

## Submission by the United Nations High Commissioner for Refugees

### For the Office of the High Commissioner for Human Rights' Compilation Report

#### Universal Periodic Review: 3<sup>rd</sup> Cycle, 37<sup>th</sup> Session

#### AUSTRIA

### I. BACKGROUND INFORMATION

Austria ratified the *1951 Convention relating to the Status of Refugees* in 1954 and its *1967 Protocol* in 1973. Austria also ratified the *1954 Convention relating to the Status of Stateless Persons* in 2008 and the *1961 Convention on the Reduction of Statelessness* in 1974 (hereinafter the *1954 Convention* and the *1961 Convention* respectively).

As of end-2019, Austria hosted an estimated 136,000 recognized refugees and beneficiaries of subsidiary protection coming mainly from Syria, Afghanistan and the Russian Federation (since no official figures are available this number includes all persons granted international protection during the past ten years) and 27,000 asylum-seekers. In 2019, about 12,900 new asylum applications were lodged (down 6% compared to 2018)<sup>1</sup>. The total number of stateless persons in Austria is unknown. Data on stateless persons lawfully residing in Austria (which does not include beneficiaries of international protection) as of 1 January 2020 records 1,132 persons as stateless, having an “unknown” or “undetermined” citizenship.

Austria has a well-established asylum system. In recent years, asylum and refugee affairs have been dominating the political and public discourse. Following the arrival of some 89,000 asylum-seekers<sup>2</sup> and the transit of another 700,000 refugees and migrants through Austria in 2015, the discourse on refugees and asylum-seekers has become even more polarized and there has been a rise in hate speech against asylum-seekers and refugees. At the same time, numerous legal amendments were adopted in Parliament, some of which restricted the rights of beneficiaries of international protection, e.g. to family reunification or social aid.

### II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

#### **Positive developments linked to 2nd cycle UPR recommendations**

**Linked to 2nd cycle UPR recommendation no. 139.86:** “Continue to promote measures to eradicate violence against women, including domestic violence, and expand support services and psychological support for victims, taking especially into account the vulnerability of migrant women (Chile)”

UNHCR notes increased awareness and efforts regarding prevention and response to sexual and gender-based violence in reception centers for asylum-seekers. This includes the establishment and re-enforcement of security measures in sanitation areas (e.g. making sure that toilets and showers are not only sex-segregated but also lockable). Furthermore, many provinces have specialized reception facilities for single women and female headed

<sup>1</sup> Ministry of Interior, Asylum Statistics as of November 2019, available at [www.bmi.gv.at/301/Statistiken/files/2019/Asylstatistik\\_November2019.pdf](http://www.bmi.gv.at/301/Statistiken/files/2019/Asylstatistik_November2019.pdf).

<sup>2</sup> Ministry of Interior, Asylum Statistics 2015, available at: [www.bmi.gv.at/301/Statistiken/files/Jahresstatistiken/Asyl\\_Jahresstatistik\\_2015.pdf](http://www.bmi.gv.at/301/Statistiken/files/Jahresstatistiken/Asyl_Jahresstatistik_2015.pdf).

households seeking asylum, although no mechanisms are in place to ensure that the capacities are sufficient. The coalition agreement of the new government sworn in on 7 January 2020 foresees the adoption of a National Action Plan on Protection against Violence which shall ensure the funding and expansion of victim support institutions.

**Linked to 2nd cycle UPR recommendation no. 139.125: “Improve the situation of asylum seekers and guarantee their rights to an adequate standard of living and remedy their housing conditions (Albania)”**

Since the reception crisis in 2015 and 2016, reception conditions have been improved. There are no more temporary mass shelters or overcrowded facilities. At the same time, the quality and conditions of accommodation and support in reception facilities still varies greatly as there are no harmonized reception standards and the respective responsibility is shared between the Federal Government and the nine Provinces.

### **III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS**

#### **Challenges linked to outstanding 2nd cycle UPR recommendations**

##### **Issue 1: Initial reception of unaccompanied and separated asylum-seeking children**

**Linked to 2nd cycle UPR recommendation no. 139.128: “Provide proper assistance for the increasing number of unaccompanied minor refugees during their initial reception in Austria (Brazil)”**

While unaccompanied and separated asylum-seeking children (UASC) are assigned a legal representative as soon as they apply for asylum, guardians are appointed only once children are admitted to the asylum procedure and placed in a provincial reception facility – in cases where an age assessment is conducted, this often takes a few months. During that initial period, where abscondment from reception centres is also more frequent, children lack a person who supports and legally represents them in all aspects of life with a view to ensuring their best interests.

The custody courts normally assign the local child protection authority as guardians, where professional social workers trained in child protection assume this task. The expertise and experience of local child protection authorities ultimately entrusted with the guardianship of UASC in working with refugee children varies, and their resources for training and exchange of information are limited. Standards on the implementation of guardianship (such as systematic needs assessments, case planning and monitoring) are not always fully applied.

National legislation foresees that if a UASC is unable to furnish proof of a claimed under-age status which, on the basis of the available results of the preliminary investigation, is doubtful to the asylum authority, the latter may give instructions for radiological examinations, in particular x-ray examinations, to be carried out under a multifactorial examination technique for the purpose of age assessment. Even though, there are no regular statistics, data published by the Ministry of Interior<sup>3</sup> shows a frequent reliance on medical age examination techniques. Between January and October 2019, in 477 cases an x-ray of the hand/wrist was commissioned as a first step in the age assessment process, and in 116 of those cases a full multifactorial age assessment including a physical examination and x-rays of teeth and clavicles was completed.

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<sup>3</sup> Parliamentary request regarding „Asylverfahren minderjähriger Asylsuchender in Österreich“ BMI-LR2220/0675-V/8/2019, 16.12.2019, available at [www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB\\_00038/imfname\\_776146.pdf](http://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB_00038/imfname_776146.pdf)

The best interests of the child principle is not continuously and primarily considered by all actors that take actions affecting asylum-seeking and refugee children, including asylum authority, administrative courts and authorities in charge of reception facilities for asylum-seekers. To date, there are no standard operating procedures in place to facilitate the involvement of child protection experts in decisions concerning child asylum-seekers and refugees although this is the case in other areas, such as family and juvenile law.

The government programme for the period 2020-2024 under the chapter quick and fair asylum procedures commits to ensure a speedy appointment of a guardian for UASC through the child protection authority and a consideration of the best interests of the child principle in the asylum procedure but so far no legislative changes or standard operating procedures have been initiated.

### **Recommendations:**

UNHCR recommends that the Government of Austria

- a) Systematically assign a guardian to all UASC without delay or pre-condition (such as age assessments) from day one of their arrival or, if later, upon identification;<sup>4</sup>
- b) Provide effective support for the needs of asylum-seeking and refugee children also to mitigate the risk of children going missing;
- c) Adapt existing national legislation and practice by replacing medical age assessments by a multidisciplinary procedure, which also takes into account developmental, psychological, environmental and cultural factors, and by introducing the possibility to separately appeal the outcome of the age determination procedure;<sup>5</sup> and
- d) Ensure that the best interests of the child are the primary consideration of all actors in every decision or action pertaining to asylum-seeking and refugee children, irrespective of their status or nationality.

### **Issue 2: Work permits in favor of asylum-seekers**

**Linked to 2nd cycle UPR recommendation no. 140.22:** “Consider issuing, upon request, provisional work permits in favor of asylum seekers (Brazil)”

While according to the *Foreigners Employment Act*, asylum-seekers have access to the labour market three months after their admission to the Austrian asylum procedure, an ordinance of the Federal Ministry of Economy and Work of 2004 limits their access to the labour market to seasonal employment for a maximum duration of six months per year. In practice, it is very difficult for asylum-seekers to obtain such a work permit, as they often do not possess respective skills and are not allowed to attend relevant training (in many cases German language courses are not offered to them). Apart from this, asylum-seekers can only engage in community service, become self-employed in professions that do not require a license (including sex work) or provide services in private households (e.g. garden work or childcare). Very few asylum-seekers manage to find employment and generate an income which makes them self-sufficient. While a decree of the former Minister of Social Affairs of 2012 had declared young asylum-seekers under 25 years-old eligible to obtain work permits for vocational training in areas where there was a shortage of trainees, this option was closed in September 2018.

