

# Trafficking in persons and protection of refugees, stateless persons and internally displaced persons (IDPs)

## Situation in Switzerland

To the attention of:

**The UN Special Rapporteur on trafficking in persons, especially women and children in regards to her call for input on Trafficking in persons and protection of refugees, stateless persons and internally displaced persons (IDPs)**

February 28, 2023

### **Introduction**

The answers for this call has been drafted by FIZ Advocacy and Support for Migrant Women and Victims of Trafficking. FIZ Advocacy and Support for Migrant Women and Victims of Trafficking advocates for and supports migrant women affected by violence and victims of trafficking since 38 years. The organization runs two support services: One is the Counselling Center for Migrant Women The second service is the specialized Victim Protection Programme for Victims of Human Trafficking. We offer counselling, support services and safe housing for victims of trafficking, mostly women. FIZ also does educational and policy work. This is where the experience we gain from practical work with the recipients of the services becomes visible and effective.

Furthermore, FIZ founded a project specifically for VOTs who are in the Swiss asylum system. Within this project, FIZ deals with yearly around 100 cases of human trafficking in the asylum sector, thus having an in-depth view of the current challenges and experiences of this group of VOTs. The forthcoming answers are based on the experience of our work with this specific group throughout the last 5 years.

We would like to express our gratitude for the opportunity to comment on the issue of trafficking in persons and protection of refugees, stateless persons and internally displaced persons (IDPs).

**Summary: This particular group of THB experiences discrimination regarding access to specialized support and counseling, accommodation as well as international protection and long-term residence status in Switzerland.**

1. *Access to international protection for victims of trafficking or persons at risk of trafficking for all purposes of exploitation: conceptual and procedural issues*

Obstacle 1: Dublin-III-Regulation

Since 2019, an accelerated asylum procedure is in place in Switzerland. The accelerated procedure entails major obstacles concerning access to international protection for VOTs due to the strict application of the Dublin-III-regulation: Within a very short period of time, Switzerland declares that it is not responsible for the handling of the asylum claim if someone has been fingerprinted in another European country, thus referring the person back to the Dublin country which she or he has entered Europe in the first place. The majority of the VOTs we support (around 90%) have been exploited either on the migration route or in another Dublin country, which means as a consequence in many cases that the person is referred back to the country in which the exploitation took place. Switzerland does not make use of the so called "sovereignty clause" foreseen in the Dublin regulation<sup>1</sup>, which would permit states to take on an asylum claim based on humanitarian grounds. This happens with the full knowledge of the migration authorities about the fact that a person is VOT (for details about the procedure and legal gaps in case of a Dublin return, see answer 8).

Obstacle 2: No application of the "membership of a social group" as in the international refugee convention of 1951

This no application is the first obstacle in receiving international protection in Switzerland as a VOT within the asylum procedure. In the rare case that someone's Dublin-procedure is stopped or impossible, the VOT enters the "normal" asylum procedure. However, even there, international protection, such as a residence in Switzerland based on the quality as a refugee due to being a VOT, is basically nonexistent. The aspect of human trafficking is very rarely taken into consideration when deciding upon the asylum claim since very often, the trafficking has taken place in a country other than the country of origin. Even in cases in which the argumentation of either gender-based persecution or the belonging to a specific social group (such as e.g. young women from Edo State in Nigeria) could well be made, Switzerland refrains from accepting it as a reason for full refugee status. This is very problematic since the denial is given even in cases in which severe reprisals, discrimination as well as ostracism awaits a VOT back in their country of origin.

Since Switzerland resorts to giving a "provisional admission" (which entails significantly less rights and possibilities for social and labor integration in Switzerland) in those cases, they cannot be brought before CEDAW or European courts.

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<sup>1</sup> Art. 17 of [Dublin-III-Regulation](#).

Obstacle 3: No access to victim aid if the exploitation took place outside of Switzerland

One major gap in the access to the identification and support for VOTs who have become victims on the migration route or in another European country is that they are not entitled to receive victim aid in Switzerland. The legal base for this discriminatory exclusion is in the Swiss Victim Aid Act Art. 17 in combination with Art. 3, stating that only persons who have become victims on Swiss soil and/or have a residence status in Switzerland are entitled to receive victim aid. This excludes 90% of the VOTs we counsel from the asylum sector; leaving us as specialized victim organization to counsel them solely funded on private donations, whereas for those VOTs who have become victims on Swiss soil, we receive public funding by the cantonal victim aid.

