



International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Concluding observations on the report submitted by Switzerland under article 29 (1) of the Convention*

1. The Committee on Enforced Disappearances considered the report submitted by Switzerland under article 29 (1) of the Convention¹ at its 339th, 340th and 342nd meetings,² held virtually owing to the coronavirus disease (COVID-19) pandemic. At its 356th meeting, held on 4 May 2021, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the report submitted by Switzerland under article 29 (1) of the Convention, which was drafted in accordance with its guidelines. It commends the State party for having consulted civil society organizations while drafting the report and including their comments.³ It also thanks the State party for the quality of its written replies⁴ to the list of issues.⁵

3. The Committee appreciates the constructive dialogue with the delegation from the State party on the measures taken to implement the provisions of the Convention, which has dispelled many of its concerns, and particularly welcomes the openness with which the delegation responded to the questions it raised. It thanks the State party for the additional information and clarifications provided in its oral statements and in writing.

B. Positive aspects

4. The Committee commends the State party for becoming a party to almost all of the international human rights instruments, including several of their optional protocols, as well as the Rome Statute of the International Criminal Court.⁶

5. The Committee welcomes the fact that the State party has recognized its competence to receive and consider individual and inter-State communications, respectively under articles 31 and 32 of the Convention.

6. The Committee commends the State party for the legislative measures it has adopted in areas related to the Convention, including:

* Adopted by the Committee at its twentieth session (12 April–7 May 2021).

¹ CED/C/CHE/1.

² See CED/C/SR.339, 340 and 342.

³ Paras. 157–164.

⁴ CED/C/CHE/RQ/1.

⁵ CED/C/CHE/Q/1.

⁶ Switzerland is not a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.



(a) Federal Act No. 150.2 of 18 December 2015 on the International Convention for the Protection of All Persons from Enforced Disappearance;

(b) 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.

7. The Committee commends the State party for recognizing the guidelines on COVID-19 and enforced disappearance adopted by the Committee and the Working Group on Enforced or Involuntary Disappearances. In this regard, it welcomes the measures adopted by the State party as part of its response to COVID-19 to reduce the prison population and facilitate contact with the outside world for persons deprived of their liberty.

8. The Committee welcomes the role played by the State party in promotion of the Convention at international forums and as part of its international cooperation policy.

9. The Committee notes with appreciation that the State party has extended an open invitation to all special procedures mandate holders of the Human Rights Council to visit the country.

C. Principal subjects of concern and recommendations

10. The Committee notes the measures taken by the State party to comply with the provisions of the Convention. Nevertheless, the Committee considers that, at the time of drafting the present concluding observations, the legislative and institutional framework in force in the State party could be further strengthened to better prevent and punish enforced disappearance. The Committee therefore invites the State party to give due consideration to implementation at the federal and cantonal levels of the recommendations set out below, adopted in a constructive and cooperative spirit, with a view to ensuring the full implementation of the Convention.

1. General information

National human rights institution

11. The Committee finds it regrettable that, despite the recommendations made by various human rights mechanisms, the establishment of a national human rights institution in the State party has been postponed until 2023. Furthermore, the Committee notes with concern that the bill on the establishment of the institution does not give it a mandate to conduct monitoring activities or to process individual complaints, even though the number of requests concerning individual cases received by the National Commission for the Prevention of Torture highlights the need to establish such a procedure.

12. The Committee encourages the State party to expedite the process of establishing a national human rights institution that complies with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) and that has a mandate to conduct monitoring activities and to process individual complaints. It also encourages the State party to explicitly include the promotion and protection of the rights enshrined in the Convention in the institution's mandate.

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

Offence of enforced disappearance

13. The Committee notes the State party's approach of relying on existing criminal provisions, including those relating to crimes against humanity, to criminalize enforced disappearance in article 185 bis of the Criminal Code. The Committee also notes that the Federal Council Dispatch of 29 November 2013 on the approval and implementation of the International Convention for the Protection of All Persons from Enforced Disappearance provides an authoritative interpretation of certain elements of the definition contained in article 185 bis of the Criminal Code that is in line with the Convention, including "consent", "fate", "the intention of removing a person from the protection of the law", and "prolonged

period”. While these interpretations may be useful to judges, the Committee considers that the definition of the crime remains unclear to victims and other persons who may have recourse to it. The Committee also notes that the wording of article 185 bis (b) of the Criminal Code makes no mention of the “consent” of the State (arts. 2 and 4).

14. The Committee invites the State party to review the definition of enforced disappearance contained in article 185 bis of the Criminal Code so as to ensure that it is in full conformity with that contained in article 2 of the Convention, to remove the ambiguities regarding its constituent elements and to clarify its meaning for all.

