

AUSTRIA

before the UN Committee against Torture: allegations of police ill-treatment

Introduction

In November 1999 the United Nations Committee against Torture examined in Geneva the Second Periodic Report of Austria describing the measures it has taken to implement its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). Austria ratified the Convention against Torture in 1987 and its Initial Report was submitted in November 1988. Although the Second Periodic Report of Austria under the Convention against Torture was due to be submitted in 1992, it was only presented to the Committee against Torture in 1998, some six years later. This brief report highlights the main concerns and recommendations of both the Committee against Torture and Amnesty International in the light of Austria's examination by the Committee against Torture and presents a number of cases of alleged ill-treatment received by Amnesty International.

Subjects of concern of the Committee against Torture

In its consideration of the report submitted by Austria the Committee against Torture expressed a number of concerns which reflected some of Amnesty International's own concerns about allegations of ill-treatment in the country.

Among its concerns the Committee against Torture noted the fact that in Austria "...allegations of ill-treatment by the police are still reported".¹ Amnesty International continues to receive reports of alleged ill-treatment of detainees by police officers, in many instances while being arrested. A large majority of allegations come from non-Caucasian Austrian and foreign nationals. Most report that they have been subjected to repeated kicks, punches, kneeling, beatings with truncheons and spraying with pepper after being restrained. In many cases the allegations of ill-treatment have been supported by medical reports and in some cases the detainees have been taken by the arresting police officers to receive medical attention during their initial period in custody. Police officers are also alleged to have used racist language in some instances. In the light of continued allegations of police ill-treatment the Committee against Torture recommended that: "clear instructions be given to the police by the competent authorities to avoid any incident of ill-treatment by police agents. Such instructions should emphasize that ill-treatment by law enforcement officials shall not be tolerated and shall be promptly investigated and punished in cases of violation according to law".² In this report Amnesty International expresses the concern that, when formal complaints have been lodged and investigations opened in cases of alleged police ill-treatment, in Amnesty International's experience they have been slow, lacking in thoroughness and often inconclusive (**see Prompt and impartial investigations into alleged ill-treatment**).

¹ UN Doc. CAT/C/XXIII/Concl.2 - paragraph 4b.

² UN Doc. CAT/C/XXIII/Concl.2 - paragraph 5b.

The Committee against Torture also expressed concern that "potential complaints of abuse committed by the police authorities may be discouraged by the provisions enabling the police to accuse of defamation the person who lodges a complaint against them".³ For a number of years Amnesty International has expressed the same concern that people who lodge complaints of ill-treatment against the police run the risk of counter-charges, such as defamation, resisting arrest or physical assault. This report documents a number of cases of alleged police ill-treatment, where the complainants faced counter-charges after alleging they had been ill-treated by police officers (**see Counter-complaints**).

In commenting on the death of the Nigerian national, Marcus Omofuma, during his deportation in May 1999 the Committee against Torture expressed concern about "insufficient measures of protection in cases of individuals under an order of deportation, which are not in conformity with the provisions of Articles 3 and 11 of the Convention..."⁴ and recommended that "provisions concerning the protection of asylum seekers should fully conform with the relevant international standards, in particular articles 3 and 11 of the Convention, both in law and practice".⁵ Article 11 of the Convention against Torture states that: "Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture". The death of Marcus Omofuma during his forced deportation and the subsequent inquiry into his death has revealed a considerable degree of ambiguity regarding the types of physical restraints which could permissibly be used during the expulsion of a deportee (**see directives on the means of physical restraint authorized in deportation**). Amnesty International has called on the Austrian authorities to examine the safety of the use of methods of restraint and ensure that they do not endanger the health and safety of the deportee.

The Committee against Torture expressed concern that there is no definition of torture in Austria's penal code as provided for by Article 1 of the Convention against Torture. Due to the absence of this definition in Austria's penal code the Committee against Torture expressed the concern that the offence of torture does not appear as punishable by appropriate penalties as required by Article 4, paragraph 2 of the Convention against Torture. In its recommendations to the Austrian government the Committee against Torture recommended legislative changes be made to incorporate a definition of Article 1 of the Convention as a punishable offence in accordance with Article 4, paragraph 2 of the Convention against Torture.⁶

³ UN Doc. CAT/C/XXIII/Concl.2 - paragraph 4c.

⁴ UN Doc. CAT/C/XXIII/Concl.2 - paragraph 4d.

⁵ UN Doc. CAT/C/XXIII/Concl.2 - paragraph 5c.

⁶ UN Doc. CAT/C/XXIII/Concl.2 - paragraph 4a and 5a.

Subjects of concern of other inter-governmental bodies

As well as ratifying the Convention against Torture, Austria has ratified the other international treaties prohibiting torture and cruel, inhuman or degrading treatment or punishment, including the International Covenant on Civil and Political Rights (ICCPR) in 1978 and the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) in 1989. Since ratifying the ICCPR Austria has submitted periodic reports to the Human Rights Committee. The Austrian government has also permitted publication of the reports of the European Committee for the Prevention of Torture (CPT) of its visits to places of detention and prisons in Austria in 1990 and 1994, together with the government's responses to the questions and recommendations put forward by the CPT. As a result of its 1990 visit to the various places of detention the CPT stated in the summary of its main findings: "Taking into account also the weaknesses in some of the basic safeguards against ill-treatment noted in the course of the visit, the CPT has reached the conclusion that there is a serious risk of detainees being ill-treated while in police custody".⁷

The CPT report following its 1990 visit recommended the introduction of a number of safeguards against the ill-treatment of detainees in police custody. These recommendations included the notification of custody, access to legal advice, examination by a doctor chosen by the detainee, controls concerning the interrogation process and the introduction of a single and comprehensive custody record. In 1994 the CPT returned to Austria and in its report to the Austrian government published in October 1996 the CPT reported receiving, during its visit to Austria, "a considerable number of allegations of ill-treatment of persons by the police", some of which "amounted to torture".⁸ The CPT repeated the main conclusion of its previous report, published in 1991, that people detained by the police were at serious risk of being ill-treated, and made recommendations to remedy the violations.⁹

⁷ CPT/Inf (91) 10 - Summary of the CPT's main findings.

⁸ Amnesty International Report 1997 p.79.

⁹ CPT/Inf (91) 10 - Summary of the CPT's main findings.

In September 1999 the CPT carried out a 12-day visit as part of its third periodic visit to the Austria, the findings of which have not been made public. However, during the deliberations of the Committee against Torture in Geneva on 11 November 1999, General Director of the Ministry of Interior Szymanski stated, in response to a question from a member of the Committee, who asked whether the third report of the CPT would still contain the sentence that "there is a serious risk of detainees being ill-treated while in police custody"¹⁰: "I have the impression, that it was the impression of all those who had any contact with the committee that the report on the third visit would no longer contain that 'famous sentence'".¹¹ Amnesty International awaits the publication of the CPT's report of its 1999 visit to Austria with great interest.

