

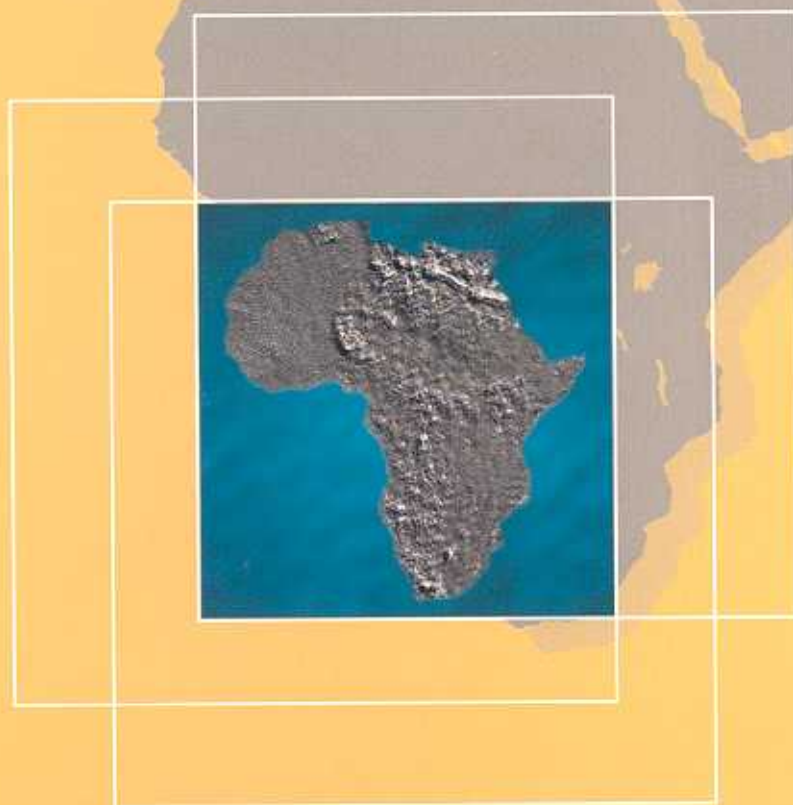


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# **Employment of People with Disabilities**

## **A human rights approach (East and Southern Africa)**

Report of a Tripartite Technical Consultation  
Addis Ababa, 23-25 september 2005



Development  
Cooperation  
Ireland



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International  
Labour  
Office

**EMPLOYMENT OF PEOPLE WITH DISABILITIES  
A HUMAN RIGHTS APPROACH**

**REPORT OF A TRIPARTITE TECHNICAL CONSULTATION**

**East and Southern Africa**

**Addis Ababa, 23-25 September 2005**

*Organized by the ILO Skills and Employability Department  
Funded by Development Cooperation Ireland*



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## 1. Introduction

Since the 1970s, the disadvantages faced by disabled persons, their social exclusion and discrimination against them have been increasingly perceived to constitute human rights issues, rather than matters to be dealt with exclusively through social welfare measures. The shift from a social welfare approach to one based on human rights is reflected in the legislation on the statute books in a growing number of countries around the world, and in international and national human rights instruments. While progress has been made, much remains to be done to ensure that national legislation concerning the training and employment of persons with disabilities and other relevant legislation is amended to guarantee their rights as citizens, and that this legislation is effectively implemented.

The ILO Technical Consultation “Employment of People with Disabilities: A Human Rights Approach” was held from 23 to 25 September 2005 in Addis Ababa, Ethiopia, as part of an ILO project “Promoting the Employability and Employment of People with Disabilities through Effective Legislation”. This project, funded by the Government of Ireland, is being implemented by the ILO in eight countries of East and Southern Africa: Ethiopia, Kenya, Lesotho, Malawi, South Africa, Uganda, United Republic of Tanzania and Zambia, as well as several countries of Asia – China, Mongolia, Thailand and Viet Nam. The ILO project aims at enhancing the capacity of national governments in these countries to implement effective legislation concerning the employment and training of people with disabilities.

The Technical Consultation brought together representatives of governments, employers, workers and disabled persons from the eight participating countries, as well as parliamentarians representing persons with disabilities. A delegation from a ninth country – Namibia – attended as observer.

The meeting, which marked the start of Phase 2 of the project, examined the training and employment of persons with disabilities from a human rights perspective, drawing on ILO Conventions and other international human rights instruments, as well as exemplary legislation at national level. Key elements of a rights-based approach are contained in ILO Conventions concerning employment in general and persons with disabilities in particular. Of particular relevance are the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) that are based on the principles of equality of opportunity, equal treatment and non-discrimination.

Through a combination of formal presentations and working group sessions, participants had the opportunity to learn from other members of their own delegations, as well as those from other countries, and to become familiar with the main elements of rights-based disability laws and policies.

The Consultation was a contribution to the objectives and activities of the Continental Plan of Action of the African Decade of Persons with Disabilities (1999-2009). This Plan of Action calls upon Member States of the African Union to review and amend all legislation that impacts negatively on the lives of people

with disabilities, pass and promulgate enabling disability-related legislation aiming at equal opportunity, and amend constitutional bills of rights to include a non-discriminatory clause on the basis of disability. It also calls on member States to protect and promote the human rights of people with disabilities.<sup>1</sup> The Consultation also contributed to the targets and objectives set out in the Declaration on Employment and Poverty in Africa, adopted at the African Union 3<sup>rd</sup> Extraordinary Session, Ouagadougou, September 2004.

Following the Consultation, project support will be provided to participant countries, in the form of national-level technical guidance upon request, a training programme on disability-related laws and policies, and support to a media campaign to challenge negative images of disabled persons at work.

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<sup>1</sup> African Union: *Continental Plan of Action for the African Decade of Persons with Disabilities (1999-2009)* (Addis Ababa, Ethiopia, Feb. 2002).

## 2. Overview

The Technical Consultation examined the training and employment of persons with disabilities from a human rights perspective as a contribution to the ILO-Development Cooperation Ireland (DCI) project that aims at promoting the employability and employment of people with disabilities through effective legislation, policies and programmes.

In the course of the Technical Consultation, participants were sensitized to a rights-based approach to disability and to what is being done in other parts of the world and at the international level. Participants also identified and proposed actions that might be taken by the government, the social partners and Disabled Persons Organizations (DPOs) in their country to advance a human rights approach to training and employment of people with disabilities, and to improve the quality and impact of laws and policies. They also had the opportunity to exchange with their counterparts in other countries and with other members of their own country delegations.

### 2.1 Themes

The work of the Technical Consultation was conducted through a combination of formal presentations, a panel on recent initiatives undertaken in participating countries and working group sessions.

Three thematic sessions were held:

- Employment of People with Disabilities: Moving towards a Human Rights Approach.
- What have governments been doing nationally and regionally to promote a human rights approach to the employment of persons with disabilities?
- Effective Legislation as a Measure of Good Governance.

The presentations made at these sessions are reproduced in Section 4. These presentations were followed by discussions where key points were raised. These are summarized in Section 4.8.

A panel session on the second day featured four presentations by participants or resource persons followed by a short reply by another participant (see Section 5). The themes of the presentations were:

- Initiatives with Business in Uganda.
- Promoting Human Rights of Persons with Disabilities in Ethiopia.
- Parliamentary Initiatives in South Africa.
- Initiatives for Women with Disabilities in Ethiopia.

Three working group sessions focused on the following questions:



- Moving towards a human rights approach to the training and employment of people with disabilities: What action is required of governments?
- What initiatives can the social partners and DPOs undertake, separately or collaboratively, to promote the training and employment of people with disabilities taking into account the human rights approach?
- What actions can be taken at country level by governments, social partners and DPOs, separately or collaboratively, to improve the practical impact of laws and policies concerning the training and employment of people with disabilities?

The conclusions of the working group discussions were presented to the plenary and were followed by a discussion (see Section 6).

## **2.2 Participants**

The Technical Consultation was attended by 60 participants from eight countries of East and Southern Africa: Ethiopia, Kenya, Lesotho, Malawi, South Africa, Uganda, United Republic of Tanzania and Zambia, as well as five observers from Namibia. Of the participants, there were 15 government representatives, 11 employers representatives, 15 workers representatives, 17 representatives of organizations of people with disabilities and three Parliamentarians. In total there were 30 women and 30 men. Among the participants, there were 21 persons with disabilities, most of them with a physical, visual or hearing impairment, but none with a mental or intellectual disability.

