

United Nations Study on Violence against Children

Response to questionnaire received from the
Government of the Republic of AUSTRIA

QUESTIONNAIRE

I. LEGAL FRAMEWORK

International human rights instruments

- 1. Describe any developments with respect to violence against children which have resulted from your country's acceptance of international human rights instruments, including, for example, the Convention on the Rights of the Child and its optional protocols, the Palermo Protocol or regional human rights instruments. Provide information on cases concerning violence against children in which your country's courts or tribunals have referred to international or regional human rights standards.**

Austria ratified the following instruments relating to the prevention of violence against children:

- Convention on the Rights of the Child (CRC), ratified on 6 August 1992, entered into force on 5 September 1992, published in Austrian Federal Law Gazette no. 1993/7
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, ratified on 1 February 2002, entered into force on 12 February 2002, published in Austrian Federal Law Gazette no. III Nr. 92/2002
- The Geneva Conventions of 1949 and the Additional Protocols thereto of 1977. The Geneva Conventions were promulgated in the Austrian Federal Law Gazette Vol. I No. 155/1953; the Additional Protocols in the Austrian Federal Law Gazette Vol. I No. 527/1982.
- The Rome-Statute, ratified on 28 December 2000, implemented by the Act on Cooperation with the International Criminal Court, Austrian Federal Law Gazette Vol. I No. 135/2002.
- International Labour Organization (ILO) Convention concerning the Elimination of the Worst Forms of Child Labour (Convention No. 182), Federal Law Gazette Vol. III No. 41/2002.
- The UN Convention against Transnational Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol; in the process of ratification)
- The Hague Convention of 5 October 1961 concerning the Powers of Authorities and the Law applicable in respect of the Protection of Infants, ratified on 12 March 1975, entered into force 11 May 1975.

Following the ratification of international legal instruments as mentioned above, Austrian domestic law has been amended accordingly so that the obligations stemming from these international legal instruments can be fulfilled. One of the most recent examples is the insertion of a new provision against trafficking of human beings into the Austrian Penal Code that has been drafted in conformity with the respective additional/optional protocols to the Convention on the Rights of the Child and the Palermo Convention.

Domestic Legal provisions on violence against children

2. Describe how forms of violence against children are addressed in your country's constitution, legislation and subsidiary legislation, and, where appropriate, customary law.

Criminal law:

The general penal provisions addressing the prevention of, protection from, punishment of violence etc. also apply to children. There is, however a number of specific penal provisions addressing violence against children in particular.

- Section 92 of the Penal Code ("Cruelty towards or neglecting of persons under the age of 18 or of helpless persons")
- Sections 206 and 207 of the Penal Code ("Sexual abuse of persons under the age of 14"). The exercise of violence is not a prerequisite. If the perpetrator uses force to sexually abuse a child under the age of 14 s/he commits the offence of sexual abuse as well as the offence of rape.

Concerning sexual abuse there are a number of other provisions aiming particularly at the protection of minors, for example Sec. 207b ("Sexual abuse of juveniles") or Sec. 215a of the Penal Code – "Promotion of prostitution and pornographic performances of minors").

Act on the Protection against Domestic Violence

For the scope of application of the Federal Act on the Protection against Domestic Violence (entered into force on 1 May 1997) please refer to the 5th Austrian Report to the Committee for the Elimination of All Forms of Discrimination Against Women, September 1999.

Further legislation on violence against children

For specific information on legislation dealing with the prevention of violence against children please refer to Austria's 2nd report to the United Nations pursuant to Article 44, para. 1 b of the Convention on the Rights of the Child, June 2002, p.26, para. 35; pp. 58-61; 89/90, para. 494, 125-136.

See also Response of the Austrian Federal Ministry of Health and Women's Issues, Reference Period June 1999 to December 2003, to the Questionnaire to Governments on the Implementation of the Beijing Platform for Action (1995) and the Outcome of the Twenty-Third Special Session of the General Assembly (2000), July 2004, pp. 1-3, 8-9, 13

In addition see the comments in the forthcoming 6th Austrian Report to the Committee for the Elimination of All Forms of Discrimination Against Women (hereinafter: 6th CEDAW Report) under the following headings: Recommendation 228 and 229, as well as under Articles 2, 5 lit a, 6 of.

3. Provide details of any specific legislative provisions on:

- **Prevention of all forms of physical, sexual and mental violence, injury or abuse, neglect or negligent treatment, and sexual abuse;**
- **Protection of children from all forms of violence;**
- **Redress, including compensation, for child victims of violence;**
- **Penalties for perpetrators of violence against children;**
- **Reintegration and rehabilitation of child victims of violence.**

Act on Protection from Domestic Violence

The Austrian system of preventing all forms of violence against children rests on the cooperation of 3 institutions: the police, the intervention centre against domestic violence and the family courts. Section 2 of the Youth Welfare Act explicitly mandates the youth

welfare authority to act in the interests of the child, in particular when a child has been subject to violence or physical or psychological suffering.

Specific legislative provisions have been adopted under the Federal Act on the Protection against Domestic Violence (entered into force on 1 May 1997). The scope of its application has already been comprehensively documented in the 5th Austrian Report to the Committee for the Elimination of All Forms of Discrimination Against Women, September 1999.

By the 2003 Amendment to the Enforcement of Orders Act (EO-Nov 2003, Federal Law Gazette I No. 31/2003), which came into effect on 1 January 2004, the provisions regarding injunctions for protection against domestic violence (§ 382, letters b) and d) EO) have also been improved, based on the experiences made with the existing legislation. Under the new legal situation the protection accorded under § 382b EO now extends to all persons who live or have lived with the (potential) perpetrator in a family or family-like relationship (hitherto this protection only applied to a specifically listed circle of persons and only if the latter were living with the (potential) perpetrator in a common household within the last three months preceding the application for injunction). The general paraphrasing of the term "near relatives" introduced under the new amendment primarily aims at extending the protected circle of persons, especially beyond the narrow definition of live-in partner. The abolition of the three-month time limit was based on the consideration that the emotions between formerly cohabiting persons cannot be expected to have cooled down within three months, and aims to guarantee protection against violence irrespective of court deadlines, especially in cases in which a permanent involvement is likely, e.g. due to common children.

