



THE RIGHT TO DECENT WORK OF PERSONS WITH DISABILITIES

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Arthur O'Reilly

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Everyday we are reminded that, for everybody, work is a defining feature of human existence. It is the means of sustaining life and of meeting basic needs. But it is also an activity through which individuals affirm their own identity, both to themselves and to those around them. It is crucial to individual choice, to the welfare of families and to the stability of societies.

Juan Somavia, ILO Director General, June 2001

All human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.

Declaration of Philadelphia, International Labour Conference, 1944

All ILO Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, including the elimination of discrimination in respect of employment and occupation.

ILO Declaration on Fundamental Principles and Rights at Work 1998

Each Member shall, in accordance with national conditions, practice and possibilities, formulate, implement and periodically review a national policy on vocational rehabilitation and employment of disabled persons (*which*) shall aim at ensuring that appropriate vocational rehabilitation measures are made available to all categories of disabled persons and at promoting employment opportunities for disabled persons in the open labour market (*and*) be based on the principle of equal opportunity between disabled workers and workers generally.

ILO Convention No. 159 concerning Vocational Rehabilitation and Employment of Disabled Persons 1983

The promotion of full, productive and freely chosen employment should be regarded as the means of achieving in practice the realization of the right to work.

ILO Recommendation No. 169 concerning Employment Policy

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INTRODUCTION

The ILO has commissioned this paper on ‘The Right to Decent Work of Persons with Disabilities’ as a contribution to the deliberations taking place in preparation for the development of a United Nations Convention on the Rights of Persons with Disabilities. The paper is intended to be of specific relevance to those involved in drafting the provisions concerning employment and work in the proposed Convention. By examining the development over time of the ‘right to work’ of disabled persons, the way in which this matter has been dealt with in international instruments and national legislation to date, and the experience in implementing employment and work opportunities, the paper will enable those involved in the preparation of the proposed UN Convention to build on achievements so far.

A summary overview of the principal international legal instruments and policy of relevance to the rights of people with disabilities, with a particular focus on employment and work, is given at the outset. This is followed, in Chapter 1, by a more detailed description of international instruments, policies and initiatives, including reference to the debates which have taken place about their effectiveness in practice.

In Chapter 2, the focus is on the different options open to people with disabilities who wish to work in open/competitive employment, sheltered employment, supported employment and social enterprises. The chapter examines available evidence on the trends in each of these categories and highlights the key issues faced in each case.

Chapter 3 deals with the main approaches which have been adopted at national level to assist people with disabilities in securing, retaining and advancing in employment and work, including legislation; employment services; training for employment; disability management; financial, technical and personal supports; and/persuasion measures. The chapter also touches on the processes of consultation, information gathering, monitoring and evaluation which are essential elements of effective policies.

Chapter 4 reviews the key areas which still require attention, in spite of the range of measures introduced at international, regional and national level to improve employment opportunities for people with disabilities. The chapter suggests ways in which progress might be made in each of these areas, and goes on to propose general principles which should inform the new UN Convention, along with concrete provisions which the Convention might contain.

Annex 1 contains definitions of the key terms used, while Annex 2 gives a historical flavour to the paper, by tracing the development of work and employment opportunities for persons with disabilities in different industrialized countries in the early twentieth century.

THE RIGHT TO DECENT WORK OF PERSONS WITH DISABILITIES¹ - SUMMARY OVERVIEW

Human rights and fundamental freedoms are the birthright of all². This is the essence of the Universal Declaration of Human Rights³ and finds specific application in the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and other international instruments⁴. States have affirmed this principle again and again, including in the Copenhagen Declaration⁵, acknowledging that the promotion and protection of those rights and freedoms is primarily the responsibility of governments. Acceptance of that responsibility should have led to ready ratification and implementation of international instruments and adherence to internationally recognized declarations concerning the elimination of discrimination and the promotion and protection of human rights. That this did not happen to the extent it should is evident from regular exhortations, including from Heads of States and Government in Copenhagen, for greater compliance and the avoidance, as far as possible, of the resort to reservations.

All human rights are universal, indivisible, interdependent and interrelated. It is the duty of States, regardless of their political, economic, social and cultural systems, to promote and protect all human rights and fundamental freedoms.

The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized⁶. Because all human rights are inviolable and none is superior to another, the improvement of any one right cannot be set off against the deterioration of another⁷. While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights.⁸ In other words, the promotion and protection of human rights should be progressed without conditions attached.

Poverty denies the enjoyment of practically all human rights. The importance of international cooperation in the eradication of poverty and promotion of development is apparent. The principle of international cooperation has been recognized in the International Covenants.

¹ The terms 'persons with disabilities' and 'disabled persons' are used interchangeably, reflecting accepted usage in different countries around the world.

² Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, 25 June 1993

³ The Universal Declaration begins: 'Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world....'

⁴ See Chapter 1

⁵ Copenhagen Declaration and Programme of Action, adopted by the World Summit for Social Development, 1995

⁶ UN Declaration on the Right to Development, 1986

⁷ UN Commission on Human Rights Working Group on the Right to Development, Jan. 2001, E/CN.4/2001/WG.18/2, para. 10

⁸ Vienna Declaration, op. cit.

Principle 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. In a comprehensive and far-seeing Recommendation, the ILO stated unequivocally 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.’⁹ The ILO said that persons with disabilities should, wherever possible, be trained with other workers, under the same conditions and the same pay, and called for equality of employment opportunity for disabled workers and for affirmative action to promote the employment of workers with serious disabilities.

Four years later, the right to work of everyone, including persons with disabilities, was copperfastened by the United Nations. Article 23 of the Universal Declaration of Human Rights could hardly be more explicit: ‘Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. Everyone, without discrimination, has the right to equal pay for equal work. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. Everyone has the right to form and to join trade unions for the protection of his interests’¹⁰.

What proved to be one of the most important international instruments in relation to the right to work of persons with disabilities was adopted by the ILO in 1955¹¹. Until the adoption of ILO Convention No. 159 and Recommendation No. 168 almost thirty years later, Recommendation No. 99 served as the basis for national legislation and practice in relation to vocational guidance, vocational training, and placement of disabled persons. Recommendation No. 99 built on the core provisions of earlier instruments in relation, for example, to vocational training, equality of opportunity and equal pay for equal work.

The 1966 International Covenant on Economic, Social and Cultural Rights was drafted in close consultation with the ILO, and reiterates those earlier provisions in binding treaty form¹². States Parties to the Covenant recognize the right of everyone to work, which includes the right to the opportunity to gain one’s living by work freely chosen or accepted, and undertake to safeguard that right. Steps to be taken to achieve the full realization of that right include vocational guidance, training and productive employment. States Parties also commit themselves to equal pay for work of equal value without distinction of any kind, safe and healthy working conditions, and equal opportunity for everyone to be promoted in employment to an appropriate higher level, subject to no considerations other than those of seniority and competence. The International Covenant on Civil and Political Rights, also adopted in 1966¹³, does not deal specifically with employment, but it does contain an important provision prohibiting discrimination on any ground, including disability.

⁹ Employment (Transition from War to Peace) Recommendation No. 71, 1944

¹⁰ Universal Declaration of Human Rights, adopted by the General Assembly on 10 Dec. 1948, Article 23

¹¹ ILO Vocational Rehabilitation (Disabled) Recommendation No. 99, 1955

¹² International Covenant on Economic, Social and Cultural Rights, adopted by G.A. Resolution 2200A (xxi) of 16 Dec. 1966

¹³ International Covenant on Civil and Political Rights, adopted by G.A. Resolution 2200A (xxi) of 16 Dec. 1966

In 1971, the United Nations General Assembly proclaimed a Declaration on the Rights of Mentally Retarded Persons, which affirmed, inter alia, their right to perform productive work or to engage in any other meaningful occupation to the fullest extent of their capabilities¹⁴.

To encourage, assist and enable persons with disabilities to exercise their right to work on an equal basis and without discrimination, the ILO Convention concerning Human Resources Development (No 142), adopted in 1975, called on member States to develop and implement open, flexible and complementary systems of general, technical and vocational education, educational and vocational guidance and vocational training, including continuing employment information.¹⁵ An accompanying Recommendation¹⁶ spells out in detail how the provisions of this Convention should be effected, reinforcing the principle of mainstreaming in vocational guidance and training, highlighting the importance of educating the general public, employers and workers in relation to the employment of persons with disabilities, and calling for adjustments in the workplace, where necessary, to accommodate disabled workers. In an important reference, the Recommendation notes that the ILO and UNESCO had collaborated closely with a view to ensuring that the instruments of the two organizations pursue harmonized objectives and that they would continue to do so with a view to the effective implementation of those instruments. In a further measure,¹⁷ again reflecting its perception of the importance of multi-sectoral collaboration among international bodies in pursuit of the exercise of the right to work of persons with disabilities, the ILO called for a comprehensive campaign for vocational rehabilitation¹⁸ and social integration of disabled persons, in cooperation and coordination with the United Nations, its specialized agencies, and international, regional and non-governmental organizations, a campaign which was to result in the International Year of Disabled Persons and the World Programme of Action concerning Disabled Persons, among other initiatives.

Further affirmation of the right to work and the right to work-related services including vocational counseling and training came almost immediately from the United Nations General Assembly¹⁹.

Building on the ‘full participation and equality’ theme of the International Year and goal of the World Programme of Action, and conscious that developments since its seminal Recommendation No. 99 in 1955 had made it appropriate to adopt new international labour standards concerning vocational rehabilitation and employment, the ILO adopted landmark Convention No. 159 in 1983²⁰. The Convention sets out a number of fundamental principles which should underlie vocational rehabilitation and employment policies, highlighting those of equal opportunity and treatment, affirmative measures which should not be regarded as discriminating against other workers, integration of persons with disabilities into mainstream work-related programmes and services, services for those in rural areas and remote communities, the training of

¹⁴ UNGA Resolution 2856 of 20 Dec. 1971

¹⁵ ILO Human Resources Development Convention (No. 142), 1975

¹⁶ ILO Human Resources Development Recommendation (No. 150), 1975

¹⁷ ILO Resolution concerning Vocational Rehabilitation and Social Reintegration of Disabled or Handicapped Persons, adopted 24 June 1975

¹⁸ ‘Vocational rehabilitation’ is a process which enables disabled persons to secure, retain and advance in suitable employment and thereby furthers their integration or reintegration into society (ILO Code of Practice on Managing Disability in the Workplace, 2002)

¹⁹ Declaration on the Rights of Disabled Persons, UNGA Res. 3447 of 9 Dec. 1975

²⁰ ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159), 1983

qualified staff, and the need to consult employers' and workers' organizations as well as representative organizations of and for disabled persons. The accompanying Recommendation No. 168 details measures which should be taken to promote equitable employment opportunities, including the making of 'reasonable adaptations to workplaces, job design, tools, machinery and work organization', and outlines steps which should be taken to ensure that the consultative processes mentioned in the Convention work effectively²¹.

The 1987 Global Meeting of Experts to Review the Implementation of the World Programme of Action proposed that a guiding philosophy should be developed to indicate priorities for action in the years ahead, and that the basis of that philosophy should be the recognition of the rights (including the right to work) of persons with disabilities. The Meeting recommended that the General Assembly convene a special conference to draft an international convention on the elimination of all forms of discrimination against disabled persons. Following a failure by the General Assembly to reach a consensus on this issue, the Standard Rules on the Equalization of Opportunities for Persons with Disabilities were adopted on 20 December 1993²². The Standard Rules are a set of non-compulsory guidelines, though the UN Economic and Social Committee hoped they would become 'international customary rules when they are applied by a great number of States with the intention of respecting a rule in international law'²³. Employment is covered by Rule 7, which calls on all States to take various measures, most of which are contained in earlier relevant ILO Conventions and Recommendations, to ensure that persons with disabilities have equal opportunities for productive and gainful employment in the labour market.

In a further reaffirmation of the right to work, the World Conference on Human Rights, meeting in Vienna in 1993, in a direct reference to persons with disabilities, emphasized that 'every person is born equal and has the same rights to life and welfare, education and work, living independently and active participation in all aspects of society. Any direct discrimination or other negative discriminatory treatment of a disabled person is therefore a violation of his or her rights.'²⁴ The World Conference called on governments to adopt or adjust legislation to assure access to these and other rights for disabled persons.

Towards the end of 1994, the UN Committee on Economic, Social and Cultural Rights pointed out that the effects of disability-based discrimination had been particularly severe in the fields of education, employment, housing, transport, cultural life and access to public places and services.²⁵ The Committee considered the field of employment as one in which discrimination had been both prominent and persistent. In most countries, the unemployment rate among persons with disabilities was two to three times higher than that for others. Disabled persons were mostly engaged in low-paid jobs with little social and legal security and often segregated from the mainstream labour market. As the ILO had frequently noted, physical barriers such as inaccessible public transport, housing and workplaces were often the main reasons why persons with disabilities were not employed. The Committee drew attention to the valuable and comprehensive

²¹ ILO Vocational Rehabilitation and Employment (Disabled Persons) Recommendation (No. 168), 1983

²² Resolution 48/96

²³ A/C. 3/48/L.3, 1 Oct. 1993, p. 6

²⁴ Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993, p. 18

²⁵ General Comment No. 5 (1994)

instruments developed by the ILO, including in particular Convention No. 159, and urged States Parties to the International Covenant to consider ratifying that Convention.

Heads of State and Government at the World Summit for Social Development in 1995, acknowledging the particular employment difficulties faced by persons with disabilities, committed themselves to putting the creation of employment, the reduction of unemployment, and the promotion of adequately remunerated employment at the centre of strategies and policies of governments, in full respect for those workers' rights.²⁶ The Programme of Action adopted by the Summit includes taking effective measures to bring to an end all forms of discrimination against persons with disabilities.²⁷

Echoing the exhortation of the UN Committee on Economic, Social and Cultural Rights a year earlier, the Programme of Action calls on governments to enhance the quality of work and employment by, *inter alia*, 'strongly considering ratification and full implementation of ILO conventions relating to the employment rights of...persons with disabilities.'²⁸ Acknowledging the singular role of the ILO at international level in relation to the world of work and the particular tripartite nature of its structure and operation, the Programme urges governments to promote the role of the ILO, particularly as regards improving the level of employment and the quality of work.

The European Social Charter recognizes the right of everyone to 'have the opportunity to earn (a) living in an occupation freely entered upon,' and that all workers have the right to just conditions of work. The Charter specifically acknowledges that disabled persons have the right to independence, social integration and participation in the life of the community.²⁹

A European Union Directive, adopted at the end of 2000, outlaws direct and indirect discrimination in the field of employment on a number of grounds, including disability.³⁰ The Directive applies, *inter alia*, to selection criteria and recruitment conditions, vocational guidance, vocational training, employment and working conditions, including pay. Importantly, the Directive states that 'reasonable accommodation' shall be provided, i.e. that employers are to take appropriate measures, where needed, to enable a person with a disability to have access to, participate in, or advance in employment, or to provide training, unless such measures would impose a 'disproportionate burden' on the employer.

The ILO Code of Practice on Managing Disability in the Workplace was drawn up to provide guidance to employers on practical means of implementing the types of measures contained in international instruments such as those mentioned earlier.³¹ The Code was developed and unanimously agreed at a tripartite meeting of experts (representing governments, employers' organizations and workers' organizations), convened in October 2001 at the decision of the ILO Governing Body, taken at its 277th Session in March 2000. While addressed mainly to employers,

²⁶ Copenhagen Declaration and Programme of action adopted by the World Summit for Social Development, 1995

²⁷ *idem*: para. 15 (i)

²⁸ *idem*: para. 54 (c)

²⁹ Council of Europe, European Social Charter (revised 1996)

³⁰ Council directive 2000/78/EC of 27 Nov. 2000 establishing a general framework for equal treatment in employment and occupation. OJL 303, 2 Dec. 2000, pp. 16-22

³¹ ILO Code of Practice on Managing Disability in the Workplace, 2002

the Code should also prove of considerable benefit to governments, which play a primary role in providing the necessary legislative framework for promoting equal opportunities and treatment in the workplace, and to workers' representatives, whose main concern is to protect workers' interests. The contents of the Code are based on the principles underpinning international instruments and initiatives. The Code should, accordingly, also help to inform the principles and contents of the employment provisions of the proposed UN Convention on the Rights of Persons with Disabilities.

There is no doubt that general international human rights instruments apply to all persons, including persons with disabilities. Explicit confirmation was given in 1994 by the UN Committee on Economic, Social and Cultural Rights.³² The Committee acknowledged, however, that States Parties devoted very little attention to persons with disabilities in their reports on compliance with that Covenant.³³ The need for explicit, disability-related provisions in international human rights instruments was recognized in later measures, including the Convention on the Rights of the Child (Article 23), the African Charter on Human and Peoples' Rights (Article 18 (4)), and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Article 18), leading the Committee to conclude that 'it is now widely accepted that the human rights of persons with disabilities must be protected and promoted through general, as well as specially designed, laws, policies and programmes'³⁴.

Despite existing national, regional and international laws and other instruments, and despite the activities of international bodies and the efforts of non-governmental organizations, persons with disabilities throughout the world continue to be subjected to widespread violations of their human rights. This is an undeniable fact. In the field of employment, the available statistics indicate that the unemployment rate among workers with disabilities tends to be twice or three times that of other workers. Problems of access to the physical environment, including transportation, housing and workplaces, coupled with still-held prejudices among many employers, co-workers and the general public, aggravate an already difficult situation. This is not to suggest that there has been no improvement. The significant growth in domestic anti-discrimination legislation in recent years is encouraging, even though adoption of a law does not guarantee its enforcement. The persistent efforts of international agencies, and in particular the ILO, in promoting equal opportunity and treatment in employment continue to make important inroads into the economic and social exclusion of persons with disabilities. If the provisions contained in the international treaties and other instruments discussed in this report were fully implemented, full equality and participation for persons with disabilities in the employment field would be achieved. This, regrettably, is not yet the case. For people with disabilities and their representative organizations, there is more to be done.

A number of attempts were made during the past fifteen years to have a specially designed law, a UN Convention on the Rights of Persons with Disabilities, elaborated. In December 2001, the UN General Assembly decided to establish an Ad Hoc Committee to consider proposals for such a convention. The terms of reference of this Committee are:

³² General Comment No. 5

³³ *idem*: para. 2

³⁴ *idem*: para. 6

“to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities, based on the holistic approach in the work done in the fields of social development, human rights and non-discrimination and taking into account the recommendations of the Commission on Human Rights and the Commission for Social Development”

The work of this Committee commenced in July 2002.

CHAPTER 1 - INTERNATIONAL LEGAL INSTRUMENTS AND POLICY INITIATIVES CONCERNING THE RIGHT TO WORK OF PERSONS WITH DISABILITIES

1.1 Introduction

This chapter reviews, in chronological order, the principal legal instruments and policy initiatives concerning the right to work of persons with disabilities from the United Nations (UN), the International Labour Organization (ILO), the Council of Europe and the European Union (EU). It includes the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in 1993, and the Copenhagen Declaration and Programme of Action, adopted by the World Summit for Social Development in 1995.

1.2 Early ILO Measures

The International Labour Organization (ILO), founded in 1919, is the oldest of the specialized technical agencies of the UN system. It is tripartite in structure, with representatives of employers' and workers' organizations having an equal voice with those of governments, of its 175 member countries, in shaping ILO policies and programmes, through participation in the annual International Labour Conference and membership on the ILO Governing Body. The primary goal of the ILO is to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity. The ILO has four principal strategic objectives:

- to promote and realize standards, and fundamental principles and rights at work
- to create greater opportunities for women and men to secure decent employment
- to enhance the coverage and effectiveness of social protection for all
- to strengthen tripartism and social dialogue.

These objectives are realized through:

- (1) The formulation of international policies and programmes to promote basic human rights, improve working conditions, and enhance employment opportunities.
- (2) The creation of international labour standards, through the formulation and adoption of Conventions, backed by a system to supervise their application, as well as Recommendations and Codes of Practice, which serve as guidelines for national authorities in putting standards into action. *Conventions* prescribe international labour standards and are binding on ratifying States; *Recommendations* provide guidelines for Members of the ILO; *Codes of Practice* are agreed, non-binding rules and procedures.
- (3) An extensive programme of international technical cooperation, formulated and implemented in partnership with ILO constituents and development partners.
- (4) Training, education, research and publishing activities.

The first international instrument containing provisions relating to the vocational rehabilitation of workers with a disability was adopted by the International Labour Conference in 1925, just a few years after the establishment of the International Labour Organization.³⁵ The Recommendation set out principles which should be taken into account in determining compensation payment for industrial accidents. It also recommended that ‘the vocational re-education of injured workmen should be provided by such means as the national laws or regulations deem most suitable,’ and urged governments to promote institutions which would provide such ‘re-education’.

Interest in vocational rehabilitation and employment opportunities for persons with disabilities re-surfaced during the Second World War, largely because of the number of people disabled during the war and the need to find trained workers to fill jobs left vacant by mobilized workers. In May 1944, the International Labour Conference adopted a comprehensive Recommendation (No. 71) on employment services, including labour market information, vocational guidance and vocational training. One of the groups specifically covered by the Recommendation was disabled workers who, ‘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’. The Recommendation provides early examples of a number of concepts such as mainstreaming, equality of opportunity and affirmative action:

- (39) The criterion for the training and employment of disabled workers should be the employability of the worker, whatever the origin of the disability.
- (40) There should be the closest collaboration between medical services for the disabled and vocational rehabilitation and placement services.
- (41) Specialized vocational guidance for the disabled should be developed in order to make it possible to assess each disabled worker’s capacity and to select the most appropriate form of employment for him.
- (42)
 - 1. Wherever possible, disabled workers should receive training in company with able-bodied workers, under the same conditions and with the same pay.
 - 2. Training should be continued to the point where the disabled person is able to enter employment as an efficient worker in the trade or occupation for which he has been trained.
 - 3. Wherever practicable, efforts should be made to retrain disabled workers in their former occupations or in related occupations where their previous qualifications would be useful.
 - 4. Employers with suitable training facilities should be induced to train a reasonable proportion of disabled workers.
 - 5. Specialized training centres, with appropriate medical supervision, should be provided for those disabled persons who require such special training.
- (43)
 - 1. Special measures should be taken to ensure equality of employment opportunity for disabled workers on the basis of their working capacity. Employers should be induced by wide publicity and other means, and

³⁵Recommendation (No. 22) concerning the minimum scale of workmen’s compensation, 1925

where necessary compelled, to employ a reasonable quota of disabled workers.

2. In certain occupations particularly suitable for the employment of seriously disabled workers, such workers should be given preference over all other workers.
3. Efforts should be made, in close cooperation with employers' and workers' organizations, to overcome employment discriminations against disabled workers which are not related to their ability and job performance, and to overcome the obstacles to their employment including the possibility of increased liability in respect of workmens' compensation.
4. Employment on useful work in special centres under non-competitive conditions should be made available for all disabled workers who cannot be made fit for normal employment. Information should be assembled by the employment service in regard to the occupations particularly suited to different disabilities and the size, location and employability of the disabled population'.³⁶

Although Recommendation No. 71 did not specifically refer to gender differences in the provisions concerning workers with disabilities, it did emphasize more than once 'complete equality of opportunity' for men and women in respect, for example, of recruitment on the basis of their individual merit, skill and experience, equal pay for equal work, and access to further education and training.

