



SRI LANKA

A BRIEF ON GENERAL EQUALITY AND NON-DISCRIMINATION, NON-DISCRIMINATION AND REASONABLE ACCOMMODATION AT WORK, AND NON-DISCRIMINATION AND INCLUSION IN EDUCATION

(CRPD Articles 3, 5, 24 and 27 and General Comments 4 & 6)

*Information for the Committee on the Rights of Persons with Disabilities
19th Pre-Sessional Working Group, March 2024*

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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 19th 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 Sri Lanka'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 Sri Lanka, and topics we hope the Committee will address in its concluding observations. We hope the Committee will recommend that Sri Lanka 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 Sri Lanka for having provisions in

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place, we hope the Committee will recommend that Sri Lanka 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, Sri Lanka guarantees equality before the law to all persons and prohibits discrimination on the basis of multiple grounds and statuses, **not including disability. Although the constitution does generically protect against discrimination on the basis of other “such grounds” in addition to the grounds and statuses mentioned, it does not explicitly guarantee equality or non-discrimination to persons with disabilities, who may face distinct barriers to accessing their constitutional rights.** Sri Lanka mentions in the State Party Report that disability will be added as a protected status in its constitutional amendment of the Bill of Rights.

We hope the Committee will:

- In its list of questions, ask Sri Lanka: can Sri Lanka clarify the intended timing of the passing of a constitutional amendment to its Bill of Rights that will grant constitutional protection against discrimination explicitly on the grounds of disability?
 - If Sri Lanka does not have concrete, near-term plans to pass this amendment, recommend in its concluding observations that Sri Lanka **develop a clear and explicit schedule to amend its Bill of Rights to protect against discrimination on the grounds of disability**, consistent with CRPD commitments.

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

Based on our systematic review of Sri Lanka’s legislation, workers with disabilities are guaranteed non-discrimination **only in hiring. We found no provisions protecting from discrimination in other aspects of work, including compensation, promotions and demotions, termination and vocational training. We also found no provisions on indirect discrimination, discriminatory harassment, or retaliatory action for bringing forward claims of discrimination.**

We hope the Committee will:

- In its list of issues, ask Sri Lanka: does Sri Lanka have concrete, near-term plans to pass legislation that protects workers with disabilities from direct and indirect discrimination explicitly in all specific aspects of employment, including hiring, compensation, promotions and demotions, terminations, vocational training, and discriminatory harassment?
 - If concrete, near-term plans are not in place, recommend in its concluding observations that Sri Lanka pass legislation to protect workers with disabilities from direct and indirect discrimination explicitly in all aspects of employment, including hiring,



compensation, promotions and demotions, terminations, vocational training, and discriminatory harassment.

- In its list of issues, ask Sri Lanka: does Sri Lanka have concrete, near-term plans to pass legislation that protects workers with disabilities from retaliatory action for bringing forward claims of workplace discrimination?
 - If concrete, near-term plans are not in place, recommend in its concluding observations that Sri Lanka pass legislation that protects workers with disabilities from retaliatory action for bringing forward claims of workplace discrimination.

Reasonable accommodation at work (Articles 5, 27)

Based on our systematic review of legislation, **we did not identify any legislative provisions that guarantee reasonable accommodation at work in Sri Lanka.** The State Party Report mentions in paragraph 27 that these will be implemented in a forthcoming disability act.

We hope the Committee will:

- In its list of issues, ask Sri Lanka: Can Sri Lanka describe the intended schedule to pass its new Protection of the Rights of Persons with Disabilities Act, which includes guarantees of reasonable accommodation at work?
 - If Sri Lanka does not have concrete, near-term plans in place, recommend in its concluding observations that Sri Lanka pass and implement alternative legislation that guarantees employer-provided reasonable accommodation to workers with disabilities.

Non-discrimination in education and inclusive education (Article 24, General Comm. No. 4)

Based on our systematic review of legislation, **we conclude that Sri Lanka protects students with disabilities from discrimination only in admissions, and offers no guarantees of integration or accommodation in regular schools or regular classrooms.**

We hope the Committee will:

- In its list of issues, ask Sri Lanka: Can Sri Lanka outline any concrete, near-term plans to pass legislation that protects students with disabilities from discrimination other than in admissions?
 - If Sri Lanka does not have concrete, near-term plans in place, recommend in its concluding observations that Sri Lanka pass and implement legislation that comprehensively guarantees non-discrimination for students with disabilities.



