



OHCHR: Call for input: Report on Revisiting migrants' contributions from a human rights-based approach: a discussion on facilitating and hindering factors

Commentary by AsyLex Regarding Switzerland

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A. About the Commenting Organization

AsyLex is an independent, Switzerland-based association providing legal assistance and representation to asylum seekers in Switzerland and beyond. Our work is performed primarily by volunteers, who provide legal counseling and court representation in cases involving Swiss asylum procedures and immigration detention.

It is worth highlighting that a significant portion of our volunteer team consists of individuals with migration or refugee backgrounds. This diversity is not only reflected among our translators but also within our board and other teams. Their personal experiences greatly inform our perspective as we embark on the task of producing this report. In light of these unique backgrounds and insights, we wish to share the following comments.

B. Background

In recent years, international migration has emerged as a central topic in global discussions, characterized by polarized narratives that often overshadow the substantial contributions migrants make to societies worldwide. In response, the Special Rapporteur on the human rights of migrants aims to address these misconceptions through a human rights-based analysis in his forthcoming thematic report to the Human Rights Council. AsyLex welcomes the drafting of this report and thanks the Special Rapporteur on the human rights of migrants for the opportunity to contribute.

C. Responses to the Report's Questions

1. Empowering migrants: AsyLex's Academy and the path to social cohesion in Switzerland as an example of the role of migrants in making a positive interaction with societies in order to counter the public narratives, myths, and discrimination against them

Migrants and their families play a pivotal role in fostering positive interactions across various dimensions in society, including education, healthcare, and entrepreneurship, bringing diverse

perspectives, skills, and innovation. Statistical and disaggregated data highlight their valuable contributions while revealing disparities and challenges in integration and access to services. Socio-culturally, they bring a rich tapestry of traditions, languages, and perspectives that enrich the cultural fabric of both their origin and receiving societies. This diversity encourages mutual understanding and promotes tolerance, challenging the negative narratives and myths surrounding migration. In the civic-political realm, migrants often actively engage in local communities, advocating for change and contributing to the democratic process. Economically, they bolster the labor force, fill skill gaps, and stimulate economic growth in both origin and receiving societies.

AsyLex acknowledges the immense value of incorporating former clients, with their diverse skill sets and invaluable perspectives, into our workspace. To illustrate this, we will now introduce the AsyLex Academies as a prime example:

AsyLex has been organizing AsyLex Academies with training modules dedicated specifically to persons with refugee background, particularly in fields like translation. This demonstrates the organization's dedication to promoting the positive impact of migrants. Since its establishment in 2017, AsyLex has conducted a mandatory training program, known as the AsyLex Academy, for its volunteers four times a year at various locations across Switzerland. The goal is to ensure that the AsyLex team remains informed about the latest developments in asylum law and can offer high-quality legal advice and representation. During these academies, experts from academia and practical fields are invited to deliver lectures, participate in panel discussions, and conduct workshops. By providing avenues for skill development and integration, AsyLex not only facilitates the entry of migrants into the workforce but also supports their flourishing within it. This approach emphasizes a two-way integration process where migrants are not merely recipients of integration efforts but active participants in their own empowerment. The focus on training modules that cover not only technical skills but also resilience-building, human rights advocacy, and intercultural communication further enriches this comprehensive approach to integration. Additionally, the engagement of former clients as volunteers within AsyLex's initiatives not only expands their social networks but also strengthens the bonds between migrant communities and the wider Swiss society. AsyLex and its volunteers benefit from individuals with refugee backgrounds who bring valuable skills and perspectives such as translation abilities, knowledge of specific refugee-related issues, cultural awareness, and a deeper understanding of client experiences, thereby enhancing the effectiveness and cultural sensitivity of AsyLex's services.

AsyLex's Academy initiatives serve as exemplary models for promoting integration and social cohesion, demonstrating the potential for NGOs to play a pivotal role in migrant empowerment. However, for such initiatives to have a broader and more sustainable impact, greater support from the state is imperative. Increased funding and policy backing for projects like AsyLex's academies can amplify their reach and effectiveness in addressing the multifaceted challenges faced by migrants. By recognizing the value of grassroots initiatives in fostering integration and empowerment, policymakers can contribute to creating a more inclusive and supportive environment for migrants in Switzerland.

2. Challenges faced by vulnerable migrants as an example of hindering factors and obstacles of migrant contribution and existing national framework which impede migrant contribution.

2.1. General issues in Switzerland

In Switzerland, the journey of migrants towards integration and inclusion is marked by various challenges, particularly for those belonging to vulnerable groups, including individuals with disabilities, migrants holding “F” permits denoting temporary protection status, and those in a legal limbo as rejected asylum seekers in Switzerland, without the factual possibility of leaving the country due to impossibility, inadmissibility, or unreasonableness of deportation. These groups encounter unique barriers that intersect with broader issues of discrimination, limited opportunities, and legal uncertainty, hindering their access to essential services and impeding their path to social inclusion. This discussion delves into the distinct challenges faced by each group and underscores the imperative for comprehensive measures to address their specific needs and uphold their rights within Swiss society.

In addition to the multitude of challenges faced by migrants worldwide, individuals with disabilities encounter further barriers when seeking employment or pursuing higher education. Discrimination and lack of accessibility in the job market and educational institutions often impede their integration and advancement. Furthermore, migrants under temporary protection status, such as those with “F” permits in Switzerland, endure prolonged uncertainty and limited opportunities due to the temporary nature of their status. Their arbitrary designation of "temporary" not only makes it more challenging to secure employment, but also affects their ability to reunite with their families, with an approximate waiting period of three years before they can apply for family reunification. However, a recent decision¹ has acknowledged the need for flexibility in certain cases, potentially shortening this waiting period, albeit inconsistently, thereby exacerbating the unpredictability and stress experienced by affected individuals and families.²

Moreover, migrants who have obtained a temporary possibility to remain in Switzerland due to a deportation halt through legal proceedings often find themselves in a state of legal limbo, lacking clear rights or pathways for integration. This ambiguous status further compounds their vulnerability, hindering their access to essential services, employment opportunities, social inclusion and sometimes even public school for children. The absence of recognized rights and protections leaves them marginalized and at risk of exploitation or abuse. Their uncertain legal standing not only obstructs their ability to rebuild their lives but also perpetuates their susceptibility to human rights violations across origin, transit, and destination countries. Addressing these intersecting challenges requires comprehensive and proactive measures to dismantle systemic barriers, uphold human rights principles, and ensure the dignity and well-being of all migrants, regardless of their legal status or circumstances.

The intricate complexities of legislative frameworks and practical barriers often impede migrants, including asylum seekers and refugees, from fully realizing their rights. These impediments range from bureaucratic hurdles to systemic inequalities, hindering their integration and access to essential services. It is imperative to recognize and address these challenges to ensure the protection and well-being of vulnerable populations. Therefore, we advocate for the alleviation of burdens imposed by legislative systems and practices, aiming to foster a more inclusive and equitable environment conducive to the fulfillment of migrants' rights.

