



# FRA

## Thematic Study on Child Trafficking

### Austria

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# Executive Summary<sup>1, 2</sup>

## General anti-child trafficking framework

- [1]. Austria ratified – apart from the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse (2007) – all relevant international anti-trafficking instruments. These instruments are not directly applicable. Criminal law provisions criminalise child trafficking in line with these international definitions. However, criticism has been raised regarding the inadequate application of these provisions.
- [2]. So far, rights of the child, in particular the principle of best interests of the child, have not been incorporated in the federal constitution. However, they form part of some constitutions at provincial level.
- [3]. In 2007, a National Plan of Action (NPA), established by the Task Force against Trafficking, was adopted by the Council of Ministers. It follows a comprehensive approach covering issues ranging from national coordination, prevention, protection of victims to prosecution and data collection. In this context, a Working Group on Child Trafficking has been installed. A systematic, formalised and standardised instrument for cooperation and referral – addressing also rights of trafficked children – is to be developed.
- [4]. Due to the lack of sensitisation and an unclear distribution of competences, identification of victims of child trafficking is not adequately carried out. Thus, in case criminal behaviour has occurred, children who are not identified as victims are subjected to criminal proceedings, if they reach the age of criminal responsibility, i.e. 14 years. A clear and coherent training strategy for all professional actors involved in the identification, care and protection of trafficked children does not exist. However, the topic of Trafficking in Human Beings (THB) is integrated in the training programmes of judges, prosecutors and the police. Multi-stakeholder trainings bringing together all relevant actors are being organised and held by a NGO.

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<sup>1</sup> Co-author of this report: Margit Ammer, Ludwig Boltzmann Institute of Human Rights.

<sup>2</sup> The terms ‘children’ and ‘minors’ are used interchangeably and refer to persons under the age of 18 years (Sec. 21 para. 2 *Allgemeines Bürgerliches Gesetzbuch* [Austrian Civil Code]).

## Prevention of child trafficking

- [5]. Awareness-raising campaigns mainly focus on Austrian children and the topic of abuse within the family. Children seldom participate in the development and implementation of awareness-raising efforts. Local communities or minority groups, such as Roma, do not participate in preventive efforts. Specific policies to prevent children in a vulnerable position to become victims do not exist.

## Appointment of legal guardian

- [6]. If a child is found unaccompanied on Austrian territory, the youth welfare authority of the province in which the child is found,<sup>3</sup> is responsible *ex lege* to take over custody. However, in practice, authorities are often not aware of their responsibility for victims of child trafficking.
- [7]. In proceedings relating to aliens law (e.g. pre-deportation detention), minors are capable of acting legally already at the age of 16, even to their disadvantage. Even though no legal provisions laying down the benefit-of-a-doubt principle exist, the Administrative Court ruled that this principle had to be applied in age assessment. However, in practice this rule is sometimes not followed.

## Coordination and cooperation

- [8]. A Task Force against Trafficking involving all relevant ministries and non-governmental actors was established in 2004. A Working Group on Child Trafficking was established. These instruments should help to coordinate Austrian activities in the fight against THB in general and child trafficking in specific. A National Coordinator responsible for the monitoring of the implementation of the NPA will be appointed.
- [9]. Austrian development cooperation measures focus on South Eastern Europe/Western Balkans. The supported measures aim primarily at the prevention of THB/child trafficking (CT), victim protection and prosecution.

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<sup>3</sup> Youth welfare issues are mainly falling within the competence of the provinces.

## Care and protection

- [10]. An internal document of the Minister of the Interior addressed to the police provides a reflection period of 30 days. A residence permit for humanitarian reasons for at least six months may be granted, if the Minister of the Interior consents. It has been criticised that the granting is made dependent upon the will to testify. Persons who are granted a humanitarian residence permit usually receive basic welfare support comprising *inter alia* health care. Unaccompanied minor foreigners are entitled to special age-adequate treatment, which may also include psychosocial care. Victims of child trafficking not receiving this basic welfare support are entitled to receive emergency treatment.
- [11]. Legal provisions do not contain an explicit prohibition to detain children, not even regarding children under the age of 14. However, detention should be only a means of 'last resort'. In practice, only children older than 14 years are detained. Police detention centres often do not dispose of age adequate equipment or occupation possibilities.
- [12]. There exists only one specialised shelter for victims of child trafficking in the Federal Province of Vienna administered by the Viennese Youth Welfare authority. Another specialised shelter for adult women takes in exceptional cases also care of girls under the age of 18.
- [13]. Victims of child trafficking have the right to attend school irrespective of residence status and nationality in the context of compulsory schooling. However, access to vocational training is granted only if a work permit for a contract of apprenticeship is obtained.
- [14]. Upon request, victims are entitled to psychosocial and legal assistance in criminal proceedings, if and to the extent it is necessary to exercise his/her procedural rights. Due to the limited number of institutions dealing specifically with trafficked children, difficulties in securing this right may be encountered.

## Best interests determination and durable solutions, including social inclusion/return

- [15]. Specialised integration programmes for trafficked children do not exist. Current efforts seem to focus on return, even though formalised structures securing the repatriation in the best interest of the child are

not in place. One crisis centre organises the repatriation in cooperation with youth welfare organisations of the receiving country.

- [16]. So far, (child) trafficking has not been recognised as a reason for qualifying for asylum or subsidiary protection. However, at the moment, three relevant cases are pending at the first and second instance asylum authority.

## Prosecution

- [17]. In order to avoid ‘secondary victimisation’ in criminal proceedings, the possibility of ‘considerate examination’ exists. Victims under the age of 14 dispose of special rights: they are entitled to such ‘considerate examination’; an expert may conduct the interview. The Code of Criminal Procedure also contains several provisions regarding sensitive handling of victim data.
- [18]. The amendments to the Code of Criminal Procedure included a strengthening of victims’ rights. Victims have the right to claim compensation for the damage suffered by joining the criminal proceedings as a private party.
- [19]. The Ministry of Justice does not dispose of any conviction statistics regarding THB disaggregated by the age of victims.

## Miscellaneous

- [20]. So far, trafficking in illegal adoptions did not receive sufficient attention. Recently, the Working Group on Child Trafficking worked on the topic of international adoptions.

## Good practice

- [21]. A Round Table on Child Trafficking provides an important forum for networking among different national non-governmental and international actors. It also contributes to the raising of awareness of the topic of child trafficking. The multi-stakeholder trainings organised and conducted by ECPAT Austria tried for the first time to link important actors across all institutions, i.e. from youth welfare, police to NGOs and practitioners in the field.

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## A. General anti-child trafficking framework

- [22]. Austria ratified the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000) (OPSC)<sup>4</sup>, the UN Convention against transnational organised crime/Palermo Protocol to prevent, suppress and punish trafficking in persons (2000)<sup>5</sup>, the ILO Convention Nr. 182 on the worst forms of child labour (1999)<sup>6</sup> and the Council of Europe (CoE) Convention on Action against trafficking in human beings (2005)<sup>7</sup>. Austria signed the CoE Convention on the protection of children against sexual exploitation and sexual abuse (2007) on 25.10.2007 and plans to ratify it in 2009. Currently, the compatibility of the Austrian legal framework with this Convention is checked in order to determine the extent to which amendments are necessary.<sup>8</sup>
- [23]. Until 2004, only a provision regarding cross-border trade in prostitution according to Sec. 217 of the *Strafgesetzbuch* [Criminal Code (CC)]<sup>9</sup> and Sec. 104 CC making punishable trafficking in slaves (incl. slavery-like situation such as debt bondage, serfdom, forced or compulsory labour) served the criminalisation of trafficking in human beings (THB). Sec. 217 CC would not have sufficiently served the implementation of above mentioned international instruments: Sec. 217 CC criminalises only sexual exploitation and requires a ‘border-crossing element’, i.e. the exertion of active and targeted influence on a person to relocate his/her whole conduct of life to another country.<sup>10</sup>
- [24]. In order to implement *inter alia* the Palermo Protocol and the OPSC, Sec. 104a CC was introduced.<sup>11</sup> Sec. 104a CC criminalises THB, i.e. certain acts and actions preparing for subsequent exploitation<sup>12</sup> if they are executed with the intention to exploit<sup>13</sup> the person. If minors are

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<sup>4</sup> Austria/BGBI III 93/2004 (11.08.2004). See also Explanatory Notes 18 d.B. XXII. GP.

<sup>5</sup> Austria/BGBI III 220/2005 (29.12.2005). See also Explanatory Notes 825 d.B. XXII. GP.

<sup>6</sup> Austria/BGBI III 41/2002 (19.03.2002). See also 601 d.B. XXI. GP.

<sup>7</sup> Austria/BGBI III 10/2008 (31.01.2008). See also Explanatory Notes 1565 d.B. XXII. GP.

<sup>8</sup> Information from the Ministry of Health, Family Affairs and Youth, 23.07.2008.

<sup>9</sup> Austria/BGBI 60/1974 last amended by BGBI I 15/2004 (01.03.2004).

<sup>10</sup> See Austria/Oberster Gerichtshof/11 Os 109/96 (14.10.1997). If persons travels to Austria on its own and works there as prostitute, Sec. 217 is not applicable. See also *Explanatory Notes* 294 d.B. (XXII. GP).

<sup>11</sup> Austria/BGBI I 15/2004 (01.03.2004). See Explanatory Notes, 294 d.B. (XXII. GP), pp. 11-14.

<sup>12</sup> E.g. recruitment, harbouring, accommodation, transportation, offering, passing on of a person.

<sup>13</sup> The focus of Sec. 104a CC is on the ‘exploitation’-element following the Palermo Protocol and not on the ‘remuneration’-element (OPSC).



concerned, the use of specific means (e.g. the use of force or threat) is no condition to qualify as THB. In contrast to Sec. 217, Sec. 104a CC makes also intra-state trafficking punishable and envisages more severe penalties than Sec. 217 if the victim is an underage person.<sup>14</sup> In that case, the range of imprisonment is one to ten years instead of up to three years. This more severe range of punishment also applies, if the offence has been committed by a person, who is a member of a criminal organisation, by using serious violence or results in a particularly severe disadvantage for the victim.<sup>15</sup>

- [25]. Sec. 104a CC covers the exploitation forms sexual exploitation, removal of organs and exploitation of labour force<sup>16</sup> but not trafficking for illegal adoptions (Art. 3 para. 1 lit. a) ii) OPSC).<sup>17</sup> In order to embrace also this form of exploitation, Sec. 194 CC was introduced in 2004.<sup>18</sup> Sec. 194 CC<sup>19</sup> makes punishable the agency of (intra- and inter-state) adoptions of minors if the agent is ‘improperly inducing consent’ of a person whose permission is required<sup>20</sup>, i.e. through granting of any kind of (also immaterial) advantage.<sup>21</sup> The proscribed element is not the exploitation of the child but the granting of advantage in exchange of giving consent to an adoption. The adopting and adopted persons are exempted from criminal liability.<sup>22</sup> The range of punishment is imprisonment up to two years, in case the perpetrator acts for pecuniary advantage up to three years.
- [26]. Provisions criminalising THB need to be distinguished from provisions penalising illegal migration such as people smuggling in Sec. 114 *Fremdenpolizeigesetz* [Aliens Police Law]<sup>23</sup> as it lacks the exploitation purpose. However, due to problems in victim identification, it is assumed that several persons – including children – registered in the statistics as ‘smuggled’ are affected by THB.<sup>24</sup>

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<sup>14</sup> See *Explanatory Notes* 294 d.B. (XXII. GP) p. 11; see also ECPAT (2006) *Internationaler Monitoring Bericht zu Maßnahmen zur Bekämpfung kommerzieller sexueller Ausbeutung von Kindern, Österreich*, available at: <http://www.ecpat.at/index.php?id=26> (07.07.2008), p. 18.