The specific concern of the International Labour Organization for workers with disabilities continues to run like a thread through that body's Conventions and Recommendations. In 1946, Convention Nos. 77 and 78, and Recommendation No. 79, concerning medical examination of young people for fitness for employment, called for appropriate measures to be taken by the competent authority for vocational guidance and vocational rehabilitation in respect of young persons with disabilities.³⁷ Recommendation No. 83 and Convention No. 88, adopted in 1948, concerning the organization of employment services, called for special measures to meet the needs of workers with disabilities and recommended 'conditions or special studies' on such questions as the placement of disabled workers.³⁸ Included also was a recommendation that employment services should not, in referring workers to employment, itself discriminate against applicants on grounds of race, colour, sex or belief.

1.3 Universal Declaration of Human Rights

On 10 December 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights. There has been some criticism of the fact that the Declaration

³⁶ Employment (Transition from War to Peace) Recommendation (No. 71), 1944, Section X

³⁷ Medical Examination of Young Persons (Industry) Convention (No. 77), 1946; Medical Examination of Young Persons (Non-Industrial Occupations) Convention (No. 78), 1946; Medical Examination of Young Persons Recommendation (No. 79), 1946.

³⁸ Employment Service Convention (No. 88), 1948; Employment Service Recommendation (No. 83) 1948.

ignores persons with disabilities, that disabled persons were not included as a distinct group vulnerable to human rights violations, that disability is not mentioned as a protected category.³⁹

The UN General Assembly does, however, at the outset, proclaim the Declaration ‘as a common standard of achievement for *all* peoples...’; Article 1 states that ‘*All* human beings are born free and equal in dignity and rights...’; Article 2 states that ‘*Everyone* is entitled to all the rights and freedoms set out in (the) Declaration, without distinction of any kind, *such as* race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’.⁴⁰ There can be little doubt that disabled people are covered by the Declaration, even though not specifically mentioned.

Several of the articles of the Declaration relate to employment - Article 22 on the right to social security; Article 23 (1) on the right to work, to free choice of employment, to just and favourable conditions of work and to protection against employment; Article 23 (2) on the right to equal pay for equal work; Article 23 (3) on the right of everyone who works to just and favourable remuneration ensuring for self and family an existence worthy of human dignity and supplemented, if necessary, by other means of social protection; Article 25 (1) on the right to a standard of living adequate for the health and well-being of self and family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond control; Article 26 (1) on the right to education, including that technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

1.4 Council of Europe: European Convention on Human Rights

Founded in 1949 by ten Western European States, the Council of Europe - current membership 41 States - is primarily an organization of intergovernmental cooperation devoted to upholding parliamentary democracy, the rule of law, and the protection of human rights. The outcome of the work of the Council of Europe falls into three broad categories. First, there are international treaties - normally known as European conventions or agreements - which are binding on the States which ratify them. Secondly, the Committee of Ministers addresses Recommendations to governments regarding policies or legislation. Thirdly, there are reports or studies which may examine and discuss various approaches or opinions on certain issues.

The European Convention on Human Rights, adopted by the Council of Europe in 1950, might be regarded as the European equivalent to the International Covenant on Civil and Political Rights.⁴¹ From a disability perspective, it is open to criticism because the main non-discrimination provision (Article 14) does not include disability among the grounds on which discrimination is prohibited, although it could be argued that it is implied in the phrase ‘or other status’.

³⁹ See, for example, Degener T and Quinn G. A Survey of International, Comparative and Regional Disability Law Reform. Paper presented at From Principles to Practice Symposium, Washington D.C., Oct. 2000, p. 16

⁴⁰ Emphasis added

⁴¹ For a more detailed description and discussion, see Degener and Quinn, op. cit., p. 60 et seq.

1.5 ILO Social Security Convention

The 1952 Convention No. 102 on Social Security (Minimum Standards) called on the institutions or government departments administering medical care to cooperate with the general vocational rehabilitation services, with a view to the return to suitable work of disabled workers.⁴² It also provided that ‘national laws or regulations may authorize such institutions or departments to ensure provision for the vocational rehabilitation of handicapped persons.’

1.6 First ILO Recommendation devoted to Vocational Rehabilitation

What was to be one of the most important instruments in relation to persons with disabilities, ILO Recommendation No. 99, was adopted in 1955.⁴³ Until the adoption of Convention No. 159 and Recommendation No. 168 almost thirty years later, this international instrument served as the basis for all national legislation and practice concerning vocational guidance, vocational training and placement of disabled persons.⁴⁴

Using a definition of ‘disabled person’ which is substantively the same as that currently in use by the ILO,⁴⁵ the Recommendation built on key provisions of earlier instruments in relation, for example, to mainstreaming of vocational training, equality of opportunity, no discrimination in pay for equal work, and promotion of research. Methods of widening employment opportunities for workers with disabilities, in close cooperation with employers’ and workers’ organizations, included quotas, reserved occupations, creation of cooperatives and the establishment of sheltered workshops. The role of the ILO, in providing technical advisory assistance, organizing international exchanges of experience, and other forms of international cooperation including the training of rehabilitation staff was spelled out. The Recommendation also included special provisions for disabled children and young persons.

1.7 Further ILO Measures 1958-68

ILO Convention No. 111 and Recommendation No. 111 concerning Discrimination in Employment and Occupation, which were adopted in 1958, outline policies of non-discrimination in the promotion of equal opportunity and treatment in employment.⁴⁶ Given the ILO’s previous attention to persons with disabilities, it is somewhat surprising that disability was not specifically included in these particular instruments as a prohibited ground of discrimination. A proposal to include disability as a ground of discrimination is currently before the ILO Governing Body.

Mindful of the effects of technological change on jobs, the ILO issued a Resolution in 1965 concerning techniques employed by member States in the rehabilitation and training of disabled persons for new forms of employment.⁴⁷

⁴² Social Security (Minimum Standards) Convention (No. 102) 1952, Article 35

⁴³ Vocational Rehabilitation (Disabled) Recommendation (No. 99), 1955

⁴⁴ ILO, Vocational Rehabilitation and Employment of Disabled Persons, 1998

⁴⁵ See ILO Code of Practice on Managing Disability in the Workplace, 2002

⁴⁶ Discrimination (Employment and Occupation) Convention (No. 111), 1958; Discrimination (Employment and Occupation) Recommendation (No. 111), 1958

⁴⁷ Resolution concerning Vocational Rehabilitation of Disabled Persons, 1965

The ILO's continuing interest in workers with disabilities was reflected in the requirement in Convention No. 128 (1967) that members should, under prescribed conditions,

- (a) provide rehabilitation services designed to prepare a disabled person wherever possible for the resumption of previous activity, or, if this is not possible, the most suitable alternative gainful activity, having regard to aptitudes and capacity, and
- (b) take measures to further the placement of disabled persons in suitable employment.⁴⁸

That the ILO was determined to progress policy in vocational rehabilitation and to eliminate all discrimination in relation to the employment of disabled workers was evidenced in 1968 by a Resolution of the International Labour Conference concerning disabled workers, requesting the Director General to carry out appropriate studies to enable the Conference to consider the possible revision of the Vocational Rehabilitation (Disabled) Recommendation No. 99, 1955 (No. 99), or the possible adoption of a new international instrument.⁴⁹

1.8 International Covenants

In December 1966, the UN General Assembly adopted two important Covenants, on Economic, Social and Cultural Rights, and on Civil and Political Rights.⁵⁰ Together with the Universal Declaration of Human Rights (see 1.3 above), they form the International Bill of Human Rights.

The International Covenant on Economic, Social and Cultural Rights, which was drafted in close collaboration with the ILO, contains a number of important provisions relating to work and equal employment opportunity:

Article 6:

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his (sic) living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken... to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7:

The States Parties... recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:

⁴⁸ Invalidity, Old-Age and Survivors' Benefits, Convention (No. 128), 1967, Article 13

⁴⁹ Resolution concerning Disabled Workers, adopted 24 June 1968

⁵⁰ International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights, adopted by General Assembly Resolution 2200A (xxi) of 16 Dec. 1966

- (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
- (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence....;’ The Covenant also guarantees the right to education.⁵¹

The International Covenant on Civil and Political Rights contains no specific provisions on employment, but it does include an important safeguard against discrimination: ‘All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’⁵²

Although disability is not explicitly included in either Covenant among the prohibited grounds of discrimination, it is encompassed by the term ‘or other status.’⁵³

1.9 UN Declaration on the Rights of Mentally Retarded Persons

In 1971, the UN General Assembly proclaimed a Declaration on the Rights of Mentally Retarded Persons.⁵⁴ The Declaration affirmed that mentally retarded persons had the same rights as everyone else. Specifically, they had a right to such education, training, rehabilitation and guidance as would enable them to develop their ability and maximum potential; a right to economic security and a decent standard of living; a right to perform productive work or to engage in any other meaningful occupation to the fullest possible extent of their capabilities.

1.10 ILO Measures on the Development of Human Resources

ILO Convention No. 142 in 1975 called on member States to develop comprehensive and coordinated policies and programmes of vocational guidance and vocational training, closely linked with employment, in particular through public employment services. Systems of vocational guidance, including continuing employment information, were to be extended to ensure that comprehensive information and the broadest possible guidance would be available to all, including persons with disabilities.⁵⁵

Recommendation No. 150 spelled out in considerable detail how the provisions of Convention No. 142 should be effected. Persons with disabilities should have access to mainstream vocational guidance and vocational training programmes provided for the general

⁵¹ Article 13

⁵² ICCPR, Article 2

⁵³ UN Committee on Economic, Social and Cultural Rights, General Comment No. 5, 1994

⁵⁴ UNGA Res. 2856 (xxvi) of 20 Dec. 1971

⁵⁵ Human Resources Development Convention (No. 142), 1975

population or, where this was not desirable, to specially adjusted programmes. It recommended that every effort should be made to educate the general public, employers and workers on the need to provide disabled persons with guidance and training to enable them to find suitable employment, on the adjustments in employment which some of them might require, and on the desirability of special support for them in their employment. Persons with disabilities were, as far as possible, to be integrated into productive life in a normal working environment.⁵⁶

1.11 ILO Call for Comprehensive Campaign

The ILO Resolution adopted on 24 June 1975 was short, but particularly significant for a number of reasons.⁵⁷ Referring to the fact that Rehabilitation International had declared the 1970s to be the Rehabilitation Decade, the Resolution acknowledged growing public recognition of the need for special measures to integrate disabled persons into the community, deplored the fact that too many persons with disabilities, the majority of whom lived in developing countries, had very limited opportunity for work, and called on all public authorities and employers' and workers' organizations to promote maximum opportunities for disabled persons to perform, secure and retain suitable employment. The Resolution called for a comprehensive campaign for vocational rehabilitation and social integration of disabled persons, in cooperation and coordination with the United Nations, its specialized agencies, and international, regional and non-governmental organizations, a campaign which was to result, inter alia, in the International Year of Disabled Persons and the World Programme of Action concerning Disabled Persons.

1.12 UN Declaration on the Rights of Disabled Persons

The UN General Assembly, at the end of 1975, proclaimed a Declaration on the Rights of Disabled Persons. The Declaration affirmed that disabled persons had the same civil and political rights as other people, as well as the right to, inter alia, education, vocational training, counselling and placement services, the right to secure and retain employment or to engage in a useful, productive and remunerative occupation.⁵⁸ The Declaration proclaimed that these rights were for all disabled persons without discrimination on the basis of sex or other grounds.

1.13 International Year of Disabled Persons

On 16 December 1976, the UN General Assembly proclaimed 1981 the International Year of Disabled Persons, with the theme 'full participation and equality'.⁵⁹ Towards the end of 1981, the General Assembly urged member States to consolidate and build further on the results of the International Year in order to secure prevention of disability, rehabilitation and full integration of disabled persons into society. The General Assembly also urged the Secretary-General, the specialized agencies and other UN bodies to undertake or expedite measures already under way to improve employment opportunities for disabled persons within these bodies at all levels.⁶⁰

⁵⁶ Human Resources Development Recommendation (No. 150), 1975

⁵⁷ Resolution concerning Vocational Rehabilitation and Social Reintegration of Disabled or Handicapped Persons, adopted 24 June 1975

⁵⁸ UNGA Res. 3447(XXX) of 9 Dec. 1975

⁵⁹ UNGA Res. 31/123

⁶⁰ UNGA Res. 36/77 of 8 Dec. 1981

1.14 UN World Programme of Action and Decade of Disabled Persons

One year later, the UN General Assembly, stressing that the primary responsibility for promoting effective measures for prevention, rehabilitation and the realization of the goals of full participation and equality rested with individual countries and that international action should be directed to assist and support national efforts in this regard, adopted the World Programme of Action (WPA) concerning Disabled Persons.⁶¹ On the same day, the General Assembly proclaimed the period 1983-1992 United Nations Decade of Disabled Persons and encouraged member States to utilize this period as one of the means to implement the World Programme of Action.⁶²

The World Programme of Action contains three overall aims – prevention, rehabilitation and equalization of opportunities. Equalization of opportunities is defined as:

‘ the process through which the general system of society, such as the physical and cultural environment, housing and transportation, social and health services, educational and work opportunities, cultural and social life, including sports and recreational opportunities are made accessible to all.’⁶³

The WPA states that ‘experience shows that it is largely the environment which determines the effect of an impairment or a disability on a person’s daily life’,⁶⁴ an acknowledgement which epitomizes the shift from a care/welfare approach to a social/rights one.⁶⁵

1.15 ILO Convention No. 159

It will be recalled that the ILO had some years earlier proposed considering a possible revision of the Vocational Rehabilitation (Disabled) Recommendation No. 99 of 1955, or the possible adoption of a new international instrument (see 1.6 above). Recommendation No. 99, which was not linked to a convention, played a significant role in influencing national legislation and practice. The extent to which it did so confirmed the Director-General’s comment in his 1964 Report to the effect that while conventions lay down obligations, it is possible, in certain areas, ‘that a standard which can be widely accepted may well be more effective in practice than obligations which are unlikely to be equally widely assumed.’⁶⁶

Building on the ‘full participation and equality’ theme of the International Year, and goal of the World Programme of Action, the ILO adopted the Vocational Rehabilitation and Employment (Disabled Persons) Convention No. 159 and Recommendation No. 168 in 1983. The Convention requires member States, in accordance with national conditions, practice and possibilities, to formulate, implement and periodically review a national policy on vocational rehabilitation and employment of disabled persons. The renewed emphasis on full participation is reflected in Article

⁶¹ UNGA Res. 37/52 of 3 Dec. 1982

⁶² UNGA Res. 37/53 of 3 Dec. 1982

⁶³ para. 12

⁶⁴ para. 21

⁶⁵ A traditional approach to disability was to view it as a problem of the person. Policy response tended to be to try to reduce or eliminate the disability largely through medical rehabilitation and/or to provide care/welfare supports. Equalisation of opportunities, on the other hand, recognises that society is disabling when it fails to provide equal opportunities for participation to all its members, opportunities to exercise the equal rights to which all are entitled.

⁶⁶ Quoted in ILO, Vocational Rehabilitation and Employment of Disabled Persons, 1998, p. 4

1.2, which describes the purpose of vocational rehabilitation as being to enable a disabled person to secure, retain and advance in suitable employment and *thereby to further such person's integration or reintegration into society*,⁶⁷ the highlighted phrase being an addition to Recommendation No. 99. The 'equality' goal is captured in Article 4 of the Convention:

'The said policy shall be based on the principle of equal opportunity between disabled workers and workers generally. Equality of opportunity and treatment for disabled men and women workers shall be respected. Special positive measures aimed at effective equality of opportunity and treatment between disabled workers and other workers shall not be regarded as discriminating against other workers.'

The clear recognition of both women and men with disabilities will be noted. The Convention prescribes the action to be taken at national level to implement the policy. It also reminds Members, as did Recommendation No. 99 nearly thirty years previously, of the need, not only to provide the relevant services, but to evaluate them with a view to their continual improvement. The equality theme runs through Recommendation No. 168: for example,

- disabled persons should enjoy equality of opportunity and treatment in respect of access to, retention of and advancement in employment which, wherever possible, corresponds to their own choice and takes account of their individual suitability for such employment (Article 7);
- in providing vocational rehabilitation and employment assistance to disabled persons, the principle of equality of opportunity and treatment for men and women workers should be respected (Article 8);
- measures should be taken to promote employment opportunities for disabled workers which conform to the employment and salary standards applicable to workers generally (Article 10).

The Recommendation reminds Members that such measures should include the making of 'reasonable adaptations to workplaces, job design, tools, machinery and work organization' to facilitate training and employment. Given the increasing shift away from the 'caring' to the 'rights' model which was then beginning to take place at national as well as international level, the Recommendation is forthright in stating that disabled persons should be informed 'about their rights and opportunities in the employment field.'⁶⁸

1.16 Monitoring the Implementation of Convention No. 159

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) is one of two supervisory bodies with responsibility for the regular supervision of the observance by member States of their standards-related obligations⁶⁹. Members of the CEACR, appointed by the ILO Governing Body for a renewable period of three years, are appointed in a personal capacity among impartial persons of technical competence and independent standing, drawn from all parts of the world. The CEACR reviews the periodic reports of member States on

⁶⁷ Emphasis added

⁶⁸ Article 16

⁶⁹ The other regular supervisory body is the Conference Committee on the Application of Standards.

the measures which they have taken to give effect to the provisions of Conventions which they have ratified.

In its report on a General Survey on the implementation of the provisions of Convention No. 159 and Recommendation No. 168,⁷⁰ the CEACR commented that the principle of equality of opportunity and equality of treatment in employment for disabled persons requires particular attention in an environment characterized by global competition and deregulation of labour markets, and emphasized the applicability of the Convention to all member States.

‘Convention No. 159 is a promotional convention: it sets objectives and lays down basic principles to be observed in attaining them. Because its provisions are flexible as to the attainment of its objectives, due account can be taken of the situation prevailing in each country. They can be applied in all member States, regardless of the stage they have reached in their activities for the vocational rehabilitation and employment of disabled persons’.

Recalling the fundamental importance of consultations between governments and the social partners, the Committee emphasized that consulting representative organizations of persons with disabilities on vocational rehabilitation and employment matters was a crucial element of the consultation process. It went on to strongly urge member States to promote the formation of truly representative organizations of people with disabilities and to facilitate communication between such organizations and administrative and technical bodies involved in vocational rehabilitation.

Noting that governments had not supplied detailed information on the situation of people with disabilities living in rural areas and isolated communities, the Committee observed that these persons are doubly affected, by their disability and by their distance from services available to the general population and to people with disabilities living in urban centers and highlighted the importance of community-based rehabilitation programmes in facilitating the integration of some disabled persons into the economic and social life of their communities.

Observing on a general trend in national practice concerning persons with disabilities towards the use of general services for vocational guidance, training, placement, employment and other related services which exist from workers in general, the Committee noted that this process of mainstreaming has contributed considerably to changing negative ideas and attitudes in regard to the place and role of people with disabilities in working life and in society.

In a final comment, the Committee emphasized that the implementation of the Convention’s provisions and the measures advocated by Recommendation No. 168 did not necessarily require vast resources, but depended on a commitment of the relevant stakeholders. In view of this and the fact that both instruments take into account the diversity of national situations and conditions, it urged member States which had not yet done so to ratify the Convention.

1.17 European Union Recommendation concerning employment for persons with disabilities

The original six member States of the then European Economic Community (EEC) (now the European Union) had relatively similar social systems and levels of economic development, and

⁷⁰ ILO Vocational Rehabilitation and Employment of Disabled Persons, 1998

they did not perceive social policy as a major issue of potential disagreement. Hence, between 1957 and the first enlargement of the EEC in 1973,⁷¹ social policy was not a serious pre-occupation. There were two exceptions: free movement of workers and equal opportunities. The focus of equal opportunities legislation was, however, primarily on gender balance. Concern about the need for an active social policy increased with the entry into the Community of Greece in 1981 and Spain and Portugal in 1986.

While the Council of Ministers had no formal competency until the Treaty of Amsterdam in 1997 to adopt legal measures in the disability field, this did not prevent it from adopting non-binding Recommendations and Resolutions.^{72 73} In 1986, a Recommendation was adopted urging member States ‘to take appropriate measures to promote fair opportunities for persons with disabilities in the field of employment and vocational training.’

1.18 UN Convention Recommended

The Global Meeting of Experts to Review the Implementation of the World Programme of Action concerning Disabled Persons at the Mid-Point of the United Nations Decade of Disabled Persons was held in Stockholm in 1987. It was proposed that a guiding philosophy should be developed to indicate priorities for action in the years ahead, and that the basis of that philosophy should be the recognition of the rights of persons with disabilities. The Meeting recommended that the General Assembly convene a special conference to draft an international convention on the elimination of all forms of discrimination against people with disabilities, to be ratified by States by the end of the Decade. A draft outline of a convention was prepared by the Government of Italy and presented to the General Assembly at its forty-second session. Further presentations concerning a draft convention were made by the Government of Sweden at the forty-fourth session. On neither occasion could a consensus be reached on the suitability of a convention. In the opinion of many representatives, existing human rights documents appeared to guarantee persons with disabilities the same rights as others.⁷⁴

1.19 Council of Europe - Coherent Policy for the Rehabilitation of People with Disabilities

Probably the best-known Council of Europe Recommendation concerning people with disabilities was adopted by the Committee of Ministers in 1992. ‘A Coherent Policy for the Rehabilitation of People with Disabilities’⁷⁵ is more comprehensive than the title might suggest. In fact, its sub-title ‘A model rehabilitation and integration programme for national authorities’ is probably a more useful description of the document, which includes detailed sections on prevention and health education, education, vocational guidance and training, employment, social

⁷¹ In 1973, the United Kingdom, Denmark and Ireland joined

⁷² For a more detailed discussion see Degener & Quinn, *op. cit.*, p. 94 et seq.

⁷³ Unlike the Council of Europe, the European Community Treaty provides the Institutions of the European Union with legal powers which can be imposed on member States. Two types of law are used: *Regulations* are directly and automatically effective; *Directives* typically allow member States discretion as to the method of implementation and usually allow a number of years before full implementation. Recommendations and Resolutions are also issued but are not binding.

⁷⁴ United Nations, *The Standard Rules on the Equalisation of Opportunities for Persons with Disabilities*, 1994

⁷⁵ Recommendation No. R (92) 6, 9 Apr. 1992

integration and environment, social, economic and legal protection, personnel training, information, statistics and research.

