



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

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Committee on Enforced Disappearances

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Consideration of reports of States parties to the Convention

**List of issues in relation to the report submitted by
Switzerland under article 29 (1) of the Convention**

Addendum

Replies of Switzerland to the list of issues*

[Date received: 20 December 2019]

* The present document is being issued without formal editing.



I. General information

A. Reply to paragraph 1 of the list of issues (CED/C/CHE/Q/1)

1. In Switzerland, a pilot project aimed at establishing a national human rights institution, known as the Swiss Centre of Expertise in Human Rights, has been running since 2011. The need to establish a national human rights institution in Switzerland was confirmed by a consultation undertaken with the different cantons, political parties and other relevant stakeholders between July and October 2017. The Federal Council approved the proposal to establish the institution on 13 December 2019. The national human rights institution is expected to have a legal basis that will guarantee its independence. This proposal will be considered by the Swiss parliament in 2020. The aim is for the new institution to become operational in 2021.

II. Definition and criminalization of enforced disappearance (arts. 1–7)

A. Reply to paragraph 2 of the list of issues

2. The expression “with the intention of removing a person from the protection of the law”, used in articles 185 bis of the Criminal Code and 151 (d) of the Military Criminal Code, should be understood as an intentional element, in accordance with the explicit provision governing the criminal offence and the principle “*nullum crimen sine lege*”. It is therefore a subjective constituent element of the offence.

B. Reply to paragraph 3 of the list of issues

3. Article 20 of the Military Criminal Code and article 80 (2) of the Service Regulations of the Swiss Armed Forces, mentioned in paragraph 43 of the report of Switzerland, are also directly applicable in cases of enforced disappearance that do not constitute crimes against humanity. In cases involving crimes against humanity, the responsibility of superior officers is governed by article 264 (k) of the Criminal Code and 114 (a) (1) of the Military Criminal Code. Lastly, in other circumstances, the general rules on instigation (Criminal Code, art. 24), indirect perpetrators and attempted instigation (art. 24 (2)) apply.

C. Reply to paragraph 4 of the list of issues

4. It is true that, in Swiss law, the legal framework for sentencing is relatively broad. This is a general feature of the Swiss judicial system. However, the penalty applied in a specific case by the court must be explained and justified in the judgment issued. Moreover, the penalty can be appealed by the Office of the Public Prosecutor (and the defendant).

5. As explained in paragraph 49 of the report, the court determines 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.

6. Therefore, the mandatory minimum sentence consisting of a prison term of at least one year is applied in cases where the culpability of the offender is the least serious imaginable after all the relevant criteria have been taken into account. For example, the offender might have occupied a very junior position in the chain of command, his or her involvement might have been limited to, for example, refusing to report the offence, the case might have been a one-off, the enforced disappearance might not have lasted long and might not have had serious consequences (all these conditions being cumulative).

7. The Swiss authorities have not considered it necessary to transpose the mitigating and aggravating circumstances listed in article 7 (2) of the Convention, which is not obligatory, into domestic law. Indeed, these circumstances are covered by the general rules on sentencing. In particular, article 48 of the Criminal Code provides for the reduction of a sentence in cases of genuine repentance, which requires, inter alia, the offender to make reparation for the damage caused, insofar as this may reasonably be expected of him or her. This general provision of Swiss law therefore encompasses the circumstances listed in article 7 (2) (a) of the Convention. Conversely, when the perpetrator of the enforced disappearance is also found guilty of having caused the death of the disappeared person, the rules on the coincidence of several offences provide for the application of a harsher penalty (art. 49). The same applies in cases involving multiple enforced disappearances.

III. Judicial proceedings and cooperation in criminal matters (arts. 8–15)

A. Reply to paragraph 5 of the list of issues

8. Under Swiss law, apart from a few exceptions, only military personnel may be considered the perpetrators of the military criminal offences provided for in the Military Criminal Code. Article 3 of the Military Criminal Code specifies the persons who are subject to military criminal law.

9. Any offences of enforced disappearance committed by civilians are therefore not subject to military criminal law or military justice, even in a situation of active service (Military Criminal Code, art. 4) or in wartime (Military Criminal Code, arts. 5 and 6), since article 151 (d) of the Military Criminal Code on enforced disappearances is not one of the exceptions mentioned in articles 4, 5 and 6 of this law.

B. Reply to paragraph 6 of the list of issues

10. In Switzerland, police activities are governed by the rule of law. The Federal Office of Police comes under the administrative authority of the Federal Council, the judicial authority of the federal courts and the political authority of the Swiss parliament. The same is true for the cantonal police authorities, which work under the supervision of the cantonal administrations, courts and parliaments. The cantonal police authorities are not a subdivision of the Federal Office of Police, but are independent bodies operating at the cantonal level.

