



World Organisation Against Torture



**Implementation of the Convention on the Elimination of All Forms of
Discrimination Against Women (CEDAW Convention)**

***Briefing note on discrimination and domestic violence against
migrant women in Switzerland***

Executive summary

Consideration of the third periodic report of Switzerland by the Committee on the Elimination of
Discrimination Against Women (CEDAW), 44th session, 20 July – 7 August 2009

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Summary

Under the new Federal Act on Foreign Nationals (FNA), which came into force in January 2008, wives from “third” countries¹ can fairly easily obtain a residence permit within the context of family reunification. However, the conditions for renewal prove, in certain cases, to be problematic. Indeed, renewal only occurs, as a rule, where the couple continue to live together as husband and wife. Wives, who do not have equal status with their husbands, do not hold a stand-alone permit and are thus placed in a situation of dependence on their husbands. There are many partners who take advantage of this situation by engaging in acts of blackmail, control and even violence.

Article 50(b)² of the FNA provides that, following a breakdown of the marital relationship, the foreign spouse of a Swiss citizen or a holder of a settlement permit (C permit) has the right to have a residence permit granted or renewed if he or she has been the victim of domestic violence AND if social reintegration in his or her country of origin appears severely compromised.

Whilst the recognition of this right should be welcomed, the conditions required to exercise it are likely to prevent, in the majority of cases, the protection of victims. It is already difficult to prove violence; to show, in addition, that “social reintegration in the country of origin appears severely compromised” will, more often than not, be a mission impossible. Moreover, the Federal Council adopts a very restrictive interpretation of this concept. Thus, as a result both of these cumulative conditions and their narrow interpretation, many women from third countries will continue to be faced with the following alternative: stay with their violent husband and be subjected to his abuse, or leave him, denouncing violence, but at the same time risk losing their permit.

In its third periodic report to the CEDAW Committee³, the Swiss Government itself acknowledged that migrant women are particularly vulnerable to violence within the home, and

¹ That is, countries outside the European Union (EU) and the European Free Trade Association (EFTA).

² **Art. 50 Dissolution de la famille**

¹ Après dissolution de la famille, le droit du conjoint et des enfants à l'octroi d'une autorisation de séjour et à la prolongation de sa durée de validité en vertu des art. 42 et 43 subsiste dans les cas suivants:

a. l'union conjugale a duré au moins trois ans et l'intégration est réussie;

b. la poursuite du séjour en Suisse s'impose pour des raisons personnelles majeures.

² Les raisons personnelles majeures visées à l'al. 1, let. b, sont notamment données lorsque le conjoint est victime de violence conjugale et que la réintégration sociale dans le pays de provenance semble fortement compromise.

³ 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)

the law tends to lead to abuses of power by the husband, increasing impunity and thus perpetuating the high prevalence of this type of violence against wives from third countries.

Moreover, in practice, the physical and psychological consequences of domestic violence, most notably the post-traumatic effects, do not appear to have been taken systematically into account when evaluating the possibilities of reintegration.

Furthermore, the long-lasting consequences of these acts of violence may be exacerbated by the several months it takes for the relevant authorities to provide a response.

Additionally, in cases where the marriage and cohabitation have lasted at least 3 years, article 50(a) of the FNA provides that a foreign spouse has the right to have a residence permit granted or renewed if integration has been successful. But in practice, this integration is measured in terms of integration in the labour market, without taking into account factors that are outside the control of the female foreign spouse and which hinder her taking up a stable job: for example, having young dependent children, difficulties in recognition of qualifications, opposition of the husband or even difficulties linked to the trauma caused by acts of domestic violence.

It should also be noted that spouses of holders of a residence permit (B permit) simply do not have the right to have a residence permit granted or renewed in the case of domestic violence. In such cases, although the authorities may renew the residence permit of the foreign spouse, they are not required to do so by law.

In light of this situation, OMCT and the CCSI make the following recommendations to the Swiss Government:

- Amend article 50(b) of the FNA by removing the requirement to show that social reintegration in the country of origin appears severely compromised, thus guaranteeing victims of domestic violence a residence permit where they have made out a prima facie case of domestic violence, without the need to fulfil other conditions.
- Whilst waiting for the implementation of this amendment, and to ensure proper enforcement of this article, carry out mandatory training of all staff in the relevant cantonal authorities and in the Federal Office for Migration on this issue, and issue a circular to their attention requiring them to properly take into account the impact of domestic violence when considering the possibility of reintegration in the country of origin;
- Relax the simultaneous application of the article 50(a) criteria in cases where factors outside the control of the wife prevent integration in Switzerland; and
- In the long term, issue stand-alone residence permits for women who obtain them through family reunification.