<sup>15</sup> If the use of force or serious threat is involved, punishment ranges from six months to five years.

<sup>16</sup> In accordance with the Palermo Protocol, the CoE Convention and Art. 3 para. 1 lit. a) i) OPSC.

<sup>17</sup> See *Explanatory Notes* 294 d.B. (XXII. GP) p. 12.

<sup>18</sup> See *Explanatory Notes* 294 d.B. (XXII. GP) pp. 15-16.

<sup>19</sup> Austria/BGBI I 15/2004.

<sup>20</sup> That are parents of minor adopted person and the spouse of the adopting and adopted person (e.g. Sec. 181 Civil Code).

<sup>21</sup> In that regard, Austria ratified the Hague Convention on Protection of Children and Co-Operation in respect of Inter-country Adoption (1993), BGBI III 145/1999.

<sup>22</sup> See *Explanatory Notes* 294 d.B. (XXII. GP) pp. 15-16.

<sup>23</sup> Austria/BGBI I 100/2005 (16.08.2005).

<sup>24</sup> See also University of Padua, La Strada, Ludwig Boltzmann Institute of Human Rights, Human Rights Human Development Association (2007) *Der Handel mit Frauen und Jungen*

- [27]. According to the Working Group on Child Trafficking of the Austrian Task Force<sup>25</sup>, the Austrian legal framework is ‘generally suitable’ to protect children from various forms of child trafficking.<sup>26</sup> However, NGOs criticise that the actual application of these norms is inadequate, in particular the number of convictions and also the range of punishment applied is very low.<sup>27</sup>
- [28]. Upon adoption of the international treaties mentioned above, the parliament declared a *Erfüllungsvorbehalt* [reservation to implement the treaty through enactment of separate legislation] in accordance with Art. 50 para. 2 *Bundes-Verfassungsgesetz* [Federal Constitutional Law]<sup>28</sup>. As no implementing legislation has been passed, those instruments are not directly applicable on domestic level and cannot be invoked by courts.
- [29]. Legal provisions establishing the principle of best interests of the child as primary considerations in all actions and decisions affecting children are not contained in the Federal Constitution.<sup>29</sup> Only four out of nine *Länder* [provinces] incorporated rights of the child in their constitutions.<sup>30</sup> Attempts to integrate rights of the child at federal level, e.g. in context of the ongoing constitutional reform, have failed so far.

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*Menschen – Europäische Dimensionen einer Menschenrechtsverletzung, Länderbericht Österreich*, p. 15.

<sup>25</sup> Explanation regarding the Task Force see below (Coordination and cooperation).

<sup>26</sup> *TF Working Group on Child Trafficking Report* 2008, 3.

<sup>27</sup> *Alternative Report on the Implementation of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* 2008, Available at: <http://www.ecpat.at/index.php?id=26> (11.07.2008).

<sup>28</sup> Austria/BGBI 1/1930, last amended by BGBI I 2/2008 (04.01.2008).

<sup>29</sup> The Committee on the Rights of the Child recommended to incorporate rights of the child in the Constitution at federal and provincial level: CRC Committee, *Concluding Observations in relation to Austria 2005*, UN Doc. CRC/C/15/Add. 251, 28.01.2005, para. 9; *Alternative Report*, p. viii. See also Commissioner for Human Rights Hammarberg (2007) *Report on his Visit to Austria*, 1212.2007, CommDH(2007)26, available at: [http://wcd.coe.int/ViewDoc.jsp?id=1225149&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679#P266\\_63628](http://wcd.coe.int/ViewDoc.jsp?id=1225149&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679#P266_63628) (09.07.2008).

<sup>30</sup> That is Upper Austria, Tyrol, Vorarlberg and Salzburg. See also *Alternative Report*, p. 1. See also Kinder- und Jugendanwaltschaften Österreichs [Austrian Ombuds Offices for Children and Youths] (2008) *Amendment to the Shadow Report of ECPAT Austria regarding the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, available at: <http://www.kinderanwalt.at/images/stories/englischeskrkzusatzprotokollkinderhandelpornoprostiutionstmk.pdf> (11.07.2008) p. 3.

## A.1. National Plans of Action

- [30]. There exists a National Plan of Action against Trafficking (NPA 2007)<sup>31</sup> developed by the Task Force against Trafficking. It follows a comprehensive approach and comprises national coordination, prevention, protection and compensation of victims, prosecution, international cooperation and data collection/monitoring/evaluation. The NPA specifies for each activity the competent body/ies, the deadline and indicators. Even though the NPA was adopted only in 2007, the first measures of implementation have been taken already (e.g. establishment of a Working Group on Child Trafficking; appointment of contact persons in provinces).<sup>32</sup> The establishment of a National Referral Mechanism is planned. However, NGOs raised criticism that information exchange with civil society could be further improved.<sup>33</sup>
- [31]. Apart from this Plan of Action (2007), three other National Plans of Action not dealing exclusively with THB or child trafficking exist: The first Plan of Action (1997) mainly addresses violence against women; its trafficking section lacks clear goals, implementation measures and a tangible timeframe.<sup>34</sup> The second Plan (1998) has a narrow focus on Internet pornography.<sup>35</sup> It was the third NPA (2004) which contained for the first time a whole chapter on child trafficking and sexual exploitation (chapter 11).<sup>36</sup> However, its implementation encountered difficulties due to coordination and cooperation problems (resulting from the federal structure of Austria), lack of resources, political will and of clarity regarding roles and responsibilities for its

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<sup>31</sup> *Nationaler Aktionsplan gegen den Menschenhandel*, adopted by the Council of Ministers in March 2007, available at: [http://www.bmsk.gv.at/cms/site/attachments/6/1/8/CH0497/CMS1119514084704/napmensch\\_enhandel.pdf](http://www.bmsk.gv.at/cms/site/attachments/6/1/8/CH0497/CMS1119514084704/napmensch_enhandel.pdf) (11.07.2008).

<sup>32</sup> *Erster Österreichischer Bericht zur Bekämpfung des Menschenhandels* [Task Force against Trafficking Report 2008]. Reporting period March 2007 until end of May 2008.

<sup>33</sup> *Alternative Report*, p. 9.

<sup>34</sup> *Violence in Society, Violence in the Family, Child Abuse, Sexual Abuse of Children, Violence against Women, Violence among Juveniles, and Violence in the Media*, available at: [http://www.kinderrechte.gv.at/home/upload/downloads/politische%20beschlusse/mr\\_beschluss\\_gewalt\\_1997.pdf](http://www.kinderrechte.gv.at/home/upload/downloads/politische%20beschlusse/mr_beschluss_gewalt_1997.pdf) (07.07.2008). See *Alternative Report*, pp. 12-13.

<sup>35</sup> *Action Plan against Child Abuse and Child Pornography on the Internet*.

<sup>36</sup> *National Plan of Action for Children's Rights*. This NPA was based on the Convention on the Rights of the Child (CRC) and incorporated the objectives of the document *A World Fit for Children* (UN Children's Summit 2002, New York). See *Alternative Report*, p. 12. Available at [http://www.kinderrechte.gv.at/home/upload/30%20oesterreich/nap\\_041123\\_ov.pdf](http://www.kinderrechte.gv.at/home/upload/30%20oesterreich/nap_041123_ov.pdf) (07.07.2008).

implementation.<sup>37</sup> The implementation report for 2004-07 did not define next steps.<sup>38,39</sup>

## A.2. Data collection

- [32]. Currently, systematic collection of comparative data relating to THB or Child Trafficking (CT) is not taking place.<sup>40</sup> Few reliable comparative data regarding child trafficking exist. Especially the areas of trafficking in organs and trafficking for the purpose of adoption are not well documented.<sup>41</sup> This can be attributed on the one hand to the federal structure resulting in different responsibilities of different authorities for data collection, and on the other hand to the lack of sensitisation of authorities so that victims of child trafficking are often not identified: in particular, victims are often treated as perpetrators (when apprehended stealing, engaging in prostitution etc.), as illegal migrants or unaccompanied minor refugees.<sup>42</sup>
- [33]. Current statistics of the police (MoI) do not sufficiently clear display victims of CT.<sup>43,44</sup> The *Gerichtliche Kriminalstatistik* [Conviction statistic] only contains the gravest crime of conviction and is not disaggregated by categories of victims in regard to THB. Data on residence permits for humanitarian reasons in the *Fremdenstatistik* [Aliens Statistics] (MoI) is not disaggregated by age or reason for granting.<sup>45</sup> Data on illegal migration does not contain information on

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<sup>37</sup> *Alternative Report*, p. 13.

<sup>38</sup> Ministerratsbeschluss 21.11.2007, available at: [http://www.bmgfj.gv.at/cms/site/attachments/0/8/6/CH0583/CMS1201618235635/mrv-nap-umsetzungsbericht\\_071121.pdf](http://www.bmgfj.gv.at/cms/site/attachments/0/8/6/CH0583/CMS1201618235635/mrv-nap-umsetzungsbericht_071121.pdf) (07.07.2008).

<sup>39</sup> The Committee of the Rights of the Child criticised particularly insufficient human and financial resources and the lack of indicators for monitoring and evaluation. *CRC Committee Recommendations 2005*, para. 13.

<sup>40</sup> See also *CRC Committee Recommendations 2005*, para. 17: Already in 2005, the Committee on the Rights of the Child recommended the development of a system for comprehensive collection of comparative data on child rights disaggregated with specific emphasis on vulnerable groups.

<sup>41</sup> *Alternative Report*, p. 5.

<sup>42</sup> *TF Working Group on Child Trafficking Report 2008*, p. 15.

<sup>43</sup> *Sicherheitsbericht* [Security Report] issued together with Federal Ministry of Justice contains factual information from law enforcement agencies and from justice departments; trafficking in children is not analysed separately and hardly mentioned. See [www.parlament.gv.at/PG/DE/XXIII/III/III\\_00114/fname\\_100251.pdf](http://www.parlament.gv.at/PG/DE/XXIII/III/III_00114/fname_100251.pdf) (07.07.2008); see also *Alternative Report*, p. 2.

<sup>44</sup> *Kriminalitätsbericht* [Crime rate report] contains only complaints (according to assessment by security authorities) but includes data on victims of trafficking (age, gender). Available at [http://www.parlament.gv.at/PG/DE/XXIII/III/III\\_00114/fname\\_100252.pdf#](http://www.parlament.gv.at/PG/DE/XXIII/III/III_00114/fname_100252.pdf#) (07.07.2008).

<sup>45</sup> Available at: <http://www.bmi.gv.at/publikationen> (11.07.2008).

background.<sup>46</sup> Even data of Viennese Youth Welfare does not differentiate between victims of child trafficking and exploitation of children by parents/relative.<sup>47</sup> Records on *Verwaltungsübertretungen* [administrative offences] do only deliver description (e.g. ‘mother with child begging’), but do not mention its background.

