

# Input by civil society to the 2022 Asylum Report

Fields marked with \* are mandatory.

D e a r

C o l l e a g u e s ,

The production of the *Asylum Report 2022* is currently underway. The annual [Asylum Report series](#) present a comprehensive overview of developments in the field of asylum at the regional and national levels.

The report includes information and perspectives from various stakeholders, including experts from EU+ countries, civil society organisations, UNHCR and researchers. To this end, we invite you, our partners from civil society, academia and research institutions, to share with us your reporting on developments in asylum law, policy or practice in 2021 (and early 2022) by topic as presented in the online survey.

Please note that the Asylum Report does not seek to describe national systems in detail but rather to present key developments of the past year, including improvements and challenges which remain. Your input can cover practices of a specific EU+ country or the EU as a whole. You can complete all or only some of the sections.

All submissions are publicly accessible. For transparency, 2022 contributions will be published on the EUAA webpage. For reference, contributions to the 2021 Asylum Report by civil society organisations can be accessed [here](#), under 'Acknowledgements'. All contributions should be appropriately referenced. You may include links to supporting material, such as analytical studies, articles, reports, websites, press releases or position papers. If your organisation does not produce any publications, please make reference to other published materials, such as joint statements issued with other organisations. Some sources of information may be in a language other than English. In this case, please cite the original language and, if possible, provide one to two sentences describing the key messages in English.

The content of the Asylum Report is subject to terms of reference and volume limitations. Contributions from civil society organisations feed into EUAA's work in multiple ways and inform reports and analyses beyond the Asylum Report.

Your input matters to us and will be much appreciated!

\*Please complete the online survey and submit your contribution to the 2022 Asylum Report by **Monday, 21 February 2022**.\*

[Instructions](#)

---

Before completing the survey, please review the list of topics and types of information that should be included in your submission.

For each response, only include the following type of information:

- New developments and improvements in 2021 and new or remaining challenges; and
- Changes in policies or practices, transposition of legislation or institutional changes during 2021.

Please ensure that your responses remain within the scope of each section.

## Contributions by topic

---

### **1. Access to territory and access to asylum procedures (including first arrival to territory and registration, arrival at the border, application of the non-refoulement principle, the right to first response (shelter, food, medical treatment) and issues regarding border guards)**

Data on mobile phones: On 15 September 2021, the Swiss Parliament agreed for immigration officials to access people's mobile data if it is the only way to verify their identity. Lawmakers cite the fact that most people who request asylum in Switzerland enter without documents proving their identity. The Swiss Refugee Council and UNHCR criticised the measure as disproportionate and an assault on privacy rights.

### **2. Access to information and legal assistance (including counselling and representation)**

Since the new accelerated asylum procedure came into force in March 2019, every asylum seeker applying for asylum in a federal asylum centre is assigned a legal representative and has thus access to free legal representation and advice. While the collaboration between the involved actors in the new procedure has generally improved and clarified after some initial challenges and open questions regarding the different roles, some challenges still remain.

Avoiding changes of hands is not a priority in all asylum regions: The SEM's (State Secretariat for Migration) practice with regard to requests to extend time limits is experienced as inconsistent and often too restrictive. Requests for extension of time limits serve to prevent changes of mandates in legal protection. The Swiss Refugee Council agrees with the SCHR's assessment that changes of hands/mandates - particularly in the case of persons with special needs and especially unaccompanied minor asylum seekers - should be avoided as far as possible in order not to jeopardise the relationship of trust between the legal representative and the asylum seeker, which is important for the procedure.

Inconsistent and incomplete information: According to the SCHR report, the flow of information from the SEM to the person of trust (legal representation responsible for unaccompanied minor asylum seekers) is inconsistent and incomplete in the two regions studied. The legal representative emphasises that this means that s\*he cannot adequately fulfil their role as a person of trust. The Swiss Refugee Council supports the recommendation that the person of trust must be given low-threshold access to the relevant actors. In addition, they must be provided with all the information concerning the welfare of the minors.

