



Convention on the Rights of the Child

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Committee on the Rights of the Child

Combined fifth and sixth periodic reports submitted by Austria under article 44 of the Convention, due in 2018*, **

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* The present document is being issued without formal editing.

** The annex to the present report is on file with the secretariat and is available for consultation. It may also be accessed from the web page of the Committee on the Rights of the Child.

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Introduction

1. In accordance with Article 44 of the Convention on the Rights of the Child (hereinafter referred to as the CRC) and the concluding observations regarding the third/fourth periodic report on implementation of the CRC (CRC/C/AUT/CO/3-4 (CRC/C/AUT/CO/3-4 of 3 December 2012; Art. 58) Austria herewith submits the consolidated fifth/sixth periodic report on measures implementing the Convention on the Rights of the Child.
2. This report has been drawn up by the Federal Chancellery/Division V, Families and Youth, which is responsible in Austria for coordinating policies on the rights of the child. This process involved all federal ministries of Austria, in addition to all provincial governments (Länder).
3. The report covers the period from December 2012 to March 2018 and primarily relates to the recommendations made by the Committee in the concluding observations:
 - (a) In respect of the third/fourth periodic report on implementation of the Convention on the Rights of the Child (CRC/C/AUT/3-4; CRC/C/AUT/CO/3-4);
 - (b) In respect of the second periodic report (CRC/C/83/Add.8) on implementation of the CRC: CRC/C/15/Add. 251 of 28 January 2005;
 - (c) In respect of the initial report (CRC/C/OPAC/AUT/1) on implementation of the Optional Protocol regarding the involvement of children in armed conflict: CRC/C/OPAC/CO/2 of 28 January 2005;
 - (d) In respect of the initial report (CRC/C/OPSC/AUT/1) on implementation of the Optional Protocol regarding the sale of children, child pornography and child prostitution: CRC/C/OPSC/AUT/CO/1 of 3 October 2008.
4. Although the present report pays special attention to these recommendations, it also highlights those activities which were deemed especially important for the improvement of the living conditions of children living in Austria during the reporting period.

A. General implementation measures (Arts. 4, 42 and 44, para. 6)

Previous recommendations of the Committee

5. In its observations on the strategic measures undertaken and the progress made in this regard the Committee criticised the failure to fully implement its recommendations (CRC/C/15/Add.251) in relation to the third/fourth country report.
6. Following the third/fourth periodic report review on 24 September 2012, a Children's Rights Monitoring Process commenced on the initiative of the (then) Federal Minister for Economics, Family and Youth, which aimed for comprehensive implementation both of the Convention and of the Constitutional Act on the Rights of Children of 16 February 2011.
7. With the constitution of the Children's Rights Monitoring Board on 13 December 2012, which acts as an independent advisory body to the minister in charge of children's rights, a permanent mechanism has been set up to continue comprehensive implementation of the Convention. The "Children's Rights Board" (renamed in 2016) has created further momentum for a comprehensive children's rights policy by taking on the task of contributing to the implementation of the Convention in line with the Committee's recommendations.
8. Following commencement of the above-mentioned Children's Rights Monitoring Process, the subcommittee *Children's Rights Monitoring and Youth Participation* was set up at parliamentary level by the Family Committee of the Austrian National Council in a historic decision on 29 September 2015, with the aim of involving the members of the National Council more closely in the Children's Rights Monitoring Process. In parallel, a children's rights committee specially appointed to defend the rights of the child was

simultaneously constituted, likewise for the first time in Austria's parliamentary history, within the Federal Council, the second legislative body of the country at federal level. This means that both chambers of the federal legislature each have their own body for parliamentary discussion of children's affairs, on a basis that spans the *Länder* and cover multiple issues affecting children.

Reservations

9. In its concluding observations on the third/fourth periodic report the Committee reaffirmed the view already expressed in its earlier recommendations that the reservations relating to Art. 13, 15 and 17 were unnecessary.

10. Following the third/fourth periodic report review, examination of the need for upholding Austria's reservations regarding Art. 13, 15 and 17 CRC immediately became the main priority of the new path taken with the Children's Rights Monitoring process to ensure comprehensive implementation of the Convention. In the framework of the Children's Rights Monitoring Process, the Department for Children's Rights in the then Federal Ministry for Economics, Family and Youth commissioned the *Studies on the Convention and their implementation in Austria* by independent experts in constitutional law, namely Walter Berka of the University of Salzburg, Christoph Grabenwarter of the Vienna University of Economics and Business and Karl Weber of the University of Innsbruck. In their report, the experts reached the conclusion that it would be possible to revoke the reservations regarding Art. 13, 15 and 17 CRC without jeopardising other private interests meriting protection or significant interests of a public nature. This expert opinion ultimately paved the way for the resolution taken by the National Council on 7 July 2015 to withdraw Austria's reservations in respect of Art. 13, 15 and 17 and the declarations relating to Art. 38 of the Convention. The declaration regarding revocation of the reservations was submitted to the Secretary-General of the United Nations and took effect in accordance with Art. 51 item 3 of the Convention on 28 September 2015.

Legislation

11. The Committee expressed its regret that not all rights afforded protection under the Convention were granted constitutional status with the Federal Constitutional Act on the Rights of Children of 16 February 2011.

12. As regards the concern voiced regarding incomplete incorporation of all rights protected under the Convention in the Federal Constitutional Act on the Rights of Children of 16 February 2011, the above-mentioned independent experts in constitutional law came to the conclusion in Part 2 of their studies that full incorporation of the Convention in the Federal Constitution "is not recommended". They argued this view stating firstly that, "approval of state treaties is no longer possible with constitutional status" since the 2008 amendment of Art. 50 of the Federal Constitutional Act (B-VG) – and secondly, that on adoption of the resolution for the Federal Constitutional Act on the Rights of Children the constitutional legislators consciously refrained from merely reiterating the entire content of the Convention with the status of constitutional law.

13. The aforementioned studies demonstrated in detail that the rights protected under the Convention are, on the one hand, not only acknowledged at a constitutional level in a qualified manner and have also already been largely implemented at the level of sub-constitutional law; on the other hand, the rights protected under the Convention, in particular social and cultural rights, are already constitutionally enshrined by the European Convention on Human Rights, the Charter of Fundamental Rights of the European Union and, not least, by the Constitutional Act on the Rights of Children.

14. The independent experts concluded that the possibility of extension to include certain guarantees of the Convention is not ruled out should there be a specific need for regulation in Austrian constitutional law *pro futuro*.

15. Austria occupies a leading position in ensuring effective protection for children, not least in the light of the report issued by the Venice Commission on 3 April 2014 on the protection of children's rights: International Standards and domestic constitutions, CDL-AD(2014)005 and the core elements identified therein.

16. Lastly, in Part 3 of their study, the above-mentioned independent experts specifically addressed the question of implementation of the Convention in *Länder* legislation. They concluded that the achievements of Austria's *Länder* go well beyond the level stipulated by the Convention in terms of support for children, youth and families.

17. With the standardised Child Impact Assessment ("Youth Check") regarding the possible impact of legislative proposals on children and adolescents, which has been mandatory since 2013 as an integral part of the legislative process, an instrument has been created at federal level to raise awareness of aspects relevant to children's rights among political decision-makers – first and foremost involving the members of the (then) National Council's subcommittee "Children's Rights Monitoring and Youth Participation" – with a specific orientation towards implementation of the rights enshrined in the Convention and the Federal Constitutional Act on the Rights of Children.

18. As regards the concern expressed by the Committee regarding insufficient harmonisation of the youth protection laws of all *Länder*, it can be reported that with the aim to further harmonise the youth protection laws of the *Länder* it was decided at the conference attended by the heads of the provincial youth departments (Conference of Provincial Youth Departments) on 31 March 2017 to set up a *Länder* working group under the overall control of the *Land* holding the chair and with the involvement of the Federal Chancellery/Division V, Families and Youth.

19. As regards the child and youth welfare implementing laws of the *Länder* subject to the framework legislation of the *Bund* (Art. 12 B-VG), it has been possible in the reporting period to achieve a high level of homogeneity for *Länder* legislation with the adoption of the 2013 Federal Child and Youth Welfare Act (B-KJHG 2013).

20. It should nonetheless be noted that, given the multi-faceted, complex nature of the issue of "children's rights", there are limits to concentrating competence by setting up a single "super-competence" for children's rights.

21. Although harmonisation of the youth protection laws is, in principle, possible, nonetheless – despite increasing convergence in standardising the child and youth protection laws and despite increasing alignment of the various statutory materials relevant to children's rights at *Länder* level – full standardisation of the relevant laws falling within the competence of the *Länder* is not realistic due to the federalist structure of the state enshrined in the Federal Constitutional Act of 1 October 1920.

Comprehensive policy and strategy

22. The Committee recommends the preparation of a comprehensive national policy on children in consultation with children and civil society and programmes for its application, ensuring these are provided with sufficient human, technical and financial resources.

23. The Austrian Constitution does not recognise exclusive competence in relation to "children's rights" for legislation and administration, but rather manages and implements "children's rights" as an all-pervading cross-cutting topic in the framework of the respective subject-based competence both at federal (*Bund*) and *Länder* level.

24. With the aim of ensuring a comprehensive policy approach for the rights of children, increasing reliance is being placed on the concentration of professional expertise while simultaneously attempting by means of various coordination mechanisms such as National Action Plans, etc. to bring together the specific expert knowledge in certain areas with strategic relationships to issue-related policy strategies, for example:

25. The National Action Plan on Disability 2012–2020 (NAP Disability) contains a subsection on the issue of children with disabilities, including a number of measures, most of which have already been fully implemented (NAP Interim Assessment 2015).

26. As regards the heading "Schools", a number of measures aimed at inclusion have been implemented, for example participative strategy development for the realisation of an inclusive school system, additional school projects at upper secondary level, inclusive education as part of teacher training at university colleges of teacher education and university teaching degrees aimed at academic secondary schools and colleges for higher

vocational education and the further development of courses accessible to students with disabilities.

27. The ROMA Strategy 2020 consistently provides for proactive measures countering marginalisation, discrimination and stigmatisation of Roma and Sinti in order to improve access to and quality of early schooling and care, as well as pushing forward learning assistance to ensure students properly complete primary school or satisfy the educational goals specified by the EU framework in the form of key areas, in addition to educational and careers advice as well as school mediation.

28. Besides the measures incorporated into the NAP Violence Against Women that are indirectly aimed at ensuring the well-being of children, particularly those affected by violence, the said NAP also includes specific measures to protect children, for example the provision of information materials to teachers about violence targeting girls and women.

29. Special measures aimed at victim protection for children are enshrined in the NAP Trafficking in Human Beings as a key objective.

30. Topic Area 1 of the Child and Youth Health Strategy of the Federal Ministry of Labour, Social Affairs, Health and Consumer Protection (BMASGK), in particular Goal 1.4, defines specific objectives in conjunction with corresponding measures aimed at children's rights; in the Austrian Health Targets (2012–2032), “*Ensuring optimum healthy development for children and adolescents*” is pursued as an independent objective within the meaning of Article 24 of the Convention.

31. The “Austrian Youth Strategy” pursues the approach of establishing youth policy for the core group of children and adolescents over the age of 14 years as an interdisciplinary issue (Part C of the seventh report on the situation of young people in Austria, 2017).

32. In the field of asylum, the need for strategic and operational coordination of the various decision-makers involved at *Bund* and *Länder* level is taken into account by the competence of the *Bund* and *Länder* – Coordination Council set up according to Article 5 of the Basic Welfare Agreement of 2004 regarding joint measures for the provision of temporary basic welfare to aliens requiring help and protection. The introduction of refugee commissioners has additionally established a political coordination level between the *Länder* and the federal government. Their work commenced in 2013 with the staging of annual Refugee Commissioners Conferences.

Coordination

33. The Committee has criticised the lack of a separate body at *Bund* and *Länder* level with a clear mandate to coordinate implementation of the Convention in a comprehensive manner.

34. The permanent coordination bodies concerned with children's rights that were set up to coordinate policy and administration between the *Bund* and *Länder* include the Child and Youth Welfare Liaison Officers' Conference, the Family Liaison Officers' Conference, the Conference of Provincial Youth Departments, the Refugee Commissioners' Conference, the Social Workers' Conference and the Standing Conference of Ombudspersons for Children of the *Länder*.

35. In view of the generally acknowledged need for policy coordination, the decision-makers responsible for legislation and administration at *Bund* and *Länder* level are increasingly using the *Agreement between Bund and Länder pursuant to Art. 15a B-VG* as an instrument for cooperation and coordination, e.g.:

- On Health Target Control;
- On development of institutional daycare;
- On the introduction of compulsory early-stage support in institutional daycare free of charge for part-time care;
- On early-stage language development in institutional child care facilities for kindergarten;

- On development of all-day forms of schooling;
- On social care professions;
- On a nationwide needs-based minimum benefits system;
- On joint measures for temporary basic welfare for aliens requiring help and protection (asylum seekers, persons qualifying for asylum, displaced persons and others who de jure or de facto cannot be deported) in Austria (Art. 15a B-VG – Basic Welfare Agreement).

