

Monitoring Report to the UN Expert Committee for the Rights of People with Disabilities on the Occasion of the Second Constructive Dialogue with Austria

I. Introduction

Creation of this report

Austrian politics are characterised by a division of responsibilities. This **federalist principle** affects a wide range of different fields, such as the field of disability. Monitoring mechanisms also follow this structure: There are nine constructions responsible for monitoring implementations in their respective federal province. We will go into detail regarding the problems of this system later in this report.¹

The present report makes an attempt to consider the contributions of all mechanisms equally and to make joint statements. The federal monitoring committee is responsible for selection and editing of this report and also takes responsibility for the content.

Background Information

The CRPD was ratified by Austria on the 26th September 2008, **under the proviso** that in accordance with Article 50 of the Federal Constitution Act the respective treaty was not automatically self-executing (“Erfüllungsvorbehalt”)². This drastically limits the effectiveness of the rights stipulated in the CRPD in Austrian practice – and it also limits the degree to which legal practitioners are aware of these rights.

The **first Universal Periodic Review** took place in October 2013. This resulted in a large number of very helpful, Austria-specific concluding observations and recommendations by the expert committee of the UN, for which the monitoring committees are very grateful.³

Structure

The structure of this report is informed by the UN expert committee’s guidelines on periodic reporting by national monitoring mechanisms⁴. Following a short introduction, the major points and statements of this report are summarised in the Executive Summary. Next, an account on relevant developments since the last Universal Periodic Review in 2013 will be

¹ Reference to paragraph of Article 33 UN-BRK and page number

² BGBl. III Nr. 155/2008. The UN-BRK took effect in Austria with 26th October 2008.

³ CRPD/C/AUT/CO/1.

⁴ Guidelines on independent monitoring frameworks and their participation in the work of the Committee on the Rights of Persons with Disabilities, CRPD/C/1/Rev.1 Annex. Guidelines on periodic reporting to the Committee on the Rights of Persons with Disabilities, including under the simplified reporting procedures, CRPD/C/3.

given. The main part of this report deals with the implementation of individual articles and **recommendations**. In an additional chapter, this report will deal with structural deficiencies which constitute fundamental barriers for a comprehensive and consistent implementation of the CRPD. A short conclusion will summarise essential implications of the report.

Acknowledgement

The independent monitoring committee and the provincial monitoring mechanisms are grateful to the UN expert committee for its singularly dedicated work for the rights of people with disabilities. We are also grateful for the consideration of this report as well as for being included in the 2nd Constructive Dialogue with Austria. We also want to thank civil society for its constructive contributions.

II. Executive Summary

- The efforts to implement the recommendations of 2013 are explicitly acknowledged; however, the review of these recommendations has been very inconsistent.
- The recommendations regarding article 14, 15 and 16 have not been sufficiently implemented by far.
- The current government agreement 2017 – 2022 includes a plan to “evaluate and continue” the National Action Plan on Disability; the monitoring committee is sceptical about the effectiveness of the NAP, though.
- In the area of socio-psychiatric care, a lack of person-centred support and easily accessible mobile assistance and other services is evident.
- The Austrian Ombudsman Board points out how shortcomings in other areas (articles 9, 14, 19, 20, 22, 27) affect the freedom from exploitation, violence and abuse.
- Examples for deteriorations: increase of unemployment among persons with disabilities, reversal of minimum standards in the area of accessible construction, reverse trend in the area of education (esp. in schools), standstill in the field of forensic commitment, deterioration in the area of monitoring bodies of the federal provinces, no discernible efforts to facilitate de-institutionalisation.
- Examples for improvements: An inclusion package was passed in 2017 which contains many improvements relating to the field of disability. The law on guardianship was reformed from the ground up, and a new law will come into effect in mid-2018.
- No well-structured activities aimed at dissolving the problems of responsibilities between the federal government and the provinces could be registered.

III. Significant Developments since the last Universal Periodic Review

National Action Plan (NAP) on Disability

The Austrian federal government passed the **National Action Plan on Disability (NAP) 2012-2020** on the 24th July 2012.⁵ It was passed as a strategy of the Austrian federal government to facilitate the implementation of the CRPD. The monitoring committee appreciates the efforts of the Federal Ministry of Labour, Social Affairs, Health and Consumer Protection (BMASGK), which lead and still leads the creation and accompaniment of the implementation of the NAP. The implementation proper is the responsibility of all ministries and provinces equally – a fact which is given little consideration in practice.

As the monitoring committee has pointed out in its last report to the UN expert committee, there have been distinct **shortcomings** in the creation of the NAP in regards to the participation of people with disabilities.⁶ Moreover, the current NAP neglects to involve the provinces, even though very crucial areas of responsibilities are part of their jurisdiction. The measures are only partly derived from the guidelines of the convention, and occasionally list activities in the area of disability which have been in existence for a long time.⁷ The lack of budgeting severely restricts the effectiveness of the NAP.

To facilitate the implementation of the NAP, the so-called **supervisory group of the NAP on Disability** was created. This group includes representatives of civil society, academic representatives, representatives of individual ministries and provinces and representatives of the Disability Ombudsman and the monitoring committee. This group holds meetings about once or twice annually and has developed into what is now mainly an information platform.

An **interim evaluation** of the NAP on Disability was executed by following a colour coded system created by the BMASGK itself; it was based on self-evaluations of the ministries.⁸ This has resulted in massive criticism within the NAP supervisory group, and not just from academic representatives. Many members of the NAP supervisory group emphatically called into question the reliability of the interim evaluation.

The **current government agreement 2012-2022** plans for the “evaluation and continuation of the NAP on Disability, for the period 2021-2030”. However, the agreement fails to meet the urgent need for a revision and partial redesign of the NAP.⁹

Suggested recommendations:

Fundamental revision and sharpening of the current NAP on Disability with due regard to the following parameters:

⁵ <https://broschuerenservice.sozialministerium.at/Home/Download?publicationId=225>. (English Version)

⁶ cf. https://monitoringausschuss.at/download/berichte/MA_Report_to_UN_Committee.pdf, p. 7.

⁷ cf. For example NAP measures Nr. 26, 29, 34, 56, 83, 86, 121, 162, 215, 224, 227 etc.

⁸ https://www.sozialministerium.at/site/Service_Medien/News_Veranstaltungen/News/Zwischenbilanz_des_Nationalen_Aktionsplan_Behinderung. (German version)

⁹ <https://www.bundeskanzleramt.gv.at/regierungsdokumente> p.120. (German version)

- comprehensive and genuine participation of people with disabilities in the revision and evaluation.
- a more explicit orientation on the guidelines of the CRPD, taking into account the maxim of the social model of disability and the self-determination of people with disabilities.
- sustained involvement of the federal provinces in the revision, including a clear distribution of responsibilities and roles.
- central, continued and effective coordination of the process of review.
- introduction of indicators for the measurability and traceability of (partial) successes in the implementation of the measures laid out in the NAP and their aims.
- appropriate budgeting of individual measures.
- independent evaluation following accepted scientific methods.

Regional Action Plans

In Styria and Carinthia, regional action plans have been created to implement the aims of the CRPD. In the federal provinces of Lower Austria, Salzburg, Vorarlberg, Vienna, Tirol and Burgenland, no such efforts have been undertaken. However, there are declarations of intent or decisions on the matter by state parliaments in several federal provinces.

Recommendations

The monitoring committee appreciates the **efforts** of individual ministries and actors in the implementation of those recommendations in the concluding remarks of the last Universal Periodic Review which were directed at them.¹⁰ However, the review of the recommendations has taken place **in a very inconsistent manner**. Aggravating factors include:

- There has been no comprehensive and consistently coordinated process of reviewing.
- The recommendations were vastly differently prioritised by the ministries responsible.
- The federal provinces, who were only indirect addressees, did not seem to feel as if they were addressed at all.
- The review of the recommendations is hardly transparent and only in individual instances traceable.

The monitoring committee was able to ascertain that the following recommendations **were at least partially reviewed**. (More detailed information and limitations on this can be found in the respective chapters):

- A **new German translation of the CRPD** was created, which, however, is only used in Austria.¹¹

¹⁰ CRPD/C/AUT/CO/1.

¹¹ CRPD/C/AUT/CO/1 paragraph 7.

- There have been improvements in the **protection against discrimination** for people with disabilities, among other things because of the inclusion package. However, the protection is still limited, inconsistent and incomplete.¹²
- The **reform process** regarding the **law on guardianship**, with a view to introduce the Protections of Adults Act, was started.¹³ Following an exemplary legislative process, this act will come into effect in 2018.
- There have been activities in regards to the **portrayal of people with disabilities in the media**, which are regarded as concluded. Moreover, a legislation amendment in relation to the Audience Council of the Austrian Broadcasting Corporation (ORF) has been introduced.¹⁴
- The **decree on cage beds**¹⁵ has banned the use of cage beds in psychiatric wards and homes. However, fixations and other non-consensual practices are still permitted.¹⁶
- Creation of or provisions for **monitoring mechanisms in most of the provinces**¹⁷. The development is inconsistent and not completed everywhere. Moreover, there are mostly no independent budgets, and the Paris Principles are not fulfilled.
- Restructuring of the **Independent Monitoring Committee on the federal level**¹⁸, implemented through the inclusion package. This process is currently ongoing.

