NGO Submission on Switzerland to the U.N. Human Rights Committee

List of Issues Prior to Reporting: 144th Session (23 June - 25 July 2025)

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AsyLex is an independent Swiss NGO offering free online legal support to asylum seekers and refugees. Since 2017, it has supported over 14'000 individuals in navigating the Swiss asylum system, regardless of origin, religion, gender, age, family situation, financial means or prospect of success.

Around 150 trained volunteers, coordinated by a core office team of 14, provide specialized assistance in areas such as family reunification, detention, criminal law, social assistance and international litigation.

Through its *Rights in Exile* platform, AsyLex also serves displaced persons globally by offering access to legal information, local legal practitioners, and a space for collaborative knowledge exchange. Internationally, AsyLex represents individuals before UN human rights bodies including the CCPR, CRC, CERD, CAT, and CEDAW.

I. INTRODUCTION

This submission outlines key concerns identified by AsyLex in the course of its legal representation of asylum seekers and refugees in Switzerland. The issues presented reflect systemic shortcomings and raise serious questions regarding Switzerland's compliance with its obligations under the International Covenant on Civil and Political Rights (ICCPR).

The analysis is based on AsyLex's ongoing legal practice, complemented by documentation from other Swiss NGOs, relevant jurisprudence from international human rights bodies—including UN Treaty Bodies and the European Court of Human Rights (ECtHR)—as well as recent developments in Swiss migration, detention, and asylum law and policy.

This report is submitted with the aim of assisting the Human Rights Committee in identifying appropriate issues for the List of Issues Prior to Reporting for the 144th Session (23 June – 25 July 2025).

This report is authorized for publication.

2. PROPOSED ISSUES FOR INCLUSION IN THE LIST OF ISSUES PRIOR TO REPORTING

a) Art. 2 and 13 ICCPR: Discriminatory Access to Effective Remedies for Asylum Seekers

Art. 2 of the ICCPR establishes the binding obligation of State Parties to respect and ensure all Covenant rights without discrimination, and to provide effective remedies for violations through competent authorities. Art. 13 safeguards due process for aliens lawfully present in a State's territory, requiring that any expulsion be based on law and subject to procedural guarantees, except in cases involving compelling national security interests.

Switzerland's asylum system is marked by serious shortcomings that undermine the ability of asylum seekers to access justice. Under the accelerated asylum procedure introduced in 2019, a problematic lump-sum structure for legal aid has become a major obstacle.[1] This structure incentivizes legal representatives to withdraw as soon as the State Secretariat for Migration (SEM) issues a negative decision, instead of providing continuous support during the appeal phase. Since the SEM often fails to refer complex cases for extended procedures and facts cannot be adequately established in the accelerated timeline, especially for vulnerable groups, applicants are frequently left alone to navigate the highly restrictive 5 to 7 working day window for appeals,[2] only receiving support from free legal aid providers such as AsyLex. The significantly high success rate of non-state legal aid providers in proportion to appeals lodged by state-paid legal representatives underscores the aforementioned issue of state-appointed legal representatives refraining from lodging appeals, even in cases where the Federal Administrative Court deems subsequent appeals filed by private legal representatives to be "not without merit" at least: A report from Pikett Asyl titled "Work of the service providers legal protection in the federal asylum centres – Based on a survey of asylum seekers" highlights that in the first half of 2024, 61.11% of successful appeals in the Zurich region were brought forward by

[1] The accelerated asylum procedure, implemented in 2019, is designed to handle the majority of applications within 140 days, streamlining the process through shorter deadlines and centralized reception centers. In contrast, the regular procedure is applied in cases requiring further clarification or additional examination, and allows for extended processing times. More information can be found in: Swiss Refugee Council, The asylum procedure, available at: https://www.refugeecouncil.ch/topics/asylum-in-switzerland/the-asylum-procedure.
[2] See also: https://bündnis-rechtsarbeit-asyl.ch.

privately appointed legal representatives or even as layperson appeals, rather than by state-appointed legal representatives.[3] Given that state-appointed legal representatives may only terminate their mandate if they see no chance of success (See Art. 102h Asylum Act[4]), these findings are very worrying. The challenges to access legal aid are even greater for those in remote asylum centers, where securing alternative legal help in such a short time is almost impossible. These practices violate Art. 2 ICCPR, as they prevent asylum seekers from enjoying their Covenant rights without discrimination and from accessing an effective remedy for rights violations through competent legal support.

