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Mr. Ambassador,

In my capacity as Rapporteur for Follow-up on Conclusions and Recommendations of the United Nations Committee Against Torture (CAT), I refer to the examination of the third periodic report of Austria (CAT/C/34/Add.18) its 679th and 680th meetings (CAT/C/SR.679 and 680), held on 16 and 17 November 2005, and where Conclusions and Recommendations (CAT/C/CR/32/3) were adopted and transmitted to your Permanent Mission.

In paragraph 21 of those Conclusions and Recommendations, the Committee asked, pursuant to its rules of procedure, that Austria provide further information regarding areas of particular concern identified by the Committee in paragraphs, 7, 8, 10 (b), 12, 15 (b) and 17 (a). Noting that a reply concerning the information sought by the Committee was provided on 24 November 2006, I am writing to express appreciation for your Government's responses on these matters and the substantial information provided. The Committee would be grateful for clarification on the following matters, where sufficient information is not yet provided to enable it to complete an analysis of the progress made regarding implementation of aspects of the Convention.

With regard to the recommendation made in paragraph 7, in which the Committee requested information on the impact of a Constitutional Court decision on the Asylum Law, the clarification on the status of the Asylum Act and the measures taken to improve the State Party's asylum laws was appreciated. Please also provide us with further information on the content of the Aliens' Police Act and how this legislation impacts those seeking asylum in Austria.

The Committee is concerned by the information provided by the State party that an appeal of a decision denying asylum based on a procedural issue, as opposed to subject matter, does not have automatic suspensive effect. The Committee is concerned that there may be differential treatment of asylum seekers based on the grounds for the denial of their request, yet all asylum seekers should be guaranteed the same protections against refoulement whether they are appealing a decision made on substantive issues or on procedural matters, and should make suspension automatic in either case. Please provide the Committee with further information on the measures it intends to take or has taken to ensure that asylum-seekers are not deported before a decision on their appeal has been taken. We would also appreciate data, disaggregated by age, gender, ethnicity, and country of origin, on the number of applicants who have been deported or extradited while an appeal of a decision denying asylum based on a procedural issue has been waiting a decision. Please also clarify the criteria used by the Independent Federal Asylum Senate to determine whether an asylum-seeker is at risk of Refoulement. How many cases that have appealed for a stay of extradition based on possible non-refoulement have been rejected by the Senate?

Additionally, the Committee is pleased to learn of the additional provisions in the Asylum Act which enable authorities to take all decisions in a family procedure at the same time. Please clarify however whether a decision to deny an appeal for one member of a family applies to all members of that family who are awaiting decisions on their appeals.

With reference to the recommendation in paragraph 8 regarding the use of diplomatic assurances to return individuals to countries where they may face a risk of torture, the Committee understands that the State party

itself has sought diplomatic assurances as a requirement to the extradition of Muhammad 'Abd al-Rahman Bilasi-Ashri to Egypt, and that this return was stayed due to his pending appeal in the European Court of Human Rights. Please update us on this case and clarify whether it is the Government's position that diplomatic assurances by the Egyptian Government would mitigate the substantial risk of abuse, despite the international community's noted concerns with reports of torture and ill-treatment of suspected terrorists in Egypt? Also, please indicate at what level such assurances were being sought, what minimum elements are required, whether there were specific monitoring arrangements requested and what the legal enforceability of these guarantees would have to be. In view of the State party's statement that "no room" is left for diplomatic assurances when a person faces a substantial risk of torture, please clarify its current position on this matter.

Regarding the Committee's recommendation in paragraph 10(b) on the question of whether an appeal was lodged in the death in custody case of Cheibani Wague, the Committee thanks the State party for providing updated information on the case, and requests clarification whether it considers a seven-month conditional suspended sentence adequate. Please update us on the appeal.

In paragraph 12 in which the Committee recommended the implementation of a legal aid system in the State party, we are pleased to note the efforts made so far by the Austrian Ministry of Justice to establish a system of legal aid for persons in police custody that would apply immediately after arrest. Please provide updated information on the result of the State party's consultations with the Austrian Bar Association and on the status of this programme.

The Committee regrets that inability of the State party to provide information on cases of torture or ill-treatment in which there are aggravating factors as stated in Section 33 of the Austrian Criminal Code, and which include racism and xenophobia, as requested in paragraph 15 of the Recommendations. We reiterate our request for further information on such cases as it becomes available. Does the Government collect data on cases of torture and ill-treatment where aggravating factors, including racism and xenophobia, have been invoked in the assessment of punishment of offenses?

In reference to paragraph 17(a), the Committee reiterates its request that the State party provide information about the status of enactment of appropriate legal provisions by the Länder authorities regarding protection of the measures to meet the basic needs of refugees.

Upon receipt of additional information, the Committee will be able to assess whether further information may be required. We look forward to continuing this constructive dialogue with the Government of Austria on the implementation of the Convention.

Accept, Mr. Ambassador, the assurances of my highest considerations.



Felice Gaer
Rapporteur for Follow-up on Conclusions and Recommendations
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