2.2. A specific example of vulnerable migrant groups and their obstacles faced; challenges faced by Afghan women in Switzerland

¹ Federal Administrative Court, *Judgement F-2739/2022*, 24 November 2022, available at https://www.bvger.ch/media-releases/5bc64db2-1425-4ced-959a-882e05494a7c/de/f_2739_2022-web.pdf.

² For further information on temporarily admitted people see annex A: “*Questionnaire of the report of the Special Rapporteur on how to expand and diversify regularization mechanisms and programs to enhance the protection of the human rights of migrants, Commentary by AsyLex regarding Switzerland*”.

To highlight the specific challenges experienced by migrants in Switzerland, we will illustrate using the example of Afghan women. However, it is essential to recognize that numerous individuals from diverse nationalities also encounter similar obstacles.

Afghan women face significant gender-based discrimination in their home country, severely limiting their opportunities to contribute to society. Cultural norms and legal barriers often restrict their access to education, employment, and public life. Discriminatory practices such as forced marriage, limited mobility, and lack of property rights exacerbate their marginalized status, hindering their ability to realize their potential and make meaningful contributions to their communities. These challenges persist as Afghan women transit through neighboring countries, where they encounter similar obstacles, including legal and societal discrimination. Thus, this gender-specific persecution, exacerbated by the decline in women's rights under Taliban rule, underscores the importance of legal adaptations and humanitarian assistance to uphold human rights amidst the Afghan crisis. Therefore, recent developments in Afghanistan have reshaped migration policies in Europe, including Switzerland. The Taliban's takeover prompted a reassessment of asylum strategies, focusing on safeguarding vulnerable groups, including women, which is welcomed by AsyLex. European nations suspended deportations and granted temporary protection status to Afghan asylum seekers, reflecting the recognition of dire circumstances and the need for protective measures.

Nevertheless, there are tremendous issues in the possibility of reaching safe-countries as legal pathways are in practice often not available for (Afghan) refugees. While Swiss law does provide for the possibility of obtaining a humanitarian visa, facilitating a safer and faster journey to Switzerland to ask for asylum, obtaining such a visa has proved difficult in practice. Despite the existence of a legal basis allowing derogations from the requirement to appear at a Swiss embassy to submit an application, such exemptions are rarely granted, even in the most exceptional cases. The absence of a Swiss representation in Afghanistan poses a significant problem for Afghan women since the travels to a Swiss embassy are expensive, dangerous, and further obstructed by the necessity of obtaining a visa for neighboring countries.

Upon filing a humanitarian visa request, Swiss embassies almost systematically reject applications, even when all criteria are met, demonstrating a lack of sufficiently assessing the evidence presented by applicants. After the negative decision, the possibility of objections and appeals exists, but this process often necessitates professional legal assistance, to which many affected persons do not have access. Additionally, the extended processing times by Swiss authorities further exacerbate the challenges applicants face in their emergency situation, including the precarious living conditions, discrimination, and risk of deportation in third countries. Only a minimal number of humanitarian visas are ultimately granted, posing a considerable barrier to the enjoyment of human rights of Afghan women, especially the human right to seek asylum.

Afghan women who successfully reach Switzerland encounter persistent barriers to societal integration, thus also restricting them from making valuable contributions to society. Ambiguity surrounding residency permits and legal status presents obstacles to employment, education, and community participation. This is particularly due to the fact that many Afghan women still hold temporary admission permits solely, facing daunting challenges to obtain legal employment and hurdles to reunite with their family immediately, which impedes their right to family life and hinders effective integration.

In addition, it is important to note that while legal avenues such as hardship requests for a residence permit exist, practical implementation often proves challenging.³

Addressing these integration obstacles requires several key measures, including simplifying the asylum process, establishing tailored support networks for female asylum seekers, and implementing gender-sensitive policies and programs. Providing access to language and vocational training opportunities can empower Afghan women to achieve self-sufficiency and contribute to their new communities.

2.3. Challenges faced by refugee scholars as an example of hindering factors and obstacles of migrant contribution

This report goes beyond highlighting the challenges encountered by migrants in Switzerland. It delves into how specific subgroups within this community face barriers that hinder their ability to contribute effectively to society. To illustrate this, we will spotlight the experiences of refugee scholars and the obstacles they confront. It is essential to note that while we focus on this subgroup as an example, we recognize that numerous other refugee groups also encounter similar hurdles in their efforts to contribute meaningfully to society.

Undemocratic regime practices have far-reaching consequences, affecting individual freedoms, societal solidarity, international peace, and prosperity. Refugee scholars bring a unique and invaluable perspective to the understanding of undemocratic practices and their consequences. Having personally experienced the repercussions of undemocratic regimes, they are better equipped to observe the causal link between these practices and their far-reaching effects. Furthermore, they possess the technical skills necessary to dissect the complex processes they have undergone and convey their experiences, as well as those of others, objectively.

The expulsion of academics and researchers has become a significantly destabilizing phenomenon in the realms of knowledge production, scientific research, and the quality of higher education. Conflicts, wars, and undemocratic government practices are the primary culprits behind the forced displacement of scholars.

3. Facilitating factors that help migrants to provide greater contributions to the societies from socio-cultural, civic-political and economic perspectives

3.1. General comment

In addressing the multifaceted challenges faced by vulnerable migrant groups in Switzerland, it is imperative to underscore the vital role played by civil society organizations and non-governmental stakeholders in maximizing and optimizing migrants' contributions. Against the backdrop of an increasingly complex global migration landscape, these entities have taken proactive measures to enhance the integration and well-being of migrants, offering various forms of support and advocacy. Furthermore, placing greater emphasis on refugee leadership is vital not only to implement solutions on behalf of migrants but also to empower them to be active participants in shaping these solutions. Therefore, it is imperative to support all initiatives aimed at fostering refugee leadership. Additionally,

³ See annex B: “*AsyLex and Center for Human Rights Advocacy Submission for Afghanistan’s Universal Periodic Review (Fourth Cycle)*”.

it is desirable for states to prioritize the integration of refugees into democratic policy-making processes.

3.2. Facilitating factors for Afghan women in Switzerland to provide greater contributions to the societies

In light of the multifaceted challenges faced by Afghan women along their migration journey and upon settling in Switzerland, exploring positive measures aimed at facilitating their integration and maximizing their contributions becomes paramount. At the local, national, regional, and international levels, states must prioritize the development and implementation of comprehensive legislative, policymaking, and institutional frameworks tailored to address the specific needs of (Afghan) migrant women. Regularization mechanisms, integration programs, and access to education, employment, and healthcare are essential components in empowering (Afghan) women to overcome systemic barriers. Moreover, concerted efforts to combat gender-based discrimination, promote social integration, and foster community cohesion are crucial in creating an inclusive environment conducive to harnessing the potential of migrant women and their families. Finally, recognizing temporary admission conflicts with ongoing conflicts of no temporary nature, therefore, granting residence permits instead of temporary admission, would help migrants tremendously in the enjoyment of their rights, including the rapid reunification with their family members, without delay.⁴

3.3. Facilitating factors for refugee scholars to provide greater contributions to the societies

To support displaced and endangered scholars, various institutional measures have already been implemented. These measures primarily focus on preserving their scholarly identities, enabling the continuation of their academic studies, and providing stable conditions for them to rebuild their lives and careers within academic communities.