Furthermore, in order to ensure improved and more efficient enforcement of injunctions served in accordance with § 382b, paragraph 2 EO, which prohibits a perpetrator from staying in or visiting certain locations ("inviolable precincts"), EO-Nov 2003 provides that these injunctions can also be executed by the public law enforcement agencies.

As regards the protection against female genital mutilation, the Criminal Law Amendment Act 2001 amending Section 90 paragraph 3 of the Penal Code explicitly states that consent cannot be given to a mutilation or other wounding of the genitals that can lead to permanent impairment of sexual sensation.

Penalties

Penalties for cruelty towards or neglecting of persons under the age of 18 or of helpless persons according to Section 92 of the Penal Code range from up to three years of imprisonment to one to ten years of imprisonment, if the victim is killed (negligently). By the Criminal Law Amendment Act 2001 (Federal Law Gazette I No. 130/2001), rape and severe sexual abuse of minors were made punishable by life imprisonment in case of with lethal consequence and otherwise by a prison sentence of 10-20 years. The reform of Austrian penal law relating to sexual offences was continued with the Criminal Law Amendment Act 2004 (StRÄG 2004; Federal Law Gazette I No. 15/2004). This Act attaches particular importance to the protection of minors against sexual exploitation and provides for broadening of the scope of offences relating to child pornography and abuse of a position of authority as well as penal provisions against encouraging the prostitution of minors and the involvement of minors in the production of pornographic materials.

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For further information see the comments made under the following headings: Recommendation 228 and 229 as well as under Articles 2, 5 lit a, 6 of the Sixth CEDAW Report; Austria's 2nd report to the United Nations under the Convention on the Rights of the Child, June 2002, pp. 58-61; 89/90, 125-136; paras. 313-325; Response of the Austrian Federal Ministry of Health and Women's Issues, Reference Period June 1999 to December 2003 to the Questionnaire to Governments on the Implementation of the Beijing Platform for Action (1995) and the Outcome of the Twenty-Third Special Session of the General Assembly (2000), pp. 1-3, 8-9, 13.

Regarding reintegration/physical and psychological recovery of victims of violence and support of victims during criminal proceedings, see Austria's 2nd report under the Convention on the Rights of the Child, June 2002, paras. 324-325

4. Indicate whether any specific legislative provisions address all forms of violence including physical, sexual and psychological violence, injury or abuse, neglect or negligent treatment and sexual exploitation against children which take place in:

- The family/ home

See above under questions 2 and 3.

- Schools and pre-school care and education (both formal and non-formal, state and private)

See above under questions 2 and 3.

- Military schools

Not applicable in the Austrian context. See for recent general information on military schools Austria's 1st Report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, paras. 40-45.

- Institutions including care, residential, health and mental health

See general provisions under questions 2 and 3 above.

- The context of law and public order enforcement including in detention facilities or prisons

See for information Austria's 2nd report under the Convention on the Rights of the Child, June 2002, p. 20, para 103

- The neighbourhood, street and the community, including in rural areas:
General provisions apply.

- The workplace (informal and formal)

See for information Austria's 2nd report under the Convention on the Rights of the Child, June 2002, pp.118-122, paras. 663-689.¹

In addition, the Act on Domestic Helpers and Domestic Employees (Hausgehilfen- und Hausangestelltengesetz, Federal Law Gazette No. 235/1962

¹ The Act on the Employment of Children and Adolescents of 1987 (Bundesgesetz über die Beschäftigung von Kindern und Jugendlichen 1987, KJBG) Federal Law Gazette No. 599/1987, was last amended by Federal Law Gazette I No. 79/2003.

as amended by Federal Law Gazette I No. 1000/2002 contains general provisions regarding safety measures and monitoring of the youth's health as well as a general duty to care for the adolescent.

Likewise the Vocational Training Act (Berufsausbildungsgesetz, BAG, Federal Law Gazette No. 142/1969 as amended by Federal Law Gazette No. 79/2003) governing the relationship between an apprentice and the trainer contains several provisions regarding the protection of apprentices, including the prohibition of corporal punishment and a duty to protect from corporal punishment or abusive remarks by other persons.

For legislation on protection from sexual harassment at the workplace (private and public employment) please refer to the relevant information on Austria's Equal Treatment Acts in the Response of the Austrian Federal Ministry of Health and Women's Issues, Reference Period June 1999 to December 2003, to the Questionnaire to Governments on the Implementation of the Beijing Platform for Action (1995) and the Outcome of the Twenty-Third Special Session of the General Assembly (2000), July 2004, pp. 15/16; see also the comments in the Sixth CEDAW Report under Recommendation 235 as to the amendments of the Equal Treatment Act in compliance with the two EU Anti-Discrimination Directives, i.e. Council Directive 2000/43/EC on the application of the principle of equal treatment irrespective of race and ethnic origin (Anti-Racism Directive) and Council Directive 2000/78/EC on determining the general framework for implementing equal treatment in employment and at the workplace, which prohibits discrimination on account of religious faith or ideology, disability, age or sexual orientation (Framework Directive on Equal Treatment).

The Equal Treatment Act and the Act on Equal Treatment in Federal Service was amended in order to implement the two EU Anti-Discrimination Directives. Two acts were passed: The Equal Treatment Act, renamed as the Federal Act Governing the Equal Treatment Commission and the Ombuds' Office for Equal Treatment, contains provisions on institutions and procedures. Furthermore, a Federal Act on Equal Treatment took over the substantive provisions of the former Equal Treatment Act and was amended so as to comply with the relevant EU-Directives. Both acts entered into force on 1 July 2004.

- Sports and sporting facilities.

General provisions apply.

5. Indicate if corporal punishment of children, in any setting, including in the family, is explicitly prohibited in your legal system. Provide details of any legal defences available to those who administer corporal punishment to children, including in the family. Provide information on penalties applicable to those who administer corporal punishment to children, including in the family.

Corporal punishment is prohibited by law. For the relevant legislation please refer to Austria's 2nd report under the Convention on the Rights of the Child, June 2002, p. 58, para.309; p. 89, para. 494; p. 120/121, para. 678-683. In addition, the Act on Domestic Helpers and Domestic Employees and the Vocational Training Act as well as the Act on Employment in Agriculture (Landarbeitsgesetz (LAG) was last amended by Federal Law Gazette No. 158/2002 explicitly prohibiting corporal punishment.

