

Working Group
Migrant Women & Marital Violence

**Implementation of the Covenant on Economic, Social and Cultural Rights by
Switzerland**

***Information note concerning discrimination and marital violence against
women in precarious status in Switzerland***

Executive Summary

**Committee on Economic, Social and Cultural Rights
45th session, 1-19 November 2010**

Geneva, 31 March 2010

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Foreword

The Working Group on Migrant Women & Marital Violence is comprised of the following organisations: le Centre de Contact Suisses-Immigrés (CCSI), le Centre Suisses-Immigrés Valais (CSI Valais), La Fraternité du Centre social protestant – Vaud (CSP-VD), the World Organisation Against Torture (OMCT), Solidarité Femmes Genève, Camarada, Collectif « Les Sorcières en colère », F-Information et le Syndicat Interprofessionnel des travailleuses et travailleurs (SIT).

This note was translated from the original version which has been submitted in French.

Executive Summary

Migrant women are particularly vulnerable to marital violence in Switzerland. In addition, the conditions for renewing the authorisation to stay in the country 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 conjugal household, they risk to be expelled.

The introduction in article 50 of the Alien Act (LEtr) of the right to renewal of the residence permit in case of dissolution of the household following domestic violence fails to address the particular vulnerability of migrant women, as the extent of and conditions for its application are extremely limited. In fact, in more than two years since its introduction, this provision of LEtr has proven to be ineffective in protecting foreign women against marital violence. As we will explain below, the **sum total of the criteria** for being able to enjoy the right to remain in Switzerland – that is, to demonstrate that one has been the victim of marital violence and that reintegration into society in one's country of origin would be seriously prejudiced – poses serious problems. Beyond the fact that it is difficult to demonstrate that one has been subjected to violence, **the interpretation by the competent authorities of what constitutes "seriously prejudiced" is very restrictive**. The authorities seem to take into account only grave threats to physical integrity, without bothering about the impact that marital violence might have on the possibilities for reintegration in the country of origin.

Since then, women victims of marital violence, having no real guarantee that they will be allowed to remain in Switzerland, often do not dare to reveal what they have endured, or to leave their husbands. They are maintained, *de facto*, in an abusive situation.

The recent decision of the Swiss Federal Tribunal which **makes possible but not obligatory** the renewal of the authorization to stay solely on the basis of serious marital violence, does not unfortunately remedy to the situation described above since the competent authorities keep a discretionary power regarding the expulsion.

In such a case, given the current legal framework, lawyers and other professionals can only say to migrant women victims of marital violence, that if they leave their husband, there is a serious risk that their authorization might not be renewed and that they may be expelled. **But, they can never ensure them that they will not have to leave Switzerland.** In any case, they will have to face a very long procedure, in a context of anxiety given the uncertainty of the final result of the procedure.

As Switzerland itself recognized in its third periodic report to the Committee on the Elimination of Discrimination against Women (CEDAW)¹, migrant women are particularly vulnerable to violence in the home, 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 cases of separation following such acts. However, when the Committee on Economic, Social and Cultural Rights requested that the Swiss government should indicate whether steps

¹ 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) "... 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)

had been taken regarding the potential abrogation or modification of the conditions of article 50 Letr², the Swiss government replied that, at that point, there was no sufficient ground to lead to the abrogation of this law³.

Unlike the Swiss government, we consider that the legal framework and its practical implications **violate the International Covenant on Economic, Social and Cultural Rights, in particular article 3 together with article 10 and article 2 § 2**. The risk of being expelled if they leave their husband constitutes a real impediment to denounce the marital violence. 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 of migrant women victims of marital violence who, in practice, have no option but to stay in an abusive situation. In such a situation, we believe that the State party violates its international obligation to provide remedies and redress for suffered damages. We also note that the legal provisions imply unequal treatment regarding the protection against marital violence among migrant women and Swiss women. Finally, the fact of remaining in an abusive situation prevents women to fully enjoy their economic, social and cultural rights as well as civil and political ones.

In view of this situation, the Working Group on Women Migrants & Marital Violence requests the Committee on Economic, Social and Cultural Rights to recommend to the State of Switzerland to :

- Amend article 50 b) of the Aliens Act (LEtr) by deleting the requirement to demonstrate that social reintegration in the country of origin seems seriously prejudiced, in order to guarantee that victims of domestic violence will be granted a residence permit without any condition other than having demonstrated that it is likely that domestic violence has taken place ;
- Ensure, while awaiting this modification, that the possibilities opened by the new jurisprudence of the Swiss Federal Court are systematically applied by the competent cantonal services and the Federal Office for Migration and, to this end, undertake mandatory training of their personnel on this matter and issue a circular requiring them to exercise greater flexibility with respect to the various kinds of proof that domestic violence has taken place that they will accept and to their interpretation of what constitutes “seriously prejudiced social reintegration in the country of origin”, including taking into account the consequences of marital violence on the possibilities for reintegration in the country of origin ;
- Ease the simultaneous application of the criteria of article 50 a) LEtr in cases where factors independent of the will of a spouse prevent her integration in Switzerland;

² UN Doc. E/C.12/CHE/2-3, 4 December 2009, para. 21.

³ UN Doc. E/C.12/CHE/Q/2-3/Add.1, para 179.

- Eventually, separate the resident permits of women who receive them as a result of family reunification from those of their spouses.
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