



**International Convention for
the Protection of All Persons
from Enforced Disappearance**

Distr.: General
14 March 2019
English
Original: French
English, French and Spanish only

Committee on Enforced Disappearances

**Report submitted by Switzerland under article 29
(1) of the Convention, due in 2019^{*}, ^{**}**


[Date received: 21 December 2018]

* The present document is being issued without formal editing.
** The annexes to the present report are available for consultation on the Committee's website.

GE.19-04223 (E) 080719 100719



* 1 9 0 4 2 2 3 *

Please recycle 



Contents

| | <i>Page</i> |
|--|-------------|
| Introduction | 4 |
| Part I: Preparation of the report..... | 4 |
| Part II: General legal framework under which enforced disappearances are prohibited | 5 |
| A. National legislative framework | 5 |
| B. Application of the legal framework for the prevention and prosecution of enforced disappearance and concrete examples | 6 |
| Part III: Article-by-article presentation of the implementation of the Convention | 6 |
| Part IV: Consultation with non-governmental organizations regarding the report | 28 |

List of abbreviations

| | |
|-----|---|
| ATF | Federal Supreme Court judgment |
| FF | <i>Feuille Fédérale</i> (Federal Gazette) |
| RS | <i>Recueil systématique du droit fédéral</i> (Systematic Compendium of Federal Law) |

Introduction

1. On 19 January 2011, Switzerland signed the International Convention for the Protection of All Persons from Enforced Disappearance of 20 December 2006,¹ ratifying it on 6 December 2016. The Convention entered into force for Switzerland on 1 January 2017.
2. When it ratified the Convention, Switzerland declared that, pursuant to article 31, it recognized the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of a violation by Switzerland of provisions of the Convention.
3. Switzerland also declared that, pursuant to article 32 of the Convention, it recognized the competence of the Committee to receive and consider communications in which a State party claimed that another State party was not fulfilling its obligations under the Convention.²
4. In accordance with article 29 of the Convention, Switzerland hereby submits to the Committee a report on the measures taken to give effect to its obligations under the Convention. The present document was written in accordance with the guidelines on the form and content of reports to be submitted by States parties to the Convention, adopted by the Committee at its second session (26–30 March 2012).
5. The common core document for Switzerland, which contains general information about Switzerland and its legal system for all United Nations committees, should be considered an integral part of the present report.³

Part I: Preparation of the report

6. Preparation of the report was coordinated by the Federal Department of Foreign Affairs.
7. The report was prepared with the Federal Department of Justice and Police. The other departments of the Federal Government were consulted, as were the Federal Chancellery and three independent extra-parliamentary commissions: the Federal Commission for Child and Youth Affairs, the Federal Commission on Migration and the Federal Commission against Racism.
8. Furthermore, the Federal Department of Foreign Affairs gave the National Commission for the Prevention of Torture – a body independent of the Confederation and the cantons, established to implement the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – an opportunity to express its views. Through regular visits and continuous dialogue with the authorities, the Commission safeguards the rights of persons held in detention.⁴
9. Owing to the federal division of competences in Switzerland, the 26 cantons were involved in preparing the report and in the related consultation. They were able to make comments and propose additions. Moreover, the Conference of Cantonal Governments and the Conference of Cantonal Justice and Police Directors were involved in the consultation with the cantons.
10. In addition, a number of relevant organizations and groups had the opportunity to give their opinions on the content of the present document (cf. part IV: Consultation with non-governmental organizations regarding the report).

¹ RS 0.103.3.

² The declaration by Switzerland can be downloaded from the United Nations website at: <https://treaties.un.org> > Depository > Status of Treaties > Chapter IV.16.

³ That document can be downloaded from the website of the Office of the United Nations High Commissioner for Human Rights (www.ohchr.org).

⁴ Activity reports and visit reports are published at: www.cnpt.admin.ch.

Part II: General legal framework under which enforced disappearances are prohibited

11. To incorporate the protective aim of the Convention into national law, the Federal Act of 18 December 2015 on the International Convention for the Protection of All Persons from Enforced Disappearance (hereinafter referred to as “the implementing act”)⁵ and the Ordinance of 2 November 2016 concerning the Federal Act on the International Convention for the Protection of All Persons from Enforced Disappearance⁶ came into effect in Switzerland at the same time as the Convention. In addition, the crime of enforced disappearance was added to the Swiss Criminal Code, prompting amendments to the Code of Criminal Procedure, the Military Criminal Code and the Code of Military Criminal Procedure. These legal measures are aimed at ensuring that the provisions of the Convention are fully implemented in the Swiss legal order.

A. National legislative framework

12. In national law, the Constitution ensures extensive protection from enforced disappearance, based on fundamental rights (see para. 20). In addition to the explicit prohibition on enforced disappearance as a crime against humanity (see para. 39), an explicit prohibition on enforced disappearance has been incorporated into ordinary criminal law (see paras. 25 et seq.) and military criminal law (see para. 31). The specific implementing act (see para. 23) regulates further details of the Convention’s implementation in national law.

13. Switzerland is a State party to various international conventions on protection from enforced disappearance, including:

(a) The European Convention on Human Rights of 4 November 1950, which entered into force for Switzerland on 28 November 1974;

(b) The International Covenant on Civil and Political Rights of 16 December 1966, which entered into force for Switzerland on 18 September 1992;

(c) The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 26 November 1987, which entered into force for Switzerland on 1 February 1989;

(d) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 and the Optional Protocol thereto of 18 December 2002, which entered into force for Switzerland on 26 June 1987 and 24 October 2009, respectively. To ensure the implementation of the Optional Protocol, the Federal Council established the National Commission for the Prevention of Torture, which began operating on 1 January 2010;

(e) The Convention on the Rights of the Child of 20 November 1989, which entered into force for Switzerland on 26 March 1997, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography of 25 May 2000, which entered into force for Switzerland on 19 October 2006, and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure of 19 December 2011, which entered into force for Switzerland on 24 July 2017;

(f) The Council of Europe Convention on Action against Trafficking in Human Beings of 16 May 2005, which entered into force for Switzerland on 1 April 2013;

(g) The Geneva Conventions of 12 August 1949, which entered into force for Switzerland on 21 October 1950, and the Protocols additional thereto of 8 June 1977;

⁵ RS 150.2.

⁶ RS 150.21.

(h) Rome Statute of the International Criminal Court of 17 July 1998, which entered into force for Switzerland on 1 July 2002.

14. The place of the Convention in the hierarchy of norms derives from the monist system in force in Switzerland: an international instrument approved by Switzerland is part of the Swiss legal order and an integral part of federal law. Federal law prevails over cantonal law by virtue of article 49 (1) of the Constitution. The Convention must be applied by courts and authorities in the same way as other instruments of federal law (Constitution, art. 190). For an individual to rely on a provision in the Convention, the provision must be directly applicable. Case law provides the following definition of directly applicable provisions of international law:⁷

- (a) The provision must relate to the rights and obligations of the individual;
- (b) The provision must be justiciable, i.e. sufficiently concrete and clear to be applied to a specific legal case by an authority or court;
- (c) The provision must be addressed to the authorities responsible for applying the law and not to legislative bodies.

B. Application of the legal framework for the prevention and prosecution of enforced disappearance and concrete examples

15. Switzerland has clearly defined administrative procedures enabling a reliable and effective response in the event of a suspected enforced disappearance. The families of missing persons can initiate a search request through the network recently established by the Confederation and the cantons. Once such a request is filed, the case is examined and a record is made of whether it constitutes an enforced disappearance under the Convention (for information on the establishment and operation of the network, see paragraphs 106 et seq.). The Federal Office of Police keeps statistics on requests filed by families regarding possible enforced disappearances and whether they constituted enforced disappearances within the meaning of the Convention. This practice was introduced on 1 January 2017. The data collected can be disaggregated by sex, age, geographical location, number of requests filed with the national authorities and results of the searches. Since the launch of the electronic portal on the Federal Office of Police website, three requests have been filed. None involved enforced disappearances. In all three cases, the authors of the requests were redirected to the competent police stations.

16. Thus, no cases of enforced disappearance within the meaning of the Convention have as yet been reported in Switzerland, at either federal or cantonal level. Therefore, the Swiss authorities have not yet been involved in any investigations or judicial proceedings relating to a case of enforced disappearance.

Part III: Article-by-article presentation of the implementation of the Convention

17. The implementation of the Convention in national law, article by article, is described below.

Article 1 Prohibition of all enforced disappearance

18. Article 1 of the Convention provides that no one should be subjected to enforced disappearance. No exceptional circumstances may be invoked as a justification for enforced disappearance.

19. Article 5 of the Federal Constitution of the Swiss Confederation sets out the principles of the rule of law, under which the activities of the State must have a legal basis (principle of legality). In addition, State activities must be conducted in the public interest

⁷ ATF 124 III 90 or ATF 129 II 249, p. 257.

and be proportionate to the ends sought. In Switzerland, all persons are protected from arbitrary acts on the part of the State. Furthermore, legal proceedings can be brought against the State for the wrongful acts of its agents, in accordance with the rules on the responsibility of States.

20. Various constitutional provisions related to fundamental rights offer guarantees that constitute implicit protection from enforced disappearance. These include the right to protection against arbitrary conduct (Constitution, art. 9), the right to life and personal freedom (Constitution, art. 10 (1) and (2)), the right to a fair trial (Constitution, arts. 29–32) and the right not to be subjected to torture and cruel, inhuman or degrading treatment (Constitution, art. 10 (3)). However, most of these rights are not absolute: some may be limited providing that the requirements of article 36 of the Constitution are respected. The requirement that any restriction on a fundamental right must have a legal basis may be disregarded only in very exceptional circumstances. Other than in cases of serious, direct and immediate danger, significant restrictions must be provided for by a specific law (Constitution, art. 36 (1)). In all cases, restrictions on fundamental rights must be proportionate to the ends sought and never violate the “essence” of those rights.⁸ The prohibition on torture is absolute and never subject to derogation.

21. In addition to its national law, Switzerland is obliged to respect its international commitments. The protection afforded by the Convention, among other instruments, is thus ensured at all times (see para. 14).