11. Federal law provides for procedural guarantees in judicial investigations; see paragraphs 62 and 64 of the report of Switzerland, which explain:

(a) The legal guarantees relating to the independence of the prosecuting and judicial authorities (Code of Criminal Procedure, arts. 4 (1) and 6 (1));

(b) The obligation to establish the relevant facts for prosecution and defence (Code of Criminal Procedure, arts. 6 and 139);

(c) The rules on recusal (Code of Criminal Procedure, arts. 56 to 58);

(d) The procedural guarantees already flowing from the Constitution (Constitution, arts. 29 (1) and 30 (1)).

12. As for the requirement for allegations to be investigated promptly, Switzerland does not have a central register covering all types of deprivation of liberty. Nevertheless, compliance with the protection requirements laid down in the Convention is guaranteed by the existence of a network between the Confederation and the cantons through which information on persons deprived of liberty in a closed setting can be quickly retrieved.

13. This network was set up to ensure that information circulates efficiently and reliably between the country's various structures. It is composed of a federal coordination service

and a coordination service in each canton (see paragraph 106 of the report of Switzerland), as well as focal points for each canton.

14. Once a request has been received, if there is evidence to suggest that the person sought is deprived of his or her liberty, the federal service launches a search. It makes immediate contact with the cantonal coordination services and, if necessary, the federal services responsible for enforcing the sentence 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, which is generally six working days, is intended to ensure that the search is both thorough and exhaustive, and that all leads have been properly followed up.

15. 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.

16. The processing and analysis of the request by several services and stakeholders also helps to ensure an optimal search.

17. 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 paragraph 122 of the report of Switzerland). If that person has not given his or her consent, or if warranted under article 214 (2) of the Code of Criminal Procedure, the author of the request is simply informed that the person sought has not disappeared within the meaning of the Convention.

18. As a result, this network makes it possible to find a person deprived of his or her liberty in a closed setting as reliably, efficiently and quickly as possible.

C. Reply to paragraph 7 of the list of issues

19. All the cantons have procedural mechanisms to guarantee the independence and impartiality of investigations. Apart from these mechanisms, 23 cantons follow a practice similar to that followed by the Canton of Thurgau, namely, referring cases to a special prosecutor if an employee of the Office of the Public Prosecutor or the cantonal police is involved in a case.

20. As stated in the reply provided to paragraph 6 (see reply above), federal law provides for procedural guarantees in judicial investigations.

21. With regard to procedural mechanisms and recusal at the federal level, the Office of the Attorney General of Switzerland distinguishes between two scenarios:

(a) That of an employee of the Office of the Attorney General of Switzerland who is suspected of having committed an offence: in the event of criminal proceedings being initiated against a chief prosecutor or a prosecutor attached to the Office of the Attorney General of Switzerland, the latter's supervisory authority appoints one of its staff or a special prosecutor (Federal Act on the Organization of Federal Criminal Justice Authorities, art. 67). The Attorney General must grant an authorization in order for criminal prosecution to be possible. In the event of him or her refusing to do so, an appeal may be lodged with the Federal Administrative Court (Federal Act on the Liability of the Federal Government, the Members of its Authorities and its Public Officials, art. 15 (5) and (5) bis). As for the employees of the Office of the Attorney General of Switzerland elected by the Federal Assembly (Attorney General and deputy attorneys general), it is not article 67 of the Federal Act on the Organization of Federal Criminal Justice Authorities that applies, but article 14 of the Federal Act on the Liability of the Federal Government, the Members of its Authorities and its Public Officials, which provides that it is for the competent committees of the Federal Assembly to decide whether to grant the authorization to prosecute. If

authorization is granted, the competent committees may (also) instruct the federal criminal justice authorities to investigate and try offences that fall within cantonal jurisdiction. In these circumstances, the United Federal Assembly may elect a special public prosecutor (Federal Act on the Liability of the Federal Government, the Members of its Authorities and its Public Officials, art. 14 (3), read in conjunction with article 17 (2) and (3) of the Federal Act on the Federal Assembly);

(b) That of an application for recusal submitted when proceedings are ongoing: an employee of the Office of the Attorney General of Switzerland (as director of proceedings) in respect of whom a recusal application is submitted by one of the parties is only required to take a position on the application (Code of Criminal Procedure, art. 58 (2)) and then to refer the case to the Lower Appeals Chamber of the Federal Criminal Court for decision. When an application based on article 56 (b) to (e) of the Code of Criminal Procedure is not contested, or if the application for recusal is granted by the Lower Appeals Chamber, a new director of proceedings is appointed from within the Office of the Attorney General of Switzerland.

