



Laws Protecting Rights of People with Disabilities

Argentina • Australia • Canada
People's Republic of China • Czech Republic • Egypt
European Union • France • Germany • India • Iran
Israel • Italy • Japan • Mexico • Netherlands
Pakistan • Poland • Russian Federation
Sub-Saharan Africa • Taiwan
United Kingdom • Zimbabwe

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LAW LIBRARY OF CONGRESS
RIGHTS OF PEOPLE WITH DISABILITIES

ARGENTINA

SUMMARY

The 1994 Constitution included a specific provision on the protection of persons with disabilities, requiring that the Congress legislate and promote affirmative action procedures so that the provision and the provisions of applicable international treaties on the rights of the disabled could be implemented. Similar provisions are incorporated in the provincial constitutions as well. Under the General Law for the Protection of the Disabled of 1981, any person whose family, social, educational, and labor integration is affected by a permanent or prolonged functional disturbance, either physical or mental, considering his/her age and social status, is considered disabled. A number of laws and decrees have been adopted to implement policy, including the Law No. 24657 of June 5, 1996, which creates the *Consejo Federal de Discapacidad*, a council designed to integrate efforts on behalf of disabled persons and provide national policy leadership. Laws and Decrees from 1981, 1983, 1994, and 1997, taken together, create a comprehensive system for the protection of the disabled.

Scope of Coverage

Provisions on the disabled cover the following areas:

- Medical benefits
- Educational benefits
- Social security benefits
- Tax exception and incentives
- Employment priorities (government agencies required to have persons with disabilities as 4 percent of the workforce, of which 1 percent must be blind; private employers given tax incentives to hire the disabled)
- Protected workshops to provide rehabilitation, labor training, and integration into the work force
- Priority use of public premises for small businesses
- Extra allowance for family with a handicapped child (and in some cases paid maternity leave)
- Public transportation and public buildings must have facilities for the disabled, including wide pedestrian paths, stairs and ramps, reserved parking spaces, reserved seats on vehicles etc.
- Exemption from various taxes on the acquisition or import of motor vehicles with

special equipment for persons with disabilities

- Public telephones must be provided with equipment for the deaf, mute, and deaf-mute, and telephone companies must provide special telephone services for home use

Legislative Objective

The legislative intent under the Constitutional provision is to give the disabled the same opportunities that a non-disabled person has, so that they will be productive members of the society. Congress is directed under the Constitution to legislate and promote affirmative action procedures to ensure equal opportunity and treatment and the full enjoyment and exercise of human rights by the disabled.

Public Policy Implementation

The Ministry of Public Welfare is the enforcement authority of the General Law. It provides information on problems and conflicts created by disabilities. It renders financial and technical support to the provinces and non-profit private institutions devoted in any way to disabled people. Decree 1027 of 1994 directs the Ministries of Labor, Social Action, and Culture and Education and other government organs to carry out the policies set up for disabled and incapacitated individuals. The *Comision Nacional Asesora para la Integracion de Personas Discapacitadas*, under the jurisdiction of the Executive, was established to conduct studies for the development of the national plan of aid and support for the disable and is the regulatory agency for the *Sistema Unico de Prestaciones Basicas para Personas con Discapacidad* which provides prevention and rehabilitation treatment, educational and therapeutic programs, and special transportation devices for the disabled. The *Comision Nacional de Telecomunicaciones* is the enforcement authority for provisions on the disabled related to telecommunications.

Enforcement and Remedies.

Violations to the Constitutional mandate against discrimination of any kind, including discrimination based on physical traits, are penalized under Law No. 23592, of 1988, which provides for payment of damages. In addition, any crime perpetrated with a discriminatory motive will be punished with a sanction increased by a minimum of one-third and a maximum one-half of the amount applicable. Member of organizations that promote discrimination of any kind and individuals who encourage persecution or hatred may be punished with imprisonment of one month to three years.

Affirmative Defenses.

No information.

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AUSTRALIA

SUMMARY

Prior to 1980, Australian legislation focused on ensuring basic 'services to invalids'. Subsequently, statutes were amended and new ones promulgated, culminating in the national **Disability Discrimination Act 1992** (DDA). This statute and implementing regulations set an **ADA-like** framework for the protection of the rights of disabled persons. In 1994, the Commonwealth (federal) government issued a **10-Year Commonwealth Disability Strategy** to encourage federal agencies to set an example in promoting the national goals of equal opportunity for the disabled. In August 2002, the first set of national standards for equal access to transportation was submitted to Parliament for debate and enactment. Although the entire legislation is designed to ensure overall protection of the rights of persons with disabilities, lingering lack of national standards has delayed reaching the full objective.

Scope

The DDA and implementing regulations apply to all employers, with the exception of the Armed Forces and other defense related employers; to all private and public employees; and to all public and private service providers. The DDA prohibits all forms of discrimination and mandates national standards to guarantee:

- Equal access to education;
- Equal access to employment;
- Equal access to public services;
- Equal access to membership in private organizations;
- The right to be accommodated;
- Barrier-free access to transportation;
- Barrier-free access to telecommunication;
- Barrier-free access to public buildings and services. and regarding access to membership in private organizations;
- Legal recourse and remedies.

Legislative Objective

The DDA constitutes national **civil rights legislation**. The Commonwealth and the States share responsibility for promoting this legislative objective. However, the

Commonwealth assumed legislative authority over the matter in order to facilitate equitable application and treatment of disabled persons regardless of the state of domicile.

The DDA contains operative definitions, foremost of

- “disability”;
- “reasonable accommodation”;
- and “unjustifiable hardship”.

Disability is broadly defined. The statute does not apply to the Military and defense related institutions and companies.

Public Policy Implementation

The DDA established the **Commonwealth Human Rights and Equal Opportunity Commission** (CHREOC). The commission is tasked to:

- Propose parliamentary actions;
- Advise the courts on pending issues under the DDA, either directly or by filing *amicus curiae* briefs;
- Investigate allegations of violation under the DDA;
- Assist in resolving disputes between parties, and to refer unresolved complaints to the courts.

Enforcement and Remedies

The CHREOC monitors compliance with the DDA and federal regulations, and voluntary action plans by service providers. The commission offices

- investigate all allegations of discrimination or violation of the DDA, and, if determined to have merit,
- attempts resolution through conciliation and mediation.

If unsuccessful, the disabled may sue in court. To date, most cases seem to have involved predominantly employment issues.

With regard to remedies, the courts seem to take a “make whole” approach. To date, court awards included

- Reinstatement,
- Back pay,
- Monetary damages, and
- Litigation costs in accordance with the principle “loser pays”.

Affirmative Defenses

The DDA recognizes several affirmative defenses to alleged improper denial of accommodation or service:

- The desired accommodation/service would require services or facilities that are not required by persons without disabilities;
- The desired accommodation would create an unjustifiable hardship under the cost-benefit analysis;
- The disabled applicant/employee lacks the requisite qualifications; and
- The employer or service acted in accordance with the officially approved action plan.

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CANADA

SUMMARY

Canada does not have a single statute equivalent to the Americans with Disabilities Act; instead emphasis is placed on access to justice and enforcement, rather than on the enactment of new legislation to consolidate the large number of laws and regulations in various fields that now apply. There is a statement in the Canadian Charter of Rights and Freedoms adopted in 1983 that extends equal treatment, protection, and benefits to those with mental or physical disabilities. The Canadian Human Rights Act and counterpart legislation in each province extends nondiscrimination provisions to the private sector, with some differences in laws from province to province.

Scope of Coverage

The following protections are provided under the Canadian Human Rights Act and other federal and provincial legislation:

- There is protection against discrimination in hiring, or treatment of an employee based on disability, unless there are *bona fide* reasons for occupational requirements.
- No jobs may be advertised in a way that expresses or implies limitations or preferences based on a prohibited discrimination.
- Employment equity laws apply to the Federal Government and employers who have 100 or more employees; employers must conduct workforce surveys to determine if there is under- representation of any category and develop plans to compensate.
- Each transportation carrier or mode must function in a way that does not have undue obstacles to the mobility of persons with disabilities.
- Public accommodation access is enforced through cases brought by individuals when lack of access constitutes a form of discrimination.
- Telecommunications carriers are required to offer TTY service for the deaf at a discount and must accept only phones that have a switch to make them compatible with hearing aids.

Legislative Intent

Emphasis is placed on access to justice and to the rights of the disabled to non-discriminatory treatment.

Public Policy Implementation

The Canadian Human Rights Commission investigates complaints; provincial commissions do the same. The Canadian Human Rights Act is administered by the Minister of Justice. Other regulations are implemented by the appropriate agencies; for example, the Canada Transport Agency for transportation services.

Enforcement and Remedies

The non-discrimination provisions of the Charter are enforceable only through the courts; standards and tests are still being developed. Cases found by human rights commissions to warrant an inquiry are sent to special, quasi-judicial tribunals that can issue binding, enforceable orders. Commissions can direct employers to take action to comply with the Canadian Human Rights Act, but there are limits on the type of orders it can issue. For example, companies can not be ordered to hire or promote unqualified persons or to use quotas. Failure to file required reports in full can be punished with a fine of up to Can\$10,000 for a single incident or Can\$50,000 for a continued pattern of violations. Criminal sanctions can be applied to transportation providers that do not follow regulations on accessibility.

Affirmative Defenses

In employment discrimination cases, consideration must be given to whether accommodation of a disability would impose undue hardship on an employer. In transportation services, exemptions are based on whether there is an undue obstacle to usage of the service.

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THE PEOPLE'S REPUBLIC OF CHINA

SUMMARY

The Law of the People's Republic of China (PRC) on the Protection of Disabled Persons became effective on May 15, 1991 ("PRC Disability Act" or "Act"). It sets the framework for public programs of assistance and rehabilitation and some private sector actions to integrate disabled persons into mainstream society. The Act's coverage compares favorably with the ADA in terms of scope, although emphasis is given to state guarantees of the disabled's right to work in state organized welfare enterprises, to benefit from sanatoria and rehabilitation centers, private and collective compliance with instructions issued by the state, based on national interest rather than remedial prevention of acts of discrimination. In contrast to the ADA, the PRC Act takes a fundamentally different approach in two areas: (i) the Act defines disability broadly in terms of physical and psychological conditions, and not of functional ability. (ii) Equality is primarily achieved through governmental assistance and rehabilitation, and employment in welfare enterprises, and less through prevention of discriminatory exclusion of the disabled person from all walks of life.

Scope of Coverage

The PRC Disability Act generated a wide range of government programs with little substantive involvement of the private sector. In particular, the Act addresses:

- Assessment of nature and degree of disability and individual needs;
- Assessment and determination of suitable employment;
- Establishment of welfare enterprises;
- Establishing quotas for particular jobs;
- Matching identified jobs/employer with identified disabled person;
- Directing employer to hire identified disabled person;
- Assessing need for and procuring necessary equipment (Wheelchairs, etc.);
- Access to education;
- Providing vocational training;
- Providing technical and some financial assistance for enterprises to employ disabled persons in rural areas;
- Accommodations on the job;

- Providing assistance to generate self-employment (small enterprises, etc.);
- Granting tax relief to create jobs or self-employment;
- Preferential allocation of housing;
- Cost-free transportation for the Blind;
- Scheduling removal of physical barriers in road and other construction;
- Other, such as massages, sanatoria.

Legislative Objective

The PRC Disability Act is clearly intended as state provided and state controlled **welfare legislation**. It does not address individual rights to equal treatment in any area of coverage. The legislative emphasis on **equal rights** for the disabled finds expression in:

- Prohibiting discrimination in general terms;
- Creating employment
- Providing basic services to meet basic needs;
- Providing welfare for persons disabled because of public service (military, etc.);
- Assisting in rehabilitation.

Public Policy Implementation

- **State Council** promulgates criteria for implementation and administration of the mandates under the Act; and
- Classifies disabilities and plans the creation of suitable production jobs.

