

September 2009

Contribution

**In response to a Request by the Office of the High Commissioner, 10 July 2009,
based on Human Rights Council Resolution 10/7 – “Human Rights of Persons
with Disabilities: National Frameworks for the Promotion and Protection of the
Human Rights of Persons with Disabilities”**

c) The existence, structure and mandate of national frameworks tasked with promoting, protection and monitoring implementation of the Convention, particular reference to how the principles to the status and functioning of national human rights institution for the promotion and protection of human rights are taken into account in such frameworks (Article 33 (2) CRPD)

The Austrian government ratified the Convention on the Rights of Persons with Disabilities (CRPD) in October 2008. The main legislative measure taken to implement the Convention was the establishment of a Monitoring Committee pursuant to Article 33 of the Convention. Amending the pertinent sections of the Federal Disability Act (*Bundesbehindertengesetz*), an independent mechanism has been put in place to make recommendations to the Federal Disability Council, which in turn advises the Minister for Social Affairs.

As the title indicates: the competence is for federal matters only, in line with federal structures in Austria. The provinces/*Länder* are in the process of taking care of their responsibilities in relation to the monitoring provision.

Constituted on the 60th anniversary of the Universal Declaration of Human Rights, December 10 2008, the Monitoring Committee has since met eight times.

Rules of Procedure

The Rules of Procedure of the Monitoring Committee (see Annex) are first and foremost an effort to highlight the various aspects of accessibility, trying to establish a role-model in terms ensuring the accessibility for and equal participation of persons with disabilities. In this vein, the text does not only discuss the reimbursement of costs for travel and such but also for personal assistance – inasmuch it is not

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beim Bundesministerium für Arbeit, Soziales und Konsumentenschutz

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covered through other means – or the costs for language interpretation, such as sign-languages.

The Rules of Procedure are based on the provisions made in Section 13 of the Austrian Federal Disability Act and follow the spirit of the Paris Principles. Furthermore, the involvement of civil society – in line with Article 33 (3) CRPD – as well as the basic principles of the Convention (Article 3 CPRD) are highlighted as part of the Rules' preamble.

The Monitoring Committee is comprised of seven members, all of whom are proposed by the main Disabled People's Organization, the Austrian National Council of Disabled Persons (ÖAR). Four members represent disabled people's organizations, one each represents a human rights non-governmental organization, a development cooperation organization and one person is a university expert. In addition one substitute is nominated per member.

The composition of the Monitoring Committee specifically covers expertise in the field of international development cooperation, a feature, which the Committee perceives as a unique possibility to ensure that the inclusion of and accessibility for persons with disabilities is promoted and protected in all policies and programs.

All members are appointed in their individual capacity, they are independent and not bound by any orders or directives. The pro bono nature of the appointment follows an agreement reached with representatives of non-governmental organizations, reached during the drafting of Section 13 Federal Disability Act. The members are appointed by the Minister of Labour, Social Affairs and Consumer Protection for a period of four years. All members, substitute members and experts consulted by the Committee are bound by confidentiality rules.

The Monitoring Committee has a variety of duties and responsibilities, which derive from both the Convention as well as Section 13 Federal Disability Act, they include:

1. Monitoring the domestic implementation of the Convention on the Rights of Persons with Disabilities;
2. Promotion and protection of human rights of persons with disabilities;
3. Advice to the legislature, government, the administration and the judiciary;
4. Compiling of reports to legislature, the government, the administration – particularly the BMASK – and the judiciary;
5. Recommendations on all questions related to the promotion, implementation and monitoring of the Convention (Art. 33 Para. 2 Convention);