Article 2

Definition

22. The definition of “enforced disappearance” for the purposes of the Convention is set out in article 2.

23. In Swiss law, enforced disappearance is defined in criminal law (see paras. 25 et seq.) and for administrative purposes, that is to address situations in which the family of a missing person suspects that he or she is the victim of an enforced disappearance. The administrative definition in article 2 of the implementing act relies on the following four characteristics:

(a) Firstly, the person must be deprived of liberty. This wording covers all forms of deprivation of liberty, including those resulting from the enforcement of sentences and from criminal procedure measures, child or adult protection measures and administrative or military procedures. Given the protective aims of the Convention, the concept necessarily refers to deprivation of liberty in a closed setting;

(b) It is then specified that the deprivation of liberty must result from an act by the State, in other words by a Swiss authority;

(c) The third constitutive element is a refusal to give any indication of the fate or whereabouts of the person;

(d) Finally, the person must be placed outside the protection of the law.

24. The definition contained in the Criminal Code, explained below, also specifies the conditions for criminal responsibility.

25. Swiss criminal law establishing the offence of enforced disappearance (Criminal Code, art. 185^{bis} (1) (Enforced disappearance)) states that a custodial sentence of not less than 1 year is imposed on any person who, with the intention of removing a person from the protection of the law for a prolonged period of time:

(a) On behalf of or with the consent of a State or political organization, deprives that person of liberty and thereafter refuses to give information as to his or her fate or whereabouts; or

⁸ Regarding derogable and non-derogable human rights guarantees, see also article 15 of the Convention on the Rights of the Child and article 4 of the International Covenant on Civil and Political Rights.

(b) On behalf of or with the consent of a State or political organization or in violation of a legal duty, refuses to give information as to the fate or whereabouts of the person concerned.

26. The concept of deprivation of liberty used in article 185^{bis} of the Criminal Code should be understood as a generic one encompassing the more detailed concepts of the Convention (arrest, detention, abduction). This also follows from the preparatory legislative work.⁹

27. Article 2 of the Convention presupposes the involvement of agents of the State or the authorization, support or acquiescence of the State. An agent of the State who is the perpetrator of an enforced disappearance may be acting on the instructions of a superior or on his or her own initiative but making use of the authority and discretion enjoyed on account of his or her position. The condition of action on behalf of the State is thus also fulfilled. The concept of consent used in article 185^{bis} of the Criminal Code is sufficiently broad to encompass authorization and acquiescence, as required by the Convention. As for support, it invariably implies consent, at least by recklessness. It is thus also covered by article 185^{bis} of the Criminal Code.¹⁰

28. Under article 185^{bis} of the Criminal Code, it is also a criminal offence to refuse to give information as to the fate or whereabouts of a missing person. The word “fate” does not only refer to the death of the missing person, but also to anything important that happens to that person, including his or her arrest and the circumstances surrounding it. The “refusal to acknowledge the deprivation of liberty” explicitly mentioned in the Convention is thus included within this refusal to give information on the fate of the missing person.

29. The refusal of information must meet certain criteria. The culpable nature of the refusal may derive from the breach of a legal obligation, causing harm to a legally protected public or private interest. A refusal is also punishable when it is made on behalf of the State, indicating a link between the perpetrator and State authority.

30. Deprivation of liberty followed by refusal to provide information on the fate or whereabouts of the person concerned results in that person being placed outside the protection of the law. The expression “for a prolonged period of time” should be understood not as an objective indication of a relatively long duration, but as a period exceeding the legal time limits applicable to the deprivation of liberty in question, when the deprivation of liberty was originally in compliance with the law. When the deprivation of liberty is illegal from the outset, the placement outside the protection of the law occurs immediately.¹¹

31. The Military Criminal Code contains an identical offence (Military Criminal Code, art. 151*d*).

32. Under both the Criminal Code and the Military Criminal Code, acts preparatory to the commission of the offence of enforced disappearance are punishable in and of themselves (Criminal Code, art. 260^{bis} (1) (f^{bis}), and Military Criminal Code, art. 171b (1) (i^{bis})).

Article 3 **Enforced disappearance without State involvement**

33. Article 3 of the Convention provides that States parties should take appropriate measures to bring to justice those responsible for enforced disappearances in which the State is not involved.

34. The definition of enforced disappearance, whether it constitutes a crime against humanity (Criminal Code, art. 264*a* (1) (e)) or not (Criminal Code, art. 185^{bis}), also includes non-State actors exercising de facto authority or controlling a given territory and covered by the concept of “political organization” used in the Rome Statute. Acts

⁹ Message of 29 November 2013 on approval and implementation of the International Convention for the Protection of All Persons from Enforced Disappearance (hereinafter “message”, FF 2014 437).

¹⁰ See message, FF 2014 437, p. 470.

¹¹ See message, FF 2014 437, pp. 471–472.

committed by criminal groups or individuals fall under the general provisions of the Criminal Code, which establishes false imprisonment and abduction as criminal offences (Criminal Code, arts. 183 and 184).

Article 4

Establishment as a criminal offence in national law

35. Article 4 of the Convention requires the criminal offence of enforced disappearance to be established in national law.

36. When the Convention entered into force for Switzerland on 1 January 2017, an amendment to Swiss criminal law also came into effect in order to establish enforced disappearance as a specific criminal offence (Criminal Code, art. 185^{bis}, and Military Criminal Code, art. 151*d*), in addition to those cases constituting crimes against humanity, which were already offences (Criminal Code, art. 264*a* (1) (e)). Offences against official duty, including abuse of authority (Criminal Code, art. 312), were then also taken into account.

37. Criminal law, in article 185^{bis} of the Criminal Code, explicitly criminalizes enforced disappearance. It thereby provides fundamental safeguards for two legally protected interests: on the one hand, it ensures that individuals deprived of liberty by the State continue to be protected by the law and, in particular, by procedural guarantees; on the other, it ensures that the close friends and relatives of a person deprived of liberty can know the fate of that person (a right deriving from respect for privacy and family ties), in order to spare them the psychological suffering caused by enforced disappearance and the associated uncertainty. Close friends and relatives should thus also be considered victims of the offence (see para. 140).

Article 5

Crime against humanity

38. Under article 5 of the Convention, the widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law.

39. Enforced disappearance was explicitly made punishable under international criminal law in the Rome Statute, which categorizes it as a crime against humanity. However, this instrument covers only offences committed as part of a widespread or systematic attack directed against a civilian population, with knowledge of the attack. Under article 7 (2) (i) of the Rome Statute, the following elements constitute the crime of enforced disappearance:

(a) Deprivation of liberty (with the authorization, support or acquiescence of a State or a political organization);

(b) Refusal to give information on the whereabouts of the missing persons (with the authorization of a State or a political organization, or in breach of a legal obligation);

(c) Intention to remove such persons from the protection of the law for a prolonged period of time. For example, the fact that a victim does not have the possibility of having the legality of his or her detention considered by a court counts as removal from the protection of the law.

40. In order to implement the Rome Statute, the offence of enforced disappearance was introduced in Swiss criminal law in article 264*a* (1) (e) of the Criminal Code, under the heading “Crimes against humanity”.¹² According to that provision, enforced disappearance committed as part of a widespread or systematic attack directed against any civilian population constitutes a crime against humanity.¹³

¹² Cf. message on the amendment of federal laws in order to implement the Rome Statute of the International Criminal Court (hereinafter “message”, FF 2008 3461).

¹³ Regarding the applicable penalties and statute of limitations, see the comments on articles 7 and 8.

Article 6

Criminal responsibility, especially for superiors

41. Article 6 of the Convention requires the criminalization of various forms of participation in an enforced disappearance and determines that superiors should be held criminally responsible.

42. The general rules on participation and commission apply (Criminal Code, arts. 22–25). Thus, instigation is punishable by the same penalty as commission of the offence. Attempted instigation carries the same penalty as attempted commission of the offence (Criminal Code, art. 24). Complicity, which means deliberately assisting the perpetrator to commit an offence, is also punishable, but by a reduced penalty (art. 25). Finally, attempted offences are also punishable, but the judge can reduce the penalty (Criminal Code, art. 22).

43. Military criminal law (Military Criminal Code) regulates the criminal responsibility of superiors and the subordinates acting under their orders. Article 20 of the Military Criminal Code provides that, if the execution of an official order constitutes a criminal offence, the commander or superior officer who gave the order may be punished as the indirect perpetrator of the offence. A subordinate who commits an act on the orders of a superior or by obeying comparably binding instructions is liable to punishment if he or she is aware at the time of the events that the act is punishable. Article 80 (2) of the Service Regulations of the Armed Forces provides that subordinates must not carry out an order if they realize that it requires them to commit a wrongful act. If they nonetheless wittingly collaborate in such an action, they render themselves criminally responsible.

44. In the event of a crime against humanity, the responsibility of the superior is greater: a superior who knows that a subordinate is committing or about to commit a crime against humanity and fails to take the appropriate measures to prevent him or her is liable to the same penalty as the perpetrator (Criminal Code, art. 264k (1); see also article 114a (1) of the Military Criminal Code, read in conjunction with article 109 (1) (e)). Furthermore, a superior who knows that a subordinate has committed a crime against humanity and does not take the appropriate measures to ensure the punishment of the perpetrator is liable to punishment (Criminal Code, art. 246k (2); see also article 114a (2) of the Military Criminal Code, read in conjunction with article 109 (1) (e)).

45. The offence can also be committed by omission (Criminal Code, art. 11, and Military Criminal Code, art. 12a), when there is a strong link between the area of responsibility of the superior and the enforced disappearance and the superior is acting as a guarantor by virtue of his or her supervisory duties.

Article 7

Penalties provided by law

46. According to article 7 of the Convention, each State party is obliged to make the offence of enforced disappearance punishable by appropriate penalties.

47. Enforced disappearance is punishable by a custodial sentence of between 1 and 20 years (Criminal Code, art. 185^{bis}). When it is committed as part of a widespread or systematic attack directed against a civilian population, it constitutes a crime against humanity and the sentence is between 5 and 20 years (Criminal Code, art. 264a). If the crime against humanity is especially serious, in particular where it affects a large number of persons or the offender acts cruelly, a life sentence may be imposed (Criminal Code, art. 264a (2)).