Enforcement and Remedies

- The Act is vague on what constitutes discrimination or a violation of the Act;
- Denial of employment or of services under a government program for the disabled may be appealed;
- Appeal to the respective government agency;
- Agency failure to resolve controversy may be appealed to state courts;
- Fine or imprisonment for refusal to comply with governmental instructions.

Affirmative Defenses

No information.

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CZECH REPUBLIC

SUMMARY

The rights of persons with disabilities are protected by a combination of special laws, such as the Law on Sign Language, and general legislation like the Building Code. Provisions similar to those of the ADA have been enacted, covering a range of issues.

Scope of Coverage

Under a number of different laws, the following protections are offered:

- Employment—employers to create employment opportunities for the disabled.
- Programs to improve skills and qualifications of the disabled.
- Jobs in some cases reserved for the disabled.
- Public transit access required, with priority seats reserved.
- Free transportation and reserved seats in street cars and buses and 75% reduction in fares on trains for those in wheelchairs under the Social Security Law as amended in 2001.
- Public accommodation measures, including marked parking areas, automatic doors, leveled pavements, and accessible toilets under consideration.
- Buildings with more than three apartments or that are intended to house persons with disabilities, along with buildings designed for public use, are covered to provisions requiring accessibility.
- The Law on Sign Language states that the deaf and hearing impaired have the right to the use of and education about sign language and to the free services on an interpreter in the handling of official business, when in contact with medical services, and in schools, including universities.

Legislative Objective

The purpose of the various provisions on persons with disabilities is to improve their living conditions. Equality of treatment is not addressed.

Public Policy Implementation

New legislation is considered in consultation with disability organizations, whose role is to advocate rights and improve services. There is a coordination committee that reports to the Prime Minister's Office; it includes representatives of the concerned

Ministries and of organizations of persons with disabilities. In addition to improving coordination of programs and legislation and promoting effective use of resources, the committee is designed to increase public awareness.

Enforcement and Remedies

Compliance is enforced by the appropriate government offices, such as the Ministry of Local Development for the Building Code. Employers must report yearly compliance with hiring requirements. In addition, legal remedy for infringements of the rights of the disabled is available through the courts, and a non-judicial mechanism is also available through the public administrative offices.

Affirmative Defenses

No information.

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EGYPT

SUMMARY

The 1975 law No. 39 **Rehabilitation of Disabled Persons** ("Act") governs the rights of persons with disabilities. It is designed to assist the disabled to earn one's livelihood through government sponsored training, employment quotas, and job protection. The law seems in the nature of **affirmative action**. It does not provide individual right against discrimination.

Scope of Coverage

The Act is limited in scope. It applies to all public employers and private employers with more than 50 employees. The provisions govern:

- Rehabilitation programs and assistance;
- Mandatory participation or loss of social security payments;
- Special vocational and other training;
- 5%-Quota in public and private employment;
- Government-maintained roster of vacant suitable positions;
- Enforcement and penalties for violation.

Legislative Objective

The main objective is to set a framework for rehabilitation of persons with disabilities and their integration into the work force. The Act defines "disabled" as a person unable to assume or maintain a job on her/his own ability due to muscular, mental, or sensational weakness, since birth or subsequently obtained. The definition is one of few relying on functional ability.

Public Policy Implementation

Minister of Social Affairs is responsible for:

- Establishing necessary educational and training institutions;
- Monitoring mandatory enrollment in rehabilitation programs;
- Maintaining roster of rehabilitated persons in the Employment Office;
- Maintaining roster of suitable positions;

Enforcement and Remedies

Unjustified denial of employment carries a penalty of a fine of 100 Egyptian Pounds or imprisonment. In the event the disabled person is denied proper pay, he/she may seek an order for garnishment against the employer.

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FRANCE

SUMMARY

French disability legislation developed gradually over the course of the 20th century, with efforts culminating in the 1975 Law. Under that legislation, the integration of all disabled people into the educational, employment, and social life of the country becomes a national obligation. Additional laws specifically addressing education, employment, training, transportation accessibility, building requirements, roads, access to sporting and cultural events, and other social benefits were adopted.

In addition, the Penal Code has been amended to extend provisions on non-discrimination to disabled persons.

Scope of Coverage

Legislation on persons with disabilities covers the following areas:

- Enterprises with more than 20 employees must hire 6 percent workers recognized as disabled or pay the equivalent in contributions to a development fund.
- Salaries must not be lower than those of the equivalent non-disabled employees, unless productivity is diminished (and in that case the difference is paid from the central development fund)
- Sheltered workshops may be established publicly or privately to employ some of the permanently disabled.
- Disabled workers have the right to have vocational rehabilitation and training.
- Protection is provided against discrimination under the Penal Code and the Labor Code.
- Disabled children have the right to education, with priority given to schooling in the mainstream environment and those with serious disabilities are given specially adapted individual transportation to and from school.
- Public transportation must be adapted to the needs of the disabled, with older trains being replaced by equipment that accepts wheelchair and has adapted restrooms; airline companies have signed a "code of good practices" relating to accessibility; rules are in force governing access to public or private road networks, including stipulations on parking spaces; and public buses are being adapted.
- Public housing constructed since 1983 must be adapted for wheelchairs and accessibility. requirements are in place for workplaces with more than 20 employees.
- Physical and sports education programs must take into account different types

of disabilities.

- Use of the Internet is being promoted for disabled persons with financial aid available to workers and students to acquire equipment to adapt computers to specific disabilities.

Legislative Objective

The object is to integrate all people with disabilities fully into society, with no barriers to participation in education, work, and social life and to insure the maximum level of autonomy for each disabled person. The 1975 law states that families, central and local government authorities, public organizations, social security organizations, public and private sector associations and other groups, and enterprises must all work to achieve the objective.

Public Policy Implementation.

Organizations and committees representing persons with disabilities are consulted when policies, laws and regulations on related issues are drawn up.

Enforcement and Remedies.

Various courts may enforce the rights of the disabled, depending on the nature of the claim of discrimination. Associations set up to defend and assist disabled persons and labor unions are authorized to take legal action on behalf of individuals with disabilities. In addition, there is the option of using the mediator established in 1973 to restrain the excesses of the administration and provide an avenue of remedy. The mediator may investigate complaints that the administration has not fulfilled its mission and may make proposals for reform.

Employers that do not fulfill their obligation to hire disabled workers may be fined. Discrimination based on state of health or disability is punishable in some cases by two years in prison and a fine of 30,000 *euro*.

Affirmative Defenses

No information.

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INDIA

SUMMARY

Under the Constitution of India, matters of welfare of the general public as well as of disabled persons are subjects of state legislation. However, in 1992, India signed the Resolution of the United Nations Economic and Social Commission for the Asian and Pacific Region in which the signatories resolved that each country enact legislation ensuring equal rights of the disabled. This international commitment authorized India to pass the national **The Persons with Disabilities (Equal Opportunities, Protection of Rights, and Full Participation) Act 1995 (No. 1 of 1996)** ("PDA 1995"). The statute incorporates the UN standards. It focuses mainly on prevention of disabilities, integration into the mainstream of society, and public programs for rehabilitation. However, the act also prohibits abuse and neglect of the disabled and offers avenues to seek recourse against violations. The states are obligated to implement the PDA 1995 and to administer the federal programs to serve legislative mandates. In addition, several states passed supplementary legislation.

Scope of Coverage

The PDA 1995 and supplemental state statutes apply to public and private employers and to all disabled persons. Most provisions set forth public policies and regulate public programs on specific benefits for the disabled. In particular the PDA 1995 governs:

- Preventive health care;
- Public welfare and social security for the disabled;
- Access to education by reserving 3% of class seats for disabled children;
- Education free of cost until the age of 18 years and special educational institutions;
- 3%-quota of public employment and record keeping of employment;
- Job protection for incumbents but not applicants;
- Access to publicly funded recreation and other publicly funded accommodations;
- Tax and other financial incentives to establish businesses;
- Access to transportation and safety of disabled in public places;
- Implementation of the PDA 1995;
- Legal enforcement and remedies.

Legislative Objective

Notwithstanding the act's terminology of protection against discrimination, the provisions of the PDA1995 are predominantly **service** oriented. The act encourages the Federal and state governments to work together with NGOs and private organization to prevent disabilities and to provide basic living conditions for disabled persons to integrate them into society. This is mainly achieved through public and private programs, spanning the gamut from education of children free of cost, to financial incentives for businesses creating jobs for the disabled. To this end the PDA 1995

- Defines 'disability' as
 - "no less than 40% impairment of vision and hearing
 - leprosy-cured
 - locomotor disability
 - mental retardation and mental illness;
- Provides for a wide range of public or publically funded programs;
- Provides for interdepartmental coordination; and
- Provides for affirmative actions by the government;

Public Policy Implementation.

The PDA 1995 established two organizations to assist in implementing the act's objectives:

- **Coordination Committee**
 - federal and state
 - assists in developing policies,
 - monitors and evaluates impact of policies and government plans
 - promotes public awareness and participation;
- **Disability Commission**
 - supervises compliance with the Act,
 - monitors use of public funds for the disabled, and
 - serves as first line enforcement office.

Enforcement and Remedies.

The PDA 1995 created the office of the Disability Commissioner to

- Exercise quasi-judicial powers:
 - investigate allegations of violations,
 - monitor use of public funds for programs for the disabled,
 - deny provider public assistance funds
 - sue violator in court, and
 - levy some fines.

In addition, the disabled may file in court against all who denied

- Mandatory accommodations, such as access to public transportation, or admission to part-time schooling, or equipment;
- Any affirmative action, such as discounted rates when establishing a business, allotment of land, or failure to provide preventive healthcare or rehabilitation center.

With regard to remedies, the PDA 1995 empowers the Commissioner to withhold public funds, or issue a cease and desist order. Fraudulent claims of benefits for the disabled carry imprisonment or fines up to 20,000 Rupees.

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IRAN

SUMMARY

In November 1959, Iran adopted the **Recommendation No. 99, Vocational Rehabilitation of the Disabled, General Conference of the International Labor Organization, 38 Sess., June 1, 1955.** ("Act") This legislation sets out the framework for the protection of persons with disabilities. Its scope is limited to rehabilitation for targeted employment opportunities, primarily achieved through government sponsored and administered programs, and equal treatment on the job. Such programs are the responsibility of one or several public authorities. No reference is made to individual civil rights.

Statutory Scope

The Act applies to all employers and disabled employees. "Disabled person" is defined in functional terms as "an individual whose prospects of securing and retaining suitable employment are substantially reduced as a result of physical or mental impairment."

In particular the Act covers;

- Vocational rehabilitation services for employable disabled persons;
- Equal pay for work equal to that performed by non-disabled persons;
- Development and administration of services to the disabled;
- Administrative responsibility of government agencies;
- Targeted job identification, placement, and accommodations;
- Identification of degree of employability;
- Employment quotas;
- Prohibition of disparate treatment.

Legislative Objective

The Act aims to create or to ensure opportunities for disabled persons to achieve and/or maintain income producing employment. It is not intended as civil rights legislation, although it clearly mandates equal treatment. The general character seems to be that of **social legislation.**

Public Policy Implementation

Under the Act recommends to assign overall responsibility for development and

implementation of the services to one authority. In the alternative, responsibility may be jointly exercised by all affected government resort department, with one having oversight. No information is available concerning the present administration.

Enforcement and Remedies

The Act does not seem to recognize or to establish individual rights and statutory obligations. Consequently, no information is available with regard to enforcement of policies and rights and remedies for violation of such.

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ISRAEL

SUMMARY

On January 1, 1999, the **Equal Rights for Persons with Disabilities Law of 1998** ("1998 Act") went into effect, expanding a prior general statutory framework which recognized disabled persons' basic rights to enjoy constitutional freedoms and privileges as citizens which, among other, assured barrier-free access to polling places. The amendment mandates that specific issues are addressed through supplementary regulations. To date, several such regulations have been promulgated, spanning from guarantee of minimum pay to preferential assignment of parking spaces at the place of employment. The new statute and implementing regulations create a framework of protection very similar to that afforded under the Americans with Disabilities Act and the Rehabilitation Act.