- [34]. Reports of centres taking care of victims of THB/CT can give a hint on the extent of trafficking: In the province of Vienna, a crisis centre called ‘*Drehscheibe*’ administered by the Viennese Youth Welfare authority takes care of unaccompanied foreign children. The children are in most cases under the age of 14, i.e. the age of criminal responsibility and were referred by the police. After an increase in the number of children received until 2005 (99 children in 2003, 315 in 2004, 701 in 2005), the number went down to 319 in 2006 and finally to 72 in 2007. However, these statistics do not reflect the actual number of affected children (children are counted more than once) and do not say anything about the kind of referral; the information regarding the country of origin is only disaggregated by Bulgaria and “other countries”.<sup>48</sup> The activity reports of the NGO *LEFÖ-Interventionsstelle für Betroffene des Frauenhandels IBF* [Intervention centre for trafficked women] provide information on the number of trafficked women taken care of in its centre in Vienna; exceptionally also children are concerned<sup>49, 50</sup>.
- [35]. In implementing the NPA 2007 (7.2 specific data collection), a statistical working group in the Ministry of Justice was created; its task is the development of statistics displaying all state reactions in response to a criminal behaviour, i.e. from the filing of charges at the police until court conviction.<sup>51</sup> Furthermore, the Working Group on Child Trafficking<sup>52</sup> collected information from all provinces on the extent of child trafficking. After - apart from Vienna - hardly any cases were reported,<sup>53</sup> the Working Group recommended external

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<sup>46</sup> Federal Criminal Police Office (MoI) do not give information about trafficked minors; only about age of smuggled persons; see *Organisierte Schlepperkriminalität, Illegale Migration, Report 2007* [Report on People Smuggling 2007] available at: [http://www.bmi.gv.at/downloadarea/schlepperberichte/Jahresbericht\\_2007.pdf](http://www.bmi.gv.at/downloadarea/schlepperberichte/Jahresbericht_2007.pdf) (07.07.2008).

<sup>47</sup> *TF Working Group on Child Trafficking Report 2008*, p. 15. See also *Annual report of the Kinder- und Jugendanwaltschaft Wien*, available at: [http://www.kja.at/index.php?option=com\\_docman&task=cat\\_view&gid=25&Itemid=49](http://www.kja.at/index.php?option=com_docman&task=cat_view&gid=25&Itemid=49), (07.07.2008).

<sup>48</sup> *TF Working Group on Child Trafficking Report 2008*, p. 9.

<sup>49</sup> In 2006, 8% of the persons taken care of were of the age between 17 and 18; 2007 18 persons below age of 18 (information provided by LEFÖ by e-mail).

<sup>50</sup> *Alternative report*, p. 6.

<sup>51</sup> *Task Force against Trafficking Report 2008*, pp. 25-27.

<sup>52</sup> In the following ‘TF Working Group’.

<sup>53</sup> Compare *TF Working Group on Child Trafficking Report 2008*, 9. See also *Alternative Report*, p. 6.

qualitative collection of knowledge on existing structures in all province and regular monitoring of the development of the extent of victims of child trafficking. Furthermore, police and conviction statistics should disclose child trafficking; youth welfare statistics should cover whole Austria and list victims of child trafficking, victims of people smuggling and all international adoptions separately.<sup>54</sup>

- [36]. In order to standardise data in the area of THB within the EU, Austria currently coordinates a project aiming at the development of guidelines and standards for comparable and reliable data collection regarding THB; the project takes place together with five other EU Member States, Europol, International Centre for Migration Policy Development (ICMPD) and the International Organisation for Migration (IOM); results are to be expected in spring 2009 and should deliver the basis for the proposal of a EU directive.<sup>55</sup>

### A.3. Resources

- [37]. As the *Bundesfinanzgesetz* [Law on the Federal Budget]<sup>56</sup> does not explicitly mention the topic ‘child trafficking’, it is unclear how much budget of relevant ministries or actors is designated for anti-trafficking measures in general.<sup>57</sup> It is also unclear how much budget is allocated to support research on child trafficking.
- [38]. NGOs demand to allocate more government resources on research on overlaps between asylum-seeking and trafficked children, on all manifestations of THB, and on the phenomenon of Roma begging with children.<sup>58</sup>

### A.4. Monitoring

- [39]. So far, no monitoring mechanism exists. However, the NPA 2007 envisages the designation of a National Coordinator covering also

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<sup>54</sup> *TF Working Group on Child Trafficking Report 2008*, p. 16

<sup>55</sup> Further information on this project available at:

<http://www.iomvienna.at/index.php?module=Content&func=display&id=293&newlang=eng> (11.07.2008). See also NPA 2007 7.3; *TF Working Group on Child Trafficking Report 2008*, pp. 15-16. See also *Task Force against Trafficking Report 2008*, p. 27. NGOs demanded the development of indicators for data collection. See *Alternative Report*, pp. xiii, ix, 2-7.

<sup>56</sup> Austria/BGBI 23/2007, last amended by BGBI 95/2007.

<sup>57</sup> *Alternative Report*, p. viii.

<sup>58</sup> See *Alternative Report*, pp. xiii, ix, 2-7.

trafficking of children.<sup>59</sup> In its report 2008, the Task Force encouraged the designation of a public official of the Foreign Ministry in the function of an Austrian National Coordinator.<sup>60</sup> The choice of an official of the Foreign Ministry is due to its leadership of the Task Force against Trafficking (see D.1.). Among his/her tasks are the monitoring of the implementation of the NPA and the reporting to the Task Force.<sup>61</sup>

## A.5. Referral

- [40]. At the moment, a systematic formalised and standardised instrument for cooperation and referral, such as a National Referral Mechanism (NRM)<sup>62</sup> addressing also rights of trafficked children does not exist.<sup>63</sup> However, the Task Force is currently working on a concept for a national contact point (NRM) to be consulted in identification of victims of THB.<sup>64</sup>
- [41]. The *Round Table Kinderhandel* [Round Table on Child Trafficking] issued a letter to the Chairman of the *Landeshauptleutekonferenz* [conference of governors of provinces] of April 2008 raised concern about the lack of awareness at relevant institutions when it comes to identification.<sup>65</sup> The Round Table exists since February 2007 and is a permanent forum for the exchange of information and experience; participants are international and inter-governmental organisations (e.g. UNICEF, IOM, UNODC, ICMPD), non-governmental organisations (ECPAT Austria<sup>66</sup>, FICE<sup>67</sup>, BIM<sup>68</sup>) and private persons (e.g. the director of the *Drehscheibe*).

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<sup>59</sup> See activity 'National Coordination' 1.6.

<sup>60</sup> *Task Force against Trafficking Report 2008*, p. 4. A proposal for a mandate is annexed to first report (see *Task Force against Trafficking Report 2008*, p. 5).

<sup>61</sup> *Task Force against Trafficking Report 2008*, Annex, p. 29.

<sup>62</sup> As proposed in OSCE/ODIHR, *National Referral Mechanisms – Joining Efforts to Protect the Rights of Trafficked Persons, A Practical Handbook* (2004).

<sup>63</sup> *TT Working Group on Child Trafficking Report 2008*, p. 3. See also ECPAT Austria (2006), *Monitoringbericht Österreich*, p. 23; *Alternative Report*, p. viii.

<sup>64</sup> *Task Force against Trafficking Report 2008*, p. 12.

<sup>65</sup> *TF Working Group on Child Trafficking Report 2008*, pp. 5-6.

<sup>66</sup> End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT).

<sup>67</sup> *Federation Internationale des Communautés Educatives*.

<sup>68</sup> Boltzmann Institute of Human Rights.

## A.6. Training

- [42]. A clear and coherent training strategy by the state for all professional actors involved in the identification, care and protection of trafficked children does not exist. Trainings take place only for certain groups. NGOs criticise that the focus of the trainings on child trafficking is limited to a small number of professions (police, judges, attorneys) and topics.<sup>69</sup>
- [43]. Thus, the Working Group on Child Trafficking recommends that all relevant actors (e.g. executive, public prosecution, judiciary, youth welfare organisations, aliens and asylum authorities, medical sector, education sector, personnel for foreign deployment and NGOs) are to be sensitised for THB and CT in their basic or advanced education. In all provinces several employees of youth welfare and executive should acquire better knowledge in the area of CT. An info folder ('checklist') with basic knowledge/indicators should be distributed to all employees of youth welfare, police and public prosecution in order to facilitate identification.<sup>70</sup>
- [44]. Following trainings for subsequent categories of professionals have been / are being carried out:

### A.6.1. Judges and prosecutors

- [45]. The NPA 2007 envisages (advanced) trainings for judges and public prosecutors for identification and prosecution of THB in particular according to Sec. 104a CC (5.5). The following trainings have taken place since 2007<sup>71</sup>:
- *Deutsche RichterInnenakademie* (DRA) [German Academy for Judges]: Training on International THB, 01.-05.05.2007 in Trier, Germany.
  - *Oberes Landesgericht Wien* [Court of Appeal Vienna]: Training on THB and Protection of Victims, 21.11.2007 (biennial), including a lecture of the LEFÖ-IBF.

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<sup>69</sup> *Alternative Report*, p. 12.

<sup>70</sup> *TF Working Group on Child Trafficking Report 2008*, p. 6. In that regard, the CRC Committee recommended already in its Concluding Observations 2005 to strengthen capacity of police and relevant personnel to receive complaints and investigate cases of trafficking in a child sensitive manner, *inter alia*, by increasing human and financial resource, and where necessary, by providing appropriate training; see *CRC Committee Concluding Observations 2005*, para. 52. lit. b.

<sup>71</sup> *Task Force against Trafficking Report 2008*, p. 18.



- Ministry of Justice: ‘Judicial Training on Human Trafficking and Domestic Violence’, 21.-22.04.2008; together with the Council of Europe (HELP Programme).
  - *Oberes Landesgericht Graz* [Court of Appeal Graz]: THB and new challenges for the judiciary, 11.06.2008.
- [46]. According to the Austrian State Report (OPSC), advanced training schemes concerning THB (including child trafficking) for judges and public prosecutors are offered on a regular basis; however, it seems that the focus is on how to deal with victims of sexual abuse or of violent criminal offences.<sup>72</sup>

## A.6.2. Executive

- [47]. THB forms part of the basic education of the police (including border guards).<sup>73</sup> NGOs criticise the lack of focus on CT.<sup>74</sup>
- [48]. In 2005 and 2006, IOM and the MoI organised the project *Comprehensive Training for Law Enforcement Authorities responsible for Child Trafficking/Minors*. A resource book on good practices in combating CT was elaborated which is still used as basis for seminars offered by the MoI.<sup>75</sup> In the context of advanced police trainings, courses on THB in general take place in cooperation with the LEFÖ-IBF once a year.
- [49]. In order to guarantee uniformity, the *Bundeskriminalamt* [Federal Criminal Office] advises investigators of *Landeskriminalämter* [Criminal Offices on provincial level] on new manifestations of trafficking; discussions on actual problems in legal and tactical regard during ongoing investigations are taking place.<sup>76</sup>
- [50]. The police participated in the multi-stakeholder trainings offered by ECPAT Austria in December 2007 and January 2008.

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<sup>72</sup> See *State Report (OPSC)*, paras. 57-60.

<sup>73</sup> *Task Force against Trafficking Report 2008*, pp. 9-10. NPA 2007, 2.5: sensitisation of executive, in particular border control organs in the area of THB.

<sup>74</sup> *Alternative Report*, p. 11.

<sup>75</sup> IOM Vienna (2006), *Resource Book for Law Enforcement Officers on Good Practices in Combating Child Trafficking - Executive Summary*, available at: <http://www.iomvienna.at/files/Upload/Resource%20Book%20on%20Child%20Trafficking%20pen%20version%201.pdf> (08.07.2008).

