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**Promotion et protection de tous les droits de l'homme, civils, politiques, économiques, sociaux et culturels, y compris le droit au développement**

## **Rapport de l'Experte indépendante dans le domaine des droits culturels, Farida Shaheed**

### **Additif**

### **Mission en Autriche (5-15 avril 2011)\***

#### *Résumé*

Dans le présent rapport, l'Experte indépendante dans le domaine des droits culturels présente les principales conclusions de la mission officielle qu'elle a effectuée en Autriche du 5 au 15 avril 2011, à l'invitation du Gouvernement. Sa visite visait principalement à examiner certains aspects de la promotion et de la protection des droits culturels en Autriche, en particulier le droit de chacun de participer à la vie culturelle, d'apprendre à connaître sa propre culture et la culture des autres, d'y contribuer et d'en jouir, y compris le droit d'utiliser sa langue maternelle et de pratiquer son propre culte. L'Experte indépendante a également examiné les mesures prises pour promouvoir la diversité culturelle et encourager la compréhension interculturelle, ainsi que pour garantir l'accès au patrimoine culturel et aux bénéfices qui en découlent.

Le rapport examine le cadre normatif et institutionnel en place afin de promouvoir les droits culturels et la diversité culturelle, ainsi que les difficultés rencontrées et les succès obtenus dans la réalisation de ces droits. Il s'achève sur des recommandations visant à renforcer la promotion et la protection des droits culturels pour tous en Autriche.

\* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport proprement dit est joint en annexe au résumé et il est distribué dans la langue originale seulement.

## Annexe

### Report of the Independent Expert in the field of cultural rights, Ms. Farida Shaheed, on her mission to Austria

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## **I. Introduction**

1. The Independent Expert in the field of cultural rights, Farida Shaheed, visited Austria from 5 to 15 April 2011, at the invitation of the Government. The mission was the first official visit to Austria by an expert appointed by the Human Rights Council. The Independent Expert's visit included Vienna, Burgenland, Carinthia and Styria.

2. During her mission, the Independent Expert met with senior officials at the federal, federal provinces (Landers) and municipal levels dealing with all aspects of cultural rights as well as in the areas of education, population statistics, women's issues, minority issues, the media, internal and foreign affairs. She also engaged with public institutions working in the field of culture and media, equality and redress. She met UNESCO Austria and interacted with academics, civil society organizations, representatives of minority associations and religious groups.

3. The expert visited a number of community projects and public-private partnership initiatives that facilitate people's access to and ability to contribute to cultural life and that promote cultural diversity in Vienna, Graz, Eisenstadt and Klagenfurt. She was able to see multilingual educational institutions and projects of minority associations that promote the use of minority languages and safeguard cultural traditions as living heritage.

4. In the course of the visit, the Independent Expert assessed the realization of the cultural rights of all persons in Austria and the measures adopted by the Government to promote cultural diversity and to foster intercultural as well as inter-religious dialogue. She studied the relevant normative and institutional framework, and looked particularly at the achievements and challenges in the realization of cultural rights of national, ethnic, religious and linguistic minorities, migrants, as well as persons with disabilities and those living in relative poverty.

5. The Independent Expert thanks the Government of Austria for the opportunity to examine the situation of cultural rights in the country. She extends her thanks to all stakeholders and interlocutors for their time, information and insights.

6. In the present report, the Independent Expert presents her observations and recommendations in the spirit of fostering further cooperation and with a view to contributing to the efforts to strengthen cultural rights in Austria.

## **II. General background**

### **A. The federal administrative framework**

7. Austria is a federal republic comprised of nine independent Federal Provinces: Burgenland, Carinthia, Lower Austria, Upper Austria, Salzburg, Styria, Tyrol, Vorarlberg and Vienna. These administrative districts, called "Länder" in German, have some autonomy, including constitutional authority to enact certain legislation and take administrative decisions. Nevertheless, most public affairs fall under the competence of the federal authority: Länder do not have a stand-alone judiciary, have comparatively few actual legislative powers and rely for most of their budget on the federal government.

## B. Ethnic, linguistic and religious diversity

8. Austria is a culturally diverse society enriched by communities from various ethnic, linguistic and religious backgrounds. According to the 2011 register-based census, the total population in Austria exceeded 8.4 million inhabitants.<sup>1</sup> In 2009, 1,468 million people residing in Austria had a migrant background, 385,500 being second-generation migrants and 1,082 million first-generation migrants.<sup>2</sup> Currently, the number of foreign nationals living in Austria is 957,000, approximately 11 per cent of the population.<sup>3</sup> Nationals from all countries of former Yugoslavia represent the largest group of immigrants, followed by those from Germany and Turkey.<sup>4</sup> Other foreign nationals include people from other States in Europe, as well as Africa, Asia and America. Austria is also home to 13 different religious communities.

9. Six national minorities, called “ethnic groups” in national laws, are officially recognized in Austria: Hungarians, Croats, Slovenes, Czechs, Roma and Sinti, and Slovaks. Other minorities, such as the Jenische and the Poles, are not recognized as national minorities.

10. A decade ago, the 2001 census enumerated 25,884 Austrian citizens using Hungarian as their colloquial language concentrated in Burgenland and Vienna; 19,374 Burgenland Croatian-speaking citizens; 17,953 Slovene-speaking citizens mainly in Carinthia and Styria; 11,035-Czech speaking citizens mostly living in Vienna and Lower Austria; 4,348 Romanes-speaking citizens mostly in the eastern part of the country, particularly Burgenland, Vienna and Lower Austria; and 3,343 Slovak-speaking citizens in the eastern regions of Austria.<sup>5</sup> Members of national minorities have been migrating in large numbers to other regions of Austria, mainly to the city of Vienna. Today, the capital city is home to Croats, Roma, Slovaks, Czechs, and Hungarians as well as a vast number of migrants. The current number of people belonging to ethnic minorities is unknown since the 2011 census did not include information on ethnic background or language.

11. The Austrian legal framework on ethnic minorities grants particular rights to officially recognized national minorities residing in their historical settlements in the Länder. In particular, any community with a sufficient number of residents belonging to a national minority is required to provide for bilingual topographic signs, education and for the use of minority language(s) in official dealings. Recognized national minorities also benefit from earmarked federal funds to safeguard and promote their cultures. These rights are not afforded to members of these communities who opt to live outside the specified Länder settlements.

12. In line with the multi-ethnic and multicultural background that forms Austrian society, the Government has put into place a number of initiatives and regulations to promote cultural diversity and intercultural dialogue, as well as to facilitate access to culture for all, including minorities, migrants and persons with disabilities. However, a number of obstacles hinder the full realization of cultural rights in the country, particularly the fragmentation of policies and regulations, a relatively narrow perspective on preserving

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<sup>1</sup> On 31 October 2011 the first register-based census was conducted in Austria. Its final results will be published in June 2013; [http://www.statistik.at/web\\_de/presse/059977](http://www.statistik.at/web_de/presse/059977).

<sup>2</sup> Migration and Integration: Facts, figures, indicators, ed. Statistik Austria et al. (2010), p. 1.

<sup>3</sup> [http://www.statistik.at/web\\_en/dynamic/press/059990](http://www.statistik.at/web_en/dynamic/press/059990)

<sup>4</sup> Austria: Data, figures, facts; ed. Statistik Austria (Vienna, 2010), p. 21.