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<sup>4</sup> For detailed recommendations in German see UNHCR “*Vorschläge für ein verbessertes Obsorgesystem für unbegleitete Kinder und Jugendliche in Österreich*”, available at [www.unhcr.org/dach/wp-content/uploads/sites/27/2019/02/AT\\_UNHCR\\_Obsorge-f%C3%BCr-unbegleitete-Kinder-und-Jugendliche.pdf](http://www.unhcr.org/dach/wp-content/uploads/sites/27/2019/02/AT_UNHCR_Obsorge-f%C3%BCr-unbegleitete-Kinder-und-Jugendliche.pdf).

<sup>5</sup> CRC, N.B.F. against Spain, 27.9.2018, CRC/C/79/D/11/2017, available at [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2F79%2FD%2F11%2F2017&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2F79%2FD%2F11%2F2017&Lang=en).

## **Recommendations:**

UNHCR recommends that the Government of Austria

- a) Amend national legislation and administrative procedures to grant asylum-seekers effective access to the labour market during their asylum proceedings, at the very least no later than six months following the lodging of the application if a decision has not been taken, and if the delay cannot be attributed to the applicant.

## **Additional protection challenges**

### **Issue 3: Independent legal aid**

Many asylum-seekers do not have access to free legal counselling during the first instance procedure. Those who are not recognized as refugees by the Federal Office for Immigration and Asylum are currently assigned an NGO contracted by the Ministry of Justice for legal counselling and legal representation at the appeal stage. In 2019, the Austrian Parliament adopted an *Act for the Establishment of a new Federal Agency for Care and Support Services* which inter alia foresees that legal counselling and representation shall in the future be provided through counsellors employed by that Agency. UNHCR is concerned that, although the law provides for independent and instruction-free legal counselling, full independence will be difficult to guarantee due to the fact that the Agency is 100% owned by the state of Austria.<sup>6</sup>

## **Recommendations:**

UNHCR recommends that the Government of Austria:

- a) Systematically make accessible quality legal counselling and representation for asylum-seekers of adequate quality throughout the entire asylum procedure and especially also in the first instance procedure;
- b) Ensure that legal aid and representation for asylum-seekers continues to be independent.

### **Issue 4: Social aid for beneficiaries of international protection**

In May 2019, the Austrian Parliament adopted a framework law foreseeing that beneficiaries of subsidiary protection shall only be entitled to core social aid benefits at the level of the basic care and welfare support which is provided also to asylum-seekers. Furthermore, recognized refugees should only be entitled to full social aid if they can demonstrate German language skills at level B1 or English at level C1. While the latter provision has meanwhile been annulled by the Constitutional Court in December 2019, UNHCR is concerned that beneficiaries of subsidiary protection, who have fled war and/or ill-treatment and are often unable to return to their countries of origin for many years will fall below the national poverty line.<sup>7</sup>

## **Recommendations:**

UNHCR recommends that the Government of Austria:

- a) Amend national legislation to grant the same treatment with respect to social aid as is accorded to Austrian nationals to beneficiaries of subsidiary protection.

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<sup>6</sup> For a detailed analysis in German, see: *UNHCR-Analyse des Entwurfs für ein BBU-Errichtungsgesetz*, 11 April 2019, available at: <https://www.refworld.org/docid/5cb0685f4.html>.

<sup>7</sup> For a detailed analysis in German, see: *UNHCR-Analyse des Entwurfs für ein Sozialhilfe-Grundsatzgesetz*, 8 January 2019, available at: <https://www.refworld.org/docid/5c347ac84.html>.

## **Issue 5: Statelessness**

UNHCR's report *Mapping Statelessness in Austria*<sup>8</sup> published in 2017 found that the status and rights of stateless persons in Austria depend largely on whether or not they qualify for a residence status for other reasons since statelessness is not a ground for granting a residence permit. Stateless people who are in an irregular situation including those whose asylum applications have been finally rejected often receive a decision to terminate their residence. In this situation, stateless persons neither have the right to work nor receive any social aid benefits. Once it has been established that stateless persons cannot be deported, they are granted a so-called "tolerated stay" which after one year entitles them to a residence permit. Also, statelessness can be "inherited" in Austria as under the special provision for bestowal of nationality to children born stateless in Austria (article 14 of the Austrian Nationality Act), stateless children can apply for citizenship only after reaching 18 years of age and not later than two years after having reached the age of majority.

### **Recommendations:**

UNHCR recommends that the Government of Austria:

- a) Establish an accessible, fair and efficient procedure to determine statelessness conducted by a specialized authority; introduce a residence permit on account of statelessness; and ensure full human rights for all stateless persons in Austria;
- b) Accord Austrian citizenship to otherwise stateless children born in the territory of the State party, unless a child can acquire citizenship of one of his or her parents immediately after birth through a non-discretionary procedure.

## **Issue 6: Family reunification for beneficiaries of international protection**

In 2016, restrictions to the right to family reunification for beneficiaries of international protection were introduced. Beneficiaries of subsidiary protection now face a three-year waiting period, starting from the day they are granted status, before their core family members can apply for family reunification. In addition, they must prove sufficient living space, income and health insurance for the family members who seek family reunion. Exceptions from these requirements might be granted pursuant to Article 8 of the European Convention on Human Rights but are rarely approved for families depending on social aid. Formal requirements (e.g. religious weddings are not accepted) and practical barriers (fees; applications ought to be lodged in person with the Austrian embassy) pose additional obstacles.<sup>9</sup>

### **Recommendations:**

UNHCR recommends that the Government of Austria:

- a) Reduce legal and administrative barriers for family reunification with beneficiaries of international protection in Austria.

**UNHCR  
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<sup>8</sup> UNHCR, *Mapping Statelessness in Austria*, January 2017, available at: <https://www.refworld.org/docid/58b6e5b14.html>.

<sup>9</sup> For a description of law and practice in German, see: [https://www.unhcr.org/dach/wp-content/uploads/sites/27/2017/02/AUT\\_UNHCR-FRU\\_2017.pdf](https://www.unhcr.org/dach/wp-content/uploads/sites/27/2017/02/AUT_UNHCR-FRU_2017.pdf).

## ANNEX

### Excerpts of relevant Recommendations from the 2nd cycle Universal Periodic Review, Concluding Observations from UN Treaty Bodies and Recommendations of Special Procedures mandate holders

#### AUSTRIA

We would like to bring your attention to the following excerpts from the 2<sup>nd</sup> cycle UPR recommendations, UN Treaty Monitoring Bodies' Concluding Observations, and recommendations from UN Special Procedures mandate holders' reports relating to issues of interest and persons of concern to UNHCR with regards to AUSTRIA.

#### I. Universal Periodic Review (Second Cycle – 2015)

Recommendation <sup>10</sup>	Recommending State/s	Position <sup>11</sup>
<b>Acceptance of international norms and Reservations</b>		
139.1. Consider ratifying human rights conventions to which it is not yet party (Plurinational State of Bolivia); Source of position: A/HRC/31/12 - Para. 139	Bolivia (Plurinational State of)	Supported
141.6. Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, accede to the inquiry procedure and inter-State communications, and ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (France); Source of position: A/HRC/31/12/Add.1 - Para. 3	France	Supported / Noted <sup>12</sup>
141.3. Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and accept the competence of the Committee as regards the inquiry procedure and inter-State communications (Finland); Source of position: A/HRC/31/12/Add.1 - Para. 3	Finland	Noted
141.4. Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (Slovakia) (Uruguay) (Montenegro); Source of position: A/HRC/31/12/Add.1 - Para. 3	Slovakia <sup>13</sup>	Noted
141.1. Consider ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural	Ghana	Supported / Noted <sup>14</sup>

<sup>10</sup> All recommendations made to Austria during its 2nd cycle UPR can be found in: "Report of the Working Group on the Universal Periodic Review of Austria" (22 December 2015), A/HRC/27/3, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/289/37/PDF/G1528937.pdf?OpenElement>

All documents regarding the 2nd cycle UPR concerning Austria can be found online at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/ATIndex.aspx>

<sup>11</sup> Austria's views and replies, in English, can be found in: Addendum (3 March 2016A/HRC/31/12/Add.1, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/041/42/PDF/G1604142.pdf?OpenElement>

<sup>12</sup> **Comments:** „A/HRC/31/12/Add.1 states at para 3: Respect for economic, social and cultural rights is of great importance to Austria. By ratifying ICESCR, the (revised) European Social Charta and other international human rights conventions, Austria has committed itself to a comprehensive human rights protection system in the field of ESC rights. There are numerous possibilities for individuals to file complaints or appeals on a national and European level. The ratification of the Optional Protocol to ICESCR is still being examined, taking particularly the jurisprudence of the ICESCR Committee into account. However, ratification is not envisaged for the time being. With regard to recommendations 141.1, 141.6, 141.9 to ratify OP to CRC-IC see recommendations 141.7. et al.“

<sup>13</sup> Similar recommendations were given by Slovakia, Uruguay, Montenegro and Italy.