1.20 Asian and Pacific Decade of Disabled Persons

The Asian and Pacific region has by far the largest number of persons with disabilities in the world. Most of them are poor, their concerns unknown and their rights overlooked. In April 1992, the UN Economic and Social Commission for Asia and the Pacific (ESCAP), recognizing that more needed to be done and, building on the results of the UN Decade, proclaimed the period 1993 to 2002 as the Asian and Pacific Decade of Disabled Persons.⁷⁶ Thirty-three governments had co-sponsored the resolution, which was adopted by acclamation. In December 1992, the meeting to launch the Decade adopted the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region and the Agenda for Action for the Asian and Pacific Decade of Disabled Persons, 1993-2002. In April 1993, the Commission adopted the Proclamation and Agenda for Action.⁷⁷ Training and Employment forms one of the major policy categories in the framework of the agenda for action.⁷⁸

On 22 May 2002, ESCAP, while ‘recognizing that since the inception of the Asian and Pacific Decade, an overall improvement in all twelve policy categories under the Agenda for Action is evident, although achievements have been uneven, with significant achievements in the areas of national coordination and legislation and some improvement in the areas of the prevention of causes of disability, rehabilitation services, access to built environments and development of self-help organizations of disabled persons, but a continuing and alarmingly low rate of access to education for children and youth with disabilities and marked subregional disparities in the implementation of the Agenda for Action’, adopted a resolution extending the Asian and Pacific Decade of Disabled Persons for a further decade, 2003-2012.⁷⁹

1.21 UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities

The Standard Rules on the Equalization of Opportunities for Persons with Disabilities were adopted by the United Nations General Assembly on 20 December 1993.⁸⁰

In its resolution to the General Assembly, the Economic and Social Committee described the Rules as follows:

‘Although these Rules are not compulsory, they can become international customary rules when they are applied by a great number of States with the intention of respecting a rule in international law. They imply a strong moral and political commitment on behalf of States to take action for the equalization of opportunities. Important principles for responsibility, action and cooperation are indicated. Areas of

⁷⁶ Resolution 48/3

⁷⁷ Resolution 49/6

⁷⁸ Economic and Social Commission for Asia and the Pacific, Asian and Pacific Decade of Disabled Persons, 1993-2002: Mandates for Action. New York: United Nations, 1994

⁷⁹ Resolution 58/4 ‘Promoting an inclusive, barrier-free and rights-based society for people with disabilities in the Asian and Pacific region in the twenty-first century’

⁸⁰ Resolution 48/96

decisive importance for the quality of life and for the achievement of full participation and equality are pointed out. These Rules offer an instrument for policy-making and action to persons with disabilities and their organizations. They provide a basis for technical and economic cooperation among States, the United Nations and other international organizations.’⁸¹

There are 22 Rules, ranging from Awareness-raising to International Cooperation. Employment is covered by Rule 7:

‘States should recognize the principle that persons with disabilities must be empowered to exercise their human rights, particularly in the field of employment. In both rural and urban areas they must have equal opportunities for productive and gainful employment in the labour market.

1. Laws and regulations in the employment field must not discriminate against persons with disabilities and must not raise obstacles to their employment.
2. States should actively support the integration of persons with disabilities into open employment. This active support could occur through a variety of measures, such as vocational training, incentive-oriented quota schemes, reserved or designated employment, loans or grants for small business, exclusive contracts or priority production rights, tax concessions, contract compliance or other technical or financial assistance to enterprises employing workers with disabilities. States should also encourage employers to make reasonable adjustments to accommodate persons with disabilities.
3. States’ action programmes should include:
 - (a) measures to design and adapt workplaces and work premises in such a way that they become accessible to persons with different disabilities;
 - (b) support for the use of new technologies and the development and production of assistive devices, tools and equipment and measures to facilitate access to such devices and equipment for persons with disabilities to enable them to gain and maintain employment;
 - (c) provision of appropriate training and placement and ongoing support such as personal assistance and interpreter services.
4. States should initiate and support public awareness-raising campaigns designed to overcome negative attitudes and prejudices concerning workers with disabilities.
5. In their capacity as employers, States should create favourable conditions for the employment of persons with disabilities in the public sector.
6. States, workers’ organizations and employers should cooperate to ensure equitable recruitment and promotion policies, employment conditions, rates of pay, measures to improve the work environment in order to prevent injuries and impairments and measures for the rehabilitation of employees who have sustained employment-related injuries.
7. The aim should always be for persons with disabilities to obtain employment in the open labour market. For persons with disabilities whose needs cannot be met in open employment, small units of sheltered or supported employment may be an alternative. It is important that the quality of such programmes be

⁸¹ A/C.3/48/C.3 1 Oct. 1993, p. 6

assessed in terms of their relevance and sufficiency in providing opportunities for persons with disabilities to gain employment in the labour market.

8. Measures should be taken to include persons with disabilities in training and employment programmes in the private and informal sector.
9. States, workers' organizations and employers should cooperate with organizations of persons with disabilities concerning all measures to create training and employment opportunities, including flexible hours, part-time work, job-sharing, self-employment and attendant care for persons with disabilities.⁸²

The Rules provide for the appointment of a Special Rapporteur to monitor implementation and provide reports to the UN Commission for Social Development. An international panel of experts may be consulted by the Special Rapporteur or, when appropriate, by the Secretariat, to provide advice or feedback on the promotion, implementation and monitoring of the Rules.

There was inevitably some disappointment that the General Assembly had failed to agree on introducing a Convention on the Rights of Persons with Disabilities and adopted the non-binding Standard Rules instead.⁸³ Depouy, then Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, described the establishment of an international body or mechanism to supervise respect for the human rights of disabled persons as 'one of the most cherished aims of the non-governmental organizations'. Writing in 1993, as the Standard Rules were being finalized, he stated:

'Despite the many actions undertaken throughout the Decade and the valuable results that have been achieved for disabled persons in many respects, it must be said that, at the end of this period, persons with disabilities are going to find themselves at a legal disadvantage in relation to other vulnerable groups such as refugees, women, migrant workers, etc. The latter have the protection of a single body of binding norms, such as the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, etc. In addition, those Conventions have established specific protection mechanisms: the Committee on the Elimination of Discrimination against Women and the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families are in charge of supervising compliance with the Conventions... there is no specific body in charge of monitoring respect for the human rights of disabled persons and acting, whether confidentially or publicly, when particular violations occur. It can be said that persons with disabilities are equally as protected as others by general norms, international covenants, regional conventions, etc. But although this is true, it is also true that unlike the other vulnerable groups, they do not have an international control body to provide them with particular and specific protection'.⁸⁴

⁸² UN Standard Rules, pp. 25-27

⁸³ For example, Degener and Quinn, *op. cit.*, refer to the Standard Rules as 'a compensatory alternative' (p. 18)

⁸⁴ Depouy, L. *Human Rights and Disabled Persons*, United Nations, 1993, pp. 40-41

1.22 Vienna Declaration

The Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993, reinforced the fact that all human rights are universal, indivisible, interdependent and interrelated. The Declaration noted (Article 22) that ‘special attention needs to be paid to ensuring non-discrimination, and the equal enjoyment of all human rights and fundamental freedoms by disabled persons, including their active participation in all aspects of society’. The Declaration emphasized (Article 64) that persons with disabilities should be guaranteed equal opportunity through the elimination of all socially determined barriers, be they physical, financial, social or psychological, which exclude or restrict full participation in society.⁸⁵

1.23 Monitoring the International Covenant on Economic, Social and Cultural Rights in relation to Persons with Disabilities

Towards the end of 1994, the UN Committee on Economic, Social and Cultural Rights issued a salutary reminder that, notwithstanding the many international instruments adopted over the years by the ILO and the United Nations, States Parties to the International Covenant on Economic, Social and Cultural Rights had devoted very little attention to ensuring the full enjoyment of the relevant rights by persons with disabilities.⁸⁶ Attributing the absence of an explicit, disability-related provision in the Covenant to the lack of awareness of the importance of addressing this issue explicitly, rather than only by implication, at the time of the drafting of the Covenant over twenty-five years previously, the Committee drew attention to a number of more recent international human rights instruments which had addressed the issue specifically, including

- the Convention on the Rights of the Child (Article 23)
- the African Charter on Human and Peoples’ Rights (Article 18 (4)) and
- the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Article 18).

Reminding governments that the ultimate responsibility was theirs for remedying the conditions that lead to impairment and for dealing with the consequences of disability, the Committee pointed out that the effects of disability-based discrimination had been particularly severe in the fields of education, employment, housing, transport, cultural life and access to public places and services. Regarding the rights relating to work contained in Articles 6 to 8 of the Covenant, the Committee considered the field of employment as one in which discrimination had been both prominent and persistent. In most countries, the unemployment rate among persons with disabilities was two to three times higher than the unemployment rate for others. Persons with disabilities were mostly engaged in low-paid jobs with little social and legal security and often segregated from the mainstream labour market. As the ILO had frequently noted⁸⁷, physical barriers such as inaccessible transport, housing and workplaces were often the main reasons why persons with disabilities were not employed. The Committee drew attention to the valuable and

⁸⁵ UN General Assembly A/Conf. 157/23, 12 July 1993

⁸⁶ General Comment No. 5 (1994)

⁸⁷ For example in ILO Vocational Rehabilitation and Employment of Disabled Persons, 1998

comprehensive instruments developed by the ILO, including in particular Convention No. 159, and urged States Parties to the Covenant to consider ratifying that Convention.

The methods to be used by States parties in seeking to implement their obligations under the Covenant towards persons with disabilities are, the Committee pointed out, essentially the same as those in relation to other obligations. They include the need to ascertain, through regular monitoring, the nature and scope of the problems existing within the country concerned, the need to adopt appropriately tailored policies and programmes to respond to what is required, the need to legislate where necessary to prohibit discrimination and to eliminate any existing discriminatory legislation, and the need to make budgetary provisions or, where necessary, seek international cooperation and assistance. International cooperation is likely to be a particularly important element in enabling some developing countries to fulfil their obligations under the Covenant.

The Committee drew particular attention to the situation of women with disabilities: ‘Persons with disabilities are sometimes treated as genderless human beings. As a result, the double discrimination suffered by women with disabilities is often neglected. Despite frequent calls by the international community for particular emphasis to be placed upon their situation, very few efforts have been undertaken during the Decade.’ The Committee urged States Parties to address the situation of women with disabilities, with high priority being given in future to the implementation of economic, social and cultural rights-based programmes.

The right to the enjoyment of ‘just and favourable conditions of work’ (Article 7 of the Covenant) applies to *all* disabled workers, whether they work in the open labour market or in sheltered employment. The right to join a trade union (Article 8) similarly applies to *all* disabled workers. Social security and income-maintenance schemes are particularly important for persons with disabilities. The Committee referred to the UN Standard Rules, which state that States should ensure the provision of adequate income support to persons with disabilities who, owing to disability or disability-related factors, have temporarily lost or received a reduction in their income or have been denied employment opportunities. Such support should reflect the special needs for assistance and other expenses associated with disability. Support provided, adds the Committee, should also, as far as possible, cover individuals (who are generally female) who undertake the care of a person with disabilities: such persons are often in need of financial support because of their assistance role.

1.24 Copenhagen Declaration

The Copenhagen Declaration and Programme of Action, adopted by the World Summit for Social Development in March 1995, acknowledged that people with disabilities, who form one of the world’s largest minorities, are too often forced into poverty, unemployment and social isolation. In relation to employment, the Heads of State and Government at the Summit committed themselves, *inter alia*, to put the creation of employment, the reduction of unemployment and the promotion of appropriately and adequately remunerated employment at the centre of strategies and policies of Governments, in full respect for workers’ rights, and giving special attention to disadvantaged groups and individuals including persons with disabilities. The elimination of all forms of discrimination is emphasized throughout the Declaration, and the Programme of Action includes ‘taking effective measures to bring to an end all *de jure* and *de facto* discrimination

against persons with disabilities.’⁸⁸ In a specific employment reference, the Programme states that broadening the range of employment opportunities for persons with disabilities requires:

- (a) ‘Ensuring that laws and regulations do not discriminate against persons with disabilities;
- (b) Taking proactive measures, such as organizing support services, devising incentive schemes and supporting self-help schemes and small businesses;
- (c) Making appropriate adjustments in the workplace to accommodate persons with disabilities, including in that respect the promotion of innovative technologies;
- (d) Developing alternative forms of employment, such as supported employment, for persons with disabilities who need these services;
- (e) Promoting public awareness within society regarding the impact of the negative stereotyping of persons with disabilities on their participation in the labour market.’⁸⁹

The Declaration and Programme of Action makes frequent mention of the need to achieve equality and equity between women and men, including women and men with disabilities. In the context of work and employment, parties to the Declaration commit themselves

- to promote changes in attitudes, structures, policies, laws and practices in order to eliminate all obstacles to human dignity, equality and equity in the family and in society, and to promote full and equal participation of urban and rural women and *women with disabilities*, in social, economic and political life, including in the formulation, implementation and follow-up of public policies and programmes;
- to promoting and attaining the goals of universal and equitable access to quality education...making particular efforts to rectify inequalities relating to social conditions and without distinction as to race, national origin, gender, age or disability;
- to ensure that persons with disabilities have access to rehabilitation and other independent living services and assistive technology to enable them to maximize their well-being, independence and full participation in society.

The Programme of Action acknowledges that empowerment and participation are essential for democracy, harmony and social development and that gender equality and equity and the full participation of women in all economic, social and political activities is essential: ‘the obstacles that have limited the access of women to decision-making, education, health-care services and productive employment must be eliminated...’⁹⁰

The Programme calls on governments to enhance the quality of work and employment by, *inter alia*

⁸⁸ Programme of Action, para. 15 (i)

⁸⁹ *idem*: para. 62

⁹⁰ *idem*: p. 29

- observing and fully implementing the human rights obligations that they have assumed
- safeguarding and promoting respect for workers' basic rights, including freedom of association and the right to organize and bargain collectively, equal pay for equal work and non-discrimination in employment, and fully implementing the ILO conventions in the case of States party to them.

1.25 EU Treaty Amendment Prohibiting Discrimination

Within the EU, disability issues had been largely regarded as a matter of social policy. The European Commission, in a social policy White Paper published in 1994

- acknowledged that there was a need to build the fundamental right to equal opportunities into European Union policies
- said it would ensure, through appropriate mechanisms, that the needs of disabled people were taken into account in relevant legislation programmes and initiatives
- said it would prepare an appropriate instrument endorsing the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities
- promised it would prepare a code of good practice in relation to its own personnel policies and practices on employing persons with disabilities
- said that, at the next opportunity to review the EU Founding Treaties, serious consideration must be given to the introduction of a specific reference to combating discrimination on the grounds of disability.⁹¹

In December 1996, the EU Social Council adopted a Resolution which reaffirmed the commitment of the member States to

- the principles and values that underlie the UN Standard Rules
- the ideas underlying the Council of Europe's 1992 Resolution on a coherent policy for the rehabilitation of persons with disabilities (see section 1.188)
- the principle of equality of opportunity in the development of comprehensive policies in the field of rehabilitation
- the principle of avoiding or eliminating any form of negative discrimination on the grounds of disability.

Also in December 1996, the Intergovernmental Conference (IGC) - basically heads of government of EU member States meeting to review the EU Treaties - agreed to include in the draft revised Treaties a new article prohibiting discrimination based on a number of grounds,

⁹¹ 'European Social Policy – A Way Forward for the Union'.

including disability. What was finally approved in the Treaty of Amsterdam in 1997, however, was a watered-down version of what had been agreed at the IGC:

‘...the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.’⁹²

While generally welcomed as an important step in the right direction, the amendment fell far short - particularly in the requirement for unanimity and the optional nature of the provision - of what many had hoped for.

1.26 Council of Europe: European Social Charter

The European Social Charter deals with economic and social rights. The original Charter was opened for signature in 1961 and entered into force in 1965. It was added to in 1988 and extensively revised in 1996.⁹³ In developing the Charter, the Council of Europe paid particular attention to the work of, and the measures adopted by the ILO.

Part 1 sets out general principles which Contracting Parties undertake to accept. These include the rights of everyone to appropriate facilities for vocational guidance (Article 9) and vocational training (Article 10), the right of persons with a disability to independence, social integration and participation in the life of the community (Article 15), and the right of everyone to protection against poverty and social exclusion (Article 30).

Part 11 lists the obligations to which Contracting Parties are bound under each of the 31 articles in Part 1, which results in protection of rights in over one hundred areas. The breakdown of Article 15, for example, reads as follows:

‘With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:

1. to take the necessary measures to provide persons with guidance, education and vocational training in the framework of general schemes wherever possible, or where this is not possible, through specialized bodies, public or private;
2. to promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialized placement and support services;

⁹² Article 13

⁹³ European Social Charter (Revised), Strasbourg, 3 May 1996. Any references in the above text are to the 1996 version.

3. to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure.’

Notwithstanding its title, the European Social Charter is a legally binding treaty. However, the number of rights protected depends on whether the Contracting Party has ratified the original Charter, the 1988 Additional Protocol or the Revised Charter 1996. For example, under Part 11 of the 1996 Charter, a Contracting Party must agree to be bound by at least six of nine listed Articles of Part 11. Article 15 is not included in this ‘core’ list. In addition, the Contracting Party must agree to be bound by an additional number of articles or numbered paragraphs of Part 11 which it may select, provided that the total number of articles or numbered paragraphs by which it is bound is not less than sixteen articles or sixty-three numbered paragraphs. Member States which have only ratified the original Charter are only bound by a minimum of five out of seven core articles and at least five others or forty-five paragraphs.

Allowing for the unusual ‘a la carte’ manner of obligations accepted, the European Social Charter is still a valuable treaty which more member States should be encouraged to ratify. Non-governmental organizations, in particular, need to be made more aware of its potential in terms of promoting and advancing the rights of persons with disabilities.⁹⁴

1.27 The Inter-American Convention

The Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities was adopted in June 1999. The Convention does not include rights. It is the first regional treaty to define discrimination against persons with disabilities. The term “discrimination against persons with disabilities” in this Convention means any distinction, exclusion, or restriction based on a disability, record of disability, whether present or past, which has the effect or objective of impairing or nullifying the recognition, enjoyment, or exercise by a person with a disability of his or her human rights and fundamental freedoms. (Article 1.2a).

1.28 African Decade of Disabled Persons

The African Decade of Disabled Persons (1999-2009) was declared in July 2000 by Organization of African Unity (OAU) Heads of State and Government. A Continental Action Plan was adopted unanimously by participants at the Pan African Conference on the African Decade in February 2002. The Action Plan is intended to provide guidance to member States and Governments of the OAU in achieving the goal of the Decade – the full participation, equality and empowerment of persons with disabilities in Africa. The Action Plan includes a range of measures to be undertaken by member States in order to meet the objectives of promoting the participation of persons with disabilities in the process of economic and social development, and to ensure and improve access to training and employment.

⁹⁴ See Kenny, T. *Securing Social Rights across Europe: How NGOs can make use of the European Social Charter*, Strasbourg: Human Rights Centre, 1997; Council of Europe, *The Social Charter of the 21st Century – NGO Forum*, Strasbourg, 12-13 May 1997, H/NGO (97) Forum 4; Council of Europe, *The Implementation of the Collective Complaints Procedure: Opinion of the Non-Governmental Organisations*, Strasbourg, 14-16 May 1997, S C Coll/rep 12 e.

1.29 EU Charter of Fundamental Rights

The Charter of Fundamental Rights of the European Union was proclaimed at the Nice European Summit in December 2000. The Charter sets out, for the first time in the history of the European Union, the full range of civil, political, economic and social rights of all European citizens and all persons resident in the EU, including persons with disabilities. In the context of work and employment, the most relevant provisions are:

- the right to human dignity (Article 1)
- the right to education and to have access to vocational and continuing training (Article 14.1)
- the right to engage in work and to pursue a freely chosen or accepted occupation (Article 15.1)
- any discrimination based on any ground including disability is prohibited (Article 21)
- equality between men and women must be ensured in all areas, including employment, work and pay (Article 23)
- the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community (Article 26)
- the right of access to a free placement service (Article 29)
- the right to protection against unjustified dismissal, in accordance with Community law and national laws and practices (Article 30)
- the right to working conditions which respect health, safety and dignity (Article 31.1)
- the entitlement to social security benefits and social services (Article 34.1).

A decision on the legal force of the Charter has been postponed until the next Treaty revision discussions in 2004.

1.30 EU Directive on Discrimination

A new EU Directive on discrimination in employment was adopted by the EU Social Affairs Ministers at the end of 2000.⁹⁵ The Directive prohibits direct and indirect discrimination on a number of grounds, including disability, and applies, *inter alia*, to selection criteria and recruitment conditions, vocational guidance, vocational training, employment and working conditions, including pay. Importantly, the Directive states that ‘reasonable accommodation’ shall be provided, which means that employers are to take appropriate measures, where needed, to enable a person with a disability to have access to, participate in, or advance in employment, or to provide training, unless such measures would impose a ‘disproportionate burden’ on the employer.

⁹⁵ Council Directive 2000/78/EC of 27 Nov. 2000 establishing a general framework for equal treatment in employment and occupation. OJL 303, 2 Dec. 2000, pp. 16-22

On age and disability, the Directive allows member States to take a further three years, if necessary, beyond the normal three years to transpose the Directive into national law. Any Member State doing so is required to report annually to the European Commission on the progress it is making towards implementation.

1.31 Women with Disabilities

All human rights are universal and therefore unreservedly include women and men with disabilities. Every person is born equal and has the same rights to life and welfare, education and work, living independently and active participation in all aspects of society. Any direct or indirect discrimination against a disabled woman or man is a violation of her or his rights.

Women with disabilities are more vulnerable to discrimination, (a) because they are women and (b) because they have a disability. Many women with disabilities are further discriminated against because they are poor. This double or treble discrimination suffered by women with disabilities is often ignored or goes unnoticed because persons with disabilities are sometimes treated as though they are genderless human beings. It is also largely neglected because little information is available on its extent or impact. This situation does not appear to be improving. In 1993, for example, the then Special Rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities expressed his disappointment 'at the virtually total lack of bibliographic material on the specific problems of women with disabilities.'⁹⁶ The UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities, adopted in December 1993, concern all people with disabilities, regardless of gender, race, age, etc, but contain few direct references to the gender dimension, a fact regretted by the Special Rapporteur of the UN Commission for Social Development.⁹⁷

The 1998 report of the first General Survey on the application of Convention No. 159 and Recommendation No. 168, both in States which have ratified the Convention and in those which have not, comments succinctly on equality of opportunity and treatment between disabled men and disabled women workers⁹⁸.

'People with disabilities face many obstacles in their struggle for equality. Although both men and women with disabilities are subject to discrimination, women with disabilities are double disadvantaged by discrimination based on gender *and* their disability status. Women with disabilities are more likely than their male counterparts to be poor or destitute, illiterate or without vocational skills, and most of them are unemployed. They have less access to rehabilitation services, they are more likely to be without family or community support and they often suffer greater social isolation due to their disability. The situation is dramatic, and the Director-General of the ILO in 1981 pointed out that poor disabled women are all too frequently deprived of all human rights.'⁹⁹

⁹⁶ Depouy, L. Human Rights and Disabled Persons. New York: United Nations, 1993, p. 20

⁹⁷ Report to the Commission, Feb. 2000

⁹⁸ ILO: Vocational Rehabilitation and Employment of Disabled Persons, 1998

⁹⁹ ILO: Report of the Director General, ILC, 67th Session, Geneva, 1981.

