



Togo: Brief on the Implementation of CRPD Commitments for Articles 3, 5, 24 and 27

*Information for the Committee on the Rights of Persons with Disabilities
14th Pre-Session Working Group, September 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 14th 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 has guided us on the development of this initiative. 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 its concluding observations. We hope the Committee will recommend that Togo address any gaps in consultation and collaboration with relevant stakeholders, including civil society organizations.



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

Areas where Togo does not appear to have provisions in place:

A) General equality and non-discrimination (Articles 3, 5)

Based on our review of full-text national constitutions, Togo guarantees equality before the law to all citizens regardless of origin, race, sex, social condition, and religion, and further guarantees non-discrimination to all persons based on family, ethnic or regional origin, economic or social situation, political, religious, philosophical, or other conviction. **However, the constitution does not specifically guarantee these rights of equality or non-discrimination to persons with disabilities.**

We hope the Committee will:

- Recommend in its concluding observations that Togo consider amending the constitution to add explicit guarantees of equality and non-discrimination regardless of disability status, consistent with CRPD commitments. These guarantees could be added to Articles 2 and 11 of the constitution, which already guarantee equality and non-discrimination based on other personal characteristics and statuses.

B) Reasonable accommodation at work (Articles 5, 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 Togo.**

We hope the Committee will:

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

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

While we recognize there may be other policies and programs that currently govern or extend equal educational opportunities based on disability, or general practices, our systematic review of national legislation available through UNESCO and the ILO **did not identify any national legislative provisions**



that explicitly ensure inclusive education or non-discrimination in education to students with disabilities in Togo.

We hope the Committee will:

- In its list of issues, ask Togo: Can Togo outline any concrete, near-term plans to pass legislation that ensures equal education opportunities by guaranteeing inclusive education and non-discrimination for students with disabilities?
 - If Togo does not have concrete, near-term plans in place, recommend in its concluding observations that Togo pass and implement legislation that ensures equal education opportunities by guaranteeing inclusive education and non-discrimination for students with disabilities.

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

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

Based on our review, Togo's legislation broadly prohibits any direct and indirect discrimination at work based on disability, and further **explicitly prohibits disability-based discrimination in hiring, demotions, and terminations**. However, we found **no explicit prohibitions of discrimination covering other areas of employment such as access to employer-provided vocational training, and no guarantees of equal remuneration for work of equal value**. Further, our review of legislation **did not identify any provisions that prohibit retaliatory action** when reporting disability-based discrimination.

We hope the Committee will:

- In its list of issues, ask Togo: Can Togo outline how the current law prohibiting disability-based discrimination in hiring, demotions, and terminations 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 Togo outline how it will ensure effective implementation of non-discrimination provisions by all employers.
- In its list of issues, ask Togo: Can Togo demonstrate whether provisions broadly prohibiting direct and indirect disability-based discrimination sufficiently cover other critical areas of working life, including equal remuneration for work of equal value and access to employer-provided vocational training?
 - If sufficient coverage does not exist, recommend in its concluding observations that Togo pass and implement legislation that explicitly prohibits disability-based discrimination in other aspects of the working life course, , including access to employer-provided vocational training, as well as guaranteeing equal remuneration for work of equal value.



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. 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.

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

Based on our review of full-text national constitutions, Article 2 guarantees equality before the law to all citizens regardless of origin, race, sex, social condition, and religion. Article 11 further guarantees non-discrimination to all persons based on family, ethnic or regional origin, economic or social situation, political, religious, philosophical, or other conviction. **However, the constitution does not specifically guarantee these rights of equality or non-discrimination to persons with disabilities.**

Art. 2

La République Togolaise assure l'égalité devant la loi de tous les citoyens sans distinction d'origine, de race, de sexe, de condition sociale ou de religion. Elle respecte toutes les opinions politiques, philosophiques ainsi que toutes les croyances religieuses. Son principe est le gouvernement du peuple par le peuple et pour le peuple. Sa devise est : "Travail-Liberté-Patrie"

Art. 11

Tous les êtres humains sont égaux en dignité et en droit. L'homme et la femme sont égaux devant la loi. Nul ne peut être favorisé ou désavantagé en raison de son origine familiale,



ethnique ou régionale, de sa situation économique ou sociale, de ses convictions politiques, religieuses, philosophiques ou autres.

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.

2. Work and employment (Articles 27, 5, General Comment 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 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.