Introducing measures and undertaking systematic reviews to prevent torture and ill-treatment

Articles 2, 11 and 16 of the Convention against Torture require each state party to take effective legislative, administrative, judicial or other measures to prevent torture and ill-treatment and to keep under systematic review interrogation rules and practices and other arrangements for overseeing the custody and treatment of detainees, in order to prevent acts of torture and other, cruel, inhuman or degrading treatment. In view of the death of the Nigerian national Marcus Omofuma during his forced deportation and the continued allegations of ill-treatment of detainees by police officers, Amnesty International recommends that further improvements aimed at strengthening the safeguards against ill-treatment be made in the following areas:

- directives on the means of physical restraint authorized in deportation

The death of Marcus Omofuma

Marcus Omofuma is alleged to have suffocated on an aeroplane in the presence of three Austrian police officers during his forced deportation. Amnesty International believes that the actions of the police officers may have contributed to his death. Marcus Omofuma had been in detention awaiting deportation after his final application for asylum was rejected by the Austrian authorities. On 1 May 1999 police officers accompanied 25-year-old Marcus Omofuma to the airport in Vienna. On the way Marcus Omofuma is alleged to have resisted the attempt to deport him and as a result police officers bound his arms and legs and gagged him. At the airport police officers had to carry him on to the aeroplane. Three officers accompanied him on the Balkan Air flight to Sofia. On Sunday 2 May Marcus Omofuma was to be flown to Lagos.

¹⁰CPT/Inf (91) 10 - Summary of the CPT's main findings.

¹¹ Interpretation of Mr Szymanski's statement made during 398th Meeting of the Committee against Torture on 11 November 1999.

On the aeroplane he was put in an empty row of seats at the back of the aeroplane. One witness has stated that when police officers carried him to the back of the aeroplane "he was like a slaughtered animal with his hands and feet bound". Witnesses have also stated that police officers had already gagged him with several pieces of adhesive tape before bringing him onto the aeroplane and then proceeded to strap him into his seat using adhesive tape. One witness has reportedly stated that: "They wrapped the entire upper part of his body and arms with adhesive tape like a mummy stuck to the seat". When Marcus Omofuma continued to protest the police officers allegedly applied more adhesive tape to his chin and used a plastic belt to tie him further in to the seat. One crewman on the flight was quoted in an Austrian weekly magazine to have said, "The black man was thrashing around wildly and trying over and over to get air. But the officials did nothing...The man appeared to be really fighting for his life". Only towards the end of the two-and-a-half hour journey was Marcus Omofuma said to have calmed down. After the aeroplane had landed the officers untied him and removed the adhesive tape from his mouth. At this point they realised that Marcus Omofuma had lost consciousness. By the time a doctor arrived to treat him Marcus Omofuma was dead. It is not known whether the officers had been trained in first aid or whether they made any attempts to resuscitate him.

Amnesty International expressed concern to the Austrian authorities that Marcus Omofuma may have died as a direct or indirect result of his treatment by the three police officers. It is relevant to note that the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, in its 7th General Report, published in 1997, "recognises that it will often be a difficult task to enforce an expulsion order in respect of a foreign national who is determined to stay on a State's territory. Law enforcement officials may on occasion have to use force in order to affect such a removal. However, the force used should be no more than is reasonably necessary. It would, in particular, be entirely unacceptable for a person subject to an expulsion order to be physically assaulted as a form of persuasion to board a means of transport or as a punishment for not having done so. Further, the committee must emphasize that to gag a person is a highly dangerous measure". In view of the risk involved in gagging a deportee Amnesty International requested to be informed whether officers, in training, are informed of the risks of gagging and whether gagging is permitted as a form of restraint, and if so, under what circumstances.

The inquiry into the death of Marcus Omofuma has revealed a considerable degree of ambiguity regarding the types of physical restraints which could permissibly be used during the expulsion of a deportee. Amnesty International is concerned that the Minister of the Interior, senior police officers and police officers of lower rank have made contradictory statements about the permissibility of the use of mouth gags during forced deportations.

Amnesty International received a response from the Minister of the Interior, Karl Schlögl, in a letter dated 30 August 1999, stating: "I prohibited without exception the use of adhesive tapes or similar materials". This statement contradicted a statement made by him at a

press conference on 16 August 1999, in which he stated: "Gagging of the mouth was neither permitted nor prohibited, it was a failure in the system" (*Mundverkleben war weder erlaubt noch verboten, es war ein Fehler im System*). In the course of the press conference the Minister of the Interior and several of the most senior police officials, the former General Director of Public Security, Michael Sika, and the President of Vienna's Police, Peter Stiedl, maintained they knew nothing of the practice of gagging during forced expulsions. The Head of Vienna's Alien Police Branch, Stefan Stortetcky, is reported to have banned the use of gagging in September 1998 after the death of the Nigerian national Semira Adamu by asphyxia during her forced deportation from Belgium, stating to subordinates during a meeting: "I have said, that deportees are to be returned to the police jail, if expulsion is only possible through the gagging of the mouth" (*Ich habe gesagt, daß der Schubhäftling wieder in das Polizeigefangenenhaus zurückzubringen ist, wenn eine Abschiebung nur unter Verklebung des Mundes möglich ist*).

The position of these senior officials directly contradicted statements made by the police officers involved in the deportation of Marcus Omofuma on the permissibility of gagging. On 7 May 1999 one of the accused police officers reportedly stated before a court in Korneuburg (*Landesgericht Korneuburg*): "I take the position, that everyone at our department knew about these practices" (*Ich gehe davon aus, daß bei uns auf der Dienststelle alle über diese Praktiken Bescheid wussten*). Amnesty International is concerned that the lack of clarity with regard to the permissibility of gagging deportees may have contributed to the use of this dangerous practice by the failure to deliver a clear message to police officers that it had in fact been prohibited as a restraint technique. The organization welcomes the decision of the Austrian authorities to ban the use of mouth gags, but it is concerned that clearer guidelines and better training are required with regard to the use of force and the types of restraints which may be employed during forced expulsions.

The investigation into the death of Marcus Omofuma is continuing but it is not yet known when the case will be heard by a court and whether the three police officers will be held responsible for his death. While there have been two medical investigations into the death their results have been contradictory. The autopsy, which was conducted in Bulgaria shortly after the death, pointed to death by asphyxia. However, an autopsy, which was conducted later in Austria, suggested that an undetected heart defect meant that it could not be said with the required certainty that there was a causative link between the gagging of Marcus Omofuma and his death.

