



Convention on the Rights of the Child

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Committee on the Rights of the Child

Concluding observations on the combined third and fourth periodic report of Austria, adopted by the Committee at its sixty-first session (17 September – 5 October 2012)

1. The Committee considered the combined third and fourth periodic report of Austria (CRC/C/AUT/3-4) at its 1736th and 1737th meetings (see CRC/C/SR.1736 and 1737) held on 24 September 2012, and adopted, at its 1754th meeting, held on 5 October 2012, the following concluding observations.

I. Introduction

2. The Committee welcomes the submission of the combined third and fourth periodic report of the State party (CRC/C/AUT/3-4) and the written replies to its list of issues (CRC/C/AUT/Q/3-4/Add.1), which allowed for a better understanding of the situation in the State party. The Committee expresses appreciation for the constructive dialogue held with the high-level and multi-sectoral delegation of the State party.

II. Follow-up measures undertaken and progress achieved by the State party

3. The Committee welcomes the adoption of the following legislative measures:

(a) The Federal Constitutional Law on the Rights of Children, on 20 January 2011, which is directly applicable in the courts of the State party and protects the best interests of the child, the views of the child and several other rights enshrined in the Convention;

(b) The amendment to the Criminal Code, on 27 December 2011, strengthening the protection of children from sexual exploitation and sexual abuse;

(c) The amendment to the Family Burden Equalization Law, in 2011;

(d) The amendment to the Child Care Allowance Law, on 1 October 2010; and

(e) The amendment to the Electoral Law lowering the voting age from 18 to 16 years, on 29 June 2007.

4. The Committee also welcomes the ratification of or accession to:
 - (a) The International Convention for the Protection of All Persons from Enforced Disappearance, in June 2012;
 - (b) The Convention on the Rights of Persons with Disabilities and its Optional Protocol, in September 2008;
 - (c) The 1954 Convention relating to the Status of Stateless Persons, in February 2008;
 - (d) The Protocol against the Smuggling of Migrants By Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, in November 2007;
 - (e) The Council of Europe Convention on Cybercrime, in June 2012;
 - (f) The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, in February 2011;
 - (g) The 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, in December 2010;
 - (h) The Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession, in September 2010.
5. The Committee also welcomes the following institutional and policy measures:
 - (a) The introduction of a child rights impact assessment of all relevant legislative initiatives and administrative measures at the federal level, from 1 January 2013;
 - (b) The creation of a human rights advisory board to the Austrian Ombudsman Board and the designation of the Board as a national preventive mechanism with competence to visit socio-pedagogical facilities where children are deprived of their liberty, both in 2012;
 - (c) The adoption of a child health strategy in September 2011;
 - (d) The introduction of free compulsory kindergarten attendance for children aged 5, in 2010; and
 - (e) The appointment of the first Austrian National Coordinator for the Fight against Trafficking in Human Beings, in 2009, the adoption of National Action Plans to fight trafficking in human beings for 2007-2009, 2009-2011 and 2012-2014, and the establishment of a special working group on child trafficking in 2007.

III. Main areas of concern and recommendations

A. General measures of implementation (arts. 4, 42 and 44, para. 6 of the Convention)

The Committee's previous recommendations

6. The Committee, while welcoming the State party's efforts to implement the Committee's previous concluding observations of 2005 (CRC/C/15/Add.251) on the State party's second periodic report (CRC/C/83/Add.8), notes with regret that some of the recommendations contained therein have not been fully addressed.

7. **The Committee urges the State party to take all necessary measures to address those recommendations from the concluding observations on the second periodic report under the Convention that have not been implemented or sufficiently implemented, particularly those related to the withdrawal of reservations, coordination, non-discrimination and juvenile justice.**

Reservations

8. While noting that discussions are taking place in the State party on a possible withdrawal of its reservations to articles 13, 15 and 17 of the Convention, the Committee remains of the opinion that said reservations are not necessary.

9. **The Committee reiterates its recommendation that the State party consider withdrawing its reservations to articles 13, 15 and 17 of the Convention, in line with the Vienna Declaration and Plan of Action adopted by the World Conference on Human Rights in 1993.**

Legislation

10. While welcoming the Federal Constitution Law on the Rights of Children of 16 February 2011, the Committee notes with concern that the Law does not include all the rights protected under the Convention, in particular social and cultural rights of children. It also notes with concern that despite the State party's efforts to harmonize the youth protection laws of all Länder, in line with the principles and provisions of the Convention, most of the Länder continue to have divergent standards as regards certain age limits and definitions of terms such as "children" and "adolescents".

