

Zurich, 14<sup>th</sup> of July

Universal Periodic Review of Switzerland, 4<sup>th</sup> Cycle

**Stakeholder report by FIZ Advocacy and Support for Migrant Women and Victims of Trafficking**

This stakeholder report was prepared by FIZ Advocacy and Support for Migration Women and Victims of Trafficking for the Universal Periodic Review (UPR) of Switzerland in 2023.

In the following, FIZ is analyzing the implementation of recommendations made to Switzerland in its previous UPR with regards to the subject «Right to Life, Liberty and Security» and with links to the subjects «Refugees and Asylum Seekers» and «Migrants».

The report references the following recommendations under the 3<sup>rd</sup> Cycle of the UPR of Switzerland:

- 146.61 Seriously combat human trafficking and sexual exploitation, ensure victim assistance, prosecute human traffickers, as well as enhance further cooperation with countries concerned (Thailand #1)
- 146.62 Take effective measures in ensuring that the victims of trafficking, especially women, are protected and supported in an appropriate manner (Bosnia and Herzegovina #2)
- 146.63 Prevent and combat trafficking in persons and intensify the protection of victims (China #3)
- 146.64 Review the national action plan against trafficking, strengthening coordination between Confederation, cantons and civil society to ensure a harmonised, robust and victim-oriented response (United Kingdom of Great Britain and Northern Ireland #1)
- 146.65 Adopt a new National Action Plan against Trafficking in Persons with a gender perspective which guarantees the protection of victims without any type of discrimination, in particular regarding their migration status (Honduras #1)
- 146.66 Follow up on offences linked to trafficking of persons irrespectively of the victim's immigration status, in order to prevent the victim from being criminalized during the procedure (Mexico #1)
- 147.46 Adopt a new action plan against trafficking, reduce the time taken to issue residence permits and remove disparities thereof between cantons and remove structural and individual obstacles to work and training for migrants to combat racial discrimination through legal and administrative measures (Kenya #2)

<p><b>1</b></p>	<p><b>Unconditional and sustainable support for victims of trafficking</b></p> <p>Based on the Swiss Victim Assistance Act (see <a href="#">Art. 17 in connection to Art. 3 of the Swiss Victim Aid Act</a>) Victims of Trafficking (VOTs) who have been subjected to exploitation abroad (not on Swiss territory) will not receive any state financed support. This leads to unequal treatment, especially affecting (potential) VOT cases in the asylum procedure: for VOTs who have been exploited in another country or on the migration route the Swiss state does not provide any victim support. To the contrary, persons who have been exploited in another country are regularly returned (within the framework of the Dublin system f.ex.) to the very country where the exploitation took place.</p>	<p>Ensure that – in line with the Council of Europe Convention (CoE) on Action against Trafficking in Human Beings and the Istanbul Convention – counselling and financial support are provided in all cases of (potential) VOTs, so that access to specialized accommodation, counselling, translation, material and medical assistance is granted, regardless of where the exploitation took place.</p>
<p><b>2</b></p>	<p><b>Taking into account special needs throughout the asylum procedure</b></p> <p>The new asylum procedure has led to an improvement with regards to the efficiency. However, no improvement of the overall situation of VOTs seeking asylum has been reached. The accommodation conditions in the federal reception centres remain absolutely inadequate for VOTs. Even though concerns have been raised, the respective government authorities did not implement relevant measures such as the elaboration and implementation of the concept for the accommodation for vulnerable asylum seekers (which is due since 2019). Moreover, there is no systematic triaging of (potential) VOTs to specialized services during the asylum process. Thus, identification of VOTs is hindered and their right to access to specialized counseling services not granted.</p>	<p>Ensure that the needs of particularly vulnerable persons such as VOTs are assessed and taken into account in a systematic manner and during the whole asylum procedure.</p> <p>Identification by and access to specialized organizations must be ensured. Direct contact with organizations specialized on trafficking in persons (TIP) issues must thus be proactively facilitated.</p> <p>Provide accommodation and infrastructure adapted to the specific needs of vulnerable persons. In cases where this is not possible, ensure accommodation for VOTs in specialized institutions outside the asylum structures.</p>
<p><b>3</b></p>	<p><b>The application of the Dublin Convention</b></p> <p>Around 80-90% of potential VOTs seeking asylum are denied access to the procedure in the Swiss asylum system due to the Dublin-law. Switzerland applies the Dublin-provisions very strictly, even in cases the exploitation of a person seeking asylum in Switzerland took place in the respective Dublin-country. Even though the risk of re-</p>	<p>If it is in the interest of the VOT, refrain from arraying a Dublin-return. Instead, administer the competence to examine the asylum application in cases of vulnerable persons such as VOTs seeking asylum in Switzerland.</p> <p>Provide in-depth analysis regarding the high risk of inhuman living conditions without any support from the State and</p>