Scope of Coverage

The 1998 Act coverage is all-inclusive and appears modeled after the ADA:

- Definition of disability
- Commission for Equal Rights of Persons with disabilities
- Advisory Committee
- Employment
 - hiring
 - reasonable accommodations in the work place
 - promotion
 - termination
 - employer programs of affirmative actions
 - principle of proper representation within the workforce
 - through diversity
 - quotas in public employment
- Public accommodations - services and entertainment
- Removal of barriers
 - Access to public transportation

- Access to public buildings
- Building code requirement for private and public sectors

Legislative Intent

The 1998 Act and supplemental regulations are **civil rights legislation** with a primary purpose of protection of equality and human dignity of persons with disabilities through:

- Integration and enabling to participate actively in all areas of societal life;
- Prohibiting disparate treatment based on disability;
- Specifically allowing for affirmative corrective actions to remedy prior or present discrimination based on disability; and
- Advancing the basic principles through appropriate public policies.

Public Policy Implementation

The 1998 Act establishes the **Commission for Equal Rights for Persons with Disabilities** and a special **Advisory Committee**. The commission and committee are tasked:

- To supervise implementation of general public policy and government regulations;
- To promote equality through prevention of discrimination; and
- To promote opportunities for the disabled to participate actively in society.

Enforcement and Remedies

The Labor Courts have jurisdiction to hear complaints by a disabled person alleging of violation of the 1998 Act. The courts may grant:

- Injunctive relief;
- Compensatory damages; and
- Criminal penalties for violation of the prohibition of discrimination and retaliation.

Affirmative Defenses

The following affirmative defenses are available:

- The grieved disparate treatment constitutes an affirmative action to correct prior or present discrimination;
- The requested accommodation is too costly or almost impossible = unreasonably

burdensome;

- The disabled applicant /employee lacks the necessary qualifications for the desired position. (Similar to ADA)

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ITALY

SUMMARY

Law on the disabled in Italy is founded on constitutional principles. The Constitution recognizes and guarantees the inviolable human rights and requires the performance of certain fundamental duties, including the duty to work. These rights and duties apply to citizens equally, without regard to social and personal conditions. The duty to work, consequently, also applies to persons with disabilities, who must contribute, within the limits of their abilities, to the community. An additional constitutional consideration is the provision on the protection of the health of the individual. Furthermore, the Constitution specifically addresses the situation of citizens unfit for work in a provision that constitutes the focal point for the constitutional protection of the disabled. It establishes that every citizen unfit for work and without means of livelihood has the right to maintenance and social assistance, and that the unfit and disabled have the right to vocational instruction and training.

Legislation for the protection of persons with disabilities developed over the years in a fragmentary fashion until 1992, when Parliament approved the first organic law, a type of charter for disabled people that incorporated some of the previous provisions and established the general principles from which appropriate rules may be developed in specific areas to better address the needs of people with disabilities, and to guide the government institutions in their actions.

Scope of Coverage

The provisions on the disabled cover:

- Support services and job placement, plus protection against dismissal (quotas based on the size of the business—e.g. enterprises employing more than 50 workers must hire 7 percent disabled workers)
- Education must be available at all levels, with specific technical and educational assistance for disabled students attending universities
- State and private facilities open to the public must be accessible; new buildings and renovations subject to rules on removal of architectural barriers
- Public transportation must be as available to the disabled as anyone else
- Grants and reduced tax rates apply to the purchase of specialized motor vehicles and special parking spaces must be reserved
- Companies licensed for the distribution of radio, television, and telephone services

are to facilitate access by persons with disabilities

Legislative Objective

The intent is to assure persons with disabilities of the right to overcome their conditions with the support of the national community. It is considered to be a duty of individuals and of State institutions to make this happen and to make disabled people's participation effective and productive for society.

Public Policy Implementation

The 1992 Law provides for the implementation and monitoring of its provisions at the central and local government levels and assigns the tasks of coordinating the activities of the administrative offices responsible for achieving the objectives set up by the law and of promoting policies that support persons with disabilities to the Minister for Social Policies. Some aspects of the policy related to employment are handled by the Ministry of Labor.

Enforcement and Remedies

Article 36 of the 1992 establishes that punishment for certain crimes, including non-negligent crimes against the person, is increased by one-third to one-half when the victim is a disabled person. Public and private employers are subject to fines imposed by the Provincial Directorate of Labor for violation of their obligation to hire disabled workers. In the case of public facilities, licenses for use are not issued if the building is not in compliance with rules on accessibility and removal of barriers.

Designers, project directors, and engineers are personally responsible for insuring compliance and subject to fines or suspension from their professions for up to six months if their projects do not comply.

Affirmative Defenses

No information.

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JAPAN

SUMMARY

Japanese law recognizes the need to promote equal rights and the general welfare of persons with disabilities. The Basic Law of 1999 mandates the government to establish basic plans concerning policies for disabled persons. The mandate led to various statutes and regulations, dealing with substantive measures for access to employment, education transportation, and public services, as well as allocating administration of government programs and issues of implementation and enforcement between the central government and prefectures and municipalities.

Scope of Coverage

The various statutory provisions apply to private and public employers and organizations and all disabled persons. Disability is defined in medical terms as impairment of physical, mental, and psychological health. It is unclear whether the "equal rights" concept reaches service providers in general, however, the laws expressly cover access to telecommunication services. In particular the laws govern:

- Integration into mainstream local education systems;
- Establishment of special educational institutions;
- Mandatory employment quotas and levy for sub-quota employment of disabled;
- Other affirmative actions;
- Financial incentives for exceeding quotas;
- Access to barrier-free transportation;
- Municipal parking;
- Access to public buildings;
- National standards and time frames to achieve barrier-free access;
- National priority program to provide access to telecommunications;
- National organization to assist business to install disabled user-friendly technology;
- Enforcement of compliance.

Legislative Objective

The Japanese legislation benefitting disabled persons is primarily intended to meet their basic needs. In contrast to the ADA, the laws seem to favor more the **affirmative action** approach, thus obligating society in general to contribute to the overall objective through:

- National employment quota for the disabled;
- Excising a levy for not meeting the government quota;
- Financial awards for surpassing the quota;
- Financial assistance to install user-friendly technology; and
- Establishing national standards and time frames for removing barriers.

Within this framework, access to and integration into information technology enjoy particular attention, entrusted to the **Telecommunication Advancement Organization of Japan - TAO**.

Public Policy Implementation

Reflecting the legal bases for various government programs for the disabled, the authority and responsibility for implementation rests with the respective government organization. In addition to the respective government ministries, the following need mentioning:

- The Japan Association for Employment of Persons with Disabilities;
- The Corporation for advanced Transport and Technology; and
- The Telecommunications advancement Organization of Japan (TAO).

Enforcement and Remedies

The report mentions the assessment of fines for failure to comply with national standards for removing barriers in transportation and construction. The 2002 amendments obligate the transportation authorities to have all new trains made accessible for persons with disabilities. The same holds true for the construction industries with regard to new buildings.

Affirmative Defenses

No information available.

LAW LIBRARY OF CONGRESS
RIGHTS OF PEOPLE WITH DISABILITIES

MEXICO

SUMMARY

The Constitution of the United States of Mexico guarantees equal protection of the law and recognizes a citizen's right to general welfare including the right to employment, to education, housing, and health care. These constitutional guarantees provide the basis for all welfare legislation safeguarding the rights of persons with disabilities, in particular the **General Law on Health 1984**, the law **National System of Social Assistance**, and on the **National System for the Integral Development of the Family**. In 1995 and 2001 some amendments were passed focusing on the disabled persons' need to barrier-free access to medical facilities and public buildings. The latter is limited to the Federal District and expected to serve as an example for corresponding state action.

Scope of Coverage

With the exception of the mentioned federal statutes, legislation and administration of matters of the general welfare are subject to the jurisdiction of the States. Services and entitlements under federal legislation may be summarized as follows:

Social Security Legislation:

- Defines disability;
- Provides for medical insurance and pensions for disabled persons;
- Considers disabilities when determining family allowance.

General Law on Health covers:

- Social assistance;
- Education and vocational training;
- Employment during rehabilitation;
- Access to public buildings; and
- Promotion of public awareness of the needs of persons with disabilities.

National System of Social Assistance covers:

- Technical support for educational programs;
- Technical support for States and NGO programs;

- On-the-job training;
- Social assistance providers;
- Preventive and rehabilitation programs.

Legislative Objective

The cited national statutes are intended as **social legislation** to provide a safety net for all citizens, including persons with disabilities. Growing public awareness of the needs of the disabled led to the recent amendments which, in turn, suggest a public policy of equal protection and equal rights of the disabled as active members of society through:

- Reference to the definition of disability of the Social Security Act;
- Amending existing social legislation to address particular needs of persons with disabilities;
- Emphasis on prevention and rehabilitation and uniformity of public actions.

Public Policy Implementation

It appears that implementation of all national and state public policy programs is left to the States. One prime example is the National Public Access Program 2001, introduced by and applicable only in the Federal District.

Enforcement and Remedies

There is no individual legal recourse similar to the ADA for discrimination in terms of improper exclusion or denial of a right based on disability. Individuals may sue in court for any violation of law. Violations carry civil and criminal penalties.

LAW LIBRARY OF CONGRESS
RIGHTS OF PEOPLE WITH DISABILITIES
THE NETHERLANDS
SUMMARY

In July 2002, the Dutch parliament commenced the approval process for the **Bill on Equal Treatment of People with a Handicap or Chronic Illness** ("Bill") which will amend present legislation when it becomes effective in 2003. The Bill will increase present rights of the disabled in the areas of vocational training, employment, and public transportation. In addition, parliament is considering yet another amendment covering the areas of access to public buildings, to services, and housing. when adopted, the amended Bill will create an ADA-like protection against discrimination based on disabilities. At the present time, the provisions of the **Law on the Integration of Persons Disabled to Perform Work 1998**, as amended still govern. The Dutch welfare system provides an extensive safety net for the disabled, particularly with respect to rehabilitation.

Scope of Coverage

Present legislation as extended by future amendments are primarily designed to ensure equal opportunities for the disabled in employment and vocational training, including accommodation, as well as access to transportation and means of telecommunication. In particular, present and future law covers:

- All employers;
- Equal employment opportunity in all phases of employment and employment quotas;
- Education and vocational training;
- Accommodations in employment and services;
- Financial assistance for the disabled to finance additional costs and equipment;
- Financial incentives for employers to accommodate the disabled at the work place;
- barrier-free access to buildings and means of transportation;
- access to means of telecommunication;
- Departmental responsibilities;
- Enforcement.

Legislative Objective

The Law is intended to enable persons with disabilities to participate in the work life by:

- Removing organizational obstacles and promote integration;
- Offering necessary financial assistance and defraying costs for accommodations;
- Providing equal opportunities; and
- Coordinate all public programs into an extensive safety net.

In its final amended form, the present, mostly social welfare law will have completed its transition to **civil rights legislation**.

Public Policy Implementation

Coordination and implementation of public programs and laws are the responsibility of

- The Ministry of Social Affairs and Employment;
- The Ministry of education, Culture, and Science;
- The Ministry of Transport, Public works and Water Management;
- The Ministry of Public Housing, Physical Planning and the Environment.

Starting in 2003, the **Committee on Equal Treatment** will oversee compliance with the provisions of the amended Bill.

Enforcement and Remedies

Future complaints of discrimination may be filed with the **Committee on Equal Treatment**, with appeal to the court. Presently, litigation seems to be the only legal recourse.

Affirmative Defenses

The amended Bill will allow the following affirmative defenses:

- The challenged disparate treatment is necessary ensure safety and health;
- The challenged disparate treatment is based on a rule, norm, or practice intended to benefit the disabled;
- The challenged preferential treatment is to remedy prior discriminatory effects.

