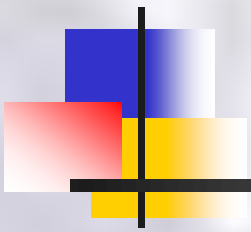


International and National Law concerning Employment of People with Disabilities

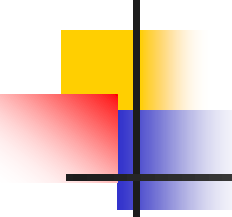


Tim De Meyer, Specialist on International Labour
Standards & Labour Law

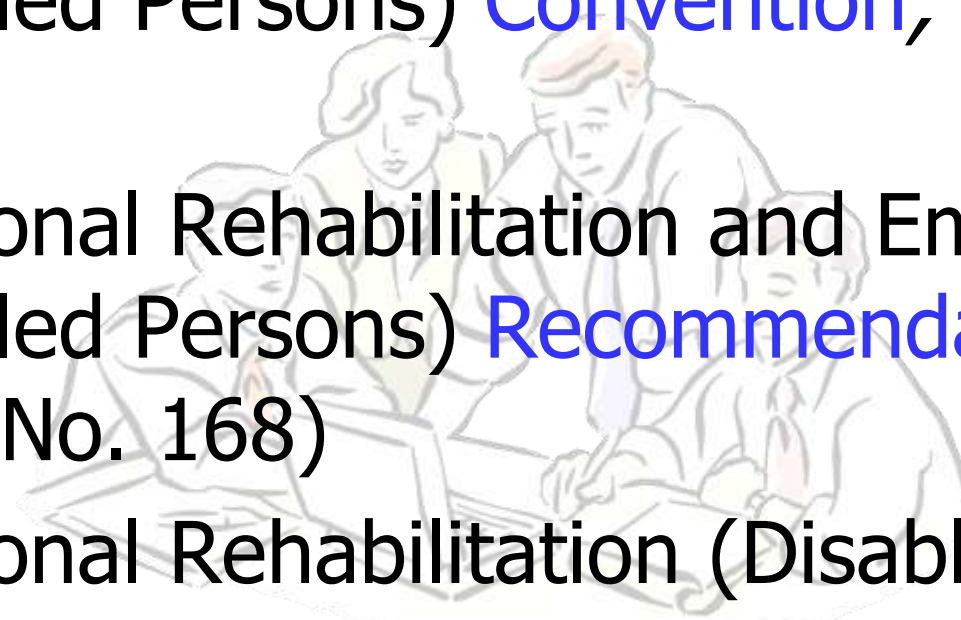
ILO Subregional Office for East Asia
(SRO Bangkok)

