OHCHR: Call for inputs Report on Externalization of Migration and the Impact on the Human Rights of Migrants

Commentary by AsyLex Regarding Switzerland

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A. About the Commenting Organization

AsyLex is an independent Swiss NGO offering free online legal support to asylum seekers and refugees. Since 2017, it has supported over 15 '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 16, 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.

We welcome the Special Rapporteur on the Human Rights of Migrants' call to receive relevant information for his report to the 80th session of the General Assembly on the externalization of migration. We thank the Special Rapporteur for the opportunity to contribute by sharing our practical experience and general concerns with regards to Switzerland's externalization practices.

B. Responses to the Special Rapporteur's Questions

Art. 14, paragraph 1 of the Universal Declaration of Human Rights recognizes the right to seek and enjoy asylum from persecution."[1] Regardless of the grounds for seeking asylum or eligibility for refugee status, international human rights law unequivocally prohibits the expulsion of any individual when there is a real risk of serious harm to life or physical integrity upon deportation. The principle of non-refoulement is enshrined in the 1951 Refugee Convention[2], the 1984 Convention again Torture[3] and the 2006 Convention for the Protection of All Persons from Enforced Disappearance[4]. The non-refoulement principle is part of customary international law. It is thus an absolute norm and universally binding to all States, whether or not they are parties to the above mentioned Convention.[5]

[1] Art. 14, par. 1, UN General Assembly, Universal Declaration of Human Rights, 217 A (III), 10 December 1948; available at: https://www.un.org/en/about-us/universal-declaration-of-human-rights. [accessed 5 June 2025]
[2] Art. 33, 1951 Refugee Convention, available at: https://www.unhcr.org/media/1951-refugee-convention-and-1967-protocol-relating-status-refugees. [accessed 6 June 2025]
[3] Art. 3, 1984 Convention against Torture, available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading. [accessed 6 June 2025]
[4] Art. 16, 2006 Convention for the Protection of All Persons from Enforced Disappearance, available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced. [accessed 6 June 2025]
[5] *See for example.:* Syahrin, M. A. (2021). The Principle of Non-Refoulement as Jus Cogens: History, Application, and Exception in International Refugee Law. *Journal of Indonesian Legal Studies,* 6(1), 53-82. https://doi.org/10.15294/jils.v6i1.43350. [accessed 6 June 2025]

While Switzerland recognizes the principle of non-refoulement as absolute in nature and has enshrined the ban on refoulement in Art. 5 of the Swiss Asylum Act[6], as well as the respect for international law in the Swiss Constitution[7], AsyLex observes highly concerning developments that threaten the absolute nature of the non-refoulement principle which we intend to bring to the attention of the Special Rapporteur with this submission.

Specifically, this report focuses on two key developments: current political trends that seek to externalize asylum procedures—such as through return hubs or agreements that shift responsibility for processing asylum claims to so-called "safe third countries" (STC)—and Switzerland's financial involvement in strengthening asylum systems in third countries. AsyLex is deeply concerned about the human rights implications of such externalization practices, particularly given Switzerland's insufficient assessment and monitoring of its partners' compliance with fundamental rights standards. Moreover, these developments risk gradually eroding the absolute nature of the non-refoulement principle. The prioritization of political objectives—such as curbing migration—over a rights-based and dignified asylum process is, in our view, highly alarming.

1. An Alarming Trend Towards Externalization: Political Attempts to Outsource Migration

International legal guidance, including from UNHCR, strongly emphasizes that externalization practices often violate international law, including the principle of non-refoulement and the right to access asylum, and highlights the inherent risks in outsourcing asylum procedures and delegating responsibility to third countries that may not provide adequate protection.[8]

At European-level, concerning developments regarding the externalization of asylum procedures are increasing, including efforts to establish so-called 'return hubs'[9] in third countries, as well as proposals to broaden the category of third countries to which an asylum seeker may be transferred by loosening the connection criteria–a key safeguard that currently requires a meaningful link between an asylum seeker and the so-called STC to which they may be transferred[10].