Appropriate penalties

15. The Committee notes the State party’s explanation of the sentencing rules in its national law, including those relating to aggravating and mitigating circumstances. While noting the explanation that the mandatory minimum sentence of 1 year provided for in article 185 bis of the Criminal Code for the crime of enforced disappearance is applicable only in cases where, for example, the perpetrator occupied a very junior position and where his or her involvement in the commission of the crime was limited, the Committee remains concerned that such a sentence is not commensurate with the extreme seriousness of the crime (art. 7).

16. The Committee encourages the State party to review the penalty provided for in article 185 bis of the Criminal Code so as to ensure that the minimum sentence for the crime of enforced disappearance meets the requirements of article 7 of the Convention, duly reflecting its extreme seriousness. Furthermore, the Committee invites the State party to include in its criminal law the mitigating and aggravating circumstances specifically applicable to enforced disappearance, ensuring that the mitigating circumstances will in no case lead to a lack of appropriate punishment.

Criminal responsibility of superiors

17. While noting the provisions of article 114a of the Military Criminal Code on the “punishability of superiors”, the Committee is concerned that, in the Criminal Code, neither the provisions on commission by omission nor those on abuse of authority (Criminal Code, arts. 11 and 312, respectively) appear to meet the requirements of article 6 (1) (b) of the Convention. It is also concerned that the Criminal Code does not contain any provisions excluding, in accordance with article 6 (2) of the Convention, invocation of the superior orders defence (art. 6).

18. The Committee recommends that the State party incorporate into the Criminal Code the principle of criminal responsibility of superiors in cases of enforced disappearance, in accordance with article 6 (1) (b) of the Convention. It also recommends that the State party ensure that no order or instruction from a public authority may be invoked to justify an offence of enforced disappearance.

3. Criminal responsibility and judicial cooperation in relation to enforced disappearance (arts. 8–15)

Military jurisdiction

19. The Committee notes with concern that military courts may take up cases involving offences of enforced disappearance allegedly committed by military personnel, including when the victim is a civilian. It recalls that, as a matter of principle, all cases of enforced disappearance must remain expressly outside the jurisdiction of the military courts and be dealt with only by the competent ordinary civilian authorities (art. 11).

20. Recalling its statement on enforced disappearances and military jurisdiction,⁷ the Committee recommends that the State party exclude the investigation and prosecution of cases of enforced disappearance from the competence of the military

⁷ A/70/56, annex III.

courts. In this regard, the Committee encourages the State party to repeal the relevant provisions of the Military Criminal Code.

Search for disappeared persons

21. The Committee welcomes the establishment by Ordinance No. 150.21 of the contact network between the Confederation and the cantons. While noting that this is not a minimum period of time, the Committee considers that the six-day deadline for responding to a request for information provided for in article 4 of the Ordinance does not reflect the urgency that characterizes all cases of enforced disappearance. The Committee is concerned that article 5 of the Ordinance places a priori restrictions on searches, limiting them to certain “institutions” where persons are deprived of their liberty. Furthermore, while noting the recusal systems provided for in Swiss law, the Committee finds it regrettable that the Ordinance contains no procedural safeguards to ensure that persons who may be involved or have links with persons who may be involved in a disappearance may not, under any circumstances, participate in information gathering (arts. 12 and 24).

22. Drawing the attention of the State party to the guiding principles for the search for disappeared persons, the Committee recommends that it make the necessary amendments to Ordinance No. 150.21 of 2016 concerning the Federal Act on the Convention, taking into account the need to:

(a) **Establish a 24-hour response time for any search initiated by the network, unless a duly motivated extension request is made, under conditions specified by the Ordinance;**

(b) **Explicitly extend the network’s competence to cover all places of deprivation of liberty and any other place where there are reasonable grounds for believing that a disappeared person may be present, including by specifying the procedures, powers and resources that can be mobilized to this end;**

(c) **Ensure the absolute independence and impartiality of information gathering, by establishing safeguards to ensure that any person who may be involved or has links with a person who may be involved in a case of enforced disappearance does not participate in information gathering and is not in a position to influence the course of the investigation.**

4. Measures to prevent enforced disappearance (arts. 16–23)

Non-refoulement

23. While noting the State party’s explanation of its asylum procedure and the fact that an asylum seeker may invoke the risk of being subjected to enforced disappearance in the event of his or her removal at any stage of the asylum proceedings, the Committee remains concerned that the concept of “enforced disappearance” is not adequately or consistently incorporated in the risk assessment carried out prior to removal decisions (art. 16).

