



Tuvalu: Brief on the Implementation of CRPD Commitments for Articles 3, 5, 24, 27 and General Comments Nos. 4 and 6

*Information for the Committee on the Rights of Persons with Disabilities
16th Pre-Session Working Group, September 2022*

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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 16th 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 Tuvalu'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
- Non-Discrimination in Education and Inclusive Education

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 Tuvalu, and topics we hope the Committee will address in its concluding observations. We hope the Committee will recommend that Tuvalu 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 Tuvalu for having provisions in place, we hope the Committee will recommend that Tuvalu 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, Tuvalu prohibits discrimination on the basis of race, color, political opinion, religion or lack thereof, and place of origin; it further guarantees equal rights for members of those groups and adds this protection on the basis of sex. **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:

- In its list of issues, ask Tuvalu: can Tuvalu provide the Committee with the specific steps it is taking, including providing more information on the process and timeline of its Constitutional Review process, to add explicit constitutional guarantees of equality and non-discrimination regardless of disability status?
 - If Tuvalu cannot describe any concrete steps it is currently taking to add explicit constitutional guarantees of equality and non-discrimination regardless of disability status, recommend that Tuvalu amend its constitution in the near term to add these guarantees, consistent with CRPD commitments. These guarantees could be added to article 27 of the constitution, which already guarantees equal rights and prohibits discrimination on several grounds.

Non-discrimination in work and employment (Articles 5, 27, Gen. Comment No. 6)

Based on our review, Tuvalu broadly prohibits all forms of direct and indirect discrimination against workers with disabilities, and specifically prohibits discrimination in hiring, vocational training, promotions and terminations. Tuvalu also protects against retaliation for filing a complaint or participating in an investigation related to employment discrimination.

However, while the text of the Labour and Employment Relations Act includes a general clause against discrimination in “other matters arising out of the employment relationship,” **there are no provisions that explicitly protect persons with disabilities from discrimination in remuneration, or from discriminatory harassment.**

We hope the Committee will:

- In its list of issues, ask Tuvalu: Can Tuvalu demonstrate whether the Labour and Employment Relations Act’s provision on “other matters arising out of the employment relationship” has been applied to cases of discrimination in remuneration?
 - If Tuvalu cannot demonstrate the application of this clause to matters of discrimination in remuneration, recommend that Tuvalu amend its legislation to guarantee protections against discrimination in remuneration; it could add this protection to section 50.1, which already contains a list of areas of work protected from discrimination.



- In its list of issues, ask Tuvalu: Can Tuvalu demonstrate whether the Labour and Employment Relations Act’s provision on “other matters arising out of the employment relationship” has been applied to cases of discriminatory harassment in the workplace?
 - If Tuvalu cannot demonstrate the application of this clause to matters of discriminatory harassment in the workplace, recommend that Tuvalu amend its legislation to guarantee protections against discriminatory harassment in the workplace.

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 Tuvalu.**

We hope the Committee will:

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

Non-discrimination in education and inclusive education (Article 24, Gen. Com No. 4)

While we recognize there may be policies governing the equal educational opportunities based on disability, our systematic review of national legislation available through UNESCO and the ILO **did not identify any national legislative provisions that ensure non-discrimination in education to students with disabilities in Tuvalu; we further found no national legislative provisions that ensure the integration and accommodation of students with disabilities.**

We hope the Committee will:

- In its list of issues, ask Tuvalu: Can Tuvalu outline any concrete, near-term plans to pass legislation that guarantees non-discrimination to students with disabilities?
 - If Tuvalu does not have concrete, near-term plans in place, recommend in its concluding observations that Tuvalu pass and implement legislation that ensures equal education opportunities by guaranteeing non-discrimination in education for students with disabilities
- In its list of issues, ask Tuvalu: Can Tuvalu outline any concrete, near-term plans to pass legislation that ensures children with disabilities are provided with accommodations and supports in mainstream schools?
 - If Tuvalu does not have concrete, near-term plans in place, recommend in its concluding observations that Tuvalu pass and implement legislation that ensures equal education opportunities based on disability by guaranteeing inclusive education.



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.

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

Based on our review of full-text national constitutions, section 27 of the Constitution of Tuvalu prohibits discrimination on the basis of race, colour, place of origin, religion or lack thereof, and political beliefs; section 11 mandates equal rights to all of these groups and also adds this protection on the basis of sex.

Constitution of Tuvalu

11. The fundamental human rights and freedoms

1. *Every person in Tuvalu is entitled, whatever his race, place of origin, political opinions, colour, religious beliefs or lack of religious beliefs, or sex, to the following fundamental rights and freedoms:-*

(...)

and to other rights and freedoms set out in this Part or otherwise by law.