11. **The Committee recommends that the State party find the appropriate constitutional path that will allow it to have in the whole territory, including its Länder, a comprehensive legal framework which fully incorporates all the provisions of the Convention, in particular social and cultural rights, and its Optional Protocols. It also recommends that the State party continue and intensify its efforts to harmonize the youth protection laws of all Länder, with a view to achieving equal protection standards throughout the State party.**

Comprehensive policy and strategy

12. While noting that the State party has mainstreamed children's rights in different sectors, including in its national plans of action on integration, persons with disabilities, and trafficking, the Committee regrets the absence of a comprehensive policy and strategy on children in the State party.

13. **The Committee recommends that the State party prepare a comprehensive national policy on children in consultation with children and civil society and develop programmes for its application, ensuring these are provided with sufficient human, technical and financial resources.**

Coordination

14. The Committee welcomes the State party's efforts to strengthen coordination in respect of policies to implement the Convention, including through regular meetings of representatives of relevant Federal Ministries and the Länder. While noting that, according to the State party's report, a permanent coordination mechanism would be inefficient, as it would require the involvement of regional and local administrative bodies and NGOs, the Committee nevertheless reiterates its concern regarding the lack of a specific body, at Federal and Länder levels, with a clear mandate to coordinate in a comprehensive manner the implementation of the Convention (CRC/C/15/Add.251, para. 10).

15. **The Committee reiterates its recommendation that the State party undertake all measures to ensure the establishment of a permanent and effective coordination mechanism on the rights of the child at Federal and Länder levels, and that sufficient human, technical and financial resources are allocated for ensuring the effective functioning of such a mechanism (CRC/C/15/Add.251, para. 11).**

Allocation of resources

16. The Committee regrets the lack of information on the level of resources allocated to children as well as on mechanisms for the identification, tracking and protection of strategic budget lines designated for the implementation of the Convention.

17. **The Committee requests the State party to provide information in its next periodic report on relevant procedures in its budgeting process to implement article 4 of the Convention in order to ensure that funds are allocated to the maximum extent of available resources for the implementation of the rights recognized in the Convention, and are easily identifiable and presented in a transparent way. It also recommends that the State party clearly state on a yearly basis its priorities with respect to child rights issues and identify the amount and proportion of the budget spent on children, especially those in vulnerable and disadvantaged situations, at the Federal, Länder and municipal levels in order to make possible an evaluation of the impact of expenditures on children and of their effective utilization and provide such information in its next periodic report. In doing so, the State party should take into account the recommendations of the day of general discussion of 21 September 2007 on "Resources for the rights of the child - responsibility of States".**

Data collection

18. The Committee notes that the Austrian statistics institution publishes data disaggregated by age, sex and geographic location on the population, labour market, youth employment, education, culture, health and social affairs on a regular basis. However, it is concerned that such data is not sufficiently disaggregated for all areas covered by the Convention, particularly with regard to migrant children, refugee and asylum-seeking children, as well as other children in vulnerable and disadvantaged situations.

19. **The Committee encourages the State party to set up a comprehensive data collection system with the support of its partners and to analyse the data collected as a basis for assessing progress achieved in the realization of child rights and to help design policies and programmes to implement the Convention. The data should be disaggregated by age, sex, geographic location, nationality, migration status and socio-economic background to facilitate analysis of the situation of all children.**

Dissemination and awareness-raising

20. The Committee notes the State party's efforts to disseminate the Convention via the Internet and to translate it into the languages of the national minorities and the major migrant communities in the State party. However, it regrets that children's rights are not included in the curricula of primary and secondary education.

21. **The Committee recommends that the State party increase its efforts to raise awareness among the general public, particularly children, about the rights provided for in the Convention, by including children's rights in the curricula of primary and secondary education.**

Training

22. While noting the State party's efforts to train judges and public prosecutor's on children's rights, the Committee is concerned that there is no systematic specialized training on children's rights for all professional groups working for and with children.