Another significant barrier to accessing legal representation arises when (rejected) asylum seekers are placed in administrative detention. In Switzerland, access to legal aid in such cases is inconsistent, as it falls under the responsibility of individual cantons, leading to unequal treatment depending on the region. The vast majority of individuals in administrative detention lack access to free legal representation, which is particularly troubling for those held in remote or isolated facilities.[5] This creates significant obstacles for detainees seeking to challenge their detention or deportation and results in access to justice being largely a matter of geographic luck.

The situation is further exacerbated by Art. 73(1)(c) of the Federal Act on Foreign Nationals and Integration (FNIA), which allows for detention at the border for up to three days without judicial review and even without a written order.[6]

At the same time, those striving to fill the legal aid gap for asylum seekers, especially organizations like AsyLex, are increasingly confronted with active obstruction and criminalization by state actors, including through so-called Strategic Lawsuits Against Public Participation (SLAPP proceedings). Efforts to provide essential legal representation are often met with resistance, including intimidation, harassment and threats from state actors including judicial authorities. Lawyers have faced threats or complaints directed to the bar associations, as well as personal sanctions, all of which are clearly intended to discourage advocacy for vulnerable clients, particularly in sensitive or unpopular cases such as administrative detention.

Beyond intimidation, there are persistent attempts by authorities to restrict practical access to justice. Legal representatives are frequently denied entry to asylum centers, even when the law explicitly grants the right to consult with clients, specifically Article 102(f) of the Swiss Asylum Act.[7] These restrictions make it difficult to assess living conditions, gather crucial information, or provide effective legal guidance—severely limiting the ability of asylum seekers to prepare their cases or challenge official actions taken against them. Such obstruction and intimidation directly violate Art. 2 ICCPR, which obliges the State to ensure effective remedies and to remove practical barriers to accessing justice.

Moreover, the threat of prosecution has become a reality, as providing legal assistance to undocumented migrants is at times framed as "supporting illegal stay". Moreover, even where clear evidence of procedural violations exists—such as in the context of pushbacks or unlawful detentions—judicial authorities have repeatedly delayed or stagnated proceedings, signaling a broader

[3] Pikett Asyl. Fachbericht zur Arbeit der Leistungserbringer Rechtsschutz in den Bundesasylzentren. January 2025. p. 26.
[4] Asylum Act Art. 102h, available at: https://www.fedlex.admin.ch/eli/cc/1999/358/en#art_102_h.
[5] Comparison for instance between Art. 12 para. 2 of the Applicational Act of the Federal Act on Foreign Nationals (F 2 10) in the Canton of Geneva and Art. 6 para. 1 Act of the Enforcement of Coercive Measures in the Law on Foreign Nationals (211.56) in the Canton of Zürich.
[6] Geschäft des Bundesrates 22.044, Ausländer- und Integrationsgesetz. Finanzielle Unterstützung von Kantonen mit Ausreisezentren an der Grenze. Änderung, 18.05.2022 available at: https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20220044.
[7] Asylum Act, available at: https://www.fedlex.admin.ch/eli/cc/1999/358/en?msclkid=c7f287a9c7ae11ec84162511ff3b9165&print=true.

lack of willingness to hold state actors accountable or to ensure that asylum seekers receive fair treatment.

In summary, Switzerland's current asylum practice violates both Art. 2 and Art. 13 of the ICCPR. The lack of consistent legal representation, regional disparities in legal aid, active state obstruction of legal advocates, and restrictive appeal timelines cumulatively undermine Switzerland's obligations to provide non-discriminatory, fair, and effective protection to asylum seekers as required by international law.

b) Art. 3 and 7 ICCPR: Inadequate Gender-Sensitive Approaches in Asylum Procedures

Art. 3 of the ICCPR enshrines the right to equality between men and women in the enjoyment of their civil and political rights. Art. 7 secures the freedom from inhuman or degrading treatment or punishment.

While asylum law does not explicitly differentiate between men and women, women are in practice still significantly disadvantaged by the way Swiss authorities interpret and apply legal provisions. This disparity is reflected in official statistics: in each of the past four years, women have consistently been underrepresented among those granted B permits: 31'520 women compared to 34'744 men in 2024,[8] 28'167 women compared to 32'312 men in 2023,[9] 26'348 women compared to 30'593 men in 2022,[10] 24'395 women compared to 28'810 men in 2021,[11] in the past four years only.

