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**Human Rights Committee
Ninety-first session
Geneva, 15 October-2 November 2007**

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Concluding observations of the Human Rights Committee

Austria

Non-edited version

1. The Committee considered the fourth periodic report submitted by Austria (CCPR/C/AUT/4) at its 2490th and 2491st meetings (CCPR/C/SR.2490 and 2491), held on 19 October 2007, and adopted the following concluding observations at its 2505th meeting (CCPR/C/SR.2505), held on 30 October 2007.

A. Introduction

2. The Committee welcomes the State party's detailed fourth periodic report which makes reference to the Committee's previous concluding observations. It notes, however, that the report was submitted only in July 2006, although it was due in October 2002. The Committee appreciates the comprehensive written replies provided by the delegation as well as the frank and detailed answers given by the delegation to the Committee's written and oral questions. It also appreciates the presence of a high-level inter-ministerial delegation and the constructive dialogue held between the delegation and the members of the Committee.

B. Positive aspects

3. The Committee notes that the Work Programme of the Austrian Government 2007-2010 envisages the establishment of a preventive agency, as defined in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, under the aegis of the Austrian Ombudsman's Board, and that the Advisory Board for Human Rights will be integrated into that agency upon transfer from the Ministry

of the Interior, with a view to ensuring its independence and extending its jurisdiction to cover all places of detention.

4. The Committee notes that according to the Government Programme for 2007-2010, a constitutional reform will be introduced which will bring about a new codification of fundamental rights and further improvements in the human rights protection system, including the establishment of a two-tier administrative court system.

5. The Committee welcomes the following amendments to the Code of Criminal Procedure of the State party, which will enter into force on 1 January 2008:

(a) The introduction of an express prohibition of evidence obtained by means of torture or cruel, inhuman, or degrading treatment, or other unlawful interrogation methods (Section 166 (1) of the Criminal Proceedings Reform Act).

(b) The obligation of courts to report cases in which evidence was allegedly extracted by such unlawful means immediately and *ex officio* to the public prosecutor (Section 100 (2) of the Criminal Proceedings Reform Act).

(c) The requirement to expedite criminal proceedings, especially if the accused is held in custody (Section 9 of the amended Code of Criminal Procedure), as well as the right of the accused to file a motion to discontinue proceedings if the current suspicion does not justify the continuation of the proceedings, and if no substantiation of the suspicion can be expected from a further clarification of the facts (Section 108 (2) of the amended Code of Criminal Procedure).

C. Principal subjects of concern and recommendations

6. The Committee notes that, unlike the European convention on Human Rights, the Covenant is not directly applicable in the State party and that the courts and authorities of the State party rarely apply or interpret domestic law in the light of the Covenant. In this regard, it reiterates that a number of Covenant rights exceed the scope of the provisions of the European Convention of Human Rights which has been incorporated into Austrian law at the rank of constitutional law. (art. 2)

The State party should ensure that all rights protected under the Covenant are given effect in domestic law and that judges and law enforcement officers receive adequate training to apply and interpret domestic law in the light of the Covenant.

7. The Committee is concerned about the absence in the State party of any mechanisms ensuring systematic follow-up to the Views adopted by the Committee under the Optional Protocol to the Covenant, in particular mechanisms enabling victims to obtain compensation for violations of their Covenant rights. (art. 2)

The State party should consider adopting adequate mechanisms to give effect to the Committee's Views, with the aim to ensure that victims obtain redress, including compensation, in case their Covenant rights have been violated by the State party.

8. The Committee notes that the Equal Treatment Act, the Employment of Disabled Persons Act and the Equality of Disabled Persons Act provide protection against discrimination on grounds of ethnic origin and disability at work and in other areas such as

social security, housing, education and health. However, it notes with concern that protection against gender discrimination is less comprehensive and that protection against discrimination on grounds of age, religion and sexual orientation is limited to 'work' only under the Equal Treatment Act. It is also concerned that such hierarchisation of discrimination grounds can also be found in Provincial laws, and that in cases covered by the Acts concerning disabled persons, victims must seek an out-of-court settlement prior to filing a court action. (arts. 2 (1), 14 (1), 26)

The State party should consider amending the Equal Treatment Act, the Employment of Disabled Persons Act, the Equality of Disabled Persons Act and relevant Provincial laws, with a view to levelling up and ensuring equal substantive and procedural protection against discrimination with regard to all prohibited grounds of discrimination.

