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## Human Rights Council

Working Group on the Universal Periodic Review

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### Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1

#### Austria\*

The present report is a summary of 16 stakeholders' submissions<sup>1</sup> to the universal periodic review. It follows the structure of the general guidelines adopted by the Human Rights Council. It does not contain any opinions, views or suggestions on the part of the Office of the United Nations High Commissioner for Human Rights (OHCHR), nor any judgement or determination in relation to specific claims. The information included herein has been systematically referenced in endnotes and, to the extent possible, the original texts have not been altered. Lack of information or focus on specific issues may be due to the absence of submissions by stakeholders regarding these particular issues. The full texts of all submissions received are available on the OHCHR website. The report has been prepared taking into consideration the four-year periodicity of the first cycle of the review.

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\* The present document was not edited before being sent to United Nations translation services.

## **I. Background and framework**

### **A. Scope of international obligations**

1. Amnesty International (AI) welcomed the announcement by Austria of its intention to ratify the International Convention for the Protection of All Persons from Enforced Disappearance and urged Austria to take prompt steps towards ratification and implementation of the Convention.<sup>2</sup>

2. A.I noted the government's stated intention to prepare for ratification of the Optional Protocol to the Convention against Torture and Other Cruel (OPCAT), Inhuman or Degrading Treatment or Punishment.<sup>3</sup> AI indicated that intensive dialogue on the ratification of the Optional Protocol to the Covenant on Economic, Social and Cultural Rights had taken place but regretted that the ratification process currently appears to have stalled. AI further noted that Austria has yet to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.<sup>4</sup>

3. The Council of Europe's Commissioner for Human Rights (CoE CHR) encouraged Austria to ratify the Convention on Cybercrime and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.<sup>5</sup>

4. Joint Submission 2 stated that Austria has ratified most treaties with a series of reservations, which are outdated or contradict international law and have repeatedly been criticized by UN bodies. JS 2 recommended a withdrawal of reservations to UN Treaties.<sup>6</sup> Zivilcourage und Anti-Rassismus-Arbeit (ZARA) recommended that the Austrian government specifically withdraw the following reservations: the International Committee on Elimination of All Forms of Racial Discrimination (ICERD) Art 4 sub-paragraphs (a), (b) and (c), CCPR Art 14 (3) (d); the International Covenant on Civil and Political Rights (ICCPR) Arts 19, 21 and 22; CCPR Art 26.<sup>7</sup>

### **B. Constitutional and legislative framework**

5. AI welcomed the fact that the European Convention for the Protection of Human Rights and Fundamental Freedoms has constitutional status<sup>8</sup>. AI recommended that Austria give full and effective implementation to all human rights enshrined in treaties to which Austria is a party, including economic, social and cultural rights; the right to asylum; children's rights and the prohibition of discrimination of all persons, including non-citizens. AI recommended that Austria ensure the full and effective implementation of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child.<sup>9</sup>

6. AI welcomed Austria's intention to introduce a specific crime of torture in the penal code, thus implementing a long-standing recommendation by the Committee against Torture, but noted that there is not a concrete timeframe for the adoption of the law. AI recommended that Austria set a narrow timeframe for criminalizing in domestic law the crime of torture in accordance with Article 1 and Article 4, paragraph 2, of the UN Convention against Torture, as recommended by the Committee against Torture.<sup>10</sup>

7. JS 2 noted that Austria adopts UN treaties with implementation provisions (Article 50 (2) Constitutional Act), and fails to transpose them into national law, rendering direct application impossible. This is also evident from jurisprudence, where UN standards are by and large ignored.<sup>11</sup>

8. ZARA noted that in 1995 the Constitutional Court established that the Constitution only guarantees equality before the law to nationals and not to aliens. This provision makes it possible to grant social housing and family benefits to Austrian and EU nationals but not to third-country nationals. ZARA asked the government to amend the Constitution and guarantee equality before the law for all people residing in Austria independent of their national origin.<sup>12</sup>

9. CoE CHR considered that the constitutional reform process constitutes a welcome opportunity to codify all fundamental rights in a coherent and clear manner. Austrian Child Rights Network (CRN) urged the government to review the draft law which seeks to ensure the incorporation of children's rights in the Constitution and ensure representatives of the Child Rights Coalition are involved in the review process.<sup>13</sup>

10. CRN recommended that Austria withdraws all reservations to the Convention on the Rights of the Child. CoE CHR highlighted the importance of retaining the constitutional status of the European Convention on Human Rights (ECHR).<sup>14</sup>

