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Male Violence Against Migrant Women: Denying Rights in a Racist Gender System

Sabine Masson and Patricia Roux

Introduction

In this paper we analyze gender-based violence from an intersectional angle, taking into account both the gender and the racial/ethnic/national group membership of women living in Switzerland. The analysis echoes other papers that show the relevance of intersectionality for understanding the meaning and impact of male violence. Male violence is an instrument in the reproduction of the gender system, but it has different effects depending on social and racial factors (Crenshaw 2005; Hooks 1984). As in many other Western countries, migrant women victims of marital violence in Switzerland do not have access to the same support as Swiss women in similar situations and do not have the same rights. This paper sets out to show that the cause of this flagrant injustice is a twofold discrimination, based on gender and nationality. Migrant women are victims of gender-based violence in the same way as other women, but they are also caught up by institutional restrictions due to their residency conditions and the racist basis of immigration laws and policies and representations of ‘foreigners’¹. Because their legal status is dependent on their marital tie, migrant women are more exposed to marital violence and risk being deported if they leave their husbands.

The context to this discrimination is one where immigration laws and policies, grounded in the gender system and racism, are being tightened. At the same time as the trend is towards denying migrant women all rights to protection, there has rarely been so much public talk of ‘migrants’ violence’. Violence is treated as if it were a cultural trait that radically differentiates ‘foreigners’ from Swiss nationals. This *‘geography of sexist violence’* (Tissot and Delphy 2009: 2) demonstrates not only the way social relations are interwoven with the stigmatization of migrants and the women’s exposure to male violence, but also the way in which Swiss society hides the reality of

1 Official category that includes all persons not of Swiss nationality, even if born on Swiss soil.

male violence in general. In other words, whereas migrant women are more exposed to male violence because of their residence status, ethnicization and racialization of sexist violence helps to ‘euphemize’ violence in general, under new strategies for legitimizing gender inequality (Romito 2006).

Our approach is based on our activist feminist position. We are white academic women; we are not speaking in the name of migrant women but on the basis of our engagement against a discriminatory system and our active solidarity with these women.

Political and legal contexts produce double discrimination against women migrants

To understand Switzerland’s response to migrant women victims of marital violence, we need to examine the political and legal framework governing immigration. Standards in this regard infringe women’s rights in many respects. When a woman arrives in Switzerland seeking refugee status, her reasons for fleeing her country are not properly recognized under existing laws.² In practice, although jurisprudence has made some progress³, women fleeing their country for gender-related reasons find that the political nature of their persecution is denied (Schmidlin 2006; Schmidlin and Masson 2009). For women coming to Switzerland to work or to join their husbands, admission and residency rights are based on a system of a double-thinking called the ‘two circles policy’.⁴ Whereas for nationals of the European Union and European Free Trade Association countries the Agreement on the Free Movement of Persons gives them residence rights for the purposes of work, women from other countries have no such right. Their entry to Switzerland is governed by the Law on Foreigners (*Loi sur les étrangers*, LEtr), under which they cannot work unless they are issued the relevant residence permit (Schmidlin 2008). These permits are granted only rarely, when justified by high qualifications and a high level of integration. Although these require-

2 Gender is not included among the reasons for persecution that enter into the statutory definition of ‘refugee’ (Art. 3 of the Law on Asylum).

3 In 2006, the Federal appeal court acknowledged that a woman refugee was discriminated against because she was a woman. Persecution by private individuals is also more widely recognized than before, when a close link with the State had to be demonstrated (Schmidlin 2006; Schmidlin & Masson 2009).

4 The ‘two circles policy’ has a long history in Switzerland. It follows on from the ‘three circles policy’ which appeared in the 1980s and was a response both to xenophobic conceptions and the needs of the market (Mahnig 2005). At that time the Council of State set up a system of selection by nationality; today’s ‘two circles’ policy establishes a hierarchy between two zones: the European Union and all other countries.

ments are formulated in neutral terms, they are based on gender discrimination because in most countries few women or none can reach managerial status (Baronne 2006; Baronne and Lempen 2007). And there is no provision for legal authorization to work in sales, catering or domestic work; these skills are not recognized as such.

