**Recommendations**

**of Austrian Civil Society Representatives with regard to the List of Issues of the UN Committee on the Rights of Persons with Disabilities of 19 April 2013**

**Introduction**

The present document has the purpose to respond to the questions of the UN-Committee on the Rights of Persons with Disabilities gathered in the List of Issues of 19 April 2013 (CRPD/C/AUT/Q/1) in the course of the process of reviewing the State Party Austria. The document was drawn up by a group of civil society representatives and activists[[1]](#footnote-1) coordinated by the Austrian National Council of Persons with Disabilities (ÖAR) of whom many were also essentially involved in the process of writing the alternative report on the implementation of the UNCRPD in Austria[[2]](#footnote-2). The responses to the questions contain as well comments on the government’s replies and some other important information. The numbers listed below refer to the paragraphs of the list of issues document.

1. **Purpose and general obligations**

**Article 1 (purpose)**

**Ad para 1.**

It has to be mentioned that in the draft version of the national action plan, the Länder were addressed, but were not asked beforehand whether they want to participate or not. After having read the draft version, the Länder explicitly withdrew their participation in the national action plan. This means that a nationwide implementation of the national action plan will not be possible (see para 1/answer 4 by the Federal Ministry of Labour, Social Affairs and Consumer Protection).

Besides this fact, the Austrian Federal Ministry of Finance stated already in the context of the draft version of the national action plan that there will not be additional budget for implementing the national action plan. This means that an implementation can only be cost neutral which is impossible given the necessary political steps to be taken to implement the national action plan.

Regarding the aspect of participation and a participatory process which lead to the national action plan (mentioned in para 1/answer 1) it has to be stated that this process was at some points participatory (two meetings with workshops where persons with disabilities were involved), but for long periods, the process was not participatory. The addressed (para 1/answer 1) ‘broad discussion’ has not taken place and moreover, the many (about 100) statements on the draft version were not included in the final version. Hence, neither the process of developing the text of the national action plan and of formulating the content of this national action plan nor the result (the national action plan itself) has been developed in a participatory manner and what has happened can be described with Arnsteins 1969 so called ‘Ladder of Participation’ as tokenism.

Regarding the Supervisory Group on the National Action Plan (para 1/answer 2) this group is currently still debating (in quite heated debates) its self-understanding regarding the limits of duties and goals. Also, representatives from the Independent Living Movement, the Independent Monitoring Committee, and from Austrian Science and Research pointed out several times that the quite few existing statistics have not been compiled with the background of the CRPD and hence, lack the social model approach of the CRPD. Indicators have to be developed in the context of the CRPD and this means that a lot of scientific work has to be done which cannot be conducted by a group of persons working on a honorary basis. Budget for this work is non-existent.

**Proposed recommendation:**

* Harmonize standards, laws and policies with regard to disability rights and programmes across all Länder by creating space for constructive discussion and to find common solutions with strong and active participation of persons with disabilities. Ensure that all Länder adopt and implement harmonized action plans which are in accordance with the Convention).

**Article 2 (definitions)**

**Ad para 2.**

Although the mentioned (para 2/answer 7) Austrian Federal Disability Equality Act (Bundes-Behindertengleichstellungsgesetz) in fact refers to (hampered) participation and (anti-) discrimination in society, the context of the Austrian legal framework regarding persons with disabilities still mainly refers to the medical model of disability.

In stark contrast to the Ministry’s answer, it is obvious that the disability assessment in Austria explicitly refers to the medical model of disability (e.g. the Assessment Ordinance, mentioned in para 2/answers 8 and 9)

Para 2/answer 9 by the Ministry makes that point even clearer as they refer to functioning (e.g. regarding the ability to communicate) and do not refer to a person’s abilities by including the societal context (e.g. barriers). E.g. communication is narrowed down to a person (as the medical model of disability argues) and is not perceived as an interactional practice (as the social model of disability argues).

Para 2/answer 11 just states that a circular exists which is a mere statement of intent in a context of a lived medical model of disability.

**Proposed recommendation:**

* Amend the Austrian legal framework in order to embed the social model of disability with a focus on social and attitudinal barriers in the legal and political practice concerning the rights of persons with disabilities, including a thorough revision of the Austrian disability assessment’s standards and practice/application; and the adoption of an overall legal definition of disability according to the CRPD, carried out with the active involvement and close consultation of persons with disabilities and their representative organisations.

**Ad para 3.**

Even though Austrian sign language (ÖGS) is the mother tongue[[3]](#footnote-3) of deaf and many hard-of-hearing people and was recognized as a language in its own right in the Federal Constitution in 2005, no further laws have been enacted in order to transform the constitutional provision into an individual entitlement to sign language in education. ÖGS is not given the same status as other autochthonous minority languages or first languages of migrant groups in the Austrian educational system[[4]](#footnote-4), which explains why 50% of deaf and hard-of-hearing children do not reach the educational objectives set for hearing children. These children are put at a disadvantage for the rest of their lives.

Non-discrimination: Systematic development of ÖGS as a first language of deaf children along the lines of German or other first languages for hearing children is made impossible. Deaf and hard-of-hearing students have to put double the effort into their education if they want to comprehend and follow the lessons.

Equal status of ÖGS and other spoken first languages: A survey funded by the BMUKK and conducted in 2007showed that ÖGS is not seen as a linguistic resource in deaf education[[5]](#footnote-5).

A new curriculum with a modernized terminology was enacted in 2008 but ÖGS is still treated as an auxiliary means[[6]](#footnote-6) while the curriculum itself is directed towards oral/spoken language. A bilingual curriculum does not exist[[7]](#footnote-7) [[8]](#footnote-8) [[9]](#footnote-9). The Federal Ministry of Education (BMUKK) has not delivered a draft law that allows ÖGS to be used as a first language and mother tongue, respectively, in education.

Teacher training: The latest reform of training is not compatible with the principles of inclusion and comprehensive accessibility of the CRPD. Teachers can voluntarily train in inclusive education. Deaf teachers are not required to learn ÖGS. The level of sign language competence reached within 70 hrs is by far not sufficient to be qualified to teach (in) ÖGS in deaf schools.

Deaf and hard-of-hearing teachers as role models/native signers: Native signers are not easily accepted into pedagogical training due to a regulation that requests a proven ability to speak. If admitted, graduates face difficulties to find employment in a school or a Kindergarten. Currently in two out of nine Länder, a total of five deaf teachers are employed.

Access to secondary education: Integration of deaf and hard-of-hearing students in secondary school does not meet the criteria for inclusion set out by the CRPD as the students have to adapt to structural shortcomings: Interpretation is subject to general availability of interpreters and strict financial constraints. Remedial lessons and additional support are given by teachers who are not competent in ÖGS. High school leaving exams cannot be taken in ÖGS.

Access to tertiary education: The deaf student association VÖGS has repeatedly called for expansion and long-term funding of GESTU.

Instruction materials in ÖGS: The bilingual database cisonline.at was funded once with EUR 50.000. With no further funding, the work had to be ceased. There is still virtually no materials for instruction of subjects in ÖGS.

Support of ÖGS in public services: Interpretation in general is subject to limited availability of interpreters. A National Action Plan on disability sets out training of additional sign language interpreters as a goal but does not specify measures. Interpreters enlisted for interpretation in court do not have to meet any formal requirements to prove their competence. The assumption of costs for interpretation in the context of notarial procedures is not guaranteed.

**Proposed recommendation:**

* Ensure education on equal terms and introduce Austrian Sign Language (ÖGS) as a language of instruction and German as a second language as well as additional bilingual teaching as a standard form in terms of promoting ÖGS and German and transform schools for deaf persons into bilingual schools. Introduce adequate and compulsory teacher training for Austrian Sign Language and ensure the funding of instruction materials in ÖGS.

**Article 4 (general obligations)**

**Ad para 4.**

As already pointed out with regard to para 1/answer 1, the Minstry’s understanding of participation refers to what Arnstein in his seminal work 1969 called tokenism.[[10]](#footnote-10) Including NGOs of/and persons with disabilities does not per se mean that the policymaking process or the results of such policymaking efforts are indeed developed in a participatory manner.

Besides these theoretical arguments regarding the practical performance of policymaking processes in Austria, it has to be mentioned that a manual exists which is – since 2008 – binding for Austrian ministries but which is not applied (so called Standards der Öffentlichkeitsbeteiligung, Standards of Public Participation) [[11]](#footnote-11). In this manual, three steps are described: Information, consultation and cooperation (cooperation as the highest level of involvement and opportunity to directly affect policymaking processes and results). None of the policymaking processes and results in the context of Austrian disability politics and policies can be referred to as cooperation.

Also, it has to be mentioned that even if sometimes involvement of persons with disabilities is made possible and accepted, persons with intellectual disabilities are usually not involved (see para 4/answer 25). Due to arguments of time constraints and also due to a failure to provide Easy-to-read language, persons with intellectual disabilities are still excluded from policymaking processes.

For example: the participation of self-advocates in the Federal Disability Advisory Board: until now, only once has a self-advocate been invited as an expert (without voting rights), and this person did participate in the meeting. ‘Difficult language’ was used at the meeting, and the documents had also not been tailored to the needs of people with disabilities. For such a person to participate as a full voting member, the Federal Disability Act would have to be amended, which has not yet taken place.