Suggested recommendations:

- Establishment of a comprehensive and consistently coordinated review process for the recommendations of the previous and current Universal Periodic Review.
- Transparent documentation of the review process for individual recommendations.
- Distribution and acceptance of clear responsibilities among all ministries and local authorities.
- Methodical, sustainable inclusion and consideration of the expertise of people with disabilities and their organisations in the review process.

¹² CRPD/C/AUT/CO/1 paragraph 13.

¹³ CRPD/C/AUT/CO/1 paragraph 28.

¹⁴ CRPD/C/AUT/CO/1 paragraph 22.

¹⁵ Erlass, Einsatz von psychiatrischen Intensivbetten in Einrichtungen nach dem UbG und HeimAufG, GZ BMG-93330/0002-II/A/4/2014. Decree, use of psychiatric intensive care beds in institutions according to the UbG and HeimAufG, GZ BMG-93330/0002-II/A/4/2014, of 22nd July 2014. Effective since 1st of July 2015.

¹⁶ CRPD/C/AUT/CO/1 paragraph 33.

¹⁷ CRPD/C/AUT/CO/1 paragraph 53.

¹⁸ CRPD/C/AUT/CO/1 paragraph 53 und 54.

IV. Implementation in Detail

A) General Principles and Obligations (Articles 1-4)

General recommendations regarding the translation:

CRPD/C/AUT/CO/1 Paragraph 7:

Since the **German translation** of the CRPD did not match the original in essential points, the UN expert committee recommended a revision during the Universal Periodic Review for Austria 2013.

In immediate reaction to this, the Federal Ministry of Europe, Integration and Foreign Affairs (BMEIA) installed a **participatory working group** with the participation of the BMASGK, the independent monitoring committee and several NGOs from the field of disability. In a process spanning several years, a correction of errors was developed for the German translation. In 2016, the CRPD, in a corrected Austrian translation BGBl. II Nr. 105/2016, was announced a second time.¹⁹ Despite efforts of Austrian officials, neither Germany nor Switzerland or the EU could be convinced to support the corrected version.

After lengthy persuasion efforts by the NGOs involved, the BMASGK also commissioned a revision of the **Simple German version of the CRPD**. At the moment, a participatory process is underway, which will likely be concluded in 2018. After this, an Easy German version of the CRPD should be available.

Article 1 CRPD

Recommendations: no

The **social model of disability** has found its way into the disability rights movement in the last few years, and has at least caused discussions. However, the paradigm shift towards the social model of disability has not taken place within the politics of inclusion in any sufficient measure. Despite isolated attempts to do justice to the social model, the necessity of a “radical” change of thinking is still not given any consideration in essential areas. The way of small adjustments which has been followed up to now is not an option in these areas, if the social model of disability is supposed to be taken into account.

Suggested recommendations: The paradigm shift from the medical to the social model of disability has to be continued and legally reinforced in all areas of life and for all generations.

Article 4 CRPD

Recommendations:

CRPD/C/AUT/CO/1 Paragraph 9:

¹⁹ https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=BgblAuth&Dokumentnummer=BGBLA_2016_III_105

There have been no visible efforts to implement the UN expert committee's recommendation for the amendment of relevant laws in order to align the concept of disability therein with the CRPD throughout Austria. It is well known that there are nine different (social) legislatures for people with disabilities because of the federal system, and the rights of people with disabilities are vastly differently portrayed and treated within these. For example, the term "Menschen mit Beeinträchtigungen" (about equivalent to "handicapped" or "people with handicaps" in English), which references the **medical concept**, perseveres in Upper Austrian federal state laws and ordinances.²⁰ In some federal provinces (e.g. Tirol and Salzburg), **non-discriminatory terminology** has been introduced in amendments and new laws, but this has hardly changed anything in regards to the services for people with disabilities. The **concept behind it remains discriminatory** and aligned with the medical model.

CRPD/C/AUT/CO/1 Paragraph 11.

The federalist structure of Austria results in **fragmentation of political responsibility** between the federal and the provincial governments, which also leads to very different standards regarding concerns relating to disability policy. Since the last Universal Periodic Review in 2013, this has not changed.

In 2014, the social secretaries of the provinces decided to demand funds for a "disability fund" from the federal government. Later, these demands were renamed to "**inclusion fund**" and were again submitted by the provincial governments. The supposed purpose of these funds is the funding of measures for the aid of persons with disability, relating to the implementation of the CRPD.

In 2015, the federal and the provincial governments started **negotiations on the topic of „inclusive disability policy“**. Organisations of people with disabilities were not involved in these early negotiations, which led to major disagreements. In 2016, the multi-annual distribution of funds between the federal government and the provinces (the so-called Finanzausgleich, "financial compensation") was again agreed on. The **negotiations** in regards to an **inclusion fund** meant to strengthen and coordinate the implementation of the CRPD **failed**.²¹

In April 2018 there was another decree by the members of the provincial governments responsible for social issues to ask the federal government for money for an inclusion fund.

No further attempts to harmonise the coordination of disability politics are known to the monitoring committee. There still doesn't exist any **comprehensive federal-provincial strategy for the implementation of the CRPD**.

Suggested Recommendations:

The signatory state is called upon to act in a results-oriented manner (within a foreseeable time period, at the longest until the next Universal Periodic Review). The federal and

²⁰ cf. Upper Austrian Equal Opportunities Act /OÖ. CHG 2008 (formerly Upper Austrian Disability Act 1991).

²¹ https://www.parlament.gv.at/PAKT/PR/JAHR_2016/PK1421/.

provincial governments are called upon to go through existing laws and eliminate discriminatory regulations.

B) Specific Rights (Article 5 – 30)

Article 5 CRPD

Recommendations:

CRPD/C/AUT/CO/1 Paragraph 13:

CRPD/C/AUT/CO/1 Paragraph 15:

The existing anti-discriminatory legislation remains basically unchanged. The **fragmentation** of laws and the resulting problems with law enforcement in cases of intersectional or multiple discriminations are still in existence.

The legislation on non-discrimination is vastly inconsistent between provinces. For this reason, there are still **great disparities** in Austria, depending on a person's residence and the reason for discrimination.

We can report two concrete **improvements**:

- The Lower Austrian Equal Treatment Act (NÖ ADG) has received an amendment through the provincial law gazette 2017/24 which now offers protection from discrimination in the access to and supply of goods and services.
- The right of class action within the Federal Disability Equality Act was extended to the federal Disability Ombudsman and the Litigation Association of NGOs Against Discrimination (Klagsverband) through the Federal Law Gazette 2017 I/155. Fundamentally, the class action provision is still aimed at the ascertainment of discrimination, though in large companies as specified by the Austrian Commercial Code, it is also possible to sue for elimination and/or to take out an injunction in case of discrimination.

In spite of the recommendation, the provisions on **abortion** were not changed.

Suggested recommendations:

The existing anti-discriminatory legislation should be simplified and standardised for the benefit of people who have experienced discrimination.

Discriminatory distinctions regarding abortion and disability should be eliminated and a provision conforming to the CRPD should be created. From a general human rights point of view, this matter should be removed from the Criminal Code.

Article 6 CRPD

Recommendations:

CRPD/C/AUT/CO/1 Paragraph 18:

The monitoring committee maintains that the recommendation of the expert committee on the assurance of equal rights and prevention of multiple discrimination of women and girls with disabilities was not implemented. **Individual initiatives** with an aim to prevent multiple discrimination of girls and women with disabilities and, especially, to educate on the issue, are discernible. No **comprehensive review** of the recommendation has been undertaken since the last Universal Periodic Review.

A study on the **access of women with disabilities to victim protection organisations in case of experiences of violence** has shown that such institutions, for the most part, show substantial shortcomings in regards to accessibility. This is true both for the structural design and for the information and personnel provided.²²

Even though there is no current data on this issue, the monitoring committee assumes that women and girls with disabilities are still exceedingly affected by **violence**.²³ A study on the experience of violence of people with disability, commissioned by the Federal Ministry of Labour, Social Affairs, Health and Consumer Protection, is currently being prepared.

For a more detailed account, see the annex.

Suggested Recommendations:

The signatory state is called upon to guarantee the access of women and girls with disabilities to victim protection organisations in case of experiences of violence; and moreover to offer easily accessible services in Simple German, and to create barrier-free access to general counselling centres for women and girls with disabilities.

Article 7 CRPD

Recommendations:

CRPD/C/AUT/CO/1 Paragraph 20: The monitoring committee maintains that the recommendation of the UN expert committee on article 7 was not adequately implemented. Some measures were implemented through the **National Action Plan on Disability**, such as:

- the accessible rebuilding of subsidised specialised family advice centres in Austria;
- measures to raise awareness;

²² Cf. „Zugang von Frauen mit Behinderungen zu Opferschutz- und Unterstützungseinrichtungen bei Gewalterfahrungen“. Ludwig Boltzmann Institute of Human Rights (German: Ludwig Boltzmann Institut für Menschenrechte, BIM). Sabine Mandl, Anna Schachner, Claudia Sprenger, Julia Planitzer. Vienna 2015.

