

# Input by civil society to the EASO Annual Report 2018

Fields marked with \* are mandatory.

## Input by civil society to the EASO Annual Report on the Situation of Asylum in the EU+ 2018

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EASO has started the production of the 2018 Annual Report on the Situation of Asylum in the European Union, in line with Article 12 (1) of the EASO Regulation. The report aims to provide a comprehensive overview of important asylum-related developments at EU+ and national level, and the functioning of all key aspects of the Common European Asylum System (CEAS). [Previous reports are available at EASO's website](#)

While the final product comes out of an analytical and synthetic process that takes place in-house, a critical part of information is elicited through valuable contributions by a multiplicity of stakeholders from EU+ countries, civil society organizations, UNHCR, and other actors possessing in-depth knowledge on main developments in asylum policies and practices in EU+ countries.

We would like to kindly invite you to take part in this process, by sharing your observations on developments in asylum law, policy or practice in 2018 (and early 2019) in the areas listed on the online survey. The topics listed there reflect the structure of Chapter 4 of the EASO Annual Report, which focuses on the 'Functioning of the CEAS'. To this end, your observations may concern national practices of specific EU+ countries or the EU as a whole. You can fill in all or only some of the points. Overall, the EASO Annual Report is not meant to describe the national asylum systems in detail, but present key developments in 2018, including improvements and new/remaining concerns. In terms of format, your contributions would be preferably offered in the form of bullet points, which would facilitate further processing of your input.

Please, bear in mind that the EASO Annual Report is a public document. Accordingly, it would be desirable that your contributions, whenever possible, be supported by references to relevant sources. Providing links to materials such as analytical studies, articles, reports, websites, press releases, position papers/statements, and press releases, would allow for maintaining transparency. For your reference, you may review the [contributions offered by civil society actors for the 2017 Annual Report](#). If you do not consent on EASO making your submission available, please indicate so in the relevant part of the online survey.

In our effort to provide an inclusive overview of all relevant developments, we strive to incorporate as

many contributions as possible. At the same time, the final content of the EASO Annual Report is subject to its set terms of reference and volume limitations. To this end, your submissions, which are gratefully received and acknowledged, may be edited for length and clarity so that the final product concisely serves the objectives of the Annual Report: to improve the quality, consistency, and effectiveness of CEAS. From our side, we can assure you that the valuable insights you offer feed into EASO's work in multiple ways and inform reports and analyses beyond the production of the Annual Report.

Please, kindly provide your input completing the online survey by **Thursday, 28 February 2019**.

## Instructions

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Within each area, please highlight the following **type of information**:

- **NEW positive developments; improvements and NEW or remaining matters of concern;**
- **Changes in policies or practices; transposition of legislation; institutional changes; relevant national jurisprudence.**

*You are kindly requested to make sure that your input falls within each section's scope. Please, refrain from including information that goes beyond the thematic focus of each section or is not related to recent developments. Feel free to use Section 16 to share information on developments you consider important that may have not been covered in previous sections.*

*Prior to completing the survey, please take a moment to review the list of areas and the types of information that needs to be included in each area.*

*Please contribute your feedback online or copy and paste your answers from an editable type document*

## Questions

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### **1. Access to territory and access to asylum procedure (including first arrival to territory and registration)**

- Problems at the Italian border remain a matter of concern and removals by border guards still take place (see e.g. [https://www.swissinfo.ch/eng/immigration\\_switzerland--border-controls-not-enough-to-curb-irregular-migration/44222162](https://www.swissinfo.ch/eng/immigration_switzerland--border-controls-not-enough-to-curb-irregular-migration/44222162)).
- This policy of returning back results in preventing people seeking asylum in Switzerland from being directed to the reception center in Chiasso in order to lodge a claim of asylum (e.g. <https://www.asylumineurope.org/reports/country/switzerland>).

