

# AUSTRIA

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## Joint Civil Society Information to the GANHRI Sub-Committee on Accreditation concerning the review of the Austrian Ombudsman Board

14-18 March 2022 (If held virtually) / 14-25 March 2022 (If held in-person)

Submitted by

Amnesty International Austria  
Asylkoordination Österreich  
Caritas Österreich  
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SOS Mitmensch  
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ZARA



In light of the recent application of the Austrian National Human Rights Institution (NHRI) – modeled as the Austrian Ombudsman Board (AOB) – for re-accreditation by the Global Alliance for National Human Rights Institutions (GANHRI), Amnesty International Austria, Asylkoordination Österreich, Caritas Österreich, Diakonie Österreich, Hemayat, Integrationshaus, Netzwerk Kinderrechte, Österreichische Liga für Menschenrechte, SOS Mitmensch, Volkshilfe Österreich, and ZARA are providing the following joint civil society information on the status of the AOB.

The purpose of this submission is to provide pertinent information and analysis, drawing on human rights standards, to assist the GANHRI Sub-Committee on Accreditation as it conducts its review of the AOB. In this document we highlight specific areas where the AOB could be strengthened to effectively implement its mandate as a NHRI and fulfil its crucial role in the promotion and protection of people’s human rights in Austria. This effort is undertaken in view of the 13 recommendations made to Austria during the last Universal Periodic Review (UPR) to strengthen the AOB and ensure full compliance with the Paris Principles.<sup>1</sup> These recommendations have been accepted by the Government.<sup>2</sup>

The AOB was re-accredited with B Status in May 2011.<sup>3</sup> The International Coordinating Committee (ICC) has criticised, inter alia, the lack of a dedicated human rights mandate, the current appointment and selection procedure of the AOB’s decision-making body, and the AOB’s relations to civil society. Since then, the AOB has undergone various positive changes, including the implementation of the mandate as National Preventive Mechanism (NPM) to conduct visits to places of detention as well as certain institutions and programs for persons with disabilities and the establishment of a Human Rights Advisory Council (HRAC).<sup>4</sup>

Despite these reforms, the present civil society organisations are concerned about the state of compliance of the AOB as a NHRI with the Paris Principles. These concerns are a result of desk research and analysis conducted by Amnesty International Austria of the legal framework of the AOB, the United Nations Paris Principles,<sup>5</sup> the GANHRI General Observations<sup>6</sup> and the Guidelines on NPM by the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT).<sup>7</sup> In addition to desk research and analysis, Amnesty International Austria consulted eight representatives of civil society organisations and four representatives of state institutions who have or have been serving in the HRAC, three active or former members of the visiting commissions of the AOB, and three independent human rights experts. The results of the analysis and consultations have also been discussed with representatives of the AOB.

The information in the present submission is provided in accordance with para 6.7 of the Rules of Procedure for the GANHRI Sub-Committee on Accreditation (SCA) which permits third parties to submit information relevant to the accreditation status of a NHRI.<sup>8</sup> Details are provided on particular aspects related to those criteria and the information presented in this document raises questions concerning the full compliance with the relevant criteria laid down by the SCA. The areas of concern

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<sup>1</sup> See Bundeskanzleramt, *UPR 2021 - Übersicht offene Empfehlungen*, 2021 [https://www.bundeskanzleramt.gv.at/dam/jcr:0de3f20c-e98f-4585-9a90-ae8bbacdba5c/54\\_14\\_bei1.pdf](https://www.bundeskanzleramt.gv.at/dam/jcr:0de3f20c-e98f-4585-9a90-ae8bbacdba5c/54_14_bei1.pdf).

<sup>2</sup> Amnesty International Austria (2020), *Austria: Human Rights Challenges Persist*, January 2021, [https://www.amnesty.at/media/7612/amnesty\\_human-rights-challenges-persist\\_upr\\_oesterreich\\_sept-2020.pdf](https://www.amnesty.at/media/7612/amnesty_human-rights-challenges-persist_upr_oesterreich_sept-2020.pdf).

<sup>3</sup> International Coordinating Committee (ICC) of National Institutions for the Promotion and Protection of Human Rights – Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), May 2011, <https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/SCA%20REPORT%20MAY%202011%20-%20FINAL%20%28with%20annexes%29.pdf>

<sup>4</sup> Also referred to as Human Rights Advisory Board (HRAB).