48. The scale of the penalties provided in the Criminal Code is appropriate given the extreme seriousness of the offence of enforced disappearance: the sentence of between 1 and 20 years provided in article 185^{bis} of the Criminal Code is equivalent to the penalty for hostage-taking (Criminal Code, art. 185) or false imprisonment and abduction with aggravating circumstances (Criminal Code, art. 184). Moreover, the minimum sentence of 1 year is the same as the penalty applicable for less serious cases of crimes against humanity (Criminal Code, art. 264a (3)). The offence of enforced disappearance seeks to deny the existence of a person; in addition, its consequences are far-reaching because it has the effect of removing the person concerned from all the safeguards offered by the rule of law. This

intention, along with the refusal to give information on the fate of the missing person, are the characteristic elements of enforced disappearance and distinguish it from abduction or false imprisonment (Criminal Code, art. 183). Enforced disappearance therefore constitutes an aggravated offence.

49. Moreover, the general rules on determination of the sentence (Criminal Code, art. 47) allow for a comprehensive consideration of circumstances, whether aggravating or mitigating. The court must determine the sentence according to the culpability of the offender. This is assessed according to the seriousness of the damage (or threat) to the legally protected interests concerned, the reprehensibility of the conduct and the offender's motives and aims, among other factors. Furthermore, if the offender is guilty of more than one offence, the court imposes the sentence for the most serious offence and increases it appropriately, by up to half the maximum sentence. The court, however, remains bound by the statutory maximum for each form of penalty (Criminal Code, art. 49). The most serious penalty provided in Swiss criminal law is life imprisonment (for example, for murder). Finally, the Criminal Code envisages mitigating circumstances, which can reduce the penalty, even below the statutory minimum stipulated (Criminal Code, arts. 48 and 48a). The cases where this applies include those where the offender has made reparation for the damage caused, insofar as this may reasonably be expected of him or her, and those where the offender acted while he or she was under serious threat.

50. In addition to criminal law, the laws relating to federal and cantonal personnel provide that measures may be taken, in compliance with labour law, in the event of misconduct by persons employed by the State. The law on federal personnel provides for disciplinary measures, that is punitive measures imposed in response to a breach (see article 25 (1) of the Federal Personnel Act). Article 98 (1) of the Ordinance on Federal Personnel provides for the possibility of opening a disciplinary investigation to ascertain whether an employee has breached his or her professional obligations. Such an investigation may be assigned to persons from outside the Federal Government. If a breach is found to have occurred, various disciplinary measures are applicable, depending on the severity of the misconduct (Ordinance on Federal Personnel, art. 99). Furthermore, under article 10 (4) of the Federal Personnel Act, permanent and temporary contracts may be terminated with immediate effect for good cause. The existence of "good cause" is determined in principle on the basis of article 377 of the Code of Obligations. In general, a finding that a criminal offence was committed in the discharge of professional duties constitutes good cause under this article. In their submissions, the cantons referred to the provisions of their cantonal laws on personnel. Again, no special provisions have been incorporated into these laws because the existing norms already provide the necessary means to deal with the offence of enforced disappearance and possible sanctions. In particular, the cantonal regulations provide for the suspension of employees whom there are legitimate grounds for suspecting of having committed a criminal offence, by way of a precaution, or their dismissal with immediate effect.

Article 8

Statute of limitations

51. Article 8 of the Convention requires specific measures regarding the statute of limitations applicable in respect of enforced disappearance, to take account of the special nature of this crime and guarantee the right to an effective remedy.

52. The general rules on the statute of limitations also apply to the offence of enforced disappearance. Enforced disappearance is classed as a continuous crime. Under article 98 (c) of the Criminal Code, the limitation period therefore begins to run only when the criminal conduct ceases, that is once the illegal situation has come to an end. The limitation period for criminal prosecutions is 15 years (Criminal Code, art. 97 (1) (b)). The time limit no longer applies if a judgment is issued by a court of first instance before expiry of the limitation period (Criminal Code, art. 97 (3)). The right to an effective remedy is thus also guaranteed.

53. Furthermore, the law expressly provides that the statute of limitations is not applicable to crimes against humanity (Criminal Code, art. 101 (1) (b)).

54. Article 99 of the Criminal Code sets the limitation period for execution of a sentence:
- (a) A life sentence is subject to a limitation period of 30 years;
 - (b) A custodial sentence of 10 years or more is subject to a limitation period of 25 years;
 - (c) A custodial sentence of at least 5 but less than 10 years is subject to a limitation period of 20 years;
 - (d) A custodial sentence of at least 1 but less than 5 years is subject to a limitation period of 15 years;
 - (e) Other sentences are subject to a limitation period of 5 years.

Article 9 Jurisdiction

55. Article 9 of the Convention describes the situations in which States parties must establish their competence to exercise jurisdiction over the offence of enforced disappearance.

56. Swiss criminal law recognizes the territorial principle (Criminal Code, art. 3 (1)) and the law of the flag (Federal Act on Civil Aviation, art. 97 (1), and Federal Act on Navigation under the Swiss Flag, art. 4 (2)).

57. In general, Swiss criminal law also applies in cases in which the offender or victim are Swiss (Criminal Code, art. 7). However, two additional conditions must be met:

- (a) The offender must be in Switzerland or must be extradited to Switzerland in connection with the offence in question;
- (b) The act must also be punishable *in abstracto* in the State where it was committed;
- (c) Article 185^{bis} of the Criminal Code nonetheless explicitly provides that the second condition does not apply to the offence of enforced disappearance.

58. Finally, article 6 of the Criminal Code, which establishes the jurisdiction of the Swiss authorities over offences committed abroad that Switzerland is obliged to prosecute by virtue of an international agreement, also covers the cases mentioned in article 9 (2) of the Convention.

59. In principle, crimes against humanity come under the jurisdiction of the federal Office of the Public Prosecutor. However, if a case of enforced disappearance is not part of a systematic attack, the offence comes under the jurisdiction of the cantons (Constitution, art. 123 (2)). Given the division of competences between the Confederation and the cantons, it is appropriate for the relevant canton to carry out the investigation if complaints are addressed to the country's authorities.

60. When the personal conditions (Military Criminal Code, arts. 3 et seq.) and territorial conditions (Military Criminal Code, art 10) that render military criminal law applicable are met, crimes against humanity committed in Swiss territory or abroad, including enforced disappearances that are part of a widespread or systematic attack directed against a civilian population within the meaning of article 109 of the Military Criminal Code, are tried by the military courts (Military Criminal Code, art. 109 (1) (e)). If, among the persons involved in a crime against humanity within the meaning of article 109 of the Military Criminal Code, some are subject to military jurisdiction and others to civilian jurisdiction, or if one individual is accused of multiple offences, some of which fall under military jurisdiction and others under civilian jurisdiction, the rules set out in article 221a of the Military Criminal Code apply. The Federal Council may then, at the request of the Armed Forces Attorney General or the Attorney General of Switzerland, decide that all the persons involved should be subject to either military or civilian jurisdiction. Enforced disappearances within the meaning of article 151d of the Military Criminal Code – those that are not committed as part of a widespread or systematic attack directed against a

civilian population – fall under military jurisdiction if the personal conditions for the application of military criminal law (Military Criminal Code, arts. 3 et seq.) are met.

61. Prevention of impunity for offenders: see also para. 70.

Articles 10 to 12

Provisional measures; *aut dedere aut judicare*; right to report and obligation to investigate

62. Articles 10 to 12 of the Convention set out the actions that States parties must take with a view to the effective conduct of criminal proceedings.

63. Procedure is governed by the Code of Criminal Procedure, particularly article 4 (1), which provides that “the criminal justice authorities are independent in applying the law and bound solely by the law”, and article 6 (1), which provides that “the criminal justice authorities shall investigate ex officio all the circumstances relevant to the assessment of the criminal act and the accused”. The offence of enforced disappearance (Criminal Code, art. 185^{bis}) is prosecuted ex officio. It should also be noted that, in Switzerland, the obligation to establish the facts is a general principle of any criminal procedure (see, in particular, articles 6 and 139 of the Code of Criminal Procedure). Furthermore, the procedural guarantees enshrined in articles 29 (1) and 30 (1) of the Constitution already provide constitutional protection of the right to due process.

64. Owing to the systematic separation between the judiciary and the executive and, within the executive, between the custodial authority and the enforcement authority, mutual oversight is ensured.

65. The Code of Criminal Procedure also provides that any person acting for a criminal justice authority must recuse himself or herself if he or she has a personal interest in a case or if he or she may not be impartial for other reasons, in particular owing to friendship with or enmity towards a party or his or her legal counsel (Code of Criminal Procedure, arts. 56 and 57).¹⁴ Recusal can also be requested by a party (Code of Criminal Procedure, art. 58). These rules apply to the police and the public prosecutor’s office as well as to the courts. In this regard, the canton of Thurgovia indicated that, in practice, if an employee of the public prosecutor’s office or the cantonal police is involved in a proceeding, the case is assigned to a special prosecutor from another canton.

66. Personnel law and disciplinary measures: see paragraph 50.

67. Article 36 of the Vienna Convention on Consular Relations of 24 April 1963 guarantees that prisoners can communicate with the competent representative of their State (on this subject, see paragraph 103).

68. Jurisdiction: see paragraphs 56 et seq.

69. Switzerland takes measures to prevent suspects from fleeing: when an extradition procedure is instituted, the rule is to place the person concerned in detention (Federal Act on International Mutual Assistance in Criminal Matters, art. 47). When an arrest is made for the purposes of extradition, provisional measures may also be taken, such as the seizure of objects and assets that may serve as evidence or the search of premises (Federal Act on International Mutual Assistance in Criminal Matters, art. 45). Moreover, for the purposes of mutual assistance, provisional measures may be taken very quickly (Federal Act on International Mutual Assistance in Criminal Matters, art. 18).

70. To prevent impunity for offenders, Switzerland complies with the principle of *aut dedere, aut judicare*. The Government examines formal extradition requests sent to it by foreign States. It authorizes extradition if all the conditions are met (on this subject, see paragraphs 81 et seq.). If they are not met, the requesting State can, either spontaneously or at the invitation of the Swiss authorities, delegate to Switzerland the criminal proceedings or execution of the custodial sentence for which the extradition was initially requested (Federal Act on International Mutual Assistance in Criminal Matters, arts. 37, 85–87 and 94–99). If no request for delegation of a foreign prosecution is made, Switzerland can itself

¹⁴ In this respect, the appearance of bias is sufficient.

decide to prosecute a person whose extradition is refused, in the circumstances set out in articles 4 et seq. of the Criminal Code.

