiction> (last accessed Feb. 20, 2016).

⁷⁴ See, e.g., Gabriel Zucman, *The Missing Wealth of Nations: Are Europe and the U.S. Net Debtors or Net Creditors?*, Q. J. of Economics Vol. 128, No. 3, 1321–1364 (2013); Dev Kar & Joseph Spanjers, Global Fin. Integrity, *Illicit Financial Flows from Developing Countries: 2003-2012*, at 21 (2014), <http://www.gfintegrity.org/wp-content/uploads/2014/12/Illicit-Financial-Flows-from-Developing-Countries-2003-2012.pdf> (“Illicit financial flows from developing countries are facilitated and perpetuated primarily by opacity in the global financial system.”); Niko Lusiani, *Only the Little People Pay Taxes*, in *Litigating Transnational Human Rights Obligations: Alternative judgments* (Mark Gibney & Wouter Vandehole, eds., 2014), http://cesr.org/downloads/Tax_Evasion_ETOs_2014.pdf (citing NOU, Official Norwegian Reports, *Tax Havens and Development: Status, analyses and measures* 67 (2009), www2.ids.ac.uk/gdr/cfs/TaxNews/NorwegianTaxPolicy.pdf).

⁷⁵ See, e.g., Oxfam, *G20 among biggest losers in large-scale tax abuse – but poor countries relatively hardest hit* (Nov. 10, 2015), <https://www.oxfam.org/en/pressroom/pressreleases/2015-11-10/g20-among-biggest-losers-large-scale-tax-abuse-poor-countries>.

⁷⁶ Gabriel Zucman, *The Missing Wealth of Nations: Evidence From Switzerland, 1914-2010*, at 1 (Paris-Jourdan Sciences Economiques, Working Paper No. 2011 – 07, 2011), <https://hal.archives-ouvertes.fr/halshs-00565224v1/document>.

⁷⁷ Zucman, *Taxing Across Borders*, *supra* note 56, at app, <http://gabriel-zucman.eu/files/Zucman2014JEPAppendix.pdf>.

⁷⁸ *Id.* at 140.

⁷⁹ See Int’l Monetary Fund (IMF), *G20 London Summit Leaders’ Statement*, ¶ 15 (2009), https://www.imf.org/external/np/sec/pr/2009/pdf/g20_040209.pdf.

⁸⁰ See Zucman, *Taxing Across Borders*, *supra* note 56, at 140.

⁸¹ Gerard Ryle et al., *Banking Giant HSBC Sheltered Murky Cash Linked to Dictators and Arms Dealers*, International Consortium of Investigative Journalists (ICIJ) (Feb. 8, 2015), <http://www.icij.org/project/swiss-leaks/banking-giant-hsbc-sheltered-murky-cash-linked-dictators-and-arms-dealers>.

⁸² Financial Transparency Coalition & Christian Aid, *Viewing #Swissleaks Through a Different Lens*, #Swissleaks Reviewed, <http://www.swissleaksreviewed.org/#viewing-swissleaks-differently> (last accessed Feb. 18, 2016).

⁸³ See Zucman, *Taxing Across Borders*, *supra* note 56, at 140.

⁸⁴ *Offshore Tax-Avoidance and IRS Compliance Efforts*, Internal Revenue Service (IRS), <https://www.irs.gov/uac/Offshore-Tax-Avoidance-and-IRS-Compliance-Efforts> (last accessed Jan. 14, 2016).

⁸⁵ See Tax Justice Network, Financial Secrecy Index, *Narrative Report on Switzerland 2* (2015), <http://www.financialsecrecyindex.com/PDF/Switzerland.pdf>.

⁸⁶ See *id.* at 2–4.

⁸⁷ See Bundesgesetz über die Banken und Sparkassen (Banking Act), art. 47 (1934), <https://www.admin.ch/opc/de/classified-compilation/19340083/index.html> [hereinafter Banking Act].