There are no defences available for those who administer corporal punishment to children.

The penalties applicable depend on the kind of offence the person administering corporal punishment commits by doing so (ranging from insult/assault without injury according to

Section 115 of the Penal Code with imprisonment up to three months, to murder with imprisonment from 10 to 20 years or for life). Whereas offences against property and the offence of "dangerous threat" are treated differently when committed in the family, there are no longer any differences between offences against physical or sexual integrity, whether committed within the family or outside.

6. Provide information on whether the penal code permits corporal punishment and/or capital punishment as a sentence for crimes committed by under 18 year olds.

The Austrian Penal Code does not permit corporal punishment and/or capital punishment irrespective of any age (see above response to question 5).

Corporal punishment is prohibited under the European Convention on Human Rights which enjoys constitutional rank in the Austrian legal order (see European Court of Human Rights, *Tyrer v. UK*, 1978; *Campbell and Cosans v. UK*, 1982; *Costello-Roberts v. UK*, 1993; *A v. UK*, 1998). Capital punishment is "abolished" according to Section 85 of the Austrian Federal Constitution since 1968. Austria ratified Protocols No 6 and 13 to the European Convention on Human Rights (prohibition of the death penalty in all circumstances).

7. Provide details on whether bullying/hazing and sexual harassment are explicitly addressed by legislation.

Sexual harassment is a criminal offence according to Section 218 of the Penal Code – regardless of the age of the victim.

Bullying/hazing may be a criminal offence according to Section 93 of the Penal Code if it amounts to "overstraining"/"overexerting" a person under 18 years old (or a convalescent person/a person in need of careful treatment).

Both types of behaviour are also addressed by equal treatment/anti-discrimination legislation. See responses above under questions 4 (sexual harassment) and 5 (bullying/hazing).

8. Provide information on the way in which harmful or violent traditional practices, including but not limited to female genital mutilation, child marriage or honour crimes are addressed in your country.

Pursuant to the Austria Penal Code female genital mutilation (FGM) constitutes bodily injury with severe after-effects. Section 90 para. 3 of the Penal Code provides that "consent cannot be given to mutilation or injury to the genital organs that can lead to long-term impairment of sexual enjoyment. Possible consent to injury practices classified as "(female) genital mutilation" always constitutes an unlawful act. See also Austria's 2nd report under the Convention on the Rights of the Child, June 2002, p.74, para.394.

Gender-specific asylum claims such as FGM are covered by Austrian asylum legislation and practice.

Child marriage and honour crimes are not explicitly mentioned in Austrian penal legislation. See, however, for the minimum legal age of marriage Austria's 2nd report under the Convention on the Rights of the Child, June 2002, p. 58, para.309; p. 89, para. 494; p. 16, para. 79.

Child marriage as such is not a criminal offence; depending on the circumstances, one could, however, imagine e.g. offences against sexual integrity in connection to it.

Regarding honour crimes, the general provisions in the Penal Code apply.

9. Provide information on the applicability of specific provisions to address all forms of violence against children to non-citizens and stateless children, including asylum seekers and displaced children. If specific provisions do not apply to such children, provide details of protection offered to them.

Provisions addressing violence against children also apply to non-citizens and stateless children, including asylum seekers and displaced children. See for specific protective measures Austria's 2nd report under the Convention on the Rights of the Child, June 2002, chapter 10., para. 569-608 as well as paras. 760-763. For information on combating trafficking in children see comments in the Sixth CEDAW Report under Recommendation 228.

10. Provide information on any difference in the definition of violence and the applicable legal framework according to:

- **The sex or sexual orientation of the victim and/or of the perpetrator;**
- **The age of the victim and /or of the perpetrator;**
- **The relationship between the victim and the perpetrator, including, but not limited to infanticide, sexual violence in marriage, incest and sexual abuse within the family, and physical chastisement.**

In principle, there are no differences in the definition of violence and the applicable legal framework according to the sex or sexual orientation of the victim and/or of the perpetrator or the age of the victim and/or of the perpetrator or the relationship between the victim and the perpetrator. With the entering into force of the Criminal Law Amendment Act 2004 in May 2004, the privilege of rape and sexual coercion within a marriage or partnership was eliminated without substitution.

Concerning the age of the victim one could say, however, that due to specific provisions the level of protection against violence is higher for children than for adults. For example, sexual abuse of children constitutes a crime no matter if the perpetrator has been using violence or not (if he has done so he can be punished for rape as well). The situation is similar concerning trafficking in human beings: if the victim is under 18 it is not a prerequisite that violence, deception or comparable methods have been applied.

Concerning the age of the perpetrator there is a general rule excluding any criminal liability for offences (including violent crimes) committed before the age of 14 (cf. Section 4 of the Juvenile Justice Act 1988).

Concerning the relationship between the victim and the perpetrator there are specific provisions against infanticide (according to Section 79 of the Penal Code which can only apply to a mother having killed her baby while giving birth to him or her or immediately after having given birth, as long as she is still under the influence of it), incest (according to Section 211 of the Penal Code) and sexual abuse within the family (as one subheading of "abuse of a relationship of authority" according to Section 212 of the Penal Code). Whereas in the case of infanticide Section 79 replaces possible punishment under a more severe provision, especially murder, Sections 211 or 212 apply in addition to the more general, "relationship-neutral" – and more severely punished – provisions such as the provisions against rape or sexual abuse of children.

Regarding physical chastisement, see responses to questions 5 and 6 above.

11. Provide information on any recent comprehensive review of the legal framework to address violence against children.

With the Criminal Law Amendment Act 2001 (Federal Law Gazette I No. 130/2001), rape and severe sexual abuse of minors were made punishable by life imprisonment in case of lethal consequence and otherwise by a prison sentence of 10-20 years. The reform of Austrian penal law relating to sexual offences was continued with the Criminal Law

Amendment Act 2004 (StRÄG 2004; Federal Law Gazette I No. 15/2004; see below and under Recommendation 228). This Act attaches particular importance to the protection of minors against sexual exploitation and provides for broadening of the scope of offences relating to child pornography and abuse of a position of authority as well as penal provisions against encouraging the prostitution of minors and the involvement of minors in the production of pornographic materials.