This trend stems from a lack of gender-sensitive analysis in asylum decisions and a reluctance to interpret asylum grounds in a way that accounts for the lived realities of women on the move. Swiss authorities systematically reject claims based on structural and systemic gender-based discrimination, arguing that women do not constitute a "particular social group" when such discrimination affects all women equally.[12] This reasoning relies on a circular logic: that discriminatory laws targeting all women do not amount to persecution of a specific group because they impact all members of that group.
As a result, women must demonstrate an "oppositional attitude" or a "refusal to comply" with discriminatory norms in order to be considered persecuted on the basis of political opinion.[13] Those who, due to fear or lack of alternatives, remain passive in the face of gender-based repression are thereby excluded from refugee protection, despite being directly affected by systemic persecution.

In response to the worsening situation of Afghan women since 2021, Swiss authorities made modest adjustments to their asylum policy in 2023, allowing claims not only based on political opinions, but also on religious persecution.[14] However, the underlying restrictive interpretation persists. Authorities maintain that refugee status cannot be granted solely on the basis of gender unless it is linked to one

[8] SEM, Kommentierte Asylstatistik 2024, 17 February 2025, p. 11, https://www.sem.admin.ch/dam/sem/de/data/publiservice/statistik/asylstatistik/2024/stat-jahr-2024-kommentar.pdf.
[9] SEM, Foreign Population and Asylum Statistics 2023, June 2024, p. 27, https://www.sem.admin.ch/dam/sem/en/data/publiservice/statistik/bestellung/auslaender-asylstatistik-2023.pdf.download.pdf/auslaender-asylstatistik-2023-e.pdf
[10] SEM, Foreign Population and Asylum Statistics 2022, June 2023, p. 27, https://www.sem.admin.ch/dam/sem/en/data/publiservice/statistik/bestellung/auslaender-asylstatistik-2022.pdf.download.pdf/auslaender-asylstatistik-2022-e.pdf
[11] SEM, Kommentierte Asylstatistik 2021, 15 February 2022, p. 9, https://www.sem.admin.ch/dam/sem/de/data/publiservice/statistik/asylstatistik/2021/stat-jahr-2021-kommentar.pdf.
[12] SEM Handbuch Asyl und Rückkehr, Artikel D2.1: die geschlechtsspezifische Verfolgung, p. 8. available at: https://www.sem.admin.ch/sem/de/home/asyl/asylverfahren/nationale-verfahren/handbuch-asyl-rueckkehr.html
[13] *Ibid*.
[14] State Secretariat for Migration SEM, Faktenblatt «Praxisänderung weibliche afghanische Asylsuchende».

of the specific grounds listed in Art. 3(1) of the Asylum Act.[15] They continue to assert that Afghan women are not subject to collective persecution—a position upheld by the Federal Administrative Court.[16]

This restrictive approach stands in contrast to evolving international standards. The UN Special Rapporteur on the situation of human rights in Afghanistan, Richard Bennett, has described the Taliban's treatment of women as reaching the level of gender apartheid, given its widespread, institutionalized and systematic nature.[17] Similarly, the Court of Justice of the European Union has recently affirmed that, depending on the conditions in the country of origin, women may be recognized as a "particular social group" and thus qualify for refugee status on that basis alone.[18]

Switzerland's continued reliance on outdated and overly narrow interpretations of the Refugee Convention prevents many women from accessing the protection they urgently need. A shift towards a gender-sensitive, reality-based application of asylum law in line with Art. 3 and 7 of the ICCPR is both necessary and overdue.

c) Art. 7 ICCPR: Lacking Protection from *Non-Refoulement* Violations

Art. 7 prohibits inhuman or degrading treatment or punishment, and thereby also encompasses the principle of non-refoulement.

In AsyLex's daily work, it is evident that Switzerland often lacks thoroughness when assessing whether a forced removal to a Dublin State, a so-called "safe third country" or even home-countries might violate Art. 7 of the ICCPR, which prohibits inhuman or degrading treatment.

1. Faulty Reliance on Theoretical Legal Obligations of Returning State

Swiss authorities often rely on legal assumptions or formal commitments of the receiving country rather than examining the real legal and factual conditions on the ground. This means they may overlook how those laws are actually applied in practice. AsyLex observes that Switzerland often fails to sufficiently consider the actual legal and factual situation in destination countries before enforcing deportations—raising serious concerns under the principle of non-refoulement.

