



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

*Information for the Committee on the Rights of Persons with Disabilities
13th Pre-Session Working Group, March 2020*

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

Over the past year, 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. 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 executive summary, we provide our findings and suggestions for questions the committee may ask regarding areas that may have not been covered. Finally, we suggest topics to be addressed by the committee in concluding observations. We hope the Committee will recommend that Georgia address any gaps in consultation and collaboration with relevant stakeholders, including civil society organizations.

The WORLD Policy Analysis Center's examination of Georgia'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:



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

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

Based on our review of full-text national constitutions, Georgia’s constitution guarantees equality before the law to all persons “regardless of race, color, language, sex, religion, political and other opinions, national, ethnicity and social belonging, origin, property and title, place of residence.” The constitution further guarantees equality and non-discrimination to all citizens “irrespective of their national, ethnic, religious or linguistic belonging”. **However, the constitution does not specifically guarantee equality or non-discrimination to persons with disabilities.**

We hope the Committee will:

- Recommend in its concluding observations that Georgia consider amending its constitution to add explicit guarantees of equality regardless of disability status, consistent with CRPD commitments. These guarantees could be added to Article 14 of the constitution, which already guarantees equality before the law based on other personal characteristics and statuses.

B) Reasonable accommodation at work (Article 27)

Based on our systematic review of national legislation, **we did not identify any legislative provisions that guarantee employer-provided reasonable accommodation to workers with disabilities in Georgia.**

We hope the Committee will:

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

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

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

Based on our review, Georgia’s legislation broadly prohibits disability-based discrimination in any labour relations, including during the hiring process or pre-contractual period. The law further defines discrimination to include both direct and indirect forms of harassment. Legislation prohibits the termination of contracts on the grounds of disability, or on the grounds that a person has brought forward a dispute against the employer, which can protect workers from retaliatory action after reporting cases of discrimination. **However, we found no provisions explicitly guaranteeing equal pay for work of equal value to workers with disabilities, or prohibiting discrimination in access to employer-provided vocational training, promotions, or demotions.**



We hope the Committee will:

- In its list of issues, ask Georgia: Can Georgia demonstrate whether broad prohibitions of disability-based discrimination sufficiently protect persons with disabilities from discrimination in areas not specifically mentioned in legislation, including: employer-provided vocational training, promotions and demotions, and equal pay for work of equal value?
 - If sufficient provisions do not exist, recommend in its concluding observations that Georgia pass and implement legislation that explicitly prohibits discrimination based on disability in all critical areas of working life, including employer-provided vocational training, promotions, and demotions, and guarantees equal pay for work of equal value.
- In its list of issues, ask Georgia: Can Georgia demonstrate how legal prohibitions of discrimination are being enforced, and whether all individuals, regardless of income, have access to an effective reporting process?
 - If insufficient evidence is provided, recommend in its concluding observations that Georgia outline how it will improve implementation to ensure access to an effective reporting process for all individuals, including addressing issues of affordability and preventing retaliation against those who report incidents.

Where Georgia's provisions are consistent with or directly support the Convention:

A) Non-discrimination in education and inclusive education (Article 24)

Based on our review, Georgia has passed laws **guaranteeing access to education for students with disabilities, and prohibiting any discrimination during the admissions process**. The laws further **guarantee that students with disabilities be integrated into general education schools, and be provided with the necessary benefits to succeed, which may include individualized curricula**.

We hope the Committee will:

- In its list of issues, ask Georgia: Can Georgia demonstrate how these legislative guarantees of non-discrimination and inclusive education are being enforced?
 - If Georgia is not fully enforcing the guarantees of non-discrimination and inclusive education as specified in the law, recommend in its concluding observations that Georgia develop concrete steps towards full implementation of these guarantees.



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.

1. Equality and non-discrimination in the constitution (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.”

Constitutions state the values of a country and 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.

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.