LAW LIBRARY OF CONGRESS
RIGHTS OF PEOPLE WITH DISABILITIES
PAKISTAN
SUMMARY

In the wake of the UN declaration of 1981 as the Year of the Disabled Person, the Pakistan government engaged in an awareness campaign which culminated in the national **Disabled Persons (employment and Rehabilitation) Ordinance 1981** ("Ordinance").

This legislation primarily provides guidelines and sets out implementation policies including those previously adopted by NGOs. The Ordinance established the National Council and Provincial Councils whose main tasks are to formulate and implement policies. Oversight rests with the National Council. The primary focus lies on government administered disability assessment, job referral system, employment exchange, and training/rehabilitation programs partly funded through a tax levied on employers for not meeting the hiring quota. Covered are employers with more than 100 employees.

Scope of Coverage

The provisions of the Ordinance govern employment and rehabilitation, training, funding, and administrative processes. In particular

- Operative definitions, such as "disability", "disease", "commercial establishment", and "council";
- Authority and jurisdiction of the National Council and provincial councils;
- Enforcement authority;
- Certification of nature and degree of disability and job qualification;
- Referral system and employment exchange;
- Hiring quota of 1% and levy in the amount of one full salary in lieu of meeting quota;
- Disability Fund (levies, donations, grants);
- Use of Disability Fund and accounting;
- Duties and responsibilities of NGOs;
- Training programs, training centers, rehabilitation;
- Enforcement.

Legislative Objective

The Ordinance is in the nature of a governmental **integration policy and social**

legislation, reflecting society's obligation as a provider for meeting basic needs. This objective is reflected in:

- No emphasis on individual civil right
- Government control over training, employment, and rehabilitation;
- Taxation of "evaders" and legal enforcement.

Public Policy Implementation

Implementation and oversight are entrusted to the **National Council** and **Provincial Councils**. These are large representative bodies with members from all walks of life.

Provincial Council are responsible for

- Formulating policies and advising local government agencies;
- Implementing referral systems, employment exchanges, training programs;
- Administering allocated financing from the Disability Fund.

The National Council is responsible for

- Exercising oversight over provincial councils;
- Formulating national policies;
- Administering national funds.

Enforcement and Remedies

The National Council and provincial councils may complain in their own right with the Magistrate First Class alleging violation of the Ordinance.. Non-payment of salary equivalent into the Disability Fund is punishable with a fine.

LAW LIBRARY OF CONGRESS
RIGHTS OF PEOPLE WITH DISABILITIES

POLAND

SUMMARY

The Republic of Poland does not have a comprehensive law similar to the ADA. The rights of people with disabilities in Poland are protected by various international and domestic laws. The Republic of Poland has signed most international conventions related to disabilities. The Polish Constitution also guarantees equal or preferential treatment to people with disabilities. In 1997, the Polish government adopted the **Charter of Rights of Disabled People** ("Charter") which embodies the official policy and may serve as guidance for the interpretation of rights and obligations referred to in other legislation applicable to the disabled. The Charter defines disability in terms of functionality, not unlike the ADA. Accordingly, persons "whose physical, psychological, or mental capacity, permanently or temporarily, hinders, limits, or disables their everyday life, study, work, or fulfillment of social roles, according to legal or customary rules" are considered disabled and entitled to special protection or treatment under the constitution. However, these policies have not led to special legislation. To date, persons with disabilities are covered by general laws applicable to all inhabitants. The same holds true with regard to enforcement of rights.

Scope of Policy Statement in the Charter

The charter does not distinguish between public and private employers, and extends the policy to a wide range of issues. Included are:

- Access to
 - goods and services
 - health treatment, medical care, early diagnosis, rehabilitation and treatment;
 - education, mainstream, special, or individual;
 - orthopedic objects, aid devices, and rehabilitation equipment;
 - comprehensive rehabilitation with the purpose of social adaptation;
 - the open labor market according to qualifications, education, and abilities;
 - professional counseling and employment referral;
 - accommodations;

¹ See country report on page 1.

- psychological, pedagogical, and other specialized help enabling the achievement, development, and improvement of general and professional qualifications;
- social security and tax benefits;
- Barrier-free access to
 - offices, voting stations, and other public utilities
 - means of transportation
 - information and communication.
- self-governing representation of their group and ability to express their opinions on all bills that relate to disabilities;
- full participation in public, social, cultural, artistic, sport, and recreation and tourism life appropriate to their interests and needs.

Constitutional Underpinning of the Charter

The Charter explicitly states that rights of disabled people are guaranteed by the Polish Constitution, the Universal Declaration of Human Rights, the Convention on the Rights of the Child, and the Standardized Rules for Providing Equal Opportunities for Persons with Disabilities, as well as other international and domestic laws. The Constitution of the Republic of Poland provides special treatment to disabled persons to accomplish or expedite full integration into society through obligating public authorities to assist disabled persons in securing their subsistence, adaptation to work, and public communication, in accordance with the law.

Public Policy Implementation

The Charter requests central and local governments to undertake steps necessary for fully effectuating these policies in enacting appropriate laws and regulations. To date, any policy implementation is based on the general **Law on Professional and Social Rehabilitation and Employment of Persons with Disabilities 1997**. Professional rehabilitation is administered by district employment agencies, and social rehabilitation by local centers for family assistance.

Enforcement and Remedies

No special information is available. It appears that violations may be enforced under regular civil and criminal provisions for violation of law.

Affirmative Defenses

No information available.

LAW LIBRARY OF CONGRESS
RIGHTS OF PEOPLE WITH DISABILITIES

RUSSIA

SUMMARY

In 1995, the Russian Parliament passed Federal **Law No. 181 on Social Protection of Persons with Disabilities** ("Disability Act" or "Act"). The Act does not define disability but seems to rely on medical determination of a person's status as disabled. This federal legislation sets the framework for a national public welfare system for the disabled, administered at the federal and state level. The Disability Act does not appear to recognize a personal enforceable civil right to be integrated. Thus, the Act's objective differs from that of the ADA.

Statutory Scope

The Disability Act applies to all public and private employers of disabled persons, and public and private service providers. It prescribes a 3% quota for government employment, and a 10% quota of reserved parking. The Act regulates entitlements in the areas of education, employment, access to transportation, public accommodations, and means of communication. In particular the coverage extends to:

- Education and learning materials free of cost;
- Employment in public enterprises or organizations;
- Accommodations regarding priority housing and public services;
- Equipment;
- Barrier-free Access to
 - Transportation,
 - Public buildings and housing,
 - Recreational and sports facilities;
- Unrestricted access to information; and
- Tax relief for costs of
 - equipment, and
 - rehabilitation.

Legislative Objective

The Disability Act is intended to protect the economic and political rights of persons with disabilities. However, contrary to the ADA, it does not protect against

unjustified exclusion. This Act is more in the nature of **welfare legislation** based on the premise that society is obligated to provide the means needed to integrate the disabled to some extent into everyday life.

Public Policy Implementation

Implementation and enforcement of the provisions of the Disability Act is the responsibility of the **Ministry of Social Protection of the People**. For all practical purposes, the Act has not yet been implemented and, thus, not enforced. The latest federal target program is to solve existing problems.

LAW LIBRARY OF CONGRESS
RIGHTS OF PEOPLE WITH DISABILITIES

TAIWAN

SUMMARY

The Law on the Protection of the Physically and Mentally Handicapped was enacted in 1980. It covers medical rehabilitation, education rights and interests, promotion of employment, welfare services, welfare organs, and penalties. A number of measures have been adopted to implement the Law. Also, the Constitution of the Republic of China contains a general stipulation on equal protection under the law. The Additional Articles of the Constitution, as last amended in 2000, further provide that the State is to guarantee insurance, medical care, obstacle-free environments, education, vocational guidance, and support and assistance in every day life to those with physical or mental handicaps.

Scope of Coverage

The following protections are provided under various legal instruments:

- For government, school, or other public institutions with more than 50 employees, 2% of those hired must be disabled workers; for the private sector, the rule is 1% for entities with more than 100 employees. As an alternative, institutions may contribute to a Special Employment Fund Account for the Disabled, to be used to offset expenses for accommodating work facilities for disabled employees.
- Quotas for priority approval of applications by the disabled for licenses for retail stores and for applications to purchase or rent public housing or parking spaces are established. Low-interest loans are available for associated costs.
- The Law prohibits discrimination in education or employment and other unequal treatment.
- Only the blind are allowed to engage in the profession of massage.
- Welfare funds are available for the disabled that have economic need and other services, including such things as home nursing, meals on wheels, day care, employment referral services, etc., are offered through local governments.
- Measures are to be adopted at all levels of government to enrich the cultural and spiritual lives of persons with disabilities, including such measures as providing reading materials and closed captioning of television programs.
- Half-price fares are available, in addition to preferential seating, on various means of transportation; 2% of parking spaces in large lots are reserved; school transportation is provided free of charge to disabled children.
- Free admission is provided for the disabled and any needed companion for entrance

to scenic areas, places or entertainment, and cultural and educational facilities and barriers to entrance and participation are forbidden.

- Newly built public buildings of all sorts must be able to accommodate the disabled; for other facilities, obstacle-free access is to be provided where possible, unless there are special circumstances such as military control, historic preservation, or natural environmental factors that prohibit this.
- Disabled litigants are given assistance as needed when they are parties to or giving evidence in criminal cases.
- Telecommunications receivers or other special delivery services must be provided as needed to persons with disabilities.

Legislative Intent

The goal of the Law on the Protection of the Physically and Mentally Handicapped is to safeguard the lawful rights and livelihood of the physically and mentally disabled, protect their opportunities for equal participation in society, and unite government and private resources to plan and carry out measures for their support and welfare. The underlying purpose is to assist the disabled to develop and to attain independence.

Public Policy Implementation

The overall authority in charge of the programs for the disabled is the Ministry of the Interior, but other government offices play a role, with various organs having established protection committees for those with disabilities. An investigation of the living requirements of the disabled is to be made at every level of government at least every three years. When the national census includes a survey of the disabled population, and every level of government is to make an annual report to the people's representative body on the conditions of the implementation of the Law on the Protection of the Physically and Mentally Disabled.

Enforcement and Remedies

Fines are imposed for violations of the various provisions protecting the disabled, including the provisions on equal pay for equal work and the prohibition against discriminatory treatment, the provision concerning reserving the massage profession for the visually disabled, and the provisions concerning preferential treatment for the disabled in business licensing or housing and parking space permits. In some cases, businesses will not be issued a profit-making institution registration certificate or a public housing or parking space user permit. Those who set up welfare agencies for the disabled without the proper permits or who operate such an agency without following related regulations may also be punished with a fine. In addition, fines are imposed for failure to provide obstacle-free environments in new public facilities; in some cases, if the problems are not corrected, water or electricity to the facility may be cut off.

Affirmative Defenses

An entity must be able to prove that it does not have the ability to provide special features for persons with disabilities in order to refuse provision of educational, employment, or other opportunities or accommodations.

LAW LIBRARY OF CONGRESS
RIGHTS OF PERSONS WITH DISABILITIES
UNITED KINGDOM
SUMMARY

In the United Kingdom, the rights of persons with disabilities are governed by the **Disability Discrimination Act 1995** and its companion act on enforcement, the **Disability Rights Commission Act**. In September 2002, the newly enacted **Special Educational Needs and Disability Act 2002** took effect. The laws offer comprehensive protection. Disability is broadly defined as a "physical or mental impairment which has a substantial and long-term effect on the [disabled's] ability to carry out normal day-to-day activities." This definition echoes the ADA's in its emphasis on a person's ability to function in everyday life situations. The referenced laws apply to all service providers and employers with more than 15 employees. Exempt are employers with less than 15 employees, charities, the Armed Forces, police officers and prison guards, and acts relating to national security.