Rights and the third Optional Protocol to the Convention on the Rights of the Child; Source of position: A/HRC/31/12/Add.1 - Para. 2, 3		
140.14. Take concrete steps towards accession to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and ILO Convention No. 189 (Philippines); Source of position: A/HRC/31/12 - Para. 140	Philippines	Noted
141.12. Ratify the Convention against Discrimination in Education (Trinidad and Tobago); Source of position: A/HRC/31/12/Add.1 - Para. 3	Trinidad and Tobago	Noted
141.10. Ratify the third Optional Protocol to the Convention on the Rights of the Child on a communications procedure (Montenegro); Source of position: A/HRC/31/12/Add.1 - Para. 2	Montenegro	Supported
141.7. Take steps to ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (Slovakia); Source of position: A/HRC/31/12/Add.1 - Para. 2	Slovakia <sup>15</sup>	Supported
140.1. Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Sudan); Source of position: A/HRC/31/12 - Para. 140	Sudan <sup>16</sup>	Noted
141.13. Withdraw reservations to the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture (Pakistan); Source of position: A/HRC/31/12/Add.1 - Para. 2	Pakistan <sup>17</sup>	Supported / Noted <sup>18</sup>
141.17. Withdraw its reservations to the Convention against Torture (Netherlands); Source of position: A/HRC/31/12/Add.1 - Para. 2	Netherlands	Supported
<b>Constitutional &amp; legislative framework</b>		
139.2. Continue to improve legislative mechanisms in the area of human rights (Tajikistan); Source of position: A/HRC/31/12 - Para. 139	Tajikistan	Supported
139.49. Review the effectiveness of existing legislation to combat racism, hate crime and hate speech (Islamic Republic of Iran); Source of position: A/HRC/31/12 - Para. 139	Iran (Islamic Republic of) <sup>19</sup>	Supported
141.26. Promote incorporating into the national legislation all	Ukraine	Supported

<sup>14</sup> **Comments:** „A/HRC/31/12/Add.1 states at para 3: Respect for economic, social and cultural rights is of great importance to Austria. By ratifying ICESCR, the (revised) European Social Charta and other international human rights conventions, Austria has committed itself to a comprehensive human rights protection system in the field of ESC rights. There are numerous possibilities for individuals to file complaints or appeals on a national and European level. The ratification of the Optional Protocol to ICESCR is still being examined, taking particularly the jurisprudence of the ICESR Committee into account. However, ratification is not envisaged for the time being. With regard to recommendations 141.1, 141.6, 141.9 to ratify OP to CRC-IC see recommendations 141.7. et al.“

<sup>15</sup> Similar recommendations were given by Uruguay, France, Uruguay, Spain, Portugal.

<sup>16</sup> Similar recommendations were given by Azerbaijan, Egypt, Honduras, Senegal, Indonesia, Bosnia and Herzegovina, Turkey, Mexico, Timor-Leste, Bangladesh, Sri Lanka, Plurinational State of Bolivia and others.

<sup>17</sup> Similar recommendations were given by Hungary, South Africa and Spain.

<sup>18</sup> **Comments:** „A/HRC/31/12/Add.1 states at para 2: A withdrawal of the reservations to Art. 10 and 14 ICCPR is not envisaged, as a separate accommodation of juveniles and adults in the penitentiary system cannot be fully guaranteed. The specifications relating to Art. 14 ICCPR are still necessary and are applied in conformity with the constitutional principle of a public hearing in judicial proceedings.“

<sup>19</sup> Similar recommendations were given by South Africa.

the rights protected under the international conventions and covenants, in particular economic, social and cultural rights (Ukraine); Source of position: A/HRC/31/12/Add.1 - Para. 2		
139.4. Continue to harmonize its national legislation on children with the international standards contained in the Convention on the Rights of the Child and its Protocols, and any other relevant instrument to which it is party (Nicaragua); Source of position: A/HRC/31/12 - Para. 139	Nicaragua <sup>20</sup>	Supported
<b>Institutions &amp; policies</b>		
139.7. Continue to strengthen the mandate of the Austrian Ombudsman Board in order to ensure full compliance with the Paris Principles (Croatia); Source of position: A/HRC/31/12 - Para. 139	Croatia <sup>21</sup>	Supported
139.13. Adopt an overarching national action plan on human rights (Georgia); Source of position: A/HRC/31/12 - Para. 139	Georgia	Supported
<b>Human rights education and training</b>		
139.119. Continue to raise awareness to eradicate existing prejudices and stereotypes against people with a migration background and foreigners (Turkey); Source of position: A/HRC/31/12 - Para. 139	Turkey	
139.64. Implement public awareness campaigns to promote tolerance and respect for cultural diversity and to counter prejudice, stereotypes, discrimination, racism and Islamophobia (United Arab Emirates); Source of position: A/HRC/31/12 - Para. 139	United Arab Emirates	
139.95. Continue with its efforts in raising awareness and knowledge on human trafficking, including through trainings and awareness-raising measures for law enforcement organs, judges and public prosecutors (Bhutan); Source of position: A/HRC/31/12 - Para. 139	Bhutan	
<b>Racial discrimination and Non-discrimination</b>		
139.62. Continue promoting tolerance towards persons of different ethnic origins (the former Yugoslav Republic of Macedonia); Source of position: A/HRC/31/12 - Para. 139	The former Yugoslav Republic of Macedonia	Supported
139.65. Take all appropriate measures to promote tolerance, intercultural dialogue and respect for diversity in the society (Azerbaijan); Source of position: A/HRC/31/12 - Para. 139	Azerbaijan	Supported
141.30. Ensure that everyone enjoys the same protection against all forms of discrimination, in all circumstances (Switzerland); Source of position: A/HRC/31/12/Add.1 - Para. 4	Switzerland	Noted
141.33. Increase measures to combat discrimination in all forms (Rwanda); Source of position: A/HRC/31/12/Add.1 - Para. 4	Rwanda	Noted
141.35. Scale up its efforts to ensure equal protection against all forms of discrimination (Trinidad and Tobago);	Trinidad and Tobago	Noted

<sup>20</sup> Similar recommendations were given by Poland.

<sup>21</sup> Similar recommendations were given by Egypt, Indonesia, Germany, Hungary



Source of position: A/HRC/31/12/Add.1 - Para. 4		
141.32. Ensure equal protection from all forms of discrimination, including by extending the scope of anti-discrimination regulations, by including the grounds of religion and belief, age and gender identity (Bulgaria); Source of position: A/HRC/31/12/Add.1 - Para. 4	Bulgaria <sup>22</sup>	Noted
141.46. End discrimination in law and practice against religious and ethnic minorities, in particular against Muslims, and ensure full protection of their rights (Islamic Republic of Iran); Source of position: A/HRC/31/12/Add.1 - Para. 3	Iran (Islamic Republic of)	Noted
139.5. Address the limitations for children born out of wedlock in accessing Austrian nationality and ensure non-discrimination (Portugal); Source of position: A/HRC/31/12 - Para. 139	Portugal	Supported
139.42. Put in place measures to combat all forms of racial discrimination (France); Source of position: A/HRC/31/12 - Para. 139	France	Supported
139.44. Strengthen its current work to combat racism and xenophobia, by condemning manifestations of intolerance and populism in the political sphere and in the media (Cuba); Source of position: A/HRC/31/12 - Para. 139	Cuba	Supported
139.45. Step up efforts to fight racism, racial discrimination, xenophobia and associated intolerance (Senegal); Source of position: A/HRC/31/12 - Para. 139	Senegal	Supported
139.47. Take the necessary steps to combat racial hatred and promote tolerance towards persons of different ethnic origins (Thailand); Source of position: A/HRC/31/12 - Para. 139	Thailand	Supported
141.44. Work towards establishing and adopting a national strategy aimed at combating all forms of racism and xenophobia (Bahrain); Source of position: A/HRC/31/12/Add.1 - Para. 3	Bahrain	Noted
<b>Conditions of detention</b>		
139.99. Introduction of new concrete measures to protect child victims of trafficking and minors in custody and detention (Norway); Source of position: A/HRC/31/12 - Para. 139	Norway	Supported
<b>Prohibition of trafficking</b>		
139.96. Continue to improve the national infrastructure to assist victims of trafficking and develop a national system for the recognition and support of child victims of trafficking (Chile); Source of position: A/HRC/31/12 - Para. 139	Chile	Supported
139.94. Continue to ensure that its anti-human-trafficking programmes remain victim-oriented and provide effective access to legal and psychological support to child victims of trafficking (Philippines); Source of position: A/HRC/31/12 - Para. 139	Philippines	Supported
139.98. Further promote protection of victims of human	Greece	Supported

