



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

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## Committee on Enforced Disappearances

### List of issues in relation to the report submitted by Switzerland under article 29, paragraph 1, of the Convention\*

#### I. General information

1. Please provide information on the steps taken to establish an independent national human rights institution in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

#### II. Definition of the criminal offence of enforced disappearance (arts. 1–7)

2. With reference to paragraph 30 of the State party report (CED/C/CHE/1), please clarify whether the expression “with the intention of removing a person from the protection of the law”, used in the definition of enforced disappearance appearing in articles 185 bis of the Criminal Code and 151 (d) of the Military Criminal Code, should be understood as an intentional element (*animus*) that would have to be present in order for the act to constitute criminal conduct or whether, on the other hand, it should be understood as a consequence of that act (arts. 2 and 4).

3. With reference to the information provided in paragraph 44 of the State party report, please indicate whether Swiss law contains specific provisions on the responsibility of superiors that would apply to cases of enforced disappearance that do not constitute crimes against humanity. In the light of article 20 of the Military Criminal Code and article 80 (2) of the Army Service Regulations, please also state whether Swiss law contains similar provisions which state: (a) that no order or instruction issued by other public authorities may be invoked to justify an offence of enforced disappearance; and (b) that the issuance by other public authorities of an order to commit an act of enforced disappearance constitutes a criminal offence (art. 6).

4. Please specify the circumstances in which the commission of an act of enforced disappearance would be punishable by a prison sentence of 1 year. With regard to paragraph 49 of the State party report, please clarify whether Swiss law provides for the specific mitigating and aggravating circumstances listed in article 7 (2) of the Convention (art. 7).

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\* Adopted by the Committee at its seventeenth session (30 September–11 October 2019).



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

5. Please indicate whether measures have been taken to ensure that cases of enforced disappearance remain expressly outside the jurisdiction of the military courts and can be investigated and tried only by the competent civilian authorities (art. 11).

6. Given that Ordinance No. 150.21 of 2 November 2016 concerning the Federal Act on the International Convention for the Protection of All Persons from Enforced Disappearance designates the Federal Office of Police as the federal coordination service and that, in a number of cantons, the person responsible for coordination is appointed from among the members of the police force or the prison authorities, please explain how the requirement for a thorough and impartial investigation is met in all circumstances. Please also explain how the time limit set out in the implementing regulations for responding to a request for information (six days) is compatible with the requirement for allegations to be investigated promptly (arts. 12 and 24).

7. Please indicate whether other cantons and the federal authorities follow the practice of the Canton of Thurgau of referring cases to a special prosecutor from another canton if an employee of the public prosecutor's office or the cantonal police is involved in a case (see paragraph 65 of the State party report) and/or whether procedural mechanisms exist at the cantonal and federal levels to ensure that the police or security forces do not participate in an investigation into an enforced disappearance when one or more of their officers are suspected of having been involved in the commission of the offence in question (art. 12).

8. Please indicate whether, and, if so, to what extent, the designated services and/or persons forming part of the network established in accordance with Federal Act No. 150.2 of 18 December 2015 on the International Convention for the Protection of All Persons from Enforced Disappearance are able to obtain access to any place of detention or any other place where there are reasonable grounds for believing that a disappeared person may be present. Please also indicate whether the searches carried out by the network are restricted to official places of deprivation of liberty (art. 12).

9. With regard to the information provided in paragraph 50 of the State party report, according to which cantonal regulations provide for the suspension of employees when there are legitimate grounds for suspecting them of having committed a criminal offence, please indicate whether: (a) similar regulations also exist at the federal level; (b) such regulations are applicable to all public officials, whether civilian or military; and (c) suspensions are effective from the beginning of an investigation and throughout its duration (art. 12).

10. With regard to Federal Act No. 312.2 of 23 December 2011 on Extra-Procedural Witness Protection, cited in paragraph 72 of the State party report: (a) indicate whether the Act applies to all persons referred to in article 12 (1) of the Convention; (b) describe the type of protection measures that may be granted and the procedures for their application, indicating whether the persons to be protected are consulted regarding the steps to be taken for that purpose; and (c) indicate whether there are mechanisms to ensure that the law enforcement or security forces whose members are suspected of having been involved in an enforced disappearance do not take part in the implementation of protection measures (art. 12).