²³ See also the statement of the independent monitoring committee to the implementation of the Women's Rights Convention (CEDAW) in Austria of 12th April 2012. English version:

https://monitoringausschuss.at/download/documents-in-english/MA_SN_austria_crpdc_committee_submission_cedaw_2012_04_12.pdf.

- the establishment of a “monitoring”-board for children’s rights;²⁴
- the establishment of a working group on inclusion by the Ministry for Women, Family Affairs and Youth.

In four provinces, rehabilitation centres for children were established or are currently being created. Even though these are large-scale facilities, it is still positive that rehabilitation centres specialising on children have been or are being created.

However, there are still glaring shortcomings in the areas of **institutional accommodation** and **education**.

For example, **very large institutions, partially with affiliated special schools**, where children with disabilities are housed without their families, still exist in most federal provinces. Even though the committee on children’s rights already called on Austria to create and implement a de-institutionalisation strategy for these types of institutions in 2012, nothing has been done concerning this matter. There is either no or only isolated data available on this and other areas of the life of children with disabilities.

Inclusive education – especially in primary education – is not possible everywhere (see article 24). Because of a lack of accessibility and legal regulations, extra-curricular supervision is not guaranteed.

One factor that is completely missing in Austria is the **possibility for children and adolescents with disabilities to represent themselves**. The monitoring committee of Tirol carried out an exemplary project on this matter, but this could only be realised through self-funding and volunteer work.

Suggested Recommendations:

Development and implementation of an Austrian-wide de-institutionalisation strategy

Comprehensive implementation of inclusive education opportunities

Promotion of self-advocacy for children and adolescents with disabilities

Article 8 CRPD

Recommendations:

CRPD/C/AUT/CO/1 Paragraph 22:

The **rate of subtitling** by the Austrian Broadcasting Corporation has only increased insignificantly²⁵ since 2013.²⁶ At the moment, it is at 72% for the two biggest TV stations under public law, ORF I and ORF II. The third TV station under public law, ORF III, only has

²⁴ It must, however, be mentioned in this context that the board re-named itself to „Kinderrechte Board“ (Children’s Rights Board) in accordance to the Paris Principles because of its lack of independence. It is located in the federal ministry of Women, Families and Youth. The agenda of this federal ministry passed to the Chancellor’s Office with January 2018. NGOs criticize the board’s limited capacity to act.

²⁵ <https://www.bizeps.or.at/wie-entstehen-untertitel-im-orf/>

²⁶ <http://der.orf.at/unternehmen/recht-grundlagen/nachhaltigkeitsbericht/nachhaltigkeitsbericht102.pdf>

a subtitling rate of 40%. It is extremely rare to find programming with audio descriptions or in sign language. All in all, ORF I and ORF II provide audio descriptions for 8.48% of their programme. Private broadcasters hardly offer any accessible programming.

The NAP on Disability made a provision in measure 101 to introduce a working group to the Office of the Federal Chancellor to draw up a **recommendation for the portrayal of people with disabilities in the media**. This working group, which was created in 2014 with the involvement of experts with disabilities, created recommendations²⁷ which were presented to the public in 2016. Additionally, a **homepage** for journalists was created, containing tips on how to make media accessible.²⁸

Additionally, a study on **“people with disabilities in the Austrian media”**²⁹ was commissioned by the Austrian Regulatory Authority for Broadcasting and Telecommunication (RTR), the Federal Ministry of Labour, Social Affairs, Health and Consumer Protection and the Austrian Ombudsman Board. The findings of this study were presented in 2017.

The **study** shows how little knowledge the media creators of Austria have of the principles of the CRPD. The monitoring committee appreciates the efforts of the Office of the Federal Chancellor and of the participating persons. At the same time, we clarify that awareness raising is supposed to be understood as a **continuing and comprehensive process**. The Austrian media policy of the federal government only takes **selective measures** to remind media creators of their responsibility. Regrettably, no effective campaigns for the raising of awareness and for the communication of the meaning and contents of the UN convention on the rights of people with disabilities have been organised since the last Universal Periodic Review.

There are **no detailed legal provisions** for the media to create accessibility. The Austrian Broadcasting Corporation ORF is free to take whatever steps it wants to make its programming more accessible.

In 2017, it was stipulated in the ORF Act³⁰ that for the purpose of participation, at least one person with disability has to be part of the Audience Council (a committee to safeguard the interests of the ORF’s audience).

For a more detailed account, see the annex.

Suggested recommendations:

The committee suggests to draft legally detailed and compulsory standards for accessible media.

²⁷

https://www.bundeskanzleramt.gv.at/documents/131008/370304/Empfehlung_zur_Darstellung_von_Menschen_mit_Behinderungen_in_den_Medien.pdf/0916d9df-1c41-4303-8c82-1122d52eac64

²⁸ <https://www.barrierefreiemedien.at>

²⁹ https://www.rtr.at/de/inf/Studie_Menschen_mit_Behinderung

³⁰ https://www.parlament.gv.at/PAKT/VHG/XXV/A/A_02213/index.shtml

Article 9 CRPD

Recommendations:

CRPD/C/AUT/CO/1 Paragraph 24:

Neither the federal nor the provincial governments have yet developed a **comprehensive inclusive approach** to accessibility in accordance with Article 9 CRPD.

Building legislation:

There are grave regressions in accessible construction, which is part of the federal provinces' responsibilities. Standardisation efforts by the provinces exist, but these are on a far lower level than the current standards for construction, which, until now, included accessibility provisions (footnote OIB 4).

Public transport:

Accessibility in public transport is improving very slowly. Recommendations by the committee regarding an **individual complaint** (Communication 21/2014) – which would lead to a change in the regulations on the tram system – have been announced, but not implemented.

Information, media:

The range of **accessible websites** aimed at a general public is insufficient.

The range of legislation, regulations, and information in **Simple German** aimed at the public is insufficient. There is a lack of specific, binding staged plans for the provision of such information in Simple German.

Moreover, there are not enough efforts to facilitate the access of people with disabilities to **new information and communication systems**, including the internet.

For a more detailed account, see the annex.

Suggested recommendations:

The signatory state is called upon to set standards for accessibility in compliance with the CRPD and according to the state-of-the-art of technology for all of Austria and to monitor the implementation of this legislation in all federal provinces.

Article 11 CRPD

Recommendations: CRPD/C/AUT/CO/1 Paragraph 26

a) Disaster protection, prevention and preparedness in Austria³¹

There is no **state-wide methodical description** of measures to support people with disabilities in the case of a disaster. **Disaster information systems** (like the app KATWARN) are not consistently accessible, and information in Simple German is only available occasionally. The emergency number which has been established for deaf people³² is commendable in principle, but people who send a distress call by text or fax do not receive any confirmation that their message was received.

Suggested recommendations:

- methodical involvement of people with disabilities in the development and evaluation of measures for disaster protection and preparedness (including fire safety and plans for civil protection and evacuation). Emergency services should be trained on how to rescue and treat people with disabilities.
- All information and communication systems for dangerous situations, including emergency call systems, and for disaster protection need to be structured in an accessible way, including Simple German and sign language.

b) Situation of refugees with disabilities

The 2015 refugee movement in Europe shows the inadequacy of the structures for the reception and accommodation of refugees with disability. There are too few accessible accommodations. Disabilities, especially such disabilities that might not be immediately visible, are often not recognised during the initial reception, and thus refugees with disabilities are not treated in accordance to the convention.³³

Suggested recommendations:

- Guarantee for inclusion and accessibility in the asylum system and in the support of refugees so that people with disabilities who are seeking refuge can be adequately supported: training and networking of authorities and organisations, accessible registration and accommodation with consideration to family ties and persons supporting the individual; guarantee for accessible communication and information.
- inclusion of self-advocates in the creation and structure of action plans and programmes, funding for necessary measures and needs for support.

c) International humanitarian aid

The **systemic inclusion** of people with disability in humanitarian aid **has not yet taken place**. People with disabilities are named in the Guidelines on Humanitarian Aid (2007), but there is no obligation for inclusive structures. Austria has not yet joined the “Charter on Inclusion of

³¹ The Federal Ministry for the Interior coordinates federal crisis and disaster management, international disaster relief and civil protection. Measures of domestic disaster relief are mostly the responsibility of the federal provinces.

³² http://bmi.gv.at/Notrufnummern/notruf_gehoerlose.aspx

³³ https://www.ots.at/presseaussendung/OTS_20160929_OTSO015/monitoringausschuss-besorgt-ueber-situation-von-fluechtlingen-mit-behinderungen

People with Disabilities in Humanitarian Action”, which would be a good implementation plan for the application of the CRPD in the context of humanitarian measures.³⁴

Suggested recommendations:

- Signing/application of the “Charter on Inclusion of People with Disabilities in Humanitarian Action”
- Application of the twin-track approach in humanitarian aid and disaster preparedness programmes

Article 12 CRPD

Recommendation:

CRPD/C/AUT/CO/1 Paragraph 28:

The Ministry of Justice’s reaction to the recommendation of the UN expert committee in 2013 was a **comprehensive 5-year participatory process to reform the law on guardianship**. The plan was to introduce the so-called second Adult Protection Law (2.ErwSchG), which was supposed to go into the direction of supported decision-making. In March 2017, the law was decided unanimously in parliament and will come into effect on the first of July 2018.