Consequently, most women economic migrants from countries outside Europe have no legal status⁵, making their working conditions even more insecure (Carreras 2007). There is also gender discrimination against women entering under family reunion provisions. In the first place, this status primarily concerns women⁶. Secondly, their right to work being extremely limited, marital immigration is often the only solution for these women. There are, however, also restrictions on residence in the case of marital reunion. While the right to a residence permit has, for many years, been closely tied to marital status, the new Law on Foreigners (LEtr) has strengthened that link with a requirement that husband and wife live together. A major consequence of this situation is that migrant women from non-European countries are exposed more than others to marital violence.

Migrant women more exposed to marital violence

Before analyzing the greater exposure of migrant women, we must point out that in Switzerland as elsewhere, figures on marital violence are hard to establish because there are no nationwide statistics or systematic institutionalized reports on domestic violence (BFEG 2007: 1). However, the only nationally representative study conducted in 1994 unveiled for the first time the extent of marital violence in Switzerland⁷ (Gillioz, De Puy and Ducret 1997). More recently, a survey of homicide revealed that the family is the most murderous context of social relations and is twice as much so for women as for men.⁸ This situation has led to more vigorous campaigns against domestic

5 Exploratory research shows that there are more women than men with no legal status (Valli 2003).

6 In 2005, 40% of all cases of legal immigration concerned family reunion. However, there are twice as many marriages between Swiss men and foreign women as the reverse (Baronne 2006).

7 This survey interviewed 1500 women and showed that 20.7% of them had suffered physical and/or sexual violence by a partner (Gillioz, De Puy and Ducret 1997).

8 Forty-five per cent of homicides in Switzerland between 2000 and 2004 were committed in the domestic setting; 317 of the victims were women and 159 were men (Federal Office of Statistics (OFS) 2006). Another survey, of consultations at official victim assistance centres, shows that in 52.6% of cases of violence – more than half – there was a family tie between the victim and the suspected perpetrator (OFS 2008; BFEG 2007).

violence and some advances in legal provisions.⁹ But there are still major obstacles that limit the effects of these essentially penal measures: the burden of proof is on the victims, there is the risk of renewed victimization during the proceedings, and the victims are exposed to their husband's threats. These procedural constraints have been noted particularly by the Federal Office for Gender Equality (BFEG), which recommends that a study be conducted of their impact '*on the scope of the civil law standard for protection against violence*' (Art. 28b CC) and that measures be taken (BFEG 2008: 96). Various national and international institutional and voluntary bodies are also worried by the fact that victims can now ask for provisional suspension of the penal proceedings. According to Switzerland's third report on the implementation of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), '*the prosecution authorities tend to suspend proceedings quite quickly. The additional protection that automatic prosecution was intended to give the victims, is thus insufficient in practice*' (Switzerland's third report 2008: 48). The BFEG report (2008) also stresses the problematic nature of this measure, because women use it under pressure from their partners, relatives, friends and even judges. This loophole in protection reflects a degree of continued denial of violence in the family, since it does not apply to other automatically prosecuted breaches of penal law.

Social and legal conditions that increase migrant women's exposure to marital violence

Their insecure socio-economic situation and residence status further weakens migrant women's protection against marital violence. The legal loopholes are all the more worrying in that migrant women are particularly at risk of domestic violence (OFS 2008).¹⁰ The reason for the probable over-representation lies in their social conditions (place of residence, lack of occupational skills and economic resources) and not nationality as such (Belser 2005).

9 In particular the fact that the Swiss Penal Code now provides for automatic prosecution for physical or sexual marital violence (Art. 189, 190 and 123, 126 CP), and the fact that the courts can order the violent partner's eviction from the family home. However, the victim can provisionally suspend proceedings in such cases (Art.55 CP) and this often leads to charges being dropped (see Mösch-Payot 2008). There is also a continuing lack of civil law provisions to protect the individual, of provision for intervention, counselling for victims and financial resources for consulting centres and battered wives' homes.

10 Although foreign women are under-represented in prevalence studies, they are over-represented in police statistics. According to the police figures, migrant women are concerned 2.5 times as often (OFS 2008; DINT 2008). However, these data must be interpreted with caution as they are certainly affected by other factors, e.g. the fact that the police intervene more readily in poorer neighbourhoods.