⁸⁸ See, e.g., *New mandatory international OECD standards with regard to corporate taxation, including for Switzerland*, news.admin.ch (Oct. 5, 2015), <https://www.news.admin.ch/message/index.html?lang=en&msg-id=58972>; *Multilateral Cooperation*, State Secretariat for International Financial Matters, <https://www.sif.admin.ch/sif/en/home/themen/internationale-steuerpolitik/multilaterale-zusammenarbeit.html> (last accessed Feb. 14, 2016); Swiss Federal Department of Finance, *State Secretariat for International Financial Matters, Report on International Financial and Tax Matters* 32 (2015), https://www.sif.admin.ch/dam/sif/en/dokumente/Publicationen/SIF_Bericht_e_2015.pdf.download.pdf/SIF_Bericht_e_2015.pdf; Global Tax Alert, *Switzerland and the EU sign agreement regarding automatic exchange of information* (May 28, 2015), [http://www.ey.com/Publication/vwLUAssets/Switzerland_and_the_EU_sign_agreement_regarding_automatic_exchange_of_information/\\$FILE/2015G_CM5473_Switzerland%20and%20the%20EU%20sign%20agreement%20regarding%20automatic%20exchange%20of%20information.pdf](http://www.ey.com/Publication/vwLUAssets/Switzerland_and_the_EU_sign_agreement_regarding_automatic_exchange_of_information/$FILE/2015G_CM5473_Switzerland%20and%20the%20EU%20sign%20agreement%20regarding%20automatic%20exchange%20of%20information.pdf).

⁸⁹ Under article 47(5) of the Banking Act, criminal liability does not apply when a person is obliged by federal or Cantonal law to give testimony or provide banking information to a federal or Cantonal agency that has the legal authority to request such information. See Banking Act, *supra* note 87.

⁹⁰ Since 2009, when Switzerland agreed to apply the OECD standard on exchange of information, which requires exchange of information with foreign authorities in cases of tax evasion, even if the conduct would not amount to a crime under Swiss law. See Marad Magomedov, *Past, Present and Future of Swiss Bank Secrecy Interview of Cyril Troyanov, a Swiss lawyer and Partner at Altenburger Ltd. legal + tax of Geneva, Switzerland*, Business in Switzerland, at 2 (Mar. 12, 2014 & Mar. 19, 2014), http://www.altenburger.ch/uploads/tx_altenburgerteam/CT_2014_Past_Present_and_Future_of_Swiss_Bank_Secrecy.pdf. As of November 27, 2015, Switzerland has enacted OECD standards on information exchange in 53 of its bilateral tax agreements, the majority of which are with developed countries. See *Double Taxation and Administrative Assistance*, State Secretariat for International Financial Matters, <https://www.sif.admin.ch/sif/en/home/themen/internationale-steuerpolitik/doppelbesteuerung-und-amtshilfe.html> (last accessed Feb. 15, 2016). Under the Federal Act on International Mutual Assistance in Criminal Matters (IMAC), tax information may be obtained through judicial assistance if the subject is tax fraud or aggravated tax fraud. See Bundesgesetz über

internationale Rechtshilfe in Strafsachen, 1981, AS 1982 846 (English translation available at: <https://www.admin.ch/opc/en/classified-compilation/19810037/index.html>).

⁹¹ See *Steueramtshilfegesetz* (the Tax Administrative Assistance Act), art. 1(2) (2012) [hereinafter TAAA].

⁹² See *Double Taxation and Administrative Assistance*, State Secretariat for International Financial Matters, <https://www.sif.admin.ch/sif/en/home/themen/internationale-steuerpolitik/doppelbesteuerung-und-amtshilfe.html> (last accessed Feb. 15, 2016) (indicating that the Swiss tax agreements in force with some 56 countries, the majority of which are in the Global South, do not comply with the OECD standard on exchange of tax information).

⁹³ See, e.g., Gilles Carbonnier & Anne Zweynert de Cadena, *Commodity Trading and Illicit Financial Flows*, ¶ 35 (Graduate Institute of Geneva, International Development Policy Policy Briefs, Working Papers, 2015), <http://poldev.revues.org/2054?lang=fr>.

⁹⁴ IMF, OECD, UN, World Bank, *Supporting the Development of More Effective Tax Systems: A Report to the G20 Development Working Group* (2011), <http://www.oecd.org/ctp/48993634.pdf>.

