**Questionnaire of the UN SR on human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment**

1. **Input provided by the Austrian Federal Chancellery**

Question 3

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) enjoys constitutional status in Austria, the extensive case-law of the European Court of Human Rights (ECtHR) relating to the environment 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.[[1]](#footnote-1) In addition, the Council of Europe's manual "Human Rights and the Environment" (2nd edition, 2012) provides further information (see Attachment).

The rights guaranteed by the ECHR can be asserted not only before the 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 Laws that violate the ECHR rights can be repealed by the Constitutional Court.

Since 1984, the Austrian Federal Constitution contains a commitment to comprehensive environmental protection (Federal Law Gazette No. 491/1984). In 2013, this state 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).[[2]](#footnote-2) 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.

According to the constant case-law of the Austrian Constitutional Court[[3]](#footnote-3), comprehensive environmental protection must be considered and included in the interpretation of statutory provisions due to the Federal Constitutional Law on Environmental Protection: For example, when examining the approval of the construction and operation of a third runway for Vienna's Schwechat Airport (VfSlg. 20.185/2017), the Constitutional Court stated that it is constitutionally required to take comprehensive environmental protection into account both in the interpretation of the "other public interests" which must be safeguarded under the Aviation Act and to interpret them in the light of the state's objectives, and also to take them into account it in the balancing of interests.

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[[4]](#footnote-4) or rights of participation in proceedings.[[5]](#footnote-5) 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); 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).

1. **Input provided by the Austrian Federal Ministry of Climate Action, Environment, Energy, Mobility, Innovation and Technology**

Question 2:

The Austrian National Biodiversity Strategy 2020+ contains goals and measures that address the main direct and indirect drivers of biodiversity loss. A range of national and EU legislation aims at protecting nature, biodiversity and ecosystem services (nature protection laws of provincial governments of Austria, Environment Impact Assessment, EU Regulation on Invasive Alien Species, National Forest Act, EU Nature Protection Legislation, EU Water Framework, etc.).

Question 3:

Austria has adopted at federal level in 2018 the Aarhus Participation Act (Aarhus Beteiligungsgesetz 2018)[[6]](#footnote-6) 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 environ-mental law with the aim to ensure effective implementation of environmental law. Environmental organisations and, where relevant directly affected individuals, are granted legal re-view before the national administrative courts in the event of a breach of environmental law.

On provincial level (Bundesländer), main provisions on access to justice with regard nature protection can be found in the different Nature protection Acts of the federal Provinces. In this regard, the Provinces have also amended their legislation[[7]](#footnote-7) concerning nature protection and the protection of species as well as their laws on hunting and fishing.

When it comes to Environmental Impact Assessments (EIA), a comprehensive public participation for certain projects is a core element of the procedure. The purpose of an EIA is to look at potential environmental effects of a project prior to its implementation. The national EIA-Act provides rights of information of a broader public. Moreover, there is a right for parties to the procedure to participate in a hearing. All parties of the procedure are entitled to lodge an appeal to the courts. The range of parties in the procedure according to EIA Act is defined in very wide terms. Party status is granted e.g. to neighbors who might be affected by possible environmental impacts, the ombudsperson for the environment, the water management planning body, the host municipality and the directly adjoining Austrian municipalities which may be affected by significant effects of the project on the environment, Citizens’ groups and environmental organisations.

In the framework of the implementation of the EU Environmental Liability Directive 2004/35/EC, the Federal Environmental Liability Act[[8]](#footnote-8) provides for an environmental com-plaint, if 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. With regard to damages of biodiversity, the Provinces have adapted their respective legal systems in accordance with the provisions of the Federal Environmental Liability Act.

Question 4:

See answer to Question 3.

Question 5:

Within the national Biodiversity Campaign “vielfaltleben” (living.diversity) more than 50 species protection projects have been carried out jointly with NGOs and landowners that contributed to the improvement of the status of endangered species and their habitats. For example the population of lapwings in the province of Vorarlberg has increased tenfold by commitments of farmers to take care of their nests. More than 150 municipalities have joined the local biodiversity network of vielfaltleben by signing biodiversity declarations (by the mayors) and establishing local biodiversity programmes.

A number of projects aiming habitat and species conservation and restoration is carried out and financed by the Austrian Rural Development Programme. Among others the increasing population of the Great Bustard has become a great success.

Question 7:

Almost 60% of the national territory of Austria is covered by mountains and mountainous areas. People living in these areas are potentially affected by the decline of biodiversity and degradation of nature, e.g. by increase in avalanches, floods and torrents. Within the Austrian Rural Development Programme, which forms the backbone of the Austrian Agricultural Policy, specific attention is given to areas with natural constraints and farmers in such areas. Austria is Party to the Alpine Convention and its Protocols which aim at preserving culture, nature and biodiversity in alpine areas.