Allocation of resources

36. The Committee bemoans the lack of information on the level of funding made available for children and implementation of the Convention.

37. The Annex to the present report contains a list – albeit not exhaustive – of the most sizeable resources provided by the federal government, *Länder* and municipalities for implementation of the rights of the child guaranteed by the Convention (Factbook “Children in Austria” A. a - i), such as spending on:

- Children’s education and care;
- Child and youth welfare;
- Children’s health;
- Education;
- Universities;
- The needs-based minimum benefits system;
- Care for unaccompanied minors seeking asylum;
- Support for extracurricular child and youth work;
- Resources from the Family Burden Equalisation Fund.

Data collection

38. The Committee recommends the creation of a comprehensive pool of data as the basis for evaluation of the progress made with implementation of the Convention.

39. As a consequence of the country reporting process in 2012 the creation of a comprehensive data pool for all areas covered by the Convention became a key priority of the Children’s Rights Monitoring Project Group 1 – “Data” (Factbook “Children in Austria”).

40. Following the codification of data generation and capture by the Federal Child and Youth Welfare Act (B-KJHG 2013), nationwide child and youth welfare statistics have become available from reporting year 2015.

41. In 2015 the impact of family-relevant transfers and tax breaks on the income situation of families in Austria was investigated by the Austrian Institute for Family Studies.

42. The Federal Ministry of the Interior compiles statistical data on unaccompanied minors, which is available on its website. In addition, records are kept of unaccompanied minors in basic welfare.

Dissemination and raising of awareness

43. The Committee recommends that greater efforts be made to raise awareness among the general public as regards the rights of the child specified in the Convention, as well as incorporation of the rights of the child in syllabuses at primary and secondary school level.

44. The Children’s Rights [Monitoring] Board set up following the previous country report review sees it as one of its core tasks to raise awareness among the public at large for the concerns and rights of children, in particular to encourage public awareness for a child-friendly society.

45. The Convention, published on the Children's Rights website, has also been made accessible in an easily understandable print version with publication of "*Die Rechte von Kindern und Jugendlichen*" (edition of 10,000 brochures) the reprint of which is planned in 2018 for dissemination to all schools and other institutions which work with children.

46. Marking the 25th anniversary of the Convention, an international 30-second video competition on the topic of children's rights was staged in 2014 by the Children's Rights Unit within the Federal Chancellery/Division V, Families and Youth, the award winning entries of which were posted on the YouTube channel and Facebook page.

47. The *Land Vorarlberg* has joined forces with the children's ombuds-office to invite entries for a Children's Rights Award, which is staged every two years addressing children's rights in an exemplary fashion and so helping to raise awareness. The projects run by the Jupident foundation "Get up, stand up!" (2015), "Jupi goes Kinderrechte" (2016) and the "Giant Children": Young People stand up for Children's Rights (run by the Youth Ambassadors for Children's Rights of *Caritas Auslandshilfe Vorarlberg*) which were exhibited in the Rotunda of the United Nations in Vienna and in the Austrian Parliament in 2017 are further examples of how attention is drawn to children's rights.

Education and training

48. The Committee expresses its concern that there is no systematic special training in children's rights for all occupational groups who work with and on behalf of children.

49. The continuing and further training provided for judges working in the areas of family law take into account the judgments given against Austria of the European Court of Human Rights regarding Articles 8 and 10 of the European Convention on Human Rights, *inter alia* with reference to children's rights (e.g. 6 December 2003, *Krone vs. Austria*, 17 January 2012, *Kurier vs. Austria*; of the same date, *Krone vs. Austria*).

50. Good knowledge of family law and children's rights is required under relevant quality standards for state-registered advisors responsible for the statutory provision of advice to parents "about the special needs of children in connection with divorce" and for the advisors accredited to safeguard children's interests in highly escalated proceedings involving custody or access law (Section 95 (1a) and 107 (3[1]), Non-Contentious Proceedings Act).

51. Human Rights Education, encompassing Children's Rights Education, forms an integral part of Citizenship Education, which is included in the syllabuses of Austrian schools either as a combined subject, as a separate topic or as an interdisciplinary educational principle, the latter binding for all school levels and all school types.

52. "Children's Rights" are included at lower secondary level in the syllabus of the subject "History and Social Studies/Citizenship Education" of 2016 in two compulsory modules:

- 6th grade – Module 9 (Citizenship Education);
- 8th grade – Module 8 (Citizenship Education).

53. Consideration is also given to the Convention at Austria's university colleges of teacher education which provide continuing and further education for teachers and are engaged in vocationally related fields of research, namely:

- Fostering of gifted children as a child's right in the context of diversity (University College of Teacher Education Vienna, 2015–2017);
- In the field of R&D by means of research projects into children's rights (University College of Teacher Education Carinthia, 2016).

54. According to the curriculum of the *Bildungsanstalt für Elementarpädagogik* (BAfEP – higher vocational school for preschool teachers) consideration must also be given to the educational principle of Citizenship Education when lessons are planned. The content of the Convention forms part of the syllabus for the third and fourth semesters.

55. The “rights of the child” are specifically included in the course syllabus for the *Bildungsanstalt für Sozialpädagogik (BASOP* – higher vocational school for social education workers), while the syllabus of the *Kolleg für Sozialpädagogik* (college for social education workers) addresses human rights, fundamental rights and freedoms, with the “rights of the child” being explicitly covered under the subject of “family law”.

56. Continuing training, further education and networking formats are offered from the perspective of gender equality for teachers, disseminators and managers in the administration of the education system by the *Bundeszentrum für Geschlechterpädagogik*, a centre for gender education and research set up at the University of Salzburg in 2016.

57. The decree on the educational principle “instruction on the equality of men and women” enshrined in the curriculum of all types of school explicitly refers to children’s rights in the context of suppressing gender stereotypes and typical roles of the sexes.

58. Children’s rights are enshrined in the relevant education and training programmes under the Child and Youth Health Strategy.

59. Under the reform of the healthcare and nursing professions, a curriculum for the newly created training programmes for the profession of medical care assistant has been developed explicitly taking children’s rights into account as a specific part of the syllabus in the initial curriculum materials now available to institutions running such courses (2016 amendment to Health and Nursing Care Act).

60. Continuous development of human resources, particularly basic and further training of staff are a priority of major importance for the Federal Ministry of the Interior (BMI). In terms of process management special attention is paid to identifying and dealing with groups of persons requiring protection such as (unaccompanied) minors.

61. In September 2017 UNICEF Austria organised a training course on child protection and children’s rights for all executive bodies of the federal care institutions run by the BMI with the aim of raising awareness of the need for special protection on the part of unaccompanied minor asylum seekers (UMA). The content of this course included modules dealing with the Convention, traumatic experiences during the escape journey and their impact on safety and future life from the viewpoint of a child.

62. Staffing levels at the authority responsible for processing asylum applications, the Federal Office for Immigration and Asylum, had been stepped up from 555 in 2014 to some 1,375 employees by the reference date of 1 September 2017.

63. The Child and Youth Welfare Act of Styria (StKJHG), in correspondence with other *Länder* regulations, specifies that only specialist staff may be employed for the provision of child and youth welfare services, whereby they must have received training and be personally suitable for the individual task.

64. With introduction of the Child and Youth Welfare Implementation Act of the *Land Vorarlberg* in 2013, clear-cut acknowledgement was given to “*encouraging development and prevention*” as key tasks that are incumbent on child and youth welfare including – above all – the principles of participation and involvement of children in decisions affecting them.

B. Definition of the child

65. The statements made in chapter 4, paragraphs 72–117, of the second periodic report continue to apply unchanged.

C. General principles (Arts. 2, 3, 6 and 12)

Non-discrimination

66. The Committee expressed its concern about cases of hate speech by politicians and manifestations of neo-Nazism, racism, xenophobia and associated intolerance shown to

migrants, refugees, asylum seekers and persons of certain ethnic origin, and the impact on children belonging to these groups of persons.

67. In the field of justice, specialised units were set up in the public prosecution offices in 2017 to conduct criminal proceedings for incitement to hatred (Section 283, Austrian Criminal Code (StGB) and according to the Prohibition Act (Section 4 [3], Implementing Regulation Public Prosecutor's Act (DV-StAG)). This specialisation allows the expertise required to handle such cases to be bundled within the public prosecution services and to deal with proceedings in a more effective and efficient manner, including possibly establishing close, trustful cooperation with other authorities in Austria and abroad.

68. From the proceedings under Section 283 StGB reported by the public prosecution services occasional cases have come to light in which minors have been specifically targeted as the victims of messages and postings inciting hatred.

69. Thanks to an agreement concluded with Facebook by the Federal Ministry of Constitution, Reform, Deregulation and Justice (BMVRDJ) at national level, Facebook will generally investigate eligible posts for unlawful content in terms of hate speech within 24 hours and either remove such content or block access where necessary. To report criminally relevant content in hate speech, the directors of the public prosecution services and the BMVRDJ are provided with a special channel in which the investigation of posts does not take place according to EU standards, but based on the individual national legislation by persons with a legal background in less than 24 hours.

70. Racism, xenophobia and associated intolerance, which have an adverse effect on children, are key issues covered by Citizenship Education, which is included in the syllabuses of the Austrian school system.

71. In 2014 the "Extremism Information Center" was set up as a contact point to offer advice, workshops and training for disseminators and parents on politically or religiously motivated extremism, e.g. extreme right-wing or jihadist movements, and in 2016 the "Nationales Komitee No Hate Speech" was established, followed in 2017 by the campaign "#make love great again".

72. In response to the current trend towards radicalisation, in 2015/16 some 550 workshops were held for schools of all types and for all grades for purposes of prevention. This offer will be upheld in the same fashion in the 2016/17 and 2017/18 academic years.

73. The anti-racism association "ZARA – Zivilcourage und Anti-Rassismus-Arbeit" supported by the BMASGK runs an advice centre for victims of hate crime and documents such incidents in its annual report on racism.

74. On 10 October 2016 the "Expert_Forum" of the Vienna Deradicalisation and Prevention Network established by the City of Vienna and its children and youth ombuds-offices launched a set of 27 measures to combat extremism in any form and to offer scientific support to the network.

75. As regards the concern expressed by the Committee about cases of hate speech by politicians and manifestations of neo-Nazism, racism, xenophobia and associated intolerance, reference is made to the statements made in items 69 and 70 of the third and fourth periodic report of Austria (CRC/C/AUT/3-4).

Best interest of the child

76. Notwithstanding anchoring of the principle of the best interests of the child as a primary consideration in the Federal Constitutional Act on the Rights of Children, the Committee is still concerned that due consideration is in practice not always given to this principle during the decision-making process and as regards the allocation of resources.

77. The impact of the Constitutional Act on the Rights of Children radiates not least through the legal decisions of Austria's supreme courts in relation to the specific fundamental rights of the child enshrined thereby – in particular regarding the principle of the best interests of the child and the prohibition of discrimination – to equally include the legislation and administration of highly diverse areas of law, including social, cultural and other personality rights.

78. The “Principle of the best interests of the child” anchored at the constitutional level has been specified as the foundation for legislation and administration by a number of decisions taken by the Austrian supreme courts.

79. In its judgement of 11 October 2012, B 99/12, the Austrian Constitutional Court gave priority to a child’s right to identity by means of entry in the registry of births over the prohibition on surrogacy in force in Austria. According to the Court, the refusal to recognise a Ukrainian birth certificate to grant Austrian nationality due to a suspicion of surrogacy was not permissible in view of the principle of the best interests of the child.

80. Following on from Article 1 of the Federal Constitutional Act on the Rights of Children, with the conceptual determination of the best interests of the child by the 2013 law amending child custody and the right to a name (Section 138 Austrian Civil Code – ABGB), key criteria for the best interests of the child have been set out in law in the form of a twelve-point checklist.

81. Translation of this legislative step into practice to protect the best interests of the child in court proceedings for custody or access means that the courts have been obliged since 2013 to order appropriate measures such as compulsory attendance of family, parent or child upbringing counselling where the interests of the child are disregarded in relation to custody or contact. Other measures include participation in an initial mediation meeting or an arbitration hearing or enrolment in counselling or therapy to deal with violence and feelings of aggression – where this does not impair the rights of other persons involved to an unreasonable degree (Section 107 [3] Non-Contentious Proceedings Act).

82. In an effort to turn legal standards into practice, provisions governing the consequences of divorce also require parents (petitioning for divorce by consent) to present the court with certain documentation confirming that they have seen a competent consultant for advice about the specific needs of their underage children ensuing from the divorce (Section 95 [1a], Non-Contentious Proceedings Act).

83. To offer access to such counselling and assistance to parents with children affected by divorce or separation without making any distinction in terms of linguistic origin, this service is made available in 24 different languages via the web portal separationanddivorce with a pool of around 2,000 accredited counsellors.

84. Following procedural simplification by the 2013 law amending child custody and the right to a name (KindNamRÄG 2013) it became possible to extend the numbers of illegitimate children benefiting from joint custody, namely from some 6,000 judicial agreements in 2012 to 14,200 custody declarations before the registry office in 2015. With some 40% of parents of children born out of wedlock opting for joint custody in 2015, this has now consolidated the right of the child to both parents.