Under Art. 31a(1) of the Asylum Act (AsylA), Swiss authorities may dismiss an asylum application if the applicant can be transferred to a Dublin State or a so-called "safe third country."[19] The list of such countries—set out and reviewed every six months in Annex 2 of the Asylum Ordinance (OA 1)—currently includes around 45 countries, such as EU/EFTA member states, as well as others like Albania, Senegal, India, and Georgia.[20] However, Art. 31a(2) AsylA prohibits dismissing an application if there are signs that the country in question does not provide effective protection against refoulement.[21] To determine whether a country qualifies as "safe," authorities must assess objective

[15] *Ibid.*
[16] Federal Administrative Court, decision E-2303/2020 of 23 April 2024, § 7.3.2.
[17] Special Rapporteur to Human Rights Council: the Systematic and Institutionalised Discrimination that Seeks to Exclude Women from All Facets of Life in Afghanistan Necessitates an Examination of the Evolving Phenomenon of Gender Apartheid, 11 September 2023, available at: https://www.ohchr.org/en/meeting-summaries/2023/09/special-rapporteur-human-rights-council-systematic-and-institutionalised
[18] Decision C-621/21 16 January 2024, available at: https://curia.europa.eu/juris/document/document.jsf;jsessionid=E4D72488C7490138BD207808180B29F9?text=&docid=281302&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=7694277
[19] See: https://www.fedlex.admin.ch/eli/cc/1999/358/en#art_31_a
[20] See: https://www.fedlex.admin.ch/eli/cc/1999/359/fr#annex_2/lvl_u1
[21] See: https://www.fedlex.admin.ch/eli/cc/1999/358/en#art_31_a

criteria outlined in Art. 2(1) OA 1, including: (1) political stability; (2) respect for human rights; (3) evaluations by other EU/EFTA states and the UNHCR; and (4) other country-specific factors.[22]

Despite these legal safeguards, AsyLex finds that in practice, assessments often rely more on assumptions than on up-to-date and critical evaluations of real conditions in the receiving country.

Switzerland's handling of returns to Dublin States or so-called "safe-third countries" is especially troubling. This is particularly evident in how it assesses countries like Croatia, where credible reports and legal precedents indicate serious human rights concerns. Swiss authorities do often insufficiently consider international findings—such as the 2022 report by the Council of Europe's Committee for the Prevention of Torture (CPT),[23] which documents widespread police violence, substandard detention conditions, and inadequate medical care.

AsyLex has represented several highly vulnerable individuals who suffered serious harm during their time in Croatia, including ill-treatment by law enforcement, lack of access to basic needs, and detention in degrading conditions. Many returnees now face long-term psychological trauma and health issues, making the prospect of removal especially alarming.

Despite such evidence, Swiss authorities continue to rely on formal assurances and theoretical legal obligations rather than critically assessing actual conditions. This practice ignores medical and psychological risks and undermines the principle of non-refoulement under Art. 7 ICCPR.

The failure to conduct thorough, evidence-based assessments of individual cases and country conditions raises serious concerns about Switzerland's compliance with its international human rights obligations.

With regard to the removal of individuals to their home states, AsyLex has also observed concerning practices by Switzerland. One particularly striking example is Eritrea. Since 2021, Switzerland has been reprimanded six times by the UN Committee against Torture (CAT) for violating Art. 3 of the CAT by allowing removals to Eritrea[24]. Despite these repeated warnings, Swiss courts continue to rely on concerning case law and have not shifted their reasoning.

While courts acknowledge the CAT's authoritative findings, they argue that these individual rulings do not apply universally. They continue to rely on a 2017 ECtHR judgment[25]—issued prior to the CAT's more recent conclusions and the 2018 precedent set by the Federal Administrative Court—which states that "(re)assignment to military service is not, in itself, sufficient to render deportation 'unreasonable.'"[26] However, this view severely contradicts independent evidence. It disregards academic research and UN findings, which show that Eritrean national service constitutes systematic abuse, including forced labor and arbitrary punishment, with no legal alternative to conscription[27].

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[22] See: https://www.fedlex.admin.ch/eli/cc/1999/359/fr#art_2

[23] European Committee for the Prevention of Torture and inhumane or degrading treatment or Punishment, Report to the Croatian Government on the visit to Croatia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 29 September 2022, available at: https://rm.coe.int/1680ad6168.

[24] See for instance: CAT/C/76/D/983/2020 of 18 July 2023; CAT/C/74/D/887/2018 of 22 July 2022; CAT/C/73/D/872/2018 of 28 April 2022; CAT/C/73/D/914/2019 of 28 April 2022; CAT/C/72/D/916/2019 of 12 November 2021; CAT/C/71/D/900/2018 of 27 July 2021.

[25] See ECtHR, A.A. v. Switzerland, App. No. 58802/12, Judgment of 4 December 2017. See also: Committee Against Torture, Concluding Observations on the seventh periodic report of Switzerland, CAT/C/CHE/CO/7, 2015.