TOGO’S LEGISLATIVE PROVISIONS: LIMITED PROTECTIONS FROM WORKPLACE DISCRIMINATION ON THE BASIS OF DISABILITY

Based on our review, Togo’s 2006 Labor Code **broadly prohibits any direct and indirect discrimination at work based on disability**, and further **explicitly prohibits disability-based discrimination in hiring, demotions, and terminations**. However, we found **no provisions explicitly prohibiting discrimination in**



employer-provided vocational training, and no explicit guarantee of equal remuneration for work of equal value.

Further, our review of legislation **did not identify any provisions that prohibit retaliatory action** when reporting disability-based discrimination.

Table 1: Does Togo have legislative provisions in place guaranteeing non-discrimination across the following six key areas of employment?	
Employment opportunities and hiring	Yes
Equal remuneration for work of equal value	No provisions found
Employer-provided vocational training	No provisions found
Promotions and/or demotions	Yes
Terminations	Yes
Retaliatory action	No provisions found

ARTICLE 3. Toute discrimination directe ou indirecte en matière d’emploi et de profession est interdite.

Par discrimination, on entend toute distinction, exclusion ou préférence fondée sur le sexe, la race, la couleur, la religion, l’appartenance ethnique, l’opinion politique ou philosophique, l’origine sociale, le statut juridique, l’ascendance nationale, l’état de santé ou le handicap et qui a pour effet de réduire ou d’altérer l’égalité de chance ou de traitement en matière d’emploi ou de profession.

Est nulle de plein droit toute disposition discriminatoire figurant dans un contrat de travail, un barème de salaire, une convention ou un accord collectif de travail.

ARTICLE 39. Aucune personne ne peut être écartée d’une procédure de recrutement, aucun salarié ne peut être sanctionné ou licencié en raison de son origine, de son sexe, de ses moeurs, de sa situation de famille, de son appartenance à une ethnie, une nation ou une race, de ses opinions politiques, de ses activités syndicales ou mutualistes, de ses convictions religieuses ou, sauf inaptitude constatée par le médecin d’entreprise ou par un médecin agréé, en raison de son état de santé ou de son handicap. En cas de contestation sur l’inaptitude invoquée, il est fait recours au médecin inspecteur du travail.



Reasonable accommodation at work (Article 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 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.

TOGO: MISSING LEGISLATIVE GUARANTEES OF REASONABLE ACCOMMODATION AT WORK

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 (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.

TOGO: MISSING LEGISLATIVE GUARANTEES OF 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 in Togo.**

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.

TOGO: MISSING LEGISLATIVE GUARANTEES OF INCLUSIVE EDUCATION

While we recognize there may be other 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 inclusive education in Togo.**



Reference Sheet

Recommended Questions and Concluding Observations for Togo's List of Issues
For the Committee on the Rights of Persons with Disabilities
14th Pre-Session Working Group, September 2020

Recommended Questions for Togo's List of Issues:

Work and Employment

- Can Togo outline how the current law prohibiting disability-based discrimination in hiring, demotions, and terminations is being effectively enforced and monitored?
- Can Togo demonstrate whether provisions broadly prohibiting direct and indirect disability-based discrimination sufficiently cover other critical areas of working life, including equal remuneration for work of equal value and access to employer-provided vocational training?
- Can Togo outline any concrete, near-term plans to pass legislation that guarantees employer-provided reasonable accommodation to workers with disabilities?

Education

- Can Togo outline any concrete, near-term plans to pass legislation that ensures equal education opportunities by guaranteeing inclusive education and non-discrimination for students with disabilities?

Recommended Concluding Observations for Togo (where Togo'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.

General Equality and Non-Discrimination

- Consider amending the constitution to add explicit guarantees of equality and non-discrimination regardless of disability status, consistent with CRPD commitments. These guarantees could be added to Articles 2 and 11 of the constitution, which already guarantee equality and non-discrimination based on other personal characteristics and statuses.



Work and Employment

- Outline how it will ensure effective implementation of current workplace non-discrimination provisions by all employers.
- Pass and implement legislation that explicitly prohibits disability-based discrimination in other critical aspects of the working life course, including access to employer-provided vocational training, as well as guaranteeing equal remuneration for work of equal value.
- Pass and implement legislation that guarantees employer-provided reasonable accommodation to workers with disabilities.

Education

- Pass and implement legislation that ensures equal education opportunities by guaranteeing inclusive education and non-discrimination for students with disabilities.

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