

I. GENERAL REMARKS

1. The Austrian Ombudsman Board (AOB) **welcomes the opportunity to provide input** for the 2nd cycle of the UPR Review on Austria that is tentatively scheduled for 6 November 2015. The following remarks highlight several areas, but due to page constraints cannot offer a full and comprehensive picture of the human rights situation in Austria.
2. Since the first UPR cycle the constitutional and legal basis of the AOB has changed significantly. As of 1 July 2012, the AOB has a **broad mandate** under constitutional law **to protect and promote human rights** (Art 148a para 3 Federal Constitution). It took on the role of the **National Preventive Mechanism (NPM)** in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). This allows the AOB together with six Commissions to independently visit and inspect places of detention. A consultative body, the Human Rights Advisory Council (HRAC), comprised of representatives of NGOs, Federal Ministries and the *Laender* (provinces), has been established to advise the AOB on human rights issues.
3. This broad human rights mandate additionally invested the AOB with the responsibility of an independent authority under Art 16 para 3 of the UN Convention on the Rights of Persons with Disabilities (**UN-CRPD**) to monitor facilities and programmes for persons with disabilities to prevent all forms of exploitation, violence and abuse.
4. As NHRI and in accordance with its constitutional mandate the AOB is actively involved in the development of the first **National Action Plan for Human Rights (NAP-HR)** and strives to include civil society in this process. The AOB hosted an NGO-forum and established a communication platform on its website to inform about the development of the NAP-HR in a transparent and open manner. This platform includes general information and all statements submitted by NGOs during the consultation process¹. The AOB furthermore established a working group on this matter, consisting of representatives from the Government, the AOB and **civil society**. As a first step, structured summaries of NGO submissions and of current recommendations addressed to Austria by international human rights organizations will be forwarded to human rights coordinators at Federal Ministries and in the *Laender* to ensure their consideration in the development of the NAP-HR.
5. The AOB actively **cooperates with the United Nations** and other international organizations. In the recent past, the presence of representatives of the AOB as independent surveillance institution at the Committee on the Rights of Persons with Disabilities in September 2013 was highly welcomed. An expert of the AOB as independent NHRI also participated at a session with the Committee on Economic, Social and Cultural Rights prior to the Austrian State Review in November 2013. The AOB regularly interacts with the **OHCHR** by rendering statements to human rights issues, answering questionnaires and participating at annual meetings of the ICC of NHRIs in Geneva.
6. The AOB seeks to **raise awareness** for its work to promote human rights. A weekly TV-show broadcasted nationwide helps gain widespread publicity. Furthermore, a recent publication on “Young People and their Rights” fosters human rights education in schools.

¹ For information on the National Action Plan see: <http://volksanwaltschaft.gv.at/praeventive-menschenrechtskontrolle/nationaler-aktionsplan-menschenrechte>

II. SPECIFIC CONCERNS

Insufficient implementation and anchoring in the rule of law of “social human rights”

7. The social human rights to work, education, health, social welfare, social insurance and housing have been recognised as human rights in International and European Law; however, they have not been anchored in Austrian constitutional law. With regard to placing social human rights and civil and political human rights on an equal footing, the AOB advocates for the inclusion of social human rights in the Austrian Constitution. A recommendation in this regard by the UPR Committee in May 2011 was unfortunately not accepted by Austria. The customary practice of leaving the domestic implementation of social human rights to legislation, which is then not or not fully enacted, creates a deficit in existential areas of life and promotes direct or indirect discrimination.

Economic human rights

8. The AOB recommends to the Federal Government that it sign and ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

Children’s rights to best possible health must be guaranteed

9. In recent years, Austria has published strategy papers regarding the improvement of the health of children and youth, but they have mostly not yet been implemented.
10. Enabling best possible health is the basis for well-being and successful psychosocial and cognitive learning. In Austria, 18% of children under 19 are at risk of poverty (source: EU-SILC 2013). When children grow up in poverty, they are more often ill, perform more poorly in school and fewer of them attend upper schools. The risk of poverty for minors increases in families with many children, children with single parents and children from an immigrant background. There are international studies that prove the correlation and success rates of “early help programmes” both in the prevention of health problems and threats to the children’s welfare to lower incidence of criminality and better educational careers.
 11. Around 20 percent of children under 18 show mental health issues and half of them need psychiatric treatment. The number of available specialists for child and adolescent psychiatry is currently slightly more than half of the figure needed. When visiting institutions, the Commissions of the AOB regularly point out deficiencies in inpatient psychiatric care of children and adolescents.
 12. A nation-wide lack of cost free therapy slots for children by Regional Health Insurance Offices endangers necessary treatment, which has fatal consequences for their future.
 13. The public sector is also derelict in other areas of care of developmentally impaired minors. This applies, for example, to treatment of minors with autism or palliative care of chronically ill or dying children. Often significant additional payments must be made to finance therapy and medical, which severely restricts families’ financial possibilities.