Scope of Coverage

The DDA entails administrative, operational, and enforcement provisions. This comprehensive legislation covers a wide range of issues, such as:

- Definition of disability
- Education
 - integration into mainstream
 - choice of institution
- Employment
 - recruitment
 - working hours
 - promotions
 - reduction-in-force
 - reasonable adjustments (accommodations)
- Access to
 - public accommodations
 - goods and services
 - transportation, especially public service vehicles

- Telecommunications
 - requirements to accommodate are part of licence
 - free directory service
 - special tariffs and payment plans
 - priority maintenance service
- Housing
- Enforcement of compliance

Legislative Objective

The statutory scheme is in the nature of **civil rights legislation**. It recognizes disabled persons as equal members of society, entitled to be fully integrated in societal life. Taken together, the acts offer comprehensive protection of their rights. The enforcement mechanism is designed to ensure equal opportunities, based on a **cost-benefit** approach.

Public Policy Implementation

The Secretary of State has final authority over policy on and enforcement of the statutory rights of persons with disabilities. His office is tasked to issue guidelines on compliance with the provisions of the acts and on disability determination. Two statutory bodies were successively created to assist the Secretary of State:

- The National Disability Council advised on policy, and, in 1999 was replaced by the
- The Disability Rights Commission monitors and enforces compliance
 - advises employers and disabled employees,
 - investigated complaints,
 - attempts settlement,
 - refers to outside conciliation,
 - conducts in-house mediation,
 - files in court.

Enforcement and Remedies

The laws prohibit any disparate treatment based solely on disability. Employment contracts are rendered void to the extent that their terms violate provisions of the DDA. The disabled person may file a complaint with the Disability Rights Commission which may file *sua sponte* against the alleged discriminating employer. contrary to the

ADA, the employer has the burden of proof. Service contracts conflicting with provisions of the DDA are void. The disabled person may sue the violating provider in court.

The following remedies are available under the statutes:

- Declaratory judgement,
- Compensatory damages,
- Punitive increase of compensatory damages for continued discrimination,
- Order to accommodate.

Affirmative Defenses

Alleged disparate treatment may be defended on the basis that

- the desired action constitutes an undue burden for the employer because
 - the employer action was reasonably suited to prevent discrimination;
 - the desired action is impracticable and would create financial restraint.

LAW LIBRARY OF CONGRESS
RIGHTS OF PEOPLE WITH DISABILITIES
ZIMBABWE
SUMMARY

In 1992, Zimbabwe enacted the **Zimbabwean Disabled Persons Act** ("Act") which regulates the rights of disabled persons in the areas of barrier-free access and employment. The Act is under the jurisdiction of the Minister of Public Services, Labor and social Welfare, vested with rule-making power. The act extends to the entire population. There is a National Disability Board tasked with the administration of the act, as well as certain aspects of its enforcement. The law established penalties for violations. It has all the characteristics of a **civil rights** statute.

Statutory Scope

The Act prohibits discrimination based on disabilities in two main areas of human activities, i.e., access to buildings and services, and employment. Specifically, the act covers;

- Access to
 - public and private premises
 - service or amenity ordinarily provided to members of the public;
- Employment
 - advertisement for employment
 - recruitment, selection, and other hiring methods for employment
 - classification, creation of positions or their abolition
 - the determination or allocation of wages, salaries, pensions, leave, or other such benefits
 - accommodation,
 - training, apprenticeships, transfer, promotion, or retrenchment
- welfare or rehabilitation of disabled persons
- registration of
 - disabled persons
 - institutions, associations and organizations including those controlled and managed by the State and local authorities that provide services for the rehabilitation of disabled persons

- places at which services for the rehabilitation of disabled persons are provided;
- exemptions;
- enforcement.

Legislative Objective

The act is intended as **civil rights legislation** by which to establish and protect, through legal enforcement, the individual rights of persons with disabilities. Through the National Disability Board, the government formulates and develops measures and policies that may relate to wide range of subjects affecting the rights of persons with disabilities. The enforcement system is intended to guarantee compliance.

Public Policy Implementation

Implementation is greatly the jurisdiction of the National Disability Board. To this end, the board is authorized to:

- to issue adjustment orders under section 7 to comply with the provisions of the Act; and to
- promulgate guidance and regulations on issues such as
 - equal opportunities for disabled persons in employment, education, sports, recreation, and cultural activities with full access to community and social services;
 - rehabilitation to lead independent lives;
 - welfare, services, and service providers;
 - rehabilitating equipment and accommodations;
 - public awareness.

Enforcement and Remedies

Enforcement of the rights and compliance with the law is entrusted to the National Disability Board and the courts of law. Rights of access are in the first instance enforced through adjustment orders. In the event that the Board determines that premises, services, or amenities are inaccessible to disabled persons by reason of any structural, physical, administrative, or other barrier, the Board, subject to the provisions of this section, shall issue and serve an adjustment order to the owner of the premises or provider of the service or amenity concerned. The Order must contain a full description of the premises or service and/or amenity concerned and the grounds upon which the Board considers the premises, service, or amenity inaccessible to disabled persons.

Adjustment Orders may be appealed to administrative courts. Once the court has

heard the appeal, it may either confirm, vary the adjustment order, or set it aside and make such order as to costs of the appeal as the court deems fit.

Affirmative Defenses

The following affirmative defenses are available:

- undue financial hardship resulting from complying with the order;
- the period stipulated for the implementation of the adjustment order is unreasonable;
- adequate access to the premises, service, or amenity could be secured without recourse to the action required by the adjustment order or on any other ground;
- the disabled person is not qualified for the coveted position;
- the employer or institution is exempt under the statute;
- the act or omission alleged to discriminate was not based in whole or in part on the disability.

LAW LIBRARY OF CONGRESS
ARGENTINA
RIGHTS OF PEOPLE WITH DISABILITIES

Introduction

The National Constitution of 1994¹ included for the first time a specific provision on the protection of people with disabilities² which provided that Congress shall legislate and promote affirmative action procedures to ensure equal opportunity and treatment and the full enjoyment and exercise of the rights recognized by the Constitution and the by the currently applicable international treaties on human rights, especially those related to the disabled.³

By granting constitutional ranking to several international human rights treaties, such as the International Convention Against Any Form of Discrimination, the American Declaration of the Human Rights and Obligations, as well as the Universal Declaration of Human Rights,⁴ the Government provides for a generic protection against any type of discrimination.

In addition, as explained below, special laws for the treatment and protection of disabled persons have been passed not only for rehabilitating and incorporating the disabled into the workforce, but also for improving their quality of life.

Provincial Constitutions have incorporated the protection, prevention, assistance, and rehabilitation of disabled persons. This is the case in Cordoba, San Juan, La Rioja, Santiago del Estero, Catamarca, Tierra del Fuego, Rio Negro, Salta, and Jujuy.⁵

Law No. 24657⁶ created the *Consejo Federal de Discapacidad* which is integrated by the highest authorities on protection for disabled persons in the provinces and the Municipality of the City of Buenos Aires. Its mission is to coordinate the national policy for prevention, rehabilitation, and equal opportunities for the disabled at a

¹ CONSTITUCIÓN ARGENTINA (CONST. ARG.), Imprenta del Congreso de la Nación, Buenos Aires (1996).

² *Id.* art. 75, ¶23.

³ *Id.*

⁴ *Supra* note 1, art. 75, ¶22.

⁵ B. Chirinos, *La Seguridad Social y La Argentina, ad. hoc.*, 29 (Buenos Aires, 1991).

⁶ Law No. 24657, June 5, 1996, BOLETÍN OFICIAL (B.O.) [July 10, 1996].

provincial level.⁷ It also provides provincial entities with national and international information on research and studies on the disabled that would not be available otherwise.⁸

Decree No. 1027/94⁹ provides directives to the Ministries of Labor, Social Action, Culture and Education and Secretaries of the Presidency, to the Municipality of the City of Buenos Aires, and other administrative agencies with related competence, to carry out the policies set up for disabled and incapacitated individuals so declared under Law No. 22431.

The *Comision Nacional Asesora para la Integracion de Personas Discapacitadas*, created by Decree No. 1101/87¹⁰ under the jurisdiction of the Executive to conduct studies for the development of the national plan of aid and support for the disabled, is the regulatory agency for the *Sistema Unico de Prestaciones Basicas para Personas con Discapacidad*¹¹ which provides prevention and rehabilitation treatments, educational and therapeutic programs, as well as special transportation devices for the disabled.¹²

In the international field, the United Nations General Assembly Resolution No. 2856 of December 20, 1971, adopted the Declaration of Rights of the Mentally Retarded unanimously by all member countries, including Argentina. This instrument, even if not legally binding, formulates recommendations for each country to adopt in their national laws.¹³ Argentina also ratified the Additional Protocol to the American Convention on Human Rights in Economic, Social and Cultural Matters¹⁴ which specifically provides that any individual affected by any disability has the right to receive special attention in order to achieve his/her highest personal development. Member countries to the Convention agree to provide programs, training, and development plans towards such an end.¹⁵

⁷ *Id.* art. 2.a.

⁸ *Id.* art. 2.e.

⁹ Decree No. 1027/94, June 29, 1994, B.O. [July 6, 1994].

¹⁰ Decree No. 1101, Oct. 7, 1987, B.O. [Oct. 27, 1987].

¹¹ Decree No. 762, Aug. 11, 1997, B.O. [Aug. 14, 1997].

¹² *Id.* Annex 1.

¹³ J. Hervada and J. Zumaquero, *Textos Internacionales de Derechos Humanos I 1776-1976*, Ediciones Universidad de Navarra, Pamplona, 650 (1992).

¹⁴ Law No. 24658, June 19, 1996, B.O. [July 17, 1996], Annex 1.

¹⁵ *Id.* art. 18.

Affirmative Laws

In the light of these principles, a comprehensive system for the protection of the disabled was enacted by Law No. 22431/81, amended by Law No. 24314/94,¹⁶ No. 24901/97,¹⁷ and No. 25504¹⁸— regulatory Decree No. 498/83.¹⁹

Employment

The Law guarantees disabled persons medical assistance, education, and social security benefits. It also provides tax exemptions and incentives to neutralize (compensate) any disadvantage caused by the disability. Legislators intend to provide the disabled with the same opportunities that a normal and healthy person has in order to be productively integrated into society.²⁰

Under Argentine Law, any person whose family, social, educational, and labor integration is affected by a permanent or prolonged functional disability, either physical or mental, considering his/her age and social status, is considered disabled under the General Law for the Protection of the Disabled.²¹ The government, through the Secretary of Public Health, assesses the degree of disability of qualifying individuals and indicates appropriate rehabilitation programs, work, and professional training. It also provides loans and subsidies to support labor or intellectual activities and personal, family, and social orientation as well as types of work suitable for the disabled.²²

The Ministry of Public Welfare is the enforcement authority of this Law. It provides information on problems and conflictive situations created by disabilities. It renders financial and technical support to the provinces and non-profit private institutions devoted in any way to disabled people.²³

Special programs for the treatment of the disabled must be established in all public hospitals. The *Talleres Protegidos Terapeuticos* [Therapeutic Protected Workshops] within a health provider unit and *Talleres Protegidos de Produccion* (TPP) [Protected

¹⁶ Law No. 24314, Mar. 15, 1994, B.O. [Apr. 12, 1994].

¹⁷ Law No. 24901, Nov. 5, 1997, B.O.

¹⁸ Law No. 25504, Nov. 14, 2001, B.O. [Dec. 12, 2001].

¹⁹ Law No. 22431, Mar. 16, 1981, B.O. [Mar. 20, 1981], regulated by Decree No. 498 of Mar. 1, 1983, B.O. [Mar. 4, 1983], as amended by Decree No. 140, Jan. 17, 1985, B.O. [Jan. 23, 1985].

²⁰ *Supra* note 19, art. 1.

²¹ *Supra* note 19.

²² *Supra* note 19, art. 3.

²³ *Supra* note 19, art. 5.