In order to represent the group of persons with intellectual disabilities well, two representatives would need to be present in roles of support. This has already been refused.

Regarding the right of the organisations of people with disabilities to be heard (para 4, answer 28): Here, involvement means the opportunity to give a statement, which is, however, usually not taken into account.

**Proposed recommendations:**

* Adapt the existing means and measures for participation to the requirements of the CRPD, including reasonable accommodation, and provide for inclusion and meaningful consultation of persons with disabilities and their representatives during the elaboration of all laws and programs concerning persons with disabilities. Ensure full implementation (and raise awareness about) of the government decision of 2008 “Standards for Public Participation”, making cooperation (level three) a minimum standard, including steps to raise awareness and provide training.
* Introduce effective measures and reasonable accommodation in order to facilitate the representation of persons with intellectual disabilities not only in the Federal Disability Advisory Board but also in all other participation and consultation processes as foreseen by article 4 para 3 of the Convention.

**Ad para 5.**

Regarding para 5/answer 32, it has to be stated that Austrian legal framework does not – as answered by the Ministry – as such correspond with the CRPD or reflect the content, goals and standards of the CRPD. Respective Austrian legal framework during the decades developed in the direction of the social model, but as already mentioned above under para 2/answer 7, the whole context (i.e. Austrian society and politics, and policymaking as such) does not refer to social model of disability. However, obviously, political practices (understood as political action contextualised in certain understandings of norms) build the basis for living as a person with disabilities on an equal basis with others. Even the best legal framework (which is not yet the case in Austria) is more or less worthless if not implemented adequately.

The Ministry argues in para 5/answer 33 that it is not that relevant how terms are translated into German. This is obviously a stark misjudgement of the power of terms and concepts. It is exactly the practical relevance of using the term and concept “integration” instead of the term and concept “inclusion”. Also, the term and concept of “accessibility” and also of “independent living”, which are both very important for formulating and implementing disability policies and politics, were translated incorrectly.[[12]](#footnote-12)

Besides this content-related argument, persons with disabilities were not involved in the process of this translation. It should also be mentioned that the CRPD has so far not been translated into sign language.[[13]](#footnote-13)

Hence, the Ministry’s argument, that it is good to have any translation is a perilous argument for the social model- and CRPD-based disability policies and politics and also for necessary changes.

**Proposed recommendation:**

* Revise the translation of the CRPD and ensure the appropriate use of terms which align concepts of “inclusion”, “accessibility” and “independent living” to the CRPD standard in close cooperation with persons with disabilities. Ensure that disability law, programmes and policies are in conformity with these revised terms and concepts in accordance with the spirit and letter of the CRPD.

1. **Specific rights**

**Article 5 (equality and non-discrimination)**

**Ad para 6. and para 7.**

All Länder have adopted a broad range of laws that handle, inter alia the topic of non-discrimination.[[14]](#footnote-14) Problematically, the various Länder laws have very diverse standards. Lower Austria, for example, does not foresee any protections from discrimination except for the working environment. Furthermore, the only sanction foreseen in most laws is compensation. This clearly contradicts article 5 para 3 CRPD prescribing the provision of reasonable accommodation.

This problem seems to be evident. The initial draft of the NAP listed the introduction of a legal claim and right to elimination and injunction of discriminatory circumstances (in the Federal Disability Equality Act). However, the final version of the NAP merely talks about a „broadly-based discussion on the design“ of such a right „in relation to its reasonability criteria“[[15]](#footnote-15)

**Proposed recommendation:**

* Take immediate and comprehensive steps to harmonize the standards of non-discrimination laws across the Länder and introduce at both Länder and federal level adequately deterrent measures against disability based discrimination, which go beyond the provision of compensation to also include a right to a legal claim, injunctive relief of discriminatory circumstances, a range of remedies for persons subject to discrimination, and sanctions for perpetrators.

**Ad para 8.**

There are actually no statistics on such legal claims available. There has been the demand expressed by NGOs and directed to the Federal Ministry for Justice to identify and indicate cases alleging discrimination. However, this never entered into practice. The number of claims in this ambit is very limited and most of them have been issued by the Klagsverband (Litigation Association of NGOs Against Discrimination).

Due to the very strict admission criteria, no action claim according to the Federal Disability Equality Act has been issued since 2006, i.e. since its introduction, so far.

Data on the content as well as on the outcome of conciliation procedures are not published on a regular basis. Once a year, the Federal Social Office publishes the number of conciliations that took place in each state during the previous year. Only the study „Evaluation of the Disability Equality Law“[[16]](#footnote-16) makes details on the specific content of conciliations available. This may be due to the fact that, generally, there is a high demand for confidentiality for all persons involved in conciliation. Findings, agreements and results are not made public. However, BIZEPS, a Centre for Independent Living in Vienna, provides an online databank of 138 conciliations (as of 1st July 2013) (http://www.bizeps.or.at/gleichstellung/schlichtungen/). Here, individual people, who went through conciliation, report on their initial aim, the outcome and the process of the conciliation.

Between January 2006 and November 2010, 182 conciliations took place that dealt with indirect discrimination based on the lack of accessibility. 114 cases were about barriers of the built environment, 47 were about communication barriers, 12 about technical barriers and 9 about others[[17]](#footnote-17). No more details about the agreement or the outcome are available.

The authors underline that between January 2009 and November 2010 there were more conciliations about communication barriers (25) than in the previous four years together (22). In this period these conciliations also outnumbered cases of barriers of the built environment (17) for the first time.[[18]](#footnote-18)

**Proposed recommendation:**

* Systemize the collection, analysis and dissemination of data, disaggregated by sex, age, disability, ethnicity, geographical location, etc, including data and statistics on factors impeding the participation of persons with disabilities, legal claims on federal and Länder level by persons with disabilities alleging discrimination as well as about abuse and violence against persons with disabilities (including reporting and complaints) in the home, community, schools, institutions, particularly concerning women and children with disabilities.

**Article 8 (awareness-raising)**

**Ad para 9 and para 10**

Para 9 and 10/answers 45-53 are a mingle mangle of activities of which some of them do not refer to persons with disabilities (e.g. para 9 and 10/answer 47) and only very few of them can be understood as reflecting the CRPD to a certain extent (e.g. para 9 and 10/answer 46). Besides these inaccuracies in this list of activities, it is obvious that this is a very short list of awareness-raising programmes for a country such as Austria, which is – see the answers by the Ministry – perceived as a country which is not that far away from having already implemented the CRPD.

With regard to para 9 and 10/answer 51 it has to be stated that it is true as that the ORF (Austrian Public Braodcasting) has this mandate to take into account the concerns and claims of persons with disabilities. But at the same time it is a fact that in the context of the large-scale charity show ‘Licht ins Dunkel’ (Light into the Dark) in late autumn/early winter (before Christmas) the ORF for weeks still pictures persons with disabilities as dependent receivers of charity which has an enormous negative impact on persons with disabilities in Austria, and which runs counter the intention of the CRPD.

**Proposed recommendations:**

* Significantly increase awareness-raising measures and campaigns about persons with disabilities with the participation of persons with disabilities including awareness-raising about the rights of persons with disabilities in all educational institutions as well as for other public sectors (including police, prosecutors, judges, social workers, etc.) at both the federal and Länder level. This includes as well the financing and implementation of cross-country and interdepartmental awareness-raising projects (for e.g. “bidok”[[19]](#footnote-19) and for future projects).
* Promote the positive image of children and adults with disabilities amongst government personnel, the media and the public based on the human rights based approach and principles of the CRPD, highlighting as well the contributions made to society by persons with disabilities.

**Article 9 (accessibility)**

**Ad para 11.**

The construction laws of the Länders comprise only a few aspects of accessibility concerning the erection respectively refurbishment of private buildings. Concerning accessibility in general these laws show big differences in quality. Despite strong protests of many people with disabilities and contrary to the provisions of the CRPD the construction laws of Upper Austria and Vorarlberg have been strongly impaired recently. For example, in residential buildings elevators have to be installed only from 3rd floor up. It has to be mentioned that this provision concerns mainly rural areas and that in Upper Austria and Vorarlberg multi-storey buildings are very rare. Also public buildings as restaurants, cafés etc having less than 25 seats or stores which are accessible for less than 50 persons don’t have to be accessible for customers with disabilities according to these new construction laws.

The question why there is a minimum number of people set for requiring a barrier-free environment for such public buildings is purportedly justified by the government of Vorarlberg[[20]](#footnote-20) that this is the result of a compromise between the interests of the industry, commerce and the requirements of universal design. It has to be mentioned that people with disabilities have not been included in this process of compromise. This statement shows clearly that the rights of people with disabilities by politicians are seen as rights that can be negotiated. It is a common argument that legal provisions concerning accessibility must also meet the interests of the industry and is currently discussed in the context of affordable housing.