This sharp violation of international law is now, after many years of advocacy, finally discussed in the Swiss parliament. It is not sure however in which direction discussions will go, since former discussions on this topic resulted in a clear rejection of any changes in the victim aid law despite the full knowledge of authorities that this is violating international law, especially the Convention on Trafficking.

2. *Promising practices at country or regional level, on ensuring effective access to protection for victims of trafficking who are refugees, asylum seekers or stateless persons*

One positive effect of the accelerated asylum procedure in Switzerland, which is in force since 2019, is the fact that each asylum seeker receives a legal representative from the very beginning who supports him or her during the whole asylum procedure. Based on the initiative of FIZ, we are in very close contact with these representatives and offer trainings and exchange for this group of lawyers. The number of detected VOTs in the asylum procedure has thus significantly risen in the last years.

Nevertheless, it is very problematic that the migration authorities, who mandate these legal representatives, are not systematically ensuring that they are well trained in the detection of potential VOTs. Furthermore, the migration authorities themselves refrain from transferring potential VOTs towards specialized victim organizations, limiting their support to handing them a flyer with different addresses and leaving the potential VOT to his or her own devices.

3. *Trafficking in persons for all purposes of exploitation as a form of persecution*

Even though awareness for other forms of trafficking such as trafficking for the purpose of forced labor or criminal activities has risen, the Swiss application of asylum law excludes these forms as a reason for refugee status. In general, it is impossible to receive a refugee status in Switzerland solely on the fact of having been a VOT. Also, detection

happens mostly in cases of female VOTs who have been sexually exploited.

4. *Trafficking in persons and the nexus with the definition of a refugee in international law*

See answer 1, obstacle 2.

5. *Gendered inequalities in access to international protection for victims of trafficking*

See answer 3. This affects mostly male VOTs.

6. *Identification and protection of refugees, asylum seekers and stateless persons who are victims of trafficking: challenges and gaps*

See answer 1, obstacles 1 and 3.

7. *Externalisation policies and the impact on trafficked persons or persons at risk of trafficking for all purposes of exploitation*

The lack of legal migration routes makes refugees more prone to become VOTs along the migration route. We see this especially on the route through the Sub Sahara and Libya, where severe human rights violations, human trafficking and extortion take place on a daily basis with horrible outcomes for migrants trapped in Libya. The externalisation of border protection from European countries to Frontex is the major driver to the currently unbearable situation in Libya. Also the situation at the Turkish-Greek boarder is very concerning.

On the national level, we observe that the externalization of mandates on security and care/support in the asylum centres with great worry. There have been incidences of violence from private security firm personnel towards asylum seeeers in those centres.<sup>2</sup> The externalization of the accommodation to private partners is also problematic, since there are serious gaps in the flow of information, especially concerning special needs or security aspects of VOTs. More money is invested in security than in high quality care and support for asylum seekers. In general, asylum centres are no adequate accommodation for VOTs (for more information, see answers 9 and 10).

8. *Non-refoulement obligations: application to risks of trafficking in persons*

Since it only rarely even comes to the point in the asylum procedure in which a non-refoulement to the country of origin is in question, the forthcoming remarks focus on the principle of non-refoulement towards a Dublin country.

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<sup>2</sup> <https://www.nzz.ch/schweiz/untersuchung-bestaetigt-faelle-von-unangemessener-gewalt-in-asylzentren-sicherheitspersonal-ueberfordert-ld.1650839?reduced=true>.

Switzerland (the State Secretariat for Migration of Switzerland, SEM) applies the Dublin return practice in a very restrictive manner, ignoring precisely the highly vulnerable psychological and physical situation of victims of human trafficking. Many of the repatriated (but beforehand identified by authorities) victims find themselves in great danger of re-trafficking in the respective Dublin country (Italy, Greece, France) and have no resources and often no support to fall back on.