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

- According to the new accelerated procedure to be put in place as of March 2019, legal advice and representation are provided by the government from the beginning of the procedure, for every asylum seeker.
- Very critical point: the assigned legal counsel has the option not to lodge an appeal, if he/she considers that the case has no prospects of success. In this case, the asylum seeker wishing to make an appeal has to find other legal sources within the tight deadlines (e.g. <https://www.tagesanzeiger.ch/sonntagszeitung/wegen-gratisanwaelten-drohen-schadenersatzklagen/story/18348777#overlay>, in German).
- In our view, there is potential for improvement regarding independency and quality assurance of the provided legal services is to be monitored (see e.g. Das Schweizer Asylverfahren, Friedrich Ebert Stiftung <http://library.fes.de/pdf-files/bueros/budapest/15099.pdf>)
- If the case is shifted to the expanded procedure because more clarifications are needed, the asylum seeker is no more assisted by the assigned legal counsel, but he/she can ask for assistance from the regional legal office of the region, where he/she has been transferred. It is unclear yet how such transfer of file will work in reality.
- The deadlines to appeal remain short or become even shorter (5 or 10 working days).
- People in detention do not have the right to a free lawyer.

#### 4. Providing interpretation services

- Interpretation being a crucial and delicate parameter of the asylum procedure, several points still remain matters of concern (religious or political beliefs of the translators / translation not always conducted in the language of the Canton, which the asylum seeker may have learnt, but in another official language / focus on professional training and qualification of translators /absence of translation services in hospitals or for psychological treatments / differences in accents or dialects when the applicant's mother tongue was Tibetan, Kurdish of Syria or Dari, see e.g. <https://www.asylumineurope.org/reports/country/switzerland>).
- In view of the restructuring of the asylum system as of March 2019, when every asylum seeker will have right to free legal assistance from the beginning of the procedure, government and cantonal authorities must be prompt to cover the need for adequate and efficient interpretation services, which will be considerably increased.

#### 4. Dublin procedure (including the organisational framework, practical development and suspension of transfers to selected countries, detention in the framework of Dublin procedures)

- Switzerland remains overly strict with Dublin returns. The humanitarian clause is invoked in very rare cases only (see, e.g. <https://www.dublin-appell.ch/de/>).
- In particular, the family criteria are generally applied narrowly and Amnesty International is seriously concerned about this practice (see e.g. <https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>)
- In certain cantons, Dublin decisions are only handed out at the time of deportation. This fully prevents access to justice and stands in contradiction to the Dublin regulation.
- Returns to Italy are still taking place on a regular basis, even though it is public knowledge that the living conditions for asylum seekers in Italy are inhumane. Switzerland shows this practice even in cases of vulnerable people and was, accordingly, reminded of its obligations by CAT twice in the recent past (see e.g. “The situation of persons with special reception needs transferred to Italy under the Dublin III Regulation”, <https://www.osar.ch/assets/herkunftslaender/dublin/italien/monitoreringsrapport-2018.pdf>, practice that forced the UN Committee Against Torture to issue the communication no. 742/2016 A.N. v. Switzerland (<https://www.refworld.org/cases,CAT,5b964c664.html>, underlying that “the State party has an obligation to refrain from forcibly returning the complainant to Italy and to continue complying with its obligation to provide the complainant, in full consideration with him, with rehabilitation through medical treatment”). We accompanied a number of clients with their return to Italy and with one single exception, all of them were excluded from the Italian social security system and forced to live in the streets, unless financially supported by our volunteers or by local partner NGOs in Italy.
- Various cantons put persons with Dublin return decisions immediately into detention without any particular reason for such detention, which is clearly in violation of the Dublin Regulation. This practice seems to be supported by federal authorities who arrange for the transportation directly from the federal center to detention. This, again, prevents organizations like AsyLex to support returnees with the return to Italy since we are not able to stay in touch with such clients.
- Legal remedies against Dublin returns are hard to take since (i) no information is provided about free legal aid centers and (ii) an appeal has to be filed within 5 working days. In practice, therefore, even if a Dublin decision is not in line with the legal provisions, it is close to impossible to take legal action (see comment on access to legal aid above).
- In the beginning of 2018, the Federal Administrative Court followed the Court of Justice of the European Union and declared that an asylum seeker can challenge the incorrect application of responsibility criteria under Dublin III before court. We consider this to be a positive development. [https://www.bvger.ch/dam/bvger/en/dokumente/2018/01/E-1998-2016%20Dublin-III-Verordnung%20St%C3%A4rkerer%20Rechtsschutz%20f%C3%BCr%20Asylsuchende.pdf.download.pdf/MM\\_E-1998-2016\\_En\\_ohne-Embargo.pdf](https://www.bvger.ch/dam/bvger/en/dokumente/2018/01/E-1998-2016%20Dublin-III-Verordnung%20St%C3%A4rkerer%20Rechtsschutz%20f%C3%BCr%20Asylsuchende.pdf.download.pdf/MM_E-1998-2016_En_ohne-Embargo.pdf)

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

- For border procedure, see comments on 1).
- From the standpoint of a legal representative, the short deadlines for appeal in case of inadmissibility and accelerated procedures are very critical (5 or 10 working days).

