



# UN Committee against Torture

## Speaking Notes - Geneva 11.11.2015

Ladies and Gentlemen,

Thank you very much for giving me the opportunity to speak to you today on behalf of the Austrian Ombudsman Board.

The Austrian Ombudsman Board is accredited at the International Coordinating Committee of National Human Rights Institutions as the Austrian NHRI.

Since 2012 we have the explicit constitutional mandate to protect and promote human rights and to act as the Austrian National Preventive Mechanism in accordance with OPCAT. This mandate also includes the institutionalized cooperation with civil society.

Although Austria has made significant progress and has implemented many recommendations of the Committee, there are still areas where further improvements are needed.

What are the most important topics in my initial statement?

First I would like to start with the challenging situation of **refugees in Austria** and thereby focus on the problems of vulnerable groups.

Then I will report on **two recent positive achievements**, the recommended introduction of the criminal provision of 'Torture' into the Austrian Criminal Code as well as the abolition of net-beds in the whole of Austria.

After that I will take up the issue of **alleged misconduct by police authorities** and the steps taken to prevent such incidents, also in the context of the **Istanbul Protocol**.

In addition, I will focus on less traditional places of detention, such as **retirement and nursing homes**.

Finally, I would like to talk about the situation **in correctional institutions** and the highly problematic situation of many persons with disabilities working in so-called **occupational therapy workshops**.

And so, Ladies and Gentlemen, let me start with the biggest challenge for many European states these days.

Many European countries are feeling the effects of the high levels of forced migration resulting from the violence and conflict in Syria and elsewhere. Austria, being both, a destination and transit country, is thereby confronted with serious humanitarian, administrative and political challenges.

Since this is a very broad subject, I would like to focus on vulnerable groups and start with **unaccompanied minor refugees** (UMRs), because their situation is especially precarious.

At the beginning of October 2015 there were on average 1600 unaccompanied minor refugees in the first reception centre Traiskirchen. These persons under 18 have had to remain in mass housing because the “*Laender*” could not provide enough adequate homes.

“Warehousing” these children in reception centres without any socio-pedagogical care, without proper facilities and without fulfilling caretaking obligations, is not only a violation under international law but also contravenes Austrian constitutional law.

By the way, I have also personally and very strongly criticized the suggestion to lower the age limit of minors to 17 years. This would deprive a large number of defenceless people of their basic human rights and would therefore be unacceptable.

The Austrian Ombudsman Board has held press conferences on the alarming situation of young refugees in initial reception centres and has addressed systemic shortcomings of the Austrian asylum system. This has also been done via our weekly **TV-show called “Bürgeranwalt”**, which is broadcast on Austrian National TV.

Altogether, currently, there are about 6 000 unaccompanied minor refugees in Austria.

Turning to another vulnerable group - **persons with disabilities** – let me express, that the conditions in reception centres, of course, are inadequate too.

One of the submissions of civil society (Austrian National Council of Disabled Persons) to this honourable Committee also focusses on the unacceptable situation of refugees with disabilities.

However, the AOB could accomplish that all of the persons with disabilities were transferred to more adequate homes within only three weeks.

Ladies and Gentlemen, let me now bring two very positive developments to your attention.

Committing acts amounting to torture has so far been punishable under various provisions of the Austrian Criminal Code.

The AOB therefore welcomes the introduction of one **explicit criminal provision** on 1 January 2013 prohibiting torture in the Criminal Code.

Even though the creation of this criminal provision has been an important step in the implementation of international obligations, its proper application in practice will have to be closely observed.

Another encouraging development is the total **abolition of net beds** in the whole of Austria.

Since 1999, the CPT has clearly reiterated that “net beds be withdrawn from service as a tool for managing agitated persons in all psychiatric/social welfare institutions and facilities in Austria”. This had not been realised in Vienna and Styria.

The NPM, as well as the Human Rights Advisory Council, have repeatedly addressed this problem area in the last two years.

I also stressed this subject personally in speeches at the National Assembly, in TV reports and press conferences, with the clear goal of pushing through the implementation of international human rights standards in this regard.

