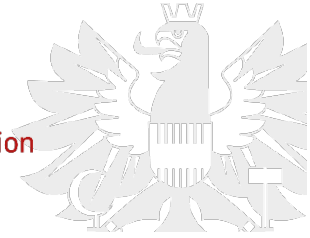


MonitoringAusschuss

Unabhängiger Monitoringausschuss zur Umsetzung der UN-Konvention
über die Rechte von Menschen mit Behinderungen



“The implementation of CEDAW in Austria with regard to women and girls with disabilities”

Report to the Pre-Sessional Working Group 2024

submitted by the

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

I. Introduction

The Convention on the Rights of Persons with Disabilities (CRPD) was signed by Austria on March 30th 2007 and ratified in October 2008.¹ The CRPD came into force more than 25 years later than the CEDAW, which was ratified in 1982. Both conventions contain significant overlaps, as both aim to improve the human rights situation. The principle of non-discrimination for example in Article 3 lit. b and g CRPD explicitly refer to the equality of men and women.

The Independent Monitoring Committee was established in accordance with Article 33 para 2 CRPD. The remit of the Independent Monitoring Committee is to monitor, protect and promote human rights of people with disabilities in Austria. The Independent Monitoring Committee issues statements and recommendations on the provisions of the CRPD, including recommendations on the implementation of human rights for women and girls with disabilities with reference to the CEDAW-Committee General Recommendations No. 18 “Disabled Women”.²

This report is directed at the Pre-Sessional Working Group for the preparation of the List of Issues Prior to Reporting as part of Austria’s tenth CEDAW review cycle. The structure of this report is based on the topics relevant to women and girls with disabilities and is orientated towards the articles of the CEDAW and the CRPD. The current Concluding Observations of the UN Committee on the Elimination of Discrimination against Women

¹ Federal Law Gazette III 2008/155.

² See *Independent Monitoring Committee*, Statement on the Implementation of the Convention on the Elimination of Discrimination against Women in Austria (Seventh Periodic Report in accordance with Article 18 CEDAW) for women and girls with disabilities (2012) 2, https://www.monitoringausschuss.at/wp-content/uploads/download/documents-in-english/MA_SN_austria_crpdc_committee_submission_cedaw_2012_04_12.pdf (accessed on 11.12.24).

(CEDAW-Committee) (CEDAW/C/AUT/CO/9) and the UN-Committee on the Rights of Persons with Disabilities (CRPD-Committee) (CRPD/C/AUT/CO2-3*) are considered.

II. Discrimination against women and girls with disabilities

Article 1, 2, 3 und 4 CEDAW / Article 3, 4, 5 und 6 CRPD

Both the CEDAW and the CRPD aim to fight discrimination. The Independent Monitoring Committee sees an urgent need for action in Austria to ensure equal rights for people with disabilities, such as stronger legal enforcement options to act against discrimination.³

The CRPD-Committee also noted during the last state review in August 2023 concerning Austria there are no appropriate mechanisms to combat intersectional discrimination against woman with disabilities. Furthermore, the laws on gender equality do not include a disability perspective and there is a lack of disaggregated data about women and girls with disabilities at federal and state level. The CRPD-Committee calls for effective and specific measures to ensure access to prevention and protection mechanisms against gender-based violence (counseling centers, sex education, etc.) and the consistent integration of rights of women and girls with disabilities in all gender equality and disability-related laws and regulation.⁴

In its Concluding Observations on Austria`s last state report in 2019, the CEDAW-Committee also reaffirmed the need to take women and girls with disabilities into account in all political measures for gender equality and to consider temporary special measures.⁵

Questions:

- **How has Austria implemented the Concluding Observations of the CEDAW-Committee No. 41 (2019) and of the CRPD-Committee No. 19 (2023)?**
- **What legal and de facto measures has Austria taken since the last CEDAW state review in 2019 to combat multiple and intersectional discrimination against women and girls with disabilities?**

³ *Independent Monitoring Committee*, Monitoring Report for the UN Committee on the Rights of Persons with Disabilities on the Occasion of the Second Constructive Dialogue with Austria (2023) 5, https://www.monitoringausschuss.at/wp-content/uploads/2023/07/Monitoring-Report-2023_engl.pdf (accessed on 11.12.24).