GEORGIA’S CONSTITUTIONAL PROVISIONS

Based on our review of full-text national constitutions, Georgia’s constitution guarantees equality before the law to all persons “regardless of race, color, language, sex, religion, political and other opinions, national, ethnicity and social belonging, origin, property and title, place of residence.” The constitution further guarantees equality and non-discrimination to all citizens “irrespective of their national, ethnic, religious or linguistic belonging”. These rights are outlined in Articles 14 and 38 of the constitution.

However, the constitution does not specifically guarantee equality or non-discrimination to persons with disabilities.

Article 14

Everyone is free by birth and is equal before law regardless of race, colour, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, place of residence.



Article 38

- 1. Citizens of Georgia shall be equal in social, economic, cultural and political life irrespective of their national, ethnic, religious or linguistic belonging. In accordance with universally recognised principles and rules of international law, they shall have the right to develop freely, without any discrimination and interference, their culture, to use their mother tongue in private and in public.*
- 2. In accordance with universally recognised principles and rules of international law, the exercise of minority rights shall not oppose the sovereignty, state structure, territorial integrity and political independence of Georgia.*

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

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.

Non-discrimination in work and employment (Articles 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, (...)*
- (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 itself.*

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 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 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.

GEORGIA’S LEGISLATIVE GUARANTEES

Based on our review, Article 2 of Georgia’s *Labor Code* broadly prohibits disability-based discrimination in any labour relations, including during the hiring process or pre-contractual period. Article 2 further defines discrimination to include both direct and indirect forms of harassment. The Labor Code prohibits the termination of contracts on the grounds of disability, as specified in Article 37. In Article 47, employers are also prohibited from terminating a contract on the grounds that a person has brought forward a dispute against the employer, which can further protect workers from retaliatory action after reporting cases of discrimination. **However, we found no provisions explicitly guaranteeing equal pay for work of equal value to workers with disabilities, or prohibiting discrimination in access to employer-provided vocational training, promotions, or demotions.**

Article 2. Labour Relations

[...]

3. Any and all discrimination in a labour and/or pre-contractual relations due to race, skin colour, language, ethnic or social belonging, nationality, origin, material status or title, place of residence, age, sex, sexual orientation, marital status, handicap, religious, social, political or other affiliation, including affiliation to trade unions, political or other opinions shall be prohibited.

4. Any direct or indirect harassment of a person that aims at and/or results in creating an intimidating, hostile, humiliating, degrading, or abusive environment for that person or creating



such conditions for any person that directly or indirectly causes their status to deteriorate as compared to other persons in similar conditions, shall constitute discrimination.

Article 37. Bases for Termination of Labour Agreement

3. Labour relations shall in no event be terminated:

[...]

b) by grounds of discrimination as provided in the Article 2 of this Law;

Article 47. Dispute

1. A dispute is a disagreement arising during the course of labour relations. The resolution of disputes shall fall within the legal interests of the parties to a labour agreement.

[...]

5. The consideration of a dispute shall not cause suspension of labour relations.

Reasonable accommodation at work (Articles 27.1, 5.3)

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 require employers to guarantee 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.

GEORGIA’S LEGISLATIVE GUARANTEES

Our systematic review of national legislation did not identify any legislative provisions that guarantee reasonable accommodation at work.



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

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

Article 24.1 of The Convention states that “States Parties shall ensure an inclusive education system at all levels”, and Article 24.2.b states 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 Labour Organization’s NATLEX database for all 193 UN member states to determine whether national legislation guaranteed non-discrimination in education based on disability.

GEORGIA’S LEGISLATIVE GUARANTEES

The 2005 Law on General Education in Georgia guarantees access to general education for students with special needs, and prohibits any form of discrimination during a school’s admissions process.

These legal provisions are outlined in Article 7 and Article 13 of the law, respectively.

Article 7 - Access to general education

1. The State shall ensure the right of each pupil (including pupils with special educational needs) to acquire general education in the official, or in is/her native, language, as close to his/her place of residence as possible.

[...]

Article 13 - Neutrality and non-discrimination

[...]