23. **The Committee recommends that the State party take the necessary measures to ensure that all professional groups working for and with children are adequately and systematically trained on children's rights, in particular teachers, personnel involved in juvenile justice, health workers, social workers and personnel working in all forms of alternative care.**

B. General principles (arts. 2, 3, 6 and 12 of the Convention)

Non-discrimination

24. While noting the specialized training, education and awareness-raising programmes, including inter-cultural and civic education at school, conducted by the State party to prevent discriminatory attitudes, as well as the State party's legislation criminalizing incitement to racial hatred, the Committee remains concerned about instances of hate speech by politicians and manifestations of Neo-Nazism, racism, xenophobia and related intolerance towards migrant communities, refugees, asylum seekers and persons of certain ethnic backgrounds, and their impact on children belonging to these groups.

25. **The Committee urges the State party to take immediate measures to combat direct and indirect manifestations of Neo-Nazism, racism, xenophobia and related intolerance affecting children and to effectively investigate, prosecute and punish such acts. It also recommends that the State party strengthen its efforts to foster a culture of tolerance and mutual respect. Furthermore, it recommends that the State party include information in its next periodic report on measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party in follow-up to the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the outcome document adopted at the 2009 Durban Review Conference.**

Best interests of the child

26. The Committee welcomes that the principle of the best interests of the child has been included in article 1 of the Federal Constitutional Law on the Rights of Children and other relevant legislation. However, it is concerned that in practice, this principle is not always duly taken into consideration in decision-making processes and in the allocation of resources.

27. **The Committee urges the State party to strengthen its efforts to ensure that the principle of the best interests of the child is appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings as well as in all policies, programmes and projects relevant to and with an impact on children. In this regard, the State party is encouraged to develop procedures and criteria to provide guidance for determining the best interests of the child in every area, and to disseminate these to public or private social welfare institutions, courts of law, administrative authorities and legislative bodies. The legal reasoning of all judicial and administrative judgments and decisions should also be based on this principle.**

Respect for the views of the child

28. While noting that the voting age was lowered from 18 to 16 years in 2007 and that the right to participation is protected in article 4 of the Federal Constitutional Law on the Rights of Children, the Committee recommends that the State party conduct research to monitor the impact of the lowering of the voting age and educate children on the exercise of the right to vote in an effective manner. The Committee also recommends that the State party take into account its general comment No. 12 (2009) and take effective measures to implement the right of the child to participation in relevant matters arising under the Convention.

C. Civil rights and freedoms (arts. 7, 8, 13-17, 19 and 37 (a) of the Convention)**Birth registration**

29. The Committee reiterates its concern about the practice of anonymous abandonment in the State party through the use of “baby flaps” or “baby nests”, which is in violation of, inter alia, articles 6, 7, 8, 9 and 19 of the Convention.

30. **The Committee strongly urges the State party to undertake all measures necessary to end the practice of anonymous abandonment and expeditiously strengthen and promote alternatives such as the possibility of anonymous births at hospitals as a measure of last resort to avoid abandonment and or death of the child, and to keep a confidential record of the parents to which the child could access at a later stage, taking into account the duty to fully comply with all provisions of the Convention. Furthermore, the Committee urges the State party to increase its efforts to address the root causes which lead to the abandonment of infants, including the provision of family planning as well as adequate counselling and social support for unplanned pregnancies and the prevention of risk pregnancies.**

Protection of privacy

31. While noting the self-control of the media through the Austrian Press Council, the Committee is concerned about cases of violations of privacy rights in news reporting on criminal proceedings involving child victims and/or children accused of sexual and other offences on television, radio, as well as in electronic and print media. It is seriously concerned about instances of humiliation, insult, “cyber mobbing” and grooming of children via internet or mobile phones. The Committee is also concerned that the dangers and risks of the Internet are not sufficiently discussed at school, and that parents and teachers are often unaware of the legal consequences in case of misuse of electronic media by children.