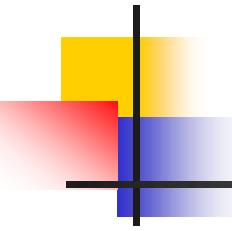
Part I

International Law

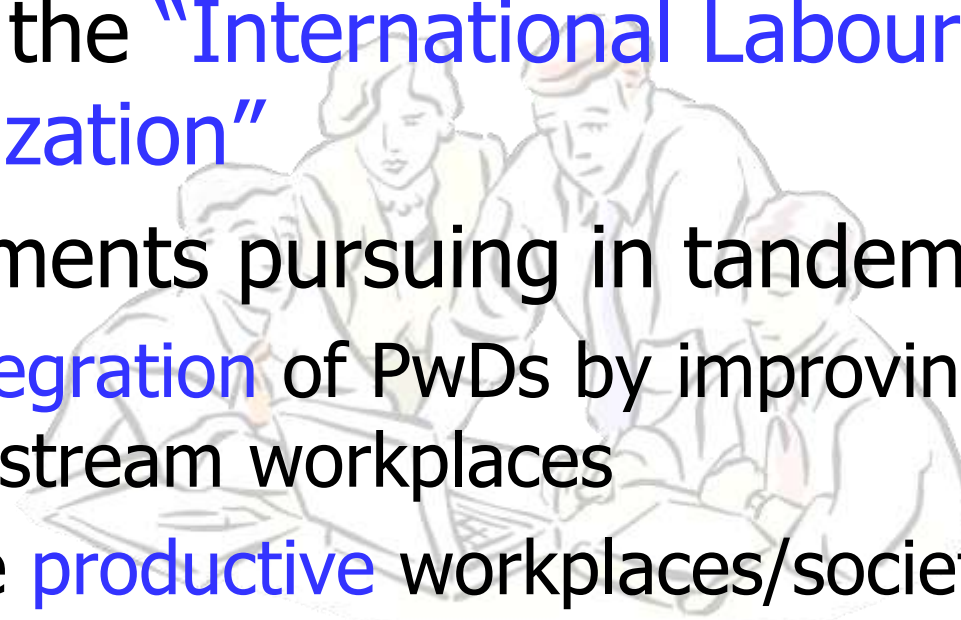


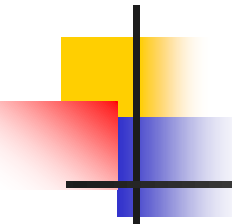
Key ILO instruments

- Vocational Rehabilitation and Employment (Disabled Persons) **Convention**, 1983 (No. 159)
 - Vocational Rehabilitation and Employment (Disabled Persons) **Recommendation**, 1983 (No. 168)
 - Vocational Rehabilitation (Disabled) **Recommendation**, 1955 (No. 99)
- 



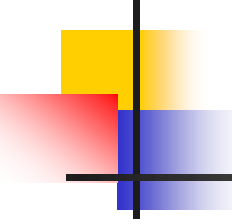
C. 159 - R. 168 - R. 99

- Instruments containing labour standards set by the “International Labour Organization”
 - Instruments pursuing in tandem
 - **reintegration** of PwDs by improving access to mainstream workplaces
 - more **productive** workplaces/societies
 - Some of the 72 C. & 72 R. that are **up-to-date**
- 

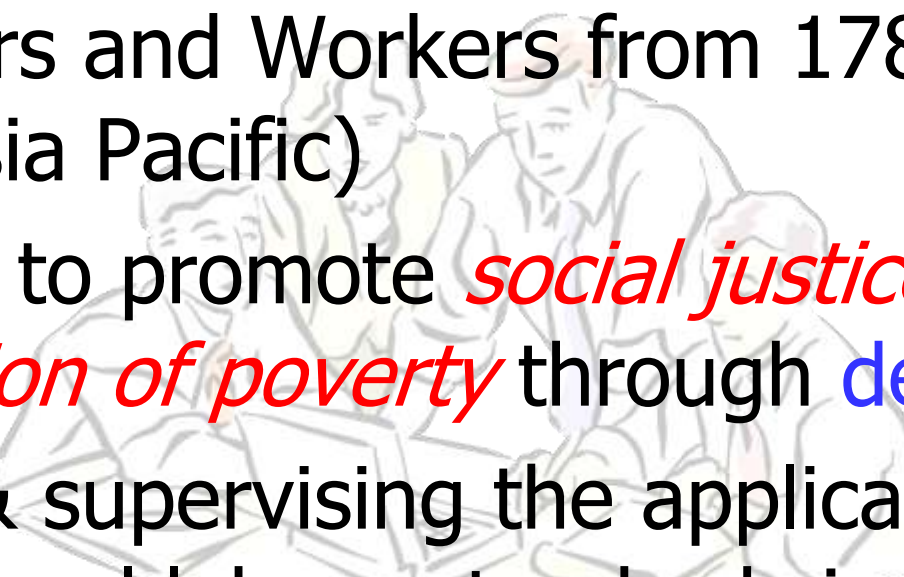


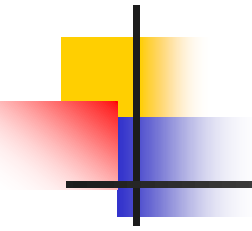
Principle

- People with disabilities (PwDs) have a more difficult time finding or retaining jobs and receiving fair treatment on the job ...
 - 2 x jobless rate of PwDs, 3 x longer unemployed
 - more likely to accept fixed-term contracts
 - disproportionately affected by lay-offs
 - often employed below qualification level
- ... but they are just as entitled to **decent work** as people without disabilities (PwDs), and are intrinsically just as productive ...
- ... and regular work is key to their social inclusion