<sup>76</sup> According to NPA 5.2. exchange of information and experience between the Federal Criminal Office and Criminal Offices on *Länder* level under involvement of social institutions of provinces should take place. See *Task Force against Trafficking Report 2008*, p. 18.

### A.6.3. Youth Welfare authorities

- [51]. Personnel of the Viennese Youth Welfare authority have to attend 40 hours of general training per year. However, the choice of topics, such as CT, is left to the employee in consultation with his/her superior; no central body is responsible for coordinating equal distribution of knowledge as to various topics regionally.<sup>77</sup>
- [52]. A 'checklist' developed by the TF Working Group, which should support the identification process, will be distributed among personnel of the Youth Welfare authorities of all provinces.<sup>78</sup>

### A.6.4. Austrian Federal Armed Forces / Peace Support Operation

- [53]. A course on Combating Trafficking in Human Beings in Peace Support Operations took place in May 2008. Apart from UNODC, ICMP and IOM also NGOs (ECPAT Austria, LEFÖ) were involved.<sup>79</sup>

### A.6.5. Multi-stakeholder trainings

- [54]. ECPAT Austria is developing training programmes and trainer manuals on CT for multi-stakeholder groups consisting of law enforcement officers (police, judiciary), youth welfare employees, social workers, medical practitioners and stakeholders from organisations working with asylum seekers.<sup>80</sup> In cooperation with the Federal Criminal Police Office, two multi-stakeholder trainings have already taken place in December 2007 and January 2008. Through this

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<sup>77</sup> *Alternative Report*, p. 10, refers to MAG 11 (2008): *Education program, January-December 2008*; interview with Monika Niederle, President of the International Federation for Educative Communities FICE, 23.03.2008.

<sup>78</sup> *TF Working Group on Child Trafficking Report 2008*, p. 5.

<sup>79</sup> Description of course and training programme available at: <http://www.emn.at/News-article-folder-279.phtml?POSTNUKESID=4b51bc6d1be637d7e5a049c36c178d74> (08.07.2008). See also *Alternative Report*, p. 11.

<sup>80</sup> *Alternative Report*, p. 11. See also ECPAT Europe Law Enforcement Group Programme against Trafficking in Children for Sexual Purposes in Europe in Cooperation with ECPAT International (2006), *International Training Handbook in English, Combating the Trafficking in children for sexual purposes*; adapted to Austrian situation: ECPAT Austria (ed.) (2008) *Die Bekämpfung von Kinderhandel zu sexuellen Zwecken, Ein Trainingshandbuch..*

capacity building activity, also co-operation among organisations is ameliorated and awareness is raised.<sup>81</sup>

#### A.6.6. Trainings for officials of embassies/consulates in countries of origin

- [55]. The Foreign Ministry organised in cooperation with the MoI and LEFÖ-IBF sensitisation trainings for officials of consulates.<sup>82</sup> The Foreign Ministry forwarded to all Austrian embassies/consulates a circular letter concerning THB and distributed info folders from the NGO LEFÖ-IBF.<sup>83</sup>

### A.7. Policy of non-criminalisation

- [56]. The police usually refer children under the age of 14, i.e. the age of criminal responsibility<sup>84</sup>, to the youth welfare office (in Vienna to the *Drehscheibe*). With regard to children older than 14, in case criminal behaviour has occurred, the usual criminal proceedings are initiated. This is due to the lack of sensitisation on side of the police. Children engaging in prostitution face administrative penalties. Laws at provincial level regulating prostitution stipulate administrative penalties if persons engaging in prostitution do not reach a certain minimum age (i.e. in almost all provinces 18 years). NGOs argue that children have to rely on further prostitution in order to pay for these penalties. Thus, the abolishment of such provisions criminalising children would constitute a preventive measure.<sup>85</sup>

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<sup>81</sup> *Task Force against Trafficking Report 2008*, pp. 9-10; see also *TF Working Group on Child Trafficking Report 2008*, p. 5. See also *Response of the Austrian Federal Government to the Questionnaire of the UN Special Rapporteur on the sale of children, child prostitution and child pornography* (in the following: *Response to the Questionnaire of the UN SR*); available at: [http://www.kinderrechte.gv.at/home/upload/70%20service/un-fragebogen\\_kinderhandel\\_0709.pdf](http://www.kinderrechte.gv.at/home/upload/70%20service/un-fragebogen_kinderhandel_0709.pdf) (11.07.2008), question 2.c.

<sup>82</sup> *TF Working Group on Child Trafficking Report 2008*, p. 7 (NPA 2.1.).

<sup>83</sup> *Task Force against Trafficking Report 2008*, p. 7.

<sup>84</sup> Sec. 74 CC.

<sup>85</sup> *Alternative Report*, p. xiii.

## B. Prevention of child trafficking

### B.1. Awareness-raising

- [57]. The NPA 2007 contains the sensitisation of risk groups and of the population. Generally, NGOs criticise that existing policies focus on the one hand on Austrian children and on the other hand on sexual violence and abuse within the family.<sup>86</sup>
- [58]. Several awareness-raising events providing general information on THB, such as meetings organised by the MoI<sup>87</sup> or Foreign Ministry<sup>88</sup>, took place. In February 2008, the UN.GIFT (Vienna Forum to Fight Human Trafficking) drew attention of the public/media to the topic of THB. However, hardly any events or campaigns actually focus on child trafficking and the reduction of the demand on the side of adults. ECPAT Austria draws public attention to sexual exploitation of children by tourists (exhibition *Hinschauen statt wegschauen* [look – don't look away]).<sup>89</sup> The Women's section of the Austrian Federal Chancellery is supporting two public events of the LEFÖ-IBF in 2008.<sup>90</sup> Additionally, the *Round Table on Child Trafficking* plays an important role in raising awareness of the public.<sup>91</sup>
- [59]. There is some evidence of awareness-raising campaigns in relation to children. On the one hand, children in Austria are provided with information on THB/child trafficking: in that regard, a handbook for school education<sup>92</sup> is made available for schools by the Ministry for Education, Arts and Culture.<sup>93</sup> Furthermore, on the website of the

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<sup>86</sup> *Alternative Report*, p. 14.

<sup>87</sup> Meeting organised by MoI and IOM in 2007 with *Wiener Migrationsgruppe* on topic 'Trafficking in Persons – Current Trends and Challenges', presentation of common MoI and IOM activities to fight THB.

<sup>88</sup> Event *Gemeinsam gegen Menschenhandel* [Together against THB] on occasion of EU Day against THB (18.10.2007).

<sup>89</sup> *State Report OPSC*, paras. 68, 70.

<sup>90</sup> That is the 10th anniversary celebration of LEFÖ-IBF and a two-days symposium with focus on labour exploitation in October 2008. See *Task Force against Trafficking Report 2008*, pp. 7-8.

<sup>91</sup> *Task Force against Trafficking Report 2008*, pp. 7-8.

<sup>92</sup> '*Der Handel mit Frauen und jungen Menschen – Europäische Dimensionen einer Menschenrechtsverletzung*' [The Trade in Women and Young People – A European Dimension of a Human Rights Violation] developed by the BIM and Italian and Polish partner organisations in a DAPHNE-project.

<sup>93</sup> See *TF Working Group on Child Trafficking Report 2008*, p. 6.

Ministry of Health, Family Affairs and Youth<sup>94</sup> a section on the topic of child trafficking is to be incorporated.<sup>95</sup>

- [60]. On the other hand, children should be made aware of their rights by the provision of information on their rights, in particular the right to protection against violence and exploitation. They should also be encouraged to claim their rights.<sup>96</sup> However, many of these measures rather aim at the prevention of sexual violence in general and lack a focus on CT.<sup>97</sup> Several education materials inform also about advice and support institutions.<sup>98</sup> However, children affected are not reached if they do not attend school regularly.<sup>99</sup> The public broadcaster ORF offers through the campaign *Rat auf Draht* anonymously professional help over telephone and the internet; it is advertised on TV and radio and in that way also serves raising awareness of the whole population. However, it is not used to highlight the issue of CT.<sup>100</sup>
- [61]. In order to improve the current situation, the TF Working Group recommends the inclusion of other forms of exploitation – apart from sexual exploitation – in current information campaigns targeting the media and the public. Information at schools and outside schools should be provided in cooperation with children's and youth organisations.<sup>101</sup>

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<sup>94</sup> <http://www.kinderrechte.gv.at> (08.07.2008).

<sup>95</sup> See *TF Working Group on Child Trafficking Report 2008*, p. 6; see also *State Report OPSC*, para. 71.

<sup>96</sup> *TF Working Group on Child Trafficking Report 2008*, p. 7. For more details see Kinder- und Jugendanwaltschaften Österreichs [Austrian Ombuds Offices for Children and Youths] (2008), *Amendment to the Shadow Report of ECPAT Austria regarding the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, available at: <http://www.kinderanwalt.at/images/stories/englischeskrkzusatzprotokollkinderhandelpornoprostitutionstmk.pdf> (11.07.2008).

<sup>97</sup> *TF Working Group on Child Trafficking Report 2008*, p. 7; see also *State Report OPSC*, para. 66: teaching materials *Hör auf dich – lass dein Selbst laut werden* [listen to yourself – allow yourself to speak out loudly] for female pupils in 1<sup>st</sup> to 12<sup>th</sup> grades explaining strategies used by offenders taking intercultural aspects into consideration; info booklet *Beziehungsraum und Begegnungsraum* [A room for relations, a room to meet] for teachers and parents providing information on possibilities to support and set up protective measures at schools and class levels. Project *Mein Körper gehört mir* [My body belongs to me] launched by the Ministry of Education, Arts and Culture (interactive stage play for elementary schools; child protection organisations provide professional ass; accompanying events parents evening, school staff meeting).

<sup>98</sup> *TF Working Group on Child Trafficking Report 2008*, p. 7.

<sup>99</sup> *Alternative Report*, p. 16.

<sup>100</sup> *Alternative Report*, p. 15.

<sup>101</sup> *TF Working Group on Child Trafficking Report 2008*, p. 7. In general, the measures implementing this activities listed in the Task Force Report 2008 are rather dealing with events organised by governments to be visited by other state representatives.

## B.2. Child participation / Vulnerable groups

- [62]. There is hardly any evidence of direct participation of children in the development or implementation of awareness-raising efforts. Direct participation of children's organisations is taking place in the context of the awareness raising measures of ECPAT Austria through its *Jugendbeirat* [Federal Youth Advisory Council], e.g. in the development, implementation, monitoring and evaluation of OPSC related activities.<sup>102</sup>
- [63]. There is no evidence of direct participation of local communities and/or minority groups such as Roma in preventive efforts. This is problematic as - according to the Alternative Report - Roma people are affected to an alarming extent by child trafficking. According to the International Romani Union in Austria, data on the proportion of Roma people in the Austria population does not exist.<sup>103</sup>
- [64]. Specific policies to prevent that children in a vulnerable position may become victims of child trafficking upon their arrival in Austria do not exist. Several asylum-seeking minors have contacts, which do not exclude a relationship of dependency.<sup>104</sup> According to information from the asylum area, three asylum-seeking girls have been identified as victims of child trafficking; their cases at the asylum authorities are still pending.<sup>105</sup> NGOs criticise that prevention measures tend to have a focus on Austrian children and issues within the family, even though the youth welfare authorities are responsible for all children on Austrian territory (Sec. 3 Federal Youth Welfare Act).<sup>106</sup> NGOs criticise that attention to marginalised groups is given rather in the form of prohibitions, e.g. the introduction of a provision prohibiting begging with children on the streets in the Viennese *Landes-Sicherheitsgesetz* [Viennese Security Law].<sup>107</sup> An assessment of the consequence for affected children and for affected social institutions has not taken place.<sup>108</sup>
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<sup>102</sup> *Alternative Report*, p. vii.