32. **The Committee calls on the State party to take all necessary measures:**

(a) **To ensure the protection of and respect by the media for the privacy of children, in particular in news reporting on criminal proceedings involving child victims and/or children accused of sexual and other offences;**

(b) **To protect children against “cyber mobbing”, “happy slapping” and other forms of humiliation, insult and defamation, as well as against grooming, in social forums on the Internet and via mobile phones;**

(c) **To educate children, parents and teachers on the need to protect the privacy of children and the risks and legal consequences in case of misuse of electronic media by children, while respecting their right of access to appropriate information.**

D. Violence against children (arts. 19, 34, 37 (a) and 39 of the Convention)

Corporal punishment

33. The Committee notes that the State party has taken measures to raise awareness about non-violent forms of child-rearing, including financial support to institutions that are educating parents on such forms of child-rearing. However, it remains concerned by the continued use of corporal punishment by many parents and by the fact that parts of the population are still unaware of the prohibition of all forms of corporal punishment in the State party.

34. The Committee recommends that the State party strengthen and expand awareness-raising programmes and education campaigns in order to promote positive and alternative forms of discipline and respect for children's rights, with the involvement of children, in line with its general comment No. 8 (2006) . It also recommends that the State party continue educating teachers and parents on the immediate and long-term negative impact, including the psychological and physical impact, of corporal punishment on children.

Abuse and neglect

35. While taking note of the special training that the State party provides to law enforcement officers on violence against children, as well as of the nationwide child helpline “Rat auf Draht”, the Committee is concerned that measures to encourage child victims to report instances of violence, abuse and neglect, in particular in alternative care institutions, care institutions for children with disabilities and holding centres for migrants, remain insufficient.

36. The Committee calls on the State party to strengthen its measures to encourage child victims to report instances of violence, abuse and neglect, in particular in alternative care institutions, care institutions for children with disabilities and holding centres for migrants, and to prosecute and punish the perpetrators of such acts.

Harmful practices

37. While noting the State party’s efforts to raise awareness and monitor the situation of harmful practices and cooperate with States where such practices are prevalent in order to combat them, the Committee is nevertheless concerned that hundreds of girls living in the State party have been subjected to female genital mutilation (FGM) and at the absence of convictions of perpetrators of FGM. The Committee is further concerned that the law prohibiting such practices is not sufficiently known, including by health workers. It is also concerned at the lack of research on the prevalence of FGM in the State party.

38. The Committee urges the State party to:

(a) Effectively implement the law prohibiting female genital mutilation and take all necessary measures to ensure that those who continue to practice FGM are effectively brought to justice;

(b) Undertake a study on the extent and nature of FGM practiced in the State party, or abroad on girls who live in the State party, and involve NGOs that are active in this field;

(c) Strengthen its efforts to conduct awareness-raising programmes, taking into account the results of the study, and to prevent this practice;

(d) Strengthen its international cooperation on the eradication of harmful practices.

Freedom of the child from all forms of violence

39. Recalling the recommendations of the United Nations Study on violence against children (A/61/299, 2006), the Committee recommends that the State party prioritize the elimination of all forms of violence against children. The Committee further recommends that the State party take into account its general comment No. 13 (2011), and in particular:

(a) Develop a comprehensive national strategy to prevent and address all forms of violence against children;

(b) Adopt a national coordinating framework to address all forms of violence against children;

(c) Pay particular attention to the gender dimension of violence;

(d) Cooperate with the Special Representative of the Secretary-General on violence against children and other relevant United Nations institutions.

E. Family environment and alternative care (arts. 5, 18 (paras. 1-2), 9-11, 19-21, 25, 27 (para. 4) and 39 of the Convention)

Children deprived of a family environment

40. The Committee is concerned that no adequate statistical data is available to ensure the quality control of alternative care institutions and family type alternative care. It notes that the monitoring of such institutions falls under the competence of the Länder which have different methods and practices. The Committee is also concerned that the right of children to quality standards of care and placement was not included in the Federal Constitutional Law on the Rights of Children.

41. The Committee recommends that the State party take into account the Guidelines for the Alternative Care of Children annexed to the United Nations General Assembly resolution 64/142 of 20 December 2009, adopt measures to regularly monitor and evaluate the conditions in alternative care settings, including by collecting adequate statistical data, disaggregated by sex, gender and geographic location. The Committee also recommends that the quality standards in alternative care settings be strictly regulated by law and effectively enforced.

Adoption

42. The Committee notes with concern that the current normative framework is insufficient to ensure the rights and best interests of children in cases of intercountry adoptions when children come from countries that have not ratified the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption.

43. The Committee calls on the State party to effectively regulate and monitor intercountry adoptions from countries that are not party to the 1993 Hague Convention, with a view to ensuring that the rights and best interests of the child are observed throughout the process.