- the right of access to a lawyer

The requirement that people be given immediate or prompt access to a lawyer is enshrined in international human rights standards.¹² The failure of the Austrian authorities to ensure that this right is observed has been the subject of concern and recommendations by the Human

¹² Principles 7 and 8 of the Basic Principles on the Role of Lawyers and Principle 17 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Rights Committee and the CPT. In November 1998, following its consideration of Austria's third periodic report on implementation of the ICCPR, the Human Rights Committee, in its Concluding Observations listed several principal subjects of concern, some of which echoed the concerns of the CPT. The Human Rights Committee expressed concern that the presence of a lawyer to advise a detained person is not authorised at the preliminary stage of judicial investigation. It recommended that the Code of Criminal Procedure be revised so as to guarantee more fully the right of a suspect to be assisted by a lawyer at all stages of the proceedings.¹³ In its 1996 report the CPT also recommended that "persons detained by the police should have the right of access to a lawyer as from the outset of detention".¹⁴ The CPT report stressed that the right of access to a lawyer should include the right to contact and to be visited by a lawyer in conditions which facilitate confidentiality and to have a lawyer present during interrogations.

In the experience of Amnesty International detainees are of the greatest risk of physical ill-treatment and intimidation in the period immediately following deprivation of liberty. Access by people who have been deprived of their liberty to a lawyer during this period may serve as an important safeguard against ill-treatment and the presence of a lawyer would have a dissuasive effect on those officials who might be inclined to ill-treat detainees. The presence of a lawyer is particularly important in the context of interrogation, during which a detainee may be subjected to excessive verbal and physical pressure by police officers. Amnesty International also believes that immediate access to a lawyer allows the detainee access to the practical help they need immediately after detention, including assessing whether their rights have been infringed and seeking remedial action.

The alleged police ill-treatment of Johannes G. and his denial of access to a lawyer

The Austrian media reported a case in Vienna of alleged ill-treatment by police officers of an Austrian citizen referred to as Johannes G. He alleges he was deliberately punched in the eye region of the face by several police officers while in detention on the evening of 6 November 1999. As a result of the alleged ill-treatment Johannes G. spent 12 days in hospital suffering from various injuries to his eyes. While in custody he alleges he was refused access to a lawyer.

Johannes G. has reportedly stated that two police officers found him lying at the front door of his house on the evening of 6 November 1999. He has maintained that he had been forced to the ground by an unknown person and had asked the police officers for help. When the police officers refused to help him an argument ensued resulting in his arrest. It is reported that the two police officers maintain that Johannes G. was intoxicated, verbally abused them and then attacked them. The two officers handcuffed Johannes G. and took him to a police station on *Boltzmanngasse* in Vienna. According to Johannes G. after he was placed in a cell

¹³ UN Doc. CCPR/C/79/Add.103 (1998) - paragraph 10.

¹⁴ CPT/Inf (96) 28 - paragraph 46.

in the police station, several police officers repeatedly punched him in the face. Johannes G. has stated that as a result he lost consciousness and had to be taken to hospital for medical treatment. The police officers stated in their report to the hospital that the respective injuries to Johannes G.'s left and right eyes occurred as a result of him hitting his face against a house intercom during his arrest and falling from a chair at the police station. After receiving superficial medical treatment at the hospital he was brought back to the police station and detained overnight.

Johannes G. has complained that the police officers refused to allow him to make a telephone call after they returned to the police station from the hospital. Under a number of international human rights treaties, to which Austria is a state party, detainees should be given prompt access to a lawyer of their own choice and be allowed to inform family members of their arrest. Amnesty International requested to be informed why Johannes G. was allegedly not given prompt access to a lawyer or permitted to contact members of his family.

Johannes G. was reportedly released the next morning. Upon his release Johannes G. was referred by a police doctor to the *Krankenanstalt Rudolfstiftung* hospital in Vienna after he recognized the seriousness of the detainee's eye injuries. Doctors at the *Krankenanstalt Rudolfstiftung* hospital, where he was treated for 12 days, have reportedly lodged a complaint against the police officers on the basis of the injuries sustained by their patient. Johannes G. was diagnosed as suffering from cerebral haemorrhaging, a detached right optic nerve and cuts to the eye region of his face. The injuries to Johannes G.'s right eye have reportedly resulted in blindness of the eye and it is not known whether the blindness is permanent or temporary.

Amnesty International has called on the Austrian authorities to initiate an immediate, thorough and impartial investigation into Johannes G.'s alleged ill-treatment and has requested to be informed of its findings. Amnesty International has also expressed the concern that, since Johannes G.'s arrest and subsequent hospitalization, the arresting police officers have brought charges of physical assault and violent conduct against him.

- the electronic recording of police interrogations

Amnesty International has repeatedly called on the Austrian authorities to ensure that the safeguards against ill-treatment are strictly observed. The organization has also recommended that the authorities should not place exclusive emphasis on administrative and legislative safeguards, which have been inadequate to prevent ill-treatment. Amnesty International has recommended that the authorities look at additional practical measures to prevent ill-treatment, including the use of audio-visual tape-recording of questioning and closed circuit television monitoring of the questioning of detainees.

In November 1998, following its consideration of Austria's third periodic report on the implementation of the ICCPR, the Human Rights Committee, although welcoming the efforts undertaken by the Austrian authorities to prevent, investigate and punish acts of

ill-treatment of suspects and detainees, stated that it regretted "that audio recording of the interrogations of detainees is not yet used systematically".¹⁵ The Human Rights Committee went on to recommend that audio recording of interrogations be implemented in all parts of the country. In its 1996 report the CPT also asked the Austrian authorities to comment on "why police and gendarmerie officers practically make no use of the possibility of the electronic recording of interviews".¹⁶ Amnesty International recommends that the Austrian government ensures that interrogations are audio-visually recorded. The organization considers that, as well as providing a safeguard for detainees against ill-treatment, such equipment could also protect police officers from unfounded allegations of ill-treatment.

Prompt and impartial investigations into alleged ill-treatment

Articles 12, 13 and 16 of the UN Convention against Torture require that each state shall ensure that there is a prompt and impartial investigation, whenever there is reasonable ground to believe an act of torture or other, cruel, inhuman or degrading treatment has been committed. Article 12 makes it clear that this duty is not dependent on a formal complaint by a detainee: "Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction".

