



International  
Labour  
Organization

## Executive Summary

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### **The right to decent work of persons with disabilities**

By Arthur O'Reilly

*The right to decent work of persons with disabilities* is a comprehensive overview of the principal international and national legal instruments, policies and initiatives of relevance to the rights of people with disabilities, with a particular focus on employment and work. It examines progress to date in promoting equal employment opportunities for disabled persons through these instruments, highlights issues to be tackled, and sets out an agenda for action to implement these instruments appropriately. This publication builds on an International Labour Organization working paper prepared as a contribution to the negotiation of the United Nations Convention on the Rights of Persons with Disabilities (CRPD), adopted in December 2006.

### **Principal international legal instruments and policy initiatives**

One of the earliest international acknowledgements of the right of people with disabilities to work opportunities was made by the ILO in 1944 – Employment (Transition from War to Peace) Recommendation (No. 71). In the Recommendation, the ILO stated equivocally that disabled workers, “whatever the origin of their disability, should be provided with full opportunities for rehabilitation, specialized vocational guidance, training and retraining, and employment on useful work.”

Over the following decades, important international instruments in relation to the right to work of persons with disabilities have been introduced. These have included several ILO instruments:

- **ILO Vocational Rehabilitation (Disabled) Recommendation (No. 99)**, adopted in 1955, served as the basis for all national legislation and practice concerning vocational guidance, vocational training and placement of disabled persons, until the adoption of Convention No. 159 and Recommendation No. 168 almost thirty years later.
- **ILO Convention No. 159**, adopted in 1983, focuses on the promotion of equal opportunities and equal treatment for men and women with disabilities and requires States to formulate, implement and review national policies on vocational rehabilitation and employment of disabled persons.
- **ILO Recommendation No. 168** outlines measures to create job opportunities, promote cooperatives and improve government support for employment and vocational training and guidance for disabled persons.

- **The ILO Code of Practice on Managing Disabilities in the Workplace**, adopted in 2001, guides employers in all sectors and sizes of enterprises to introduce a positive strategy in managing disability-related issues in the workplace. The Code of Practice recommends practice related to job retention, early intervention, monitoring, assessment and rehabilitation.

Other significant instruments and declarations include those introduced by the United Nations, the Council of Europe, the European Union, the Organization of American States and the World Summit for Social Development. The recent CRPD breaks new ground by prohibiting discrimination on the basis of disability in all forms of employment and calls on States to enshrine this in legislation. It recognizes the right of disabled people of working age to freely choose work in just and favourable conditions and to join trade unions, and provides access to vocational training, work and employment alongside non-disabled persons.

### **Employment status of persons with disabilities**

Despite existing national, regional and international laws and other instruments, and the activities of international bodies and efforts of non-governmental organizations (NGOs), persons with disabilities throughout the world continue to be subjected to widespread violations of their human rights. While the absence of reliable data on persons with disabilities in the field of employment makes generalization difficult, available information suggests that the participation rate of disabled persons in the open labour force is far lower than that of other workers, while the unemployment rate tends to be higher. In the European Union in 2003, for example, only 40 per cent of disabled persons of working age were employed compared to 64.2 per cent of people without disability.

Reasons for this high inactivity vary between countries. Problems of access to information and to physical environment, including transportation, housing and workplaces, risk of losing benefits on starting work, coupled with still-held prejudices among many employers, co-workers and the general public, aggravate an already difficult situation. Another possible reason may be the reluctance of employers to recruit disabled workers for fear of having to make expensive workplace adjustments or because of the difficulty of “letting someone go” once appointed. Many countries, concerned about levels of unemployment and low levels of labour market participation, are placing greater emphasis on active labour market measures. These include:

- Measures to prevent and discourage welfare dependency
- Mainstreaming of employment and training services for persons with disabilities
- Incentives to participate in educational, training and work initiatives
- Greater involvement of employers
- Improving employment support services
- More effective implementation of anti-discrimination legislation
- Greater enforcement of existing quota scheme provisions