⁴ *CRPD-Committee*, Concluding observations on the combined second and third periodic reports of Austria, CRPD/C/AUT/CO/2-3* No.19.

⁵ *CEDAW-Committee*, Concluding observations on the ninth periodic report of Austria, CEDAW/C/AUT/CO/9 No. 41.

- **How does Austria ensure that systematic gender-disaggregated data on discrimination is available?**

III. Gender-based violence against women and girls with disabilities

Article 1, 2, 6 CEDAW / Article 16 CRPD

While the definition of discrimination enshrined in Article 1 CEDAW “*includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately*”⁶, CRPD has its own article (Article 16 CRPD) on protection against exploitation, violence and abuse, including based on gender. Therefore, appropriate measures must be taken to prevent and rehabilitate victims, including women with disabilities.

Studies and the Independent Monitoring Committee have found that women and girls with disabilities are affected by sexualized, physical and psychological violence to a much greater extent in Austria than women without disabilities. Within the group of women with disabilities women with intellectual and psychosocial disabilities and women who live in institutions are demonstrably more likely to be victims of violent assaults. The lack of concepts for the advancement of sexual self-determination and the prevention of violence in institutions and of accessible legal remedies in the event of incidents are evident.⁷ In addition, victim protection facilities and counseling centers are often not accessible.⁸

Therefore, the Concluding Observations of the CRPD-Committee call for the close involvement of organizations representing the interests of women and girls with disabilities, for measures to actively fight violence, for concepts for sexual self-determination and for the prevention of violence in institutions, as well as legal remedies.⁹ Regarding institutions, the longer-term goal is their dissolution (de-institutionalization) with the simultaneous provision of sufficient support services and compensation for women and girls with disabilities in institutions.¹⁰ The CEDAW-

⁶ CEDAW General Recommendation 19, para 6.

⁷ The Austrian Ombudsman Board (Volksanwaltschaft) conducted 2024 an audit on “Sexual self-determination of persons with disabilities” in institutions and facilities and issued findings and recommendations. See *Austrian Ombudsman Board*, https://volksanwaltschaft.gv.at/downloads/af9u6/Presseunterlage_VA_Schwerpunkt_MmB_bf_20240220.pdf (accessed on 9.12.24).

⁸ See *Mayrhofer/Schachner/Mandl/Seidler*, *Erfahrungen und Prävention von Gewalt an Menschen mit Behinderungen* (Experiences and prevention of violence against people with disabilities) (2019), <https://broschuerenservice.sozialministerium.at/Home/Download?publicationId=718> (accessed on 11.12.24).

⁹ CRPD/C/AUT/CO/2-3* No. 41 f.

¹⁰ CRPD/C/AUT/CO/2-3* No. 42.

Committee also emphasizes in its Concluding Observations the need to ensure access to all victims of gender-based violence.¹¹

Questions:

- **What legal and de facto measures has Austria taken since the last CEDAW state review in 2019 to protect women and girls with disabilities from violence?**
- **How does Austria ensure that women and girls with disabilities, especially women and girls in institutions, experience sexual self-determination and receive comprehensive information?**
- **What measures and resources has Austria made available since the last CEDAW state review in 2019 to ensure the accessibility of victim protection centers and women`s shelters?**

IV. Living independently and being included in the community for women and girls with disabilities

Articles 1-3 CEDAW / Article 19 CRPD

While CEDAW connects the aspect of self-determination as a cross-cutting issue to the comprehensive concept of protection against discrimination, Article 19 CRPD contains a separate provision on self-determined living and inclusion in the community. According to this, people with disabilities have the right to live independently. Support services such as personal assistance must be provided.

However, this does not reflect the reality in Austria. There is still a basic social attitude that people with disabilities are in good hands in institutions. Women with intellectual and psychosocial disabilities are particularly affected by institutionalization. Personal assistance in everyday life as an important measure for a self-determined life is not available throughout Austria in line with demand. The Ministry of Social Affairs is planning to standardize the requirements for personal assistance in terms of human rights in all federal states. Yet only some of the federal states are participating in this project. Vienna, the largest federal state, recently decided not to take part.¹²

The Independent Monitoring Committee observes these developments with great concern and notes a lack of political will to dismantle institutions. The CRPD-Committee also reiterated in its Concluding Observations the need for a comprehensive national de-institutionalization strategy, including targets, deadlines and corresponding funding. Furthermore, Austria must ensure that no further investments are made in existing or new

¹¹ CEDAW/C/AUT/CO/9 No. 41.