<sup>5</sup> See OHCHR, *Principles relating to the Status of National Institutions (The Paris Principles)*, December 1993, <https://www.ohchr.org/en/professionalinterest/pages/statusofnationalinstitutions.aspx>

<sup>6</sup> GANHRI, General observations, download at <https://ganhri.org/accreditation/general-observations/> (accessed 05.10.2021).

<sup>7</sup> CAT/OP/12/5, download at <https://www.ohchr.org/en/hrBodies/opcat/pages/nationalpreventivemechanisms.aspx>

<sup>8</sup> GANHRI, *Rules of Procedure for the GANHRI Sub-Committee on Accreditation [amended version adopted on 15 July 2020]*, download at <https://ganhri.org/accreditation/> (accessed 05.10.2021)

focused on in this submission include the scope of the human rights mandate, the composition and selection process of the AOB's decision making-body and its cooperation with civil society.

Therefore, we recommend GANHRI to give consideration to these concerns in their accreditation examination and provide clear recommendations to the legislative and the AOB regarding the reforms necessary to strengthen the Austrian NHRIs effectiveness and ability to promote and protect human rights in Austria.

## Human Rights Mandate

According to section A.1 of the Paris Principles, a NHRI should be mandated with the competence to promote and protect human rights. This mandate should be "as broad as possible" and encompass all human rights set out in international, regional and domestic instruments, including not only civil and political, but also economic, social and cultural rights.<sup>9</sup>

### Legal and Practical Implementation

During the last re-accreditation process in 2011, the existing legislation for the AOB did not have any specific provision for a mandate to protect and promote human rights. With the implementation of OPCAT in 2012, the mandate of the AOB has been expanded as follows:

According to Article 148a (1) of the Austrian Constitutional Law (ACL),<sup>10</sup> everyone can lodge a complaint with the AOB against alleged maladministration by the Federation, **in particular for alleged violations of human rights**, provided that they are affected by such maladministration and in so far as they do not or no longer have recourse to legal remedy. All such complaints must be investigated by the AOB. Furthermore, according to Article 148 (2) of the ACL, the AOB is ex officio entitled to investigate allegations of maladministration by the Federation, **in particular of violations of human rights it assumes**.

The human rights mandate of the AOB according to Article 148a (1) and (2) of the ACL<sup>11</sup> has a very strong focus on investigative activities including individual complaint handling and, in this regard, it does not single out or prioritise specific human rights. It is, however, noticeable that human rights violations are to a certain extent subsumed under the umbrella term "maladministration".<sup>12</sup>

Moreover, the AOB was established as a National Preventive Mechanism (NPM) in 2012. In this function, according to Article 148 (3) of the ACL, the AOB and the commissions appointed by it are also responsible for the **protection and promotion of human rights** in the area of administration of the Federation. For this, it is incumbent on the AOB

- to visit and inspect locations of deprivation of liberty,
- to watch and check in an advisory manner the conduct of the organs authorised to exert direct administrative power and compulsion as well as
- to visit and inspect certain institutions and programs for persons with disabilities.

The provisions in Article 148 (3) of the ACL concerning the protection and promotion of human rights are based on the UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and the UN Convention on the Rights of Persons with Disabilities (CRPD), and in this regard, they refer to institutions in which liberty is or may be restricted. This is also reflected in the AOB's own description of its core human rights

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<sup>9</sup> See GANHRI General Observations of the SCA, G.O. 1.2. Human Rights Mandate, download at <https://ganhri.org/accreditation/general-observations/> (accessed 05.10.2021)

<sup>10</sup> See Austrian Federal Constitutional Law, Version 01.01.2021, [https://www.ris.bka.gv.at/Dokumente/Erv/ERV\\_1930\\_1/ERV\\_1930\\_1.html](https://www.ris.bka.gv.at/Dokumente/Erv/ERV_1930_1/ERV_1930_1.html)

<sup>11</sup> *ibid.*

<sup>12</sup> *ibid.*

mandate.<sup>13</sup> Furthermore, the provisions in Article 148 (3) of the ACL encompass the exercise by the administration of direct authority and the use of force, particularly during deportations and demonstrations.<sup>14</sup>