12. Studies and surveys on violence against children:

The following studies focus on experiences with and requirements for psycho-social and legal support for sexually abused young children and adolescents in connection with (but not limited to) court proceedings. Both publications are available in German at www.bmsg.gv.at.

- Psychologische und juristische Prozessbegleitung bei sexuellem Missbrauch an Mädchen, Buben und Jugendlichen, Federal Ministry of Social Security and Generations (Bundesministerium f. Soziale Sicherheit und Generation - BMSG), Vienna 1998-2000
- Prozessbegleitung von Kindern und Jugendlichen als Opfer sexueller/körperlicher Gewalt. Kooperation als Herausforderung, Federal Ministry of Social Security and Generations and the Federal Ministry of Interior, Vienna 2002 (=)

A study undertaken by the Institute for Conflict Research in 2002 evaluated the Act on the Protection against Domestic Violence (http://www.ikf.ac.at/a_proj02/a_pro03.htm).

Courts tasked with addressing violence against children

13. Identify those parts of the court structure in your country tasked with addressing violence against children. Indicate if your family or juvenile courts have specific responsibility for this issue.

Apart from the responsibility of criminal courts in adjudicating all forms of violence falling under the Penal Code, there is a specific role for family courts in the framework of the Act on the Protection against Domestic Violence pursuant to which family courts are tasked to issue temporary injunctions against the offenders in cases of domestic violence.

Minimum age for sexual activity

14. Provide information on any legislatively defined minimum age required for valid consent to sexual activity. Is this age different for girls and boys? Is this age different in respect of heterosexual and homosexual activities?

The legal age of sexual consent for girls and boys is fourteen irrespective of sexual orientation. Sections 206 and 207 of the Penal Code provide, however, for protection of minors (under 14 years) against sexual abuse use different levels of age depending on the sexual act performed. Section 207b of the Penal Code penalises sexual abuse of persons under 16 years under certain conditions (immaturity; situation of duress). Pursuant to Section 208 of the Penal Code protects persons under the age of sixteen against being endangered in the moral, mental or health development (unless the age difference between perpetrator and victim does not exceed 4 years and the victims is not under 12 years of age)

15. Provide information on the minimum age of marriage for women and men.

Upon completion of the age of 18 years a person has full legal capacity and becomes marriageable. The legal age can be lowered to 16 upon application to the courts, see for details Austria's 2nd report under the Convention on the Rights of the Child, June 2002, p. 16, para 79.

Sexual exploitation of children

16. Provide information on legislation and other measures to prevent the commercial sexual exploitation of children, including through prostitution and other unlawful sexual activities. Provide details on means to ensure that child victims of such exploitation are not criminalized. Provide information on legislation or other measures to prohibit all forms of sale or trafficking in children, including by their parents.

See also response to question 11, above.

The consistent battle against sexual exploitation of women and children has been given special attention in the past few years, particularly because of outside factors due to Austria's geographical situation and its function as a transit and target country for trafficking. Austria's Penal Code and the Aliens Act contain various provisions criminalizing the (sexual) exploitation of children. The Criminal Law Amendment Act 2004 contains a new regulation on trafficking in human beings. See in more detail in the Response of the Austrian Federal Ministry of Health and Women's Issues, Reference Period June 1999 to December 2003 to the Questionnaire to Governments on the Implementation of the Beijing Platform for Action (1995) and the Outcome of the Twenty-Third Special Session of the General Assembly (2000), July 2004, pp. 1-3, 8-9, 13.

Section 216 of the Penal Code criminalizes pimping. Section 217 of the Penal Code referring to transnational/cross-border trafficking in human beings criminalises the recruiting of aliens for prostitution. Penalties increase if the recruitment for prostitution was effected by deception on the purpose of the journey to the country, coercion or use of force. Depending on the severity of the offence, the offender is liable to imprisonment for up to ten years.

Pursuant to Section 104 of the Penal Code criminalizes trafficking for slavery entailing imprisonment of from 10 to 20 years. Section 104a on trafficking in human beings became effective as of May 2004. It penalizes not only trafficking for sexual exploitation but also for labor and trafficking of organs. Depending on the severity of the offence, the offender is liable to imprisonment for up to ten years.

Section 104 of the Aliens Act provides for a maximum sentence of 10 years of imprisonment for alien smuggling. Section 105 of the Aliens Act (in force since 2003) prohibits the exploitation of illegal aliens.

The Austrian Federal Ministry of Interior and the Ministry of Health and Women have funded a non-governmental organisation with special expertise in gender issues and victims' rights operating a so-called "intervention centre for victims of trafficking in women" for several years now. The centre offers safe shelter, psychological, social and legal assistance, and other support to victims of trafficking. Austria is committed to continue funding these programmes for the recovery of victims. In addition, this specialised centre works closely with other counselling centres for women across Austria that also offer assistance to victims of trafficking.

Victims of trafficking may be granted a temporary residence permit on humanitarian grounds.

See also information Austria's 2nd report under the Convention on the Rights of the Child, June 2002, chapters 12.4 and 12.5, pp. 125-136, paras. 703-766. See also the Sixth CEDAW report, comments under Article 6.

Pornography and harmful information

17. Provide information on legislation and other measures to prohibit the production, possession and dissemination of child pornography. In particular, please provide information on any controls on pornography produced and/or disseminated via the internet.

See also response to question 11.

Section 207a of the Austrian Penal Code criminalizes pornographic representations of minors. It also prohibits distribution and possession of material containing child pornography downloaded from the Internet. This provision is in complete conformity with the relevant international legal instruments such as the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, the Council of Europe Convention on Cybercrime which was signed on Austria on 23 November 2003 (ETS 185) or the EU Framework Decision on combating the Sexual Exploitation of Children and Child Pornography.

In 1997, the Ministry of Interior set up a unit to combat child pornography in the Internet.

Section 207b para. 3 of the Penal Code criminalises sexual contact in exchange for a remuneration and Section 215a of the Penal Code – "Promotion of prostitution and pornographic performances of minors".