Following its first visits to Austria the CPT made recommendations to and requested information from the Austrian authorities with regard to investigations into allegations of police ill-treatment. The CPT was critical of police disciplinary procedure, in instances where ill-treatment occurred. The CPT considered that the question should be addressed whether the level of sanctions, both as provided for and as applied in practice, were adequate to deter police officers from resorting to excessive use of force and whether an independent person should take part in the disciplinary procedure in order to improve the intrinsic quality of the procedure and enhance public confidence in its fairness.¹⁷ In its report to the Austrian government, published in October 1996, the CPT made a number of similar comments regarding the investigation of allegations of police ill-treatment. The CPT asked for comments from the Austrian authorities on the apparently lenient attitude of the Ministry of the Interior with regard to disciplining police officers for behaviour which constituted a serious infringement of a person's fundamental rights.¹⁸ In the light of these concerns the CPT asked the Austrian authorities to comment on the desirability of having complaints of police

¹⁵ UN Doc. CCPR/C/79/Add.103 (1998) - paragraph 10.

¹⁶ CPT/Inf (96) 28 - paragraph 51.

¹⁷ CPT/Inf (91) 10 - paragraph 97.

¹⁸ CPT/Inf (96) 28 - paragraph 26.

ill-treatment investigated by persons with appropriate qualifications and skills from outside the police service.¹⁹

¹⁹ CPT/Inf (96) 28 - paragraph 25.

The CPT stressed the importance of senior police officers delivering to their subordinates the clear message that the ill-treatment of persons deprived of their liberty is unacceptable and will be the subject of severe sanctions. The CPT also attached a great deal of importance to human rights education and training among police officers and recommended that a very high priority should continue to be given to enhanced human rights education and to training in modern investigation techniques.²⁰

In recent years Amnesty International has repeatedly expressed concern that, when formal complaints have been lodged and judicial investigations opened in cases of alleged police ill-treatment, in Amnesty International's experience they have been slow, frequently lacking in thoroughness and often inconclusive. The impartiality of a number of criminal investigations into allegations of ill-treatment has also been questioned, with claims that prosecuting authorities frequently view the evidence presented in favour of the suspected police officer as more credible than that supporting the victim. Amnesty International knows of very few judicial investigations into allegations of ill-treatment which have resulted in the prosecution of police officers. Furthermore, in a number of instances known to the organization, where officers were found guilty of ill-treating detainees, the sentences imposed on the guilty police officers were nominal.

The alleged police ill-treatment of Dr C

In April 1999 Amnesty International wrote to the Minister of the Interior, Karl Schlögl, expressing concern about the apparently racist treatment of a detainee by the Austrian police. In November 1998 a black Austrian citizen was allegedly ill-treated by police officers. The victim has been widely referred to in the Austrian media as Dr C. On the evening of 1 November 1998 Dr C and his family were leaving a friend's house in Vienna's 22nd district. After reversing his car into a one-way street Dr C was approached by a police patrol car. One of the officers in the car allegedly rolled down his window and shouted: "Why are you driving the wrong way, Nigger? Get out of your car now! This is a raid! If you don't produce your passport by the time I count to three, you're in the canal" (*Warum fährst du gegen die Einbahn, du Niggerant? Stieg sofort aus! Das ist eine Razzia! Ich zähle bis drei, wenn du dann nicht den Paß hervorgeholt hast, landest du im Kanal!*). One of the police officers is alleged to have again verbally abused Dr C after he was unable to produce his passport: "It's a shame that you are a nigger! Niggers are drug dealers!" (*Ein Pech, daß du ein Nigger bist! Nigger sind Drogendealer!*). During this incident, witnesses claimed, the police officers pushed Dr C into a bush of thorns and beat him unconscious. While Dr C lay unconscious on the ground the police handcuffed him, but continued to beat him after he regained consciousness. Dr C's wife claims that during the assault one of the police officers shouted to his colleague, "Make him lame until he can no longer walk!" (*Machts ihn lahm, bis er nicht mehr gehen kann!*) and "Work on his joints so he can no longer walk!" (*Bearbeitet seine Gelenke, daß er nicht mehr gehen kann!*).

²⁰ CPT/Inf (96) 28 - paragraphs 20 - 23.

A third police officer arrived on the scene and the police officers arrested Dr C and took him to the police station. Upon arrival at the police station the victim was unable to get out of the police car due to his injuries. The police officers are alleged to have thrown Dr C out of the police car and taken him into the police station. At the police station the police officers initially refused Dr C medical treatment. However, his injuries were so serious that eventually they informed a paramedic from a local hospital who ordered that Dr C be taken immediately to hospital. Dr C was taken to the SMZ Ost Hospital where he was treated. The head doctor at the hospital stated that there were “clear traces of ill-treatment” (*deutlichen Mißhandlungsspuren*) of the victim. As a result of the attack on his joints Dr C spent 11 days in hospital suffering from injuries to his knees and elbows. His arms and legs were put in plaster and he was given blood thinning drugs to prevent thrombosis. After the incident Dr C had to use crutches for two weeks. In addition to injuries to his knees and elbows Dr C suffered from severe concussion and bruising of the genitals, where he was kicked by one of the policemen.

Amnesty International wrote to the Minister of the Interior asking to be informed what steps had been taken to investigate these allegations of ill-treatment and whether any disciplinary measures had been taken against the police officers concerned. Amnesty International also inquired whether any steps were being taken by the Ministry of the Interior to address racist behaviour by police officers.

Amnesty International learned that Dr C was charged with resisting arrest and physically injuring the police officers. Amnesty International was not aware of the nature of the injuries the police officers are alleged to have sustained. Dr C’s complaint of being physically abused by the two police officers and their counter-complaint that he resisted arrest and physically assaulted them was heard in court (*Straflandesgericht*) in August. The judge presiding over the hearing, Gustav Rothmayer, rejected the counter-claim of the two police officers that Dr C had physically assaulted them but upheld the charge that he had resisted arrest, sentencing him to a conditional four-month prison sentence. The judge found the two police officers guilty of intentionally injuring Dr C and sentenced them to conditional six-month prison sentences. However, these judgments are not final and are open to appeal. Amnesty International has also learned that disciplinary procedures have been initiated against the two police officers. In October 1999 an Independent Administrative Tribunal (*Unabhängiger Verwaltungssenat*) found the police officers guilty of using excessive force against the detainee and reprimanded them for their use of racist language.