### **C. Institutional and human rights infrastructure**

11. CoE CHR noted that the Austrian Ombudsman Board, which reports to the Parliament, is an independent institution with constitutional status. CoE CHR further noted that the Human Rights Advisory Board (HRAB) was set up in 1999 to visit places of detention under police authority, and although the HRAB is administratively attached to the Federal Ministry of the Interior and issues recommendations to the Minister of the Interior, its operational independence is guaranteed by the Constitution. CoE CHR stated that the independence of the HRAB from governmental authorities could be further guaranteed by placing it, as a distinct body, under a shared institutional framework with the parliamentary Ombudsman Board. CoE CHR indicated that a totally separate human rights institution with a clearly defined monitoring and complaints mechanism following the Paris Principles of 1991 would also be an option if its independence were clearly guaranteed by the Constitution.<sup>15</sup>

12. AI noted that recent negotiations for the establishment of a National Preventive Mechanism have been conducted behind closed doors and without civil society consultation. AI expressed concern that any such mechanism created on the basis of the current proposals may fall short of the criteria required by the OPCAT, in particular with regard to its independence and funding.<sup>16</sup> AI recommended that the government of Austria ensure that the establishment of the mechanism is done in consultation with civil society.<sup>17</sup>

13. ZARA noted that there are no (inter-ministerial) structures in place guaranteeing a focus on ethnic discrimination and recommended that the Austrian government establish a Ministry for Equal Treatment.<sup>18</sup> ZARA further noted that a survey among members of ethnic minorities conducted by the Fundamental Rights Agency of the European Union showed that about 70 per cent of the interviewees in Austria did not know of a law against discrimination, and only about 15 per cent knew about the Ombudsman for Equal Treatment (EU average: 37 per cent). ZARA called on the government to improve the human rights infrastructure and establish regional offices of the Ombudsman for Equal Treatment.<sup>19</sup>

### **D. Policy measures**

14. AI and JS 2 recommended that Austria start developing a National Action Plan on Human Rights as well as a National Action Plan on Racism and Xenophobia, in close consultation with civil society.<sup>20</sup> AI noted that the distribution of human rights competences

between ministries, as well as the role of ministerial and provincial human rights coordinators, remains ambiguous. The human rights coordinators, in particular, appear to lack the political backing as well the institutional standing and resources needed to ensure the implementation of Austria's international obligations as well as the mainstreaming of human rights into all areas of Austrian federal and provincial government policy.

15. AI noted that while government officials from time to time meet with civil society to discuss specific human rights concerns, there is no mechanism or process in place to ensure and facilitate a regular substantive dialogue with civil society on current and structural human rights concerns. AI further noted that the UPR of Austria provides an excellent opportunity to remedy human rights-related shortcomings in the country in a structured manner.<sup>21</sup> AI recommended the establishment, in consultation with civil society, of a mechanism or process to ensure and facilitate regular substantive dialogue with civil society on current and structural human rights concerns, and that the government of Austria should establish, in consultation with civil society, a clear process to assess the UPR outcome document and to ensure implementation of the recommendations made to Austria in the UPR.<sup>22</sup>

16. JS 2 noted the lack of human rights awareness in weak public discourse and flaws in systematic human rights education, and recommended measures for awareness raising and systematic human rights education.<sup>23</sup>

17. ZARA urged the government to make use of the data available as a basis for developing general anti-discrimination policies also combating structural discrimination. ZARA further noted that in January 2010, the Federal Ministry of the Interior launched its National Action Plan on Integration (NAPI) but added that the NAPI is not a supplement for the National Action Plan against Racism, which Austria should have launched following the UN World Conference against Racism in Durban in 2001. This NAPI does not provide for measures aiming at social cohesion, promoting the Equal Treatment Act, giving more support to victims of discrimination or tackling the issue of structural discrimination.<sup>24</sup>

## **II. Promotion and protection of human rights on the ground**

### **A. Cooperation with human rights mechanisms**

#### **Cooperation with treaty bodies**

18. AI reported Austria's refusal to fully and timely implement the views of the HR Committee. AI reported that neither the International Covenant on Civil and Political Rights nor the views of the HR Committee have any effect in domestic law.<sup>25</sup> Furthermore AI noted that there is no adequate mechanism or process in place to ensure and facilitate systematic follow-up to and implementation of Treaty Body recommendations, including by making all views and concluding observations concerning Austria publicly available in German and by engaging in regular substantive dialogue with civil society on their recommendations.<sup>26</sup>