[26] See: FAC E-5022/2017, § 6.2.5, available at: https://bvger.weblaw.ch/pdf/E-5022-2017_2018-07-10_41ada7f7-b1d2-4267-bd84-cb2721c8a74b.pdf

[27] See e.g. https://www.ohchr.org/en/documents/country-reports/ahrc5624-situation-human-rights-eritrea-report-special-rapporteur

The UN Commission of Inquiry on Human Rights in Eritrea has described Eritrea's conscription system as amounting to slavery, while scholars emphasize that it places thousands of individuals under perpetual, exploitative control.[28] Therefore, the assertion that harm is not widespread among conscripts is not only factually incorrect, but also legally problematic.

This not only raises serious concerns about returns to Eritrea but also exemplifies how Switzerland fails to adequately account for the realities on the ground, thereby potentially exposing individuals to treatment that violates core legal obligations—such as the principle of non-refoulement, also protected under ICCPR.

2. Lack of Individualized Assessment

Switzerland exhibits serious shortcomings in conducting case-by-case assessments. For instance, the individual health conditions of people facing removal are often not properly considered—despite being crucial in determining whether a person would face serious harm if deported.

AsyLex highlights Switzerland's failure to carry out proper individualized assessments in removal cases—such as considering a person's physical or mental health before deportation. This malpractice has led to repeated violations of the non-refoulement principle, particularly in cases involving vulnerable individuals like families with children, single mothers, or survivors of torture. The UN Human Rights Committee has echoed these concerns, notably in the case of Joseph Ndukaku Chiakwa, who died during deportation after Swiss authorities failed to account for his serious health conditions.[29] The Committee also criticized Switzerland for not fully recognizing expert reports based on the Istanbul Protocol, which document torture and ill-treatment.[30]

To date, Swiss authorities rarely follow the Protocol's standards, do not fund such expert assessments, and often disregard psychological or medical reports submitted by asylum seekers. The Federal Administrative Court continues to treat these reports as optional and insufficient on their own, undermining the credibility of torture claims and weakening protection against forced returns.[31]

AsyLex legal representatives frequently work with clients in extremely poor physical and mental health, often suffering from severe PTSD, depression, and suicidal thoughts that endanger their well-being. Even when such conditions are thoroughly documented, the SEM too routinely disregards the standards of the Istanbul Protocol. Moreover, in its daily practice, AsyLex regularly encounters cases where individuals are deported directly from hospitals or psychiatric facilities. A recent example involved the deportation of a gravely ill child who was removed straight from a hospital while undergoing treatment for chronic sickle cell anemia—demonstrating that Swiss authorities have failed to draw lessons from the tragic case of Joseph Ndukaku Chiakwa.[32] Staff at the St. Gallen Children's Hospital later confirmed they had not been informed in advance of the child's sudden transfer to Croatia.[33]

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[28] Palacios-Arapiles, S. (2023). Enslaved by their Own Government: Indefinite National Service in Eritrea. In: Van Reisen, M., Mawere M., Smits, K., & Wirtz, M. (eds), Enslaved Trapped and Trafficked in Digital Black Holes: Human Trafficking Trajectories to Libya. Bamenda, Cameroon: Langaa RPCIG, pp. 195-254.
[29] See e.g. UN Press Release, Committee against Torture concludes forty-fourth session, 14.05.2010, available at: https://www.ohchr.org/en/press-releases/2010/05/committee-against-torture-concludes-forty-fourth-session?LangID=F&NewsID=10046
[30] HRC, Concluding observations on the fourth periodic report of Switzerland, CCPR/C/CHE/CO/4, 22 August 2017, available at: https://digitallibrary.un.org/record/1312177?v=pdf
[31] See: FAC, D-1939/2022 and D-1947/2022 of 19 July 2022, available at: https://entscheide.weblaw.ch/cache.php?link=19-07-2022-d-1939-2022&sel_lang=de
[32] Blick, "Wie die Schweiz einen kranken Jungen ausschaffte", 8 February 2025, available at: https://www.blick.ch/politik/schaerfere-asylpolitik-wie-die-schweiz-einen-kranken-jungen-ausschaffte-id20571682.html and:https://www.blick.ch/fr/suisse/la-suisse-va-t-elle-laisser-mourir-cet-enfant-expulse-en-croatie-id20692374.html
[33] Ibid.

d) Art. 17 ICCPR: Infringement of the Right to Privacy Through Mobile Phone Searches of Asylum Seekers

Art. 17 of the ICCPR is explicit in its guarantee of the right to be free from arbitrary or unlawful interference with one's privacy, family, home, and correspondence. In its General Comment No. 16, the Human Rights Committee emphasises that any interference with privacy must meet the criteria of legality, necessity, and proportionality, in accordance with the principles of the Covenant.[34] This protection is applicable to actions perpetrated by both state and non-state actors, necessitating the establishment of clear legal regulations governing the collection, storage, and dissemination of personal data. The confidentiality of communications, particularly those between legal counsel and their clients, must be protected to prevent misuse and uphold the rights of individuals.