<sup>103</sup> *Alternative Report*, p. 6.

<sup>104</sup> *TF Working Group on Child Trafficking Report 2008*, p. 10.

<sup>105</sup> *Alternative Report*, Annex, p. 43; telephone interview with Gerhard Wallner, Diakonie (Laura Gatner House), 10.07.2008.

<sup>106</sup> *Alternative Report*, p. 14.

<sup>107</sup> See Sect. 2; Vienna/LGB1 51/1993, last amended by LGB1 33/2008 (03.06.2008).

<sup>108</sup> *Alternative Report*, p. 14.

## C. Appointment of legal guardian

- [65]. If a child is found unaccompanied on Austrian territory, the *Jugendwohlfahrtsträger* [youth welfare authority] of the province in which the child is found, has to apply for transfer of custody, as soon as it gets to know about the presence of unaccompanied minors on its territory.<sup>109</sup> It has to appoint a guardian who has the obligation to function as ‘parental substitute’ offering full custody over child, including educational care and legal representation.<sup>110</sup> According to Sec. 3 *Jugendwohlfahrtsgesetz 1989* [Federal Youth Welfare Act]<sup>111</sup>, the Austrian youth welfare authorities are responsible for providing child care/protection services to all children living in Austria irrespective of their nationality. According to a ruling of the Supreme Court of Justice, the youth welfare authorities are under an obligation to take custody of foreign unaccompanied refugees even if their basic needs are fulfilled by e.g. *Grundversorgung* [basic welfare support].<sup>112</sup>
- [66]. Thus, all these services are accessible also for victims of child trafficking.<sup>113</sup> However, in reality, victims of child trafficking are often not identified and referrals are not taking place. The youth welfare authorities are often not aware of their field of responsibility.

### C.1. Age limits / age assessment

- [67]. In general, children are not capable of acting legally and consequently need to be represented in legal proceedings. However, in administrative proceedings such as asylum or aliens police proceedings different rules apply.
- [68]. In asylum proceedings, minors between 14 and 18 years are able to apply for asylum and actually initiate proceedings, if their interests cannot be safeguarded by their legal representatives (Sec. 16 para. 3 *Asylgesetz* [Asylum Law]<sup>114</sup>). Regarding all other

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<sup>109</sup> See S. Schumacher (2006) *Fremdenrecht*, pp. 213, 215, 341. See also Koziol/Welser (2002) *Bürgerliches Recht Band II*, pp. 508-510

<sup>110</sup> *Response to the Questionnaire of the UN SR*, question 3.a).

<sup>111</sup> Austria/BGBI 161/1989. The issue of youth welfare falls under shared legislative competences (Art. 12 Federal Constitutional Law). Thus, the Federal Youth Welfare Act regulates the basic principles; additionally, 9 varying youth welfare laws of the provinces exist under the umbrella of the Federal Youth Welfare Act.

<sup>112</sup> Austria/Oberster Gerichtshof/7 Ob 209/05v (19.10.2005); see also *Alternative Report*, p. 8.

<sup>113</sup> *Response to the Questionnaire of the UN SR*, question 3 lit. a.

<sup>114</sup> Austria/BGBI 100/2005 (16.08.2005)

procedural steps, they need to be represented; i.e. during the *Zulassungsverfahren* [admission procedure] by his/her *Rechtsberater* [legal advisor]; after admission by the youth welfare authority.

- [69]. In proceedings relating to the Aliens Police Law, minors are capable of acting legally already at the age of 16, even if the result of such actions could be to their disadvantage. Under the age of 16, they can act only in case such proceedings could result solely in a decision to their advantage (Sec. 12 *Fremdenpolizeigesetz* [Aliens Police Law]<sup>115</sup>). Consequently, the case may arise in which an unaccompanied minor is legally represented in his/her asylum procedure but not once he is detained (as a measure falling under the Aliens Police Law). NGOs and international organisations criticise this different treatment of foreign minors.<sup>116</sup>
- [70]. Age assessment is to be carried out by the Aliens Police authorities; a medical expert may be consulted (Sec. 12 para. 4 Aliens Police Law). In case an alien alleges to be a minor, the competent youth welfare authority has to be heard. Whereas the provision itself does not contain a *benefit-of-the-doubt* rule,<sup>117</sup> the *Verwaltungsgerichtshof* [Administrative Court] ruled that in case of doubt the nonage has to be assumed.<sup>118</sup> Also the *Menschenrechtsbeirat* [Human Rights Advisory Board] stressed that no scientific method existed and that margins of error of one or two years had to be taken into account.<sup>119</sup> NGOs criticise that psychosocial factors are not taken into consideration and that the benefit-of-the-doubt rule is often not followed.<sup>120</sup>

## C.2. Specialised Training for legal guardians

- [71]. Regarding trainings for youth welfare authorities see A.6.3.
- [72]. No information is available as to whether legal guardians have appropriate time for preparation of cases.

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<sup>115</sup> Austria/BGBI 100/2005 (16.08.2005)

<sup>116</sup> *Alternative Report*, p. xiii. See also UNHCR (2005) *Stellungnahme zum Entwurf für das Fremdenpolizeigesetz 2005*, pp. 2-3, available at: [http://www.unhcr.at/fileadmin/unhcr\\_data/pdfs/rechtsinformationen/5.2.\\_A-Stellungnahmen/027\\_UNHCR-Analyse\\_-\\_Asylg2005\\_20mai05.pdf](http://www.unhcr.at/fileadmin/unhcr_data/pdfs/rechtsinformationen/5.2._A-Stellungnahmen/027_UNHCR-Analyse_-_Asylg2005_20mai05.pdf) (24.07.2008).

<sup>117</sup> Criticism of the Human Rights Advisory Board: *Stellungnahme des Menschenrechtsbeirates zum Begutachtungsentwurf des BMI zum Asyl- und Fremdenpolizeigesetz 2005*, p. 21.

<sup>118</sup> Austria/Verwaltungsgerichtshof/2005/01/0463 (16.04.2007); See also 2007/21/0370 (24.10.2007).

<sup>119</sup> In particular, X-ray of the carpus is not approved. See Human Rights Advisory Board (2000) *Minderjährige in Schubhaft*.

<sup>120</sup> *Alternative Report*, p. 25.



## D. Coordination and cooperation

### D.1. Coordination body / Task Force

- [73]. In 2004, a Task Force against Trafficking was set up by the Foreign Ministry by decision of the Council of Ministers.<sup>121</sup> It is an inter- and multidisciplinary gremium under the leadership of the Foreign Ministry in order to coordinate and strengthen Austrian measures against THB.<sup>122</sup> Participants are representatives of all relevant ministries and of relevant non-governmental organisations and institutions. Ministries involved are the Foreign Ministry, MoI, Ministry of Social Issues and Consumer Protection, Ministry of Justice, Ministry of Labour and Economics, Ministry for Women, Media and Regional Policy (integrated in Federal Chancellery) and Ministry of Health, Family and Youth. Non-governmental actors involved are LEFÖ-IBF, the BIM and the Austrian Development Agency.
- [74]. In order to facilitate coordination and cooperation with the provinces on all levels, during the year 2007 Contact Persons in all provinces were appointed. Annual meetings of the Task Force with these Contact Persons are taking place.<sup>123</sup> As envisaged in the NPA 2007, a Working Group on Child Trafficking was established and a National Coordinator is about to be designated.<sup>124</sup>

#### D.1.1. Working Group on Child Trafficking

- [75]. In 2007, a Working Group on Child Trafficking (TF Working Group) was established. Participants are representatives of relevant ministries (Ministry of Health, Family and Youth, Foreign Ministry, MoI, Ministry of Justice), representatives of all governments of the

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<sup>121</sup> Decision of Council of Ministers, 09.11.2004. Information available on the Website of the Ministry of Social Affairs and Consumer Protection:

<http://www.bmsk.gv.at/cms/siteEN/liste.html?channel=CH0497> (11.07.2008).

<sup>122</sup> Before the Task Force came into existence, informal inter-ministerial meetings took place, e.g. in order to develop the CoE Convention on Action against trafficking in human beings (2005). It was the Ministry of Foreign Affairs which led these informal meetings eventually resulting in the establishment of the Task Force.

<sup>123</sup> *Task Force against Trafficking Report 2008*, p. 2.

<sup>124</sup> Other activities of the NPA in this context are the reporting on cooperation on EU-level for implementation of the EU Action Plan against THB and the nomination of experts for GRETA (*Le Groupe d'experts sur la lutte contre la traite des êtres humains*).

provinces and of relevant NGOs (ECPAT Austria, LEFÖ-IBF, BIM). Among its tasks is the development of proposals for concrete measures regarding the prevention and protection of victims.<sup>125</sup> Recommendations regarding the treatment of victims of child trafficking were adopted as discussion paper.<sup>126</sup>

## D.2. Cooperation

### D.2.1. Inter-ministerial agreements

- [76]. Currently, there are no cooperation agreements explicitly dealing with CT. However, in the Task Force – aiming at better coordination and cooperation – all relevant Ministries are represented. The TF Working Group holds regular meetings with youth welfare authorities of all provinces. In this context, relevant topics such as the need for sensitisation of personnel of the youth welfare, the need for disaggregation of data in youth welfare statistics and the possible necessity of a nationwide victim protection centre are covered.
- [77]. In this context, the frequent referrals of unaccompanied minors by the police to the *Drehscheibe*, a crisis centre administered by the Viennese Youth Welfare authority (MA 11), has to be mentioned (details see below).

### D.2.2. Agreements between state agencies and non-governmental actors

- [78]. LEFÖ-IBF runs on behalf of the MoI and the Ministry for Women, Media and Regional Policy (Federal Chancellery) a victim protection centre for adult trafficked women. LEFÖ-IBF, in particular its social workers and counsellors, closely cooperate with investigating officials. Recently, the Task Force issued a circular letter to the Aliens Police authorities with contact data of LEFÖ-IBF.<sup>127</sup> IBF offers accommodation, medical care and counselling/assistance in the affected person's mother tongue (support in contact with authorities, e.g.

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<sup>125</sup> *TF Working Group on Child Trafficking Report 2008*, p. 2.

<sup>126</sup> ‚Empfehlungen im Umgang mit Opfern des Kinderhandels und unbegleiteten Kindern‘ drafted by UNICEF Austria, IOM (International Organisation for Migration); FICE (Kinderrechtsbüro Österreich); ECPAT Österreich, LEFÖ-IBF, BIM and Norbert Ceipek. Available at: <http://www.sircc.strath.ac.uk/fice-inter/documents/Child%20trafficking%20deutsch.doc> (07.07.2008).

<sup>127</sup> *Task Force against Trafficking Report 2008*, p. 11.

application for residence permit; support in getting access to the labour market). Even though the target group are adult women, in exceptional cases also girls above the age of 16 are treated in this Centre.<sup>128</sup> LEFÖ-IBF receives funding also from the Ministry of Justice for its assistance during all legal proceedings.<sup>129</sup> In 2007 and 2008, capacities of LEFÖ-IBF were expanded by an increase of its budget.<sup>130</sup>

- [79]. Apart from that, NGOs such as LEFÖ-IBF, ECPAT Austria and BIM are represented in the Task Force and its Working Group.