See also Austria's 2nd report under the Convention on the Rights of the Child, June 2002, paras. 39; 212-216; 703-704; 741-754; and the Response of the Austrian Federal Ministry of Health and Women's Issues, Reference Period June 1999 to December 2003 to the Questionnaire to Governments on the Implementation of the Beijing Platform for Action (1995) and the Outcome of the Twenty-Third Special Session of the General Assembly (2000), July 2004, p. 13.

18. Provide information on any legislation or guidelines to protect children from injurious information and material transmitted through the media, Internet, videos, electronic games, etc.

Austria ratified the European Convention on Transfrontier Television (CETS No 132) of the Council of Europe. Article 7 para. 2 of said Convention provides for the responsibility of the broadcaster to avoid scheduling "[a]ll items of programme services which are likely to impair the physical, mental or moral development of children and adolescents (...) when, because of the time of transmission and reception, they are likely to watch them. See Austria's 2nd report under the Convention on the Rights of the Child, June 2002, paras. 104-107, 203-223, 703-704.

The Pornography Act 1950 (as amended by Federal Law Gazette No. 422/1974) contains several provisions penalising the producing, editing, storing, importing, transporting or exporting, circulation etc. of indecent or obscene written material, pictures, films, representations or objects. It also contains administrative provisions restricting the circulation and publication of printed material that is apt to harm the moral or mental development or health of persons under 16 years.

Reporting obligations relating to violence against children

19. Provide information on legislation, regulations or administrative directives requiring reporting of all forms of violence against and abuse of children in all settings to appropriate bodies. If reporting legislation, regulations or administrative directives exist, please indicate whether all citizens are required to report, or whether the obligation falls on certain professional groups only. Provide details of any sanctions for non-reporting.

Please refer to Austria's 2nd report under the Convention on the Rights of the Child, June 2002, p. 128, paras. 713-715. A public official's failure to report (violation of the duty under § 84 of the Penal Code) is a breach of official duty according to Section 302 of the Penal Code and/or may have disciplinary consequences.

The second amendment to the Medical Profession Act, Federal Law Gazette I No. 110/2001, provided a fundamental reform of some aspects of mandatory reporting by physicians (section 54 paras. 4 – 6).

Complaints procedures

20. Provide information on any complaints procedures relating to all forms of violence against children perpetrated in:

See answer above to question 2 and particularly 4.

As regards complaints procedures in the context of law and public order enforcement including in detention facilities or prisons:

Although there is no specific complaints procedure concerning violence against children in prisons every prison inmate is entitled to complain about a member of the prison staff or their orders including in respect of the use of violence to the head of the institution (cf. Section 121 of the Code on the Execution of Prison Sentences). Complaints against the head of the institution can be lodged with monitoring chambers, which are independent three-person-chambers established with the courts of second instance. These chambers are headed by a judge and include either one more judge and an experienced prison official or two experienced prison officials (cf. Sections 11a to 11h of the Code on the Execution of Prison Sentences).

21. Indicate whether children or persons acting on their behalf can access these procedures. Indicate whether legal aid is available to facilitate submission of complaints, and the circumstances in which legal aid will be available.

Since 2000 victims of domestic violence have been offered psychological, social and legal assistance in connection with court appearances. This service is offered by some 70 specialised counselling centres such as child protection centres throughout Austria. Please refer to article 2 of the sixth CEDAW report.

Free legal advice can also be sought at the intervention centres entrusted with counselling victims of domestic violence. See also Austria's 2nd report under the Convention on the Rights of the Child, June 2002, paras. 136-144; paras. 318-323; para. 325; para. 719.

In addition to these services offered by specialised organisations, general legal aid covering (full or partial, as the case may be) court costs and costs of legal representation is granted to persons in need. Legal aid is denied if the claim or defence of the applicant is manifestly unfounded or manifestly not brought in good faith. Legal aid is available in all penal, civil and commercial court proceedings regardless of nationality or residence of the applicant.

Legal aid is not available, however, for civil claims in criminal court proceedings (because there are no fees involved and legal representation is not required; nor may evidence with regard to civil claims be brought forward there) but these claims may be brought in parallel – with legal aid – before a civil court.

22. Describe steps which have been taken to raise awareness of possibilities to submit complaints about violence against children.

Please refer to Austria's 2nd report under the Convention on the Rights of the Child, June 2002, paras. 136-144; paras. 527-540; paras. 721-740 as well as the Response of the Austrian Federal Ministry of Health and Women's Issues, Reference Period June 1999 to December 2003, to the Questionnaire to Governments on the Implementation of the Beijing Platform for Action (1995) and the Outcome of the Twenty-Third Special Session of the General Assembly (2000), July 2004, p. 13.

In addition, the Federal Ministry of Education, Science and Culture has initiated activities to inform, sensitise and do preventive work in schools on violence against children in civics, human rights and health education and in school psychology.

- initiative in co-operation with the Austrian Youth Red Cross to empower and strengthen the child's personality, provide assistance to enable the child to protect him/herself, enable him/her to recognize problematic situations. Measures include: information posters in all schools, teaching materials, further training for teachers, assistance offers, recommendations for further reading
- "School Psychology-Educational Guidance/Psychological Assistance for Students (<http://www.schulpsychologie.at/>) provides counselling on a low-threshold level. The advice and counselling centres co-operate with local networks such as public authorities (regional governments, district authorities), Ombudsoffices for Children and Adolescents (see also below), centres providing assistance to abused young children and adolescents, emergency hotlines (for women and children), child protection centres, institutions providing marriage and family therapeutic counselling, in-patient health care centres and crisis intervention centres.
- The elaboration of guidelines for teachers on how to deal with (sexual) violence against children has been commissioned.
- A brochure of May 2003 contains information on different forms of violence, the legal remedies available and provides practical advice. The brochure can be downloaded from the website of the service center civics education at the Ludwig Boltzmann Institute for Human Rights, <http://www.politische-bildung.at/content/topic/29/50/179/>.
- A list of related web links containing comprehensive information and assistance is available on <http://www.schule.at/politische-Bildung>.
- In the framework of the "Aktionstage Politische Bildung" (Action Days Civics Education) a variety of projects deal with the issue including information campaigns and awareness-raising measures – see for the programme and background <http://www.politische-bildung.at/content/aktionswochen/71/>, or www.aktionstage.politische-bildung.at.
- All schools were informed by ministerial decree of the rights of children and adolescents when the national action plan for the rights of children and adolescents was drafted.
- Complementing the ministerial information decree Teaching Human Rights No. 17 of November 2003, a quarterly newsletter of the Service Centre for Human Rights Education, deals with children rights, including the topics of sexual exploitation, child soldiers etc. See for the newsletter <http://www.humanrights.at/root/start.asp?b=58&sub=53&m=9&ID=23614>. For a comprehensive list of links www.schule.at/politische-Bildung.
- A host of school projects on violence against children have been carried out either as initiatives of individual schools or on the initiative of the Ministry
- The Ministry makes available to schools IT-equipment with special filter programs to protect students from violence and criminality (e.g. child pornography) on the internet.

