

Austrian Replies to the Questionnaire by the Special Rapporteur on Human Rights and the Environment on “Toxic-free places to live, work, study and play”

Based on contributions by Ministry of the Economics and Digitalisation, Ministry of Justice, Federal Chancellery-Constitutional Service

AT welcomes the efforts of the Special Rapporteur on human rights and the environment, Dr. David Boyd, to provide additional clarity regarding the substantive rights and obligations that are related to the enjoyment of a safe, clean, healthy and sustainable environment, by preparing a thematic report focusing on human rights and associated obligations related to toxic-free environments where people live, work, study and play.

Questionnaire

1. Please provide examples of ways in which toxic environments—characterized by unhealthy levels of pollution and high risks of exposure to toxic substances—are having adverse impacts on human rights. Adversely affected rights could include, among others, the rights to life, health, water, sanitation, food, livelihoods, non-discrimination, a safe, clean, healthy and sustainable environment, the rights of the child, cultural rights and Indigenous peoples’ rights.
2. What are the most heavily polluted places in your State? Are any areas in your State designated as “sacrifice zones” because of extreme pollution? Are there any examples of heavily polluted places that have been comprehensively cleaned up and rehabilitated? If not, what are the barriers to clean-up and rehabilitation
3. What are the specific obligations of States and responsibilities of businesses in terms of preventing exposures to unhealthy levels of pollution and toxic substances, rehabilitating toxic sites, and providing compensation to adversely impacted individuals?

The Austrian Criminal Code (StGB) contains several criminal offences aimed at protecting the environment, for example “Intentional damage to the environment” (§ 180 StGB), “Negligently causing damage to the environment” (§ 181 StGB), “Intentional” as well as “Negligent treatment or disposal of waste in a manner that is hazardous to the environment” (§§ 182, 183 StGB) and “Intentional” as well as “Grossly negligent operation of a plant in a manner that is hazardous to the environment” (§§ 181d, 181e StGB).

Each of these offences is contingent upon the violation of an (administrative) statutory provision or an official order (“Verwaltungsakzessorietät”).”

In the framework of the implementation of the EU Environmental Liability Directive 2004/35/EC, the Federal Environmental Liability Act (Federal Law Gazette I No. 55/2009, last amended by I No. 74/2018) provides for environmental complaints in case the public authority fails to take action in the event of environmental damage (to water bodies and soils, provided that human health is affected). If they are affected, natural or legal persons as well as Ombudsmen for the environment and acknowledged environmental organizations are entitled to lodge a written complaint with the district administration authority.

4. Please provide specific examples of constitutional provisions, legislation, institutions, regulations, standards, jurisprudence, policies and programmes that apply a rights-based approach to ensuring toxic-free environments.

The Austrian fundamental rights catalogue does not provide for a specific right to environment or climate.

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), however, enjoys constitutional status in Austria, and the extensive case-law of the European Court of Human Rights (ECtHR) relating to the environment (more than 300 relevant judgements) is therefore directly applicable in Austria. The environment-related case-law of the ECtHR is summarised in the factsheet "Environment" (see Attachment) and accessible on the ECtHR homepage. In addition, the Council of Europe's manual "Human Rights and the Environment" (2nd edition, 2012 – revised version soon to be published) provides further information (see Attachment).

The rights guaranteed by the ECHR can be asserted not only before the Austrian civil, criminal and administrative courts, but also by means of individual complaints before the Austrian Constitutional Court. Laws that violate the ECHR rights can be repealed by the Constitutional Court.

Additionally, since 1984, the Austrian Federal Constitution contains a commitment to comprehensive environmental protection (Federal Law Gazette No. 491/1984). In 2013, this national objective (Staatszielbestimmung) was widened by the Federal Constitutional Act on sustainability, animal protection, comprehensive environmental protection, securing water and food supplies and research (Federal Law Gazette I No. 111/2013), which reads as follows:

“Section 3. (1) The Republic of Austria (federal government, federal provinces and municipalities) is committed to comprehensive environmental protection.

(2) Comprehensive environmental protection means the prevention of harmful effects on the natural environment as the basic resource of the human being. Comprehensive environmental protection consists particularly in measures to ensure the cleanliness of air, water and soil as well as to prevent noise disturbance.”