### D.2.3. Guidelines on protection of personal data of child

- [80]. Currently, Austria coordinates a project aiming at the development of Guidelines and standards for comparable and reliable data collection regarding THB. In that regard, data protection aspects play a role.<sup>131</sup>

### D.2.4. International Cooperation

- [81]. The NPA 2007 envisages in its chapter on International Cooperation prevention measures (e.g. awareness raising, promotion of economic activities of risk groups), measures for the protection of victims<sup>132</sup> but also trainings for prosecution organs. Apart from that, the COSPOL-project for the fight against THB is mentioned.<sup>133</sup>

#### D.2.4.1. Cooperation Agreements

- [82]. Cooperation agreements concerning CT exist between the *Drehscheibe* on the one hand and youth welfare authorities in Bulgaria and Romania on the other hand (NPA 6.2). The centre developed a specific repatriation model for children coming from those two countries. Crisis centres in Romania (currently 14 centres) and in

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<sup>128</sup> *Response to the Questionnaire of the UN SR*, question 1.

<sup>129</sup> *Der Handel mit Frauen und Jungen Menschen*, pp. 30-31.

<sup>130</sup> *Task Force against Trafficking Report 2008*, p. 14. LEFÖ-IBF offers assistance from the first police interview until the final conviction of the perpetrator.

<sup>131</sup> *TF Working Group on Child Trafficking Report 2008*, pp. 15-16. See also *Task Force against Trafficking Report 2008*, p. 27.

<sup>132</sup> E.g. promotion of victim protection centres with psychological, medical and legal counselling and assistance, vocational trainings; strengthening of national mechanisms and institutions and trainings for law enforcement authorities regarding victims and witness protection.

<sup>133</sup> *Comprehensive Operational Strategic Planning for Police*; deals mainly with fight against THB in combination of Organised crime-groups from Romania.

Bulgaria (three) receive trainings and undertake to care for the children according to international standards and to submit reports about the well-being of the child for a period of six months after the handover.<sup>134</sup> Monitoring of the implementation may be conducted by independent NGOs.<sup>135</sup> It is argued, that due to this cooperation, the number of children accommodated in the *Drehscheibe* dropped significantly. Repatriation is organised in close cooperation with the embassy of the respective country and IOM.<sup>136</sup> However, these agreements are only due to the personal engagement of the director of the *Drehscheibe*.<sup>137</sup> Apart from that, no information about cooperation agreements specifically concerning CT with countries of origin outside the EU is available.

#### D.2.4.2. Support programmes

- [83]. The Austrian Development Agency (ADA) and the BIM implement projects in South Eastern Europe/Western Balkan; cooperation takes place with international organisations and non-governmental organisations. The supported measures aim primarily at prevention (sensitisation of population for THB, amelioration of the socio-economic situation of particular groups at risk), victim protection and prosecution. If possible, all these three elements are taken into consideration.<sup>138</sup>
- [84]. So far, several projects in South Eastern Europe dealing with the capacity building in regard to child protection programmes and public prosecution but also with the amelioration of inter-state cooperation of the police have been (co-)financed by the Austrian Development Agency:<sup>139</sup>
- Albania:
    - Project aiming at the protection and reintegration of trafficked children. Interventions take place on local level, in order to build up a functioning and sustainable child protection programme.<sup>140</sup>

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<sup>134</sup> *Response to the Questionnaire of the UN SR.*

<sup>135</sup> *Task Force against Trafficking Report 2008*, p. 22.

<sup>136</sup> *TF Working Group on Child Trafficking Report 2008*, pp. 14-15.

<sup>137</sup> *Alternative Report*, p. 28.

<sup>138</sup> ADA co-finances a project of the OSCE in Serbia containing all three components ('Advancing Institutional Response to Challenges of THB in Republic of Serbia'). See *Task Force against Trafficking Report 2008*, p. 21.

<sup>139</sup> General information on the ADA available at <http://www.ada.gv.at/en> (11.07.2008). See *TF Working Group on Child Trafficking Report 2008*, pp. 7-8.

<sup>140</sup> Terre des Hommes, Transnational Action against Child Trafficking' (TACT III).

- Project of UNICEF against trafficking in women and girls: rights of trafficked women and girls and of specific groups at risk (orphans) should be guaranteed and their access to prevention and protection measures enabled.
  - Bosnia and Herzegovina, Moldova
    - A project intending to provide girls and young women with education and income possibilities.<sup>141</sup>
    - In Moldova a project of the Moldovan NGO (ORDSE) aims also at saving young women from THB, in particular through income generating measures.
  - Project of police cooperation between Austria and several South East European states in the fight against THB (capacity building, trainings).<sup>142</sup>
- [85]. In context of the AGIS and CARDS programmes, the Boltzmann Institute of Human Rights has been involved in strengthening victim protection and increasing capacities of institutions involved in the fight against THB in e.g. Romania (sensitisation of judges, prosecutors and police for victim protection standards), Turkey and Croatia (both capacity building).<sup>143</sup>
- [86]. The TF Working Group recommends the continuing financing of measures in countries of origin, such as awareness building campaigns especially for groups at risk, e.g. Roma and Sinti, and the implementation of trainings on prevention measures concerning CT for authorities and other person involved.<sup>144</sup>

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<sup>141</sup> Project of Catholic Relief Services.

<sup>142</sup> *TF Working Group on Child Trafficking Report 2008*, pp. 7-8.

<sup>143</sup> *Task Force against Trafficking Report 2008*, pp. 21-22. See also *Alternative Report*, p. 11. More information on BIM-projects available at: <http://www.univie.ac.at/bim> (08.07.2008).

<sup>144</sup> *TF Working Group on Child Trafficking Report 2008*, pp. 7-8.

## E. Care and protection

### E.1. Residence

- [87]. There exist no legal provisions ensuring a reflection period. However, the Minister of the Interior issued an internal decree according to which the police should grant a reflection period of 30 days.<sup>145</sup> However, as such a decree is addressed only to authorities, it cannot be invoked by individuals concerned. According to NGO information, this reflection period is only granted if the victim gives evidence.<sup>146</sup> The Task Force against Trafficking issued a circular letter to the Aliens police authorities reminding of the 30 days reflection period.<sup>147</sup>
- [88]. Third country nationals who are victims of human trafficking may be granted a *Aufenthaltsbewilligung aus humanitären Gründen* [residence permit for humanitarian reasons]<sup>148</sup>. Victims should be enabled to testify in the criminal proceedings against the perpetrator and/or to enforce her/his civil claims. However, victims of THB/CT have no legal entitlement to obtain such a permit: In deciding whether or not to grant a permit, authorities dispose of discretion. In that regard, it is criticised, that the permit is only granted if the victim testifies.<sup>149</sup> Apart from that, the consent of the Minister of the Interior forms a requirement. What is more, the residence permit is to be granted *ex officio*; thus, it is not possible to apply for this residence permit and in case an ‘application’ is filed no right to receive a decision exists. However, only recently the *Verfassungsgerichtshof* [Constitutional Court] found the lack of a possibility to file an application unconstitutional.<sup>150</sup> Victims wishing to obtain a residence permit without knowledge of the Austrian legal system and the German language are usually reliant on victim protection organisations. This permit may be granted for the necessary period, at

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<sup>145</sup> *TF Working Group on Child Trafficking Report 2008*, p. 11 (3.1.).

<sup>146</sup> ECPAT Austria (2006), *Monitoringbericht Österreich*, p. 23.

<sup>147</sup> *Task Force against Trafficking Report 2008*, p. 11. Compare NPA 2007 3.1.

<sup>148</sup> Sec. 72 para. 2 *Niederlassungs- und Aufenthaltsgesetz* [Settlement and Residence Act], Austria/BGBl I 100/2005 (16.08.2005).

<sup>149</sup> *Der Handel mit Frauen und Jungen Menschen*, pp. 29-30 referring to LEFÖ-IBF, *Activity Report 2005*. See also ECPAT Austria (2006) *Monitoringbericht, Österreich*, p. 23.

<sup>150</sup> Austria/Verfassungsgerichtshof/G 246,247/07-14, G 265/07-15, G 273/07-13, G 23/08-13 (27.06.2008); the amendments will enter into force on 01.04.2009.

a minimum for six months. The renewal of the permit is possible but again subject to the consent of the Minister.<sup>151</sup>

- [89]. If additional requirements, e.g. fulfilment of the *Integrationsvereinbarung* [integration pact] are met, a *Niederlassungsbewilligung* [permanent residence permit] for humanitarian reasons may be granted.<sup>152</sup>
- [90]. Victims who are citizens of the European Economic Area may obtain a *Anmeldebescheinigung* [certificate of registration].<sup>153</sup>
- [91]. According to the Aliens Statistics, in 2007, 188 residence permits were granted for humanitarian reasons.<sup>154</sup> However, it is not disaggregated by reason for requesting the permit (e.g. victim of trafficking) or by age. Consequently, the number of victims of child trafficking holding such a residence permit cannot be deducted from the Aliens Statistics.

## E.2. Detention

- [92]. The legal framework regarding *Schubhaft* [administrative detention pending deportation] is to be found in Secs. 76-81 Aliens Police Law. There exists no explicit prohibition to detain children, not even regarding children under the age of 14.<sup>155</sup> However, authorities are obliged to apply *gelindere Mittel* [more lenient measures]<sup>156</sup>; i.e. to use detention as a 'last resort'.<sup>157</sup> In practice, children older than 14 years are detained.<sup>158</sup> In 2006, 185 children between the age of 14 and

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<sup>151</sup> See Vogl/Taucher/Bruckner/Marth/Doskozil (2006) *Fremdenrecht*, pp. 641-642.

<sup>152</sup> Sec. 73 Settlement and Residence Act.

<sup>153</sup> Sec. 53 Settlement and Residence Act.

<sup>154</sup> Available at: <http://www.bmi.gv.at/publikationen> (08.07.2008).

<sup>155</sup> The Human Rights Advisory Board recommended the introduction of an explicit prohibition of detention for children under the age of 14.

<sup>156</sup> Aliens may be ordered to take up accommodation in places determined by the authorities and to report at regular intervals to the police.

<sup>157</sup> See Schumacher (2006) *Fremdenrecht*, p. 317.

<sup>158</sup> However, according to information of the MoI, children under the age of 14 years are not detained in pre-deportation detention. See *Anfragebeantwortung 748/AB XXIII*. GP (26.06.2007) of the MoI, answer in response to questions 1 and 2. According to the MoI, in 2005 171 minors were detained (thereof 14 of the age 14-16 years and 157 of the age of 16-18 years). See *Anfragebeantwortung, 4012/AB XXII*.GP, May 2006, answers in response to questions 62-63, p. 10.

