



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

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 Switzerland may have passed legislation or enacted new policies since our most recent review. We therefore hope the Committee will include the following questions for Switzerland in its list of issues, and where applicable, make the recommendations outlined below in its concluding observations. We hope the Committee will recommend that Switzerland address any gaps in consultation and collaboration with relevant stakeholders, including DPOs and civil society organizations.

The WORLD Policy Analysis Center's examination of Switzerland'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



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

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**A) Non-discrimination in work and employment (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 explicitly prohibit discrimination on the basis of disability at work in Switzerland.

**We hope the Committee will:**

- In its list of issues, ask Switzerland: Does legislation exist prohibiting discrimination at work based on disability?
  - If no such legislation exists, recommend in its concluding observations that Switzerland pass and implement legislation that explicitly prohibits discrimination at work based on disability in:
    - 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 also hope the Committee will recommend that this legislation includes a definition of discrimination that prohibits direct discrimination, indirect discrimination, and harassment. This prohibition of discrimination should be paired with effective enforcement mechanisms, such as protection from retaliation for reporting disability-based discrimination.

**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 Switzerland: Can Switzerland 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 Switzerland pass and implement legislation that explicitly guarantees reasonable accommodation at work.



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

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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, Switzerland prohibits discrimination on the basis of both mental and physical disability.

**We hope the Committee will:**

- In its list of issues, ask Switzerland: Can Switzerland outline how constitutional guarantees of non-discrimination based on disability are being implemented?
  - Where evidence of implementation is unclear or insufficient, we hope the Committee will recommend in its concluding observations that Switzerland develop concrete action towards full implementation.

## 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.

#### SWITZERLAND'S CONSTITUTIONAL PROVISIONS

Switzerland's constitution prohibits discrimination based on physical and mental disabilities. These guarantees are embedded in Article 8 of Switzerland's Constitution: 8 (2). *Nul ne doit subir de discrimination du fait notamment de son origine, de sa race, de son sexe, de son âge, de sa langue, de sa*



*situation sociale, de son mode de vie, de ses convictions religieuses, philosophiques ou politiques ni du fait d'une déficience corporelle, mentale ou psychique.*

## 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:*

- (c) 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, 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 at work.

## SWITZERLAND’S LEGISLATIVE GUARANTEES

While we recognize there may be other policies governing non-discrimination at work, our systematic review of national legislation of the ILO’s NATLEX database as of May 2018 did not identify any national legislative provisions that explicitly prohibit discrimination at work on the basis of disability in Switzerland.

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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 required employers to guarantee 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.

### SWITZERLAND'S LEGISLATIVE GUARANTEES

While we recognize there may be other policies guaranteeing reasonable accommodation at work, 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 in Switzerland.



## Reference Sheet

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

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

- Can Switzerland outline how constitutional guarantees of non-discrimination based on disability are being implemented?

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

- Does legislation exist prohibiting discrimination at work based on disability?
- Can Switzerland demonstrate whether legislation exists that ensures reasonable accommodation is provided to persons with disabilities at work?

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#### Recommended Concluding Observations for Switzerland (where Switzerland'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**

- Where evidence of implementation of Switzerland's constitutional guarantees of non-discrimination based on disability is unclear or insufficient, we hope the Committee will recommend in its concluding observations that Switzerland develop concrete action towards full implementation.

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

- If no legislation exists prohibiting discrimination at work based on disability, we hope the Committee will recommend in its concluding observations that Switzerland pass and implement legislation that explicitly prohibits discrimination at work based on disability in:





- 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 also hope the Committee will recommend that this legislation includes a definition of discrimination that prohibits direct discrimination, indirect discrimination, and harassment. This prohibition of discrimination should be paired with effective enforcement mechanisms, such as protection from retaliation for reporting disability-based discrimination.
  
  - If no legislation exists ensuring reasonable accommodation at work is provided to persons with disabilities, we also hope the Committee will recommend in its concluding observations that Switzerland pass and implement legislation that explicitly guarantees reasonable accommodation at work.

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