International Labour Organization

- UN specialized agency of Governments, Employers and Workers from 178 countries (29 in Asia Pacific)
 - Mandate to promote *social justice* and *eradication of poverty* through *decent work*
 - Setting & supervising the application of international labour standards is a key means of action
- 



ILO's Decent Work agenda

- Decent work = work which does not only provide men or women an occupation and a short-term *livelihood*, but also
 - An ability to influence decisions affecting the life of the human being at work – and share in the responsibility for these decisions (*empowerment*)
 - A sense of *protection* against the hazards and unpredictability of (working) life
 - Social inclusion and a sense of *participation* in the wider community

International Labour Standards

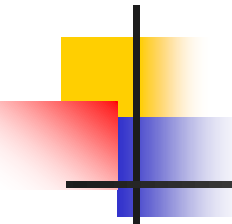


■ Conventions

- If ratified, they are binding under *international* law
- If not ratified, they influence national law & policy
- **Protocols** may only be ratified together with their Convention

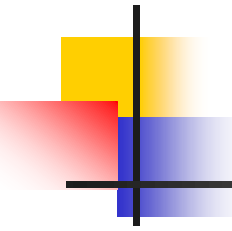
■ Recommendations

- Same authority as Conventions
- Not open to ratification
- Guidelines or higher standards



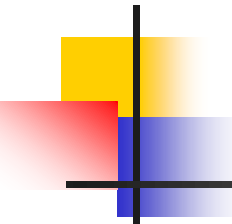
Ratification of C. 159

- Worldwide - 78/178 ratifications to date, and steadily rising (successful)
- Asia Pacific - 8/29 to date, 1 in the last 5 years (Fiji): Australia, China, Fiji, RoKorea, Japan, Mongolia, Philippines, Pakistan
 - focus of Asia Pacific has been on ratification of fundamental ILO Conventions
- Ratification of another Biwako signatories needed
 - end Jan 04, 46 Biwako signatories
 - i.e. C159 ratifications need to be doubled, while not many AP States have ratified in recent years
 - some cannot ratify (no ILO member State)



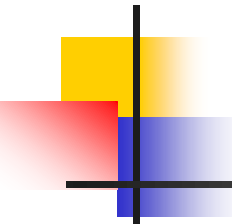
ILS and PwDs

- Economic policy must be geared towards full, productive and freely chosen **employment** for all without distinction (C. 122)
- **Discrimination** on the basis of (7) criteria irrelevant to productivity or potential must be prohibited (C. 111)
- Physical or mental disability can be a valid reason not to hire a person for a particular job if the disability concerns an inherent characteristic of the job (C. 111) ...



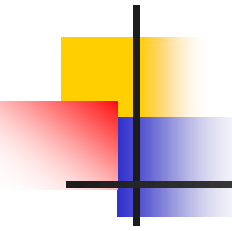
ILS and PwDs

- ... but many productive job opportunities are lost to the PwD and the economy, because no adaptations are made to jobs or work environments (e.g. adapting premises / equipment; working time; distribution of tasks or provision of training / integration resources) ...
 - job opportunities for PwDs must be **proactively** equalized (C. 159), and “affirmative action” is no discrimination against non-disabled (C. 111)
 - key is the gradual **extension** of mainstream systems of vocational guidance and employment information to PwDs (C. 142)
- ... or because employment services (agencies) do not pay special attention to the needs of PwDs (or their prospective employers) for guidance and counseling (C. 88)
 - e.g. Flanders (guidance subsidies for employers), Ireland (“job coaches” assigned to PwDs)

