



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

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Committee on Enforced Disappearances

**Information received from Switzerland on follow-up to the
concluding observations on its report submitted under article
29 (1) of the Convention***

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* The present document is being issued without formal editing.



I. Additional information relating to paragraph 14 of the concluding observations (CED/C/CHE/CO/1): definition of enforced disappearance

1. While the domestic procedures for the ratification of the Convention were under way, the Government of Switzerland carried out a detailed legal analysis to ensure that the new article 185 bis of the Criminal Code was fully in line with article 2 of the Convention. On the basis of the explanatory report prepared by the Government, the Swiss parliament adopted the wording of article 185 bis without amendment during the legislative process.
2. The Swiss authorities do, however, closely follow any developments in practice or in case law that might reveal ambiguities or lacunae in the definition of enforced disappearance. In the absence of such indications, the Swiss authorities are of the view that no amendment to article 185 bis is called for.

II. Additional information relating to paragraph 30 of the concluding observations: access to information

3. In the context of criminal proceedings, it is permissible, under article 214 of the Code of Criminal Procedure, to delay providing information regarding deprivation of liberty “if the purpose of the investigation prohibits it or if the person concerned expressly objects”. The wording of the law is restrictive. Information on deprivation of liberty is not communicated to 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. 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 defence counsel.
4. A decision not to inform the relatives must be issued in the form of an order, in writing and with reasons given (Code of Criminal Procedure, art. 80 (1) and (2)). When taken by the police, a decision not to inform the relatives is valid for at most 24 hours. No later than the end of that period, the police must either release the person who has been taken into custody or bring him or her before a public prosecutor. In the latter instance, responsibility for the case passes to the Office of the Public Prosecutor, which must decide whether to keep the measure of non-disclosure in place or to inform the relatives without delay of the deprivation of liberty. Cases involving serious offences are referred to the Office of the Public Prosecutor even more quickly, since the police must inform the Office without delay of any serious offences of which they become aware. In this instance too, as soon as the Office of the Public Prosecutor is notified of a case, it assumes responsibility for it, including the decision as to whether to inform the relatives.
5. A decision not to inform the relatives may be challenged before the courts by the person in custody or his or her defence counsel. The question of whether relatives are also entitled to seek a judicial remedy against a decision not to provide them with information has not been addressed in practice, as the issue has not been raised before the courts. Nevertheless, the federal law on the Convention ensures that the right of family members and relatives to be informed is effective and subject to review by the courts. Under this law, those persons may file a search request with the federal coordination service, and if it is denied on the basis of article 214 of the Code of Criminal Procedure, the federal coordination service will issue an administrative decision that can then be appealed to the courts.
6. A violation of article 214 of the Code of Criminal Procedure is punishable under article 312 of the Criminal Code (abuse of authority) when the act is performed in order to secure an unlawful advantage for oneself or for a third person or to cause prejudice to another person.

III. Additional information relating to paragraph 40 of the concluding observations: adoptions of children from Sri Lanka

7. The illegal adoptions of children from Sri Lanka that took place in the 1980s and 1990s cannot be characterized, in general, as enforced disappearances. At the same time, the possibility that certain individual cases fall within the definition contained in article 2, read in conjunction with article 25 of the Convention, cannot be ruled out categorically. The issue should be examined on a case-by-case basis. Furthermore, the scope of the temporal and spatial application of the Convention should be taken into account.

8. A working group comprising representatives of federal and cantonal authorities, adopted persons and private tracing services was established in August 2020. The aim of its work is to identify measures, on the basis of an analysis of the situation and needs of adopted persons, to better support them in searching for their roots. The working group's efforts are not limited to Sri Lanka but take account of all countries of origin and also address the issue of illegal adoption. The working group's final report is expected in the summer of 2022 and will include a series of recommended measures, including with respect to future legislative amendments.

9. Specifically with respect to the situation of adopted persons from Sri Lanka, the Conference of Cantonal Justice and Police Directors decided on 18 November 2021 that the cantons would provide additional financial support to the association Back to the Roots to enable it to further develop and expand its programmes to support adopted persons in their search for their roots. This pilot project will also be co-financed by the Confederation. The Swiss cantonal and federal authorities continue to work closely with Back to the Roots to identify ways that the Swiss authorities can support adopted persons in tracing their roots. Searches can be conducted in Sri Lanka thanks to the cooperation of the competent Sri Lankan authorities. This collaboration will be stepped up in connection with the pilot project, and discussions will be held with the Sri Lankan authorities to determine whether additional opportunities for mutual assistance and cooperation could be considered within the framework of the Convention.