In a landmark decision, Germany's highest administrative court found that the practice of searching asylum seekers' phones without sufficient suspicion violates fundamental rights and is therefore illegal and disproportionate.[35] Despite this ruling setting a strong precedent for the protection of privacy, recent legislative and regulatory developments in Switzerland raise significant concerns about the compatibility of national practices with the aforementioned obligations. As of April 2025, a new provision in the Asylum Act[36] authorises SEM to inspect and analyse data from the electronic devices of asylum seekers—such as mobile phones and laptops—where the identity, nationality, or travel route of an applicant cannot be established through other means.[37] Authorities from the Secretariat for Migration (SEM) have been granted the right to extract and temporarily retain personal data, including but not limited to telephone numbers, messages, photographs, geographical location data, and social media profiles, for a period of up to one year.[38]

While the law provides that electronic devices may only be accessed when no other means of verification are available and requires a proportionality assessment, it lacks concrete safeguards to ensure that consent is truly informed and voluntary.[39] In practice, asylum seekers may feel pressured to comply, fearing that refusal could delay or negatively impact their asylum claims. This power imbalance effectively undermines the voluntariness required for any legitimate restriction of privacy rights under Art. 17 of the ICCPR.

Moreover, the legal and regulatory framework is vague regarding the scope of data that may be extracted, how such data is processed, and who may access it. The absence of clear, binding safeguards creates a heightened risk of arbitrary interference with personal data. As emphasized by the Human Rights Committee, any collection of personal information must be clearly defined, strictly necessary, and proportionate to a legitimate aim.[40] The broad and insufficiently regulated powers currently granted to the SEM do not meet these standards.

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[34] CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, Adopted at the Thirty-second Session of the Human Rights Committee, on 8 April 1988.
[35] Bundesverwaltungsgericht Pressemitteilung Nr. 13/2023 vom 16.02.2023, *Voraussetzungen der Auswertung digitaler Datenträger durch das Bundesamt für Migration und Flüchtlinge im Asylverfahren*, available at: https://www.bverwg.de/pm/2023/13 (accessed on 16.04.2025).
[36] Asylverordnung 3 über die Bearbeitung von Personendaten vom 1. Mai 2024, AS 2024 208 (SR 142.314).
[37] Mitteilung der Bundeskanzlei, *Auswertung elektronischer Datenträger von Asylsuchenden startet am 1. April*, 25.03.2025, available at: https://www.news.admin.ch/de/nsb?id=104629 (accessed on 16.04.2025).
[38] Swissinfo, *How Switzerland and Europe use AI tech for migration control*, 04.02.2025, available at: https://www.swissinfo.ch/eng/foreign-affairs/how-switzerland-and-europe-use-ai-tech-for-migration-control/88822424# (accessed on 16.04.2025).
[39] Swissinfo, *Swiss government to use phone data to identify asylum seekers*, 02.05.2024, available at: https://www.swissinfo.ch/eng/swiss-politics/swiss-government-to-use-phone-data-to-identify-asylum-seekers/76827631 (accessed on 16.04.2025).
[40] CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, Adopted at the Thirty-second Session of the Human Rights Committee, on 8 April 1988.

A particularly concerning aspect is the potential infringement on attorney-client privilege. While Swiss law protects the confidentiality of legal communications, the existing framework offers no effective safeguards to prevent SEM from accessing sensitive legal correspondence during device inspections. This poses a serious threat to the integrity of the asylum process and undermines trust in legal representation. In this matter, the European Court of Human Rights has repeatedly affirmed that lawyer-client communications enjoy enhanced protection under Art. 8 ECHR. In its case law, notably *Michaud v. France*, the Court stressed that any interference must be lawful, necessary and proportionate, and accompanied by adequate safeguards to prevent abuse. The lack of such safeguards in the current practice raises serious concerns about compatibility with these standards.[41]

Although the measure is presented as a way to expedite asylum procedures, its implementation raises serious concerns about compliance with fundamental rights, particularly the right to privacy under Art. 17 of the ICCPR. The broad and intrusive nature of device inspections risks compromising sensitive personal data and undermining the confidentiality of communications—especially between asylum seekers and their legal representatives. These protections are essential to ensuring a fair asylum process and the effective exercise of legal rights.

