



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

List of issues prior to the submission of the sixth periodic report of Austria,* adopted by the Committee at its forty-ninth session (29 October–23 November 2012)

Specific information on the implementation of articles 1 to 16 of the Convention, including with regard to the Committee's previous recommendations

Articles 1 and 4

1. With reference to the Committee's previous concluding observations (para. 8),¹ please provide information on the status of the amendment to the Criminal Code that would incorporate into domestic law the crime of torture. Please indicate whether a definition of torture that covers all the elements contained in article 1 of the Convention has been adopted and if these offences are punishable by appropriate penalties that take into account their grave nature, as set out in article 4, paragraph 2, of the Convention.

Article 2²

2. In the light of the Committee's previous concluding observations (para. 9) and the State party's follow-up replies, please provide an update on the introduction of any legal and administrative safeguards to ensure that suspects are guaranteed confidential access to lawyers and legal aid from the moment of arrest, regardless of the nature of the alleged

* The present list of issues was adopted according to the new optional procedure established by the Committee at its thirty-eighth session, which consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective periodic report. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

¹ Paragraph numbers in brackets refer to the previous concluding observations adopted by the Committee, published under symbol CAT/C/AUT/CO/4-5.

² The issues raised under article 2 could imply also different articles of the Convention, including but not limited to article 16. As stated in paragraph 3 of general comment No. 2 (2007) on the implementation of article 2 by States parties: "The obligation to prevent torture in article 2 is wide ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter "ill-treatment") under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. ... In practice, the definitional threshold between ill-treatment and torture is often not clear." See further chapter V of the same general comment.

crime. Please indicate whether the State party has reconsidered its position on amending paragraph 24 of Internal Instruction (*Erlass*) Ref. BMI-EE1500/0007-II/2/a/2009, issued by the Federal Ministry of Interior on 30 January 2009, in the light of the Committee's concern that its wording suggests that police are not obliged to delay questioning to allow lawyers to arrive at a place of interrogation. Also, please provide updated information on any measures taken by the State party to extend the use of audio and video equipment to all places of deprivation of liberty.

3. With reference to the Committee's previous concluding observations (para. 11), please provide updated information on the establishment of a full-fledged and properly funded system of legal aid and on measures taken to provide effective free legal aid for indigent criminal suspects.

4. In the light of the Committee's previous concluding observations (para. 12), please provide information on efforts made by the State party to diversify the composition of its police force and detention services by extending efforts for the recruitment of women and members of ethnic minority communities, including statistical information on the composition of the police force and detention system staff throughout the country.

5. With reference to the Committee's previous concluding observations (para. 10), please provide an update on measures taken to bring the functioning of the juvenile justice system into line with international standards, and in particular by guaranteeing that minors are always interrogated in the presence of legal counsel and/or a trusted person, in accordance with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).

6. With reference to the Committee's previous concluding observations (para. 23), please provide information on efforts taken by the State party to prevent and combat trafficking in women and children, and on measures to strengthen cooperation with countries of origin, transit and destination. Please provide information on any measures taken to prevent sex tourism³ with impunity in countries of origin.

7. With reference to the Committee's previous concluding observations (para. 24), please provide updated information on measures taken by the State party to ensure the introduction of efficient protection measures to combat and punish acts of violence against women and children, including domestic violence and sexual abuse. Please indicate if there is an institutional mechanism at the governmental level to coordinate, monitor and assess the effectiveness of strategies and actions to prevent and address violence against women⁴ and children. Also, please provide information on specific measures taken to protect children with disabilities from abuse and violence, in particular those in care institutions.⁵

Article 3

8. Please provide information about the number of persons, disaggregated by country of origin, who have been granted asylum or humanitarian protection, and the number of those who have been returned, extradited or deported since the consideration of the previous report. Please provide details of the grounds on which they were sent back, including a list of countries to which individuals were returned.

9. In the light of the Committee's previous concluding observations (para. 13), please provide information on measures taken by the State party to ensure that persons under its

³ CRC/C/OPSC/AUT/CO/1, para. 19.

⁴ CEDAW/C/AUT/CO/6, para. 23.

⁵ CRC/C/AUT/Q/3-4, para. 7.

jurisdiction, including unaccompanied asylum-seeking children⁶, are guaranteed fair treatment at all stages of asylum proceedings that comprises an opportunity for effective, independent and impartial review of decisions on expulsion, return or deportation. Also, please indicate whether an appeal of a denial of asylum on procedural grounds continues to not have automatic suspensive effect. Please provide information on whether the State party has adopted a gender-sensitive approach to refugee status determination⁷ in cases when such persons are fleeing conflict and generalized violence.

10. Please provide an update on the status of free legal counselling for asylum seekers outlined in the 2011 implementing Directive 2008/115/EC of the European Parliament,⁸ as referenced in the State party's follow-up replies.⁹ Please provide information on the number of asylum seekers to have received free counselling since the directive entered into force and indicate whether such counselling is available in all locations..