While the expansion of the STC principle as stipulated in the EU Pact on Migration and Asylum is currently not applicable to Switzerland and Switzerland has not yet formalized any return hub agreements, recent years saw persistent efforts by members of parliament to push for such initiatives. In 2021, a parliamentary motion by the Swiss People's Party (SPP) called on the Federal Council to draft legislation which allows for the establishment of asylum centers abroad.[11] Similarly, creating a legal basis to accommodate asylum seekers in an STC while their asylum request is being processed – and to have them remain there even if asylum is granted – was proposed to the Federal Council.[12] Both

[6] Swiss Asylum Act, Art. 5 https://www.fedlex.admin.ch/eli/cc/1999/358/en?msclkid=c7f287a9c7ae11ec84162511ff3b9165&print=true
[7] Art. 5(4), 1999 Swiss Constitution, available at: https://www.fedlex.admin.ch/eli/cc/1999/404/en [accessed 6 June 2025]
[8] *See for example*: UN High Commissioner for Refugees (UNHCR), *UNHCR Note on the "Externalization" of International Protection*, 28 May 2021, https://www.refworld.org/policy/legalguidance/unhcr/2021/en/121534. [accessed 09 June 2025]
[9] *'Return hubs' are centers in third countries in which asylum seekers would await the outcome of their asylum decision. In response to a number of European countries pushing for the establishment of 'return hubs' in third countries, the EU Commission is currently pushing for the inclusion of return hubs in upcoming legislation, which was welcomed and described "as a possible deterrence for irregular migration" by "Austria, Bulgaria, Czech Republic, Denmark, Germany,* Greece, Italy, Latvia, and Malta". *See*: https://www.euronews.com/my-europe/2025/02/04/exclusive-eu-commission-poised-to-propose-controversial-migrant-return-hubs [accessed 4 June 2025]
[10] *The most recent proposal under the 2024 agreement on the Asylum Procedures Regulation, as part of the new EU Pact on Migration and Asylum, significantly dilutes this criteria, requiring merely that an individual have transited through the STC or that an agreement exists between the STC and the EU. S*ee: European Commission: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2024/1348 as regards the application of the 'safe third country' concept. COM/2025/259 final. 20.05.2025. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52025PC0259. [accessed 3 June 2025]
[11] Motion Nr. 21.3785, «Die Schweiz soll dem Beispiel Dänemarks folgen und Zentren für Asylsuchende ausserhalb von Europa schaffen», submitted by Quadri Lorenzo on 17 June 2021. https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20213785. [accessed 3 June 2025]
[12] Motion Nr. 21.3992, «Gewährleistung des Schutzes von Asylbewerbern in einem sicheren Drittstaat», submitted by SPP on 14 June 2021. https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20213992. [accessed 3 June 2025]

motions argued that such measures would benefit Switzerland by reducing its attractiveness as a reception country and deterring asylum seekers from seeking refuge. In 2023, another motion by the SPP called on the Federal Council to present a concrete legal proposal to carry out asylum procedures in third countries.[13] While the motion was framed as a measure to combat human trafficking and smuggling, it explicitly stated the aim of minimizing the number of people reaching Switzerland. Also in 2023, a member of the Free Democratic Party (FDP) demanded the establishment of a pilot project of sending Eritrean nationals to asylum centers in third countries.[14]

While all of these motions have been denied by the Federal Council, in February 2024, the Federal Council accepted a postulate which called for an analysis of potentially "outsourcing asylum procedures and expulsion enforcement".[15] The Federal Council argued that "[it] is of the opinion that it is appropriate to present the most recent efforts and discussions at European level as part of a current analysis and to examine their compatibility with Swiss law and international obligations."[16]

AsyLex is deeply concerned about the implications of these developments toward externalization of the asylum procedure, wherein the acceptance of the most recent postulate is particularly alarming. While the outcome of the forthcoming report remains unknown, AsyLex fears that the Federal Council may follow political momentum aligned with a broader European normalization of externalization and attempts of deterrence—rather than firmly rejecting these approaches in light of Switzerland's human rights and international obligations.

Our concerns regarding compliance with the non-refoulement principle is based on our observations of Switzerland's current deportations to STCs. Often, both systemic human rights violations and individual abuses asylum seekers have previously suffered in those countries are ignored: in over 75% of individual cases we brought before UN human rights treaty bodies such as the CAT, CRC, and CEDAW and CERD interim measures were issued to prevent deportation on grounds of a real-risk of non-refoulement violations. A substantial number of these cases involve clients facing deportation to countries that Switzerland designates as STCs, including Croatia, Greece, Slovenia, and Bulgaria.

