‘The Two Year Trap’ in Sweden

1. Aim

Human rights are women’s rights and women’s rights include all women. Throughout our work we, Terrafem Gothenburg, have identified violations to these rights through the application and use of the Two Year Rule, part of the Swedish ‘Utlänningslagen’, which can be translated to ‘the Foreigner Act’. However, the implications of the law are different in practice and highly related to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) as it often implies a gender unbalance where women end up in a vulnerable position. As will be further developed in this text, the Two Year Rule impedes the rule of law for women in this specific situation.

Issues with the so-called Two Year Rule have been raised by several women’s aid organizations in Sweden. A woman applying for residence permit due to a connection to a man in Sweden is granted a residency limited to two years. Following these two years comes a new trial where she receives a permanent residence permit if the relationship persists but is expelled to her home country if not.

In order to gain Swedish citizenship, one must maintain the relationship for a minimum of two years. There are exceptions to this rule, which are; either you can have suffered abuse in the relationship and ended it because of this, or you risk social exclusion or danger in your home country upon return, or thirdly you can have other strong reasons for needing to stay, for example having children in Sweden (Utlänningslagen, kap 5:§16). This situation has led to the Two Year Rule to be called “the Two Year Trap”, where women can be put in the situation where they can only choose from staying in an abusive relationship or being sent back to a country where being divorced often implies exposure to e.g. harassments, threats, ostracism or even death.

The victim group

The group of women we identify as victims of this jurisdiction will not be mentioned by name but as a group, since neither of our organizations have an interest of examining specific cases, but instead rather aim to raise awareness of the dangers and implications that come with the Two Year Rule for the women it affects. The idea of the law is to protect women who come to Sweden, in connection to a man, from being deported when that relationship ends - should it end because of abuse.

The Two Year Trap applies to all of Sweden. Terrafem together with many other women aid offices (Roks, 2010) have however identified specific men who take advantage of this law, bringing women to Sweden and then ending the relationship before the two year period is up, or by convincing the woman that her right to stay will disappear should she end the relationship. This puts women in a vulnerable position, especially considering the language and culture barriers that further disables them from understanding and trusting their own knowledge of the legislation.
1.1 Disposition
In this next chapter following the Aim and Disposition, we take a closer look at what the law actually says. Chapter two looks to point out the issues we identify in the legislation and continue to discuss this from the perspective of women and children. In chapter three we present some of the suggested solutions and alternations that have been made towards the law. The last chapter briefly present our organization, Terrafem Gothenburg. A reference list for the content of this text can be found on the last page.

1.2 Current legislation, ‘Utlänningslagen’
Swedish migrant laws are found in Utlänningslagen SF 2005:716 (UtL). In its 5th chapter, UtL regulates residence permits. UtL states that spouses that move to Sweden to live with their spouse here need to apply for a temporary residence permit which will be given for two years according to its 5th chapter 8 §. The rule is also applicable on couples who are not married but cohabit.

The law therefore leads to migrants getting their permanent residency permit after a period of two years, if the relationship is still lasting. The rule of suspended investigation is an exception to the main principle to allow a foreigner to get permanent residence permit when allowed to live here. The exception is supposed to work to test the relationship’s seriousness. It is a way to avoid the up come of “fake marriages”. After the two years of temporary residence permit a further investigation is started. If the migrant is still in the relationship she/he is allowed a permanent residence permit. If the relationship has ended she/he has lost her/his connection to Sweden and can therefore no longer have neither a temporary nor a permanent residence permit.

There are exceptions to the rule where the migrant still can get permanent residence permit even though the relationship has ended. These exceptions are listed in UtL and briefly summarized below.

The migrant can still receive a permanent residence permit if she/he has attained a certain connection to Sweden. The connection could either be to a family member, as in a child or a new spouse (who has Swedish citizenship), or to the Swedish society. A certain connection to the Swedish society could be that the migrant has found a job, has been engaged in collective activities or has learned the Swedish language during the temporary residency.

The second exception is if the migrant or its child is exposed to violence or serious harassments. In cases of violence or ‘serious harassments’, the migrant can get a permanent residence permit even though the connection is broken if the relationship ended because of the violence. The law itself does not identify further what serious harassments mean. The prework to the law (prop.1999/2000:43), brings up various aspects of the rule and how it is thought to be viewed when decided.

Lastly, as a third exception, the migrant can get permanent residence permit if she/he has certain reasons, e.g. the migrant risks oppression in the origin country by returning. One of the exceptions are if the migrant because of medical reasons cannot return to its origin country, UtL. 5th chapter 16 § 3d part 3e point and 6 §. We will
discuss the exception related to cases of domestic violence and its conditions more thoroughly in the following parts, how does the law work and how are these exceptions “tested”?