<sup>22</sup> Similar recommendations were given by Uruguay, Czech Republic, Namibia, Germany, Ecuador, Finland, Belgium, Rwanda, Canada.

trafficking, including measures of more effective investigations and prosecution of perpetrators (Greece); Source of position: A/HRC/31/12 - Para. 139		
139.97. Investigate incidents of human trafficking and offer full assistance to child trafficking victims (Sierra Leone); Source of position: A/HRC/31/12 - Para. 139	Sierra Leone	Supported
<b>Administration of justice &amp; fair trial</b>		
139.105. Comprehensively investigate incidents and allegations of hate crimes and xenophobic attacks and bring their perpetrators to justice (Sierra Leone); Source of position: A/HRC/31/12 - Para. 139	Sierra Leone	Supported
139.104. Ensure that police investigations are carried out in an impartial and non-discriminatory manner and not based on ethnic profiling (Iceland); Source of position: A/HRC/31/12 - Para. 139	Iceland	Supported
139.106. Investigate all allegations of racial profiling, of the practice of unlawful detention and of searches of persons belonging to ethnic and religious minorities, and penalise strictly law enforcement officers who were engaged in such actions (Uzbekistan); Source of position: A/HRC/31/12 - Para. 139	Uzbekistan	Supported
139.103. Investigate all cases of ill-treatment, human rights violations committed by law enforcement agencies and prosecute those responsible (Azerbaijan); Source of position: A/HRC/31/12 - Para. 139	Azerbaijan	Supported
139.101. Ensure transparent and effective investigation and prosecution where appropriate of alleged human rights violations by law enforcement officials, particularly in reference to the treatment of members of minority groups (United States of America); Source of position: A/HRC/31/12 - Para. 139	United States of America	Supported
<b>Right to an effective remedy, impunity</b>		
141.50. Ensure independent and effective investigation and prosecution of all cases of alleged human rights violations by law enforcement officials (Czech Republic); Source of position: A/HRC/31/12/Add.1 - Para. 2	Czech Republic	Supported
141.48. Improve the investigation of alleged human rights violations by law enforcement officials, including by establishing an independent mechanism to investigate such allegations with the power to order disciplinary proceedings and refer cases directly to the judicial authorities (Islamic Republic of Iran); Source of position: A/HRC/31/12/Add.1 - Para. 3	Iran (Islamic Republic of)	Noted
141.49. Prosecute perpetrators of hate crimes and xenophobic acts and prevent misuse of information and communications technologies for this purpose (Pakistan); Source of position: A/HRC/31/12/Add.1 - Para. 2	Pakistan	Supported
<b>Right to an adequate standard of living</b>		
139.129. Put forward further efforts to guarantee the rights of asylum seekers, migrants and refugees with a view to delivering an adequate standard of living and access to affordable public services (Republic of Korea); Source of position: A/HRC/31/12 - Para. 139	Republic of Korea	Supported
139.127. Ensure adequate living conditions for migrants,	Ecuador	Supported

refuges and asylum seekers for the effective promotion and protection of their rights (Ecuador); Source of position: A/HRC/31/12 - Para. 139		
<b>Right to work</b>		
139.111. Continue to enhance senior citizens' workforce participation, as advocated under the Federal Plan for Senior Citizens, adopted in 2012 (Australia); Source of position: A/HRC/31/12 - Para. 139	Australia	Supported
141.69. Take further steps to promote integration of asylum seekers, migrants and refugees and their participation in political, cultural and economic life, including by increasing their access to affordable health-care services and to the employment market (State of Palestine); Source of position: A/HRC/31/12/Add.1 - Para. 2	State of Palestine	Supported
140.22. Consider issuing, upon request, provisional work permits in favor of asylum seekers (Brazil); Source of position: A/HRC/31/12 - Para. 140	Brazil	Noted
<b>Right to education</b>		
141.28. Adopt specific measures at the legislative and policy levels to ensure the full inclusion of children from minorities, asylum seekers and migrant backgrounds, and boys and girls with disabilities, in its educational system (Honduras); Source of position: A/HRC/31/12/Add.1 - Para. 2	Honduras	Supported
139.121. Take all necessary steps to ensure that children with a migration background have unhindered and equal access to education (Turkey); Source of position: A/HRC/31/12 - Para. 139	Turkey	Supported
<b>Discrimination against women</b>		
141.25. Make progress in harmonizing its legislation on the rights of women, non-discrimination and gender equality (Honduras); Source of position: A/HRC/31/12/Add.1 - Para. 4	Honduras	Noted
<b>Gender-based violence</b>		
139.85. Undertake effective actions to continue the fight against violence regarding women and children in the family setting (Angola); Source of position: A/HRC/31/12 - Para. 139	Angola	Supported
139.89. Take effective measures to prevent violence against women, including domestic violence (Russian Federation); Source of position: A/HRC/31/12 - Para. 139	Russian Federation	Supported
139.91. Combat violence against women and trafficking of child victims of prostitution (Djibouti); Source of position: A/HRC/31/12 - Para. 139	Djibouti	Supported
139.87. Continue combating violence against women and domestic violence, taking into account the vulnerability of migrant women and adopting new legislative measures in support of this group (Cuba); Source of position: A/HRC/31/12 - Para. 139	Cuba	Supported
139.86. Continue to promote measures to eradicate violence against women, including domestic violence, and expand support services and psychological support for victims, taking especially into account the vulnerability of migrant women (Chile); Source of position: A/HRC/31/12 - Para. 139	Chile	Supported

<b>Children</b>		
139.88. Develop a comprehensive national strategy to prevent and address all forms of violence against children with a view to strengthen measures to encourage child victims to report instances of violence, abuse and neglect (Poland); Source of position: A/HRC/31/12 - Para. 139	Poland	Supported
139.6. Ensure the protection of the rights of children, including juveniles who are incarcerated in overcrowded prisons (Botswana); Source of position: A/HRC/31/12 - Para. 139	Botswana	Supported
<b>Members of minorities</b>		
141.62. Provide increased support for minorities (Japan); Source of position: A/HRC/31/12/Add.1 - Para. 3	Japan	Noted
139.118. Consider extending additional support to linguistic and ethnic groups other than those officially recognised as ethnic minorities, with the aim to further promote diverse cultural identities and practice of multiculturalism (Serbia); Source of position: A/HRC/31/12 - Para. 139	Serbia	Supported
141.58. Ensure the freedom of religious minorities, in particular Muslims, in exercising their religious practices, and respect their right to choose the language of their own, used in their religious scripts, and also respect their right to financial supports and services provided by their brothers of faith from other countries (Libya); Source of position: A/HRC/31/12/Add.1 - Para. 2	Libya	Supported
141.64. Invest further efforts in political empowerment of representatives of minority communities with a view to encourage their meaningful participation in political processes at the local, regional and national levels, and thus provide for their better integration in the society (Serbia); Source of position: A/HRC/31/12/Add.1 - Para. 3	Serbia	Noted
<b>Refugees, asylum-seekers and migrants</b>		
139.122. Continue ensuring an environment conducive to the full respect and protection of the rights of refugees and asylum seekers within Austrian society at large (Sweden); Source of position: A/HRC/31/12 - Para. 139	Sweden	Supported
139.123. Continue working to provide asylum and refugee status to all of those persons who need it (Plurinational State of Bolivia); Source of position: A/HRC/31/12 - Para. 139	Bolivia (Plurinational State of)	Supported
141.66. Create specific protection institutions that provide a voice and protection for the integration and development of refugees and asylum seekers (Costa Rica); Source of position: A/HRC/31/12/Add.1 - Para. 3	Costa Rica	Noted
140.23. Reconsider the concession of refugee centers to private businesses taking into account the impact such a policy has on the right to access to justice, as well as the practical consequences of the financial incentives that this creates (Mexico). Source of position: A/HRC/31/12 - Para. 140	Mexico	Noted
139.125. Improve the situation of asylum seekers and guarantee their rights to an adequate standard of living and remedy their housing conditions (Albania);	Albania	Supported