22. It is also possible, in some cases, to appoint special military prosecutors in military criminal proceedings.

D. Reply to paragraph 8 of the list of issues

23. The cantons have indicated that the designated services and focal points forming part of the network in question have unrestricted access to places of detention and to any other place where there are reasonable grounds for believing that a disappeared person may be present. The cantons recalled that, in Switzerland, which is a State governed by the rule of law, there are no unofficial places of deprivation of liberty.

E. Reply to paragraph 9 of the list of issues

24. Article 103 of the Federal Ordinance on the Personnel of the Swiss Confederation provides for the possibility of suspending an employee with immediate effect, as a precautionary measure, if the proper performance of his or her duties is compromised. This situation may arise when serious events that could give rise to criminal or disciplinary action are observed or suspected, when repeated irregularities are found to exist or when ongoing proceedings are obstructed. This course of action is decided by the competent authority. As a general rule, this is the office of the federal administration that hired the person concerned. The competent authority may, for the duration of the suspension, withhold or adjust wages and other benefits. These regulations apply to all staff of the central federal administration, and to military personnel.

25. Staff of the cantonal authorities may also be suspended as a precautionary measure. All the cantons indeed have corresponding supplementary regulations.

F. Reply to paragraph 10 of the list of issues

1. Reply to subparagraph (a)

26. The Federal Act on Extraprocedural Witness Protection applies to any person who, as a result of his or her cooperation or willingness to cooperate in criminal proceedings conducted by the Confederation or the cantons, is, or may be, exposed to danger threatening their life or physical integrity, or to other serious harm (Federal Act of 23 December 2011 on Extraprocedural Witness Protection, art. 2 (1) (a)). It also applies to the relatives of the person in question, within the meaning of article 168 (1) to (3) of the Code of Criminal Procedure, and who, as a result, are, or may be, exposed to danger threatening their life or physical integrity, or to other serious harm (Federal Act on Extraprocedural Witness Protection, art. 2 (1) (a)).

27. The protection provided is therefore comprehensive. It extends to witnesses, persons called to provide information, victims, police officers, undercover agents, experts,

translators and to the relatives of those persons who come under threat. Prosecutors and judges, on the other hand, are excluded from the scope of the Federal Act on Extraprocedural Witness Protection.

28. If the Act does not apply, cantonal or federal law governing the police guarantees persons under threat protection outside of proceedings. In these circumstances, use is made of the habitual modes of intervention (surveillance, patrols, police escort of persons under threat, etc.). The federal witness protection unit can offer advice and support to the competent police authorities in this connection. Swiss criminal procedure law itself also provides for protection measures in criminal proceedings, including by guaranteeing the anonymity of witnesses.

2. Reply to subparagraph (b)

29. A person under threat may be placed in a witness protection programme. Such a programme includes the following protection measures (Federal Act on Extraprocedural Witness Protection, art. 5):

- (a) Housing the person in a safe location;
- (b) Changing the person's workplace and home address;
- (c) Making support services available to the person;
- (d) Blocking the dissemination of information about the person;
- (e) Providing the person with a new identity for as long as he or she is under protection;
- (f) Supporting the person financially.

30. Requests to place a person in a witness protection programme are submitted to the witness protection unit by the competent director of proceedings. The witness protection unit then proceeds to consider the request in full. It also checks whether the person concerned is prepared to abide by the protection measures and to follow the instructions given in this connection. The witness protection unit also informs the person to be protected of the services offered by, and the limitations and conditions of, the witness protection programme, as well as the potential impact of the programme on his or her personal life. The person concerned is thus consulted and asked whether, and to what extent, he or she wishes to benefit from protection measures.

31. The decision to place a person in a protection programme is taken by the management of the Federal Office of Police, at the request of the witness protection unit. If a person is placed in a protection programme, the witness protection unit informs the person to be protected of how it will be conducted, his or her rights and obligations and the consequences of a violation of those rights and obligations. The protection programme only begins when the person to be protected or his or her legal representative has given his or her written consent. The person concerned is (again) heard and given the opportunity to take part in the programme. Under the requirement to give consent, protection measures cannot be applied if they go against the wishes of the person to be protected. The witness must be actively willing to abide by the measures applied and to ensure their effectiveness.