1.3 The conditions mentioned in the Two Year Rule
As mentioned, one of the exceptions to the Two Year Rule where a migrant could be granted permanent residency although the relationship did not last when there is violence. However, only few women fall under this exception since it requires the woman to fulfill several criteria. Firstly, the time aspect meaning that the cohabitation must have been going on for some time. Secondly, the violence must be serious and “singular, less serious acts of violence” are not sufficient. Thirdly, if the woman would return to her partner after having left him, it is seen as an indication of the violence not being serious. Fourthly, the relationship must have ended due to the violence. As seen above, it is however well-known that this is not how the process of leaving an abusive relationship works in reality.

The Two Year Rule and its exceptions in practice mean that immigrant women have to endure heavier violence than women born in Sweden. Especially the time-aspect is reported as a major obstacle for the women. Also, the above criteria imply that immigrant women have to reach a certain level of vulnerability before meeting the requirements for this exception. This is one main critique to the rule, since it implies that the definition of violence differs depending on who’s abused, thus differentiating the human right of freedom from violence between different groups of women. Another mistake the law makes is in its understanding of the connection between enduring violence and actually leaving your spouse. Research today supports that leaving and coming back up to five times is the average pattern for victims of domestic abuse, before really leaving. There is no such space in the current legislation as the expectation is rather that if you are mistreated, the proof is that you leave your abuser directly.

Seriousity of the violence
The pre-work to the rule (1999/2000:43 p. 53) states that not all acts of violence should lead to the migrant getting permanent residence permit once being a victim. This is also applicant when the child of the migrant is a victim of violence. According to this it is explained that if this restrain is not made it would be easy to manipulate the rule. The pre-work makes difference between serious acts or repeated acts of violence or/and violence and less serious acts. In the case MIG 2011:25 the Migration court discusses this condition more thoroughly. The Migration court also writes that the violence has to be seen in its context in each case. In the judgment different aspects can affect the outcome. In the case the Migrant court brings up the length of the period, if the violence has been systematic or and the seriousness. The Migration court states that not only should the violence be of a certain seriousness, but the relationship should also end mainly because of it. The same kind of formulation is found within the law itself.

Time aspect
A woman under the Two Year Rule who is subjected to domestic violence has to consider the time aspect of the violence. Due to the design of the legislation, the relationship must have proceeded for some time for it to be considered serious. For how long is not specified, although four months is too short, and nine months might
be enough but it is no guarantee. This implies that the abuse must begin after at least nine months, since the woman is also obliged to leave the relationship at the first act of serious violence.

The pre-work (prop. 1999/2000:43) and the cases around the rule states that the relationship must have lasted a certain time and that is has not been too short, and on the other hand it also needs to be a serious relationship from the very beginning.

Need of evidence
The law itself does not state what sort of evidence is needed but the pre-work to the law (1999/2000:43, p. 54) brings up the form and importance of evidence. It is not sufficient that the migrant claim that abuse has taken place. Although this does not mean that the migrant needs to prove the abuse by showing a filed police report. The migrant must show that the abuse has likely happened. The pre-work to the law does not state any formal conditions to this, but medical journals or certificates from social authorities or women’s aid offices are examples given, apart from police reports.

The importance of evidence and how they are interpreted has been shown in cases where the rule has been applied. One case that weigh different evidence to each other is MIG 2011:25. The migrant in this case had come to Sweden due to connection to her husband that later began to abuse her. The migrant in this case had filed a police report but it did not lead to prosecution, although the Migration court did not interpreted this as if abuse did not per se taken place. The court therefore went through content in the police report. Other evidence that was taken into count was the migrant’s teacher’s description to the police. The teacher stated that the migrant had bruises in her face when arriving to school and that she tried to cover with her headscarf. Also a note made by social authorities was weighed into the decision of the Migration court from when the migrant had sought shelter from the man because of the mental and physical abuse. The social authorities had taken the decision that she was in need of shelter. The Migration court stated that this was aligned with the principle of free evidence sifting of evidence.

The rule of evidence is therefore vague since it is difficult to anticipate what will affect the outcome.

2. Over-all issues with the conditions
The conditions lined up in the rule, its pre-work and cases have different dimensions that lead to difficulties for some women when being victims to domestic violence. Terrafem Gothenburg has experience through supporting women facing these rules. We have seen how women are unaware of the rules and how they are afraid of reporting the violence because of the uncertainty of the rule and the price they have to pay if decided to be deported. Many of the women are afraid of returning back as divorcees – it is for them a shame and they risk being mistreated by family and society. Although they might have left their countries in a different sense they know they will be treated differently when divorced. These risk do not always lead to the women obtaining the status as refugees. Even when facing the choice between remaining in the violent relationship or to go through a long process of seeking asylum many women keeps hopes on the man changing and to bear the violence and harassment. This creates many serious issues for them and it restrains their rights to live a life free from violence. The men who bring the women to Sweden are often
aware of the rules and know how to manipulate them for their own benefits. In the following part we will discuss the conditions in the light of the experiences we have had of women.

