

**Permanent
Mission
of Austria**

to the United
Nations in Geneva

Genf-ÖV/RECHT/108/2021

Note Verbale

The Permanent Mission of Austria to the United Nations Office in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights in Geneva and in response to communication AL AUT 1/2021, received on 26 January 2021 from the Chief of Special Procedures Branch in the Office of the High Commissioner for Human Rights conveying a communication sent by fifteen Special Rapporteurs and Working Groups, has the honour to transmit the enclosed observations based on information available, as requested by the above mentioned mandate holders.

The Permanent Mission of Austria to the United Nations Office in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights in Geneva the assurance of its highest consideration.

Geneva, 26 April 2021



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Observations by Austria
in response to the communication from OHCHR of 26 January 2021
conveying a communication sent by Special Rapporteurs and Working Groups
21 April 2021

In response to the communication received on 26 January 2021 from the Chief of Special Procedures Branch in the Office of the High Commissioner for Human Rights, conveying a communication sent by fifteen Special Rapporteurs and Working Groups, respectively, Austria has the honour to transmit the following observations based on information available, as requested by the above mentioned mandate holders.

Question 1

Austria has no specific information regarding the allegations contained in the joint communication by the Special Rapporteurs transmitted via the Office of the High Commissioner to Austria and is therefore not in a position to provide additional information and/or comments on these matters.

As a general comment, however, Austria wishes to point out that under the applicable rules of international law the obligation of States to ensure respect for human rights, or prevent human rights violations beyond their territories applies only in limited circumstances, and where that State exercises jurisdiction or effective control. Pursuant to Article 2 of the Articles on the Responsibility of States for Internationally Wrongful Acts elaborated by the International Law Commission there is an internationally wrongful act of a State when conduct consisting of an action or omission (a) is attributable to the State under international law; *and* (b) constitutes a breach of an international obligation of the State.

Austria does not exercise jurisdiction, control or authority regarding the camps in north-eastern Syria, the administrators of these camps and their actions or the conditions imposed in the camps. Austria does not operate a consular mission in Syria at the moment; the Austrian Embassy in Damascus has been temporarily relocated to Beirut until the security situation in Syria improves. Access for Austrian consular staff to Syria in general is very limited. With regard to the camps in northeastern Syria, Austria relies entirely on the assistance of international humanitarian organisations. Consequently, Austria cannot be held responsible for any alleged human rights violations perpetrated outside its territory and jurisdiction by non-state actors beyond its control.

The fact that in October 2019 Austria repatriated two orphaned minors of Austrian nationality from Al-Hol, or that it relies on the assistance of international humanitarian organisations for information on the situation in the camps and also to support its own nationals does not infer *de facto* jurisdiction of Austria over the camps.

Austrian law provides for the right of every Austrian national to consular assistance abroad and Austrian consular missions work hard to provide this assistance, often under very

difficult circumstances. However, the Austrian consular law allows for the possible limitation or denial of consular assistance under certain circumstances and on the basis of a case-by-case assessment, for instance if the security of Austrian consular staff cannot be guaranteed. Due to the general security situation as well as additional complications posed by the Covid-19 pandemic, direct consular assistance to Austrian nationals in the camps in northeastern Syria is currently impossible.

Austria has consistently supported international organisations providing humanitarian aid in Syria with substantial funds, including specifically for the benefit of the Al-Hol camp. Austria reiterates its position that access for humanitarian actors must be granted under all circumstances and without restrictions, and should not be jeopardized.

We share the view of the Special Rapporteurs and Working Groups that there is an urgent need for justice, truth and reparation for all the victims of the serious violations of human rights and international humanitarian law that have occurred in Syria. It is essential that all violations of human rights and international humanitarian law are duly investigated and the perpetrators held accountable by competent courts and according to international standards of fair trial and due process.

As regards the most serious atrocity crimes, since the beginning of 2012 Austria has been calling for a UN Security Council referral of the situation in Syria to the International Criminal Court (ICC). As the ICC, due to its limited capacities, would only be able to prosecute a small number of high-level perpetrators, we believe that additionally a special criminal tribunal in the region should be established to ensure accountability for the most serious crimes. This should go hand in hand with capacity building for national justice systems to ensure due process at the national and local level.

