

Vienna, 23 September 2013

Independent Monitoring Committee for the Implementation of the
UN Convention on the Rights of Persons with Disabilities

(Section 13 Austrian Federal Disability Act)

Statement

On the implementation of the Covenant on Economic, Social & Cultural Rights

With reference to the Fourth Periodic Report (E/C.12/AUT/4) in accordance with Article 16 CESCR

Introduction: The Monitoring Committee

1. Austria signed the Convention on the Rights of Persons with Disabilities (CRPD) on 30 March 2007 and ratified it in October 2008 (Federal Law Gazette III No. 155/2008). The Monitoring Committee was established pursuant to Section 13 Austrian Federal Disability Act (Bundesbehindertengesetz) (Federal Law Gazette No. 283/1993 as amended by the Federal Law Gazette I No. 109/2008), in line with Article 33 Para 2 CRPD. The Monitoring Committee was constituted on 10 December 2008 and adopted its Rules of Procedure on 1 April 2009 (see Annex a.). The preamble of the Rules of Procedure explicitly refers to the principle of non-discrimination and the equality of men and women pursuant to Article 3 (b) and (g) CRPD.
2. The CRPD provides for consideration of the principles relating to the status and functioning of national institutions for the protection and promotion of human rights (Article 33 Para 2 CRPD). As the Monitoring Committee has

put on record in its statement of 27 May 2009, its design does not comply with the Paris Principles. An independent Human Rights institution with status “A” does not exist in Austria as of this writing.

3. The Monitoring Committee, which is in charge of federal matters only, has not yet been informed of the establishment or designation of Monitoring Committees in all the *Länder* (Federal provinces) as provided for in Section 13 Para 8 Austrian Federal Disability Act.
4. The remit of the Monitoring Committee is the protection and promotion of the human rights of persons with disabilities (Section 2 Para 2 Rules of Procedure). Among others, it issues recommendations - also with reference to CESCRC Committee General Comments.
5. This statement is an outline of some of the topics brought to the attention of the Monitoring Committee – it does not claim to be comprehensive.

General concerns

6. As the Monitoring Committee noted in its recent report to the CRPD Committee:¹ **Austria’s approach to human rights is complex.** It is generally assumed that the European Convention on Human Rights covers all human rights. Economic, social and cultural human rights have not been incorporated constitutionally. All international human rights treaties – except the ECHR – were ratified by Austria with the proviso that in accordance with Article 50 of the Federal Constitution Act the respective treaty was not automatically self-executing (“Erfüllungsvorbehalt”).² When it comes to realising human rights, the “legal” aspect is overemphasised and attention is focused on the question of legal implementation. Implementation issues – and particularly the quality of implementation – are belittled as utopian visions of NGO representatives. As far as the human rights of persons with disabilities are concerned, the situation is aggravated as Austria considers itself a welfare state. Hence, it is difficult to replace “alms” for persons with disabilities with a human rights based approach.
7. In Austria’s federal structure numerous issues, which are vital to persons with disabilities, fall within the (legislative and/or executive) **competence of the federal provinces**, causing **significant fragmentation** of the disability issue and resulting in different conditions in the individual federal provinces. Moreover, the individual competent bodies have **different ideas** of how disability policy should be implemented – this can lead to **enormous differences** between the federal provinces.

¹ Compare: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Session10.aspx>.

² See also: Report on the Universal Periodic Review, A/HRC/17/8.