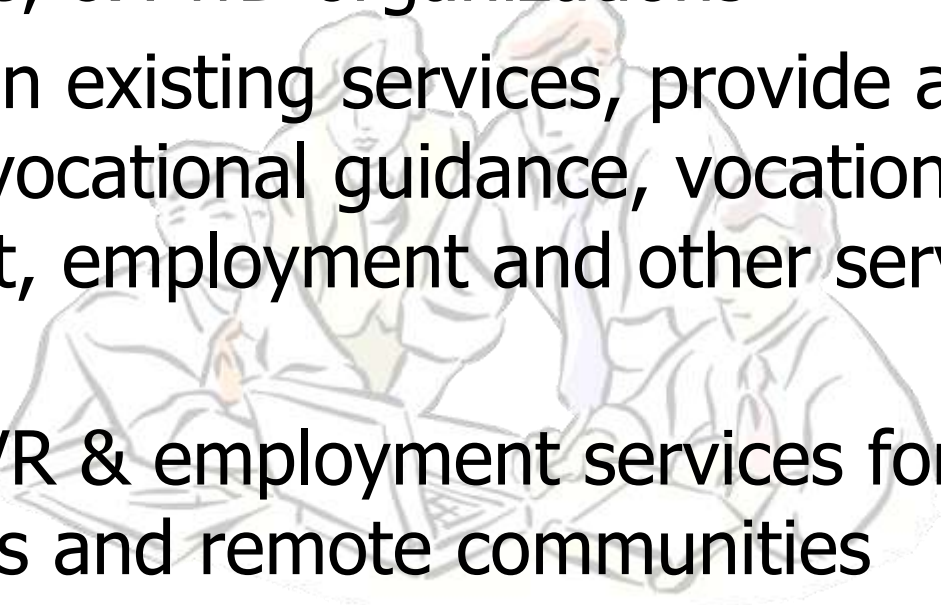


State Obligations under C. 159

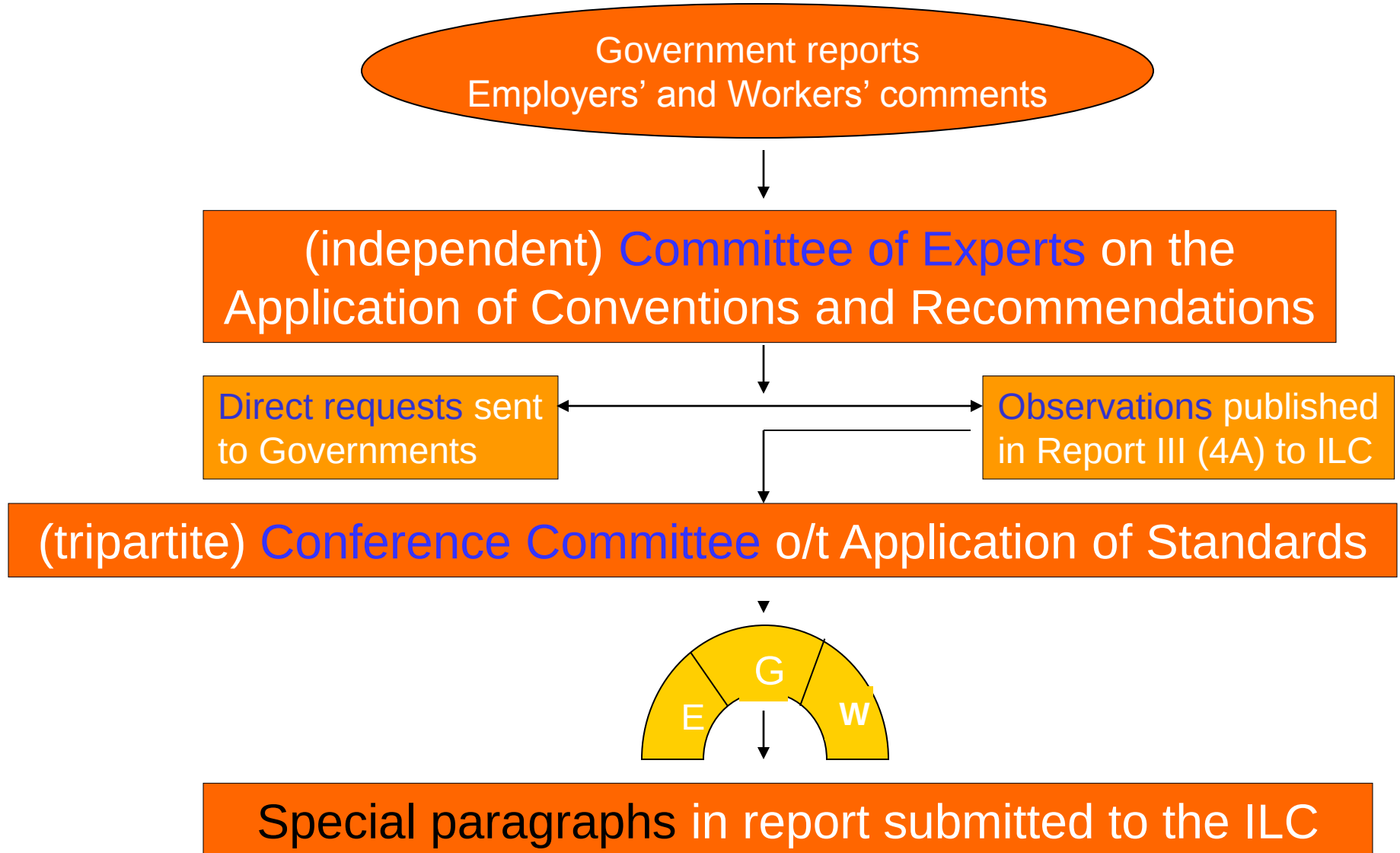
- Formulate, implement & periodically review a national policy on vocational rehabilitation of PwDs
- Ensure that the policy has proper orientation
 - enable PwDs to secure, retain and advance in suitable employment and thereby to reintegrate into society
 - include all categories of PwDs (all recognized physical, sensory, intellectual or mental impairments)
 - promote employment on the open labour market (and sheltered employment as a complement)
 - recognize the need for special positive measures (e.g. aids, devices and ongoing personal services) which must not be considered discriminatory against non-PwDs

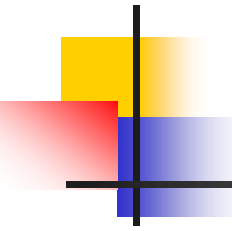


State Obligations under C. 159

- Consult representative organizations of Employers & Workers, & PwD organizations
 - Building on existing services, provide and evaluate vocational guidance, vocational training, placement, employment and other services to PwDs
 - Develop VR & employment services for PwDs in rural areas and remote communities
 - Ensure training and availability of rehabilitation counselors and other suitably qualified staff
- 

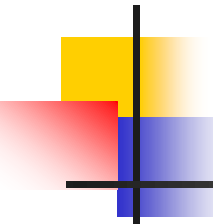
Supervisory machinery





China DR 1994

- continued info requested on a pilot programme applying the policy of scattered employment of PwDs in the open labour market
- info on the development of various services for PwDs, including those in the rural areas
- more detailed description of the manner in which representative E & W organizations are consulted on cooperation/coordination between public & private bodies
- measures taken to ensure the availability of suitably qualified staff responsible for the vocational guidance etc.



