

Working Group
“Migrant Women & Marital Violence”

Executive Summary

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

List of issues prior to reporting

Human Rights Committee

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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), 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

Executive Summary

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 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, six 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 Articles 3, 7, 23 and 26 ICCPR.

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, CESCR, HRCtee and CERD have issued recommendations that Switzerland amend Article 50 LEtr in order to prevent foreign women from remaining in abusive relationships.

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

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>.

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 Federal Office on 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 of offences (LAVI). Such expert opinion continues to be underestimated by ODM⁶ 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. 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.

When marriage has lasted more than three years, Article 50 LEtr provides for the possibility of staying in Switzerland if the foreign spouse 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 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

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/201304_13-rs-ehgewalt-f.pdf.

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

⁶ See ODAE romand, Cas 235 (« *Victime de violences conjugales, elle doit partir* ») available at http://odae-romand.ch/IMG/pdf/Cas_235_Sonia.pdf.

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 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/index.html?lang=fr&download=NHZLpZeg7t,lnp610NTU042I2Z6ln1ae2Izn4Z2qZpnO2YUq2Z6gpJCDdnt4fGym162epYbg2c_JjKbNoKSn6A--.

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. Given this double discrimination, the State party's laws and practice are in breach of ICCPR, in particular Articles 3, 7, 23§4 and 26.

In view of this situation, the Working Group on Women Migrants & Marital Violence suggests that the Committee address the following question to the Swiss government:

Would the State party consider changing its practice with respect to Article 50 of the Alien Act (Loi sur les étrangers) so as to 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)? In particular, would a police report or a certificate by a specialized service or a medical report to apply this provision?