General Measures related to Persons with Disabilities

8. The **List of Issues** (E/C.12/WG/AUT/Q/4) makes reference to the “**National Action Plan on Disability 2012-2020**” and requests information “on the budget allocated for its implementation, indicators to monitor progress, and measures taken to ensure the effective participation” of persons with disabilities and their representative organizations. The Monitoring Committee raised similar questions prior to the adoption of the National Action Plan and looks forward to the responses during the dialogue session.
9. Per its recent submission to the Committee on the Convention on the Rights of Persons with Disabilities³ and its opening statement during the dialogue, the Monitoring Committee is deeply concerned about the **public perception and the image of persons with disabilities** in Austria. A self-advocate stated during one of the Monitoring Committee’s biannual public meetings: “I often feel that people do not take me seriously. I am no different to other people, I merely require a little assistance or support.” A wheel-chair user reported that when waiting outside a shop in Vienna because of lack of physical accessibility, people would frequently stop to give him alms.
10. Vigorous awareness-raising measures have to be a matter of highest priority, including an overhaul of the annual charity campaign of the Austrian public Broadcasting Corporation (ORF) aired as a public appeal during Christmas time.
11. A corner-stone of independent living is the right to utilize one’s legal capacity fully. While regulations enshrine the right to self-determination, implementation is slanted toward minimizing the possibilities to make one’s own choices, particularly for the more than 60.000 persons with a guardian whose purview too often covers all areas of life.

Non Discrimination – Article 2

12. The Monitoring Committee reiterates concerns raised by Non-governmental organizations about the uneven protection level for various grounds of discrimination and underscores the need for a comprehensive levelling-up of protection for all grounds of discrimination, including aggravated and multiple forms of discrimination (PP (p) CRPD).
13. An obligation to remove barriers (“Beseitigungsanspruch”) is currently lacking in Austrian law.

³ See documents for the 9th Session of the CRPD Committee:
<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Session10.aspx>.

14. Importantly, General Comment 20 rightly underscores the importance of making the built environment fully accessible and discrimination due to the denial of reasonable accommodation.⁴
15. Concerning Austria's extraterritorial obligations the Monitoring Committee is concerned about the lack of a comprehensive human rights based approach. The Austrian Development Cooperation does not fully realize the rights of persons with disabilities, i.e. the twin-track approach is not yet implemented.⁵

Equal opportunities of men and women – Article 3

16. Women with disabilities face multiple and aggravated forms of discrimination, the structural causes of which are not adequately addressed.⁶
17. Particularly access to decent employment is a challenge for most persons with disabilities, structural barriers and multiple discrimination exacerbate the situation for women with disabilities.⁷
18. Violence protection for persons with disabilities has been slightly improved also due to the broadening of the Mandate of the Ombudsmen's Office to include violence protection in line with Article 16 Para 3 CRPD, while pertaining to both men and women with disabilities, the misconception of persons with disabilities being "a-sexual" increases the risk of falling victim to sexual violence particularly for girls and women with disabilities.

Right to Work – Article 6-8

19. Roughly 20.000 persons with disabilities are "occupied" in sheltered workshops, which are not inclusive in their nature and where neither adequate income nor comprehensive social security are provided.
20. The quota system – according to which a person with disabilities has to be hired per 25 employees – is not working, largely due to the exemption tax ("Ausgleichstaxe"), which is too low to cause employers consideration of actually hiring persons with disabilities.

⁴ Compare, Para 28 General Comment 20 CESCR, see also the definition of discrimination in Article 2 CRPD as well as the obligations in line with Article 5 CRPD.

⁵ Compare Statement of Monitoring Committee on inclusive development.

⁶ See also the comprehensive Statement by the Monitoring Committee to the Committee on CEDAW.

⁷ Compare Statement of Monitoring Committee on inclusive employment.

21. The assessment of the “ability to work” and “capability to work” are highly problematic in that the current approach fails to incorporate the social model, which takes into account the impact of the interaction with others and their potential attitudinal barriers and which places and emphasis on support and assistance needs rather than noting perceived deficits
22. Only as of January 2014 will two blind lawyers start to work as judges – albeit in a Court of Administrative Affairs; the example is indicative of the piecemeal approach to making the work place generally accessible and inclusive of persons with disabilities, particularly by reducing the attitudinal barriers vis-à-vis persons with disabilities.
23. Frequently, persons with disabilities relinquish job opportunities given that they lose support for assistance schemes and other benefits at a rate that makes gainful employment based on a job’s income unattainable. Particularly younger persons with disabilities face the risk of losing family allowance (“Familienbeihilfe”) and other benefits, which due also to their level of qualification they cannot compensate and which cannot be reinstated in the event of job-loss.