### **3. Provision of interpretation services (e.g. introduction of innovative methods for interpretation, increase/decrease in the number of languages available, change in qualifications required for interpreters)**

**4. Dublin procedures (including the organisational framework, practical developments, suspension of transfers to selected countries, detention in the framework of Dublin procedures)**

Restrictive practice: The family criteria in particular are generally applied narrowly in view of the Swiss Refugee Council. The SEM's practice regarding the effective relationship and regarding the definition of family members in the Dublin III Regulation is strict.

**5. Special procedures (including border procedures, procedures in transit zones, accelerated procedures, admissibility procedures, prioritised procedures or any special procedure for selected caseloads)**

**6. Reception of applicants for international protection (including information on reception capacities – increase/decrease/stable, material reception conditions - housing, food, clothing and financial support, contingency planning in reception, access to the labour market and vocational training, medical care, schooling and education, residence and freedom of movement)**

Allocation to the cantons is not handled uniformly: According to the SCHR report, cases are allocated to the cantons inconsistently and sometimes to other language regions. If asylum seekers are transferred to cantons in another language region for the extended procedure, this results in a great deal of additional work and increased costs for legal representation. The Swiss Refugee Council therefore is of the opinion that such allocations from the federal asylum centers to other language regions should be avoided.

Emergency aid is provided in the form of non-cash benefits wherever possible. Persons under emergency aid are housed in specific shelters. Under emergency aid, people may have to live with around 8 CHF a day, which must cover the expenses for food, transportation, household items and any other needs. This amount is extremely low in comparison with the high living costs in Switzerland. Further restriction is that the entire amount is granted in the form of non-cash benefits or vouchers (which can only be used in one particular supermarket chain), as it is encouraged by the national legislation. This restriction of reception conditions raises serious problems for asylum seekers whose (subsequent) procedure is still running. Long-term stay under emergency aid is known to be disastrous for the integration and health of asylum seekers, despite the chance of being granted a legal status at the end of the procedure.

Remote locations of centers: Boudry and Giffers/Chevresses federal centres as well as the centre of Les Verrières are, for example, characterised by their isolation. The Boudry centre is located in a complex that includes the asylum processing centre and a psychiatric hospital. It is several kilometres away from the surrounding village and about 15km from the town of Neuchâtel. The waiting and departure centre of Chevresses is even more isolated. In order to get there by public transport, it is necessary to take a 20-minute bus ride from the city of Fribourg. Once arrived in the village of Chevresses, it still takes a 20-minute walk to reach the centre. There are two buses per hour driving to both centres, and asylum seekers receive every week a single ticket to go to Neuchâtel or Fribourg and 3 CHF of pocket money per day, with the exception of persons from EU/EFTA countries or countries exempt from the visa requirement who do not receive any pocket money.

## **7. Detention of applicants for international protection (including detention capacity – increase /decrease/stable, practices regarding detention, grounds for detention, alternatives to detention, time limit for detention)**

Lack of access to legal representation in detention: Under the new asylum procedure, all asylum seekers are systematically assigned a legal representative. This is still not the case, in practice, for people lodging asylum applications while in detention or in prison. Despite case law of the Federal Administrative Court, most recently of November 2021,<sup>2</sup> finding that legal representation must be guaranteed in those cases, the SEM still does not systematically provide for legal representation in the asylum procedure. Access to legal advice and representation concerning the ordering of immigration detention also remains a critical point as national law does not provide for legal representation in detention procedures and access to legal advice is very limited in practice.

## **8. Procedures at first instance (including relevant changes in: the authority in charge, organisation of the process, interviews, evidence assessment, determination of international protection status, decisionmaking, timeframes, case management - including backlog management)**

In every third asylum decision of the SEM, the case files show serious deficiencies:

Of the 120 decisions analysed in depth by the SCHR, such serious deficiencies were found in 40 dossiers. In particular insufficient clarification of the facts, insufficient assessment of the statement on the draft decision, procedural deficiencies, formal errors in the decision, incorrect application of the law, questionable conformity with the practice or deficiencies in the quality of the reasoning. The Swiss Refugee Council sees this as a confirmation of its criticism of February 2020: The acceleration of the procedures continues to take place at the expense of the authorities. The acceleration of procedures continues to be at the expense of fairness and quality.