F. Disability, basic health and welfare (arts. 6, 18 (para. 3), 23, 24, 26 and 27 (paras. 1-3) of the Convention)

Children with disabilities

44. The Committee welcomes the recent adoption of a National Plan of Action for Persons with Disabilities (2012-2020) and that article 6 of the Federal Constitutional Law on the Rights of Children provides for the equal treatment, care and protection of children with disabilities. However, it notes with concern that children with disabilities continue to be excluded from participation in various aspects of public life in the State party due to the limited accessibility of their physical environment, and the lack of appropriate services and information. The Committee is also seriously concerned about the high number of children with disabilities in institutional care in the State party. While noting the decrease in the percentage of children with disabilities attending special schools, the Committee is concerned that the decision whether a child with disabilities should attend a special school or an inclusive school rests with the parents, which may conflict with the best interests of the child. The Committee also expresses concern about the paucity of information on education for minority children with disabilities.

45. **In light of its general comment No. 9 (2006) , the Committee urges the State party to:**

(a) Take measures to fully integrate children with disabilities in all areas of public life;

(b) Ensure that their environment, including, buildings, transportation and other public areas, is physically accessible for them;

(c) Take measures to de-institutionalize children with disabilities and further strengthen support to families to enable them to live with their parents;

(d) Ensure that children with disabilities have full access to information, communications and other services;

(e) Give priority to inclusive education of children with disabilities and ensure that the best interests of each child are a primary consideration in decisions concerning his/her school enrolment;

(f) Provide in its next periodic report information on education for minority children with disabilities.

Health and health services

46. While noting the high quality of paediatric services, the Committee is concerned about the absence of systematic monitoring of children's health. It is further concerned about the over-prescription of medication such as Ritalin for children with attention deficit and hyperactivity disorder.

47. **The Committee recommends that the State party establish a countrywide system for monitoring children's health status. It also recommends that the State party carefully examine the phenomenon of over-prescription of psycho-stimulants to children and take initiatives to provide children diagnosed with attention deficit and hyperactivity disorder, as well as their parents and teachers, with access to a wide range of psychological, educational and social measures and treatments.**

Breastfeeding

48. The Committee is concerned at the low rate of exclusive breastfeeding for the first six months, and at the absence of a mechanism for systematically monitoring violations of the International Code of Marketing of Breastmilk Substitutes. The Committee is further concerned at the low number of hospitals that are certified as baby-friendly.

49. **The Committee recommends that the State party:**

(a) Strengthen its awareness-raising efforts on the importance of breastfeeding and promote exclusive breastfeeding of children up to the age of 6 months;

(b) Strengthen the monitoring of existing marketing regulations relating to breast-milk substitutes and ensure that such regulations are monitored on a regular basis and action is taken against those who violate these regulations; (c) Increase the number of maternity hospitals that meet the required standards and are certified as baby-friendly under the Baby-Friendly Hospital Initiative (BFHI).

Adolescent health

50. While noting the State party's preventive, curative and substitution programmes, the Committee is concerned at the high rate of alcohol, tobacco, cannabis and other illicit substance abuse, as well as depression and obesity, among children in the State party, often due to poverty, violence, dysfunctional families and inability of parents to cope with their children. It is also concerned at the lack of care and rehabilitation programmes, to address those situations and support the children affected by them.

51. **The Committee recommends that the State party increase its efforts to address the needs of children from dysfunctional families and take measures to minimize the psychological effect of such family situations, and strengthen care and rehabilitation programmes for children suffering from alcohol, tobacco, cannabis and other illicit substance addiction, depression and obesity. With reference to its general comment No. 4 (2003), the Committee recommends that the State party develop specialized and youth-friendly drug-dependence treatment and harm reduction services for children.**

G. Education, leisure and cultural activities (arts. 28, 29 and 31 of the Convention)**Education, including vocational training and guidance**

52. While acknowledging the large expenditure on education in the State party, the Committee notes with concern that there is a lack of State-funded early childhood care facilities for children under 5 and that regional differences exist in the availability, costs and opening times of pre-school education services. It is also concerned that the parallel schooling system, which divides education after primary school into separate tracks of vocational education and general education, disadvantages migrant children. Furthermore, the Committee is concerned at the lack of a comprehensive policy and legislation on inclusive education.