1.31.1 Employment Barriers for Women with Disabilities

People with disabilities in general face difficulties in entering the open labour market, but, seen from a gender perspective, men with disabilities are almost twice as likely to have jobs than disabled women.¹⁰⁰ When women with disabilities work, they often experience unequal hiring and promotion standards, unequal access to training and retraining, unequal access to credit and other productive resources, unequal pay for equal work and occupational segregation, and they rarely participate in economic decision-making.¹⁰¹

A general trend worldwide is that women with disabilities are less likely to be referred to vocational training, have a harder time gaining access to rehabilitation programmes, are less likely to obtain equality in training, and if they are successfully rehabilitated, it is more likely to lead to part-time jobs or worse-unemployment. Among the general public and rehabilitation counsellors, the attitude still persists that women with disabilities are passive, dependent, and not capable of or interested in taking up an occupation leading to employment. Studies have found that, even in rich countries, major programmes designed to assist people with disabilities, such as supplemental security income, disability insurance, workers' compensation and vocational rehabilitation, disadvantage women because of their relationship to labour market participation. Not only do women receive fewer benefits than men, they also draw lower benefits. Moreover, despite their greater need, disabled women receive less from public income support programmes.¹⁰²

The ILO Committee on the Application of Conventions and Recommendations, in the report of the General Survey on Convention No. 159 and Recommendation 168, notes that the reports communicated by governments indicate that most countries apply the principle of equality of opportunity in the fields of education, training and employment, without distinction based on race, colour, sex, language or any other ground, such as disability. However, the general trend is to have special initiatives for people with disabilities, but without targeting disabled women as a vulnerable group that needs support. Consequently, since the legal framework is gender-neutral, discrimination against women with disabilities can easily take place without being registered.

In order to combat discrimination against women with disabilities in training and employment, several measures have been taken by the ILO, and these are reflected in a number of standards, resolutions and policy statements.. The last resolution concerning ILO action for women workers, adopted in 1991, reaffirmed the Organization's concern for women workers, including women with disabilities. Lastly, ILO Convention No. 159 states that equality of

¹⁰⁰ For example, according to a study carried out in the *United States* almost 42 per cent of men with disabilities are in the labour force, compared to 24 per cent of women. In addition, while more than 30 per cent of disabled men work full time, only 12 per cent of disabled women are in full-time employment. Women with disabilities who work full time earn only 56 per cent of the earnings of full-time employed men with disabilities (these figures are taken from Bowe: *Disabled women in America: A statistical report drawn from census data* (1984). Only 3 per cent of disabled women are registered in the labour force in *Ghana* (1996), 0.3 per cent in *India* (1991) and 19 per cent in the *Philippines* (1992). Most working women with disabilities are to be found in the informal sector (E. Messel: *Employment strategies for women with disabilities*, paper presented at the International Leadership Forum for Women with Disabilities (Washington, DC, 15-20 June 1997).

¹⁰¹ ILO; "Women swell ranks of working poor", in *World of Work*, No. 17, Sep.-Oct. 1996, ILO Geneva.

¹⁰² N. Mudrick: "Disabled women and public policies for income support" (a study on the influence of income support on the lives of women with disabilities), in M. Fine and A. Asch (eds.): *Women with disabilities: Essays in psychology, culture and politics* (Philadelphia, Temple University Press, 1988).

opportunity and treatment of disabled men and women workers shall be respected. The Convention can be used in a strategy to remove barriers which stand in the way of full participation and integration of women with disabilities in the mainstream of society and in the economy.¹⁰³

The particular situation of women with disabilities continues to be inadequately addressed. A recent study of employment policies for persons with disabilities for the European Commission concluded in relation to this issue that ‘the gender perspective is generally not well integrated into disability policy and little information is available on the differential impact of employment policies for disabled people on men and women.’¹⁰⁴

States parties to the UN Convention on the Elimination of All Forms of Discrimination against Women are requested to include information on women with disabilities in their periodic reports. In a sample of reports surveyed in 2001, little consistent reporting on the double discrimination experienced by women with disabilities was found.¹⁰⁵

1.32 Education and Training

Fitting-persons-to-jobs and fitting-jobs-to-persons are multi-faceted processes. The key roles played by education and training in particular continues to be highlighted by the ILO. These issues were again cogently addressed by the International Labour Conference in 2000. The Conference underlined the fact that education and training are essential for economic and employment growth and social development.

‘Education and training are a means to empower people, improve the quality and organization of work, enhance citizens’ productivity, raise workers’ incomes, improve enterprise competitiveness, promote job security and social equity and inclusion. Education and training are therefore a central pillar of decent work.’¹⁰⁶

The Conference emphasized that education and training must cover everyone, and must be carefully targeted at persons with special needs, including people with disabilities. In addition to education and training, vocational guidance and counselling, job placement services, recruitment and selection practices, educational and labour market information, job design, ergonomics, working conditions and rewards, attitudes and motivation, all play inter-related roles in the whole employment process¹⁰⁷ and need to be considered as part of work and employment policy for persons with disabilities.

¹⁰³ ILO, Vocational Rehabilitation and Employment of Disabled Persons, 1998, pp. 35-36

¹⁰⁴ Benchmarking employment policies for people with disabilities. European Commission, 2000.

¹⁰⁵ Quinn, G. and Degener, T. Human Rights and Disability, summary report to the Office of the UN High Commissioner on Human Rights, Feb. 2002.

¹⁰⁶ ILC. Eighty-eighth Session, Geneva, 2000, Conclusions concerning human resources training and development.

¹⁰⁷ For detailed suggestions on placement strategies and practices see (1) Murray B and Heron R, Placement of Job-seekers with Disabilities and (2) Heron R and Murray B, Assisting Disabled Persons in Finding Employment – A Practical Guide, ILO, 1999 and 1997 resp.

1.33 A New Convention?

It will be recalled that, towards the end of the 1980s, efforts were made to have the UN General Assembly elaborate a convention on the rights of persons with disabilities: the efforts failed because of lack of sufficient support. It is interesting to note Depouy's comment that those discussions of the General Assembly concluded 'with the *postponement* of that initiative'.¹⁰⁸

The United Nations Consultative Expert Group Meeting in 1998 on International Norms and Standards relating to Disability, in the course of considering more effective ways to promote and protect the human rights of persons with disabilities, discussed, *inter alia*, the possible advantages and disadvantages in formulating a new international instrument.¹⁰⁹

In 1999, the General Assembly of Rehabilitation International adopted a new Charter which called, *inter alia*, for an international convention on the rights of persons with disabilities. Representatives of Disabled People's International, Inclusion International, Rehabilitation International, World Blind Union and World Federation of the Deaf, meeting in Beijing in March 2000, expressed serious concern that UN instruments 'have yet to create a significant impact on improving the lives of people with disabilities' and called for international collaboration towards the development and adoption of a convention.

The UN Commission on Human Rights was also concerned about the adequacy of existing measures. At its meeting in April 2000, the Commission adopted a Resolution¹¹⁰ which invited the High Commissioner for Human Rights to examine measures to strengthen the protection and monitoring of the human rights of persons with disabilities. In response, the Office of the High Commissioner commissioned a study to evaluate existing standards and mechanisms in the field of human rights and disability. The preliminary findings of the study were presented at a meeting in Geneva on 14 January 2002.

Meanwhile, in December 2001, the UN General Assembly adopted a resolution¹¹¹ which established an Ad Hoc Committee, open to the participation of all member States and observers to the United Nations, to consider proposals for a comprehensive and integral international convention to protect and promote the rights and dignity of persons with disabilities, based on the holistic approach in the work done in the field of social development.

Participants at the 14 January 2002 meeting in Geneva agreed on the need for a multiple approach to disability. There was wide agreement on the need for a focus on the human rights dimension of the issues involved. The findings of the study underline how the drafting of a new convention should not be seen as an alternative to strengthening attention to disability within the existing international human rights system ('twin-track approach'). The discussion broadened that approach further, highlighting the need to strengthen social development efforts in the field of

¹⁰⁸ Depouy, *op. cit.*, para. 281 (emphasis added)

¹⁰⁹ Report of the United Nations Consultative Expert Group Meeting on International Norms and Standards relating to Disability, Univ. of California at Berkeley, 8-12 Dec. 1988

¹¹⁰ 2000/51

¹¹¹ 56/168

disability and to integrate better the United Nations work in that domain with reinforced attention to the matter from a human rights perspective ('multi-track approach').¹¹²

¹¹² Note by the High Commissioner for Human Rights, 'Study on Human Rights and Disability', 14 Feb. 2002

CHAPTER 2 - WORK AND EMPLOYMENT OPTIONS

Persons with disabilities should enjoy equality of opportunity and treatment in respect of access to, retention of and advancement in employment which, wherever possible, corresponds to their own choice and takes account of their individual suitability for such employment.¹¹³ Such employment includes jobs in the open labour market which, again subject to individual suitability, are open to persons without disabilities. For persons with disabilities for whom, for reasons of choice and/or suitability, open employment may not be appropriate, alternative forms of employment of a sheltered or supported nature are usually provided. There are numerous variations of these options, across countries, depending on factors such as tradition and culture, economic, social and labour market conditions, social welfare benefit systems, availability of trained personnel, and influence of stakeholders, including disability organizations.

This chapter gives an overview of employment for persons with disabilities under four broad headings:

- Open/Competitive Employment, including Self-Employment¹¹⁴
- Sheltered Employment
- Supported Employment
- Social Enterprises.

The next chapter will discuss measures to facilitate entry to and retention in employment under each approach, with particular reference to employment policy and practice in industrialized countries.

2.1 Open/Competitive Employment

The absence of adequate data in many countries makes generalization difficult. From the information available, however, it is possible to draw some tentative conclusions about the current situation.¹¹⁵

The participation rate of persons with disabilities in the open labour force tends to be considerably lower than that of other workers.

In Australia, the participation rate for males with a disability was about 60 per cent in 1998, compared with 90 per cent for persons without a disability. The corresponding figures for females were 46 per cent and 71 per cent, respectively. The unemployment rate among males with a

¹¹³ ILO Vocational Rehabilitation and Employment (Disabled Persons) Recommendation No. 168, 1983

¹¹⁴ Self-employment is not dealt with as a separate category here, as it can exist under all categories.

¹¹⁵ For more detailed discussion, see European Commission, *Benchmarking employment policies for people with disabilities*, 2000. This report covers Australia, Japan and the United States in addition to the 15 EU member States.

disability was 14 per cent compared with 8 per cent for males with no disability. Corresponding rates for females were 9 per cent and 8 per cent respectively.

In Canada, the general labour market availability of persons with disabilities was 6.5 per cent in 2001, but they made up only 2.4 per cent of the federally regulated workforce. Disabled persons were under-represented in every industrial sector, ranging from a low of 1.8 per cent in transportation to 2.3 per cent in banking, 2.4 per cent in communications and 2.9 per cent in 'other' sectors.¹¹⁶

In France, the unemployment rate for disabled workers in 1996 was three times higher than that for the overall active population. Over the previous 10 years, the overall unemployment rate increased by 23 per cent, but by 194 per cent for unemployed persons with disabilities. Disabled workers who are unemployed tend to remain unemployed twice as long.

In Germany in 1997, the labour market participation rate for severely disabled persons was 37 per cent (West), compared with that for non-disabled persons of 80 per cent for men and 63 per cent for women. The gap between the unemployment rate for persons with disabilities and the overall unemployment rate widened between 1994 and 1997, rising from 15 per cent to 17.9 per cent (disabled persons) and from 9.6 per cent to 11.4 per cent (overall). As in France, the duration of unemployment tends to be almost twice as long as for workers without disability.

In Sweden, of the population between 16 and 64 years of age with a disability in 1998, 60 per cent were employed, compared with 72 per cent in the general population. The unemployment rates were 9 per cent (disabled workers) and 5 per cent (non-disabled workers).

In the United Kingdom, people with disabilities account for almost 20 per cent of the working age population, but only about 12 per cent of all in employment. Disabled people are over six times as likely to be out of work and claiming benefits as persons without disabilities.

In general, persons with disabilities in the labour market tend to have a lower level of education than others. They are also more likely to be in part-time jobs. Unemployment rates vary between types of disability, being highest among those with mental illness. In the U.K. it is estimated that 75 per cent of those of working age with mental illness are unemployed. Based on a review of available information, reasons given for high unemployment rates among persons with disabilities include:

- Low level of education and training
- Declining demand for unskilled labour
- Reductions in the workforce of large enterprises and the public service
- Concern about accidents and insurance costs
- Reluctance to register as having a disability

¹¹⁶ National Institute of Disability Management and Research, Annual Report 2001, p. 4

- Lack of information on work opportunities
- Lack of awareness among employers of needs and abilities of persons with disabilities
- ‘Benefits trap’
- Fear of losing welfare benefits
- Inadequate technical/personal supports

2.1.1 More Active Labour Market Policy

Many countries are concerned about increasing levels of unemployment among persons with disabilities and their low rate of labour market participation, linked to concerns about increasing social assistance costs. Details of specific measures are contained in the following chapter, but the general thrust of new policy moves reflects a greater emphasis on greater activation of labour market policy through:

- 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
- A more effective implementation of anti-discrimination legislation
- Greater enforcement of existing quota scheme provisions.

At present, passive measures (income transfers) consume a considerably greater proportion of public resources than active labour market measures. While the scope for shifting the balance may appear to be great, relatively high unemployment rates, coupled with a general economic downturn in many countries, are making it difficult to implement some of these measures effectively.

2.2 Sheltered Employment

It is generally accepted that for some disabled persons, open employment may not for various reasons be a practicable option. In calling for measures to promote employment opportunities for persons with disabilities, the ILO has recommended that such measures should include ‘appropriate government support for the establishment of *various types* of sheltered employment for disabled persons for whom access to open employment is not practicable.’¹¹⁷ The UN Standard

¹¹⁷ Vocational Rehabilitation and Employment (Disabled Persons) Recommendation (No. 168), 1983 (emphasis added)

Rules on the Equalization of Opportunities for Persons with Disabilities states that while the aim should always be for persons with disabilities to obtain employment in the open labour market, 'for persons with disabilities whose needs cannot be met in open employment, small units of sheltered or supported employment may be an alternative.'¹¹⁸

As the above ILO recommendation implies, there are possibilities for different types of sheltered employment. In their survey of sheltered employment in various countries, Samoy and Waterplas found that even the concept of sheltered employment does not have the same meaning for all people:

'When government officials are asked to present their system of sheltered employment to foreigners (such as the authors), they will sometimes refer exclusively to organizations providing productive work (in industry or services) to persons with disabilities who have an employment contract and receive a wage. Other officials from the same state or officials from another state may want to include organizations where productive work is certainly not the only and often not even the main aim and where persons with disabilities have no employment contract and receive no wages but only a bonus in addition to their disability pension. Other interested parties, such as workshop organizations or organizations of and for people with disabilities, may share this view or disagree.'¹¹⁹

In their report, Samoy and Waterplas adopted a broad view of sheltered workshops, including types of organization close to occupational centres or day centres. However, a minimum of productive activity was required for an organization to be included. For countries where such institutions are normally not considered as sheltered work, some information was gathered in order to make comparisons possible.

The Council of Europe also uses a broad definition of sheltered employment:

'Sheltered employment should be open to people who, because of their disability, are unable to obtain or keep a normal job, whether supported or not; it can cover a number of diversified situations, amongst which are sheltered workshops and work centres. Sheltered work should have a double purpose: to make it possible for people with disabilities to carry out a worthwhile activity and to prepare them, as far as possible, for work in normal employment. To this end, all ways of facilitating the passage from supported to ordinary employment should be devised, such as: the setting up of sheltered work sections in work centres or work centres in sheltered workshops; the setting up of sheltered work sections or work centres within ordinary firms; individual or collective detachment of workers in sheltered workshops or work centres to ordinary firms.'¹²⁰

Some countries have found it useful, for planning purposes, to make distinctions between certain forms of work and employment. In Ireland, for example, a committee set up to advise on a strategy for employment for persons with disabilities in sheltered and supported work and employment used the following definitions:

¹¹⁸ Rule 7 (7)

¹¹⁹ Samoy, E. and Waterplas, L. Sheltered Employment in five member states of the Council of Europe: Austria, Finland, Norway, Sweden and Switzerland. Council of Europe, 1997, p. 6

¹²⁰ Council of Europe, A coherent policy for the rehabilitation of people with disabilities, 1992

Work is the undertaking of organized tasks which may attract some forms of remuneration, but which is not covered by employment protection legislation or pay-related social insurance.

Employment is remunerated work which complies with statutory requirements in regard to employment protection legislation, pay-related social insurance and income tax liability.

Sheltered Work is work undertaken by persons with disabilities in workshops specifically established for that purpose. People working in sheltered workshops retain their social insurance benefits and usually receive a small additional weekly payment from the work provider. Sheltered workers are not employed and are not covered by employment protection legislation.

Sheltered Employment is employment in an enterprise established specifically for the employment of persons with disabilities and which is in receipt of special funding from the State.¹²¹

Many countries operate some form of sheltered employment system.¹²² Comparison between countries is difficult for a number of reasons, not least because the concept of sheltered employment does not have the same meaning to all, even within the same country. A number of general points may, however, be made.

- The philosophy of sheltered employment has been hotly debated in some countries (e.g. Australia, United States) in recent years, with other supported employment measures coming more into favour. In Europe, there appears to be little consensus, with some countries providing a significantly smaller number of sheltered employment places (per 1000 workforce) than others.
- Many sheltered workshops owe their origin to voluntary effort, often charities, religious groups or groups of concerned parents. Gradually, they became subject to state regulation and eligible for state subsidization.
- In general, sheltered employment was intended for persons who were unable or unlikely to obtain or retain a job in the open labour market because of the severity of their disability or limited working capacity. In many cases, a minimum level of disability is specified as an entry requirement. The majority of those employed tend to have an intellectual disability, though in some cases no distinction appears to be made between intellectual disability and mental illness.
- In most countries, improving transition to the regular labour market is a stated policy goal of sheltered employment. In reality, transition rates range from under 1 per cent

¹²¹ Employment Challenges for the Millennium. Report of the NACTE Steering Group on Sheltered and Supported Work and Employment, NRB, 1997

¹²² For a detailed discussion see Samoy, E. and Waterplas, L., Sheltered Employment in the European Community, Commission of the European Union, Brussels, 1992; Samoy, E. and Waterplas, L., Sheltered Employment in five member states of the Council of Europe: Austria, Finland, Norway, Sweden and Switzerland. Council of Europe, 1997; Thornton P., and Lunt, N., Employment Policies for Disabled People in Eighteen Countries: A Review, Social Policy Research Unit, University of York, 1997.

to about 5 per cent, with most countries near the lower end of the scale.¹²³ Reasons given for low transition include reluctance of employers to recruit, reluctance on the part of workshops to release their key workers, the low technological level of workshop activities which restricts the potential skill levels of employees, and skills training which often does not reflect the requirements of the labour market.

- Sheltered employment has been criticized in some countries for failing to provide proper working conditions and employment contracts. In many cases, employees are paid less than the minimum wage. In some cases, they receive only ‘pocket money’ in addition to their normal disability benefit. Employment and occupational safety and health laws often do not apply. There is generally no right to freedom of association (to unionize).

Some of the criticisms of sheltered employment in relation to low transition, lack of employment contracts, poor pay, etc. may reflect differences - or even uncertainty - in the philosophy underlying the concept rather than inadequacies in policy, management or cost-benefit returns. To assess the performance of sheltered workshops using criteria such as those mentioned is open to question when those operating the system see their responsibility more in terms of care and social service rather than employment promotion or economic returns.

2.3 Supported Employment

Supported employment originated in the United States as an alternative to traditional rehabilitation programmes for persons with severe disabilities. It is defined by law and regulation as paid work in integrated work settings, with ongoing support services, for persons with severe disabilities. The provision of a minimum wage was added to US federal regulations for supported employment in 1997.¹²⁴

There is a variety of ways in which supported employment may be provided. These include individual placement, enclaves, mobile work crews and small business arrangements.¹²⁵ An enclave is a group of individuals, usually three to eight, who work in a special training group within a host company. Not all members of the group may move into the company’s regular workforce. A mobile work crew may be a similar sized group, with one or more supervisors, which travels through a community offering specialized contract services, such as gardening or grounds-keeping. The small business option could be a manufacturing service or a subcontract operation, with a small number of workers with disabilities and non-disabled workers. The business might provide only one type of product or service.

¹²³ See, for example, Thornton and Lunt, *op. cit.*; Samoy and Waterplas, *op. cit.*; Council of Europe, Note by the Netherlands: Sheltered Employment for Handicapped People– Trends and Issues in the Netherlands, 12 Jan. 1993.

¹²⁴ Wehman, P., Revell, G. and Kregel, J. Supported Employment: a decade of rapid growth and impact, in Wehman, P., Kregel, J. and West, M. (Eds) Supported Employment Research: expanding competitive employment opportunities for persons with significant disabilities. Rehabilitation Research and Training Centre on Supported Employment, Virginia Commonwealth University, 1997

¹²⁵ Moon, M. and Griffin, S. Supported Employment Service Delivery Models in Wehman, P., and Moon, M. (Eds) Vocational Rehabilitation and Supported Employment. Paul H. Brooks Publishing Company: Baltimore MD, 1988

The individual placement option would appear to be the dominant one in the United States. In 1995, 77 per cent of supported employment participants were in individual supported employment places, and 23 per cent in some type of group model.¹²⁶ There is no one 'best' model. As some commentators have said:

'there is a nearly infinite array of supported employment strategies and structures, each of which combines a particular kind of work opportunity with a particular method of ongoing support. Each has advantages and drawbacks in terms of generating real employment outcomes while overcoming barriers to employment experienced by the individuals with disabilities. No single alternative is ideal, and none fits all situations. Development of supported employment programmes requires adaptation to local employment opportunities and individual service requirements.'¹²⁷

It was reported in 1997 that two-thirds of all supported employment participants in the U.S were persons with intellectual disability, with the second largest group being persons with a mental illness.¹²⁸

The interpretation of supported employment has been found to vary from country to country.

- In the United Kingdom, for example, it includes programmes providing financial subsidies to employers in respect of disabled workers with reduced productivity, as well as job coach based activity as in the U.S. Of the 5,000 or so people employed in the UK under the latter model in 1996, 90 per cent had an intellectual disability.
- In Norway, supported employment has been provided since 1996, with job coach support guaranteed for three years.
- In the Netherlands, the parliament in 1992 asked the government to find a solution to wage differences between supported employment programmes and sheltered employment. In the supported employment programmes, wages were related to productivity and supplemented with a disability benefit of up to 85 per cent of the statutory minimum wage, while in sheltered companies full wages were paid. In addition, the government was asked to cover the costs of job coaches. As a first step, the supplementary benefit was raised to a limit of the minimum wage and a subsidy was introduced towards the cost of job coaches. Under 1996 legislation, local authorities may fund supported employment. Each job created in this way is treated as a job in a sheltered company for the purpose of government funding.¹²⁹
- In New Zealand, the supported employment programme provides a wage subsidy for two years.¹³⁰

¹²⁶ Wehman et al, 1997, op. cit.