The current approach lacks effective safeguards to guarantee informed and voluntary consent and does not adequately protect against breaches of legal confidentiality. This creates a risk of coercive practices and arbitrary interference with privacy. To meet its obligations under Art. 17 of the ICCPR, Switzerland must urgently strengthen legal protections, ensure that consent is genuinely voluntary, and uphold the confidentiality of legal communications throughout the asylum procedure.

e) Art. 23 Read in Conjunction with Art. 26 ICCPR: Switzerland's Failure to Uphold the Right to Family Life and Equal Protection

By enshrining the right to family life, Art. 23 guarantees the right to the reunification of families.[42] Art. 26 not only entitles all persons to equality before the law as well as equal protection of the law but also prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour or any other status.[43]

AsyLex is deeply concerned by the discriminatory legal framework governing family reunification for persons admitted to Switzerland on a temporary basis (holders of an F permit). The current legal regime subjects these individuals to more stringent requirements than recognized refugees, despite their comparable need for international protection. This differential treatment constitutes a violation of Art. 23 of the ICCPR in conjunction with Art. 26.

Under Swiss law, provisionally admitted persons face a series of restrictive conditions before they can apply for family reunification. Art. 85c FNIA[44] stipulates a mandatory waiting period before an application may even be submitted. In addition to this waiting period, applicants must meet the following stringent conditions: (1) the family members must live together; (2) suitable housing must be available; (3) the family must not depend on social assistance and;(4) they must be able to communicate in the national language spoken at the place of residence.

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[41] ECtHR, Fiche thématique – Secret professionnel des avocats, available at: https://www.echr.coe.int/documents/d/echr/fs_legal_professional_privilege_fra#:~:text=%C2%AB%20%5BS%5Di%20l.

[42] CCPR General Comment No. 19: Article 23 (The Family), Protection of the Family, the Right to Marriage and Equality of the Spouses, Adopted at the Thirty-ninth Session of the Human Rights Committee, on 27 July 1990, § 5.

[43] CCPR General Comment No. 18: Non-Discrimination, Adopted at the Thirty-Seventh Session of the Human Rights Committee, on 10 November 1989, § 1.

[44] Federal Act of 16 December 2005 on Foreign Nationals and Integration, available at: https://www.fedlex.admin.ch/eli/cc/2007/758/en.

Furthermore, Art. 74 paragraph 3 of the Ordinance on Admission, Period of Stay and Employment (ASEO)[45] imposes additional temporal constraints: spouses and children under 12 must be reunited within five years of the expiry of the waiting period under the FNIA, while children over the age of 12 must be reunited within just one year. If the application is not submitted within this timeframe, reunification becomes possible only under "important family reasons."

The ECtHR has addressed the question of rigid time limitations on family reunification in its ruling *M.A. v. Denmark*, concluding that a fixed three-year waiting period violated the principle of proportionality, thereby breaching Art. 9 and 14 of the ECHR—protecting the right to family life and prohibiting discrimination, respectively.[46]

Consequently, the current Swiss legal framework for family reunification of temporarily admitted persons violates both the right to family life (Art. 8 ECHR; Art. 23 ICCPR) and the right to equality before the law (Art. 14 ECHR; Art. 26 ICCPR).

In response to the ECtHR ruling, the Federal Council proposed reducing the waiting period in Art. 85c FNIA from three to two years.[47] While this may appear progressive, the core issues remain unresolved. The reform does not remove the stringent conditions attached to family reunification (set in Art. 85c FNIA), nor does it adjust the time frame under Art. 74 para. 3 ASEO. As a result, applicants now have less time to meet the same demanding criteria, exacerbating the burden on already vulnerable individuals.

The ECtHR has emphasized that the rupture of family life and the presence of "insurmountable obstacles" must be considered when assessing a state's obligations under Art. 8 ECHR (Art. 23 ICCPR).[48] Yet the revised Swiss policy merely shifts these obstacles into a shorter time frame, without meaningfully tackling shortcomings in the access to the right to family life. For instance, under the new practice, a mother wishing to reunite with her 14-year-old son has just three, respectively two years to secure stable income, adequate housing, and language proficiency—requirements that are often unachievable for F-permit holders facing economic hardship and systemic barriers. Rather than easing access, the reform risks making family reunification practically impossible.

