



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

*Information for the Committee on the Rights of Persons with Disabilities  
13<sup>th</sup> 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 13<sup>th</sup> 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 Mauritania address any gaps in consultation and collaboration with relevant stakeholders, including civil society organizations.

The WORLD Policy Analysis Center's examination of Mauritania'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 Mauritania 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, Mauritania's guarantees all citizens equality before the law regardless of origin, race, sex, and social status. However, the **constitution does not specifically guarantee equality to persons with disabilities.**

**We hope the Committee will:**

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

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

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

Based on our review, Mauritania's law **prohibits discrimination in hiring by broadly stating that disability status should not be a basis for depriving someone employment.** 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, demotions, or dismissals.** We further found no provisions that prohibit specific forms of discrimination against persons with disabilities, including indirect discrimination and harassment. The law also fails to protect workers from retaliatory actions after reporting incidents of discrimination.

**We hope the Committee will:**

- In its list of issues, ask Mauritania: Can Mauritania outline how the current law prohibiting hiring discrimination on the basis of disability is being effectively enforced and monitored?
  - If sufficient evidence is not provided to demonstrate the effective enforcement of this law, recommend in its concluding observations that Mauritania outline how it will improve implementation to ensure non-discrimination provisions are being effectively implemented by all employers.
- In its list of issues, ask Mauritania: Can Mauritania demonstrate whether sufficient legal provisions exist that prohibit disability-based discrimination in other critical areas of working life, including employer-provided vocational training, promotions or demotions, dismissals, and guarantee equal pay for work of equal value?
  - If sufficient prohibitions do not exist in these areas, recommend in its concluding observations that Mauritania pass and implement legislation that explicitly prohibits disability-based discrimination at work in these areas.



- Additionally, recommend in its concluding observations that Mauritania pass and implement legislation that prohibits harassment and indirect discrimination on the basis of disability.

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

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

Based on our systematic review, the law in Mauritania **requires working conditions to be adapted for workers with disabilities who are hired under the mandatory quota.**

**We hope the Committee will:**

- In its list of issues, ask Mauritania: Can Mauritania demonstrate how it is enforcing guarantees of reasonable accommodation at work?
  - Where Mauritania is not fully implementing this guarantee, recommend in its concluding observations that Mauritania develop concrete steps towards full implementation.
- In its list of issues, ask Mauritania: Do legal guarantees of reasonable accommodation exist for workers hired outside the mandatory quota?
  - If Mauritania does not have legal guarantees of reasonable accommodation that exist for workers hired outside the mandatory quota, recommend in its concluding observations that Mauritania expand the provision of reasonable accommodation to include all workers.

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

Based on our review, Mauritania has implemented laws **guaranteeing access to education for students with disabilities on an equal basis with others.** The laws further **guarantee that students with disabilities are integrated into general education schools to the extent possible, and are provided with the necessary physical, technical, human, and material supports.**

**We hope the Committee will:**

- In its list of issues, ask Mauritania: Can Mauritania demonstrate how these legislative guarantees of non-discrimination and inclusive education are being enforced?
  - If Mauritania is not fully enforcing the guarantees of non-discrimination and inclusive education as specified in the law, recommend in its concluding observations that Mauritania 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)

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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.”

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.

### MAURITANIA'S CONSTITUTIONAL PROVISIONS

Based on our review of full-text national constitutions, Article 1 of Mauritania’s constitution guarantees all citizens equality before the law regardless of origin, race, sex, and social status. **However, the constitution does not specifically guarantee equality to persons with disabilities.**

*Article Premier : La Mauritanie est une république Islamique, indivisible, démocratique et sociale. La République assure à tous les citoyens sans distinction d'origine, de race, de sexe ou de condition sociale l'égalité devant la loi. Toute propagande particulariste de caractère racial ou ethnique est punie par 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 (Articles 27.1, General Comment 6)

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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 advancements 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.

#### MAURITANIA'S LEGISLATIVE GUARANTEES

Based on our review, Mauritania's law guarantees the right to work for persons with disabilities, and prohibits discrimination in hiring by broadly stating that disability status should not be a basis for depriving someone of employment. These provisions are outlined in Article 46 of the *Ordonnance relative à la promotion et la protection des personnes handicapées*. **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, demotions, or dismissals.** Further, we found no provisions that prohibit specific forms of discrimination against persons with disabilities, such as indirect discrimination and harassment. **The 2006 Ordinance also fails to outline clear legal recourse for victims, including protection from retaliatory actions after reporting incidents of discrimination.**

*Article 46.- La personne handicapée a droit au travail.*

*L' handicap ne doit pas constituer un alibi pour priver une personne handicapée d'emploi dans le secteur public ou privé.*

*L'Etat, les collectivités locales ainsi que le secteur privé, encouragent le recrutement des personnes titulaires de la carte de personne handicapée, lorsque ces dernières possèdent les qualifications requises pour les emplois et les postes vacants à pourvoir;*



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Reasonable accommodation at work (Articles 27.1, 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. 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.

#### MAURITANIA’S LEGISLATIVE GUARANTEES

Based on our systematic review, **the *Ordonnance relative à la promotion et la protection des personnes handicapées* requires working conditions to be adapted for workers with disabilities who are hired under the mandatory employment quota.**

*Article 46 – La personne handicapée a droit au travail.*

*L’handicap ne doit pas constituer un alibi pour priver une personne handicapée d’emploi dans le secteur public ou privé.*

*L’Etat, les collectivités locales ainsi que le secteur privé, encouragent le recrutement des personnes titulaires de la carte de personne handicapée, lorsque ces dernières possèdent les qualifications requises pour les emplois et les postes vacants à pourvoir; en conséquence l’Etat prendra les dispositions nécessaires pour que l’effectif des recrutements des personnes handicapées au sein des administrations publiques et privées puissent atteindre 5% chaque fois que l’effectif total de recrutement est supérieur ou égal à 20.*

*L’attribution des postes à pourvoir devra faire l’objet d’une sélection entre les personnes handicapées candidates.*

*Les conditions de travail devront alors être adaptées aux aptitudes des personnes handicapées sélectionnées.*





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

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

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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.