6. Assessment of the legal and administrative rules in force as well as corresponding practice and issues recommendations for amendments;
7. Compiling of statements on draft legislation and decrees;
8. Recommendation of new legislative and administrative rules;
9. Examination of data and statistics;
10. Support of awareness-raising;
11. Collaboration with schools, universities, other educational institutions, medical, social and other relevant institutions;
12. Cooperation with institutions, agencies and bodies nationally and internationally, foremost with representatives of civil society, particularly with persons with disabilities and their representative organizations, to include them in the monitoring process;
13. Cooperation with the focal points and coordination mechanism established in accordance with Art. 33 Para. 1 of the Convention;
14. Cooperation with the independent authorities, which are to effectively monitor all facilities and programmes designed to serve persons with disabilities in order to prevent the occurrence of all forms of exploitation, violence and abuse (Art. 16 Para. 3 Convention);
15. Cooperation with the “authorities of the *Länder* that are to be established or named” in accordance with Section 13 Para 8 Federal Disability Act and in line with Article 4 (5) CRPD;
16. Cooperation with agencies related to the Convention abroad, in particular with other monitoring committees under Art. 33 Para. 2 of the Convention as well as the Committee on the Rights of Persons with Disabilities (Art. 34 Convention), to which it will report as required;
17. Advice and support for individuals and groups who want to file a communication with the Committee on the Rights of Persons with Disabilities established in line with Art. 34 of the Convention;
18. Receives complaints, which can also be submitted informally, by the complainants or their representatives (including representative organizations) on asserted violations of the Convention; the Committee can also inquire into the presumption of a violation of the Convention ex-officio:

- a. Based on a complaint or a presumption the Committee can request further information from the authority or institution in question as well as a statement from the administrative bodies (Section 13 Para 2 Sub 2 Federal Disability Act).
- b. For this purpose the Committee may seek the consent of the concerned person or their representative in compliance with data security regulations;
- c. The Committee can, in line with data protection, seek the expertise of experts and civil society organizations, particularly organizations which represent persons with disabilities;
- d. The Committee can invite the complainant or her/his representative to a dialogue;
- e. The Committee examines the complaint or presumption, can make a statement within reasonable time, and makes a recommendation in case of a violation.

19. Informs the public as necessary in all matters related to monitoring.

The Monitoring Committee has a number of competencies, among them are:

1. unlimited access to all relevant institutions and authorities necessary to discharge the mandate;
2. an unlimited right to inspect files, the content of which is naturally covered by public confidentiality (compare § 1 Para 6 Rules of Procedure)
3. the possibility to request statements from administrative bodies (as foreseen in Section 13 Para 2 Sub 2 Federal Disability Act);
4. the possibility to request data and statistics (Art 31 Convention).

The Committee is to meet at least four times a year and can convene whenever necessary. It can invite experts and convene working groups in advisory capacity when necessary. The secretariat of the Committee is provided and run by the Federal Ministry of Labour, Social Affairs and Consumer Protection Affairs. Due consideration is given to the independent nature of the Monitoring Committee. In lieu of an independent budget, accrued expenditures are covered by the Federal Ministry of Labour, Social Affairs and Consumer Protection. The Federal Ministry of Labour, Social Affairs and Consumer Protection undertakes to archive complaints, measures taken and statements issued.

The Federal Social Office – in line with Section 13 Para 7 Federal Disability Act – is to support the work of the Monitoring Committee. The Office has regional centers in the *Länder* / provinces, which are to support the awareness raising of the Convention as well as the facilitation of individual complaints. The Office is to provide counselling and other support pro-actively. Furthermore, the Office is to alert the Monitoring Committee to potential structural problems and to support research both on individual cases as well as information related to the mandate of the Committee.

Taking into account the principles on the status and functioning of NHRI

In its first statement, the Monitoring Committee stated that a comparison between Section 13 Federal Disability Act and the Paris Principles clearly shows shortcomings. There is a lack of independence due to its organisational placement with the Federal Ministry of Labour, Social Affairs and Consumer Protection. The independence is not sufficiently guaranteed by constitutional law and it lacks the necessary independent and adequate budget.

Furthermore, the Monitoring Committee believes that mainstreaming the inclusion of persons with disabilities necessitates that any monitoring entity has to be placed among general human rights monitoring mechanisms and not within a specialized entity, mainly in charge of 'social' matters. In this vein, the Monitoring Committee has suggested the establishment of a National Human Rights Institution in line with the Paris Principles, the plans for which have been subject to regular discussion in Austria but which yet have to come to a conclusion.