These joint and persistent efforts were successful. In July 2014 the Federal Ministry of Health issued a decree to all Governors that the use of psychiatric intensive beds (net beds) as well as other “cage-type beds” are no longer permitted.

The operators of medical facilities and nursing homes were given a one-year transition period until 1 July 2015 in order to implement necessary measures.

It is thus an important achievement from the Austrian NPM that since this date net-beds have been banned entirely in Austria.

Ladies and Gentleman, now I would like to draw your attention to **misconduct by police authorities**.

First and foremost, I would like to emphasise that in Austria, without a doubt, the police is generally doing a good job and luckily such allegations occur only rarely.

However, it has been long demanded that the system of abuse proceedings in Austria needs to be fundamentally reformed so that allegations are investigated quickly and independently.

The Austrian Ombudsman Board has not received additional powers to investigate racism and misconduct on the part of the police. If the AOB receives complaints it merely has the power to request the submission of statements by the examined authority and has access to files. But the AOB currently has no powers to gather evidence by itself, to summon suspects or witnesses or to question witnesses under oath.

Neither is the AOB entitled to assist potential victims in the enforcement of their legal interests nor in the enforcement of financial compensation during pending proceedings and is equally not competent to represent victims in interrogations, examine court rulings, lodge appeals etc.

At present, the preparations for the establishment of the first Austrian National Action Plan for Human Rights of the Federal Government are taking place, in which the Austrian Ombudsman Board plays a crucial role and offers a platform for the participation of civil society in this process.

The creation of an independent body to investigate allegations of racism and ill-treatment by the police or prison officers is such a proposal by civil society.

Ladies and Gentlemen, let me turn to another success of the AOB which is also important in the abovementioned context.

The medical personnel employed in hospitals plays an important role in the **investigation of police brutality towards potential victims**.

Following an intervention of the Austrian Ombudsman Board, the Federal Ministry of Health agreed to inform all hospital carriers regarding the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Istanbul Protocol") and to supervise its implementation in all Austrian Provinces.

I believe this is an important contribution to raise awareness in such a sensitive matter.

Ladies and Gentlemen, I would also like to point out the importance of "**less traditional places of detentions**" and the problem areas associated with them.

Retirement and nursing homes, although being social care institutions, represent such less traditional places of detention.

Our visiting commissions have found structural deficits in nursing homes regarding the use of medication without informed consent and without prescription by doctors. These measures often result in depriving people of liberty by way of pharmaceuticals.

Currently, residents of nursing homes are frequently in their beds by late afternoon, having been given sedating medication.

The too uncritical use of sleeping pills and tranquilisers has of course serious negative health consequences and significantly restricts the mobility and quality of life of the elderly.

The Ombudsman Board is aware that the current problems are also a result of insufficient funding and a shortage of staff, which lies in the responsibility of the carriers and the federal ministries.

We therefore demand more staff in these institutions, a more specific education of doctors with regard to the treatment of elderly patients with medication and a stronger involvement of psychiatrists during the consultation process.

Ladies and Gentlemen, may I continue now with traditional places of detention, namely **prisons and correctional institutions**.

Our NPM has identified three main areas of concern, which are too long lock up times, a lack of activities for the detainees and insufficient staffing. Together, these deficits can lead to serious human rights violations.

A systemic investigation revealed that closing times of several correctional institutions already started between 11:15 am and 12:00 noon on weekends and bank holidays.

Also, social activities in some correctional institutions are extremely limited. Because of an extended night shift, all activities have to fit in a shortened daily schedule. Inmates often have to decide whether they want to work or be in the fresh air.

Such strict closing times and the lack of activity can trigger aggression as well as depression among the inmates, especially in the case of juvenile offenders.

A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners and provides them with useful skills for their future return to the employment market.

For **vulnerable groups** such as women or mentally ill offenders, however, the situation is often even worse.

**Women** complain about monotonous work and too few opportunities to engage in reasonable recreational activities. Leisure time activities of females are thereby often limited to stereotypical work, such as knitting or doing handicrafts.