In light of Switzerland's already inadequate assessment of the risk of refoulement, AsyLex is highly concerned about further third-country agreements, as we seriously question how compliance with human rights standards by migration authorities and in asylum centres abroad would be effectively monitored. Furthermore, there is a pressing question about what connection criteria would be applied to determine the eligibility of third countries to receive transferred asylum seekers, given the risks associated with sending individuals to places with which they have little or no personal ties or knowledge.

2. Funding Human Rights Violations Abroad: Switzerland's Current Financial Engagement in Equipping Migration Authorities in Third Countries

AsyLex' concern about insufficient monitoring of third country partners' compliance with fundamental rights are grounded in Switzerland's current equipping of migration authorities abroad.

[13] Motion Nr. 23.3950, «Paradigmenwechsel in der Asylpolitik. Unterbinden von Migrationsrouten, Bekämpfung von Schlepperwesen und Kriminalität», submitted by Chiesa Marco on 16 June 2023. https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20233950. [accessed 3 June 2025]
[14] Motion Nr. 23.3176, «Rückführung von Eritreern, deren Asylantrag abgelehnt wurde. Lancierung eines Pilotprojekts in einem Drittstaat», submitted by Müller Damian on 15 March 2023. https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20233176 . [accessed 3 June 2025]
[15] Postulate Nr. 23.4490, «Auslegeordnung zu Asylverfahren und zum Wegweisungsvollzug im Ausland», submitted by Caroni Andrea on 22 December 2023. https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20234490 . [accessed 3 June 2025]
[16] Ibid.

One troubling example of this is Switzerland's funding of so-called 'safe areas' for unaccompanied migrant children in the Closed Controlled Access Areas (CCAC) in Greece. Intended to provide a protected environment where unaccompanied children receive primary support and assistance upon arrival, children are effectively detained under precarious conditions in fenced, confined sections of the CCAC. The situation is well known: lawyers and humanitarian workers on the ground have consistently documented alarming conditions, including overcrowding forcing children to sleep in shifts on the floor, a lack of basic hygiene, and inadequate access to food and medical - including psychological - support and treatment.[17]

Rulings from both the European Court of Human Rights (ECtHR)[18] and the Greek Administrative Court[19] recognize these 'safe areas' as de facto detention centers. Despite these legal findings and numerous reports about the appalling conditions, Switzerland continues to fund these facilities. From January 2024 to 15 June 2025, Switzerland allocated over 4 million CHF to support 'safe areas' on the islands of Samos, Leros, Chios, and Kos.[20] This funding is part of the Swiss-Greek Cooperation Programme, which aims to "strengthen asylum procedures, infrastructure and accommodation for vulnerable migrants, integration, and voluntary return," and forms thus part of a broader externalization strategy, ensuring that those minors do not continue their flight towards Switzerland.[21]

However, the conditions in these 'safe areas' reveal a lack of effective monitoring to ensure respect for fundamental rights. A Swiss delegation visiting Samos in early February 2025 confirmed warnings repeatedly issued by frontline organizations, that essential services such as food distribution, hygiene, and psychosocial support were "compromised." According to an investigative report, the Swiss embassy internally expressed "serious concerns over the escalating situation," revelations which have reportedly prompted Swiss authorities to consider withdrawing funding.[22]

Based on these information, detailed reports from the Human Rights Legal Project (HRLP) operating in Samos, and direct communication with children held in these 'safe areas,' AsyLex has concluded that these children are effectively subjected to arbitrary detention in the CCAC. Thus, together with HRLP, AsyLex filed an Urgent Action request to the UN Working Group on Arbitrary Detention (WGAD) on behalf of five children representing the broader structural problems. The WGAD is yet to assess the Urgent Action request.

Given Switzerland's awareness of the situation and latest developments—including the most recent evacuation of the 'safe area' of Samos[23] — it is imperative that Switzerland publicly acknowledge its responsibility and launch a thorough investigation into its funding and oversight practices.

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[17] Emmanouilidou, L. et al. (31 March 2025). *Unaccompanied Children Sleep on the Floor in Shifts in Greece's 'Model Camps'. The EU is Aware*. Solomon. https://wearesolomon.com/mag/focus-area/migration/unaccompanied-children-sleep-on-the-floor-in-shifts-in-greece-model-camps/. [accessed 03 June 2025]

[18] ECtHR, T.A. and others v. Greece, no. 152932/20, 03.10.2024. Available at: https://hudoc.echr.coe.int/#%7B%22itemid%22:%5B%22001-236050%22%5D%7D.