## **2.3 Resource persons**

Seven ILO resource persons took part in the Consultation:

- Ms Christina Holmgren, International Labour Standards Specialist, ILO Subregional Office for East Africa, Addis Ababa
- Ms Heather Labanya, Programme Assistant, Skills and Employability Department (SKILLS), ILO Geneva
- Ms Barbara Murray, Manager, Equity Issues, SKILLS, ILO Geneva
- Mr Charles Pagé, Consultant, SKILLS, ILO Geneva
- Ms Debra Perry, Senior Specialist on Disability, Asia/Pacific Region, ILO Subregional Office for Asia and the Pacific, Bangkok
- Mr Bob Ransom, Senior Specialist on Disability, SKILLS, ILO Geneva
- Mr Lee Swepston, Senior Advisor on Human Rights, Standards and Fundamental Principles and Rights at Work Sector, ILO Geneva

In addition, five resource persons were invited to attend the Consultation and share their experience:

- Ms Hendrietta Bogopane-Zulu, Member of Parliament - South Africa

- Ms Barbara Duncan, Director of Communications, Rehabilitation International (RI)
- Mr Gidion Mandesi, Executive Director, Disabled Organization for Legal Affairs and Social Economic Development (DOLASED)
- Ms Euphrasia Mbewe, Chairperson, Africa Deaf Union
- Mr Abraham Worku, Civil Service Reform Programme, Ethiopia

## 2.4 Resource Materials

The following documents were provided to participants in hard copy or electronic format:

- *Employment of People with Disabilities: The Impact of Legislation (East and Southern Africa)*. ILO/Ireland-Aid (Geneva, 2004 and 2005). Individual country profiles for: Ethiopia, Kenya, Lesotho, Malawi, South Africa, Uganda, United Republic of Tanzania and Zambia.
- ILO: *Draft Regional Overview of a Technical Consultation on Promoting the Employability and Employment of People with Disabilities through Effective Legislation (East and Southern Africa)*, 23-25 Sep. 2005, Addis Ababa (Geneva, 2005).
- ILO: *Employment of People with Disabilities: The Impact of Legislation*, Report of a Technical Consultation, Addis Ababa, 20-22 May 2002 (Geneva, 2002).
- *Change from Within: International Overview of the Impact of Disabled Politicians and Disability Policy Bodies on Governance*, Final Report of the International Disability Exchanges and Studies (IDEAS) Project for the New Millennium 1999-2004 (Oakland, 2005).
- A. O'Reilly: *The Right to Decent Work of Persons with Disabilities*, Skills and Employability Working Paper No. 14 (Geneva, ILO, 2003).
- ILO: *Achieving Equal Employment Opportunities for People with Disabilities through Legislation: Guidelines* (Geneva, 2004).
- ILO: *Policy on the Employment of Persons with Disabilities*, Human Resources Development Circular No. 655 (Series 6), (Geneva, 2005).
- ILO: *Code of Practice on Managing Disability in the Workplace* (Geneva, 2002).
- ILO: Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159).
- ILO: Vocational Rehabilitation and Employment (Disabled Persons) Recommendation, 1983 (No. 168).
- ILO: Vocational Rehabilitation (Disabled) Recommendation, 1955 (No. 99).



### 3. Official Opening

The Technical Consultation was officially opened by Mr George Ruigu, Deputy Director, ILO Addis Ababa, and Mr Don Sexton, Chargé d’Affaires, Irish Embassy, Addis Ababa. Introductory statements were also made by Ms Phumzile Bhengu, Member of Parliament of South Africa and Mr Solomon Ashete, Acting President, Ethiopian Federation of Persons with Disabilities (EFPD).

In his opening remarks, Mr Ruigu welcomed the participants, explained the purpose of the ILO-Development Cooperation Ireland Programme and thanked the Government of Ireland for its support. He noted that ILO’s work in promoting vocational rehabilitation and employment for people with disabilities dates from the early days of the organization, with its first instrument adopted in 1925.<sup>2</sup> Through its various Conventions, Recommendations and codes of practice, the ILO advocates equal opportunities and treatment for all and the elimination of discrimination.

Mr Ruigu noted that the ILO-DCI Programme encompasses knowledge development, service provision and advocacy, which are the ILO’s main means of action. Research is conducted on good practice in the implementation of legislation and policies; consultation takes place with governments, the social partners and Disabled Persons Organizations (DPOs) to promote equal opportunities for people with disabilities; and technical support is provided, as requested, in the development or revision of laws and policies.

Mr Sexton described the Technical Consultation as an important practical output of the ILO-DCI programme. He stressed the importance of building partnerships, and noted that ILO is one of the partners the Government of Ireland is working with. He noted that this is a time of great change in the way in which disability is understood in societies around the world, with a move away from a charity or a social welfare approach to an approach which recognizes that disabled people are citizens like non disabled people, and have, or should have the same civil rights. Many countries have changed or are changing their laws and policies to reflect this new understanding. The Government of Ireland is supporting this process of change in countries of East and Southern Africa, as well as a number of countries in Asia, through its Partnership Programme with the ILO.

Mr Sexton noted that the Programme constitutes an integrated approach, working on three levels: macro (the impact of legislation); meso (capacity-building of local organizations); and micro (helping individuals, such as entrepreneurship development for women, including women with disabilities). Over the next two years, the Programme will support national governments, social partners and disability advocates in improving the effectiveness of disability-related laws and policies, so that disabled men and women have better employment opportunities. Sustainability will be sought through training programmes to build their capacity

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<sup>2</sup> Workmen's Compensation (Minimum Scale) Recommendation, 1925 (No. 22). See Section 4.1 for more information on this and other disability-related ILO instruments.

and through alliances with media to promote positive images of disabled persons at work. Thus support will be provided at each level.

Ms Bhengu mentioned that South Africa is an example of good practice in promoting the representation of people with disabilities in parliament and that the South African delegation would be pleased to share their experience with the other participants. She noted South African DPOs are well-organized and that the Parliamentary Committee works to ensure the success of legislation.

Mr Ashete reminded participants that people with disabilities are still excluded from the socio-economic agenda and are still viewed pejoratively. Thus, the need to tackle the issue of human rights of people with disabilities. All stakeholders need to commit to this objective. He noted that ILO is one of the partners EFPD has been working with and that ILO's involvement on disability issues dates from a few decades ago and has resulted in significant improvements.

## 4. Thematic Presentations

During the Technical Consultation, presentations were made on the following topics:

- Rights in National and International Legislation
- What is a Rights-Based Approach and can it be used in Practice?
- Moving Towards a Human Rights Approach: The Experience of the Organization of People with Disabilities Zanzibar
- The Asia-Pacific Experience in Promoting a Human Rights Approach to the Employment of Persons with Disabilities
- Governmental Action to Promote a Human Rights Approach to the Employment of Persons with Disabilities: Experiences from ILO and UN Supervision
- Developing Rights-Based Legislation: Effective Consultation Mechanisms
- Effective Legislation as a Measure of Good Governance.

The presentations are reproduced below, along with a summary of the discussions that followed.

### 4.1 Rights in National and International Legislation

*Christina Holmgren, International Labour Standards Specialist, ILO Subregional Office for East Africa (Addis Ababa)*

Human rights and fundamental freedoms, including the right not to be discriminated against, are the birthright of all. 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. 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 another. 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. In other words, the promotion and protection of human rights should be progressed without conditions attached.

In recent years, the rights of disabled persons to education, to employment opportunities and to be free from discrimination have come to be recognized through the adoption of new legislation. Yet, people with disabilities remain to a large extent excluded from society and prevented from participating despite the growing awareness of disability issues as reflected in both national and international legislation. Positive action is needed to give effect to their rights

## *I - Historical Overview of Disabled Workers' Rights in International Instruments*

Since 1925, the ILO has paid attention to the situation of persons with disabilities:<sup>3</sup>

- ILO Workmen's Compensation (Minimum Scale) Recommendation, 1925 (No. 22) 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”.
- ILO Employment (Transition from War to Peace) Recommendation, 1944 (No. 71) was adopted during the Second World War, largely because of the number of people disabled as a result of the war. It contains provisions on employment services, including labour market information, vocational guidance and vocational training. One of the groups specifically covered by the Recommendation is 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.
- ILO Vocational Rehabilitation (Disabled) Recommendation, 1955 (No. 99) was the first international instrument focusing on people with disabilities. Using a definition of “disabled person” which is substantively the same as that currently in use by the ILO,<sup>4</sup> the Recommendation builds 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. Reference is made to methods of widening employment opportunities for workers with disabilities, in close cooperation with employers’ and workers’ organizations, including 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 is spelled out. The Recommendation also includes special provisions for disabled children and young persons.
- The ILO Resolution concerning Vocational Rehabilitation and Social Reintegration of Disabled or Handicapped Persons, adopted on 24 June 1975, was short, but particularly significant for a number of reasons. The

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<sup>3</sup> A. O’Reilly: *The Right to Decent Work of Persons with Disabilities, Skills and Employability* Working Paper No. 14 (Geneva, ILO, 2003).

<sup>4</sup> The ILO 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.”. See ILO: *Code of Practice on Managing Disability in the Workplace* (Geneva, 2002), p. 4.

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 ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) is the first legally-binding international instrument on disability. The Convention is based on the principles of equality of opportunity and equal treatment for women and men with disabilities. Governments that have ratified the Convention must adopt a national policy of vocational rehabilitation and employment available to all categories of disabled people. This policy must be based on equal opportunity between disabled workers and other workers, on one hand, and between disabled men and women, on the other. It states that special positive measures aimed at facilitating access to employment, for example, are not to be considered as discriminatory against workers without disabilities. There is an obligation to undertake consultations, not only with the Employers' and Workers' Organizations, but also organizations of and for disabled people. The Convention is accompanied by the Vocational Rehabilitation and Employment (Disabled Persons) Recommendation, 1983 (No. 168).

