



## Djibouti: Constitutional and Legislative Guarantees to Non-Discrimination and Inclusion at Work and School

Information for the Committee on the Rights of Persons with Disabilities  
12<sup>th</sup> Pre-Session Working Group, September 2019

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## EXECUTIVE SUMMARY

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 12<sup>th</sup> Pre-Sessional Working Group of the Committee on the Rights of Persons with Disabilities.

Over the past two years, WORLD has worked 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 a 19-member steering committee of global leaders from DPOs, academia, intergovernmental organizations, civil society and philanthropy that has guided us in determining priority areas for law and policy analysis and monitoring, and key directions for future work. While WORLD is responsible for this submission and its content, we have benefited greatly from their advice.

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. constitutional texts, original legislation), 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 our review.

While our review is systematic and rigorous, we recognize that there may be other laws or policies governing these areas that we have not captured. We also recognize that Djibouti may have passed legislation or enacted new policies since our most recent review. We therefore hope the Committee will include the following questions for Djibouti in its list of issues, and where applicable, make the recommendations outlined below in its concluding observations. We hope the Committee will recommend that Djibouti address any gaps in consultation and collaboration with relevant stakeholders, including DPOs and civil society organizations.

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

1. Equality and non-discrimination in the constitution
2. Non-discrimination in work and employment
3. Prohibiting discrimination in education and guaranteeing inclusive education



***Areas where Djibouti does not appear to have relevant provisions in place:***

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**A) Equality and non-discrimination in the constitution (Articles 3, 5)**

Based on our review of full-text national constitutions as of May 2017, Djibouti's constitution guarantees equality before the law to all persons "*without distinction of language, origin, race, sex or religion*", but does not specifically guarantee equality or non-discrimination based on disability status.

**We hope the Committee will:**

- Recommend in its concluding observations that Djibouti consider amending the constitution to add explicit guarantees of equality and non-discrimination based on disability status, consistent with CRPD commitments. These guarantees could be added to Article 1 of the constitution which already guarantees equality before the law for other personal characteristics and statuses.

**B) Reasonable accommodation at work (Article 27)**

Our systematic review of national legislation of the ILO's NATLEX database as of May 2018 did not identify any national legislative provisions that require employers to guarantee reasonable accommodation at work.

**We hope the Committee will:**

- In its list of issues, ask Djibouti: Can Djibouti demonstrate whether legislation exists that ensures reasonable accommodation is provided to persons with disabilities at work?
  - If no such legislation exists, recommend in its concluding observations that Djibouti pass and implement legislation that explicitly guarantees reasonable accommodation at work.

**C) Non-discrimination in education and inclusive education (Article 24)**

While we recognize there may be other policies and programs that currently govern or extend equal educational opportunities based on disability, or general practices, our systematic review of national legislation available through UNESCO and the ILO did not identify any national legislative provisions that explicitly guarantee inclusive education or non-discrimination in education in Djibouti.

**We hope the Committee will:**

- In its list of issues, ask Djibouti: Can Djibouti demonstrate whether legislation exists that prohibits discrimination in education based on disability?
- In its list of issues, ask Djibouti: Can Djibouti demonstrate whether national legislation exists that ensures inclusive education for students with disabilities?



- If no such legislation exists, recommend in its concluding observations that Djibouti pass and implement legislation that ensures equal education opportunities based on disability by guaranteeing inclusive education and non-discrimination in education based on disability.

***Areas where Djibouti has relevant provisions in place, but where these provisions do not appear to fully address the commitments Djibouti has made through its ratification of the CRPD:***

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## A) Non-discrimination in work and employment (Article 27)

Our systematic review of national legislation as of May 2018 highlights that Djibouti prohibits workplace discrimination on the basis of disability in some key areas of employment, but not all. Specifically, Djibouti prohibits discrimination in hiring and recruitment, career advancement, and terminations, and explicitly prohibits retaliatory action for reporting disability-based discrimination in these areas. We found no legislative provisions prohibiting discrimination in vocational training at work on the basis of disability, or guaranteeing equal remuneration for work of equal value for persons with disabilities. Further, Djibouti does not prohibit indirect discrimination or harassment at work on the basis of disability. However, Djibouti's legislation does broadly prohibit workplace discrimination based on disability.

### **We hope the Committee will:**

- In its list of issues, ask Djibouti: Can Djibouti demonstrate whether broad prohibitions of disability-based discrimination at work sufficiently protect persons with disabilities from discrimination in vocational training at work and equal remuneration for work of equal value?
  - If sufficient provisions do not exist, recommend in its concluding observations that Djibouti pass and implement legislation that explicitly prohibits discrimination based on disability in all aspects of the working life course, including in vocational training at work and equal remuneration for work of equal value.
- In its list of issues, ask Djibouti: Can Djibouti demonstrate whether broad prohibitions of disability-based discrimination at work extend to include indirect discrimination and harassment?
  - If sufficient provisions do not exist, recommend in its concluding observations that Djibouti pass and implement legislation that expands the definition of discrimination to include both direct and indirect discrimination as well as harassment.
- In its list of issues, ask Djibouti: Can Djibouti demonstrate how legal prohibitions of retaliation for reporting disability-based discrimination at work are being enforced, and whether all individuals, regardless of income, have access to an effective reporting process?