Social Security – Article 9

24. The Monitoring Committee is concerned that recent **budget cuts** have affected the services for persons with disabilities, particularly those aimed at enabling independent living, disproportionately.⁸
25. The social insurance provisions, especially related to defining an impairment do not yet comply with the social model, which takes into account the impact of the interaction with others and their potential attitudinal barriers and which places and emphasis on support and assistance needs rather than noting perceived deficits.
26. The means-tested minimum income scheme (“Mindestsicherung”) is implemented in varying and thus unpredictable ways. The increase family allowance (“Erhöhungsbeitrag Familienbeihilfe”) is deducted from the minimum income to the disadvantage of persons with disabilities.

Protection of the Family – Article 10

27. Public imagery by and large portrays persons with disabilities as “a-sexual”, contributing to a significantly increased likelihood of falling victim to

⁸ See General Comment 5 CESCR as well as General Comment 3 CESCR, also letter dated 16 May 2012 CESCR/48th/SP/MAB/SW.

violence.⁹ The obstacles to being recognized as a person with also sexual needs and desires in turn impacts the perception of persons with disabilities as potential founders of a family, including the choice to have and to raise children. Recently, both the upbringing of biological as well as adopted children by persons with disabilities were met with forcible removal of children by authorities.

Adequate Standard of Living – Article 11

28. Far too many persons with disabilities are accommodated in institutions, there is a worrying trend to place young persons with disabilities in old-age-care facilities for want of alternative community based set-ups.
29. While accessibility standards are in place to provide for housing projects, particularly those financed by public monies, to be accessible for all, particularly persons with disabilities, practically there is a lack of implementation of said standards.¹⁰
30. Affordable housing that is accessible and enables independent living is scarce – the cost of adaptation is compounded by the generally increased cost of housing and further exacerbated by the happenstance provision of personal assistance schemes, which are on pilot-project proviso only.

Health – Article 12

31. The Monitoring Committee's most recent public meeting focused on the health service.¹¹ One self-advocate observed: "it is important to be recognized as being the patient, to be taken seriously."¹² Another one stated that she often feels overlooked and has to wait longer than other patients. The overall sentiment was the health care system lacked respect vis-à-vis persons with disabilities. The Monitoring Committee is concerned about the potential – including fatal – impact of attitudinal and related social barriers vis-a-vis persons with disabilities.
32. Recent reports by the Ombudsman's Office reinforce the impression that the situation of persons with mental health issues, psycho-social and related impairments needs urgent attention. The Monitoring Committee is concerned that both the legal provisos ("Unterbringungsgesetz") but even more so implementation standards do not conform with a human rights based approach.

⁹ See Statement by the Monitoring Committee on Violence.

¹⁰ Compare General Comment 20 CESCR, Para 28; see also Statement by Monitoring Committee on Housing.

¹¹ See minutes of public meeting: www.monitoringausschuss.at.

¹² For all quotes of public meetings, see the minutes of all meetings of the Committee: <http://www.monitoringausschuss.at>.

Education – Article 13 & 14

33. The urgency of making education inclusive of and accessible to all is also reflected in the Monitoring Committee's decision to devote two of its hereto eight public meetings to this topic. Standards to enable adequate support and assistance are lagging far behind while an expensive two-track system is being maintained. There is a lack of training for teachers, curricula as well as teaching devices compounded by a lack of political understanding that inclusion will benefit all learners, not just those with an impairment.
34. The Monitoring Committee is concerned that a recent recommendation of the Child Rights Committee related to the primacy of the best interest of the child has not yet yielded any discussion let alone pertinent policy guidance.
35. The Monitoring Committee shares the concern of the Independent Expert in the field of cultural rights that „the schooling system divides education after kindergarten and after primary school into separate parallel streams, has an indirect discriminatory effect on children according to their background. Negatively impacting children with disabilities and a migrant background, the system impedes opportunities for cross-cultural interaction which are essential for intercultural understanding and building pluralistic societies.“¹³