19. ZARA noted that the reservations to ICERD and CCPR should be withdrawn in order to promote cooperation with international human rights mechanisms.<sup>27</sup>

## **B. Implementation of international human rights obligations, taking into account applicable international humanitarian law**

### **1. Equality and non-discrimination**

20. CoE CHR noted that the European Commission against Racism and Intolerance (ECRI) has identified black Africans, Muslims and Roma as the most vulnerable population groups to racism and racist discrimination in Austria, while acknowledging that anti-Semitism also remains a problem. In addition, ECRI has pointed out that asylum-seekers, refugees and non-EU migrants have been targets of racist and xenophobic political discourse and media reporting. CoE ECRI recommended that the Austrian authorities systematically condemn, in the strongest possible terms, all forms of racism, xenophobia and anti-Semitism in political discourse and furthermore recommended the adoption of ad hoc measures to combat the use by political parties or their representative of racially inflammatory or xenophobic discourse and in particular of legal provisions allowing for the suppression of public financing for parties which promote racism or xenophobia.<sup>28</sup>

21. The Austrian Ombudsman Board (AOB) noted that violations of the prohibition of discrimination were often considered as minor offences, and consequently were not adequately prosecuted or penalised. AOB states that a change of public attitude and awareness cannot be expected until public authorities cease to consider such violations as minor offences and ensure that these offences are efficiently prosecuted and penalised.<sup>29</sup>

22. JS 2 stated that equality for women and equal opportunities for migrants, refugees, minorities, particularly Roma, children, persons with disabilities and LGBT are not fulfilled. JS 2 also stated that there are indications that structural racism is prevalent in administrative practice, and it is manifest in the police force.<sup>30</sup>

23. JS 2 further noted that anti-discrimination legislation is confusing and scattered over various federal and provincial laws. It provides varying degrees of protection for different grounds of discrimination in the areas of work, access to goods and services, social security and education. Equality bodies, such as the Equal Treatment Commission and the Ombudsman for Equal Treatment are insufficiently resourced and lack independence. JS 2 recommended the revision and harmonization of anti-discrimination laws to ensure equal protection on all grounds of discrimination and further recommended an increase in resources and competencies of equality bodies.<sup>31</sup> JS 2 also recommended measures against Islamophobia and structural racism (e.g. National Action Plan).<sup>32</sup>

24. AI noted that complaints of police ill-treatment from members of ethnic minorities are often followed by an inadequate response by both the police force and the judicial system e.g. such complaints tend not to be properly investigated, police officers are seldom prosecuted and even if they are, including in cases of serious racially motivated ill-treatment, the courts do not always impose penalties commensurate with the gravity of the offence, including its racist motivation.<sup>33</sup>

25. AI concluded that the failure of the police and judicial organs to routinely extend the same quality of service to foreign nationals and members of ethnic minorities is the result of institutional racism.<sup>34</sup> AI noted that while the current government programme seeks to make protection against racism and xenophobia under criminal law more effective, Austria still does not collect and publish statistics on racist incidents and has not yet developed an action plan to combat racism and xenophobia. AI stressed that in successive reports, the Council of Europe's ECRI has recommended that the Austrian authorities "introduce a comprehensive and coherent data collection system that would make it possible to assess the situation with regard to the different minority groups in Austria and to discrimination".<sup>35</sup>

26. AI also recommended that Austria train the police and the judiciary in how to address complaints of racially motivated crimes and take steps to ensure that all allegations of racist misconduct by law enforcement officials are effectively investigated and appropriately punished.

27. CoE ECRI further recommended that the Austrian authorities take steps to ensure that the criminal administrative law provisions designed to combat discrimination are duly applied, and recommended increased awareness raising and training for those working in the administrative justice system.<sup>36</sup>

## **2. Right to life, liberty and security of the person**

28. JS 2 noted that problems in criminal detention are largely due to a shortage of personnel. The closing of the Juvenile Court in 2003 has weakened the standards of detention for juveniles. Asylum seekers in detention pending deportation are held in police detention centres - for up to 10 months without regular ex-officio review of remand - largely in closed cells without any occupation.