Source of position: A/HRC/31/12 - Para. 139		
139.126. Make every effort to guarantee the right to seek asylum and to provide adequate housing for refugees (Holy See); Source of position: A/HRC/31/12 - Para. 139	Holy See	Supported
139.124. Ensure that camps and centers for migrants and refugees have sufficient shelter and health facilities to handle current increased numbers (United States of America); Source of position: A/HRC/31/12 - Para. 139	United States of America	Supported
139.128. Provide proper assistance for the increasing number of unaccompanied minor refugees during their initial reception in Austria (Brazil); Source of position: A/HRC/31/12 - Para. 139	Brazil	Supported
139.81. Adapt the integration measures by taking into account the current migration situation in order to prevent cases of intolerance on the grounds of religion and of ethnic belonging (Belarus); Source of position: A/HRC/31/12 - Para. 139	Belarus	Supported
140.20. Abolish the quota requirement for family reunification (Turkey); Source of position: A/HRC/31/12 - Para. 140	Turkey	Noted
140.21. Abolish the quota system requirement in relation to family reunification (Egypt); Source of position: A/HRC/31/12 - Para. 140	Egypt	Noted
141.67. Strengthen programmes providing equal access to health, education and social services for migrants and asylum seekers and their children (Philippines); Source of position: A/HRC/31/12/Add.1 - Para. 3	Philippines	Noted
141.68. Protect rights of migrants, asylum seekers and refugees in accordance with international human rights standards with a view to combat discrimination against them (Pakistan); Source of position: A/HRC/31/12/Add.1 - Para. 2	Pakistan	Supported

## II. Treaty Bodies

### Committee on the Elimination of Discrimination against Women [Concluding observations \(2019\) CEDAW/C/AUT/CO/9](#)

#### **Access to justice**

12. The Committee is concerned that the anti-discrimination legislation, currently scattered across numerous federal and provincial laws, and the complex distribution of institutions at the federal and provincial levels, may negatively affect the ability of victims to claim their rights and obtain a remedy, providing varying degrees of protection for different grounds of discrimination, which may result in confusion and legal uncertainty. It is also concerned that the current anti-discrimination legal framework fails to afford equal protection against all forms of discrimination.

**13. The Committee, taking into account the legal responsibility and leadership role of the federal Government in the implementation of the Convention, recommends that effective coordination of the structures at all levels be strengthened to ensure the**

uniformity of results in the implementation of the Convention throughout the State party. The Committee also recommends that the State party ensure that all elements of the Convention are incorporated into the federal legislation.

#### **Gender-based violence against women**

**23. Recalling the relevant provisions of the Convention and the Committee's general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, the Committee recommends that the State party: (a) Expedite the adoption of comprehensive measures to prevent, combat and punish all forms of gender-based violence against women, and ensure that adequate human, technical and financial resources are allocated for their systematic and effective implementation, monitoring and assessment; (b) Monitor and assess the responsiveness of the police and the judiciary in cases of sexual crimes and introduce mandatory capacity-building for judges, prosecutors, police officers and other law enforcement officers on the strict application of criminal law provisions on gender-based violence against women and on gender-sensitive investigation procedures; (c) Strengthen the investigation and prosecute all cases of hate crimes and attacks against refugee and asylum-seeking women and girls; (d) Reinforce the protection and assistance provided to women who are victims of gender-based violence, including by strengthening the capacity of shelters and ensuring that they meet the needs of victims and cover the entire territory of the State party and strengthen financial support to and cooperation with non-governmental organizations providing shelter and rehabilitation to victims; (e) Collect statistical data on domestic and sexual violence disaggregated by sex, age, disability, nationality and relationship between the victim and the perpetrator.**

#### **Trafficking and exploitation of prostitution**

24. The Committee welcomes the efforts of the State party to enhance the early identification and referral to appropriate services of victims of trafficking. It further notes the increased number of investigations and prosecutions of traffickers, resulting in 63 arrests for trafficking and 75 arrests for cross-border prostitution in 2017. However, the Committee notes with concern that: (a) The State party remains a destination and transit country for trafficking in women and girls for purposes of sexual exploitation (95 per cent) and forced labour; (b) The lenient sentences imposed on traffickers by the courts of the State party, despite the fact that article 104 (a) of the Criminal Code provides for penalties of up to 10 years' imprisonment; (c) Efforts to identify women as victims of trafficking in persons are undermined by the restrictive asylum policies in place, which often involve speedy deportation; (d) Temporary residency permits for victims of trafficking are issued only for a one-year period that is renewable, in accordance with article 57 of the Asylum Law of 2005; (e) Women coming from States members of the European Union who are trafficked into the State party might have difficulties in fulfilling the required criteria for receiving a registration certificate under the Settlement and Residence Act, especially in cases of unemployment, lack of health insurance and lack of sufficient means of subsistence; (f) The structural violence and exclusion faced by foreign women in prostitution, in particular those in an irregular situation, and the lack of measures taken by the State party to provide exit programmes and alternative income-generating opportunities to women who wish to leave prostitution.

**25. The Committee recommends that the State party: (a) Intensify international, regional and bilateral cooperation with countries of origin, transit and destination, in particular with countries in the region, including by exchanging information and harmonizing legal procedures for prosecuting traffickers; (b) Strictly enforce article 104 (a) of the Criminal Code by investigating, prosecuting and imposing adequate sentences on perpetrators of trafficking in persons, especially women and girls; (c)**

**Create a uniform national system for identifying and following up on women who are victims of trafficking, ensuring the continuity of rights and entitlements when there is a change in the residence or legal status of the victim, conducting awareness-raising campaigns about trafficking in persons and discontinuing the return of victims of trafficking under the Dublin III Regulation; (d) Ensure that women coming from States members of the European Union who are trafficked into the State party are sufficiently protected under the Settlement and Residence Act; (e) Revise immigration policies to ensure that laws and policies on the deportation of foreign women are not applied in a discriminatory manner, do not deter migrants, refugees and asylum seekers from reporting crimes of trafficking and do not undermine efforts to prevent trafficking in persons, identify or protect victims or prosecute perpetrators; (f) Continue strengthening capacity-building for the police, the judiciary, lawyers, law enforcement officers, border control officers, social workers and health-care workers on the early identification and referral to appropriate services of victims of trafficking and on gender-sensitive investigation methods; (g) Regularly review the situation of foreign women who are engaged in prostitution, in order to protect them, and strengthen the assistance provided to women and girls who wish to leave prostitution, including by providing exit programmes and alternative income-generating opportunities.**

### **Nationality**

28. The Committee notes that non-citizens applying for Austrian citizenship must have proof of a “sufficiently secured livelihood” far above the indicative national rates of guaranteed minimum income, among other requirements. It is concerned that the threshold requirement has a structurally discriminatory effect on women, given that only their own income and legal claims to maintenance, child allowance and insurance benefits can be taken into consideration for that purpose, thereby not taking into consideration unpaid work performed by them, such as childcare, housework or taking care of older family members. Furthermore, the Committee is concerned that, under the special provision for bestowal of nationality to children born stateless in Austria (article 14 of the Austrian Nationality Law), stateless children can apply for citizenship only after reaching 18 years of age and not later than two years after having reached the age of majority.