Yet, there is still leverage to introduce further facilitating factors. Firstly, the importance of documentation in capturing the experiences of individuals affected by undemocratic practices cannot be overstated. By shedding light on untold stories and providing a platform for marginalized voices, documentation serves to raise awareness of the challenges faced by scholars under oppressive regimes. Furthermore, it enriches scholarly discussions by offering deeper insights into the causes and consequences of undemocratic practices, thus laying the groundwork for resilience programs and academic studies aimed at aiding refugee scholars and advancing our understanding of this critical issue.

Finally, to implement a framework for empowering refugee scholars and facilitating knowledge production, several concrete actions are recommended to be taken. First, it is essential that refugee scholars themselves are involved in the establishing process of these actions. Thus, organizing preparatory meetings to develop comprehensive study frameworks in collaboration with refugee scholars would be instrumental. These meetings should also establish mechanisms for documenting the entire displacement process. Additionally, conducting roundtable discussions on themes such as scholars under undemocratic regimes and displacement experiences, along with initiatives for data collection and workshops, would provide valuable insights and platforms for further research and give the refugee scholars the needed platform to raise their voices and share their valuable experiences. Encouraging refugee scholars to contribute academic studies on political regimes and their consequences would further enrich the discourse and contribute to addressing the challenges faced by scholars in such environments.

⁴ See annex B.

D. Recommendations

Based on the aforementioned considerations, we strongly encourage the Special Rapporteur to consider the following recommendations, with a specific focus on addressing the Swiss government. Additionally, we urge the Special Rapporteur to extend these recommendations to other governments where similar obstructive practices are evident:

- Support private initiatives promoting integration, social cohesion, and migrant empowerment by introducing facilitative policies and providing funding;
- Ensure comprehensive and proactive measures to simplify the legislative framework, dismantle systemic barriers, and uphold human rights principles, to favor the integration of migrants regardless of their legal status or circumstances, ensure their access to essential services, and foster a more inclusive and equitable environment conducive to the fulfillment of migrants' rights;
- Establish legal pathways such as humanitarian visas that facilitate secure passage to places of refuge and guarantee their practical accessibility;
- Reduce barriers to integration for (female Afghan) migrants by providing clarity regarding residency permits, offering gender-sensitive, tailored support to favor their empowerment, and implementing programs that tackle discrimination and promote the active participation of migrants, including Afghan women in Swiss society;
- Expand institutional measures to enable the continuation of academic studies and research of migrants and implement a framework containing concrete actions to favor knowledge production among refugee scholars and enrich scholarly discourse on undemocratic practices and their consequences.

Annex A:



OHCHR: Questionnaire of the report of the Special Rapporteur on how to expand and diversify regularization mechanisms and programs to enhance the protection of the human rights of migrants

Commentary by AsyLex regarding Switzerland

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A. About the commenting organization

AsyLex is an independent, Switzerland-based association providing legal assistance and representation to asylum seekers in Switzerland and beyond. Our work is performed primarily by volunteers, who provide legal counseling and court representation in cases involving Swiss asylum procedure and immigration detention.

B. Responses to Special Rapporteur’s questions

1. How regularization processes facilitate the enjoyment of human rights by migrants

To illustrate how regularization would facilitate the enjoyment of human rights by rejected asylum seekers, in the following the issues faced by rejected asylum seekers in Switzerland will first be explained.

Rejected Asylum Seekers

Persons who neither receive asylum in Switzerland nor temporary admission but cannot be deported, stay in Switzerland without a regularized permit. These rejected asylum seekers are **prohibited from working** (Art. [43 Asylum Act](#) (AsylA) and **excluded from obtaining social aid** (Art. [82 para. 1 AsylA](#)). Nevertheless, many rejected asylum seekers take on illegal work to earn a living, where they face harsh working conditions and low wages.

According to [Art. 12 of the Swiss Federal Constitution](#), “Persons in need and unable to provide for themselves **have the right to assistance and care, and to the financial means required for a decent standard of living**”. This **emergency-aid**, frequently solely consisting of material provision instead of money, is, however, **insufficient**. A shelter, designed for **short-term stay**, is also provided ([Swiss Refugee Council, 2023](#)), yet, the **living conditions in these shelters are worrying**, especially for families and children ([WOZ, 2022](#)).

Moreover, **access to health care is very difficult for rejected asylum seekers**. They only receive medical care in emergencies ([SODK, 2023](#)) and **access to psychological care is almost impossible** for them.

Furthermore, rejected asylum seekers who stay in Switzerland may be **subject to punishment** under

[Art. 115 para. 1 of the Foreign Nationals and Integration Act \(FNIA\)](#): “*A custodial sentence not exceeding one year or a monetary penalty shall be imposed on anyone who stays in Switzerland unlawfully*”. In a ruling of 2008 ([Decision 6B_114/2008](#)), the Federal Supreme Court established the legal construction of a **permanent offense for illegal stay** in Switzerland, thus, undermining the legal principle of *double jeopardy* in Switzerland ([Ruckstuhl et al., 2022](#)). Therefore, **rejected asylum seekers can be prosecuted repeatedly for illegal stay**, for a maximum of 1 year of detention. Additionally there is **administrative detention which** secures the removal of a foreign person without a valid residence permit ([CNPT, 2020](#)). **Administrative detention can last up to 18 months, thus, even longer than criminal detention, and may be imposed before or after the maximum of 12 months under criminal law.**

Milder measures, provided for under [Art. 74 FNIA](#), include **restriction and exclusion orders**, preventing rejected asylum seekers from leaving or entering a designated area. These restrictions can be very problematic especially if rejected asylum seekers have **family in another canton and are consequently no longer allowed to visit them.**

Consequently, the **emergency-aid regime is designed to make rejected asylum seekers leave Switzerland.** Yet certain nationalities, such as Eritreans, experience particularly harsh asylum screening practices, with their asylum claims often rejected even though they cannot return to their home country due to imminent violations of *non-refoulement*. However, this is often disregarded by Switzerland. Therefore, these persons live long-term in the emergency-aid regime which is, however, solely **designed for short-term stay. Hence, all above described restrictions constrain rejected asylum seekers from enjoying basic human rights.** Regularizing their stay would, thus, help them considerably to enjoy these rights.