⁹⁵ Ministry of Foreign Affairs, the Netherlands, *Evaluation issues in financing for development Analysing effects of Dutch corporate tax policy on developing countries* (Nov. 2013), <https://www.government.nl/binaries/government/documents/reports/2013/11/14/iob-study-evaluation-issues-in-financing-for-development-analysing-effects-of-dutch-corporate-tax-policy-on-developing-countries/iob-study-evaluation-issues-in-financing-for-development.pdf>

⁹⁶ IBFD, *IBFD Spillover Analysis Possible Effects of the Irish Tax System on Developing Economies* (July 2015), http://www.budget.gov.ie/Budgets/2016/Documents/IBFD_Irish_Spillover_Analysis_Report_pub.pdf.

⁹⁷ United Nations, Addis Ababa Action Agenda of the Third Int'l Conf. on Financing for Development (Addis Ababa Action Agenda), ¶ 104 (“We recognize the importance of policy coherence for sustainable development and we call upon countries to assess the impact of their policies on sustainable development.”), http://www.un.org/esa/ffd/wp-content/uploads/2015/08/AAAA_Outcome.pdf.

⁹⁸ Government of Brazil, Government of Sweden, Government of Switzerland, Government of the United Kingdom of Great Britain and Northern Ireland, Organisation for Economic Co-operation and Development (OECD), UN Women, Women’s Working Group on Financing for Development, *Addis Ababa Action Plan on Transformative Financing for Gender Equality and Women’s Empowerment*, 2015, <http://www.un.org/esa/ffd/ffd3/commitments/commitment/addis-ababa-action-plan-on-transformative-financing-for-gender-equality-and-womens-empowerment.html#>

⁹⁹ In 2013, Switzerland signed the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters, which is, according to the OECD, the “most comprehensive multilateral instrument available for all forms of tax cooperation to tackle tax evasion and avoidance, a top priority for all countries.” <http://www.oecd.org/ctp/exchange-of-tax-information/conventiononmutualadministrativeassistanceintaxmatters.htm>. In 2015, Switzerland signed a tax cooperation agreement with the United States, following the latter’s enactment of the Foreign Account Tax Compliance Act (FATCA), to help prevent Swiss financial secrecy from impeding the ability of U.S. tax authorities to investigate tax abuse by US citizens. The agreement requires financial institutions to disclose to U.S. tax authorities information related to resident-U.S. accounts on an ongoing, automatic basis. See, e.g., Dirk de Wolf, *Global Tax Transparency: FATCA, CRS, European FATCA*, world.tax (July 29, 2015), <https://www.world.tax/articles/global-tax-transparency-fatca-crs-european-fatca.php>. In 2014, Switzerland also joined the OECD declaration for automatic exchange of information, stressing that domestic bank client confidentiality would not be affected by the implementation of the new global standard. <https://www.sif.admin.ch/sif/en/home/themen/internationale-steuerpolitik/automatischer-informationsaustausch.html>. See also <https://www.sif.admin.ch/sif/en/home/dokumentation/medienmitteilungen/medienmitteilungen.msg-id-57554.html>.

¹⁰⁰ See, e.g., <https://www.sif.admin.ch/sif/en/home/dokumentation/medienmitteilungen/medienmitteilungen.msg-id-57554.html>. The Common Reporting Standard “contains the due diligence rules for financial institutions to follow to collect and then report the information, that underpin the automatic exchange of financial information.” OECD, *Standard for Automatic Exchange of Financial Information in Tax Matters, Implementation Handbook*, at 7, <http://www.oecd.org/ctp/exchange-of-tax-information/implementation-handbook-standard-for-automatic-exchange-of-financial-information-in-tax-matters.pdf>. See also: <http://www.taxjustice.net/2014/02/13/press-release-tjn-responds-new-oecd-report-automatic-information-exchange>.

¹⁰¹ <http://www.taxjustice.net/wp-content/uploads/2013/04/TJN-141124-CRS-AIE-End-of-Banking-Secrecy.pdf>

¹⁰² See <https://www.sif.admin.ch/sif/en/home/dokumentation/medienmitteilungen/medienmitteilungen.msg-id-54768.html>; see also Federal Council approves dispatches on legal basis for automatic exchange of information (June 5, 2015), <https://www.news.admin.ch/message/index.html?lang=en&msg-id=57554> (There is to be only one global standard, the exchanged information should be used solely for the agreed purpose (principle of speciality), the information should be reciprocal, i.e. should flow in both directions, data protection must be ensured and the beneficial owners of trusts and other financial constructs should also be identified.”)