<sup>5</sup> Austria: Data, figures, facts; ed. Statistik Austria (Vienna, 2010), p. 17. The census only gives an approximate idea of the sizes of the resident ethnic groups in Austria. People were asked which colloquial language they spoke rather than to what ethnic group they belonged. Austria: Data, figures, facts; ed. Statistik Austria (Vienna, 2010), p.16f.

cultural communities, an assimilationist approach to inclusion, and the insufficient implementation of rights of minorities and disadvantaged groups.

### III. Normative and institutional framework

#### A. The legal framework for the protection of human rights

13. In its 2010 report submitted under the universal periodic review, Austria indicated that human rights are enshrined in its 1867 Basic Law on the General Rights of Nationals, which provides for a number of important guarantees of fundamental rights, such as the principle of equality, and freedoms of belief and conscience, opinion, and assembly, as well as academic and artistic freedom, and the right to property.<sup>6</sup> It also indicated that the European Convention for the Protection of Human Rights and Fundamental Freedoms, which it adopted in 1958, was granted constitutional status in 1964. The rights laid down in the Convention are thus directly applicable before Austrian courts and administrative authorities.<sup>7</sup>

14. Other constitutional laws incorporating human rights include the Federal Constitutional Law on the Prohibition of all Forms of Racial Discrimination, the Federal Constitutional Law on the Protection of Personal Freedom, and the 1862 Act on the Protection of the Rights of the Home.<sup>8</sup>

15. Austria has ratified most international human rights instruments. It is not a party, however, to the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families, or the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, *inter alia*.

16. Austria has ratified most of the Council of Europe treaties on human rights and culture. However, it is not yet party to, *inter alia*, Protocol No. 12 of the European Convention on Human Rights (which includes a general prohibition on discrimination), the Framework Convention on the Value of Cultural Heritage for Society (Faro Convention), the Convention on the Participation of Foreigners in Public Life at Local Level, and the European Convention on the Legal Status of Migrant Workers.

17. Economic, social and cultural rights are not provided for in the Federal Constitution and the International Covenant on Economic, Social and Cultural Rights is not directly applicable, despite numerous recommendations by international bodies.<sup>9</sup> The incorporation of economic, social and cultural rights into the Federal Constitution is currently being debated.<sup>10</sup> In addition, the Constitution does not recognize other human rights, such as the rights of the child, the right to asylum, or a general prohibition against discrimination.<sup>11</sup>

18. With regard to discrimination, Austria has adopted a number of laws associated with different procedures and institutions. The 1979 Equal Treatment Act was revised in 2004 and prohibits discrimination in working life on the basis of ethnic origin, religion, age, gender and sexual orientation. It also proscribes discrimination on the basis of ethnic origin in the fields of social protection and benefits, education, and access to public goods and

<sup>6</sup> A/HRC/WG.6/10/AUT/1, para. 6.

<sup>7</sup> A/HRC/WG.6/10/AUT/1, para. 7.

<sup>8</sup> A/HRC/WG.6/10/AUT/1, para. 8.

<sup>9</sup> E/C.12/AUT/CO/3, paras. 8 and 20.

<sup>10</sup> E/C.12/AUT/CO/3, para. 8.

<sup>11</sup> Initiative Human Rights. Now.; Compilation of fact sheets, Universal Periodic Review Austria, Fact Sheet 2.

services including housing. However, the Act does not apply to the provisions and conditions governing the entry of third-country nationals or stateless persons or their residence or to any treatment resulting from the legal status of third-country nationals or stateless persons. In 2006, Austria adopted the Equal Treatment for Persons with Disabilities Act, prohibiting direct and indirect discrimination against persons with disabilities. Although a number of relevant regulations have been adopted, the fragmented legal framework on non-discrimination does not provide a coherent and comprehensive basis for combating discrimination in Austria, as observed by the Committee on the Elimination of Racial Discrimination in 2008.<sup>12</sup>

19. The Independent Expert subscribes to this view. She also notes with concern the lack of consideration of human rights as a cross-cutting issue in Austria's legislation and the lack of a comprehensive human rights catalogue.

## **B. The national legal framework protecting the rights of minorities**

20. The 1867 Basic Law on the General Rights of Nationals, adopted in the context of the Austro-Hungarian Compromise, provided for dual sovereignty: the Austrian Empire and the Kingdom of Hungary. The Austro-Hungarian Empire ruled over various Slavic groups including Croats, Czechs, Poles, Rusyns, Serbs, Slovaks, Slovenes and Ukrainians, as well as large Italian and Romanian communities. Article 19 of the Basic Law establishes that all ethnic entities of the empire shall enjoy equal rights and have an inviolable right to the preservation of their nationality and language. It stipulates the "equal rights of all existing languages in schools, administration and public life", and stresses that in countries populated by more than one ethnic entity, members of each ethnic entity should have adequate opportunity to receive education in their own language. Last amended in 1988, the Basic Law has constitutional status.

21. The Republic of Austria emerged in 1918 with the Treaty of St. Germain. The State Treaty of Saint Germain ensures equal treatment and security *de jure* and *de facto* to members of racial, religious or linguistic minorities. It sets out the obligation to ensure the use of minority languages before the courts and to provide primary school instruction in minority languages in districts with a sizeable population belonging to a racial, religious or linguistic minority. Moreover, it guarantees an equitable share of public funds to be granted to these minorities for educational, religious and charitable purposes.<sup>13</sup>

22. The Austrian Constitution, first enacted in 1920, is an extensive collection of legal provisions which, over the years, have attained constitutional status. The 2000 amendment of the Federal Constitutional Law enshrines the commitment of Austria to protect the rights of minorities in a new Article 8. Through article 8, the Republic subscribes to its linguistic and cultural multiplicity reflected in its indigenous ethnic groups, and guarantees to respect and preserve their existence, language and culture. The article introduces the term "autochthonous" into legal texts for the first time.

23. The 1955 State Treaty of Vienna recognizes the right of Austrian citizens in Carinthia, Burgenland and Styria, as members of the Slovenian and Croatian minorities, to use their own languages in schools, administrative and judicial procedures, and topographical signs.<sup>14</sup>

24. The 1976 Law on Ethnic Groups, enabling the implementation of the State Treaty, defines ethnic groups as "such groups of Austrian citizens living in parts of the Federal

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<sup>12</sup> CERD/C/AUT/CO/17, para. 12.

<sup>13</sup> State Treaty of St. German, 1920, arts. 66-68.

<sup>14</sup> Austrian State Treaty, 1955, art. 7.

territory and having a language other than German as mother tongue and having traditions of their own".<sup>15</sup> To ensure their recognition, the Act stipulates taking into account "the number of members of the ethnic group, the areas of the territory they live in, the ratio of their number as compared with other citizens of Austria in a particular area as well as their particular needs and interests",<sup>16</sup> and considering "the results of data collected by official statistics"<sup>17</sup> for this purpose. The act regulates the use of topographic names in bilingual areas and the use of the minority language in official interactions with public institutions.<sup>18</sup> It restricts the right to bilingual signs and place names to areas where the ethnic minority makes up at least 25 per cent of the population. The Act provides for the establishment of ethnic group advisory boards to advise the Federal Government and Ministers on matters regarding their particular community, and stipulates the provision of financial support to ethnic groups for activities and projects aimed at preserving their cultural communities.<sup>19</sup>

25. There is a debate among legal scholars on whether article 19 of the 1867 Basic Law on the General Rights of Nationals has been derogated by the more recent and more restrictive provisions of the 1920 State Treaty of St. Germain and the 1955 State Treaty of Vienna, thus disputing its applicability to minorities living in contemporary Austria. The matter has not been resolved yet; however the doctrine supports applicability. A 2000 government proposal to abolish article 19 was vehemently opposed by the minorities, and eventually withdrawn.