Workshops of Production]²⁴ within the jurisdiction of non-profit organizations will be promoted for the rehabilitation, labor training, and integration in the work force of the disabled.²⁵

The *Programa de Apoyo a Talleres Protegidos de Produccion* was created to promote the entry of disabled persons into the protected and non-protected labor workforce.²⁶ It promotes and subsidizes the TPP in order to enhance its social and economic role.²⁷ Projects must be submitted to the TPP before the Ministry of Labor and Social Security for approval.²⁸

The National Government, its Federal agencies, Government Corporations and Municipalities are required to hire suitable disabled people at a minimum rate of four percent of their staff, one percent of which must be blind people.²⁹ People hired under this provisions will have the same labor rights and obligations as normal worker.³⁰ Private employers that hire disabled persons are granted a special deduction on income tax equal to 70 percent of the salaries of each disabled employee.³¹ The new Law on Promotion of Employment³² includes specific provisions for the promotion of employment of the disabled with tax and financial incentives.

Disabled persons have a priority right to utilize small businesses in public premises owned by the Federal Government, Federal agencies, government owned companies, or the Municipality, as well as private companies rendering public services. Any concession to private companies that does not comply with this mandate will be nullified.³³ When a public service is privatized, the privatized company is required to comply with this rule.³⁴

²⁴ Law No. 24147, Oct. 21, 1992, B.O. [Oct. 27, 1992].

²⁵ *Supra* note 19, art. 11.

²⁶ Resolucion No. 355/97 of the Ministry of Labor and Social Security, June 3, 1997, B.O. [June 11, 1997], art. 2.

²⁷ *Id.* art. 3.

²⁸ *Id.* art. 7.

²⁹ *Supra* note 19, art. 8.

³⁰ *Supra* note 19, art. 10.

³¹ *Supra* note 19, art. 23.

³² Law No. 24018, Dec. 5, 1991, B.O. [Dec. 17, 1991], arts. 42, 86-89.

³³ *Supra* note 19, art. 11.

³⁴ Law No. 24308, Dec. 23, 1993, B.O. [Jan. 18, 1994], regulated by Decree No. 795/1994 of the Ministry of Economy

Law No. 24716³⁵ provides that a working mother has the right to a six-month paid leave when she gives birth to a child with Down Syndrome. It also provides that during such leave, the worker shall receive a family allowance paid by the employer equal to the one she would receive if she was working.³⁶ An increased family allowance is paid to a worker for life if he/she has a handicapped child, as opposed to the same allowance paid for non-handicapped children, which expires when they turn 18 years old.³⁷

The Law also provides special rules for social security benefits by including specialized rehabilitation medical services in such benefits.³⁸ A system of Basic Services of Complete Health Care for the handicapped is created with full coverage of their needs.³⁹

Education

Educational allowance for elementary, high school, and college is doubled for parents with disabled children.⁴⁰

Public Services and Transportation

Public transportation and public buildings must provide special facilities for the disabled.⁴¹ Law No. 24314⁴² provides public facilities for the handicapped to give them as much autonomy, self-sufficiency, and safety as possible in transportation or in any other urban environment.⁴³ It specifically provides for the suppression of physical barriers to their mobility as follows:

- pedestrian paths with appropriate dimensions for a handicapped person to use
- appropriate stairs and ramps
- appropriate parks, gardens, park grounds, and free spaces

and Public Works, May 23, 1994, B.O. [May 31, 1994].

³⁵ Law No. 24716, Oct. 2, 1996, B.O. [Oct. 25, 1996].

³⁶ *Id.*

³⁷ Decree No. 771/1996, July 15, 1996, B.O. [July 16, 1996], arts. 3 and 4.

³⁸ *Supra* note 19, art.15.

³⁹ Law No. 24901, Nov. 5, 1997, B.O. [Dec. 5, 1997].

⁴⁰ *Supra* note 19, art. 14*bis*.

⁴¹ *Supra* note 19, art. 20.

⁴² Law No. 24314, amending Law 22431, Apr. 8, 1994, B.O. [April 12, 1994].

⁴³ *Id.* art. 20.

- reserved parking spaces located closer to pedestrian paths
- traffic signs and posts must be located in a way that would not be an obstacle for the handicapped and blind
- public works must be signaled and protected appropriately in order to avoid obstacles to the blind and other handicapped⁴⁴

Regarding architectural barriers, buildings for public use must follow the standards of general accessibility for people with limited mobility, including reserving special parking spaces, creating spaces with horizontal circulation, as well as installing appropriate elevators. This applies to theaters and other entertainment centers. Commercial and industrial facilities also must have access that is appropriate for the use of handicapped employees. Apartment buildings must provide access for the disabled from the elevator to the street. Building codes must include this requirement for remodeling projects.⁴⁵

Transportation services must observe the following standards:

- Public transportation vehicles will have two reserved seats, appropriately marked and close to the exit doors. The transportation vehicles should have anti-slipping surfaces and enough space for handicapped-related devices. In airplanes, the disabled will be assigned seats close to the exit doors. Public transportation companies must transport disabled individuals for free from their domicile to their schools or rehabilitation centers. These companies will gradually add transportation units with special access for the disabled.
- Transportation stations also must make pedestrian paths available for the disabled. The airports will provide mechanical means of ascent and descent.
- Disabled individuals with their own means of transportation have free circulation and parking according to the applicable municipal rules.⁴⁶

Disabled individuals may acquire national or imported motor vehicles equipped with devices for their disability exempt from internal taxes, value-added taxes, import tariffs, statistics taxes, and others.⁴⁷

⁴⁴ *Id.*

⁴⁵ *Id.* art. 21.

⁴⁶ *Id.* art. 22.

⁴⁷ Law No. 24183, Nov. 25, 1992, B.O. [Nov. 27, 1992], as amended by Law No. 24844, July 11, 1997, B.O. [July 17, 1997], regulated by Decree No. 1313, June 24, 1993, B.O. [June 29, 1993].

Telecommunications

Law No. 24204⁴⁸ requires telephone companies to provide public phones duly equipped for the deaf, mute, and deaf-mute.⁴⁹ The Secretary of Communications issued the pertinent Regulation⁵⁰ of the Public Telephone System for the Deaf or Mute/Deaf. The regulation applies to all licensees of the public telephone service and provides for rules and technical standards and requirements for such service.⁵¹ The Regulation provides for special specifications for these telephones, covering requirements such as volume control, telephones compatible with auditive devices, and telephones with alpha-numeric keys and text screen.⁵²

The *Comision Nacional de Telecomunicaciones* is the enforcement authority of this public service.⁵³ Noncompliance with the applicable regulation will be reported to the enforcement authority, which will apply sanctions according to the procedure set by Decree No. 62/90.⁵⁴

Law No. 24421⁵⁵ requires telephone companies to provide special telephone service for home use.⁵⁶

Anti-discrimination

Violations to the Constitutional mandate⁵⁷ against discrimination of any kind, including discrimination based on physical traits, are penalized under Law No. 23592,⁵⁸ which prohibits such actions and provides reparation of moral and money damages.⁵⁹ In addition, any crime perpetrated with a discriminatory motive will be punished with a

⁴⁸ Law No. 24204, June 17, 1993, B.O. [June 23, 1993].

⁴⁹ *Id.* art. 1

⁵⁰ Resolution No. 26878/96 of the Secretary of Communications of Dec. 27, 1996, B.O. [Jan. 8, 1997].

⁵¹ *Id.* arts. 1 and 2.

⁵² *Id.* annex 1.

⁵³ *Id.* art. 4.

⁵⁴ *Id.* art. 35.

⁵⁵ Law No. 24421, Dec. 7, 1994, B.O. [Jan. 11, 1995].

⁵⁶ *Id.*

⁵⁷ *Supra* note 2.

⁵⁸ Law No. 23592, Sept. 1, 1988, B.O. [Sept. 5, 1988].

⁵⁹ *Id.* art. 1.

sanction increased by a minimum of one-third and a maximum one-half of the amount applicable.⁶⁰

Any member of an organization that promotes discrimination of any kind will be punished with imprisonment of one month to three years. The same punishment applies to those who encourage or incite persecution or hate based on discriminatory grounds.⁶¹

Discriminatory acts include those which arbitrarily prevent, obstruct, limit, or undermine in any way the full exercise of constitutional rights and guarantees of equal condition. Discriminatory acts or omissions may be based in hate of a race, religion, or nationality or with the purpose of exterminating in whole or in part a national, ethnic, racial, or religious group.⁶²

Law No. 24515⁶³ creates the *Instituto Nacional contra la Discriminacion, la Xenofobia y el Racismo* (INADI) [National Institute against Discrimination, Xenophobia and Racism] within the jurisdiction of the Ministry of Interior to promote and establish policies against discrimination, xenophobia, and racism.⁶⁴ Discrimination claims are to be filed before the INADI, which will file the pertinent judicial claim if appropriate.⁶⁵

In a recent case (August 2001) of discrimination, an individual in a wheelchair was denied a seat to a flight on a domestic airline. The company's alleged reasons were that its operations manual stipulates that a handicapped who may pose a risk to the other passengers and for security reasons must notify the airline in advance of his/her condition and bring an accompanying adult to travel with him/her for assistance. The individual in question did notify the airline in advance but did not get a ticket for the accompanying person and, therefore, was prevented from traveling. A civil law suit was filed against the company as well as a claim before the INADI. The final judicial decision is still pending in the Court of Appeals, but the individual did travel on August 22, 2002, after the INADI and other NGO's supporting anti-discrimination intervened to resolve the case.⁶⁶

⁶⁰ *Id.* art. 2.

⁶¹ *Id.* art. 3

⁶² *Id.* art. 1.

⁶³ Law No. 24515, July 5, 1995, B.O. [Aug. 3, 1995].

⁶⁴ *Id.* arts 1 and 2.

⁶⁵ *Id.* arts. 4, ¶¶e and l.

⁶⁶ *Denunciacion por Discriminacion a una aerolinea*, LA NACION ON LINE, at www.lanacion.com.ar (Aug. 22, 2002).

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AUSTRALIA

RIGHTS OF PEOPLE WITH DISABILITIES

The framework for disability rights in Australia is provided by the Disability Discrimination Act 1992 and a body of case law. The Act is enforced by the Commonwealth Human Rights and Equal Opportunity Commission, which promotes education on disability issues and responds to complaints of discrimination with an approach stressing conciliation, although appeal to the Federal Court is possible. Both the terms of the Act and government practice take a cost-benefit approach to disability issues, with statements of rights qualified by such terms as "impose an unjustifiable hardship on" employers or educators.

In Australia, both the Commonwealth (Federal) and State and Territory governments provide services to and endeavor to promote the rights of people with disabilities. Although State and Territory governments provide many social services, the Commonwealth role goes back as far as 1908 when the Invalid Pension was introduced. After the Second World War the Commonwealth played an increasingly larger role in providing services to veterans whose disabilities were due to wartime service. The enactment of laws on discrimination against those with disabilities at first the State and then the Commonwealth level in the 1980s and 1990s reflected a shift away from definition of issues in terms of provision of services and assistance to those in need of charity and toward ensuring citizens their due rights. In the Australian constitutional context, the Commonwealth role has been justified by the power to enact laws to give effect to Australia's international treaty obligations in regard to human rights and elimination of discrimination. It was also argued that the State laws existing in the late 1980s were inconsistent and offered only partial protections and that national legislation was necessary to ensure that rights and remedies would not be determined by accidents of residence.¹ The Commonwealth government also provides the great bulk of the funding for disability services, either paid directly as pensions or allowances or indirectly through State and Territory departments and programs.²

¹Parliament of Australia, Parliamentary Library, Bills Digest for Disability Discrimination Bill 1992 (May 26, 1992) at <http://www.aph.gov.au/library/pubs.html>.

²Parliament of Australia, Parliamentary Library, E-Briefs, *Disability Support and Services in Australia* (March 2001) at <http://www.aph.gov.au/library/intguide/sp/disability.html>.