The United Nations adopted several international human rights instruments between 1948-1966, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR). These instruments do not specifically mention disability, but do clearly state that all human beings are entitled to the rights defined in them.

The Universal Declaration of Human Rights, 1948 says that "all human beings are born free and equal in dignity and rights," (Article 1) and "Everyone is entitled to all the rights and freedoms set out in the Declaration, without any distinction of any kind, such as race, colour, sex, language, religion.... or other status." (Article 2). There can be little doubt that disabled people are covered by the Declaration, even though they are not specifically mentioned. Article 23 of the Declaration deals with the right to work.

The ICESCR, which was drafted in close collaboration with the ILO, contains a number of important provisions relating to work and equal employment opportunities. Article 6 states that "States Parties... 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. 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 adds that "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 fair wages and equal remuneration for work of equal value without distinction of any kind [and] a decent living for themselves and their families; (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...”

On 16 December 1976, the UN General Assembly proclaimed 1981 as the International Year of Disabled Persons, with “full participation and equality” as its theme. 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.<sup>5</sup>

One year later, the UN General Assembly, stressing that the primary responsibility for promoting effective measures for 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. 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.<sup>6</sup>

A step forward in the explicit recognition of disabled persons’ rights was taken in 1989 with the adoption of the Convention on the Rights of the Child (CRC), the first legally-binding UN instrument that specifically mentions persons with disabilities. The CRC includes disability as a prohibited ground of discrimination and has one article on children with disabilities (Article 23). Since 2001, the UN has been negotiating a comprehensive Convention on the Rights of People with Disabilities.

## *II - Conceptual Evolution in Legislation*

In recent years, there has been a shift in the way in which disability issues are viewed. Disability had long been considered a social welfare issue, whereby disabled persons needed care and assistance as they were unable to live their own lives, which resulted in them being viewed as objects of social welfare instead of subjects entitled to rights, including the right to work. In other words, disabled persons could not enjoy all the human rights that other citizens were enjoying, as they were not considered “full” citizens due to their disability. This was translated into legislation that placed the emphasis on social security, and less on integration. This perception is often referred to as the individual or the medical model of disability, a view that locates the problem of disability in the person him or herself and not in the society.

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<sup>5</sup> UNGA Res. 36/77 of 8 Dec. 1981

<sup>6</sup> UNGA Res. 37/53 of 3 Dec. 1982

The adoption of the ILO Resolution concerning Vocational Rehabilitation and Social Reintegration of Disabled or Handicapped Persons and the proclamation of the UN International Year for Disabled Persons in the 1970s marked a conceptual shift, as both instruments constituted a first recognition that the social exclusion and the discrimination that disabled people faced were human rights issues. It was with the adoption of international texts such as the Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159) in the 1980s, that the human rights concept became firmly asserted. The latest attempt to protect and promote disabled people's rights internationally by means of a UN Convention (currently being drafted) marks an additional step in this direction as the draft Convention explicitly reaffirms that all persons with disabilities are entitled to the full enjoyment of human rights.

With this conceptual shift, a new vision on how to tackle the integration of disabled persons emerged. Instead of focusing solely on the medical problem faced by some individuals with disabilities, attention is now also placed on the social and environmental barriers disabled people face. In other words, it is now recognized that in order to put disabled persons on an equal basis with other citizens, action is needed to remove the barriers in the physical and social environment - such as changing attitudes towards people with disabilities, making transportation and buildings accessible, or providing reasonable accommodation in the workplace.

### *III - Equality between all Citizens or Non-Discrimination as Basic Human Rights Principles underpinning all Legislation*

This conceptual evolution has been translated into non-discrimination provisions in national legislation, taking different forms depending on how the concept is interpreted.

The principle of non-discrimination is inherently linked to the principle of equality, according to which all human beings are of intrinsic equal value, whatever the social background, the religion, political affiliation, etc, including physical and mental differences. This equality, many times enshrined in international texts such as the Universal Declaration of Human Rights, entails equal concern and equal respect for each person. How is this equality concretely materialized in national law, what are its different interpretations, and what are the implications concretely of these different interpretations?<sup>7</sup>

- (a) Firstly, according to the concept of formal equality, persons in the same situation are to be treated in the same manner. While this interpretation by itself ensures coherence and equity among persons in an identical situation, it ignores those persons who do not fall into that category due to the differences that they present. Therefore, this principle ignores the characteristics inherent to disabled persons and does not address their specific needs.
- (b) Secondly, equality can take the form of equality of opportunity, which implies that all human beings are to be granted equal chances and that, in

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<sup>7</sup> ILO: *Achieving Equal Employment Opportunities for People with Disabilities through Legislation: Guidelines* (Geneva, 2004).

order to do so, the external barriers that constitute an obstacle to disabled persons to accede, for example, to education and employment, are to be eliminated. This concept of equality overcomes the shortcoming of formal equality as it does take into account differences between individuals, but does not, on the other hand, focus on achieving equality of results. This concept of equality is now the most frequently applied in national legislation.

- (c) Equality of results aims at achieving the same results for disabled persons as for persons without disabilities, and takes due account of the existing differences between these two groups of persons. For example, account is taken of any additional costs a disabled worker has, in examining the question of equal pay. This concept of equality has several weaknesses. It does not clearly indicate where responsibility lies for meeting the needs of disabled persons so as to guarantee true equality of results – with the State, with the private sector or with the individual.

The ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111), ratified by most ILO member States (163), contains a reference text regarding non-discrimination with respect to employment. The Convention is one of the ILO's eight Fundamental Conventions, and all member States are required to respect its principles by sole virtue of their membership to the Organization. In general terms, the Convention provides for equal opportunities and treatment when it comes both to working conditions and to access to employment or occupation. In other words, by including access to employment or occupation, the Convention also encompasses vocational guidance and placement services, as well as vocational training.

This is of particular importance for persons with disabilities who often cannot access employment in the absence of suitable vocational training adapted to their characteristics. The Convention does not, however, include disability among the specifically listed prohibited grounds of discrimination. The Convention specifically provides that other grounds can be added, in consultation with employers and workers, and accordingly, a certain number of countries have added disability to the list of prohibited grounds for discrimination.

As already noted, Convention No. 159 imposes on ratifying States the obligation to adopt and implement a national policy on vocational rehabilitation and employment of disabled persons that is based on the principles of equality of opportunity and treatment for disabled men and women workers. The Convention also states that special positive measures shall not be regarded as discriminating against other workers.

The term discrimination is not necessarily equivalent to the term differentiation, as some forms of differentiation may be required in recruiting workers for a given post, and thus legitimate. If a given job requires certain skills that certain disabled persons cannot meet, the posting of a job advertisement prescribing these skills does not by itself constitute a discriminatory practice.

Discrimination occurs when an employer treats an employee or a job seeker unfavourably due to disability, and notably when the disability in question has no implications for job performance, or only a slight implication that can even be

remedied through, for example, appropriate work equipment. Three main types of discrimination have been identified: direct discrimination, which implies a less favourable treatment of one person as compared to another person in a similar situation, consequent to disability and in the absence of any objective justification; indirect discrimination, which is a more disguised and subtle form of discrimination as it implies a criterion that appears neutral at first sight but results, when applied, in excluding a group of disabled persons, or putting this group at disadvantage compared to other persons; and harassment, which may take place with the objective of intimidating the person, or creating a hostile work environment, so that the disabled worker ultimately is made to leave his or her job.

#### *IV – Key Concepts in Implementing Disability-Related Legislation*

Disability provisions can be included in various types of laws: constitutional, labour, disability-specific, or even criminal law. Practical examples of how African countries have dealt with disability in their national legislation can be found in the *Draft Regional Overview*.<sup>8</sup>

**Reasonable accommodation:** In order to remedy the disadvantages that disabled persons may face at work or while in the process of job seeking, the law may impose upon the employer the obligation of making a so-called “reasonable accommodation”. Instead of imposing an obligation upon the employer, this can also be formulated under the form of a human right to which a disabled person is entitled.

**Burden of proof:** A second type of legislative provision that aims at redressing the disadvantaged situation of disabled workers can be found in procedural rules concerning evidence. Indeed, a disabled job applicant or worker considering himself or herself as discriminated against, will meet great difficulties in bringing the proof of such discrimination, for example in the case of indirect discrimination in job selection procedures. In order to resolve this procedural problem and in order not to place an additional burden on the already disadvantaged person with disability, a certain number of countries have placed the burden of proof on the employer instead. If, therefore, a person establishes at court proceedings sufficient facts showing that discrimination can be presumed, it will be up to the employer to prove the contrary. This aspect of enforcement of non-discrimination law is crucial as otherwise well formulated laws enhancing disabled persons rights, may become ineffective. Such a reversal of the burden of proof has been introduced in the European Union, for instance.