Concerning the staged plan of the city of Vienna it has to be mentioned that the representation of the Viennese people with disabilities (Wiener Interessenvertretung) rejected the deadlines because of the long transitional period of more than 30 years. Another fault the representation of the Viennese people with disabilities finds with the staged plan is that it does not include all relevant buildings for which the city of Vienna is responsible for. That includes for example public toilets, public baths, municipal authorities etc. It also has to be mentioned that only about 5 million Euros per year are supposed to be spent on measures to make these buildings accessible. Compared to the expenditures the city of Vienna spends on advertisement (which was 11.8 million Euros in the period October-December 2012) the expenditures on measures to make the buildings of the city of the Vienna accessible are not reasonable and are a mockery for people with disabilities.

**Proposed recommendations:**

* Guarantee the federal harmonization of the construction laws according to Austrian Standard B 1600 for accessible construction and according to guideline 4 for user safety and accessibility of the Austrian Institute for technical engineering.[[21]](#footnote-21) No regional exemptions by the Länder may be allowed. Introduce compulsory consultation of accessibility experts for construction projects as well as compulsory control of accessibility after finishing a construction project. Ensure the participation of people with disabilities in the process of amending the construction laws (participation with voting rights)
* Ensure – as a matter of priority – the revision of planned changes in construction regulations in the Länder (e.g., Vorarlberg and Upper Austria) and the proposed changes to accessibility standards that have been agreed on, which compared to CRPD standards water down the obligation to provide accessibility.
* Amend the Trade Regulation Act (federal law) to ensure that accessibility requirements are applied to new buildings, general restorations or building renovations. The construction office must also be consulted when buildings are altered or their use is changed.

**Ad para 12.**

Concerning the long transitional period it has to be mentioned that contrary to the opinion of the Austrian government (see para. 55 of its response to the List of Issues) the Austrian representations of people with disabilities certainly do see relevant consequences because of the extension of the transitional period. Before the amendment the transitional period was 10 years, now it is 14 years. The presented figures (see para. 56 of the Austrian government’s response to the List of Issues) show that only one third of federal buildings have been made accessible within 7.5 years. Practically this means it will take a longer time until federal buildings are made accessible than previously scheduled.

The staged plans to make federal buildings accessible were forwarded to the OEAR when the Federal Disability Equality Act came into force in 2006. They were varying in quality and quantity. Not all of the responsible bodies forwarded a staged plan. Due to the fact that continuous reports about the status quo have not been provided and furthermore, as the OEAR does not have the legal control option (but merely a right to be heard), no statement can be made about the development. Thus, the only option still is to wait for the end of the transitional period.

The figures presented by the Austrian government in response to the List of Issues are not comprehensible to the Austrian representations of people with disabilities. The list is incomplete as the Ministry of Labour, Social Affairs and Consumer Protection as well as the Foreign Ministry cannot specify the relevant figures. It is incomprehensible why the Austrian government has not been able so far to put the relevant figures at publics’ disposal.

**Proposed recommendations:**

* Introduce permanent centralised structures in order to monitor and evaluate the staged plans. Develop comprehensive and measurable indicators for the monitoring and the evaluation. Include persons with disabilities and their representative organisations in the monitoring, evaluation and development of indicators and allocate adequate budget for all of these activities.
* Introduce a right to lodge legal complaints and to seek a remedy, as well as, injunctive relief and sanctions for perpetrators in case of non-compliance with the accessibility standards in the Federal Disability Equality Act.

**Ad para 14.**

Approximately 60 % of the programme broadcasted by ORF1 and ORF2 had been subtitled in 2012 whereas ORF III (emphasis on cultural programme) and ORF SPORT+ do not reach said percentage at all but subtitle only about an estimate of 5% of their programme.

Only about 3,7% of the programme is interpreted in ÖGS (Austrian Sign Language). The News “Zeit im Bild 1” and the information show “konkret” can be received only via ORF 2 Europe (a channel which can only be received via digital satellite and which is not primarily intended for general national use). The sign language interpreted sessions of the Austrian parliament are sent via ORF III.

With only one exception there are no shows for deaf or hard-of-hearing children and youth in Austrian Sign Language ÖGS available.

The three biggest private TV broadcasters ATV, Puls 4 and Servus TV do not offer any programme with subtitles or sign language interpretation. There is no obligation by law for broadcasters to offer a fully accessible programme (subtitles, audio description, sign language). The ORF law only obliges ORF to offer more accessible programme for the deaf audience compared to 2009, which in fact allows not only for a halt in progressive realization of making their programmes accessible but would also allow for a cut in the quota of subtitles from one year to another as long as the quota does not fall below the benchmark of 2009.

**Proposed recommendation:**

* Significantly increase the participation and inclusion of persons with disabilities in the media including, inter alia, the non-discriminatory nomination in the ORF Audience Council and the establishment of an independent and participative media regulatory authority in Austria (responsible for both public and private TV) in order to define joint solutions and goals, including indicators, to implement accessibility.

Support as well the presence of persons with disabilities in the media (e.g. moderations in sign language, representation in children’s programs, etc.).

* Take adequate steps to guarantee full accessibility of the programmes (audio-visual and digital media and press) of all public and private broadcast companies for deaf, hard-of-hearing as well as blind persons. Implement a law on the obligation to use subtitles, sign language and audio-description for broadcast companies in Austria. Information sent via public or private radio must also be available for deaf and hard-of-hearing people (using transcriptions). Support of public funds must be linked to ensure accessibility.

**Article 11 (situations of risk and humanitarian emergencies)**

**Ad para 15.**

Once the Government of Austria decides to financially support international disaster relief (case by case decisions), the Austrian Development Agency issues a ‘Call for Proposal’. The Funding Guidelines for all recent emergency and disaster relief calls under Section 4.2. Objective of Assistance state: ‘Applicants are also encouraged to take into consideration the inclusion of persons with disabilities where applicable’.

Austria’s Official Development Assistance has a focus on human rights (see Three-Year-Programme 2013-2015 <http://www.entwicklung.at/uploads/media/ThreeYearProgramme_13-15_02.pdf>) and a twin-track approach to inclusion is envisaged. However, this does not yet translate into an ‘inclusive development approach’, hence little progress is made towards meaningfully accessible development programmes and projects. In the past, the first part of the ‘twin-track approach’ received attention: projects specially geared towards support of persons with disabilities. What is still missing is to mainstream accessibility into all development policies, programmes and projects in order to make the Official Development engagement meaningfully and effectively accessible for all.

**Proposed Recommendations:**

* Increase efforts to implement the twin-track approach, in order to truly achieve ‘disability mainstreaming’ in all spheres of the Austrian Development Cooperation and Humanitarian Aid as well as all other Official Development Assistance (ODA) of Austria, particularly including contributions to financial institutions.
* We strongly recommend changing the discretionary clause of “are encouraged to take into consideration the inclusion of persons with disabilities where applicable” in the Funding Guidelines for disaster relief projects into a mandatory regulation for each and every disaster relief engagement as well as all development initiatives of the Austrian government.
* The ‘Policy Guidelines for Humanitarian Aid’ (German version dated 2007, English translation 2009 <http://www.entwicklung.at/uploads/media/PD_International_humanitarian_aid_03.pdf>) need to be amended in accordance with the CRPD. Mandatory inclusion of persons with disabilities in all humanitarian aid initiatives should be added to the guiding principles.

**Article 12 (equal recognition before the law)**

**Ad para 16.**

It is right that the Austrian Guardianship Law highlights the subsidiarity of the guardianship and circumscribes the aids that are to be used primarily in order to ensure that a guardian is only appointed if necessary. However, in practice, appointments of guardians are effected by courts in great numbers and often very rapidly without adequately considering potential alternatives. In 2012 there were approximately 55.000 guardianship cases in Austria. In nearly half of all proposed proceedings, the appointment of a guardian occurs in relation to all areas of life.

The revision of the Austrian Guardianship Law is mentioned in Nr. 49 NAP. This process will start in October 2013 at the earliest. The participation of persons with disabilities in the revision process and its outcome is unclear. It has not been understood that guardianship as such is to be avoided. Furthermore, there is no budget foreseen for this measure in the NAP.

The development of a model for supported decision-making is also mentioned in the NAP (Nr. 50). In Mai 2013 the first meeting of the ministerial working group was held with the participation of persons with intellectual disabilities. Important representatives of persons with disabilities were not invited as well as elder people and persons with mental health problems. A second meeting should be held in August 2013. So far, there is no consistent theoretical model elaborated. It is feared that the model is designed as an exceptional model so that only a very limited number of persons will be able to „fit in“.

**Proposed recommendation:**

* Revoke and abolish in the law measures of guardianship and substituted decision making. Raise the efforts to develop a model for supported decision-making with the strong participation of persons with disabilities including older persons, persons with psychosocial disabilities and persons with intellectual disabilities, ensuring support rather than substitution is made possible for everyone with assistance needs fully replacing the current system of guardianship.

**Article 13 (access to justice)**

**Ad para 18.**

As current media reports reveal[[22]](#footnote-22), people with disabilities are not looked after suitably in detention centres and prisons. Organisations of people with disabilities frequently receive information stating that due to a lack of accessibility and a lack of resources, people with disabilities are denied basic human rights in penal institutions.

Cost cutting in almost all areas has also led to the support and supervision given to young people in penal institutions being reduced to such an extent that in the months of May and June 2013 alone there were two serious cases of sexual violence against young people in detention. In the first case it was a 14 year-old youth in detention while awaiting trial who was raped with a broom handle. The injured youth was confirmed as being of “reduced mental maturity”.