- If insufficient evidence is not provided to demonstrate implementation that prohibits retaliation in reporting, recommend in its concluding observations that Djibouti outline how it will improve implementation to ensure access to an effective reporting process for all individuals.

## DETAIL

### 1. Equality and Non-Discrimination in the Constitution (Articles 3, 5)

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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.”

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 human rights. We reviewed full text constitutions as of May 2017 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.

#### DJIBOUTI’S CONSTITUTIONAL PROVISIONS

Based on our review of full-text national constitutions as of May 2017, Djibouti’s constitution guarantees equality before the law to all persons “without distinction of language, origin, race, sex or religion”, but does not specifically guarantee equality or non-discrimination based on disability status. This guarantee is specified in Articles 1 and 10 of Djibouti’s Constitution:

*Article 1 : L'État de Djibouti est une République démocratique, souveraine, une et indivisible. Il assure à tous l'égalité devant la loi sans distinction de langue, d'origine, de race, de sexe ou de religion. Il respecte toutes les croyances.*

*Article 10: La personne humaine est sacrée. L'Etat a l'obligation de la respecter et de la protéger. Tous les êtres humains sont égaux devant la loi.*



## 2. Work and Employment (Articles 27, 5, General Comment No. 6)

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Article 27 of the CRPD 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 for persons with disabilities.

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### *Non-discrimination in Work and Employment (Article 27, Article 5.2, General Comment 6)*

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Article 27.1.a 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, (...)*
- (d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;*

Article 27.1.b also asserts the importance of prohibitions of workplace harassment

*(...) 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:*

- (b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including (...) protection from harassment*

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 Labor 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 guarantees of equal rights across five areas covered by the CRPD:

- Employment opportunities or hiring
- Equal remuneration for work of equal value
- Vocational training at work
- Career advancement or 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.

## **DJIBOUTI’S LEGISLATIVE GUARANTEES**

Based on our review, Djibouti’s legislation explicitly prohibits discrimination at work based on disability in hiring and recruitment, career advancement (in the form of prohibiting the discriminatory sanctioning of employees), and terminations. Legislation explicitly prohibits retaliatory action for reporting discrimination in these areas. We found no explicit guarantees to equal remuneration for work of equal value, or vocational training at work. Further, our review of legislation did not identify explicit provisions prohibiting indirect discrimination or harassment based on disability. However, Djibouti’s legislation does broadly prohibit workplace discrimination based on disability.

### **Code Penal**

#### *Article 390*

*Constitue une discrimination toute distinction opérée entre les personnes physiques à raison de leur origine, [...] de leur état de santé, de leur handicap, [...].*



*Constitue également une discrimination toute distinction opérée entre les personnes morales à raison de l'origine, du sexe, de la situation de famille, de l'état de santé, du handicap, des mœurs, des opinions politiques, des activités syndicales, de l'appartenance ou de la non appartenance, vraie ou supposée, à une ethnie, une nation, une race ou une religion déterminée des membres ou de certains membres de ces personnes morales.*

#### *Article 391*

*La discrimination définie à l'article 390 commise à l'égard d'une personne physique ou morale, est punie de deux ans d'emprisonnement et de 500 000 F d'amende lorsqu'elle consiste:*

*...*

*3° à refuser d'embaucher, à sanctionner ou à licencier une personne;*

#### **Code du Travail**

*Article 117: Les personnes handicapées ne doivent faire l'objet d'aucune discrimination en matière d'emploi.*

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### Reasonable Accommodation at Work (Article 27.1.i, 5.3)

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Article 27.1.i 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, including necessary and appropriate modifications to ensure persons with disabilities can exercise their right to work without imposing an undue burden on the employer. 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 Labor Organization's NATLEX database as of May 2018 for all 193 UN member states.





## DJIBOUTI'S LEGISLATIVE GUARANTEES

Based on our systematic review of national legislation of the ILO's NATLEX database as of May 2018, we did not identify any national legislative provisions that require employers to guarantee reasonable accommodation at work in Djibouti.

### **3. Education (Article 24, General Comment No. 4)**

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#### Non-discrimination in Education (24.1, 24.2.b)

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Article 24 of The Convention states that *"States Parties shall ensure an inclusive education system at all levels"*, and that *"Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live"*.