Japan DR 2000

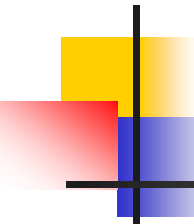
- Govt - main vehicles for promoting employment of PwDs are quotas for hiring in firms, sheltered workshops and welfare factories. Some 68,000 PwDs will be employed in either sheltered workshops or welfare factories by 2002.
- RENGO –
 - the quota system in practice it is not being followed, especially in large enterprises, due to poor administration and guidance
 - integration of PwDs into the labour market needs to be improved
 - please take account of RENGO proposals for better integration
- laws have been adopted to promote employment of women, but how about women with disabilities ?
- representation of workers on the Central Deliberative Council (now 20 members, mainly representatives of PwDs, of social agencies concerned with issues of the PwDs, of academics, and one business representative)

Part II

National Law

Examples

- **CHINA**
 - Law of the People's Republic of China on the Protection of Disabled Persons
 - Regulations on the Education of Persons with Disabilities
- **FIJI**
 - Fiji National Council for Disabled Persons Act 1994
- **INDIA**
 - The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995
- **INDONESIA**
 - Government Regulation of the Republic of Indonesia, Number 36 Year 1980, RE, Social Welfare for the Disabled
 - Act of the Republic of Indonesia, Number 4, of 1997, Concerning Disabled People
- **JAPAN**
 - Disabled Persons' Fundamental Law
 - Law for Employment Promotion, Etc., of the Disabled
 - Law for Employment Promotion, Etc., of the Disabled (Guidelines)
- **PAKISTAN**
 - Disabled Persons' (Employment and Rehabilitation) Ordinance
- **PHILIPPINES**
 - Magna Carta for Disabled Persons
 - Accessibility Law and its Amended and Original Implementing Rules and Regulations
- **REPUBLIC OF KOREA**
 - The Welfare Law for Persons with Disabilities
 - Act relating to Employment, Promotion etc. of the Handicapped
 - The Special Education Promotion Law
- **SRI LANKA**
 - Protection of the Rights of Persons with Disabilities Act, No. 28 of 1996
- **THAILAND**
 - Rehabilitation of Disabled Persons Act and Ministerial Regulations
- **PACIFIC**
 - Review Of Policy And Legislation On Disability In Pacific Island Countries, Pacific Islands Forum Secretariat 2004



2005 Study of the CIR Network

- Overall, legal protections in the region are good. There are a variety of national laws, as well as widespread regional support for an international convention on the rights of people with disabilities.
 - With the exception of Japan, the national Constitution of every country establishes protection for, and/or the State's obligation to, people with disabilities
 - Vietnam's Constitution, however, only specifically mentions the rights of children with disabilities and people disabled by war.
 - All countries except Cambodia have also passed some type of legislation specifically dealing with people with disabilities.
- Four of the seven countries – China, Japan, the Philippines, and Thailand – include anti-discrimination measures among the available legal protections.
- The effectiveness and influence of the provisions varies from country to country along with implementation and enforcement.
 - National laws to “encourage” rather than “require” compliance. This trend undermines the enforceability of disability legislation.
- All countries retain laws or regulations that serve as legal barriers to people with disabilities.
 - As of 2001, Thailand had 50 laws that implicitly or explicitly prevented people with disabilities from enjoying their rights.
- People with disabilities in the majority of countries encounter significant legal and physical barriers to civic participation
 - India, Japan, the Philippines, and Thailand have laws that deny people with disabilities, most often those with mental disabilities, the right to stand for election and/or vote.

Types of Provisions

- Anti-discrimination provisions
 - establish **right** of PwDs to equal opportunities and treatment, without their disability in itself being a justification for restriction in employment (training) and occupation
- “Reasonable accommodation” provisions
 - establish a **duty** on the employer to take appropriate measures to adapt the work or workplace with a view to facilitating employment of PwDs
 - EU Equality Directive : “to take measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer”
- Quota/levy provisions
 - establish a **duty** on the employer to set aside a percentage of positions for PwDs
 - ... or to pay a levy instead
- Support provisions
 - establish a (funded) **mandate** for an officer (e.g. in the public employment service) or a fund to partially shoulder costs incurred as a result of e.g. “reasonable accommodation”
- Representation provisions
 - e.g. election of special employee representatives
- Contract compliance
 - see also Labour Clauses (Public Contracts) Convention, 1949 (No. 94)