¹²⁷ Bellamy, G. T., Rhodes, L.E. and Albin, J. M. Supported employment. In Kieran, W.E and Stark, J.A. (Eds) Pathways to Employment for Adults with Developmental Disabilities (pp. 129-138), Baltimore: Brooks, 1986

¹²⁸ Wehman et al, 1997

¹²⁹ Krug, R. Sheltered Employment in the Netherlands – Recent Developments. Paper presented at conference on Disability and Employment, Dublin, 14 Oct. 1996

¹³⁰ Saloviita, Timo, Supported Employment as a Paradigm Shift and a Cause of Legitimation Crisis, Disability & Society, Vol. 15, No. 1, 2000, pp. 87-98

- In Finland, a survey of supported employment projects found that few defined supported employment as supported, paid work in integrated settings: ‘generally, it was understood to mean a variety of support options for employment or employment-related activities.’¹³¹

2.3.1 Evaluation

A number of studies in the United States have shown that supported employment has produced greater social and psychological benefits for workers, as compared with sheltered placements, and to have been cost-effective for workers, taxpayers and society as a whole.¹³² One U.S. review of supported employment from its origins in the 1970s, however, quotes other studies which accuse many programmes of ‘creaming’ i.e. taking less severely disabled persons as participants.¹³³ Because of the variations in definitions of supported employment, findings from studies carried out in one country cannot be generalized to another. The U.S. legislation under which supported employment is funded as a rehabilitation option specified that participants should work at least 20 hours per week on average to be eligible for funding. Many of the positive cost-benefit outcomes achieved in the U.S. resulted from savings in the reduced use of alternative services and from tax receipts from earned income. In the U.K. many supported employment jobs are part-time and below 20 hours per week. Where participants opt to retain their welfare benefit and earn a small allowable amount in addition, welfare benefit expenditures are not reduced and there is little, if any, flow back from tax.¹³⁴ This is not so much a feature of the supported employment concept but is rather due to the relationship between benefit entitlement and job earnings.

The concept of supported self-employment for persons with severe disabilities has been receiving some attention, particularly in the United States. A number of articles which appeared in a recent special edition of the *Journal of Vocational Rehabilitation*, published to introduce its readers to the concept, show how self-employment may be helpful in promoting individual satisfaction for persons with significant disabilities, but they are also generally forthright in acknowledging the high level of supports required at every stage of the business start-up and operation.¹³⁵

2.4 Social Enterprises

The Social Economy, according to the European Information Centre for the Social Economy (ARIES), is ‘based on the values of economic activities with social goals, sustainable development, equal opportunities, inclusion of disadvantaged people, and civil society.’

The European Commission, which sometimes refers to the Social Economy as the Third System, describes it as ‘the economic and social fields represented by cooperatives, mutual

¹³¹ idem: p. 91

¹³² Saloviita, op. cit.

¹³³ Barbour, Wayne C. Supported Employment: the coming of full circle. *Journal of Vocational Rehabilitation*, 13 (1999), pp. 176-174

¹³⁴ Beyer, Goodere L. and Kilsby, M. The Costs and Benefits of Supported Employment Agencies. Research Studies No. 37. Department for Education and Employment, UK. 1996.

¹³⁵ *Journal of Vocational Rehabilitation*, 17 (2002)

companies, associations, along with all local job creation initiatives intended to respond, through the provision of goods and services, to needs for which neither the market nor the public sector currently appear able to make adequate provision.’ Enterprises of the Social Economy have been defined as ‘those entities that do not belong to the public sector, are run and managed in a democratic way, whose members have equal rights, and that adhere to a special regime of property and distribution of profits whereby any surplus is reinvested in the growth of the entity and the improvement of services offered to its members and society at large.’¹³⁶ A wide variety of social economy enterprises exist, all sharing similar values. They include social firms, social businesses, social enterprises, community enterprises, community cooperatives, development trusts, neighbourhood co-ops, worker cooperatives, social cooperatives, credit unions, microcredit and mutual guarantee societies.

The European Union sees the Social Economy as an important part of the European economic model. In a visit in 2002 to the European Confederation of Workers’ Cooperatives, Social Cooperatives and Participative Enterprises (CECOP), the President of the European Commission referred to the fact that cooperatives currently employ 2.3 million people in the EU.

The social economy has developed in different ways in EU member States, largely because of different regulatory frameworks. In Italy, for example, a new regulation on social cooperatives has led to a major expansion of the sector during the past ten years, and assisted the reorientation of the cooperative sector from a direct focus on delivering benefit for members to providing wider benefits to the local community.¹³⁷

In the United States, the not-for-profit sector dates mainly from the 1960s. Such enterprises benefit from a range of tax exemptions. U.S. government departments are required to procure goods and services from not-for-profit organizations employing persons with disabilities, subject to their being competitive on price and quality.

2.4.1 Current Employment of Persons with Disabilities in Social Enterprises

A recent review of employment policies for persons with disabilities in 18 industrialized countries found little evidence of enterprise strategies directly targeted at disabled individuals.¹³⁸ While a number of countries offered start-up grants to persons with disabilities proposing to become self-employed or to start up a new business, few mentioned social enterprises as specific strategies to create additional employment opportunities for persons with disabilities.

In Japan, social firms/enterprises have provided work opportunities for severely disabled individuals since 1981.

In Italy, the growth of work integration cooperatives started in 1974 when workers with mental illness rebelled against working without pay, and set up a cooperative to do the same work

¹³⁶ Quoted in Viorreta, C. The Social Enterprise in Spain. Paper presented at Transnational Meeting in Cagliari, 29 Sep. 1998

¹³⁷ U.K. Department of Trade and Industry, Social Enterprise: a strategy for success, July 2002

¹³⁸ European Commission, Benchmarking employment policies for people with disabilities, 2000

under contract.¹³⁹ The movement advanced with the closure of psychiatric institutions in the late 1970s. Law 381 of 1991 introduced a new model of employment for persons with disabilities based on social cooperation. Social cooperatives, which engage in a variety of commercial, manufacturing, farming and service activities, employed over 17,000 disabled workers in 1997.

In Spain, ONCE (The Spanish Organization of Blind Persons) established a foundation (Fundacion ONCE) in 1988, involving representation of different groups of persons with disabilities. The primary goal of the Foundation is to provide employment for disabled people. In 1989, the Foundation set up FUNDOSA GRUPO as a holding or parent company of more than 60 enterprises, which in 1997 employed almost 6000 workers, of whom 72 per cent were disabled. The enterprises operate in diverse sectors, including laundry, retail sales in hospitals and community centres, telephone marketing, food production and data processing.¹⁴⁰

In the United Kingdom, there has been increasing interest in social cooperatives with between 40 and 50 such enterprises providing work for persons with disabilities in 1995.¹⁴¹

The figures quoted may well considerably understate the number of disabled persons currently working in social enterprises of various kinds. A Spanish report in 1998, for example, estimated that there were almost one thousand social cooperatives in Spain. Of the total, approximately 200 were in Cataluna. A 1995 study of social cooperatives in Cataluna found that 45 per cent were oriented to the integration of people with intellectual disabilities.¹⁴²

According to a recent UK government report, there is no precise estimate of the number of social enterprises in the U.K. A tentative estimate of the relative size of the social enterprise sector in 2000 suggested that the social economy accounted for almost 7.3 per cent of all employment in the U.K.: between 10 per cent and 20 per cent of this may be accounted for by social enterprise. There is no indication of the number of persons with disabilities employed in the sector.

2.4.2 Future Potential

One of the fundamental characteristics of social enterprises is that they are created to respond, by providing goods and services, to needs for which neither the private business sector nor the public sector are able or willing to make provision. The future growth potential of the social enterprise sector would, therefore, appear to offer significant possibilities for new employment opportunities for persons with disabilities, provided any barriers to growth are removed or reduced. These barriers have been identified, in the U.K., as

- poor understanding of the capacities and value of social enterprise
- limited information on the social, environmental and financial impact of social enterprise

¹³⁹ quoted in Thornton, P. and Lunt, N. Employment Policies for Disabled People in Eighteen countries. Social Policy Research Unit, University of York, 1997

¹⁴⁰ idem: pp. 237-8

¹⁴¹ idem: p. 270

¹⁴² quoted in Viorreta, op. cit.

- insufficient specialist support and advice from government and business
- difficulty in accessing finance
- insufficient account of the particular characteristics of social enterprises by financial, legal and regulatory frameworks, or in procurement activities
- inadequate training of social enterprise managers in business, financial and personnel management.

The U.K. government has developed a strategy aimed at overcoming these barriers and allowing social enterprises to deliver significantly more public services.

CHAPTER 3 - MEASURES TO FACILITATE WORK AND EMPLOYMENT

3.1 Introduction

Vocational rehabilitation is a process which enables disabled persons to secure, retain and advance in suitable employment and thereby further their integration or reintegration into society.¹⁴³ That process, according to the ILO Vocational Rehabilitation (Disabled) Recommendation, 1955,¹⁴⁴ involves the provision of certain vocational services, in particular vocational guidance, vocational training and selective placement. In 1983 the ILO, conscious that significant developments had occurred since 1955 in the understanding of rehabilitation needs, the scope and organization of rehabilitation services and the law and practice of many Members, decided that new international standards were necessary to ensure equality of opportunity and treatment to all categories of disabled persons, in both rural and urban areas, for employment and integration into the community.

3.1.1 Convention No. 159

Convention No. 159, adopted in 1983, highlights the inextricable link which exists between vocational rehabilitation and employment by calling on each Member, in accordance with national conditions, practice and possibilities, to formulate, implement and periodically review a national policy on vocational rehabilitation and employment of disabled persons. Such policy should:

- aim at ensuring that appropriate vocational rehabilitation measures are made available to all categories of disabled persons and at promoting employment opportunities for disabled persons in the open labour market;
- be based on the principle of equal opportunity between disabled workers and workers generally; equality of opportunity and treatment for disabled men and women workers should be respected; special positive measures aimed at effective equality of opportunity and treatment between disabled workers and other workers should not be regarded as discriminating against other workers;
- involve consultation with representative organizations of employers and workers, and of and for disabled persons, with regard to implementation of the policy.

The Convention calls on the competent authorities to provide and evaluate vocational guidance, vocational training, placement, employment and other related services, using, wherever possible and appropriate, existing services for workers generally, with any necessary adaptations. Measures are to be taken to promote the establishment and development of vocational rehabilitation and employment services for disabled persons in rural areas and remote communities, and to ensure the training and availability of rehabilitation counsellors and other suitably qualified staff responsible for the vocational guidance, vocational training, placement and

¹⁴³ ILO Code of Practice on Managing Disability in the Workplace, 2002

¹⁴⁴ No. 99

employment of disabled persons. Convention No. 159 entered into force on 20 June 1985. As of December 2002, Convention No. 159 has been ratified by 73 countries.

3.1.2 Recommendation No. 168

The accompanying Vocational Rehabilitation and Employment (Disabled Persons) Recommendation, 1983 (No. 168) outlines measures, in addition to those mentioned in Recommendation No. 99, which should be implemented. They include:

- measures to create job opportunities for persons with disabilities on the open labour market, including financial incentives to employers and reasonable adaptations to workplaces, equipment and jobs
- government support for sheltered employment, and for vocational training, vocational guidance, and placement services for disabled person run by non-governmental organizations
- promotion of cooperatives and small-scale industry
- elimination of physical, communication and architectural barriers
- dissemination of information on successful instances of employment integration
- exemption from taxes of training materials and specified assistive devices
- flexible job arrangements
- elimination of exploitation in training and sheltered employment
- applied research to further the participation of disabled persons in ordinary working life.

Recommendation No. 168 also calls for community participation, in particular of employers', workers' and disabled persons' organizations, in the organization and operation of vocational rehabilitation services. Special efforts should be made to ensure that services in rural areas and remote communities are provided at the same level and on the same terms as for urban areas. The proper training of personnel involved in the provision of vocational rehabilitation and employment services is essential.

3.1.3 Current Practice

The following sections discuss briefly the main types of measures currently in use¹⁴⁵ to assist and facilitate persons with disabilities to secure, retain and advance in suitable work and employment, under these headings:

¹⁴⁵ More detailed information on measures in a number of countries may be found in other reports, including: ILO Vocational Rehabilitation and Employment of Disabled Persons, 1998; Thornton, P, and Lunt, N. Employment Policies for Disabled People in Eighteen Countries: A Review. Social Policy Research Unit,

- employment services
- training for employment
- financial supports
- technical and personal supports
- quota systems
- anti-discrimination legislation
- persuasion measures
- disability management
- consultation mechanisms
- information, monitoring and evaluation.

3.2 Employment Services

In providing services such as vocational guidance, vocational training, placement and other employment-related services to persons with disabilities, the competent authorities are exhorted to use services available to workers generally, wherever possible and appropriate, with necessary adaptations.¹⁴⁶ This is being increasingly done in countries where vocational rehabilitation infrastructures have already been developed.¹⁴⁷

The range and types of services vary between countries, but may include vocational guidance and counselling, with some countries (France and Belgium, for example) agreeing individualized ‘vocational pathways’ with disabled persons, which provide for different measures at different stages, leading in many cases to job integration.

Other services include provision of information on training and employment opportunities, job search training which encompasses preparation of job applications/resumes, interview techniques, presentation skills, canvassing for jobs, and placement. Training in literacy and numeracy is sometimes provided, where necessary. Preferential access to specified jobs is provided in a number of countries. In Greece, for example, a proportion of jobs in certain occupations, including messengers, cleaners, gardeners, receptionists, must be reserved by public sector organizations and banks: preferential access is also given to licences for certain commercial activities, such as taxis and newspaper stalls. Work experience, either on its own or as an integral part of a training programme, is often provided, particularly for newcomers to the world of work.

University of York, 1997; European Commission, Benchmarking Employment Policies for People with Disabilities, 2000.

¹⁴⁶ Convention No. 159, Article 7

¹⁴⁷ ILO, Vocational Rehabilitation and Employment of Disabled Persons, 1998

For persons with disabilities returning to work after an absence, individual back-to-work action plans may be developed. Support measures include job coaching, particularly in supported employment situations. Individualized support assistance in helping, for example, to deal with difficulties with co-workers, may be provided through vocational advisers or through a special scheme such as *Arbeitsassistentenz* (work-assistance) in Austria, which provides on-going assistance during the initial integration and follow-up phases as well as crisis intervention where continuing employment may be threatened for any reason. Early intervention such as ‘fresh-start’ initiation programmes aimed at young workers with disabilities within six months of their being unemployed, and programmes aimed at assisting long-term unemployed disabled workers back to work, are provided in many countries (for example, France, Belgium, Austria). Because of the particular difficulties faced by workers with disabilities who have been unemployed for a long time, intensified efforts are frequently made to assist disabled workers to participate in educational, retraining or other programmes as soon as possible after they become unemployed.

3.3 Training for Employment

In many ways, training for employment for persons with disabilities appears to be going through a transition, from programmes in specialized institutions to mainstream programmes for general job seekers. For some countries, this transition is in its early stages, with training still mostly in specialized institutions. In others, the majority of adults with disabilities receive their training in mainstream programmes (the UK, for example). In Sweden, employment policies for persons with disabilities are part of general labour market policies in any event. Almost all countries, however, appear to be experiencing a variety of difficulties. This situation is aggravated by high rates of unemployment which are making it particularly difficult for persons with disabilities, even after completion of training, to find suitable employment.

For those countries in the early stages of mainstreaming training for persons with disabilities, special classes, schools, and training institutions are still common. In many of these specialized providers, both public and private, curricula tend to relate to jobs traditionally thought appropriate for disabled persons. This mismatch between training and the skill requirements of the labour market hinders job placement possibilities and may well contribute to negative perceptions by employers of the ability potential of many disabled persons.

Even where persons with disabilities are being encouraged to enter mainstream training, some countries report that relatively few are doing so. Reasons given include physical inaccessibility of training centres, distant or inconvenient location of training, courses which are not relevant, inadequate transportation, unavailability and/or cost of child care, little flexibility in course design or delivery.

Countries which are further along the mainstreaming path have recognized and are taking or plan to take steps to deal with such issues. In the Netherlands, physical access is being improved in vocational and adult education to improve opportunities for disabled persons to get a basic qualification, and more flexible, module-based apprentice training courses are planned. Individualized support for persons with disabilities in France through its ‘fresh-start’ initiatives and further development of apprenticeship training, ‘sandwich courses’ alternating training and work in enterprises, and preparation for working life in a mainstream environment are all underway. In the United Kingdom, disabled people have priority access to mainstream

programmes, and specialist teams operate in jobcentres to assist persons with disabilities to gain and retain employment. Special pre-training programmes have been introduced in Germany which include advice and assistance in the transition from school to working life: courses in vocational training centres have also been adapted in order to meet labour market requirements more effectively. In Australia, short-term courses have been developed at local level to meet individual needs: normally up to 12 months duration, the courses may be extended, if necessary, for persons with disabilities. In Sweden there has been increasing cooperation between schools and placement services.

For persons with a high level of disability, training for work continues to be provided mainly in special institutions or in sheltered or supported employment programmes, although Australia operates a programme which provides fully subsidized work experience, mainly in the private sector, for those who cannot get a place on a mainstream wage-subsidy programme.

Greater efforts are being made to get employers more directly involved in developing and providing training and employment opportunities, through financial and other incentives. Belgium has a system of employer-based on-the-job training contracts for disabled persons: the employer is not committed to hiring the trainee after the training contract but often does. Advisory committees on the training and employment of disabled workers, which include representatives of employers' and workers' organizations as well as representatives of government and disability non-governmental organizations, play a useful role in helping to develop policy and codes of good practice, and in improving cooperation and coordination among the sectoral interests involved.

3.3.1 Key Issues

Workers with disabilities tend to fall behind other job seekers, particularly when overall numbers of unemployed workers rise. While ignorance and prejudice may have a part to play in such situations, a key factor is often their inability to compete on the basis of relevant skills or qualifications. What an employer will look for in recruiting a new employee is, first and foremost, the capacity to do the job (given reasonable accommodation, where necessary). Applicants who can show that they have the necessary competence, or have the capacity to acquire it after suitable training, have an advantage over applicants who cannot. Training, which should encompass skill, knowledge and attitudes, is very often the key to success in finding a job. For persons with a disability, professional training – under qualified instructors, and leading if possible to some form of recognized certification – is an essential passport to gaining employment. This is why a national policy on vocational rehabilitation and employment of disabled persons, as called for in ILO Convention No. 159, is so essential. People with disabilities have the right to work, but they must be given the means to enable them to exercise that right. Priority in vocational training policy and provision, particularly in times of high unemployment, needs to be given to the most vulnerable if they are not to become further disadvantaged in the labour market.

Many of the jobs for which disabled persons were traditionally trained do not exist any more, especially in industrialized countries. The relevance of training programmes to current and likely future labour market requirements needs to be critically reviewed to ensure that all programmes are responding to such needs at all times.

Physical accessibility remains a major barrier to many disabled persons seeking work or training. This applies not just to the training or work place but to the local built environment – including public transport, housing, shops, restaurants, places of recreation – used to a greater or lesser degree by other employees. Considerable improvement has been made in many places, but in general progress is slow, and many disabled persons remain excluded as a result.

Lack of coordination between government ministries or departments continues to be an issue inhibiting the right to work of many disabled people. There are many good examples of how this has been effectively resolved where the political will existed.

Many countries have accepted the principle of ‘mainstreaming’ in training and employment services for persons with disabilities. In some cases, however, it has not progressed much beyond the acceptance of the principle or the transfer of responsibility from one ministry to another. If disabled persons are to participate on an equitable basis with others, whatever reasonable accommodations are necessary, in terms of physical accessibility, job/training design, training equipment and materials, modes of instruction, etc. must be carried out. In addition, the staff members responsible for managing and operating the systems involved must be sufficiently trained and equipped, not only in requisite knowledge and skill, but also in attitudes.

Mainstreaming in training programmes may have many implications, in addition to those mentioned. An important consideration, for example, will be the basis on which training outcomes are assessed. Indicators, such as placement rates, which may be used to measure the performance of training programmes for some unemployed groups of workers may not be the most appropriate for others. ‘Creaming’ or selecting those most likely to succeed, in order to enhance placement prospects of occupational training programmes is a recognized (if not always admitted) phenomenon.¹⁴⁸

3.4 Financial Supports

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. In some countries, such supports are time-restricted: in Sweden, four years, but up to eight years in Germany, for example. The amount of subsidy varies: in Austria it can be up to 80 per cent of the full wage in the first year of employment. The wage subsidy may be combined with a grant during the initial period of adjustment.

Other financial supports to employers include:

- grants towards training costs
- training completion bonus grants for workplace modifications/special equipment
- grants for tutorial assistance
- retention bonus grants to hire personal assistants for disabled workers who need them

¹⁴⁸ For a more detailed discussion see, for example, OECD Working Party on Employment, Occupational Training and Retraining Measures for Specific Target Groups, 1986

- tax credits in respect of each new disabled worker (may be time-restricted, e.g. three years in Italy)
- reductions in social security charges in respect of disabled workers.

In the Netherlands, where responsibility for disability prevention and rehabilitation of disabled employees has been increasingly transferred from governments to employers, special measures include:

- ‘trial appointments’: A person with a disability may work for up to three months without the employer paying wages - unemployment benefit is continued during this period
- a replacement grant may be paid to an employer if the disabled employee cannot return to his or her former job and needs a different job in the company
- the employer may be exempted from having to pay wages during the first 52 weeks of sickness of an employee if the employee was disabled when recruited
- during the first six months after hiring a disabled worker the employer is exempted from supplementary insurance contributions in case the worker applies for disability benefit.

In Sweden, employers are protected by law against excessive sick leave costs of an employee with an illness which is likely to lead to a large amount of sick leave. Financial supports of various kinds may also be available to persons with disabilities. In France, an employment bonus may be paid to an unemployed disabled person who gets a job. Financial assistance towards public transport costs if participating in training programmes may also be paid. Under a pilot scheme in the Netherlands, persons with a disability may receive a personal budget in the form of vouchers or tickets to enable them to purchase placement or other job integration services of their choice. A similar ‘Ticket to Work’ programme operates in the United States.

A key concern of many disabled persons is that their eligibility for disability benefit or pension may be adversely affected if they find a job and subsequently lose it for any reason. A number of countries have taken steps to ensure that such concerns do not act as a disincentive to persons with disabilities in seeking employment. In Spain, for example, eligibility to access former disability benefit if laid off is assured by regulation. To encourage those on long-term disability benefit in Finland to return to work, individuals may suspend their benefit for up to two years during which they may enter training or employment without losing their entitlement. In many countries, persons with disabilities are allowed to earn up to a certain level in pay without affecting their disability insurance or social security benefits.

Grants may also be available to disabled persons who wish to set up their own business or to establish a cooperative. Such measures are particularly important in countries, such as Greece, where self-employment is high and a high proportion of all enterprises are small. In Italy, social cooperatives with a workforce of which at least 30 per cent are persons with disabilities may be exempted from social insurance contributions. Financial assistance may also be available to third-party agencies to assist disabled persons in preparing and training for employment. In the United

States, for example, grants may be available to States to establish programmes of technology-related training, access and assistance, and awards can be made to private agencies which deliver assistive technology training and services at local level.

3.5 Technical and Personal Supports

The dividing line between technical, personal and even financial supports can be a very narrow one. Is the provision of a guide dog to a person with a visual impairment a personal or a technical support? In the context of employment it may qualify more as the latter. In any event, the categorization is of less importance than the support itself and the role it plays in enabling a person with a disability to exercise the rights to which they are entitled. Other non-financial supports in relation to work and employment include assistance in arranging for a special driving licence; job coaches to help facilitate the transition to employment; post-placement support; personal assistants (to assist, if needed, in relation to personal hygiene or transport, for example); provision of readers for workers with a visual impairment, particularly during the initial stage of training and/or employment; provision of signers/sign language interpreters during interviews or in the workplace; grants for or direct provision of personal aids (e.g. computer-based aids, clothing, textbooks); technical aids and devices.