Other social causes such as language difficulties and a narrow social network play their part, increasing a woman's dependence on her husband. Social isolation, a factor that favours marital violence (BFEG 2008), is further increased by a residence status tied to the marriage because this limits a woman's possibilities for establishing connections outside the family. The combination of isolation and economic difficulties reduces migrant women's possibilities for independence, defence, protection and information in face of male violence.

Migrant women are made more vulnerable in face of marital violence by their insecure residence conditions. The third Swiss report on implementation of the CEDAW (2008) recognizes that the various protection and intervention measures have had 'limited effects' for migrant women because of their fear of being deported.¹¹ This adds to the more general obstacles described above, such as provisional suspension of prosecution proceedings. Suspension is all the more likely where the victim is exposed to the risk of losing her residence permit; husbands often make use of this danger to strengthen their hold on the victim (Hanselmann & Dürer 2008). Pressure from the authorities responsible for granting residence permits can also persuade the victim to suspend the proceedings as they may threaten to withdraw the permit or shorten its validity period if they know the couple is in crisis or has split up. In short, migrant women confronted with this situation are quite likely to see the charges against their husband dropped. If they then try to have the decision against renewal of their residence permit re-examined, the fact that they withdrew their case or suspended proceedings may be taken as lack of proof.

In the light of this situation the Federal Office for Gender Equality recommends specific research and protection and prevention measures (BFEG 2008), including an examination of the application of the provisions for *cas de rigueur* (serious cases) in the Law on Foreigners (Art. 50, para. 1b, LEtr), to see '*to what extent the Federal and canton authorities make use of the possible margin of interpretation to protect victims*' (BFEG 2008: 96). For authorities that answered various parliamentary questions on the subject¹², current legislation and practice is satisfactory thanks to the inclusion in the

11 In 2003, the Committee for the Elimination of all forms of Discrimination Against Women was already recommending that an assessment be made of the impact of revocation of the residence permit in the case of foreign women victims of violence (CEDAW 2003, recommendation No 35).

12 See the reply of the Federal Council to the question from National Councillor Francine John-Calame (http://www.parlament.ch/F/Suche/Pages/geschaefte.aspx?gesch_id=20081102#) and the report of the Council of State of the canton of Vaud at the request of deputy Fabienne Freymond Cantone (<http://www.vd.ch/fr/organisation/autorites/grand-conseil/liste-des-objets-en-attente-de-traitement-par-le-grand-conseil/>).

LEtr of an article explicitly referring to domestic violence¹³. However, under this law, marital violence can only be taken into account as ‘major personal reasons’ justifying maintenance of the residence permit if ‘*social reintegration in the country of origin seems to be seriously compromised*’. This condition is in addition to that of proof of the violence, a requirement of the legal proceedings for all women and which cannot be based ‘simply on allegations’.¹⁴

Recognition of violence is thus subordinated to a major limitation, based on fuzzy or indeed arbitrary criteria¹⁵. For the Federal Office for Migration, a person can reintegrate in their country of origin ‘*as long as they are not integrated in Switzerland, (...) if they have not been long in Switzerland, if they have not established close ties with Switzerland and their reintegration in their country of origin does not pose a particular problem*’ (Report of the Council of State 2009: 4). The question of reintegration in the country of origin is thus closely linked to that of integration in Switzerland, which becomes the ‘*essential criterion for a migrant victim of marital violence who wishes to obtain an individual residence permit*’ (Dürer & Hanselmann 2008: 61). Making maintenance of the residence permit conditional on a positive assessment of integration in Switzerland reveals the false neutrality of this term and the underlying gender inequality. For women victims, the integration requirement is especially discriminatory because ‘*women who suffer violence do not manage to integrate, for their husbands often forbid them to go out or to take language lessons*’ (Report of the Council of State 2009: 1).

These legal provisions establish a hierarchy within women’s universal right to physical and sexual integrity, on the basis of a social classification by nationality. This ratifies a twofold violence, administrative and gender-based, against women migrants. Administrative sanction represents a kind of ‘sec-

13 Article 50 of the LEtr:

1 After the breakup of the family, the right of the spouse and children to a residence permit and the prolongation of its validity period according to Art. 42 and 43 remains in the following cases:

a. the marital union has lasted at least three years and integration has been successful;
b. continued residence in Switzerland is necessary for major personal reasons.