53. **The Committee recommends that the State party take into account its general comment No. 1 (2001) and adopt measures to ensure affordable access to adequate early childhood care and pre-school education services throughout the country. It also recommends that the State party strengthen its efforts to provide migrant children with equal opportunities in the education system, including through special support to reduce language barriers, and consider adopting an integrated system for compulsory**

public schools, as recommended by the independent expert in the field of cultural rights (A/HRC/17/38/Add.2, para. 20). The Committee further recommends that the State party adopt a comprehensive policy and legislation on inclusive education.

H. Special protection measures (arts. 22, 30, 38, 39, 40, 37 (b)-(d) and 32-36 of the Convention)

Asylum-seeking and refugee children

54. The Committee notes that the Aliens Law Amendment Act of 2011 prohibits the placement of children under the age of 14 in detention pending deportation, and is concerned that such age limit is too low. It is also concerned that the age determination methods applied to unaccompanied refugee and asylum-seeking children in the State party may not be in conformity with the guidance set out in the Committee's general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin. The Committee is further concerned that some Länder such as Carinthia and Styria do not systematically comply with the Supreme Court decision of 2005 that unaccompanied refugee children must be provided with a legal guardian.

55. The Committee urges the State party to ensure that children under the age of 14 are not placed in detention under any circumstances, and use administrative detention of unaccompanied refugee and asylum-seeking children above 14 years only as a measure of last resort when non-custodial alternatives to detention are unavailable. The Committee further urges the State party to ensure that detention conditions are of a non-punitive character and in line with the special status of such children as minors who are not suspected or convicted of any crime. It also urges the State party to ensure that the age determination procedure applied to unaccompanied children is based on scientifically approved methods, as recommended in general comment No. 6 (2005), and that each unaccompanied child is provided with a legal guardian.

Children in armed conflict

56. While noting the State party's indication during the dialogue that under 18-year old recruits may not participate in any hostilities and in United Nations peacekeeping operations, the Committee remains concerned that Section 9, paragraph 2, of the National Defence Act sets the minimum age of voluntary recruitment at 17 years. The Committee also notes with concern that students from age 14 are trained on the use of small arms at the Vienna military academy ("Militärrealgymnasium"), albeit on an extracurricular basis.

57. The Committee reiterates its recommendation (CRC/C/OPAC/AUT/CO/1, para. 6) that the State party consider the possibility of increasing the minimum age for voluntary recruitment to 18 years. It also recommends that the State party ensure that the education of child cadets at military academies is free from any form of arms training and military drill and consistent with the aims of education, as recognized in article 29 of the Convention and in its general comment No. 1 (2001).

Economic exploitation, including child labour

58. While noting that the Federal Law on the Employment of Children (2010) raised the minimum age for children to be involved in light work from 12 to 13 years, the Committee is nevertheless concerned that this age is still very low. The Committee is further concerned that the law lacks a precise definition of light work and that after-school work of children, in particular in family businesses, is not monitored effectively.

59. **The Committee recommends that the State party include in its legislation a precise definition of light work and effectively monitor after-school work of children, in particular in family businesses, with a view to ensuring that children are not deprived of their right to rest and leisure and to engage in play after they have completed their daily schooling.**

Sale, trafficking and abduction

60. While welcoming that children who are victims of sexual violence have a right to free legal assistance in court proceedings and psychological support, the Committee is concerned that in practice, child victims of human trafficking and migrant children often have no effective access to such support.

61. **The Committee recalls its concluding observations under the Optional Protocol on the sale of children, child prostitution and child pornography (CRC/C/OPSC/AUT/CO/1, para. 30) and recommends that the State party take the necessary measures to provide all children who are victims of sexual violence, including child victims of human trafficking and migrant children, with the support that they are entitled to under the law.**

Follow-up to the Committee's concluding observations under the Optional Protocol on the sale of children, child prostitution and child pornography (2008)

62. The Committee remains concerned that the State party's legislation does not criminalize all the acts constituting offences against children in full compliance with the definition of offences contained in articles 2 and 3 of the Optional Protocol on the sale of children, child prostitution and child pornography. In particular, it notes with concern that the possession of certain forms of child pornography is not criminalized, for example pornographic cartoon representation of children or child pornography involving children between 14 and 18 when they give their consent to the production of such pornography for strictly private use (CRC/C/OPSC/AUT/CO/1, para. 20).