Disability Discrimination Act

The basic law affecting the rights of persons with disabilities in Australia is the Commonwealth (Federal) Disability Discrimination Act 1992 (DDA). This is a statute of very broad application. It prohibits discrimination against the disabled in employment, education, access to premises, provision of goods and services, accommodation, membership in clubs and associations, sport and administration of Commonwealth laws and programs³. It is unlawful to harass any person who has a disability. The DDA establishes victimization of a person who makes a complaint under the Act, who provides information relevant to a proceeding under the Act, or who appears as a witness before the Human Rights and Equal Opportunity Commission as an offence punishable by six months' imprisonment.⁴

Because the DDA is a comprehensive Act and establishes a single framework for addressing problems persons with disabilities encounter in employment, public services and transportation, public accommodation and services by private entities, and telecommunications, that framework will be discussed before those specific areas.

The DDA takes a broad definition of disability, including not only total or partial loss of a person's bodily or mental functions; or the malfunction, malformation, or disfigurement of a part of the body, but also the presence in the body of organisms capable of causing disease or illness (an apparent reference to HIV-positive individuals), disorders that result in the person learning differently from those without the disorder, or a disorder or illness that affects a person's thought processes, emotions or judgement, or results in disturbed behavior. Disabilities that previously existed, may exist in the future, or are imputed to a person are also covered.⁵

Within the Act, the topical sections that begin with generalized statements of principle such as "It is unlawful for __ to discriminate against a person on the ground of the person's disability" are consistently qualified by clauses such as "impose an unjustifiable hardship on" or "would require services or facilities that are not required by persons without the disability." The intent appears to be to limit what can be expected or required of employers, educators, or those responsible for access to buildings or transportation facilities to that which is "reasonable" or can be provided within the operating budget of the institution. The determination of what, in any particular instance, would constitute an unjustifiable hardship is the responsibility of the Federal Court.

Division 3 (of Part 2) of the DDA (sections 45-58) concerns Exemptions. It lists circumstances and conditions under which is not unlawful to discriminate against persons

³Disability Discrimination Act 1992 No. 135, as amended. Compilation as of August 19, 2002 : <http://scaleplus.law.gov.au/>.

⁴ *Id.* § 42.

⁵ *Id.* §4.

on the grounds of disability. These include: refusing to offer an annuity or a life insurance policy, if the discrimination is based on actuarial or statistical data or is “reasonable;” providing public pay telephones; discriminating under the provisions of the Migration Act 1958; or employment by the Defence Force in a position involving combat duties, combat-related duties or peacekeeping service.

Part 3 of the DDA (sections 59-65) encourages educational institutions, public authorities, or those who provide goods and services or facilities, to prepare action plans to achieve the objects of the DDA. The plans may include setting goals and targets, developing means of evaluating progress, or appointing persons to implement the policies and programs. Copies of the action plan may be provided to the Human Rights and Equal Opportunity Commission (HREOC), which may sell such copies to the public. The HREOC is also responsible for developing disability standards and reporting to the Minister (the Attorney-General) on monitoring of the operation of such standards.

Regulations under the DDA

Section 132 of the DDA authorizes the Governor-General to make regulations to give effect to the Act. A regulation made in 1996 defines “combat duties” and “combat-related duties” which are the subject of section 53, which makes it clear that discriminating against persons with disabilities in employment by or appointment to the Defence Force is lawful. It also specifies the particular State laws referred to in section 47(2) and compliance with which is lawful.⁶ Regulations made in 2002 in connection with transport standards are discussed below.⁷

Human Rights and Equal Opportunity Commission (HREOC)

The body responsible for enforcing the provisions of the DDA is the HREOC, which was established by an Act of Parliament in 1986⁸. This is an independent statutory body represented in Parliament by the Attorney-General, who is the Minister referred to in the DDA. The HREOC administers the Racial Discrimination Act 1974 and the Sex Discrimination Act 1984, as well as the DDA. The HREOC is headed by a President, and there are separate Commissioners for each of the Acts. The HREOC has responsibilities for advising the government on policy and legislative developments. It may issue reports on acts or practices that may be discriminatory and recommend action to resolve the issues. It may also advise on proposed legislation and review existing legislation for provisions which impair equal opportunity. It may propose new laws or suggest actions the government may take on matters relating to human rights and discrimination⁹. The HREOC may also intervene

⁶Disability Discrimination Regulations, Statutory Rules 1996 No.27.

⁷ Disability Discrimination Amendment Regulations 2002 (No.1), Statutory Rules 2002 No. 185.

⁸ Human Rights and Equal Opportunity Commission Act 1986, No. 125.

⁹Commonwealth of Australia, Australian Human Rights and Equal Opportunity Commission, *About the Commission* and

in court proceedings, with the agreement of the Court, which involve issues of race, sex, or disability discrimination. In addition, the Commissioners may assist the Federal Court or Federal Magistrates Service as *amicus curiae* (friend to the court) in particular cases which have implications for the rights of persons not party to the proceedings or for the administration of the relevant Act.¹⁰

The HREOC investigates alleged infringements of the anti-discrimination Acts and attempts to resolve the matters through conciliation. The website of the HREOC offers information on the complaints process as well as providing an opportunity to download the complaint form, complete an on-line form, or to submit a complaint by email¹¹. If there is no reasonable prospect for conciliation, the President of the HREOC may terminate the complaint. At this point, the matter may, if the complainant decides, be referred to the Federal Court.¹²

Commonwealth Government Initiatives and Programs

Australia's Commonwealth Government operates a large number of programs, projects, and initiatives intended to promote the goals of elimination of discrimination against persons with disabilities and the integration of such persons into the workforce and ordinary social life. In December 1994 the Department of Family and Community Services and the Office of the Attorney-General published the *Commonwealth Disability Strategy: A Ten Year Framework for Commonwealth Departments and Agencies*¹³. This was a planning framework for all Commonwealth agencies, intended to ensure access by persons with disabilities to all programs, services, and functions. Its *Forward* claimed to represent a shift in focus from a welfare approach to a rights-based approach to meeting the needs of people with disabilities. The Government acknowledged its role in providing leadership and setting an example for others in the community. The strategy was intended to provide a practical framework to meet the Commonwealth's obligations under the DDA and the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities.

The Strategy was to be reviewed in 1998 and each department was to regularly report its progress. As examples of steps to be taken under the strategy, the Attorney-General's Department was to identify all laws and provisions that might authorize discriminatory practices, so that they could be amended or removed. The Public Service

Functions and Powers, in the Commission's website at <http://www.humanrights.gov.au/>.

¹⁰ DDA §67; note 5, *Information about the Amicus Curiae Role*.

¹¹ *Id.* Complaints Information.

¹² Between 1986 and 2000 the Commission held public hearings and made determinations in cases of alleged discrimination. The Human Rights Legislation Amendment Act 1999, No. 1, came into effect on Apr. 13, 2000. This transferred the public hearing and determination process to the Federal Court of Australia and the Federal Magistrates Service.

¹³ Commonwealth of Australia, COMMONWEALTH DISABILITY STRATEGY, at <http://www.facs.gov.au/disability/ood/cds.html>.

Commission was to examine the issue of recruitment to the Australian Public Service (the federal civil service) and arrange to accommodate the needs of the disabled. By 1998 all departments and authorities were to build equal opportunity performance into program performance indicators. Each department was to develop long-term strategies to locate its functions in buildings that were accessible and useable by all staff and potential clients. As a minimum requirement, all departments were to comply with AS1428, the Australian Standard for building accessibility. Each department was to set performance indicators for the employment of people with disabilities, and to provide information on equal opportunity performance requirements in annual reports.¹⁴

Disability Standards

Section 132(1) of the DDA empowers the Attorney-General to formulate disability standards in relation to the employment, education, accommodation, and provision of public transportation services and facilities to the disabled. Such standards are subject to approval by Parliament, and once approved are legally enforceable. They thus differ from guidelines, goals, or action plans, which are aspirational, expressing values but having no force at law. Some draft standards have been produced and there has been much discussion and consultation about standards, August 21, 2002 marked the first disability standards (for transport) be formally presented to Parliament.¹⁵

Employment

Division 1 (of Part 2) of the DDA - Discrimination in Work - deals with discrimination in employment (section 15), discrimination against commission agents (section 16), discrimination against contract workers (section 17), discrimination in terms or conditions for participation in a partnership (section 18), discrimination by bodies that issue qualifications needed for practice of a profession, the carrying on of a trade or engaging in an occupation (section 19), refusing membership in a registered organization under the Workplace Relations Act (this section concerns membership in a trade union) (section 20), and discrimination by employment agencies (section 21).¹⁶ It applies to all employers, public and private.

Each section contains brief examples of discrimination, such as denying or limiting access to training or benefits, to opportunities for promotion, dismissing the employee, or discriminating in the terms or conditions on which a person is invited to become a partner in a partnership. All such discrimination is “unlawful”

¹⁴ *Id.* Section 2 - Core Strategies for Commonwealth Departments, 7-11.

¹⁵ *Supra*, note 5, Disability Standards and Guidelines.

¹⁶ *Supra* note 3. §§15-21.

Enforcement of the Act is complaint-driven. A person who regards him/herself as suffering from discrimination files a complaint with the HREOC which will investigate and attempt conciliation. If this fails, the complainant may choose to take the matter to the Federal Court. If the Court finds that discrimination has indeed occurred, it will make a judgment appropriate to the particular case. It may, for example, order reinstatement in employment, payment of back wages, or impose monetary damages. Under the procedures of Australian courts, the loser in a case is usually ordered by the court to pay the legal costs of the winner.

As noted above, each section concludes with a paragraph limiting the offense of discrimination. If a person with a disability is unable to carry out the inherent requirements of a particular job, or would require services and facilities that are not required by persons without the disability and the provision of which would impose an unjustifiable hardship on the employer, it is not discrimination to refuse to employ them or to dismiss them. The same phrases - "inherent requirements of ..." and "not required by persons without the disability ... impose an unjustifiable hardship on" are repeated in each section of the DDA.

The authorities responsible for enforcing the DDA are the HREOC and the Federal Courts.

Public Services/Transportation and Public Accommodation and Services by Private Entities

Division 2 (of Part 2) of the DDA - Discrimination in other areas - consists of 13 sections (22-34) covering discrimination in such areas as administration of Commonwealth laws and programs (section 29), education (section 22), accommodation (section 25), and provision of goods, services and facilities (section 24). The provisions for enforcement, exceptions and administering authorities are the same as those set out above under **Employment**.

On June 27, 2002, Parliament passed the Disability Discrimination Amendment Act 2002, No. 62, which amends the DDA to permit the HREOC to grant appropriate temporary exemptions from the Disability Standards for Accessible Public Transport when they come into effect. The Attorney-General tabled [before Parliament] the new Transport Standards during the week of August 19, 2002.¹⁷ According to the Attorney-General, the Standards were developed after extensive consultation with the transport industry and people with disabilities and strike "an appropriate balance" between costs to transport operators and benefits to people with disabilities.¹⁸ The Standards go into effect on October 15,

¹⁷ Commonwealth of Australia, Department of the Attorney-General, *On Track for Accessible Public Transport*, News Release, August 21, 2002, at http://law.gov.au/aghome/agnews/2002newsag/joint_publictrans.html.

¹⁸ Commonwealth of Australia, Department of the Attorney-General, *Significant Progress on Accessible Public Transport*, News Release, June 27 2002 at http://www.law.gov.au/aghome/agnews/2002newsag/69_02.html. A draft of the Standards is available at <http://www.law.gov.au/Department.html>.

2002, and set requirements for such features as access paths, ramps and boarding devices, allocated spaces, handrails, doorways, and provision of information. These must be met for all new facilities and there is a compliance timeframe for upgrading existing equipment.