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

- The current regimes in reception centers are insufficient and against human dignity regarding various aspects:
  - (i) The confiscation of the personal mobile phone during the first few days prevents asylum seekers from contacting their friends and family and tell them about their safe arrival, to help with translation and to help to orient themselves. It is unclear what the upside of such a measure should be and to what extent it has still been the practice in the recent past.
  - (ii) The confiscation of assets at time of entry is unnecessary and disrespectful. The argument, that the assets are an upfront payment for the social money to be received, is rather confusing, since exactly those people who have assets are not (to that extent) dependent on social support.
  - (iii) Daily structure (language classes, work) is insufficient.
  - (iv) There is a lack of information about the procedure and legal aid (see above).
  - (v) Camp rules are often not respecting basic human rights, e.g. prohibition to bring food inside, hours at which asylum seekers have to be present that amount to detention like environments.
  - (vi) There is a lack of medical and psychological support. Especially people with trauma are for the most part left without any treatment for months or even years.
- We are critical towards the current system of allocating asylum seekers to cantons without considering their family / friend ties, language and other skills, etc.

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

- For detention like regimes in reception camps, see above at 6)
- There is no actual free legal aid for people in detention (except for some organizations which provide legal assistance, but no legally guaranteed access); access to legal aid is, therefore, oftentimes close to impossible.
- Various cantons put persons with Dublin return decisions immediately into detention without any particular reason for such detention, which is clearly in violation of the Dublin Regulation. This practice seems to be supported by federal authorities who arrange for the transportation directly from the federal center to detention.
- In general, we strongly disagree with the detention practices where families are separated, mentally ill people are detained for months without any adequate treatment and detention can take up to 18 months even though the detainee has never done any criminal act (except for crossing the Swiss border without visa and / or, possibly, not leaving upon being asked to do so).
- Even though administrative detention for rejected asylum seekers is supposed to be separated from criminal detention, in many places there is no such separation.
- We are particularly skeptical towards detention of minor asylum seekers (see e.g. <https://www.tdh.ch/fr/mediatheque/documents/detention-administrative-mineurs-migrants-suisse>).

**8. Procedures at First Instance (including relevant changes in: the authority in charge, organisation of the process, interviews, evidence assessment, international protection status determination, decision making, timeframes, case management, including backlog management)**

- Under the current asylum system, the main point of criticism is undoubtedly the extremely long duration of first instance procedures (two years upon arrival).
- Especially due to the fact that working is not permitted, social support is very limited, housing is often times in remote camps, access to health services is limited and no claim for free language courses is given, such a waiting period is way too long. Moreover, it prevents (social and economic) integration and it is detrimental for people with special needs, such as traumatized asylum seekers.
- We are hopeful but skeptical about the accelerated asylum procedure under the new law as of March 2019. We also want to emphasize that all asylum seekers asking for asylum before the date of entry into force are still treated under the old procedure which takes normally 2 years or more; authorities should not lose sight of those people and also accelerate their procedures accordingly.
- With regard to the new asylum procedure, we highly encourage authorities also to accelerate the “extended procedure”. We fear that a large part of the material decisions will also then take very long.
- First instance interviews are generally conducted in a good atmosphere and the interviewers are well prepared. However, we also experience very difficult situations: (i) not accurate translation (see issues mentioned above); (ii) interviewers not showing any interest or understanding and being very harsh with traumatized asylum seekers; (iii) time pressure not allowing for a proper conduct of the interview, e.g. no breaks, interrupting the interviewee; (iv) non-verbal communication, such as gestures, facial expressions but also intonation are not being documented and therefore are not being considered in the decision-making process; (v) language of the interview, which is not always the one that the asylum seeker is about to learn; (vi) transcript of the interview not available.
- For issues regarding legal aid, see above.