3. Reply to subparagraph (c)

32. If the Federal Office of Police is informed that one of its members is involved in an enforced disappearance, he or she may under no circumstances participate in the application of a witness protection measure. The Federal Office of Police is legally obliged to take the necessary measures to ensure that tasks are performed in the proper manner. This is compromised if serious acts that could attract a criminal sanction are detected (Federal Act of 24 March 2000 on the Personnel of the Swiss Confederation, art. 25, and Federal Ordinance of 3 July 2001 on the Personnel of the Swiss Confederation, art. 103). Preventive protection mechanisms also exist. In particular, the Federal Act on Extraprocedural Witness Protection requires the staff and administrative structure of the witness protection unit to be independent from the units conducting the investigations (Federal Act on Extraprocedural Witness Protection, art. 22 (2)). The staff of the witness protection unit are, naturally,

selected according to strict criteria. In addition, witness protection programmes and the measures taken in this connection are subject to restrictive confidentiality requirements. The Federal Act on Extraprocedural Witness Protection severely limits the circle of persons who can be informed of ongoing witness protection measures (Federal Act on Extraprocedural Witness Protection, arts. 24, 25 and 30). Lastly, federal administrative staff have a duty to report. Under article 22 (a) (1) of the Federal Act on the Personnel of the Swiss Confederation, employees are obliged to report to the criminal prosecution authorities, their hierarchical superiors or the Swiss Federal Audit Office all crimes and offences that may be prosecuted ex officio of which they have become aware or which have been brought to their attention in the performance of their duties. In this way, the likelihood of being able to uncover deficiencies swiftly, and to take the necessary measures, increases.

IV. Measures to prevent enforced disappearances (arts. 16–23)

A. Reply to paragraph 11 of the list of issues

33. The principle of non-refoulement is enshrined in article 25 (3) of the Federal Constitution and is an obligatory component of Swiss asylum procedure.

1. Reply to subparagraph (a)

34. The data of all asylum seekers are recorded and stored in the Central Migration Information System and in the corresponding file of the State Secretariat for Migration. As for the processing of asylum seekers' personal data, the State Secretariat for Migration records them in both paper and electronic format. The legal basis for the processing of personal data, including sensitive data, can be found in article 96 of the Asylum Act. The personal data of asylum seekers are also recorded in the Central Migration Information System. The relevant legal provisions are formal and material in nature. The Federal Act on the Information System on Matters relating to Foreign Nationals and Asylum and the Ordinance concerning the Central Migration Information System list all the data fields contained in the system in question (for example: family name, first name, date of birth, etc.), as well as the access rights corresponding to each user group. This is also the case for the information system for reception and procedure centres and airport accommodation provided for in articles 99 (a) to (d) of the Asylum Act and article 1 (i) of Asylum Ordinance No. 3 on the Processing of Personal Data.

35. The legal provisions mentioned above incorporate all the principles laid down in the Federal Act on Data Protection and its implementing ordinance.

2. Reply to subparagraph (b)

36. If a person files an application for asylum at an airport, compliance with the prohibition of refoulement, as it pertains to Swiss asylum procedure, is reviewed in that particular case (see point (c) below).

3. Reply to subparagraph (c)

37. Swiss law provides comprehensive protection against refoulement, including through the prohibition of the practice when it violates human rights, in accordance with article 25 (3) of the Constitution, and when it violates the rights of refugees under article 5 (1) of the Asylum Act. These provisions also provide the protection against refoulement referred to in article 16 of the Convention (see the text adopting and implementing the International Convention for the Protection of All Persons from Enforced Disappearance; <https://www.admin.ch/opc/fr/federal-gazette/2014/437.pdf>, pp. 454 and 455, art. 16, guarantee of non-refoulement). Under Swiss asylum procedure, a careful, thorough and case-by-case assessment is conducted to determine whether the execution of a removal order would violate the prohibition of refoulement. In cases where removal is ordered under the country's law on foreign nationals, which, as a general rule, falls within the purview of the cantonal authorities, the risk that the person in question might be disappeared is

assessed on a case-by-case basis. In case of doubt, the cantonal authorities also request the State Secretariat for Migration to make an assessment.

38. The Federal Council may designate safe countries of origin or provenance, namely, those in which it considers the applicant to be safe from persecution (Asylum Act, art. 6 (a) (2) (a)). The criteria that must be met in order for a country to be designated as safe include respect for human rights and the application of international conventions on human rights and refugees. Elements such as the risk of enforced disappearance will have already been taken into account before a country of origin is designated as safe. Similarly, the Federal Council may designate safe third countries, namely, those in which it considers that the principle of non-refoulement, within the meaning of article 5 (1) of the Asylum Act, is duly respected (Asylum Act, art. 6 (a) (2) (b)). Applications for asylum filed by persons coming from a safe country or by persons who can return to a safe third country are also considered carefully on a case-by-case basis; if there is concrete evidence of a threat of persecution or a violation of the prohibition of refoulement, the presumption of safety may be challenged on a case-by-case basis.