In this context, reference is made to the statutory duty of school physicians and psychologists under Section 54 paras. 4 to 6 Medical Profession Act.

23. Provide information on any special procedural or evidentiary rules which may apply in proceedings with respect to violence against children.

Please refer to Austria's 2nd report under the Convention on the Rights of the Child, June 2002, p. 127, paras. 708-710.

24. Provide information on the usual outcome of complaints of violence against children (e.g. compensation, punishment of perpetrators, perpetrator rehabilitation, family therapy).

Criminal proceedings may have different outcomes:

- ⇒ Conviction and punishment (imprisonment, fines, court instructions such as to undergo medical treatment or psychotherapy (upon consent of the perpetrator); a perpetrator may also be sentenced to pay for civil damages and compensation
- ⇒ In principle, depending on the severity of the offence, on the guilt of the offender and on certain other conditions, alternative forms of amends, such as victim-offenders reconciliation/restorative justice, community service may be applied instead of a criminal penalty (However, it remains doubtful that all conditions would be fulfilled in the case of violence against children)

25. Provide information on the usual outcome of legal proceedings in which children and juveniles are found guilty of perpetrating violence (e.g. imprisonment, corporal punishment, community service, perpetrator rehabilitation, family therapy).

On Austria's juvenile justice system please refer to Austria's 2nd report under the Convention on the Rights of the Child, June 2002, paras. 618-657.

II. INSTITUTIONAL FRAMEWORK AND RESOURCES TO ADDRESS VIOLENCE AGAINST CHILDREN

26. Are there any Governmental authorities, structures and mechanisms, including at federal, state/provincial, municipal and local level which are currently responsible for addressing violence against children? If YES, identify these authorities, structures and mechanisms and describe how coordination is ensured.

The Federal Ministry of Social Security, Generations and Consumer Protection is in charge of parental education and counselling, awareness-raising programmes, launching of networking, developing provisions for prevention, protection, helping victims of violence, providing information, conducting reviews, studies and surveys, developing standards e.g. for training programs for perpetrators and providing pilot-projects in this subject area.

For measures taken in schools under the competence of the Federal Ministry of Education, Science and Culture, see response to question 22.

Ombudsoffices for Children and Adolescents in all *Länder* (federal states) offer legal, psychological and social assistance. An emergency assistance and clearing centre assists child victims of sexual violence in a quick and informal way.

On the level of the *Länder* youth welfare authorities and institutions are responsible for assisting families and children, *inter alia*, in cases of different forms of violence within the families. The family and/or youth policy departments conduct a variety of activities in the field of awareness-raising programmes, launching networking, developing and conducting provisions for prevention, protection, assisting victims of violence, providing information.

Mention should be made of the professional associations in all Austrian hospitals with children's departments, the so called "child protection groups in hospitals". These multi-

disciplinary teams provide counselling and assistance in cases of suspected maltreatment or abuse of children.

See also Austria's 2nd report under the Convention on the Rights of the Child, June 2002, paras 27-33; paras. 136-144

27. Is there a lead Government authority tasked with responsibility for addressing violence against children?

No.

28. Are specific financial and/or human resources allocated by your country to address violence generally? If YES, indicate the extent of these allocations.

Funding by the Federal Ministry of Social Security, Generations and Consumer Protection capacity is as follows:

1 pers/year with a varying budget according to the work-programme of the Ministry
1 pers/year for the promotion of parental education with a budget of € 1,1 Mio/year
5 pers/year for the funding of family-counselling institutions with a budget of € 10,9 Mio/year.
1 pers/year for the funding of prevention-projects of the Platform Against Violence in the Family (see question 36), for the funding of measures to ensure a professional level of the court accompaniment system (see questions 21 to 23), for the developing of standards e.g. for perpetrator-programmes etc. (varying budget according to the work programme of the Ministry)

Several ministries fund non-governmental organisations assisting victims of violence, such as the intervention centres on domestic violence, the intervention centre for victims of trafficking, women's shelters, and several women helplines. See also responses to questions 16, 21, 22 and 26.

There are also financial and human resources allocated at the *Länder* level.

In addition, the organisation *Weisser Ring* (White Ring), a victim support organisation is involved in the payment of compensation to victims of violent crimes. It is a non-profit organisation for assistance to victims of crime and the prevention of criminal offences. The *Weisser Ring* also provides legal information and advice to victims.

In 1997 an organisation called 'Victims First' was founded by a group of psychologists, doctors and lawyers. 'Victims First', which works with 30 volunteers, aims to prevent present-day victims turning into future offenders by offering them psychological support. Starting with victims of physical and mental abuse, the organisation hopes to extend its services to other groups of victims.

The *OeGB - Oesterreichischer Gewerkschaftsbund* (Austrian Labour Union) recently set up help-points for victims of harassment at work (mobbing-victims).

Neustart (New Start), another non-governmental organisation, focuses on comprehensive support for victims that have not yet received assistance with a proactive approach, i.e. contact or visit the victim. Target groups include

- Crime victims or their surviving dependants or relatives
- victims of violence without permanent physical damage
- crime witnesses
- foreigners

The primary goal is to guide and support the person concerned during a difficult time of recovery, to avert imminent danger, and to restore assertion.

29. Does your country allocate specific financial and/or human resources to activities to address violence against children?

See question 28 – most of the resources mentioned there are for activities to address violence against children, whereas some programmes cover violence against elderly and women.