**Quotas and targets:** Quota systems are a type of positive action to promote employment opportunities for disabled persons. There are three main types of quota systems. First, the quota-levy scheme under which a binding quota is set and those employers covered by that obligation who do not fulfill it, are required to pay a fine or a levy. This money is then pooled in a special fund which in turn

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<sup>8</sup> ILO: *Draft Regional Overview of a Technical Consultation on Promoting the Employability and Employment of People with Disabilities through Effective Legislation (East and Southern Africa)*, 23-25 Sep. 2005, Addis Ababa (Geneva, 2005).

finances vocational training of disabled persons, for example. If the option is left open to choose between hiring a certain percentage of disabled workers of the total workforce or paying a levy, however, there is a risk that employers chose the second option, making thus the quota scheme inefficient as it fails in employing disabled workers.

A second type of quota system consists of a binding quota without sanctions. Under this system, employers will be obliged to devote a certain quota of their workforce to employees with disabilities, but no effective sanction is foreseen to enforce this obligation. As a result, this lack of enforcement mechanism thus is most likely to jeopardize the efficiency of the system.

An even less obligatory system can be found in those national policies that establish a quota system whose legal basis is a recommendation, that is to say a non-legally binding text. This has been formerly the case of the Netherlands, for example, whose voluntary system failed to meet the expectations.

## **4.2 What is a Rights-Based Approach and can it be used in Practice?**

*Lee Swepston, Senior Advisor on Human Rights, Standards and Fundamental Principles and Rights at Work Sector, ILO (Geneva)*

There are two facets to considering the rights-based approach to working with disabled persons.

The first is that this has already developed as a result of the efforts of people with disabilities, but needs to go further. Disability rights advocates have succeeded in engineering a move away from the granting of favours to disabled persons to make meaningless jobs available as a matter of charity, to a situation in which the rights of people with disabilities are more often consecrated in international standards, in national legislation, and in the labour regimes of many countries. This is far from being fully accomplished, but a basic change of mentality has taken place, and is productive.

The rights-based approach to development is also gaining ground more widely in the international development organizations. It is defined as “basing development programming, at national and international levels, on guaranteeing the effective implementation of the rights already recognized in national law and international treaties.” A rights-based approach to development recognizes the interdependence between human rights and development and thus, that development is impossible without respect for human rights. A rights-based approach is contrasted to a needs-based approach, based on an analysis at the national level of priorities that is subject to many variants of politics, policies and other factors, and that did not get us far.

The sources of a rights-based approach can be found in the ILO Constitution and standards, as well as the Universal Declaration of Human Rights. The UN and the ILO have made commitments to a rights-based approach to development, notably

in the Millennium Declaration and in the Common Country Assessment (CCA)<sup>9</sup> United Nations Development Assistance Framework (UNDAF)<sup>10</sup> process for the UN and in the Decent Work Country Programmes for the ILO. This commitment has been reaffirmed by the recent UN World Summit (September 2005):

*“We acknowledge that peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being. We recognise that development, peace and security and human rights are interlinked and mutually reinforcing.”<sup>11</sup>*

### *How to do Rights-Based Programming?*

What is more, this is based on the Secretary-General’s proposals for reform, known by the arcane title of “Action 2” – which means simply that this was the second action proposed in his Action Plan for UN reform.

In practice, this means accepting the premise that for every right there is a right holder and a duty bearer. Where a right has been established, it is the responsibility of the duty bearer – usually the State under international treaties, and other actors under national laws – to accomplish that right. Rights-based programming must thus establish a balance between rights and duties. Rights-based development contributes to the development of the capacities of “duty-bearers” to meet their obligations and/or of “rights-holders” to claim their rights.

Rights-based programming must start by identifying what rights exist in national legislation and policies, other promises made at national level and international commitments made when a country ratifies ILO Conventions or other treaties, and then look if and how these rights are applied in practice. Are there labour inspectorates, evaluation programmes, reports to Parliament, court or legal judgements that can implement these rights in practice? There is also evaluation at the international level of whether countries are applying their international obligations.

Development programming must be based on these evaluations and attempt to further the realization of human rights. For example, most judges and lawyers are not familiar with international obligations and do not know how to plead such cases. Training them can help improve the application of national and

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<sup>9</sup> As defined by the UN General Assembly, the CCA is the common instrument of the UN system to analyze the national development situation and identify key development issues. Both a process and a product, the CCA takes into account national priorities, with a focus on the Millennium Development Goals (MDGs) and the other commitments, goals and targets of the Millennium Declaration and international conferences, summits and conventions.

<sup>10</sup> The UNDAF is the common strategic framework for the operational activities of the UN system at the country level. It provides a collective, coherent and integrated UN system response to national priorities and needs within the framework of the MDGs, the Millennium Declaration and other initiatives adopted at international conferences and summits and through major UN conventions. The UNDAF emerges from the analytical and collaborative effort of the CCA and is the foundation for UN system programmes of cooperation.

<sup>11</sup> Outcome Document of the UN World Summit, New York, 2005, para. 9.

international standards in practice. It may also be necessary to help reinforce national implementation mechanisms through international assistance.

### **4.3 Moving Towards a Human Rights Approach: The Experience of the Organization of People with Disabilities Zanzibar**

*Khalfan Khalfan, Executive Director, Organization of People with Disabilities Zanzibar*

The 20-year-old Organization of People with Disabilities Zanzibar (UWZ) is currently shifting its activities from being a service provider to being an advocate for the rights of people with disabilities in Zanzibar - thus moving from a welfare approach to a rights-based approach. The shift came after an evaluation of their programmes that showed people with disabilities were not satisfied with the programmes, as these did not enable them to break through the social barriers and be fully included in society. Many disabled persons fear, however, that a shift to a rights-based approach will endanger their welfare benefits; some are afraid of “losing everything”.

UWZ has realized the need to mainstream disability issues in the institutions that have relevant competencies, as DPOs have competencies in certain areas but not others. Disability needs to be mainstreamed to enable the full participation of disabled people in society. A step in the right direction to achieve this involves ensuring that disability desks are set up in every Ministry, with the main desk located in the highest office.

UWZ has now contributed to the adoption of a disability policy in Zanzibar, the development of a draft disability legislation (to which ILO contributed its expertise) and the shift of governmental responsibility for disability issues from the Ministry of Health and Social Welfare to the Chief Minister's Office.

### **4.4 The Asia-Pacific Experience in Promoting a Human Rights Approach to the Employment of Persons with Disabilities**

*Debra Perry, Senior Specialist on Disability, Asia/Pacific Region, ILO Subregional Office for Asia and the Pacific (Bangkok)*

The Asia Pacific region is exceedingly diverse. There are 400 million people with disabilities in the region, of whom 160 million live in poverty and less than 10 per cent have access to basic education. Several regional initiatives have been undertaken in the Asia-Pacific region to promote full participation and equality of disabled persons in society, and important lessons have been learned from these activities.

*Asian and Pacific Decade of Disabled Persons, 1993-2002*

The Asian and Pacific Decade of Disabled Persons, 1993-2002 was an initiative of the United Nations Economic and Social Commission of Asia and the Pacific (ESCAP). The 54 member countries initiated the first decade, following the worldwide UN Decade of Disabled Persons 1983-1992, recognizing that people

with disabilities are not full participants in their communities. Key decade mandates included: the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region; the Agenda for Action for the Decade; and Targets and Recommendations for Implementation of the Agenda for Action, including gender dimensions. The Agenda for Action included more than 100 targets, in 12 areas such as education, training and employment, rehabilitation and regional cooperation.

In the course of the Decade, governments formed national coordinating bodies, identified focal points, used the Agenda for Action as a policy framework, increased participation and consultation with people with disabilities and support for self-help organizations and adopted new legislation and policies. There was progress in all target areas but it was uneven: education and training and employment had inadequate progress; the knowledge base increased, with greater dissemination; and more networking and advocacy were conducted for a rights based approach. Towards the end of this Decade, it became clear that more action was needed. Support grew for a Second Decade of Disabled Persons.

The first Decade allowed for the identification of needs and problems: lack of education; lack of data; need for a greater emphasis on rights. Many countries have passed legislation but fail to implement it. Too many targets had been set. Evaluation of the first Decade enabled a better preparation of the second Decade. The Asia-Pacific Development Center on Disability was funded as a joint project between the Thai and Japanese government to promote the second decade and build up self-help organizations.

#### *The Biwako Millennium Framework (BMF)*

In May 2002, ESCAP proclaimed the extension of the Asian and Pacific Decade for another ten years, 2003-2012. Later that year, at a major high-level governmental meeting, governments adopted the Biwako Millennium Framework (BMF) for Action towards an Inclusive, Barrier-free and Rights-based Society for Persons with Disabilities in Asia and the Pacific. The Framework's principles and policy direction follow a rights-based approach.

Reflecting areas where outcomes were the weakest during the first Decade, the BMF identifies seven priority areas for action: self-help organizations; women with disabilities; early detection, intervention and education; training and employment, including self-employment; access to built environment and transportation; access to information; and poverty alleviation.

On employment and training, the BMF states that "Persons with disabilities have a right to decent work... in conditions of freedom, equity, security and human dignity." It sets three targets for this priority area: by 2012, 30 per cent of signatories<sup>12</sup> will have ratified ILO Convention No. 159; by 2012, at least 30 per cent of all vocational training programmes in signatory countries will be inclusive of persons with disabilities and provide appropriate support and job placement or business development services for them; and by 2010, all countries will have

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<sup>12</sup> There are currently 46 signatory countries to the Proclamation.



reliable data on the employment of people with disabilities. It calls on government to take action, notably to: examine and/or enact legislation to protect the rights of disabled people; ensure that people with disabilities have the support services needed for mainstream vocational training and employment; collaborate and establish partnerships with employers and trade unions; and be a model employer.