27. Freedom from discrimination

1. *In this section, discrimination refers to the treatment of different people indifferent ways wholly or mainly because of their different-*
 - *racess; or*
 - *places of origin; or*



- *political opinions; or*
 - *colours; or*
 - *religious beliefs or lack of religious beliefs,*
- in such a way that one such person is for some such reason given more favourable treatment or less favourable treatment than another such person.*
2. *Subject to the provisions of this Part, and in particular to-*
- *the succeeding provisions of this section; and*
 - *section 29 (Protection of Tuvaluan values, etc.); and*
 - *section 31 (disciplined forces of Tuvalu); and*
 - *section 32 (foreign disciplined forces); and*
 - *section 33 (hostile disciplined forces); and*
 - *section 36 (restrictions on certain rights and freedoms during public emergencies),*
- no-one shall be treated in a discriminatory manner. (...)*

However, the constitution does not explicitly guarantee equality or non-discrimination to persons with disabilities, who may face distinct barriers to accessing these rights. This is acknowledged by Tuvalu in paragraphs 43 and 86 of the State Party Report.

In the State Party Report from 2018 (paragraphs 11 and 66), Tuvalu states that it intends to amend its constitution to include disability in the existing list of protected groups and statuses. However, to the best of our knowledge, this amendment to the constitution has not yet been made and thus this remains an active issue.

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 Comm. 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 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 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.

TUVALU'S LEGISLATIVE PROVISIONS: MISSING SOME SPECIFIC GUARANTEES OF DISABILITY-BASED NON-DISCRIMINATION AT WORK

Based on our review, section 50 of the Labour and Employment Relations Act broadly prohibits all forms of direct and indirect discrimination against workers with disabilities, and specifically prohibits discrimination in hiring, vocational training, promotions and terminations. Together with section 39, section 50 also protects against retaliation for filing a complaint or participating in an investigation related to employment discrimination.

Labour and Employment Relations Act

50 Prohibition of discrimination

(1) An employer shall not discriminate, directly or indirectly, against any employee or prospective employee in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment, or other matters arising out of the employment relationship, for a prohibited reason.

(2) For the purpose of subsection (1), a prohibited reason is a reason that is affected by any of the following attributes of the employee or prospective employee, whether actual or perceived:

(a) ethnic origin, race, colour, national extraction, social origin, social class or economic status; or

(b) gender, sex, pregnancy, marital status, sexual orientation or family responsibilities; or

(c) age, state of health, HIV / AIDS status, or disability; or (d) religion or political opinion; or

(e) trade union membership or activity; or

(f) involvement in a dispute, an investigation or legal proceedings affecting the employer.

(3) For the purpose of subsection (1):

(a) direct discrimination occurs when a distinction, exclusion or preference is made on the basis of an attribute listed in subsection (2); and (b) indirect discrimination occurs when a distinction, exclusion or preference is made on the basis of an attribute that is not listed in subsection (2), but that



disproportionately disadvantages people with a particular attribute listed in subsection (2). However, we found no provisions explicitly guaranteeing equal opportunities in employer-provided vocational training. We further did not identify any provisions that prohibit distinct forms of discrimination, including harassment, indirect discrimination, or retaliatory action when reporting disability-based discrimination.

39 Unlawful reasons for termination

(1) The termination of an employee’s employment shall be unlawful and an offence if it is attributable to the following:

(e) raising a complaint or the participating in any proceedings against an employer whether under this Act or any other Act or Regulation; [...]

While the Labour and Employment Relations Act does protect against discrimination in “other matters arising out of the employment relationship,” **there are no provisions that explicitly protect persons with disabilities from discrimination in remuneration, or from discriminatory harassment.**

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

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

Reasonable accommodation at work (Articles 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 employer-provided reasonable accommodation. 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.

TUVALU: NO PROVISIONS ON REASONABLE ACCOMMODATION AT WORK

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

Education (Article 24, General comment No. 4)

Article 24 of The Convention recognizes the right to education for persons with disabilities and outlines concrete steps that States Parties must take to ensure this right.

Non-discrimination in education (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 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.

TUVALU’S LEGISLATIVE PROVISIONS: NO GUARANTEES OF DISABILITY-BASED NON-DISCRIMINATION IN EDUCATION

While we recognize there may be other policies governing equal educational opportunities based on disability, **our systematic review of national legislation available through UNESCO and the ILO did not identify any national legislative provisions that ensure non-discrimination in education to students with disabilities in Tuvalu.**



[Inclusive education \(Article 24.1, 24.2, and General Comment No. 4\)](#)

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 as of June 2018 for all 193 UN member states.

[TUVALU’S LEGISLATIVE PROVISIONS: NO GUARANTEES OF INTEGRATED EDUCATION AND ACCOMMODATIONS TO STUDENTS WITH DISABILITIES](#)

While we recognize there may be other policies governing equal educational opportunities based on disability, **our systematic review of national legislation available through UNESCO and the ILO did not identify any national legislative provisions that ensure the integration and accommodation of students with disabilities** in Tuvalu’s education system. The State Party Report acknowledges, in paragraphs 152 and 153, that amendments are necessary to the Education Act to include a clause on reasonable accommodation.

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