85. The introduction of the four-eyes principle, the regulations on risk assessment and help planning, the adjustment of the secrecy provisions and the creation of rights of information for children, adolescents as well as parents can be seen as the principal innovations of the Federal Child and Youth Welfare Act 2013 and the subsequent implemental legislation of the *Länder* in implementing the best interests of the child as the guiding principle of child and youth welfare for all activities of the specialists working in this field.

86. Lower Austria, for example, does not solely see the best interest of the child from the viewpoint of social work, but also operates with a scientifically validated four-element pyramid (multidimensional diagnostic instrument), with the focus of attention being directed in practice at the specific risk scenarios in existence (‘four- eyes’ principle).

87. To increase the opportunities for participation by disadvantaged children, the model project “Vorarlberg won’t leave any child behind”, which is being staged by the Land Vorarlberg during a trial period from 2016 to 2018, is engaged in developing and testing social space-based prevention networks in four selected municipalities/regions. With ‘prevention chains’, which are used to link the available facilities and structures from the areas of social issues, education and health to make them more accessible, the aim is to increase equal opportunities for all children and to expand the possibilities for participation by children at risk from disadvantage.

88. As far as UMAs are concerned, the paramount concern is always the well-being of the child, according to the principle laid down by the *Bund-Länder* Coordination Council, set up under Article 5 of the Basic Welfare Agreement on joint measures for aliens requiring help and protection.

89. In Austria asylum procedures are carried out at the highest constitutional standard with the best interests of the child always ranking first as a primary consideration:

- Section 10 Procedural Act for the Federal Office for Immigration and Asylum – BFA-VG: The legal representative in the admission procedure is without exception the legal advisor. In this capacity, he or she represents the interests of the child in such legal matters with special regard for the welfare of the child and also takes part in the hearing;
- Following admission to the asylum procedure, further legal representation passes to the child and youth welfare authority on allocation of the new place of abode;
- Further particularities: During hearings questioning is adapted to the mental development and maturity of the minor: Development of special training modules for decision-makers with internal and external trainers (experts in child and youth psychology and/or forensic psychology);
- The UBAUM I project was carried out jointly with the office of the United Nations High Commissioner for Refugees (UNHCR) in 2011: Development of comprehensive, uniform, binding standards for procedures involving unaccompanied minor asylum seekers to cater for the special needs of such underage children. The results were incorporated into trainings, in order to ensure greater reliability in the decision-making process;
- In 2012 the standards developed in the framework of UBAUM I were extended and a child-friendly information leaflet was created with easily understandable language and layout (UBAUM II). It not only contains legal information about the asylum application process, but also lists other available services, such as advice on returning home, the Dublin Regulation, searching for family members, etc.

90. Due to the principle of priority for the interests of the child equally applicable to this area under-age (i.e. less than 14 years of age) unaccompanied minor asylum seekers are subject to a differentiated procedure in several regards: With submission of an application for asylum for an underage UMA, identity is established by the executive staff and the child and youth welfare service is notified. The underage UMA is then handed over into the care of this body. The child and youth welfare service subsequently organises removal of the underage unaccompanied minor alien to the initial reception centre EAST Ost for an initial asylum interview. To safeguard the well-being of the child, the minor may only be brought to this reception facility by the responsible child and youth welfare authority in order to submit an asylum application following an appropriate phase of stabilisation.

91. If two or more unaccompanied minor asylum seekers who are related to each other arrive in the country, and at least one is under-age (i.e. less than 14 years), they may not be separated and should be handed over to the child and youth welfare service responsible.

92. Asylum procedures involving unaccompanied minor asylum seekers who are of age (aliens aged between 14 to 18 years) are always carried out by the EAST Ost facility, i.e. UMAs who are of age should always be presented to EAST Ost, where submission of the asylum application and the initial asylum interview takes place in the presence of the minor's legal representative.

93. During the admission procedure, legal advice and representation is available free of charge. When an unaccompanied minor applies for international protection, the legal advisor provided to the UMA (Section 49 BFA-VG) also becomes his or her legal representative from arrival of the unaccompanied minor at the initial reception centre (Section 10 [3] and [6] BFA-VG).

94. All unaccompanied minor asylum seekers are admitted to the asylum process on principle, with the exception of third country safety pursuant to Section 4 Asylum Act, with protection in a member state of the European Economic Area (EEA) or another state

pursuant to Section 4a Asylum Act, in cases subject to the Dublin Regulation pursuant to Section 5 Asylum Act, and in the event of a subsequent application where rejection should take place as admission has already been decided with final effect.

95. Following admission to the asylum process and allocation to a care agency, legal representation is taken over by the local responsible youth welfare service of the Land into whose care the minor is placed.

96. Acceptance and accommodation of unaccompanied minor asylum seekers who are of age takes place in the basic welfare system from the time of their arrival in Austria, whereby the framework conditions of such care – in particular, the conditions of acceptance and the cost rates to be granted – are laid down in the Basic Welfare Agreement 2004 concluded between the federal government and the *Länder*. Article 7 of the agreement provides for a number of special, far more extensive provisions for unaccompanied minor aliens, including specific measures for such refugees – from the provision of basic welfare for asylum seekers (e.g. accommodation in suitable facilities with regard for human dignity and the family unit, appropriate catering, information, advice, social assistance, medical care, etc., cf. Article 6):

- Initial clarification, stabilisation, psychological support and creation of a foundation of trust (if necessary, including assistance from a social education/mental health worker);
- Accommodation in a residential group, hostel, other suitably organised lodging place, assisted living facility or individual housing;
- Structuring of the daily routine adapted to the minor's respective needs (education, leisure, sport, group-based and individual activities, housework);
- Clarification of the minor's age, identity, origin and the whereabouts of family members;
- Clarification of future prospects;
- Where appropriate, the possibility of reuniting the family;
- Where appropriate, development of an integration plan and measures for scholastic, training and vocational preparation activities, taking advantage of the existing opportunities on offer with the aim of ensuring independent living.

97. Not only was there merely one instance in the reporting period where a minor asylum seeker was deported from Austria, the rates of voluntary return are also low. Where return does take place, however, it must be ensured, since amendment of the Aliens Police Act in 2011, that the minor is handed over into the care of a family member, guardian or suitable care facility in the home country. Where family members are sought, unaccompanied minors who are of age are obliged to assist if this is in the interest of the child (as of 1 January 2014).

98. Assistance for the voluntary return of unaccompanied minors normally involves cooperation with specialist aid organisations and generally includes the reservation of a flight ticket and a small cash allowance. Help with reintegration is offered by projects involving individual countries of return. Such assistance can include support for school education and the generation of income, for temporary accommodation, medical care, etc. (cf. General Comment No. 6 from 2005 re dealing with children who are unaccompanied or separated from their family outside their country of origin).

99. Unaccompanied minors with asylum or subsidiary protection status or holding a long-term residence permit are furthermore entitled to apply for services offered by the Austrian Integration Fund. Unaccompanied minor asylum seekers can be offered integration support in conjunction with the basic welfare available.

Respect for the views of the child

100. The Committee recommends that research is undertaken to monitor the impact of the lowering of the voting age and that children are educated on the exercise of the right to vote in an effective manner. The Committee also recommends that its General Comment No. 12

(CRC/C/GC/12, 2009) is taken into account, and that effective measures are taken to implement the right of the child to participation in relevant matters arising under the Convention.

101. Consideration is given to the views of the child (depending on his or her level of understanding and ability to form an opinion) as one of the key criteria of the child's well-being (Section 138 para 5 Civil Code, introduced with the 2013 law amending child custody and the right to a name).

102. Following the Electoral Rights Amendment Act of 2007, which lowered the voting age to 16 years for elections to the National Council and municipal councils, for the Federal President of Austria and presidents of its provincial parliaments, in addition to the European Parliament elections, a survey was carried out at the request of the Parliamentary Administration in the context of the elections to the National Council in 2017 to investigate political attitudes and behavioural patterns of Austrian voters aged from 16 to 21 years (Austrian National Election Study). This report considered whether the previous experiences of voting among adolescents aged 16 and 17 years still apply, what conclusions can be drawn about the country's youngest group of voters in terms of democracy and to what extent they are influenced by family and school.

103. This was preceded by the project "Voting at 16 in the 2013 National Council elections" performed in the framework of the AUTNES Austrian National Election Study. This research project took a scientific look at the preparations made for the election, political knowledge of the facts, actual behaviour and the decision taken by people voting for the first time in the 2013 elections.

104. In November 2014 a one-day parliamentary symposium entitled "25 Years of the UN Convention on the Rights of the Child" was held in Vienna on children's rights at the invitation of the youth spokespersons of the parties represented in the Austrian National Council.

105. "Citizenship Education", which is incorporated into the syllabuses of Austrian schools, aims to provide children and adolescents with an ability to develop and maintain independent political thinking as well as actively take part in political processes.

106. Since bundling of the child and youth participation agenda in 2016 at the Büro für Zukunftsfragen, an office dealing with questions of the future within the provincial government of Vorarlberg, various participation initiatives have sprung up in 35 municipalities, e.g. children's cafés, youth parliaments, project-oriented participation by children, child surgeries, project incubators, etc. (cf. also school parliaments).

107. Project Group 12 "Participation" set up under the Children's Rights Monitoring Process was tasked with developing a "participation model".

D. Civil rights and freedoms (Arts. 7, 8, 13–17 and 37 (a))

The right to identity

108. The Committee repeated its concern about the practice of anonymously abandoning newborns through the use of baby 'hatches' or 'flaps', a circumstance which constitutes, among other things, a violation of Articles 6, 7, 8, 9 and 19 of the Convention.

109. Since the decree of 27 July 2001 issued by the Federal Ministry of Justice (JMZ 4600/42-I 1/2001), baby hatches and anonymous births have been legalised. In practice, from these two options, anonymous birth is used almost exclusively by mothers who find themselves in emergency situations whereas the abandonment of newborns via a baby hatch is extremely rare (Factbook "Children in Austria", D. b). Here it is also a fact that – despite the lack of consensus among experts regarding cause and effect – the number of babies killed following the legalisation of anonymous birth more than halved, falling from 7.2 cases per 100,000 births before passing of the law (1991 to 2001) to 3.1 cases per 100,000 births during the observation period 2002 to 2009 (BJOG – An International Journal of Obstetrics & Gynaecology - DOI: 10.1111/1471-0528.12099).

110. Irrespective of the priority, generally acknowledged by Austrian experts, that is given to the right of children to survival over their right to identity, an effort is made here to uphold a child's right to know who his or her parents are as far as possible. Austrian law thus does not admit the right of a woman to anonymous birth, but applies numerous measures designed to enforce the fundamental right of children to know who their parents are. This means, for instance, that the anonymous birth of a child can be justified only in the exceptional circumstances of an emergency, a situation presenting serious danger to the physical or psychological health or life of mother or child which cannot be otherwise averted (seemingly desperate living conditions, etc.).

111. Where anonymous birth takes place in a hospital, the mother is encouraged to leave her child a letter, which will then be given to the child at the latest by his or her 18th birthday. Mothers can also use the codes issued by the baby hatch to find out anonymously what happens to their child afterwards. If a mother changes her mind and decides after all to assume parental responsibility for the child before adoption takes legal effect, she first has the option of being identified as the child's mother by court according to Sections 82 Non-Contentious Proceedings Act. Alternatively, she can apply to be entered as the mother in the central civil registry (ZPR) by the public registrar of births pursuant to Section 36 in conjunction with Section 41 (2), Civil Status Act 2013.

112. Special consideration is also given to the right of children to know their origin e.g. by the child and youth welfare authorities of Lower Austria in the form of counselling. This principle is upheld by arranging adoptions generally with the "open" procedure, i.e. the mother and the adoptive parents meet, thus getting to know each other and dealing with this knowledge in their own way.

113. Anonymous births taking place in hospital present a particular challenge insofar as the mother-to-be receives full medical treatment and psychosocial advice/services regardless of her decision to opt for anonymity in a situation she perceives as a predicament. Her baby, who has been born anonymously and will be adopted by suitable parents after six months, is not told the birth mother's name, but will be provided in due course with documentation detailing all obvious circumstances associated with the birth. This may for example include the mother's responses to questioning by the staff at the clinic, observations made by social workers and midwives, ranging from external appearances to impressions of her motive for such a birth. These documents and a sealed letter possibly left by the mother for her child are stored by a central body and handed over to the child at a later date.

Protection of privacy

114. The Committee expressed its concern regarding cases involving the violation of personality rights in media reporting about criminal proceedings in television and radio broadcasts or published in electronic and print media in which children are victims or are accused of sexual abuse or other offences. The Committee is also unhappy about incidents involving humiliation, insults, cyber bullying and grooming of children via the Internet or mobile phones. It is likewise worried that the dangers and risks of the Internet are not discussed sufficiently at school, and that parents and teachers are frequently not aware of the legal consequences where electronic media are misused by children.