63. **The Committee reiterates its recommendation (CRC/C/OPSC/AUT/CO/1, para. 21) that the State party take further measures to bring its Criminal Code into full compliance with articles 2 and 3 of the Optional Protocol and to that end:**

(a) **Amend the definition of child pornography to include cartoon representation of children;**

(b) **Criminalize the possession of child pornography, including virtual pornography, involving children between 14 and 18 without requiring the intent of dissemination and regardless of the minor's consent.**

64. The Committee is also concerned that child victims of prostitution are sometimes treated as offenders rather than victims in the State party and are imposed administrative fines (CRC/C/OPSC/AUT/CO/1, para. 31).

65. **The Committee recommends that all child victims of prostitution be strictly treated as victims and that no sanctions involving deprivation of liberty or fines be imposed on them.**

Administration of juvenile justice

66. While noting that, according to the State party, the average length of pretrial detention of juveniles is 49 days and that the number of juveniles detainees has decreased, the Committee is concerned that under the law of the State party, the maximum length of pretrial detention for juveniles is one year, that prisons where juveniles are deprived of their liberty are reportedly overcrowded and juveniles not always separated from adult prisoners,

and that a high percentage of juveniles on remand suffer from psychological or psychiatric disorders without access to adequate health care.

67. The Committee recommends that the State party bring the juvenile justice system fully in line with the Convention, in particular articles 37, 39 and 40, and with other relevant standards, including the Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules), the Vienna Guidelines for Action on Children in the Criminal Justice System; and the Committee's general comment No. 10 (2007). In particular, the Committee urges the State party to:

(a) Ensure that juveniles below the age of 18 who are deprived of their liberty are separated from adults in all circumstances and are detained in adequate conditions;

(b) Ensure that detention, including pretrial detention, of juveniles is used as a measure of last resort and for the shortest possible period of time;

(c) Provide juvenile detainees with adequate access to medical and psychological treatment;

(d) Take the necessary measures to provide juvenile detainees with perspectives for their future, including their full reintegration into the society;

(e) Proceed with the feasibility study for the construction of a new centre for juveniles deprived of their liberty in Vienna, with a view to reducing overcrowding in existing facilities.

I. Ratification of international human rights instruments

68. The Committee recommends that the State party, in order to further strengthen the fulfilment of children's rights, ratify the following treaties: The Optional Protocol to the Convention on the Rights of the Child on a communications procedure, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

J. Cooperation with regional and international bodies

69. The Committee recommends that the State party cooperate with the Council of Europe towards the implementation of the Convention and other human rights instruments, both in the State party and in other Council of Europe member States.

K. Follow-up and dissemination

70. The Committee recommends that the State party take all appropriate measures to ensure that the present recommendations are fully implemented by, *inter alia*, transmitting them to the Council of Ministers, the National Council and Federal Council, the Länder Governments and Parliaments, as well as to the judiciary, for appropriate consideration and further action.

71. The Committee further recommends that the third and fourth periodic report and the written replies of the State party and the present recommendations (concluding observations) be made widely available in the languages of the country, including (but not exclusively) through the Internet, to the public at large, civil society organizations, media, youth groups, professional groups and children, in order to generate debate and awareness of the Convention and its Optional Protocols and of their implementation and monitoring.

L. Next report

72. The Committee invites the State party to submit its combined fifth and sixth periodic report by 4 March 2018 and to include in it information on the implementation of the present concluding observations. The Committee draws attention to its harmonized treaty-specific reporting guidelines adopted on 1 October 2010 (CRC/C/58/Rev.2 and Corr. 1) and reminds the State party that future reports should be in compliance with the guidelines and not exceed 60 pages. The Committee urges the State party to submit its report in accordance with the reporting guidelines. In the event that a report exceeding the page limitations is submitted, the State party will be asked to review and eventually resubmit the report in accordance with the abovementioned guidelines. The Committee reminds the State party that if it is not in a position to review and resubmit the report, then translation of the report for purposes of examination of the treaty body cannot be guaranteed.

73. The Committee also invites the State party to submit an updated core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting, approved at by the fifth Inter-Committee Meeting of the human rights treaty bodies in June 2006 (HRI/GEN/2/Rev.6, chap. I).