9. The Committee is concerned that police training specifically aimed at preventing discrimination against persons of different ethnic background is not mandatory. (arts. 2 (1) and 26)

The State party should introduce mandatory police training aimed at preventing discrimination against all vulnerable ethnic groups, specifically including the Roma.

10. The Committee is concerned that, despite the progress achieved in recent years, women continue to be under-represented in senior positions in the public service, despite statutory quota, as well as in the National Council and, in particular, in many Provincial legislative bodies. (arts. 3 and 25)

The State party should expand its strategies to achieve the 40-percent quota for women's employment in the public service, especially in senior positions, including at the Provincial level, e.g. by introducing open competition for senior posts. It should also adopt measures to achieve equal representation of women in the National Council and, in particular, in Provincial legislative bodies, e.g. by introducing statutory quota.

11. The Committee is concerned about reports that the State party has repeatedly failed to initiate a prompt investigation and, that only lenient sentences and disciplinary sanctions have been imposed, in cases of death and abuse in police custody. It is particularly concerned about the case of Cheibani Wague, a Mauritanian national, who died on 16 July 2003 in Vienna in the presence of a doctor while being restrained by three paramedics and six police officers, none of whom were suspended during the investigations and most of whom were acquitted; the doctor and one police officer were sentenced to suspended prison terms of seven and four months. It is also concerned about the case of Bakary Jassay, a Gambian national who was abused and severely injured by policemen in Vienna on 7 April 2006 after his deportation had been cancelled, resulting in suspended sentences of eight and six months' imprisonment due to 'mitigating factors', as well as in disciplinary fines, for the responsible officers who continue to serve in the police force. (arts. 6, 7 and 10)

The State party should take immediate and effective steps to ensure that cases of death and abuse of detainees in police custody are promptly investigated by an independent and impartial body outside the Ministry of the Interior and that sentencing practices and disciplinary sanctions for police officers are not

overly lenient. It should also reinforce preventive measures, including by introducing mandatory training for police, judges and law enforcement officers on human rights and treatment of detainees and by intensifying its efforts to eliminate deficiencies within the police training system with regard to restraint methods.

12. The Committee notes with concern that under Section 79 (6) of the Aliens Police Act (2005), detainees awaiting deportation who are on hunger strike can be kept in detention which reportedly may result in situations where their life or health is endangered, in the absence of adequate medical supervision. It is particularly concerned about the cases of Yankuba Ceesay, an 18 year-old asylum seeker from Gambia awaiting deportation, who died in October 2005 in a 'safety cell' after 11 days of hunger strike, and Geoffrey A., a Nigerian detainee awaiting deportation, who was released in August 2006 after 41 days of hunger strike, without anyone having been notified about his release, and who collapsed on his way home. (arts. 6 and 10)

The State party should ensure adequate medical supervision and treatment of detainees awaiting deportation who are on hunger strike. It should also conduct an independent and impartial investigation of the case of Geoffrey A. and inform the Committee about the outcome of the investigations in that case and in the case of Yankuba Ceesay.

13. The Committee notes with concern the absence of detailed statistical information on the nature of reported incidents of torture or ill-treatment of detainees, especially foreign nationals, and the types of sanctions imposed on perpetrators of such acts. (arts. 7 and 10)

The State party should provide detailed information on the nature of reported incidents of torture and ill-treatment of detainees, disaggregated by age, gender and ethnic origin of victims, the number of convictions, and the types of sanctions imposed on perpetrators of such acts. It should also provide information on specific cases of torture and ill-treatment of detainees, especially foreign nationals, including information on the concrete measures taken by the State party.

14. The Committee is concerned about the absence of disaggregated statistical data on the number of women and children trafficked for sexual exploitation and for forced labour, and on the number of victims of trafficking in human beings who have been granted residence permits on humanitarian grounds. (art. 8)

The State party should devise a system for the collection of such data and include such information, as well as information on the progress achieved under the National Action Plan against Trafficking in Human Beings adopted in 2006, in its fifth periodic report.

15. The Committee is concerned about reports that, in accordance with the Code of Criminal Procedure, indigent criminal suspects may be appointed a legal aid lawyer only after a judge has decided on their remand in custody, i.e. 96 hours after their apprehension. (arts. 9 and 14 (3))

The State party should give full effect to the rights of criminal suspects to contact counsel before and to have counsel present during interrogation, in particular by ensuring that the free 24-hour legal counsel service to be provided by the Federal Ministry of Justice and the Federal Bar Association from 1 January 2006 will operate as

a fully fledged and properly funded system of legal aid for, as a minimum, indigent criminal suspects.