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

11. Please provide additional information on the measures taken to ensure, in practice, strict compliance with the principle of non-refoulement under article 16 (1) of the Convention. Please also specify: (a) the measures envisaged to ensure that information on migrants, in particular minors, is duly recorded and stored; (b) whether a thorough individual assessment of the risk that a person might be subjected to enforced disappearance if returned to his or her country of origin is carried out when entry is refused at an airport or at a border crossing; and (c) whether, before departing, returning or

extraditing a person to a country considered to be “safe”, a thorough individual assessment is made of the risk that the person concerned might be subjected to enforced disappearance, and/or whether consideration is given to the possibility that, after having been transferred to a State considered to be “safe”, the person might then be transferred to another State where he or she might be at risk of enforced disappearance (art. 16).

12. With reference to paragraph 83 of the State party report, please indicate whether Switzerland has ever required guarantees from a State requesting extradition because there were grounds for believing that the person in question may have been at risk of enforced disappearance. In connection with paragraph 87 of the State party report on procedures for appealing against extradition orders, please clarify whether appeals against expulsion decisions also have a suspensive effect (art. 16).

13. Please indicate whether the National Commission for the Prevention of Torture possesses sufficient human, financial and technical resources for it to carry out its functions effectively and independently. Please also provide information on the safeguards established to allow the Commission immediate and unrestricted access to all places of deprivation of liberty and state whether the Commission may carry out unannounced inspections (art. 17).

14. Please specify what measures have been taken to ensure that, from the outset of any deprivation of liberty, including at the time of apprehension, all persons deprived of their liberty have access to a lawyer and may inform their families, or any other person of their choice, including their consular authorities in the case of foreign nationals. In this connection, please indicate whether there have been any complaints or allegations regarding a failure to observe these rights and, if so, please provide information on the proceedings conducted and their outcome, including any sanctions imposed. Please indicate whether, outside the context of institutionalization for purposes of care, Swiss law recognizes the right of any person with a legitimate interest, in any circumstances, to initiate proceedings before a court so that it may decide, without delay, on the lawfulness of the deprivation of liberty (art. 17).

15. With regard to article 214 of the Code of Criminal Procedure, please specify under what circumstances the “purpose of the investigation” would be a reason to refrain from communicating information on a person’s deprivation of liberty to his or her relatives and how long the communication of such information may be delayed by the authorities. Please explain how it is ensured that, in the event of a refusal to disclose information, the person is effectively under the protection of the law (arts. 17–20).

16. With reference to paragraph 136 of the State party report, please indicate whether all civilian and military law enforcement personnel, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty, including judges, prosecutors and other officials responsible for the administration of justice at both the federal and cantonal levels, receive specific and regular training on the Convention in accordance with article 23 (1) of the Convention (art. 23).

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

17. With regard to paragraph 141 of the State party report: (a) specify whether, in cases of enforced disappearance, it is necessary for victims to initiate criminal proceedings in order to obtain compensation and/or reparation in accordance with article 24 (4) and (5) of the Convention; and (b) describe how it is possible to obtain access to the benefits provided for by Federal Act No. 312.5 of 23 March 2007 on Assistance to Victims of Offences in cases where it has not been possible to obtain such benefits by other means (art. 24).

18. With reference to paragraph 144 of the State party report:

(a) Specify whether it is necessary to prove that it is very likely that a missing person has died in order for a declaration of absence to be issued;

(b) Indicate whether it is necessary, in order for a declaration of absence to be issued, for the whereabouts of the disappeared person to have been unknown for one or five years, depending on the circumstances, or whether these periods may be shorter;

(c) Please provide information on the legal situation of disappeared persons whose fate has not been clarified and that of their relatives in areas such as social benefits, financial matters, family law and property rights during the period preceding the issuance of a declaration of absence;

(d) Please indicate whether a declaration of absence may have an impact on the State party's obligation to continue the investigation into an enforced disappearance until the fate of the disappeared person has been clarified (art. 24).

19. Please indicate whether the State party intends to define the conduct described in article 25 (1) (a) of the Convention as a specific criminal offence (art. 25).

20. With reference to paragraph 149 of the State party report, please provide information on the procedures that adopted children must follow in order to exercise their right to obtain information on the identity of their biological parents and indicate whether there are any requirements that they must meet in order to obtain such information. Please also describe the measures taken to ensure that children left in baby boxes are not wrongfully removed in contravention of article 25 of the Convention (art. 25).

21. With reference to paragraph 151 of the State party report, please provide information on the progress made in the assessment of the country's international adoption procedures pursuant to parliamentary motion No. 17.4181 ("Shedding light on illegal adoptions in Switzerland of children from Sri Lanka in the 1980s"). Please also provide information on the measures taken to ensure, in practice, that internationally adopted children have not been victims of wrongful removal within the meaning of article 25 (1) (a) of the Convention (art. 25).

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