We systematically reviewed education acts, child protection legislation, and anti-discrimination legislation available through UNESCO's Observatory on the Right to Education Library and International Labor Organization's NATLEX database as of June 2018 for all 193 UN member states to determine whether national legislation explicitly guaranteed non-discrimination in education based on disability.

## DJIBOUTI'S LEGISLATIVE GUARANTEES

While we recognize there may be other policies governing the equal educational opportunities based on disability, we found no evidence of legislation in Djibouti that explicitly prohibits discrimination in education based on disability.

#### Inclusive Education (Article 24.1, 24.2.d, e, and General Comment No. 4)

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Article 24 of the Convention states that *"States Parties shall ensure an inclusive education system at all levels"*. Article 24.2 of the Convention outlines, as a component of the right to education, that States Parties shall ensure that: *"Persons with disabilities receive the support required, within the general education system, to facilitate their effective education"*, and that *"Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion."*

In General Comment No. 4, "the Committee highlights the importance of recognizing the differences between exclusion, segregation, integration and inclusion" in educational institutions. Applying this distinction, we identified whether students with disabilities were explicitly guaranteed access to



education, and further, if the legislation outlined integration into mainstream schools or only guaranteed education in separate schools. We also identified whether legislative provisions guaranteed individualized accommodations and supports to enable students with disabilities to succeed in school alongside their peers and advance inclusion.

To complete this legislative review, we systematically examined education acts, child protection laws, and anti-discrimination laws available through UNESCO's Observatory on the Right to Education Library and International Labor Organization's NATLEX database as of June 2018 for all 193 UN member states.

### DJIBOUTI'S LEGISLATIVE GUARANTEES

While we recognize there may be other policies governing the equal educational opportunities based on disability, we found no evidence of legislation in Djibouti that guarantees inclusive education.



## Reference Sheet

### Recommended Questions and Concluding Observations for Djibouti's List of Issues

For the Committee on the Rights of Persons with Disabilities  
12<sup>th</sup> Pre-Session Working Group, September 2019

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#### Recommended Questions for Djibouti's List of Issues:

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##### **Work and Employment**

- Can Djibouti demonstrate whether broad prohibitions of disability-based discrimination at work sufficiently protect persons with disabilities from discrimination in vocational training at work and equal remuneration for work of equal value?
- Can Djibouti demonstrate whether broad prohibitions of disability-based discrimination at work extend to include indirect discrimination and harassment?
- Can Djibouti demonstrate how legal prohibitions of retaliation for reporting disability-based discrimination at work are being enforced, and whether all individuals, regardless of income, have access to an effective reporting process?
- Can Djibouti demonstrate whether legislation exists that ensures reasonable accommodation is provided to persons with disabilities at work?

##### **Education**

- Can Djibouti demonstrate whether legislation exists that prohibits discrimination in education based on disability?
- Can Djibouti demonstrate whether national legislation exists that ensures inclusive education for students with disabilities?

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#### Recommended Concluding Observations for Djibouti (where Djibouti's responses to questions from the list of issues are unclear or insufficient):

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\*Note that wherever possible, these recommendations should be implemented in collaboration with relevant stakeholders, including civil society organizations.



### **Equality and Non-Discrimination in the Constitution**

- We hope the Committee will recommend in its concluding observations that Djibouti consider amending the constitution to add explicit guarantees of equality and non-discrimination based on disability status, consistent with CRPD commitments. These guarantees could be added to Article 1 of the constitution which already guarantees equality before the law for other personal characteristics and statuses.

### **Work and Employment**

- If no legislation exists ensuring reasonable accommodation is provided to persons with disabilities at work, we hope the Committee will recommend in its concluding observations that Djibouti pass and implement legislation that explicitly guarantees reasonable accommodation at work.
- If broad prohibitions of disability-based discrimination at work do not sufficiently protect persons with disabilities from discrimination in vocational training at work and mandate equal remuneration for work of equal value, we hope the Committee will recommend in its concluding observations that Djibouti pass and implement legislation that explicitly prohibits discrimination based on disability in all aspects of the working life course, including in vocational training at work and equal remuneration for work of equal value.
- If broad prohibitions of disability-based discrimination at work do not extend to include indirect discrimination and harassment, we hope the Committee will recommend in its concluding observations that Djibouti pass and implement legislation that expands the definition of discrimination to include both direct and indirect discrimination as well as harassment.
- If insufficient evidence is not provided to demonstrate implementation of legal prohibitions of retaliation for reporting disability-based discrimination, we hope the Committee will recommend in its concluding observations that Djibouti outline how it will improve implementation to ensure access to an effective reporting process for all individuals.

### **Education**

- If no legislation exists prohibiting discrimination in education based on disability or ensuring inclusive education for students with disabilities, we hope the Committee will recommend in its concluding observations that Djibouti pass and implement legislation that ensures equal education opportunities based on disability by guaranteeing inclusive education and non-discrimination in education based on disability.