39. As for the second part of the question, namely, the possibility that a person might be transferred to another State where he or she might be at risk of enforced disappearance following extradition, it should be pointed out that two different scenarios exist:

(a) The person is transferred to another State by means of re-extradition: re-extradition to another State is only possible if Switzerland gives its express consent;

(b) Other forms of transfer to another State (expulsion, repatriation): the State concerned is, in principle, responsible for preventing the risk of disappearance. If the risk has already been mentioned during the extradition proceedings before the Swiss authorities, it will be assessed in accordance with the preceding paragraph.

40. In extradition proceedings, the person in respect of whom an extradition request is made also has the opportunity to submit observations to the Federal Office of Justice – the authority leading the proceedings – in which he or she can make claims that might indicate that the extradition request is not compatible with the rights protected by international human rights instruments. Decisions taken by the Federal Office of Justice may be appealed before the Federal Criminal Court and, in important cases, before the Federal Supreme Court, as the court of final appeal.

B. Reply to paragraph 12 of the list of issues

41. To date, the Federal Office of Justice has never required guarantees from a State requesting extradition on the ground that the requested person was at particular risk of enforced disappearance; the guarantees that it usually requires in practice are general guarantees of respect for human rights.

42. Regarding the second part of the question, as a general rule, appeals against removal decisions in ordinary proceedings have a suspensive effect, unless there are overriding public or private third-party interests (serious risk to the life or health of third parties). In extraordinary proceedings (request for reconsideration), an appeal does not have a suspensive effect on a removal.

C. Reply to paragraph 13 of the list of issues

43. As for the resources allocated to the National Commission for the Prevention of Torture, in 2017/18, the institution had an annual budget of approximately 0.8 million Swiss francs. The National Commission is free to choose how these funds are spent. However, it must conduct its work within the limits of this budget. There are currently no plans to increase its financial resources. With regard to human and technical resources, the National Commission for the Prevention of Torture currently has a secretariat comprising six persons (3.7 full-time equivalent posts). In addition, it regularly calls on various experts in the field of migration to observe forced repatriations by air under the country's law on

foreign nationals. It is also free, within the limits of its budget, to hire experts or interpreters (Federal Act on the National Commission for the Prevention of Torture, art. 7 (3)).

44. Pursuant to article 8 (2) of this law, the National Commission for the Prevention of Torture has access to all places of deprivation of liberty, and to their facilities and amenities. It can conduct unannounced visits to these places. It also has access to all the information relevant to its mandate (number and identity of persons deprived of their liberty, place where they are held, etc.). It should be recalled that the National Commission for the Prevention of Torture is a 12-member interdisciplinary commission that conducts its work in complete independence (Federal Act on the National Commission for the Prevention of Torture, arts. 4 and 5).

D. Reply to paragraph 14 of the list of issues

45. The broad procedural guarantees offered by Swiss law to persons deprived of their liberty (see paragraphs 96 to 98 of the report of Switzerland) may be recalled here:

(a) Any person who has been deprived of his or her liberty by a body other than a court has the right to have recourse to a court without delay (Constitution, art. 31 (4));

(b) The police or the Office of the Public Prosecutor is obliged to inform the accused, in a language that he or she understands, at the start of initial hearing, that preliminary proceedings are being instituted and for what offences; that he or she may refuse to testify and cooperate; that he or she has the right to appoint a defence counsel or to ask the court to appoint one on his or her behalf; and that he or she may request the assistance of a translator or an interpreter (Code of Criminal Procedure, art. 158).

(c) The accused has the right to appoint a legal counsel to conduct his or her defence during criminal proceedings (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 (Code of Criminal Procedure, art. 223 (2)). It is important to note that the accused has the right to appoint a legal counsel to conduct his or her defence at any stage of the proceedings and in all criminal proceedings (Code of Criminal Procedure, art. 129);

(d) The accused is obliged to have a defence counsel, particularly when the period that he or she has spent in pretrial detention, including the duration of his or her arrest, has exceeded 10 days (Code of Criminal Procedure, art. 130).

46. In criminal proceedings, the legal counsel of the accused, as his or her representative, has the right to appeal to a court in order for it to rule, without delay, on the lawfulness of the deprivation of liberty.

47. As for the more specific circumstances of a suspected enforced disappearance, mentioned in article 17 (2) (f) of the Convention, close friends or relatives must file a report of a criminal offence to initiate such proceedings. In such cases, the criminal prosecution authority, which, under article 4 of the Code of Criminal Procedure, is an independent body, must then establish whether there is reason to believe that an enforced disappearance has occurred and, therefore, whether the deprivation of liberty is or was unlawful. In their capacity as victims, close friends and relatives can assert their own rights, including the right of appeal, as mentioned in paragraph 100 of the report of Switzerland.