115. A blanket ban on the media reporting of criminal proceedings involving children – be it as the perpetrator or victim – would constitute wrongful interference in the freedom of the press under the fundamental right of freedom of expression ("within the legal framework") enshrined in Art. 10 of the European Convention on Human Rights and Art. 13 of the 1867 Basic Law on the General Rights of Citizens. It is, however, possible to obtain relief for a violation of personality rights following unlawful media reporting about an individual by recourse to the courts: According to the Media Act, an individual has certain claims to damages following violation of his or her personality rights subject to the following qualifications:

- Section 6 Media Act: Defamation, abuse, disparagement and calumny;
- Section 7 Media Act: Violation of a highly personal sphere of life, i.e. portrayal in the media liable to embarrass an individual in public;

- Section 7a Media Act: Protection from disclosure of a person's identity in certain cases, particularly where the individual is either a victim or the accused in criminal proceedings;
- Section 7b Media Act: Protection of the presumption of innocence;
- Section 7c Media Act: Protection from the prohibited publication of the outcome of certain investigative measures (e.g. telephone tapping) where not yet the subject of main proceedings in public.

116. Individuals whose rights have been violated hold an entitlement to damages, whereby the maximum amounts provided by law are set at EUR 20,000, and, in the event of prohibited publication, may even be as much as EUR 100,000. It is possible to apply for legal aid for such proceedings. In contrast to ordinary claims for damages, it is not necessary for the claimant to furnish evidence of the extent of the prejudice sustained. The level of damages is determined by the court in each case.

117. To protect the personality rights of the individual concerned, the investigation proceedings take place *in camera*. The general public can be excluded from the main proceedings, which are normally public, e.g. prior to the disclosure of information involving the personal sphere or privacy of the accused, victim, witnesses or third parties (Section 229 [1 (2)] Code of Criminal Procedure). In cases conducted against adolescents, the general public should at all events be excluded in the main proceedings, either *ex officio* or on application, where this is in their interest (Section 42 Subsection 1, Juvenile Court Act).

118. The 2011 amendment to the Criminal Code (Austrian Federal Law Gazette I No. 130/2011) defines a new offence "initiation of sexual contact with under-age persons" (Section 208a Criminal Code), which was broadened with transposition of the 2011/93/EU Directive to combat sexual abuse and the sexual exploitation of children, as well as child pornography under the law amending the Sexual Offences Act 2013. According to Section 208a StGB anyone who contacts an under-age person with the intention of committing a sexual offence pursuant to Sections 201–207a Criminal Code by way of telecommunications or any other manner while concealing his intentions ("grooming") thereby renders himself liable to prosecution.

119. The 2015 change in criminal law has defined a further offence, namely "Continued harassment by way of telecommunications or a computer system" in order to deal with "cases of cyber bullying" (Section 107c Austrian Criminal Code). A criminal offence is committed where a telecommunication or computer system is used in a manner liable to unreasonably impair the lifestyle of an individual, the dignity of an individual is perceptibly harmed for a significant number of persons (Subsection 1[1]) over a lengthy period on a continuous basis (1), or (2) acts or images from the highly personal sphere of an individual are made perceptible without the consent of said individual for a significant number of persons (Subsection 1[2]).

120. The possible punishment for the basic offence is imprisonment of up to one year or a penalty of up to 720 day-fines. In the event of suicide or a suicide attempt by the affected individual, a penalty of up to three years' imprisonment is possible here. According to the 2016 Police Crime Statistics, following introduction of the criminal offence of cyber bullying (Section 107c Criminal Code, a total of 302 cases were reported by 1 January 2016.

121. An agreement was concluded by the Federal Ministry of Constitution, Reform, Deregulation and Justice (BMVRDJ) with Facebook regarding the deletion of hate postings and supply of information (cf. national decree of 20 July 2016, BMJ-S884.024/0014-IV/2016). This was followed in the autumn of 2016 by the case of the "thrashing video" involving a minor as the victim, with the agreement serving for the first time as the basis of a request for the deletion of a posting (a video showing the assault) to Facebook made by the St. Pölten public prosecutor.

122. In its responsibility of media self-regulation, Austria's press council has significantly contributed to the protection of personality rights and the privacy of children with the statements it has made regarding violation of the code of ethics by the media. In

past years, this body has observed multiple infringements of the code where, in the words of the council, articles published by the “gutter press” –

- Have ridiculed and compromised adolescents, without this being justifiable by virtue of postings in social media by the children and adolescents themselves (decision No. 2017/033);
- Harmed with detailed descriptions of maltreatment and sexual abuse of an infant both the human dignity and privacy of a child (decision No. 2017/056);
- By speculating that two girls from Vienna who had travelled into Syrian territory controlled by IS, were pregnant and wished to return to Austria, not only jeopardised the safety of the two girls, but also violated their personal sphere and privacy (decision No. 2017/174);
- Failed to exercise the restraint due when reporting about suicides as regards the nature and manner of the suicide of a 13 year old girl and regarding identifying details of persons involved (sweeping suspicion of bullying by other students not researched in depth) (decision No. 2013/003 – II);
- Violated the code of ethics by publishing photographs of an adolescent suspected of a crime (decision No. 2012/133);
- Infringed the personality rights of a child, a seven year old victim of domestic violence, by showing a live ticker of the funeral (decision No. 2012/60).

123. Inclusion of mandatory “Basic Digital Education” in the curriculum of the new secondary schools and the academic secondary schools lower cycle is helping to consolidate the students’ digital skills.

124. As hate speech on the internet is becoming more and more misogynist and aggressive, the DG Women’s Affairs and Equality in the Federal Chancellery, has launched the project “Gender-based Cyber Violence” and published the information brochure “Hass und Hetze im Internet”. The advisory centre “#GegenHassimNetz” (“Against hate speech on the internet”), operated by the NGO “Zara – Zivilcourage und Anti-Rassismus-Arbeit”, was opened on 15 September 2017.

125. The peer project “make-IT-safe 2.0“ launched on 1 May 2016 in cooperation with Saferinternet.at and funded by the Federal Chancellery/Division V, Families and Youth and the BMVRDJ aims to draw the attention of children and adolescents to the risks presented by the Internet by means of education from their peers.

126. On the initiative of the Federal Chancellery, Division V, Families and Youth, the National Committee “No Hate Speech” was formed in 2016 in Austria with regard to the campaign of the Council of Europe.

127. With the prevention programme Click & Check special importance is attached to the competent and secure use of online media and services by children and adolescents.

Violence against children (Arts. 19, 34, 37 (a) and 39

128. The Committee reaffirmed its concern about the continued use of corporal punishment by many parents and the fact that the prohibition of any kind of physical punishment is still unknown to parts of the population.

129. It has now been possible to correct the previous lack of research and data on the issue of violence affecting children thanks to the 2009 study into the ban 20 years ago on domestic violence in Austria “Familie – kein Platz für Gewalt(!?): 20 Jahre gesetzliches Gewaltverbot in Österreich“, comparing Austria, Germany, Sweden, France and Spain, the study on the prevalence of violence “Gewaltprävalenz-Studie 2011” and the study commemorating the double anniversary 25 Years of the Convention on the Rights of the Child and 25 Years of the Prohibition of Violence in Austria: “THE RIGHT TO AN UPBRINGING FREE OF VIOLENCE: 25 years of prohibition of violence by law – an interim review” (2014).

130. The change in attitude towards violence which has come about since Austria's abolition of corporal punishment in 1989 is also apparent here. While in 1977 85 percent of people still thought a "little smack" was all right when bringing up a child, by 2014 "only" 16 percent agreed with this "educational method".

131. On the occasion of the 2017 Universal Children's Day, a booklet entitled "*On the High Seas*" was developed by the Austrian child protection centres with the help of children from the primary school Volksschule Novarragasse in Vienna's 2nd municipal district. Written in easily understandable language, the booklet deals with the problem of children witnessing violence in their parents' relationship.

132. The BMASGK sponsors workshops for women, girls and teenage boys aimed at preventing violence (e.g. the pilot project "Transcultural prevention of violence and promotion of health" targeting teachers, girls and boys and their parents with a migrant background, or the "CROSSROADS" project).

133. In the framework of the anti-violence campaign Living FREE of Violence – GewaltFREI LEBEN (2014/2015) some 170 workshops at schools and youth centres were held drawing the attention of over 3,000 participants to the issue of violence against women and children. In addition, guidelines for journalists were drawn up to ensure sensitive reporting about cases involving violence. In the 2016/2017 academic year the women's association "*wendepunkt – Frauen für Frauen und Kinder*" raised awareness by organising violence-prevention workshops for girls and young women.

134. Under the National strategy to prevent violence at Austrian schools the BMBWF has worked with experts to develop effective aids for students, teachers and parents to prevent physical, verbal and psychosocial violence. With the prevention approach "zero tolerance for violence" the aim is to raise awareness about the phenomenon of bullying among the partners in the educational system and inform them about appropriate counter-strategies so students and teaching staff feel safe when at school.

Abuse and neglect

135. The Committee expressed concern about the continued inadequacy of measures designed to encourage underage victims to report cases of violence, abuse and neglect, above all at alternative care institutions, care homes for children with disabilities and at detention centres for migrants.

136. At the symposium entitled "Torn away – What gives strength to children in care?" held in November 2012, the recommendations of the UN Committee on the Rights of the Child were taken up as regards the lack of uniform quality standards and control and insufficient statistical data for children in alternative care.

137. Providing positive stimuli for the further development of uniform standards and advancing the level of professionalism of the staff are seen as the key objectives of the Federal Child and Youth Welfare Act (B-KJHG 2013) and the corresponding *Länder* implemental legislation. An evaluation study has been commissioned to analyse the extent to which the results achieved have met the objectives set out in the legislation; the results and conclusions of the survey will be submitted to the Parliament in the second half of the year 2018.

138. In addition, guidelines to prevent violence were developed for (social) education institutions by the Federal Chancellery/Division V, Families and Youth. The key provisions of these standards not only include information about children's rights, but also guarantee children in care access to independent persons of trust.

139. The *Land Vorarlberg* has set up an expert panel for the avoidance of violence and sexual assault at children's care facilities and has developed guidelines on how to observe and implement relevant standards to avoid such offences (in force since 1 July 2017). Resources from this panel have also permitted the performance of special children's rights projects involving children living in care. Here children were not only specifically informed about the rights of the child: it was also possible to raise awareness for this issue among all stakeholders. Bringing the question of child rights out into the open has also helped to change the impression made by care facilities for children in Vorarlberg.

140. A study commissioned by the *Land* Styria in 2017 on safety management at social education institutions has resulted in significant insights in terms of safety principles, the organisational aspects of such care institutions and specific features of the state run facilities.

141. Special child protection courses run by the *Interdisciplinary Network for Children and Adolescents – Hinterbrühl*, Lower Austria, offering continuing education for professionals working with children and adolescents in the fields of therapy, education and care can be mentioned as examples of good practice.

142. The special report of 2017 by the Ombudsman Board on children in public institutions and their rights entitled “Kinder und ihre Rechte in öffentlichen Einrichtungen” provides a detailed description of the achievements and shortcomings still present in the accommodation and care of children outside the family.

143. To improve and standardise the protection of children at Austrian accommodation centres for asylum seekers, UNICEF worked for several months in cooperation with numerous national partners and stakeholders in 2017 to co-produce the draft “*Minimum Standards for the Protection of Children in Refugee Accommodation Centres*”. This was followed by validation of this guideline at *Land* level in agreement with the Basic Welfare Coordination Council of the *Bund* and *Länder*. At the time this report was concluded, four of nine *Länder* had submitted their comments, remarks and revisions regarding features specific to the individual states for the accommodation of asylum seekers. Final validation by the *Bund-Länder* Basic Welfare Coordination Council is still outstanding at federal level.

144. To mark the International Day for the Elimination of Violence against Women, the project launched by the nationwide child helpline RAT AUF DRAHT “Break the Silence!” #Tabu highlighted the problems of physical, mental and sexual violence against children and adolescents. In an effort to sensitise children and to guard them against potential risks of victimisation, posters dealing with this topic were distributed to 2,340 schools nationwide. The video “Your laughter“ produced in the framework of the project has been submitted to and accepted by the NYC Independent Film Festival running from 7–13 May 2018.

145. In the framework of prosecution in the courts in 2017, a charge was brought for the first time against a teacher in relation to the tormenting or neglect of under-age, juvenile or defenceless persons pursuant to Section 92 Abs 1 Criminal Code (StGB) following persistent humiliating verbal attacks on school-age children. The proceedings were then settled by the Steyr Regional Court with a final and absolute diversion order.

Harmful practices

146. The Committee expressed its concern regarding the lack of knowledge about the prohibition of FGM and the failure to punish perpetrators.

147. There is no reason to assume insufficient knowledge of the Austrian Criminal Code and in particular its prohibition of bodily injury – whereby female genital mutilation constitutes a criminal offence – by persons who are employed in the health sector. Deemed to be bodily injury with severe lasting consequences (Section 85 [2]), the practice of FGM is punishable by a term of imprisonment between one and ten years. Since 2001, anyone who performs such an intervention is considered to have committed a criminal offence, even with the consent of the victim.

148. Cases of FGM cannot be subjected to separate statistical analysis as the relevant statistics do not differentiate between the type of injury involved, but merely indicate the total number of all convictions under Section 85 StGB.