29. AI claimed that consistent and credible reports that individuals have been subjected to ill-treatment and excessive use of force by law-enforcement officials, and about difficulties encountered by victims of torture and other ill-treatment in obtaining justice and reparation, have been received.<sup>37</sup> JS 2 recommended that independent inquiry bodies be established for cases of police ill-treatment and to ensure adequate handling of cases of ill-treatment (including compensation).<sup>38</sup>

30. AI also stressed that the use of charged energy devices, as currently practiced by law enforcement officials, may lead to human rights violations<sup>39</sup>, and recommended that Austria ensure that all law enforcement officials use charged energy devices on the basis of the strictest standards, which must be consistent with international human rights law.<sup>40</sup> JS 2 further noted that the usage of electroshock weapons (“Taser”) is permissible in detention facilities and generally allowed as a “less dangerous weapon” for police, where it is also in use. JS 2 recommended the introduction of a general prohibition of usage of “Taser”-weapons and the introduction of a criminal provision prohibiting torture in accordance with CAT.<sup>41</sup>

31. JS 2 noted the flawed implementation of the Protection from Domestic Violence Act through shortcomings in the collection of evidence leading to insufficient prosecution and frequent acquittals. JS 2 notes that judgments reveal a lack of information by judges on the causes and consequences of violence against women. Despite pertinent guidelines, health care services frequently fail to recognize injuries sustained from violence. Dependency on spouses for a residence permit decreases the level of protection from violence for migrant women.<sup>42</sup>

32. JS 2 stated that in spite of a legal prohibition of corporal punishment, children are exposed to violence in various areas (e.g. family, school, private and church institutions); the prevention and appraisal of incidences of violence is flawed due to a lack of cooperation among the involved institutions. There is a lack of data, systematic identification and care for victims of child trafficking and child prostitution.<sup>43</sup>

33. JS 2 noted that persons with disabilities, particularly women and girls with disabilities, and especially those with intellectual impairments, are frequently victims of (also sexual) violence. This is also due to the stereotype of being “a-sexual”, which prevents persons with disabilities from receiving adequate sex education and is compounded by living arrangements in e.g. institutions, which abet violence structurally.<sup>44</sup>

### **3. Administration of justice, including impunity, and the rule of law**

34. JS 2 stated that structural independence within the judiciary is lacking. The latest reforms have transferred tasks from the independent judiciary to the public prosecutors, who are subject to directives from the Minister for Justice; thus the dependency on the Ministry for Justice has increased further. Structural problems are also compounded by a lack of judges, public prosecutors and administrative staff in the judiciary.<sup>45</sup> JS 2 also noted that human rights, equality and gender issues are part of the curriculum for judges' training; however, they are not sufficiently included in continued education of incumbent judges. JS 2 recommended measures to further strengthen the independence of the judiciary, restructuring and increase of resources also in the field of corporate crimes and awareness raising and mandatory training on human rights for the judiciary.

35. CoE ECRI noted that non citizens were seriously over represented in the prison population. In particular 60 per cent of pre-trial detainees were reported to be non-citizens and the differential between pre trial detention and final convictions was remarkably higher for non citizens than for Austrian nationals. CoE ECRI recommended that the Austrian authorities undertake research on the incidence of direct and indirect racial discrimination in the criminal justice system, particularly as regards pre-trial detention and imprisonment, so as to be able to adopt targeted measures where necessary.<sup>46</sup>

36. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CoE CPT) recommended that the Austrian authorities take the necessary measures to ensure that all persons detained by the police are fully informed of their fundamental rights from the very outset of their deprivation of liberty. The persons concerned should be asked to sign a statement attesting that they have been informed of their rights, and they should be given a copy of the information sheet.<sup>47</sup> CoE CPT further recommended that the Austrian authorities develop a fully fledged legal aid system in the context of police custody, so as to ensure that persons who are not in a position to pay for a lawyer can effectively benefit, if they so wish, from the assistance of a lawyer throughout their police custody.