16. The Committee notes with concern that Section 59 (1) of the Criminal Proceedings Reform Act (2004), which will enter into force on 1 January 2008, authorizes the police to supervise contacts between an arrested or detained person and counsel and exclude the presence of counsel during interrogations, “insofar as it is considered necessary to avoid that the investigation or the gathering of evidence are adversely affected by the presence of counsel.” (art. 9)

The State party should ensure that any restrictions under Section 59 (1) of the Criminal Proceedings Reform Act on the contact between an arrested or detained person and counsel are not left to the sole discretion of the police, and that the rights to talk to counsel in private and to have counsel present during interrogations are never totally denied to persons deprived of their liberty.

17. The Committee is concerned about the high number of asylum seekers, including traumatized persons, who have been detained pending deportation under the Aliens Police Act, which entered into force in January 2006. That Act provides that asylum seekers may be detained at an early stage of their asylum procedure if it may be assumed that their application will be rejected under the EU Dublin II Regulation. It is particularly concerned that asylum seekers awaiting deportation are frequently detained for up to several months in police detention facilities which are not designed for a long-term stay, and where the majority of detainees are reportedly confined to locked cells for 23 hours a day, separated from their families, and without access to qualified legal aid or adequate medical care. (arts. 10 and 13)

The State party should review its detention policy with regard to asylum seekers, in particular traumatized persons, give priority to alternative forms of accommodation for asylum seekers, and take immediate and effective measures to ensure that all asylum seekers who are detained pending deportation are held in centres specifically designed for that purpose, preferably in open stations, offering material conditions and a regime appropriate to their legal status, occupational activities, the right to receive visits, and full access to free and qualified legal counselling and adequate medical services.

18. The Committee notes with concern reports that asylum-seeking women are not automatically interviewed by female asylum officers and assisted by female interpreters and, that children are treated in the same way as adults in the asylum procedure. (arts. 3, 13 and 24 (1))

The State party should adopt a gender- and age-sensitive approach to refugee status determination by automatically assigning female interviewers and interpreters to asylum-seeking women and by issuing guidelines for first instance asylum officers on the treatment of separated children. The State party should also issue guidelines on gender-related persecution as a ground for claiming asylum.

19. The Committee is concerned that the Federal Asylum Act (2005) foresees family reunification only for nuclear family members, i.e. spouses, minor children and parents of minor children, of recognized refugees and beneficiaries of subsidiary protection, and that the exclusion of dependent adult children, minor orphan siblings and other persons with whom persons granted international protection enjoyed family life in their country of origin can result in hardship situations. (arts. 13, 17 and 23 (1))

The State party should consider amending the Federal Asylum Act, with a view to applying a more liberal approach towards family reunification in cases of refugees and beneficiaries of subsidiary protection.

20. The Committee is concerned about the persistence of racist and xenophobic speech against Muslims, Jews and ethnic minorities in political and media discourse and on the Internet. (arts. 18, 20 and 26)

The State party should vigorously combat any advocacy of racial or religious hatred, including political hate speech, by intensifying public information and awareness raising campaigns and ensuring the strict application by judges, prosecutors and the police of article 283 of the Criminal Code as well as of other criminal law provisions punishing incitement to racial or religious hatred.

21. The Committee notes with concern that Romani is taught as an *extra-curricular* subject only in Vienna and that specific instruction about Romani culture is not available at schools in the State party. (arts. 26 and 27)

The State party should intensify its efforts to provide adequate opportunities for Roma children to receive instruction in or on their language and culture, wherever there is sufficient demand, and ensure adequate training and recruitment of qualified teachers for that purpose.

22. The Committee notes that the decision of the Constitutional Court of 13 December 2001 on topographical road signs has not been implemented in Carinthia (arts. 19 (2) and 27).

The State party should take further steps to ensure that the decision of the Constitutional Court of 13 December 2001 on topographical road signs is enforced in Carinthia.

23. The Committee sets 30 October 2012 as the date for the submission of the fifth periodic report of Austria. It requests that the State party's fourth periodic report and the present concluding observations, as well as the full text of the Committee's Views concerning the State party, be published and widely disseminated in German to the general public, as well as to the judicial, legislative and administrative authorities. It also requests that the fifth periodic report be made available to civil society and to non-governmental organizations operating in the State party.

24. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should submit within one year information on the follow-up given to the Committee's recommendations in paragraphs 11, 12, 16 and 17 above. The Committee requests the State party to include in its next periodic report information on its remaining recommendations and on the implementation of the Covenant as a whole.