2.1 Lacking rule of law
Since so few of the women can acquire residency on their own, women under the Two-Year Rule end up in a situation of lacking rule of law. Most women don’t have any other choice but to stay in the abusive relationship until the two years have passed and they are granted a permanent residency. Many women do not obtain this information and can therefore easily be used. Terrafem Gothenburg has witnessed many cases where women have been lied to and made believed that they have no rights in Sweden. These women also lacks a social network when abused which makes it difficult to reach out and get the information. When the rules are explained to women when they are many times afraid to risk returning. They view the relationship as less awful between the choice of returning back to their home countries.

Even if they would be informed on the legislation and regulations – which few women are due to their dependency on the spouse – few women are not willing to take the risk to report the violence since the chance of getting to stay in Sweden is not very big.

As mentioned earlier, some of the conditions are very vague in its formulation and practice. It is difficult to foresee and understand the different parts. There are many benefits of having a less strict legislation, but for many women the ambiguity means an insecurity making them rather stay in the violent relationship when not fulfilling all different aspects to the rule. We will discuss the complexities of fulfilling all sides of the conditions, which many times are contradictory to each other, more thoroughly in the next part.

2.2 Contradictory conditions
The 2012 inquiry stated that the two-years rule even may enforce the violence, as the Swedish man can use it as a threat if the woman considers leaving him. It also found that the time aspect of the relationship is arbitrary, since the relationship must have been going on for some time, but for how long is not clear. Four months is however too short, and nine months might be enough but it is not certain. This lacking clarity traps women in abusive relationships in a Catch 22, where she has to leave the man at his first act of violence, and not only that act has to be serious enough – it also has to be temporally right- not too early and not too late in the relationship. It also clashes with the criteria where she should leave due to the violence, but if she gets harassed in an early in the relationship she risks being viewed as unserious in the relationship.

3. Immigrant Women’s Rights are Women’s Rights
The immigration debate is a separate one and not the aim of this document. However, it can be argued that the effects of the Two-Year Rule makes a distinction between women born in Sweden and those who migrate here, in terms of needing to endure some amounts of domestic abuse. The attitude towards women who immigrate to Sweden in connection to a man is according to the legislation based on a fear of them abusing the migration system, when in fact they should be seem as women of the
same rights as all women.

The effects of the formulation of the law: the fear of having migrants who come to Sweden with the primary goal of gaining residency. This fear is weighed against the right to be protected by the law. These women are already vulnerable due to the language and cultural barriers when moving to a new country. They usually don’t have connections to other people than the man who brought them here, and therefore need to be protected by the laws to the same extent as Swedish women, in order for Sweden to comply with CEDAW.

3.1 Children's Rights
Another aspect of the aftermath of the Two Year Rule are the negative effects it imposes on children involved. A child’s right not to witness or grow up with an abusive relationship cannot be ensured with criteria allowing “singular, less serious acts of violence” against women, nor in situations where women are trapped to stay in an abusive relationship due to the risk of deportation should the relationship not persist for long enough.

These are however some of the implications of the Two Year Rule. In similarity to this problem’s relevance to CEDAW (2009), its implication also counter the objectives of the Convention on the Rights of the Child, such as children’s right to protection from abuse and the very aim of acting in the best interest of the child, the same kind of formulation is found in Swedish law, Föräldrabalken. According to Föräldrabalken 6 kap 2 a § the child’s best interest (“barnets bästa”) has to be guiding all decisions that affect the child. In the same rule’s second part it is stated that certain importance in situations where the child or anyone else risks to be or is subjected to violence. It is unfortunate to see that this is not applicant to children of migrants, since some less serious acts of violence is viewed upon as not sufficient. It is in this context not aligned with the best interest of to accept “less serious” acts, since this protection should be stronger. The rule found within Swedish legislation in Föräldrabalken does not only protect children that witness or are subjected to acts of violence, but also at the risk of being so. The protection should also include children of migrants in the same sense when discussing and applying Utlänningslagen, instead of making differences between violence and (less serious) violence.

4. Identified issues in the current legislation
The Two Year Rule enables “wife-import” where Swedish men can put into practice to bring women to Sweden and use them for two years and then replace her with a new woman for another two years. In these cases the purpose of the law, which is to counter fake marriages as a way to surpass the Swedish immigration system, is not fulfilled. Instead, it forces women who are physically and mentally abused to stay in the relationship since many women don’t see returning to their home country as an alternative.

