

Working Group
“Migrant Women & Marital Violence”

Executive Summary

Information note concerning the protection of migrant women in precarious status in Switzerland from marital violence*

Committee Against Torture

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**This summary is based on the French original version.*

The Working Group on Migrant Women & Marital Violence is comprised of individuals acting in their personal capacity, as well as the following organisations which have contributed to its work since 2009:

Centre de Contact Suisses-Immigrés (CCSI Genève), Centre Suisses-Immigrés Valais (CSI Valais), La Fraternité du Centre social protestant – Vaud (CSP VD), Camarada and Syndicat Interprofessionnel des travailleuses et travailleurs (SIT).

In May 2012, the Working Group collaborated with the Observatoire romand du droit d’asile et des étrangers (odae-romand.ch) in publishing a report titled « Femmes étrangères victimes de violences conjugales en Suisse romande – 2^e édition actualisée » - available at

http://odae-romand.ch/IMG/pdf/RAPPORT_SIG_300412_2e_edition_final.pdf

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Migrant women are particularly vulnerable to marital violence in Switzerland. In addition, the conditions for renewing the residence permit obtained through family reunification can only be granted in principle if the husband and wife continue to live together. Should migrant women seek to put an end to acts of violence by leaving the household, they risk to be expelled.

Article 50 of the Aliens Act (Loi sur les étrangers – LEtr)¹, which entered into force in 2008, was expected to address this problem, as it provides for the right to renewal of the residence permit in case of dissolution of the household following domestic violence. However, the extent of and conditions for its application are extremely limited. In fact, seven years since its introduction, this provision has proven to be ineffective in protecting foreign women against marital violence.

As explained below, the criterion of severity of marital violence for being authorised to remain in Switzerland is highly problematic, so is the administration of proof of such violence. Given the current legal framework and practice, legal and social professionals can only say to migrant women victims of marital violence that if they leave their husband, there is a serious risk that their residence permit might not be renewed and that they may be expelled. As such many women are reluctant to seek protection from violence, to file a complaint or seek redress. We consider that the legal framework and its practical implications therefore violate the fundamental human rights of foreign women. Such State failure to protect migrant women from ill-treatment is in breach of Article 16 CAT combined with articles 2.1, 13 and 14.

As Switzerland itself recognised in its third periodic report to the Committee on the Elimination of Discrimination against Women (CEDAW)², migrant women are particularly vulnerable to inter-partner violence, and the law tends to perpetuate the wide prevalence of this type of violence as it does not guarantee against non-return to the country of origin in case of separation following such acts. CEDAW, CAT, CESC, HRCtee and CERD have issued recommendations that Switzerland amend Article 50 LEtr in order to prevent foreign women from remaining in abusive relationships.

¹ *This provision only applies to foreign women who have obtained a B permit (regular residence status) after marrying a Swiss national or a foreign national with a C permit (permanent residence status).*

² *UN Doc. CEDAW/C/CHE/3, 23 April 2008, paras. 123-125: “The legislation currently in force makes the wife coming to Switzerland under a family reunification scheme conditional upon her living in the household with her employed husband, thus facilitating abuse of power and use of violence by the spouse and weakening the position of the potential victim” (para. 124). Furthermore, “... foreign women are often especially exposed to the violence of their partner, despite the intervention of the police, when they cannot leave him out of fear of having to return to their country without their children and without any right over them, and fearing that they will be ostracized by society because their marriage has failed. The new legislation on foreigners only partly remedies this situation” (para. 125).*

Indeed, when it was introduced, Article 50 LEtr was applied as requiring that two cumulative criteria be met: proving one has experienced marital violence and that reintegration upon return to the country of origin is highly jeopardised. Despite some resistance, following the adoption by the Federal Parliament of a new law to combat forced marriage, the wording of Article 50 §2 LEtr has changed as of 1st July 2013. It now clearly states that marital violence – or forced marriage – suffices in and of itself to allow for a victim to remain in Switzerland after separation. This change in the law confirms a 2009 decision by the Swiss Federal Tribunal³. According to this jurisprudence, such violence could already suffice to allow for the victim to stay in Switzerland after leaving her violent husband. But for this purpose, violence must reach a certain threshold of severity. Despite this change in the law, the severity criterion continues to be applied today, and has even been incremented to imply that one must give evidence of “systematic violence aimed at exercising control over one’s spouse”⁴. Systematic violence, especially when it is psychological, social and economic, is however extremely difficult to prove⁵.

Moreover, quite often the failure to lodge a criminal complaint against the author or the dismissal of such a complaint has meant that the severity threshold was not attained. The State Secretariat for Migration (Secrétariat l’Etat aux migrations - SEM) often concludes so, despite the fact that specialised services supporting victims of domestic violence have attested that the person was victim of a direct attack against her physical and psychological integrity, and has therefore been recognised as a victim under the Law for the protection of victims of offences (LAVI). Such expert opinion continues to be underestimated by SEM⁶ although it is now acknowledged as one element to be taken into account under Article 77 of the administrative ordinance on application of the Aliens Act (OASA)⁷.