	<p>trafficking upon return to the Dublin-country is extremely high in these cases, it takes an appeal to the Federal Administrative Court and the reference to the legal guarantees of VOTs, in order for a case to potentially be processed in the Swiss asylum system. If it is in the interest of the VOT to refrain from the Dublin procedure, their asylum claim should be processed in Switzerland.</p>	<p>of ultimately being re-trafficked when returned to a respective Dublin-state and offer protection accordingly.</p> <p>In cases of voluntary return ensure the full range of protection guarantees foreseen under the CoE Convention.</p>
<p><b>4</b></p>	<p><b>National standards and coordination mechanisms</b></p> <p>Increased efforts are needed in the area of prevention, investigation and prosecution of all forms of human trafficking, including human trafficking for labor exploitation. To this end the coordination between the federal government, cantons and specialized civil society organizations must be institutionalized at the federal level. Cantonal disparities regarding victim protection, criminal proceedings against perpetrators and sensitization on the issue of trafficking of relevant actors are still highly prevalent. Potential victims are thus often not recognized as such and are unable to enjoy protection from criminalization and/or immediate deportation, or from reprisals by perpetrators. Parallel to strengthening national coordination, harmonized and effective victim-centered protection provisions, national referral mechanisms and standard operation procedures (SOPs) must be established and implemented. Moreover, there is still no explicit legal definition of labor exploitation in Art. 182 Swiss Criminal Code (SCC). However, such a legal definition is needed so that corresponding crimes are no longer prosecuted as violations under the Labor Code but as trafficking crimes.</p>	<p>Establish binding regulations to ensure identification and protection of victims and prosecution of perpetrators in TIP cases follow victim-centered standards (such as the principle of non-punishment).</p> <p>In order to ensure implementation throughout the whole national territory establish effective coordination mechanisms at the national level.</p> <p>Include an explicit legal definition of labor exploitation in Art. 182 SCC. Furthermore, establish a legal mandate for work inspectors to monitor and denounce violations of Article 182 of the Criminal Code.</p>
<p><b>5</b></p>	<p><b>Residence permits for victims of trafficking</b></p> <p>Residence permit are not automatically granted to VOTs – they are often conditional on cooperation with state authorities. There is only a discretionary provision in the Foreign Nationals Act that enables cantons to grant a residence permit when the victim has cooperated with the criminal prosecution authorities, or because their</p>	<p>Ensure that victim’s rights, in line with international provisions, are applied in a unified and equitable manner across all cantons. Thus, VOTs are to be granted renewable residence permits on account of their personal situation and regardless of cooperation with state authorities.</p>

	<p>personal situation does not permit a return to their country (humanitarian permits based on personal hardship). This leads to great disparities between cantons. The deadlines for reflection and recovery are also at the discretion of the cantons and not applicable to victims who have also submitted a concomitant request for asylum. All this results in discrimination and is incompatible with international standards.</p>	
<p><b>6</b></p>	<p><b>Right of residence for victims of domestic violence</b></p> <p>The situation of victims of domestic violence is still extremely precarious. The cantonal authorities and the State Secretariat of Migration (SEM) do not hesitate in applying the significant margin of maneuver to the detriment of the victims. This demonstrates the need to introduce unified standards and better training of the relevant actors. The criterion set in the federal directives relating to the implementation of the Foreign National Act that states the violence suffered must be of a systematic nature must be abandoned – it is too restrictive and does not take into account the complex nature of the phenomenon of domestic violence. The aim of the legislator as well as of international provisions under the Istanbul Convention to protect migrant victims is thus not respected. Many of the affected migrant victims dare not leave a violent partner for fear of being deported. This is why an amendment of Art. 50 of the Foreign Nationals Act is needed urgently.</p>	<p>The Confederation is called to amend Art. 50 of the Foreign Nationals Act to render it more flexible. Furthermore, it must be ensured that the provisions regarding humanitarian residence permits on the grounds of personal hardship are specifically detailed so that the cantons can apply them in a fair and unified manner.</p> <p>Abandon the criterion of systematic violence as set out in the federal directives on the implementation of the Foreign National Act.</p>

<p><b>7</b></p>	<p><b>The status of minor victims of trafficking</b></p> <p>In this context, it should be pointed out that in cases of doubt, it is assumed by the SEM that (potential) VOTs are adults. In consequence in many cases minor (potential) VOTs do not have access to the protection and rights they are entitled to. This "legal age of majority" is determined by the SEM in the respective cases from one day to the next. The persons concerned are then transferred to adult accommodation structures immediately, whereupon in many cases the minor (potential) VOTs go into hiding and disappear.</p>	<p>The status of minor (potential) VOTs must be recognized and their rights adhered to accordingly.</p> <p>Create support structures for the age group of 18 to 25 year-old vulnerable persons such as VOTs in the asylum system so that the change from minority to adulthood is less drastic and leads to less disappearances.</p>
-----------------	---	--