71. If individuals suspect a case of enforced disappearance, they can not only file a criminal complaint but also avail themselves of a mechanism specially established to ensure respect for the rights enshrined in the Convention (see paragraph 106 for a presentation of the network in question). The necessary information and a request form to initiate the search for a missing person are freely accessible on a website.¹⁵

72. The protection of persons involved in criminal proceedings is governed by the Federal Act on Extra-Procedural Witness Protection. Under this law, tailored extra-procedural measures can be taken to protect a person from any risks he or she may incur by cooperating in a criminal proceeding, including attempts to intimidate him or her.

Articles 13 to 15

Extradition; international cooperation for mutual legal assistance

73. Articles 13, 14 and 15 of the Convention concern the obligations of States parties with respect to extradition and set the requirements for international mutual legal assistance.

74. In Switzerland, the Federal Act on International Mutual Assistance in Criminal Matters allows for extensive cooperation in the area of mutual legal assistance. It is applicable *erga omnes*, that is to all States. Cooperation is thus possible on this basis, as long as the principle of double criminality is observed. This means that the offence must be punishable in both the requested State and the requesting State. However, non-coercive mutual assistance measures are not subject to the requirement of double criminality.

75. The legal foundations underpinning mutual legal assistance include the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and the Additional Protocols thereto, which regulate mutual legal assistance between States members of the Council of Europe and with some third States.¹⁶ This Convention is of broad application and therefore also applies to enforced disappearances.

76. There are also several bilateral treaties relating to mutual assistance in criminal matters that may apply in cases of enforced disappearance.¹⁷

77. Regarding extradition, there are many other treaties that may apply between States parties to the Convention. In this area, the European Convention on Extradition of 13 December 1957 and the Additional Protocols thereto, which regulate extradition between States members of the Council of Europe and with some third States, are vitally important.¹⁸

78. In addition, there are several bilateral extradition treaties with other countries such as Argentina, Brazil, Malawi and Uruguay.

79. Since no mutual legal assistance or extradition requests related to enforced disappearance have been made to or by Switzerland, the Swiss authorities cannot provide concrete examples or make any statement on possible obstacles to extradition or mutual legal assistance.

80. An offence will only result in extradition if the act being prosecuted is punishable by a custodial sentence of at least 1 year in both Swiss law and the law of the requesting State (Federal Act on International Mutual Assistance in Criminal Matters, art. 35 (1) (a)). That is the minimum penalty for enforced disappearance under Swiss law (Criminal Code, art. 185^{bis} and art. 264a (1) (e)).

81. As the competent authority, the tasks of the Extraditions Unit of the Federal Office of Justice include transmitting formal extradition requests from Switzerland to foreign States, receiving and processing formal extradition requests from other States and carrying

¹⁵ See www.fedpol.admin.ch > Police cooperation > Search for persons.

¹⁶ RS 0.351.1.

¹⁷ Bilateral treaties relating to mutual assistance in criminal matters have been concluded with, among other countries, Uruguay, Peru, Mexico, Ecuador, Colombia, Chile, Brazil, Argentina and Japan.

¹⁸ RS 0.353.1.

out extradition procedures in Switzerland, in accordance with national law and/or a treaty. In particular, the Federal Office of Justice is competent to order detention for the purposes of extradition if necessary (Federal Act on International Mutual Assistance in Criminal Matters, art. 47) and to make decisions on extradition (Federal Act on International Mutual Assistance in Criminal Matters, art. 55).

82. In addition to checking compliance with the formal requirements for foreign extradition requests (see article 28 of the Federal Act on International Mutual Assistance in Criminal Matters, read in conjunction with article 41), the Federal Office of Justice examines whether the acts alleged in the request are also punishable under Swiss law (double criminality) and the extradition can thus be justified. If the decision on whether to extradite can be based on either national law or treaty law, the favourability principle applies. Unless otherwise provided in law, the surrender of the suspect to the requesting State must be authorized. It must therefore first be verified that there is no procedural or substantive ground to prevent extradition. The person whose extradition is being requested also has the opportunity to state his or her case during the proceeding in question (Federal Act on International Mutual Assistance in Criminal Matters, art. 55 (1)).

83. Article 2 of the Federal Act on International Mutual Assistance in Criminal Matters provides that a request for cooperation in criminal matters (and therefore an extradition request) is inadmissible if the person against whom proceedings are being brought risks becoming a victim of a human rights violation in a foreign country. This proviso also applies in the case of enforced disappearances within the meaning of the Convention. In accordance with article 25 (3) of the Constitution and article 37 (3) of the Federal Act on International Mutual Assistance in Criminal Matters, extradition is refused if the person concerned risks being sentenced to death or subjected to treatment that could violate his or her physical integrity. According to the Federal Supreme Court, there are three categories of State: (1) States whose respect for human rights is not, in principle, in doubt (see paras. 84 et seq.); (2) States for which extraditions may be granted or mutual assistance authorized providing that specific guarantees are obtained; and (3) States for which extraditions are not permitted or mutual assistance authorized because of the real risk of prohibited treatment. The States considered “safe” are States in the first category, that is traditionally democratic States with institutions ensuring the rule of law. They include the majority of States in the Council of Europe and the United States of America and Canada for example. If there are reasons to believe that a person risks becoming a victim of enforced disappearance, it is possible to require guarantees from the requesting State, such that the risk of enforced disappearance is either eliminated or reduced to a level where it is purely theoretical.

84. When it is clear, in a particular case, that it will be necessary to obtain guarantees from the requesting State, the Federal Office of Justice sends the State a formal request to that effect. Such necessity is analysed on a case-by-case basis, considering all the circumstances and the personal situation of the person against whom proceedings are being brought. The type of guarantees to be provided mainly relate to respect for the basic human rights of the person sought, especially the right not to be subjected to prohibited treatment and the right to a fair trial. In addition, after the extradition, the person concerned must be able to communicate freely with the Swiss diplomatic mission in the requesting State and receive unsupervised monitoring visits from Swiss consular representatives. Ad hoc guarantees can also be required, such as specific medical care.

85. It is assumed that the guarantees provided by the requesting State will be observed, in line with the principle of good faith governing inter-State relations. In this context, the international responsibility of the receiving State is engaged. A failure to observe the guarantees provided may result in the termination of extradition relations with Switzerland.

86. In Switzerland, enforced disappearances are not automatically considered political offences. The political or non-political nature of an offence is determined on a case-by-case basis. The decision is made in the first instance by the Federal Criminal Court. There is

currently no case law from either the Federal Supreme Court or the Federal Criminal Court on the offence of enforced disappearance.¹⁹

87. The decisions of the Federal Office of Justice, including those related to detention, can be appealed to the Federal Criminal Court and then the Federal Supreme Court if the case can be considered particularly important (Federal Act on International Mutual Assistance in Criminal Matters, art. 25 (1), and Federal Supreme Court Act, art. 84 (1)). Appeal procedures have a suspensive effect. This means that the transfer to the requesting State of the person against whom proceedings are being brought is delayed until the appeal court has made a final ruling on the extradition.

88. Swiss police forces have brigades specialized in the removal of foreign nationals. These officers, who are also responsible for extradition, are specially trained to ensure the successful handover of the person sought to the requesting State.

89. No specific agreement has been entered into in order to provide assistance to victims of enforced disappearance. However, the Federal Act on International Mutual Assistance in Criminal Matters applies in all cases where criminal proceedings are ongoing.

Article 16

Non-refoulement

90. Article 16 of the Convention prohibits the expulsion, return (refoulement), surrender or extradition by any State party of a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance.

91. The Constitution (art. 25 (2) and (3)) and the European Convention on Human Rights (art. 3) provide protection from expulsion and extradition. It is strictly prohibited to return refugees to the territory of a State in which they will be persecuted (Constitution, art. 25 (2)) or to return a person to the territory of a State in which he or she risks being subjected to torture or other cruel or inhuman treatment or punishment (Constitution, art. 25 (3)). This proviso also applies in the case of enforced disappearance within the meaning of the Convention. The principle of non-refoulement enshrined in article 25 (3) of the Constitution is a peremptory norm of international law and constitutes an essential element of fundamental rights. It is therefore not subject to limitations, even if the person concerned is accused of a crime. The principle of non-refoulement also derives from many other bilateral and multilateral treaties (see also article 3 of the Convention against Torture of 10 December 1984).²⁰ As indicated, this protection from return if there is a risk of torture is supplemented by the prohibition on the return of refugees, enshrined in article 25 (2) of the Constitution. The latter provision reflects the prohibition on return in refugee law, enshrined in article 33 of the Convention relating to the Status of Refugees of 28 July 1951.²¹ Similar protection is ensured by article 5 (1) of the Asylum Act.

92. Guarantee of the non-refoulement principle in the context of requests for mutual legal assistance: see in particular paragraph 83.

93. In Switzerland, asylum seekers are questioned in detail on their reasons for fleeing. In this context, they have the opportunity to express any fear of being subjected to enforced disappearance if they are returned to their country of origin. The State Secretariat for Migration, which is responsible for handling asylum procedures, thoroughly examines each case. If there are substantial grounds for believing that the person in question might be subjected to enforced disappearance in his or her country of origin, Switzerland grants protection.

¹⁹ Judgment RR.2009.94 of the Federal Criminal Court and judgment 136 IV 4 of the Federal Supreme Court mention enforced disappearance, but only tangentially. The essential element of the offence in question was participation in a criminal organization.

²⁰ RS 0.105.

²¹ RS 0.142.30.

Article 17

Deprivation of liberty/obligation to maintain records

94. Article 17 of the Convention regulates in detail the conditions applicable to all instances of deprivation of liberty and calls on States parties to ensure that no one is held in secret detention.

95. The Constitution guarantees freedom of movement and the right to physical and mental integrity (Constitution, art. 10) and states that “no one may be deprived of his or her liberty other than in the circumstances and in the manner provided for by law” (Constitution, art. 31 (1)).

