



Afghanistan: Brief on the Implementation of CRPD Commitments for Articles 3, 5, 27 and General Comment No. 6

*Information for the Committee on the Rights of Persons with Disabilities
15th Pre-Session Working Group, March 2022*

Table of Contents

Introduction	1
Summary of Findings and Recommendations	2
General equality and non-discrimination (Art. 3, 5).....	2
Non-discrimination in work and employment (Art. 27, Gen Comment No. 6).....	2
Reasonable accommodation at work (Art. 5, 27)	3
Detail	3
General equality and non-discrimination (Art. 3, 5).....	3
Work and Employment (Art. 5, 27, Gen Comment No. 6).....	4
Non-discrimination in work and employment (Art. 27, Gen Comment No. 6).....	4
Reasonable accommodation at work (Art. 5, 27)	6



INTRODUCTION

The WORLD Policy Analysis Center, based at the University of California, Los Angeles, captures quantitative policy data on more than 2,000 indicators that matter to equality, health, and well-being. We strive to improve the quantity and quality of globally comparative data available to policymakers, citizens, national governments, intergovernmental organizations, civil society, and researchers for all 193 UN member states. We submit the following brief in advance of the 15th Pre-Sessional Working Group of the Committee on the Rights of Persons with Disabilities.

WORLD works to advance the global evidence base on national laws and policies that address social and environmental barriers to the full realization of the right to work and education for persons with disabilities. We are immensely fortunate to have had a 19-member steering committee of global leaders from DPOs, academia, intergovernmental organizations, civil society and philanthropy that guided us on the development of these measures. While WORLD is responsible for this submission and its content, we have benefited greatly from their advice.

The WORLD Policy Analysis Center's examination of Afghanistan's constitutional provisions and legislation vis à vis the commitments it has made through its ratification of the Convention is focused in the following areas:

- General Equality and Non-Discrimination
- Non-Discrimination in Work and Employment
- Reasonable Accommodation at Work

We have collected and analyzed information on rights, laws, and policies in these areas for all 193 UN member states using a variety of sources, including primary national legal sources (e.g. original legislation and constitutions), national reports on policies and laws to the United Nations and official global and regional bodies, and secondary sources where clarification or corroboration of primary data is needed. Using a rigorous double-coding process, we create original databases which distill thousands of pages of text to highlight the essential features of each right, law, or policy. These original databases are the reference for the following brief. When drafting each brief, we perform a series of additional verifications to ensure the data provided reflects the current constitutional and legal landscape of a country.

In this report, we provide a summary of our constitutional and legislative findings as well as suggested questions for the Committee to ask Afghanistan and topics we hope the Committee will address in its concluding observations. We hope the Committee will recommend that Afghanistan address any gaps in consultation and collaboration with relevant stakeholders, including civil society organizations. We also recognize that while having strong laws and policies in place are necessary first steps, implementation is also of paramount importance. In areas where we have commended Afghanistan for having provisions in place, we hope the Committee will recommend that Afghanistan work with stakeholders to overcome any obstacles in implementing these provisions.



SUMMARY OF FINDINGS AND RECOMMENDATIONS

General equality and non-discrimination (Articles 3, 5)

Based on our review of full-text national constitutions, Afghanistan broadly guarantees equality and non-discrimination to all citizens. **However, the constitution does not explicitly guarantee equality or non-discrimination to persons with disabilities, who may face distinct barriers to accessing these rights.**

We hope the Committee will:

- Recommend in its concluding observations that Afghanistan **amend the constitution to add explicit guarantees of equality and non-discrimination regardless of disability status**, consistent with CRPD commitments. These guarantees could be added to article 22 of the constitution, which already prohibits discrimination between citizens of Afghanistan and guarantees equality on the basis of gender.