30. Do international or bilateral donors provide resources to your country for activities to address violence against children? If YES, indicate the extent of these resources and the way in which they are used.

Not that the Government is specifically aware of. However private institutions or associations may receive foreign funds as long as this is in line with general Austrian legislation.

31. Does your country provide any assistance to other countries' efforts to respond to the problem of violence against children? If YES, provide details.

On recent development cooperation projects as regards children in armed conflict please refer to Austria's 1st Report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, paras. 65-68 and Annex 2. In addition, the Federal Ministry for Foreign Affairs supports the establishing of support centres for victims of trafficking, such as the women's shelter in Belgrade (Serbia and Montenegro) of which children are also beneficiaries. The Federal Ministry of Interior supports countries wishing to implement the Austrian model on the prevention of domestic violence. See response to questions 2 and 3.

See generally on Austria's development co-operation activities with regard to children Austria's 2nd report under the Convention on the Rights of the Child, June 2002, pp. 143-145, paras 813-826.

32. If your country has a national human rights institution, such as a human rights commission or ombudsman, or a child-specific human rights institution, does it have any role or competence in the area of violence against children, including receiving complaints?

There is an ombudsperson system for children and adolescents in each of the Länder and at federal level (see also response to question 26). The ombudspersons offices were established by law and are funded by the 9 Länder. They serve as contact points for all issues and problems relating to children and adolescents – also in cases of violence. Their role is understood as independent representatives of children's and adolescents' interests and to safeguard these interests. This is reflected in their primary (statutory) task to counsel minors, parents and legal guardians of children *in all matters* relating to the position of the minor and the tasks of the parent or guardian as well as to assist in cases of disagreement and dispute about care and upbringing (see Section 10 Youth Welfare Act 1989, Federal Law Gazette no. 1989/161).

Violence against children in all its forms has a predominant place in the work of the ombudspersons offices. Among the activities conducted are awareness raising, information, networking, counselling and advocacy.

33. Are there any particular parliamentary structures (for example special committees) to address violence against children? If YES, provide details.

No, however, a parliamentary hearing on domestic violence was conducted in 1997 (see also Austria's 2nd CRC report, para 44..)

34. Have there been any recent parliamentary initiatives to address violence against children? If YES, please give details.

No.

III. ROLE OF CIVIL SOCIETY IN ADDRESSING VIOLENCE AGAINST CHILDREN

35. Describe significant civil society initiatives addressing violence against children in your country, including the types of institutions involved (such as academic institutions, professional associations, women's associations, student associations, community-based groups, faith-based groups, child and youth-led groups, trade unions, employer's organizations, national non-governmental organizations, international non-governmental organizations) and the major activities engaged in (including advocacy, awareness raising, research, prevention, rehabilitation and treatment of children harmed by violence, provision of services, provision of resources).

Violence against children is addressed by different institutions in different ways and intensity in Austria. Above all, women's associations but also child and youth-led groups and religious or church-affiliated groups are active in advocacy, awareness raising, research, prevention, rehabilitation and treatment of children harmed by violence, provision of services. See also answer to question 28.

Austrian civil society has been invited to actively participate in the comprehensive process of elaborating the National Action Plan for the implementation of the Convention on the Rights of the Child, including the Optional Protocol.² This process started in 2003 and brought together some 100 experts from governmental and non-governmental organisations. This on-going process is intended as a dynamic forum for the continuous improvement of the implementation of the CRC. In addition to the experts meeting a wide range of children participation projects have been carried out. Internet fora for discussion and information have been created. A database documenting the measures related to child rights undertaken by ministries was set up. See for civil society campaigns regarding children's rights www.kinderhabenrechte.at.

36. Describe the support provided by your Government for these activities and the efforts made to coordinate civil society and government initiatives.

The Federal Ministry of Social Security, Generations and Consumer Protection operates a fund for the "Platform Against Violence in the Family" which is a nationwide network of more than 30 institutions working in the field in many different aspects as mentioned above in question 35.

37. Describe the role played by the media in addressing violence against children.

The Federal Ministry of Social Security, Generations and Consumer Protection commissioned a survey on the subject which was published in the report *Gewalt in der Familie. Gewaltbericht 2001. Von der Enttabuisierung zur Professionalisierung*, Federal Ministry of Social Security, Generations and Consumer Protection (BMSG), Wien 2001 –

² See <http://www.yap.at>; <http://www.kinderhabenrechte.at>

available in German at <http://www.bmsg.gv.at/cms/site/detail.htm?channel=CH0098&doc=CMS1056453530966>. The outcome of the survey can be summarised as follows: the media's interest as regards violence against children, in particular sexual violence, is increasing. However media coverage centers on a particular case while not touching on the causes and backgrounds of the issue. The reports focus on the perpetrators by repeating stereotypes. Violence is mainly seen as an individual problem rather than a societal problem which concerns the entire society.

IV. CHILDREN AS ACTORS IN ADDRESSING VIOLENCE

This section is designed to extract information on children's activities to address violence.

38. Provide information on the involvement and consultation of children in designing activities, and in implementation and monitoring of programmes and policies to address violence against them. Provide details, including ages and other details of the children involved.

See above response to question 35 for the wide range of children participation projects carried out in the course of the elaboration of the Young Rights Action Plan, the national action plan for the implementation of the CHR. For the activities bringing together 25.000 child voices see http://www.yap.at/yapwai/aktionsplan/kinder_und_jugendbeteiligung.asp, For the report (in German) on the results of surveys/field interviews among children see http://www.yap.at/upload/yap_content/Berichtkompl_GUID0DA052D01D7C4626A230065333256A08.pdf.

39. Describe the involvement, if any, of children in designing special procedural or evidentiary rules applying in court proceedings with respect to hearings concerning violence against children. Provide details including ages and other details of the children involved.

No information available.

40. Describe the amount and type of resources made available to support children's participation in activities to address violence against children.

No information available.

V. POLICIES AND PROGRAMMES TO ADDRESS VIOLENCE AGAINST CHILDREN

41. Does your Government have a comprehensive policy concerning violence against children? If YES, provide details and describe any gender-specific provisions included in the policy.

Please refer to Austria's 2nd report under the Convention on the Rights of the Child, June 2002, pp. 9, paras. 38-40; paras. 308-325; see also generally chapter 12, Special Protective Measures: Children in Exploitative Relationships.