Temporarily Admitted People

[Art. 83 FNIA](#) provides for the **temporary admission of asylum seekers.** According to [Art. 83 para. 1 FNIA](#) the State Secretariat for Migration (SEM) shall order temporary admission if the person does not meet the refugee status, however, “*the enforcement of removal is not possible, not permitted or not reasonable*”. Persons who are admitted temporarily receive a “*F status*”. The temporary admission is issued for 12 months and can be extended for further 12 months at a time ([SEM, 2022](#)). Yet, **the temporary nature of this admission status is misleading** because the authorities often repeatedly renew the temporary admission as the enforcement of removal is still not possible. **More than half of all temporarily admitted persons are staying in Switzerland for seven or more years** ([SEM, 2022](#)). This is particularly concerning, since, in comparison to a refugee status, a so-called *B permit*, **the F status comes with numerous disadvantages:**

Temporarily admitted persons receive **less social aid** ([Art. 86 para. 1 FNIA](#), [Swiss Refugee Council, 2023](#)); it is **more difficult** for them **to find work**, because employers are deterred by the temporary nature of the permit; there are **travel restrictions**, whereby only in exceptional circumstances travel may be permitted ([SEM, 2019](#)), significantly restricting their right to freedom of movement; and temporarily admitted persons can apply for family reunification **the earliest 3 years after the temporary admission was granted** ([Art. 85 para. 7 FNIA](#)), severely restricting the right to family life.

To conclude, a **regularization of persons with F status would be essential to ensure their basic and fundamental human rights** such as the **right to free movement and family life.**

2. Examples of national and regional solutions to legalize the stay for migrants in irregular situations

Hardship request

General information and legal basis

An example of a national solution to legalize the stay for migrants in irregular situations is the **hardship request** provided for under [Art. 14 para. 2 AsylA](#) read in conjunction with [Art. 31 OASA](#). This is particularly interesting for rejected asylum seekers or temporarily admitted persons (with an F-Status) who can directly apply for a B (foreigner not refugee) permit through a hardship request.

Conditions and Requirements

To obtain a hardship permit the applicant must have resided in Switzerland for at least five years; their place of residence must have always been known to the authorities; they must prove a serious personal hardship due to advanced integration (including proof of relevant language skills) according to [Art. 58a para. 1 FNIA](#); and there must be no grounds for revocation under [Art. 62 para. 1 FNIA](#). Also, the family, financial and health situation as well as the possibilities for reintegration in the country of origin must further be considered.

Yet, regarding these requirements, significant cantonal differences to obtain a hardship permit are observable: Whereas in the Canton of Zurich a German level of [A2 is required](#) in the Canton of Bern they require solely [a level A1](#)

Procedure

The hardship request must be submitted to the cantonal migration authority. The cantonal authority examines the hardship request and forwards it to the SEM if accepted. The SEM must then also approve the request ([UNIA, 2023](#)). If the cantonal authority rejects the hardship request there is no possibility to appeal (see [Art. 14 para. 4 AsylA](#)). This is very problematic and **not in accordance with the rule of law**. However, if the SEM rejects the hardship request, there is a possibility to appeal.

Problematic Issues

To submit a hardship request, **identity documents** must be provided to the authorities. This can become problematic for the applicants, since they **can also be used to enforce deportation**. Therefore, there is always a risk for rejected asylum seekers to be deported, when identity documents are provided for the hardship request.

Moreover, in order to organize identity documents, the **domestic authorities must be contacted**. Since these people had fled their country in the first place, **this can be problematic**. Also, in certain countries, **the organization of such identity documents is connected to numerous bureaucratic hurdles or is even completely impossible**. While this issue is notorious, Swiss authorities usually insist on the provision of these identity documents nonetheless.

Further regularization possibilities

Reconsideration request

A further regularization possibility is the reconsideration request provided for under [Art. 111b AsylA](#). If there is new proof or the situation has substantially changed since the asylum request, a reconsideration request can be submitted no later than 30 days after the discovery of a reason for reconsideration.

International complaint

Another regularisation possibility is the submission of an international complaint in cases of severe human rights violations, which were not sufficiently assessed by the Swiss authorities before an international court, such as the European Court for Human Rights or an UN Human Rights

Committee (Committee against Torture, Committee on Enforced Disappearances, Committee on the Elimination of Discrimination against Women, Committee on the Elimination of Racial Discrimination, Committee on the Rights of the Child).

Marriage and reversed family reunification under [Art. 8 ECHR](#)

Rejected asylum seekers who are in a relationship with a Swiss citizen or a person with a residence permit in Switzerland may regularize their status through marriage. This is provided for under [Art. 44 FNIA](#). Similarly can parents of minor children with a residence status in Switzerland apply for reversed family reunification under Art. [8 ECHR](#) in order to regularize their status.

3. Promising practices

Temporary humanitarian admission for people fleeing the war in the Ukraine

On 11 March 2022 **protection status S** (“S permit”), temporary humanitarian admission, was introduced for people who fled to Switzerland from the war in the **Ukraine**. The **advantage** is that the **asylum reasons do not have to be examined, which leads to a more efficient procedure**. Additionally, once a person applies for an S permit, they are **covered by health insurance** and can **choose to live in an asylum center, privately or with a family**. Asylum seekers from other countries, however, must live in asylum centers. Once the S permit is granted, people are assigned to a canton where they **receive social assistance**. Furthermore, although the S permit grants only temporary protection, individuals with S permit can be **immediately reunited with their nuclear family members and are free to travel without restrictions**, which stands in stark contrast to individuals with F status, as seen above. Finally, people with an S permit have **immediate access to the Swiss labor market** and can even register for **self-employment** ([SEM, 2022](#)).

AsyLex welcomes the rights granted with the S permit and the speedy procedures associated, yet the obvious differences between the rights granted to asylum seekers from Ukraine and those from other countries, including between S and F status holders, are striking. Therefore, AsyLex recommends that **every asylum seeker be granted the same rights as those applying for S permit**. Likewise, it would be welcomed if **people with an F status were granted the same rights as people with an S permit**.

Otherwise, to our knowledge, no other specific regularization initiatives exist.

4. Concrete initiatives by civil society organizations to the regularization of migrants in an irregular situation

The Afghanistan context

After the Taliban takeover in Afghanistan the SEM informed that **rejected asylum seekers from Afghanistan could file a reconsideration request** ([SEM on Afghanistan, 2022](#)), through which they would be granted temporary admission. However, this was neither done *ex officio*, nor part of the mandate of the state-paid legal representation. Rather, Afghans are dependent on other legal representatives and organizations to inform them of this possibility and to file the reconsideration request on their behalf.

Civil society’s engagement in drafting hardship requests

Many civil society organizations play an important role in providing recommendations for hardship requests from asylum seekers or draft them directly, as this does not require a lawyer.

However, assisting in the integration of rejected asylum seekers is a double-edged sword, as any assistance can be prosecuted, as per [Art. 116 para. 1 FNIA](#).