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

- Under the current asylum procedure, there is no free legal aid and assistance provided by the authorities and deadlines to appeal are very short.
- As of March 2019, free legal will be provided, see above 2) while deadlines to appeal remain short (even shorter, given the accelerated rhythm of the procedure). We welcome this development while observing critically the implementation of the new procedure.

### **10. Availability and use of Country of Origin Information (including organisation, methodology, products, databases, fact-finding missions, cooperation between stakeholders)**

- ❖The documentation provided by EASO in this regard is helpful for our work as a legal aid NGO. However, for certain countries or regions it is difficult to get the information required. Moreover, sometimes certain reports seem to have a certain political background, which renders them less helpful.

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

•❖ Various matters about vulnerable applicants remain still alarming: i) traumatized and/or tortured asylum seekers do not receive the treatment necessary, ii) similar problems appear with regard to female asylum seekers, especially if they are victim of domestic violence, iii) inappropriate handling of cases of unaccompanied (potentially) minor asylum seekers: Oftentimes, there is no person of trust allocated in the very beginning (and if, they do not have enough resources). The determination of age is made by methods criticized by pediatrics (see [http://www.swiss-paediatrics.org/sites/default/files/3-4\\_2.pdf](http://www.swiss-paediatrics.org/sites/default/files/3-4_2.pdf), in German) and legal remedies against the determination are very limited, including denial of inspection of files by the person concerned or his/her legal representative. The latter aspect, in combination with the fact that in many cases no formal order (“Verfügung”) is issued by the authorities, prevent the taking of legal remedies. Accordingly, many young asylum seekers who are possibly underage are being treated like adults, including housing with other adults, no access to education, no person of trust etc.

## **12. Content of protection – situation of beneficiaries 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)**

- The current political environment leads to the fact that especially people with temporary protection (“Vorläufige Aufnahme”) are more and more levied with restrictions. E.g., the canton of Zurich just decided to reduce social support for this group significantly. On the other hand, however, as of 1 January 2018 the special tax levied on the income of people with temporary protection has been abolished in order to promote labour market integration.
- Further restrictions on traveling for recognized refugees were voted by the Swiss Parliament (e.g. [https://www.swissinfo.ch/eng/politics/migration\\_swiss-change-policy-for-returning-refugees/44613688](https://www.swissinfo.ch/eng/politics/migration_swiss-change-policy-for-returning-refugees/44613688)). For foreigners with temporary protection, any travelling outside Switzerland is practically impossible for the first three years and also afterwards close to impossible in many cases.
- Access to health care is an issue for many people also after receiving a positive decision. In particular, dental treatments and mental health care are restricted to an absolute minimum.
- Integration in the labour market is challenging due to the two years period of the asylum procedure, during which neither working is permitted (some very restrictive exemptions apply) nor free language classes are mandatorily provided (there are, of course, language classes given by volunteers / communities or even some cantons / towns).
- In general, social integration is not easy due to the oftentimes remote areas where people with protection are supposed to live in many cantons. The change of canton is for people with temporary protection very challenging.
- Family reunification is heavily restricted for people with temporary protection (only after 3 years and only in case of sufficient financial resources). This leads to very unsatisfying situations and the separation of families for years. Currently, two cases against Switzerland are pending before the European Court of Human Rights (no: 13258/18 and 15500/18) in this matter.

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

N/A



**14. Resettlement and humanitarian admission programmes including EU Joint Resettlement Programmes; national resettlement programme (UNHCR); National Humanitarian Admission Programme; Private sponsorship programme/scheme and Ad-hoc special programmes)**

- We would be very much in favor of a sponsorship program similar to the one in Canada. In the current system, no such possibility is given.
- The numbers of people coming to Switzerland under resettlement are very low (2018: 1.598 from Syria and neighboring countries who received refugee status by UNHCR) compared to the need and the Swiss capacity. (<https://www.sem.admin.ch/sem/fr/home/aktuell/news/2019/2019-02-01.html>). Moreover, we became aware of critical methods applied by UNHCR and Swiss authorities in terms of “choosing” eligible refugees. According to the information received from clients, UNHCR withdrew travel permissions on short notice in several cases in order to allocate the slot to another applicant who paid the UNHCR staff. A respective complaint to the UNHCR remained unanswered. Another client was requested to take off his clothes in his resettlement interview with the Swiss authorities, it remains unclear up until today for what reason, and access to files has not been granted.
- The granting of humanitarian visa is way too restrictive and does not provide protection to those people who really need it, since oftentimes a request is denied based on the fact that a return within the time foreseen is not ensured – which is obvious if someone is actually threatened.