2 The major personal reasons referred to in para. 1b are those where the spouse is a victim of marital violence and the possibility of social reintegration in the country of origin seems to be seriously compromised.

14 Article 77 para. 6 of the ordinance on admission, residence and pursuit of an income-earning activity (Canton de Vaud) lists the indications of marital violence, mainly *a. medical certificates; b. police reports; c. penal action; d. measures under the meaning of Art. 28b of the civil code 1, or e. penal judgement pronounced in the matter.*

15 The Federal Council makes a very narrow interpretation of ‘seriously compromised’ regarding the possibility of reintegration in the country of origin. It only takes into account extreme cases and the post-traumatic aftermath of domestic violence does not seem to be systematically taken into account (OMCT 2009).

ond punishment' (John-Calame 2008) in addition to the violence at home. This twofold violence feeds the cycle of marital violence because dependence on residence status accentuates the husband's pressure on the victim who has denounced him or wishes to do so:

by making the residence right of a wife entering Switzerland under family reunion provisions conditional on her living with a husband who is in work, the current law on foreigners facilitates abuse of power and violence by the husband and makes the potential victim's position insecure (Third Swiss report 2008: 56).

In practice: marital violence assessed according to the migrant woman's skill level

The press has lately reported several cases of women who had lost their residence permits because they had separated from violent husbands to protect themselves. At present there is no systematic census of such cases, partly because most women in this situation keep quiet or disappear from emergency shelters when they lose their permits or see they are at risk of doing so. Also, the application of the new LEtr law is still recent and the authorities have not organized any census. In the field, however, NGOs report that many migrant women victims are faced with a dilemma owing to the legal vacuum described above. They must choose between continuing to suffer violence and losing their residence permit.¹⁶ These organizations are therefore fighting for an amendment to the current law.¹⁷ One of the main problems they report is the prevalence of the integration factor in assessments of violence. In the jurisprudence (mainly established under the previous law, given that the LEtr only came into force on 1 January 2008) and in cases the associations encounter in the field, the integration criterion is used almost systematically. It is used even when the women concerned have been living in Switzerland for many years, in combination with other arguments such as lack of proof and the fact that the woman has withdrawn her legal action.¹⁸ A negative assess-

16 In French-speaking Switzerland several activists and professionals in aid for women victims of marital violence have recently expressed their view in the press (*Le Courrier*, 17 November 2008; *Le Courrier*, 13 December 2008; *Tribune de Genève*, 29 December 2008; *Le Courrier*, 9 May 2009; *24 Heures*, 13 May 2009).

17 Particularly 'by removing the requirement to show that social reintegration in the country of origin is impossible, in order to ensure that the victims of acts of family violence receive a residence permit without any other condition than having shown plausibly that they have been victims of such acts' (OMCT 2009: 6).

18 See jurisprudence of the Canton Tribunal, Court of Administrative and Public Law of the Canton of Vaud (CDAP); *Observatoire du droit de l'asile et des étrangers* (ODAE); petition of feminist collective *Sorcrières en colère* (December 2008); petition of the group *Non aux*

ment of integration is based on the absence of family ties, lack of integration in the labour market, lack of economic independence or occupational qualifications or non-recognition of diplomas awarded in the country of origin. Once poor integration has been alleged, reintegration in the country of origin is stated as possible – as it is if the victim has relatives in the country of origin. Violence is thus only one criterion among others, addressed conditionally and dependently on other factors, even when backed up by proof such as legal action, trial or specialist protection. The following example is of a Brazilian national with four years' residence in Switzerland.