For gender-related aspects see Austria's comprehensive policy on domestic violence and other forms of violence e.g. also in the Response of the Austrian Federal Ministry of Health and Women's Issues, Reference Period June 1999 to December 2003, to the Questionnaire to Governments on the Implementation of the Beijing Platform for Action (1995) and the Outcome of the Twenty-Third Special Session of the General Assembly (2000), July 2004. Reference should also be made to the fifth and sixth CEDAW reports.

42. Does your Government deliver, or provide direct support for delivery by other agencies, of specific programmes aimed at preventing and responding to violence against children? If YES, please provide available summary reports, or URLs, of these programmes, and indicate, using the table below, which settings and types of violence are addressed by these programmes:

Yes, see questions 22 and 28 above.

43. Does your Government monitor the impact of these policies and programmes directed towards violence against children? If YES, describe the monitoring systems and provide a URL or other reference where the system and outcomes are described in greater details.

See answers to questions 12 and 37. A working group on violence against children of the Advisory Council on Prevention works on improving the co-ordination of all actors in the field.

44. Does your Government participate in any internationally coordinated activities concerning violence against children? If YES, please provide details.

Austria is actively involved in nearly all activities taking place on the international and regional level, such as the European Union or the Council of Europe. Children in armed conflict in particular is one of the key issues of Austria's international human rights policy. See also e.g. Austria's 1st Report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, paras. 50-54 and 65-68.

VI. DATA COLLECTION, ANALYSIS AND RESEARCH

45. Over the past five years, has there been any victimization, epidemiological or other population-based surveys of any forms of violence against children in your country? If YES, provide details or references, or attach.

The following publication was published by the Federal Ministry of Social Security and Generations „Opferschutz durch Rückfallsprävention. Das Wiener Sozialtherapeutische Programm für Sexualtäter, Federal Ministry of Social Security and Generations (BMSG), Vienna 2002 - only available in German. See also answers to questions 12 and 37.

46. Have there been any small-scale or representative interview studies with parents and children on violent victimisation of children?

No information available.

47. Over the past five years, has your Government conducted or commissioned any scientific research projects on the problem of violence against children? If YES, indicate the subject of this research and where the findings of these projects may be consulted in more detail.

See answers to questions 12 and 37.

48. Have studies or surveys been undertaken into the impact of legal measures to address violence against children? If YES, provide details or references, or attach.

See answers to questions 12 and 37.

49. Does your Government have a system for formal inquiries into all child deaths in which it is known or suspected that violence may have played any part? Provide details.

50. Are regular (e.g. annual) reports published describing the statistical profile of the known or suspected violent deaths investigated by the system? If YES, what proportion of all homicide deaths are under the age 18?

The proportion of all homicide deaths under the age 18 stood at 5,1 % in 2003.

51. If reports on the national profile of known and suspected violent deaths are published by your Government, indicate how the data is broken down for the purpose of reporting (check all that apply):

Sex	
Age	
Ethnicity	
Manner of death (homicide, suicide, undetermined)	
External causes of death (firearm, strangulation, etc.)	
Geographical location of incident (address)	
Scene of occurrence (home, school, etc.)	
Time and date of incident	
Victim-perpetrator relationship	
Other:	

No information available.

52. Provide the total number of reported cases of violence against children in 2000, 2001, 2002 and 2003.

Year	Cases
2003	9.481
2002	7.999
2001	11.859

53. Provide the total number of convictions and reported cases for the various categories of crimes of violence recorded against children in 2000, 2001, 2002 and 2003.

Convictions for sections 92, 206 and 207 of the Austrian Penal Code			
Year	Sec. 92	Sec. 206	Sec. 207
2000	23	103	121
2001	18	60	112
2002	25	90	99

The statistics for 2003 were not available at the time of writing.

VII. AWARENESS, ADVOCACY AND TRAINING

54. Over the last five years has your Government conducted or commissioned any campaigns for raising awareness of and preventing violence against children?

If YES, please describe any recent campaigns, including the settings and types of violence that were the subjects of the campaigns and the target audience (general public, caregivers, teachers, etc.).

See response to question 22.

Please refer to Austria's 2nd report under the Convention on the Rights of the Child, June 2002, para. 726-740. Several campaigns were conducted by the Ministry of the Interior on sexual abuse (1995-1997) and on domestic violence. See Austria's Fifth and Sixth CEDAW Reports, comments made under Article 5.

55. How were the campaign messages and information disseminated (check all that apply)?

Print media	X
Radio	
Television	
Theatre	
Schools	X
Others	X

56. Over the last five years, has your Government provided, commissioned or sponsored training programmes in the area of violence against children?

	Prevention	Protection	Redress	Rehabilitation	Penalties
Medical Professionals (including paediatricians, nurses, psychiatrists and dentists)		x		x	
Public health practitioners					
Social workers and Psychologists	X	x		x	
Teachers and other educators	X	X			
Court officials (including judges)?		X			x
Police	X	X			
Prison officers					
Juvenile offenders personnel Institution personnel Parents/guardians ?					
workers in the intervention centres for the protection against domestic violence	x	x	x	x	x

Psycho-social and legal court accompaniment

In the course of the implementation of psycho-social and legal court accompaniment services in Austria, a project was undertaken aiming at training staff to render such support and accompaniment services in order to ensure a professional level and to secure quality standards. Secondly, the project was designed to initiate and support co-operations among the various providers of services to victims of sexual abuse. Its specific purpose was to establish a "co-operative forum for court accompaniment" and interdisciplinary "roundtables" in the nine *Länder* of Austria.

Police

In Austria police officers are trained on how to deal with victims (ethnic minorities, children, sexually abused children and women), as part of their basic training. The matter is dealt with in seminars and in a psychology course.

Police staff are trained to deal with victims in a sympathetic, constructive and reassuring manner. Police officers receive training on how to deal with victims during the basic training, also during seminars, in a psychology course and a seminar about domestic violence. Seminars are also part of the follow-up training.

- increase the victims' (and the victims' children) safety
- respect the right of the adult victim to direct her own life and make her own decisions
- hold the perpetrator, not the victim, responsible for the violent and abusive behaviour and for stopping this behaviour