**Proposed recommendation:**

* Introduce immediate measures in order to ensure that alternative means of detention are given priority, detention be applied as a last resort and provide for decent living conditions for persons with disabilities in prisons which ensure an accessible environment, psychological support as well as the provision of assistive communication technologies. Set measures to prevent abuse and harassment in places of detention by detainees and personnel, respectively, by ensuring awareness raising and training for staff and personnel on the rights of persons with disabilities and the provision of reasonable accommodation, as well as putting into place accessible complaints mechanisms and monitoring which respect the privacy of prisoners. Ensure effective access to justice with equal procedural and substantive guarantees of due process, including the possibility of age and disability – appropriate support for individuals during court proceedings.

**Article 14 (liberty and security of the person)**

**Ad para 19**

Austria is one of the last European countries, where net-beds are still being used and thus has also been confronted with international criticism. Reports from the AOB illustrate that in the area of the Vienna Hospital Association (Wiener Krankenanstaltenverbund), one of the largest European medical service providers, net-beds are still commonly used not only in psychiatric hospitals/wards (Otto-Wagner-Spital) but also in the Lorenz Böhler Emergency Hospital, as well as in retirement and special care homes for olderly persons, such as the Center for Social Medicine Floridsdorf, the Center for Social Medicine East (SMZ Ost/Donauspital, also outside of the psychiatric ward), Center for Social Medicine Sophienspital (geriatric ward), Center for Social Medicine South (SMZ Süd/Kaiser Franz Josef Spital). The same is true for the Neuropathic Hospital Siegmund Freud in the city of Graz. Other Austrian Lnder stopped using net-beds about 30 years ago.

The relevant federal legislation (Law on Doctors, Nursing Home Residents Act, Hospitalisation Act, Medical Devices Act) does not include an explicit ban concerning this matter. On the part of the Austrian Society for Psychiatric and Psychotherapeutic Medicine no standards have been set in order to ban the use of net-beds. In April 2013 the Austrian Supreme Court of Justice issued a decision from which must be deduced that the placement of a person demonstrating acute psychiatric behaviour in a net-bed is considered as a less severe measure compared to 4-point-restraint. This judicature hampers the change of attitude recommended by the European Committee for the Prevention of Torture since 1999 to stop the use of net-beds entirely.

**Proposed recommendation:**

- Abolish the use of net beds, restraint and other non-consensual practices in psychiatric hospitals and institutions. Provide training and raise awareness amongst medical professionals and the public about the fact that use of restraint and non-consensual practices constitute a violation of human rights and establish adequate measures to prevent these abusive practices including the provision of appropriate criminal sanctions and redress for victims.

**Article 16 (freedom from violence and abuse)**

**Ad para 20.**

Due to the extension of the Ombudsman's Office by the function of a National Prevention Mechanism (in accordance with Articles 3 and 4 of OPCAT and Article 16 para 3 CRPD), it is now possible for the newly-introduced commissions of the Ombudsman's Office to carry out unannounced checks in institutions for people with disabilities. However, the commissions of the Ombudsman’s office are not designed in order to sustainably prevent physical, emotional and sexual abuse throughout the country. Recent reports demonstrate that the existing oversight measures (like e.g. “Bewohnervertretung”) are not sufficient to prevent abuse. What would really be required would be far-reaching structural changes within these institutions in order to effectively prevent human rights violations.

**Proposed recommendation:**

* Strengthen preventive measures and mechanisms including far-reaching structural changes in institutions in order to effectively prevent physical, emotional and sexual violence against persons with disabilities including in large institutions. These measures and mechanisms should go beyond the sporadic visits of the commissions of the Ombudsman’s Office, i.e. they should provide for monitoring on a regular basis and foresee adequate sanctions for perpetrators, awareness-raising and training for all staff.
* Further raise awareness on the heightened risk of violence and abuse in institutions and the fact that monitoring cannot be considered an end in itself but the minimum standard to avoid abuse or ill-treatment during the deinstitutionalisation process to uphold the rights of persons with disabilities, including the right to live in the community. Take steps to address the social reasons (lack of support including peer support) and structural (particularly lack of community-based services), for institutionalisation and the legal mechanisms, which facilitate institutionalisation (deprivation of legal capacity, presumption of danger) in concerted efforts to close institutions.

**Ad para 21.**

The problem with guardianship in Austria is that the guardian is legally permitted to make decisions against the will of the person, and thus can also agree to simple medical treatments even if the person affected is explicitly or obviously against it. This includes immunisation or dental treatment, for example. However, in serious cases a court has to decide on the case. The guardian may not give his/her consent to sterilisation or abortion.

**Proposed recommendation:**

* Take steps to abolish guardianship measures in the law and to ensure the recognition of the legal capacity of persons with disabilities as equal to that of others; introduce supported decision-making to provide for support to exercise legal capacity in accordance with the autonomy, will and preferences of the person.
* Repeal all legal provisions which allow for the forced treatment of persons with disabilities including on the basis of an actual or perceived psychosocial impairment or intellectual disability encompassing legal provisions that authorise confinement or treatment which is grounded on any factors including a motivation to protect the safety of the person or others or to provide treatment deemed necessary by medical professionals and any provisions by which substitute decision-makers are authorised to consent to such coercive confinement or treatment. Ensure that persons with disabilities exercise their right to free and informed consent in all healthcare contexts, including the right to refuse consent, by providing awareness raising and training to all public and private health care staff and professionals.

**Ad para 22.**

It can be assumed that the sterilisation of people with disabilities is hardly recorded in statistics. In most cases a medical reason is most probably given, and this decision does then not seem to be really examined. People with intellectual disabilities seem to be frequently not even aware that an intervention has been carried out. During her research, the author of this section was told by persons working in assisted living arrangements for persons with intellectual disabilities that in many cases, a three-monthly contraceptive injection is administered without explaining this to the affected person or trying to obtain their informed consent.

**Proposed recommendation:**

* Strengthen measures to prevent the forced sterilisation, abortion and contraception of persons with disabilities including upon the consent of a third party (family, guardian, doctor, court). Uphold the right to free and informed consent of persons with disabilities, including persons with intellectual disabilities and persons with psychosocial disabilities, and provide training in this respect to public and private health care professionals and staff. While respecting the privacy of individuals, collect data on the practices of sterilisation, abortion and contraception of persons with disabilities including measures carried out without the informed consent by the person.

**Article 19 (living independently and being included in the community)**

**Ad para 23.**

There is no reliable data on this available to the authors.

**Ad para 24.**

Personal assistance in the workplace is used by only around 450 persons in Austria. Because it is linked to the staged system of long-term care benefit, groups of people with disabilities are excluded from entitlement to it. The personal assistance in the workplace scheme is not publicised actively enough – either to employers or employees – to have a positive effect on the employment situation of people with disabilities.

**Proposed recommendation:**

* Extend the provision of personal assistance in the workplace to promote the participation of persons with disabilities and ensure that all persons with disabilities who wish to receive Personal Assistance, including persons with intellectual and psychosocial disabilities, have access thereto; involve persons with disabilities in the development in a meaningful way.

**Ad para 25.**

It is estimated that currently only around 1,000 persons in Austria receive personal assistance in fields outside their work. The services offered by the Länder differ considerably, and none of the Länder provide enough funding to cover the need for assistance. Children and people with intellectual disabilities are excluded from it in almost all the Länder, and in one province there is only assistance for people with intellectual disabilities. This service is usually only a social service, which is granted to a very small number of people and is means-tested. The negotiations between the Federal Government and the Länder on a nationwide solution have been without success until now. People with disabilities were only invited to the negotiations after massive pressure exerted by those affected, but then there were only two more meetings without results. Due to the upcoming parliamentary elections, no further negotiations have been planned. We fear that a new government will not pursue the resolution of Parliament of 15 March 2011 on a nationwide uniform regulation of personal assistance in all areas of life. It is therefore not possible to say whether Austria is willing to fulfil its obligation in accordance with article 19.

It should also be mentioned that rules regarding comprehensive personal assistance when drafted must include sign language interpretation for deaf and hard-of-hearing persons that is not restricted to public administration or work place but enables communicative accessibility in all spheres of life.

**Proposed recommendation:**

* Implement a legal entitlement for Personal Assistance that is nationwide uniform and comprehensive and that includes all persons with disabilities, particularly those still living in institutions. This can either be regulated by a binding agreement between the Federation and the Länder or by assigning the whole competence for Personal Assistance to the Federation similar to the provision of Personal Assistance at the Workplace. Ensure meaningful participation of persons with disabilities and their representative organizations in the elaboration in accordance with the cooperation level of “Standards of Public Participation”[[23]](#footnote-23).
* Implement a nationwide uniform and comprehensive legal entitlement for Personal Budget that can be opted for by all persons with disabilities. The Personal Budget must cover all support needs for persons with disabilities. Particularly persons with intellectual disabilities and those living in institutions must be included to stipulate deinstitutionalisation. People with disabilities must effectively participate in the development of this provision.

**Ad para 26.**

There are no structured plans for deinstitutionalisation in Austria. Both the Federal Government and the Länder have spoken in favour of the principle of mobile care – usually without any consequences. Statistics show that the number of people with disabilities kept in homes has increased in the past 20 years. In practice, new homes are still being planned and built in spite of various declarations of intention.