¹⁰³ Andres Knobel, Markus Meinzer, Tax Justice Network, *The end of bank secrecy? Bridging the gap to effective automatic information exchange: An Evaluation of OECD’s Common Reporting Standard (CRS) and its alternatives* 51–53 (Nov. 24, 2014) (describing limitations on developing country participation in automatic information exchange), <http://www.taxjustice.net/wp-content/uploads/2013/04/TJN-141124-CRS-AIE-End-of-Banking-Secrecy.pdf>.

¹⁰⁴ See, e.g., Tax Justice Network, *Swiss double tax agreements disadvantage poorer countries* (Jan. 21, 2014), <http://www.taxjustice.net/2014/01/21/swiss-double-tax-agreements-disadvantage-poorer-countries/>; Tax Justice Network, *Swiss tax treaty policy thwarts new era of automatic information exchange* (Mar. 24, 2014), <http://www.taxjustice.net/2014/03/24/swiss-tax-treaty-policy-thwarts-new-era-automatic-information-exchange/>;

Mark Herkenrath, Olivier Longchamp & Andreas Missbach, « Fiscalité et développement : Comment l'évasion fiscale handicape les pays du Sud – et ce que la Suisse peut changer » at 8, table 1 (2012),

http://www.alliancesud.ch/fr/politique/finance/downloads/Steuerbroschure_AS_DB_f.pdf/at_download/file

¹⁰⁵ Bundesgesetz über internationale Rechtshilfe in Strafsachen, 1981, AS 1982 846, English translation available at:

<https://www.admin.ch/opc/en/classified-compilation/19810037/index.html>.

¹⁰⁶ In addition to the discussion of India's experience, above, see also *Switzerland 'wrong' to cooperate on stolen bank data*, Swissinfo.ch (Sept. 24, 2015), http://www.swissinfo.ch/eng/tax-evasion_switzerland--wrong--to-cooperate-on-stolen-bank-data/41681292;

Infers international pressure: *Die Schweiz gibt erneut nach* (Aug. 15, 2013), <http://www.bernerzeitung.ch/schweiz/Die-Schweiz-gibt-erneut-nach/story/30410078>; B. Balaban: *Das Ausland als Steuergesetzgeber der Schweiz?*,

http://www.trex.ch/xml_1/internet/de/application/d5/f22.cfm?view=trex.printArchiv&showYear=2013&showMagazin=177&showArtikel=3171&CFID=22242974&CFTOKEN=356f50897cec2ce-B38AEB7D-5056-8200-1294A03886FDA804.

¹⁰⁷ See Swiss Federal Department of Finance, *State Secretariat for International Financial Matters, Report on International Financial and Tax Matters 47* (2016) (figure 25, showing a map that indicates countries with which Switzerland has agreements on administrative assistance in tax matters), <https://www.sif.admin.ch/sif/en/home/dokumentation/publikationen/bericht-ueber-internationale-finanz--und-steuerfragen.html>.

¹⁰⁸ Pritni Patnaik, *India opens new front in tax evasion battle*, swissinfo.ch (Jun. 23, 2014), http://www.swissinfo.ch/eng/swiss-indian-tax-spat_india-opens-new-front-in-tax-evasion-battle/38843502.

¹⁰⁹ See Swiss Federal Department of Finance, *State Secretariat for International Financial Matters, Report on International Financial and Tax Matters 48* (2016), <https://www.sif.admin.ch/sif/en/home/dokumentation/publikationen/bericht-ueber-internationale-finanz--und-steuerfragen.html> (discussing ongoing disagreement with India regarding tax cooperation based on “data illegally obtained”).

¹¹⁰ http://articles.economictimes.indiatimes.com/2014-10-28/news/55521375_1_banking-secrecy-tax-evasion-indian-government

¹¹¹ Consideration of proposals to amend IMAC to conform to OECD standards appears to be on hold. See <http://www.law-news.ch/2011/07/rechtshilfe-bei-steuerdelikten-wird-ausgedehnt>, at 12.

¹¹² *BEPS project on corporate taxation: Federal Council gives go-ahead for country-by-country reports*, News.admin.ch (Jan. 20, 2016),

<https://www.news.admin.ch/message/index.html?lang=en&msg-id=60366>.