### **4. Right to marriage and family life**

37. JS 2 noted that lesbians and gays have a right to a registered partnership, which does not include the same set of rights as a marriage. Lesbians and gays do not have the possibility to adopt children, including stepchildren; they are also barred from reproductive medical assistance. The denial of a legal relationship to their partner's child also violates child rights.<sup>48</sup> JS 2 recommended that the authorities ensure rights for same-sex partnerships according to international standards.<sup>49</sup>

### **5. Freedom of expression and right to participate in public and political life**

38. JS 2 noted that there is an alarming degree of hate speech. Targets are particularly foreigners, migrants, asylum seekers and minorities (Carinthian Slovenes). The application – and especially non-application – of the provision against hate speech, which does not include religion and belief, age, sex, sexual orientation or disability, is a cause of concern. JS 2 therefore recommended more effective application of the provisions on hate speech.<sup>50</sup>

39. ZARA noted that in June 2004, the Constitutional Court declared the right to vote in elections at the district level for third country nationals unconstitutional after the City of Vienna had passed legislation on voting rights for third country nationals at the district level. The Court reasoned that such legislation would violate the constitutional principle of homogeneity. ZARA called on the government to change the Constitution and enable third country nationals to vote at least at district level.<sup>51</sup>

40. CoE CHR noted that in recent years, the European Court of Human Rights (ECtHR) has found Austria to be in violation of Article 10 – freedom of expression – of the ECHR on several occasions. In most cases, the applicants had been fined for certain publications in their media while the ECtHR finally ruled that their convictions had been disproportionate and unnecessary in a democratic society. It would appear from these cases that when striking a balance between the protection of the individual and the freedom of the press, Austrian courts have taken a more restrictive approach towards the press than the ECtHR. CoE CHR recommended to the judges that they should engage in an active dialogue with the ECtHR on the topic by inviting representatives of the ECtHR to participate in their seminars. CoE CHR also urged the authorities to review the current penal provisions on defamation to determine whether they should be repealed to ensure that they are not used to mete out disproportionate punishments in the interest of protecting the reputation of individuals. He questioned the appropriateness of penal provisions as a means to sanction defamation, and suggested provisions in civil law are the preferred option for such cases.<sup>52</sup>

#### **6. Right to work and to just and favourable conditions of work**

41. ZARA stated that Muslims, people of darker skin colour or with a “foreign sounding” name face discrimination when applying for a job. The rights awareness among employers is rather low and urged the government to take measures to raise awareness among employers and to offer incentives to implement diversity management or positive action measures.<sup>53</sup>

#### **7. Right to social security and to an adequate standard of living**

42. Austrian National Council of Persons with Disabilities (ANCPD) stated that the United Nations Convention on the Rights of Persons with Disabilities (CRPD) was ratified in 2008 but that no monitoring bodies exist in the individual Federal States of Austria as stipulated in Article 33, Para. 2 CRPD, nor is there an independent agency to monitor institutions for persons with disabilities as enshrined in Article 16, Para. 3 CRPD.<sup>54</sup> ANCPD recommended the establishment of a National Human Rights Institution in line with the Paris Principles.<sup>55</sup> Independent Living Austria (ILA) recommended the development of an action plan for the implementation of CRPD and the introduction of mandatory standards for the representation of persons with disabilities in the media.<sup>56</sup>

43. ANCPD noted that Austria does not have a national policy to establish comprehensive accessibility, and that numerous barriers exist which prevent persons with disabilities from equal and independent participation in many areas of life. ANCPD stated that the Federal Act on Equalization of Persons with Disabilities (BGStG) was established in 2006 to monitor the prohibition of discrimination against persons with disabilities in all areas at the federal level. However, measures to create accessible opportunities in the provinces exist only in very few cases. Due to the long period of transition before the Act has to be implemented (until 2015), steps to eliminate physical barriers are taken based on the economic interests and discretion of businesses.<sup>57</sup> ANCPD recommended that<sup>58</sup> obligations for physical accessibility be considered in plans for construction of housing and city and regional development plans. The topic of ‘universal design’ has to be obligatory in the curricula of technical professional and vocational training.

44. Austrian Association of the Deaf (AD) stated that a large group of deaf and hearing impaired people have only a slim chance to live a satisfactory working life due to deficiencies in the educational system. Unemployment among deaf and hearing impaired people is far higher than among other people and their promotion prospects are generally quite low. Deaf and hearing impaired people are severely discriminated in education (compulsory and further education). AD noted that most relevant laws and regulations for studies and work require the skills “speech and vocal performance” (German language),



"physical" fitness, "mental" and "sanitary" applicability from the affected candidates. The word "language" means spoken languages only. Sign language(s) are not considered as an admission criterion. AD recommended that the government introduce the right to use Austrian Sign Language as a language of education and teaching deaf people at all stages of the education system.<sup>59</sup>