³ Federal Tribunal, ATF 136 II 1, 4 November 2009: <http://relevancy.bger.ch/cqi-bin/JumpCGI?id=BGE-136-II-1&lang=fr>.

⁴ See the State Secretariat for Migration directives, 25 October 2013 (as revised at 1st July 2015), pages 278-279: <https://www.bfm.admin.ch/dam/data/bfm/rechtsgrundlagen/weisungen/auslaender/weisungen-aug-f.pdf> as well as the circular issued on 13 April 2013: <https://www.bfm.admin.ch/content/dam/data/bfm/rechtsgrundlagen/weisungen/auslaender/familie/20130413-rs-ehegewalt-f.pdf>.

⁵ See ODAE romand (Observatoire romand du droit d’asile et des étrangers), Case 170 (« Une tentative de strangulation n’est pas une violence conjugale grave pour l’ODM ») available at <http://www.odae-romand.ch/spip.php?article378>.

⁶ See ODAE romand, Case 235 (« Victime de violences conjugales, elle doit partir ») available at <http://www.odae-romand.ch/spip.php?article515> and Case 273 (« L’« intensité » des violences conjugales étant jugée insuffisante, elle doit partir ») available at <http://www.odae-romand.ch/spip.php?article620>.

⁷ Art. 77 OASA provides under §6 that for the purpose of evaluating whether domestic violence justifies the renewal of the victim’s residence permit under Article 50 of the Aliens Act (LEtr), are considered as evidence: a. medical certificates; b. criminal complaints; c. police reports; d. decisions under civil law; e. criminal convictions. Since 1st January 2012, at § 6bis it is now expected that “the

Experts on domestic violence tend to agree however that the mere fact of seeking help or refuge is a sign that violence has become unbearable and that a real danger exists⁸.

Understanding of the issue of domestic violence is also lacking among some judges. In a recent decision, the Federal Administrative Tribunal deemed not credible the allegations of a migrant woman victim of violence because she had had higher education in her home country. Hence she was supposedly not likely to remain in an abusive relationship (Judgement C-2696/2014 dated 29 June 2015, § 5.4.6).

Another obstacle exists with respect to women whose permit has been renewed for one or two years after separation due to domestic violence. There is a strong pressure to ensure that they become financially independent shortly after, without due consideration to the lasting consequences of the violence they were subjected to or to the isolation that often accompanies such situations or the lack of pre-school day care for their children, all of which make their professional integration all the more difficult. In some cases, a residence permit is no longer renewed due to the lack of financial independence despite evidence that the consequences of violence still hampers a woman's reconstruction and ability to enter the job market⁹.

To conclude, the risk of being expelled if they leave their husband constitutes a real impediment to migrant women in Switzerland to denounce marital violence or leave this situation. In maintaining this uncertainty regarding their legal status in case of dissolution of the household, Article 50 LEtr does not provide adequate and effective protection to migrant women victims of marital violence who, in practice, have no option but to stay in an abusive situation. Hence, we consider that the State party violates its international obligation to provide remedies and redress to victims of violence without discrimination on the basis of one's administrative status. Indeed, the legal provisions imply unequal treatment between foreign and Swiss women regarding the protection from marital violence. Moreover, in practice foreign women are more likely to be victims of marital violence than foreign men, whose residence permits are less often dependent on those of their spouses.

In view of this situation, the Working Group on Women Migrants & Marital Violence calls on the Committee to recommend that Switzerland:

- 1. Ensure that victims of marital violence may remain in Switzerland after separation, with no further requirement than providing credible evidence that violence is likely to have occurred (plausibility rather than severity).**

competent authorities take into account information provided by specialised services". Such information is therefore not per se considered as evidence of the same level as the above.

⁸ See a report commissioned by the Federal Office for Gender Equality, "Assessing the severity of domestic violence", June 2012, available at <http://www.ebg.admin.ch/dokumentation/00012/00196/?lang=fr>.

⁹ See ODAE romand, Case 220 (« Fragilisée par les violences conjugales, elle est renvoyée après 11 années en Suisse ») available at <http://www.oda-romand.ch/spip.php?article489>.

For this purpose:

- withdraw the requirements to prove the severity and the systematic character of the violence, as well as the author's intent to exercise control over the victim.
- automatically renew residence permits upon recognition as a victim under the Law on assistance to victims of violence (LAVI).
- Issue directives so that women who have had their residence permits renewed after separation due to marital violence may not lose the right to remain in Switzerland for the sole reason that they rely on social assistance.

2. Guarantee that all cantons and the federal administration apply the same standards of proof and criteria to exercise their margin of appreciation.

For this purpose:

- undertake mandatory training of officers in charge.
- issue a new circular with more flexible standards of proof of marital violence, as well as requiring that the violence suffered be taken into account when assessing the possibilities of reintegration in the country of origin.

3. When marriage has lasted more than 3 years, take into consideration the consequences of domestic violence when assessing the victim's integration in society and in the labour market.

3. Eventually, grant independent resident permits to women who receive them as a result of family reunification.