Amnesty International is also concerned that the trend of a low rate of prosecution of police officers who are alleged to have ill-treated detainees in proportion with the number of complaints has continued. In replying to a parliamentary question in July 1999 the Minister of the Interior, Karl Schlögl, reportedly admitted that in 1997 there was not a single prosecution from the 343 registered complaints of ill-treatment by police and gendarmes, whereas in 1998

there was only one prosecution from 356 registered complaints, although a very small number of cases were still pending a decision.²¹

The alleged police ill-treatment of He Xiuqin, He Xiuzhen and Ni Tongjun

In July 1998 Amnesty International was informed of the ill-treatment of two women of Chinese origin and a male Chinese national during their arrest in the Chinese restaurant where they worked. The Austrian national He Xiuzhen and her sister He Xiuqin worked as waitresses at the “Schöne Perle”, a Chinese restaurant in Vienna. Ni Tongjun worked there as the cook of the restaurant.

According to these statements three police officers entered the restaurant shortly after 9pm on 2 July 1998 and ordered He Xiuqin and her sister, He Xiuzhen, to show their identity papers. When the two women had produced their papers, one of the police officers informed He Xiuqin that she was under arrest alleging that her Chinese passport was forged. Her sister tried unsuccessfully to persuade the police that the documents were in order as they had been examined many times by the Austrian authorities when extending He Xiuqin’s resident’s permit. Other staff of the restaurant were searched and it transpired that the cook, Ni Tongjun, did not have his identity papers on him. Suggestions by He Xiuzhen that she herself fetch the papers from his home, which was nearby, or that they all go to his home, were turned down by the police. One police officer allegedly said: “We have no time to go on walks together” (*Wir haben keine Zeit für gemeinsame Spaziergänge*). Ni Tongjun was subsequently placed under arrest and ordered to go with the police.

He Xiuzhen asked Ni Tongjun to first go into the kitchen and turn off the gas, explaining the reason for her request to the police. However, one of the police officers allegedly followed him into the kitchen, seized him by the throat, beat him with his fist in the face and forced him into a headlock. The staff and guests apparently heard him cry for help. The police officer allegedly dragged him out of the kitchen, still in this position, and continued to hit him. The two sisters intervened with the police officer in order to protect Ni Tongjun and eventually he was released from the headlock. However, the police officer then seized He Xiuzhen by the shoulder and knocked her down. He grabbed her breast, tearing her bra as she fell to the ground. He held her to the ground, with his foot on her knee and hit her again on the breast. In self-defence she tried to attack him with her shoe but he beat her repeatedly with her other shoe. The other policemen did not attempt to intervene. One of them is reported to have left the restaurant.

He Xiuqin tried to come to the help of her sister, but was seized and handcuffed. Eventually, the other two were also handcuffed and the three of them were dragged out of the restaurant by the handcuff chains, which they said was very painful. They were taken to a police station in Vienna and locked, still handcuffed, in individual cells. They have stated that

²¹ Salzburger Nachrichten 28 July 1999.

their requests to be allowed to go to the toilet went unheeded. They were then interrogated until 5am the following morning, without, they maintain, the statutory breaks required during interrogation under these circumstances, after which they were released.

Amnesty International urged the Austrian authorities to investigate the allegations of ill-treatment thoroughly, promptly and impartially and to bring to justice anyone guilty of ill-treating detainees. The organization asked to be informed about the outcome of any investigation. The authorities were also asked for information regarding the training which Vienna police officers receive in the use of force when arresting or restraining detainees and to ensure that the service instructions and training programs of Vienna officers are consistent with the obligations laid down in international instruments, including the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

In August 1998 He Xiuquin lodged a complaint, which was rejected by the state prosecutor in September 1998. The police officers lodged complaints of physical assault and resisting arrest. It is not known whether these charges were lodged on the night of their arrest or after He Xiuquin had lodged her complaint. One of the officers alleged that she kicked him in the lower abdomen with high-heeled shoes and consequently he suffered from abdominal pains. In December 1998 the court sentenced He Xiuzhen to a suspended sentence of seven months' imprisonment for resisting an officer in the execution of his duties and physical assault. Her sister and the cook were sentenced to a suspended sentence of three months' imprisonment for resisting arrest. In addition, He Xiuzhen was ordered to pay compensation to the police officers.

He Xiuquin, He Xiuzhen and Ni Tongjun have instituted an appeal against the decision at an Independent Administrative Tribunal (*Unabhängiger Verwaltungssenat*) claiming that they were ill-treated by the police officers. Amnesty International has not yet been informed of the outcome of any decision reached by this body.

Counter-complaints

Amnesty International recognizes that, like anyone else, police officers are entitled to the protection of their reputation. However, the organization is concerned that detainees, who have lodged a complaint of ill-treatment against police officers, have been charged with criminal counter-charges such as resisting arrest, physical assault or the defamation of the arresting police officers. In a large majority of cases of alleged police ill-treatment which came to the attention of Amnesty International in the period 1998 to 1999 complainants faced counter-charges after alleging they were ill-treated by police officers. In one case five witnesses who had witnessed a serious case of alleged police ill-treatment of a French national were also threatened by a leading police figure with the charge of defaming the arresting police officers (**see below**). Under Austrian law conviction on a charge of defamation can result in a prison sentence or a fine depending upon the severity of the allegations. Amnesty International is concerned that these police counter-complaints made against the witnesses may have violated Article 13 of the Convention against Torture, which states: "Steps shall be

taken to ensure that the complainants and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given".

The alleged police ill-treatment of Mohammed Ali Visila

Amnesty International expressed concern about reports of an assault by police officers on a French citizen of African origin, Mohammed Ali Visila. The alleged ill-treatment of Mohammed Ali Visila by police officers was widely reported in the Austrian media. In April 1999 Amnesty International wrote to the Minister of the Interior, Karl Schlögl, expressing concern about the apparently racist treatment of the detainee by the Austrian police.

The incident occurred just before midnight on 3 March 1999 at the underground station of *Schottenring* in Vienna. According to the eye-witness statements and the coverage of the incident in the Austrian press, Mohammed Ali Visila was pushed into the control room of the station and assaulted by two police officers. The eye-witnesses claimed to have seen the two policemen punch, kick and beat the man with rubber truncheons while he lay on the floor of the control room. In addition he was sprayed with pepper spray but only after he had been forced to the ground and beaten. Eventually more policemen arrived and the injured man was carried away on a stretcher to the *Lorenz Boehler* hospital where he was treated for his injuries.

Amnesty International found disturbing the allegations of the use of racist language by the two policemen. Witnesses reported that the police officers verbally abused the victim as "you dirty negro son-of-a-bitch" (*Du dreckige Negersau*) and "negro son-of-a-bitch" (*Negersau*). Moreover, the policemen were reported to have continued using racist language when dealing with the crowd of people who witnessed the attack. One of the policemen is alleged to have asked one female witness why she was so concerned about a "negro"? (*Wie ist das so mit einem Neger?*).