### *Major findings and lessons learned*

Basic findings from ILO research, surveys conducted with governments and NGOs on the progress of the BMF and from the first Decade indicate that significant legislative and policy initiatives have resulted in the past decade. Many governments have developed national plans of action for implementing the BMF, strengthened national coordinating committees, with linkage to DPOs and civil society and increased support for self-help organizations. Most countries have some form of disability legislation related to employment and training and most of them include rights to vocational training and employment services, often mainstream services. When we look at the institutional structures for achieving these rights and accessing services, however, we find that the structures are not in place to implement the laws and policies or they are not effective in implementing them. As a result vocational training and employment services are not meeting the needs, are being denied to disabled persons or are being provided only in segregated settings, denying people with disabilities choice and equal opportunity and treatment. It is not surprising then that so few people with disabilities have access to an education, training and employment.

The major lessons learned are summarized here:

- Most countries have laws but many are outdated, are based on the welfare model or require strengthened implementation measures.
- Quotas are not enough - incentives, support measures and even special laws and policies are needed.
- Most people with disabilities live in rural areas, work in the informal economy or are self-employed.
- Sheltered employment does not have to mean underpaid or isolated work - community-based and supported employment options have been tried and work (e.g. community-based contracts).
- Creative models for expanding job opportunities exist throughout the region.
- Employment services must be adapted to needs of people with disabilities and employers.
- Vocational training is critical to competitiveness and success in the workplace and the marketplace.
- People with many types of disabilities are left out of legislation, policies and services.
- Partnerships enhance rights-based approaches, job opportunities, and training.

- Many employers want to hire people with disabilities (or return disabled employees to work) - they need to be motivated, encouraged and given technical assistance.

We know what needs to be done, we just need to make it happen. In the new Decade, we are looking for changes in policy practices and partnerships, so that women and men with disabilities everywhere can enjoy their right to decent work.

#### **4.5 Governmental Action to Promote a Human Rights Approach to the Employment of Persons with Disabilities: Experiences from ILO and UN Supervision**

*Lee Swepton, Senior Advisor on Human Rights, Standards and Fundamental Principles and Rights at Work Sector, ILO (Geneva)*

##### *UN Supervision*

As of now, there is no UN Convention focusing on disability, although one is currently being negotiated. Among Conventions adopted by the United Nations, disability is only specifically mentioned in the Convention on the Rights of the Child (CRC), but not in the other core human rights treaties. Disability is, however, considered a human rights issue in the UN supervisory bodies.

For each of the seven core UN human rights Conventions, there is a “treaty body” that is in charge of monitoring the implementation of the Convention. State parties to the Convention have to submit periodic reports to the treaty body, describing how they are implementing the Convention, and then appear before the Committee. The monitoring bodies can address their concerns and recommendations to the State party in the form of “concluding observations”.

In addition to examining individual country reports, the UN treaty bodies also publish their interpretation of the content of human rights provisions, in the form of general comments on thematic issues. The Human Rights Committee (HRC) is the body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights (ICCPR). The HRC has not issued a general comment on disability, but it considers disability as a discrimination issue. Government reports to the HRC rarely mention disability and disability is rarely raised as an issue when the body is discussing implementation with governments, which led the authors of a study conducted for the UN Office of the High Commissioner on Human Rights to conclude that “*general awareness of the applicability of the ICCPR to disabled persons needs to be developed*”.<sup>13</sup>

The Committee on Economic, Social and Cultural Rights (CESCR) is the body of independent experts that monitors implementation of the International Covenant

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<sup>13</sup> OHCHR: *Human Rights and Disability: The current use and future potential of United Nations human rights instruments in the context of disability*, New York and Geneva, 2002, p. 75.

on Economic, Social and Cultural Rights. The Committee issued a general comment in 1994 on persons with disabilities,<sup>14</sup> that says:

*“Through neglect, ignorance, prejudice and false assumptions, as well as through exclusion, distinction or separation, persons with disabilities have very often been prevented from exercising their economic, social or cultural rights on an equal basis with persons without disabilities. The effects of disability-based discrimination have been particularly severe in the fields of education, employment, housing, transport, cultural life, and access to public places and services.”*

States parties must also ensure that the enjoyment of rights by persons with disabilities is not hampered by third-party actors in the private sphere, including private employers.

A number of reports submitted by States parties to the Committee refer to measures to integrate disabled persons into work, including mainstream work, but a majority refer to special education systems, not mainstream. The study conducted for the UN Office of the High Commissioner on Human Rights concluded *“States parties to the ICESCR have not fully internalized the move to a rights-based perspective on disability”*.<sup>15</sup>

### *ILO Supervision*

The ILO supervisory mechanism is the most developed in the international system. There is a unified supervisory body in the Committee of Experts on the Application of Conventions and Recommendations. Once a country has ratified an ILO Convention, it is obliged to report regularly on measures it has taken to implement it. Governments are required to submit copies of their reports to employers' and workers' organizations. These organizations may comment on the governments' reports; they may also send comments on the application of Conventions directly to the ILO. DPOs and NGOs do not have direct access, but can work through trade unions to make their voices heard.

When examining the application of international labour standards, the Committee of Experts makes two kinds of comments: observations and direct requests. Observations contain comments on fundamental questions raised by the application of a particular Convention by a state. These observations are published in the Committee's annual report. Direct requests relate to more technical questions or requests for further information. They are not published in the report but are communicated directly to the governments concerned, and can be found on the internet, on the ILO website.

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<sup>14</sup> CESCR General comment 5 (1994). The full text of the comment can be accessed at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/4b0c449a9ab4ff72c12563ed0054f17d?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/4b0c449a9ab4ff72c12563ed0054f17d?Opendocument)

<sup>15</sup> OHCHR: *Human Rights and Disability: The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability*, New York and Geneva, 2002, p. 115.

The Committee reports that a growing number of countries are including disability as a prohibited ground of discrimination under the ILO's basic Convention on Discrimination: the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

On the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), the findings from ILO supervision show that in many countries, people with disabilities suffer from discrimination, preventing them from getting training, education and jobs. When employed, people with disabilities are generally confined to a narrow band of occupations. The Committee finds an increasing number of countries are implementing special measures to eliminate discrimination, but *“although their efforts have yielded encouraging results, the fact unfortunately remains that very many countries are still far from meeting the minimum conditions for equalization of opportunities.”* The Committee also notes that *“Women with disabilities are doubly disadvantaged by discrimination based on gender and their disability status ... more likely than their male counterparts to be poor or destitute, illiterate or without vocational skills, and most of them are unemployed.”* The Committee has observed that difficulties in the application of the provisions of the Convention by ratifying States are often due to the fact that attitudes are slow to change and negative prejudices persist concerning the capacity to work of people with disabilities.

The information provided by governments on vocational rehabilitation and employment services in rural areas and remote communities where most disabled people live is often not sufficient to enable the Committee of Experts to assess the extent to which the instruments are applied.

#### **4.6 Developing Rights-Based Legislation: Effective Consultation Mechanisms**

*Barbara Murray, Manager – Equity Issues, Skills and Employability Department, ILO (Geneva)*

In developing or revising legislation and policy to promote employment opportunities for persons with disabilities, widespread consultation will enable governments to benefit from the expertise of employers, trade unions, disabled persons' organizations and community groups more widely. Laws and policies which reflect the views of key stakeholders are more likely to be effective in practice. Those involved in drafting legislation and policy should consult relevant government ministries, organizations of persons with disabilities, employers' and workers' organizations, service providers and the general public.

Consultation may take place through existing bodies set up to facilitate social dialogue – such as the National Economic Development and Labour Council bodies in South Africa, which includes representatives of employers' and workers' disabled persons and other civil society organizations. As an alternative, it may be decided to set up a task force representing the key stakeholders to work on the task of developing the law or policy – such as the tripartite Labour Law Task Force established in Kenya in 2001 to hold nation-wide consultations about

what the new labour law should contain. Such a task force should involve the social partners as well as disabled persons' organizations and relevant government ministries. In some countries, the ministries responsible for developing or revising the law or policy may initiate direct contact with the social partners, and with the disabled persons' representatives, to ensure that their views are made known. Another option is for national level meetings to be organized, involving the key stakeholders, at which the drafts can be discussed.

In preparation for the consultation, it is useful to prepare a public position paper, to serve as the basis for discussion. This can be discussed at public meetings, held at every level in the society – centrally, regionally and locally, ensuring that people at village level also have the opportunity to express their views. Radio chat shows and other media can be a good means of informing the population at large of the proposed law or policy and the issues which these seek to address.