48. Following a consultation with the competent Swiss authorities, it transpires that Switzerland is not currently in possession of any statistics on complaints or allegations made concerning non-observance of these rights.

49. Lastly, regarding the right to have access to a lawyer from the time of apprehension, it should be recalled that the sole purpose of apprehension, within the meaning of article 215 of the Code of Criminal Procedure, is to establish the identity of the person and to determine, based on the concrete facts of a given situation, whether an offence could be attributed to him or her. Since the brevity of this interview is expressly mentioned in the provision referred to above, the questioning of the person can only be cursory in nature and take place for the sole purpose of determining whether more thorough investigations are required. As soon as there is the slightest suspicion, the apprehension becomes an arrest

within the meaning of article 217 of the Code of Criminal Procedure, at which point the police must inform the accused of his or her right to a lawyer (Code of Criminal Procedure, art. 219 (1), read in conjunction with art. 158). Swiss law therefore respects in full the principles developed by the European Court of Human Rights, according to which “as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police” (judgment of the European Court of Human Rights of 27 November 2008, Case of *Salduz v. Turkey*, para. 55).

E. Reply to paragraph 15 of the list of issues

50. The purpose of a criminal investigation is to establish the truth. Information on deprivation of liberty is not communicated to close friends or relatives if there is a real risk of collusion with the aim of, inter alia, making evidence disappear (for example, when a search has yet to take place at the home of the person to be informed). Non-disclosure of information, like deprivation of liberty itself, is a coercive measure and must respect the same conditions, particularly that of proportionality. The measure of non-disclosure should be applied for as short a time as possible and the reasons for applying it should be removed by the criminal authorities as quickly as possible.

51. However, the person deprived of his or her liberty is still under the protection of the law, since all procedural guarantees remain in effect, particularly the right to appoint a defence counsel, and the legal safeguards listed in paragraphs 95 to 98 (in particular paragraph 97 on time limits and competent authorities) of the report of Switzerland continue to apply.

F. Reply to paragraph 16 of the list of issues

52. Half of the cantons organize specific training on the subject of enforced disappearance and the Convention. Some other cantons are addressing broader aspects of the topic as part of continuing or basic training.

53. For example, the Canton of Zurich requires a knowledge of the provisions on coercive measures as they relate to criminal procedure and sentence enforcement, which are then incorporated into training courses. The use of coercive measures and deprivation of liberty in psychiatric hospitals (for example, in the case of institutionalization for purposes of care) is also included as a topic in standard training courses so as to ensure that patients receive high-quality and personalized medical care through the very judicious use of coercive measures.

54. According to the information provided by the Swiss Competence Centre for the Execution of Criminal Penalties, knowledge of the Convention is not (yet) part of the basic training for obtaining the federal diploma of higher education for prison officers. The Centre expressed interest in this subject being addressed during the training in question. In addition, the training provided by the Centre covers several European and international legal instruments:

(a) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984;

(b) The Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950;

(c) The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 26 November 1987;

(d) Recommendation Rec(2006)2 of the Committee of Ministers to member States on the European Prison Rules;

(e) Recommendation Rec(2012)5 of the Committee of Ministers to member States on the European Code of Ethics for Prison Staff.

V. Measures to provide reparation and to protect children against enforced disappearance (arts. 24 and 25)

A. Reply to paragraph 17 of the list of issues

1. Reply to subparagraph (a)

55. Filing a complaint that leads to the institution of criminal proceedings is not a prerequisite for obtaining compensation and/or moral reparation under the Victim Support Act. Nevertheless, criminal proceedings may prove the existence of an offence and of a victim's status as such.

2. Reply to subparagraph (b)

56. Immediate assistance consists of assistance provided to meet the most urgent needs resulting from the commission of the offence (Victim Support Act, art. 13 (1)). The services available include appropriate medical, psychological, social, material and legal assistance. Immediate assistance is free; the victim's income is not taken into account. In order to obtain immediate assistance, the person in question need only be considered a victim.

57. Longer-term assistance comprises the same services as those provided under the immediate assistance model but is provided over a longer period, normally until the victim's state of health has stabilized, and the other consequences of the offence have been, as far as possible, eliminated or mitigated by compensation (Victim Support Act, art. 13 (2)). The evidentiary requirements are more stringent for longer-term assistance. In such cases, the person's victim status must be believable – that is to say, there must be more arguments in favour of the existence of an offence conferring the status of a victim than against. Longer-term assistance, when provided by counselling centres, is not contingent on the victim's income. However, when counselling centres enlist the services of third parties to provide longer-term assistance, the Victim Support Act mentions the possibility of a contribution to the associated costs (Victim Support Act, art. 16). The extent to which these costs will be covered depends on the victim's income, with either some or all of them being borne by the State.