High pressure of expectations reduces fairness and quality: According to the opinion of the SCHR in the report, "it is clear that there is pressure on the SEM staff to make as many decisions as possible in the accelerated procedure". The SCHR notes that the SEM head office apparently has a target of 80%, which seems to be interpreted differently in the various asylum regions. From the Swiss Refugee Council's point of view, this is highly questionable - especially since incorrect clarifications of the facts and incorrect decisions are the direct result. The Swiss Refugee Council also shares the SCHR's assessment that such pressure is anything but conducive to quality standards and contradicts the requirements for triage in complex cases. More allocations to the extended procedure: The share of referrals to the extended procedure has increased from 18% (2019) to 26.7% (2020). This is due to new SEM-internal guidelines for triage into the extended procedure and the landmark ruling of the Federal Administrative Court of 9 June 2020. The Swiss Refugee Council sees this as a welcome indication that this triage is now being carried out more carefully than in the past. Nevertheless, the planning size for the extended procedure must be increased so that complex cases in particular can be handled with the necessary quality and with sufficient time.

Incorrect triage still too frequent: Nevertheless, the SCHR evaluation concludes that incomplete or insufficient clarification of the facts too often leads to incorrect triage: According to the SCHR report, the proportion of accelerated procedures is just under 50% and thus still does not correspond to the original estimate of the planning size of 32%. In the view of the Swiss Refugee Council, the continuing high proportion of accelerated procedures signals that complex cases are still too often dealt with in accelerated proceedings.

Time pressure often prevents adequate examination: The statement on the draft decision is to be considered part of the legal hearing of the asylum seekers' right to be heard. According to the SCHR report, there are indications that due to the time pressure, the opinion of the statement is often not adequately examined and assessed by the SEM.

Too short deadlines in the accelerated procedure (24 hours for commenting on the asylum decision, 7 working days for an appeal) must be adjusted. In the view of the Swiss Refugee Council the short deadlines cause excessive time pressure in the procedure and are therefore not conducive to the quality of the decision.

Different handling of evidence and access to files: According to the SCHR report, there is a need for the SEM to harmonise the receipt of evidence and the right to access files during hearings in the extended procedure between the regions.

## **9. Procedures at second instance (including organisation of the process, hearings, written procedures, timeframes, case management - including backlog management)**

More than one third of SEM decisions are appealed: The rate of appeals to the Federal Administrative Court (FAC, the highest and only appeal instance for asylum cases in Switzerland) in the accelerated procedure was 35% on average in 2019/2020, according to SEM statistics. Although it decreased in 2020 (2019: 40% / 2020 30%), the fact that even in 2020 almost one in three SEM decisions is still contested confirms that the quality of decisions should be examined more comprehensively and in depth by an external follow-up project.

More than one in five appeals in the accelerated procedure successful or not futile: The success rate in the accelerated procedure (approval, partial approval, cassation, reconsideration) is higher than in the previous year, cassation, reconsideration) is 22% in 2019/2020 according to the statistics of the Federal Administrative Court FAC.

One in four appeals in the extended procedure successful or not futile: According to the SCHR report, the rate of appeals in the extended procedure has fallen only slightly from 61.9% in 2019 to 56.5% in 2020. 56.5% in 2020, which means it remains consistently high. Compared to 2019 (30%), the success rate in the extended procedure is 23.5% in 2020.

Cassation rate continues to indicate reduced decision quality: According to figures from the Federal Administrative Court (FAC), the rate of cassations of SEM decisions in the accelerated procedure has fallen from 18.3% (2019) to 11.9% (2020). However, the rate of cassation was more than twice as high as before the system change, when the rate was still 4.8% on average for the years 2007-2018.