There is no permeability, and for people who live in institutions there is a stark lack of support for them in the community to be able to leave the institution and live an independent life outside of it.

The amount of long-term care benefit paid is much too low for people in need of care to be able to obtain the support and assistance they would need. It is merely a subsidy which – particularly for people with a high need for support – does not ensure that they are able to live a life which is as independent as possible. The long-term care benefit stages and the way the benefit is granted are purely orient towards a medical model of disability.

**Proposed recommendation:**

* Implement a comprehensive and effective plan for nationwide deinstitutionalisation of persons with disabilities currently living in institutions. This plan should comply with the Common European Guidelines on the Transition from Institutional to Community Based Care. Consider a binding agreement between the Federation and the Länder on compulsory deinstitutionalisation. Ensure broad participation of persons with disabilities and their interest groups in the elaboration and implementation of these measures.
* Implement an effective programme for the deinstitutionalisation of children with disabilities, particularly those who are living in special boarding schools for children with disabilities and those who live in large homes for persons with disabilities. This must cover all institutions, both under Federal and Lander competence, public as well as private. Develop and strengthen community support services for parents of children with disabilities as well as for parents with disabilities (family assistance and parenting assistance) so children with disabilities can live with their family. Parallel to the further development of inclusive education in regular primary and secondary schools community oriented support services for families are an important measure towards the full inclusion and participation of children with disabilities.

**Article 20 (personal mobility)**

**Ad para 27**

Plans to increase accessible transport, including accessible information on travelling, especially in the Länder are not known.

There are staged plans of the Austrian railway traffic (ÖBB) to improve accessibility of railway transport. These plans do not include the improvement of accessible information on travelling. In addition, there is evidence of a concentration to city regions while the development of non-urban areas and rural regions is rather regressive. According to Sec 6 para 5 of the Federal Disability Equality Act (see commentary) railway stations having less than 1000 passengers per day do not have to be accessible. Although this means a direct form of discrimination people with disabilities do not have any legal rights to defend themselves against it.

The Länder usually conclude contracts with local public transport providers. This means that the Länder invest some million Euros per year into services and vehicles of these providers. It is assumed that these contracts do not include provisions concerning accessibility.

There are supplements for mobility support by the Federal Social Office and at Länder-level. These supplements have the purpose of covering disability-related additional expenditures. They usually depend on the degree of the disability and are predominantly granted to persons who are actively participating in the labour market. Thus, persons with disabilities who are unemployed are disadvantaged (especially children or retired persons). Despite strong protests of many people with disabilities and contrary to the provisions of the CRPD the supplements for mobility have been strongly cut. An example is the mobility supplement by the Federal Social Welfare Office: this subsidy has been cut by 26%. In 2010, the mobility supplement was still EUR 780. For 2011 and 2012 it was only EUR 580. In addition, this supplement is no longer paid to people with disabilities who are in marginal part-time employment. This is a worsening of the situation for people with disabilities.

**Proposed recommendation:**

* Compile comprehensive overview on legal regulations with regard to accessibility requirements for public transport in the Länder together with organisations of persons with disabilities. Negotiate binding agreements with the nine Länder to effectively implement the comprehensive guidelines for accessible public transport published by the Federal Ministry for Transport, Innovation and technology in Austria.
* Reconsider – as a matter of priority – the recent reductions of mobility supplements by comprehensive consultation with organisations of persons with disabilities. Furthermore, develop a more equitable system of mobility supplements that does not systematically discriminate against persons with disabilities who are not employed by restricting their right to these supplements.

**Article 23 (respect for home and the family)**

**Ad para 28**

Whether sex education takes into account the needs of people with disabilities is not known. We could only find two advice centres for people with disabilities on the issues of sexuality, pregnancy and birth: Libida in Styria, which since 2011 has had to reduce the services it offers due to massive financial cuts. Senia in Linz (Upper Austria)

**Proposed recommendation:**

* Ensure adequate and needs-oriented provision of active and outreach sexual counselling and education and sexual and reproductive rights for persons with disabilities regarding sexuality, contraception, abortion, family planning and parenthood and enlarge the number of such specialised counselling centers across the country in close consultation with persons with disabilities and their representative organizations.

**Article 24 (education)**

**Ad para 29**

Overall it has to be stated that due to the preservation of the parallel system (integrated classes and eleven different types of special schools) and the de facto extension of the sphere of responsibility of General Special Schools from eight to nine school years, there has been no progress towards integration or full inclusion in the Austria education system.[[24]](#footnote-24) [[25]](#footnote-25) Since 2001, the nationwide integration rate in Austria has stagnated at a figure of around 50 %. The ratification of the UN Convention in 2008 and the clear statement of the Independent Monitoring Office on inclusive education from 2010[[26]](#footnote-26) have also not led to any improvements in the existing system until now. This situation is confirmed by the most recent experiences of affected parents, according to which special schools are increasingly being promoted instead of introducing more measures to push for inclusion within the mainstream schools system. Building completely new special schools has remained common until today, and is cited by politicians as being urgently necessary and as a particular achievement for pupils with disabilities.[[27]](#footnote-27) The current ‘right to choose’ of parents is misused to maintain the existing special schools system. The realisation of integration in schools is often “a path which has to be fought for individually. It is frequently dependent on the commitment of individual civil servants or teachers” [[28]](#footnote-28) (see Question 30 in this document).

Children with disabilities receive special educational support if their special educational needs (SEN) are officially recognised. The definition of SEN reflects a medical point of view and does not take the social model of disability into account. [[29]](#footnote-29)

The requirement of having to establish SEN before additional support measures can be approved is controversial, as SEN are not standardised. This also often leads schools to try and obtain as many resources as possible by labelling as many things as possible as SEN. [[30]](#footnote-30) In other words, children are often categorised as having SEN over the course of their compulsory schooling, although no physical or mental disability has been established. “For example, a boy in Vorarlberg has a risk of being categorised as having SEN which is a 2.4 times higher risk than that of a girl in Styria”[[31]](#footnote-31). Current statistical data shows that in the past 12 years the proportion of children in special schools has risen continuously (2000-01: proportion of children in compulsory schooling in specials schools: 1.71. By 2010-11 this had risen to 1.98%).[[32]](#footnote-32) At 65%, there are a disproportionate number of boys in special schools. The same applies to children with migrant backgrounds.[[33]](#footnote-33)

**Proposed recommendations:**

* Prioritise steps towards implementing the right to inclusive education by increasing the efforts to provide reasonable accommodation in education, allocation of sufficient financial and human resources, comprehensive accessibility (i.e. physical, communicative, intellectual and social) of the educational establishment, teacher training, curricula and materials, the availability of assistive devices and support in classrooms, encourage the teaching of sign language and deaf culture. Take steps to raise awareness and provide training at the federal, Länder and local government levels and schools to ensure understanding and respect of Convention obligations.
* Include inclusive education as an integral part of core teacher training curricula in universities to ensure that the values and principles of inclusive education are infused at the outset of all teacher training and teaching careers.

**Ad para 30.**

The concerns of the Committee on the Rights of Children with regard to the right to choose of parents are justified.

Austria has a vertically differentiated education system. The existing system of special schools of 11 different types and integration in schools are both embodied in the relevant legislation as being of equal value.

Section 8a of the Compulsory Education Act does not lay down a definitive right of choice; mothers and fathers can merely express a wish for integrated schooling.

The welfare of children is frequently discussed in relation to the right to choose of parents. “The best interests of children are solely discussed as posing a limit for the inclusion of children with disabilities. They therefore act as a sort of defence mechanism against inclusion.”[[34]](#footnote-34)

Regarding the choice of schools, parents receive advice from education authorities including the Special Educational Centres which have a double role: on the one hand, they are supposed to support the integration of children with disabilities into schools. On the other hand, they have to fulfil the tasks of a special school. [[35]](#footnote-35) A study has proven that the effect of advice offered is influenced by whether the advisor has a critical or supportive attitude with regard to integration. [[36]](#footnote-36)

The same holds true for deaf and hard-of-hearing children. In the best interest of the child, parents need to be counselled by a multiprofessional team including deaf peer counsellors from an early stage on. In order to allow for the best psychosocial and intellectual development and full participation, a child with a hearing impairment must be given a fully accessible language from infancy on. A Cochlear implant is no substitute for a bilingual approach with sign language.

General schools (integrated area) and special schools are not equally well-equipped.

“The will of parents can also be influenced by the unequal equipment of special schools and general schools. Therefore there are parents who actually want joint lessons in general schools, but then feel they have to choose a special school because the conditions there are better for the comprehensive care of children with more severe impairments. Instead of realising that parents are experiencing this conflict and introducing improvements in the equipment of general schools, the low demand for joint lessons among parents with children who have more serious impairments are interpreted as an expression of the will of the parents.”[[37]](#footnote-37)  In the integrated sector, it can be seen that there is a lack of the conditions needed to do justice to all children – all-day schools, afternoon care offers, sufficient personnel (teachers and assistants), smaller class sizes – and that precisely these conditions are present in special schools. Children with learning difficulties, those with severe disabilities, blind, deaf and deaf and blind children often attend special schools even in Länder with a large proportion of integrated classes.[[38]](#footnote-38)

There are specialised family advice centres[[39]](#footnote-39) in almost every province which offer advice for families with disabled family members. According to the National Action Plan on Disability 2012-2020[[40]](#footnote-40), these have to be funded by the Federal Ministry of the Economy, Family and Youth. In addition, there are advice centres which cater for specific groups of persons[[41]](#footnote-41) and advice centres for children and young people and their parents or family members[[42]](#footnote-42) which are subsidised by provincial governments or simultaneously by the Federal Government and a province.