**29. The Committee recommends that the State party: (a) Ensure that unpaid work is taken into account for the determination of a “sufficiently secured livelihood” in the context of citizenship applications by foreign women; (b) Remove barriers to the acquisition of Austrian nationality by children born out of wedlock, including the restrictive age requirement, and accord Austrian citizenship to otherwise stateless children born in the State party, unless a child can acquire citizenship of one of his or her parents immediately after birth through a non-discretionary procedure such as consular registration, declaration, the right of option or other similar procedures.**

### **Education**

30. The Committee welcomes the State party’s continuous efforts to eliminate discrimination against women in the education sector and the progress achieved to date, including through the implementation of multiple initiatives, such as the FEMtech project, which is aimed at supporting women in industrial research. However, the Committee notes with concern the concentration of women and girls in traditionally female-dominated fields of study and their underrepresentation in the areas of science, technology, engineering and mathematics. Furthermore, the Committee is concerned about the following: (a) The decision taken by the State party to ban “ideologically or religiously influenced clothing” in schools and that it may have a discriminatory impact on migrant girls; (b) The low level participation of women and girls in atypical apprenticeships, which reduces their prospects in the labour market; (c) The need to revise educational materials to ensure that all textbooks use gender-sensitive



language and images; (d)The disproportionately high dropout rate at the upper secondary level of education among girls with a migration background and girls whose parents have lower levels of education; (e)The lack of progress made to support inclusive education for persons with disabilities and that the programme entitled “Together for our Austria, 2017–2022” may strengthen the special school system currently in place in the State party for women and girls with disabilities rather than ensuring inclusive education at all levels; (f)The limited access for refugee and asylum-seeking women and girls to integration and language courses beyond obligatory schooling, which are currently accessible only to refugees with the prospects of staying in the State party.

**31. The Committee recommends that the State party address discriminatory stereotypes and structural barriers that may deter girls from enrolling in traditionally male-dominated fields of study and career paths, such as science, technology, engineering, mathematics and information technology. It also urges the State party:**

**(a) To mandate the conduct of a comprehensive study to determine the impact of the Education in School Law, which entered into force in June 2019, banning the wearing of “ideologically or religiously influenced clothing” for girls under 10 years of age in primary schools, on the right to education of girls and their inclusion in all facets of Austrian society as full members of the community and indicate remedies, if needed; (b) Take coordinated measures to encourage further diversification of the educational and vocational choices of boys and girls and the increased participation of girls in apprenticeships, crafts, science and technology; (c) Ensure that gender-sensitive teaching materials are used at all levels of education; (d) Adopt a strategy to reduce the school dropout rate at the upper secondary level of education among girls with a migration background and girls whose parents have lower levels of education and ensure that women and girls who have dropped out are reintegrated into the education system; (e) Clearly define inclusion and its specific objectives at each educational level, in order to ensure that girls with disabilities have access to inclusive learning opportunities in the mainstream education system; (f) Ensure that all asylum-seeking and refugee girls have access to language courses and integration programmes, irrespective of their prospects of staying in the State party.**

## **Employment**

32.The Committee notes that in 1953, the State party ratified the Equal Remuneration Convention, 1951 (No. 100) of the International Labour Organization. In 2011, the State party introduced the requirement that companies with more than 150 employees must produce income reports every two years. However, the Committee notes with concern that:

(a)The gender pay gap in the State party (19.9 per cent in 2017) is one of the highest in the European Union, and it adversely affects women throughout their working life and in terms of their pension benefits, as evidenced by the fact that the average pension level for women is about 40 per cent lower than that for men; (b)Despite the relatively high employment rate among women between 15 and 64 years of age (68.69 per cent), 47.5 per cent of employed women are currently holding part-time positions, predominantly owing to family responsibilities. Because of what is considered to be the roles of women and men, women continue to be the main caretakers of children and adults in need of care; (c)The current retirement age for women is 60 years of age, whereas it is 65 for men; (d)Only a very low number of men avail themselves of parental leave in the State party and only for short periods; (e)There is limited integration into the labour market of women with disabilities, Roma women, women belonging to other ethnic minority groups and migrant, refugee and asylum-seeking women; (f)The prevalence of special employment centres, such as “integrative companies” and “vocational therapy”, in which workers are not covered under an independent social insurance programme or protected by labour legislation on an equal basis with other workers.

**33. The Committee recommends that the State party: (a) Effectively enforce the principle of equal pay for work of equal value, in order to narrow and ultimately close the gender pay gap, by regularly reviewing wages in all sectors, conducting regular labour inspections, applying gender-sensitive analytical job classification and evaluation methods and conducting regular pay surveys; (b) Take measures to eliminate horizontal and vertical occupational segregation and combat the underemployment of women in full-time jobs, including by enhancing efforts to encourage women and girls to select non - traditional career paths, giving priority to the transition of women from part-time to full-time work supported by adequate high-quality childcare facilities; (c) Ensure that all employers are aware of the right of women to stay in their jobs as long as men and encourage women to continue working as long as men; (d) Lower the threshold for the requirement that companies produce income reports to apply to companies with 50 or more employees; (e) Strengthen measures aimed at facilitating the reconciliation of professional and private life, improve the conditions for paid maternity leave and encourage men to avail themselves of parental leave and extend the length of paid paternity leave, so as to promote the equal sharing of responsibilities between women and men, and collect gender-disaggregated data on the use of flexible working arrangements; (f) Ensure that workers in special employment centres are covered by an independent social insurance programme, receive wages and are protected by labour legislation. The Committee also invites the State party to develop programmes that facilitate the transition towards an inclusive and open labour market; (g) Take into account the needs of women belonging to disadvantaged groups, especially women with disabilities, Roma women, women belonging to other ethnic minority groups and migrant, refugee and asylum-seeking women, and consider the use of targeted measures, including temporary special measures, to create further employment opportunities for those women.**

#### **Refugee and asylum-seeking women**

42. The Committee commends the State party for the numerous initiatives and measures adopted to strengthen the protection of asylum-seeking women and girls. However, it remains concerned that: (a) Only if asylum seekers claim a violation of their right to sexual self-determination do they have the right to be interviewed by an officer of the same sex and an interpreter of the same sex; (b) Programmes aimed at the social and economic integration of migrant, refugee and asylum-seeking women do not fully address the needs of all asylum-seeking and refugee women, in particular in relation to social and labour integration; (c) The amendment to the Asylum Law that entered into force in 2016 introduced severe restrictions on the right to family reunification and that beneficiaries of subsidiary protection must wait for three years before their spouses or, in the case of minor children, parents can submit an application for family reunification; (d) Although the State party has strengthened reception capacities for single women and members of households headed by women, there is still a lack of specialized reception facilities for that target group and that, in several provinces, those women have limited or no access to specialized shelters for women affected by gender-based violence; (e) Protection officers and interpreters often lack training on identification and the appropriate handling of victims of sexual and gender-based violence.

**43. In line with its general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women and general recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations, the Committee recommends that the State party: (a) Ensure that the process of refugee status determination is fully gender-sensitive, that the specific needs of asylum-seeking and refugee women and girls are addressed as a priority concern throughout the asylum process and, to that effect, incorporate into national law the provisions of European Union asylum legislation relating to reception**

conditions and asylum procedures; (b) Continue to apply a gender-sensitive approach in receiving refugee and asylum-seeking women and in considering asylum claims, thereby ensuring that the protection needs of asylum-seeking and refugee women and girls arriving in the State party are addressed as a priority concern; (c) Reduce legal and administrative barriers to family reunification for women and men who are beneficiaries of international protection; (d) Ensure the availability of specialized reception capacities for single women and members of households headed by women and access to specialized shelters and services for refugee and asylum-seeking women affected by gender-based violence, irrespective of their legal status; (e) Provide mandatory training for members of the judiciary, prosecutors, the police and other law enforcement officials on gender-based violence as grounds for international protection and on gender-sensitive investigation and interrogation procedures.

### **Committee against Torture**

[Concluding observations \(2015\) CAT/C/AUT/CO/6](#)

#### **Asylum seekers and non-refoulement**

20. The Committee values the extraordinary efforts made by the State party to respond to the exceptionally high influx of undocumented migrants and asylum seekers, including unaccompanied minors, arriving in its territory. It is, however, concerned at reports of poor living conditions in some transit reception facilities for asylum seekers and, in particular, the conditions prevailing during the summer of 2015 at the Traiskirchen asylum-seeker centre, such as overcrowding, with hundreds of people sleeping outdoors, and limited access to medical care and adequate sanitary facilities. The Committee appreciates the acknowledgment by the delegation that the shortage of staff at the branch offices of the Federal Office for Immigration and Asylum results in the inability to process speedily the increasing number of asylum applications and of the need to provide all new asylum officers with proper training. The Committee regrets that the State party has provided no complete information on the procedures in place for the timely identification of victims of torture among asylum seekers (arts. 3 and 16).