Cultural rights – Article 15

36. The Monitoring Committee also reiterates the observations of the Independent Expert in the field of cultural rights on lack of access to participate in sports, accessible visitor facilities and infrastructure, subsidies for recreational offers and communication facilities as well as insufficient funding and availability of services for persons with disabilities in participating in cultural life – both in creating and enjoying culture & art.¹⁴

Concluding Observations CRPD Committee

37. Finally, the Monitoring Committee would like to flag that the Committee on the Convention on the Rights of Persons with Disabilities adopted its Concluding Observations on Austria on September 13, 2013: CRPD/C/AUT/CO/1.

¹³ Compare Para 98 Report by the Independent Expert, A/HRC/20/26/Add.1.

¹⁴ Compare inter alia Paras 48 f Report by the Independent Expert.

Annex:

*Unabhängiger Monitoringausschuss
zur Umsetzung der UN-Konvention über die
Rechte von Menschen mit Behinderungen*
MonitoringAusschuss.at

UNOFFICIAL TRANSLATION

Rules of Procedure

- a) Based on § 13 of the Federal Disability Act (FDA; Federal Law Gazette No. 283/1993 as revised in Federal Law Gazette No. 109/2008) and in line with the duties and responsibilities of the Federal Disability Council in accordance with § 8 Sec 2 Para 4 FDA,*
- b) For the purpose of domestic implementation and monitoring of the Convention in the Rights of Persons with Disabilities (ratified by Federal Law Gazette III No. 155/2008) and in accordance with its Article 33 Para 2 and 3 (hereinafter Convention),*
- c) In the spirit of the Paris Principles (Resolution of the General Assembly of the United Nations No. 48/134 including Annex) and the involvement of civil society in the independent monitoring of human rights, their promotion and protection, prescribed therein,*
- d) Based on the general principles: individual autonomy of persons with disabilities, equality and non-discrimination, inclusion, full and effective participation in society, respect for the difference of human beings, equality of opportunity, accessibility, and equality between men and women as well as the advancement of children with disabilities (Article 3 Convention),*
The Monitoring Committee establishes its

Rules of Procedure:

Members of the Committee

§ 1. (1) The members (substitute members) of the Committee, appointed by the Minister for Labour, Social and Consumer Affairs with due regard to the proposals by the Austrian National Council for Disabled Persons (ÖAR), are:

- a. Four representatives of disabled people's organizations (and one substitute member each)
- b. One representative of a non-governmental organization in the field of human rights (and one substitute member)
- c. One representative of a non-governmental organization in the field of international development (and one substitute member)
- d. One representative of academia (and one substitute member).

(2) A representative of the Ministry for Labour, Social and Consumer Affairs (BMA SK) and of the department or the highest level of the administration concerned, participate in an advisory capacity.

(3) The members of the Committee are independent and not bound by any directives or orders.

(4) Membership in the Committee is an unpaid honorary office. The members and substitute members are to receive reimbursement for their travel and sojourn expenses in accordance with the rules set out for lay judges and jury members in the 1975 *Expenses Claim Act*. This includes also personal assistance as well as interpretation services, particularly for sign languages.

(5) The members and substitute members are appointed for a period of four years. Following the discharge of the mandate the old Committee has to continue its office until the new Committee

convenes. The time elapsed during the continuation of the office by the old Committee shall count toward the term of office of the new Committee.

(6) The members and substitute members of the Committee are bound by the same level of confidentiality as the representative who discharges his or her mandate toward the Committee.