Ongoing work of the Committee

The themes discussed by the Committee thus far are largely derived from individual complaints received, as the Monitoring Committee tries to not only address potential shortcomings in an individual's case but seeks to place the issue raised in the larger context of inclusion and participation of persons with disabilities. To date the Committee has received six individual complaints; they focus on issues of equality in the labour market, measures to ensure independent living, particularly personal assistance, the right to family life and questions surrounding early childhood interventions.

As the Committee has wide-ranging possibilities to explore the issues put to it, including the competence of unlimited access to all relevant institutions and authorities necessary to discharge the mandate, the unlimited right to inspect files,

the possibility to request statements from administrative bodies as well as the possibility to request data and statistics, it is seeking to involve as many stakeholders as possible in finding adequate responses to the concerns raised in the complaints, aimed at achieving full and effective inclusion and participation of persons with disabilities in Austria.

The Monitoring Committee is in the process of launching its website – www.monitoringausschuss.at – where it will share all relevant information in line with the principle of transparency, including the Rules of Procedure, also in an unofficial English translation.

d) The process regulating involvement and participation of civil society and in particular persons with disabilities and their representative organizations in the national implementation and monitoring process (Article 33 (3) CRPD)

As has been stated above, the Monitoring Committee is comprised of seven members, all of whom are proposed by the main Disabled People's Organization, the Austrian National Council of Disabled Persons (ÖAR). Four members represent disabled people's organizations, one each represents a human rights non-governmental organization, a development organization and one person is a university expert. In addition one substitute is nominated per member. All members are appointed in their individual capacity, they are independent and not bound by any orders or directives.

Furthermore, in line with human rights principles and as reflected in the Rules of Procedure – compare § 5 Para 4 – the Committee may convene public meetings. The first such meeting is to be held on the occasion of the first anniversary of Austria's ratification of the Convention, October 27, 2009.

Vienna, 21 September 2009

Annex

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

(Section 13 Federal Disability Act)

UNOFFICIAL TRANSLATION

Rules of Procedure

a) Based on § 13 of the Federal Disability Act (FDA; Federal Law Gazette No. 283/1993 as revised in Federal Law Gazette No. 109/2008) and in line with the duties and responsibilities of the Federal Disability Council in accordance with § 8 Sec 2 Para 4 FDA,

b) For the purpose of domestic implementation and monitoring of the Convention in the Rights of Persons with Disabilities (ratified by Federal Law Gazette III No. 155/2008) and in accordance with its Article 33 Para 2 and 3 (hereinafter Convention),

c) In the spirit of the Paris Principles (Resolution of the General Assembly of the United Nations No. 48/134 including Annex) and the involvement of civil society in the independent monitoring of human rights, their promotion and protection, prescribed therein,

d) Based on the general principles: individual autonomy of persons with disabilities, equality and non-discrimination, inclusion, full and effective participation in society, respect for the difference of human beings, equality of opportunity, accessibility, and equality between men and women as well as the advancement of children with disabilities (Article 3 Convention),

The Monitoring Committee establishes its

Rules of Procedure:

Members of the Committee

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

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

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

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

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

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

office by the old Committee shall count toward the term of office of the new Committee.

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

Duties & responsibilities

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

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

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

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

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

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

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

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

(9) The Committee examines data and statistics.

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

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

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

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

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

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

(16) The Committee cooperates with agencies related to the Convention abroad, in particular with other monitoring committees under Art. 33 Para. 2 of the

Convention as well as the Committee on the Rights of Persons with Disabilities (Art. 34 Convention), to which it will report as required.

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

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

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

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

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

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

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

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

Competences

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

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

Chairperson and Rapporteur

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

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

Meetings of the Committee

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

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

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

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

Quorums

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

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

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

Experts and working groups

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

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

Annual Report

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

External Representation

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

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

Secretariat

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

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

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

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

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

Federal Social Office

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

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

Accessible Formats

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