45. Austrian National Platform of Social Services for Homeless People (BAWO) stated that the current policy and practice in Austria, which sets rigid and high conditions to access basic social assistance, is in violation of its obligation under article 11 of ICESCR and increases the risk of exclusion of those already in a particularly vulnerable situation from the housing and labour market. BAWO recommended that Austria remove obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens notably in the area of housing and furthermore that Austria ratify the International Protection on the Protection of the Rights of All Migrant Workers and Members of their Families and the Optional Protocol to the International Covenant of Economic, Social and Cultural Rights.<sup>60</sup>

## **8. Right to education**

46. JS 2 noted that social access to higher education is not ensured because the primary school system segregates based on social attributes. There are separate education institutions for persons with "special pedagogical education needs," who in principle do not have a right to education beyond the 8<sup>th</sup> grade.<sup>61</sup> JS 2 added that cutbacks in resources have lowered the standards for primary and tertiary education. JS 2 further noted that the inclusion of migrants is insufficient, leading to a ghettoization in schools. JS 2 stated that possibilities for minorities and deaf people to acquire minority languages are inadequate.<sup>62</sup> JS 2 recommended reform of the education system and an increase of the education budget in the primary and tertiary sector to 7 per cent Gross National Product (GNP). JS 2 further recommended the establishment and promotion of Austrian sign language as a language of instruction.<sup>63</sup>

47. ZARA noted that the current educational system reproduces social and educational inequalities, a drawback that especially impacts on the social as well as educational mobility of migrants. ZARA recommended that the government collect data that will facilitate inclusive and anti-discriminatory educational policy decisions for teacher training that enables the educators to cope with a high level of linguistic and cultural diversity in the classrooms and encourage them to embrace the issue of diversity.<sup>64</sup>

## **9. Minorities and indigenous peoples**

48. Austrian Centre for Ethnic Groups (CEG) noted that the basic problems are the unequal protection of minorities as well as the non-implementation of articles of the State Treaty of Vienna of 1955 and the State Treaty of Saint Germain of 1920. As a result, the rights of the national minorities to their own organizations, free use of their languages, adequate school instruction and support of their own culture have been undermined.<sup>65</sup> In particular CEG indicated that the only national minorities officially recognized in Austria are Croat, Slovene, Hungarian, Czech, and Slovak national minorities. CEG stated that the Roma ethnic group has been deprived for decades of basic minority rights guaranteed under international law.<sup>66</sup> CEG further recommended the implementation of the decisions of the Constitutional Court on topography and official languages.<sup>67</sup>

## **10. Migrants, refugees and asylum-seekers**

49. AI was concerned that asylum-seekers may not have adequate access to legal advice, following the termination by the Ministry of Interior of the contracts of almost all independent NGOs providing legal advice to asylum-seekers. AI considered that this may

hamper the chances of asylum-seekers to obtain asylum or international protection and to effectively challenge the reasons for their detention and deportation.<sup>68</sup>

50. AI added that the amendments to the asylum law adopted in 2009 strip asylum-seekers of the possibility of challenging second-instance decisions on international protection before the Administrative Court. AI stressed that the denial of this right to asylum-seekers is discriminatory.<sup>69</sup> JS 1 noted that the political debates on amendments to asylum and alien legislation centre almost exclusively focus on “combating abuse”. This promotes prejudice against refugees.<sup>70</sup> JS 1 further noted that the numerous amendments are characterised by an intensified trend towards control and combating of alleged abuse; security aspects prevail and asylum legislation loses its effectiveness as an instrument designed to protect refugees. AI recommended that Austria ensure effective and adequate access of all asylum-seekers to independent legal advice, and that asylum-seekers be allowed to challenge second-instance decisions on international protection before the Administrative Court.<sup>71</sup> JS 1 recommended that responsibility for asylum, migration and integration should be shifted from the Ministry of the Interior to a new, separate ministry.<sup>72</sup>

51. JS 2 noted that migrants, particularly partners of migrants, are wronged due to the fact that family reunification (“*Familiennachzug*”) requires an income above the minimum level of existence. This also concerns Austrians and their foreign partners. There is also an income requirement to apply for citizenship, and older women and mothers of multiple children are disadvantaged. A quota system for family reunification is in place, which has been criticized repeatedly.