[the applicant] has been employed as a cleaner in a restaurant since 1 January 2008. The income from this work is not known, but it is reasonable to doubt that it is enough to provide financial independence for her and her three children (...). Furthermore, the applicant is not highly qualified and her work does not require special knowledge. (...) it seems from the applicant's file that her integration in the social fabric and local life of her place of residence cannot be called exceptional. (...) While it is true that the applicant has long been devoting her energy to solving the serious marital problems she was faced with and fleeing her husband's violence, it does not emerge from the file that she has demonstrated a particularly successful adaption. (Court of Administrative and Public Law, Canton of Vaud, PE.2008.0096, TA, 12.09.2008)

All in all, renewal of the residence permit depends primarily on skills or qualifications as a criterion of integration. The violence is only secondary. Migrant women victims are caught up in a chain of constraints: the racist and sexist admission system prevents them from entering the country as workers in their own right; family reunion is the main possibility open to them. This legal status makes them entirely dependent on their husbands, and when there is marital violence, the restrictive laws on residence and termination of marriage further strengthen this dependence. Prevented from protecting themselves by so many restrictions, they are all the harder hit by the cycle of violence. At the root of this situation is the patriarchal concept of residence dependent on married status, which defines women entering under family reunion provisions exclusively as wives and mothers (Minder 2005). Yet it does not recognize the skills involved in domestic labour, childcare and education, nor the social activities and paid work the women may have in Switzerland. The couple is a place where women of every social class encounter violence. To deprive one category of women of all legal independence simply strengthens patriarchal domination.

Expulsions (September 2008); World Organization Against Torture (OMCT 2009); parliamentary question by National Councillor Francine John-Calame of 2/10/2008; *Amnistie! Le Magazine pour les Droits Humains* No 47/2006.

Gender violence instrumentalized by racist discourse

Two paradoxes stand out from our examination of migration policies and law governing the situation of migrant women victims of marital violence. The first is that the State worsens migrant women's exposure to their partner's sexism while simultaneously denying that violence, since in assessing their residence applications the fact of violence is subordinated to their integration in Switzerland and the possibility of their reintegration in their country of origin. The second is that this double penalization takes place in a social context where more and more measures are being adopted to deal with the problem of marital violence, which affects one woman in five in Switzerland (Gillioz, De Puy and Ducret 1997). What can explain the social acceptance of the denial of rights inflicted on migrant women victims of violence? In our view, a partial answer to this question is the racist representations and discourses that attribute male violence to 'the culture' of immigrant communities rather than to structural factors concerning Switzerland itself.

In public debate, the media and political discourses, the argument that migrants from non-European and/or Muslim countries are violent is repeatedly put forward to explain the problems they encounter in Switzerland and to show that their lifestyles, values and identities are incompatible with Swiss conceptions and practices (Roux, Gianettoni & Perrin 2006; 2007). The chain of reasoning that seems to prevail in these representations and discourses could be described as follows: (1) these migrants are different from the Swiss; (2) the proof of this is that they are violent; (3) this violence is a threat to Switzerland: it disturbs the peace and calls into question the established moral order, especially the principle of gender equality to which the country subscribes; (4) Switzerland has the right to reject this menace and protect itself by tightening conditions for the granting of residence permits. In this reasoning, which is reflected in increasingly restrictive policies towards increasingly broad categories of migrants, the women are invisible and do not count. Attention is focused on migrant men's violence and very little on the effects of this violence on migrant women. On the contrary, it even implies that they are responsible for their fate, or at least that their peers or migrant partners are, which in either case absolves Switzerland and relieves it of its duty to address the problems raised by male violence.

We think this is a process of 'racialization of sexism' (Hamel 2003), which does much to render invisible the real and specific problems migrant women may encounter. This last part of our paper attempts to decipher this process, which stems from a stigmatization of migrant communities, legitimized by acts of violence attributed only to migrants: forced marriages, genital mutilation and gang rape, to which some (both men and women) add

the wearing of headscarves and demands by Muslim families that their daughters be excused from swimming at school. Political intervention in this field, from left and right, feminist and otherwise, is increasing. This might be cause for rejoicing but in fact the political strategies and discourses involved generally reinforce racial hierarchies and even gender hierarchies.