However, in contrast to NPMs under OPCAT and the independent mechanisms under CRPD, NHRIs are vested with a much broader human rights mandate, including economic, social and cultural rights.<sup>15</sup> In this context it has already been pointed out in the previous joint civil society submission of January 2011 – and the situation remains the same as of the date of submission of this information – that the Austrian Constitution does not expressly enshrine guarantees of economic, social and cultural rights. Whereas the European Convention on Human Rights with its limited set of rights has constitutional status, the International Covenant on Social, Economic, and Cultural Rights is not yet given full effect in national legislation despite being ratified. Therefore, there is still a risk that the *“precedence given to civil and political rights over other human rights as reflected in their unequal level of legal protection may lead to a similar hierarchisation of different sets of human rights in the work of the AOB and even to the exclusion of some human rights from the AOB’s work focus”*.<sup>16</sup>

When observing on the practical implementation of the human rights mandate, several of the consulted experts confirmed that the implementation of the mandate is restricted to the OPCAT and CRPD mandates and measures of direct administrative power and compulsion. For example, it was specifically raised by two consulted experts that issues such as children’s or women’s rights are not systematically promoted by the AOB beyond its OPCAT and CRPD mandate. Moreover, a former head of commission stated in his paper on the Austrian NPM that the AOB members take the view that the NPM commission members are strictly limited by their mandate as stipulated in Article 148a (3) of the ACL, whereas commission members tend to interpret the mandate as broadly as possible.<sup>17</sup>

In sum, both legally and practically, it appears that the mandate of the AOB is too narrowly focused on tasks directly connected to the OPCAT and CRPD mandates and measures of direct administrative power and compulsion. By widening its mandate, the AOB could focus more strategically on other pressing issues such as the prevention of violence against women<sup>18</sup> and children in general, beyond only those who are in detention or in foster care; similarly, on the rights of elderly people in general, and not only of those who are in nursing homes.

**Thus, we recommend a transparent application of the current mandate in cooperation with relevant civil society stakeholders including the consideration of potential legal amendments with a view to broaden the mandate’s focus of promoting and protection human rights – in particular to strengthen the focus on economic, social and cultural rights in view of their weak protection in Austria.**

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<sup>13</sup> See the preface in the AOB’s 2020 Annual Report on the activities of the Austrian National Preventive Mechanism (NPM),

<https://volksanwaltschaft.gv.at/downloads/cbhc4/PB%20%28Band%20II%29%202020%20-%20EN.pdf>

<sup>14</sup> *ibid.*

<sup>15</sup> De Beco, G., & Murray, R. (2014): *Frontmatter*. In *A Commentary on the Paris Principles on National Human Rights Institutions* (pp. I-IV). Cambridge: Cambridge University Press, p. 49.

<sup>16</sup> Ludwig Boltzmann Institute of Human Rights et al., *Joint Civil Society Information to the ICC Sub-Committee on Accreditation*, 2011.

<sup>17</sup> See also Berger E., Paar C. (2019): *Der österreichische NPM – vom Pionierprojekt zum Kontrollministerium?* In: Patricia Hladschik, Fiona Steinert (Hrsg.): *Menschenrechten Gestalt und Wirksamkeit verleihen. Festschrift für Manfred Nowak und Hannes Tretter* (S 357-368), Neuer Wissenschaftlicher Verlag, Wien 2019)

<sup>18</sup> On the positive side, the Center for Forensic Medicine at MedUni Vienna, in cooperation with the Association of Autonomous Austrian Women’s Shelters (AÖF) and the AOB, organises the interdisciplinary lecture series “One of five” every year in order to actively counteract the taboo and trivialization of violence against women. The AOB uses the lecture series to address violence protection and violence prevention as a political and social challenge, to point out deficits and to initiate training and further education programs in the legal, health and social professions aimed at eliminating them.

## Interaction with the International Human Rights System

Furthermore, sections A.3(d) and A.3(e) of the Paris Principles recognise that the monitoring and engagement with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures and Universal Periodic Review) and the various United Nations Human Rights Treaty Bodies, are crucial for NHRIs in the promotion and protection of human rights domestically. Effective engagement with the international human rights system does not only include submitting parallel reports.<sup>19</sup>

The AOB legislation does not currently specify how this function should be exercised and does not include a specific mandate to encourage the ratification and implementation of international law and standards. In its role as a NHRI, the AOB has submitted UPR stakeholder reports to the Office of the High Commissioner of Human Rights (OHCHR),<sup>20</sup> but has however not used this process to launch a dialogue with the state and civil society organisations on the relevant examinations and the follow-up to international recommendations.