26. The Independent Expert welcomes the legislative framework adopted in Austria to safeguard the cultural rights of ethnic minorities and to ensure the use of their languages in schools, topographic signs, and administrative or judicial procedures. She is concerned, however, that most of these rights are only guaranteed to the minority population as long as they reside in the historical settlement areas. These rights are not guaranteed outside these settlements. Consequently, there is a differentiated treatment of members of the same minority depending on their physical location. Moreover, the prevalent demographic tendencies of urbanization and rural depopulation mean that an increasing number of persons from recognized minorities are losing these cultural rights. In this regard, the Independent Expert is concerned about statistical data collection, the results of which are to be considered for granting rights (see below).

### **Statistical data collection**

27. Statistical information related to minority communities is a matter of concern. The 2001 Population Census was the last "traditional" census using enumerators and questionnaires in a survey to collect empirical data. As of 2011, the population census is carried out using existing statistical registers, administrative registers and databases to obtain most of the information typically surveyed in traditional censuses.<sup>20</sup> This marks a turning point in the methodology used to collect statistical information on population, in which the desired information is not collected from citizens and residents, but extracted from pre-existing administrative registers that typically collate information for other purposes.

28. According to the authorities, the rationale underpinning this change is that register-based censuses are substantially less expensive, use information already available in registers, enable faster results, and thus can be conducted more frequently. In addition,

<sup>15</sup> Sect. 1, art. 1(2).

<sup>16</sup> Sect. 1, art. 2. (2)

<sup>17</sup> Ibid.

<sup>18</sup> Sects. IV and V.

<sup>19</sup> Sects. II and III.

<sup>20</sup> As decided on the Register-based Census Act of 16th March 2006.

register censuses are meant to provide better data protection compared to a conventional census where personnel conducting the interviews often live in the same municipality as the respondent, and may therefore know them personally, undermining anonymity.<sup>21</sup>

29. Led by Statistik Austria, the new register census does not collect information on ethnic background and colloquial language, or on religion.<sup>22</sup> According to the authorities, there is insufficient register information on these topics to merit their inclusion.<sup>23</sup> Authorities also suggest that excluding ethnic background, colloquial languages and religion would avoid stigmatizing members of minority groups.

30. Members of national minorities have stated that in the past many people avoided answering questions on ethnic background and quantification of minorities in national statistics for several reasons, including historical trauma and personal fears, a reported lack of anonymity in the data collection process, and the biased or misleading manner in which questions pertaining to linguistic affiliation had been formulated.<sup>24</sup> Nevertheless, most academics and civil society organizations, including representatives of virtually all minorities, believe that it is important to document such information.

31. The Independent Expert appreciates the sensitivity of the issue. However, she is concerned that the lack of updated and reliable information on the number of people pertaining to minority groups may misrepresent their weight in Austrian society and, even more problematically, affect the rights to which they are entitled. The elimination of a comprehensive survey impedes adequate statistical assessment of cultural diversity in terms of linguistic and ethnic minorities, religious communities and migrant backgrounds of Austrian nationals. The absence of this information will impede effective planning to protect cultural rights and promote diversity in Austrian society. Moreover, this precludes any new group from being recognized as an autochthonous community, effectively blocking the possibility of providing other minority groups with the entitlements now afforded to recognized indigenous groups. It also does not seem to be in keeping with the spirit of the Constitution's new Article 8.

32. The Independent Expert shares the view of the Committee on the Elimination of Racial Discrimination, which, in 2008, recommended that Austria "conduct censuses and collect data, including on the basis of the use of mother tongues, languages commonly spoken or other indicators of ethnic diversity, together with any information derived from targeted social surveys conducted on a voluntary basis, with full respect for the privacy and anonymity of the individuals concerned, in order to obtain accurate information on all ethnic groups living in the territory of the State party."<sup>25</sup>

33. She concurs with the concern of the Advisory Committee on the Framework Convention for the Protection of National Minorities regarding the shortage of reliable data on the socio-economic and educational situation of persons belonging to national minorities in Austria. The Committee recalled that "data collection on the situation of minorities is crucial to the development of adequate anti-discrimination policies and of specific policies to improve equal opportunities for persons belonging to national minorities".<sup>26</sup> The

<sup>21</sup> [http://www.statistik.at/web\\_de/frageboegen/registerzaehlung/index.html](http://www.statistik.at/web_de/frageboegen/registerzaehlung/index.html).

<sup>22</sup> Information on religion and colloquial language may only be collected if a specific regulation is issued by the relevant Federal Ministry.

<sup>23</sup> [http://www.statistik.at/web\\_en/statistics/population/population\\_censuses/index.html](http://www.statistik.at/web_en/statistics/population/population_censuses/index.html).

<sup>24</sup> See Dr. Matjaž and Dr. Vladimir Klemenčič, *Prizadevanja koroških Slovencev za narodnostni obstoj po drugi svetovni vojni*, (Klagenfurt/Celovec, Hermagoras Verlag/Mohorjeva založba, January 2007)..

<sup>25</sup> CERD/C/AUT/CO/17, para. 9.

<sup>26</sup> ACFC/OP/II(2007)005, para. 15.

Advisory Committee reiterated this view in its Third Opinion on Austria, issued in December 2011.<sup>27</sup>

34. The Independent Expert also echoes the opinion of the Committee on the Elimination of Racial Discrimination, which expressed its concern about the “distinction [made] between autochthonous minorities and other minority groups” as well as about “the application of a different treatment to individuals belonging to ‘autochthonous national minorities’ residing in the so-called ‘historical settlement areas (...) and individuals who do not reside in those settlements areas.’”<sup>28</sup> She reiterates the 2011 Third Opinion on Austria of the Advisory Committee on the Framework Convention for the Protection of National Minorities urging the Government to ensure a more consistent and inclusive application of minority rights in Austria, including through comprehensive amendments to the Law on Ethnic Groups and relevant constitutional provisions.<sup>29</sup>

### C. Institutions of redress and relief

35. A number of bodies have been established in Austria for the protection and promotion of human rights.

36. The Austrian Ombudsman Board is an independent institution with constitutional status mandated to monitor Austria’s public administration, check the legality of decisions made therein, and examine allegations of malpractice by public authorities. It is also mandated to mediate between individuals and public authorities and to refer laws and ordinances for review to the Constitutional Court. The board consists of three members appointed by the parliament who report back to it.<sup>30</sup>

37. The Human Rights Advisory Board, established in 1999, is mandated to visit places where people are detained by law enforcement officers and to monitor the use of force by authority. Additionally, it advises the Ministry of the Interior on human rights matters. The direct monitoring functions of the board are delegated to six regional commissions. The Advisory Board is attached to the Federal Ministry of the Interior and its 11 members, some of whom are members of civil society, are appointed by the Minister of the Interior.<sup>31</sup> Although operational autonomy is purportedly guaranteed by a constitutional provision in the Security Police Act, the placement of the Board within the Ministry of the Interior raises concerns. The independence of this body from government authorities could be further guaranteed by locating it outside of the Ministry, under parliamentary oversight.