Mohammed Ali Visila was brought to trial in April 1999 charged with resisting arrest and physically injuring the police officers. Amnesty International is not aware of the nature of the injuries they were alleged to have sustained. Mohammed Ali Visila was sentenced to a nine-month prison sentence, of which eight months were suspended. During the trial Mohammed Ali Visila claimed he could not remember the details of the incident. It was reported that the judge asked him if he had hit the police officers with a wooden sign. He answered "Maybe, I don't know". When the judge asked him if the police officers beat him so he was in need of hospital treatment he answered "Maybe". Since his arrest on 3 March 1999 the detainee had already spent nearly one month in detention in Austria. Shortly after the trial he was allowed to return to Hannover in Germany where he lives and works.

Amnesty International wrote to the Minister of the Interior in April 1999 asking to be informed whether an investigation into the allegations of ill-treatment of Mohammed Ali Visila had taken place and whether any disciplinary measures had been taken against the police officers concerned. Amnesty International also expressed concern about the alleged use of racist language by the police officers and asked what steps the authorities were taking to

deal with racism in the Austrian police force. In December 1999 Amnesty International received a reply from the Austrian authorities stating that after reviewing the available evidence the state prosecutor considered that a verdict of guilt on the part of the two police officers of ill-treating Mohammed Ali Visila was not to be expected and no further action would be taken against the two police officers.

During the investigation into this case of alleged ill-treatment Amnesty International became concerned about the comments reportedly made by senior officials in the police about the reliability of the five eye-witnesses. Although the alleged ill-treatment of Mohammed Ali Visila occurred on 3 March, the five eye-witnesses were not questioned by the authorities until 23 March, during which time Mohammed Ali Visila was being held in detention. On 19 March the most senior police officer in the Viennese police force, Chief Inspector Franz Schnabl, is reported to have questioned the reliability of the eye-witness statements in the media before the official eye-witness interviews had taken place. Amnesty International is concerned that this statement may have been designed to discredit the five eye-witnesses. The comments made by the leader of the police trade union (*Freiheitliche Polizeigewerkschaft*), District Inspector Josef Kleindienst, at around the same time may have also constituted a violation of Article 13 of Convention against Torture. He reportedly stated to an Austrian news agency: "I am preparing to bring legal proceedings against these eye-witnesses for various, punishable offences. It cannot be, that police officers suffer professional and private disadvantage through untrue allegations" (*Ich bereite gegen diese Zeugen eine Anzeige wegen diverser strafbarer Handlungen vor. Es kann nicht sein, daß Polizisten durch unwahre Behauptungen dienstliche und private Nachteile erleiden*). He is also reported as having said that: "They [eye-witnesses] only want to protect drug-dealing black Africans from the police and not the other way round, parents and children from those types of criminals" (*Diese wollen ja nur die drogendealenden Schwarzafrikaner vor der Polizei schützen und nicht, umgekehrt, Eltern und Kinder vor derartigen Kriminellen*). Amnesty International is concerned that these comments may have violated the principle that eye-witnesses should be protected against ill-treatment or intimidation.

The 1991 CPT report also expressed the concern that the counter-claim of defamation by police officers could deter people from lodging a genuine complaint of ill-treatment, stating: "The recourse had by police officers to the defamation proceedings against persons who accuse them of ill-treatment should be reviewed with a view to ensuring that there is a proper balance between the competing interests of play".²² Amnesty International has expressed this same concern for a number of years. Although recognizing that some complaints about ill-treatment by police officers might be exaggerated or untrue and acknowledging that, like everyone else, such officers are entitled to protection of their reputations and to be presumed innocent until proven guilty, Amnesty International expressed concern that the institution of legal proceedings against a high proportion of complainants might effectively dissuade victims of ill-treatment from complaining. For a number of years

²² CPT/Inf (91) 10 - Summary of the CPT's main findings.

the organization has been calling on the Austrian authorities to review the present complaints procedures with a view to ensuring that would-be complainants have recourse to at least one effective, impartial channel of complaint which does not expose the complainant to the risk of counter-complaints.²³ Furthermore, the organization believes that prompt, thorough and impartial investigations, with the methods and findings made public, serve to protect the reputations of law enforcement officers who may be the subject of unfounded accusations of ill-treatment, as well as to safeguard the interests of genuine victims of ill-treatment.

Education, training and instructions on the prohibition against torture and other cruel, inhuman or degrading treatment

Articles 10 and 16 of the Convention against Torture require that education and information regarding the prohibition against torture and other cruel, inhuman or degrading treatment or punishment be fully included in the training of law enforcement personnel and others and that this prohibition against torture and cruel, inhuman or degrading treatment should be included in the rules or instructions issued in regard to the duties and functions of such personnel. The Committee against Torture emphasized the importance of such education, including in its recommendations that: "...instructions should emphasize that ill-treatment by law enforcement officials shall not be tolerated and shall be promptly investigated and punished in cases of violation according to law".²⁴ This recommendation made by the Committee against Torture echoed similar recommendations made by other inter-governmental bodies in the past.

²³ Amnesty International Report: *Austria - Torture and Ill-treatment (January 1990)*.

²⁴ UN Doc. CAT/C/XXIII/Concl.2 - paragraph 5b.

In the summary of its main findings in the 1991 report the CPT stated: "the CPT cannot emphasise too strongly the importance of adequate professional training. Skilled police officers will be able to carry out successfully their duties without having recourse to ill-treatment and to cope with the presence of such fundamental safeguards as access to legal advice for detainees".²⁵ In its 1996 report the CPT re-emphasised the importance of training and education. The CPT recommended that a very high priority should continue to be given to enhanced human rights education and to training in modern investigation techniques. It also recommended that an aptitude for interpersonal communication should be a major factor in the process of recruiting law enforcement officers and that, during training, considerable emphasis should be placed on acquiring and developing interpersonal communication skills.²⁶

Amnesty International believes that further work is required in the area of human rights education among police officers at all levels of seniority and that the Austrian authorities should take further steps to impress on police officers of all ranks the centrality of human rights to law enforcement and, following the recommendations of the 1996 report of the CPT and the 1999 recommendations of the Committee against Torture, inform them of the sanctions they face if the principle of proportionality in the use of force is violated.

The alleged police ill-treatment of Raymond Ayodeji

In August 1999 Amnesty International learned of a case of alleged ill-treatment of a Nigerian national by police officers in St. Pölten. Raymond Ayodeji was reportedly sprayed with pepper after he had been pushed to the ground and repeatedly punched and kicked by police officers.