96. Swiss law establishes broad procedural safeguards for persons deprived of liberty. Article 31 (3) of the Constitution, for example, provides that any person placed in pretrial detention has the right to be brought without delay before a judge, who must decide whether the person concerned should remain in detention or be released (see also article 5 (4) of the European Convention on Human Rights).²² Moreover, under article 31 (4) of the Constitution, any person who has been deprived of liberty by a body other than a court has the right to have recourse to a court without delay. These safeguards are enshrined in law (see, for example, articles 220 to 228 of the Code of Criminal Procedure with regard to pretrial detention in the context of criminal proceedings; articles 55, 59 and 108 of the Code of Military Criminal Procedure with regard to military criminal proceedings; and articles 44 and 46 to 48 of the Federal Act on International Mutual Assistance in Criminal Matters with regard to extradition proceedings).

97. The Code of Criminal Procedure provides that coercive measures may be taken only if: they are permitted by law; there is reasonable suspicion that an offence has been committed; the aims pursued cannot be achieved by less stringent measures; and they are justified by the seriousness of the offence (Code of Criminal Procedure, art. 197 (1)). The Code of Criminal Procedure also establishes that coercive measures involving deprivation of liberty must be revoked as soon as: the conditions for their application are no longer met; the corresponding period provided for by the Code of Criminal Procedure or by a court has expired; or the same aim can be achieved by alternative measures (Code of Criminal Procedure, art. 212 (2)). Regarding time limits and the competent authorities, the Code of Criminal Procedure provides that, within not more than 24 hours of making an arrest, the police must bring the arrested person before the public prosecutor (Code of Criminal Procedure, art. 219 (4)). The public prosecutor has a maximum of 48 hours from the moment of the arrest to request the court competent to order coercive measures to issue an order of pretrial detention (Code of Criminal Procedure, art. 224 (2)). The court must rule on the request within not more than 48 hours of receiving it (Code of Criminal Procedure, art. 226 (1)).

98. The accused has the right to appoint a legal counsel to conduct his or her defence (Code of Criminal Procedure, art. 129 (1)) and to communicate privately, at any time, with his or her defence counsel, whether orally or in writing (see, in particular, article 223 (2) of the Code of Criminal Procedure). At the start of the first interview, the accused is informed, in a language he or she understands, that he or she has the right to appoint a defence counsel or to request the assistance of an officially assigned defence counsel, and that he or she may request the assistance of a translator or an interpreter (Code of Criminal Procedure, art. 158). The right to understand and be understood by one’s legal counsel derives first and foremost from the fundamental rights enshrined in the Constitution (art. 29 (2)) and the European Convention on Human Rights (arts. 5 and 6).

99. Anyone who has been deprived of liberty also has the right to inform his or her close friends or relatives (Constitution, art. 31 (2)). Criminal procedure law also requires the authorities to immediately notify the close friends or relatives of an arrested person, except

²² Equally, in civil law, the law on the protection of adults affords full legal protection. According to article 439 of the Civil Code, the person concerned may appeal in writing to the competent court against decisions relating to institutionalization for purposes of care. A statement of grounds is not required for such an appeal (Civil Code, art. 450e).

when otherwise provided by the law (Code of Criminal Procedure, art. 214). If the person arrested is an unaccompanied minor asylum seeker, his or her designated person of confidence or guardian must be notified.

100. Swiss law affords a right of appeal to the close friends and relatives of persons institutionalized for purposes of care (Civil Code, art. 450). The concept of “close friend or relative” should be understood in a broad sense. It refers to someone who knows the person concerned well and who, by virtue of his or her qualities and, most often, his or her relationship with that person, appears suited to defend the person’s interests. In addition to the parents, children and spouse/partner of the person concerned, his or her guardian, doctor, priest or social worker or a person of confidence can challenge his or her institutionalization. Close friends and relatives have a right of appeal and also a right to request, at any time, that the person concerned be discharged (Civil Code, art. 426 (4)). As a general rule, close friends and relatives may also submit a complaint directly to the public prosecutor’s office at any time (article 301 (1) of the Code of Criminal Procedure, read in conjunction with article 12 (b)). In such cases, the criminal prosecution authority has an obligation to establish whether there is reason to believe that an enforced disappearance has occurred and whether the deprivation of liberty was lawful. As victims (see para. 140), close friends and relatives can avail themselves of their own rights, including the right to appeal to the courts.

101. With regard to the law on foreign nationals, the Foreign Nationals Act and the Asylum Act provide for several types of deprivation of liberty: temporary detention (Foreign Nationals Act, art. 73; no longer than three days); detention in preparation for departure (Foreign Nationals Act, art. 75; no longer than 18 months); detention pending return or deportation (Foreign Nationals Act, art. 76; no longer than 18 months); detention under the Dublin procedure (Foreign Nationals Act, art. 76a; no longer than six or seven weeks, depending on the grounds for detention); detention pending return or deportation due to lack of cooperation in obtaining travel documents (Foreign Nationals Act, art. 77; no longer than 60 days) detention for non-compliance (Foreign Nationals Act, art. 78; no longer than 18 months); and detention at the airport or in a detention centre (Asylum Act, art. 22). For minors between the ages of 15 and 18, the maximum duration of detention is 12 months for detention in preparation for departure, detention pending return or deportation, and detention for non-compliance. The detention of minors is rare and only ever occurs as a last resort.²³ Under the law on foreign nationals, the detention of children and adolescents under the age of 15 is prohibited pursuant to article 80a (5), of the Foreign Nationals Act.²⁴ However, a report of the National Council Control Committee on administrative detention of asylum seekers, submitted on 26 June 2018, shows that there are improvements to be made in this area to ensure that the rights of minors are fully guaranteed and to facilitate appropriate and effective data collection. The Federal Council adopted its position on the report on 28 September 2018 and presented the measures it intends to take to implement the recommendations contained therein.²⁵ Detention decision and review procedures are regulated by article 80 of the Foreign Nationals Act (or article 80a for detention under the Dublin Procedure). Only detention pending return or deportation from a reception and processing centre or a special centre (Asylum Act, art. 26 (1^{bis})) may be ordered by the State Secretariat for Migration; the Federal Administrative Court is competent to review this type of detention. All other types of detention are ordered by the authorities of the canton responsible for enforcing the return or deportation. The legality and appropriateness of detention must be reviewed by a judicial authority within 96 hours. One month after this review, the detainee may submit a request for release from

²³ Efforts are being made to supplement canton-specific statistics relating to the detention of minors, including under the law on foreign nationals, so that practices can be reviewed and standardized, where necessary, particularly in the context of the Conference of Cantonal Justice and Police Directors.

²⁴ In criminal law, the detention of minors under the age of 15 is authorized only under very strict conditions (see AFT 142 IV 389).

²⁵ The report of the National Council Control Committee is available at www.parlament.ch/fr. The position of the Federal Council can be consulted here: <http://www.sem.admin.ch/dam/data/sem/aktuell/news/2018/2018-10-02/ber-br-f.pdf>.

detention, which must be ruled upon by a judicial authority within eight working days, following an oral hearing. According to the procedure for the review of detention under the law on foreign nationals, a higher court must be appointed as the cantonal authority of last instance pursuant to article 86 (2), of the Federal Supreme Court Act. By “higher cantonal court”, the Federal Court understands, in the context of appeals in matters of public law, the cantonal administrative court. The law on foreign nationals guarantees the right of foreign nationals in detention to communicate with their legal representative and family (Foreign Nationals Act, art. 81 (1)). Under asylum law, the minimum guarantee established in article 31 (2) of the Constitution applies in the case of detention at the airport. The task of drafting the legal provisions relating to the guarantee of the right to communicate with a legal counsel or a legal representative (Asylum Act, art. 17 (4)) was delegated to and completed by the Federal Council (Asylum Ordinance No. 1, art. 7a (2)). The State Secretariat for Migration informs asylum seekers who file their applications at the airport or at a reception and processing centre, in a language they understand, of their option to appoint a legal counsel or a legal representative and provides them with the means to do so.

102. Article 15a of the Ordinance on the Enforcement of the Return or Deportation of Foreign Nationals specifies what data the cantonal authorities must submit to the State Secretariat for Migration concerning detentions ordered (number of detentions ordered and the duration of each instance of detention; number of repatriations; number of releases; nationality of the detainees; sex and age of the detainees; nature of the detention).

103. Article 36 of the Vienna Convention on Consular Relations of 24 April 1963²⁶ establishes obligations that enable foreign nationals to communicate with their consular authorities. These include the obligation to inform all detainees, without delay, of their right to contact their consular representatives. If a detainee so requests, the authorities must notify, without delay, the consular post of the State of which the detainee is a national regarding his or her situation and pass on all communication addressed to the consular post by the detainee. Consular officials must be authorized to visit nationals of the State they represent, to converse and correspond with them and to arrange for their legal representation, if so requested by a detainee. In Switzerland, these obligations are fulfilled by the authorities responsible for criminal justice and enforcement of sentences, first and foremost the cantonal authorities.

104. In Switzerland, access to places of deprivation of liberty is granted to legally authorized authorities according to cantonal law. Detention centre inspections are conducted with the support of the appropriate representative of the network. The cantons have referred explicitly to the monitoring functions carried out by superior authorities (Zurich, Lucerne, Schwyz, Obwalden, Nidwalden, Basel-City, Basel-Country, Schaffhausen, Appenzell Outer-Rhodes, St. Gall, Argovia, Thurgovia, Zug, Solothurn), parliamentary commissions (Zurich, Lucerne, Ticino, Jura), law enforcement authorities (Basel-City, Solothurn), judicial authorities (Basel-City) and, in certain cases, special monitoring commissions (Zurich, Lucerne, Neuchâtel) or the child and adult protection authority (Schaffhausen). In the Canton of Solothurn, the cantonal commission for the enforcement of sentences, which regularly inspects institutions and interviews detainees, plays an advisory role in relation to the cantonal monitoring authority. The Canton of Neuchâtel reported that the competent authorities of cantons that have signed the cooperation agreement between French- and Italian-speaking cantons (“Concordat latin”) on criminal detention may conduct visits to institutions in other signatory cantons at any time. The National Commission for the Prevention of Torture, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the Subcommittee on Prevention of Torture instituted pursuant to the Optional Protocol to the Convention against Torture have access to all places of deprivation of liberty at all times.