Women also receive about half as much work and pay as men and the work assigned is often cleaning and polishing, which is perceived to be discriminatory.

Also, the need for a reform of the **detention of mentally ill offenders** became particularly obvious last year.

In May 2014 a shocking case of neglect of a 74-year-old mentally ill inmate in the prison of Stein was discovered by the media. The bandages applied to the leg of the inmate had never been changed and his legs were not washed for several months, and so the smell of decay from the inmate's wounds was shocking.

The prison guards had overlooked the situation for several months; the AOB therefore initiated an ex-officio investigation in this case.

The results show the urgent need to expand nursing care and medical examinations for groups of persons who are at particular risk.

However, despite these human rights disaster, I can also point out a positive development.

We have achieved that juvenile offenders will no longer be detained in institutions for adults.

Before closing my statement, let me say a few words on the situation of persons with disabilities. Austria-wide there are an estimated 21 000 persons with disabilities participating in special kinds of work in so-called "**occupational therapy workshops**".

Regardless of the type and scope of the work performed, such occupations are not considered to be regular employment relationships, they are not paid and they do not result in any kind of independent security under pension insurance law.

Pocket money amounting to an average of EUR 65.00 per month is paid out under criteria that are not transparent. The AOB presumes that such employment in the current form does not conform to the provisions of UN-CRPD, as persons with disabilities have the same right to work and employment as everyone else. This has also been criticised by the UN Committee on the Rights of Persons with Disabilities.

The Human Rights Advisory Council has indicated that in extreme cases, the situations in “occupational therapy workshops” can amount to abuse or even exploitation. It is therefore important to ensure that persons with disabilities have a right to work in accordance with CRPD and are being integrated into normal jobs if possible.

Ladies and Gentlemen, before I finish please allow me to briefly comment on some points raised by NGOs in their submissions to your esteemed committee, and that you may hear from them later. Regarding the criticism that – I quote - “there is no easily accessible overview of **how the NPM responds to and follows up on its visits** and [...] on the level of implementation of its recommendations by the authorities” - end of quote - allow me to point out that **all** protocols of the visits by the commissions are fed into a database.

This database can be accessed by all 54 members of the commissions any time. The protocols of the visits are evaluated by the NPM lawyers of the AOB and any kind of potential violation of human rights is being forwarded to the competent authorities.

Needless to say, the chairpersons of commissions always receive a copy of this letter to the authorities and any response thereto. And so they are therefore fully aware of how the NPM responds. Moreover, on a regular basis there are meetings with the chairpersons of the commissions, ensuring a constant exchange of information.

In addition, all recommendations of the NPM are published on the AOB’s website and are therefore easily accessible to the general public.

Finally about the **Open Letter of some members of the HRAC to the Appointment of Chairpersons.**

There has been critique regarding the appointment of the chairpersons of the visiting commission and even allegations that the AOB had thereby breached the law (!)

I have to reject this intolerable assertion very firmly, as the appointment of the chairs most certainly complies with all legal requirements.

The chairpersons of the visiting commission as well the regular members are appointed for a period of six years. Every three years, half of the members of the six visiting commission as well as half of the six chairpersons are tendered. This is in order to safeguard the highest possible level of independence of the members of the visiting commissions and of the chairpersons in particular. A certain fluctuation in the positions of the chairpersons is therefore desired by law as this is the best way to guarantee the commission’s full independence.

The requirement for the position of a chairperson of the visiting commission to have a broad experience in the field of human rights is also prescribed by law and was certainly fulfilled by the AOB in the selection process.

Ladies and Gentlemen, for the last 38 years the AOB has independently monitored public administration and has continuously applied a human rights based approach.

The Austrian NPM is equipped with substantial funding and a mandate going even beyond the requirements of the OPCAT. Since its beginning three years ago, the six visiting commissions were able to conduct a total of 1 400 inspections and observations.

Within these three years, the Austrian NPM also managed to achieve a reputation that makes its expertise in this field sought after on an international level.

Ladies and Gentlemen, thank you very much for your time. I'm happy to hear your comments and answer any question you may have.

Thank you!