**We recommend that the AOB expands its role to proactively coordinate the dialogue on the monitoring and promotion of the implementation of relevant recommendations from international and regional human rights treaty bodies and mechanisms in close cooperation with civil society, for example, organising follow-up exchange to UN or Council of Europe recommendations.**

## **Composition and Selection Procedure**

The Paris Principle 4 lays down criteria to guarantee the independence and pluralism of a NHRI, which are at the heart of an effectively functioning NHRI.

### Composition

The decision-making body of the AOB is made up of three members. The selection and appointment procedure of those Ombudspersons is laid down in the Austrian Constitutional Law (ACL).<sup>21</sup> According to Article 148g (2) of the ACL the selection procedure ensures representation from the three main political parties on the AOB. As already highlighted in the previous *Joint Civil Society Information to the ICC Sub-Committee on Accreditation* in 2011, the ACL does not contain any further provisions for a pluralist composition representing civil society and other stakeholders in Austria. Additionally, there are no provisions for ensuring the participation of people on the AOB who belong to ethnic or minority groups, LGBTI or other particular groups, e.g., people with disabilities.

Furthermore, no specifications are given regarding the gender composition and diversity of the board. Just seven out of twenty-two members in the history of the AOB have been Ombudswomen.<sup>22</sup> However, there is a lack of a legal requirement for adequate gender and minority balance. This has contributed to the current situation where all members of the AOB are white men.

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<sup>19</sup> See GANHRI General Observations of the SCA, G.O. 1.4. Interaction with the international human rights system, 21 February 2018, [https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/EN\\_GeneralObservations\\_Revisions\\_adopted\\_21.02.2018\\_vf.pdf](https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/EN_GeneralObservations_Revisions_adopted_21.02.2018_vf.pdf)

<sup>20</sup> See Summary of Stakeholders' submission on Austria 2021, <https://daccess-ods.un.org/TMP/8088070.15419006.html>; See Summary of Stakeholders' submissions on Austria 2015, <https://daccess-ods.un.org/TMP/6333039.40296173.html>; See Summary of Stakeholders' submissions on Austria, <https://daccess-ods.un.org/TMP/9834555.9835434.html>

<sup>21</sup> See Austrian Federal Constitutional Law, 2021 [https://www.ris.bka.gv.at/Dokumente/Erv/ERV\\_1930\\_1/ERV\\_1930\\_1.html](https://www.ris.bka.gv.at/Dokumente/Erv/ERV_1930_1/ERV_1930_1.html)

<sup>22</sup> See Austrian Ombudsman Board, *Geschichte der Volksanwaltschaft*: <https://volksanwaltschaft.gv.at/ueber-uns/geschichte> (accessed 04.10.2021).

This lack of effective participation and involvement of both women and other groups in the decision-making body of the AOB indicates the current system likely falls short of the Paris Principle 4 regarding the principle of pluralism.

A further concern is that the current selection process as stipulated constitutionally allows Ombudspersons to be appointed solely according to their political affiliation from each of the three main political parties. Thus, in practice, the elected members of the Board have predominately been former members of Parliament or at least long-standing party members.

**We therefore recommend, as foreseen by the General Observations of the SCA, to install provisions for a pluralist composition representing all relevant social forces and segments in Austria in accordance with the Paris Principles.**

### Independence

The functional independence of the AOB is strongly guaranteed in Article 148a (6) of the ACL.<sup>23</sup> Thus, the AOB is independent in its exercise of power and takes no directions from the Government or any other institution. The independent budgeting and staffing allow for further operational and functional independence. However, there remain certain structural weaknesses which undermine the full independence of the AOB according to the Paris Principles.

Section B.3 of the Paris Principles sets out requirements to ensure a **stable mandate** for members of the decision-making body of NHRIs “*without which there can be no real independence*”. While the Austrian Ombudspersons are guaranteed a strong and stable mandate against removal from office – security of tenure is ensured by a fixed six-year office term<sup>24</sup> with a high threshold for dismissal<sup>25</sup> – this is not the case for members of the commissions. According to the Guidelines on National Preventive Mechanisms by the SPT, the requirement of a stable mandate must also apply to members of the NPM commissions, with, among other things, the NPM's independent conduct of office (“operational independence”) being guaranteed, and the relevant legislation specifying the period of office and any grounds for dismissal of members.<sup>26</sup>

Against this background, the recent amendment of Article 12 (1) of the Federal Law on the AOB has further raised concerns about the absence of safeguards against NPM members being dismissed. Therefore, several civil society organisations have criticised that there is a risk that commission members have no effective access to remedy against dismissal and are thus restricted in independently carrying out their monitoring function.<sup>27</sup> Thus, it is important to quickly clarify the legal situation and ensure adequate safeguards for a stable mandate of the commission members.