24. The Committee recommends that the State party ensure that a thorough individual assessment of the risk of any person becoming a victim of enforced disappearance is conducted before it proceeds with an expulsion, return, surrender or extradition, including in cases where entry is refused at an airport or at the border. In the case of a person from a State considered “safe”, the risk of him or her subsequently being transferred to a State where he or she might be at risk of enforced disappearance should also be assessed. In this regard, the Committee recommends improving the training provided to staff involved in asylum, return, surrender or extradition procedures and, in general, to law enforcement officials, on the concept of “enforced disappearance” and on the assessment of the related risks.

Fundamental legal safeguards

25. The Committee notes the State party’s explanation of the distinction drawn between apprehension under article 215 and arrest under article 217 of the Code of Criminal Procedure. Nevertheless, the Committee notes with concern that the Code of Criminal Procedure does

not specify any rights for the apprehended person, even when the purpose of the apprehension is to determine whether the person has committed an offence, and that he or she may be taken to the police station, in accordance with article 215 (1). The Committee is also concerned about the lack of any statistics on complaints of failure to respect safeguards related to deprivation of liberty (arts. 17 and 18).

26. The Committee urges the State party to ensure that, in law and in practice, persons deprived of their liberty have access to counsel and can communicate without delay with their relatives or any person of their choice from the outset of the deprivation of liberty, regardless of its intended duration. It also recommends that the State party keep statistics on complaints or allegations of non-compliance with safeguards related to deprivation of liberty and on any penalties that may have been imposed.

Specific remedies concerning the lawfulness of a detention

27. The Committee notes that counsel is able to file an appeal on behalf of his or her client in order to have a court rule without delay on the lawfulness of the deprivation of liberty. However, it is concerned that an equivalent right is not expressly guaranteed for any person with a legitimate interest outside the criminal complaints procedure (art. 17).

28. The Committee invites the State party to take the measures necessary, including the possible creation of a specific remedy, to ensure that:

(a) **The review of the lawfulness of a deprivation of liberty and any appeal connected to it satisfy the “without delay” requirement of article 17 (2) (f) of the Convention;**

(b) **Any person with a legitimate interest may exercise this right in all circumstances.**

Access to information by persons with legitimate interest

29. The Committee notes that article 214 of the Code of Criminal Procedure allows an authority to refuse to transmit information when the purpose of the criminal investigation prohibits it or when the person objects. However, the Committee is concerned about the lack of guarantee that any appeal filed against a negative decision will be “prompt and effective”. The Committee is also concerned about allegations that there are regular delays in the provision of information to relatives as a result of decisions taken by police officers if they suspect that there is a “risk of collusion” (arts. 17–20 and 22).

30. The Committee recommends that the State party ensure that the persons referred to in article 18 (1) of the Convention have the right to a prompt and effective judicial remedy to obtain, without delay, the information referred to in that paragraph. It also recommends that the State party prevent and punish the refusal to provide such information and the provision of inaccurate information.

National Commission for the Prevention of Torture

31. The Committee is concerned that the National Commission for the Prevention of Torture is not being provided with sufficient resources to conduct regular visits to all places of deprivation of liberty in the State party. It is also concerned about the Commission’s attachment to the Federal Department of Justice and Police, which could compromise its autonomy and independence.

32. The Committee recommends that the State party provide the National Commission for the Prevention of Torture with adequate financial and human resources to enable it to conduct regular visits to all places of deprivation of liberty. It also recommends that the State party ensure the structural independence of the Commission in relation to the executive branch.

5. Measures to protect and ensure the rights of victims of enforced disappearance (art. 24)

Right to obtain reparation and prompt, fair and adequate compensation

33. The Committee notes that the scope of Federal Act No. 312.5 of 23 March 2007 on the Provision of Support to Victims of Crime, as defined in articles 3 and 17 (1) of the Act and based on the principle of territoriality, precludes refugees who have been victims of serious human rights violations committed abroad, including enforced disappearance, from receiving the assistance provided for therein (art. 24).

34. The Committee recommends that the State party ensure that any person who has suffered direct harm as a result of an offence of enforced disappearance has the right to obtain reparation in accordance with article 24 (4) and (5) of the Convention, including when the person was abroad at the time of the event.

Legal situation of disappeared persons whose fate has not been clarified and that of their relatives

35. The Committee considers that the existing system for obtaining a declaration of absence in the State party, which is based on presumption of death, is ill-suited for cases of enforced disappearance. The Committee reiterates that, in view of the continuous nature of enforced disappearance, in principle and unless there is concrete evidence to the contrary, there is no reason to presume that a disappeared person has died, so long as his or her fate has not been clarified (art. 24).

36. In the light of article 24 (6) of the Convention, the Committee recommends that the State party review its laws to clarify the legal situation of disappeared persons whose fate has not been established, and that of their relatives, in fields such as social welfare, financial matters, family law and property rights, without having to presume the disappeared person dead. In this regard, the Committee encourages the State party to consider establishing a specific procedure for obtaining a declaration of absence in cases of enforced disappearance.