Persons with disabilities – inclusion in society and work

14. Inclusion can only be put into practice, when the Federal Government and the *Laender* create coordinated framework conditions to ensure that people with disabilities are not housed in special institutions, but can freely choose where and how they would like to live. However, no comprehensive master plans for deinstitutionalisation exist. Moreover, personal assistance for people with disabilities as an alternative to institutional care is not uniformly regulated

Austria-wide nor are such alternatives being expanded. These are serious shortcomings from a human rights standpoint. Tackling these shortcomings by dismantling large-scale institutions and increasing personal assistance would - according to international research - also prevent violence. In order to get this process going in Austria, the uncompromising determination of politicians and transparent plans and concepts with concrete time horizons are necessary.

15. Austria-wide there are an estimated 21,000 people with disabilities participating in special types of work in workshops. Regardless of the type and scope of the work performed, such occupations are not considered to be regular employment relationships, are not paid and do not result in any kind of independent security under pension insurance law. Pocket money amounting to an average of EUR 65.00 per month is paid out under criteria that are not transparent. The AOB presumes that such employment in the current form does not conform to the provisions of UNCRPD. Under Art. 27 of the UNCRPD, persons with disabilities have the same right to work and employment as everyone else. The UN Committee on the Rights of Persons with Disabilities has also criticised this. Detailed remarks by the HRAC on this problem area were published on the website of the AOB.

Deficiencies in the basic level of social services – particular problems in services for unaccompanied minor refugees

16. It is shameful that despite continuing international conflicts and other threatening situations the quotas agreed between the Federal Government and the *Laender* regarding the Austria-wide distribution of persons forced to flee their countries are not being complied with. It continues to be the case that many refugees must remain in inadequate, poorly equipped mass housing with insufficient support services and without any prospects for the future for several years until their applications for asylum have been decided upon.
17. For unaccompanied minor refugees (UMRs) as a group, the situation is particularly precarious. Up until February 2015, 750 children under 18 had to remain in mass housing in initial reception centres because the *Laender* had no adequate spaces where they could be cared for. Moreover, the money available from the basic level of social services (*Grundversorgung*), which is only half of the amount available for other institutions providing aid to children and adolescents, cannot provide for sufficient trained pedagogical personnel, e.g. specialising in trauma. This results in de facto discrimination of children and adolescents solely due to their origin, although the *Laender* – as providers of assistance to children and adolescents – are responsible for unaccompanied minors.
18. The AOB demands that steps be taken quickly and that all institutions for UMRs in the *Laender* must comply with the applicable socio-pedagogical standards established in Austria. This should also be monitored in the future by children and youth welfare organisations. Individual clarification of needs and the assignment of child refugees to shared accommodations or residential homes, which must be set up in the *Laender*, should be undertaken child-appropriately by clearing organisations. UMRs require socio-spatial integration, must receive help in learning the German language and in their schooling and must have full access to all vocational training, not just to those occupations where there are shortages as is currently the case.

Forced returns

19. As a result of a number of observations of forced returns, the following criticisms were made:
20. A translation must always objectively reflect the contents, which is why it is out of place if the interpreter injects himself/herself into the conversation or even begins to conduct his/her own conversation. However, the complete absence of interpretation can result in serious uncertainty and misunderstandings on the part of both officials and the persons involved.

21. In the case of medical assessments, in some cases, no anamnesis was obtained from the patient. The AOB objected numerous times to the fact that in cases of hunger strikes no psychiatrist was consulted. The AOB also considered problematic the absence of anamnesis in cases of fear of flying as well as the omission of clarification about possible side effects of medication for the fear of flying.
22. In a case of a joint forced return of three families with children, too few officials were deployed. Three forced returns with children involved, of which at least one return was problematic due to massive resistance, should not have taken place at the same time with this number of officials. Despite the existing friction between preparation of the party involved and their right to personal freedom, the people being returned also have to be adequately prepared psychologically for their return.
23. The AOB criticised numerous times that in the case of forced returns, the separation of families was condoned. Sufficient consideration was not always given to Art. 8 ECHR.