52. JS 1 noted that the EU’s Dublin II Regulation gives the Member States leeway for taking account of both human rights concerns and humanitarian aspects. In Austria, the Dublin II Regulation is applied very restrictively. The humanitarian provision of the Dublin Regulation is hardly applied at all.<sup>73</sup> JS 1 recommended that the Austrian asylum authorities be urgently called upon to use their discretionary powers in applying the sovereignty clause under the Dublin II Regulation. JS 2 further recommended that the authorities ensure the protection of the right to family life for migrants and the abolition of quota systems for family reunification.<sup>74</sup> JS 2 noted that asylum seekers have no right to work and de facto no chance for vocational training, further increasing the risk of poverty and inadequate integration.<sup>75</sup>

#### **11. Right to development**

53. Global Responsibility – Austrian Platform for Development and Humanitarian Aid (GR) noted that Austrian Development Cooperation shows a number of shortcomings in realizing the right to development and Austria’s international commitment towards the international development agenda. GR stated that structural shortcomings in Austrian Development Cooperation predominantly affect already marginalised people like women, persons with disabilities and persons living with HIV/AIDS. Humanitarian aid remains chronically underfinanced. GR noted that direct overseas development aid continues to be below 0.25 per cent of the GNP.<sup>76</sup>

### **III. Achievements, best practices, challenges and constraints**

N/A

### **IV. Key national priorities, initiatives and commitments**

N/A

## V. Capacity-building and technical assistance

N/A

### Notes

- <sup>1</sup> The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: [www.ohchr.org](http://www.ohchr.org). (One asterisk denotes a non-governmental organization in consultative status with the Economic and Social Council.)

#### *Civil society*

AI	Amnesty International, London, United Kingdom*
AD	Austrian Association of the Deaf
AKTIVE	Aktive Arbeitslose, Vienna, Austria
ANCPD	Austrian National Council of Persons with Disabilities
ANSU	Austrian National Students' Union, Vienna, Austria
BAWO	Austrian National Platform of Social Services for Homeless People, Vienna, Austria
CEG	Austrian Centre for Ethnic Groups*, Vienna, Austria
CRN	Austrian Child Rights Network, Vienna, Austria
GR	Global Responsibility – Austrian Platform for Development and Humanitarian Aid, Vienna
ILA	Independent Living Austria, Innsbruck, Austria
JS1	Joint submission 1 by AGENDA ASYL
JS2	Joint submission 2 by the Austrian NGO platform on human rights, Vienna, Austria
KLA	Klagsverband, Vienna, Austria
ZARA	Zivilcourage und Anti-Rassismus-Arbeit, Vienna, Austria

#### *National human rights institution*

AOB	Austrian Ombudsman Board, Vienna, Austria
	- Submission to UPR 12 July 2010
	- Annex 1 - a selection of cases from these human rights sections of the Annual Reports 2006 to 2009.

#### *Regional intergovernmental organization*

CoE	Council of Europe
	- Report by the Commissioner for Human Rights Mr. Thomas Hammarberg on his visit to Austria 21-25 May 2007, Council of Europe 2007
	- Group of States against corruption, Joint First and Second Evaluation Report on Austria, Council of Europe 2008
	- Resolution on the implementation of the Framework Convention for the Protection of National Minorities by Austria adopted on 11 June 2008
	- Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Austria adopted June 2007, Council of Europe 2010
	- Report to the Austrian Government on the visit to Austria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 15 – 25 February 2009, Council of Europe 2010
	- Response of the Government of Austria to the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Austria from 15 – 25 February 2009, Council of Europe 2010
	- European Commission against Racism and Intolerance, Fourth report on Austria adopted on 15 December 2009, Council of Europe 2010
	- Council of Europe, main pending cases against Austria
	- Ratifications

- <sup>2</sup> AI, p. 1.