¹¹³ *A boost to transparency in international tax matters: 31 countries sign tax co-operation agreement to enable automatic sharing of country by country information*, OECD (Jan. 27, 2016), <http://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/a-boost-to-transparency-in-international-tax-matters-31-countries-sign-tax-co-operation-agreement.htm>.

¹¹⁴ Note however, that the commercial register of Switzerland (including all names of subsidiaries and branches in Switzerland) is available at [http://zefix.admin.ch/zfx-](http://zefix.admin.ch/zfx-cgi/hrform.cgi/hraPage?alle_eintr=on&pers_sort=original&pers_num=0&language=4&col_width=366&amt=007)

[cgi/hrform.cgi/hraPage?alle_eintr=on&pers_sort=original&pers_num=0&language=4&col_width=366&amt=007](http://zefix.admin.ch/zfx-cgi/hrform.cgi/hraPage?alle_eintr=on&pers_sort=original&pers_num=0&language=4&col_width=366&amt=007).

¹¹⁵ *Country-by-Country Reporting*, Tax Justice Network, <http://www.taxjustice.net/topics/corporate-tax/country-by-country/> (last accessed Feb. 20, 2106).

¹¹⁶ *BEPS Project on Corporate Taxation: Federal Council Gives Go-Ahead for Country-by-Country Reports*, news.admin.ch (Jan. 20, 2016),

<https://www.news.admin.ch/message/index.html?lang=en&msg-id=60366>.

¹¹⁷ See Banking Act, *supra* note 87, art. 47; Swiss Criminal Code, art. 123.

¹¹⁸ Article 9 of the AMLA provides for a reporting obligation in the presence of founded suspicions that assets involved in a business relationship or a transaction are related to a crime, are the proceeds of a crime or are under the control of a criminal organisation. See Anti-Money Laundering Forum, *Switzerland*, <http://www.anti-moneylaundering.org/europe/Switzerland.aspx> (last accessed Feb. 20, 2016).

¹¹⁹ See Erster Abschnitt: Geltungsbereich des Gesetzes, at 31 & nn. 160–61, <https://www.admin.ch/opc/de/classified-compilation/19340083/201507010000/952.0.pdf> (stating that Article 47(1c) and (1bis) were added in 2014 and entered into force July 1, 2015, and that reform increased criminal liability for violations of client confidentiality).

¹²⁰ See Tax Justice Network, *How Switzerland Corrupted Its Courts to Nail Rudolf Elmer*, (July 1, 2015),

<http://www.taxjustice.net/2015/07/01/guest-blog-how-switzerland-corrupted-its-courts-to-nail-rudolf-elmer/>.

¹²¹ *Int'l Whistleblower Protections*, Nat'l Whistleblowers Ctr.,

http://www.whistleblowers.org/index.php?option=com_content&task=view&id=744&Itemid=164 (last accessed Feb. 20, 2016).

¹²² Switzerland ratified the Convention Against Corruption in 2009, and the ICCPR in 1992. *United Nations Convention against Corruption Signature and Ratification Status as of 1 December 2015*, U.N. Office on Drugs and Crime [UNODC],

<https://www.unodc.org/unodc/en/treaties/CAC/signatories.html>; *Status of Ratification Interactive Dashboard*, U.N. Human Rights Office of the High Commissioner, <http://indicators.ohchr.org/> (last accessed Jan. 24, 2016).

¹²³ Tax Justice Network – Financial Secrecy Index, *Narrative Report on Switzerland 2* (Sept 23, 2015),

<http://www.financialsecrecyindex.com/PDF/Switzerland.pdf>.

¹²⁵ CEDAW Comm., Concluding observations: India, ¶ 15, UN Doc. CEDAW/C/IND/CO/4-5 (July 24, 2014).

¹²⁶ CEDAW Comm., Gen. Rec. No. 28, *supra* note 2, ¶¶ 9–10, 12 (“States parties are responsible for all their actions affecting human rights, regardless of whether the affected persons are in their territory.”); CEDAW Comm., General Recommendation No. 30 (Advanced Unedited Version), ¶ 8, U.N. Doc. CEDAW/C/GC/30 (Oct. 18, 2013) (reiterating the same extraterritorial standard as General Comment 28) [hereinafter CEDAW Comm, Gen. Rec. 30].