### *Consulting People with Disabilities*

In consulting people with disabilities and their organizations, it is important to ensure that representatives of people with all disability types are included. This may mean that several representative organizations will have to be contacted. It is important to bear in mind that these organizations might not be used to being consulted on legal and policy issues, and therefore need time to prepare a response. It is also possible that they may not be able to understand written information. Special measures may therefore be required to promote their involvement. Any written or oral information on the consultation should contain a sufficient amount of background information which clearly sets out the issues and the measures proposed to address these issues. This information should be in accessible format. Where it is not financially feasible to provide such alternative formats, or where they are not relevant (e.g. as a result of illiteracy), other means should be used to involve people who are blind or have intellectual disabilities - for example by reading the paper out loud, providing a version on tape, or explaining its contents in a simplified manner using language that is easy to understand. People with disabilities could be trained to consult with the disabled persons' organizations, and compile a report on the views expressed – this may result in a more comprehensive expression of views.

### *Consulting Government*

In consulting government ministries, all the relevant ministries should be invited to express their views. In addition to the ministry with responsibility for employment of disabled persons, other important ministries include those with the portfolios for social security and employment compensation; education; skills development; the build environment: and public transportation. While their involvement may not be directly relevant to the legislation or policy being drafted, the laws, regulations and policies of these ministries may need to be brought in line with the proposed provisions relating to employment, so that they become mutually reinforcing.

### *Consulting Employers*

Laws to promote the employment of persons with disabilities generally involve obligations on employers, so it is central to ensure that employer views are sought during the drafting process, in order to identify the measures that will have the greatest impact. Consultation may take place with central employers' organizations representing a large number of employers, or with bodies which represent particular categories of employers – for example rural and industrial employers, employers in different sectors, large and small employers. Key questions to be asked include:

- Are employers willing to collaborate in promoting opportunities for disabled persons, and if so, what suggestions do they have?
- What legal obligations will they accept?
- What incentives will have the most impact in encouraging recruitment?
- What support services will make the greatest difference?

### *Consulting Trade Unions*

Trade unions, for their part, may already be involved in promoting employment for people with disabilities and can thus provide a valuable insight into problems and effective solutions. On the other hand, some trade unions may be focused on their non-disabled members and thus feel threatened by greater efforts to promote the employment of workers with disabilities. The views of all trade union views should be sought, as their collaboration in the process will not only influence the recruitment of disabled workers but will also have implications for their success in keeping and advancing in the job. As with employers, both central and sectoral workers' organizations should be consulted. Questions which should be raised include:

- Are trade unions generally supportive of the employment of workers with disabilities?
- Does this include new recruitments, as well as job retention by those who acquire a disability while in employment?
- Are trade unions willing to sensitize members about the rights of persons with disabilities?
- Are they willing to act as model employers of disabled persons?

### *Consulting Other Institutions*

As countries move from segregated provision for disabled persons to promoting their integration into mainstream services, the question arises of how the experience and expertise of specialized agencies can be best be channeled to support the new rights-based policy approach. In the consultation process, the views of such agencies – including providers of training, rehabilitation, workplace or other specialized services for people with disabilities - can provide good insight into policy measures which will assist in promoting employment opportunities for disabled persons.

Once the law or policy has been drafted, it is useful to hold a last round of consultations with the stakeholders, to finalize the text before it is submitted by the responsible ministry to the Ministry of Justice and then to Cabinet and the relevant Parliamentary Committee. This may be done, for example, through seminars with broad participation, or through individual consultations. Taking time for this, as well as for consultations throughout the drafting process, will go a long way to ensuring that the varying interests are adequately reflected in the law and policy, and that these will make a difference to the employment of persons with disabilities.

#### **4.7 Effective Legislation as a Measure of Good Governance**

*Barbara Duncan, Director of Communications, Rehabilitation International*

“Change from Within” is an international study on the impact of the increasing number of elected and appointed officials with disabilities, as well as the growth of national disability policy bodies on governance. The study features in-depth interviews with 20 disabled parliamentarians and politicians from 12 countries in primarily Africa, Europe and the Americas;<sup>16</sup> an analysis of the similarities and differences; and an international selection of news stories from the last several years reporting on disability advocacy and political affairs. The study was published in March 2005 by the World Institute on Disability (WID)<sup>17</sup> in collaboration with Rehabilitation International (RI), as part of the International Disability Exchanges And Studies (IDEAS) for the New Millennium project, funded by the US National Institute on Disability and Rehabilitation Research.<sup>18</sup>

Although the election of parliamentarians with disabilities and the appointment of disabled individuals to ministerial or secretarial posts was first noted in the mid-1980s, there appears to be scant literature on the impact of these politicians, or on the impact of national disability policy bodies, many of which are also headed by disabled individuals. Recognizing that this is a largely unexamined phenomenon, RI and WID began to explore it through the project’s periodical, [www.DisabilityWorld.org](http://www.DisabilityWorld.org) and by organizing two workshops on the topic in Durban in 2003 and in Oslo in 2004, both during RI conferences.

The questions posed in the interviews and workshops included: what is the overall impact of elected and appointed disabled individuals on patterns and mechanisms of governance; are they influencing governmental leaders and legislative bodies to consider the disability implications of new laws and policies; are more “disability friendly” laws or policies being adopted due to this new influence from within; are these new and visible role models influencing younger disabled individuals to

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<sup>16</sup> The research was carried out from 2003-2005 through interviews with individuals from Brazil, Lebanon, Lesotho, Malawi, Mexico, New Zealand, Norway, South Africa, Sweden, Uganda, the United Kingdom, and the United States.

<sup>17</sup> [www.wid.org](http://www.wid.org)

<sup>18</sup> “Change from Within” was included in the CD-ROM distributed to participants and is available in electronic format from Jennifer Geagan of WID: [Jennifer@wid.org](mailto:Jennifer@wid.org).

pursue careers in politics, human rights, law and governance; when people with disabilities serve in high positions of leadership, do governments develop more of a “conscience” or at least consider the needs of disabled constituents more often; what are the differences, if any, in being elected versus being appointed to positions of high leadership; does having disabled colleagues raise the awareness of non-disabled politicians on disability issues; once in positions of governance, do disabled individuals see themselves only as spokespersons on disability issues, or do they try to develop a wider portfolio of expertise; and do their peers regard them as solely concerned with disabilities or as colleagues with a full range of interests and responsibilities?

### *Findings*

Although most of the recorded interviews ranged over several hours, the answers must be considered as just a first examination of the topic and not conclusive. Perhaps they could best be seen as establishing a framework for future research to follow. In any case, the findings included:

- Having disabled individuals in positions of governance is clearly having an impact.
- Disabled individuals in government positions report that legislative and programmatic improvements have aided the situation of people with disabilities in their respective countries.
- Those interviewed also reported heightened awareness and increased understanding of disability issues among their colleagues.
- Some reported that their non-disabled peers had begun to consider all issues through a new “disability lens,” resulting in new allies in the sphere of governance in several countries.
- Many saw themselves as role models who could serve to inspire youth with disabilities to enter public service.

## **4.8 Discussion**

Thematic presentations were followed by a discussion where participants were given the opportunity to ask questions or comment on the presentations. Some employers’ representatives mentioned that the cost of hiring disabled persons is often a deterrent for their members. Ms Murray responded by saying that this cost is generally minor, as demonstrated for example by data from the United Kingdom and the United States. Mr Swepston said that employers need help from both DPOs, to identify the accommodation needs of disabled persons, and governments, to cover part of the costs implied (e.g. reimbursement of expenses for accommodation or tax incentives). He said the responsibility does not only fall on employers.

When asked about the best form of quotas, and how quota systems could be made efficient, Mr Swepston said it was preferable to set targets, rather than absolute quotas. If these targets are not met, then there is a need to evaluate why and what can be done about it. Ms Murray said a quota system needs to include an



enforcement mechanism, as voluntary approaches have not worked. In setting up a quota system, a government should consult with employers, as they will have to implement it.

Participants raised the point that in participating countries, disabled persons quite often do not have access to education, which makes it very difficult for them to find employment. It was also noted that people with disabilities are frequently not well informed of the legal provisions in place, which makes it difficult for them to raise issues when laws are not implemented. Mr Khalfan Khalfan stressed the need to popularize legislation to make sure people with disabilities understand their rights and the various legal provisions that affect them.

The discussion also focused on the implementation of legislation, as many countries have laws that are not or only partially implemented. Ms Perry noted that some countries adopt laws they do not fully understand or that are not adapted to the country's situation (e.g. a quota for enterprises of more than 50 employees in a country where there are only two employers that fit that criterion). Legislation often lacks monitoring mechanisms and targets. There is also sometimes a lack of political will; elected officials make promises or adopt laws to please their electorates but then forget about them. Those who advocated for the laws need to push for its implementation as well.

Ms Hendrietta Bogopane-Zulu, Member of Parliament - South Africa, drew attention to the fact that MPs with disabilities share different political ideologies, adhere to different political parties and different views. This is part of multi-party democracy. Disabled politicians cannot be expected to have a single opinion and MPs from different parties can be expected to disagree on many issues, even if they are all disabled persons.

## 5. Panel Session on Recent Initiatives

A panel session on 25 September featured four brief presentations by participants or resource persons: Initiatives with Business in Uganda; Promoting Human Rights of Persons with Disabilities in Ethiopia; Parliamentary Initiatives in South Africa; and Initiatives for Women with Disabilities in Ethiopia.