- <sup>3</sup> AI, p. 1.
- <sup>4</sup> AI, p. 1, See also AKTIVE p. 2, para. 14.
- <sup>5</sup> CoE, Report by the Commissioner for Human Rights Mr. Thomas Hammarberg, p. 4, para. 9.
- <sup>6</sup> JS, 2 p. 2.
- <sup>7</sup> ZARA, pp. 1–2
- <sup>8</sup> AI, p. 2.
- <sup>9</sup> AI, pp. 1–2.
- <sup>10</sup> AI, p. 2.
- <sup>11</sup> JS 2, p. 2.
- <sup>12</sup> ZARA, pp. 1–2, para. 4–5
- <sup>13</sup> CRN, p. 2.
- <sup>14</sup> CoE, Report by the Commissioner for Human Rights Mr. Thomas Hammarberg, pp. 5–6, paras. 13–15.
- <sup>15</sup> CoE, Report by the Commissioner for Human Rights Mr. Thomas Hammarberg, pp. 7–8, paras. 20–26, See also AI, p. 1.
- <sup>16</sup> AI, p. 1.
- <sup>17</sup> AI, p. 5.
- <sup>18</sup> ZARA, p. 4, para. 13.
- <sup>19</sup> ZARA, p. 3, para. 7.
- <sup>20</sup> AI, p. 1, JS 2, p. 3, See also CoE, Report by the Commissioner for Human Rights Mr. Thomas Hammarberg, p. 29, para. 7.
- <sup>21</sup> AI, p. 3.
- <sup>22</sup> AI, p. 5.
- <sup>23</sup> JS 2, p. 3.
- <sup>24</sup> ZARA, pp. 3–4, paras. 9–10.
- <sup>25</sup> AI, p. 3.
- <sup>26</sup> AI, p. 3.
- <sup>27</sup> ZARA, p. 4, para. 11.
- <sup>28</sup> CoE, European Commission against Racism and Intolerance, p. 27, paras. 75–76.
- <sup>29</sup> AOB, Austrian Ombudsman Board, p. 4, paras. 11 and 13.
- <sup>30</sup> JS 2, p. 4.
- <sup>31</sup> JS 2, p. 4, See also CoE, Report by the Commissioner for Human Rights Mr. Thomas Hammarberg, p. 15, para. 50, See also KLA, p. 1.
- <sup>32</sup> JS 2, p. 4.
- <sup>33</sup> AI, p. 4.
- <sup>34</sup> AI, p. 4.
- <sup>35</sup> AI, p. 4.
- <sup>36</sup> CoE, European Commission against Racism and Intolerance, p. 18, para. 32.
- <sup>37</sup> AI, p. 3.
- <sup>38</sup> JS 2, p. 6, AI, p. 6.
- <sup>39</sup> AI, p. 3.
- <sup>40</sup> AI, p. 6.
- <sup>41</sup> JS 2, p. 5.
- <sup>42</sup> JS 2, p. 4.
- <sup>43</sup> JS 2, p. 4.
- <sup>44</sup> JS 2, p. 4.
- <sup>45</sup> JS 2, p. 5.
- <sup>46</sup> CoE, European Commission against Racism and Intolerance, p. 25, para. 66.
- <sup>47</sup> CoE, Report to the Austrian Government on the visit to Austria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 15–25 February 2009, p. 64.
- <sup>48</sup> JS 2, p. 6.
- <sup>49</sup> JS 2, p. 7.
- <sup>50</sup> JS 2, p. 7.
- <sup>51</sup> ZARA, p. 5, para. 17.
- <sup>52</sup> CoE, Report by the Commissioner for Human Rights Mr. Thomas Hammarberg, pp. 12–13, paras.

- 39–43.
- <sup>53</sup> ZARA, p. 5, para. 14.
- <sup>54</sup> ANCPD, pp. 1–2.
- <sup>55</sup> ANCPD, p. 2.
- <sup>56</sup> ILA, p. 3.
- <sup>57</sup> ANCPD, p. 3.
- <sup>58</sup> ANCPD, p. 4.
- <sup>59</sup> AD, p. 5.
- <sup>60</sup> BAWO, p. 1, paras. 3–6.
- <sup>61</sup> See also ANSU, p. 2, para. 7.
- <sup>62</sup> JS 2, pp. 8–9, See also ANSU, pp. 1–2.
- <sup>63</sup> JS 2, p. 9.
- <sup>64</sup> ZARA, p. 5, para. 4.3.4.
- <sup>65</sup> CEG, p. 2, para. 3.
- <sup>66</sup> CEG, p. 3, para. 6.
- <sup>67</sup> CEG, p. 3, para. 5, See also CoE, Report by the Commissioner for Human Rights Mr. Thomas Hammarberg, p. 29, para. 98.
- <sup>68</sup> AI, p. 4.
- <sup>69</sup> AI, p. 4.
- <sup>70</sup> JS 1, p. 1.
- <sup>71</sup> AI, p. 6, See also JS 1, p. 4.
- <sup>72</sup> JS 1, p. 1.
- <sup>73</sup> JS 1, p. 2.
- <sup>74</sup> JS 2, p. 7, para. 30.
- <sup>75</sup> JS 2, p. 7, para. 34, See also JS 1, p. 7.
- <sup>76</sup> GR, p. 2.
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