

Questionnaire

Human Rights Council resolution 24/16 on "The role of prevention in the promotion and protection of human rights"

(Please send replies by 9 March 2015)

Paragraph 15 of resolution 24/16 requests OHCHR, in consultation with States, national human rights institutions, civil society, relevant intergovernmental bodies and international organizations, and taking into account, inter alia, the outcome of the panel discussion held in September 2014 at the Council, to draft a study on the prevention of human rights violations and its practical implementation, and to present the study to the Human Rights Council at its thirtieth session.

The following questionnaire is aimed at assisting stakeholders in providing information on the prevention of human rights and its practical implications.

1. a. Please describe legislative, judicial, administrative and other measures aimed at prevention of human rights violations and abuses in place at the domestic level, both with regard to direct prevention (aiming to prevent violations from occurring by reducing the risk factors that cause violations) and indirect prevention (aimed at ensuring non-recurrence through investigation and addressing causes of violations as well as accountability).

In Austria, the AOB has been monitoring the entire public administration of the Federal Government and – with two exceptions – of the *Laender* (provinces) since 1977. It investigates complaints from citizens and assesses whether the administration is acting within the law and complies with human rights standards.

Since July 2012, the mandate of the AOB was broadened and it became responsible for the protection and promotion of human rights (Federal Constitution Article 148a(3) and 148h(3)). As NHRI and in accordance with its constitutional mandate, the AOB took on the role of the **National Preventive Mechanism (NPM)** in accordance with the UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). It is now part of its mandate to monitor and control all institutions and facilities, in which people are or can be deprived or restricted of their personal freedom and liberty. Additionally, it acts as independent authority according to Article 16/3 of the UN Convention on the Rights of Persons with Disabilities and therefore also monitors institutions and facilities in which persons with disabilities may be helpless and at risk of abuse, inhuman treatment and measures that restrict their freedom. This investigative mandate means that a total of more than 4,000 public and private institutions and facilities will be monitored and controlled by the AOB.

While these new competences were consistent with the previous duties of the AOB, they also expanded the range of competences significantly and called for a general re-orientation in order to fulfil this new NPM mandate. With the Act on the Implementation of the OPCAT (*OPCAT Durchführungsgesetz*) the AOB's competence under constitutional law has undergone its greatest expansion since its establishment. The AOB was included in the legislative process from the very beginning as were civil society and NGO representatives, who were invited to comment on the draft legislations prior to deliberations in Parliament.

b. Please describe any good practices in the implementation of these measures, as well as any challenges which have been faced.

Listing individual cases or examples in which the AOB as NHRI and NPM contributed to the prevention of human rights violations would go beyond the scope of this questionnaire, which is why we will just give a few examples of results/improvements in the following (for more details please see the NPM's reports on the website: <http://volksanwaltschaft.gv.at/en/reports>):

- In order to provide safety in pharmacotherapies for geriatric patients, the Federal Ministry of Health – at the recommendation of the NPM – announced the elaboration of scientific recommendations for long-term care with a view to solving interface problems regarding restrictions of freedom through drugs and/or medication.
- The Austrian NPM also harshly criticized the use of net beds to restrict the movement of agitated patients as contrary to international human rights standards and considered this practice a demeaning and degrading treatment on various occasions. As a result, the Federal Ministry of Health issued a decree to put an end to the use of net beds in all institutions and facilities in Austria. This finally put an end to the still common practice of using net beds to immobilize patients and old people in Vienna and Styria and can be seen as a huge success of the NPM's work and request to abolish the use of net beds entirely.
- Regarding the need to make correctional facilities suitable for persons with disabilities, the Austrian NPM noted that only 16 out of 40 prisons offered one or more cells for inmates with disabilities. As a result of these findings, the Federal Ministry of Justice showed awareness of the need for adjustments, confirmed that new or renovated buildings are to be designed in a barrier-free manner and provided a list of priorities, based on which renovations and adaptations will be performed.
- During their visits to police detention centres, several Commissions were not allowed access or only limited access to the medical records of detainees. After the Human Rights Advisory Council became involved and compiled a legal statement, the Commissions were given extensive access to the medical data of detainees and are now able to monitor whether medical treatment is appropriate at places of detention and to ensure that illegitimate restrictions to liberty, such as medication-based immobilisation, are prevented.
- In areas which primarily perform care services (health and social sector), the Austrian NPM did a lot of pioneering work. The aspect of prevention was of key importance and in many cases, the aim was to assess whether a structural deficit – even if it did not necessarily indicate a violation of an individual's human rights – had to be considered a risk factor in terms of a human rights violation in general. The multidisciplinary composition of the Commissions constituted a rich source of expertise; together with the expert knowledge from the AOB's traditional field of competence, comprehensive recommendations were presented to those responsible.