### **Employment options open to persons with disabilities**

It is generally accepted that, where possible, persons with disabilities should be supported in finding work in the open labour market. Much has been done to encourage employers to recruit and retain disabled workers, and to assist and facilitate persons with disabilities to

secure, retain and advance in work and employment. Among the measures in place are the following:

- **Financial incentives:** Wage subsidies to cover a shortfall in productivity are one of the most commonly-provided financial supports to employers in encouraging the employment of workers with disabilities. Other financial supports to employers include: grants towards training costs; training completion bonus grants for workplace modifications/special equipment; grants to encourage retention of workers who acquire a disability at work; tax credits in respect of each new disabled worker (may be time restricted).
- **Supports to employers:** In some cases an individual with a disability will require specialized disability-related equipment in order to enable him or her to carry out a job or to receive training. At times it may be difficult, however, for either the worker with a disability or the employer to obtain and/or pay for the equipment. In such cases, the public authorities can play an important supporting role by providing such equipment, either on loan or on a permanent basis. Support can also be provided in the form of technical advice on accommodations required.
- **Awareness training:** Awareness training in disability issues for employees, including supervisors and managers at all levels can play an important role in creating and maintaining an inclusive and effective work environment.
- **Disability management:** The practice of disability management has developed in recent years as a means of promoting the entry and promotion of persons with disabilities, as well as strategies to address workplace injury and disability. These strategies are undertaken in a coordinated effort by workers' representatives and management.

For some persons with disabilities, whose support needs may be higher, alternative measures have been introduced to promote employment opportunities, with the ultimate aim of moving towards open employment. These include:

- **Sheltered employment** is broadly defined as employment in a system or enterprise established specifically for the employment of persons with disabilities. It makes it possible for people with disabilities to carry out a worthwhile activity while preparing to work in "normal" employment.
- **Supported employment** is an alternative to traditional rehabilitation programmes for persons with severe disabilities. It is defined as paid work in integrated work settings with ongoing support services.
- **Social enterprises** are the economic and social fields represented by cooperatives, mutual companies and associations responding to local job creation initiatives. While social enterprises in many countries are not specifically targeted at disabled individuals, they often use social enterprise strategy to create additional opportunities such as start-up grants to persons with disabilities.

## Key issues and an agenda for action

Persons with disabilities are frequently unemployed, underemployed or inactive in the labour market. When they are at work, disabled workers are generally concentrated in low-level, low-paid jobs, and are not adequately represented at higher levels. The double or treble discrimination against women with disabilities is a particular affront to human dignity and a

denial of human rights. If the measures contained in international treaties were appropriately implemented, full equality and participation would be achieved. There is no country in which a major policy or programme initiative is not required.

Together with ILO Conventions and other international, regional and national initiatives, the CRPD provides a fresh impetus and imperative to governments to modify or abolish existing laws, regulations, customs and practice that discriminate against persons with disabilities and to adopt appropriate legislation and other measures for the implementation of the rights contained therein. To bring it into force, a continuing process is required at national and international level to have States sign and ratify the treaty.

Real progress will only be achieved if all stakeholders are made aware of the CRPD and State parties undertake to adopt *immediate*, effective and appropriate measures to raise awareness through society. State parties need to give early attention to their obligation to designate one or more focal points within government to implement the CRPD and then to establish a framework to promote, protect and monitor its implementation.

The CRPD provides for an open, transparent and consultative process through which persons with disabilities, their representative organizations and other interested parties may participate in planning and monitoring its implementation. National organizations representing persons with disabilities have a key role to play in the CRPD implementation process. Bearing in mind that the implementation process is in many ways more complex than the drafting process, they need to ensure that they are closely consulted and actively involved by their respective governments and that they have, or are in a position to acquire, the skills, knowledge and expertise necessary for meaningful consultation and involvement with a wide range of policy and programme issues, including those related to work and employment.

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