18 years were held in pre-deportation detention; the proportion of unaccompanied minors thereof is not known.<sup>159</sup>

- [93]. Secs. 78-79 Aliens Police Law and the *Anhalteordnung* [Detention Act]<sup>160</sup> regulate the conditions under which detention is to be carried out, e.g. accommodation, care, visits. Detention normally takes place in *Polizeianhaltezentren* [police detention centres]. Minors under the age of 16 may be detained only if accommodation and care adequate to their age and stage of development can be secured.<sup>161</sup> However, the Human Rights Advisory Board criticised that police detention centres did not dispose of age adequate equipment or occupation possibilities.<sup>162</sup>
- [94]. As a rule, children and adults are to be detained separately. Parents and children should be detained together except it is not to their best interest.<sup>163</sup> Due to the principle of separate detention, minors are occasionally kept in solitary confinement.
- [95]. The duration of pre-deportation detention has to be kept as short as possible; usually it should not exceed a period of two months. In case the non-execution of the deportation measure can be attributed to the alien's conduct, the maximum duration is a period of ten months within two years.<sup>164</sup> If an alien is detained for an uninterrupted period of more than six months, the proportionality of the custody is to be examined *ex officio* by the competent *Unabhängiger Verwaltungssenat* [Independent Administrative Tribunal]. Complaints about pre-deportation detention can be addressed to this Tribunal.<sup>165</sup>

### E.3. Family tracing programmes

- [96]. Information on the existence of family tracing programmes is not available. However, the *Drehscheibe* cooperating with care centres in

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<sup>159</sup> *Anfragebeantwortung* 748/AB XXIII. GP (26.06.2007) of the MoI, answer in response to questions 1 and 2.

<sup>160</sup> Austria/BGBI II 128/1999, last amended by BGBI II 439/2005 (22.12.2005).

<sup>161</sup> Sec. 79 para. 2 Aliens Police Law. See Schumacher (2006) *Fremdenrecht*, pp. 318-321.

<sup>162</sup> See Menschenrechtsbeirat, 2005/04 – *Anhalteordnung*, available at: [www.menschenrechtsbeirat.at/cms/index2](http://www.menschenrechtsbeirat.at/cms/index2) (08.07.2008).

<sup>163</sup> Sec. 79 para. 3 Aliens Police Law.

<sup>164</sup> Sec. 80 Aliens Police Law.

<sup>165</sup> *Report by the Commissioner for Human Rights Mr. Thomas Hammarberg on his Visit to Austria 2007*, 12.12.2007, CommDH(2007)26, available at: [http://wcd.coe.int/ViewDoc.jsp?id=1225149&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679#P266\\_63628](http://wcd.coe.int/ViewDoc.jsp?id=1225149&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679#P266_63628) (09.07.2008).



Bulgaria and Romania also tries to get in contact with parents of victims of child trafficking.<sup>166</sup>

## E.4. Specialised shelters

- [97]. There exists only one specialised shelter for victims of child trafficking in the Federal Province of Vienna administered by the Viennese Youth Welfare authority MA 11 (*Drehscheibe*). LEFÖ-IBF runs a specialised shelter for adult women; in exceptional cases also girls under the age of 18 are taken care of.<sup>167</sup>
- [98]. The *Drehscheibe* gives shelter to unaccompanied foreign children. In most cases, minors under the age of 14 (age of criminal responsibility) were referred by the police; the centre is well-known among Viennese police and immigration authorities. The centre is based on the Viennese Youth Welfare Law<sup>168</sup> which commits the Viennese Youth Welfare system to provide shelters and protection also for non-residents if the well-being of the child is in danger. Socio-pedagogues take care of children; special (psycho-)therapy is provided if needed. The *Drehscheibe* tries to bring the child to a special youth welfare institution of his/her home country as soon as possible.<sup>169</sup>
- [99]. Statistics of children who leave shelters with unknown destination do not exist. The *Drehscheibe* follows an 'open door approach'. Children are free to leave. In order to prevent children from going into hiding social workers try to get in personal contact with the children affected.

## E.5. Access to health care

- [100]. Persons who are granted a residence permit for humanitarian reasons usually receive *Grundversorgung* [basic welfare support].<sup>170</sup> This comprises *inter alia* health care which normally does not include psychosocial care.<sup>171</sup> However, as unaccompanied minor foreigners

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<sup>166</sup> *Task Force against Trafficking Report 2008*.

<sup>167</sup> *Response to the Questionnaire of the UN SR*, question 2.b.

<sup>168</sup> Vienna/LGB1 36/1990 (25.06.1990).

<sup>169</sup> *Response to the Questionnaire of the UN SR*.

<sup>170</sup> Art. 2 *Grundversorgungsvereinbarung* [Basic Welfare Support Agreement]. See Austria/BGBI I 80/2004 (15.07.2004); this is a federal law, which regulates the competence of the federal state and the provinces and defines beneficiary groups and benefits. The main responsibility falls with the provinces; thus additionally, nine laws on provincial level regulate the exact content.

<sup>171</sup> Art. 6 Basic Welfare Support Agreement.

are entitled to special age-adequate treatment, such psychosocial care can be included.<sup>172</sup> Victims of child trafficking not falling under the regime of basic welfare support are entitled only to emergency treatment.<sup>173</sup> Thus, the NPA 2007 mentions as one of its activities the regulation of access to medical treatment for victims of THB until a residence permit is granted (3.9). However, currently no results are available.<sup>174</sup> As the number of trafficked children or the number of trafficked children who obtained a residence permit for humanitarian reasons is not known in the first place, the number of trafficked children receiving such health care services is unknown.

## E.6. Access to education

- [101]. School attendance is compulsory for all children who are permanent residents of Austria. Children only temporarily resident have the right to attend school under the same conditions.<sup>175</sup> This applies irrespective of residence status and nationality. Compulsory schooling comprises four years of education in a *Grundschule/Volksschule* [primary school] or *Sonderschule* [special school]; four years in a *Hauptschule* [general secondary school], *allgemein bildende höhere Schule* [academic secondary school] and the ninth school year in a *Polytechnische Schule* [polytechnic school], continued attendance at primary school, general secondary school, or special school, or attendance at a medium- or higher-level school.<sup>176</sup>
- [102]. Access to the *Berufsschule* [vocational school] is granted only if a contract of apprenticeship with an employer is concluded. However, such a contract is subject to the *Ausländerbeschäftigungsgesetz* [Aliens Employment Law].<sup>177</sup> Consequently, children coming from third countries or the new Member States need to obtain a *Beschäftigungsbewilligung* [work permit], which is only possible if they dispose already of a certain residence status.<sup>178</sup> This has already

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<sup>172</sup> Art. 7 Basic Welfare Support Agreement.

<sup>173</sup> Apart from that, NGOs offer health care services: see Diakonie, Amber, <http://amber.diakonie.at> (08.07.2008).

<sup>174</sup> *Task Force against Trafficking Report 2008*, p. 14.

<sup>175</sup> *Schulpflichtgesetz* [Law on Compulsory Education], Austria/BGBI. 76/1985, last amended by BGBI I 113/2006 (24.07.2006). See Secs. 1, 17.

<sup>176</sup> See Ministry for Education, Science and Culture (2006) *Educational Opportunities in Austria*, available at: [http://www.bmukk.gv.at/medienpool/9043/bi\\_engl.pdf](http://www.bmukk.gv.at/medienpool/9043/bi_engl.pdf) (10.07.2008).

<sup>177</sup> Austria/BGBI 218/1975, last amended by BGBI I 78/2007 (13.11.2007).

<sup>178</sup> Sec. 4 para. 3 nr. 7 Aliens Employment Law.

been criticised by the Committee on the Rights of the Child and NGOs.<sup>179</sup>

- [103]. As the number of trafficked children or their residence status is not known in the first place, the number of trafficked children receiving education/training is unknown.

## E.7. Access to legal assistance

- [104]. Upon request, victims are entitled to *Prozessbegleitung* [psychosocial and legal assistance], if and to the extent it is necessary to guarantee the exercise of their procedural rights.<sup>180</sup> However, due to the uneven allocation of resources and the lack of specialised support organisations for child victims of trafficking, it is difficult to ensure that the right to psychosocial and legal assistance is upheld in practice.<sup>181</sup>

- [105]. For the period 01.10.2007 until 30.09.2008, the Ministry of Justice has concluded 46 contracts with victim protection institutions to provide psychosocial and legal assistance. In 2005 2,371 persons, in 2006 2,223 persons and in the period of 01.10.2006 to 30.09.2007 2,606 persons were supported by psychosocial and legal assistance. According to information from LEFÖ-IBF, in 2006 28 women and girls received advice; in 2007 36 women and girls.<sup>182</sup> However, this figures do not give information on the extent to which victims of child trafficking were beneficiaries.

## E.8. Special needs

- [106]. In Vienna, the *Drehscheibe* informally cooperates with the *International Romani Union* so that conversation in the mother tongue of Roma children is ensured; this is conducive for gaining information and building up trust. However, this collaboration is due to the personal engagement of *Drehscheibe*'s director and not due to a systematic approach. The spokesperson of the International Romani

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<sup>179</sup> *Alternative Report*, p. xi.

<sup>180</sup> Sec. 66 para. 2 *Strafprozessordnung* [Code of Criminal Procedure], Austria/BGBl 631/1975, last amended by BGBl I 109/2007 (28.12.2007).

<sup>181</sup> *Alternative Report*, pp. 24-25.

<sup>182</sup> *Task Force against Trafficking Report 2008*, p. 19. Compare also *Response to the Questionnaire of the UN SR*, question 3.d.

Union is still in close contact with some of children repatriated by the *Drehscheibe* and aware of their whereabouts.<sup>183</sup>

## E.9. Hotline

- [107]. The Commission decision has been already implemented<sup>184</sup> and the numbers 116 000 (Hotline for missed children), 116 111 (Hotline for children searching for help), and 116 123 (Hotline for *Lebenshilfe* [help in life]) are now available for providers. However, such hotlines have not been installed yet.
- [108]. The NPA 2007 includes the activity to examine the possibility of installing a national official telephone hotline which victims of THB of different national origins can consult (3.4). Such a hotline should not be with the police.<sup>185</sup>
- [109]. Apart from that, the public broadcaster ORF offers through the campaign *Rat auf Draht* professional help for children over a telephone hotline (147) and online<sup>186</sup> anonymously. However, it is focusing on German speaking children and does not specifically address the topic of child trafficking.

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<sup>183</sup> *Alternative Report*, p. 10.

<sup>184</sup> *Kommunikationsparameter-, Entgelt- und Mehrwertdiensteverordnung*, Austria/BGBI II 389/2006, last amended by 2008/77 (28.02.2008).

<sup>185</sup> *Task Force against Trafficking Report 2008*, p. 13.

<sup>186</sup> <http://rataufdraht.orf.at> (08.07.2008).

## F. Best interests determination and durable solutions, including social inclusion/return

### F.1. Identification of durable solutions

- [110]. The NPA 2007 mentions as one of its activities the development of a coordinated accompanying programme for victims of THB, in particular victims of child trafficking (3.10). As soon as the first treatment is secured, a long-term future perspective (i.e. integration, resettlement or voluntary return) - on the basis of best interest determination (BID) and under active involvement of the child - should be developed. However, the TF Working Group report 2008 mainly focuses on return.
- [111]. Currently, no systematic coordinated approach in securing the repatriation exists. Rather, due to the personal commitment of its director, the crisis centre *Drehscheibe* organises the repatriation to Bulgaria and Romania in cooperation with local youth welfare organisations<sup>187</sup> and under involvement of the embassies of the countries of origin. Thus, the Working Group on Child Trafficking argued that structures needed to be established. In that regard, the Working Group suggested to establish clear monitoring agreements in countries of origin after repatriation and to provide instructions for the Youth Welfare authorities on how to proceed with repatriations, in particular BID and voluntariness.<sup>188</sup> The WG Report 2008 mentioned that IOM-Standards<sup>189</sup> had to be observed and that IOM could offer help through its networks in 40 countries; in countries in which no regional office exists, UNICEF could offer support.