All these preventive activities require that the Austrian NPM views itself as more than just an ex-post control body and considers it its duty to contribute to a strengthening of human rights standards at the visited institution and to advocate the protection and promotion of human rights in general. Each visit carried out by the Commissions

leads to two products: the visit report provided to the AOB, and the preliminary feedback to the examined institution (usually verbal, if required, in writing). This form of direct feedback is of vital importance and experience has shown that it helps raise understanding and acceptance and could in turn trigger a process of change and could often lead to faster and more efficient solutions than official investigative proceedings.

c. Please describe how such measures encompass all branches of the State (executive, legislative and judicial), and other public of governmental authorities, at whatever level - national, regional or local.

2. a. What action-oriented policies, practices and strategies to prevent human rights violations and abuses have been put in place at the national level, including the establishment of independent national institutions, national human rights action plans and any early warning mechanisms?

The Austrian Government is currently working on the country's first National Action Plan for Human Rights and – as National Human Rights Institution (NHRI) and in accordance with its constitutional mandate – the Austrian Ombudsman Board (AOB) is actively involved in the development of this first national action plan and strives to include civil society in the process as well.

In May 2014, the AOB hosted an NGO-forum during which representatives from the Austrian Government informed civil society and NGOs about a consultation process, to facilitate the development of Austria's first National Action Plan for Human Rights and to invited participants to present concrete proposals to be included in such national action plan with the aim of a possible realisation within the current legislative period (i.e. until 2018).

Submitted proposals include up to 30 statements and initiatives from NGOs as well as a joint statement from the Austrian Institute for Human Rights of the University of Salzburg and the European Training and Research Centre for Human Rights and Democracy of the University of Graz. All these contributions are living proof of the broad range of relevant topics and issues to be dealt with in our country's National Action Plan for Human Rights and confirmed the AOB's approach of supporting and enabling broad participation and involvement on the part of civil society and NGOs.

The AOB established a communication platform on its website to inform about the development of such national action plan in a transparent and open manner. This platform includes general information as well as all initiatives and statements submitted by NGOs during the consultation process.

For information on the National Action Plan see:

<http://volksanwaltschaft.gv.at/praeventive-menschenrechtskontrolle/nationaler-aktionsplan-menschenrechte>

To provide the best content-related support possible, the AOB furthermore established a working group on this matter, consisting of representatives from the Government, the AOB and civil society. As a first step, structured summaries of NGO submissions and of current recommendations addressed to Austria by international human rights organizations will be forwarded to human rights coordinators at Federal Ministry and in the *Laender* (provinces) to ensure their consideration in the development of Austria's first National Action Plan for Human Rights.

Since the Government's National Action Plan for Human Rights should primarily aim at improving existing deficiencies in the protection and safeguarding of human rights, the AOB will focus its work and support on those areas which so far are not tackled in the existing drafts of such action plan. One of the main priorities for the AOB is therefore the identification of "new" and/or "unknown" problems or problematic areas and topics.

b. Please describe how national human rights institutions contribute to prevention of human rights violations.

National Human Rights Institutions are frequently equipped with a preventive mandate. The Austrian NPM model aims to prevent violations of human rights and of the rights of persons with disabilities, whenever possible, or at least to make such violations improbable. For this purpose, the NPM provides for a close cooperation between the AOB and its six **Commissions**. Each Commission covers a certain geographical area (provinces) and consists of eight members coming from various interdisciplinary backgrounds (e.g. medicine, nursing sciences, psychology etc.). The AOB's Commissions are independent, interdisciplinary and pluralistic and chaired by a person with a high reputation in the sector of human rights.