Duties & responsibilities

§ 2. (1) The Committee monitors the domestic implementation of the Convention on the Rights of Persons with Disabilities.

(2) The Committee promotes and protects the human rights of persons with disabilities.

(3) The Committee advises the legislature, the government, the administration – particularly the BMASK – and the judiciary.

(4) The Committee compiles reports to the legislature, the government, the administration – particularly the BMASK – and the judiciary.

(5) The Committee issues recommendations on all questions related to the promotion, implementation and monitoring of the Convention (Art. 33 Para. 2 Convention).

(6) The Committee assesses the legal and administrative rules in force as well as corresponding practice and issues recommendations for amendments.

(7) The Committee compiles statements on draft legislation and decrees.

(8) The Committee recommends new legislative and administrative rules.

(9) The Committee examines data and statistics.

(10) The Committee contributes to the awareness raising and sensitisation of the public, also through public relations work.

(11) The Committee collaborates with schools, universities, other educational institutions, medical, social and other relevant institutions.

(12) The Committee cooperates with institutions, agencies and bodies nationally and internationally, foremost with representatives of civil society, particularly with persons with disabilities and their representative organizations, to include them in the monitoring process.

(13) The Committee cooperates in particular with the focal points and coordination mechanism established in accordance with Art. 33 Para. 1 of the Convention.

(14) The Committee cooperates with the independent authorities, which are to effectively monitor all facilities and programmes designed to serve persons with disabilities in order to prevent the occurrence of all forms of exploitation, violence and abuse (Art. 16 Para. 3 Convention).

(15) Based on the unlimited application of the Convention for all parts of the State (*Länder*) – Art. 4 Para. 5 Convention – the Committee cooperates in particular with the “authorities of the *Länder* that are to be established or named” in accordance with § 13 Para. 8 BBG.

(16) The Committee cooperates with agencies related to the Convention abroad, in particular with other monitoring committees under Art. 33 Para. 2 of the Convention as well as the Committee on the Rights of Persons with Disabilities (Art. 34 Convention), to which it will report as required.

(17) The Committee advises and supports individuals and groups who want to file a communication with the Committee on the Rights of Persons with Disabilities established in line with Art. 34 of the Convention.

(18) The Committee deals with complaints, which can also be submitted informally, by the complainants or their representatives (including representative organizations) on asserted violations of the Convention; the Committee can also inquire into the presumption of a violation of the Convention ex-officio.

a. Based on a complaint or a presumption the Committee can request further information from the authority or institution in question as well as a statement from the administrative bodies (§ 13 Para 2 Sub 2 BBG).

b. For this purpose the Committee may seek the consent of the concerned person or their representative in compliance with data security regulations.

c. The Committee can, in line with data protection, seek the expertise of experts and civil society organizations, particularly organizations which represent persons with disabilities.

d. The Committee can invite the complainant or her/his representative to a dialogue.

e. The Committee examines the complaint or presumption, can make a statement within reasonable time, and makes a recommendation in case of a violation.

(19) The Committee informs the public as necessary in all matters related to monitoring.

Competences

§ 3. In discharging their mandate committee members have, if necessary, also as a delegation as well as in cooperation with experts, particularly

- a. unlimited access to all relevant institutions and authorities necessary to discharge the mandate;
- b. an unlimited right to inspect files, the content of which is naturally covered by public confidentiality (§ 1 Para 6);
- c. the possibility to request statements from administrative bodies (§ 13 Para 2 Sub 2 BBG);
- d. the possibility to request data and statistics (Art 31 Convention).

Chairperson and Rapporteur

§ 4. (1) Following the appointment of the new Committee, the Federal Ministry for Labour, Social and Consumer Affairs shall call a constituting meeting. The eligible members shall elect a chairperson and a deputy with simple majority for the term of office. The chairperson (her/his deputy) can be removed with a two third majority vote.

(2) The members entitled to do so elect with single majority a rapporteur and a deputy. The rapporteur (her/his deputy) can be removed with a simple majority.