### 5.1 Initiatives with Business in Uganda

The Federation of Uganda Employers (FUE) has adapted the ILO *Code of Practice on Managing Disability in the Workplace* to the Ugandan situation, after holding a number of workshops with employers.

Mr Stephen Jjinga presented the main provisions of the adopted Code:<sup>19</sup>

- Employers should ensure equal opportunities for people with disability in the recruitment, career advancement, job retention and training provided. Employers should also ensure non-discrimination against people with disabilities. For instance, employers could provide a statement to equal opportunity in their recruitment procedures and job advertisements. Workers with disabilities should be encouraged to apply for promotion. People with disabilities should be given an opportunity to access training opportunities, just as other workers.
- Where a disabled person is recruited, the employer should arrange an orientation to the company or service for him/her. Employers should ensure that information essential to the job in the work place is communicated to employees with disabilities in an accessible format.
- Employers should consider providing work experience opportunities to job seekers with disabilities to enable them to acquire skills, knowledge and work attitudes required for specific jobs. Such workplace experience could assist disabled job seekers in acquiring skills that meet the employers' requirements. Employers should also consider giving disabled persons work trials.
- Employees who acquire a disability could be transferred to an alternative job.
- Employers should take steps to improve accessibility of work premises to persons with disabilities. This includes consideration of entrance to and movement around the premises and of toilet and washroom facilities, the use of sign language, manuals or instructions or electric language necessary for people with visual impairment, and access to information frequently conveyed by sound – such as the ringing of a bell, a fire alarm, whistle or siren. In planning to improve accessibility, employers should consult with the disabled worker.

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<sup>19</sup> *Recommended Practices for the Management of Disability at the Workplace*, FUE.

- Adaptations may be required to the work place to enable the workers with a disability to perform the job effectively. For example, adaptations may be required to tools and equipment to facilitate optimal job performance; it may be necessary to review the job description and make changes or adapt the work schedules. In planning adaptations, employers should consult with the disabled worker involved and with worker representatives.

In her response, Ms Patience Mukhambe Chome, Federation of Kenyan Employers, emphasized the importance of consultation with employers on the employment of disabled persons, and the need for policy measures to compensate for costs involved. She also expressed the hope that the Technical Consultation would lead to action to improve opportunities to disabled people in Kenya.

## **5.2 Promoting Human Rights of Persons with Disabilities in Ethiopia**

Mr Abraham Worku presented the findings of a study conducted in six regions of Ethiopia on disability-related legislation and policies. Ethiopia has ratified ILO's Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) and has issued, at the Federal level, Proclamations on The Right of Disabled Persons to Employment (No. 101/1994) and on Federal Civil Servants (No. 262/2002). The latter prohibits discrimination in the civil service at Federal level and provides for affirmative action measures in the recruitment of persons with disabilities. Tigray, Oromiya, Southern Nation and Nationalities Regional Government, Amhara, the Addis Ababa City Administration and the Dire Dawa City Administration have all issued similar civil service proclamations. With the exception of Oromiya, they have all included an affirmative action clause in these proclamations.

Regulations, directives or guidelines to implement the proclamations have not, however, been issued at the Federal level. Amhara, Addis Ababa City and Dire Dawa City Administrations have all issued Directives, while Tigray and Southern Nation and Nationalities Regional Government have developed Directives without issuing them. Thus, the issue of implementation requires attention, if the Directives are to make a difference for job seekers with disabilities.

Other initiatives were also described:

- The Addis Ababa City Administration negotiated and reserved 10 per cent of the city's petty trade areas for persons with disabilities.
- The Tigray and Amhara regions have a vocational training centre for persons with disabilities.
- The regional governments of Tigray, Oromiya, Amhara and the Addis Ababa City Administration are reported to work with NGOs, although Tigray and Addis Ababa do so in a well-coordinated way.
- In Amhara, BOLSA occasionally educates disabled persons about their employment rights and what to do about them.

In her response, Ms Julian Mabangwe spoke of recent initiatives in Malawi to promote opportunities for persons with disabilities, involving the Federation of

Disability Organizations of Malawi (FEDOMA), and mentioned that several high-placed decision-makers in Malawi are disabled persons.

### **5.3 Parliamentary Initiatives in South Africa**

Ms Hendrietta Bogopane-Zulu, Member of Parliament - South Africa, made the point that inclusion is not about placing a disabled person in a job, but about accepting and respecting diversity.

She presented several laws and policies in place in South Africa regarding people with disabilities. Ms Bogopane-Zulu pointed out that South Africa does not have a disability act and will not have one, since it considers that disability acts have no impact on opportunities for people with disabilities. South Africa has very progressive legislation in the Employment Equity Act (EEA).<sup>20</sup> The Act requests employers to adopt an employment equity plan, but it lets the employers set their own targets, instead of imposing quotas on them. The Act also prohibits discrimination on the grounds of disability and contains affirmative action measures. South Africa has changed its government procurement policy to be in conformity with the EEA. South Africa also has a comprehensive disability policy, entitled the Integrated National Disability Strategy.

Ms Bogopane-Zulu noted that one of the main obstacles facing disabled people is the fact that many people with disabilities lack skills that meet market needs. People with disabilities too often do not have access to training or receive training that does not meet the needs of employers.

In response to Ms Bogopane-Zulu, Mr James Mwandha, Member of Parliament - Uganda, said that South Africa's success is in great part due to leadership from the top, where the main responsibility for disability issues lies in the President's Office. He also discussed provisions of Uganda's Constitution of 1995 that allows for Parliament seats to be allocated to persons with disabilities.<sup>21</sup>

### **5.4 Initiatives for Women with Disabilities in Ethiopia**

Ms Shitaye Astawes presented the ILO-DCI-Ethiopian Federation for Persons with Disabilities (EFPD) partnership project on "Developing Entrepreneurship among Women with Disabilities in Ethiopia".<sup>22</sup> The project aims at facilitating access of women with disabilities and women with disabled dependants to start up or develop business activities through facilitating their access to training in micro-enterprise skills, vocational skills training and credit. Another objective was to

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<sup>20</sup> The Act is described in great detail in ILO: *Employment and Training of People with Disabilities: Laws, Policies and Implementation Measures (East and Southern Africa)* (Geneva, 2006), and in the South Africa Country Profile.

<sup>21</sup> Exact provisions of the Constitution and other laws can be found in the publication cited above.

<sup>22</sup> The project was also implemented in the Tigray region with the Tigray Disabled Veterans Association (TDVA).

build the capacity of EFPD and its member associations to implement similar projects in the future. The following activities were conducted under the project:

- Women with disabilities were involved in implementing activities in a variety of ways ranging from conducting situation analyses to being trained as basic business skills trainers as well as serving on the management committee. Support to enhance their capacity to do so was provided as part of capacity building for partner organizations. Women's wing leaders in EFPD and the Tigray Disabled Veterans Association (TDVA) and their member associations were trained in how to gather information on the business aspirations of women with disabilities and women with disabled dependents, as well as the constraints to business activities for women with disabilities and women with disabled dependents, through situation analyses and case studies.
- A total of 266 were trained: 200 received training in basic business skills, 47 in "Improve Your Business" skills and 19 disabled women as Business Skills Trainers. The business skills training, using a curriculum designed for illiterate women and delivered in local languages, was provided by experienced master trainers using ILO-designed and other training materials. The training of 19 trainers will allow EFPD member organizations to train more people in the future.
- Market surveys were conducted for the purpose of identifying new production and service opportunities which women entrepreneurs with disabilities might incorporate into their business plans.
- Training was provided to 20 disabled women entrepreneurs on product design, and marketing through trade fairs.
- Vocational skills training was provided to 38 disabled women by local private training centres or through apprenticeships with local women already engaged in a business activity.
- Over 100 women with disabilities and women with disabled dependents received loans to implement their business plans through the Gasha Micro Finance Institution (MFI) in Addis Ababa.
- The project has enabled EFPD and its member DPOs to assess their operational capacity, identify their capacity building needs, prioritise the identified needs and carry out key capacity building activities. Accordingly, a board development, strategic management and Planning, Project design monitoring evaluation and reporting training was given to the leaders and staff of EFPD and its member associations.

In commenting on Ms Astawes' presentation, Mr Gidion Mandesi, Disabled Organization for Legal Affairs and Social Economic Development (DOLASED), United Republic of Tanzania (URT), said that the ILO project was much needed in countries of East Africa since disabled women are often marginalized, and welcomed the fact that this project had now been extended to the URT.

## 6. Working Groups

In the course of the Technical Consultation, participants took part in three working groups. In the first two working group sessions, participants were divided by constituents into four groups: workers, employers, governments and DPOs. Parliamentarians were free to join the group of their choice. This enabled participants to exchange examples of good practice from their own constituency with other countries. In the last working group session, participants were divided into their country groups and were asked to draft a national action plan. The main conclusions of the working groups are summarized below.