3. Any discrimination on admission to a school shall be inadmissible. This rule shall not exclude the possibility of holding a competitive selection in general education institutions that carry out military, specialised arts and sports trainings, as well as in schools with other status. Special educational needs of a person must be considered in a competitive selection.

[...]

Inclusive Education (Articles 24.1, 24.2, and General Comment No. 4)

Article 24.1 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 Labour Organization’s NATLEX database for all 193 UN member states.

GEORGIA’S LEGISLATIVE GUARANTEES

The 2005 *Law on General Education* specifies that it is the obligation of the Ministry of Education and all general education institutions to integrate students with special needs into the general education system, and provide them with the necessary benefits to succeed in school, which may include individualized curricula.

Article 2 - Definition of terms

The terms used in this Law have the following meanings:

[...]

t) inclusive education – involving pupils with special educational needs in the general education process together with their peers;

[...]

x) Individual Curriculum – a curriculum designed on the basis of the National Curriculum for the pupils with special educational needs that is a part of a School Curriculum;

Article 3 - Basic goals of the state policy in the field of general education

[...]

2. In order to achieve the goals determined by paragraph 1 of this article the state shall ensure:

h) introduction of inclusive education;

Article 5 - National Curriculum

[...]

1. If necessary, a school shall develop an individual curriculum within the framework of the National Curriculum for the pupils with special educational needs.

Article 26 - Authority of the Ministry of Education and Science of Georgia in the field of general education

1. On the basis of the legislation of Georgia in the field of general education, in particular the Constitution of Georgia, the Constitutional Agreement, international agreements and treaties of Georgia, this Law, other laws and secondary legislation, the Ministry of Education and Science of Georgia shall:

[...]

l) take the measures necessary for acquisition of education by all pupils, including pupils with special educational needs and pupils expelled from school; develop provisions for certifying external education; develop provisions for moving pupils from one general education institution



to another general education institution; develop provisions for alternative ways to acquire education; develop the procedures for introducing, developing and monitoring inclusive education, as well as the mechanisms for identifying pupils with special educational needs;

Article 33 - Rights and obligations of a general education institution

1. A general education institution shall be obliged to:

[...]

g) determine benefits for pupils with disabilities in order to create necessary learning conditions for them;



Reference Sheet

Recommended Questions and Concluding Observations for Georgia's List of Issues

For the Committee on the Rights of Persons with Disabilities
13th Pre-Session Working Group, March 2020

Recommended Questions for Georgia's List of Issues:

Work and Employment

- Can Georgia demonstrate whether broad prohibitions of disability-based discrimination sufficiently protect persons with disabilities from discrimination in areas not specifically mentioned in legislation, including: employer-provided vocational training, promotions and demotions, and equal pay for work of equal value?
- Can Georgia demonstrate how legal prohibitions of discrimination are being enforced, and whether all individuals, regardless of income, have access to an effective reporting process?
- Can Georgia outline any concrete, near-term plans to pass legislation that guarantees employer-provided reasonable accommodation to workers with disabilities?

Education

- Can Georgia demonstrate how legislative guarantees of non-discrimination and inclusive education are being enforced?

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

*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

- Recommend that Georgia consider amending Article 14 of the constitution to add explicit guarantees of equality regardless of disability status, consistent with CRPD commitments.



Work and Employment

- Recommend that Georgia pass and implement legislation that explicitly prohibits disability-based discrimination in critical areas of working life, including employer-provided vocational training, promotions, and demotions, and guarantees equal pay for work of equal value.
- Recommend that Georgia outline how it will improve the implementation of non-discrimination provisions to ensure access to an effective reporting process for all individuals, including addressing issues of affordability and preventing retaliation against those who report incidents.
- Recommend that Georgia pass and implement legislation that guarantees employer-provided reasonable accommodation to workers with disabilities.

Education

- Recommend that Georgia develop concrete steps towards fully implementing its legislative guarantees of non-discrimination and inclusive education.

Brief prepared by the World Policy Analysis Center, University of California, Los Angeles