¹²⁷ CEDAW Gen. Rec. No. 28, *supra* note 2, ¶¶ 3–4 (“The Convention is part of a comprehensive international human rights legal framework directed at ensuring the enjoyment by all of all human rights and at eliminating all forms of discrimination against women

on the basis of sex and gender. ...[T]he Convention... guarantees women the equal recognition, enjoyment and exercise of all human rights and fundamental freedoms in the political, economic, social, cultural, civil, domestic or any other field.”).

¹²⁸ See CEDAW, *supra* note 1, art. 1 (“[D]iscrimination against women’ shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women... on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”); see also *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, at 5 (“Preamble”) (2012) [*hereinafter* Maastricht Principles], <http://www.etcoconsortium.org/en/main-navigation/library/maastricht-principles/>.

¹²⁹ Switzerland has been a member of the United Nations since 2002; it ratified the listed human rights agreements in 1992, 1997, and 2014, respectively. *Status of Ratification Interactive Dashboard*, U.N. Human Rights Office of the High Commissioner, <http://indicators.ohchr.org/> (last accessed Jan. 24, 2016).

¹³⁰ See, e.g., Beate Rudolf, *Article 13*, in *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary* 338 n.24, 338–341 (Marsha A. Freeman, Christine Chinkin & Beate Rudolf, eds., 2012) (describing the ICESCR as one of the most applicable treaties for enabling a full interpretation of Article 13, *inter alia*); see also: Working Paper Human Rights Law Sources: UN Pronouncements on Extra-Territorial Obligations Concluding Observations General Comments and Recommendations Special Procedures UPR Recommendations (Nov. 2015), <http://globalinitiative-escr.org/wp-content/uploads/2015/11/151027-Human-Rights-Law-Sources-ETOs.pdf>.

¹³¹ See CEDAW Comm., Gen. Rec. 30, *supra* note 126, ¶ 11; CEDAW Gen. Rec. 28, U.N. Doc. No. CEDAW/C/GC/28, ¶ 9 (Dec. 16, 2010); see also Margaret L. Satterthwaite, *Crossing Borders, Claiming Rights*, 8 *Yale Hum. Rts. & Dev. L.J.* 1, 59–62 (2005) (describing how women’s rights are protected through an analysis of States’ obligation to respect, protect and fulfill all treaty-based human rights in order to achieve *de facto* equality between the sexes), <http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1047&context=yhrdlj>. See generally UN Comm.on Economic, Social and Cultural Rights (CESCR), *General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights*, U.N. Doc. No. E/C.12/2005/4 (2005), <http://www.refworld.org/docid/43f3067ae.html>; CESCR, *General Comment No. 20*, U.N. Doc. No. E/C.12/GC/20 (2009).

¹³² See CEDAW Comm., Gen. Rec. 28, *supra* note 2, at ¶¶ 9, 12; CEDAW Comm., Gen. Rec. 30, *supra* note 126, ¶ 11

¹³³ Maastricht Principles, *supra* note 128, at Section II, 6, princ.8. Although the Maastricht Principles are specifically intended to address the extraterritorial applicability of economic, social and cultural rights, the definitions of terms are concise and useful for the present study. *Id.* ¶ 5 (“The present Principles elaborate extraterritorial obligations in relation to economic, social and cultural rights, without excluding their applicability to other human rights, including civil and political rights.”).

¹³⁴ CEDAW Gen. Rec. No. 28, *supra* note 2, at ¶ 9; see also CEDAW, *supra* note 1, art. 2.

¹³⁵ *Maastricht Principles*, *supra* note 128, at ¶ 9. The Commentary to the Maastricht Principles notes that this principle is reflected across a broad range of international jurisprudence, including from the International Court of Justice, the European Court of Human Rights, the Human Rights Committee, the Inter-American Commission. Olivier De Schutter et al., *Commentary to the Maastricht Principles*, 34 *Hum. Rts. Q.* 1084, 1104–09 (2012). See generally UN Commission on Human Rights, *Note verbale dated 86/12/05 from the Permanent Mission of the Netherlands to the United Nations Office at Geneva addressed to the Centre for Human Rights (“Limburg Principles”)*, 8 January 1987, U.N. Doc. E/CN.4/1987/17, <http://www.refworld.org/docid/48abd5790.html>.