Further regularization initiatives of civil society

Operation Papyrus in the canton of Geneva

In Geneva, Operation Papyrus was officially launched in 2017 to regulate the stay of well-integrated undocumented workers, while addressing the problems of those sectors of the economy most affected by undeclared work and the resulting low-wage competition. Operation Papyrus is the result of a long struggle by civil society organizations advocating for the rights of undocumented workers. Although the project received attention beyond the canton of Geneva, it has not been implemented elsewhere to date ([Swissinfo, 2018](#)). AsyLex would welcome the introduction of this Operation Papyrus on a national level.

City Card in the canton of Zurich

In scope of the city of Zurich popular vote on May 15, 2022, the electorate voted in favor of a "*Züri City Card*". This city card is an official identity card for the city of Zurich, which is issued to all citizens of the city, regardless of their origin or residence status. Thus, *Sans-Papiers* can also use it to identify themselves, exercise their rights and participate in public life. Yet, the *Züri City Card* is not a formal legalization of the stay of irregular migrants. ([ZueriCityCard, 2023](#)).

Annex B:

**AsyLex and Center for Human Rights Advocacy
Submission for Afghanistan's Universal Periodic Review
(Fourth Cycle)**



Prepared by AsyLex and Center for Human Rights Advocacy (CHRA)

October 2023

AsyLex is a non-profit organization based in Switzerland. Our team of volunteers provides free online legal advice to refugees and asylum seekers. AsyLex was founded 6 years ago (2017) and has assisted over 9'000 clients on Swiss asylum law matters up until today. We not only assist our clients with legal submissions on national level, but also respond to specific flight movements, such as the Taliban takeover in Afghanistan by setting up emergency response teams. We also take cases of serious human rights violations at the international level before UN committees such as the CRC, CED, CERD, CAT and CEDAW.

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Center for Human Rights Advocacy (CHRA) is a non-profit organization headquartered in Switzerland, founded on March 3rd, 2023. We provide comprehensive support to victims and their families to facilitate their access to international human rights mechanisms and international and national courts, in the context of human rights crises. We are currently working on the Afghanistan human rights crisis.

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Developments Since the Previous Report

1. Since the last cycle, Afghanistan was focused on ensuring effective responses to the unprecedented return of refugees and internally displaced persons to Afghanistan¹. Recommendations were accordingly centered on ensuring the enjoyment of their rights, reintegration, employment, education, health-care, housing, and durable solutions².
2. A dramatic shift took place following the Taliban's military takeover on August 15th, 2021. Following the targeting of specific groups, individuals were compelled to flee out of desperation³. Fleeing meant leaving everything behind, embarking on dangerous journeys, risks of trafficking and exploitation, and costs at the border⁴. Impacts were most devastating for women and children, who faced family separation⁵. Trauma predominated among those fleeing⁶. Many found resilience in continuing to stand for their rights and a more peaceful future for their country⁷.
3. The impacts of the takeover had repercussions beyond its borders, particularly on migration patterns. Switzerland saw an increase in asylum applications in 2021, with the main country of origin of asylum seekers coming from Afghanistan (3'079 in 2021 compared to 1'681 in 2020).⁸ In addition, between 2021 and 2022⁹ there was an increase of 129% of asylum applications submitted by nationals of Afghanistan in Switzerland.

¹ U.N. Human Rights Council. Report of the Working Group on the Universal Periodic Review. (03.04.2019). Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/097/86/PDF/G1909786.pdf?OpenElement>. Consulted on 09.10.2023.

² Ibid.

³ Afghan Witness. Two years of Taliban rule: documenting human rights abuses using open source (15.08.2023). Available at: <https://www.afghanwitness.org/reports/two-years-of-taliban-rule%3A-documenting-human-rights-abuses-using-open-source>. Consulted on 09.10.2023.

⁴ Amnesty International. Pakistan: Government must stop harassing and arbitrarily arresting Afghans seeking refuge (20.06.2023). Available at: <https://www.amnesty.org/en/latest/news/2023/06/pakistan-government-must-stop-harassing-and-arbitrarily-arresting-afghans-seeking-refuge/>. Consulted on 09.10.2023.

⁵ Amnesty International. End violence and serious human rights violations against Afghan refugees (20.06.2022). Available at: <https://www.amnesty.org/en/latest/news/2022/06/end-violence-and-serious-human-rights-violations-against-afghan-refugees/>. Consulted on 09.10.2023.

⁶ Danish Refugee Council. We Do This to Survive. Afghan accounts of cross-border movement (16.07.2023). Available at: https://pro.drc.ngo/media/mzqn2yjq/drc-afg_we-do-this-to-survive-afghan-accounts-of-cross-border-movement.pdf. Consulted on 09.10.2023.

⁷ Afghan Witness. Maliha. Available at: <https://www.afghanwitness.org/stories/maliha>. Consulted on 09. 10. 2023.

⁸ State Secretariat for Migration (SEM). Asylstatistik 2021. Available at: <https://www.sem.admin.ch/sem/de/home/publiservice/statistik/asylstatistik/archiv/2021.html>. Consulted on 05.10.2023.

⁹ In 2022, Switzerland received a total of 7,054 asylum applications from Afghan nationals. See: State Secretariat for Migration (SEM). Asylum Statistics for 2022. Available at: <https://migration.swiss/en/migration-report-2022/asylum-and-protection-status-s/a-few-figures#:~:text=The%20total%20number%20of%20asylum%20and%20protection%20applications%20in%2022%20was%2099%2C470>. Consulted on 05.10.2023.

4. While the increase of asylum seekers from Afghanistan cannot be attributed solely to the Taliban takeover, as many individuals had already left and sought refuge in other countries before August 2021, however, it has deeply concerned several European governments, including Switzerland. In the following sections, we will examine how the Taliban's takeover of Afghanistan and the impacts of large-scale human rights violations and abuses have affected asylum policies and practices towards nationals of Afghanistan.

Persons at Particular Risk of Being Persecuted by the Taliban

5. In response to recent developments, the State Secretariat for Migration (SEM) in Switzerland published a report in February 2022 outlining a wide range of groups at potential risk of persecution by the Taliban¹⁰. This list includes:
 - Women
 - Employees of the previous government and security forces
 - Media and arts professionals
 - Religious and ethnic minorities
 - Former employees of international troops / organizations / NGOs / embassies
 - Human rights activists
 - Persons considered "westernised"
 - Returnees
 - Possibly family members of persons at risk (reflex persecution)
6. It's worth noting that many of these categories are remarkably broad, with the group of persons considered 'westernised' potentially encompassing a wide range of individuals. Moreover, women make up approximately 50% of the population of Afghanistan, underscoring the widespread need for individuals to flee due to the very real and pervasive threat of Taliban persecution.