For a more detailed account, see the annex.

Suggested recommendations:

Recommendation for the federal provinces to significantly expand support measures and to provide adequate alternatives, to such an extent that supported decision-making becomes the norm.

During the implementation of the reform special attention needs to be paid to the principles; long-term protection must be guaranteed.

Article 13 CRPD

Recommendations: no

In the area of **enforcement of forensic commitments** – which means the treatment of so-called “mentally disturbed offenders” – Austria has deficits that are alarming from a human rights perspective.

For example, the aim of the Austrian penal system includes **social rehabilitation**. People who have no understanding of their crime because of a psycho-social disability are supposed to go through measures with a focus on therapy – meaning a psycho-social intervention. Those who can understand their wrongdoing are supposed to go through punishment in combination with therapy. The **therapeutic nature** of these measures is supposed to be the main focus for those who cannot comprehend their wrongdoing and an important point of focus for those who can comprehend their crimes.

³⁴ <http://humanitariandisabilitycharter.org>

The **Austrian practice**, however, does not fulfil the aim of social rehabilitation. Frequently, forensic commitment is perceived as an inescapable dead-end. Moreover, in the view of the monitoring committee, there are essential omissions in regard to adequate and sufficient **therapy opportunities** within the commitment. Neglect with serious consequences also takes place before the commitment begins, in the area of **preventive measures**. There is a perceptible trend in the field of general psychiatry to hand over people in exceptional psychological situations who are at risk of becoming dangerous for third parties to the field of forensic psychiatry instead of treating them within the framework of socio-psychiatric care.

The monitoring committee published two detailed statements on this subject following **numerous complaints** of people concerned or by relatives of those people (as well as the media's exposure of the way a person concerned was neglected in the Stein penal institution) (see annex).³⁵ Deficits regarding both the **reasons for involuntary treatment** within forensic commitment as well as the access to justice (e.g. **hearings**) before a possible conditional release were discovered. The **absence of mandatory representation by an attorney** must be seen as a grave deficit.

As a result, the independent monitoring committee was invited to collaborate in a working group on forensic commitment of the Ministry of Justice. The efforts for a modernisation of the legal basis and commitment practices resulted in a **draft for a "law on forensic commitment"** which would create new regulations for the involuntary treatment of offenders with psycho-social disabilities. These regulations are in dire need of reform and alarming from a human rights perspective. This draft couldn't be realised in the past legislative period, though.

The monitoring committee does not currently³⁶ know what the further plans of the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice are in regards to forensic commitment. The **government agreement 2017-2022** refers, in connection to forensic commitment, to greater security and medical treatment. Therapy, social rehabilitation and prevention, however, are not mentioned.³⁷

Suggested recommendations:

The signatory state is called upon to take into account therapy, prevention and social rehabilitation within forensic commitment.

People with disabilities must be supported and encouraged in all phases of a proceeding so that their access to justice is guaranteed.

Article 14 CRPD

Recommendations:

³⁵ See statement "Forensic commitment - Statement on the current situation and prevention" from 19th January 2015, as well as statement "Anhörungen im Maßnahmenvollzug" (Hearings in Forensic Commitment) from 30th June 2015. German versions of both can be found at <https://monitoringausschuss.at/stellungnahmen>. The English version of the first statement can be found at https://monitoringausschuss.at/download/documents-in-english/MA_SN_forensic_commitment_2015_01_19.pdf.

³⁶ Time of writing: May 2018

³⁷ <https://www.bundeskanzleramt.gv.at/regierungsdokumente> (German version)

CRPD/C/AUT/CO/1 Paragraph 30:

Despite relevant reports from civil society, there is no valid data on how many people are erroneously institutionalised in **care homes** because of psycho-social disabilities and not because they need care. The information situation is extremely untransparent. There are some reports of a “shadow psychiatry” in which people are treated with psychotropic drugs and are partially subjected to restrictions of their freedom.

CRPD/C/AUT/CO/1 Paragraph 31:

According to patients in stationary and outpatient treatment, **information** about the effects of psychotropic drugs is either not given at all or only partially within psychiatric care. It is also alarming that **children and adolescents** in child and youth welfare institutions who suffer from problems or so-called “behavioural disorders” are increasingly treated with psychotropic drugs. Psychotropic drugs are also often given to **seniors** in homes without their consent, according to reports.

There are still **too few offers of person-centred support** and mobile, community-based, easily accessible assistance and other services. Self-advocacy groups criticise the lack of multi-professional mobile emergency services, which could visit people in situations of psychological crisis at home at any time of the day without waiting periods, no matter where they live. There is an increasing need for support circles that would support the self-determination and decision-making ability of people in situations of psychological crisis or in comparable situations. Moreover, trained and remunerated peers need to be utilised in the entire field of psychiatric and psychological care.

Suggested recommendations:

Expansion of person-centred support in the field of psychiatry as well as the installation of mobile crisis intervention teams according to the ACT model (assertive community treatments).³⁸ Special attention needs to be given to the reinforcement of self-determination in acute psychological crisis situations.

Moreover, we recommend to structure socio-psychiatric care (both medical and psycho-social) in such a way that even people in exceptional situations can be attended to in such a way that forensic commitment can be avoided.

Article 15 CRPD**Recommendations:****CRPD/C/AUT/CO/1 Paragraph 33:**

The monitoring committee appreciates that the use of **cage beds** has been prohibited in Austria since the 1st of July 2015.³⁹ However, the committee is worried to see that, according

³⁸ <https://www.thieme-connect.com/products/ejournals/abstract/10.1055/s-0033-1349497>

³⁹ Erlass, Einsatz von psychiatrischen Intensivbetten in Einrichtungen nach dem UbG und HeimAufG, GZ BMG-93330/0002-II/A/4/2014. Decree, use of psychiatric intensive care beds in institutions according to the UbG and HeimAufG, GZ BMG-93330/0002-II/A/4/2014, of 22nd July 2014. Effective since 1st of July 2015.

to reports from civil society, **fixation** and **sedation through medication** are still used as non-consensual practices in psychiatric institutions. According to these reports, these still used practices are often perceived as far more invasive and violent and also lead to more injuries for the people concerned. The use of compulsory treatment would be avoidable in many cases anyway if adequate and comprehensive psychiatric care was available.

The **deployment of private security contractors** in some hospitals for activities which are legally restricted to qualified personnel is especially alarming. A lack of suitable and sufficiently trained psychiatric personnel and a lack of training on escalation prevention for police officers aggravate this situation additionally.

For a more detailed account, see the annex.

Article 16 CRPD

Recommendations:

CRPD/C/AUT/CO/1 Paragraph 35: The tasks of the type laid out in 16/3 CRPD are assigned to the **Austrian Ombudsman Board**⁴⁰.

Since 2012, **six regional expert committees** of the Austrian Ombudsman Board visit **institutions** in which people with disabilities live.⁴¹ Additionally, **programmes** for people with disabilities are examined, and self-advocates frequently accompany the committees.

The Austrian Ombudsman Board reports the following to the present report in regard to inclusion in the individual areas:

Unfortunately, many people with disabilities live lonely lives, often **isolated** from the outside world; they effectively only know their residential facility and workshops. And if house rules and daily routines are being prescribed to them, a **lack of self-determination** is often the result. Because of this, these people lack a “life of their own” in their everyday life and suffer from “learned helplessness” as a result, which is often exacerbated by an absence of **accessibility**. Nursing staff often does their jobs with dedication and devotion. However, the Austrian Ombudsman Board continues to criticise the fact that there is **too little personnel** to provide care, and often the existing staff lacks necessary **qualifications**. Where there is no **possibility to put in individual complaints**, where **concepts for violence protection** are lacking and topics like **sexual self-determination** are ignored, violence and thus the most severe violation of human rights can occur easily.

People with psycho-social disabilities are especially often subjected to these deficits and grievances.

Young people on often isolated farms in Carinthia are often not given any opportunity for health, professional or social rehabilitation and are thus wrongly accommodated to an unbearable extend. The Ombudsman Office has been told that a change in the law is going to happen.

⁴⁰ For more information see <https://volksanwaltschaft.gv.at/en>

⁴¹ This represents Austria’s National Preventive Mechanism iSd OPCAT 2006.

The Ombudsman Board expects a new understanding in the **treatment and care of people suffering from addiction**. A series of visits by the expert committee lead to insights and recommendations which dispel generally accepted judgements in this area.⁴²

Alcohol and drug abuse is often accompanied by massive psychiatric effects. For this reason, high-quality outpatient and stationary treatment opportunities need to be extended.

Within the state report before the UN committee for people with disabilities in 2013, the Austrian Ombudsman Board already called out **structural federal deficits** which are unfortunately still in existence. The National Action Plan on Disability expires in 2020. However, there is still no agreed-upon overall concept for de-institutionalisation and for the Austrian-wide introduction of personal assistance between the federal and the provincial governments. Measures restricting people's liberty still happen, and concepts on the prevention of violence and on sexual education in institutions for people with disabilities are not consistently present.