Articles 5, 7 and 8

11. Please provide information on whether the State party has rejected, for any reason, requests for extradition by another State of an individual suspected of having committed an offence of torture, and has started prosecution proceedings as a result. Please provide information on any new cases that have reached trial and with what result.

Article 10

12. With reference to the Committee's previous concluding observations (para. 15) please provide updated information about training programmes for judges, law enforcement officials and prison officers on the provisions of the Convention and the absolute prohibition of torture as well as on the methodology developed to assess their effectiveness and impact on the reduction of cases of torture and ill-treatment.

13. Please inform the Committee about any specific training of judges, prosecutors, forensic doctors and medical personnel to detect and document cases of torture and ill-treatment based on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).

14. Please provide information on any training and awareness-raising campaigns on violence against women and girls provided to judges, lawyers, law enforcement officials and social workers as well as to the public at large.

Article 11

15. In the light of the Committee's previous concluding observations (para. 17), please provide updated information on the efforts made by the State party to alleviate overcrowding in prison facilities, in particular in the Josefstadt and Simmerig II prisons in Vienna. Also, please provide updated information on the establishment of additional facilities and on any steps taken to apply alternative measures to imprisonment. Please indicate whether staffing levels and the number of female prison officers have increased during the period under review. Please indicate whether the State party has considered relinquishing the use of electro-muscular disruption devices to restrain persons in custody.

⁶ Ibid., para. 9.

⁷ CCPR/C/AUT/CO/4, para. 18 and CEDAW/C/AUT/CO/6, para. 30.

⁸ CAT/C/AUT/CO/4-5/Add. 2, para. 8.

⁹ A/HRC/17/8/Add.1, para. 93.48.

16. With reference to the Committee's previous concluding observations (para. 18), please provide information on efforts to prevent suicides and other sudden deaths in all places of detention. In addition, please provide information on independent investigations of cases of suicide and other sudden deaths, including possible liability of prison personnel, as well as on the development of guidelines for suicide prevention. In particular, please provide information on the results of the investigations into the following cases of deaths in custody discussed with the State party during the examination of the previous periodic report, namely: case No. 2 for 2009 (male, born 23 July 1962, detained in Göllersdorf, died on 5 February 2009 as a result of being run over by a train); case No. 5 for 2008 (male, born on 14 May 1924, detained in Josefstadt, died on 4 February 2008 of a shot in the head); case No. 11 for 2007 (female, born 20 September 1948, detained in Schwarzau, died on 5 March 2007 by falling from a window).¹⁰

17. In the light of the Committee's previous concluding observations (para. 16), please indicate whether, as recommended by the Committee, the State party has ended the practice of detaining asylum seekers in police holding centres. Please provide updated information on the detention of asylum seekers pending deportation and on any measures to provide alternatives to detention as well as material conditions appropriate to their legal status. Also, please indicate whether they enjoy access to appropriate legal support to challenge their detention.¹¹ In particular, please provide an update on the status of the pre-deportation centre Vordenberg/Styria and the accommodation structure for 12 families at Zinnergasse 29a, as well as on the additional accommodation for some 50 persons in Vienna.¹² In connection with the State party's position, expressed in its follow-up replies, that pre-deportation detention is only used as a last resort, please provide data on the total number of asylum seekers deported by the State party during the reporting period, the number detained pending deportation, and the number to which alternatives to detention were applied. Please indicate whether asylum seekers in general enjoy adequate reception conditions, including accommodation, health care and social support, throughout their asylum proceedings.

Articles 12 and 13

18. With reference to the Committee's previous concluding observations (para. 19), please provide statistical data on allegations of torture and ill-treatment, on the results of any investigations undertaken in connection with the allegations, disciplinary and criminal proceedings, convictions and the sanctions applied, as well as on any compensation provided to the victims. Please provide information on the percentage of such allegations that concern foreigners.

19. Please provide updated information on the amendments to the mandate of the Austrian Ombudsman Board and on the steps taken to bring it into accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).¹³ Please provide data on any complaints of torture or ill-treatment received by the Board and investigations into such allegations it has undertaken to date, and provide information on the resources allocated to the Board for this purpose. With reference to the State party's follow-up replies, please provide an update concerning the State party's ratification of the Optional Protocol to the Convention and the establishment of a national preventive mechanism.

¹⁰ CAT/C/AUT/Q/4-5/Add.1, para. 91 and CAT/C/SR.940, para. 55.

¹¹ European Commission against Racism and Intolerance, "ECRI report on Austria (fourth monitoring cycle)", adopted on 15 December 2009, published on 2 March 2010, para. 130.

¹² CAT/C/AUT/CO/4-5/Add.2, para. 7.

¹³ See <http://www.menschenrechtsbeirat.at/en>.