Question 8:

The Austrian legal system and the independence of courts guarantee that rights are to be exercised in Austria without fear of violence, intimidation, or reprisal.

Question 9:

The objectives of the Austrian Development Cooperation also encompass the supporting of sustainable development in LDCs and low income countries. Ways to protect biodiversity in such countries also form part of many bilateral projects. Also raising awareness of consumers with regard to ecological footprints (e.g. by providing footprint calculators) contributes to re-ducing negative impacts in lower income countries.

1. **Input provided by the Austrian Federal Ministry of Agriculture, Regions and Tourism**

Question 5

**SUSTAINABILITY FOR AUSTRIA‘S FORESTS**

Six factors interact to implement sustainable forest management in Austria:

1. A widely recognised commitment to comprehensive sustainability in forests.

2. A sound legal framework.

3. An efficient institutional architecture.

4. A well-balanced financial system.

5. Systematic public participation in policy development and implementation.

6. A wise monitoring and information system.

Austria has expressly committed itself to the understanding of sustainability for forests developed at the FOREST EUROPE Ministerial Conference and even enshrined this principle in law. Austria is thus obliged to develop all aspects of forests in a sustainable manner. The concept is not static, but is continuously deepened and developed. The „Pan-European Criteria and Indicators for Sustainable Forest Management“, adopted by the FOREST EUROPE countries, offer orientation for forest policy-making in Austria and provide the contextual framework for surveys and reporting. They are the points of reference for the Austrian Forest Dialogue and the thematic frame for the Austrian Forest Report. The Austrian Forest Programme is organised along seven forest-political fields of action: Six of them are derived from the six „Pan-European Criteria for Sustainable Forest Management“ of the FOREST EUROPE Ministerial Conference. The seventh one, „Austria‘s International Responsibility for Sustainable Forest Management“, was added because it is important for a forest and timber country to have an active share in the development of the international environment for forests. Austria-specific indicators were added to the pan-European ones to be able to shape sustainability more precisely.

The concept of sustainability for Austria‘s forests is thus up-to-date, continuously refined and firmly anchored in the heads and processes that are decisive for the maintenance and management of forests. However, sustainable forest management is not only ensured by the Austrian state. Responsibility for the condition of eighty percent of Austria‘s forests lies above all with the many private forest owners. Most of them are family-run holdings where forests are passed on from generation to generation. A key factor for the success of all efforts to promote sustainability in forests is therefore the motivation of forest owners. Almost 50 percent of our national territory is covered by forests. They are managed by about 145,000 forest owners whose overall concept — sustainable forest management — is exemplary and extraordinarily successful.

Enclosed the Austrian Forest Report for additional information.

1. https://echr.coe.int/Pages/home.aspx?p=press/factsheets&c= [↑](#footnote-ref-1)
2. The English translation of the Federal Constitutional Act on sustainability, animal protection, comprehensive environmental protection, on water and food security as well as research is available in the RIS in the application "Austrian Laws": https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Erv&Titel=Federal+Constitutional+Act+on+sustainability&Quelle=&ImRisSeitVonDatum=&ImRisSeitBisDatum=&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=&Position=1&SkipToDocumentPage=true&ResultFunctionToken=3e6d33e5-e099-42b6-99e9-62b9a3c9e748&Dokumentnummer=ERV\_2013\_1\_111 [↑](#footnote-ref-2)
3. see the references in VfSlg. 20.185/2017, margin no. 206 [↑](#footnote-ref-3)
4. See for example Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information, OJ 2003 L 41/26. [↑](#footnote-ref-4)
5. See, for example, Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC, OJ 2003 L 156/17. [↑](#footnote-ref-5)
6. Federal Law Gazette I No. 73/2018. [↑](#footnote-ref-6)
7. the Nature and Landscape Conservation Act of Burgenland (Burgenländisches Naturschutz- und Landschaftspflege-gesetz – NG 1990), the Carinthian Nature Protection Act (Kärntner Naturschutzgesetz 2002 – K-NSG), the Lower Austrian Nature Protection Act (NÖ Naturschutzgesetz 2000 – NÖ NSchG), the Nature Protection Act of Salzburg (Salzburger Naturschutzgesetz 1999 – NSchG), the Styrian nature Protection Act (Steiermärkisches Naturschutzge-setz 2017 – StNSchG 2017), the Tyrolian Nature Protection Act (Tiroler Naturschutzgesetz 2005 – TNSchG), the Act on Nature Protection and Landscape Development of Vorarlberg (Gesetz über Naturschutz und Landschaftsentwick-lung), the Upper Austrian Nature and Landscape Protection Act (Oö. Natur- und Landschaftsschutzgesetz 2001 – Oö. NSchG). [↑](#footnote-ref-7)
8. Federal Law Gazette I No. 55/2009, last amended by I No. 74/2018 [↑](#footnote-ref-8)