38. The Equal Treatment Commission was established in 1979 to deal with gender-based discrimination in employment. Its mandate was expanded in 2004 to monitor issues relating to discrimination under the amended Equal Treatment Act. The Commission deals with both general questions and individual cases of discrimination. If it finds discrimination, it recommends actions to combat it. The Commission’s rulings are not binding, however. The Commission’s three Senates deal with equal treatment in employment irrespective of gender; equal treatment in employment irrespective of ethnic origin, religion, belief, age or sexual orientation; and equal treatment irrespective of ethnic origin in other areas.<sup>32</sup> Discrimination against non-nationals falls outside the Commission’s remit.

<sup>27</sup> ACFC/OP/III(2011)005, para. 11.

<sup>28</sup> CERD/C/AUT/CO/17, para. 10.

<sup>29</sup> ACFC/OP/III (2011)005, paras. 10 and 27.

<sup>30</sup> Council of Europe, CommDH (2007) 26, p. 7.

<sup>31</sup> *Ibid.*, and A/HRC/W.G.6/10/AUT/1 and Corr.1, para. 22.

<sup>32</sup> <http://bka.gv.at/site/6814/default.aspx>.

39. In 2005, Austria established three bodies to assist the Commission: the Ombud for Equal Treatment in employment irrespective of gender, the Ombud for Equal Treatment in employment irrespective of ethnicity, religion or belief, age or sexual orientation in employment, and the Ombud for Equal Treatment irrespective of ethnicity and gender in other areas. The Ombud for Equal Treatment provides legal support to the victims of discrimination and brings cases to the Equal Treatment Commission, which is the decision-making body. The Ombud for Equal Treatment has no competence to participate in Court proceedings as a third party and has limited human and financial resources.<sup>33</sup>

40. Other relevant institutions are the Ombudsperson offices for persons with disabilities, and for children and youth. Similarly, many federal provinces and municipalities have established their own ombudsperson institutions on these issues. Additionally, a number of academic institutes carry out substantive work on human rights issues.<sup>34</sup>

41. While the commissions and ombudsperson offices function well, Austria does not yet have a comprehensive institutional and legislative framework for the protection and promotion of human rights. No national human rights institution in Austria meets the requirements of the Principles Relating to the Status of National Institutions (the Paris Principles). In 2000 and 2011, the Austrian Ombudsman Board was accredited B status (not fully in compliance with Paris Principles) by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.<sup>35</sup> Various international bodies have urged Austria to establish a national human rights institution within the meaning of the Paris Principles. The creation of an independent human rights institution, separate from the executive and possessing a comprehensive and clearly defined mandate to monitor human rights across the country and receive complaints, should be a priority of the Austrian Government.

42. Austria has not yet adopted a national human rights action plan, nor is there evidence of a human rights-based approach to policymaking. A number of measures are routinely adopted in the area of human rights, but public policies are scattered and uncoordinated. The adoption of a comprehensive and coherent policy framework in the area of human rights should be a priority of the Austrian Government. The lack of a national human rights institution and action plan combined with the insufficient domestication of international human rights obligations, particularly in the field of economic, social and cultural rights, and the highly restricted possibilities for collective action before courts, weakens the protection of rights.

## **IV. Cultural rights for all in Austria**

### **A. The right to access, participate in and contribute to cultural life**

43. The Independent Expert welcomes a number of positive initiatives and good practices adopted in Austria to ensure the right to access, to participate in and contribute to cultural life by all persons, including those belonging to marginalized groups. Interesting measures adopted by the Federal and Lander governments to increase access to culture, include: (a) measures to increase access for youth, such as free access to all Federal Museums for young people up to the age of 19; (b) measures to facilitate access to culture for persons with disabilities; and (c) schemes enabling people with low incomes to

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<sup>33</sup> See: CERD/C/AUT/CO/17, para. 13.

<sup>34</sup> CommDH (2007) 26, p. 8.

<sup>35</sup> [http://www.ohchr.org/Documents/Countries/NHRI/Chart\\_Status\\_NIs.pdf](http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf).

participate in cultural life and cultural activities, such as the Kulturpass initiative that offers people living in precarious financial circumstances the opportunity to enjoy art and culture free of charge. The Government also supports numerous private initiatives aimed at promoting intercultural exchanges among members of different communities, such as the excellent Brunnenpassage initiative in Vienna, where people from different nationalities, ages and socio-cultural backgrounds participate together in community arts projects. The initiative fosters mutual understanding and learning from each other. Accessibility is ensured to all, with free-of-charge participation and a team that speaks nine languages.

44. The Independent Expert is of the view, however, that effective action to enhance the implementation of cultural rights remains scattered, is poorly known, lacks feedback mechanisms and often receives ad-hoc financial support which impedes longer-term strategic planning. On occasion, decisions by public authorities concerning the funding of these initiatives are considered to lack transparency. An institutional framework would facilitate up-scaling, having a multiplier effect by building on lessons learned.

45. Persons belonging to minorities, in particular the Roma and non-recognized minorities, migrants and socially disadvantaged people continue to face challenges in their access to cultural activities; theatres, opera houses and museums are still mostly frequented by a limited, educated public.<sup>36</sup> Of concern are numerous cases reported of discrimination against persons of African, Latin-American or Roma origin being denied access to public places, such as bars or discotheques. Of the 21,500 migrants from African countries residing in Austria (0.3 per cent of the total population), 54 per cent live in Vienna.<sup>37</sup> Africans in Austria face ongoing obstacles in accessing cultural life, employment and accommodation. In 2010, a positive precedent was set when a civil society organization supported the submission of a formal complaint by a black individual who had been refused entrance to a jazz bar on racist grounds. The night club was ordered to pay a €1,440 Euro fine in compensation to the victim.<sup>38</sup>

46. The Independent Expert notes that members of some minorities often face double discrimination in their access to culture because ethnic and national minorities are often also less secure economically. The expansion of initiatives and the adoption of a more comprehensive and systematic approach to make culture accessible to all would enable targeted policies to better support the cultural rights of all, particularly minorities and disadvantaged groups.

### **Persons with disabilities**

47. The Equal Treatment for Persons with Disabilities Act came into force in Austria in 2006. It prohibits direct and indirect discrimination against persons with disabilities and provides that relatives fall under the protection of the Act. The Federal Constitutional Law recognizes Austrian sign language as an independent language.<sup>39</sup> Following ratification by Austria of the Convention on the Rights of Persons with Disabilities in 2008, the Government amended the Federal Disability Act to create a national monitoring mechanism,<sup>40</sup> and an Ombudsman for people with disabilities with a general advocacy role. (the Equal Treatment Commission does not cover discrimination related to disabilities.) A consultative process is currently under way for the development of a national plan of action on disabilities, bringing together federal ministries and civil society representatives.

<sup>36</sup> How to achieve sustainable interest in culture, Kulturkontakt Magazine, Autumn 2010, p. 30.

<sup>37</sup> See: Schwarze Menschen in Österreich; Lagebericht, Jahresbericht 2009, Hrsg. INOU/ACHALEKE, Clara Akinyosoye.

<sup>38</sup> Ibid.

<sup>39</sup> Federal Constitutional Law, Art. 8 (3).

<sup>40</sup> BGBl. I No. 109/2008.

According to information given by the Government, the Action Plan is expected to be adopted in 2012.