Unlike the advice offered by education authorities, the specialised family advice centres and the advice centres mentioned above act independently of the system. Practical experience shows, however, that parents frequently do not know about these advice centres or lack the commitment or courage to look for advice centres of this type. The advice centres themselves often lack the financial resources they would need to be able to carry out public relations work and to thus reach more parents, and also to be able to employ sufficient personnel (advisors).

Inclusive pilot regions

The National Action Plan on Disability includes the measure “The Development of Inclusive Model Regions[[43]](#footnote-43)” to promote inclusive education, which is should be realised by the Federal Government, the Länder and local authorities by 2020. “The term ‘inclusive regions’ and their nationwide establishment by 2020 is a way out, which on the one hand does not expressly demand the closure of special schools, but on the other hand certainly does allow it.”[[44]](#footnote-44) Civil society organisations are concerned that the model of inclusive regions will not be implemented, as this would be a “fundamental reform towards an inclusive education system, because the overall aim is to move step by step in the direction of a commitment to the basic principle of diversity and the dismantling of social, cultural and socio-economic barriers in the field of education by reforming mainstream education.”[[45]](#footnote-45) “However, for nationwide implementation clear rules do have to be drawn up and laid down in law, so that inclusion changes the schools system and not the other way around.”[[46]](#footnote-46)

**Proposed recommendations:**

* Replace the parental right to choose between inclusive education and special schools by a legal entitlement for a child with disabilities to inclusive education and make counselling centres for children with disabilities and their parents structurally and financially independent in order to avoid a conflict of interests.
* Carry out federal and Länder level awareness-raising campaigns aimed at parents of children with disabilities and the public at large regarding the right of all children, particularly children with disabilities to inclusive education and the benefits of improving social skills, promoting tolerance and diversity in learning environments. Take steps to improve accessibility of schools, curricula and materials, as well as the provision of reasonable accommodation in anticipation of defining a date within the next two years for a general moratorium on referrals of children to special schools.
* The National Action Plan does not consider any accessibility provisions for schools that are in the competence of the Länder or of municipalities. Compile an overview of the accessibility of these schools and include effective measures for these schools in the foreseen revision of the National Action Plan in 2015.

**Ad para 31**

There is no access at all to higher secondary schools (age 14+). Young people with special educational needs and/or disabilities who have passed examinations in the mainstream curriculum have no legal right to attend a higher secondary school (Secondary Stage II).[[47]](#footnote-47) Attending a higher secondary school is only possible if a pilot project is submitted (i.e. no additional costs may arise). The right to education up to the young person’s 18th birthday is currently only possible at a special school (see School Education Act Section 2 para 2). According to Austrian legislation, all pupils can complete a voluntary 10th or 11th school year at a secondary modern or polytechnical school. Pupils with special educational needs are only allowed to do this at a special school.

In the current higher education system, students with disabilities are confronted by considerable restrictions and barriers. Access to universities is made more difficult for people with disabilities by physical, social and communicative barriers, and people with learning difficulties are excluded completely (no programmes in accessible language and no right to an extension of examination dates, etc.). This is partly due to a lack of personal assistance in all areas of life. Some degree courses cannot be taken at all by people with disabilities due to the curriculum or due to the lack of accessibility in buildings. In other degree programmes, people with disabilities are dependent on special rules and exceptions during their foundation course and also during later specialisation (e.g. doctorates, habilitation). Exact figures on graduates with disabilities at Austrian universities are not available.[[48]](#footnote-48)

In the field of adult education there are almost no barrier-free and integrated further education programmes for people with disabilities. Programmes which are labelled as integrated are often solely conceived and realised for people with disabilities**.[[49]](#footnote-49)**

**Ad para 33**

On 12 June 2013, NEW Teacher Training was adopted by Parliament. The teacher training colleges and universities have been urged – as part of the development of the curriculum – to introduce inclusive teaching methods, and to create additional relevant focuses within teacher training courses.

For a number of years now, there has been a severe lack of teachers trained in inclusive teaching methods. For around three years, the University College of Teacher Education has offered a specialised and credited training certificate which can be chosen as part of the teacher training course or as an additional course. However, due to too few resources, it will be impossible to achieve the nationwide availability of qualified teaching staff in the coming years.

The deployment of (school) assistants in compulsory schooling is handled in various ways in Austria, and depends on the respective provincial guidelines. Compared to most of the other Länder, in which there is a lack of specific arrangements and/or their implementation in practice, in Upper Austria great importance is attached to assistance[[50]](#footnote-50) in integrated lessons (this can also be seen in the fact that there is a special training course). Assistants are closely integrated into the schools system there. They enable pupils with disabilities to participate in the life of the class and in the achievement of curriculum goals, and make an important contribution towards the success of school work and integration.

Finally, it should be pointed out that the current integrated education system is “systematically underfinanced”[[51]](#footnote-51). As already mentioned, programmes to achieve integration are “less attractive and less functional, and are therefore not equally well-resourced”[[52]](#footnote-52) (see also the answer to question 30). Parental right to choose can thus “also be politically controlled by the unequal allocation of funding for special schools and integrated schools.”[[53]](#footnote-53) “The lower level of resources allocated to integrated education contradicts the call for high-quality lessons (Disability Rights Convention, Article 24, 2). The systematic allocation of fewer resources to integrated programmes has to be considered a failure to ensure “reasonable accommodation” and is thus “direct discrimination” (see Disability Rights Convention Article 2).”[[54]](#footnote-54)

**Proposed recommendations:**

* Adopt the following measures:
  + Include inclusive education as an integral part of core teacher training curricula in universities to ensure that the values and principles of inclusive education are infused at the outset of teacher training and teaching careers of *all* teachers.
  + Render it compulsory for teachers to develop individual education plans for all students (both with or without disabilities);
  + Ensure the availability of individual supports such as technical equipment, accessories and aids with schools, including the provision of a personal assistant within school if necessary;
  + Ensure accessibility both in terms of the physical environment and with respect to communication, the curricula and pedagogical materials;
  + Ensure the inclusion of hard of hearing and deaf children by having sign language interpreters placed into mainstream schools and formally include sign language as a language of instruction in mainstream schools with basic training on sign language for all teachers;
  + Promote the teaching of disability rights awareness and deaf culture in schools.

**Article 25 (health)**

**Ad para 32.**

While searching the internet on the issue of women, disabilities and sexuality, only outdated links could be found which either did not work or did not contain up-to-date information (e.g. the Disability Report 2003). Many of the women’s health centres mentioned there, such as FEM Süd Frauengesundheitszentrum, the Health Centre for Women in Carinthia, have no offers for women with disabilities, have no experience in this field, and their brochures are not accessible (no digital or easy read versions). Other health centres were also not able to offer barrier-free information brochures. (see answer to Para 32/answers 131 and 132)

FEM Süd-Frauenassistenz, a health centre listed by the Federal Ministry of Labour, Social Affairs and Consumer Protection, supports women with disabilities in their search for employment via courses (job application training, IT, German courses, relaxation courses). (Para 32/answer 132).

**Proposed recommendations:**

* Increase as a matter of priority the availability of acceptable, comprehensively accessible and equipped health care services for persons with disabilities, particularly women and girls both in urban but also rural areas.
* Set measures in order to ensure comprehensive accessibility of hospitals and other medical services as well as gender and disability sensitive training of medical staff. Introduce “support services for women with learning or psychological disabilities that offer medical consultation e.g. on sexuality, contraception and abortion”, which is centred upon respect of the individual’s right to free and informed consent to treatment.

**Ad para 34.**

Interacting with people with disabilities (including forms of communication) is not a fixed part of the curriculum for medical training. Interacting/communicating with people with disabilities (e.g. in facilities for people with disabilities) is also not obligatory for doctors in their practice year.

**Proposed recommendation:**

* Integrate the rights of persons with disabilities including the right to free and informed consent to treatment as well as interacting/communicating with people with disabilities into the initial and continuing training of medical staff and health professionals,

**Ad para 35**

See para 32 on women’s health centres

In spite of the availability of some brochures, the reality for women with disabilities is still that necessary preventive gynaecological examinations are carried out rarely. Due to their disabilities, these women are confronted by barriers of various types when they go to a gynaecologist. A free choice of doctors, which for other women is a matter of course, is therefore not always possible for women with disabilities.