149. In this context, particular attention should be focused on the FGM medical and social care/counselling projects on female genital mutilation (FGM/-C) for African women and girls of the African women’s association “Afrikanische Frauenorganisation”, FEM Süd and the association Orient Express, which are sponsored by the DG Women’s Affairs and Equality in the Chancellery and the BMASGK.

150. Where FGM/C is concerned, Federal Chancellery/Division III, Women’s Affairs, is relying on the provision of information to change attitudes, above all in the relevant

communities, particularly because change is taking place primarily through education, information and communication.

151. The brochure “Tradition and violence against women – Female genital mutilation FGM/C” is available in English, as well as in German, French and Arabic. Therein, detailed information is provided that FGM/C is a punishable offence.

152. To raise awareness among health professionals working in the school medical service of the BMBWF, the problem came under discussion at the annual conference of school doctors in May 2015, based on a paper given by a leading expert from the advice centre FEM Süd.

153. Acting as the central service and advice centre on behalf of the BMBWF, Zentrum polis – The Austrian Centre for Citizenship Education in Schools continuously develops classroom materials for Citizenship Education/instruction on human rights for teachers at all school types, grades and subjects addressing the issue of FGM in conjunction with the updated information booklet of 2016.

154. Women and girls at risk from or affected by forced marriage can call on the specialist organisation Orient Express offering advice, care and assistance in a number of different languages. If needed, protected emergency accommodation has been available since 2013 for anyone threatened by forced marriage.

Freedom of the child from all forms of violence

155. The Committee recommends that the elimination of all forms of violence against children shall be prioritized, taking into account general comment No. 13 (CRC/C/GC/13, 2011).

156. On the occasion of the 10th anniversary of the UN Study on Violence against Children, Austria hosted the HIGH LEVEL GLOBAL CONFERENCE “Towards Childhoods free from Corporal Punishment!”, Vienna, 1–2 June 2016.

157. In 2016 the scheme for the prevention of sexual offences against children was redeveloped with a focus on the target group of medical and nursing staff working e.g. in the framework of children and victim protection groups at hospitals (Section 8e Act on Health Institutions and Sanatoria), teachers at primary schools or sports instructors. The aim here is to enable these persons to step in if sexual abuse is suspected, e.g. with a noticeable change in a child’s behaviour.

158. In Austria, the national curricula (primary and secondary schools, and vocational education) include awareness-raising about child sexual abuse and sexting. The cross-curricular principle of sexual education supports the ability to build (sexual) relationships characterized by mutual understanding and respect for the needs and limitations of the counterpart, and to lead to equal rights. This helps to prevent sexual abuse and sexual violence. Furthermore, the cross-curricular principle of media education as well as digital education include information about the dangers of sexting and the safe use of internet.

159. In addition, a study was launched in 2015 by the Austrian Federal Ministry of Education on Sexual Health and Sexual Awareness in Austrian Schools. The study was based on the WHO guidelines on sexual pedagogics at schools. A further project is entitled Lovelife and is carried out as part of an EU Erasmus project. The topic of the protection of children against sexual exploitation and sexual abuse is specifically part of further training and education programmes for teachers on the subject of “Safer Internet”.

160. In the context of the 2016 police prevention programme targeting children and adolescents the prevention programme “*All Right – Alles was Recht ist*” revolves around raising awareness about the law and offering legal information to children and adolescents with the aim of preventing violence and youth criminality.

161. To ensure effective cooperation with aliens residing in Austrian territory, “preventative dialogue with aliens” is conducted with them by the Austrian police force and prevention workers. In such discussions attention not only focuses on constitutional principles and the role of the police, but also on special protection from violence for children.

162. The City of Vienna has launched a child protection campaign to draw the attention of its citizens to the most frequent forms of violence against children. By seeking out young people on the streets, mobile youth workers join forces with disadvantaged adolescents, who tend towards violence or are known to be troubled, to try and help them improve their situation in life.

E. Family environment and alternative care (Arts. 5; 18 (paras. 1–2); 9–11; 19–21; 25; 27 (para. 4) and 39)

Children unable to live in a family environment

163. The Committee expressed its concern about the lack of statistical data as the basis for quality inspections of the alternative care institutions for children and the different supervision systems practised in the *Länder*.

164. Under the Constitutional Act on the Rights of Children, all children who are permanently or temporarily deprived of their family environment (i.e. living in institutions offering permanent care or accommodation, for instance) hold a constitutional “entitlement to special protection and assistance provided by the State” (Section 2 Subsection 2 leg. cit.).

165. The quality standards for the care of children in social education institutions and foster homes – including the supervision and inspection of alternative care facilities for children – have been revised by the 2013 Federal Child and Youth Welfare Act (B-KJHG) and the implemental legislation and regulations enacted in this regard by the *Länder* and the calls for greater comparability of performance acknowledged by the publication of nationwide child and youth welfare statistics introduced during the reporting period; following the codification of data generation and capture by B-KJHG 2013, standardised data has become available throughout Austria from reporting year 2015.

166. Throughout Austria, it is only permitted to set up and operate social education institutions with a licence from the government of the respective *Land*. Such facilities are subject to control by the inspectorate of the *Land* government to guarantee protection for the well-being of children and adolescents. If any failing is suspected, the supervisory authority must immediately check whether children accommodated there are being looked after in the framework of educational support, are enjoying proper care and education, and that the institution is being managed and maintained according to the terms of its licence and complies with the relevant requirements. Otherwise, routine checks are carried out at regular intervals.

167. Children can be accommodated at these institutions for shorter or longer periods of time if they are at risk or cannot be looked after by their family for some other reason. Children should be accommodated in nearby regions wherever possible so they can remain in their customary environment. Differentiated offers are drawn up for male and female teenagers between 15 and 18 years of age in specialist supraregional facilities.

168. According to the principle of participation, a child and youth council has been set up in Salzburg to represent the interests of the children living in care, made up of children from the individual institutions. Addressing emerging problems and conflicts at these facilities and developing possible solutions in the child and youth council encourages cooperation between the children in care and the people looking after them, while improving quality assurance for the services rendered at the facility.

169. The accommodation facilities for unaccompanied minor asylum seekers (UMA) of the *Länder* are run following approval according to the guidelines for child and youth welfare. The authorisation notices for facilities stipulate that thorough specialist training is required as a condition of employment for social education workers. In addition, UMA accommodation is regularly inspected by a supervisory body acting on behalf of the child and youth welfare authorities. Such inspections also include examining further and continuing education courses and making recommendations for any further measures required here (in Carinthia for example in agreement with Department 1 – Regional Office Directorate/Basic Welfare and Integration of Refugees).

Adoption

170. The Committee is concerned about the inadequate normative framework for the protection of child welfare in cases of adoption taking place outside the Hague Convention.

171. The regulations on international adoption have been redefined by the 2013 Child and Youth Welfare Act. With the regulations governing the recognition of foreign adoption in conjunction with the implemental legislation of the *Länder* already introduced in 2009, the closest possible alignment with the procedure under the Hague Convention has been achieved.

172. Intercountry adoption takes place almost exclusively in accordance with the Hague Convention. In legitimate individual cases of intercountry adoption from states which have not ratified the Hague Convention, the adoption process is monitored by the central authorities, in close cooperation with the child and youth welfare service responsible.

173. All adoption applicants undergo intensive training regarding the right of the child to a fair process and are informed of the possible risks of intercountry adoption involving states which have not ratified the Hague Convention.

174. The arrangement of adoptions and suitability assessments are solely the responsibility of the child and youth welfare authority. The provision of advice, preparation and specialist support for adoption applicants and the issue of reports by private institutions are permitted here. The adoption process aims to find the most suitable adoptive parent(s) for children and adolescents. There must be a justified prospect that a relationship corresponding to that existing between the child and the birth parents will come into being. The key objective of the adoption process is the best interests of the child. It is prohibited to explicitly advertise for the adoption of specific children who are identified in the media.

175. In 2016, the brochure “Cross-Border Adoption – Information and Working Document” was completed under the auspices of the (then) Federal Ministry for Families and Youth in cooperation with all *Länder* and relevant NGOs working in this field with the aim of providing comprehensive information and guidance to professionals working in line with the standards set by the Hague Convention and thus helping to avoid illegal adoptions and child trafficking.

F. Disability, basic health and welfare (Arts. 6, 18 (para. 3), 23, 24, 26, 27 (paras. 1-3) of the Convention)

Children with disabilities

176. The Committee urges that measures should be taken to fully integrate children with disabilities in all areas of public life, to ensure that their environment, including, buildings, transportation and other public areas, is physically accessible for them, to de-institutionalize children with disabilities and further strengthen support to families to enable them to live with their parents.

177. A pro-active approach to protect children at risk of disadvantage has been enshrined in constitutional law with the introduction of Austria’s Constitutional Act on the Rights of Children, which specifically guarantees equal treatment for children with disabilities (Art. 6).

178. The objectives of the federal government in terms of education are formulated in the National Action Plan on Disability 2012–2020 which provides for the development of an inclusive school system, with the goal of setting up inclusive model regions in all Austrian *Länder* by 2020. A major step towards implementation of the NAP was taken by the directive on the development of inclusive model regions, which laid down the educational, legal and organisational framework conditions for development as guidance for the *Länder*.

179. When determining special educational needs, the education authority is required to indicate which schools can be taken into consideration with regard for the special needs of the child. Based on the needs assessment, the education authority must decide whether the student is to be educated according to the curriculum of the special school or another type of school, and if so, to what extent. When determining special educational needs, the aim is

to ensure that the student is given the best possible help and assistance in each case. With circular No. 17/2015 the education authorities were given “guidelines for the implementation and monitoring of quality standards in inclusive education for students with a disability”.

180. The implementing law of the BMBWF of 30 August 2016 regarding the implementation of primary school reform from the 2016/17 academic year is specifically aimed at the “... improvement of equal opportunities with access to education irrespective of a child’s first language, level of development and disability”.

181. While 62.1% of all students below school-leaving age in Austria with special educational needs received integrated education at general educational institutions in the 2014–2015 academic year, this figure had already risen to 64.2% in the 2015–2016 academic year.

182. The decision as to whether a child with special educational needs should attend a special or a mainstream school is incumbent on the parents.

183. The transportation of students with disabilities below school-leaving age is organised by qualified transport services in the framework of collective schemes, thus offering barrier-free access to the school system.

184. Once they reach school-leaving age, children with disabilities can sign up for special vocational training courses. Training either takes place directly at a company or a special training centre and is supported with comprehensive professional assistance. If required, assisted living facilities are also available while students are in training.

185. The Child Categorisation Regulation to the Long-Term Care Allowance Act (Kinder-EinstV) introduced on 1 September 2016 has created uniform standards for assessment of the care requirements of children and adolescents to be performed according to the Long-Term Care Allowance Act for decision-makers and the courts. When assessing these requirements for care, the preference is to consult physicians specialising in paediatrics and adolescent medicine.

Health and healthcare

186. The Committee is concerned about the lack of a systematic review of children’s health and the excessive number of prescriptions issued for drugs such as Ritalin for children with attention deficit/hyperactivity disorder.

187. The “Österreichischer Kinder- und Jugendgesundheitsbericht“ issued in 2015 for the first time, in tandem with the Child and Youth Health Strategy of the BMASGK provides detailed information about the state of health among children and adolescents in Austria.

188. In the absence of epidemiological data on the prevalence, diagnostics and treatment of AD(H)D, the report by the expert group set up by the OSR, Austria’s supreme board of health, within the BMASGK, based on data supplied by the thirteen major social security institutions, provides detailed information about the use of drugs containing the active ingredients methylphenidate and atomoxetine.

189. Based on the current data for prescription of the psychostimulants atomoxetine and methylphenidate in the case of children aged from 0–19 years (2014–2015), a slight fall in the prescribing level is indicated (see ANNEX – Factbook “Children in Austria”, chapter F. d).

190. Monitoring further prescription levels for psychostimulants has been suggested by the head of the project group on children’s health set up in the framework of Children’s Rights Monitoring at the federation of Austrian social security institutions.

191. According to the AD(H)D report it is noted in relation to drug treatment for children (> 6 years of age, below only in exceptional circumstances) that for the majority of hyperkinetic children, the first-choice method is to avoid medication. Should alternative measures fail to offer adequate success, treatment with drugs should be contemplated as a residual option of therapy. The guidelines of the specialist associations and societies recommend trying drug therapy on children and adolescents with AD(H)D from the age of six years only under certain, clearly defined conditions following a detailed consultation.

192. In the scope of treatment offered by clinical psychology and psychotherapy, specific qualifications can be obtained in paediatrics and adolescent medicine by attendance at certified further education courses. This ensures special consideration is given to the disorders occurring in this age group in the framework of the treatment options.

Breast-feeding

193. The Committee is concerned about the low rates of breast-feeding in the first six months after birth, the lack of mechanisms for monitoring infringement of the international code for the marketing of breast-milk substitutes and the small number of baby-friendly hospitals.

194. The BMASGK offers all women an information leaflet on breast-feeding for parents: “Stillen, ein guter Beginn/Information für Mütter und Väter”, available either during their pregnancy or shortly after birth. With their mother-and-child pass, all mothers-to-be are additionally supplied with an accompanying pamphlet “Unser Baby kommt”, which likewise contains details about breast-feeding.