The Commissions carry out comprehensive routine visits (announced and unannounced) to places of detention. The investigative focal points for their visits are discussed and established in advance in close cooperation with the AOB and the Human Rights Council (see next paragraph). The aim of these visits is determined by a defined issue to be investigated and the relevant international and national standards for said issue. The Commissions report their on-site observations and findings back to the AOB in standardised reports which form the basis for further investigation and action and for the AOB's final assessment of the situation. Whenever the AOB identifies a need for action based on the Commissions' reports, it takes further measures, such as contacting the supervisory authorities and the bodies responsible for the institutions and facilities in order to demonstrate the deficits and to develop suggestions and solutions for immediate improvements.

The **Human Rights Advisory Council** has been established as an advisory body. It consists of a chairperson and a deputy chairperson (both appointed by the AOB) and 16 members and substitute members who are delegated on the basis of parity by the Ministries, the *Laender* and NGOs. Its responsibility is to advise the AOB regarding its new competences, which includes the determination of general investigative focal points and consultation prior to issuing determinations of maladministration and/or recommendations. It provides guidance on how to ensure a uniform course of action and how to establish investigative standards.

The AOB's work as NPM has entered its third year in 2015 and first results can already be seen from the first full operational years. The Austrian NPM presented first reports for the 2012 and 2013 to the UN Subcommittee on Prevention of Torture (SPT) and the European Committee for the Prevention of Torture (CPT) and the report on the NPM's activities for 2014 is currently under way.

It is thanks to the NPM's work that numerous problematic conditions are uncovered on a regular basis. Criticism relates to highly varied areas, such as structural deficits, insufficient staff resources or incomplete documentation. Some of these deficits are rectified soon after the visits and in many cases, clear improvements are apparent during follow-up visits to the monitored institutions and facilities.

c. In those States that have established a national preventive mechanism under the Optional Protocol to the Convention against Torture, please provide information on any lessons learnt regarding prevention of torture that may also apply to prevention of other human rights violations.

As mentioned above (see 2b) the AOB can only look back at three years of work as an NPM, which is too short a time to identify any methods/best practice examples in the prevention of torture which could also be applied to the prevention of other human rights violations.

3. a. Please describe what policies and processes are in place at the national level to collect, maintain and analyse statistical records on the situation of human rights in the country, in order to monitor the human rights situation and inform the formulation of prevention strategies and programmes; and please describe any good practices and the main challenges in this regard.

b. Please describe how statistical collection ensures the inclusion of all persons and groups.
4. What measures have been taken to promote a human rights culture among the population and increase the level of human rights awareness in your country, including among public officials?

Besides its legal obligation to present an annual report on its work to Parliament and regular reports on its work as NPM to the SPT and the CPT, the AOB always felt a deep moral obligation to promote public awareness on democracy, human rights and the rule of law and to inform the public about the importance of the protection and promotion of citizens and human rights.

As NHRI and NPM the AOB not only performs a monitoring mandate but also aims at educating about the importance of human rights and spreading awareness on this topic. In doing so, it puts a special focus on young people and reaches out to pupils and students with a view to creating more awareness among this demographic group and to ensuring a better understanding of citizens and human rights among them.

In September 2014 the AOB inaugurated its new **visitor center** "VA.TRIUM" to further open its doors and present itself to the public and to welcome all interested parties. The AOB's visitor center is an important and relevant educational and awareness raising initiative, which marks the beginning of a new era for the AOB. It opens up new ways of informing the public about citizens and human rights and about how to make use of those rights. It encourages citizens to take an active part in the sociopolitical dialogue and fits perfectly into the AOB's daily work and area of expertise and competence.

In the framework of this project, the AOB offers tours of its premises and shares first-hand practical knowledge on citizen, human and children's rights as part of political education, law subjects or history lessons. Since its inauguration in September 2014, 21 guided tours have been carried out and a total of approximately 400 people were welcomed to the AOB's new visitor center. So far mainly schools or universities took advantage of this new service offered by the AOB, but guided tours are adaptable and can be offered to various target groups. Following the tour, one of the ombudsmen together with legal experts from the AOB make themselves available to answer questions on the legal practice and on the work performed by the AOB.

As NHRI and NPM, the AOB also took on the special duty of cooperating with the scientific community, academia and educational institutions. Within this area of responsibility, the AOB recently published a book on “**Young People and their Rights**”. This book was written with a view to raise awareness and interest in human rights and to encourage children and young people (target audience: children aged 14 and over) to reflect independently on this important topic.