Furthermore, effective independence entails more than just provisions to ensure operational independence and protection from removal from office.<sup>28</sup> It also includes **personal independence**. This is addressed by Article 148g (5) of the ACL providing for the incompatibility of membership of NPMs with certain other positions while in office. In particular, Article 148g (5) stipulates that “*they may belong neither to a general representative body nor to the European Parliament, nor be member of the Federal Government or a Land Government nor practise any other profession.*”

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<sup>23</sup> See Austrian Constitutional Law, [https://www.ris.bka.gv.at/Dokumente/ErV/ERV\\_1930\\_1/ERV\\_1930\\_1.html](https://www.ris.bka.gv.at/Dokumente/ErV/ERV_1930_1/ERV_1930_1.html).

<sup>24</sup> See Article 148g (1) of the Austrian Constitutional Law.

<sup>25</sup> According to Article 148g (6) in connection with Article 142 of the ACL, members of the decision-making body of the AOB can only be removed from office, if the Constitutional Court pronounces that they are responsible for legal contraventions culpably ensuing from their official activity.

<sup>26</sup> United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT): *Guidelines on National Preventive Mechanisms: Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 9<sup>th</sup> December 2010, CAT/OP/12/5.

<sup>27</sup> Amnesty International Austria, *Unabhängigkeit der Volksanwaltschaft in Gefahr*, February 2021, <https://www.amnesty.at/presse/unabhaengigkeit-der-volksanwaltschaft-in-gefahr/>

<sup>28</sup> De Beco, G., & Murray, R. (2014). *Independence*. In *A Commentary on the Paris Principles on National Human Rights Institutions* (pp. 82-90). Cambridge: Cambridge University Press.

Further, the *Practical Guide on The Role of National Preventive Mechanisms* of the OHCHR states that NPM members “*should not hold positions or have personal connections that would entail a real or perceived conflict of interest when undertaking the mandates of NPMs.*”<sup>29</sup>

In the past, heads of NPM commissions as well as Amnesty International have expressed concern at the current situation in the AOB and observed that the strong political links of members of the AOB may present a conflict of interest and may impair their ability to fully, impartially, independently, and effectively interpret their mandate and investigate potential human rights violations.<sup>30</sup> The criterion of personal independence is strongly linked to the **perceived independence**. Even where there is no apparent lack of independence in practice, the public perception that close political links may influence the decisions of NHRI members negatively influences the trust of civil society organisations and the public at large.<sup>31</sup> Many consulted experts have mentioned that the close political links and lack of a transparent appointment procedure (see below) damage the perception of independence of the AOB. Therefore, consulted experts proposed, among other things, the expansion and specification of incompatibility and qualification criteria, introducing a cooling-off-phase after the ending of political positions with also a clear commitment to refrain from any activity that could be viewed as engaging in party politics. At the same time, the selection procedure must be reformed to ensure an open and transparent process, enabling any concerns regarding independence to be addressed (see section below).

**Hence, we recommend questions are raised regarding the current independence of the AOB and what safeguards may be necessary to further ensure the future independence and effectiveness of the AOB, including personal and perceived independence.**

#### Selection and Appointment Procedure

As stipulated in Article 148g of the ACL, all three members of the AOB are elected by the National Council (*Nationalrat*) of the Austrian Parliament. Those three parties which have the greatest number of seats in the Parliament have the right to nominate one candidate each. By putting forward a joint recommendation of nominees, the National Council then votes by simple majority. As already highlighted in the previous submission to the ICC,<sup>32</sup> this selection procedure results in a de facto delegation of the candidates by the three main parties rather than an open election by the Parliament. In effect it resembles a secondment procedure rather than a proper election.<sup>33</sup>

This also poses the risk of candidates not being elected based on their merits and qualifications but rather for their political affiliation. Since the last accreditation, changes have been made to add the criteria for members of the Board to require “knowledge in the field of human rights” (see Article 148g (6) of the ACL). However, no further specification is given on the extent of required expertise or experience to fulfil this criterion and no process exists to assess whether a candidate possesses the necessary qualifications in the human rights field.