**21. The State party should: (a) Take the measures necessary to ensure appropriate reception conditions in transit reception facilities for asylum seekers and refugees, as well as the use of foster care for unaccompanied children; (b) Reinforce the capacity of the Federal Office for Immigration and Asylum to process refugee claims of asylum seekers in the country and guarantee access to free, qualified and independent legal aid for asylum seekers during the entire asylum procedure; (c) Formulate clear guidelines and related training on the identification of torture victims among asylum seekers.**

#### **Detention pending deportation**

22. While noting the decrease in the numbers of asylum seekers detained, and the duration of their detention, the Committee considers that detention pending deportation should be further reduced and only applied as an exceptional measure (arts. 11 and 16).

**23. The State party should ensure that asylum seekers are held in detention only as a last resort and, if this becomes necessary, that they are held for as short a time as possible and that use is made of alternatives to detention whenever feasible.**

#### **Health care in prisons**

28. The Committee is concerned at reports of inadequate medical and mental health care provided to mentally ill inmates, including a recent highly publicized case of grave neglect of

a 74-year-old detainee in pretrial detention. It also notes that, despite the request made to the State party's delegation to provide information on the measures envisaged in response to the recent findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in the area of health care in prisons,<sup>1</sup> no concrete information has been received yet on this subject, in particular with regard to medical confidentiality in detention facilities, the practice of involving prison officers in the performance of health-care duties and the need to improve medical screenings on admission (arts. 11 and 16).

**29. The State party should: (a) Provide adequate medical and mental health care for all persons deprived of their liberty, especially those with mental health conditions; (b) Ensure that all instances of ill-treatment or neglect are promptly and impartially investigated and that, if substantiated, the perpetrators are prosecuted and punished with appropriate sanctions; (c) Ensure comprehensive medical screenings on admission and guarantee the privacy and confidentiality of medical information. Prison officers should not be present during medical examinations of persons, save at the request of the medical doctor.**

### **Trafficking in human beings**

42. The Committee values the efforts made by the State party to combat human trafficking. It notes, however, that there has been a sharp increase in the number of cases reported in recent years. The Committee also takes note of the explanation provided by the delegation concerning the possibility of prosecuting foreign perpetrators found to be exploiting victims of trafficking on the State party's territory. The Committee regrets that it did not receive enough information on the protection offered to victims of trafficking independently from their cooperation in the proceedings against the alleged perpetrators (arts. 2 and 16).

**43. The State party should ensure that cases of human trafficking are thoroughly investigated, perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and the victims adequately compensated. It should also ensure that victims have access to effective protection, irrespective of their ability to cooperate in the legal proceedings against traffickers.**

### **Human Rights Committee**

[Concluding observations \(2015\) CCPR/C/AUT/CO/5](#)

### **Hate speech and racial discrimination**

15. The Committee welcomes the legislative steps taken to improve the criminal-law response to hate speech and to enforce compliance with rules of conduct for the press with regard to racism, xenophobia, anti-Semitism or intolerance. It is concerned, however, about the increasing radicalization of extremist groups in the country, including members of the Muslim communities, and the resurgence of far right-wing and other groups inspired by extremist national socialist ideologies and neo-Nazism. The Committee is also concerned at the rise of advocacy of racial or religious hatred against Roma, Muslims, Jews, minorities, migrants and asylum seekers, including political hate speech, which have not been systematically countered, and advocacy of hatred against persons of a different faith by some radical Islamist preachers. The Committee is concerned that hate speech on the Internet and online forums is on the rise (arts. 2, 18, 20 and 26).

**16. The State party should strengthen its efforts to combat acts or advocacy of racial or religious hatred, including by further enhancing awareness that hate speech, racist propaganda and the incitement of violence against racial or religious groups are prohibited under law, condemning such acts, in particular during election campaigns,**

**and taking prompt action to bring those responsible to justice. The State party should also envisage adopting a national action plan against racism and pursue its efforts to harmonize the Austrian crime statistics and judicial statistics.**

### **Intolerance and discrimination against ethnic minorities**

17. The Committee is concerned that, despite action taken by the State party, immigrants, foreigners and ethnic minorities, including the Roma minority, continue to face intolerance and discrimination. The Committee also regrets the low representation of ethnic minorities in political and public life, including in the legislative and executive bodies (arts. 2 and 26).

**18. The State party should intensify measures to ensure that immigrants, foreigners and ethnic minorities, including the Roma minority, do not suffer from discrimination. The State party should step up its efforts to encourage the participation of persons who are members of minority groups in publicly elected bodies.**

### **Trafficking in human beings**

25. While welcoming legislative and other measures adopted to combat trafficking in human beings, the Committee remains concerned at the insufficient identification of victims trafficked for labour exploitation and the absence of a comprehensive nationwide identification and referral system or comprehensive and coherent data collection system for victims of trafficking (arts. 8 and 24).

**26. The State party should continue its efforts to combat trafficking in human beings, including through international cooperation efforts. It should consider the establishment of a comprehensive nationwide identification and referral system and increase steps taken for the identification and effective protection of victims of trafficking for the purposes of labour exploitation. The State party should, as soon as possible, implement nationwide the national referral mechanism for child trafficking victims and ensure that the handbook for identification of child trafficking victims is completed and conveyed to the local and Länder authorities. Finally, it should develop a comprehensive and coherent data collection system on trafficking in human beings to appropriately identify, monitor and evaluate the State's policies.**

### **Asylum seekers and refugees**

27. While welcoming the Act Amending the Aliens Act 2015, which is aimed at harmonizing the reception and support of asylum seekers throughout the country, the Committee remains concerned about shortcomings in legal counselling and representation throughout the asylum procedure and that legal counsellors are not necessarily trained lawyers. The Committee is also concerned that legal counsellors representing unaccompanied minors, who are not yet assigned to a provincial reception facility, do not need to have any training or skills in counselling children or determining their best interests. The Committee is further concerned that, under article 7 of the new Constitutional Law on the Rights of Children, consideration of the best interest of the child may be restricted in some circumstances, including in asylum-related matters (arts. 13, 24).

**28. The State party should ensure that legal aid and representation of adequate quality are systematically made accessible throughout the entire asylum procedure. It should also ensure that unaccompanied minors are systematically and without undue delay appointed a guardian trained in child counselling, from the outset and throughout their entire stay in the State party. Finally, the best interest of the child should be given primary consideration by all relevant State authorities throughout the asylum procedure.**

## **Detention of asylum seekers and refugees**

29. While welcoming the decrease in the number of detentions pending deportation and the application of an “open door” regime of detention, the Committee is concerned that, under the revised Aliens Police Act (2015), children over the age of 14 can be detained for up to two months (arts. 9 and 24).

**30. The State party should pursue its efforts to ensure that detention pending deportation is applied only after due consideration of less invasive means, with special regard being given to the needs of particularly vulnerable persons, and that individuals detained for immigration-related reasons are held in facilities specifically designed for that purpose. The State party should review its detention policy with regard to children over the age of 14 years to ensure that children are not deprived of their liberty except as a measure of last resort and for the shortest appropriate period of time .**

## **Committee on Economic, Social and Cultural Rights** **[Concluding observations \(2013\) E/C.12/AUT/CO/4](#)**

**The Committee urges the State party to harmonize its anti-discrimination legislation so as to afford the same level of protection across the different grounds of discrimination and to streamline the administrative bodies responsible for the protection of all individuals against discrimination. It also recommends that the State party establish a statistical data collection system to assess the enjoyment of economic, social and cultural rights situation by minority groups, with due respect for the principles of confidentiality, informed consent and voluntary self-identification of persons as belonging to a particular group.**

The Committee reiterates its deep concern at the situation of asylum seekers, who receive inadequate social benefits, live in poor housing conditions and only have access to employment in certain activities during the first three months of their asylum proceedings. Moreover, while the Committee notes that asylum seekers below 25 years of age are eligible to obtain work permits for vocational training in areas where there is a shortage of trainees, it is concerned that there is limited choice for asylum seekers to select their profession. The Committee is also concerned that when places are available, preference is given to Austrians or third-country nationals who are already integrated into the Austrian labour market (arts. 2, 6, and 11).

**The Committee recommends that the State party take concrete measures to guarantee asylum seekers’ right to an adequate standard of living by allowing them full access to the formal labour market, to promote their independence and self-sufficiency, and to facilitate their access to the means-tested minimum income scheme if they are unable to find work. It also urges the State party to remedy the current housing conditions for asylum seekers, including by ensuring that adequate standards of hygiene and habitability are met, as set out in general comment N o. 4 (1991) on the right to adequate housing.**

[...]