The Dublin or readmission country is informed by the Swiss State Secretariat for Migration in individual cases that the person concerned is a victim of human trafficking. But what happens with this information or whether anything is done on the ground at all is not checked. In practice, this meant in individual cases that a highly traumatized person freshly discharged from the clinic is then de facto expected to inform herself on the spot about the support and protection services available to her, which completely ignores the vulnerability and helplessness of the trafficked person. At the very least, contact would have to be made in advance with a specialized organization on the ground (through the Swiss migration authorities and not through an NGO which is not paid for this service) and it would have to be ensured that the person arrives there or is picked up by this organization at the airport or train station. However, current procedures make it impossible to organize such contact beforehand, since it is in the responsibility of the Dublin unit of the other European country to decide in which city/state/region a person will be finally attributed to.

The way (Dublin) returns of trafficking victims are carried out by Switzerland contradicts the Convention on Action against Trafficking in Human Beings and disregards the risk of re-exploitation. In the case of victims of human trafficking, Switzerland must, if it is in the interest of the trafficked person, refrain from a Dublin transfer, or readmission, and act on the asylum application itself.

9. *Refugee and IDP camp management practices and policies to prevent trafficking in persons, identify, assist and protect trafficked persons*

Accommodation in the asylum centres is neither adequate nor safe for VOTs. Despite the publicly known incidents of violence as well as recurring reports from our clients of sexual harassment executed by other asylum seekers living in the same centres, there is no intention to enable VOTs who are in the asylum structures to be transferred to a specialized shelter for VOTs such as the one of FIZ.

This is the fact despite the publication of a report published by the Federal Counsel in 2019<sup>3</sup>, showing significant gaps in the prevention of adequate consideration of gender based needs in asylum accommodations (on the federal as well as on cantonal level).

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<sup>3</sup> [Postulat Feri 16.3407 «Analyse der Situation von Flüchtlingsfrauen» Zur Situation in den Kantonen BERICHT ZU HÄNDEN DES STAATSEKRETARIATS FÜR MIGRATION \(SEM\) UND DER SCHWEIZERISCHEN KONFERENZ DER KANTONALEN SOZIALDIREKTORINNEN UND SOZIALDIREKTOREN \(SODK\).](#)

The guideline for the accommodation of vulnerable persons within the asylum centers (incl. VOTs) which is promised to implement since years in the context of this report is unfortunately not available until today and accordingly nothing has changed in the accommodation situation for the persons concerned. Currently it is unclear whether the guidelines will be finalized and implemented at all.

*10. Child protection and child trafficking among refugee, stateless persons and IDPs*

The situation of unaccompanied minors in the asylum structures is currently problematic and precarious in several regions. There is a lack of care personnel/social workers and thus of close-meshed care. Recently it became known that due to this situation the category "SUMA" (in German: Selbstständige Unbegleitete Minderjährige Asylsuchende, in english: independent unaccompanied minors) will be used. These will then receive slightly less close supervision because they are thought to be more independent than other minors. We view this development with great concern because it violates children's rights.

There are no specialized accommodation structures for minors who are victims of human trafficking throughout Switzerland. There are isolated structures that accommodate minor victims, but they are not specialized to their needs.

Another problem is that when identification documents are missing, the authorities often question the minor's age and then decide that the person is of age based on an age assessment. At this moment, all additional care measures for minors within the asylum structures expire and a Dublin removal becomes likely. This is also often the moment when potentially underaged victims of trafficking go into hiding, making them even more prone and vulnerable to become VOTs (again).

*11. Risk factors and vulnerabilities emerging when people flee to seek safety (including issues related to lack of protection services along the routes, challenges in provision of support to meet basic/essential needs)*

See also answer 7.

The sites of exploitation usually reflect the stages of the migration route: until recently, most of the persons we counseled were trafficked on the Libya-Italy route. In 2022, however, the Balkan route became significantly more important and the majority of our clients have Turkey or Greece as their crime scene. These developments show how closely the stations of the migration route are linked to the crime scene of exploitation and how vulnerable persons on the migration routes are to become victims of exploitation. Lack of safe migration routes is thus one of the biggest drivers of human trafficking.