#### **10. Availability and use of country of origin information (including organisation, methodology, products, databases, fact-finding missions, cooperation between stakeholders)**

#### **11. Vulnerable applicants (including definitions, special reception facilities, identification mechanisms/referrals, procedural standards, provision of information, age assessment, legal guardianship and foster care for unaccompanied and separated children)**

The law does not specifically provide for the screening of vulnerabilities and there is no standard procedure in practice to assess and identify them. Furthermore, since 1 March 2019, all but very complex asylum claims should be assessed and decided within 140 days. The fast-paced new procedure puts the administrative authorities and the legal representatives under increased pressure, which, coupled with the lack of standard identification tools, may result in overlooking potential vulnerabilities. A report published by UNHCR in 2020 details the protection gaps existing in the Swiss asylum system in this regard, and advances concrete suggestions to overcome them. According to UNHCR, there remain wide margins for improvement in the screening and identification of vulnerable applicants. Similar concerns were also raised by the National Commission for the Prevention of Torture (NCPT), which published its latest report on federal reception centres in January 2021 (Link: [Einschränkung der Bewegungsfreiheit von asylsuchenden Personen \(admin.ch\)](#)).

Avoiding changes of hands is not a priority in all asylum regions: The SEM's practice with regard to requests to extend time limits is experienced as inconsistent and often too restrictive. Requests for extension of time limits serve to prevent changes of mandates in legal protection. The Swiss Refugee Council agrees with the SCHR's assessment that changes of hands/mandates - particularly in the case of persons with special needs and especially unaccompanied minor asylum seekers - should be avoided as far as possible in order not to jeopardise the relationship of trust between the legal representative and the asylum seeker, which is important for the procedure.

Inconsistent and incomplete information: According to the SCHR report, the flow of information from the SEM to the person of trust (legal representation) is inconsistent and incomplete in the two regions studied. The legal representative emphasises that this means that she cannot adequately role as a person of trust. The Swiss Refugee Council supports the recommendation that the person of trust must be given low-threshold access to the relevant actors. In addition, they must be provided with all the information concerning the welfare of the minors.

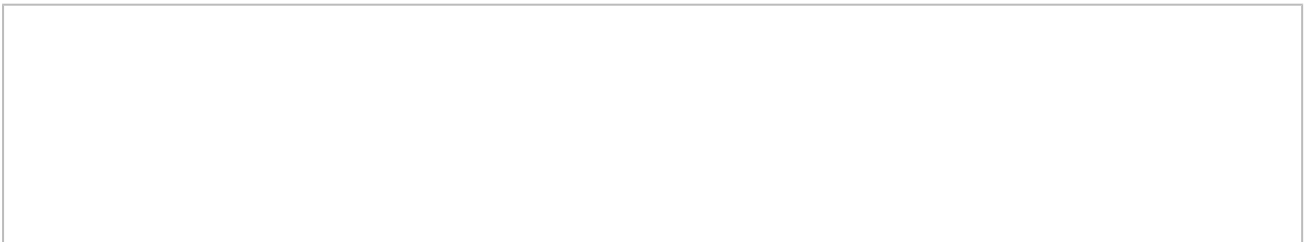
Unclear roles and responsibilities: According to the SCHR report, the roles, responsibilities and division of tasks between the person of trust, the SEM and the KESB (child and adult protection authority) are not uniform in the two asylum regions studied and therefore need to be clarified.

The identification, accommodation and care of persons with special needs is still insufficient. While initial measures have been taken that go in the right direction, these must be strengthened and implemented uniformly throughout Switzerland.

## **12. Content of protection (including access to social security, social assistance, healthcare, housing and other basic services; integration into the labour market; measures to enhance language skills; measures to improve attainment in schooling and/or the education system and/or vocational training)**