¹² See *Bizeps*, <https://www.bizeps.or.at/enttaeusches-des-nein-persoенliche-assistenz-bleibt-fuer-viele-in-wien-unerreichbar/> (accessed on 09.12.24).

institutions.¹³ The CEDAW-Committee also emphasized the self-determination of women and girls with disabilities.¹⁴

Questions:

- **When and how will Austria implement the CRPD-Committee's Concluding Observations No. 48, such as a nationwide and coordinated de-institutionalization strategy?**
- **What effective measures has Austria (nationwide) implemented to ensure needs-orientated personal assistance in all areas of life?**
- **What measures is Austria taking to ensure that institutions are dismantled and women and girls with disabilities can live and reside independently in accordance with the CEDAW-Committee's Concluding Observations No. 41?**

V. Inclusive education

Article 10 CEDAW / Article 24 CRPD

Women and girls with disabilities are still disadvantaged in the education system in Austria. This begins in the elementary sector with the lack of inclusive kindergarten places and continues with the segregated education system in Austria. Girls with – so called - special educational needs are often taught in special needs schools. Access to the mainstream school system is extremely difficult for girls with special educational needs. The Austrian school system does not provide comprehensive and needs-orientated personal assistance for students with disabilities at school. This applies to school lessons, but also to support during breaks, after-school care and school trips.

The Independent Monitoring Committee notes with concern that Austria is far from realizing an inclusive education system and has written a special report to the CRPD-Committee on this issue.¹⁵

The Concluding Observations of the CRPD-Committee envisage the immediate dismantling of the segregated school system.¹⁶ The CRPD-Committee calls in addition for a comprehensive collection of data on the inclusivity of the education system, broken down by gender among other criteria, to provide an accurate picture of the educational opportunities of women and girls with disabilities.¹⁷ The CEDAW-Committee also states

¹³ CRPD/C/AUT/CO/2-3* No. 48.

¹⁴ CEDAW/C/AUT/CO/9 No. 41.

¹⁵ See *Independent Monitoring Committee*, Special Report Art. 24 - Education (2023), https://www.monitoringausschuss.at/wp-content/uploads/2023/07/Monitoring-Report-2023_engl.pdf (accessed on 11.12.24).

¹⁶ CRPD/C/AUT/CO2-3* No. 58.

¹⁷ CRPD/C/AUT/CO/2-3* No. 58.

in its Concluding Observations that girls with disabilities must have access to inclusive learning opportunities in the regular education system.¹⁸

Questions:

- **What measures has Austria taken to ensure an inclusive education system in line with the Concluding Observations of the CPRD-Committee No. 58 (2023) and the CEDAW-Committee No. 31 (2029)?**
- **How does Austria collect comprehensive educational data, disaggregated by gender, in order to comply with the CRPD-Committee's Concluding Observations No. 58?**
- **What measures have been taken regarding personal assistance in the context of school, including breaks, school trips and after-school care?**

VI. Inclusive labor market

Article 11 CEDAW / Article 27 CPRD

The Independent Monitoring Committee notes with concern that especially women and girls with disabilities are affected by segregation in the labor market. Their formal qualifications are in most cases lower than those of men with disabilities or women without disabilities. Studies on labor market participation in Austria show that women with disabilities are largely underrepresented.¹⁹

Women with intellectual and psychosocial disabilities often have no prospect of employment with health and pension insurance and an independent livelihood. They work for “pocket money” in day-structuring programs. There is also a nationwide lack of needs-based personal assistance and other support options that enable equal participation in the labor market. Austria must ensure in accordance with the CEDAW-Committee's Concluding Observations that women and girls with disabilities gain access to the regular labor market and that temporary special measures are implemented to create further employment opportunities, if necessary.²⁰ It is also Austria's responsibility according to the Concluding Observations of the CRPD-Committee to guarantee measures

¹⁸ CEDAW/C/AUT/CO/9 No. 31.