Non-discrimination in work and employment (Article 27)

Our systematic review of national legislation **did not identify any national legislative provisions that prohibit discrimination at work on the basis of disability in Afghanistan.**

We hope the Committee will:

- In its list of issues, ask Afghanistan: Can Afghanistan outline any concrete, near-term plans to pass legislation that explicitly prohibits disability-based discrimination in work and employment?
 - If Afghanistan does not have concrete, near-term plans in place, recommend in its concluding observations that Afghanistan pass and implement legislation that explicitly prohibits disability-based discrimination in the following critical aspects of the working life course:
 - Employment opportunities and hiring
 - Equal remuneration for work of equal value
 - Access to employer-provided vocational training at work
 - Career advancement, including promotions and demotions
 - Continuance of employment or terminations
 - We also hope the Committee will recommend that this legislation include effective enforcement mechanisms, as well as protection from retaliation by employers against those reporting incidents of workplace discrimination.



Reasonable accommodation at work (Articles 5, 27)

Based on our systematic review of national legislation, **we did not identify any national legislative provisions that guarantee reasonable accommodation at work in Afghanistan.**

We hope the Committee will:

- In its list of issues, ask Afghanistan: Can Afghanistan outline any concrete, near-term plans to pass legislation that guarantees employer-provided reasonable accommodation to workers with disabilities?
 - If Afghanistan does not have concrete, near-term plans in place, recommend in its concluding observations that Afghanistan pass and implement legislation that guarantees employer-provided reasonable accommodation to workers with disabilities.

DETAIL

While the following review is systematic and rigorous, we recognize that there may be laws or policies governing these areas that we have not captured, including new legislation or policies that have not yet been published globally.

General equality and non-discrimination (Articles 3, 5)

Article 3 of The Convention states that:

The principles of the present Convention shall be:

(b) Non-discrimination;

Additionally, Article 5.1 calls on states parties to “recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law”, and Article 5.2 states that “States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.”

We reviewed full text constitutions for all 193 UN member states available from official government sources to determine whether the constitution explicitly guaranteed equality or non-discrimination on the basis of disability by prohibiting discrimination, guaranteeing equal rights, guaranteeing equality before the law, or guaranteeing overall equality or equal opportunities.

AFGHANISTAN’S CONSTITUTIONAL PROVISIONS: MISSING EXPLICIT GUARANTEES OF EQUALITY AND NON-DISCRIMINATION FOR PERSONS WITH DISABILITIES

Based on our review of full-text national constitutions, Article 22 of the Constitution of Afghanistan broadly prohibits discrimination against all citizens, and guarantees equality before the law on the basis of gender.



Constitution of Afghanistan

Chapter II: Fundamental Rights and Duties of Citizens

Article 22 Any kind of discrimination and distinction between citizens of Afghanistan shall be forbidden. The citizens of Afghanistan, man and woman, have equal rights and duties before the law.

However, the constitution does not explicitly guarantee equality or non-discrimination to persons with disabilities, who may face distinct barriers to accessing these rights.

WHY CONSTITUTIONS MATTER

Constitutions state the values of a country, describe the rights of people living within the country, and profoundly influence norms and practice. In nearly all countries, constitutions take precedence over other sources of law—making them critical tools for delineating and implementing equal rights. New constitutions and new rights guaranteed in constitutions can be used to overturn discriminatory laws as well as to legislate non-discrimination guarantees. Moreover, constitutions can offer protection against policy and legal changes during periods of social and political shifts that may seek to undermine equal rights. For these reasons and others, as the foundational document setting out the rights of all human beings in a country, a constitution and the rights contained therein are essential to realizing equal rights.

[Work and employment \(Articles 27, 5, General Comment No. 6\)](#)

Article 27 of the Convention calls on countries to advance equal work rights and prohibit disability-based discrimination “*with regard to all matters concerning all forms of employment*”. National laws and policies have an important role to play in achieving these goals and dismantling the discriminatory social and environmental barriers that maintain these disparities in employment. Laws and policies that advance equal work rights are critical.