Whereas the members of the AOB’s decision-making body are only required to have “knowledge in the field of human rights”, the heads of commissions are required to possess recognised

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<sup>29</sup> Office of the United Nations High Commissioner for Human Rights, *PREVENTING TORTURE The Role of National Preventive Mechanisms - A Practical Guide*, 2018, [https://www.ohchr.org/Documents/Publications/NPM\\_Guide\\_EN.pdf](https://www.ohchr.org/Documents/Publications/NPM_Guide_EN.pdf)

<sup>30</sup> See <https://oe1.orf.at/artikel/410131/Massive-Kritik-an-Volksanwalt>

<sup>31</sup> ENNHRI (European Network of National Human Rights Institutions): *Promoting and Protecting Human Rights in Non-Government Controlled, Non-Recognised and Other Disputed Territories\* The Role and Responsibilities of National Human Rights Institutions*, September 2020, p.16, <http://ennhri.org/wp-content/uploads/2020/09/Promoting-and-Protecting-Human-Rights-in-NGCT-Full.pdf>. Also see UNDP-OHCHR: Toolkit for collaboration with National Human Rights Institutions, December 2010, <https://www.ohchr.org/Documents/Countries/NHRI/1950-UNDP-UHCHR-Toolkit-LR.pdf>.)

<sup>31</sup> Ludwig Boltzmann Institute of Human Rights et al., ‘*Joint Civil Society Information to the ICC Sub-Committee on Accreditation*’, 2011.

<sup>32</sup> Ludwig Boltzmann Institute of Human Rights et al., ‘*Joint Civil Society Information to the ICC Sub-Committee on Accreditation*’, 2011.

<sup>33</sup> See Mayer/Muzak, B-VG5 (2015) Art 148g B-VG I., p. 536.

competences in this field. Similarly, representatives of NGOs on the HRAC are selected on merit of their expertise in the field of human rights. This raises the question of why higher standards apply to the heads of commissions and the HRAC but not to the leadership of the NHRI itself.

The SCA General Observations provide guidelines on a clear, transparent and participatory selection and appointment process. It calls for a merit-based selection process to ensure pluralism. Yet, the above-mentioned selection process for the AOB does not include broad consultations or screenings with civil society and other relevant stakeholders. Additionally, the procedure as set out does not entail an open call for tenders to maximise the number of potential candidates from a wide range of societal groups, nor does it allow any nomination by others. As already mentioned, the majority of the elected members of the AOB have been former politicians. The OHCHR and the International Council on Human Rights Policy (ICHRP) list appropriate models of appointment of which one being appointment by Parliament. Appointment by Parliament may *“work well if Parliament vigorously exercises independent oversight, but not if parliamentary scrutiny is weak or biased”*. They further state that the responsible parliamentary committee *“may receive nominations from civil society organisations, and nominees can be subject to a public interview process”*.<sup>34</sup> The SCA General Observations suggest to include requirements for the process of selection and appointment such as to *“publicise vacancies broadly, maximise the number of potential candidates from a wide range of societal groups, promote broad consultation and/or participation in the application, screening, selection and appointment process; assess applicants on the basis of pre-determined, objective and publicly available criteria; and select members to serve in their own individual capacity rather than on behalf of the organisation they represent.”*<sup>35</sup>

**Therefore, we recommend GANHRI to review and reform the selection and appointment procedure – in close consultation with civil society – to ensure that the principles and standards of independence and pluralism, as envisioned by the Paris Principles and General Observations of the Sub-Committee on Accreditation are being respected.**

### Cooperation with Civil Society

In the last accreditation process in 2011, the SCA encouraged the AOB to develop regular and systematic working relations with civil society.

For that reason, the HRAC was established in 2012 as an advisory body to the AOB. The members and substitute members of the HRAC are nominated on the basis of parity by non-governmental organisations and certain federal ministries. Every federal ministry and federal province as well as every NGO have the right to propose one member and one substitute member each. Both, the members and substitute members are appointed by the AOB.

According to Article 12 (2) of the Federal Law on the AOB, the HRAC may be consulted before members of the NPM commissions are appointed by the Board. Furthermore, the HRAC may advise the Board in order to fulfil its human rights mandate, in particular in defining general monitoring priorities as well as before the submission of recommendations and identification of cases of maladministration. The HRAC can also make suggestions to the Board on how to guarantee uniform courses of action and monitoring standards.