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<sup>187</sup> They undertake to report to the *Drehscheibe* during six months reports about the child's reintegration.

<sup>188</sup> TF Working Group on Child Trafficking Report 2008, pp. 14-15.

<sup>189</sup> Return has to happen voluntarily, documented, coordinated between relevant institutions and under data protection of the child.

## F.2. Availability of asylum/subsidiary protection

- [112]. So far, victims of THB/CT have not been regarded as ‘persecuted’ in the sense of the Geneva Refugee Convention by Austrian asylum authorities. However, at the moment, three cases of young Nigerian women who were identified as victims of child trafficking are pending at the first and second instance asylum authority.<sup>190</sup>

## F.3. Participation of the child

- [113]. Children participate in hearings in asylum procedures and are legally represented by a *Rechtsberater* [legal advisor] during the admission procedure and by Youth Welfare authorities after admission. Translators are provided.
- [114]. With regard to return, currently no formalised procedure exists. As already mentioned, the *Drehscheibe* is conducting repatriations. However, no information is available as to whether informed consent exists.
- [115]. No information is available whether or to what extent trafficked children have applied for a residence permit for humanitarian reasons. Hence, no information regarding their role in such a procedure exists.

## F.4. Access to integration programmes

- [116]. Currently, specialised integration programmes for trafficked children do not exist. The NPA 2007 envisages to examine legal norms and to present options of integration for victims of THB who are already in possession of a residence permit (3.2). However, victims of THB with a residence permit for humanitarian reasons and who also fulfil the integration pact form a very small group.<sup>191</sup> The Task Force suggested to discuss the topics education and accommodation for victims of

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<sup>190</sup> Telephone interview with Gerhard Wallner, Diakonie, 10.07.2008. Because of the long duration of one of the asylum procedures, a petition to the *Volksanwaltschaft* [Ombudsperson] has been filed.

<sup>191</sup> *Task Force against Trafficking Report 2008*, pp. 11-12. A permanent residence permit for humanitarian reasons may be granted if *inter alia* the integration pact is fulfilled.

child trafficking within the Working Group under participation of representatives of the Ministry for Education, Arts and Culture.<sup>192</sup>

- [117]. In order to facilitate access to the labour market of victims of THB in general, the Task Force suggested the amendment of laws containing quota for the labour market.<sup>193</sup> Aliens subject to the Aliens Employment Law can not participate in courses for occupational orientation/qualification.<sup>194</sup>

## F.5. Special needs

- [118]. No systematic approach exists in taking into consideration needs of children coming from different ethnic backgrounds or of children with disabilities.

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<sup>192</sup> *Task Force against Trafficking Report 2008*, pp. 11-12.

<sup>193</sup> It was suggested to include Victims of THB in the *Bundeshöchstzahlüberziehungsverordnung* [Act exempting certain categories of persons from the quota].

<sup>194</sup> *Task Force against Trafficking Report 2008*, pp. 11-12.

## G. Prosecution

### G.1. Child-sensitive procedures

- [119]. In order to avoid ‘secondary victimisation’, the possibility of ‘considerate examination’ exists: Witnesses may be interviewed without the presence of the accused; the prosecution and the defendant are given the opportunity to ask questions indirectly (e.g. use of technical equipment). Care has to be taken that the witness and the accused do not meet.<sup>195</sup> Only victims under the age of 14 are entitled to be interviewed in such a way upon request. In case the child under 14 was victim of sexual exploitation, the Court is obliged ex officio to act in that way.<sup>196</sup> Children older than 14 years are not entitled to ‘considerate examination’. However, if it is in their interest, in particular in regard of their young age or psychological state, they can be interviewed in such a way (upon request by the public prosecution or ex officio). Following a considerate examination, the person does not have to make a testimony at the main hearing.<sup>197</sup> However, also in the trial phase the possibility of a ‘considerate examination’ exists.<sup>198</sup>
- [120]. If the witness is under the age of 14, the Court can ask an expert to conduct the interview.<sup>199</sup>
- [121]. In general, a minimum age for giving testimony does not exist. Experts may be consulted in this regard. However, it has been criticised that expert evidence about the capacity to testify is often obtained only after the child has already been interrogated. Thus, the child is obliged to undergo the painful hearing in any case; sometimes also the credibility of the child is being questioned afterwards.<sup>200</sup>
- [122]. The amendments to the CCP included a strengthening of victim’s rights (e.g. right to petition closed sessions for the main procedure, right to petition the hearing of (expert) evidence, right to petition the exclusion of the accused person during interrogation). The CCP also contains several provisions regarding sensitive handling of victim data (e.g. on dissemination of photos and personal data to the media;

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<sup>195</sup> Sec. 165 para. 3 Code of Criminal Procedure (CCP). However, it has been criticised that in practice the existing infrastructure in court buildings is an obstacle in that regard.

<sup>196</sup> Sec. 165 para. 4 CCP.

<sup>197</sup> Sec. 156 CCP.

<sup>198</sup> Secs. 250 para. 3 and 65 CCP.

<sup>199</sup> Sec. 165 para. 3 CCP.

<sup>200</sup> *Alternative Report*, p. 25.



exclusion of public before discussion of circumstances from personal life etc).<sup>201</sup>

- [123]. The Task Force is discussing the necessity of witness protection programmes for children (under involvement of the youth welfare)<sup>202</sup> and examines the interaction of judiciary, police and youth welfare in that regard.<sup>203</sup>

## G.2. Final convictions

- [124]. The Ministry of Justice does not dispose of statistics containing convictions according to Sec. 104a CC, which are disaggregated by the age of victims.<sup>204</sup> Concerning THB in general, the Task Force mentions – in reference to statistics of the Ministry of Justice – two convictions (out of 18 proceedings) according to Sec. 104a CC in 2007, nine convictions (out of 33 proceedings) in 2006 and one conviction (out of 16 proceedings) in 2005.<sup>205</sup> In contrast, the TF Working Group on Child Trafficking report 2008 states – without quoting any sources – that until now there were no convictions according to Sec. 104a CC.<sup>206</sup>
- [125]. In contrast to the above mentioned figures, the *Trafficking in Persons Report 2008* of the US State Department speaks of 18 convicted trafficking offenders in 2006 and of 25 convictions in 2005.<sup>207</sup> The discrepancy in number of convictions might be due to the inclusion of convictions according to Sec. 217 CC and 114 Aliens Police Law.

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<sup>201</sup> The NPA mentions the protection of the victim through sensitive data handling (5.5). TF Report 2008, pp. 19-20.

<sup>202</sup> TF Working Group on Child Trafficking Report 2008, p. 8.

<sup>203</sup> Task Force against Trafficking Report 2008, pp. 13-14. NPA 3.5 ‘Examination of existing protection programmes for witnesses of MoI taking into account especially THB problem and examination of execution of particular measures for affected of THB’.

<sup>204</sup> Information of the Ministry of Justice by e-mail (04.07.2008); requested by e-mail (23.06.2008).

<sup>205</sup> Task Force against Trafficking Report 2008, pp. 25-26.

<sup>206</sup> TF Working Group on Child Trafficking Report 2008, p. 15.

<sup>207</sup> US State Department, *Trafficking in Persons Report 2008*, available at: <http://www.state.gov/documents/organization/105501.pdf> (11.07.2008), p. 63; conviction data for 2007 unavailable.

### G.3. Rules on access to justice / right to compensation

- [126]. In general, victims have the right to be treated with dignity and compassion in course of criminal proceedings.<sup>208</sup> The Code of Criminal Procedure contains a chapter on victims' rights (Secs. 65-70). The court is obliged to inform the victim on the existence of criminal proceedings, about every discontinuation and resumption of proceedings. The victim has the right to be present during the main trial, pose questions to the accused, witnesses and experts, inspect files, submit evidence; it has the right to translation and interpretation services to the extent necessary to exercise his/her rights.
- [127]. Apart from that, victims have the right to claim compensation for the damage insulted by joining the criminal proceedings as *Privatbeteiligte/r* [private party].<sup>209</sup> In case of conviction of the defendant, the court has to take a decision on the claims of the victim, unless further investigations appear imperative. In that case – and also if the accused is not convicted – the victim is to be referred to the civil courts.<sup>210</sup>
- [128]. Victims of CT may also have a right to claim compensation under the *Verbrechensopfergesetz* [Law regulating the compensation for crime victims].<sup>211</sup> The Task Force will examine the practical applicability of this law regarding victims of THB.<sup>212</sup> This law envisages state support for victims who suffered bodily injury because of a crime committed intentionally. Currently, third country nationals can claim this compensation only if they resided legally in Austria at the time of the commitment of the crime.<sup>213</sup>
- [129]. No figures exist as to the amount of compensation paid to trafficked children per year.

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<sup>208</sup> Sec. 10 para. 3 CCP.

<sup>209</sup> Sec. 67 CCP.

<sup>210</sup> *Response to the Questionnaire of the UN SR*, question 3.d.

<sup>211</sup> Austria/BGBI 288/1972, last amended by BGBI I 2/2008 (04.01.2008).

<sup>212</sup> NPA 2007 (4.1).

<sup>213</sup> *Task Force against Trafficking Report 2008*, p. 17.

## H. Miscellaneous

- [130]. So far, the discussions on CT in Austria focused on sexual exploitation and begging on the streets. Recently, the Working Group on Child Trafficking put the exploitation form trafficking in illegal adoptions on the agenda. It recommended to collect data on all international adoptions, introduce more concrete provisions on international adoptions in the Federal Youth Welfare Act and to improve the cooperation between relevant ministries. Further, it should be investigated whether a separate Law on international adoptions is necessary.<sup>214</sup>

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<sup>214</sup> *TF Working Group on Child Trafficking Report 2008*, p. 11.

## I. Good practices

- [131]. The Round Table on Child Trafficking provides an important forum for networking among different national and international actors. It also contributes to the raising of awareness of the topic of child trafficking.
- [132]. The multi-stakeholder trainings organised and conducted by ECPAT Austria tried for the first time to bring all relevant actors across all institutions, i.e. from youth welfare to police, NGOs and practitioners, together.
- [133]. Austria currently coordinates a project aiming at the development of guidelines and standards for comparable and reliable data collection regarding THB; results are to be expected in spring 2009 (see A.2., para. 36). Data protection issues are also taken into account.

Annex 1 - Tables and Statistics<sup>215</sup>

	2000	2001	2002	2003	2004	2005	2006	2007
Number of children being granted temporary stay on grounds of trafficking	-	-	-	-	-	-	-	-
Number of trafficked children receiving full health care services, including psychosocial care and rehabilitation (e.g. not just emergency treatment)	-	-	-	-	-	-	-	-
Number of trafficked children receiving education/training, in particular secondary education and vocational training	-	-	-	-	-	-	-	-
Number of trafficked children receiving legal assistance (e.g. for claiming compensation)	-	-	-	-	-	-	-	-
Number of final convictions based on child trafficking cases, per year	-	-	-	-	-	-	-	-

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<sup>215</sup> Statistics are not disaggregated by the category 'trafficked children'.

Total of amount of compensation paid to trafficked children, per year	-	-	-	-	-	-	-	-
Average of amounts of compensation paid to trafficked children, per year	-	-	-	-	-	-	-	-
Range of amount of compensation paid to trafficked children, per year	-	-	-	-	-	-	-	-

Any other tables or statistics relevant for child trafficking