For persons with temporary admission there are important legal and practical obstacles in obtaining travel documents and re-entry permits. They do not have an automatic right to a travel document, and their travel rights are very limited. If they want to travel outside Switzerland, they must first apply to the SEM (via the cantonal authority) for a return visa (permission to re-enter Switzerland). A return visa is only granted in specific circumstances (severe illness or death of family members and close relatives; to deal with important and urgent personal affairs; for cross-border school trips; to participate in sports or cultural events abroad; or for humanitarian reasons). A return visa can be issued for other reasons if the person has already been temporarily admitted for three years.<sup>3</sup> In addition to the return visa, the person needs a valid travel document. Persons with temporary admission can apply to the SEM (via the cantonal authority) for a travel document if they can show that it is impossible for them to obtain travel documents from their home country, or that it cannot be expected of them to apply for travel documents from the authorities of their home country.<sup>4</sup> The practice regarding this is very strict, it is only seldom recognised that the person cannot obtain travel documents from their home country. They must document very clearly what they have done to obtain travel documents (visits to the embassy etc.). In many cases, the persons do not succeed in proving their lack of documents, as the embassies of their home countries are reluctant to confirm in writing that they will not issue a travel document. This means persons with temporary admission are often unable to travel – for lack of documents, but mainly due to the strict regulation regarding return visas, see above. A reform of the temporary admission discussed in parliament led to another restriction for travelling for temporary admitted persons. A general travel ban for them was added in the National Act on Foreigners.<sup>5</sup> The exceptions in which travel can still be allowed will need to be specified at ordinance level.

### **13. Return of former applicants for international protection**



### **14. Resettlement and humanitarian admission programmes (including EU Joint Resettlement Programme, national resettlement programme (UNHCR), National Humanitarian Admission Programme, private sponsorship programmes/schemes and ad hoc special programmes)**

The Swiss Practice on humanitarian Visa is very strict, it's almost impossible to obtain such a Visa. Therefore the Swiss Red Cross advisory service for humanitarian visa closed in mid-December 2021. Having analysed developments with regard to legal access to international protection, the Swiss Red Cross decided to channel its expertise and resources into family reunification. See the Swiss Red Cross final report with recommendations based on 7 years of assisting persons applying for humanitarian visa: <https://www.redcross.ch/api/download/de/abschlussbericht-humanitaere-visa>

In light of the crisis in Afghanistan after the Taliban takeover in August 2021, the Swiss Refugee Council repeatedly called upon the Swiss authorities to step up its commitment regarding humanitarian visa and resettlement: Afghanistan (fluechtlingshilfe.ch)

### **15. Relocation (ad hoc, emergency relocation; developments in activities organised under national schemes or on a bilateral basis)**



**16. National jurisprudence on international protection in 2020 (please include a link to the relevant case law and/or submit cases to the [EUAA Case Law Database](#))**

**17. Other important developments in 2021**

Compulsory COVID-testing: On 15 September 2021 federal Parliament agreed on the introduction of mandatory COVID-19 tests, by amending the Foreign Nationals and Integration Act (COVID-19 tests can be carried out even against a person's will for persons obliged to leave the country, if host countries and airlines require a negative test result for their deportation. Medical experts, doctors and NGOs have strongly criticised the measure.<sup>6</sup> The compulsory test is criticised as legally and medically irresponsible, it is further seen as a disproportionate instrumental intervention in the human body and thus violates the right to physical integrity.

Comment on the evaluation of the new Swiss asylum procedure: The recommendations of the SCHR are to be taken seriously and implemented. The external evaluation confirms in particular the findings of the Swiss Refugee Council evaluation of February 2020. Procedures are still being carried out at too high a pace, and the focus continues to be too strongly and too one-sidedly on acceleration. It is therefore imperative that more attention is paid to the fairness and quality of the procedures so that the promised balanced implementation is actually guaranteed. In addition, a uniform practice throughout Switzerland must be ensured in order to avoid unequal treatment of asylum seekers.

It is imperative to ensure an orientation towards the individual case so that the quality of the procedures can be guaranteed. Complex cases must be consistently allocated to the extended procedure and, particularly in the case of persons with special needs, neither considerations of economy and efficiency nor pressure of expectations should play a role.

The studies in the SCHR report do not cover all areas of the new legal provisions. These should be examined in greater depth as part of a follow-up project so that a comprehensive view of the entire asylum procedure is made possible. In the opinion of the Swiss Refugee Council, further investigations and evaluations are needed in the following areas:

- The Dublin and other inadmissibility (NEE) procedures with a share of about 30%. In particular the quality of the inadmissibility decisions in particular must be examined.
- The extended procedure with a share of approx. 26% and an appeal rate of well over 50% and a success rate of 23.5%. The key statistical data in the report of the SKMR indicate that serious deficiencies exist.
- The identification of persons with special needs, as well as the accommodation and the care of asylum seekers. The Swiss Refugee Council strongly recommends that these important areas be in a follow-up project.
- The question of triage between accelerated and extended procedures. On the recommendation of the SCHR and with the involvement of legal representation, this question requires a more in-depth investigation.
- The complaint and success rate of legal representatives outside the federal asylum centers. It should be investigated whether and to what extent systemic deficiencies in the new-law procedure are the cause of the observed rates.