**Article 27 (work and employment)**

**Ad para 36**

The lack of protected and standardized data about the labour situation of persons with disabilities, and especially of persons with intellectual disabilities, poses a serious problem. The data collection by various bodies (Public Employment Service, Statistik Austria, etc.) is conducted by using varying definitions of (the term) disability, which means that there is no comparability[[55]](#footnote-55) . Therefore, there is no reliable empirical evidence about how far the present support systems benefit those who need this support most urgently in order to (re-)enter into the labour market. An expansion of the eligible group of persons, the restriction of most support structures to one year, as well as fixing the efficiency or success of support measures to quantitative placement rates only result in the fact that applicants are already selected in advance. Often only young applicants – with lower support expenditures - benefit from that. Thus, there are economic and cultural barriers that especially affect persons who need long-term and continuous support. Persons with intellectual disabilities are massively underrepresented in all areas of the labour market.

As of November 2012, the number of persons with disabilities within the group of unemployed persons was 15.17 percent.[[56]](#footnote-56) In 2007, a third of the disabled persons who are classified as registered were not employed.[[57]](#footnote-57) Persons with disabilities who are considered unfit for work and who are employed in segregated facilities are not covered in unemployment statistics. Women with disabilities often experience multiple discriminations in the job market as well.

Approximately 19,000 to 20,000[[58]](#footnote-58) persons with disabilities are presently employed at day and employment structures, and especially under the so-called “occupational therapy” (Beschäftigungstherapie), as well as at sheltered workshops (geschützte Werkstätten) or “capacity-oriented activities”. Instead of paid work, these activities are perceived as measures of the regions (Länder) according to the respective social assistance and disability laws that contain different regulations.[[59]](#footnote-59)

The estimated number of persons in employment in Austria at the end of June 2013 was approximately 3,509,000. Unemployment rose by 22,172 or 10.1% year-on-year to 242,242. There was thus a considerable increase among men (+13,856; +11.8%), but also among women (+8,316; +8.1%). The general unemployment rate is around 4.7%.[[60]](#footnote-60)

**Proposed recommendations:**

* Systematically collect protected and standardized data about the labour situation of persons with disabilities, and especially of persons with intellectual disabilities disaggregated by sex using a standardized definition of disability.
* Take steps to address the gender gap and unemployment rates of women with disabilities.  Ensure the provision of reasonable accommodation in employment and vocational training for women with disabilities, including accommodations for different types of disabilities.
* Increase the efforts to realize full inclusion in the labour market, inter alia

by opening day centred and social enterprises that are geared towards individual needs as part of community-based support services;

by expanding the legal entitlement to support measures in terms of (re-)entry into the job market for persons with disabilities according to their need for support;

by improving measures to oblige the employment of persons with disabilities for businesses (significantly increase compensation taxes);

by rethinking and reforming the assessment procedures in terms of the capacity to work (introduce individualized decisions instead of a strict 50 percent limit as well as comprehensive and multidisciplinary assessments, modify the term “unfit to work”) in line with the social model;

by ensuring equal protection under social insurance and employment laws as well as fair pay (according to collective agreements) of persons with disabilities at day centres and social enterprises and

by reinforcing the legal protection from discrimination in the job market (introduce a legal entitlement to the elimination of barriers and provide for support during legal proceedings)

**Ad para 37.**

Only 22.9% of companies fulfil their obligation to employ people with disabilities in Austria. Around eight out of ten companies pay the compensatory tax and thus buy themselves out of the obligation to employ.

Companies which fulfil their obligation to employ people with disabilities according to Länder:[[61]](#footnote-61)

Upper Austria 31 %

Carinthia 30.3 %

Styria 26.6 %

Vorarlberg 25 %

Burgenland 22.4 %

Lower Austria 21.1 %

Tyrol 18.3 %

Vienna 17.3 %

Salzburg 17.1 %

**Article 29 (participation in political and public life)**

**Ad para 38.**

In spite of higher subsidies for parties, accessibility is not a priority issue in relation to elections. People with disabilities continue to be severely under-represented in the holding of political office.

According to the Federal Law on the Election of the Members of the European Parliament (Europawahlordnung), there are regulations on the accessibility of polling stations and on support services during voting for persons with disabilities (offering appropriate aids e.g. for blind or visually impaired persons, freely chosen electoral assistants, etc.). Since the Amendment to the Right to Vote 1998 (Federal Law Gazette I No. 161/1998), the individual election laws prescribe at least one polling station in each municipality or, in Vienna, in each district that is accessible for physically disabled persons according to the technical possibilities. However, no regulations about blind control systems or ballot paper templates are to be found in the electoral regulations of the regions (Länder). Furthermore, accessibility has not been embodied as such in all electoral regulations and thus, it has not been implemented adequately across Austria so far.

Wheelchair users must be accompanied by another person when visiting the Austrian Parliament.[[62]](#footnote-62) The meetings of municipal and local councils and the provincial parliaments are often not accessible either. This is due to the fact that many public offices still do not fulfil the requirements for barrier-free buildings. Media reporting on politics is not equally informative for people with disabilities due to a lack of accessibility.

There is no voting material in Easy-to-Read formats, which means that persons with intellectual disabilities are restricted in their right to vote. Furthermore, there are no permanent and effective measures of political education for persons with intellectual disabilities. Two workshops of the “Democracy Workshop” that took place in 2008 and that had the objective of educating about political rights of persons with intellectual disabilities did not have any lasting impacts. Due to a lack of appropriate measures for the political education of persons with intellectual disabilities, their opportunities to participate in political life are very limited.[[63]](#footnote-63)

Regarding deaf and hard-of-hearing persons ballot stations in metropolitan areas should provide interpreters and/or staff with sign language competence. All polling stations must be equipped with basic guidelines and visual voting instructions. For elections and election campaigns, accessible information preferably in sign language must be provided by federal, regional and local authorities, political parties and public media.

**Proposed recommendation:**

* Provide for comprehensive accessibility in all electoral regulations of all Länder including provisions of blind control systems or ballot paper templates as well as the provision of staff with sign language competence and implement the existing regulations at polling stations, including support services during voting for persons with disabilities (offering appropriate aids e.g. for blind or visually impaired persons, freely chosen electoral assistants, etc.) as a matter of priority.
* Ensure the provision of accessible information (in easy language, braille, sign language, audio, etc.) for federal, regional and local elections and election campaigns by political parties and by public media.

1. **Women and children with disabilities**

**Article 6 (women with disabilities)**

**Ad para 39.**

There is no such data available. Generally, there is an enormous lack of data and statistics on violence against women with disabilities and the related prosecutions, convictions, etc. NGOs have often raised this problem. However, it is ignored by the responsible actors (which is also reflected in the answers provided by Austria). There is only one study from 1996 on sexual violence against women and girls with disabilities[[64]](#footnote-64) proving the alarming situation in this regard in Austria.[[65]](#footnote-65)

**Proposed recommendation:**

* Mainstream legislation and disability-specific legislation has to address the heightened risk for girls and women with disabilities of becoming victims of violence, abuse and exploitation in the home, institutions and the community. Adopt urgent measures to ensure the prosecution of perpetrators and the accessibility of support services and information for women with disabilities, including training of police and other interlocutors. Systematically require the collection of disaggregated data (including by sex and disability) to ensure adequate information on the situation and lived experiences of women and girls with disabilities to prevent and address violence against them. Increase the accessibility of existing violence protection services, including hotlines, information brochures, women’s shelters, etc.

**Ad para 40.**

“Studies investigating the labour market participation in Austria show that women with disabilities are largely underrepresented. Persons with disabilities generally face a much higher risk of being excluded from the labour market. That said women with disabilities form the most marginalised group in this context. Depending on the definition of disability, their participation rates vary between 31% and 49% while those of men with disabilities range between 37% and 62%.[[66]](#footnote-66)

The majority of women with disabilities working in the mainstream labour market, work in “women-specific” sectors. Their income is frequently below standard and they usually occupy very low hierarchy levels. [[67]](#footnote-67) Compared to men they are far more often employed for part time work and have a much lower income. Mothers with disabilities often have difficulties in re-entering the labour market (also due to an increased discontinuity in their employment history).[[68]](#footnote-68) The Monitoring Committee has issued recommendations on work and employment of persons with disabilities.”[[69]](#footnote-69)

These alarming facts clearly demonstrate that there is a lack of adequate measures to combat the underrepresentation of women with disabilities in the labour market and that general measures and benefits in this area do not sufficiently consider the gender aspect.

**Proposed recommendation:**

* Significantly increase empowerment measures and specialized programs for women and girls with disabilities in the areas of education and work in order to enhance inclusion in these ambits and to create equal opportunities for all. This includes, inter alia, gender-sensitive job-seeking and the creation of new career opportunities for women with disabilities as well as specialized vocational training. Ensure the elimination of barriers and the introduction of demand driven support in the respective areas.

**Article 7 (children with disabilities)**

**Ad para 41.**

Even though the Federal Government is making a total of € 100 million available for the period 2008- 2014 in order to increase the number of child care places on offer, this does not mean that children with disabilities benefit particularly from this, because many facilities are not inclusive and not accessible either.

The child care situation in the provincial capitals is better than in rural areas, as the opening hours there are often not designed so that parents can work full-time, even with children without disabilities. The opening hours of special educational facilities, if they actually exist, are often even more rigid than those of conventional facilities. Most afternoon care facilities are not accessible and are not inclusive.

There are no national statistics on barrier-free and/or inclusive child care facilities. The reply to an enquiry made to Statistics Austria was that this issue had never been surveyed until now.