[Non-discrimination in work and employment \(Article 27.1, General Comment 6\)](#)

Article 27.1 states that:

(...) States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:



- (a) *Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement (...)*
- (b) *Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, (...) including protection from harassment, and the redress of grievances;*
- (d) *Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;*

Per General Comment 6:

Article 5 (2) contains the legal requirements for achieving equality rights for persons with disabilities and persons associated with them. The obligations to prohibit all discrimination on the basis of disability includes persons with disabilities and their associates, e.g. parents of children with disabilities.

General Comment 6 further outlines that:

The duty to prohibit “all discrimination” includes all forms of discrimination. International human rights practice identifies four main forms of discrimination, which can occur individually or simultaneously:

- b. *“Indirect discrimination” means that laws, policies or practices appear neutral at face value but have a disproportionate negative impact on a person with a disability. It occurs when an opportunity that appears accessible in reality excludes certain persons owing to the fact that their status does not allow them to benefit from the opportunity*

We systematically reviewed national labor codes, penal codes, equal opportunity, anti-discrimination legislation and other relevant legislation available through the International Labour Organization’s NATLEX database as of May 2018 for all 193 UN member states to determine whether national legislation prohibited discrimination on the basis of disability in employment. We examined legal protections across five areas covered by the Convention:

- Employment opportunities or hiring
- Equal remuneration for work of equal value
- Vocational training at work
- Career advancement, including promotions/demotions
- Continuance of employment or terminations



We assessed whether there were explicit prohibitions from discrimination at work based on disability in each of these areas, and whether legislation explicitly prohibited harassment based on disability. We further examined whether there were provisions that protected employees from retaliatory action for reporting disability discrimination. We also examined whether legislation prohibited both direct and indirect forms of discrimination.

AFGHANISTAN’S LEGISLATIVE PROVISIONS: MISSING ANY PROTECTION AGAINST DISCRIMINATION OF PERSONS WITH DISABILITIES IN THE WORKPLACE

We recognize there may be other policies governing discrimination at work, but **our systematic review of national legislation did not identify any national legislative provisions that prohibit discrimination at work on the basis of disability in Afghanistan.**

Table 1: Does Afghanistan have legislative provisions in place guaranteeing non-discrimination across the following eight key areas of employment?

Legislative provision	Is the legislative provision in place?
Employment opportunities and hiring	No provisions found
Equal remuneration for work of equal value	No provisions found
Employer-provided vocational training	No provisions found
Promotions and/or demotions	No provisions found
Terminations	No provisions found
Retaliatory action	No provisions found
Discriminatory harassment	No provisions found
Indirect discrimination	No provisions found

While we acknowledge that Article 117 of the Labor Law, as reported by Afghanistan, contains a provision on employment for the disabled, this provision applies only to employees who become disabled “due to performing their jobs”, and fails to prohibit discrimination between employees with and without disabilities.

[Reasonable accommodation at work \(Article 27.1, 5.3\)](#)

Article 27.1 of The Convention states that:

(...) States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:



- (i) *Ensure that reasonable accommodation is provided to persons with disabilities in the workplace”*

Additionally, Article 5.3 of the Convention States that *“in order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.”*

We analyzed whether countries legally guaranteed reasonable accommodation at work. We did not consider guarantees of general workplace accessibility to be equivalent to guaranteeing reasonable accommodation to an individual worker. To assess legislative guarantees of reasonable accommodation, we systematically analyzed national labor codes, equal opportunity legislation, anti-discrimination legislation, and other relevant legislation available through the International Labour Organization’s NATLEX database for all 193 UN member states.

AFGHANISTAN’S LEGISLATIVE PROVISIONS: MISSING ANY PROVISION GUARANTEEING REASONABLE ACCOMMODATION FOR PERSONS WITH DISABILITIES IN THE WORKPLACE

While we recognize there may be other policies governing reasonable accommodation in the workplace, **our systematic review of national legislation did not identify any national legislative provisions on reasonable accommodation at work for persons with disabilities in Afghanistan.**

Brief prepared by the WORLD Policy Analysis Center (WORLD), University of California, Los Angeles