¹³⁶ *c.f.* CEDAW Comm., *M.N.N. v Denmark*, U.N. Doc. CEDAW/C/55/D/33 (2011) (ruling, in the context of deportation despite a foreseeable risk of gender-based violence, that “[t]he foreseeability of the consequence would mean that there was a present violation by the State party, even though the consequence would not occur until later”); CEDAW Comm., *Y.W. v Denmark*, U.N. Doc. CEDAW/C/60/D/51, ¶ 8.7 (2013) (applying the same legal standard of foreseeability to similar factual allegations, but failing to find a violation in fact).

¹³⁷ See CEDAW Gen. Rec. 28, *supra* note 2, ¶¶ 9–10, 12; see also CEDAW, *supra* note 1, art. 2.

¹³⁸ *Id.* ¶ 36.

¹³⁹ The U.N. Guiding Principles on Business and Human Rights further illuminate areas where States can take action to ensure that companies within their jurisdiction respect human rights overseas, including by complying with foreign tax laws. The Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises has noted that several human rights bodies encourage States to “take steps to prevent abuse abroad by corporations within their jurisdiction.” Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, *Business and Human Rights: Towards Operationalizing the ‘Protect, Respect and Remedy’ Framework*, ¶ 15, U.N. Doc. No. A/HRC/11/13 (2009) <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf> (citing CERD/C/USA/CO/6, ¶ 30 (2008); CESCR, *General Comment No. 19*, ¶ 54 (2008)).

¹⁴⁰ See Balakrishnan, R., Elson, D., Heintz, J. & Lusiani, N., *Maximum Available Resources & Human Rights: Analytical Report*, Center for Women’s Global Leadership, Rutgers University (2011), www.cwgl.rutgers.edu/globalcenter/publications/marreport.pdf.

¹⁴¹ For example, the ICESCR’s Article 2(1) obliges States parties “to take steps ... through international assistance and cooperation” in order to create an environment conducive to the realization of the rights recognized in the Covenant, utilizing “the maximum of its available resources.”

¹⁴² Int’l Bar Ass’n Human Rights Institute, *Tax Abuses, Poverty and Human Rights*, *supra* note 48, at 2.

¹⁴³ CEDAW obligates all States parties to undertake positive measures ensuring substantive equality between men and women, which requires the allocation of significant resources; therefore, a policy which predictably undermines other States’ abilities to marshal those resources constitutes a foreseeable interference with the fulfillment of CEDAW rights within affected countries. See CEDAW Comm.,

Gen. Rec. 28, *supra* note 2, ¶ 16 (“States parties are under an obligation to respect, protect and fulfill the right to nondiscrimination of women and to ensure the development and advancement of women in order that they improve their position and implement their right of de jure and de facto or substantive equality with men.”); *c.f.* CEDAW Comm., *M.N.N. v Denmark*, U.N. Doc.

CEDAW/C/55/D/33 (2011) (ruling, in the context of deportation despite a foreseeable risk of gender-based violence, that “[t]he foreseeability of the consequence would mean that there was a present violation by the State party, even though the consequence would not occur until later”); *Y.W. v Denmark*, U.N. Doc. CEDAW/C/60/D/51, ¶ 8.7 (2013) (applying the same legal standard of foreseeability to similar factual allegations)(failing to find a violation in fact). CEDAW’s language in these cases echoes that of the Human Rights Committee, which has found that “a State party may be responsible for extra-territorial violations of the Covenant, if it is a link in the causal chain that would make possible violations in another jurisdiction. Thus, the risk of an extra-territorial violation must be a necessary and foreseeable consequence and must be judged on the knowledge the State party had at the time.” Human Rts. Comm., *Munaf v. Rom.*, Comm’n No. 1539/2006, U.N. GAOR, Hum. Rts. Comm., 96th Sess., Annex ¶ 14.2, U.N. Doc. CCPR/C/96/D/1539/2006 (July 30, 2009).

¹⁴⁴ SR Report on Fiscal Policy, *supra* note 12, ¶ 75; *see also id.* ¶¶ 74, 78 (“In order to take effective and decisive action in these matters, concerted international cooperation is necessary. ...[T]here are limits to national-level actions in the absence of global reforms. Many States are undoubtedly hamstrung in their efforts to enact progressive taxation and combat illicit financial flows that could fight inequality and enhance the realization of economic, social and cultural rights...Now is the time to take decisive action towards cooperation, guided by human rights principles.”).