Therapy and support services related to the upbringing of children are not primarily for the purpose of child care.

Deaf and hard-of-hearing children are often not accepted in regular Kindergarten. If admitted they do not receive adequate support. Special care in the larger cities is speech-oriented. Sign language proficient bilingual environments are the exception. (also see para 3).

**Proposed recommendation:**

* Significantly enhance the measures in order to increase the availability of inclusive and accessible child care for children with disabilities with particular attention given to the rural areas and take steps to revise the opening hours of child care facilities to the needs of full-time workers.

**Ad para 42.**

There are ombudsman offices for children and youth in the Länder. However, according to the information available to the authors, there are no adequate specialized measures designed for children with disabilities in order to enable them to report violence and neglect in institutions.

**Proposed recommendation:**

* Address the heightened risk for children with disabilities, in particular girls, of becoming victims of violence and abuse, and adopt urgent measures to ensure that both services and information for victims are made accessible to children with disabilities living in institutions and the community. Take all the necessary measures for the prevention of abuse of and violence against children with disabilities, such as:

ensuring that children and caregivers know that the child is entitled as a matter of right to be treated with dignity and respect and they have the right to complain to appropriate authorities if those rights are breached, including actions to educate and raise awareness amongst children with disabilities in an accessible manner which is appropriate for their age;

ensuring that institutions providing care for children with disabilities are staffed with specially trained personnel, subject to appropriate standards, regularly monitored and evaluated, have a sensitive complaint mechanisms accessible to children with disabilities; and

enhancing preventive measures against forced abortion and forced sterilisation.

1. **Specific obligations**

**Article 33 (national implementation and monitoring)**

**Ad para 43.**

As the Monitoring Committee already stated in 2009, the fact that it is integrated into the organisation of the Federal Ministry on Labour, Social Affairs and Consumer Protection means that it lacks the independence which it is required to have. In addition, its independence is not safeguarded by the Constitution. The Monitoring Committee would need to be deployed on the basis of its own legal statute, and it also does not have its own budget which it can administer autonomously.[[70]](#footnote-70) “Above and beyond this, the integration of the Monitoring Committee into the Federal Ministry of Labour, Social Affairs and Consumer Protection contravenes the spirit of the Convention, which aims to achieve the inclusion of people with disabilities in **all** social and political **fields**. The Convention covers all human rights and thus encompasses all areas of life – reducing it to social agendas creates the impression that the exclusion of people with disabilities continues to be primarily seen as a ‘social issue’.”[[71]](#footnote-71)

**Proposed recommendation:**

* Re-establish the Monitoring Committee as an independent institution in line with the principles relating to the status and functioning of national institutions for protection and promotion of human rights as a Parliament entity and allocate adequate independently managed budget to guarantee the effective fulfilment of its mandate according to Sec 13 Federal Disability Act and to ensure that the Monitoring Committee regular contact and follow-up with all levels of the legislative and administrative powers of the Federal Republic and of the federal provinces, including monitoring entities of the Länder.[[72]](#footnote-72)

**Ad para 44.**

The Monitoring Offices in the Länder are even more poorly set up than the Federal Monitoring Committee. Usually they are composed of experts who have been selected and brought in by the Länder themselves. Many of these Monitoring Offices have not even begun working yet. In addition, they often lack independence.

Example Vienna:

In the Viennese Anti-Discrimination Act of Sept. 2010, the City of Vienna set up an Office for Combating Discrimination with the involvement of four representatives of the organisations of people with disabilities in order to promote, monitor and ensure the enforcement of the UN Convention.

These four representatives had a say in the drawing up of the rules of procedure and elected a chairperson. A resolution was adopted on a recommendation on personal assistance.

However, the Monitoring Office has de facto no effect on the outside world, because:

1. The chairman is an employee of the City of Vienna and is therefore NOT independent.

2. The relevant legislation does not specifically provide for a Monitoring Office, so the latter is merely an additional task of the Office for the Combating Discrimination.

This leads to the recommendations of the Monitoring Office not (or not sufficiently) being publicised, and to the fact that proposals for the implementation of the UN Convention which contain an element of criticism are not, or insufficiently, negotiated with decision-makers in politics and administration.

This is especially problematic because Vienna was the first Land to introduce a monitoring mechanism and there is sufficient reason to fear that it is used as role model for the other Länder.

**Proposed recommendation:**

* Intensify efforts to establish genuine and coordinated independent monitoring mechanisms at Länder level and set legal and other measures to guarantee the independence of their functioning. Allocate adequate budget to guarantee the effective fulfilment of this mandate.

**ANNEX:**

**List of contributors:**

Bernadette Feuerstein (Independent Living Austria, SLIÖ)

Petra Flieger (Independent Living Austria, SLIÖ)

Lukas Huber (Austrian Association of the Deaf, ÖGLB)

Magdalena Kern (Light for the World Austria)

Martin Ladstätter (Bizeps)

Johanna Mang (Light for the World Austria)

Christina Meierschitz (Austrian National Council of Persons with Disabilities, ÖAR)

Ursula Naue (University of Vienna)

Petra Pinetz (Association Integration Vienna)

Erika Plevnik (Austrian Organisation for Civil Handicapped People, ÖZIV)

Inge Pröglhöf

Claudia Schönwetter-Vogt (Austrian Association of the Deaf, ÖGLB)

Volker Schönwiese (Independent Living Austria, SLIÖ)

Bernhard Schmid (Lebenshilfe Vienna)

Silvia Weissenberg (Lebenshilfe Austria)

Florian Wibmer (Austrian Deaf Student Association, VÖGS)

Christina Wurzinger (Austrian National Council of Persons with Disabilities, ÖAR)

1. List of participants see Annex. [↑](#footnote-ref-1)
2. See http://www.oear.or.at/ihr-recht/un-behindertenrechtskonvention/zivilgesellschaftsbericht. [↑](#footnote-ref-2)
3. Cf. Linguistic Genocide in Education, Tove Skutnabb-Kangas (2000): A mother tongue is the preferred language and/or the language one acquires first and/or the language one identifies with. Sign language is the only language that deaf children can naturally acquire. [↑](#footnote-ref-3)
4. In primary school, “students with other first languages than German“ have the option to get 2-6 hrs weekly (unverbindliche Übung) native language instruction, which – since ÖGS is not considered a mother tongue – cannot be used for ÖGS. In secondary school the situation is similar. [↑](#footnote-ref-4)
5. “Sprache Macht Wissen“, <http://www.univie.ac.at/sprachemachtwissen/index.htm> [↑](#footnote-ref-5)
6. In several places ÖGS is put on equal footing with auxiliary means like manual codes that in contrast to sign languages are representations of oral languages in a gestural-visual form. <http://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2008_II_137/COO_2026_100_2_440356.html> [↑](#footnote-ref-6)
7. Where a school or a hearing teacher offers bilingual education with ÖGS, this has been despite current legislation and regulations by federal and Länder authorities. The few existing attempts are characterised by extraordinary engagement of parents and/or teachers, and local authorities. The ÖGS level of teachers in general does not reach GERS level B1 due to a lack of training opportunities and formal requirements. [↑](#footnote-ref-7)
8. The Centre for Sign Language and Deaf Communication of the University of Klagenfurt has developed a draft curriculum for deaf children for primary school which was declined by BMUKK. [↑](#footnote-ref-8)
9. Mentioned recommendations of the BMUKK are a 22-pager that again make ÖGS a mere auxiliary tool. See <http://www.cisonline.at/index.php?id=422> [↑](#footnote-ref-9)
10. Arnstein argued that information and consultation are part of a tokenistic approach towards participation. [↑](#footnote-ref-10)
11. The Standards of Public Participation were adopted by the Austrian Council of Ministers on 2 July 2008 and recommended to be applied by the Austrian federal administration. See <http://www.partizipation.at/standards_pp.html>. [↑](#footnote-ref-11)
12. As a consequence, members of the Independent Living Movement in Germany developed a shadow translation. However, the governments as well as the public administrations always use the official translation. The shadow translation can be downloaded here:   
    <http://www.netzwerk-artikel-3.de/attachments/093_nw3_schattenuebersetzung_screenreader.rtf>. [↑](#footnote-ref-12)
13. There is also no will to finance a sign language translation. [↑](#footnote-ref-13)
14. The Klagsverband (Litigation Association of NGOs Against Discrimination) has made a comprehensive compilation, see <http://www.klagsverband.at/gesetze/laender>. [↑](#footnote-ref-14)
15. See National Action Plan on Disability, measure 43, p.32. [↑](#footnote-ref-15)
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17. Federal Ministry of Labour, Social Affairs and Consumer Protection) (ed.) (2012). Evaluierung des Behindertengleichstellungsrechts. (Evaluation of the Disability Equality Law). Vienna: BMASK.p. 61. For download in German: http://www.bizeps.or.at/downloads/bgstg\_evaluierung.pdf [↑](#footnote-ref-17)
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    These numbers derive from an EU-SILC survey carried out in 2006. It should be mentioned that the microcensus survey carried out in 2007 showed slightly different numbers but lead to the same conclusion – that is that women with disabilities are clearly underrepresented in the labour market compared to men with and without disabilities and to women without disabilities. [↑](#footnote-ref-66)
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