Again and again, the commissions find institutions in which people with disabilities **basically live isolated from the outside world**. This is the case when the only available workshops and living accommodations are operated by the **same sponsoring organisation and are located close to each other**. There are still regions in Austria where people with disabilities are dependent on a single provider and have to move in closed systems due to a **lack of alternatives**. This is far, far from inclusion.

People with disabilities are also being discriminated against in many different ways in the **job market**: For example, about 23.000 people in Austria who are employed in a day centre or a workshop only receive "**pocket money**", irrespective of their work performance, and **neither have health nor pension insurance**. As the Ombudsman Board's Human Rights Advisory Board has already determined in their 2014 expert assessment, this can even lead to **exploitation** in extreme cases.

There is some criticism from the provincial side that there is **no system of reporting** if and to what extent **people who are looked after and cared for at home** run the risk e.g. of becoming victims to freedom-restricting measures or tranquilisation through medication. However, it must be assumed that there is a substantial need for measures for the prevention of violence by relatives and third parties.

Article 18 CRPD

Recommendations: no

The Austrian legal framework guarantees the right of freedom of movement within Austria's national territory, the free choice of residence and the possibility to acquire Austrian citizenship to all people. Following a verdict by the Constitutional Court, **an exception to the requirement of the ability to provide for oneself** when acquiring Austrian citizenship was instituted for people with disabilities. This requirement put people with disabilities at a disadvantage compared to people without disabilities, and was thus subject to the principle of

⁴² For example, people suffering from chronic addiction can also come within the scope of the UN convention for the rights of people with disabilities, when seen from the perspective of "mental impairments" (Art. 1 CRPD)

non-discrimination.⁴³ The Federal Law Gazette BGBl. I Nr. 136/2013 introduced a new paragraph 1a in § 10 of the 1985 Citizenship Act which stipulates that foreign nationals do not have to defend their non-secured livelihood, in particular if this is caused by a disability or a chronic severe illness, which has to be confirmed by a medical examination. This provision came into effect with the first of August 2013. However, in practice it is not applied to people who are severely traumatised by experiences of flight.

The monitoring committee sees a **practical obstacle** for people with disabilities when trying to change their residence from one province to another in the fact that provincial law generally makes the granting of monetary or in-kind benefits dependent on a certain duration of stay in the province concerned. This legal situation complicates a free change of residence in Austria, since people with disabilities are dependent on the uninterrupted receipt of such benefits.

Moreover, the **different standards in accessibility** in individual provinces and the urban-rural gap in this area lead to further obstacles in the exercise of people's freedom of movement.

Suggested recommendations:

Review and evaluation of provincial law regulations aimed at cancelling existing waiting periods for people with disabilities if they have already drawn corresponding benefits in another province.

Austria-wide standardisation and a considerable improvement of accessibility standards.

Article 19 CRPD

Recommendations:

CRPD/C/AUT/CO/1 Paragraph 37:

Austria is characterised by a **federal structure**. There are nine different social legislations and different political responsibilities in addition to that. This leads to **massive differences** within Austria: On the one hand, there are some "services" for people with disabilities which just don't exist in some federal provinces (e.g. personal assistance with legal entitlement), and on the other hand, the existing "services" differ vastly from each other. There is no standardised language; not everything that is called "personal assistance" actually is "personal assistance" in accordance with the CRPD. The divergent social legislation leads to a **structural inequality of treatment** of people with disabilities within Austria. Structural discrimination also takes place since the rights of people with disabilities only seem to be relevant in social legislation. Sharpening and awareness-raising are needed here.

Since the last Universal Periodic Review, **no discernible efforts** by the signatory state have taken place to create and implement a comprehensive, consistent **concept for the reduction of institutions ("residential homes")**. In some individual provinces, a trend towards "smaller" institutions is discernible. Institutions with 20 to 36 people are now regarded as

⁴³ Ruling of the Austrian Constitutional Court from 1st March 2013, G 106/12.

small “residential homes”. The trend is towards **renovation and partial downsizing** of existing institutions, but the dissolution of institutions that was demanded is not discernible in any federal province. Positive emphasis in this context should be put on the province of Tirol, where an assessment of the status quo on which sites offer more than four living places was conducted. There are reports that because of the dearth of residential opportunities, **young people are living in old-age residences**. In Vienna alone, about 300 people are permanently accommodated in nursing homes. For people with learning disabilities, there is hardly any or no information in Simple German on their tenancy agreements or about alternative possibilities in Austria. According to the information available to the monitoring committee, only Upper Austria offers forms in Simple German in all of Austria.⁴⁴

Recommendations:

CRPD/C/AUT/CO/1 Paragraph 39:

Since the last Universal Periodic Review in 2013, there were efforts in individual federal provinces to selectively change the programme for **personal assistance** or – if no programme was in existence yet – to at least start pilot projects. In two provinces, a “**personal budget**” was introduced, giving people with disabilities money so they could decide on their own whether they wanted to use this funding to commission a specific institution with the organisation of assistance or whether they wanted to act as employer for assistance themselves.

The current government agreement 2017-2022⁴⁵ (again) contains a note that harmonisation is necessary.

Suggested recommendations:

Considerable increase of personal assistance benefits to make a self-determined life possible for all groups of people with disabilities, facilitated by the provision of sufficient funds, secured by legal entitlement, by public authorities.

Creation of an agreement on inclusion policy between the federal government and the provinces to establish a comprehensive and federally uniform personal assistance provision for all people with disabilities. We also recommend to establish inter-agency action plans for the provinces in this agreement. Within the action plans of the federal provinces, measures for the compulsory dissolution of institutions must be taken, established by a staged plan.

The signatory state is called upon to ensure that no more investments are made in existing institutions.

Article 20 CRPD

Recommendations: no

⁴⁴ See <http://www.land-oberoesterreich.gv.at/suche.htm?chunk=1&anz=&suchart=Amt&suche.query=Leichte+sprache&Suche=Suchen>.

⁴⁵ German version: <https://www.bundeskanzleramt.gv.at/regierungsdokumente>.

People with disabilities in Austria have no legal entitlement to personal assistance. Likewise, the granting of devices and technical aids depends on the **funding bodies' willingness**, and the execution of this granting is left to the individual provinces. Because of the merging of companies in the field of manufacturing and distributing technical aids for people with blindness or visual impairment, a **monopoly** has emerged in Austria in 2017. At the moment, there is a grave shortage of trainers for orientation and mobility. Training for this profession is only possible outside of Austria.

Suggested recommendations:

The signatory state is called upon to harmonise the differing service catalogues of the federal provinces and to work out a timetable with the provinces for the standardisation of laws that aim at the establishment of legal entitlements for all groups of people with disabilities.

Article 21 CRPD

Recommendations: no

In regards to the right to freedom of expression and the access to information, there are fundamental barriers. Both in the government agreements of the provinces and in the National Action Plan of the federal government⁴⁶, the creation and **empowerment of self-advocacy organisations** of people with disabilities is established; however, these organisations are still not equipped with enough resources to take effective measures for the information, networking and empowerment of people with disabilities. Regarding the access of information aimed at the general public, an increase in offers of accessible formats such as texts in Simple German, sign language, braille and other alternative forms of communication is perceptible. However, the creation of accessible information only proceeds very slowly. **People with disabilities** also are too rarely included **as experts** in the creation and review of accessible information. Government organisations and private entities only rarely include people with disabilities in the planning and creation of events.

Suggested recommendations:

The signatory state is called upon to make information and notifications by authorities available in Simple German and in Austrian Sign Language as well as in alternative formats.

The signatory state is called upon to empower independent self-advocacy organisations by providing them with resources.

Article 22 CRPD

Recommendations: no

On the occasion of a public meeting on the topic of “partnership and family”⁴⁷ on the 19th April 2016, the following was reported by representatives of civil society:

⁴⁶ <https://broschuerenservice.sozialministerium.at/Home/Download?publicationId=225>. (English version)

⁴⁷ <https://monitoringausschuss.at/sitzungen/wien-19-04-2016-partnerschaft-und-familie/>.

People who live in residential facilities funded by public means report that the conditions for maintaining a partnership are very limited on account of a lack of **privacy**. Some institutions have developed a **Gütesiegel “Partnerschaft und Sexualität”** (quality label “**partnership and sexuality**”), but these appear to be exceptional cases. All in all there is also too little information material, especially in Simple German.

The monitoring committee retains that most organisations dealing with the aid of people with disabilities officially take an open-minded stance in regards to the sexuality and possible partnerships of their users. However, there is a hidden practice in the contexts of institutions for the aid of people with disabilities and in the context of guardianship which is extremely problematic. For example, people with learning disabilities tell of **caretakers** or **guardians** who **decide** who can enter partnerships or move in together and what kind of relationships and sexual practices are to be considered ‘**normal**’. This is the reason why people with learning disabilities, especially those who are attracted to the same sex and are in a same-sex relationship, often cannot just start partnerships or move in with who they want. This reveals a problematic interplay between guardians and caretakers.