The only legally sound solution would be to remove the special conditions and waiting periods applied exclusively to F-permit holders—many of whom come from conflict zones such as Syria, Afghanistan, and Eritrea. Despite not being granted refugee status, these individuals face the same risks and long-term displacement. There is no objective justification for subjecting them to a more restrictive regime. Aligning the rights of F-permit holders with those of recognized refugees by eliminating the restrictions enshrined in Art. 85c FNIA and Art. 74 para. 2 ASEO would bring Switzerland into compliance with Art. 23 and 26 of the ICCPR, uphold the principle of proportionality as interpreted by the ECtHR, and ensure equal treatment within the Swiss asylum system. All the more so as, notably, family reunification of F-permit holders is not a mass phenomenon; the number of approved applications remains minimal.[49]

[45] Ordinance of 24 October 2007 on Admission, Period of Stay and Employment, available at: https://www.fedlex.admin.ch/eli/cc/2007/759/de.
[46] ECtHR, judgement nº 6697/18, *M.A. v. Denmark* of 9 July 2021.
[47] News Service Bund – The portal of the Swiss government, "Bundesrat schläft Anpassung der Wartefrist beim Familiennachzug vor", available at: https://www.news.admin.ch/de/nsb?id=100865.
[48] ECtHR, judgement nº 6697/18, *M.A. v. Denmark* of 9 July 2021, § 132.
[49] Elisa-asile, Motion contre le droit au regroupement familial pour les personnes admises à titre provisoire – Argumentaire d'elisa-asile, 9 October 2024, available at: https://www.elisa.ch/news/motion-contre-le-droit-au-regroupement-familial-pour-les-personnes-admises-a-titre-provisoire.

More concerning, however, is the fact that, rather than using the ECtHR judgment to enhance legal protections, the Swiss Parliament has opted to move in the opposite direction. Recent motions (24.3057[50] and 24.3511[51]), led by the Swiss People's Party, aimed to abolish the right to family reunification for F-permit holders entirely. Although these efforts were narrowly defeated in the Council of States late 2024 (20 votes to 18, with 4 abstentions), the near adoption of such a regressive proposal signals a alarming trend: a political climate increasingly willing to undermine fundamental rights and Switzerland's international obligations.

3. CONCLUSIONS AND SUGGESTED RECOMMENDATIONS

Switzerland's current asylum and migration practices raise serious concerns regarding its compliance with key provisions of the Covenant, in particular Art. 2, 3, 7, 13, 17, 23, and 26 ICCPR. The lack of effective legal remedies, discriminatory access to protection for women, insufficient safeguards against refoulement, undue interferences with privacy and legal confidentiality and disproportionate obstacles to family reunification, collectively undermine the rights of asylum seekers and refugees.
In light of the concerns outlined above, we respectfully request that the following issues be included in the List of Issues for consideration during Switzerland's review under the 5th cycle of the CCPR:

1. Art. 2 and 13 – Access to Justice and Non-Discrimination

- Guarantee consistent, accessible, and adequately resourced legal aid throughout all stages of asylum and detention procedures, including during the appeal phase and in remote detention centres.
- Prohibit any form of intimidation, obstruction, or criminalization of civil society actors providing legal support to asylum seekers, including by curbing the misuse of SLAPP proceedings against legal representatives and NGOs.

2. Art. 3 and 7 – Gender-Sensitive Assessment

- Systematically adopt a gender-sensitive assessment of asylum claims, recognizing structural and systemic gender-based discrimination as valid grounds for refugee protection.

3. Art. 7 – Protection from Refoulement

- Strengthen compliance with the non-refoulement principle by conducting thorough, case-specific risk assessments, with particular attention to medical and psychological vulnerabilities.
- End the practice of relying first and foremost on formal assurances or theoretic legal obligations when evaluating the safety of return destinations.
- Prohibit deportations from medical or psychiatric facilities and ensure full respect for medical ethics and due process in such cases.

4. Art. 17 – Right to Privacy

[50] Motion 24.3057, *Kein Familiennachzug für vorläufig Aufgenommene,* 28.02.2024, available at: https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20243057.
[51] Motion 24.3511, *Kein Familiennachzug für vorläufig Aufgenommene,* 30.05.2024, available at: https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20243511.

- Ensure that any digital data searches conducted on asylum seekers' electronic devices are subject to clear legal safeguards, strict necessity and proportionality standards, and truly informed and voluntary consent.
- Guarantee the confidentiality of legal communications and fully protect attorney-client privilege throughout the asylum procedure.

5. Art. 23 and 26 – Family Life and Equality Before the Law

- Harmonize the legal standards for family reunification of F-permit holders with those applicable to recognized refugees, by eliminating discriminatory waiting periods and disproportionate eligibility requirements.

We respectfully recommend that these issues be addressed as priority concerns in the upcoming review of Switzerland's compliance with the Covenant.