195. In December 2017, a survey to evaluate breastfeeding support in birth clinics, infant nutrition, in particular breastfeeding rates and duration as well as factors influencing infant nutrition, has been commissioned by the BMASGK.

196. Between 2011 and 2013 contingency funds were provided by the federal government to advance the roll-out of a programme encouraging the introduction of the Baby-Friendly Hospital Initiative (BFHI) throughout Austria. At present, 14 maternity hospitals are certified as baby-friendly hospitals in Austria. The renewal of this certification is the responsibility of the individual obstetric institutes.

Adolescent health

197. The Committee is concerned about the high levels of abuse involving alcohol, tobacco, cannabis and other illegal drugs seen in children, as well as depression and obesity and the lack of suitable care and rehab programmes.

198. As regards the problem of alcohol misuse, according to the European School Survey Project on Alcohol and Other Drugs (ESPAD) and the Austrian representative survey on substance use there has been a rise in the number of adolescents who do not drink as well as a fall in alcohol consumption levels.

199. In Goal 9 of the 10 health objectives developed in 2012, “Promote psychosocial health among all sections of the population – children and adolescents as well”, special emphasis is placed on the consolidation of life skills and prevention of addiction (including legal narcotic substances such as alcohol). Implementation of the government programme 2008–2013 included the establishment of the Alcohol Forum, aimed at drafting recommendations and concepts for national alcohol policy, with a focus on the problem of the use of alcohol among juveniles.

200. Based on the Delphi study and the recommendations/concepts of the Alcohol Forum, an Addiction Prevention Strategy was developed in 2015 by the BMASGK.

201. A nationwide event “Dialogwoche Alkohol 2017” (alcohol awareness week) with the motto “HOW MUCH IS TOO MUCH?” was staged in the framework of the 2017 prevention campaign. The information brochure “Consumption of alcoholic beverages and the possible consequences” describing the possible consequences of alcohol consumption makes an appeal to the sense of duty on the part of parents and adolescents while striving to raise awareness for dealing with alcohol in a responsible and moderate manner. 2017 saw the revision of the “*Handbuch Alkohol*”, the third volume of a manual covering the basic legal aspects of alcohol in Austria.

202. As regards the consumption of tobacco, since 1998 there has been a continuous fall in the number of Austrian school children aged 11 to 15 years who state that they smoke (Health Behaviour in School-aged Children – HBSC 2014). According to the HBSC survey, the percentage of adolescents aged 17 years who smoke on a daily basis halved between 2010 and 2014. A marked fall in the number of adolescent smokers was also reported by

the ESPAD survey (2015). Although the percentage of smokers among adolescents in Austria is still relatively high, the trend is heading in the right direction, reinforced by a series of measures. Such regulatory measures are associated with transposition of the EU Tobacco Products Directive (TPD II), enshrined in law by the amendments to the Tobacco and Non-Smokers Protection Act (TNRSG) in 2015 and 2016 and scheduled to take effect as of May 2018. These provisions include extending the prohibition on smoking to school playgrounds and outside areas, putting e-cigarettes and related products on a par with conventional tobacco goods by law or prohibiting smoking at associations and clubs where children and adolescents are present. The child protection authorities in the *Länder* also propose raising the age at which smoking is permitted from 16 to 18 years. Some municipalities have moreover prohibited smoking at playgrounds based on local public health regulations.

203. As regards the question of smoking in the hospitality industry, the work programme (2017 – 2022) of the federal government does not envisage any departure from the previous arrangements for smokers from May 2018.

204. In addition to the above statutory measures to reduce the exposure of children and adolescents to smoking, the tobacco prevention initiative “YOLO – Live your life without smoking” has been staged by the BMASGK in cooperation with the Austrian Health Promotion Foundation (FGÖ) and the addiction prevention centres in the *Länder*. The initiative implements a variety of age-appropriate anti-addiction programmes aimed at children and adolescents, with some already beginning at daycare level.

205. As regards the use of narcotic substances, around one in five adolescents in the ESPAD 2015 study stated they had used cannabis at least once in their life, while about one in ten admitted having done so over the last 30 days. Teenage boys reach for cannabis more frequently than girls. In the period up to the most recent survey (2007) no appreciable difference was observed. The percentage of adolescents with a potentially problematic level of cannabis consumption is estimated to be approximately 1%.

206. At 8%, a similar 30-day prevalence rate for cannabis was also seen in the 2015 population survey on substance use for the age group 15 to 19 years, a figure that is significantly higher than in the population overall (2%). Using cannabis on a daily basis is, however, the absolute exception in teenagers between 15 to 19 years of age. All surveys indicate that the use of cannabis is generally limited to a short period of time (‘trying it out’).

207. The consumption of opioids (generally combined with different drugs) represents a relevant phenomenon of problematic drug use for Austria: In 2015, 85% of all drug-specific treatments administered in Austria followed this consumption pattern, with opioids being involved in over 90% of drug-related deaths. Use has been significantly falling for years among teenagers and young adults aged 15 to 24 years. While the number of users aged 15 to 24 years with problematic opioid consumption was judged at over 9,000 in 2004, the estimates for 2015 are 3,000 persons (latest estimates planned for 2018).

208. In the context of the 2016 police prevention programme targeting children and adolescents a total of 14 different youth projects was organised, involving students, teachers and parents, e.g. Look@your.Life – a school project aimed at preventing drug offences in the life of adolescents.

209. Addiction therapy and specialist treatment for addiction (including alcohol) was enshrined in law for the first time as the “Objective of Training” with the regulation governing the training of general practitioners (GPs) and specialist doctors issued by the Federal Minister of Health (Sections 10 and 16 of the Austrian training regulations for physicians – ÄAO 2015).

210. The understandable criticism regarding past years on the shortage of special child rehabilitation facilities was taken into account in the agreement reached in 2014 in terms of the extent of the shortages in child rehabilitation facilities and the necessary financing. Accordingly, the Rehabilitation Plan 2016/17 is currently being implemented, meeting the need for a total of 343 beds for children and adolescents plus 50 beds for family members. In conjunction with the rehabilitation of children and adolescents both physical and psychological and social aspects are taken into account to an appropriate degree, including

schooling and recreational activities. During rehabilitation, a child is usually accompanied by one parent whereas younger children, and particularly oncology patients, may be accompanied by the entire family.

211. The Action Plan Women's Health places special emphasis on health issues relevant to girls and young women, specifically on ensuring a "positive self-image". This perception first and foremost depends on the ideals of beauty cultivated by society and the effect on girls and young women, so influencing how they see their own body.

212. The Federal Act on Cosmetic Surgery (ÄsthOpG) governing the performance of beauty treatments and operations of 1 January 2013 prohibits the performance of cosmetic surgery without medical necessity on patients under the age of 16 years. In the age group of 16–18 years cosmetic surgery requires not only psychological counselling, but also the consent of the adolescent in question and the parents/guardian.

Right to an adequate standard of living

213. In view of the problematic effects of poverty, a promising trend towards a continuous decrease in child poverty during the reporting period can be pointed out (Factbook "Children in Austria", F. c).

G. Education, leisure and cultural activities (Arts. 28, 29 and 31 of the Convention)

Education, including vocational training and guidance

214. The Committee recommends that its general comment (CRC/C/GC/1, 2001) is taken into account by adopting measures to ensure affordable access to adequate early childhood care and pre-school education services throughout the country, by strengthening its efforts to provide migrant children with equal opportunities in the education system and by adopting a comprehensive policy and legislation on inclusive education.

215. Between 2008 and 2018, the federal government invested a total of € 442.5 million in the development of childhood education and care, with € 387.5 million being set aside for 2012 to 2018 (reporting period), thereby allowing the creation of 65,459 additional daycare places between 2008 and 2016, extending opening hours in compliance with the VIF (family compatibility) indicators and providing half-day attendance free of charge in the penultimate year before compulsory school attendance.

216. With the resolution on educational reform of 17 November 2015, one of the measures agreed by the Council of ministers at elementary level included the introduction of a nationwide standardised Education Compass for all children from 3.5 years until school-leaving age.

217. The Education Compass is an analysis and documentation of the learning dispositions of each child resulting from ongoing observations. A resource-oriented approach focuses on the potential and interests of each individual child. The education compass is passed on and explained to the parents as part of a private conversation and belongs to the child and the parents. On the other hand, any necessary pedagogical recommendations based on the Education Compass are passed on to the parents orally, representing an important basis for further educational development.

218. Members of minority groups are eligible to take advantage of all educational facilities offered here. The compulsory attendance of school or training institutions guarantees that all registered children are included in the system.

219. Schoolchildren who are unable to follow lessons due to an insufficient knowledge of the language used in the classroom are registered as an irregular student. They are offered extra instruction in language tutoring courses/groups to specifically improve their knowledge of the language in question. A total of 900 posts were made available throughout Austria for this purpose in the 2017/18 academic year.

220. In the framework of the dual training system, disadvantaged adolescents can enrol in an extended apprenticeship scheme (one year longer or in exceptional circumstances two years) or embark on a partial qualification (Section 8b Vocational Training Act, BAG):

- Persons with a disability pursuant to the Disability Employment Act;
- Persons with special educational needs who have reached school-leaving age;
- Persons who left general secondary school (lower level) without any qualification or failed to satisfy the requirements;
- Persons presenting obstacles to placement in the labour market.

221. As regards integration measures undertaken in the best interest of the child, it should be noted that, in the framework of care for asylum seekers, consideration is given to the specific needs of unaccompanied minor asylum seekers in relation to early-years care, in particular as offered by institutions similar to nurseries and suitable structuring of the daily routine (language courses, etc.), which are offered free of charge.

222. Unaccompanied minors who remain in Austria for at least one school semester and are obliged to attend school (from their sixth birthday for nine years) are offered identical access to the education system as children who are Austrian nationals.

223. Through circular No. 15/2016 and the brochure “Refugee children and teenagers at Austrian schools”, the school authorities were provided with all relevant information on the topic.

224. Regarding access to secondary school education for unaccompanied minors no longer of compulsory school age – the age group of most unaccompanied minors seeking asylum – since June 2012, minor asylum seekers (including unaccompanied minors) have been eligible to receive an employment permit for vocational training, provided that they were admitted to the ‘substantive’ asylum procedure at least three months before and have passed a labour market test. However, such access is limited to professions where there is a shortage of apprentices.

225. In Carinthia unaccompanied minor asylum seekers involved in an ongoing asylum process who are no longer obliged to attend school can attend ‘bridging’ classes at selected colleges to prepare them for possible admission to the standard school system. Individual solutions are likewise found with the vocational colleges, while Carinthia’s basic welfare system also offers funding for 200 hours of German classes. For unaccompanied minor asylum seekers who are looking for an apprenticeship, it is possible to make use of services, for example independently, from specialist providers, who can assist aspiring trainees with all matters of vocational training.

226. Unaccompanied minor asylum seekers (UMA) accommodated in Carinthia are able to request assistance with problems at more than one level, beginning with the social education concept for UMF accommodation facilities, whereby every UMA is assigned a ‘buddy’ under the reference-based care system. These refugees moreover have the opportunity to bring up their own issues at the weekly networking meetings of the social workers from the child and youth welfare authorities and a member of staff from Department 1 – Regional Office Directorate/Basic Welfare and Integration of Refugees.

227. The Municipal Department of the City of Vienna responsible for Integration and Diversity (MD 17) has been monitoring integration for 10 years (e.g. re questions of education and training, participation in the labour market, income position and supply of housing). With the “*Start Wien für Geflüchtete*” programme, the MD 17 allows unaccompanied asylum seekers to be incorporated into the basic welfare system from the first day of their arrival in the city, and offers guidance and support in settling down in a new country.

H. Special protection measures (Arts. 22, 30, 38, 39, 40, 37 (b)-(d), 32-36 of the Convention)

Asylum-seeking and refugee children

228. The Committee urges to ensure that children under the age of 14 are not placed in detention under any circumstances, and use administrative detention of unaccompanied refugee and asylum-seeking children above 14 years only as a measure of last resort and that the age determination procedure applied to unaccompanied children is based on scientifically approved methods.

229. If an unaccompanied minor applies for international protection, legal representation is provided from the time of his/her arrival at the reception centre. The legal advisor at the reception centre (Section 49 BFA-VG) by statute of law (Section 10 [3] and [6] BFA-VG) becomes legal representative of the unaccompanied minor asylum seeker. Following admission of the procedure and allocation to a care agency, legal representation is taken over by the local youth welfare service of the *Land* in charge into whose care the minor is placed.

230. Now the question of whether the applicant for international protection has reached the age of 18 is an essential preliminary issue both in terms of the provision of basic welfare (accommodation and care) on the one hand, and in the asylum procedure on the other.

231. Age assessments are carried out based on scientifically approved methods and are applied only as a measure of last resort: The Federal Office for Immigration and Asylum (BFA) may order a medical diagnostic age assessment pursuant to Section 13 (3) BFA-VG in cases where an alien is unable to submit trustworthy documents or other appropriate and equivalent certification to furnish evidence of alleged minority which he/she invokes in the process before the BFA, but which is in doubt based on the available results of the investigation proceedings including where the investigations of the medical examiner have not led to any clear-cut result.