With these two Federal Constitutional Acts, the constitutional legislature has expressed that there is a qualified, constitutionally recognised public interest in the protection of the aforementioned objects. While national objectives do not grant specific rights, they must be applied as objective benchmarks by the Austrian Constitutional Court when assessing legislation or administrative acts, with such benchmarks, however, being very vague and indeterminate.

Finally, the Charter of Fundamental Rights of the EU (Charter), Article 3(1) guarantees the right to physical and mental integrity; and Article 37 (protection of the environment) stipulates that "a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development". In Austria, the Charter and the case law developed by the European Court of Justice (ECJ) in this regard must be observed when implementing and applying Union law.

Union law and the Austrian legislation transposing EU law also contain procedural rights for the assertion of environmental concerns by environmental protection organisations, such as rights to information or rights of participation in proceedings. In the Austrian legal system, for example, special legal remedies are available on the basis of the Aarhus Participation Act (Federal Law Gazette I No. 73/2018, see below); and the Environmental Impact Assessment Act 2000 (Federal Law Gazette No. 697/1993 as amended by Federal Law Gazette I No. 80/2018). Access to information on the environment is regulated in particular by the Environmental Information Act (Federal Law Gazette No. 495/1993 as amended by Federal Law Gazette I No. 74/2018).

In 2018, Austria has adopted at federal level the Aarhus Participation Act (Aarhus Beteiligungsgesetz 2018) to improve access to justice in environmental matters in the areas of waste, water and air quality. The Act covers the most predominant and comprehensive areas

of environmental law with the aim to ensure effective implementation of environmental law. Environmental organisations and, where relevant directly affected individuals, are granted legal review before the national administrative courts in the event of a breach of environmental law.

5. If your State is one of the 156 UN Member States that recognizes the right to a safe, clean, healthy and sustainable environment, has this right contributed to preventing, mitigating, or rehabilitating toxic environments? If so, how? If not, why not?
6. Please provide specific examples of good practices in preventing, mitigating, or rehabilitating toxic environments. These examples may occur at the international, regional, national, sub-national, or local level. Examples may involve monitoring concentrations of toxic substances in air, water, soil, food and people; guaranteeing procedural rights (e.g. public access to information, public participation in decisionmaking, access to remedies); legislation, regulations, standards, jurisprudence and policies that address toxic substances; and initiatives to achieve toxic-free environments (e.g. banning the use of specific substances, reducing air and water pollution, remediation projects). Where possible, please provide evidence related to the implementation, enforcement, and effectiveness of the good practices.
7. Please specify ways in which additional protection is provided (or should be provided) for populations who may be particularly vulnerable to toxic environments (e.g. women, children, persons living in poverty, members of Indigenous peoples and traditional communities, older persons, persons with disabilities, ethnic, racial, religious or other minorities, migrants and displaced persons). How can these populations be empowered to protect their rights?
8. Are the actions of high-income States linked to increased risks of exposure to toxic substances in low- and middle-income States? What are ways in which high-income States should assist low-income States in preventing and rehabilitating toxic environments?
9. For businesses, what policies or practices are in place to ensure that activities, products, and services prevent risks of toxic exposures and meet human rights standards, especially those articulated in the Guiding Principles on Business and Human Rights?

Austria is implementing the OECD Guidelines for Multinational Enterprises by having established a National Contact Point (NCP) for the OECD Guidelines as a distinct unit within the Federal Ministry for Digital and Economic Affairs, and by actively promoting the use of the Guidelines. The Guidelines are recommendations addressed by governments to multinational companies and cover all key areas of business responsibility, including disclosure, human rights, employment and industrial relations, environment, anti-corruption, competition and taxation. The Guidelines are the only international RBC instrument that includes a built-in State-based grievance mechanism through National Points of Contact. In Austria, the NCP is located.

The human rights chapter of the Guidelines was introduced in 2011 and is in line with the UN Guiding Principles on Business and Human Rights. Furthermore, chapter VI of the Guidelines provides recommendations to companies in environmental issues. In order to help companies meet the expectations set by the OECD Guidelines, the Austrian NCP provides guidance, information and capacity building for companies and interested stakeholders. For example, the Austrian NCP organises webinars regarding the effective implementation of due diligence in companies risk management systems or multi-stakeholder dialogue events to specific topics of the OECD Guidelines. The Austrian NCP also functions as a non-judicial and State-based grievance mechanism regarding cases of alleged breaches of the guidelines, in particular in the

case of complaints (specific instances), by providing a voluntary dialogue platform for the parties and helping them in finding a common solution.