[19] ADMINISTRATIVE COURT OF SYROS - DECISION AP7/2025, 21 February 2025.

[20] Swiss Federal Department of Foreign Affairs. *Safe Areas for Unaccompanied Migrant Children (Samos, Leros, Chios and Kos islands)*. https://www.eda.admin.ch/countries/greece/en/home/schweizer-beitrag/second-swiss-contribution/projekte/Safe_Areas_for_Unaccompanied_Migrant_Children.html?_x_tr_sl=en&_x_tr_tl=de&_x_tr_hl=de&_x_tr_pto=sc. [accessed 03 June 2025]

[21] Swiss Federal Department of Foreign Affairs (May 2024). *Factsheet Greek Cooperation Programme May 2024*. https://www.eda.admin.ch/content/dam/countries/countries-content/greece/en/Factsheet_May%202024.pdf. [accessed 03 June 2025]

[22] Emmanouilidou, L. et al. (31 March 2025). *Unaccompanied Children Sleep on the Floor in Shifts in Greece's 'Model Camps'. The EU is Aware*. Solomon. https://wearesolomon.com/mag/focus-area/migration/unaccompanied-children-sleep-on-the-floor-in-shifts-in-greece-model-camps/. [accessed 03 June 2025]

[23] Human Rights Legal Project, (1 June 2025). All Unaccompanied Children Relocated From the Samos CCAC, Following HRLP Intervention. https://www.humanrightslp.eu/post/all-unaccompanied-children-relocated-from-the-samos-ccac-following-hrlp-intervention. [accessed 03 June 2025]

3. The Solidarity Mechanism of the European Pact on Asylum and Migration: A Crucial Crossroad

The new EU Pact on Migration includes provisions for a "solidarity pool", requiring EU member States to support each other in situations of "migratory pressure". This may take effect through relocation of applicants for international protection, financial contributions to i.a. reintegration, border management and actions in third countries, or alternative measures such as capacity building.[24] While participation in the solidarity mechanism is not legally binding for associated states, including Switzerland,[25] they explicitly have the option to participate, which the Swiss Federal Council has proposed to do. At this stage, however, it is unclear which of the proposed solidarity measures Switzerland would adopt as part of its engagement— and whether the proposal would be approved by parliament and, potentially, the Swiss electorate.[26]

While AsyLex appreciates the Federal Council's willingness to participate in the solidarity pool, we believe that it is crucial which solidarity mechanism Switzerland chooses to adopt. Given the documented risks of refoulement associated with externalization practices and the absence of effective oversight for financial support to migration authorities abroad, we are concerned that funding measures such as border enforcement, returns, or the operation of closed control centers at the EU's external borders could further heighten the threats to fundamental rights already observed. Rather, we urge Switzerland to process more asylum claims in Switzerland and relocate recognized refugees, ensuring compliance with fundamental rights locally.

C. Recommendations

In light of the above raised concerns, we invite the Special Rapporteur to include the following recommendations into its report for the 80th session of the General Assembly:

1. States must avoid any externalization practices that risk breaching the principle of non-refoulement or asylum seekers' right to seeking protection.
2. States must implement transparent, thorough monitoring and clear accountability mechanisms for all parties involved in cooperation with migration authorities in third countries.
3. Regulations on the STC principle must not allow transferring asylum seekers to countries where they lack ties or access to effective protection.
4. States must prioritize solidarity in hosting refugees and processing asylum seekers before providing financial support to migration authorities abroad, ensuring that the fundamental rights and well-being of asylum seekers remain the highest priority.

[24]European Union: Council of the European Union, European Union: European Parliament, *Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013*, 32024R1351, 14 May 2024 Art. 56 ff,, https://www.refworld.org/legal/reglegislation/council/2024/en/148011. [accessed 09 June 2025]
[25] Ibid.
[26] Federal Council Press Release of 16 May 2025. OUI AU PACTE EUROPÉEN SUR LA MIGRATION ET L'ASILE, PARTICIPATION SOUS CONDITION AU MÉCANISME DE SOLIDARITÉ. https://www.parlament.ch/press-releases/Pages/mm-spk-n-2025-05-16.aspx?lang=1033. [accessed 09 June 2025]