Changes in Legal Doctrine in Europe and Switzerland

Deportation suspension

7. Consequently, due to the developments in Afghanistan, Switzerland and other European countries have begun to change their legal practices in regard to refugees of Afghanistan.
8. Before the Taliban took over Afghanistan in August 2021, the then called European Asylum Support Office (EASO) – nowadays European Union Agency for Asylum (EUAA) – published a joint statement mid July 2021 which called upon 'European countries to

¹⁰ State Secretariat for Migration (SEM). Herkunftsländerinformationen. "Focus Afghanistan Verfolgung durch Taliban: Potentielle Risikoprofile" (15.02.2022). Available at: <https://www.sem.admin.ch/sem/de/home/international-rueckkehr/herkunftslaender.html>. Consulted on 04.10.2023.

immediately stop deportations to Afghanistan¹¹. In early August 2021, several European nations, including Finland, Sweden, Germany, the Netherlands, and Norway, officially halted the deportation of refugees to Afghanistan¹². Subsequently, France and Switzerland also announced the suspension of deportations for nationals of Afghanistan¹³.

Evacuation initiatives

9. Subsequently, when the Taliban took over, the severity of the situation became evident as numerous countries swiftly initiated evacuations from Afghanistan. Switzerland conducted its most extensive evacuation operation to date¹⁴. The criteria for evacuating people of Afghanistan varied, but most evacuations prioritized specific groups, including national embassy staff, translators who had worked with national militaries, civil society workers (including human rights defenders and journalists), employees of the European Union (EU) and North Atlantic Treaty Organisation (NATO), as well as their family members¹⁵.
10. Direct evacuations from Afghanistan concluded on August 31st, 2021. However, due to the gravity of the situation and urgent need for many people to seek safety from Taliban persecution, several countries have opened avenues for people of Afghanistan to seek protection through resettlement programs, family reunification, or humanitarian visas¹⁶.

Granting temporary protection

11. In Switzerland, asylum seekers of Afghanistan who had previously been denied asylum could request a review of their cases in light of the Taliban's takeover. Most of them

¹¹European Asylum Support Office (EASO). European countries should immediately cease all deportations to Afghanistan NGO Joint Statement (22.07.2021). Available at: [NGO-joint-statement-Afghanistan-JULY-2021.pdf \(ecre.org\)](#). Consulted on 05.10.2023.

¹² Aljazeera. European countries halt deportations amid Afghanistan fighting (12.08.2021). Available at: <https://www.aljazeera.com/news/2021/8/12/list-of-european-countries-halting-afghan-deportations-grows>. Consulted on 05.10.2023.

¹³ Radio FreeEurope/Radioliberty. France, Switzerland Latest European Countries To Suspend Deportations Of Afghans (12.08.2021). Available at: <https://www.rferl.org/a/france-switzerland-suspend-afghan-deportations/31407656.html>. Consulted on 05.10.2023.

¹⁴ State Secretariat for Migration (SEM). Afghanistan crisis. Key information. Evacuation efforts in Switzerland (26.09.2023). Available at: <https://www.sem.admin.ch/sem/en/home/asyl/afghanistan.html#-471856565>. Consulted on 03.10.2023.

¹⁵ European Council on Refugees and Exiles (ECRE). Afghans seeking protection in Europe. ECRE's compilation of information on evacuations, pathways to protection and access to asylum in Europe for Afghans since August 2021 (December 2021), p. 5. Available at: [Evacuations-pathways-to-protection-and-access-to-asylum-for-Afghans-in-Europe FINAL.pdf \(ecre.org\)](#). Consulted on 05.10.2023.

¹⁶ Ibid.

were subsequently granted temporary protection status due to the impossibility and unreasonableness of returning to Afghanistan¹⁷.

Gender-Specific Persecution

12. Compared to their status under the previous government in Afghanistan, women's active participation in political and economic activities and their contributions to society have declined significantly. Since August 15th, 2021, the Taliban have implemented various regulations and directives that have restricted women's and girls' freedom of movement and expression, as well as their access to education, employment, health care and social protection¹⁸.
13. Under Taliban rule, women's human rights are systematically infringed upon. The Taliban enforce their version of Islamic Sharia law, which results in a range of oppressive restrictions for women and girls. They are forbidden from attending school and pursuing education, denied the opportunity to work, and mandated to have a male chaperone when leaving their homes. Furthermore, women are prohibited from showing any part of their skin in public, and access to healthcare, often provided by male professionals, becomes virtually inaccessible. Also, women are forbidden from working. In addition, women are excluded from participating in political activities and expressing themselves publicly¹⁹. The Taliban's policy of deterrence against women essentially renders them invisible in public life by confining them to their homes²⁰. These restrictions collectively curtail the freedoms and rights of women and girls under Taliban's form of rule, leading to a dire situation that demands global attention and action to address these serious violations.
14. In May, Amnesty International argued that the Taliban's severe and unlawful restrictions on the rights of women and girls should be investigated as a possible crime under international law. In particular, Amnesty International and the International Commission of Jurists (ICJ) consider that this may constitute gender-based persecution and therefore a crime against humanity²¹.
15. Furthermore, under Taliban rule, violence against women increased and institutional support for victims declined, leaving many in dangerous situations. Even before the takeover, violence against women and girls was widespread in Afghanistan, with

¹⁷ State Secretariat for Migration (SEM). Afghanistan crisis. Key information. Evacuation efforts in Switzerland (26.09.2023). Available at: <https://www.sem.admin.ch/sem/en/home/asyl/afghanistan.html#-471856565>. Consulted on 03.10.2023.

¹⁸ European Union Agency for Asylum (EUAA). Country Guidance Afghanistan (January 2023), pp 86-90. Available at: <https://euaa.europa.eu/publications/country-guidance-afghanistan-january-2023>. Consulted on 05.10.2023.

¹⁹ Amnesty International. Behandlung von Frauen und Mädchen durch Taliban ist möglicherweise verbrechen gegen Menschlichkeit (26.05.2023). Available at: <https://www.amnesty.ch/de/laender/asien-pazifik/afghanistan/dok/2023/behandlung-von-frauen-und-maedchen-durch-taliban-ist-moeglicherweise-verbrechen-gegen-die-menschlichkeit>. Consulted on 03.10.2023

²⁰ Ibid.

²¹ Ibid.

limited access to justice and legal support for victims. Traditional marriage practices often led to forced marriages and violence against women, and the deteriorating security and economic situation exacerbated the problem. The United Nations Assistance Mission in Afghanistan (UNAMA) reported numerous cases of violence against women and girls following the Taliban takeover, yet none of these cases had gone through formal legal proceedings²².