3.6 Quota Systems

By the end of 1923, Germany, Austria, Italy, Poland and France had adopted a quota system, under which employers were obliged to employ disabled war veterans. Many other European countries adopted a quota system approach after the Second World War, largely because of high unemployment levels among people with disabilities and the general failure of a voluntary approach. All systems were eventually extended to cover disabled civilians. Quota systems have also been introduced in several countries of Asia and the Pacific (China, India, Japan, Mongolia, the Philippines, Sri Lanka and Thailand), Africa (including Ethiopia, Mauritius and Tanzania), in the Arab States (e.g. Kuwait) and in Latin America (e.g. Brazil). While all quota systems call for employers to employ a set minimum percentage of disabled workers, there are variations between systems, particularly in relation to the obligatory or non-obligatory requirement, and the nature and effectiveness of sanction in cases where an employer fails to meet the requirement.

Waddington has divided European quota systems into three basic models:¹⁴⁹

- *Legislative recommendation with no sanction:* Employers are not obliged to employ a set percentage of workers with disabilities, but it is recommended that they do so. Such a system has operated in the Netherlands since 1986. Under the 1947 Employment of the Disabled Act, public and private employers with more than 20 employees were expected to employ a set quota of disabled workers. People with disabilities could choose to register. The 1986 Handicapped Workers Employment Act removed the registration requirement, extended coverage to all those receiving disability benefits or an invalidity pension, and introduced a quota target of between three and five per cent, to be achieved over three years.

¹⁴⁹ Waddington, Lisa, Reassessing the Employment of People with Disabilities in Europe: from Quotas to Anti-discrimination Laws. *Comparative Labour Law Journal*, 18, 62, 1996, pp. 62-101.

The quota was voluntary and there were no sanctions for failing to meet it. By 1989, only 2.2 per cent of workers with a contract of more than 15 days were disabled and by 1992 this figure was just two per cent. The government concluded that a compulsory policy across all sectors was not practicable. Employers are, nevertheless, required to continue to keep a record of disabled employees.

- *Legislative obligation without effective sanction*: An example of this quota system was that adopted by the United Kingdom after the Second World War. The Disabled Persons (Employment) Act 1944 has been described as ‘the foundation stone of disabled workers’ rights in the UK.¹⁵⁰ These rights to mainstream employment were to be achieved through the Quota Scheme, which required private employers with 20 or more employees to have at least 3 per cent of their workforce made up of registered people with disabilities, and through the Reserved Occupations Scheme, under which two occupations - passenger electric lift attendant and car park attendant - were designated as reserved to persons with disabilities. It was not an offence for an employer to be below the quota, but it was an offence to recruit a non-registered person when below the quota or where doing so would bring the employer below the quota, without an exemption permit. An employer who committed such an offence was subject to a fine or a term of imprisonment of not more than three months. The quota was abolished in 1996, when the Disability Discrimination Act 1995 came into force. There appears to be general agreement that the quota failed to promote the employment of people with disabilities, that it was inadequately monitored and enforced (there were only 10 prosecutions for failure to comply, even though in 1993, for example, less than 20 per cent of employers met their quota obligation), and that it allowed large numbers of exemptions and exceptions.¹⁵¹
- *Legislative obligations with sanction*: According to Waddington, the levy-grant system is ‘the form of quota which has attracted most interest from those countries which have sought to introduce or modify a quota system in the 1980s and 90s. It involves setting a quota and requiring that all covered employers who do not meet their obligation pay a fine or levy which usually goes into a fund to support the employment of disabled people.’

The German quota system, which has often served as a model for other countries, was established in 1974. There is a quota of six per cent for all public and private employers with at least sixteen employees. Certain workers may be counted as occupying two or three quota places - those whom the Employment Office considers particularly difficult to employ, because of their degree of disability, and disabled persons who are receiving training within the firm. The legislation refers to special categories of severely disabled persons:

- 1) Severely disabled persons whose working lives are especially affected because of the nature or seriousness of their disability, in particular:

¹⁵⁰ Doyle, Brian, Disabled Workers’ Rights, the Disability Discrimination Act and the UN Standard Rules, *International Law Journal*, 25, 1 Mar. 1996

¹⁵¹ Doyle, op. cit.; Waddington, op. cit.; Hyde, Mark, From Welfare to Work? Social Policy for Disabled People of Working Age in the United Kingdom in the 1990s. *Disability and Society*, 15, 2, 2000, pp. 327-341

- (a) those who need special assistance, on a more than temporary basis, in order to engage in employment;
- (b) those whose employment, owing to their disability, implies exceptional expenses, on a more than temporary basis, for the employer;
- (c) those who, because of their disability, are able on more than a temporary basis to render only substantially reduced output;
- (d) those whose extent of disability is at least 50 per cent attributable to mental or psychological disturbances or to be subject to attacks;
- (e) those who, because of the nature of the seriousness of their disability, have not completed vocational training.

2) Severely disabled persons who have attained 50 years of age.

The Federal Employment Office monitors compliance with the scheme. Fines may be imposed if the quota requirement is not met. In 1977 the average quota attained was 3.9 per cent, compared with 5.9 per cent in 1982.¹⁵²

The monies collected through the compensation levy are used exclusively to promote rehabilitation and employment of severely disabled persons. It provides grants, for example, to assist employers who exceed their quota obligations to meet extra costs such as adapting premises or providing special training. The levy is often regarded, particularly during difficult economic periods, as an additional tax to be paid by employers, and a more attractive option than hiring.

A similar quota system operates in France. Under 1987 legislation, every public and private employer employing 20 or more persons is required to employ a quota of six per cent of persons with disabilities covered by the law. The six per cent obligation was introduced on a gradual basis, beginning with three per cent in 1988, rising to six per cent in 1991. Certain categories of disabled workers are counted as one-and-a-half, two, or two-and-a-half individuals. Enterprises may fulfil their employment obligation by:

- direct employment of beneficiaries under the law
- contracting with the sheltered employment sector
- reaching accords¹⁵³ to promote employment of disabled persons paying a contribution to AGEFIPH¹⁵⁴

In 1994, 62.8 per cent of employers met their obligation by payment of levy only, 19.8 per cent by sub-contracts and levies, and 12.4 per cent by sub-contracts only.¹⁵⁵ In 1998, just over half of all enterprises with 20 employees or more fulfilled their employment obligation by contributing

¹⁵² European Commission, Benchmarking employment policies for people with disabilities, 2000

¹⁵³ Accords are negotiated agreements between employers and employees' associations.

¹⁵⁴ The joint agency for the management of integration funds for disabled persons.

¹⁵⁵ Ministry of Labour and Social Affairs, 1996, quoted in Thornton and Lunt, op. cit., p. 98

to the fund.¹⁵⁶ The employment rate of disabled workers in the enterprises concerned in 1997 was 4 per cent (3 per cent in the public sector). This result led to the government launching, through AGEFIPH, a three year Exceptional Programme (1999-2001) with particular focus on long-term and youth unemployment. Actions fall under four headings:

- preparation and follow-up of integration in employment
- development and modernization of guidance and training structures
- enhancement of the actions of companies
- experimental measures.

Systematic measures to promote the employment of persons with disabilities in Japan were introduced after World War II, following the enactment in 1947 of the Employment Security Law. In 1960, a quota system was introduced, but with no obligatory provisions. Lack of compliance, particularly by larger organizations, led to the introduction in 1976 of an obligatory quota system, as well as a levy and grant system. The quota is 1.8 per cent for private enterprises and 2.1 per cent for national and local governments. Double counting in respect of workers with severe disabilities is allowed. A levy is imposed on enterprises which fall short of their quota: levies thus collected are paid as grants to enterprises which hire disabled workers in excess of their quota and are also used to subsidize new or modified facilities for workers with disabilities.

3.6.1 Comment

Discussing the assumptions underlying quota systems in Europe, Waddington says that such systems are based on the belief that, without some form of legislative intervention, people with disabilities would not make up even the specified percentage of the workforce:

‘... quotas are based on two related assumptions: (i) that employers will not hire large numbers of disabled people unless they are required to do so, and (ii) that most disabled people are unable to compete for jobs with their non-disabled counterparts on an equal basis, and win them on their merits. In short, the assumption that disabled workers are less valuable and less productive, and that, if such workers are to be integrated in the open labour market, employers need to be obliged to hire them, and sometimes even financially compensated for doing so. Numerous employers have taken their cue from the legislation, and accept these assumptions. This is reflected in the fact that many employers resist the idea of, and obligations under, quota systems, and frequently ‘buy’ themselves out of their obligation where this is an option, preferring to employ a largely non-disabled workforce. The history of the European quota systems amply demonstrates that an employment system which is based on the idea that the protected group of workers are inferior cannot achieve permanent and significant success, since employers will attempt to evade their obligations to employ such workers.’¹⁵⁷

¹⁵⁶ European Commission, op. cit., p. 89

¹⁵⁷ Waddington, op. cit., p. 71

A recent study for the European Commission, which looked at employment policies for disabled persons in eighteen industrialized countries, found no examples where quota systems achieved their targets. Acknowledging the arguments that quota systems produce resources from levies or fines which can be used to support other employment development measures, and that in some cases sufficient disabled people may not be available to enable employers to meet their quotas, the study concluded: ‘...it is clearly the case that in most countries the tide is swinging away from quotas – either for their abandonment altogether (as in the UK), or for other measures (active employment support for individuals and/or stronger anti-discrimination laws) to be given higher profile and greater force.’¹⁵⁸

3.7 Anti-Discrimination Legislation

Some European countries, such as Sweden, Finland and Denmark, as well as others including Australia, Canada, South Africa and the United States, did not introduce quota systems and decided instead to improve vocational training and rehabilitation and strengthen the voluntary approach to employers. In addition, more and more countries have, with increased lobbying by people with disabilities and their representative organizations, been taking the route of anti-discrimination legislation, based in many cases on the experience in the United States dating from civil rights legislation in the 1960s.

Perhaps the greatest seismic shift in the area of employment for people with disabilities has been this move to anti-discrimination legislation. Like quota systems and other government-sponsored schemes, anti-discrimination legislation assumes that specific measures are needed to promote the employment of disabled people. Unlike quotas, however, such legislation says that people with disabilities are able to compete for jobs on their merits, provided the environment in which they do so does not discriminate against them because of their disability.

Anti-discrimination legislation is not new. Laws to promote equal employment opportunity and equal pay for women have been around in Europe for decades, with similar legislation to protect the rights of people on racial, ethnic, or religious grounds in many countries. One of the reasons why it took so long to extend anti-discrimination legislation to disabled people may have been the lack of effective collective advocacy to promote that cause.

It was reported in 2000 that more than 40 out of 189 UN member States had adopted some kind of anti-discrimination legislation in respect of persons with disabilities.¹⁵⁹ It is not intended to compare those laws,¹⁶⁰ but rather to note the increasing number of countries enacting such legislation, and the fact that most of the laws were adopted during the 1990s. The following country examples, which are by no means exhaustive, are presented to illustrate the variety of approaches to this matter.

¹⁵⁸ European Commission, *Benchmarking employment policies for people with disabilities*, 2000, p. 207

¹⁵⁹ Degener, T. and Quinn, G. *A survey of International, Comparative and Regional Disability Law Reform*. Paper presented at ‘From Principles to Practice’ Symposium, Washington DC. Oct. 2000

¹⁶⁰ Such a comparative process would be difficult given the different legal systems and the different historic, social, economic and political backgrounds of the countries concerned.

3.7.1 Australia

Australia has both national and state legislation to address discrimination against persons with disabilities. The Commonwealth Disability Discrimination Act 1992 over-rides state legislation and prohibits discrimination on the ground of disability in work and employment as well as other areas, including education. The Act is administered by a Disability Discrimination Commissioner within the Human Rights and Equal Opportunity Commission, which investigates complaints of discrimination. The 1992 Act allows for the development by organizations of Action Plans which identify barriers for persons with disabilities within the organization and set out policies and programmes, with time frames, for addressing them. The benefits of developing a Disability Action Plan are threefold: it demonstrates a commitment to anti-discrimination principles, it can be given to the Human Rights and Equal Opportunity Commission to be taken into account if a complaint is made against the organization, and it provides a tool for change.

3.7.2 Brazil

The Federal Constitution of Brazil of 1988 explicitly prohibits discrimination of any kind concerning the recruitment of or salaries paid to persons with disabilities (Article 7). Law No. 7.853/89 concerning the Rights of Persons with Disabilities guarantees to persons with disabilities the full exercise of their basic rights, including the right to work. This law makes it a punishable offence to discriminate against a person on grounds of disability in employment or work.

3.7.3 Canada

Anti-discrimination measures in Canada take two legislative forms. Section fifteen of the 1982 Charter of Rights and Freedoms guarantees every individual ‘the right to equal protection and equal benefit of the law without discrimination’ and covers discrimination based on mental or physical disability. The Canadian Human Rights Act 1985 prohibits certain discriminatory practices, and disability is included among the possible grounds. Both the Charter and the Act allow for (but do not require) affirmative action to reduce disadvantages. While the Act did not originally require an employer to make “reasonable accommodation” to enable a disabled person to meet job requirements, an Amendment, introduced in 1998, includes a duty to accommodate:

“The duty to accommodate refers to the obligation of an employer, service provider, or union to take steps to eliminate disadvantage to employees, prospective employees or clients resulting from a rule, practice, or physical barrier that has or may have an adverse impact on individuals or groups protected under the Canadian Human Rights Act, or identified as a designated group under the Employment Equity Act.

The Canadian Human Rights Act provides that the special needs of a person relating to a prohibited group of discrimination must be accommodated unless the employer or service provider can prove that to do so would be an undue hardship.”

The second form of legislative measure, the Employment Equity Act, 1995, requires active measures to deal with disadvantage, including making reasonable accommodation. Persons with disabilities are among those covered by the Act.

3.7.4 Costa Rica

In Costa Rica, Law No. 760 concerning Equality of Opportunity for Persons with Disabilities prohibits discrimination on the basis of disability in the following cases relating to employment and work: the use of recruitment procedures which have not been adapted to reflect the needs of disabled job-seekers; the specification of requirements additional to those generally applied, in relation to the recruitment of persons with disabilities; and the failure to employ a person on grounds of disability.

3.7.5 Ethiopia

The Right of Disabled Persons to Employment Proclamation (Proclamation No. 101/1994 of 26 August 1994) aims to protect the rights of disabled persons to appropriate training, employment opportunities and salary, and to stop any workplace discrimination. Sections 3 and 4 refer to how employment opportunities for disabled persons should be promoted in the open labour market. They state that no selection criteria shall refer to the disability of the candidate, and that necessary equipment shall be provided to allow a disabled person to carry out his duty. Article 6 emphasizes:

“Any disabled person whose rights are affected because of non-compliance with the provisions of this Proclamation and regulations and directives issued hereunder, may lodge his grievance to the organ empowered by law to hear the labour dispute”.

Article 4 of the **Right of Disabled Persons to Employment Proclamation, 1994** provides for a quota (Article 4), stating that posts suitable for persons with disabilities shall be identified and reserved from among vacancies created in offices and undertakings. While the legislative framework is in place to introduce quota regulations, these have not yet been introduced.

3.7.6 Mauritius

The Training and Employment of Disabled Persons Act 1996 of Mauritius contains an anti-discrimination provision which makes it an offence for an employer to discriminate against any disabled person in relation to advertisement of and recruitment for employment, and the determination or allocation of wages, salaries, pensions and other matters relating to employment. Any employer who discriminates against a disabled person shall be liable to compensatory payment or to imprisonment. Under this Act, no disabled person shall be employed on work which, with regard to the nature of his disability, is not suitable.

The Act also requires organizations with 35 or more employees to set aside at least 3 percent of their positions for persons with disabilities. Employers who fail to meet the quota are required to pay a financial contribution into a designated fund or may be liable to imprisonment.

3.7.7 *Philippines*

The Philippines' Magna Carta – Disabled Persons 1992, section 32, prohibits discrimination against persons with disabilities in employment:

“ No entity, whether public or private, shall discriminate against a qualified disabled person by reason of disability in regard to job application procedures, the hiring, promotion, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.”

The Magna Carta lists in detail acts of discrimination covered by this prohibition:

- (a) limiting segregating or classifying a disabled job applicant in such a manner that adversely affects his work opportunities;
- (b) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out a disabled person unless such standards, tests or other selection criteria are shown to be job-related for the position in question and are consistent with business necessity;
- (c) utilizing standards, criteria, or methods of administration that:
 - have the effect of discrimination on the basis of disability; or
 - perpetuate the discrimination of others who are subject to common administrative control;
- (d) providing less compensation, such as salary, wage or other forms of remuneration and fringe benefits, to a qualified disabled employee, by reason of his disability, than the amount to which a non-disabled person performing the same work is entitled;
- (e) favouring a non-disabled employee over a qualified disabled employee with respect to promotion, training opportunities, study and scholarship grants, solely on account of the latter's disability;
- (f) reassigning or transferring a disabled employee to a job or position he cannot perform by reason of his disability;
- (g) dismissing or terminating the services of a disabled employee by reason of his disability unless the employer can prove that he impairs the satisfactory performance of the work involved to the prejudice of the business entity: provided, however, that the employer first sought to provide reasonable accommodation for disabled persons;
- (h) failing to select or administer in the most effective manner employment tests which accurately reflect the skills, aptitude or other factor of the disabled applicant or employee that such test purports to measure, rather than the impaired sensory, manual or speaking skills of such applicant or employee, if any; and
- (i) excluding disabled persons from membership in labour unions or similar organizations.

3.7.8 *South Africa*

The South African Constitution contains a Bill of Rights, which ‘enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom’.¹⁶¹ Clause 9 - Equality, which forms part of the chapter on the Bill of Rights, states that equality includes the full and equal enjoyment of all rights and freedoms, and that no person may be discriminated against directly or indirectly on the ground of disability or on any of the other grounds specified. Clause 9 also states that national legislation must be enacted to prevent or prohibit unfair discrimination.

To promote the constitutional right of equality, eliminate unfair discrimination in employment, ensure the implementation of employment equity to redress the effects of discrimination and to give effect to South Africa’s obligations as a member of the ILO, the Employment Equity Act was passed in 1998. The Act requires all employers to eliminate unfair discrimination, direct or indirect, in any employment policy or practice, on disability or other specified grounds. It is not unfair discrimination if an employer takes affirmative action measures consistent with the purpose of the Act, or distinguishes, excludes or prefers any person on the basis of an inherent requirement of the job.¹⁶² The Employment Equity Act defines affirmative measures as ‘measures designed to ensure that suitably qualified people from designated groups¹⁶³ have equal employment opportunities and are equitably represented in all occupational categories and levels in the workforce of a designated employer’. Affirmative action measures must include:

- measures to identify and eliminate employment barriers which adversely affect people from designated groups
- measures to enhance diversity in the workplace based on equal dignity and respect
- making reasonable accommodation for people from designated groups to ensure that they enjoy equal opportunities and are equitably represented in an employer’s workforce in all occupational categories and levels. This may include preferential treatment and numerical goals, but excludes quotas.¹⁶⁴

The Act defines ‘reasonable accommodation’ as ‘any modification or adjustment to a job or to the working environment that will enable a person from a designated group to have access to or participate or advance in employment.’

Employers are required to prepare and implement an ‘employment equity plan’ setting out objectives, specific numerical goals to achieve equitable representation of suitably qualified people from designated groups within each occupational category and level, timetables, strategies to achieve their goals, and procedures for monitoring and evaluating the implementation of the plan.

¹⁶¹ Constitution of the Republic of South Africa Act No. 108 of 1996, Chapter 2, clause 7

¹⁶² Employment Equity Act No. 55 of 1998, Chapter 11, clause 6 (2)

¹⁶³ Including disabled persons

¹⁶⁴ *idem*: clause 15

Unfair discrimination in employment on disability grounds is further prohibited under the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000. The Act makes it clear that disability discrimination includes failing to take reasonable steps to accommodate the needs of a person with disabilities, and failing to identify or eliminate obstacles that unjustly limit or restrict persons with disabilities from enjoying equal opportunities.¹⁶⁵

3.7.9 *United States*

In the United States, the system of rehabilitation in the 1950s and 1960s still had a strong medical component. A medical diagnosis underlay eligibility for the programme and effectively determined the course of rehabilitation for the programme's target populations.¹⁶⁶ However, the cause or origin of disability (e.g. war injuries) became less of concern under the evolving programme and the range of eligible 'groups' expanded during the 1960s and 1970s. With the passage of the 1973 Rehabilitation Act, the emphasis moved to vocational rehabilitation, and considerable investment followed in vocational rehabilitation facilities, sheltered workshops, day activity centres and in training qualified rehabilitation professionals.

Part of the 1973 Act is concerned with eliminating employment discrimination, targeting in particular public employers and firms contracting with the federal government. Disability lobbyists argued not just for effective implementation but for an extension of the Act's requirements to employers in the private sector.

With the 1986 Amendments to the Rehabilitation Act, collective advocacy, developed from the Civil Rights Movement, more and more influenced the broad national goals for rehabilitation:

- 'vocational rehabilitation' was largely replaced in the language of the Act with 'rehabilitation'
- independent living was identified as a distinct service option for people without immediate vocational goals¹⁶⁷
- supported employment was identified as a distinct programme and outcome for the most severely disabled individuals requirements for need-based programming were introduced:
 - a formal state plan must be followed, based on the assessed needs of people with disabilities
 - eligibility must be based on expressed needs among severely disabled persons

¹⁶⁵ Promotion of Equality and Prevention of Unfair Discrimination, Act No. 4 of 2000.

¹⁶⁶ Menz, Frederick. Vocational Rehabilitation Research in the United States of America, in Floyd, Michael (Ed.) Vocational Rehabilitation and Europe. London: Jessica Kingsley Publications, 1997

¹⁶⁷ The independent living philosophy is about persons with disabilities taking responsibility for and control of decisions affecting themselves, becoming self-reliant, and achieving full and equal participation in society. Control over the individual's rehabilitation programme was now very much in the hands of consumers of rehabilitation services.

- an individualized rehabilitation plan must be developed based on individual needs
- the state programme must be evaluated based on the extent to which it meets the needs of persons with severe disabilities.’¹⁶⁸

Public activism and organized advocacy continued, culminating in the adoption of the Americans with Disabilities Act (ADA) in 1990. This extended the anti-discrimination principle to all private employers with fifteen or more workers. It also prohibited discrimination on the ground of disability in housing, public accommodation, education, transport, communication, recreation, institutionalization, health services, voting and access to public services.

In order to benefit from the employment protection provided by the ADA, the individual must be qualified for the job in question. This means they must be able to perform the ‘essential functions of the job’, following the making of ‘reasonable accommodation’, if necessary, a ‘reasonable accommodation’ being any modification or adjustment that is effective in allowing an individual with a disability to perform the ‘essential functions’ of the job. Employers are obliged to make such accommodations unless it would cause them ‘undue hardship’.

