

Working Group
“Migrant Women & Marital Violence”

Executive Summary

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

Committee on the Elimination of All Forms of Racial Discrimination (CERD)
84th session, 3-21 February 2014

Geneva, 24 January 2014

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**This summary is a translation of the original version, submitted in French.*

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), 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, F-Information 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](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 status 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.

Article 50 of the Alien 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, more than five 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. We consider that the legal framework and its practical implications violate the fundamental human rights of foreign women. Such discrimination is in breach of article 5c ICERD.

As Switzerland itself recognized in its third periodic report to the Committee on the Elimination of Discrimination against Women (CEDAW)², migrant women are particularly vulnerable to violence in the household, 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. CEDAW, CAT, CESCR and HRCtee have issued recommendations that Switzerland amend article 50 Letr in order to prevent foreign women from remaining in abusive relationships.

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 although the separation occurs less than three years after marriage was celebrated. 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

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).

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

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 prove.

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 Federal Office of Migration (ODM) 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 (LAVI). Such expert opinion continues to be underestimated by ODM⁵ although it is now acknowledged as one element to be taken into account under the administrative ordinance on the application of the Aliens Act (OASA), at article 77⁶. 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 exists⁷.

When marriage has lasted more than three years, article 50 LEtr provides for the possibility of staying in Switzerland if one is well integrated. This means in practice not relying on social assistance. Often, the fact of having been a victim of marital violence does not exonerate the victim from proving to the administrative authorities that she is well integrated. As such, no account is taken of the consequences of violence. So is the case of the examination of the possibilities of reintegration in the country of origin, and the impact of violence in this context.

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. 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. Hence, we believe 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

⁴ See the Federal Office of Migration directive, as of 25 October 2013, page 267: <https://www.bfm.admin.ch/content/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-ehgewalt-f.pdf>.

⁵ See ODAE romand (Observatoire romand du droit d’asile et des étrangers), Cas 235 (« *Victime de violences conjugales, elle doit partir* ») available at http://odae-romand.ch/IMG/pdf/Cas_235_Sonia.pdf.

⁶ 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 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.

⁷ 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/index.html?lang=fr&download=NHZLpZeg7t.Inp6I0NTU042I2Z6ln1ae2IZn4Z2qZpnO2YUq2Z6gpJCDdnt4fGym162epYbg2c_JjKbNoKSn6A--.

treatment regarding the protection against marital violence among migrant women and Swiss women. As such, the fact of remaining in an abusive situation prevents women to fully enjoy their civil, political, economic and social rights.

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).**

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).

- 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.**

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