#### MAURITANIA’S LEGISLATIVE GUARANTEES

**Article 5 of the *Ordonnance relative à la promotion et la protection des personnes handicapées* states that persons with a disability card have the right to access education. Article 34 of this law affirms that admission of students with disabilities into general and specialized schools shall be based on equal opportunities and positive measures.**

*Article 5.- La carte de personne handicapée donne lieu à des droits et à des avantages en matière d'accès aux soins, de réadaptation, d'aides techniques, d'éducation, de formation, d'emploi, de transport ainsi qu'à tout autre avantage susceptible de contribuer à la promotion des handicapés.*

*La personne qui assiste une personne lourdement handicapée peut bénéficier d'avantages en vue de lui permettre d'assurer au mieux sa mission d'assistance.*

#### **TITRE IV : L'EDUCATION**

*Article 34.- Les modalités d'admission des enfants handicapés aux institutions ordinaires et spécialisées, ainsi que les conditions de passation des examens et le suivi pédagogique de l'enseignement spécialisé feront l'objet d'un arrêté ministériel conjoint des Ministres chargés de l'Education et des Affaires Sociales, se basant sur la discrimination positive et l'égalisation des chances.*

*L'Etat crée une Commission Nationale Multidisciplinaire, décentralisée chargée de l'orientation et du suivi des enfants handicapés dans les établissements ordinaires et spécialisés.*

*La composition et le fonctionnement de cette commission seront fixés par arrêté conjoint des Ministres chargés de l'Education et des Affaires Sociales.*



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

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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 as of June 2018 for all 193 UN member states.

**MAURITANIA’S LEGISLATIVE GUARANTEES**

**Article 33 of the *Ordonnance relative à la promotion et la protection des personnes handicapées* states that children with disabilities shall be integrated into general education schools to the extent possible. The State also provides students with disabilities the physical, technical, human, and material support needed for their success, as outlined in Articles 35, 37, 28, and 42 of the same law.**

*TITRE IV : L’EDUCATION*

*Article 33- Les enfants handicapés intègrent autant que possible les établissements d’enseignement général proche de leur domicile.*

*Lorsque la gravité de l’handicap empêche l’intéressé de fréquenter avantageusement un établissement d’enseignement ordinaire, ce dernier est orienté vers un établissement d’enseignement spécialisé.*

*Les établissements d’enseignement spécialisés ont pour tâche de préparer les enfants handicapés à intégrer dans toute la mesure du possible des établissements d’enseignement général ou professionnel.*

*Article 35.- L’Etat et les collectivités locales fournissent aux établissements d’éducation de l’enfance handicapée l’appui technique, humain et matériel nécessaire à leur création et à leur fonctionnement.*



*Article 37.- L'Etat et les collectivités locales prennent en charge l'adaptation des établissements scolaires et universitaires aux conditions et aux capacités d'accès physiques et de mobilité des élèves et étudiants handicapés.*

*Article 38.- L'Etat prend en compte dans le programme de développement du secteur de l'éducation la dimension handicap, dans la construction et l'aménagement des infrastructures scolaires.*

*Article 42.- L'Etat, les collectivités locales et les organismes publics et privés encouragent la création des imprimeries de braille et des bibliothèques sonores, unifie le langage des signes pour permettre aux personnes malentendantes et malvoyantes d'exercer leur droit à l'éducation et à la formation.*



## Reference Sheet

### Recommended Questions for Mauritania's List of Issues and Concluding Observations For the Committee on the Rights of Persons with Disabilities 13<sup>th</sup> Pre-Session Working Group, March 2020

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

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

- Can Mauritania outline how the current law prohibiting hiring discrimination on the basis of disability is being effectively enforced and monitored?
- Can Mauritania demonstrate whether sufficient legal provisions exist that prohibit disability-based discrimination in other critical areas of working life, including employer-provided vocational training, promotions or demotions, and terminations, and guarantee equal pay for work of equal value?
- Can Mauritania demonstrate how it is enforcing guarantees of reasonable accommodation at work?
- Do legal guarantees of reasonable accommodation exist for workers hired outside the mandatory quota?

##### **Education**

- Can Mauritania demonstrate how these legislative guarantees of non-discrimination and inclusive education are being enforced?
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#### Recommended Concluding Observations for Mauritania (where Mauritania'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**

- Recommend that Mauritania consider amending Article 1 of the constitution to add explicit guarantees of equality regardless of disability status, consistent with CRPD commitments.



### **Work and Employment**

- Recommend that Mauritania outline how it will improve the implementation of non-discrimination provisions to ensure provisions are being effectively implemented by all employers.
- Recommend that Mauritania pass and implement legislation that explicitly prohibits disability-based discrimination in other critical areas of working life, including employer-provided vocational training, promotions, and demotions, and guarantees equal pay for work of equal value.
- Recommend that Mauritania pass and implement legislation that prohibits harassment and indirect discrimination on the basis of disability.
- Recommend that Mauritania develop concrete steps towards fully implementing and enforcing guarantees of reasonable accommodation at work.
- Recommend that Mauritania expand the legal provisions of reasonable accommodation to include all workers, including those hired outside the mandatory quota.

### **Education**

- Recommend that Mauritania 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*