Meetings of the Committee

§ 5. (1) Meetings of the Committee are to be convened when necessary, at least four times a year. The dates are determined by the chairperson in coordination with the members and the Ministry for Labour, Social and Consumer Affairs. The Committee must also be convened when one third of the members submits a written request stating the purpose.

(2) The invitation should be sent to the members together with the agenda two weeks ahead of the meeting. If individual cases are to be discussed, the relevant information shall be added to the agenda.

(3) The venue, the documents and the communication of the Committee are accessible.

(4) On decision of the Committee the meetings are public, foremost to ensure the inclusion of representatives of civil society, particularly persons with disabilities and their representative organizations in the monitoring process.

Quorums

§ 6. (1) When all members have been duly invited, the Committee has a quorum if at least half of the members entitled to vote are present. If all members have been duly invited, the Committee also has the necessary quorum, if, 30 minutes after the set starting time for the meeting, less than half of the members are present. The Committee adopts its decisions with a simple majority of the votes cast. In case of a tie of votes, the vote of the chairperson shall decide.

(2) An amendment of the rules of procedure requires the approval of two thirds of all members entitled to vote.

(3) If necessary, a decision can also be made by circular resolution, which is to be noted in the minutes of the next meeting.

Experts and working groups

§ 7. (1) On suggestion by the chairperson or a minimum three eligible members, experts can be added to the meetings or other business of the Committee in an advisory capacity. Experts are eligible for the same reimbursement as the members (§ 1 Para 3).

(2) The Committee may form working groups as needed.

Annual Report

§ 8. The Committee reports on its activities at least once annually to the Federal Disability Council. The chairperson or a member of the Committee eligible to vote named by her/him may participate in the meetings of the Federal Disability Council in an advisory capacity.

External Representation

§ 9. (1) The representative of the Committee is the chairperson and in case of her/his unavailability, her/his deputy.

(2) For official correspondence the letterhead „Independent Monitoring Committee for the Implementation of the UN Convention on the Rights of Persons with Disabilities“ shall be used.

Secretariat

§ 10. (1) The secretariat of the Committee is run by the Ministry for Labour, Social and Consumer Affairs. The Ministry for Labour, Social and Consumer Affairs supports the Committee in discharging its mandate.

(2) The head of the department in the Ministry for Labour, Social and Consumer Affairs or one of her/his deputies participates in the deliberations of the Committee. The Ministry for Labour, Social and Consumer Affairs supports the rapporteur in drawing up the minutes and the meeting's results.

(3) In lieu of an independent budget, accrued expenditures are covered by the Ministry for Labour, Social and Consumer Affairs after seeking agreement and the Ministry provides direct support by providing necessary resources respectively.

(4) Minutes are compiled for every meeting by staff of the Ministry for Labour, Social and Consumer Affairs, which is signed by the rapporteur and the chairperson. The members and deputy members are to receive a copy of the minutes.

(5) The Ministry for Labour, Social and Consumer Affairs undertakes to archive complaints, measures taken and statements issued.

Federal Social Office

§ 11. The Federal Social Office (*Bundessozialamt, BSB*) and – also in its capacity of serving people concerned in regional centers – its *Länder* offices support the Committee in discharging its mandate. As a general rule the communication between the Committee and the Federal Social Office is to be facilitated by the secretariat of the Committee. In compliance with § 13 Para 7 BBG, particularly with a view to the pertinent information possibilities of the Federal Social Agency,

- a. the Federal Social Office receives complaints on the Committee's behalf and pro-actively provides counselling on possible provision of support and specified referrals respectively;
- b. insofar possible, the Federal Social Office alerts the Committee to Convention related issues, particularly potential structural problems;
- c. supports research in individual cases and provides information related to its mandate.

Accessible Formats

§ 12. The rules of procedure are to be made available in accessible formats, this includes in particular Braille, sign languages, easy-read and auditive forms.