In summary, the HRAC only has a restricted advisory function (definition of general monitoring priorities, as well as prior to the submission of irregularities and recommendations and the right to make proposals) and the right to be heard (appointment of the committee members).

Consulted experts pointed out that, although the exchange within the HRAC – between representatives of the NGOs and ministries/provinces – works very well, it is not the intended effect as foreseen by the Paris Principles. Due to the hierarchical structure of the AOB, the commissions

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<sup>34</sup> See OHCHR/ICHRP, *Assessing the Effectiveness of NHRI*, p. 14.

<sup>35</sup> See SCA General Observation G.O.1.8.

present their reports directly to the AOB and the AOB then determines whether to consult the HRAC. The analysis of the reports from the NPM commissions remains with the AOB. The majority of the consulted experts confirmed that there is little to almost no direct exchange between the HRAC and the NPM commissions.

Furthermore, systematic cooperation with civil society in the form of the HRAC is largely limited to the AOB's human rights mandate with a strong focus on OPCAT and CRPD. This means that the mandate of the HRAC is narrow and does not touch upon many human rights – notably economic, social and cultural rights – and the systematic cooperation with civil society happens in a very restricted manner.

It should be noted that according to Article 7 (3) of the Federal Law on the Austrian Ombudsman Board, the AOB shall cooperate with scientific and academic institutions and schools and other educational institutions and inform the public of its activities. Thus, the AOB is provided with a legal foundation to cooperate with other parts of civil society.

Besides the close and institutionalised cooperation with representatives of the civil society in the HRAC, the AOB has organised four annual NGO-Forums so far. According to the AOB's website these forums aim to deepen the dialogue between the AOB and civil society. Furthermore, it is stated that the outcomes of the dialogues will be presented in a special report to the National Council. However, the last NGO Forum to take place was in 2017 focusing on the situation of children and young adults in Austria. We have not been informed of concrete plans to reinstate these forums or to establish any other form of institutionalised dialogue with civil society.

In light of the recent pandemic and the challenges it imposes for the protection of human rights, a continuing dialogue and consultation with the broad civil society, including trade unions and academic institutions, is clearly valuable.

**In view of the above, we recommend the institutionalisation of better cooperation with civil society and other relevant stakeholders as foreseen with the Paris Principles.**

## Concluding remarks and recommendations

Whereas there have been positive developments in the practice of the AOB, various concerns and important questions remain regarding its compliance with the Paris Principles and thereby its ability to be effective and fulfil its crucial role as a NHRI promoting and protecting people's human rights in Austria. These areas have not only been identified by the analysis and research conducted by Amnesty International Austria but have also been raised as matters of concern during the last UPR cycle.<sup>36</sup>

Thus, we urge the GANHRI Sub-Committee on Accreditation to consider a detailed focus on the areas of concern raised in this submission, and also give consideration to the following steps which could be taken to strengthen the AOB in its role as a NHRI in accordance with the Paris Principles and relevant international standards:

- Initiate a broad consultation process with civil society and other relevant stakeholders representing all social segments in Austria, with the purpose of establishing necessary next steps for reforming the AOB and to devise a plan of action for implementation – taking into account the recommendations of the UPR and considering good practices from other countries.
- Evaluate the scope and the application of the current human rights mandate and consider expanding it beyond OPCAT, CRPD and measures of direct administrative power and

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<sup>36</sup> Amnesty International Austria: *Human Rights Challenges Persist – Amnesty International Submission for the UN Universal Periodic Review, 37th Session of the UPR Working Group*, January 2021, submitted on August 7, 2020, Index Number: EUR 13/2855/2020, download at <https://www.amnesty.org/en/documents/eur13/2855/2020/en/>

compulsion with a particular enhanced focus on economic, social and cultural rights, reflecting and affirming the indivisibility of human rights.

- Take steps to strengthen its role as a human rights coordinating body to monitor and promote the national implementation of international standards and recommendations in cooperation with civil society.
- Introduce specific provisions and procedures aimed at comprehensively safeguarding the pluralism and independence of the AOB, including personal and perceived independence – in particular by reviewing the selection and appointment procedure in accordance with Paris Principle 4 and other relevant standards.
- Maintain a regular exchange with civil society and all relevant stakeholders.

**We would welcome if these recommended measures were considered and addressed expressly during the accreditation interview process and were reflected in the final evaluation report to the AOB.**