3.7.10 Viet Nam

The **Ordinance on Disabled Persons** of 1998 prohibits discrimination in hiring against disabled persons for administrative and non-business positions. The Ordinance also provides for tax benefits to employers who recruit persons with disabilities.

3.7.11 Zambia

The People with Disabilities Act No. 33 of 1996 in Zambia specifies that an employer shall not treat a person with a disability different from a person without a disability in advertising for employment, recruiting, offering terms or conditions of employment, considering promotion, transfer or training of such persons or providing any other benefits related to employment. The prohibition on discrimination also applies to learning institutions. Discrimination is defined in the Act to mean:

- treating a person with a disability less favourably than a person without a disability
- treating a person with a disability less favourably than another person with a disability
- requiring a person with a disability to comply with a requirement or condition in which persons without a disability may have an advantage
- not providing different services or conditions required for that disability.

3.7.12 Key Issues

There are reports that anti-discrimination legislation which became effective in certain industrialized countries some years ago has not been particularly effective in improving the employment situation of persons with disabilities. A study to examine the implementation,

¹⁶⁸ Menz, idem: p. 96

enforcement and effectiveness of anti-discrimination legislation in relation to employment in different countries would be useful.

3.8 Persuasion Measures

As an addition or alternative to obligatory measures based on legislation or quota systems, non-obligatory measures based on persuasion and self-regulation are found in many countries, with the express purpose of promoting employment for persons with disabilities.

3.8.1 Information and awareness raising campaigns

Information and awareness raising campaigns, often organized by government agencies and sometimes by employer groups, may involve public seminars, publications, features in newspapers, local and national radio and television, websites, etc. Employer-led campaigns in Sweden, for example, aim to increase interest in creating job opportunities for disabled people, and emphasize that profitability and social responsibility are not incompatible. (Belgium, Canada, France, Japan, Portugal).

3.8.2 Awards

Awards to employers for efforts to improve employment opportunities are intended to recognize good employment policy and practice and to encourage other employers to do likewise (Australia, Greece). Awards may be made by a government agency or by employer networks/associations.

3.8.3 Other Measures

Symbols which public or private enterprises may use on their stationery, advertisements or other company literature indicating their commitment to equal opportunity and treatment for disabled workers are used to show good company practice and to encourage others. (Ireland, UK). *Codes of good practice* for employers have been developed in Belgium and the UK. *Disability equality awareness* training for employers and their employees is used in some countries, usually provided by non-governmental disability organizations.

It is difficult to assess the usefulness of persuasion measures in influencing attitudes or behaviour. The EU survey of employment policies for people with disabilities concluded that disability organizations tend to believe that competing interests will almost always undermine their effectiveness.¹⁶⁹

3.8.4 Key Issues

While attitudes expressed in employer surveys may not always be reflected in employer behaviour, persuasion measures should at least help to heighten awareness. Like voluntary quota schemes, however, persuasion measures are no substitute for legislation and other obligatory measures in promoting equality opportunity and treatment for workers with disabilities.

¹⁶⁹ EU, op. cit., p. 209

3.9 Disability Management

The practice of Disability Management has developed in recent years as a means of facilitating the recruitment, advancement, job retention and return to work of persons with disabilities. In the workplace, disability management is a proactive process, often integrated into human resource development practices, that promotes the entry and promotion of persons with disabilities, as well as strategies that include a range of prevention, rehabilitation and safe return-to-work interventions to address workplace injury and disability. These strategies are undertaken in a coordinated effort by workers' representatives and management, who assume joint responsibility for addressing disability-related issues in the workplace.

The ILO Code of Practice on Managing Disability in the Workplace adopted in November 2001 was drawn up to guide employers, in all sectors and sizes of enterprise, to adopt a positive strategy in managing disability-related issues in the workplace. While the ILO Code of Practice is primarily addressed to employers, the document notes that 'governments play an essential role in creating a supportive legislative and social policy framework and providing incentives to promote employment opportunities for people with disabilities. Moreover, the participation and initiative of people with disabilities is important for the Code to be achievable.' The contents of the Code of Practice are based on the principles underpinning international instruments and initiatives designed to promote the safe and healthy employment of all people with disabilities. The Code is not a legally binding document and is not intended to supersede or replace national legislation. It is intended to be read in the context of national conditions and to be applied in accordance with national law and practice.¹⁷⁰

3.9.1 Job Retention

The ILO Code includes recommended practice in relation to workers who acquire a disability while in employment, covering aspects such as policy, assessment and rehabilitation. Prevention, early intervention and retention are issues receiving increasing attention in many countries.¹⁷¹ Such measures are supported in many cases by the insurance industry on the basis that job retention is generally likely to be a less costly outcome than if the employee leaves work. Recent reviews of employment policies for persons with disabilities identified relatively few examples of initiatives in this area, but it is likely to assume growing importance to employers if it can be shown to prove itself on cost-effectiveness grounds.

To date, a limited number of countries have actively promoted disability management as a strategy in national policies concerning vocational rehabilitation and employment of disabled persons. Examples are cited here from Canada and the United States.

¹⁷⁰ ILO Code of Practice on Managing Disability in the Workplace, Geneva, 2002

¹⁷¹ Thornton, P. International Research Project on Job Retention and Return to Work Strategies for Disabled Workers, ILO: Geneva, 1998

3.9.2 Disability Management in Canada

A Code of Practice for Disability Management was launched in Canada in 2000. Endorsed and funded in part by the federal government's Labour-Management Partnership Programme, and produced by the National Institute of Disability Management and Research (NIDMAR), the Code provides practical guidelines, key criteria and outcome measures for implementing disability management. Many organizations and their networks, including employers' and workers' organizations and organizations of and for persons with disabilities, are helping to facilitate the employment, retention and return-to-work opportunities for disabled persons. Measures include policy statements and provision of advisory and supportive services.

3.9.3 Disability Management in the United States

With few exceptions, there are generally no federal or state programmes for short-term or long-term disability measures for non-occupational illness or injuries in the United States. This role is usually filled by employer, union and/or employee funded programmes. The costs of short-term and long-term payments, as well as workers' compensation payment for work injuries, are ultimately borne by employers through increased insurance premiums. Employers thus have an incentive to reduce these costs. This has led to the introduction of what is termed disability management, encompassing a variety of activities designed to prevent disabilities from occurring and/or to minimize their impact on workers and employers. The activities include:

- safety programmes
- employee health and assistance programmes
- return-to-work programmes.

3.9.4 Key Issues

The ILO Code of Practice on Managing Disability in the Workplace should be promoted actively with a view to its wider dissemination to and use by governments, employers' and workers' organizations.

3.10 Consultation Mechanisms

Convention No. 159 requires that representative organizations of employers and workers, as well as those of and for disabled persons, are to be consulted on the implementation of national policy on vocational rehabilitation and employment. Recommendation No. 168 states that these organizations should also be able to contribute to the formulation of policies on the organization and development of vocational rehabilitation services, and makes a number of recommendations about the form their participation might take.

Based on its survey of national legislation and the information provided by governments, the ILO's Committee of Experts on the Application of Conventions and Recommendations has found

that consultations, of different forms, are held in an increasing number of countries.¹⁷² In some countries (for example, Austria, Czech Republic, France, Mauritius, Sweden, United Kingdom) permanent councils or committees have been set up involving organizations of and for disabled persons and are consulted on the implementation of national policy. In other countries, all three representative groups are on various bodies responsible for drafting or implementing policies, measures and programmes (in, for example, Chile, Cyprus, Finland, Germany, the Philippines, Tunisia).

Some governments report that permanent bodies have been established to hold consultations with employers' and workers' representatives. (Australia, Burkina Faso, Greece, Lithuania, for example)

In other countries (for example, Argentina, Costa Rica, Ethiopia, Iceland, Suriname, Thailand, Zambia) only organizations of and for persons with disabilities appear to be consulted.

3.10.1 Key Issues

Vocational rehabilitation and employment for persons with disabilities should be seen as an essential component of national employment policy. Government consultations on this issue would undoubtedly benefit from the participation of employers' and workers' organizations, as well as from the involvement of representatives of and for disabled persons.

3.11 Information, Monitoring and Evaluation

3.11.1 Information

The ILO Code of Practice on Managing Disability in the Workplace¹⁷³ defines a disabled person as 'An individual whose prospects of securing, returning to, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognized physical, sensory, intellectual or mental impairment'. This is a slightly amplified version of the definition used in ILO Convention No. 159, which has successfully stood the test of time since its adoption in 1983. For practical purposes, the Code of Practice definition may be seen as applying to any generalized sections of this report.

In considering disability legislation and policies at national, regional or international levels, however, one finds no such agreement. There are wide divergences in how disability is defined, not only between countries,¹⁷⁴ but also between Ministries and programmes within countries.¹⁷⁵

There is no consistent series of internationally comparable, reliable and valid data on people with disabilities. This is partly because of the plethora of definitions used but also because of deficiencies in the data collection methods employed. Thus, estimates of the numbers of persons in the working-age population who are or might be classified as having disabilities vary between countries, not only according to differences as to what constitutes a disability but also because of

¹⁷² ILO, Vocational Rehabilitation and Employment of Disabled Persons, 1998

¹⁷³ ILO Code of Practice on Managing Disability in the Workplace, 2002

¹⁷⁴ See for example, OECD, Employment Policies for People with Disabilities, 2000, pp. 194-201

¹⁷⁵ In Australia and Canada, for example

the variety of approaches used to gather and compile such data. These are not the only reasons why cross-national comparisons are difficult. As a recent EU study of employment policies for people with disabilities points out, no two countries operate substantially similar systems, and there are major differences in almost all the main factors which impact on the structure and delivery of disability and employment policy.¹⁷⁶ The UN General Assembly has urged Governments to cooperate with the Statistics Division, Department of Economic and Social Affairs of the UN Secretariat in the continued development of global statistics and indicators on disability.¹⁷⁷

Comparisons between countries can be informative and useful, provided the bases for comparison are valid. What are more important in the first instance however, are the relevance, nature, quality, reliability and accuracy of information which informs the development of policy and programmes in each country. From recent surveys it would appear that, with a few notable exceptions (United States, Canada, United Kingdom, Australia, Sweden), the data required for policy and programme development, planning, monitoring and evaluation are inadequate, and seriously so in some cases.

Most of the countries concerned readily acknowledge the information gaps, recognizing that inadequacies in data make effective policy formulation and planning difficult, and weaken the case for resource allocation. Many have plans to improve their statistical information on the employment of persons with disabilities.

3.11.2 Monitoring and Evaluation

Poor data render effective programme monitoring and evaluation well-nigh impossible.¹⁷⁸ This assumes particular importance when increasing social security costs give rise to concern. For example, in her 1998 report on job retention and return to work strategies, Thornton includes in a list of 'emerging issues':

'Principles of social solidarity are eroding fast in the Netherlands, with decreasing public and political will to support the massive costs of the disability system....' 'A response to the rising costs of sickness and disability benefits in the Netherlands and in Sweden has been to shift responsibilities from the state to the enterprise....both for payment of sickness benefit and for early intervention to reduce sickness absence'.¹⁷⁹

In the United States, the US General Accounting Office has criticized the fact that the effectiveness of a large range of employment related programmes for people with disabilities has

¹⁷⁶ EU, Benchmarking employment policies for people with disabilities, 2000

¹⁷⁷ Resolution 54/121 of 17 Dec. 1999, 'Implementation of the World Programme of Action concerning Disabled Persons: towards a society for all in the twenty-first century.'

¹⁷⁸ OECD Working Party on Employment: Manpower Measures Evaluation Programme. 'Occupational Training and Retraining Measures for Specific Target Groups,' 1986

¹⁷⁹ Thornton, P. International Research Project on Job Retention and Return to Work Strategies for Disabled Workers, ILO 1998, p. 13

been subject to little or no evaluation.¹⁸⁰ The place of social security benefits in facilitating return to work has also received special attention in the United States.

‘Social Security Disability Insurance and Supplementary Security Income programs should not be viewed as exclusive and permanent sources of income to the person with disabilities. They should, in every case possible, be used as stepping stones to improving a person’s economic condition.’¹⁸¹

Few employment-related programmes for people with disabilities appear to have produced evaluations which could be used to support a case for better funding.

The general need for better evaluation data is being reinforced by growing and competing demands on public expenditure. Competition for resources exists not only within the overall context of national economic policies, but also between disability policies (prevention versus rehabilitation versus equal opportunity, for example) and within the disability employment area itself. For instance, should available resources be allocated to train all those who have a disability, concentrated on skill training for those most likely to get jobs, or devoted to those most in need?

The imprecision inherent in any evaluation programme does not mean that evaluations should not be carried out or used as a guide to policy. There is no alternative, if policy affecting the future is to be based on a reasonable assessment of the problems with which that policy must deal.

¹⁸⁰ Thornton P and Lunt N. *Employment Policies for Disabled People in Eighteen Countries: A Review*, Social Policy Research Unit, University of York, 1997, p. 276

¹⁸¹ Social Security Administration, 1994, quoted in Thornton and Lunt, *op. cit.*, p. 277

CHAPTER 4 - KEY ISSUES AND AN AGENDA FOR ACTION

4.1 Key Issues

Despite the array of international, regional, and national laws and other instruments, persons with disabilities throughout the world continue to be subjected to discrimination and denial of their rights in the field of employment. Available statistics indicate that the unemployment rate among workers with disabilities tends to be at least twice or three times that of other workers. Disabled workers are generally concentrated in low-level, low-paid jobs, and are not adequately represented at higher levels. Physical accessibility problems are commonplace, often reflecting negative attitudes or prejudices among others in the labour market. The double discrimination (sometimes treble, because of poverty) of women with disabilities is a particular affront to human dignity and a denial of human rights on which priority action is overdue. It could be argued that if the measures contained in existing international treaties were appropriately implemented, full equality and participation would be achieved. This unfortunately, is not yet the case. There is no country in which a major policy or programme initiative is not required. Much attention is currently being directed towards the possible elaboration of a United Nations convention on the rights of persons with disabilities. That process could take a number of years. In the meantime, there are a number of key issues which need to be addressed towards achieving the goal of equality of opportunity and treatment in the field of employment.

4.1.1 UN Human Rights Instruments

The final report of the study on Human Rights and Disability commissioned by the UN High Commissioner on Human Rights, the executive summary of which was circulated at the Commission on Social Development meeting in February 2002, contains a wide range of comments and recommendations designed to improve the effectiveness of the UN human rights system in the context of disability. These comments and recommendations are addressed to governments, treaty-monitoring bodies, the Office of the High Commissioner, the UN Commission on Human Rights, national human rights institutions and non-governmental organizations. They undoubtedly have implications for international agencies, not least in relation to multi-sectoral collaboration. Notwithstanding the understandable likely preoccupation with the elaboration of a new treaty, this rich outcome from the Human Rights and Disability study should provide an invaluable agenda for the future. It is important that an action programme be devised to address that agenda, concurrent with the work on a new convention.

Until the proposed new convention with its commitments becomes effective, human rights treaty-monitoring bodies, including the Committee on Economic, Social and Cultural Rights, should explicitly monitor the compliance of States with their commitments under the relevant human rights instruments in order to ensure the full exercise of those rights by persons with disabilities.

4.1.2 UN Standard Rules on the Equalization of Opportunities for persons with disabilities

Shortcomings in the Standard Rules which have been identified by the Special Rapporteur concerning the gender dimension, persons with developmental and psychiatric disabilities and housing, among other matters, need to be corrected.

The effectiveness of the monitoring process for the Standard Rules, which relies to a large extent on postal questionnaires, should be reviewed.

4.1.3 ILO Convention No. 159 concerning Vocational Rehabilitation and Employment of Disabled Persons

The twentieth anniversary of the adoption of Convention No. 159 in 2003 should be used to encourage States which have not yet ratified Convention No. 159 to do so and to remind States parties, where necessary, of their obligations under the Convention.

Given the central importance of consultations with the social partners and with organizations of and for persons with disabilities in relation to national policies concerning the vocational rehabilitation and employment of disabled persons, the ILO should consider conducting an international review of the extent and effectiveness of consultation between organizations of and for persons with disabilities, and governments, employers' and workers' organizations in relation to vocational rehabilitation and employment issues.

4.1.4 ILO Code of Practice on Managing Disability in the Workplace

The ILO Code of Practice on Managing Disability in the Workplace should be promoted actively with a view to its wider dissemination to and use by governments, employers' and workers' organizations.

4.1.5 Women and Disabilities

The general neglect of particular issues affecting women with disabilities should be addressed as a priority. Consideration should be given to proclaiming a Year of Women with Disabilities in order to highlight the particular vulnerability of this group to discrimination and to elaborate a special programme of action to address the problem issues.

4.1.6 Developing Countries

An estimated 80 per cent of all disabled people in the world live in rural areas in developing countries. The majority has either limited or no access to the services they need. In the current climate of economic and political uncertainty, the protection of the most vulnerable members of society assumes greater importance. A particular responsibility rests on governments to counter or alleviate the outcomes of market and other forces. A concerted effort is needed to increase the range and level of international support and assistance to enable developing countries to improve vocational rehabilitation, work and employment opportunities for women and men with disabilities. Bilateral and multilateral development cooperation programmes should integrate disability measures into their own overall approach.

Many development projects involve the construction of schools and vocational training centres, the establishment of public transport systems, the setting up of new factories, workshops

and offices. If the particular needs of persons with disabilities are not planned for in those developments, the result will reinforce their segregation and exclusion and deny them the opportunities to which they are entitled. Experience elsewhere shows clearly that attempting to make existing buildings accessible to people with different disabilities is both difficult and costly. Attention should therefore be paid to accessibility requirements from the early planning stage of such construction.

The Poverty Reduction Strategy Paper approach to poverty reduction in low-income countries, initiated by the International Monetary Fund and the World Bank, needs revision to ensure that it adequately reflects the needs of people with disabilities who live in poverty.

4.1.7 Training for Employment

Priority in vocational training policy and provision, particularly in times of rising unemployment, should be given to the most vulnerable if they are not to become further disadvantaged in the labour market.

Many of the jobs for which disabled persons have been traditionally trained do not exist any more. The relevance of training programmes to current and likely future labour market requirements should be critically reviewed.

Physical accessibility remains a major barrier to many persons with disabilities seeking work or training. Special measures are needed to create a truly barrier-free and non-discriminatory environment.

While the principle of mainstreaming is being increasingly accepted, the effectiveness of the practice needs to be urgently reviewed before disabled persons find themselves more disadvantaged than before.

4.1.8 Multi-sectoral Collaboration

In many countries, responsibility for vocational training and retraining for persons with disabilities has been assigned to the ministry or department responsible for general labour market training, rather than to a specialized 'disability' ministry. This incorporation into mainstream is seen as part of a more inclusive policy, in keeping with the goal of full inclusion and participation of disabled persons in society. Such an approach implies that the needs of persons with disabilities should be taken into account in policy making of all ministries and departments, and in the processes and structures designed to implement policies and programmes. Given this, the work of the ILO, UNESCO and WHO in relation to multi-sectoral collaboration should be pursued and intensified.

4.1.9 Employment Promotion

Persuasion measures should be encouraged and intensified. Such measures are, however, no substitute for legislation and other obligatory measures in promoting equality of opportunity and treatment.

There appears to be considerable potential for creating additional meaningful employment for persons with disabilities by expanding the range and types of social enterprises. The ILO should take the lead in helping to remove or reduce barriers which are inhibiting the creation of new social enterprises.

4.1.10 Statistical and Other Data

There is a general lack of reliable, valid and comparable data on the employment situation of persons with disabilities. This makes it difficult to answer questions such as:

- have labour force participation rates increased for persons with disabilities?
- have unemployment rates for persons with disabilities increased/decreased and, if so, by how much?
- do disabled workers enjoy the same rates of pay as others doing comparable work?

Inadequacies in data reliability and quality at any level make policy formulation and programme planning difficult and weaken the case for resources allocation. Consideration should be given to the setting up of a special Task Force to explore how data deficiencies in relation to work and employment might be improved.

4.1.11 Programme Evaluation

Few employment-related programmes for persons with disabilities have been evaluated. Competing demands on public expenditure emphasize the need for more evaluation. The development of guidelines on best practice should be considered.

4.2 General Principles to Inform the Drafting of a New treaty

An important opportunity to take a further significant step towards achieving the goal of equality of opportunity and treatment in the employment field arises from the General Assembly decision to establish an Ad Hoc Committee to consider proposals for a comprehensive and integral convention to promote and protect the rights of persons with disabilities. The process of elaborating a convention should be open and transparent, and should provide for full and meaningful participation by all interested parties in a spirit of cooperation. Keeping that firmly in mind, and taking into account existing international treaties and in particular, ILO Convention No. 159 and related ILO instruments, the following general principles are suggested as a basis to inform that process, particularly in relation to the employment provisions of the proposed Convention.

- The proposed Convention must be approached from a human rights perspective. It should be informed by the overarching principle that all persons with disabilities, without exception, are entitled to the full benefit and enjoyment of all fundamental human rights and freedoms on the basis of equality and without discrimination.

- All international human rights instruments protect the rights of persons with disabilities through the principles of equality and non-discrimination. The adoption of international standards dealing specifically with the rights of persons with disabilities should be seen as giving more detailed content to internationally agreed general rights and freedoms.
- The Convention must apply to all categories of disabled persons.
- Special attention should be paid to the situation of people with disabilities facing multiple discrimination including, in particular, women with disabilities and poor disabled persons in developing countries.
- Special attention should be paid to the situation of persons with disabilities in rural and remote areas.
- The provisions of the Convention should not conflict with existing provisions either of national law or international instruments, in particular those of Convention No. 159 concerning Vocational Rehabilitation and Employment of Disabled Persons.
- The provisions of the Convention should be regarded as minima, which States party may go beyond in national law.
- The Convention should address itself primarily to governments, with whom the main responsibility rests, while requiring States party to seek the cooperation of employer' and workers' organizations, and organizations of and for persons with disabilities.
- The Convention should recognize that equality of opportunity exists only when any relevant restrictions or limitations caused directly or indirectly by a disability have been compensated for by appropriate modifications, adjustments or assistance. Denial of any such reasonable accommodation constitutes disability-based discrimination. It should thus require governments not merely to abstain from and prevent measures which might discriminate against persons with disabilities, but also to take affirmative action to reduce or remove barriers to full participation and to give preferential treatment, where necessary, in order to achieve equality of opportunity and treatment. Such affirmative action measures should not be regarded as discriminating against other workers.
- The Convention should recognize the importance of social dialogue in achieving the rights contained in the Convention through national level negotiations and, in the case of employment, in the concrete exercise of these rights in the workplace, through collective bargaining.
- As public services become generally more privatized, private employers and providers of goods and services, and other non-public bodies should increasingly become subject to both non-discrimination and equality norms in relation to persons with disabilities.
- Rights can only be properly exercised and protected if people are aware of their existence and are in a position to access them. In other words, rights must be visible and accessible, and there should be access to justice through easy-to-use dispute prevention and settlement systems and to legal aid.