In the early afternoon of 3 July 1999 41-year-old Raymond Ayodeji and his Austrian wife, Daniela Ayodeji, took their three children around the town centre of St. Pölten. Daniela Ayodeji has stated that she took her three children for a ride on the town's sight-seeing train as a treat while her husband waited with the children's prams near the family car. After the ride she returned to find her husband lying on the ground surrounded by three police officers. She alleges that the police officers beat her husband in her presence as he lay on the ground. She says she begged the police officers to stop beating her husband but maintains they ignored her. She has also stated that after the police officers had handcuffed her husband one police officer sprayed pepper into her husband's eyes three or four times. Daniela Ayodeji has also stated that she and her seven-year-old child were also affected by the pepper spray. In the meantime more police officers arrived at the scene of the arrest and placed Raymond Ayodeji in a police vehicle and took him to the main police station in St. Pölten. After the incident Daniela Ayodeji was left alone with the three children and the prams.

²⁵ CPT/Inf (91) 10 - Summary of the CPT's main findings.

²⁶ CPT/Inf (96) 28 - paragraphs 21 and 23.

Amnesty International has received an eye-witness report supporting the allegations of ill-treatment. The witness stated that she and a friend were strolling around St. Pölten in the afternoon of 3 July. She saw Raymond Ayodeji sitting on a bench near the Promenade shopping centre speaking with a police officer. The eye-witness and her friend entered a department store. After leaving the department store, the eye-witness saw Raymond Ayodeji and the police officer involved in an intense discussion. She says she could overhear parts of the discussion. Raymond Ayodeji was explaining to the police officers in English that his identification was in his car and he was waiting for his wife to return with the children. She has also indicated that the two prams stood next to Raymond Ayodeji.

The eye-witness has stated that the situation escalated after Raymond Ayodeji asked the police officer for his service number. The police officer reportedly called for reinforcements and shortly afterwards three additional police officers arrived and immediately attacked and seized Raymond Ayodeji. The police officers allegedly forced him to the ground and punched and kicked him across his entire body. The eye-witness has stated that Daniela Ayodeji arrived with the children and she pleaded with the police officers to be allowed to calm the situation. The police officers allegedly took no notice of her and continued to direct kicks to Raymond Ayodeji's body and head while he lay on the ground. When Raymond Ayodeji attempted to defend himself from the blows a police officer allegedly sprayed the detainee with pepper several times. The eye-witness has confirmed that the seven-year-old child, who stood crying next to his father, also received a dose of the spray. Raymond Ayodeji was then taken away by police officers in handcuffs. The eye-witness maintains that she saw blood from the detainee on the road markings on the ground. As a result of the incident he suffered a number of injuries including a fractured finger and various torn ligaments. He has also alleged that he was subjected to racist abuse during the incident, being called a 'negro swine' (*Negerschwein*) by one of the police officers and that it was suggested he was a drug dealer.

Amnesty International learned that Raymond Ayodeji remained in detention until 29 July 1999. Daniela Ayodeji has stated that her husband bit one of the police officers who allegedly attempted to close his nose and spray pepper into his mouth. As a result Raymond Ayodeji was charged with resisting arrest, committing physical bodily harm and damaging property. Amnesty International received a reply from the Ministry of the Interior in October 1999 rejecting Raymond Ayodeji's version of events and alleging that Raymond Ayodeji had acted aggressively towards police officers after being asked for identification and insulted and attacked police officers resulting in his arrest. The Ministry of the Interior informed Amnesty International that Raymond Ayodeji had initiated a complaint at an Independent Administrative Tribunal (*Unabhängiger Verwaltungssenat*), the result of which is not yet known. Amnesty International learned that Raymond Ayodeji was given a conditional eight-month prison sentence in November 1999.

In 1998 and 1999 Amnesty International expressed concern about the use of racist language by police officers in the course of arrest. In its letters to the authorities the

organization has repeatedly asked the authorities to inform it of the steps they are taking to combat racist attitudes among police officers. The Alternative Country Rapporteur on Austria, Alyaksandr Yakovlev, also expressed concern at the 395th Meeting of the Committee against Torture in Geneva on 10 November 1999 about the psychological attitude of police officers to ethnic minorities and the use of racist language.²⁷

The alleged racist comments of a senior police officer

Amnesty International learned through a combination of press reports about the temporary reassignment of a senior police officer, who allegedly made racist comments to approximately 30 subordinate police officers during a training session at the end of August 1999. The alleged comments came to light through an anonymous letter, which was sent to the Austrian authorities. According to several press reports the officer alleged to have made the racist comments, is the head of the Vienna-Donaustadt Branch of Security (Wien-Donaustadt Sicherheitswache). He allegedly told police officers present at the training session that "negroes deserve to be hit first, then asked their name" (*Neger gehören zuerst geschlagen, und dann nach dem Namen befragt*). It was with some concern that Amnesty International learned of the alleged comments made by the head of the Vienna-Donaustadt Branch of Security to his subordinate police officers, since the use of racist language and the incitement to the use of violence by senior police officers clearly sends the wrong message to lower ranking police officers. Amnesty International received a reply from the Ministry of the Interior in November 1999 stating that the allegations against the official were being investigated.

Other concerns of Amnesty International:

- the abuse of the requirement to produce identification

A number of the cases in this report have involved non-Caucasian foreign and Austrian nationals who were arrested after police officers stopped them and asked them to produce identification (see the cases of **Raymond Ayodeji, Dr C and He Xiuqin, He Xiuzhen and Ni Tongjun**). The chairman of the Committee against Torture, Peter Burns, asked the Austrian delegation at the 395th Meeting of the Committee against Torture on 10 November 1999 in Geneva a series of questions relating to the requirement to produce identification upon request by a police officer. In his question to the Austrian delegation he stated he did not fully understand how the requirement to be in possession of a passport actually applied in law and asked whether everybody had to carry identity papers at all times or only foreign nationals? He also asked whether it was a summary arrestable offence not to carry a passport if one were a foreigner visiting Austria and if so what was the rationale behind the policy. He stated: "If I were a policeman that would be the device I would use if I had the authority to

²⁷ UN Doc. CAT/C/SR.395 (Summary Record) - paragraph 23.

investigate even if I had no grounds to investigate, if there were no reasonable grounds and I wonder if this is the case?"²⁸

²⁸ Amnesty International recording of the 395th Meeting of the Committee against Torture.