232. For this purpose, the BFA commissions medical experts or medical institutes (e.g. forensic medicine institute of the University of Graz, Ludwig Boltzmann Institute for Clinical Forensic Imaging) who or which are competent to perform medical diagnostic age assessments and possess the necessary expertise to issue an expert medical opinion. In accordance with the recommendations of the Study Group on Forensic Age Diagnostics (AGFAD), a medical diagnostic age assessment in the asylum process comprises a physical examination, as well as an X-ray of the left hand, a CT scan of the collarbone and a dental X-ray. Where the alleged minority remains in doubt in view of the external appearance of the applicant or due to other criteria, a dental X-ray and a CT scan of the collarbone are then taken in addition to the X-ray of the left hand (“full report”).

233. A CT scan of the collarbone and an X-ray of the jaw are performed only where the clinical examination and the X-ray of the wrist are inconclusive.

234. In case of doubt, i.e. where the outcome of the diagnostics is inconclusive, the correctness of the alleged data is assumed (principle “in dubio pro minore” – benefit of the doubt). This does not apply to cases where the applicant refused to submit to examination.

235. Overview of age-diagnostic procedures: On average, about 500 age-diagnostic procedures are commissioned per year. The result of the investigations shows that on average in 61% of cases the applicant was found to be over the age of 18.

236. Cooperation in a radiological examination for performance of a medical diagnostic age assessment is not compelled by means of coercive measures on the basis of the protection of human dignity and physical integrity.

237. Asylum seekers are obliged in response to questioning to truthfully disclose all circumstances required to legitimise their application for international protection, which also includes stating their true date of birth. Prior to commencement of a hearing, all asylum seekers are demonstrably informed about their duty to cooperate and in particular of the consequences of making false statements. A possibly false statement may consequently

give rise to a verification of veracity, the outcome of which may be negative. Where it is moreover suspected that a criminal offence has been committed (e.g. pursuant to Section 120 Subsection 2 (2) Aliens Police Act 2005), a statement of the facts of the case are additionally forwarded to the competent authority.

238. Should it transpire in the course of the process before the Federal Office for Immigration and Asylum that an alien is of legal age despite his or her assertion, he or she shall be henceforth treated as an adult.

239. As regards detention pending deportation, it is pointed out that the recommendations are basically met: Section 76 (1) Aliens Police Act (FPG) states that under-age minors may not be held in detention pending deportation.

240. In the case of minors who are of age, the authority shall apply “more lenient measures” according to Section 77 (1) FPG unless specific facts justify the assumption that the purpose of detention pending deportation cannot be attained in this manner. Indications for the existence of such grounds may for example include a situation where it involves a minor who has committed a criminal offence or the person concerned has already taken advantage of more lenient measures to abscond. Where a parent or guardian is subject to a detention pending deportation order, minor detainees awaiting deportation should be accommodated jointly with their parent or guardian unless separate detention is necessary to ensure their well-being.

241. Detention pending deportation may on principle be ordered for three months in the case of minors who are of age (Section 80 Subsection 2 (1) FPG). It may be possible to extend this period under certain circumstances (Section 80 Subsection 5 FPG).

242. It should be noted that during the reporting period administrative detention pending deportation has been imposed on a minor of age only in one single case.

243. Differentiation between Austrian nationals and unaccompanied minor asylum seekers is not envisaged in the statutory provisions. According to the decision of the Supreme Court (OGH 4Ob 7/06t), minors who are not Austrian nationals are treated on equal terms with Austrian minors with regard to the provision of child welfare benefits.

244. Since the leading decision of 19 October 2005 given by the Supreme Court of Justice 7Ob209/05, an application for custody is submitted to the local competent court for each unaccompanied minor asylum seeker by child and youth welfare authorities. However, the application is not always sustained by the court and a guardian is not appointed during court proceedings.

245. Therefore in 2017, an interministerial working group was set up within the Federal Chancellery/Division V, Families and Youth, to deal with the above-mentioned issues involving custody for unaccompanied minor refugees and aimed at developing proposals for special provisions in the field of custody, taking into account the specific needs and requirements of UMAs. This work group is comprised of representatives of the Federal Chancellery/Division V, Families and Youth (BKA), Federal Ministry of Constitution, Reform, Deregulation and Justice (BMVRDJ), Federal Ministry of the Interior (BMI), Federal Office for Immigration and Asylum (BFA), as well as the child and youth welfare authorities of the Länder and municipalities.

246. In Vienna, the Drehscheibe section of MD 11 – Vienna Youth and Family Office offers a residential group for unaccompanied minor asylum seekers and aliens. Besides the provision of care and possible voluntary return of such children to their home country, the main function of this section is cooperate and network with the representative authorities in the country of origin, in addition to authorities and organisations combating human trafficking.

Children in armed conflict

247. The Committee reiterates its recommendation (CRC/C/OPAC/AUT/CO/1, para. 6, 2005) that the possibility of increasing the minimum age for voluntary recruitment to 18 years should be considered, and recommends that it should be ensured that the education of child cadets at military academies is free from any form of arms training and military drill

and consistent with the aims of education, as recognized in article 29 of the Convention and in general comment No. 1 (CRC/C/GC/1, 2001).

248. With regard to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict data should be provided disaggregated by sex, age and ethnic group on:

(a) The number of students attending military schools and the minimum age of admission;

(b) The number of asylum-seeking and refugee children entering the country from areas where children may have been recruited or used in hostilities;

(c) The number of children who benefit from physical and psychological recovery and social reintegration measures.

249. In addition to the comments on the Committee's recommendations on previous State Reports (CRC/C/OPAC/AUT/1), including on the implementation of the Additional Protocol on children in armed conflict (CRC/C/OPAC/CO/2 of 28.1. 2005), comments are made as follows.

250. As regards the opportunity for adolescents to voluntarily commence their military service at the age of 17, i.e. prematurely, subject to the express consent of their legal representative, it should in particular be noted that adolescents embarking on an apprenticeship after reaching school-leaving age may well finish such training at 17 years of age and are frequently only offered a skilled position after completing their military service. In this case, it does not seem fair and equitable to make such adolescents wait for six months or more without gainful employment before they can enlist for military service. These adolescents are offered the opportunity to commence their military service at the age of 17 years. The Austrian Federal Army does not, however, actively promote the option of premature enlistment for military service, nor does it encourage the recruitment of persons under the age of 18 years in any manner whatsoever.

251. Explicit reference is made in this context to the new piece of legislation relating to compulsory education (APFIG), where it is stated under Section 4 (1) that compulsory education may end before the age of 18 when completion of compulsory school attendance is followed either by the successful completion of at least two years' attendance at a school for intermediate (vocational) education, an apprenticeship according to the Vocational Training Act (BAG) or the Vocational Training Act for Agriculture and Forestry (LFBAG), or by completing at least 2,500 hours training for a profession in healthcare according to the health legislation or by acquiring a partial qualification pursuant to Section 8b (2) in conjunction with 8c BAG or 11b LFBAG. Particularly in such cases it is desirable for adolescents to be able to enlist for military service as soon as they complete their training.

252. The *Militärrealgymnasium Wiener Neustadt* is a higher secondary school with a focus on the natural sciences and a boarding school organised according to military principles. Functional management of the *Militärrealgymnasium* is solely incumbent on the BMBWF. Education is organised along civilian lines under the provisions of the School Education Act (curriculum, civilian teachers, etc.). The boarding school on the other hand is managed by the Federal Ministry of Defence and offers training based on military principles.

253. Extra-curricular activities revolve around sports in general, fencing, climbing, horseback riding, orientation run, judo, military drills, small arms training and training in the mountains. Students attending the *Militärrealgymnasium* are offered the opportunity of completing academic secondary school with a (civilian) leaving certificate while also taking part in pre-military training. Currently, 26 students, including 6 female students, are attending their final academic year before taking their high school certifying exam in June 2018.

254. At the *Theresianische Militärakademie*, 120 students, including 6 female students, are at present undertaking training as officers. The students at the *Theresianische Militärakademie* are all over the age of 18 years. 1,300 soldiers, including 100 female soldiers, are currently undertaking training as non-commissioned officers (at the Non-

Commissioned Officers Academy and other training institutions). As of 20 December 2017, 6 persons under the age of 18 years, including 2 females, are at present undertaking training as non-commissioned officers.

255. Valid numbers do not exist regarding asylum-seeking and refugee children entering the country from areas where children may have been recruited or used in hostilities. The overview of the countries of origin (Factbook “Children in Austria”, H. a) may be taken as a basis for a rough estimate on the subject in question.

256. Pursuant to the Basic Welfare Agreement, unaccompanied minor asylum seekers with specific needs that may be related to their exposure to hostilities in their country of origin are provided with stabilisation and psychological support, if necessary, including assistance from a social education/mental health worker (cf. Article 6).

257. Pursuant to Art. 278 (2) Penal Code (terrorist organisation), whoever participates as a member (Art. 278 (3)) of a terrorist organisation faces a penalty of one to ten years’ imprisonment. Decisions taken by the Austrian Supreme Court on this offence related to defendants who had operated at the Turkish-Syrian border, in Syria, Latakia/Syria, Syria and Iraq, including, however, not a single young offender.

258. In the case of a judgement of 2 June 2017 given by the Regional Criminal Court of Graz, which is still subject to appeal, four defendants (two sets of parents) were found guilty of psychological torture following a jury trial in the first instance pursuant to Section 92 (1), Criminal Code. They did so by taking their children aged between 2 to 11 years with them to Syria in December 2014, into territory controlled by the terrorist organisation Islamic State. There they exposed these juveniles to violent propaganda and extreme acts of violence on a daily basis, namely public executions in the form of beheadings and stoning, etc., and subjecting them to a system of radical Islamic education.

Economic exploitation including the prohibition on child labour

259. The Committee recommends that a precise definition of light work and effectively monitor after-school work of children, in particular in family businesses, should be included in its legislation with a view to ensuring that children are not deprived of their right to rest and leisure and to engage in play after they have completed their daily schooling.

260. The eradication of child labour in Austria was achieved step by step over a long period of time until final completion, starting with eight years of compulsory primary education back in 1869 up to the statutory prohibition of child labour during the nine years of primary education in 1969. Only in 1995 was a minimum age of 15 years stipulated for admission to gainful employment. Austria ratified ILO Convention No. 138 in 2000 and No. 182 in 2001.

261. In 2011, Austria passed a special constitutional law on the rights of the child that explicitly includes inter alia the prohibition of child labour, the protection of children from all forms of violence as a disciplinary measure and from exploitation or (sexual) abuse by adults, as well as protection of the rights of children with disabilities.

262. In relation to the goals enshrined in Target 8.7 of the Agenda 2030 to end child labour by 2025 and forced labour by 2030, Austria pledged at the IV Global Conference on the Sustained Eradication of Child Labour (Buenos Aires November 2017) that it will ratify the ILO Forced Labour Protocol to Convention No. 29 by the end of 2018.

263. The following should be noted regarding the criticism of the Committee that the “light work” mentioned in the Child and Youth Employment Act (KJBG) is not defined and that child labour in Austria is not controlled (Subsection 58 and 59): The “light work” specified in Section 5a (1) KJBG is fundamentally only permitted where performed on an occasional basis. Where children are engaged in the above-mentioned work on a regular basis (for example every three days), this is no longer occasional work and thus becomes prohibited child labour. Light and occasional activities which are permitted are specified in Section 5a (2–5) KJBG by means of the following provisions and prerequisites and in this regard also are defined for Austria:

- Occasional work is deemed to be light where its performance does not exceed the individual extent which the child can be reasonably expected to carry out;
- This extent is inter alia exceeded where loads which weigh more than one fifth of the weight of the child are moved or conveyed without mechanical aids;
- Such work is furthermore subject to additional prerequisites and shall be permitted only where children:
 - Are not at risk, nor exposed to a risk of accidents, or the harmful effects of heat, cold or damp;
 - Are not hindered in attending school and are able to follow and benefit from class instruction;
 - On school days and days free of school work no more than two hours and, including classes, no more than seven hours.

264. The employment of children with such occasional light work is generally:

- Prohibited on Sundays and on statutory public holidays and in the hours between 8.00 pm and 8.00 am; and
- Permitted only with the consent of the child's legal representative.

265. Child labour is controlled in Austria in the following manner:

- Pursuant to Section 30 KJBG anyone who contravenes the provisions in relation to the prohibition of child labour will be punished, whereby this shall also apply for example where one of the prerequisites for permitted child labour under Section 5a KJBG is not satisfied. The factory inspectorate can report an offence concerning child labour to the police authorities pursuant to Section 9 Labour Inspection Act (ArbIG);
- Furthermore, pursuant to Section 9 (1) KJBG compliance with the provisions of the KJBG is verified by the district administrative authorities in cooperation with the factory inspectorates (labour inspector for child labour, youth/apprentice protection), the municipal authorities and the school management body;
- To protect children, pursuant to Section 9 (2) KJBG an obligation is incumbent on all persons and agencies that deal with the education and care of children, such as teachers, doctors and private youth welfare organisations, in addition to all bodies whose sphere of responsibility includes matters of youth welfare, to notify the competent district administrative authority of any non-compliance observed regarding the child labour provisions. At the request of the district administrative authority they shall be obliged to furnish information about child labour in general and about specific cases involving the deployment of children;
- When the district administrative authority learns of serious irregularities, it shall take appropriate steps to remedy this situation pursuant to Section 9 (3) KJBG.