48. Initiatives of the Federal and Länder governments to improve access to cultural life for people with disabilities include funding and support provided for participation in sports; the establishment of barrier-free visitor facilities and infrastructure; subsidies for recreational offers and communications facilities; and measures to improve accessibility of cultural and arts facilities, *inter alia*.<sup>41</sup>

49. However, representatives of associations of persons with disabilities informed the Independent Expert of the limitations experienced in accessing cultural life and education. Obstacles include: the lack of a comprehensive national accessibility policy; insufficient funding and availability of services offered to persons with disabilities; construction-related barriers that prevent persons with disabilities from fully participating in cultural life; deficient inclusion and support for persons with disabilities in the education system or in the field of work; the fact that Austrian Sign Language is not a language of instruction and the lack of requirement for sign language competency for kindergarten and school teachers; insufficient availability of information in alternative means of communication (such as Braille, sign language, and Lorm's alphabet); the lack of cultural opportunities for people with learning disabilities; insufficient measures for the realization of independent living; and the limited use of subtitles in public and private television broadcasting.<sup>42</sup>

50. Those interviewed were also concerned that persons with disabilities continue to be portrayed in the media as needing charity, rather than as fully entitled rights-holders,<sup>43</sup> and emphasized the need for a shift in paradigm from one of exclusion and pity, to one of inclusion, self-determination and entitlement.

## **B. The right to enjoy one's own culture**

### **Recognized national minority groups**

51. The official recognition of ethnic, linguistic and religious diversity in Austria, and the codification of the right to use minority languages in education, topographical signs and administrative or judicial procedures, provides an important base for promoting cultural rights and cultural diversity in Austria. However, the Independent Expert has received numerous reports about the insufficient implementation of these rights.

### **Bilingual topographic signs**

52. The issue of bilingual road signs in Carinthia has been controversial since the 1970s. In response to numerous complaints submitted by members of national minorities, in 2001 the Constitutional Court ruled that the threshold requirement of 25 per cent minority population for bilingual topographic signs in the Law on Ethnic Groups does not conform to article 7, paragraph 3 of the State Treaty of Vienna and is therefore unconstitutional. The Court ruled that it is sufficient for a national minority to constitute more than 10 per cent of the total population in an area over a long period of time, to entitle its inhabitants to display bilingual signs. The Court also expressed its opinion that the results of the population census, and not other parameters, were decisive in this regard.<sup>44</sup> This reinforces the concern

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<sup>41</sup> [http://www2.ohchr.org/SPdocs/CRPD/futuresession/CRPD.C.AUT.1\\_en.doc](http://www2.ohchr.org/SPdocs/CRPD/futuresession/CRPD.C.AUT.1_en.doc), p. 47.

<sup>42</sup> Austrian Association of the Deaf – Individual UPR submission 2011, OEAR, Extract from the alternative report to CRPD 2011, p. 2, and IDA - Joint UPR submission 2011.

<sup>43</sup> Initiative Human Rights. Now; Joint submission for the UPR session 2011, p. 4.

<sup>44</sup> Decision number G213/01, V 62/01 B 2075 /99 13 December 2001.

that the lack of statistical data collection on ethnic background and colloquial language in population censuses may impede fair implementation of this provision.

53. The Independent Expert is concerned that the Constitutional Court ruling on bilingual topographic signs in Carinthia has not been implemented. In April 2011, 10 years after the decision, negotiations between Slovene minority representatives and federal, Länder and local authorities led to the adoption of a compromise concerning bilingual signposts and the use of Slovene as an official language in Carinthia, putting an end to a long-standing dispute. However, the agreed threshold of 17.5 per cent remains far higher than “at least 10 per cent”, as set by the Constitutional Court in its 2001 ruling.<sup>45</sup>

54. Based on the compromise, a new proposal for amendments to the Law on Ethnic Groups has been approved by the Council of Ministers and sent to the parliament for approval. The Independent Expert is concerned that, although the amendment will affect all minorities in Austria, consultations with members of other national minorities, such as Croat and Hungarian minorities have not been held. Since the amendment is expected to be made at the constitutional level, once approved it will bar the possibility for national minorities to challenge its constitutionality before the Constitutional Court,<sup>46</sup> making appropriate consultation particularly important.

### **Bilingual education**

55. During her mission, the Independent Expert visited bilingual schools in areas of historical settlement and in Vienna. She was impressed with the commitment of teachers and principals to provide adequate bilingual education and access to textbooks in minority languages. She observed the beneficial impact that this teaching system has in promoting cultural diversity as an integral part of children’s development, and in terms of their behaviour towards minority cultures and languages. She noted with satisfaction that, due to the inclusion of minority languages in the school curricula, children of national minorities have developed a sense of pride in using their colloquial language.

56. Notwithstanding efforts to comply with the provisions of the Law on Ethnic Groups, bilingual education in schools and kindergartens is actually rare in Austria. Only a few genuinely bilingual kindergarten and primary level schools exist, particularly in Burgenland and Carinthia, but they remain highly dependent on the personal efforts of individual teachers and principals to operate effectively. Minority languages are mostly taught as elective courses, with Hungarian and especially Romani facing considerable challenges. Classes are held only a few hours per week and are not subject to learning standards. Certificates of proficiency are not provided for minority languages, reducing the interest of students in continuing their language studies. Members of the Croat and Hungarian minorities expressed concern about the continued decline in knowledge of their minority languages among the youth.

57. Opportunities for bilingual education for members of national minorities outside Burgenland and Carinthia are limited. In Vienna, some private initiatives exist, including bilingual Slovak and Czech schools, but they lack public funding. Hungarian and Roma people face particular challenges in accessing bilingual education in the capital city, with Hungarian being mostly taught by national minority organizations. Slovene education in Styria remains limited. Some bilingual primary schools opened in other areas, such as Graz, are doing well.

58. The availability of textbooks for and in all minority languages is inadequate, with a particular shortage of material in Romani and related to Roma culture. As pointed out by

<sup>45</sup> See also ACFC/OP/III (2011)005, p. 23 and ACFC/OP/II(2007)005, p. 23.

<sup>46</sup> Ibid.

some of those interviewed, despite the efforts of some universities and pedagogical institutions to offer training in national minority languages, teachers and principals proficient in minority languages are scarce.<sup>47</sup> The Independent Expert, however, commends the efforts made by the Government to codify into a single script the six Romani languages most frequently spoken in Austria and the introduction of instruction of and in Romani thanks to this codification.

59. Roma people face numerous challenges with regards to education, including academic underachievement, high drop-out rates, overrepresentation of Roma children in special remedial classes, and underrepresentation in higher level education. Opportunities for studying Romani are very limited, particularly outside of Burgenland.<sup>48</sup>

### **Official use of minority languages**

60. In 1996, the Constitutional Court ruled that the members of Austrian minorities throughout the country are entitled to have their personal documents (birth certificates, marriage certificates, death certificates) also issued in their mother tongues.<sup>49</sup> In 2000, the Constitutional Court ruled that in conformity with article 7 of the State Treaty of Vienna of 1955, Slovene as an official language had to be allowed in municipalities having a 10 per cent Slovene population over a longer period of time.<sup>50</sup> This last ruling remains unimplemented.