## References and sources

---

**18. Please provide links to references and sources and/or upload the related material in PDF format**

Swiss Refugee Council, Nouvelle procédure d'asile : bilan de l'OSA, February 2020, available at: <https://bit.ly/3Gw8PtX>

SCHR Evaluation, August 2021, available at: <https://bit.ly/3B4ldyH>

Swiss Refugee Council, La nouvelle procédure d'asile fonctionne mieux, mais il subsiste une grande nécessité d'agir, August 2021, available at: <https://bit.ly/34Eo2Ma>

ECRE, AIDA report on Switzerland, written by the Swiss Refugee Council, available at: <https://bit.ly/3Lccgff>

UNHCR, Neustrukturierung des Asylbereichs – Asylsuchende mit besonderen Bedürfnissen im neuen schweizerischen Asylverfahren. Problemaufriss und erste Empfehlungen, August 2020, written by Angela Stettler, available at: <https://bit.ly/35YrIG4>

NCPT, Report on federal asylum centres 2019-2020, January 2021, available in German at: <https://bit.ly/3jEAb72>.

## 19. Feedback or suggestions about the process or format for submissions to the Asylum Report

Preliminary remark: The general information on the new Swiss asylum system as well as the legal basics and explanations are to be found in the yearly update of the AIDA report on Switzerland, written by the Swiss Refugee Council (SRC/OSAR). The new asylum procedure was externally evaluated by the Swiss Centre of Expertise in Human Rights (SCHR), the evaluation published in 2021. These findings were also commented by the Swiss Refugee Council, some of them are to be found in the regarding chapters of this input.

Please upload your file

The maximum file size is 1 MB

**2291a25c-b37a-4a89-a5fe-6851676faae2/Input\_by\_civil\_society\_to\_the\_2022\_Asylum\_Report.docx**

## Contact details

---

\* Name of organisation

Swiss Refugee Council

Name and title of contact person

Adriana Romer, lawyer

\* Email

adriana.romer@osar.ch

I accept the provisions of the EUAA [Legal and Privacy Statements](#)

## Useful links

[EASO Asylum Report 2021 \(https://euaa.europa.eu/easo-asylum-report-2021\)](https://euaa.europa.eu/easo-asylum-report-2021)

[Executive Summary -EASO Asylum Report 2021 \(https://euaa.europa.eu/executive-summary-asylum-report-2021\)](https://euaa.europa.eu/executive-summary-asylum-report-2021)

[Bibliography for the EASO Asylum Report 2021 \(https://euaa.europa.eu/sites/default/files/EASO\\_Asylum\\_Report\\_2021-Bibliography.pdf\)](https://euaa.europa.eu/sites/default/files/EASO_Asylum_Report_2021-Bibliography.pdf)

[Summary of legislative, institutional and policy developments in asylum in EU+ countries in 2019 \(https://euaa.europa.eu/sites/default/files/easo-asylum-report-eu-developments.pdf\)](https://euaa.europa.eu/sites/default/files/easo-asylum-report-eu-developments.pdf)

[National asylum developments database \(https://euaa.europa.eu/national-asylum-developments-database\)](https://euaa.europa.eu/national-asylum-developments-database)

[EASO Asylum Report 2021 Key Findings \(https://euaa.europa.eu/sites/default/files/key\\_findings.pdf\)](https://euaa.europa.eu/sites/default/files/key_findings.pdf)

[EU+ and Country Data \(https://euaa.europa.eu/sites/default/files/europe-country-data-2020.pdf\)](https://euaa.europa.eu/sites/default/files/europe-country-data-2020.pdf)

## **Background Documents**

[Input by civil society to the 2022 Asylum Report.docx](#)

## **Contact**

[Contact Form](#)