105. Under article 17 (3) of the Convention, State parties must assure the compilation and maintenance of one or more official registers and/or records of persons deprived of liberty. Upon request, these registers and records must be made promptly available to any judicial or other competent authority or institution authorized to consult them. The purpose of this provision is twofold: to enable the authorities to quickly ascertain the whereabouts of a

²⁶ RS 0.191.02.

person sought and to establish his or her fate (the “right to the truth”, which applies particularly to close friends and relatives). In Switzerland, there is no single register of all instances of deprivation of liberty. However, information can be easily extracted from various registers, such as the computerized register of convictions (VOSTRA) and the central migration information system (SYMIC). For the most part, records are kept at the cantonal level and are decentralized, that is to say kept directly by the various institutions concerned. To entrench the register- and record-keeping obligation of places of deprivation of liberty, article 3 of the implementing act establishes an obligation to enter the data listed in article 17 (3) of the Convention in official records. The cantons have confirmed that the obligation to keep records within the meaning of article 17 (3) of the Convention is respected in accordance with the law. Monitoring bodies (see paras. 105 and 109) are usually also authorized to check that records are managed appropriately. In the Canton of Solothurn, in addition to the cantonal monitoring bodies, an external authority conducts regular checks. The collection of these data is a prerequisite for ensuring respect for the right to information of close friends and relatives and for locating a person.

106. The Convention requires that, in the event of a suspected enforced disappearance, the fact that the person sought has been deprived of liberty must be communicated quickly and verifiably. In view of the limited number of missing persons requests filed in Switzerland, the establishment of a centralized register covering all types of deprivation of liberty was deemed to be disproportionate from a technical, financial and practical standpoint. The protection sought by the Convention is therefore provided through the recording of data in various locations and the existence of a network through which information on persons deprived of liberty in a closed setting can be quickly retrieved. This network was set up to ensure that information circulates efficiently and reliably between Switzerland’s various structures. It is composed of a federal coordination service and a coordination service in each canton (see annex), as well as focal points for each canton (for specific information on organization at the cantonal level, see paragraph 109). As part of the process of implementing the Convention and establishing the network, the services concerned received basic training on the operation of the network, once cantonal representatives and their substitutes had been appointed. The cantons have the necessary resources. The organization and coordination of clarifications at the cantonal level are the responsibility of the cantonal coordination services. The Federal Office of Police has been appointed as the federal coordination service in accordance with article 1 of the Ordinance concerning the Federal Act on the International Convention for the Protection of All Persons from Enforced Disappearance. As a general rule, the Federal Office of Police also deals with missing persons requests. It is therefore experienced in searching for missing persons and collaborates effectively with other search services. The network can be used to determine the location of a person deprived of liberty in a closed setting using the following procedure:²⁷

(a) In the event of a suspected enforced disappearance, the location of the person sought must be determined. Under article 5 (1) of the implementing act, before a person can be sought through the network, a request for information must be submitted by a person who has no news of a close friend or relative (see para. 112) and who fears that he or she may have disappeared. Such requests must be substantiated to prevent the misuse of the request procedure. The federal coordination service then immediately decides whether to launch a search and informs the author of the request of its decision, thus taking account of the close friend’s or relative’s need for certainty;

(b) Once a request has been received and the decision to launch a search has been made, the federal coordination service immediately contacts the cantonal coordination services and, if necessary, the federal services responsible for the application of deprivation of liberty. It sets a time limit for the search launched through the network, in accordance with article 4 (3) of the Ordinance concerning the Federal Act on the International Convention for the Protection of All Persons from Enforced Disappearance. The time limit is generally six working days;

²⁷ Cf. arts. 4 et seq. of the implementing act; cf. Ordinance concerning the Federal Act on the International Convention for the Protection of All Persons from Enforced Disappearance.

(c) The cantonal coordination services check whether the missing person is being held in an institution under the authority of their respective cantons by consulting the cantonal registers or by requesting information from the competent authorities. According to article 3 of the implementing act, these authorities are required to submit information at the coordination services' request (see paragraph 105 for information on the obligation to maintain records);

(d) The cantonal coordination services provide information to the federal coordination service as quickly as possible. Where necessary, they also indicate the place of detention and the name of the authority that ordered the deprivation of liberty and provide information on the state of health of the person concerned. The communication of this information to the author of the request is nonetheless subject to the prior approval of the person concerned (see para. 122).²⁸ If that person has not given his or her consent, or if warranted under article 214 (2) of the Code of Criminal Procedure (see para. 123), the author of the request is simply informed that the person sought has not disappeared within the meaning of the Convention.

107. According to article 7 (3) of the implementing act, information must be provided by the coordination service to the author of a request in the form of a decision. The author can also request the federal coordination service to notify him or her by means of a formal decision if it declines to launch a search. This helps to quash any suspicion that the service has failed to act on the request and hence to make a decision thereon. The decision must be reasoned and is subject to appeal in accordance with federal procedure.

108. Pursuant to article 8 of the implementing act, legal remedies are governed by the general provisions of federal procedure, according to which the decisions of the federal coordination service can be appealed to the Federal Administrative Court. The obligation under the Convention to guarantee an effective remedy is therefore satisfied:

- Proceedings before the Federal Administrative Court are governed by the Administrative Procedure Act (cf. Federal Administrative Court Act, art. 37). In principle, the parties have the right to consult the case file. However, article 27 of the Administrative Procedure Act, under which the authorities may refuse to allow the inspection of evidence if essential private interests require that secrecy be preserved, may apply in certain circumstances to prevent close friends or relatives who have been denied access to information concerning the person deprived of liberty from discovering, through their right to consult the case file, the location of that person and the reasons for his or her detention.
- The decisions of the Federal Administrative Court can be appealed to the Federal Supreme Court (cf. Federal Supreme Court Act, art. 86 (1)). Here, too, the law provides that the Court may consider evidence without the parties being present if so required to protect compelling public or private interests (Federal Supreme Court Act, art. 56 (2)).

109. In most cantons (Zurich, Lucerne, Schwyz, Nidwalden, Thurgovia, Neuchâtel, Zug, Solothurn, Fribourg), the role of the cantonal coordination service has been assigned to the authority responsible for the enforcement of sentences and other measures. In certain cases, the legal service (Argovia, Jura), the secretary of the justice department (Grisons) or a prison director (Obwalden) has been assigned the role of coordination service. In the Canton of Argovia, arrangements are made on a case-by-case basis, depending on the situation, although the cantonal police are responsible for directing the procedure. In the Canton of St. Gall, every department concerned by deprivation of liberty within the meaning of the Convention has designated an office responsible for corresponding with the cantonal coordination service. In the Canton of Zurich, additional liaison services have been established within the cantonal departments responsible for managing institutions in which persons are deprived of liberty.

²⁸ Cf. article 6 of the Ordinance concerning the Federal Act on the International Convention for the Protection of All Persons from Enforced Disappearance and article 7 of the implementing act.

Article 18**Access to information on detention**

110. Article 18 of the Convention guarantees access to information on detention to any person with a legitimate interest in such information.

111. As mentioned above, the submission of a request for information by a close friend or relative is a precondition for the launch of a search for a disappeared person through the network. For the purposes of the Convention, the concept of “close friend or relative” should be understood in a broad sense. In addition to family members, it includes other persons with a legitimate interest in obtaining the information requested because of their close relationship with the person in detention, for example, a legal representative. Requests may also be submitted by close friends and relatives living abroad. The right to information is not unlimited; it must not undermine the personal rights of the person concerned (see the comments on article 20 in paragraphs 121 et seq. and the comments on available remedies in paragraph 108).

112. The right to information is supplemented by general obligations to inform that are incumbent upon the authorities:

- In criminal proceedings, article 214 of the Code of Criminal Procedure requires the authorities to inform the close friends and relatives of the person concerned of his or her detention, except where doing so would undermine the investigation or where the person explicitly objects.
- Under the law on foreign nationals, every canton is required to ensure that a person in Switzerland designated by a foreign detainee is informed of his or her detention (Foreign Nationals Act, art. 81 (1)).

113. Access to information in the context of institutionalization for purposes of care is regulated by law. If the person concerned wishes to keep certain facts secret, the court may limit the rights of the other persons involved in the proceedings; this may entail the restriction of close friends’ or relatives’ right to be heard. As close friends and relatives may become parties to the judicial proceedings (Civil Code, art. 439), their right to be informed is guaranteed.

Article 19**Data protection**

114. Article 19 of the Convention regulates the use of personal data collected and/or transmitted within the framework of the search for a disappeared person in order to prevent misuse: such data cannot be used or made available for purposes other than the search.

115. Article 13 (2) of the Constitution provides fundamental protection to all persons against the misuse of their personal data.

116. The Federal Data Protection Act enshrines this principle for the federal authorities: article 4 (3) provides that personal data may be processed only for the purpose indicated at the time of collection or provided for in legislation. Other provisions relating to data processing (contained in articles 4 et seq. and articles 16 to 25 of the Federal Data Protection Act) guarantee that no unjustified infringement of fundamental rights may occur during data processing.

117. The implementing act explicitly defines the data protection requirements applicable to the federal coordination service. Article 9 of the implementing act sets out the conditions under which the federal coordination service may process personal data. Section 2 of the Ordinance concerning the Federal Act on the International Convention for the Protection of All Persons from Enforced Disappearance regulates the processing of data by the federal coordination service. Data processing is permitted if it is linked to the person deprived of liberty and if it is essential to the task of the service. Thanks to the network established, the communication of personal information is kept to a minimum. Personal data processed within the framework of a search are communicated to as few persons as possible in the network.

118. The cantonal authorities are primarily subject to their own data protection legislation. The federal legal directives relating to data protection contained in the implementing act and the corresponding ordinance nonetheless enjoy the status of substantive law in their specific area of application and must be respected by the cantons.

119. Lastly, DNA profiles established using biological material attributed to disappeared persons (“ante-mortem data”) may be stored in the Swiss combined DNA index system (CODIS). These data could be used at a later date to identify victims through comparison with evidence discovered in situ. The conditions applicable to the processing of data contained in this index system are established in the Act of 20 June 2003 on the Use of DNA Profiles.²⁹

Article 20

Restrictions on the right to information

120. Article 20 provides for potential restrictions on the rights to information established in article 18. Information may be withheld for such reasons as protecting personal rights or ensuring the orderly advancement of criminal proceedings.