16. Since women's rights have deteriorated drastically under Taliban rule²³ as outlined above, changes in legal doctrine in the European Union and Switzerland are also noticeable in this context.
17. In January 2023, the EUAA published an updated joint assessment of the situation in Afghanistan, concluding that women and girls are at risk of persecution under the Taliban regime. Consequently, it recommended that women and girls should generally be eligible for refugee status in Europe. This assessment prompted various European countries to adjust their asylum practices for Afghanistan's women and girls. Switzerland has also adapted its asylum practice in response to the Taliban's discriminatory legislation against women²⁴.
18. In July 2023, Switzerland implemented a new legal practice for women from Afghanistan. This revised policy, developed by the State Secretariat for Migration, officially took effect on July 17th, 2023. Before this change, the majority of Afghanistan's women in Switzerland had been granted provisional admission status, and as of now, approximately 3'100 women from Afghanistan reside in the country under this status. Under the new policy, female asylum seekers from Afghanistan can be recognized as potential victims of both discriminatory legislation and religiously motivated persecution, provided that other grounds for persecution are not already applicable under refugee law. As a result, Swiss migration authorities have the authority to grant refugee status to female asylum seekers from Afghanistan, based on individual assessments²⁵.
19. The shift in policy was preceded by a series of significant rulings from the Federal Administrative Court. One notable example is FAC Decision D-1226/2023, dated June 21st, 2023²⁶, where the FAC found that the State Secretariat for Migration (SEM) had

²² European Union Agency for Asylum (EUAA). Country Guidance Afghanistan (January 2023), pp.90-91. Available at: <https://euaa.europa.eu/publications/country-guidance-afghanistan-january-2023>. Consulted on 05.10.2023.

²³ Amnesty International UK. Women in Afghanistan: The back story. Available at: <https://www.amnesty.org.uk/womens-rights-afghanistan-history>. Consulted on 03.10.2023.

²⁴ European Union Agency for Asylum (EUAA): Afghanistan: Taliban restrictions on women and girls amount to persecution (25.01.2023). Available at: <https://euaa.europa.eu/news-events/afghanistan-taliban-restrictions-women-and-girls-amount-persecution>. Consulted on 05.10.2023.

²⁵ SEM. Afghanistan crisis. Key information. Evacuation efforts in Switzerland (26.09.2023). Available at: <https://www.sem.admin.ch/sem/en/home/asyl/afghanistan.html#-471856565>. Consulted on 03.10.2023.

²⁶ European Union Agency for Asylum (EUAA). Case Law Database. CH: The Federal Administrative Court annulled a negative decision for insufficient investigation of the particular case of a woman from Afghanistan.

inadequately addressed the complainant's submissions. Specifically, the court pointed out deficiencies in evaluating the plausibility of her claims and in considering relevant evidence. The FAC underscored the dire situation faced by women in Afghanistan, highlighting the Taliban's history of institutionalizing gender discrimination and perpetrating violence against women and girls. The court argued that the complainant could be at an elevated risk due to her professional activities and her involvement in the Gender Committee. It emphatically stated that the SEM violated the complainant's right to be heard by failing to conduct a thorough assessment of the relevant evidence and accurately establish the facts of the case.

Passport Procurement

20. It's worth noting that, despite the responsibility of de facto authorities to issue official travel documents, the dire situation in Afghanistan has led to a practical inability for them to provide these documents both on the ground and through representations abroad, which have no relationship with the de facto authorities, including the Permanent Mission of Afghanistan in Geneva²⁷.
21. This impossibility for nationals of Afghanistan to obtain a passport of Afghanistan represents a profound violation of their human rights. This deprivation of a passport has resulted in numerous challenges, such as the perilous pursuit of "illegal" entry into various countries, rendering it difficult to obtain a humanitarian visa that would enable legal departure from a third country to destinations like Switzerland. Similarly, this lack of proper documentation creates additional obstacles for applying for family reunification. The Taliban's control and inability to provide basic state services, such as issuing passports, effectively denies their citizens the fundamental human right to freedom of movement, the right to family life, the right to seek asylum and the right to life to solely name a few.
22. This reality was recognized by the Federal Administrative Court, which determined that nationals of Afghanistan residing in Switzerland without documents cannot be compelled to return to Afghanistan to obtain a passport, as stated in FAC-Decision F-2067/2022 dated July 3rd, 2023²⁸. While renewing existing documents remains possible, the issuance of new passports is currently unavailable. The court, in response, classified an applicant without valid documents as "undocumented" and directed the State Secretariat for Migration to explore the prerequisites for issuing a

A.v. SEM (21.06.2023). Available at:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=3587>. Consulted on 03.10.2023.

²⁷ Schweizerische Flüchtlingshilfe (SFH). Asylwiki. Afghanistan aktuell (11.09.2023). Available at:

<https://asylwiki.osar.ch/node/1431>. Consulted on 03.10.2023.

²⁸ Federal Administrative Court (FAC). Press release regarding judgment F-2067/2022. Travel documents for Afghan citizens without identification documents (14.07.2023). Available at:

<https://www.bvger.ch/en/newsroom/media-releases/travel-documents-for-afghan-citizens-without-identification-documents-1168>. Consulted on 03.10.2023.

travel

document²⁹.

23. Furthermore, several European countries, including Denmark, have demonstrated flexibility in providing assistance to individuals of Afghanistan, even in cases where they lack passports. This was evident from the initial stages of evacuations, as reported by ECRE, where some evacuees of Afghanistan did not possess passports but did hold alternative travel documents like laissez-passers or Afghanistan's National Identity Cards³⁰. Germany, for instance, already in 2021, made exemptions for people of Afghanistan without passports in the context of evacuation and admission programs. The Federal Foreign Office of Germany confirmed that passport requirements were not enforced for eligible groups, and it temporarily facilitated entry into Pakistan with verbal notes issued by the German Embassy, enabling entrance without a passport³¹.
24. Therefore, the severity of the crisis in Afghanistan and the recognition by the European and Swiss governments of the urgent need to protect refugees of Afghanistan has led them to show some flexibility in admitting people of Afghanistan despite their inability to obtain essential identity documents.

Humanitarian Visa

25. A final change of legal doctrine which emphasizes the recognition of Switzerland regarding the severity of the situation in Afghanistan concerns the practice of granting humanitarian visas.
26. Although Swiss law provides for the possibility that individuals abroad facing an immediate, serious, and concrete emergency situation can apply for a humanitarian visa to Switzerland, the issuance of such visas is highly stringent³². However, due to the very challenging situation in Afghanistan, there appears to be a certain evolution in this regard, especially for applicants of Afghanistan³³, as indicated by recent decisions of the Federal Administrative Court (FAC).

²⁹ Schweizerische Flüchtlingshilfe (SFH). Asylwiki. Afghanistan aktuell (11.09.2023). Available at: <https://asylwiki.osar.ch/node/1431>. Consulted on 03.10.2023.

³⁰ European Council on Refugees and Exiles (ECRE). Afghans seeking protection in Europe. ECRE's compilation of information on evacuations, pathways to protection and access to asylum in Europe for Afghans since August 2021 (December 2021), p. 8. Available at: [Evacuations-pathways-to-protection-and-access-to-asylum-for-Afghans-in-Europe FINAL.pdf \(ecre.org\)](https://ecre.org/2022-update-aida-country-report-switzerland/#:~:text=In%202022%2C%20the%20authorities%20registered,a%20148%25%20increase%20from%202021). Consulted on 03.10.2023.