To illustrate the strengthening of racist and sexist systems, let us take the example of gang rape. When migrants are involved in such acts, the media, judges and politicians, male and female, use a common explanatory register: the rapes are due to the origin and culture of the young rapists and their parents, a culture considered barbarous, archaic and eminently patriarchal. This culturist register that 'fabricates the Other' (Delphy 2008), makes the migrant different – different from the Swiss rapist and different from the abstract figure of 'the Swiss citizen' who has other, 'modern' values. This fabrication of the Other which is used to prove 'non-ordinary' sexism and violence (Delphy 2006), specific to that culture and unrelated to the 'ordinary' sexism current in Switzerland, has its mirror image in political, media and legal discourses about gang rapes by Swiss nationals. In the latter case there is no reference to the 'patriarchal culture' of the rapists; their act is attributed to an unhappy childhood (sexual abuse, insecure living conditions etc.) or to individual deviance or pathology. This is also true in other countries; Leti Volpp, for example, has made the same observation in an analysis of cases of violence brought to court in the United States, where the dominant are seen as individual actors whose behaviour is not the product of an identity group (2006: 18). She also shows that racializing male violence – attributing it to a cultural problem foreign to the country – makes it possible to push the problem away, beyond the country's borders.

The process of racializing sexism thus discriminates against migrants and women in many ways. It is a way of stigmatizing entire migrant groups (in Switzerland Kosovars and Albanians are particularly targeted at present), or indeed the entire category of 'foreigners', who are supposed to import archaic cultural values completely different from Swiss values. The process also contributes to the underestimation of the structural strength of gender distinctions in the country, regardless of the statistics showing the wage gap between men and women, the failure to share domestic labour and the presence of marital violence in all social classes. It also has specific effects on migrant women, the social category defined by the intersection of the racial and gender hierarchies. By incriminating the migrants' 'culture' and euphemizing Swiss gender-based violence, this process makes it possible to ignore the fact that the laws in force strongly expose migrant women to the risk of male violence. As a result, all preventive or protective action is blocked (Minder 2005). But although they are over-represented in, battered wives', shelters and in police call-out statistics,

this is because *'Swiss law applicable to foreigners incorporates discriminatory elements that have repercussions in situations of domestic violence'* (Minder 2005: 26) and not because of their culture of origin or their nationality.

From this analysis, we think it can justifiably be said that the denial of migrant women's rights is inherent in Switzerland's gendered immigration policies and racist culturalist discourses that instrumentalize the question of gender-based violence. This instrumentalization is used to legitimize the tightening of measures concerning migrants. More generally, racist rhetoric instrumentalizes the entire question of gender equality. This can be seen particularly in the debate on integration. For example, in a 'Guide to the application of the integration agreement' planned under the new LEtr, the Federal Office for Migration suggest that cantons organize integration classes for migrants to *'get to know Switzerland, its particularities and customs, current norms, the rights and duties of its citizens, its principle of equality between men and women, its health system, etc.* (our emphasis). In this document as in many political statements on integration, Switzerland is presented as a benchmark in matters of equality. Equality is not a goal to be attained but a way of strengthening a 'feeling of Western superiority' (Nader 2006), stigmatizing migrants, culturalizing them as barbarous, sexist and violent, and criminalizing them.

For a woman migrant confronted with a violent husband it is extremely difficult to publicly denounce their situation because they are afraid it will reinforce these stereotypes (Crenshaw 2005). They anticipate the discriminatory effects these prejudices are bound to have on all racialized men and on themselves. For the women concerned to be able to break the silence, Kimberlé Crenshaw proposes that the policies introduced to protect them from male violence be designed also to protect them from racism.

Conclusion

The violence suffered by some migrant women cannot be properly combated as long as it is seen as the product of a specific and particularly sexist culture. Nor can the combat advance until it is recognized that we live in a racist system which establishes a hierarchy between the rights of Swiss nationals and those of migrants. As we have seen, this hierarchization results in a denial of the rights of women migrants, who are more exposed to the risk of male violence because of the discriminatory conditions of their residence status. Responses to this situation need to combine the feminist and ant-racist struggles, because sexist and racist divisions jointly structure institutions,

policies, social practices and everyone's daily lives. They also combine to shore up the legitimacy of a social order in which domination is the rule. In this situation the antiracist feminist struggle seems to us the only one that can really address the particular oppression of migrant women. It also opens the way to defending *all* women's rights, because the gendered construction of racism today, in which a culturalized image of violence is a major element, also casts a veil of silence over sexist discrimination as a whole.

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