6. Measures to protect children from enforced disappearance (art. 25)

Disappearance of unaccompanied minors

37. The Committee notes the measures taken with respect to the disappearance of unaccompanied asylum-seeking minors registered in the State party. However, the Committee remains concerned about this phenomenon, the low number of cases solved and the risk that these minors may be victims of enforced disappearance (arts. 12, 14, 16 and 25).

38. The Committee recommends that the State party: (a) review the number of asylum applications discontinued on account of the disappearance of unaccompanied juvenile applicants; (b) conduct thorough investigations into these cases, including by making use of mutual legal assistance with States experiencing the same phenomenon; (c) undertake searches to locate the missing minors; and (d) adopt new measures to prevent the disappearance of unaccompanied minors from reception centres, in particular by drawing on the good practices adopted by other States.

Wrongful removal of children

39. The Committee welcomes the adoption by the Federal Council of the report of 11 December 2020 in response to parliamentary postulate 17.4181, submitted by Rebecca Ruiz and entitled “Shedding light on illegal adoptions in Switzerland of children from Sri Lanka in the 1980s”. It notes in particular the acknowledgement by the Federal Council of the State party’s failings and the expression of regret offered to the adopted persons and their families. The Committee also notes that the State party plans to support adopted persons in tracing their origins and to undertake a broader analysis of the situation with regard to intercountry adoption in Switzerland, with a view to proposing solutions, including through legislative reforms. The Committee also notes that the delegation of the State party recognized that, in some cases, illegal adoptions could be the result of enforced disappearance or the wrongful

removal of children who were subjected to enforced disappearance, children whose father, mother or legal guardian was subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance. The Committee notes with concern the difficulties encountered by the persons concerned in obtaining the information and assistance that they need. It is also concerned that the State party does not appear to be considering taking steps to prosecute the perpetrators of the offences that were committed and to recognize and fulfil the victims' right to reparation (arts. 9, 12, 14, 15, 24 and 25).

40. **The Committee urges the State party to:**

(a) **Conduct thorough and impartial investigations to determine whether children adopted in Sri Lanka during the 1980s and 1990s may have been victims of enforced disappearance or wrongful removal, and whether other offences, such as falsification, concealment or destruction of identity documents, were committed in these cases, with a view to identifying and punishing the perpetrators of such offences;**

(b) **In consultation with the persons concerned, identify the victims of enforced disappearance or wrongful removal of children and provide them with the support that they need to establish their identity and parentage, and clarify in full the circumstances in which they were adopted;**

(c) **Guarantee the right to reparation to any person who has suffered direct harm as a result of an offence of enforced disappearance, irrespective of the date on which the act was committed, including when the harm originated in another State, even if no criminal proceedings have been instituted against the alleged perpetrators or if they have not been identified;**

(d) **As necessary for the purpose of giving effect to these recommendations, request the cooperation of Sri Lanka under articles 14, 15 and 25 of the Convention.**

D. Dissemination and follow-up

41. **The Committee wishes to draw attention to the obligations undertaken by States when ratifying the Convention and, in this connection, urges the State party to ensure that all the measures it adopts are in full compliance with the Convention and other relevant international instruments.**

42. **The Committee also wishes to emphasize the particularly cruel effect of enforced disappearance on women and children. Women who are subjected to enforced disappearance are particularly vulnerable to sexual and other forms of gender-based violence. Women who are relatives of a disappeared person are particularly likely to suffer serious social and economic disadvantages and to be subjected to violence, persecution and reprisal as a result of their efforts to locate their loved ones. Children who are victims of enforced disappearance, either because they themselves were subjected to disappearance or because they suffer the consequences of the disappearance of their relatives, are especially vulnerable to numerous human rights violations. The Committee therefore emphasizes the need for the State party to ensure that gender perspectives and child-sensitive approaches are consistently used in implementing the present recommendations and all the rights and obligations set out in the Convention.**

43. **The State party is encouraged to disseminate widely the Convention, its report submitted under article 29 (1) of the Convention, the written replies to the list of issues drawn up by the Committee and the present concluding observations, in order to raise awareness among the State authorities, all of civil society and the public. The Committee also encourages the State party to promote the participation of civil society in the actions taken in line with the present concluding observations.**

44. **In accordance with the Committee's rules of procedure, the State party should provide, by 7 May 2022 at the latest, information on the implementation of the recommendations contained in paragraphs 14 (definition of enforced disappearance),**

30 (access to information) and 40 (children adopted in Sri Lanka) of the present concluding observations.

Under article 29 (4) of the Convention, the Committee may then request the State party to provide additional information on the implementation of the Convention, including information on the measures adopted to give effect to all the recommendations contained in the present concluding observations.