The Committee is concerned at the continuing occurrence of violence against women, including domestic violence, the lack of a comprehensive strategy to combat all forms of violence against women, and the absence of statistical information on violence against women (art. 10).

**The Committee recommends that the State party adopt a comprehensive national plan of action on violence against women and establish a data collection system on all forms of violence against women, with information on the victim and perpetrator disaggregated by sex, age and type of violence , as well as the relationship of the perpetrator to the victim, geographical location and other factors considered relevant, such as disability. It also urges the State party to continue public awareness-raising campaigns on all forms of violence against women, including against migrant and ethnic minority women, as well as organizing training for the members of the judiciary and law enforcement personnel.**

[...]

The Committee expresses concern at the shortage of physicians and nurses to provide adequate health-care services to meet the growing demand for treatment, including in areas of psychosocial and adolescent health. Moreover, while noting the introduction of “video interpretation” in hospitals to assist non-citizens in communicating with health-care personnel, the Committee remains concerned that migrants and asylum seekers continue to face obstacles in accessing health-care services, primarily due to lack of access to information, language barriers and certain treatments that have to be financed in advance (arts. 2 and 12).

**The Committee recommends that the State party take effective measures to ensure that there are sufficient health - care professionals to meet the growing demands in medical treatment, particularly in areas such as psychosocial and adolescent health, taking into account its general comment No. 14 (2000) on the right to the highest attainable standard of health. It also recommends that the State party take further measures to increase access to adequate and affordable health - care services by non-citizens, including by ensuring the availability of translation services and information on health - care services, as well as by addressing their underlying risks to health.**

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**Legislation**

10. While welcoming the Federal Constitution Law on the Rights of Children of 16 February 2011, the Committee notes with concern that the Law does not include all the rights protected under the Convention, in particular social and cultural rights of children. It also notes with concern that despite the State party’s efforts to harmonize the youth protection laws of all Länder, in line with the principles and provisions of the Convention, most of the Länder continue to have divergent standards as regards certain age limits and definitions of terms such as “children” and “adolescents”.

**11. The Committee recommends that the State party find the appropriate constitutional path that will allow it to have in the whole territory, including its Länder, a comprehensive legal framework which fully incorporates all the provisions of the Convention, in particular social and cultural rights, and its Optional Protocols. It also recommends that the State party continue and intensify its efforts to harmonize the youth protection laws of all Länder, with a view to achieving equal protection standards throughout the State party.**

**Non-discrimination**



24. While noting the specialized training, education and awareness-raising programmes, including inter-cultural and civic education at school, conducted by the State party to prevent discriminatory attitudes, as well as the State party's legislation criminalizing incitement to racial hatred, the Committee remains concerned about instances of hate speech by politicians and manifestations of Neo-Nazism, racism, xenophobia and related intolerance towards migrant communities, refugees, asylum seekers and persons of certain ethnic backgrounds, and their impact on children belonging to these groups.

**25 . The Committee urges the State party to take immediate measures to combat direct and indirect manifestations of Neo-Nazism, racism, xenophobia and related intolerance affecting children and to effectively investigate, prosecute and punish such acts. It also recommends that the State party strengthen its efforts to foster a culture of tolerance and mutual respect. Furthermore, it recommends that the State party include information in its next periodic report on measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party in follow-up to the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the outcome document adopted at the 2009 Durban Review Conference.**

#### **Best interests of the child**

26. The Committee welcomes that the principle of the best interests of the child has been included in article 1 of the Federal Constitutional Law on the Rights of Children and other relevant legislation. However, it is concerned that in practice, this principle is not always duly taken into consideration in decision-making processes and in the allocation of resources.

**27. The Committee urges the State party to strengthen its efforts to ensure that the principle of the best interests of the child is appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings as well as in all policies, programmes and projects relevant to and with an impact on children. In this regard, the State party is encouraged to develop procedures and criteria to provide guidance for determining the best interests of the child in every area, and to disseminate these to public or private social welfare institutions, courts of law, administrative authorities and legislative bodies. The legal reasoning of all judicial and administrative judgments and decisions should also be based on this principle.**

#### **Harmful practices**

37. While noting the State party's efforts to raise awareness and monitor the situation of harmful practices and cooperate with States where such practices are prevalent in order to combat them, the Committee is nevertheless concerned that hundreds of girls living in the State party have been subjected to female genital mutilation (FGM) and at the absence of convictions of perpetrators of FGM. The Committee is further concerned that the law prohibiting such practices is not sufficiently known, including by health workers. It is also concerned at the lack of research on the prevalence of FGM in the State party.

**38. The Committee urges the State party to: (a) Effectively implement the law prohibiting female genital mutilation and take all necessary measures to ensure that those who continue to practice FGM are effectively brought to justice; (b) Undertake a study on the extent and nature of FGM practiced in the State party, or abroad on girls who live in the State party, and involve NGOs that are active in this field; (c) Strengthen its efforts to conduct awareness-raising programmes, taking into account the results of the study, and to prevent this practice; (d) Strengthen its international cooperation on the eradication of harmful practices.**

## **Children deprived of a family environment**

40. The Committee is concerned that no adequate statistical data is available to ensure the quality control of alternative care institutions and family type alternative care. It notes that the monitoring of such institutions falls under the competence of the Länder which have different methods and practices. The Committee is also concerned that the right of children to quality standards of care and placement was not included in the Federal Constitutional Law on the Rights of Children.

**41. The Committee recommends that the State party take into account the Guidelines for the Alternative Care of Children annexed to the United Nations General Assembly resolution 64/142 of 20 December 2009, adopt measures to regularly monitor and evaluate the conditions in alternative care settings, including by collecting adequate statistical data, disaggregated by sex, gender and geographic location. The Committee also recommends that the quality standards in alternative care settings be strictly regulated by law and effectively enforced.**

## **Asylum-seeking and refugee children**

54. The Committee notes that the Aliens Law Amendment Act of 2011 prohibits the placement of children under the age of 14 in detention pending deportation, and is concerned that such age limit is too low. It is also concerned that the age determination methods applied to unaccompanied refugee and asylum-seeking children in the State party may not be in conformity with the guidance set out in the Committee's general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin. The Committee is further concerned that some Länder such as Carinthia and Styria do not systematically comply with the Supreme Court decision of 2005 that unaccompanied refugee children must be provided with a legal guardian.

**55. The Committee urges the State party 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 when non-custodial alternatives to detention are unavailable. The Committee further urges the State party to ensure that detention conditions are of a non-punitive character and in line with the special status of such children as minors who are not suspected or convicted of any crime. It also urges the State party to ensure that the age determination procedure applied to unaccompanied children is based on scientifically approved methods, as recommended in general comment No. 6 (2005), and that each unaccompanied child is provided with a legal guardian.**

## **Children in armed conflict**

56. While noting the State party's indication during the dialogue that under 18-year old recruits may not participate in any hostilities and in United Nations peacekeeping operations, the Committee remains concerned that Section 9, paragraph 2, of the National Defence Act sets the minimum age of voluntary recruitment at 17 years. The Committee also notes with concern that students from age 14 are trained on the use of small arms at the Vienna military academy ("Militärrealgymnasium"), albeit on an extracurricular basis.

**57. The Committee reiterates its recommendation (CRC/C/OPAC/AUT/CO/1, para. 6) that the State party consider the possibility of increasing the minimum age for voluntary recruitment to 18 years. It also recommends that the State party ensure 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 its general comment No. 1 (2001).

### **Sale, trafficking and abduction**

60. While welcoming that children who are victims of sexual violence have a right to free legal assistance in court proceedings and psychological support, the Committee is concerned that in practice, child victims of human trafficking and migrant children often have no effective access to such support.

61. The Committee recalls its concluding observations under the Optional Protocol on the sale of children, child prostitution and child pornography (CRC/C/OPSC/AUT/CO/1, para. 30) and recommends that the State party take the necessary measures 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.

### **Observations of other Treaty Bodies:**

#### **Committee on the Elimination of Racial Discrimination**

[Concluding observations \(2012\) CERD/C/AUT/CO/18-20](#)

#### **Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography**

[Concluding observations \(2008\) CRC/C/OPSC/AUT/CO/1](#)

#### **Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict**

[Concluding observations \(2005\) CRC/C/15/Add.251](#)