Women arriving to Sweden as part of such import-marriages are exposed to violence in a higher extent than other women, according to the University of Gothenburg. Many scholars and practitioners are certain that the two-years rule is a major reason to this. Instead of preventing fake marriages, the rule facilitates for violent men to bring women from another country and subject her to physical, psychological and/or sexual violence. Although some admits the intention of the rule to be valid, it is – again –
women who pay the price.

The Two Year rule puts the woman further into a situation of dependence of her spouse. Research on women under the Two Year Rule in Sweden shows that few women dare to report the violence to the police or women’s aid organizations. The man tends to isolate the woman by hindering her contact with the rest of the Swedish society. This entails that it is very difficult for the woman to inform herself on her rights and Swedish regulations. How can we “fix” the Two Year Rule so that women's’ rights are not violated, as is currently the case?

5. Suggested solutions and alterations to the Two Year Rule

Domestic abuse has long been seen as a private problem, to be kept behind the doors of a home. The last decades this definition has changed, and now we admit this problem as human rights violation and thereby very much a societal issue to be fought. Swedish legislation reflects and manifests these shifts in opinion through the recent law (2018) concerning sexual consent, making it illegal for anyone to engage in sexual activities with another person without their consent. The view of how a victim of sexual assault or domestic abuse should behave is also a hot topic in the legal world, as jury and judges in the past have based their opinions on outdated ideas of how one reacts after or during an assault. These outdated assumptions are found also in the Two Year Rule, where time is a critical factor for women who seek to escape an abusive relationship: either report him immediately or leave immediately. The reality of how an abusive relationship works is not combinable with these criteria. The legislation has faced critique from women’s aid offices and other organizations.

There are several suggestion on how to revise the legislation revolving people migrating to Sweden due to a connection to a spouse. The debate is however dominated by women’s rights organizations while most political parties have yet to take a stance in the matter. Preventive interventions include for example finding ways to inform women on their rights before arrival and establish an investigation procedure of the man in Sweden before granting his spouse the two-year residency. So-called “serial-importers”, meaning men who are systematically bringing women to Sweden only to end the relationship before the two years have ended and men who have been convicted for violence against women or pedophilia could be stopped through such a procedural investigation.

The above-mentioned criteria for the exceptions of the rule are based on the idea that women arriving to Sweden on a connection to a Swedish man mainly attempt to circumvent the Swedish immigration law. An inquiry conducted by the Swedish parliament in 2012 (SOU 2012:45 Kvinnor och barn i rättens gränsland) suggested that the criteria for the exception to the two-years rule should be removed and that it should be sufficient that the woman make probable that there has been violence towards her and/or her children. Further, the inquiry made several suggestions to revise the rule.

In 2015, the Swedish parliament obliged to review the two-years rule, acknowledging that “many women and children coming to Sweden in belief of meeting love and a better life instead have been exposed to violence, threat and oppression” (Motion 2015/16:2192).
However, despite criticism towards the rule and suggestions on alternative solutions, no changes have been made in the rule, and it is not discussed as a political issue. Sweden has repeatedly gained international attention when legislating in the area of women’s rights. For example, the Swedish government introduced a large reform on the safety of women (‘Kvinnofridsreformen’), and was the first country to introduce an anti-prostitution law criminalizing the buyer and not the seller in 1998. In 2018, Sweden’s consent law entered into force. Sweden, being in some regards a model in legislation aiming to eliminate violence and discrimination against women, are evidently failing immigrant women exposed to violence.

6. About Terrafem Gothenburg
Terrafem Gothenburg is a part of Terrafem Sweden, an organization against men’s violence against women. Terrafem helps women that need support or legal advices. Terrafem’s target group is women of foreign background. Through Terrafem’s hotline women can get support in over 60 languages. Apart from the hotline Terrafem also works with opinion-making formatting work to spread knowledge about men’s violence against women, about gender equality and the ways to understand the process of domestic violence.

Terrafem Gothenburg has through its years witnessed women of foreign background’s vulnerability in the Swedish society. These women often lack a network and/or the language to reach out when those situations occurs. Terrafem Gothenburg have gotten in touch with women who have come to Sweden as spouses to men here who later have mistreated them, beaten them or isolated them. They are put in an extremely difficult situation as the rules that are supposed to protect them put very high demands. The difficulty to achieve the requirements of the law puts the women in a position where they are highly dependent position upon their husbands or boyfriends. Terrafem Gothenburg have also seen how men have used the (by law) created unequal relationship to abuse and mistreat women, then leave them before they are granted permanent residence permit.
References