- The Convention should recognize the importance of having an institutional framework to deal with the rights of persons with disabilities, appropriate to national conditions.
- The importance of international cooperation in the promotion of development and, hence, in the effective implementation of the Convention should be strongly reflected, and governments in particular urged to adopt special measures to help achieve that goal.
- The elaboration process should be open and transparent. It should provide for meaningful participation by all interested parties, in particular persons with disabilities and their representative organizations.
- The Convention should include provision for a monitoring mechanism which should involve the specialized United Nations agencies and other UN organs, in their respective areas of competence.

4.3 What Should the Convention Contain Concerning the Right to Decent Work?

Note: The proposed Convention need not be limited to defining the rights of persons with disabilities. It may also set down governmental obligations for ensuring those rights. It may include substantive articles as well as application provisions.

- States party to develop, implement and periodically review national policies and systems on vocational rehabilitation and employment.
- States party to recognize the right to decent work of persons with disabilities according to personal capabilities, which includes the right to the opportunity to gain a living by work freely chosen or accepted, the right to vocational guidance, vocational training, placement and employment-related services.
- The right, according to personal capabilities, to secure and retain employment or to engage in a freely-chosen, useful, productive and remunerative employment.
- Vocational rehabilitation and employment measures to be made available and accessible to all categories of disabled persons.
- Wherever possible, persons with disabilities to avail of these services with and under the same conditions as other workers with any necessary adaptations or assistance, as required.
- The right to decent, just and favourable conditions of work which ensure, in particular:
 - equal pay for work of equal value
 - equality of opportunity and treatment for disabled men and women
 - safe and healthy working conditions
 - equal opportunity to be promoted to an appropriate higher level, subject to no considerations other than competence, experience and the inherent requirements of the job

- rest and leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.
- The right to social security, including social insurance, and to a decent standard of living
- Social/Security/Insurance benefits should not constitute a disincentive to vocational rehabilitation or employment
- The right to join trade unions
- Equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of disability
- Protection against exploitation and any treatment of a discriminatory, abusive or degrading nature
- The right to protection in cases of termination of employment
- Measures to be taken to promote employment opportunities for persons with disabilities which conform to the employment and remuneration standards applicable to workers generally
- Special positive measures aimed at effective equality of opportunity and treatment between workers with disabilities and other workers not to be regarded as discriminating against other workers
- Elimination of physical, communication and other barriers and obstacles affecting transport and access to and free movement in training and employment premises
- The provision, where necessary, of support measures including technical supports, wage subsidies, and ongoing personal services to enable persons with disabilities to secure, retain and advance in employment
- Special measures to be taken to meet the vocational rehabilitation, work and employment needs of women with disabilities and other disabled persons facing multiple discrimination.
- Special measures to be taken to meet the vocational rehabilitation and employment needs of persons with disabilities in rural areas and remote communities
- Special measures to be taken to assist in overcoming prejudice, misinformation and attitudes unfavourable to the employment of persons with disabilities
- All States Parties to be encouraged to develop and adopt suitable legislation prohibiting direct and indirect discrimination in the field of training and employment on the grounds of disability, such legislation (a) to apply, inter alia, to recruitment and selection, vocational guidance, training and retraining, employment and working conditions, pay, retention, dismissal and promotion; (b) to include the requirement that reasonable accommodation be provided by employers where necessary to ensure equality of opportunity and treatment
- No provision in the Convention should affect any provisions which are more conducive to the realization of the right to decent work of persons with disabilities

which may be contained in the law of a State party to the Convention or international law in force in that State, in particular Convention No. 159 concerning Vocational Rehabilitation and Employment of Disabled Persons.

- States party to ensure that other employment-related laws and regulations do not discriminate against persons with disabilities
- States party to ensure the development of alternative forms of employment for persons with disabilities who may not have the capacity to work in the open labour market
- Sheltered workshops to provide, not only useful and remunerative work, but opportunities for vocational advancement with, wherever possible, transfer to open employment
- States party to ensure that persons with disabilities have access to legal and other support to enable them to exercise their right to vocational rehabilitation and employment
- Representative organizations of employers and workers, and representative organizations of and for persons with disabilities, to be consulted on the implementation of vocational rehabilitation and employment policies for disabled persons
- States party, by methods appropriate to national conditions and practice, to pursue the policy in respect of decent work for persons with disabilities under the direct control of a national authority
- The role of the ILO in the field of vocational rehabilitation and employment of persons with disabilities to be promoted, particularly with regard to:
 - the encouragement and facilitation of international cooperation
 - the utilization of the ILO Code of Practice on Managing Disability in the Workplace
 - the improvement of reliable and valid statistical and other information
 - the promotion of research and evaluation of programmes and practices.

ANNEX 1 - DEFINITIONS

The following definitions of terms used in this report are based on the ILO Code of Practice on Managing Disability in the Workplace.

Adjustment or accommodation

Adaptation of the job, including adjustment and modification of machinery and equipment and/or modification of the job content, working time and work organization, and the adaptation of the work environment to provide access to the place of work and to facilitate the employment of individuals with disabilities.

Competent authority

A ministry, government department or other public authority having the power to issue regulations, orders or other instructions having the force of law.

Disability management

A process in the workplace designed to facilitate the employment of persons with a disability through a coordinated effort addressing individual needs, work environment, enterprise needs and legal responsibilities.

Disabled person

An individual whose prospects of securing, returning to, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognized physical, sensory, intellectual or mental impairment.

Discrimination

Any distinction, exclusion or preference based on certain grounds which nullifies or impairs equality of opportunity or treatment in employment or occupation. General standards that establish distinctions based on prohibited grounds constitute discrimination in law. The specific attitude of a public authority or a private individual that treats unequally persons or members of a group on a prohibited ground constitutes discrimination in practice. Indirect discrimination refers to apparently neutral situations, regulations or practices which in fact result in unequal treatment of persons with certain characteristics. Distinction or preferences that may result from application of special measures of protection and assistance taken to meet the particular requirements of disabled persons are not considered discriminatory.

Employer

A person or organization employing workers under a written or verbal contract of employment which established the rights and duties of both parties, in accordance with national law and practice. Governments, public authorities and private companies as well as individuals may be employers.

Employee assistance programme

A programme – either jointly operated by an employer and a workers’ organization, or by an employer alone, or a workers’ organization alone – that offers assistance to workers and frequently also to their family members, with problems liable to cause personal distress, which affect or could eventually affect job productivity.

Employers’ organization

An organization whose membership consists of individual employers, other associations of employers or both, formed primarily to protect and promote the interests of members and to provide services to its members in employment-related matters.

Equal opportunity

Equal access to and opportunities for all persons in employment, vocational training and particular occupations, without discrimination, consistent with Article 4 of ILO Convention No. 159.

International labour standards

Principles and norms in all labour-related matters which are adopted by the tripartite International Labour Conference (governments, employers and workers). These standards take the form of international labour Conventions and Recommendations. Through ratifications by member States, conventions create binding obligations to implement their provisions. Recommendations are non-binding instruments which provide guidance on policy, legislation and practice.

Job adaptation

The adaptation or redesign of tools, machines, workstations and the work environment to an individual’s needs. It may also include adjustments in work organization, work schedules, sequences of work and in breaking down work tasks to their basic elements.

Job retention

Remaining with the same employer, with the same or different duties or conditions of employment, including return after a period of paid or unpaid absence.

Mainstreaming

Including people with disabilities in employment, education, training and all sectors of society.

Organizations of and/or for persons with disabilities

Organizations which represent persons with disabilities and advocate for their rights.

Return to work

The process by which a worker is supported in resuming work after an absence due to injury or illness.

Vocational rehabilitation

A process which enables disabled persons to secure, retain and advance in suitable employment and thereby furthers their integration or reintegration into society.

Works council/workplace committee

A committee of workers within the enterprise with which the employer cooperates and which is consulted by the employer on matters of mutual concern.

Worker/employee

Any person who works for a wage or salary and performs services for an employer. Employment is governed by a written or verbal contract of service.

Workers' representatives

Persons who are recognized as such under national law or practice, in accordance with the Workers' Representatives Convention, 1971 (No. 135), whether they are: (a) trade union representatives, namely representatives designated or elected by trade unions; or (b) elected representatives, namely representatives who are freely elected by workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are recognized as the exclusive prerogative of trade unions in the country concerned.

Working conditions

The factors determining the circumstances in which the worker works. These include hours of work, work organization, job content, welfare services and the measures taken to protect the occupational safety and health of the worker.

Working environment

The facilities and circumstances in which work takes place and the environmental factors which may affect workers' health.

Workplace

All the places where people in employment need to be or to go to carry out their work and which are under the direct or indirect control of the employer. Examples include offices, factories, plantations, construction sites, ships and private residences.

Workstation

The part of the office or factory where an individual works, including desk or work surface used, chair, equipment and other items.

Work trial

Work activity to provide experience in or test suitability for a particular job.

ANNEX 2 - EARLY HISTORICAL DEVELOPMENT OF WORK AND EMPLOYMENT OPPORTUNITIES FOR PERSONS WITH DISABILITIES (1900-1930)

A2.1 Overview

‘Variations in physical, mental and sensory functioning have always existed among human beings. Yet, people with functional limitations, disabilities, have always run the risk of being excluded and marginalized. Throughout the centuries we have designed and constructed our societies as if persons with disabilities did not exist, as if all human beings can see, hear, walk about, understand and react quickly and adequately to signals from the world around them. This illusion, this misconception about human nature, this inability to take the needs of all citizens into account in the development of society is the main reason for the isolation and exclusion of persons with disabilities, which we can observe in different forms and to different degrees all over the world. It will take a long time to change this pattern of behaviour, which is deeply rooted in prejudice, fear, shame and lack of understanding of what it really means to live with a disability. However, international efforts to improve the living conditions for persons with disabilities have begun and progress is being made. A more systematic effort to improving living conditions of persons with disabilities started long ago in the emerging industrialized nations. During the last 50 years the so-called advanced welfare states have developed comprehensive programmes and services in order to meet the needs of persons with disabilities.’¹⁸²

In the context of work and employment opportunities for persons with disabilities, the starting point was probably about 35 years earlier than that, though there has been a significant acceleration in the pace of change during the past two decades or so. Concepts such as equality of opportunity, justice, rights, choice, recognition and acceptance of diversity, and ‘reasonable accommodation’ (though by another name) are not unique to the independent living movement or the transition to the so-called social and rights models. They can be found in descriptions of the development of vocational rehabilitation, leading to the ability to work, in certain countries at the time of the First World War, 1914-1918.¹⁸³

A2.2 From the Beginning

The general depiction of people with disabilities as objects of health, welfare and charity programmes, often resulting in their segregation and exclusion from mainstream activities, including employment, began to be seriously questioned in the early part of the twentieth century. A growing realization that persons with a disability had not only the motivation to work but the capacity to do so, led to the early development of policies and programmes to enable disabled persons to secure, retain and advance in suitable employment, and to return to work after an absence due to illness or injury. A particular stimulus for the latter, it must be said, was the need for trained workers to replace those called to fight in World War I.

¹⁸² Final Report of the Special Rapporteur of the Commission for Social Development on monitoring the implementation of the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities on his second mission, 1997-2000 (E/CN. 5/2000/3 Annex)

¹⁸³ Harris, Garrard, *The redemption of the disabled: A study of programmes of rehabilitation for the disabled of war and industry*, New York, Appleton, 1919

A2.3 Belgium

In the early days of the First World War, a place of refuge, with medical and surgical treatment for all who needed it, developed near Havre, France, for Belgian soldiers disabled in fighting in their homeland.¹⁸⁴ What soon became known as the Depot des Invalides quickly became a centre for medical care and vocational instruction. The curriculum included carpentry, brushmaking, toymaking, plumbing, cooperage, mechanics, wood and metal turning, electrical work, upholstery, shoemaking, tailoring, printing, envelope making and the manufacture of artificial limbs. Wages were paid, some of which was deposited in a savings account to be given to the individual when he left. The advantages of vocationally rehabilitating disabled soldiers to enable them to contribute to the war effort in a supporting role led to the establishment in 1916 of the Ecole Nationale Belge des mutilés de la guerre at Port Villez in France. Training courses included poultry farming, market gardening, office/clerical work, teacher training and over forty technical trades. The school was maintained by the Belgian Government and those attending received the regular rate of army pay plus a portion of the proceeds of the sale of articles produced. For those with the capacity for and interest in studying for a profession such as law, medicine, natural sciences, etc. opportunity was provided to study in Paris.

A2.4 France

Vocational rehabilitation and return to work programmes in France had a somewhat similar development to that for Belgian disabled soldiers. The municipality of Lyons opened its first school for this purpose in December 1914, followed by a second six months later. Other municipal authorities, departmental governments, trade unions and private charities followed suit. The Ministry of Commerce adapted vocational schools under its jurisdiction so that soldiers with disabilities could attend. By the end of 1916, over 100 schools were available for vocational rehabilitation. A National Office was set up the same year to coordinate matters.

‘In the larger schools,’ according to Harris, ‘the training offered is divided into instruction in manual trades, office work and general schooling. Figures show that the manual trades most in demand are shoemaking, tailoring, basketry, harnessmaking, saddlery, tinsmithing and carpentry. The reason for the popularity of these trades is that they will afford a living almost anywhere, in the city or in a tiny village. They do not require expensive equipment, and they are the trades selected by the men themselves. Most of the soldiers are from villages and small towns, and these desire to acquire a trade that, when eked out with their pension, will give a good living and yet not be too exacting. These men will open shops in their homes, and have time also to work in the garden, cultivate their tiny farm patches, and attend their vines.’¹⁸⁵ Other trades taught included mechanics, typography, lithography, bookbinding, locksmith, brushmaking, toymaking and box-making, welding, mould making and stucco work, vehicle painting, photography, diamond cutting, sabot and galoche making, stonemasonry, hairdressing, dental mechanics and wireless telegraphy.

A2.5 Great Britain

The aftercare of disabled soldiers and sailors in Great Britain pre-World War One had been principally a matter of private initiative and financial support.¹⁸⁶ State provision consisted largely of a small pension and, where needed, artificial limbs. This approach was changed utterly when an official report in February 1915 stated that primary responsibility in this regard was with government. The report recommended:

¹⁸⁴ Paragraphs 4 to 9 rely heavily on Harris, *op. cit.*

¹⁸⁵ *idem*: p. 88

¹⁸⁶ *idem*: p. 93

- (1) 'The care of soldiers and sailors should be assumed by the State.
- (2) This duty should include:
 - a) the restoration of the man's health where practicable;
 - b) the provision of training facilities if he desires to learn a new trade;
 - c) the finding of employment for him when he stands in need of such assistance.'¹⁸⁷

The principal pre-war agency of after-care work was the Royal Patriotic Fund Corporation, which held in trust the Royal Patriotic Fund, an amalgamation of private charitable funds, dating back in origin to the Crimean War. The Military and Naval War Pensions Act, 1915 created the Statutory Committee for administration of the Fund, and the Committee and its system of local committees were brought under the control of the Ministry of Pensions when it was established in 1916. The Statutory Committee was, in turn, dissolved under further legislation the following year and the Ministry of Pensions, and Local War Pensions Committees, were charged with 'the medical treatment or training for industrial life that a discharged soldier may need.'

Training was provided as needed, in technical schools, agricultural colleges or workshops, though in the case of the last named it was expected that the individual would be employed permanently in the shop. For others, placement was organized through the training institution or local labour exchange. Trade advisory committees were set up jointly by the Ministries of Pensions and Labour in the principal trades for which training was given, to advise 'as to conditions under which the training of disabled men in the trade can be best given, the best methods of training, the suitable centres for it, and generally how to secure uniformity in training.' Other local 'technical advisory committees' were set up to advise on suitable local schemes for training individuals and the prospects of their employment after training. Both types of committee included equal representation of employers and trade unions. A key characteristic of the British system appears to have been its ability to respond to individual needs and local conditions.

A2.6 Germany

In many ways, at the beginning of the war, Germany was in a better position than many other countries to deal with the issue of vocational rehabilitation. A leader in orthopaedic surgery and rehabilitation, Germany also had a well developed network of disability centres, many of which had workshops teaching a variety of trades. Employers' insurance associations also had a number of hospitals which provided services.

It appears that the government accepted responsibility for the medical rehabilitation of disabled soldiers, while vocational rehabilitation and return to working life were the province of private charity or individual states. As an example, the 900 bed hospital in Nurnberg was made available by the city authorities, complete with up to date orthopaedic equipment. General and theoretical instruction was provided in the city's schools, and practical work in the hospital workshops.

Skills taught included: left-hand writing, typewriting, stenography, commercial courses, farm bookkeeping, decoration and design, office management, tailoring, painting, bookbinding, printing, locksmithing, shoemaking, saddlery, weaving, orthopaedic mechanics, carpentry, farming, blacksmithing, brushmaking. Additional courses provided in Düsseldorf included telegraphy,

¹⁸⁷ Quoted in Harris, op. cit. p. 95

electrical and metal work, cardboard and leather-work, plastering, upholstery and dental mechanics.

There were a number of agricultural schools for disabled servicemen, some of which provided training as farm teachers. It was considered that the main need was to equip the small peasant farmer to return to his own holding where, with the help of other family members, he might manage truck gardening, poultry-raising, etc.

A number of major employers maintained their own hospitals to rehabilitate former employees disabled in the war and to provide suitable work opportunities afterwards.

A2.7 Canada

The issues of vocational rehabilitation and return to working life for disabled servicemen was a new one for Canada when it arose for the first time in 1915. Having learned what they could of the early experiences of some of the European countries, Canada set about developing its own system to meet its own needs. The authorities concluded at an early stage:

- (a) that every case would be an individual one, and should be dealt with accordingly,
- (b) that as a matter of fundamental policy, vocational rehabilitation - which they saw as helping an individual to make the transition to civilian employment - should be strictly a civilian and not a military affair,
- (c) that, as a motivational factor, it should be made clear that no matter how much an individual might manage to earn following rehabilitation, his status as a government pensioner would not be affected.

As soon as possible after the disabled individual got to the hospital, he was seen by a vocational adviser. If at the end of hospital treatment the serviceman was able to return to his former civil occupation, the vocational work with him was ended. If not, the vocational officer would work with him to ascertain his capacities, experience and inclinations and to hopefully agree a suitable choice of occupation in which there would exist a good prospect of future employment. Assistance with placement was also provided.

Farmers were given special inducements - including homesteads and financial loans in cases - to go back to work on the land. They were trained as tractor and farm mechanics, as creamery workers, in poultry raising and horticulture.

By 1918, the Canadian government was providing training in about two hundred occupations.

A2.8 United States

For some years before the war, there had been growing interest in the United States in vocational education. The Federal Vocational Education Act, approved on 23 February 1917, created a substantial fund to be distributed among the States which accepted the terms of the Act, on a dollar for dollar matching basis, for vocational education. The Act established the Federal Board for Vocational Education to administer the fund and oversee the implementation of the legislation. When the United States entered the war on 6 April, 1917, one of the first tasks of the Board was to assist in providing personnel trained for technical war occupations.

When the need for vocational rehabilitation of disabled servicemen arose, the lessons from European and Canadian schemes were studied. There was general agreement that the work of training and returning individuals to civil life was a matter for civilians, not the military. The Smith-Sears Vocational Rehabilitation Bill became law on 27 June 1918.¹⁸⁸

Harris claims that the motivation underlying the establishment of vocational rehabilitation was markedly different as between Europe and the United States:

‘The work of vocationally rehabilitating the disabled in Europe had its origin in compassion and charity. Its rapid development came through the necessity of using all available manpower and the recognition of the possibility of substituting retrained but physically disabled men for those yet physically able, but detained behind the lines as workers in essential war industries. Its present status is due primarily to the insistent demands of war work, but partly in addition to the realization by European Governments that there will be a great shortage of trained men in all lines of industry after the war. That country possessing the greatest reserve of skilled workmen, even though in some respects physically disabled, will have a distinct advantage in recuperation over those less favourably situated. With the United States none of the foregoing considerations was the moving cause of the resolution to reeducate for civil life its disabled men, prevented by reason of their injuries from returning to their former means of gaining a livelihood. Indeed, these considerations played small part in the decision, and then only as incidentals of benefit and cause associated with a course already shaping itself upon broader and even higher grounds. That the programme had phases that might rebound to the national good was pleasant to contemplate, but the seeking of a direct national benefit, either as a present or as a *post-bellum* excuse or reason was never considered as a governing factor.

In brief, the position of the United States, as evidenced by its legislation on the subject of vocational rehabilitation for disabled soldiers and sailors, is that the Nation owes them neither charity nor alms; that their sacrifice and service deserve more than a gratuity; that the Nation is in fact indebted deeply to them, and under the highest moral obligation to discharge its debt fully and generously; and that complete restoration to pre-war civil status is a matter of simple justice to the men who have been disabled and handicapped by reason of their service in defending the commonwealth against its armed foes.’¹⁸⁹

As further explanation of what he saw as the philosophy underlying the US approach, Harris was extremely critical of the ‘obsolete pension system’ and its ‘pernicious effects upon the pensioners and the public, and upon legislation and politics’, arguing that ‘restoration and restitution, including such compensation as might be necessary to accomplish these objects and the establishment of equality of opportunity¹⁹⁰ was the course to be followed.’¹⁹¹

As in Canada, the U.S provided vocational advisers to assist the individuals in career decision-making, ‘the primary endeavour (being) to fit the individual man for the job for which his

¹⁸⁸ It is interesting to note that the original measure included provision for the vocational rehabilitation of persons disabled at work, as well as those disabled in war. The former was dropped, however, as the President and Cabinet had undertaken to bring no legislation before Congress at that time which did not relate to war measures.

¹⁸⁹ pp. 173-4

¹⁹⁰ emphasis added

¹⁹¹ idem: p. 174

inclination and capacity seem to indicate the strongest probability of success, scientifically adjusted to the likelihood of there being a demand for his services in the line of work selected.¹⁹²

It was recognized that prejudice against hiring persons with disabilities existed among many employers. Special programmes to help reduce or eliminate it were launched as part of the placement and follow-up effort. Trade unions supported the policy of vocational rehabilitation in the US, as they did in Europe.

Harris records that ‘...where special appliances, safeguards or equipment are required as means of overcoming special handicaps, these must be provided under fair agreements with employers, and some supervision after placement will be necessary to insure the proper carrying out of such agreements.’¹⁹³

As the war ended, legislation to extend the provisions of the vocational rehabilitation system to persons acquiring a disability in the workplace was being introduced.

A2.9 Women with Disabilities

The legislation and systems described above were designed with disabled servicemen in mind. Little attention, if any, appears to have been given to the vocational rehabilitation needs of women who acquired disabilities during World War One, presumably because relatively few service-women served in the front line. That work opportunities for women with disabilities was an issue of concern, at least in the United States, might however be gleaned from research reports such as that published in 1921,¹⁹⁴ which examined vocational guidance and placement approaches for a thousand women in Boston, many of whom had disabilities of varying kinds.

A2.10 Period of Stagnation

The issue of vocational rehabilitation and work opportunities for persons with disability largely faded from political agendas during the economic depression of the 1930s, emerging again during the Second World War, with quota systems forming a large part of the response in many cases.

¹⁹² idem: p. 217

¹⁹³ idem: p. 241. An early example of reasonable accommodation.

¹⁹⁴ Eaves, Lucile, *Gainful Employment for Handicapped Women*, Boston Council of Social Agencies, 1921

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