121. The right to information of family and close friends is not unlimited. The law must ensure respect for the personal rights of persons deprived of liberty and, in particular, protect their right to oppose the communication of information concerning them. The legislation applicable in this area takes account of this aspect while ensuring that anxious relatives are not kept in the dark regarding the fate of their loved ones.

122. Accordingly, article 7 of the implementing act provides that the federal coordination service must inform the person sought of any search request regarding his or her and ensure that he or she consents to the communication of any information to the author of the request. In the event that the person sought does not give his or her consent, the act provides a legal basis for informing the author of the request that the person has not disappeared within the meaning of the Convention.

123. Article 7 (3) of the implementing act provides, in accordance with article 214 (2) of the Code of Criminal Procedure, that the communication of information may be refused where it would undermine the criminal investigation. It falls to the competent criminal prosecution authority to make a decision in that regard. Such decisions are binding on the federal coordination service.

124. Since the information provided by the federal coordination service is presented in the form of a decision, federal procedure is applicable (cf. para. 108).

Article 21

Persons released from detention

125. Article 21 of the Convention requires States parties to take the necessary measures to ensure that persons deprived of liberty are released in a manner permitting reliable verification that they have actually been released. States parties must also assure the physical integrity of such persons and their ability to exercise fully their rights.

126. Article 219 (3) of the Code of Criminal Procedure establishes that if the investigations conducted following a lawful arrest reveal that there are no grounds for detention or that the grounds no longer apply, the arrested person must be released immediately.

127. See paragraph 96 for information on the judicial review of the legality of detention and paragraph 101 for information on the types of detention that can be imposed under the law on foreign nationals.

128. Pursuant to article 3 (1), of the implementing act, the date and time of the release of a detainee must be entered in the official records containing the information described in article 17 (3) (h) of the Convention.

²⁹ RS 363.

129. The rights of persons released from detention are not restricted in any way.

Article 22

Delaying or obstructing procedure

130. Article 22 of the Convention provides important procedural guarantees to prevent undue delays to or obstructions of procedure.

131. Article 29 of the Constitution establishes minimum safeguards, including the prohibition of denial of justice and undue delays. These safeguards have been enshrined in the relevant legislation.

132. Article 312 of the Criminal Code defines the criminal offence of abuse of authority as the commission of an act in order to secure an unlawful advantage for oneself or for a third person or to cause prejudice to another person. This offence is invoked to apply criminal sanctions to employees and members of an authority who abuse their official powers. It can also be committed by omission, where the perpetrator, in his or her capacity as a guarantor, is required to terminate a coercive measure but fails to do so.

133. Personnel law and disciplinary measures: see paragraph 50.

Article 23

Training

134. Article 23 of the Convention requires States parties to ensure that all personnel concerned are appropriately informed and fully understand their obligations under the Convention. Furthermore, instructions leading to enforced disappearance must be punished. The role of the superior is important in this regard.

135. Swiss law guarantees that law enforcement authorities receive appropriate training (see, for example, articles 29 et seq. of the Use of Force Act and article 32 of the Use of Force Ordinance).

136. The network established guarantees that the competent cantonal and federal services and any directly concerned third parties are informed about the Convention and its provisions. In this regard, the cantons of Lucerne, Schwyz, Obwalden, Nidwalden, Basel-City, Basel-Country, Schaffhausen, Appenzell Outer-Rhodes, Grisons, Thurgovia and Neuchâtel have each expressly stated, in their respective contributions, that the Convention is known to the authorities concerned in their administrations (including military authorities, prisons and other penitentiary establishments, authorities responsible for the enforcement of sentences and other measures, public prosecutor's offices, migration authorities and law enforcement authorities). The public officials who are included in the network are trained by the Federal Office of Police. Documents have been prepared and made available for information exchange and training purposes. Up-to-date information is published on the website of the Federal Office of Police, which is responsible for training. The Canton of Grisons reported that the Convention is one of the topics covered in the basic training provided by the Swiss Prison Staff Training Centre. In addition, there are various cantonal initiatives under way, such as a plan to send an information letter to relevant cantonal institutions (Jura) or the inclusion of information on the Convention in the module on the European Convention on Human Rights and human rights in the basic training programmes of police academies (Ticino, Solothurn).

137. As part of the body of federal legislation, the Convention and related federal legislative acts are published in the Systematic Compendium of Federal Law and are therefore considered to be known to all.

Article 24

Victim support

138. In article 24, the Convention grants specific rights to victims of enforced disappearance and provides for various forms of compensation and reparation.

139. The provisions on the offence of enforced disappearance (Criminal Code, art. 185^{bis}) afford fundamental safeguards for two legally protected interests: on the one hand, they

ensure that individuals deprived of liberty by the State continue to be protected by the law and, in particular, by procedural guarantees; on the other, they ensure that the close friends and relatives of a person deprived of liberty can know the fate of that person (a right deriving from respect for privacy and family ties), in order to spare them the psychological suffering associated with the uncertainty and despair caused by an enforced disappearance. Close friends and relatives should thus also be considered victims of the offence. This has in fact already been affirmed in a message of the Federal Council dated 23 April 2008 relating to the amendment of federal laws with a view to the implementation of the Rome Statute of the International Criminal Court.³⁰ Accordingly, close friends and relatives must enjoy the procedural rights that derive from the status of victim.³¹

140. Having the status of victim in criminal procedure allows close friends and relatives whose rights have been directly affected by an enforced disappearance to initiate criminal proceedings and become complainant parties to the proceedings. They are thus kept informed about the progress and results of the investigation and can request that evidence be taken and appeal against the termination of proceedings or acquittals, for example.

141. According to the Federal Act on the Provision of Support to Victims of Crime (Victim Support Act, art. 3), victims of an offence committed in Switzerland that impinges on their physical, mental or sexual integrity are entitled to advice and support from counselling centres. They also have access to immediate and long-term assistance (Victim Support Act, arts. 12–16), compensation (Victim Support Act, arts. 19–21) and non-pecuniary damages (Victim Support Act, arts. 22 and 23). However, entitlement is limited to those who have been unable to obtain such assistance by other means, for example, through criminal proceedings or civil liability procedures (Victim Support Act, art. 4) and certain conditions are attached. As regards applicable time limits, victims may contact a counselling centre irrespective of the date of commission of an offence (Victim Support Act, art. 15 (2)). In principle, however, requests for compensation and non-pecuniary damages must be submitted within five years of the date of an offence (Victim Support Act, art. 25 and art. 48 (a)).

142. In order to receive assistance, victims may contact one of the counselling centres (victim support centres, which are sometimes automatically informed, see article 8 of the Victim Support Act) set up by the cantons (Victim Support Act, arts. 9 et seq.) or the cantonal compensation authority (Victim Support Act, arts. 24 et seq.). The details of the procedure are governed by cantonal law.

143. The Victim Support Act does not provide for a rehabilitation programme as such. However, long-term assistance is provided to the victim and his or her close friends and relatives until the state of health of the persons receiving assistance has stabilized and the other consequences of the offence have been, as far possible, eliminated or mitigated by compensation (Victim Support Act, art. 13 (2)).

144. Swiss private law sets out a procedure for obtaining a declaration of absence (Civil Code, arts. 35 et seq.). At the request of any person deriving rights from the death of a missing person, the court may declare him or her absent if death appears highly probable because he or she disappeared in life-threatening circumstances or because no news of him or her has been received for a prolonged period of time (Civil Code, art. 35). A declaration of absence may be requested when at least one year has elapsed since the life-threatening event or when at least five years have elapsed since the receipt of the last information regarding the person concerned (Civil Code, art. 36 (1)). The judge issues a public notice calling on all persons who can provide information regarding the missing person to come forward within a specified period (Civil Code, art. 36 (2)). If the missing person reappears before the end of this period, if information is received regarding him or her or if the date of his or her death is established, the request is dismissed (Civil Code, art. 37). If the public notice proves unsuccessful, the judge issues a declaration of absence and the rights acquired as a result of the death of the missing person may be exercised as if his or her death had been established (Civil Code, art. 38).

³⁰ Message, FF 2008 3461, p. 3520.

³¹ Message, FF 2014 437, p. 469.

145. Victims' freedom of assembly and association is guaranteed in articles 22 and 23 of the Constitution, and freedom of association is enshrined in articles 60 to 79 of the Civil Code. These provisions are essential to all forms of engagement in civil society. Freedom of association protects the right of individuals to establish and participate in private associations. In its positive form, it protects the freedom of individuals to establish, join and actively participate in an association without suffering restrictions or reprisals on the part of the State. In accordance with the above-mentioned provisions, victims of enforced disappearance have the right to associate and to assemble. The extent of the restrictions that may be placed on freedom of association, and all other fundamental freedoms, is defined in article 36 of the Constitution.

Article 25

Special protection for children

146. Article 25 of the Convention provides for specific child protection mechanisms.

147. In addition to the provisions on the offence of enforced disappearance (Criminal Code, art. 185^{bis} and art. 264a (1) (e)), various specific provisions of the Criminal Code are applicable in cases of wrongful removal of children: article 183 (2) of the Criminal Code specifically protects persons under the age of 16 from abduction. Article 220 of the Criminal Code criminalizes the act of removing a minor from or refusing to return a minor to the person who has the right to determine the minor's place of residence. Lastly, article 219 of the Criminal Code addresses cases where a person endangers the physical or mental development of a minor, in breach of his or her duty of care or education. Documents attesting to a person's true identity are considered to be official documentation; their falsification or concealment (including their destruction) is punishable under articles 251 to 254 of the Criminal Code. Foreign documentation is also protected (Criminal Code, art. 255).