Duration of asylum proceedings

24. An administrative reform entered into force on 1 January 2014 that also affected asylum law proceedings. The Federal Administrative Court took on numerous still pending proceedings from the Asylum Court, which ended its work as of 31 December 2013. Subsequently, complaints about the duration of appeal proceedings increased by 50 percent in only one year.
25. The AOB took up a very remarkable case *ex-officio* of an asylum seeker from Bangladesh, who had filed an application for asylum in 1996; according to reports in the media, the proceedings were still pending. The AOB came to the conclusion that it was primarily the appellate authorities and/or courts who contributed significantly to the extremely protracted duration of the proceedings.
26. But the duration of the asylum proceedings in the first instance was also not satisfactory. On 1 January 2014, the Federal Office for Immigration and Asylum (FOIA) was established as the office for all first-instance asylum proceedings and proceedings under the aliens' law and replaced the Federal Asylum Office. Between 2013 and 2014 the number of complaints rose almost four-fold. In 2014, the AOB determined in more than two thirds of the complaints that the FOIA had delayed proceedings. Delays in proceedings and family reunifications from abroad were the focal points.
27. The AOB noticed that several months prior to the transition to the new structure the Federal Asylum Office stopped undertaking any procedural steps and that the FOIA also remained inactive for months. These proceedings were characterised by complete inactivity on the part of both authorities. In several proceedings, the AOB determined that there were delays resulting from allocation of files from a field office of the Federal Asylum Office to another field office or the Regional Directorate of the FOIA. As a result, the "procedural steps" consisted of sending files back and forth.
28. The lengthy duration of asylum proceedings results in serious uncertainty on the part of the persons affected who have an interest in expeditiously learning how they can plan their future. Unfortunately, the creation of new offices and courts has not resulted in accelerating the proceedings thus far; on the contrary, it has resulted in a still greater backlog of pending proceedings.

Prohibition and Prevention of Torture – OPCAT implementation

29. Since the AOB took on its role as NPM in 2012 its commissions carried out numerous visits in public and private institutions, among which also correctional institutions and facilities for

mentally ill offenders. Thereby the NPM revealed cross-institutional, systemic failures and proposed suggestions for improvement which are hereby exemplary illustrated:

Long lock-up times and lacking programme of activities (work, education, sport)

30. A systematic exploration of the lock-off time within all 28 correctional institutions of Austria illustrated rigid closing times. The investigation revealed that closing times of eleven correctional institutions already started between 11:15 am and 12:00 am on weekends and bank holidays. This is caused by insufficient staff, inadequate staff management and lacking will for amendments caused by a very strong staff union.
31. Furthermore the NPM observed that social activities in some correctional institutions are extremely limited. Because of an extended night shift, all activities have to fit in a shortened daily schedule, which means that inmates have to decide whether they want to work or be in the fresh air. Although the Austrian Prison Act (*Strafvollzugs-Gesetz*) stipulates that inmates have the right to spend at least one hour in the open air every day, the reality due to staff shortages proves different.
32. The NPM emphasises rigid closing times and the lack of activity can trigger aggressions as well as depressions of inmates, especially in case of juvenile offenders. Time spent outside prison cells as well as activities avoid conflict and are more likely to prevent assaults among inmates. A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners.
33. The NPM also stresses the need to provide education, training and employment within correctional institutions, offering activities which raise the morale of prisoners and provide them with useful skills for their future return to the employment market.

Severe deficiencies in facilities for preventive custody of mentally ill criminal convicts (so-called “*Maßnahmenvollzug*”)

34. In May 2014 a shocking case of neglect of a 74-year-old mentally ill inmate in the prison of Stein was discovered by the media. Allegedly, the bandages applied to the leg of the inmate have never been changed and his legs were not washed for several months. The inmate apparently also refused medical care. Despite the smell of decay emanating from the inmate's wounds, the prison guards had overlooked the situation for several months. The NPM launched a dialogue with the Federal Ministry of Justice (MoJ) to clarify the cause of this tragic case. Consequently, the MoJ announced a reform of the preventive custody of mentally ill criminal convicts. As a result from this case the NPM also called for a warning system for those inmates who repeatedly refuse medical treatment. Such repeated refusal must now be registered in an online medical care system which then automatically informs the responsible doctor.
35. On a larger scale, the NPM found severe deficiencies with regard to the treatment of mentally ill inmates in correctional institutions. It underlined the urgent need to extend and develop a valid nursing care system and regular medical examinations especially for vulnerable groups of inmates, such as mentally disordered, older or disabled offenders. It must be guaranteed, if necessary with assistance, that inmates meet a level of personal care to a sufficient degree. The MoJ also reacted to the recommendation of the NPM concerning the establishment of hygienic minimum standards and the enhancement of valid medical and nursing controls. Currently screening-examinations are taking place in all prisons to review the current situation and to gather information for the development of hygienic standards.