61. The right to use minority languages in official and administrative procedures in the historical settlement areas is facing a number of obstacles that impede effective implementation. Representatives of minority groups reported an insufficient will on the part of civil servants to facilitate the use of minority languages in official proceedings, and the overall lack of proficiency among officials in minority languages. They also complained of a lack of bilingual forms for administrative procedures. When forms are translated and made available in a minority language, these can only be used as an aid for filling out the official German language form. Moreover, proceedings launched in national minority languages are said to be treated with less diligence and take comparatively longer to process.<sup>51</sup> This, interlocutors pointed out, strongly discourages people from pursuing matters in their own language.

### **Funding**

62. The Advisory Councils for the National Minorities advise federal and local authorities on matters concerning their particular community and make recommendations on how to allocate the earmarked funds. Funding for cultural activities of national minorities is disbursed by Federal Ministries and the Länders in areas of historical settlement and in the city of Vienna. Minority representatives expressed frustration at the limited funding received (for example, the funding from the Federal Chancellery has remained the same since 1995), and believe the scattered project-based approach to the support given to minority cultural activities is unhelpful.<sup>52</sup>

### **Media**

63. The Austrian Broadcasting Corporation (ORF) is mandated to broadcast commensurate proportions of radio and television programmes in national minority

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<sup>47</sup> See also ACFC/OP/III(2011)005, pp. 25-27 and ACFC/OP/II(2007)005, pp. 25-31.

<sup>48</sup> Ibid.

<sup>49</sup> Decision VfSlg 14.425, 5 March 1996.

<sup>50</sup> Decision number V91/99, 4 October 2000.

<sup>51</sup> See also: ACFC/OP/III(2011)005, p. 21.

<sup>52</sup> See also: ACFC/OP/III (2011)005, paras. 43- 48.

languages. ORF has established a medium wave radio service in languages of the recognized national minorities, airing programmes in Croat, Hungarian and Czech. However, the service has a restricted outreach due to the low quality of the broadcasting and the unpopular time slots allocated for these. For the Roma minority, access to media in their own language is exceedingly limited.

64. Members of national minorities expressed concern about the insufficient airtime, inadequate staff representation of minority groups within ORF, difficulties in obtaining private radio broadcasting licences and in cooperating with ORF to develop programmes in minority languages, and the limited airtime for programmes in the minority languages (mostly one hour per week). They are equally concerned about the substantial reduction in the federal funds allocated to national minorities' print media.<sup>53</sup>

### Other minorities

65. Polish families, settled in Austria since the beginning of the 17th century, are not a recognized national minority. Today, most Austrian Poles live in Vienna. In 2011, 59,753 persons of Polish origin, i.e. Polish nationals or Austrian nationals who were born in Poland, lived in Austria. The Polish minority has been seeking recognition for some years as a national minority under the Law on Ethnic Groups as interpreted through the declaration of Austria on the occasion of the Ratification of the European Framework Convention for the Protection of National Minorities.<sup>54</sup> In 2001, the Austrian Government rejected this request, arguing that the Polish community does not have a long-standing and firmly rooted presence in Austria and further that a majority of the Polish community were immigrants and not Austrian citizens. In this regard, the Advisory Committee on the Framework Convention for the Protection of National Minorities has stressed that Austria should "pursue a flexible approach with regard to criteria such as the length of established presence of a group of persons belonging to a national minority in the country to be recognized as an ethnic group and ensure that the resulting approach takes into account existing calls for inclusion of additional groups in the protection of the Framework Convention".<sup>55</sup> The Committee also urged the Austrian authorities to "engage in a constructive dialogue with Polish representatives rather than limiting their consideration of the request for recognition to the analysis of statistics which are frequently incomplete and, therefore, favour a narrow interpretation."<sup>56</sup>

66. The Jenische, a nomadic community mostly residing in south-west Germany, Switzerland, Austria and parts of France, are also not recognized as a national minority despite having lived in Austria for a long period. Information about their total population number is unknown. Throughout her mission, the Independent Expert found it very difficult to collect information about their presence in the country, with some official authorities being unaware of their existence. Due to the lack of information, the Independent Expert cannot draw conclusions on their status and situation in the country. She would like, nonetheless, to urge the relevant authorities to undertake studies to determine the number

<sup>53</sup> See also: ACFC/OP/II (2007) pp. 20-21, and ACFC/OP/III (2011) pp. 19-20.

<sup>54</sup> Austria's declaration states that: "The Republic of Austria declares that, for itself, the term "national minorities" within the meaning of the Framework Convention for the Protection of National Minorities is understood to designate those groups which come within the scope of application of the Law on Ethnic Groups (Volksgruppengesetz, Federal Law Gazette No. 396/1976) and which live and traditionally have had their home in parts of the territory of the Republic of Austria and which are composed of Austrian citizens with non-German mother tongues and with their own ethnic cultures", at: <http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=157&CM=8&DF=21/12/2011&CL=ENG&VL=1>

<sup>55</sup> ACFC/OP/II(2007)005, para. 33.

<sup>56</sup> ACFC/OP/III(2011)005, para. 26.

and situation of the Jenische community living in Austria, and to adopt necessary measures to ensure that their human rights, including the right to enjoy their own culture, to access that of others and to participate in and contribute to the cultural life of Austria are adequately secured.

### **C. The right to profess and practise one's own religion**

67. Thirteen religious communities are legally recognized in Austria: Roman Catholic, Lutheran, Greek Orthodox, Eastern Orthodox, Jewish, Muslim, Mormon, Jehovah's Witnesses, Old Catholic, Armenian Apostolic, Buddhist, New Apostolic, and Methodist.<sup>57</sup> The largest religious community is that of Roman Catholics, followed by Lutherans and Muslims. The Austrian legal framework guarantees freedom of religion and belief, as well as the right of religious communities to receive religious instruction in public schools and for their institutions to act as public entities. It is very difficult for unrecognized religious groups and communities to have their institutions recognized as public entities.

68. The Government of Austria supports and promotes interfaith dialogue. Interesting initiatives in this regard include: the establishment of a Task Force on Dialogue of Cultures in 2007; a network of Jewish, Christian and Muslim theologians; the training of Imams;<sup>58</sup> "Forum.islam", a platform for dialogue with Muslims in Austria; and a number of conferences and workshops around religious and cultural dialogue involving religious leaders and persons seen to be potential "multipliers" of key messages. It should be noted that interfaith initiatives are mostly intended to promote dialogue among religious leaders. By and large these initiatives do not engage the religious communities represented by leaders. Such broader engagement, as some representatives of religious communities pointed out, may be the greater need.

69. The Independent Expert is concerned at numerous reports of discrimination against Muslims in Austria, such as attacks on Muslim cemeteries, insults to Muslim students in schools, refusal to hire Muslim women wearing headscarves, and the prohibition of the construction of mosques and minarets under the auspices of a ban on "unusual architecture". A number of anti-Semitic incidents have also been reported.<sup>59</sup>

## **V. Promotion of cultural diversity**

70. It is encouraging that the Austrian legal and institutional framework recognizes the value of cultural diversity. However, government policies do not always approach diversity as a resource for building an inclusive, pluralistic and open Austrian society. Cultural diversity is too frequently addressed through ad hoc programmes and non-institutionalized practices. While a number of initiatives are in place, there is no coherent framework underpinning these. In some cases, the information concerning the funding of activities is also unavailable.

### **Integration**

71. The Independent Expert welcomes the adoption of a national action plan on integration addressing areas such as education, language, employment, judiciary, social

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<sup>57</sup> [http://www.bmukk.gv.at/ministerium/kultusamt/ges\\_anerk\\_krg.xml](http://www.bmukk.gv.at/ministerium/kultusamt/ges_anerk_krg.xml), numbers (census 2001): Statistik Austria.