148. With regard to the adoption procedure, article 268a of the Civil Code requires the authorities to conduct a thorough investigation before authorizing an adoption. In addition, specific conditions must be met. In particular, adoption requires the consent of the child's father and mother (Civil Code, art. 265a). The Hague Convention of 29 May 1993³² on Protection of Children and Cooperation in respect of Intercountry Adoption specifically provides that consent to adoption must be given freely and in the required legal form (art. 4 (c) (2) and (d) (3)). Consequently, the fact that an adoption has resulted from an enforced disappearance is a ground for the annulment of the adoption:

- As part of the reform of Swiss adoption law on 1 January 2018, the obligation to hear the child before adoption, irrespective of whether he or she is capable of forming his or her own views, has now been enshrined in law (Civil Code, art. 268a^{bis}), in addition to other amendments. If the child is capable of forming his or her own views, his or her consent is required for the adoption (Civil Code, art. 265). As a result of the reform, Switzerland has modern legislation that is respectful of the rights of the child and prevents illicit adoptions.
- According to articles 269 et seq. of the Civil Code, an adoption can be challenged in the courts if the required consent has not been sought without any legal basis. In such cases, annulment proceedings may be initiated by, inter alia, the biological parents from whose care the child has been unlawfully removed. The best interests of the child being the paramount consideration, Swiss law sets strict time limits for challenging an adoption: within six months of the discovery of any defect, but in all cases no more than two years from the time of the adoption. By virtue of articles 256c, 260c and 263 of the Civil Code, annulment proceedings can nevertheless be initiated for valid reasons after this time limit has expired (judgment of the Federal Supreme Court: ATF 112 II 296). An adoption resulting from an enforced disappearance would fall into this category.

149. On 1 January 2003, article 268c of the Civil Code entered into force on the basis of the Federal Act concerning the Hague Convention on Adoption and on Measures to Protect

³² RS 0.211.221.311.

Children in Cases of International Adoption. According to this article, upon reaching the age of majority, an adopted child has the right to obtain information regarding the identity of his or her biological parents. In a detailed judgment, the Federal Supreme Court ruled that the right to know one's biological ancestry always takes precedence over any interest of the parents in maintaining confidentiality (ATF 128 I 63). In public law, this unconditional right derives from article 10 (2) of the Constitution, article 8 of the European Convention on Human Rights and article 7 of the Convention on the Rights of the Child. Since 1 January 2018, adopted children may obtain information regarding not only their biological parents, but also their siblings and half-siblings, providing that the latter have reached the age of majority and have given their consent (Civil Code, art. 268c (3)).

150. As part of the reform of adoption law, additional amendments entered into force on 1 January 2018 to further strengthen the position of the child in the context of adoption. As a result, the rules governing the confidentiality of adoption became more precise and more flexible. Parents who have consented to the adoption of their child, as well as the parents' direct descendants, may obtain information that identifies the adopted child when he or she has reached the age of majority, providing that the child has given his or her consent (Civil Code, art. 268b).

151. An assessment of the adoption procedure in Switzerland has recently been launched on the basis of parliamentary motion No. 17.4181 ("Shining a light on the illegal adoption of children from Sri Lanka in Switzerland in the 1980s").³³ The Federal Council will be tasked with assessing the current practices of the Swiss authorities in the area of international adoption. A report will be published revealing whether, since the reform of January 2018, current legislation is sufficient to prevent failings in this area.

152. Article 3 of the Convention on the Rights of the Child of 20 November 1989³⁴ (see para. 13 (e)) establishes that the best interests of the child must be a "primary consideration" in all actions concerning children. Likewise, Swiss law establishes that the best interests of the child constitute the highest principle of the law on children. It is, however, a vague legal concept, which must be given form by the authorities tasked with implementing the law. In 2014, the Swiss Centre of Expertise in Human Rights examined the principle of the best interests of the child and its application in Swiss law in the volume on child and youth policy of its study "Implementation of Human Rights in Switzerland". The study concluded that Switzerland has not yet integrated the principle into all of its legislation and practices and the case law of its numerous judicial and administrative authorities, and that awareness-raising and training for professionals in its practical application are necessary.³⁵

153. Article 12 of the Convention on the Rights of the Child establishes that children have the right to be heard. Through this article of the Convention on the Rights of the Child, great strides have been made towards the consideration of children as fully fledged individuals. This legal principle guarantees that a child capable of forming his or her own views has the right to express those views freely in all matters affecting him or her. States parties are required to give due weight to those views, in accordance with the age and maturity of the child. For that purpose, the child should in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting him or her, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law. These requirements are duly respected in the Swiss legal system. In 2014, with a view to obtaining more precise information on the implementation of this article, particularly in judicial and administrative proceedings, the Science, Education and Culture Committee of the National Council submitted

³³ The text of this parliamentary motion can be consulted at: <https://www.parlament.ch>. The Federal Council adopted the motion on 14 October 2018. The cases of Sri Lankan children adopted in Switzerland in the 1980s are currently being re-examined by the Federal Office of Justice.

³⁴ RS 0.107.

³⁵ The report issued by the Federal Council in response to the recommendations made by the Committee on the Rights of the Child in relation to Switzerland states that the specialized offices (under the supervision of the Federal Social Insurance Office) and the inter-cantonal conferences should analyse the measures required in the context of their regular work, taking account of the latest results of the study. Specific measures are already being prepared on this basis.

parliamentary motion No. 14.3382 instructing the Federal Council to present a report on the implementation of the right to be heard in Switzerland. The Federal Council approved the motion and instructed the Swiss Centre of Expertise in Human Rights to draw up a report on the implementation of article 12 of the Convention on the Rights of the Child. The Centre plans to collect information on the implementation of article 12 in order to identify progress made and gaps remaining to be overcome in this area. The project is expected to be completed in December 2018.

154. In 2017, the Swiss Centre of Expertise in Human Rights conducted a sub-project on the hearing of children during out-of-home placement procedures under civil law and during removal procedures under the law on foreign nationals. In its study entitled “Child-friendly justice: hearing of children during placement under civil law and removal of a parent under the law on foreign nationals”, the Centre reported that children over the age of 6 were in principle heard by the child and adult protection authorities before a placement, in accordance with the case law of the Federal Supreme Court. Younger children participated in the procedure through the intermediary of the protection services. However, during the procedure for the removal of a foreign parent, children were heard in fewer than half of all cantons, since the authorities assumed that the child’s interests were identical to those of the parent about to be removed. Awareness-raising and training are therefore necessary in this area, for which reason, it will be vitally important to give thorough consideration to the Centre’s report on article 12 of the Convention on the Rights of the Child. Switzerland received a relevant recommendation from the Committee on the Rights of the Child, concerning the right to be heard (para. 29 (a)). The competent authorities are looking into potential improvements in this area.

155. Switzerland has ratified the third Optional Protocol to the Convention on the Rights of the Child, which grants children the right to submit individual complaints to the Committee on the Rights of the Child.

156. Since 1 January 2010, the Swiss police have had at their disposal an early warning system allowing for a wide-scale response. The system is triggered when there is a genuine suspicion or knowledge that a child has been abducted and that his or her life and physical integrity are in danger. Alert messages are communicated by radio and television, by SMS, on motorway information boards, through announcements in stations, airports and shopping centres, and by news agencies and online media. The alert system was set up by the Conference of Cantonal Justice and Police Directors in cooperation with the Federal Department of Justice and Police. Inspired by the French “Abduction Alert” system, the Swiss alert system allows for the systematic and immediate dissemination of information regarding the abduction of a child throughout the country. This takes account of the fact that, when an abduction occurs, the first few hours of the search and rescue operation play a decisive role in its success. Alerts are issued as soon as the authorities have sufficient information when it is feared that the abducted minor may be in danger. The cantonal criminal prosecution authorities are responsible for the content of the messages and for issuing the alerts.

Part IV: Consultation with non-governmental organizations regarding the report

157. The Committee on Enforced Disappearances recommends that States parties should encourage the participation of non-governmental organizations in the preparation of their reports.

158. In order to reach a representative number of organizations, every organization that took part in the consultation on the implementation of the Convention in national law, thus showing a particular interest in the subject, was consulted. They include the Swiss sections of Amnesty International and the International Commission of Jurists, the Association for the Prevention of Torture, the Association Jardin des Disparus and the tracing service of the Swiss Red Cross.

159. According to the views expressed during the consultation, the implementation of the Convention in national law is generally considered satisfactory, although improvements

were suggested in relation to certain areas. The main proposals are described and discussed below.

160. A general suggestion was that awareness of the Convention should be increased not only within the relevant federal and cantonal authorities, but also among the general population. The Federal Council too is of the opinion that public awareness of the Convention is an important element in the prevention and elimination of enforced disappearances. Following the ratification of the Convention, the Federal Government issued a press release to inform the public about the existence and content of the text. In order to increase awareness of the Convention, the present report and the results of the dialogue with the Committee on Enforced Disappearances will be made public. The cantons will also be specifically informed of the Committee's recommendations, insofar as they relate to their field of competence. Additional information meetings for the cantonal services that make up the network will be organized in due course.

161. With regard to the implementation of article 2 of the Convention, the wording "for a prolonged period of time" in article 185^{bis} (1) of the Criminal Code was called into question, since the Convention does not establish a requirement as to the duration of enforced disappearance. As explained in detail in paragraph 30 of the present report, Swiss law does not require that an enforced disappearance exceed a set period of time before it constitutes an offence. The definition of enforced disappearance in Swiss law encompasses all situations that the Convention requires to be covered (for example, regarding the wording "authorization, support or acquiescence of the State", see paragraph 27).

162. The sanctions prescribed and the provisions regarding the statute of limitations were described as inadequate. Paragraphs 48 et seq. of the present report explain in detail that the prescribed sanctions take full account of the seriousness of the crime and are comparable to the sanctions prescribed for other criminal acts. Moreover, the Convention does not require that there should be no statute of limitations for the crime of enforced disappearance, but rather that the special nature of the crime should be taken into account and that the right to an effective remedy should be guaranteed. Paragraphs 52 et seq. of the present report explain how the law takes account of these two aspects. In this connection, it should be recalled that the limitation period begins to run only once the criminal conduct has ceased, in order to reflect the continuous nature of the offence.

163. Doubts were expressed regarding the ability to guarantee the effectiveness of missing person searches and the compliance of the decentralized system with the obligation to maintain records. As the consultation with the cantons took place in parallel, the detailed information they provided in this regard can now be consulted (see paras. 105 and 109). The replies of the cantons demonstrate that the effectiveness of missing person searches and compliance with the obligation to maintain (and verify) records can be guaranteed.

164. As explained in paragraph 106, a period of six days is usually set for the processing of requests. This period was described as too long during the consultation. This is not, however, a minimum period, but a maximum period of time within which requests must be processed. Regardless of the deadline, the authorities make every effort to respond to requests as quickly as possible in urgent cases. In addition, the law provides for the reduction of this period, if necessary, in particularly serious situations.