20. With reference to the Committee's previous concluding observations (para. 19), please provide updated information on the availability of clear and reliable data on acts of torture and abuse in police custody and other places of detention, including the excessive use of force.¹⁴ Please indicate if mechanisms have been introduced to collect and process data on the ethnicity of victims and allegations of excessive use of force and unlawful conduct of police officers.

21. In the light of the Committee's previous concluding observations (paras. 19 and 20), please provide information on the mandate of and investigations undertaken by the Federal Bureau of Anti-Corruption into allegations of torture and ill-treatment committed by law enforcement officials, including the number of complaints of torture or ill-treatment it has received and the actions it has taken in response to such complaints. In the light of the Committee's previously expressed concern regarding a high level of impunity in cases of police brutality, please provide updated information on whether aggravating circumstances outlined in section 33 of the Criminal Code have been invoked in the determination of sanctions for cases of torture and ill-treatment during the period under review and, if so, whether the sentences imposed are commensurate with the gravity of the offences. Also, please indicate whether effective remedies and rehabilitation have been provided to victims, including in the case of Mike B., and provide an update on the results of any investigation, prosecutions and convictions relating to this case. Please provide updated information on progress made by the working group established by the Human Rights Advisory Board in elaborating the concept for the creation of an independent body to investigate ill-treatment by police.

22. Please provide updated information, disaggregated by age, sex and ethnicity of the victims, on the number of complaints, investigations and prosecutions and on convictions and sentences imposed in human trafficking cases during the period under review. Please comment on the information that over half of convicted traffickers spend 12 months or less in jail and that one third of convicted traffickers receive no jail time. Please indicate whether victims of human trafficking benefit from victim support and recovery measures, including legal and psychosocial support, as well as the creation of livelihood options, when necessary.¹⁵

23. Please provide updated information, disaggregated by age and ethnicity of the victims, on the number of complaints investigations, prosecutions, convictions and sentences handed down in cases of gender-based violence during the period under review.

Article 14

24. In the light of the Committee's previous concluding observations (para. 21), please provide statistical data and examples of cases in which victims of torture or ill-treatment have received adequate redress and compensation, including rehabilitation, since the examination of the previous periodic report. In particular, please provide updated information with regard to compensation in the case of Bakary Jassay, a Gambian national, including whether he has received the €3,000 awarded to him by the court for the damages resulting from his pain and suffering when he was abused and severely injured by a policeman in Vienna on 7 April 2006.

¹⁴ A/HRC/17/8, para. 92.60.

¹⁵ CEDAW/C/AUT/CO/6, para. 26.

Article 16

25. In the light of the Committee's previous concluding observations (para. 22), please indicate whether additional medical and clinical staff have been hired by the Vienna Communal Health Office pursuant to the approval for hiring more staff in 2009 and whether medical examinations of registered sex workers are carried out in an environment that safeguards their privacy and preserves their dignity.

26. In the light of the Committee's previous concluding observations (para. 25), please indicate whether the use of net beds as a measure of restraint in psychiatric and social welfare establishments has ceased since the consideration of the previous periodic report. In addition, please provide an update on any measures taken to create a central register in all psychiatric institutions containing detailed information on each instance of recourse to physical and chemical means of restraint which indicates the type of restraint used, reasons for use and its duration.

27. Despite its prohibition in law, please provide information on any measures taken by the State party to eradicate corporal punishment in all settings and on any safeguards and mechanisms available to children in practice. Also, please provide information regarding legislation that prohibits corporal punishment as a disciplinary measure in penal institutions.¹⁶

Other issues

28. Please provide updated information on the measures taken by the State party to respond to any threats of terrorism and please describe if, and how, these anti-terrorism measures have affected human rights safeguards in law and practice and how it has ensured that those measures comply with all its obligations under international law, especially the Convention, in accordance with relevant Security Council resolutions, in particular resolution 1624 (2005)¹⁷. Please describe the relevant training given to law enforcement officers; the number of persons convicted under such legislation; the legal safeguards and remedies available to persons subjected to anti-terrorist measures in law and in practice; whether there are complaints of non-observance of international standards; and the outcome of these complaints.

General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention

29. Please provide detailed information on the relevant new developments on the legal and institutional framework within which human rights are promoted and protected at the national level, that have occurred since the previous report, including any relevant jurisprudential decisions.

30. Please provide detailed relevant information on the new political, administrative or other measures taken to promote and protect human rights at the national level since the previous periodic report, including on any national human rights plans or programmes, and the resources allocated thereto, their means, objectives and results.

31. Please provide any other information on new measures and developments undertaken to implement the Convention and the Committee's recommendations since the consideration of the previous periodic report in 2010, including the necessary statistical

¹⁶ Global Initiative to End All Corporal Punishment of Children, briefing to the Committee on the Rights of the Child, February 2012.

¹⁷ Reports of Austria to the Counter-Terrorism Committee: S/2002/242; S/2002/969; S/2003/276; S/2004/16; S/2005/231..

data, as well as on any events that have occurred in the State party and are relevant under the Convention.