### Session 1:

#### **Moving towards a human rights approach to the training and employment of people with disabilities: What action is required of governments?**

There was consensus in the working groups on the following points:

- Participating States who have not yet done so should ratify the ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) and other relevant Conventions.
- In drafting legislation and policy, governments should consult with DPOs, and workers' and employers' organizations.
- There is a need to further invest in vocational and skills training for people with disabilities.
- Inaccessibility of transport, buildings and communication is an obstacle to the full inclusion of people with disabilities. Accessible Information and Communication Technologies (ICT) is often forgotten when there is discussion on accessibility, but it is not less important.
- The government should set an example by hiring people with disabilities, providing reasonable accommodation and having accessible buildings.
- Governments should provide incentives to employers so that they hire people with disabilities (e.g. tax rebates, refund of expenses for accommodation).

Some points raised were not subject to discussion in the plenary:

- Funds should be made available for income-generating activities.
- More research is needed on disability and more data needs to be collected.
- Government should engage in more awareness-raising, including among its own staff, but also directed at other stakeholders and the general public.
- Universal, compulsory and inclusive education is needed.
- There is a need for a disability policy in each country, notably to serve as an advocacy tool.
- There is need for more monitoring and evaluation of the laws and policies.

Even though there was general consensus that vocational training is key to improving the chances of a disabled person attaining decent work, practical measures to achieve this objective were difficult to identify. Participants noted that too often the training received does not match the skills needs of the labour market. In order to increase employability, it is necessary that students be trained in marketable skills.

There was debate in the plenary session about the most effective arrangements for dealing with disability issues in government. Some were in favour of having one Ministry in charge of disability issues while others felt that allocating the responsibility to the President's/Prime Minister's Office along with disability desks in each Ministry was more effective.<sup>23</sup>

## **Session 2:**

### **What initiatives can the social partners and DPOs undertake, separately or collaboratively, to promote the training and employment of people with disabilities taking into account the human rights approach?**

There was general consensus in the working groups that all constituents – governments, employers, workers and DPOs - need to work together to improve the employability and employment of people with disabilities. Participants put forward that there needs to be more consultation, networking and joint advocacy campaigns. The creation of national forums for information sharing is one possibility that was proposed in the discussions.

Other conclusions of the four working groups on this topic are listed below:

- Employers should provide apprenticeships or learnerships to people with disabilities. They should also ensure that the workplace is fully accessible.
- All stakeholders have to be involved in sensitization and awareness raising.
- DPOs should contribute in the monitoring and evaluation of policies and legislation.
- DPOs should raise awareness and sensitize people with disabilities about existing legislation and policies and their rights.
- Employers' organizations and trade unions should review their constitutions, codes of conduct or human resource policies to accommodate disability issues.
- Employers and trade unions should address disability issues in the process of collective bargaining.
- DPOs could be involved in vocational guidance and job placement programmes.

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<sup>23</sup> On this point, the Continental Plan of Action for the African Decade of Persons with Disabilities (1999-2009) calls on Member States to "...allocate overall responsibility for coordination of disability-related policies, programmes and services to the President's or Prime Minister's Office, and establish a disability desk in all Government ministries and State organs." (p. 16, para. 33)

- There is a need to identify skills needs of the labour market, to train people with disabilities in skills that will enable them to find employment.
- DPOs could collaborate with academic institutions and training providers to include disability issues in curriculum development.

There was debate over the issue of funding training programmes. All the constituents called on the other groups to contribute financially.

### Session 3:

**What actions can be taken at country level by governments, social partners and DPOs, separately or collaboratively, to improve the practical impact of laws and policies concerning the training and employment of people with disabilities?**

Working in country teams, participants identified what needs to be done in their countries to improve the impact of national laws and policies and outlined an action plan:

#### Ethiopia

- Development of implementation measures for the *Right of Disabled Persons to Employment Proclamation* (Proclamation No. 101/1994 of 26 August 1994).
- Revision of the compensation scheme for occupational injuries.
- Awareness-raising programmes should be conducted among employers by the Ethiopia Employers' Federation. Trade unions should also run similar programmes among workers and union representatives, while DPOs should raise awareness among all stakeholders, including government and the social partners, promoting a positive image of disabled people.
- Inclusion of disability issues in the collective bargaining process.
- Employment and training of more people with disabilities by employers, subject to incentives provided by the Government. Trade unions should monitor and evaluate employers' actions in addressing disability issues.
- Facilitation by DPOs of access to credit and marketable skills for people with disabilities. DPOs should also help build the capacity of employees with disabilities.
- Inclusion of persons with disabilities in the Technical and Vocational Education Training (TVET) system, involving adaptation of the curriculum and improved access to institutions, as well as other appropriate measures.
- Capacity-building of DPOs to provide quality counselling services to all stakeholders.



## **Kenya**

- Commission a consultancy to identify training needs of people with disabilities that will match the needs of the labour market and will enable them to find employment.
- Conduct sensitization workshops at the regional level to raise awareness about the new *Persons with Disabilities Act, 2003* and the National Council for Persons with Disabilities (NCPD). The NCPD should be in charge of the organization of the workshops.
- Adopt and adapt to the Kenyan situation the ILO *Code of Practice on Managing Disability in the Workplace*. Federation of Kenyan Employers (FKE), in consultation with other stakeholders, should have primary responsibility in this.

## **Lesotho**

- Ratification of the ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159): the issue is to be brought up at the next meeting of the National Advisory Committee on Labour (NACOLA) in October 2005.
- Formulation of a national disability policy that will cover issues of education, training, and employment. The government will conduct consultations with all stakeholders while DPOs must lobby government.
- Amendment of the Constitution, the Labour Code and other laws to accommodate disability issues.
- Sensitization and awareness raising on disability and human rights. This should be an on-going process and is the responsibility of all stakeholders.
- Development, by 2006, of a database on disability by the Bureau of Statistics in order to facilitate national planning and budgetary allocations and to have better information on people with disabilities. This can be done through the population census, surveys and research.

## **Malawi**

- Review of the existing legislation and policies and Disability Bill with a view to adopting it. Malawi is currently reviewing its disability policy (*National Policy on Equalization of Opportunities for Persons with Disabilities*).
- Awareness raising on existing legislation and policies.

## **South Africa**

- Development of a definition of disability.
- Skills development and employment: all stakeholders have a responsibility. The government should provide funding, while all departments should have their own strategic plan to integrate disability issues. The private sector, training institutions, DPOs and trade unions all have a role to play in providing training or learnerships to disabled persons.

- Strengthening of DPOs: through provision of resources and procurement by the Government. Trade unions should mobilize and unionise disabled workers. Political parties should adopt disability policies while academic institutions should conduct research on disability.

## **Uganda**

- Review, in consultation with stakeholders, the draft employment and training policy. DPOs and other stakeholders need to advocate and lobby for its adoption, and disseminate it in accessible format.
- Review employment laws to ensure that they conform with policies in place. There needs to be consultation in the drafting process and sensitization of all stakeholders once the laws are adopted.
- Disaggregated data should be collected by a hired consultant.

## **United Republic of Tanzania**

- Ratification of the ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159). The prime responsibility of the governments, DPOs and social partners needs to be advocacy work and lobby governments for the ratification.
- Review of legislation and policies that affect disability, including the adoption of a disability policy. This will also require lobbying on the part of DPOs and social partners.
- Awareness raising and information dissemination to change attitudes towards people with disabilities and get public support. This is a responsibility of all stakeholders and could take the form of media campaigns.
- Improve education, entrepreneurial skills and skills development of people with disabilities to enable them to get employment. The Vice-President's Office, the Ministries of Labour, Trade and Industry and Education, DPOs, employers and service providers can contribute to this task.

## **Zambia**

- Sensitization on the laws and policies already in place as government officials and civil servants are often not aware of the existing provisions. The process would start with a workshop for government officials in Lusaka involving key Ministries. It would be followed by workshops at the national level involving all stakeholders.
- Media campaign to sensitize the general public in order to promote an attitudinal change and eliminate stigma.
- Monitoring and evaluation of existing laws and policies by the Ministry of Labour, DPOs and other stakeholders, notably through labour inspections. The issue would be brought up at the workshops.



## 7. Next Steps

The national action plans developed in outline by the working groups will hopefully serve as a basis for action to improve training and employment opportunities of persons with disabilities by governments, employer and worker organizations and DPOs in their respective countries. The Technical Consultation provided the opportunity for representatives of each of these groups to liaise with each other and this will hopefully set the scene for future collaboration to implement these plans at national level.

As a follow-up to Technical Consultation, the ILO-DCI project will provide support to participating countries, in order to improve the formulation and implementation of legislation. This assistance will be provided in the following forms:

- Technical support, on request, in the process of developing or reforming laws and policies on the employment and training of disabled persons;
- A training course for key stakeholders on laws and policies and their implementation in collaboration with a national training institution; and
- Support to a media campaign to promote positive images of disabled persons at work.

In the course of Phase 2, project activities aim to assist countries to implement the Continental Plan of Action of the African Decade of Persons with Disabilities (1999–2009), and the targets for action of the African Union Declaration on Employment and Poverty in Africa, 2004. The activities will be set in the framework of the ILO Decent Work Country Programmes, where these are in place.



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### **Employment of People with Disabilities: A Human Rights Approach ILO Tripartite Technical Consultation East and Southern Africa Addis Ababa, 23-25 September 2005**

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