Another area that the monitoring committee sees as problematic is the **criminalisation of sexual companionship services for people with disabilities**. In Austria, prostitution legislation is the responsibility of the federal provinces. The monitoring committee has learned that, e.g., the “Fachstelle hautnah” (a counselling service on the topic of sexuality and self-determination) by the non-profit organisation Alpha Nova (Styria) was closed in 2017. The counselling service had been funded through public means and offered sexual companionship services especially to people with learning and physical disabilities. The reason for the closure was a number of administrative penalty charges under the prostitution law against employees because of “illegal prostitution”. The organisation did not want to continue putting its employees at such a risk.

Suggested recommendations:

A compulsory procedure for organisations in relation to the creation of adequate conditions that would make self-determined partnerships and sexuality possible, as well as criteria of traceability for its implementation. Further measures to raise awareness among caretakers and guardians. Better opportunities to issue complaints for users of organisations aiding people with disabilities, within and outside of institutions.

A standardised regulation for the entire federation that lifts sexual companionship out of the legal grey area, so that it can become possible for people with disabilities to experience self-determined sexuality.

Article 23 CRPD

Recommendations: no

According to the current legal situation, if a person with disabilities is represented by a guardian, the guardian makes the decision whether this person can enter into **marriage**.

Despite the possibility to draw up a prenuptial contract, this is often denied, according to reports.⁴⁸

Critical mention must also be made of the fact that hardly any institutions or services exist to support people with learning disabilities in their role as parents. It is also problematic that **parenthood** is not recognised as an additional factor for the necessity of resources in the allocation of assistance hours or budgets.

During the public meeting “partnership and sexuality”, representatives of civil society also reported that there has recently again been an increase in cases of **children being taken from their parents** by youth welfare authorities, **especially in cases of people with a high need for support and learning disabilities, as well as people with psycho-social disabilities.**

Suggested recommendations:

Targeted creation of structures and services that support parents with learning disabilities and/or psycho-social disabilities. Additional budgets/assistance hours for assistance recipients who are parents.

Article 24 CRPD

Recommendations:

CRPD/C/AUT/CO/1 Paragraph 43: The signatory state is called upon to increase efforts to support students with disabilities consistently in all areas of the school system (from kindergarten to secondary education). The inclusion of young people with disabilities (including their representative organisations) into the implementation of inclusive models must be guaranteed.

The signatory state is called upon to guarantee the access to universities and other providers of tertiary education.

The committee further recommends that the signatory state increases its efforts to offer high-quality education for teachers with disabilities and teachers who know Austrian sign language, in order to promote the education of deaf and hearing-impaired girls and boys in accordance with the official recognition of sign language in the Austrian Constitution.

Has this recommendation been implemented?

The recommendation has not been implemented. First, it has to be noted that to our knowledge no efforts whatsoever were taken by the provinces or the federal government to include children and adolescents with disabilities into the creation of inclusive structures.

In the field of pre-school education, there is still a lack of comprehensive structures of education opportunities as well as suitable personnel in all federal provinces. In the area of schooling, three crucial attempts to improve the situation have taken place in the last years. (1) The teacher training reform, which de facto abolished the training for special school

⁴⁸ cf. Protocol of the public meeting of the monitoring committee on the topic „partnership and family“, German version to be found at <https://monitoringausschuss.at/sitzungen/wien-19-04-2016-partnerschaft-und-familie/>.

teachers. The new federal government has, however, announced that they want to reverse this advancement and re-introduce special school teaching qualifications. (2) The three “inclusive model regions” (Carinthia, Styria and Tirol) continued their work. (3) The draft of the Education Reform Act of 2017 planned for quite progressive improvements in the context of inclusive education – however, these were negotiated out of the act by an intervention of the lobbying group for special schools. Now, the legal text contains – in contrast to the progressive draft – extremely problematic regulations which reinforce the prioritisation of special schools as “a first choice” again (article 19 § 8 Par. 1), which had been abolished before. Moreover, the reform act mentioned here omits the recognition of Austrian Sign Language. Austrian Sign Language is still no subject at Austrian mainstream schools.

Beside these attempts to implement improvements, which look rather modest in the light of the actually necessary, fundamental reform of the education system towards inclusion, there are still massive problems in regards to the realisation of inclusive education in most federal provinces. In the area of primary education, there is a lack of trained personnel for inclusive education processes in many places. For this reason, few students who need a high level of support exist in the settings of mainstream schools. Moreover, in some provinces new special schools were created instead of making the connected investments in inclusive settings. Furthermore, considerable problems arise in the area of extra-curricular pedagogical supervision of children with disabilities since many mainstream institutions, such as afternoon care facilities, do not admit children or adolescents with disabilities or are not accessible. The stabilisation of the special school system, which is evident, is supposed to be reinforced in the next years, according to the government agreement.

For a more detailed account, see the annex.

Suggested recommendations:

The monitoring committee recommends the following measures for the elimination of the mentioned grievances:

- Promotion of the expansion of inclusive pre-school education structures
- Maintaining of the teacher training for inclusive education
- Promotion of the development of inclusive model regions by providing adequate financial support
- Retraction of the mentioned phrasing in the law gazette on the Education Reform Act
- Recognition of Austrian Sign Language in the School Organisation Act
- Intensified efforts to create high-quality education and training opportunities for teachers with disabilities and teachers who know Austrian Sign Language.

Article 26 CRPD

Recommendations: no

In general, it is easier for people with disabilities to receive **benefits** if they are employed than it is for children and people who are not employed. The **amount** of some benefits received in

the field of health care depends on the insurance providers responsible. For example, older people get fewer opportunities to go to a health resort than people who are working.

We welcome the **compulsory education and training** introduced in 2016 aimed at providing a qualification through education or training which increases the chance to participate sustainably and extensively in economic and social life.⁴⁹

Adolescents are now supposed to take education or training measures until they are 18 years old. For adolescents with disabilities specifically, there are the measures of production schools and youth coaching. Providers of such measures report that they are largely engaged in helping young people find their joy of learning again after they have been suffering from school-related frustration for many years.⁵⁰ To a large extent, the deficits of the school system are made up for here.

The mechanisms for **vocational training** created for people with disabilities work quite well.⁵¹

The **quality** of rehabilitative measures is heavily dependent on the social security authority concerned.

Suggested recommendations:

The signatory state is called upon to guarantee consistent quality and measures of rehabilitation to be deployed by all social security authorities and to make these measures accessible independently of any previous gainful employment.

Article 27 CRPD

Recommendations:

CRPD/C/AUT/CO/1 Paragraph 47

The development of adequate programmes of employment for people with disabilities is impeded by the **shared responsibilities of the federal and provincial governments**.

People with a high need for support, especially when this need for support exists since birth, are part of the responsibility of the **provincial governments**. This group of people often works in **day-care centres** (“occupational therapy”)⁵², where they are doing work in exchange for “pocket money” and where they receive neither health nor pension insurance. Since 2011, they have accident insurance.

⁴⁹ Ausbildungspflichtgesetz, BGBl. I Nr. 62/2016

⁵⁰ An example would be young deaf people who are taught orally (!) in a special school for all of their educational career, and who have the vocabulary of an elementary student when they leave compulsory schooling.

⁵¹ Extended apprenticeship and partial qualification in accordance with § 8b Berufsausbildungsgesetz (Vocational Training Act).

⁵² About 23.000 people in 2016. Since the federal provinces don't collect data for statistics, so this number can only be guessed at.

<https://volksanwaltschaft.gv.at/downloads/4ujtv/Menschen%20mit%20Behinderungen%2019.10.2017.10>

The **transitions** between these institutions and the primary and secondary labour market are **difficult** for several reasons. On the one hand, there is the unavoidable transition from the provincial jurisdiction to the federal, on the other hand there is a risk of falling into the so-called benefit trap: Benefits that are due to a person for the duration of their life (e.g. orphan's pensions, increased family allowance) are irrecoverably lost if a more lengthy attempt to work with fully comprehensive insurance is taken.

Individual **pilot experiments** are promising and should become nation-wide standards.

The **legislation on employment** and on **social security** is the responsibility of the **federal government**. The federal government has announced pilot projects for the employment of people with a high need of support in both the National Action Plan on Disability 2012-2020⁵³ and in the Programme for Disability, Education and Employment 2014-2017 (BABE)⁵⁴, but neither of these project was even prepared as of yet.

It is also necessary to counteract the socio-politically undesirable development in jurisdiction where people with disabilities who are employed in “sheltered workshops” or socio-economic enterprises run by non-profit providers are, under certain circumstances, denied the **status of an employed or self-employed person**.⁵⁵

Diverging definitions of “**ability to work**” and “**inability to work**” in the terminology of institutions of labour market policy, social security and the needs-based minimum income system lead to negative conflicts of jurisdiction in regards to people with disabilities. People who are classified as “unable to work” do not show up in unemployment statistics and do not receive counselling and care.

For a more detailed account, see the annex.