<sup>58</sup> A/HRC/WG.6/10/AUT/1, para. 33.

<sup>59</sup> Schulze, Human Rights and Democracy Austria 2006, juridikum online working paper 01/07, pp. 25 and 26.

services, and intercultural dialogue. She finds it encouraging that the plan was adopted in consultation with experts and civil society. However, she insists that the cultural diversity of the country should not be regarded as a problem to be fixed and that integration policies should not be narrowly defined from an assimilationist approach. Promoting cultural rights and diversity requires that communities have access to their own cultures as well as those of others. The protection and promotion of minority cultures should not be compartmentalized, resulting in further isolation and ghettoization. Instead, efforts must be made to encourage cross-cultural exchanges for a pluralistic society in which everyone can contribute equally.

72. In this regard, it is of concern that integration affairs (through the newly created State Secretariat of Integration) have been placed within the Ministry of the Interior, which might suggest that “integration” is a matter of law and order rather than an opportunity to benefit from and to enhance the richness of the country’s diverse cultures and cultural traditions.

73. The Independent Expert acknowledges the important role played by the European Integration and Refugee Funds in assisting and promoting the integration of third-country nationals with residence permits, refugees and asylum seekers. However, she believes that the criteria used for project funding should be substantially enhanced and an independent approval body established to enhance transparency and to eliminate any possibility of a conflict of interest between the institution administering the disbursement of funds and the recipients of such funding, as suggested by those interviewed.

#### **Security forces and public administration**

74. The security forces and other public officials play an essential role in ensuring respect for and the protection of human rights of all persons living in Austria. Current efforts to fight intolerance, racism and xenophobia among public officials include the welcome introduction of human rights training for security forces and the judiciary. Nonetheless, there are reports of discrimination in the criminal justice system and of excessive use of police force against members of minorities or migrants, particularly of Roma or African origin.<sup>60</sup>

75. Furthermore, the fact that few public federal officials, including personnel in prisons and detention centres, speak languages other than German hinders adequate implementation of the rights of the non-German speaking sectors of the population, in particular people with a migrant background.

76. The Independent Expert commends the authorities concerned for actively encouraging persons with migrant backgrounds to join the police in Vienna. The recruitment campaign “Vienna needs you” aimed at diversifying the police force and increasing the percentage of police officers in Vienna with an immigrant background is a positive example. The Independent Expert urges the Government to undertake similar initiatives across the country. Additionally, to ensure genuine equal opportunities for persons from a migrant background, German language courses provided by public institutions should complement existing language examinations.

#### **Education**

77. The Independent Expert welcomes the initiatives adopted by the Government to promote intercultural understanding in schools, such as the “Interkulturelles Zentrum” brochure and the “Multilingualism and Interculturality - an Opportunity” campaign, aimed

<sup>60</sup> See also ACFC/OP/III(2011)005, para. 60.

at providing educational material with teaching examples for intercultural learning, communication and conflict solution.

78. The Austrian education system is complex and fragmented into streams, however. Specialized streams of education can impede the full inclusion of some minorities, migrants or students with disabilities in mainstream cultural life. After kindergarten, pupils are in general sent either to an “ordinary” primary school or to a special school (“Sonderschule”, mostly for those with learning disabilities). After primary school and depending on grades, they are sent either to a general secondary school (four years) or to an academic secondary school (eight years), which after successful completion allows for enrolment at a university or for other tertiary studies. After general secondary school or the first four years at an academic secondary school, students can continue their education at either the higher level of an academic secondary school (four years); or a medium-level vocational school (generally three to four years); or a higher-level vocational school (five years), the successful completion of which also qualifies students for tertiary education; or a vocational training school, which also allows access to university studies, if the student opts for and passes the final examination.<sup>61</sup>

79. According to some of those interviewed, this bifurcation in schooling first following kindergarten and then following primary school indirectly segregates students on the basis of social attributes. Dividing up students at an early age into two school types leads to a fundamental lack of equal opportunities in basic as well as higher education and impedes integration amongst students from different ethnic, national and religious backgrounds.<sup>62</sup>

80. The Turkish migrant community is a case in point. Migration from Turkey to Austria on a significant scale started in the early 1960s, in response to market demands for foreign manpower. After 1973, migration continued mostly in the context of family reunification. Today, about 183,000 persons of Turkish origin, i.e. Turkish nationals and persons with Austrian citizenship born in Turkey, live in Austria. The majority live in Vienna (73,200), followed by Lower Austria (25,200) and Upper Austria (22,900).<sup>63</sup>

81. Members of the Turkish community face structural obstacles that hamper their personal development from an early age. This is particularly the case after primary school when immigrant children with a weaker command of German are most often separated and educated in “special schools” for children with learning difficulties, although this is contrary to legal provisions. Sixty-eight per cent of Turkish migrants have not completed school beyond the compulsory level, and they tend to perform less well in school than their German-speaking counterparts and bilingual students belonging to other linguistic communities. With an unemployment rate of approximately 14 per cent, Turkish immigrants are twice as likely to be unemployed as Austrians, and the community has the highest proportion of individuals at risk of poverty (more than 12 per cent).<sup>64</sup>

82. The Independent Expert received information about the insufficient inclusion of migrants in schools and their ghettoization, as well as about the lack of opportunities for linguistic minorities, including those with hearing impairments, to acquire education in their own languages, thereby affecting their academic performance and future development.

83. A positive development in this regard is the “new middle school” concept introduced as a pilot project in 2008. This establishes “integrated schools” where children are educated together from the age of 10 to 14. After that, they can decide, like all other

<sup>61</sup> [http://www.bmukk.gv.at/medienpool/9043/bw\\_engl.pdf](http://www.bmukk.gv.at/medienpool/9043/bw_engl.pdf)

<sup>62</sup> Initiative Human Rights. Now; Joint submission for the UPR session 2011, factsheet 7.

<sup>63</sup> [http://www.integrationsfonds.at/de/publikationen/oeif\\_dossiers/tuerkische\\_migrant\\_innen\\_in\\_oesterreich\\_zahlen\\_fakten\\_einstellungen/#c8832](http://www.integrationsfonds.at/de/publikationen/oeif_dossiers/tuerkische_migrant_innen_in_oesterreich_zahlen_fakten_einstellungen/#c8832)

<sup>64</sup> Ibid.

students after their first eight years of schooling, whether to move on to upper secondary education or start vocational training. The new middle school concept also aims at integrating disabled pupils.<sup>65</sup>

84. A separate concern conveyed to the Independent Expert is that the history of Austria as a multi-ethnic State is not sufficiently included in school history textbooks, which also do not adequately integrate the history and culture of national minorities.<sup>66</sup> This hinders the ability of students to learn about the autochthonous practices and traditions of national minorities and impedes the inclusion of cultural diversity in the mainstream cultural life of Austria from an early age. The Independent Expert is concerned that history textbooks covering the Holocaust do not include information regarding the deportation of national minorities and the genocide of Roma people during the Nazi regime, virtually erasing their tragic experience from the annals of Austrian history. Guaranteeing cultural rights for all and promoting cultural diversity entails making visible the histories and contributions of all cultural communities to both the general population as well as the communities concerned.