For international and national justice to succeed, the courts need evidence. Austria fully supports the very important work of the Independent International Commission of Inquiry on Syria (CoI) as well as the International, Impartial and Independent Mechanism (IIIM) to collect evidence and document atrocity crimes committed in Syria. This evidence will also assist in the criminal cases pursued abroad.

Austria has provided considerable financial support both to the IIIM and the CoI. Furthermore, in 2020 Austria implemented a legislative amendment in order for its judicial authorities to be able to fully cooperate with the IIIM in their investigations.

Questions 2, 8, 9 and 11

Austria has no specific information on the transfer to the newly-extended camp in Roj referred to in the joint communication by the Special Rapporteurs transmitted via the Office of the High Commissioner to Austria and therefore is not in a position to provide additional information and/or comments on these matters.

Austria relies on the assistance of international humanitarian organisations for maintaining contact with Austrian nationals concerned. The Austrian Embassy to Syria is in a continuous dialogue with international humanitarian organisations concerning the situation in the

camps in northeastern Syria, including Roj. These contacts also include information on the situation - in particular with regard to health and food security - of the families. On various occasions humanitarian organisations were asked to check on the situation of the families and to provide specific support, in particular medical assistance, to them.

Austria's reliance on international humanitarian organisations mentioned in this regard also pertains to information regarding the state of health and material conditions of detention of the individuals concerned and includes specific requests for assistance to children, in particular with regard to their health and nutrition. The health programs of international humanitarian organisations supported by Austria include activities for the prevention and treatment of malnutrition of children.

The health programs of international humanitarian organisations in Syria supported by Austria also address measures with regard to sexual and reproductive rights as well as gender based violence.

The Austrian Government also provides financial support for the activities of international humanitarian organisations in Syria, including in the camps, and in particular earmarked contributions for health programmes. In 2019, 1 Mio. Euro were dispensed in support of the situation in Al-Hol. In 2020, Austria contributed total of 12,3 Mio. Euro to alleviate the humanitarian situation in Syria. For 2021, Austria pledged over 18 million Euro for humanitarian support in Syria.

Questions 3, 4, 5, 11 and 12

Austria was not informed about the registration, data-collection and relocation exercise and its purpose, or about the next step.

Austria was not involved in requesting this exercise and neither the data collected nor the assessments made were communicated to the Austrian Government. Austria does not possess any information on the basis or reason for the transfer.

Question 6

In Austria high standards of data protection exist through the EU Data Protection Act (GDPR) as well as the implementation of the directive on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data in the Austrian data protection act (Datenschutzgesetz, DSGVO). In accordance with the Austrian data protection act, every person has the right to secrecy of the personal data concerning that person, especially with regard to the respect for his or her private and family life, insofar as that person has an

interest which deserves such protection. The right to secrecy can be enforced before the data protection authority against a controller subject to the Austrian data protection act.

Question 7.

In the absence of pertinent information, Austria is not in a position to comment.

Question 10

Please also refer to the response to question 1 regarding Austrian support to international accountability efforts.

The Austrian Penal Code (Section 64) provides for the jurisdiction of Austrian courts concerning certain grave crimes (e.g. extortive abduction, slave trade, trafficking in human beings, enforced disappearance, torture, terrorism-related acts, rape and sexual coercion) committed outside Austria regardless of locally applicable law, if the victim is an Austrian citizen or other Austrian interests are affected by the criminal act.

Victims of such crimes, regardless whether the crimes have been perpetrated abroad, come within the victim protection provisions in Section 65 et seq. of the Austrian Criminal Procedure Code. At their request, victims of violent acts or sexual offences as well as terrorist offences as well as certain relatives, and minors who have witnessed violence in their social environment are entitled to psycho-social and legal assistance in criminal proceedings insofar as this is necessary to preserve their rights and taking into account the degree to which they have been affected in a particular case.

Austria has ratified all relevant international instruments concerning trafficking in persons and is currently developing the 6th Austrian National Action Plan to combat trafficking in persons for 2021-2023. Cooperation with countries of origin is an important element, as well as the support of anti-trafficking projects both nationally and internationally. Austria will continue to co-fund projects to combat trafficking in persons, with a geographical emphasis on the Middle East.