Suggested recommendations:

- Intensification of the development and evaluation of permeability schemes to the primary labour market as well as consequent implementation of projects for the employment of people with a high need of support.⁵⁶
- Standardisation and clarification of the term “employed person” in different laws and regulations.⁵⁷
- Intensification and comprehensive use of permeability schemes to counteract the “benefit trap” effectively and nation-wide.
- Evaluation of the abolishment of the protection from dismissal
- Assessment Ordinance as a basis is not CRPD conform

⁵³ <https://broschuerenservice.sozialministerium.at/Home/Download?publicationId=165>

⁵⁴ https://www.sozialministeriumservice.at/cms/site/attachments/9/4/3/CH0053/CMS1455476537649/sms_rabe-wien.pdf

⁵⁵“ NAP on Disability measure 161 “Standardisation and clarification of the concept of the employee in the various relevant laws in coordination with the social partners.”

⁵⁶ See NAP on Disability measure 155.

⁵⁷ See NAP on Disability measure 161.

- The signatory state is called upon to facilitate the access to personal assistance at the work place for all people with disabilities and to not base the requirements for access on the medical model (receipt of long-term care allowance) but to base it on the need for support in accordance with the CRPD.

Article 28 CRPD

Recommendations: no

People with disabilities are still subjected to an above-average risk of poverty. The most sustainable way of combating poverty is to improve **income and employment opportunities** – this is particularly true for people with disabilities.

The **means-tested minimum income (BMS)** which was agreed upon by the federal government and the provinces and which has been implemented nationwide since the first of October 2011 represents a reform of the system of open social assistance of the provinces. As a general system to reduce poverty, it does not have special target groups, but is generally designed to support persons suffering financial hardship by providing a minimum level of benefits.

People with disabilities are entitled to the benefits of the BMS under the same conditions as non-disabled persons, and it is only an option if their material needs cannot be provided for otherwise. In the social compensation system, benefits (pensions and means-tested benefits) safeguard the standard of living of victims (of war or crime) and surviving dependents. The transfer payments (family allowance, long-term care allowance, unemployment assistance etc.) are likewise aimed at reducing poverty and mitigating higher expenses.

Information on the **current situation in Austria:**

721.000 people in the low income group (<60% of the meridian) are permanently at risk of poverty. Of these, 82.000 people (11%) are “severely impaired by disability” and 24.000 people (3%) receive an invalidity pension or a pension for inability to work.

In the middle income group (60 to <180% of the meridian, 3.983.000 people all in all in Austria), 230.000 people are “severely impaired by disability (6% of the group), while in the highest income group (>=180%, 589.000 people) only 22.000 people are “severely impaired by disability” (4%).

730.000 people in Austria are permanently at risk of poverty, 68.000 (9%) of them are part of the group “severely impaired by disability”. In the group of “individuals with chronic illnesses”, 33% are at risk of poverty.⁵⁸

While both of the previous **government agreements** contained the matter of finding ways to integrate people with disabilities into the system of social security with a special emphasis on pension insurance, the current government agreement distances itself from this topic. Now it

⁵⁸ Statistics Austria, EU-SILC 2016.

only presents the prospect of **increasing the amount of pocket money** in day-care centres and thus perpetuates **poverty in old age** among people with disabilities.⁵⁹

Suggested recommendations:

The signatory state is called upon to introduce a collective agreement for all people with disabilities.

Article 29 CRPD

Recommendations:

CRPD/C/AUT/CO/1 Paragraph 49:

In principle, Austria strives to make the right to vote more inclusive. The EU Fundamental Rights Agency declared in the course of a study in 2014⁶⁰ that people with disabilities in Austria are **not excluded from the right to vote**. The OSCE came to the same conclusion during their election observation in 2017.⁶¹ The application for a voting card is also part of the personal right to vote. The application must not be tied to a guardian.⁶²

For a more detailed account, see the annex.

Suggested recommendations:

The signatory state is called upon to guarantee that all polling places are accessible, that information in Simple German and other accessible formats is provided, that ballots are designed in an accessible way and that “flying electoral commissions” which simplify voting continue to be deployed.

Article 30 CRPD

Recommendations: no

Art and culture

The linguistic and cultural identity of many groups is not realised. There is a lack of **concepts for inclusion** as a cross-sectional task in public institutions, private foundations and associations. Private and public media authorities, theatres, cinemas and museums are far from making their programming inclusive and accessible to all groups of people with disabilities: inclusive guided tours, subtitling, the use of Simple German, Austrian Sign Language and audio description are mostly non-existent. There are hardly any touchable objects or models, or image descriptions. Access to libraries or performance venues for

⁵⁹ Zusammen. Für unser Österreich. Regierungsprogramm 2017 – 2022 p. 121; https://www.bundeskanzleramt.gv.at/documents/131008/569203/Regierungsprogramm_2017%e2%80%932022.pdf/b2fe3f65-5a04-47b6-913d-2fe512ff4ce6 (Together. For our Austria. Government Agreement 2017 – 2022)

⁶⁰ The right to political participation for persons with disabilities: human rights indicators

<http://fra.europa.eu/en/publication/2014/right-political-participation-persons-disabilities-summary>.

⁶¹ Final Report - Early Parliamentary Elections <http://www.osce.org/odihr/elections/austria/370866>

⁶² cf. Verdict of the Austrian Constitutional Court of 1987:

https://www.ris.bka.gv.at/Dokumente/Vfgh/JFT_10128993_87G00109_00/JFT_10128993_87G00109_00.pdf.

literature, music, dance, theatre or to other performative or visual forms of art is fragmentary and often difficult without assistance.

The equal and barrier-free **access to contests, grants, cultural promotion and training opportunities** also appears problematic. This might be partially because of the hardly existing inclusion in advisory boards, juries and other advisory and decision making bodies.

Rest, leisure and athletic activities

The offers for people with disabilities are estimated by the monitoring committee to be insufficient. The same is true for the equal participation of children with disabilities in play, leisure and sports activities. Tourism offerings are hardly ever suitable or usable. For this reason, there is also a lack of information about accessible offerings.

Suggested Recommendations:

We recommend that subsidies in the field of sports and cultural promotion be tied to accessibility criteria and to make sure that events are made accessible, as well as to make sure that efforts are made to raise awareness for the accessible layout of municipalities and that this topic is taken into account in the management of associations.

c) Specific Commitments (Article 31 – 33)

Article 31 CRPD

Recommendations:

CRPD/C/AUT/CO/1 Paragraph 51: The recommendation of the UN expert committee to article 31 was not implemented. There is still no **meaningful data** for most areas of the lives of people with disabilities – especially **women** with disabilities.

Suggested recommendations:

Comprehensive collection or publication of data in the context of disability, especially regarding the services offered by organisations for the aid of people with disabilities.

In the future, the collection of this kind of data should be conducted in close collaboration with organisations of people with disabilities.

The signatory state is called upon to select targeted and CRPD-conform indicators when collecting data on people with disability.

Article 32 CRPD

Small steps towards inclusion have been taken by the Austrian Development Cooperation (OEZA), for example by incorporating questions about accessibility and outreach to disadvantaged groups into application formats of the Austrian Development Agency⁶³ and

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http://www.entwicklung.at/fileadmin/user_upload/Dokumente/Projektentwicklung/Social_Standards_Assessment.docx;

through the promotion of some projects with a focus on people with disabilities. Since 2017, the OEZA takes part in an EU consortium project for the implementation of the convention in partner countries.

However, effective mechanisms for the systemic inclusion of people with disabilities in the OEZA are missing, disability is no mandatory cross-sectional issue, inclusion and the implementation of the twin-track approach are not measured systematically. Participation in the development and monitoring of strategies only happens sporadically; the OEZA working group “People with Disabilities”, established in 2011, is rarely used. The current National Action Plan 2012-2020 might aim for the twin-track approach, but the planned measures are insufficient and partially already long finished.

Suggested recommendations:

Participatory creation of an OEZA Action Plan for the implementation of article 32 with the use of the twin-track approach and in concordance with the 2030 Agenda for Sustainable Development, with concrete figures, measures, indicators and budget.

Itemisation of data and statistics of OEZA projects by disability in accordance with the 2030 Agenda (disability-disaggregated data).

Article 33 CRPD

Recommendations:

CRPD/C/AUT/CO/1 Paragraph 53

CRPD/C/AUT/CO/1 Paragraph 54:

1) Regarding the Independent Monitoring Committee on Federal Level

In Austria, there is no standardised protection of human rights and no comprehensively responsible national convention for human rights.

Recognising and appreciating the recommendations of the OHCHR for the implementation of article 33⁶⁴, the Independent Monitoring Committee views the approach described below as an option that is adapted to existing Austrian conditions and thus promising.

After a multi-year joint process between the Federal Ministry of Labour, Social Affairs, Health and Consumer Protection and the Independent Monitoring Committee, a **new legal basis for the monitoring committee on federal level** was created as part of the inclusion package in November 2017. The changes have come into effect in January 2018. Through this change, the federal monitoring committee now has an independent budget and independent personnel.

http://www.entwicklung.at/fileadmin/user_upload/Dokumente/Publikationen/Handbuecher/Environmental_and_Social_Impact_Management/Manual_Environmental_and_Social_Impact_Management.pdf

⁶⁴ OHCHR Thematic Study to article 33 or European Regional Office of the OHCHR to the implementation of article 33: „integration in NHRI is ideal“

The monitoring committee views this step as an extremely **important development** in the interest of making its operations independent and effective.