58. The victim, and his or her close friends or relatives, are subsequently entitled to compensation for the damage that they have suffered as a result of his or her injury or death (Victim Support Act, art. 19 (1)). As soon as the victim's state of health has stabilized, the costs associated with third party assistance services should be reflected in the compensation package. Depending on the victim's financial situation, the compensation package will cover either some or all of the costs.

59. Lastly, moral reparation, within the meaning of the Victim support Act, is due when the seriousness of the injury suffered warrants it (Victim Support Act, art. 22 (1)). Moral reparation is granted regardless of the income of the entitled person (Victim Support Act, art. 6 (3)).

60. Anyone wishing to assert his or her right to compensation or moral reparation must submit a request to the competent cantonal authority (Victim Support Act, art. 24). In order for compensation and moral reparation to be granted, stringent requirements regarding victim status must be met. The highest degree of probability that the person is a victim must be established – in other words, the degree of probability that the person is a victim is so high that it is not possible to seriously consider another state of affairs.

B. Reply to paragraph 18 of the list of issues

1. Reply to subparagraph (a)

61. Under articles 35 and 36 of the Civil Code, a declaration of absence may be issued if the death of a person who has been missing for at least one year following the occurrence of a life-threatening event or who has not been heard from for at least five years seems "very likely". In the absence of eyewitnesses, it is not possible to provide incontrovertible proof

of the death of the missing person. His or her death must, however, appear to be the most likely outcome, under the circumstances. It is for the persons deriving rights from the death to claim and prove this to be the case, for example, in the event of a disappearance that occurred during an earthquake. If the judge considers that the condition relating to the life-threatening event has not been met, he or she cannot initiate proceedings to declare the missing person absent unless five years have elapsed since he or she was last heard from.

2. Reply to subparagraph (b)

62. A declaration of absence presupposes that no one has any idea as to the whereabouts of the person or as to what he or she is doing. The death of the missing person must be a serious possibility (Civil Code, art. 35 (1)). This is not the case if, for example, it is known that he or she has gone abroad to start a new life under a different identity.

63. A declaration of absence may be requested when at least one year has elapsed since the occurrence of the life-threatening event or when five years have elapsed since the person concerned was last heard from (Civil Code, art. 36 (1)). The difference in the time limits can be explained by the greater likelihood of the person having died in the first scenario than in the second. These time limits cannot be curtailed.

3. Reply to subparagraph (c)

64. As for property and financial matters, until a declaration of absence is issued, succession rights cannot be exercised; the missing person remains the owner of his or her property (Civil Code, art. 537, read in conjunction with article 38 (1)). The adult protection authority may institute guardianship arrangements when a person who has reached the age of majority is prevented from acting on their own behalf because they are absent and have not appointed a representative to put their affairs in order (Civil Code, chap. II, art. 390 (1)). The selling and preservation of assets is regulated by the Ordinance on Asset Management by Welfare Advocates and Guardians (Ordinance on Asset Management by Welfare Advocates and Guardians, art. 1).

65. Regarding family matters, a marriage or registered civil partnership may only be dissolved if a declaration of absence has been issued (Civil Code, art. 38 (3)). A child born within 300 days of the occurrence of the life-threatening event, or of the last time the person was heard from, is deemed to be the child of the missing husband (Civil Code, art. 255 (3)).

66. As for social protection matters, according to the guidelines on pensions from federal old-age, survivors' and invalidity insurance (version 16 of 1 January 2019, No. 3430 ff.) entitlement to a pension begins on the first day of the month following the death of the spouse. The date of death recorded in the family register, which is the same date on which the declaration of absence takes retroactive effect, is decisive. In principle, a widow's or widower's pension cannot be paid until the judge has issued a declaration of absence in respect of his or her spouse. However, when there are special circumstances to warrant it, and if it appears likely that, in the case in question, the judge will declare the person absent, the pension may, on an exceptional basis, be paid before the declaration of absence has been issued, when the case concerns a disappearance that is attributable to a life-threatening event. However, the pension will only be paid once proceedings for obtaining a declaration of absence have been initiated. With regard to the children of the missing person, if one of a child's parents is declared absent, entitlement to an orphan's pension also begins on the first day of the month following his or her death. In theory, the orphan's pension should, likewise, not be paid until the relevant declaration of absence has been issued. However, when special circumstances apply, and in cases where it can be assumed that the missing parent will be declared absent, the pension may, on an exceptional basis, be paid before the declaration of absence has been issued, albeit only after the proceedings for obtaining it have been initiated (No. 3324 ff.).