**15. Relocation (any relevant developments concerning persons transferred under the EU relocation programme and relocation activities organised under national schemes/on bilateral basis)**

- As part of the European Union's relocation program of asylum seekers, Switzerland has received a total of 1,500 people by the end of 2018 fulfilling thus its commitment and the program was completed therewith (see <https://www.sem.admin.ch/sem/fr/home/aktuell/news/2019/2019-02-01.html>).
- We regret that at the moment there is no follow-up for the current relocation program which would be highly needed in terms of solidarity among the Dublin member states.

**\* 16. Other relevant developments**

*1 character(s) minimum*



- In general, in our view, the main problems in Switzerland during 2018 still remain:
  - (i) long duration of the procedures;
  - (ii) lack of access to legal aid;
  - (iii) prohibition to work during the procedure;
  - (iv) lack of systematic language courses during the asylum procedure.
- As of March 2019 the new asylum procedure will be put in place with the main objective to accelerate procedures. The new system will provide asylum seekers with free legal aid and representation by central and cantonal authorities. We consider this as a positive development while observing critically the implementation of the new policy.
- The ‘Initiative for auto-determination’, referendum scheduled in November 2018 which would lead to supremacy of Federal Constitution over international treaties, was rejected by the Swiss electorate. However, this initiative made the UN Rights Committee to urge Switzerland to introduce a control mechanism to ensure that referendums comply with international human rights law before being presented for a popular vote.
- The Swiss Government decided finally not to attend the conference for the formal adoption of the Global Compact for Safe, Orderly and Regular Migration stating that it will wait for parliamentary debates on the issue during the forthcoming winter session before giving the migration pact its final approval.
- In its Report 2017/2018 Amnesty international expresses its concern about the use of disproportionate force during the deportation of migrants and rejected asylum-seekers (<https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>) and, in general, about tougher regulation and policy in the field of asylum (<https://www.amnesty.ch/fr/sur-amnesty/publications/rapport-amnesty/annee/2018/suisse>)
- Eritrea: In July 2018, the Swiss Federal Court ruled (E-5022/2017) that the threat of being forced into the national service in the event of a return to Eritrea, does not violate the prohibition of forced labour (Article 4 of the European Convention on Human Rights ECHR) nor the prohibition of torture and inhuman treatment (Article 3 ECHR). It justified its decision by claiming that the situation for returnees does not extend the critical line of forced labor.
- Ethiopia: In the beginning of 2018 a return agreement was concluded between the EU and Ethiopia and Switzerland collaborated there. The participation of the Ethiopian secret services in the procedure has been strongly criticized (see e.g. <https://www.tagesanzeiger.ch/schweiz/standard/Schweiz-steigt-bei-heiklem-Asyldeal-mit-Aethiopien-ein/story/20929320>, <https://www.osar.ch/news/archives/2019/ethiopie-un-accord-discutable-noffre-pas-de-garanties.html>).

## References and Sources

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**\* 17. Please provide links to references and sources and/or upload the related material in pdf format using the following box**

1. <https://www.asylumineurope.org/reports/country/switzerland>
2. <https://www.osar.ch/pays-dorigine/les-etats-de-dublin/italie/dublin-returnee-monitoring-project-drm.html>
3. <https://www.amnesty.ch/de/ueber-amnesty/publikationen/amnesty-report/jahre/2018/schweiz-bekanntnis-zu-menschenrechten-und-voelkerrecht>
4. <https://www.ecre.org/un-rules-against-expulsion-of-victim-of-torture-from-switzerland-to-italy/>
5. <http://library.fes.de/pdf-files/bueros/budapest/15099.pdf>

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## Consent for making the input publicly available

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\* Do you consent on making your input available on the EASO website?

Yes

No

## Case law

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Please include relevant case law and/or submit cases to [EASO Portal IDS on Caselaw](#)

## Contact details

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\* Name of the contributing stakeholder

Contact person, Role

\* Email

\* I accept the provisions of EASO [Legal and Privacy Statements](#)

### Contact

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