266. With regard to child trafficking, Austria has recently established a National Referral Mechanism on identifying and working with potential victims of child trafficking, including guidance how to identify victims and how to help them. This mechanism coordinates the work of public authorities, especially public prosecutors and the child and welfare authorities, as well as NGOs. Since 2007, the Austrian Task Force on Combating Human Trafficking has contributed to the fight against modern forms of slavery, whose victims also include children.

Sale of children, child trafficking and abduction

267. The Committee recalls its concluding observations under the Optional Protocol (CRC/C/OPSC/AUT/CO/1, para. 30, 2008) and recommends that the necessary measures are taken to provide all children who are victims of sexual violence, including child victims of human trafficking and migrant children, with the support that they are entitled to under the law.

268. The Committee reiterates its recommendation (CRC/C/OPSC/AUT/CO/1, para. 21, 2008) that further measures should be taken to bring its Criminal Code into full compliance with articles 2 and 3 of the Optional Protocol and to that end (a) amend the definition of child pornography to include cartoon representation of children; and (b) criminalize the possession of child pornography, including virtual pornography, involving children between 14 and 18 without requiring the intent of dissemination and regardless of the minor's consent.

269. The Committee recommends that all child victims of prostitution are strictly treated as victims and that no sanctions involving deprivation of liberty or fines are imposed on them.

270. Ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse took place on 25.2.2011 and entered into force on 1.6.2011.

271. In the framework of the Working Group on Child Trafficking based at the Federal Chancellery/Division V, Families and Youth, three comprehensive reports have already been issued, most recently the fifth report on child trafficking (2015–2017).

272. To consolidate systematic cooperation between all responsible bodies – the federal government and Länder, law enforcement authorities, child and youth welfare services, victim protection organisations etc. – in effectively combating the sale of children, an informational guidance note was issued in October 2016 by the Working Group on Child Trafficking under the Task Force on Combating Human Trafficking (National Referral Mechanism – NRM). Distributed extensively to professionals possibly concerned by this issue, this publication aims to guide and focus their activities in identifying and assisting potential victims of child trafficking. An EU-wide hotline for missing children (telephone 116000) has also been set up.

273. In Austria minors and persons of legal age who are victims of human trafficking receive identical support irrespective of their nationality. Every person has equal entitlement to make use of victim protection facilities – regardless of whether they have a migration background.

274. Under Section 70 (1) Code of Criminal Procedure, Austria's criminal investigation department or the public prosecutor is obliged to inform victims of their essential rights (Sections 66 to 67) as soon as an investigation proceedings are has commenced against a specific accused person. This may only be deferred for as long as this would jeopardise the object of the investigations.

275. Victims within the meaning of Section 65 (1) items a) or b) Code of Criminal Procedure must be informed at the latest before being questioned about the prerequisites for the provision of legal trial support, and especially vulnerable victims of their rights pursuant to Section 66a. LEFÖ, an NGO that offers advice, education and assistance to female migrants, has been entrusted by the Federal Ministry of Constitution, Reform, Deregulation and Justice (BMVRDJ) with providing psychosocial and legal trial support to women and children who were victims of human trafficking.

276. The Intervention Center for Trafficked Women, which is jointly financed by the Federal Chancellery/Division III, Women's Affairs and Equality and the Federal Ministry of the Interior, also provides assistance to young women from the age of 15 years.

277. To mark the European Union's Anti-Trafficking Day, high-level conferences are organised on human trafficking, including child trafficking, by the Task Force on Combating Human Trafficking. These have most recently involved the Special Representative/Coordinator for Combating Trafficking in Human Beings of the Organisation for Security and Cooperation in Europe under Austria's presidency of the OSCE and in cooperation with the Vienna Institute for International Dialogue and Cooperation (VIDC) and the International Organization for Migration (IOM).

278. The statements made in the previous report on the definition of child pornography remain valid. The Austrian provisions in Section 207a Criminal Code are in line with the requirements of the more recent Directive 2011/93/EU on combating sexual abuse and

exploitation of children as well as child pornography and superseding the Council's Framework Decision 2004/68/JI (Article 5). It is in accordance with the possible opt-out included in the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Article 20 Abs 3).

279. Austria's definition of child pornography likewise conforms with the far more recent directive on combating the sexual exploitation of children and child pornography, in addition to the definition of the elements which constitute an offence.

280. Article 10 of the Criminal Code provides for the possibility not to punish victims for their involvement in criminal offences that they were forced to commit in line with the Convention on Action against Trafficking in Human Beings.

281. The conditions for the use of Article 10 of the Criminal Code are:

- A direct threat of significant detriment to the person (e.g. threat of physical violence);
- The damage that arises from the crime cannot be disproportionate to the threatened detriment;
- A person beholden to legally protected values would also have acted as the perpetrator did.

If there is relevant evidence, the public prosecutor must assess *ex officio* whether "excusatory distress" exists according to Article 10 of the Criminal Code. If these conditions are present, the proceedings must be closed. The court must also assess the applicability of Article 10 of the Criminal Code if sufficient evidence is present and, if the conditions are met, acquit the accused.

282. The non-punishment principle can only take effect, however, when there is sufficient evidence. It is the responsibility of the public prosecutor/court to assess the evidence. If the public prosecutor or the court cannot conclude without a doubt that Article 10 of the Criminal Code is fulfilled, the principle of "when in doubt in favour of the accused" should be followed. This does not mean that Article 10 of the Criminal Code must always be applied solely based on the testimony of the accused that the crime was committed under duress. Instead, the decision should be based on the circumstances and evidence of each individual case.

Administration of juvenile justice

283. The Committee recommends that the juvenile justice system is brought fully in line with the Convention, in particular articles 37, 39 and 40, and with other relevant standards, including the Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules), the Vienna Guidelines for Action on Children in the Criminal Justice System; and the Committee's general comment No. 10 (CRC/C/GC/10, 2007).

284. The reform of the Juvenile Courts Act in 2015, which had the specific aim of making "a contribution to implementation of the Convention on the Rights of the Child", created the legal basis for "Social network conferences: pretrial custody and release from custody". This enshrines in law the exceptional nature of (pretrial) custody for adolescents, as well as the legal wish to remand young people in custody only where it is truly unavoidable, and for the minimum time necessary.

285. The legal starting point for the law amending the Juvenile Courts Act ((JGG)-ÄndG 2015) was the lack of alternatives to (pretrial) custody, whereby juvenile court judges sometimes found no or insufficient options to avoid remanding adolescents and young adults in custody or releasing them from detention. As remanding juveniles in custody for offences possibly incurring an insignificant penalty (falling within the jurisdiction of the district courts) was deemed to conflict with the principle of proportionality, the objective here was firstly to reduce the number of adolescents remanded into custody, and secondly, where this was unavoidable, to offer suitable alternatives with residential facilities.

286. Section 35 (1a JGG) specifically aims to underline compliance with the principle of proportionality above all in criminal proceedings at the juvenile courts and anchor this principle in law. In cases for which only a very insignificant penalty is envisaged, it is thus not possible to remand an adolescent in custody, so simultaneously also acting to reduce custody periods, which are detrimental in social terms.

287. The juvenile court assistance scheme was introduced throughout Austria at the same time. Here the public prosecution services and courts can systematically receive help with decisions regarding custody in criminal proceedings involving adolescents and young adults and request the preparation of a detailed report about the adolescent in question.

288. Austria's only young offender institution, Justizanstalt Gerasdorf, has not needed to operate at full capacity for many years now and thus has no problem with overcrowding. The separation of adolescents and adults in Austria's prisons is also guaranteed except in a minimal number of special cases. When dealing with young offenders, it is specifically ensured that appropriate prison staff are available to the necessary extent. Austria's largest young offender section at the Vienna-Josefstadt prison has concluded a special agreement for paediatric psychiatric care with the Medical University Clinic, while the Gerasdorf facility has its own child psychiatrist.

289. The claim that adolescents in remand suffering from psychological or mental disorders do not have sufficient access to appropriate healthcare thus does not correspond to the actual circumstances.

(a) In the Austrian prison system adolescents are accommodated in separate sections of the prison away from adult offenders. The decree states that adolescents are to be accommodated in residential groups and incorporated into a daily routine which involves daily physical training and employment. They should also be closely supervised by professionals such as social workers, teachers, social education workers and psychologists;

(b) Given the gradual decrease in the number of adolescents in prison (Factbook "Children in Austria", H. b), it can be assumed that pretrial detention and imprisonment are used as the last resort with delinquent behaviour. The length of imprisonment can be further reduced by means of social network conferences, care and support from the Neustart resocialisation association and residential accommodation representing a more lenient measure than prison;

(c) Young offenders are closely supervised by professionals such as social workers, teachers, social education workers and psychologists as well as the prison medical service (general medicine, psychiatry);

(d) The resocialisation and re-integration of young offenders into society is actively supported by the training and education programmes offered in the framework of youth coaching in cooperation with the Public Employment Service Austria and the BMASGK, in addition to apprenticeships and partial qualifications;

(e) It should be noted here that, thanks to the drop in the number of adolescents in confinement, no Austrian prison has suffered from overcrowding in their young offender section for many years now. Operating under capacity (average occupancy: 65%), Gerasdorf has been developed into a centre of excellence for young offenders and another 26 places have been added to the facility (for young adults sentenced by the juvenile courts). It is thus not necessary at present to pursue the feasibility study on the construction of a new centre for juvenile prisoners.

I. Ratification of international human rights instruments

290. The Committee recommends, in order to further strengthen the fulfilment of children's rights, the ratification of the following treaties: The Optional Protocol to the Convention on the Rights of the Child on a communications procedure, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Optional Protocol to the Convention against Torture and Other Cruel,

Inhuman or Degrading Treatment or Punishment, and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

291. Before proceeding to ratify the Optional Protocol to the Convention on the Rights of the Child concerning a notification procedure, Austria first wishes to observe how this protocol is managed by the UN Committee on the Rights of the Child. To date (as of March 2018), two reports have been issued by the Federal Ministry for Europe, Integration and Foreign Affairs (BMEIA) to gain an overview of the practical application of the third Optional Protocol by the UN Committee on the Rights of the Child. Due to the low level of complaints since the protocol came into force, it has not yet been possible to gain further understanding in this regard.

292. The rights laid down in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families are adequately safeguarded in Austria both by its national provisions and directly applicable EU regulations. Austria, however, attaches special importance to national avenues for organising the labour market and, like the other members of the EU, thus does not intend to ratify this Convention.

293. With ratification on 4 December 2012 (Aust. Fed. Gaz. III No.190/2012), Austria became a State Party to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT).

294. For Austria respecting economic, social and cultural human rights is of paramount importance. By ratifying the International Covenant on Economic, Social and Cultural Rights, the (revised) European Social Charter and additional international human rights conventions, Austria is committed to comprehensive protection in the area of economic, social and cultural rights. Individuals already have at their disposal numerous possible means for complaints and legal remedies both at national and European level. Ratification of the Optional Protocol to the Covenant on Economic, Social and Cultural Rights continues to regularly undergo review by Austria, whereby particular attention is paid to the decision-making practice of the UN Committee on Economic, Social and Cultural Rights. There is not however currently any prospect of ratification.

J. Cooperation with regional and international bodies

295. The Committee recommends enhanced cooperation with the Council of Europe towards the implementation of the Convention and other human rights instruments.

296. On the occasion of the 10th anniversary of the UN Study on Violence against Children, Austria hosted the High Level Global Conference “Towards childhoods free from corporal punishment!” in Vienna, June 2016. 39 ministers and other high-level representatives of states shared their experiences of achieving law reform and committed in a resolution to contribute to the universal prohibition and elimination of violent punishment of children in line with Target 16.2 of the 2030 Agenda.

297. Between 2012 and 2017 the Austrian Development Agency (ADA) supported a series of initiatives that are specifically geared toward strengthening the rights of children: 23 initiatives focused above all on children in the member states of the Council of Europe (total budget of € 7,524,793.30), in more than 10 initiatives, they were a secondary target group. Ten more initiatives were supported in Austria with an overall budget of € 971,803.30.

298. For example, the ADA supported Terres des Hommes in establishing the Regional Resource Centre for Child Protection (RRC) in South East Europe; the Caritas child support center “Petruska” in Moldova; UNICEF in addressing the exclusion of Roma children and other marginalised children in Albania, Macedonia and Serbia; and World Vision in Serbia to strengthen civil society organisations in five municipalities in the field of social inclusion of children in need.

K. Follow-up and dissemination

299. The Committee recommends that the present recommendations are fully implemented and the third and fourth periodic report and the written replies and the concluding observations made widely available.

300. The third and fourth periodic report including the concluding observations have been translated into the official language German, transmitted to all ministries and *Länder* and published on the Children's Rights website.