4. Reply to subparagraph (d)

67. A declaration of absence is a civil law matter and, as such, does not pursue the same aims as criminal law. The decision of the civil judge therefore has no bearing on any criminal investigation.

C. Reply to paragraph 19 of the list of issues

68. The Swiss authorities considered this point during the process of ratifying the Convention. The conduct described in article 25 (1) (a) of the Convention is already covered by the Criminal Code (see paragraph 147 of the report of Switzerland), although no specific offence is defined. Establishing this conduct as a separate offence is therefore not necessary, as it would only have symbolic value, which would make little sense in the Swiss context. Moreover, this measure is not required by the Convention.

D. Reply to paragraph 20 of the list of issues

69. As for adopted children, a minor has the right to obtain non-identifying information about his or her biological parents. He or she is entitled to obtain information about the latter's identity only if he or she can demonstrate a legitimate interest in doing so (Civil Code, art. 268 (c) (2)). A child who has reached the age of majority may, at any time, request to know the identity of his or her biological parents and to receive other information about them. In addition, he or she may request information about the direct descendants of his or her biological parents if the descendants have themselves reached the age of majority and given their consent (Civil Code, art. 268 (c) (3)). Each canton has a designated cantonal authority responsible for overseeing the adoption procedure. The authority in question can communicate information about biological parents, their direct descendants and the child in question (Civil Code, art. 268 (d) (1)). An adopted child may contact the cantonal information service of his or her canton of residence or, alternatively, of the canton in which the adoption procedure took place (see Civil Code, art. 268 (d) (4)). There is a list of all the information and advisory services relevant to the adoption procedure set out in the Civil Code on the website of the Federal Office of Justice. Before communicating the requested data, the cantonal information service notifies the person concerned that it has received a request for information about them and, as and when necessary, asks for their consent to be contacted (Civil Code, art. 268 (d) (2)). If the individual refuses to meet with the requesting person, the authority notifies the latter of this fact and informs them of the personal rights of the former (Civil Code, art. 268 (d) (3)).

70. With regard to children left in baby boxes, it should be noted that there are currently eight baby boxes in Switzerland, all of which are located in hospitals. These hospitals are obliged to inform the competent authority when they find a child of unknown parentage in their baby box (Ordinance on Civil Status, art. 38). In the case of a child who is not subject to parental authority, the child protection authority appoints a guardian for the foundling (Civil Code, art. 327 (a)) and notifies the Federal Civil Status Office, which ensures that the child's birth is registered in the civil status district encompassing the place where he or she was found. The competent civil status office records the place, time and circumstances in which the child was found, its sex, presumed age and any distinguishing features (Ordinance on Civil Status, art. 20 (3)).

E. Reply to paragraph 21 of the list of issues

71. The report of the Federal Council in response to the Ruiz postulate (No. 17.4181) is currently being drafted and will be published at the end of 2020. The report will focus on three areas:

(a) The laws and practices of private intermediaries and the cantonal and federal authorities in the 1980s in relation to intercountry adoption, with a particular focus on allegations of unlawful practices, information held by the authorities and measures taken at the time;

(b) The efforts made and the measures in place today to support people who have been unable to trace their roots;

(c) An analysis of the existing legislative framework governing intercountry adoption procedures, including recommendations on related practices and the current and future legislative framework.

72. As for the historical analysis (the first part of the report), it should be noted that a research contract was awarded to a higher education institution specializing in social work in Zurich. In principle, this external report will be published at the beginning of 2020, prior to the publication of the report drafted by the Federal Council.

73. With regard to the second question on the guarantees against wrongful removal within the meaning of article 25 (1) (a) of the Convention, the following points should be recalled: once the prospective adoptive parents are in possession of a Swiss authorization declaring them suitable to adopt a child with a certain profile and from a specific country, Swiss adoption procedure provides that authorization to receive a specific child in adoption will only be granted by the competent cantonal authority if the applicants have submitted the following documents:

(a) A medical report and a social report on the child;

(b) A certificate of consent from the biological parents and the child, according to his or her age;

(c) A declaration from the competent authority in the child's country of origin stating that he or she may be entrusted to prospective adoptive parents in Switzerland.

74. Other documents may also be required.

75. This authorization must be requested and issued before the child enters Switzerland. The documents are checked at various stages of the proceedings by the different civil and migration authorities involved, and verified by the Embassy of Switzerland. The low number of intercountry adoptions (on average fewer than 200 per year) helps to ensure that cases are carefully examined by the Swiss authorities.