### Media

85. Measures adopted by Austria to combat racism and stereotyping in the media include the incorporation of provisions prohibiting racial incitement in the Federal Act for Austrian Broadcasting. Nevertheless, interlocutors denounced numerous instances of discrimination and stereotyping in the media, including mention of the ethnic origin of alleged perpetrators of crimes from immigrant or minority backgrounds (particularly African or Roma), mainstream media references to “problems with foreigners” or the “threat of Islamization”. This type of media behaviour reinforces stigmatization and intolerance, and contributes to the creation of an atmosphere of hostility and rejection towards minorities and non-citizens in Austria.<sup>67</sup> The independent press council appears to be inactive in addressing the issue of hate speech and discrimination in the media.

86. The Independent Expert is disturbed by some reported instances of hate speech by politicians, targeting members of minorities, migrants, asylum-seekers, refugees and persons of African origin.

## VI. Conclusions and recommendations

87. **The Independent Expert is pleased to note that positive initiatives have been taken in Austria to ensure the realization of cultural rights. This includes measures to increase access to culture by all, in particular youth, persons with disabilities and people with low incomes; support extended to initiatives aimed at promoting intercultural exchanges, cultural diversity and participation in cultural life; and a variety of measures for the protection and promotion of cultural rights of recognized national minorities.**

88. **The Independent Expert appreciates in particular legislation, in some regions, guaranteeing the rights of recognized minorities to bilingual schooling and bilingual topographical signs, as well as the use of minority languages in judicial and administrative procedures. She also commends the codification of a written Romani language.**

<sup>65</sup> Ibid.

<sup>66</sup> See also ACFC/OP/III (2011)005, para. 99.

<sup>67</sup> See also ACCF/OP/II(2007=005, p.18., CommDH(2007)26, p. 14 and NGO Platform on Human Rights, Joint submission for the UPR session 2011, p. 4.

89. The Independent Expert further welcomes Government initiatives, such as the introduction in some public media broadcasts of subtitles and sign language, as well as transmissions of broadcasts in official minority languages.

90. The Independent Expert believes, however, that further steps are needed. Measures to promote cultural diversity and cultural rights in Austria remain compartmentalized and lack an institutional framework that would facilitate building upon valuable experience. Partly due to this, the implementation of the rights of persons belonging to minorities and disadvantaged groups in the fields of education, culture and language as well as their rights not be discriminated against and to participate in the life of society, remains insufficient.

91. The Independent Expert recommends that consideration be given to establishing a unified framework and an institutional body, at the level of the Federal Government, to promote cultural diversity and intercultural understanding, to oversee all cultural heritage matters and to promote the right of all to participate equally in and contribute to cultural life in Austria.

92. The Independent Expert observes with concern a tendency amongst some policy-makers and implementers to treat Austria's rich multi-ethnic, multilinguistic, and multi-religious composition as a problem needing to be resolved. While Austria recognizes the value of cultural diversity, government policies do not yet approach the country's rich diversity as an invaluable resource from which all of Austrian society could, and indeed should, benefit. Policies should aim at mainstreaming the cultural diversity and heritage of the country's diverse populations, rather than simply at assigning rights to particular people and groups in a parallel fashion.

93. The Independent Expert emphasizes the fact that ensuring people's cultural rights is about empowering individuals and communities to create culture as continuously evolving ways of life, each cultural community being equally valued.

94. The Independent Expert recommends that the Government consider addressing the issue of integration together with cultural diversity, either within a new entity delinked from the Ministry of the Interior or including this subject within the Federal Chancellery.

95. The Independent Expert encourages the Government to strengthen efforts to incorporate minority cultures and histories in all public schooling curricula, media and cultural activities; to promote intercultural competencies in all official institutions, and encourage competencies in minority languages, including Austrian sign language, amongst teachers and civil servants. Special efforts are required to ensure the cultural rights of the Roma people, including their full access, contribution and participation in cultural life.

96. The Independent Expert stresses that only recognized autochthonous minorities are granted particular rights which, however, they lose outside the specifically designated territories. It is important to note that a strict application of the criteria of territoriality, notably with respect to rights in the field of education, could undermine efforts to safeguard the languages and identities of minorities, especially considering that nowadays, for a number of reasons, members of minorities may opt to settle in regions other than those they traditionally inhabit. Following previous recommendations by regional and international human rights bodies, the Independent Expert urges the Government to be more flexible in its approach, to consider extending support to linguistic and ethnic groups other than those officially recognized in Austria and to improve the existing mechanisms for the disbursement of funds for activities of national minorities.

97. The Independent Expert is concerned about the data-collection system used for the 2011 census, which excluded information on national, linguistic and religious affiliation, contrary to previous censuses. The Independent Expert encourages the Government to adopt a non-mandatory and anonymous information-gathering system with a view to enabling/creating a database on cultural diversity in Austria, including data on linguistic and religious diversity as well as internal and international migration. Such a system should guarantee privacy and be respectful of the principle of self-identification of all persons regarding their national, linguistic and religious affiliations. Where necessary, the Government should initiate dialogues with communities to strengthen trust and understanding of the purpose of such a survey. To that end, the Independent Expert also recommends that the Government consult with, in particular, civil society organizations and the communities concerned with regard to the specific formulation of questions to be asked during the census.

98. The Independent Expert is concerned that the schooling system, which divides education after kindergarten and after primary school into separate parallel streams has an indirect discriminatory effect on children according to their background. Negatively impacting children with disabilities and a migrant background, the system impedes opportunities for cross-cultural interaction which are essential for intercultural understanding and building pluralistic societies. The Independent Expert welcomes the creation of new middle schools and recommends the adoption of an integrated system for all compulsory education in public schools.

99. The Government should take all necessary measures to ensure full respect for human rights and cultural diversity by all public officials and security forces, including by expanding its initiatives to include training on human rights and cultural diversity in the mandatory curricula of public officials across the country.

100. Measures are needed to encourage public and private media to avoid stigmatizing certain communities. Intercultural exchanges among diverse groups would help to overcome ghettoization according to attributes such as language, religion, ethnic background and any kind of disability.

101. The Independent Expert welcomes the existing initiatives to promote interfaith dialogue. However, more than religious authorities engaging with each other, the need is to provide also opportunities for communities to share experiences and engage with each other.

102. The Austrian Constitution is in the process of being reformed. The Independent Expert encourages the Austrian Constitutional Assembly to adopt a coherent and comprehensive catalogue of human rights, including economic, social and cultural rights, as well as the rights of the child.

103. The Independent Expert recommends that the Government, as a matter of priority, adopt an integrated national human rights plan of action and a human rights institution in conformity with the Paris Principles, mandated to oversee all rights, including those in the field of culture, paying special attention to the needs of more marginalized groups such as persons with disabilities, the economically insecure and cultural communities outside the mainstream.

104. The Independent Expert recommends that the Ombudspersons for Equal treatment be granted competence to initiate and participate in court proceedings and given the necessary human and financial resources to conduct their activities.

105. The Independent Expert recommends that Austria ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, as well as the

**Council of Europe Framework Convention on the Value of Cultural Heritage for Society (Faro Convention).**

106. Lastly, the Independent Expert strongly recommends that the Government of Austria give adequate follow-up to the recommendations made by United Nations human rights treaty bodies and in the context of the country's universal periodic review before the Human Rights Council.

107. The Independent Expert looks forward to continuing engagement and cooperation with the Government of Austria with a view to strengthening the ongoing dialogue on these important issues.

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