The publication tackles the topic of human rights and children’s rights in a very practical way. In order to claim their rights, children and adolescents need to develop an understanding of what those rights are. With the help of 30 examples out of everyday life situations of children and adolescents, the book illustrates this important matter in a relatable way and helps young people to establish an understanding of their rights. The publication was made available to all schools for political education classes. It should be used as teaching material and provide an entry point when discussing the topic of human rights and children’s rights with pupils and students at school.

The AOB published the German version of this publication in September 2014; an English version of the book was made available later on and also presented during a panel session at the UN Human Rights Council in Geneva.

In addition to this, the AOB participates in a TV programme called “*Bürgeranwalt*” (“Advocate for the People”), which is shown by the public broadcaster ORF and has become an important platform for the AOB to continually inform the general public about its work and activities. Every week this TV-show enables the AOB to present individual cases to the public and many of them include problems and/or complaints which do not only focus on maladministration but also often deal with human rights-related issues.

5. a. How have partnerships with civil society been strengthened to harness their experience and expertise to promote and protect human rights?

As already described under 2a and 2b in more details, the AOB always strives to involve civil society to the greatest possible extent, e.g. in the legislative process leading to the Act on the Implementation of the OPCAT (from the very beginning and prior to deliberations in Parliament), in the development of Austria’s first National Action Plan for Human Rights and – most importantly – in the NPM’s daily work as part of the Human Rights Advisory Council.

As already described in more details in 2b, the Austrian NPM-model includes the establishment of the Human Rights Advisory Council, which acts as an advisory body and consists 16 regular members and substitute members who are delegated on the basis of parity by the Ministries, the *Laender* and NGOs such as Amnesty International, Caritas Austria, the Austrian Initiative for Independent Living, the Association for Civil Courage and Anti-Racism or violence preventions centres.

Since 2012 the AOB hosts NGO-forums on a regular basis and invites representatives from civil society and NGOs every year to discuss human rights-related issues and developments (in 2012 to inform about the legislative process leading to the implementation of OPCAT; in 2013 to inform about the new NPM-mandate, how it has been introduced and what activities have been undertaken and in 2014 to debate the first National Action Plan for Human Rights).

The AOB highly values this on-going and close interaction and cooperation with civil society, which enables the AOB – as NHRI and in its function as NPM – to include an “external” expertise to its daily work of protecting and promoting human rights.

b. What roles and actions can and do civil society and NGOs take to prevent human rights violations?

Civil society plays an important part in the prevention of human rights as they are strong promoters in raising the awareness of human rights issues. In particular the use of social media has further enhanced the possibilities of making human rights known to a broader public. The more people are educated and informed about their rights, the higher the chances that they can protect themselves against unfair treatment. But civil society and NGOs have an equally important role in actively promoting human rights issues vis-à-vis the government. This role has been strengthened in recent years in their inclusion in the UPR process.

6. What measures and procedures have been put in place to ensure effective follow-up to recommendations regarding your country issued by international or regional human rights mechanisms, and which may contribute to preventing human rights violations?

The Federal Ministries of Foreign Affairs as well as the Federal Chancellery hold stakeholder meetings concerning the follow-up of recommendations addressed to Austria by e.g. the UN Treaty Bodies, UPR etc. Those stakeholder meetings include not only public officials but also NGOs who can share their opinion on the state of the implementation of recommendations. The AOB as NHRI also regularly contributes to these meetings.

7. a. What legislative, judicial, administrative and other measures are in place to provide victims of human rights violations by State actors and abuses by non-State actors with an effective remedy?

Everyone claiming the violation of a constitutionally guaranteed right (fundamental rights) through a decision of an administrative court of first instance or through the application of an unlawful general norm, e.g. an unconstitutional law, that formed the underlying basis of the decision, can complain with the Austrian Constitutional Court (Art. 144 Federal Constitutional Law). If the Constitutional Court shares the doubts raised about the norm in question, it will initiate a judicial review procedure.

b. What measures are in place to ensure that all can access such remedies in practice?

Legal aid (i.e. pro bono lawyers) can be requested if the income of the complainant does not suffice.

8. What contribution do international and regional organisations make to the prevention of human "rights violations? What additional role could they play?

International and regional organisations should contribute to the prevention of human rights violations by further developing and setting minimum standards and review procedures.