¹⁹ See the Study by *Aufhauser et al*, Chancengleichheit für Frauen mit Behinderungen am Arbeitsmarkt. Hindernisse – Herausforderungen – Lösungsansätze (Equal opportunities for women with disabilities in the labor market. Obstacles - Challenges – Solutions) (2020), https://www.lrsocialresearch.at/wp-content/uploads/2024/03/2021_Chancengleichheit_Frauen_Behinderungen_Arbeitsmarkt.pdf (accessed on 11.12.24).

²⁰ CEDAW/C/AUT/CO/9 No. 33 und No. 41.

are taken to eliminate the gender gap in employment and pay, and appropriate provisions and personal assistance are available in the workplace.²¹

Questions:

- **How have the Concluding Observations of the CEDAW-Committee No. 33 and No. 41 (2019) and the CRPD-Committee No. 64 (2023) for an inclusive labor market been implemented?**
- **What (nationwide) measures have been taken since the last CEDAW state review in 2019 to ensure women and girls with disabilities have equal access to the labor market?**
- **How are reasonable accommodations and personal assistance in the workplace for women and girls with disabilities ensured?**

VII. Healthcare for women and girls with disabilities

Article 12 CEDAW / Article 25 CRPD

Access to healthcare in Austria is for women and girls with disabilities comparatively more difficult than for other groups. This is partly because the Austrian healthcare system is not comprehensively accessible. In addition, women and girls with disabilities face intersectional discrimination in the healthcare system and are taken less seriously by healthcare staff due to ableist and gender-specific stereotyping.²²

According to the law, women with disabilities who have legal representation must still be able to make their own decisions about medical interventions – if necessary, with support, which the medical staff must organize. It is evident in practice, however, that far too little consideration is given to this and often no supported decision-making is organized by medical staff.

The CRPD-Committee recommended Austria to ensure the accessibility of healthcare services and facilities, including through qualified sign language interpreters in the healthcare sector.²³ According to the CEDAW-Committee, Austria must ensure a free and informed choice is guaranteed for any medical treatment, if necessary, with the help of support services.²⁴

²¹ CRPD/C/AUT/CO/2-3* No. 64.

²² CEDAW/C/AUT/CO/9 No. 35.

²³ CRPD/C/AUT/CO/2-3* No. 60.

²⁴ CEDAW/C/AUT/CO/9 No. 35.

Questions:

- **What measures have been taken since the last CEDAW state review in 2019 to guarantee women and girls with disabilities equal access to healthcare and comprehensive accessibility?**
- **How is guaranteed that women with disabilities (with legal representation) can make their own decisions about medical interventions?**
- **What training and educational content is offered to healthcare professionals to overcome ableist and gender-stereotypical prejudices against women and girls with disabilities in the healthcare system?**

VIII. Reproductive rights of women and girls with disabilities

In particular Article 16 CEDAW / Article 8, 9, 19, 25 CRPD

Abortion is regulated in Austria in the Criminal Code. According to this, abortion within the first three months is exempt from punishment. Afterwards it is only possible to have an abortion in certain situations, for example if there is a risk of “serious damage to the fetus”. The costs are generally to be borne by the patient. The amount of the costs varies from federal state, as does the number of doctors who perform the procedure.

The access to abortion for pregnant women and girls with disabilities is often more difficult due to existing barriers. This starts with the lack of accessible information on the legal situation and counselling centers. It must be guaranteed that pregnant women and girls with disabilities have accessible access to abortion as well as additional accompanying accessible measures, such as counselling, and reasonable accommodations.

The CEDAW-Committee and the CRPD-Committee issued a joint statement about the guarantee for sexual and reproductive health and rights for all women, in particular women with disabilities.²⁵ This statement criticizes the difference in the regions and the current political development that restrict the rights of women in general. The states have the obligation to protect the guarantee for sexual and reproductive health for all women based on CEDAW and CRPD without discrimination. Therefore, legal and safe abortion, information and counseling must be guaranteed and accessible.²⁶

Another problem in the context of the reproductive self-determination of women and girls with disabilities is the risk of coercive treatment and interference with reproductive

²⁵ CEDAW-Committee/CRPD-Committee, *Guaranteeing sexual and reproductive health and rights for all women, in particular women with disabilities - Joint statement by the Committee on the Rights of Persons with Disabilities and the Committee on the Elimination of All Forms of Discrimination against Women* (2018) 1 f.