In his reply to these questions Director General of the Ministry of Interior Szymanski stated that foreign nationals are required to carry their passport on their person or have it close to hand. Upon request by the police they are obliged to produce the passport or go with the police to the place where the passport is located in order to confirm their identity. It is an offence only if a foreign national refuses to show the police his passport or go with the police to the place where the passport is located for this purpose.²⁹ Amnesty International is concerned that in the cases of Raymond Ayodeji, Dr C and He Xiuqin, He Xiuzhen and Ni Tongjun they were arrested and reportedly physically ill-treated on the pretext that they did not have identification on them. While Dr C and He Xiuzhen were theoretically not required to prove their identities as Austrian nationals, He Xiuqin had her Chinese passport in her possession at the time of her detention and Ni Tongjun's passport was at home nearby. Raymond Ayodeji's passport was reportedly in his car next to which he was standing at the time of his arrest. Amnesty International is calling on the Austrian authorities to deliver a clear message to police officers that people cannot be stopped without good reason and that it is entirely unacceptable to deprive a person of his or her liberty solely on the basis of their ethnic origin.

- unlawful detention

Amnesty International learned that in 1999 the Austrian authorities conducted a number of police operations under the rubric 'Operation Spring' aimed at clamping down on drug dealing in Vienna. During the year a number of police raids were made on the residences of asylum-seekers and a large number of foreigners were arrested. Amnesty International also learned that a notable number of people initially deprived of their liberty were subsequently released without being charged. It is relevant to note Article 9 of the ICCPR, to which Austria is a state party, which states: "Everyone has the right to liberty and security of person. No one shall be subject to arbitrary arrest or detention". While Amnesty International recognizes that the fight against illegal drug dealing is difficult, it should never be used as a justification to arbitrarily deprive people of their right to liberty and freedom from state interference. Furthermore, it is completely unacceptable to arrest people on the basis of appearance or background alone, without compelling evidence warranting an arrest. Austria is a state party to a number of international human rights treaties which guarantee the right to liberty and security of person. Amnesty International is urging the Austrian authorities to ensure that this right is safeguarded in all circumstances irrespective of the background or citizenship of a person.

The case of Claudia B. and Mr S.

Amnesty International learned about a police raid on the house of a woman, who has been referred to in the Austrian media as Claudia B. She has alleged that police officers used racist language during the raid in relation to her marriage to a man originally from Gambia. The police operation reportedly sought to apprehend a suspected drug dealer, but police officers

²⁹ Amnesty International recording of the 395th Meeting of the Committee against Torture.

arrested her husband during the raid even though he was not the suspect and no drugs were found in the house.

In the evening of 30 September 1999 police officers reportedly forced their way into the house of Claudia B. on *Sautergasse* in Vienna. It is reported that police officers rang the door bell and proceeded to break their way into the house without allowing her the opportunity to open the door. Claudia B. sustained an injury to her forehead for which she required stitches after being hit by the door, which was forced open by the police. Medical reports allegedly indicated that she suffered a deep cut to her forehead, concussion and a whiplash injury. After forcing open the door police officers allegedly pushed Claudia B. into a corner of the room. She also maintains that she was subjected to abusive, racist language. Amnesty International wrote to the Austrian authorities expressing concern about the alleged use of abusive and racist language by police officers, once again asking the Austrian authorities what steps they are taking to combat racist behaviour and attitudes among police officers of all ranks.

Amnesty International also expressed concern that Claudia B.'s husband, who has been referred to in the media as Mr S. (*Herrn S.*), was arrested and detained even though he was not the suspect for whom the police were looking. It is also reported that he was interrogated for several hours. Amnesty International requested to be informed why Mr S. was arrested and interrogated when he was not the suspected drug dealer for whom the police were looking and no drugs were found in the house. The organization learned that he was arrested for a second time approximately one week after the initial search of the house and reportedly released three days later without charge.

Recommendations

Torture and ill-treatment of people under any circumstances are expressly prohibited under international treaties to which Austria is party, including the Convention against Torture, the ICCPR and the European Convention. Amnesty International recognizes that the Austrian authorities have undertaken a number of measures to strengthen the safeguards against ill-treatment, often made on the recommendation of the Committee against Torture and the CPT. Amnesty International's current concerns echo a number of the issues which have been raised by the Committee against Torture, the CPT and the Human Rights Committee in recent years. The organization is concerned that, irrespective of the existing safeguards which have been put in place against ill-treatment, it has continued to receive a significant number of allegations of ill-treatment of detainees by police officers, some of which have been very serious. In Amnesty International's experience one of the most important factors contributing to the practice of torture and ill-treatment is impunity. Perpetrators of human rights violations are likely to become all the more confident when they are not held to account before the law. Amnesty International is most concerned that, although Austria has created a structure to investigate allegations of torture and ill-treatment, this has not been effective in preventing the ill-treatment of detainees. Amnesty International believes that it is clearly within the power of the Austrian authorities to take immediate steps to ensure that the ill-treatment of detainees by

police officers is prevented and the rights of both Austrian and foreign nationals are given greater protection. Amnesty International recommends that the authorities as a matter of priority:

- inform all people deprived of their liberty of their rights, including the right to complain to the authorities against ill-treatment;
- ensure that all people under arrest are informed promptly of the charge or charges against them in a language they understand, and that they are allowed access to a lawyer of their choice from the outset of their detention and during interrogation;
- ensure that all detainees are allowed access to a medical practitioner of their choice;
- initiate prompt, impartial and thorough investigations of all complaints of torture and ill-treatment of detainees, as well as when there are reasonable grounds to believe that torture or ill-treatment has occurred, even if no complaint has been made;
- introduce legislative and procedural measures to ensure that investigations are prompt, impartial and thorough;
- as part of such investigations, ensure prompt, impartial and professional medical examinations of persons alleging torture or ill-treatment;
- review the present complaints procedures with a view to ensuring complainants have recourse to at least one effective, impartial channel of complaint which does not expose the complainant to the risk of counter-complaints;
- bring those suspected of being responsible for torture or ill-treatment of detainees to justice in the course of fair proceedings;
- ensure that information regarding the absolute prohibition of torture and ill-treatment is fully included in the training of law enforcement personnel and other persons who may be involved in the custody, interrogation and treatment of any individual subjected to any form of arrest, detention or imprisonment;
- consider the introduction of audio-visual recording of interrogations;
- ensure that senior police officers deliver the clear message to their subordinates that torture or ill-treatment of persons deprived of their liberty is unacceptable and will be the subject of severe sanctions and that the use of force should be limited to what is proportionate and strictly necessary;
- take measures to address discriminatory attitudes and behaviour among police officers;
- examine the safety of the use of methods of restraint and ensure that they do not endanger the health and safety of the detainee;
- ensure that the use of mouth restraints by police officers is strictly prohibited;
- inform police officers that no more force should be used deporting a person than is reasonably necessary and stress that it is entirely unacceptable for a person subject to an expulsion order to be physically assaulted as a form of persuasion to board a means of transport or as punishment for not having done so;
- ensure that greater attention is given to the medical condition of the deportee both before and during deportation.