- In its list of issues, ask Sri Lanka: Can Sri Lanka outline any concrete, near-term plans to pass legislation that guarantees full inclusion, including classroom integration and accommodation, for students with disabilities?
 - If Sri Lanka does not have concrete, near-term plans in place, recommend in its concluding observations that Sri Lanka pass and implement legislation that guarantees full inclusion, including classroom integration and accommodation, for students with disabilities.



DETAIL OF LEGISLATIVE FINDINGS

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.

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.



SRI LANKA'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 12 of the Constitution of Sri Lanka guarantees equality before the law to all persons, and prohibits discrimination specifically on the basis of multiple grounds, not including disability.

Constitution of Sri Lanka, as amended to 2022

12. (1) *All persons are equal before the law and are entitled to the equal protection of the law.*
(2) *No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds:*
(...)

Although the constitution prohibits discrimination generically on other “such grounds”, it does not explicitly guarantee equality or non-discrimination to persons with disabilities. Our research has shown that these protections are becoming increasingly common: While only 12% of current constitutions that were passed before 1990 explicitly guarantee equality for persons with disabilities, 69% of those passed since 2010 do. Sri Lanka mentions in paragraph 20 of the State Party Report that a new Bill of Rights is being considered as part of constitutional reform, one which would include protection against discrimination on additional grounds, including disability; however, the timeline for its adoption is unclear, and thus this remains an open issue.

Non-discrimination in work and employment (Articles 5,27, 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.

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 2023 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.

SRI LANKA’S LEGISLATIVE PROVISIONS: ALMOST NO PROTECTIONS AGAINST WORKPLACE DISCRIMINATION ON THE BASIS OF DISABILITY

Sri Lanka’s legislation protects workers with disabilities from discrimination only in hiring.

Protection of Rights of Persons with Disabilities of 1996 as amended to 2003

23. (Provisions for the protection and advancement of persons with disabilities.)

No person with a disability shall be discriminated against on the ground of such disability in recruitment for any employment or office or admission to any educational institution.

Our research found no further protections from direct or indirect discrimination, from discriminatory harassment, or from retaliatory action on the part of the employer for bringing forward discrimination claims.

Table 1: Does Sri Lanka 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	No provisions found
Promotions and/or demotions	No provisions found
Terminations	No provisions found
Retaliatory action	No provisions found
Discriminatory harassment	No provisions found
Indirect discrimination	No provisions found

Sri Lanka claims in paragraph 154 of the State Party Report that a proposed new Employment Act contains protections against discrimination in the “terms and conditions of hiring”; however, the detailed content and status of this law are unclear.

Reasonable accommodation at work (Articles 5, 27)

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.

SRI LANKA: 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 Sri Lanka.** Sri Lanka mentions in the State Party Report that a draft Protection of the Rights of Persons with Disabilities bill is set to include these guarantees; the status of this bill is unclear, and thus this remains an open issue.

Non-discrimination in education and inclusive education (Article 24, General Comm. 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.

SRI LANKA'S LEGISLATIVE PROVISIONS: GUARANTEES OF NON-DISCRIMINATION ONLY IN ADMISSIONS OF STUDENTS WITH DISABILITIES

Our systematic review of legislation shows that students with disabilities in Sri Lanka are protected against discrimination only when considering their admission to school. We found no protection against discrimination once these students are actually in school.

Protection of Rights of Persons with Disabilities of 1996 as amended to 2003

23. (Provisions for the protection and advancement of persons with disabilities.)

No person with a disability shall be discriminated against on the ground of such disability in recruitment for any employment or office or admission to any educational institution.

Inclusive education (Article 24.1, 24.2, and General Comm. 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.



SRI LANKA'S LEGISLATIVE PROVISIONS: NO GUARANTEES OF INTEGRATED EDUCATION AND ACCOMMODATIONS FOR STUDENTS WITH DISABILITIES

While we recognize there may be other policies governing equal educational opportunities based on disability, **our systematic review of legislation shows that students with disabilities in Sri Lanka can be placed in separate schools and have no guarantees of integration and accommodation in regular schools or regular classrooms.**

Protection of Rights of Persons with Disabilities of 1996 as amended to 2003

13. (Other functions of the Council.)

Without prejudice to the generality of section 12, the other functions of the Council shall be

...

12 to establish and maintain institutions to accommodate and care for persons with disabilities and provide educational and vocational training for such persons;

13. to encourage the establishment by the State and by private individuals, of institutions to accommodate persons with disabilities and the provision of educational and vocational training to such persons;