³¹ Ibid, p. 12

³² See example. Swiss Refugee Council. Afghanistan: Useful information concerning people in need of protection. Available at: <https://www.refugeecouncil.ch/assistance-for-asylum-seekers/afghanistan-useful-information-concerning-people-in-need-of-protection> and Schweizerische Flüchtlingshilfe. Asylwiki. Afghanistan aktuell (11.09.2023). Available at: <https://asylwiki.osar.ch/node/1431>. Consulted on 03.10.2023.

³³ European Council on Refugees and Exiles (ECRE). 2022 Update AIDA Country Report: Switzerland (05.06.2023). Available at: <https://ecre.org/2022-update-aida-country-report-switzerland/#:~:text=In%202022%2C%20the%20authorities%20registered,a%20148%25%20increase%20from%202021>. Consulted on 06.10.2023.

27. In a series of decisive judgments, the FAC has repeatedly condemned the SEM for failing to carry out a thorough assessment of the credible threats faced by applicants facing possible deportation from neighboring countries to Afghanistan. For example, in FAC Decision F-3406/2022 of August 24th, 2023³⁴, the Court upheld an appeal against the SEM's decision, highlighting the imminent danger faced by a former prosecutor of Afghanistan and his family members who were at risk of forcible return from Pakistan to Afghanistan, endangering their lives. Similarly, in FAC decision F-4138/2022 of August 10th, 2023³⁵, the SEM's assessment of the dangers faced by the applicant, a journalist, writer and activist who actively opposes Islamist extremism, was found to be inadequate, particularly in the context of possible deportation from Iran to Afghanistan. The Court also drew attention to credible sources pointing to the risk of refugees in Iran being forcibly returned to Afghanistan³⁶.
28. The overall plight of refugees in neighboring countries, including, Pakistan, Iran, and Turkey, has deteriorated significantly. Countless have faced violent pushbacks³⁷. The dire situation includes significant obstacles in obtaining legal recognition and registration; lack of official documentation; increased instances of detention, deportations, violence, and discrimination; and barriers to access education, healthcare, employment, housing, legal or psychosocial support³⁸.
29. Thus, these humanitarian visa decisions are of exceptional importance, highlighting not only the pervasive danger faced by certain individuals within risk groups, but also the concerning reality that even those who have sought refuge in neighboring countries such as Iran or Pakistan remain at risk of forcible return, exposing them to grave threats to life and limb.

Conclusion

30. In conclusion, the deteriorating human rights situation in Afghanistan, marked by a complete suppression of human rights, persecution of at-risk groups and a particular detriment to women, as well as the failure to provide basic services to its citizens such

³⁴ Federal Administrative Court (FAC). Press release regarding judgment F-3406/2022. Humanitarian visa for Afghan persons at risk (08.09.2023). Available at: <https://www.bvger.ch/en/newsroom/media-releases/humanitarian-visa-for-afghan-persons-at-risk-1176>. Consulted on 03.10.2023.

³⁵ Federal Administrative Court (FAC). Decision from 10. August 2023. Available at: https://bvger.weblaw.ch/pdf/F-4138-2022_2023-08-10_d0e1204c-bfd6-44ef-8796-a614647c0f5a.pdf. Consulted on 03.10.2023.

³⁶ See also UNHCR which estimates that more than 180'000 people of Afghanistan in need of international protection have arrived in neighboring countries since 1 January 2021, but that the overall number of people of Afghanistan with international protection needs is likely to be much higher. Yet, most refugees of Afghanistan seeking safety from extrajudicial persecution in neighbouring countries are routinely detained, abused, and pushed back. Dozens of people have been injured and killed.

³⁷ Amnesty International. Iran/Turkey: Fleeing Afghans unlawfully returned after coming under fire at borders (31.08.2022). Available at: <https://www.amnesty.org/en/latest/news/2022/08/iran-turkey-fleeing-afghans-unlawfully-returned-after-coming-under-fire-at-borders/>. Consulted on 09.10.2023.

³⁸ Afghanistan Refugees Solidarity Association. "Raising Awareness of Forced Migration" Project Report (18.09.2022). Available at: <https://arsa.org.tr/EN/-149>. Consulted on 09.10.2023.

as passports, has prompted a shift in the asylum practices of European governments, including Switzerland. The recognition of the urgency of the situation, along with severe human rights violations perpetrated by the Taliban, has driven the adoption of asylum policies to protect asylum seekers of Afghanistan.

31. This adaptation has included measures such as suspending deportations, evacuating vulnerable groups, granting temporary protection, and recognizing gender-based persecution by granting women and girls refugee status. Furthermore, certain flexibility has been shown in admitting people of Afghanistan who lack essential identity documents, and slowly but surely first successes in the very restrictive domain of humanitarian visas in Switzerland have been visible in response to the very challenging circumstances in Afghanistan.
32. However, it's essential to acknowledge that the current response, while a positive step, may still fall short of meeting the high need for protection. The situation in Afghanistan remains dire, and human rights violations by the Taliban persist. More attention needs to be drawn to these severe violations, and further measures must be taken to ensure the safety and well-being of refugees of Afghanistan. Ultimately, the international community must work collectively to address the root causes of this crisis so that fewer people are compelled to flee their homeland in search of safety and refuge.

Recommendations

33. For Afghanistan as a State:

- a. Organize free and fair elections in order to allow for the establishment of a participative, inclusive and representative government, including with regard to gender and all ethnic and religious minorities, and ensuring the full, equal and meaningful participation of women and youth in decision-making positions and processes.
- b. Intensify efforts for drafting a constitution, ensuring an independent, inclusive and consultative process, rebuild national institutions, and restore rule of law, essential for laying a solid foundation for the protection of human rights in the country.
- c. Adopt specific measures to support and protect civil society organizations, human rights defenders, including women human rights defenders, and journalists as well as other civil society actors from attacks and threats, investigate all attacks against them, bring perpetrators to justice; and ensure a safe and secure environment for their work without fear of reprisal or attack.
- d. Fight gender-based discrimination, promote effective participation by women in the peace process, according to Security Council resolution 1325 (2000).
- e. Create policies and practices to prevent all forms of discrimination and

violence against women and girls, including domestic violence, as well as to increase accountability and promptly investigate and prosecute all cases of violence against women and girls and ensure that perpetrators are brought to justice in accordance with the elimination of violence against women.

34. For the international community:

- a. Establish additional secure pathways for individuals from Afghanistan who urgently need to escape their country's dire circumstances, ensuring their safe passage to places of refuge.
- b. Implement a more flexible approach when verifying the identity of individuals from Afghanistan, acknowledging the practical impossibility for them to obtain passports of Afghanistan under the current conditions.
- c. Guarantee that permits are issued with the same rights afforded by the Refugee Convention to safeguard vulnerable individuals who cannot safely return to Afghanistan, facilitating their successful integration into their host countries.
- d. Facilitate access to health care, social support and educational and skill development opportunities for refugees and asylum seekers from Afghanistan, empowering them to contribute meaningfully to their host communities.

ANNEX

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