For a more detailed account, see the annex.

2) Regarding the Monitoring Mechanisms on Provincial Level

It is encouraging that, since the last Universal Periodic Review, **monitoring mechanisms** have been formed, or that the tasks stipulated in article 33/2 were assigned to already existing agencies, **in nearly every federal province**. The construction in Carinthia is currently in development. The construction in Upper Austria has unfortunately been inactive for three years and is basically not in existence because of infrastructural conditions.

The individual monitoring mechanisms on provincial level have partially very **different constructions**.

Suggested recommendations:

Guarantee that all monitoring mechanisms are in accordance with the Paris Principles, especially by providing independent adequate budgets and by guaranteeing independent management.

General recommendations on accessible publication:

CRPD/C/AUT/CO/1 Paragraph 57: The Concluding Remarks of the UN expert committee from the last Universal Periodic Review were translated into German within a day by an NGO of people with disabilities⁶⁵. It is also available in Simple German.⁶⁶ The same organisation also arranged the translation into Austrian Sign Language.⁶⁷

A German translation of the recommendations by the Federal Ministry of Labour, Social Affairs, Health and Consumer Protection followed in the first month after the Review, as the monitoring committee was informed. However, even after extensive online research and inquiries, this translation could not be found online.⁶⁸ Accessible formats were **not provided by any official organisation**.

Likewise, mainly organisations from the field of disability as well as the monitoring committee⁶⁹ endeavoured to make the contents of the concluding remarks, as well as their recommendations, available to the general public.

Recommendations: The signatory state is called upon to put its reports and the concluding remarks of the UN expert committee online in a timely manner and to provide accessible formats.

⁶⁵ BIZEPS, Zentrum für Selbstbestimmtes Leben (Centre for self-determined living). The translation can be found at https://www.bizeps.or.at/downloads/CRPD-C-AUT-CO-1_de.pdf.

⁶⁶ At https://www.bizeps.or.at/downloads/handlungsempfehlungen_ll.pdf.

⁶⁷ At <https://www.bizeps.or.at/die-handlungsempfehlungen-der-uno-in-oesterreichischer-gebaerdensprache-oegs/>.

⁶⁸ Date of research: 23rd February 2018.

⁶⁹ See public meeting of the monitoring committee on the recommendations on 7th November 2013. <https://monitoringausschuss.at/sitzungen/wien-07-11-2013-empfehlungen-des-un-ausschusses/>.

Structural issues and underlying barriers for the implementation of the UN Disability Rights Convention

Human Rights Concept in Austria

From the perspective of the monitoring committee, the understanding of international obligations regarding human rights in Austria is problematic.

The ratification of the CRPD **with the proviso** that in accordance with Article 50 of the Federal Constitution Act the respective treaty is not automatically self-executing (“Erfüllungsvorbehalt”) has the effect that the rights guaranteed within the CRPD are not immediately applicable. It is true that the terms of treaties under international law have to be consulted when interpreting Austrian laws (as well as in jurisdiction) but they do not have priority over ordinary legislation and cannot be sued for. Austrian legislators have an obligation to establish laws that are necessary for the realisation of the rights stipulated in the CRPD, but as long as they don’t do that, there are no legal means to force the issue.

The result of this is that international human rights commitments tend to be perceived more as **“optional” provisions** or even as **luxury**. This especially concerns economic, social and cultural rights, for example the right to education or the right to work. The **human RIGHTS based approach** of the CRPD especially has not yet sufficiently become part of Austrian reality. Instead, the idea of charity dominates the entire topic. Nor has the social model of disability been profoundly and comprehensively adopted in Austrian (disability) legislation and policy.

Fragmentation of human rights protections

Another aggravating circumstance for the implementation of the CRPD and other conventions is the **massive fragmentation** of human rights protections in Austria. There are **inconsistent standards in the protection against discrimination**, which differ depending on the ground for discrimination and the federal or provincial jurisdiction. The completely unclear **responsibilities of contact points** in the case of human rights violations are a problem area which has also been criticised by the Council of Europe and which has serious consequences. In their report, the Council of Europe referred to around 50 responsible contact points in Austria, whose effectiveness is severely limited by their **complexity** and the **legal uncertainty** caused by this.⁷⁰ There is still no nation-wide standardised and comprehensively responsible national human rights institution.

Personal Expertise of People with Disabilities

Paternalism still poses a serious obstacle for people with disabilities in Austria. This is true for all groups but especially for people with learning disabilities and/or psycho-social disabilities. Despite isolated perceivable improvements (e.g. the legislative process in the case of the Protection of Adults Act, the inclusion of self-advocates in the Federal Disability Council etc.), personal expertise of people with disabilities is still not sufficiently recognised. People with disabilities are still spoken about or for, without them getting a chance to speak.

⁷⁰ See the ECRI report on Austria (fifth review), adopted on 16th June 2015. CRI(2015)34. p.13f. in German and English at https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Austria/Austria_CBC_en.asp.

This is reflected in a lack of serious **participatory processes**. This is all the more regrettable because the consideration of personal expertise of people with disabilities for issues that affect them would lead to far more effective and more sustainable results. This fundamental attitude is also expressed in the tendency to **intermingle** the rights/interests of people with disabilities with the rights/interests of organisations for people with disabilities.

Understanding of Processes

Dealing with the CRPD, which needs more than the implementation of individual measures to be realised, encounters difficulties in Austria. To raise awareness systematically and to widely implement the social model of disability, **sustained and managed processes** are needed. As of yet, little regard has been shown for that. A lack of understanding of processes has also become evident repeatedly in the context of reviewing the recommendations of the last Universal Period Review or in the creation of participatory processes.

A Cross-Sectional Issue

The phenomenon that disability and all topics connected to it are portrayed as an issue of social policy still remains. There is still a **lack of awareness** for the cross-sectional character of this issue and thus for the responsibility of all ministries. **Disability mainstreaming** has not yet found its way into Austrian administration and politics. As a result, accessibility as a comprehensive concept is still not generally understood. This is especially aggravated in such areas where shared jurisdiction exists.

Political Willingness

Issues like disability, inclusion and comprehensive accessibility are seen as little “captivating” and as hardly effective politically. For this reason, they generally have a **low priority** and are often (such as in political programmes or other activities) simply forgotten.

Moreover, the **federalist structure** of Austria is often perceived as a dead end. For this reason, the difficulties resulting from the shared responsibilities of federal and provincial governments are often used as justification for the standstill. All sides seem to have become frustrated with this, which makes it even more difficult to find a solution-oriented and constructive way to deal with the federalist system.

The Austrian way of implementing the CRPD can be called a **way of small adjustments** at best.

This, from the point of view of the monitoring committee, is the consequence of following basic tendencies in Austrian politics:

- 1) **Significant changes of mindsets** and the political courage to consistently take appropriate action are largely absent. Mindsets prioritising caution and security are still dominant. It seems as if adhering to well-trodden paths, leading to a standstill, is preferable to any possible risk.
- 2) “Fair enough, let’s have human rights, but only as long as it doesn’t cost money.” **Monetary restrictions** – even if those are only in the medium term – are regularly cited

as reasons why essential human rights are not implemented.⁷¹ It seems strange that the cost factor is only considered in regards to immediate expenses. In the world of politics, economic benefit in the long run doesn't seem to be of any importance.

These basic tendencies of Austrian politics are especially clear in the new government agreement – for example in the support of the pocket money regulation in sheltered workshops or in the reinforcement of the special school system. The excessive reluctance in regard to the urgently necessary comprehensive de-institutionalisation is also consistent with this approach.

V. Conclusion

Distinct efforts towards the implementation of the recommendations since the last Universal Periodic Review can be identified. However, reviews of the recommendations only took place very inconsistently as a consequence of the federalist structure. And yet, the shared responsibilities of federal and provincial governments were cited as a justification for the standstill.

Especially alarming factors are the shortcomings in the area of forensic commitment and the tendency of general psychiatry to hand people in exceptional psychological situations off to forensic psychiatry instead of treating them within the framework of socio-psychiatric care. Special attention must be given to the reinforcement of self-determination in acute psychological crisis situations.

Personal assistance should be available to all people with disabilities.

Setbacks can be seen in the area of gainful employment of people with disabilities and especially in the field of accessible construction. A backwards trend was registered in the area of inclusion in schools. The dismantling of institutions is at a standstill. The pocket money regulation in workshops is still upheld.

We view the inclusion package adopted in 2017, which includes many improvements, as a major step forward. The Protection of Adults Act, which reforms the law on guardianship and which will come into effect in mid-2018, also needs to be acknowledged.

Unfortunately, no measures for disability mainstreaming have been set by the federal government since the last Universal Periodic Review. Disability as a comprehensive concept is neither understood in the area of administration nor in politics. Disability is still a “social” issue. Outside of the social sector, disability is generally simply forgotten in political programmes and other activities.

⁷¹ Cf. statement of the independent monitoring committee on awareness-raising at <https://monitoringausschuss.at/stellungnahmen/bewusstseinsbildung/>

Unfortunately, no structured, solution-oriented and constructive activities for the resolution of the problems of responsibilities between federal and provincial governments could be registered.