²⁶ CEDAW-Committee/CRPD-Committee, *Guaranteeing sexual and reproductive health and rights for all women, in particular women with disabilities* 1 f.

rights. Women and girls with disabilities, especially those with intellectual and psychosocial disabilities, are confronted with such treatments to much greater extent. It is therefore essential that in Austria forced medical treatments must be banned and criminalized, like forced sterilization, involuntary abortions and other treatments, that are not based on the free will.²⁷ This was also confirmed by the Concluding Observations of the CRPD-Committee and the CEDAW-Committee, which call for guaranteed access to sexual and reproductive health services, in particular contraception and sex education. Furthermore, gender-disaggregated data and general accessibility in the healthcare system are called for.²⁸

Questions:

- **How is ensured pregnant girls and women with disabilities can exercise their reproductive rights in an equal manner (accompanying measures, reasonable accommodations, accessible abort options)?**
- **What data is available for Austria on reproductive self-determination, including accessible services, and on interventions in these rights and coercive treatments?**
- **What measures has Austria taken since the last CEDAW state review in 2019 to prevent coercive treatment and interventions in the reproductive rights of women and girls with disabilities against their will?**

IX. Marriage and family life

Article 16 CEDAW / Article 23 CRPD

The content of the provisions of Article 16 CEDAW and Article 23 CRPD on family relationships are in large parts similar. The difference is Article 16 CEDAW is also referring to the invalidity of child marriage and Article 23 CPRD to support parents with disabilities in exercising their rights, the protection to retain their fertility and the right of the child not to be separated from the parents.

The Monitoring Committee is concerned about the persistent discrimination against women with disabilities regarding family life. Discrimination derives from stereotypes that deny them the ability of fulfilling parental duties adequately and of leading an independent family life. This is exacerbated by the lack of specific support measures such as accompanied parenthood for mothers with disabilities, especially those with intellectual and psychosocial disabilities, or personal assistance during pregnancy and after birth.

²⁷ Voithofer, Art. 6, in Naguib (eds.), UNO-Behindertenrechtskonvention (2023) No. 89.

²⁸ CRPD/C/AUT/CO/2-3* No. 60; CEDAW/C/AUT/CO/9 No. 35.

The Concluding Observations of the CRPD-Committee criticize the fact that necessary support services for parents with disabilities are not available and separation of parents and children due to disabilities continues to take place. The CRPD-Committee recommends Austria to provide appropriate support services to effectively exercise the right to family life.²⁹ The CEDAW-Committee also expressed in its Concluding Observations concern about the existing intersectional discrimination faced by mothers with disabilities.³⁰

Questions:

- **How and in what form does Austria ensure that women with disabilities can exercise their right to family and partnership on an equal basis with others?**
- **What support measures, such as assisted parenthood, have been implemented to ensure that women with disabilities can live together with their children?**
- **What measures are being taken since the last CEDAW state review 2019 to break down stereotypes and prejudices against mothers with disabilities?**

X. Data collection and statistics

Article 31 CRPD

In contrast to CEDAW, CRPD contains in Article 31 a separate provision on the collection of data and statistics on persons with disabilities to develop and implement policies to fulfil the Convention. Nevertheless, there is a great lack of gender-specific data on women and girls with disabilities in all areas. There is little information on women and girls with disabilities and on lesbian, gay, bisexual, transgender and intersex people with disabilities, as well as for women and girls with disabilities in institutions.³¹

The Concluding Observations of the CRPD-Committee therefore call for the development of a comprehensive national framework for this data.³² The CEDAW-Committee has also recommended the collection of statistical data on domestic and sexual violence, broken down by gender and disability, among other things.³³

Questions:

- **How does Austria ensure that data disaggregated by gender and disability is systematically collected and made available?**

²⁹ CRPD/C/AUT/CO/2-3* No. 56.

³⁰ CEDAW/C/AUT/CO/9 No. 40.

³¹ CRPD/C/AUT/CO/2-3* No. 71.

³² CRPD/C/AUT/CO/2-3* No. 72.

³³ CEDAW/C/AUT/CO/9 No. 23.

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