Telecommunications

Section 24 of the DDA, on discrimination in provision of goods and services, and section 6, on indirect discrimination (providing the same service to everyone can discriminate against people with disabilities if there are unreasonable barriers to access) are interpreted by the Disability Discrimination Commissioner as applying to the telecommunications sector.¹⁹ The Commissioner notes that telecommunications service providers are obliged to provide equipment which is accessible and useable by people with disabilities, if this does not involve unreasonable hardship. In the HREOC's decision in the 1995 *Scott v Telstra* case, Telstra, the major Australian telephone corporation, was required to provide every person certified by an audiologist as profoundly deaf with a TTY (tele-typewriter), in form of an A\$600 voucher for the purchase of the device.²⁰ In response to a request for clarification of their responsibilities under the DDA from the Australian Telecommunications Industry Forum, a trade group, the Disability Commissioner in August 2001 provided a note on equipment.²¹ He stressed the goal of ensuring access and left technical specifications and design decisions in the hands of the equipment manufacturers and providers. Pending the development of Australian regulatory or voluntary standards for telecommunications equipment, the Commissioner suggested referring to the rules adopted by the United States Federal Communications Commission under section 255 of the (U.S.) Telecommunications Act.

HREOC has been working with Australia's Internet Industry Association to find ways to make online services more accessible to people with disabilities. On September 2, 2002, the Internet Industry Association and the Australian Interactive Multimedia Industry Association announced a jointly-developed Accessible Web Action Plan to encourage and assist members of the associations to meet the DDA's requirement that websites hosted in Australia be accessible to people with disabilities.²² As with other action plans developed under the DDA, the Plan comes with no copyright or commercial confidentiality restrictions, and the two associations encourage review and adaptation. Key Performance Indicators have been developed to ensure that the Plan will be regularly evaluated and remain effective.

¹⁹ Australian Human Rights and Equal Opportunity Commission Website: Disability Rights: *Telecommunications Equipment and the Disability Discrimination Act* (August 2001) at http://www.humanrights.gov.au/disability_rights/communications/equipment.htm.

²⁰ *Scott v Telstra* (1995) at <http://scaleplus.law.gov.au/html/ddadec/o/95/0/DD000060.htm>.

²¹ *Supra*, note 19.

²² Australian Human Rights and Equal Opportunity Commission Website: 2002 Media Releases, *Digital Divide Narrows for People with Disabilities* (September 6, 2002) at http://www.humanrights.gov.au/media_releases/2002/56_02.htm; Internet Industry Association, *The IIA Digital Bridge Initiative* <http://www.iaa.net.au/digitalbridgevt.html>.

Cases Under the DDA

Given the rather broad terms in which the DDA was drafted, judicial interpretation is especially important in determining the applicability of the Act. Although a complete survey and review of case law is beyond the scope of this brief report, some major or representative cases may be noted.

The rights of the disabled to bodily integrity on the same terms as all persons were elucidated in the High Court's 1992 *Marion* case²³. The parents of an intellectually and physically disabled 13-year-old girl wished her to be sterilized. The Court, after reviewing cases involving minors and consent to surgical treatment in Australia, New Zealand, Canada, the United Kingdom, and the United States, held that neither parents nor physicians could make a decision about so serious and irreversible a procedure as sterilization for another person. Only the courts could decide, and they only after careful consideration of the facts and condition of each person at risk. The High Court acted to counter the practice, sometimes justified by theories of eugenics, of routine sterilization of those labeled as "defectives." Following the decision, the federal Family Court amended its Rules to set out procedures for making an application for judicial approval of "special medical procedures" such as sterilization²⁴. The issue of forced sterilizations remains significant, with some advocates for the disabled alleging that the practice continues regardless of the law, and the Australian Senate issuing a December 2000 report on the question.²⁵

More common cases concern allegations of discrimination in employment or admission to educational institutions. Relatively recent Federal Court and Federal Magistrates Court cases listed on the HREOC's Disability Rights website have included:²⁶

- *Cosma v Qantas Airways*, where an employee unable to return to his pre-injury duties was found to be unable to perform the inherent requirements of the job, and so not to have suffered unlawful discrimination when terminated;²⁷

²³ Secretary, Department of Health and Community Services v. JWB and SMB, (*Marion's Case*) 1992, 175 CLR 218 F.C. 92/010 at http://www.austlii.edu.au/au/cases/cth/high_ct/175clr218.html.

²⁴ M. Jones and L. Marks, *Valuing People Through Law - Whatever Happened to Marion?* 17, 2 LAW IN CONTEXT (2000), 147-180.

²⁵ S. Brady, J. Britton and S. Grover, *The Sterilisation of Girls and Young Women in Australia: Issues and Progress - A Report Commissioned Jointly by the Sex Discrimination Commissioner and the Disability Discrimination Commissioner at the Human Rights and Equal Opportunity Commission* 2001 at http://www.humanrights.gov.au/disability_rights/sterilisation.index.html. *Sterilisation of Women and Young Girls with an Intellectual Disability* Report to the Senate, Dec. 6, 2000, at http://facs.gov.au/disability/ood/ster_report.html.

²⁶ Links to each case, on the website of the Australasian Legal Information Institute (Austlii), and a list of cases are available on the Court Decisions page of the Disability Rights website at http://www.humanrights.gov.au/disability_rights/decisions/court/court.html.

- *Purvis v State of NSW*, where being treated less favorably than other students because of disruptive behavior is not discrimination because of disability if other students who behaved the same way would have been treated similarly;²⁸
- *Hills Grammar School v HREOC*, in which the Court upheld the finding of the Disability Commissioner that a private school had discriminated by refusing admission to a child with spina bifida;²⁹
- *Williams v Commonwealth of Australia*, in which the Royal Australian Air Force dismissal of a person with insulin-dependent diabetes was found unlawful;³⁰ and
- *Grovenor v Eldridge*, in which the Court enforced a HREOC decision finding discrimination in refusing access to a shop to a guide dog user and ordered payment of damages.³¹

Conclusion

Ten years after the enactment of the DDA, general acceptance of its objectives and goals seems widespread, although progress on such matters as implementation of legally-enforceable Disability Standards has been less marked than disability advocates would have wished. Both the Act itself and government statements express a cost-benefit approach, with the rights of the disabled to be balanced by appreciation of the costs entailed in implementing those rights. The requirement that the Act be enforced by individual complaints and the costs and uncertainties of litigation have doubtless limited its application.³²

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²⁷*Cosma v Qantas Airways Ltd* [2002] FCA 640 (21 May 2002).

²⁸*Purvis v State of New South Wales (Department of Education and Training)* [2002] FCA 503 (24 April 2002).

²⁹*Hills Grammar School v Human Rights & Equal Opportunity Commission* [2000] FCA 658 (18 May 2000).

³⁰*Williams v CTH of Australia* [2002] FMCA 89 (6 June 2002).

³¹ *Grovenor v Eldridge* [2000] FCA 1574 (19 Oct 2000).

³² See M. Jones and L. Marks, *Approaching Law and Disability* and M. Thornton, *Neo-Liberalism, Discrimination and the Politics of Ressentiment*, in 17,2 *LAW IN CONTEXT* (2000) 1-27.

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CANADA
RIGHTS OF PEOPLE WITH DISABILITIES

I. Introduction

Canada does not have a single statute that is equivalent to the Americans with Disabilities Act (ADA). Studies have been conducted to determine whether the creation of a Canadians with Disabilities Act would extend protections and privileges to persons not currently covered by or benefitting from the large number of laws and regulations that parallel many parts of the field covered by the ADA, but there seems to be a consensus in Canada that "emphasis should be placed on access to justice and enforcement rather than on the enactment of new legislation."¹

The Canadian equivalent of the United States' Bill of Rights is the Canadian Charter of Rights and Freedoms. This part of the Canadian Constitution was adopted in 1983. A key provision of the Charter states that "[e]very individual is equal before and under the law and has the right to the protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, color, religion, sex, age, mental or physical disability."² The extension of this provision to persons suffering from mental or physical disabilities was largely the result of "intense and effective lobbying" by a number of groups representing disabled persons.³

The Charter only applies to government, but the federal government and the governments of the 10 provinces can declare that one of their laws or regulations are to go into effect notwithstanding the fact that it may infringe upon an equality guarantee under the Charter. However, with one exception involving language rights in Quebec, Canadian governments have avoided invoking this power due to the fact that such an action would almost certainly be widely condemned for showing disregard of Canada's constitutional principles. For this reason, serious consideration has been given to proposals to abolish the "notwithstanding" clause.

The Charter is only enforceable through the courts. In the 15 years that the equality rights provision has been in force, a number of cases involving allegations of discrimination against persons suffering from disabilities have been heard. Although standards and tests are still being developed and refined, it has been said that "[g]enerally the courts have strongly asserted themselves when they see government interfering with

¹ Lana Kerzner and David Baker, A CANADIANS WITH DISABILITIES ACT? 2 (1999) at <http://www.pcs.mb.ca/cda.html>. See Appendix I.

² R.S.C., ch. 44, Sch. B, § 15 (Appendix 1985).

³ *Supra* note 1 at 3.

the recognition of the true ability of a person or group.”⁴

The centerpieces of Canada’s anti-discrimination laws are its human rights laws. While the Charter applies to legislation, the federal Canadian Human Rights Act and the counterparts that exist in all of the provinces apply equally to government departments and agencies as well as the private sector. The federal statute applies to that part of the private sector that falls under federal jurisdiction. This part is composed of banks, airlines, telecommunications companies, broadcasters, and several other specialized industries. Most private sector contracts of employment are primarily governed by provincial legislation. Any attempt by the federal government to extend its Canadian Human Rights Act to cover the entire private sector would almost certainly be found to be unconstitutional. As a result, there are differences in the human rights laws of the provinces that are attributable to differences in the forms of the relevant laws and differences in the manner in which similar language has been interpreted.

Human rights commissions exist to administer the human rights laws. These commissions investigate complaints and attempt to settle cases. Cases that are found to warrant an inquiry are sent to special tribunals. These tribunals are quasi-judicial bodies that are authorized to issue binding orders that are enforceable in provincial courts. Judicial review of tribunal findings is possible. In the case of the Federal Government, the findings of the Canadian Human Rights Tribunal are reviewable by the Federal Court of Canada.

The largest number of complaints presented to the Canadian Human Rights Tribunal involve claims of discrimination based upon disability. In 1998, 32 percent of the new complaints fell into this category.⁵ The largest number of these related to discrimination in employment. Also well-represented were complaints dealing with accessibility to facilities. The relevant percentages of disability to other types of discrimination cases have reportedly remained constant since at least 1995.⁶

II. Employment

A. Covered Entities

As indicated, the primary statutes that address problems of discrimination against persons with disabilities in the field of employment are Canada’s human rights laws. The laws apply to government departments and the private sector.

B. Actions Considered to be Discriminatory

The Canadian Human Rights Act provides that “the prohibited grounds of

⁴ *Id.* at 4.

⁵ *Id.* at 9.

⁶ *Id.*

discrimination” include “disability.”⁷ It has been reported that the definition of “disability” in Canada is wider in practice than in the United States.⁸ An example given in this regard is that, in Canada, a condition may be considered to be a disability even if it is correctable. Thus, many cases have reportedly “considered the validity of uncorrected visual acuity requirements...without doubting that the complainants were disabled.”⁹ Obesity, alcoholism, and drug-dependency are usually regarded as disabilities even though they may not always be beyond a person’s control. In one reported case, the Federal Court of Canada reversed a Canadian Human Rights Tribunal decision by finding that a bank’s policy of refusing to employ drug-dependent persons was not a discriminatory practice.¹⁰

The Canadian Human Rights Act also provides that, subject to several important exceptions, “[i]t is a discriminatory practice, directly or indirectly, (a) to refuse to employ or to continue to employ any individual, or (b) in the course of employment, to differentiate adversely in relation to an employee on a prohibited ground of discrimination.”¹¹ A separate provision prohibits the circulating of postings or advertising of jobs in a manner that expresses or implies any limitations, specifications, or preferences based on a prohibited ground of discrimination.¹² Retaliation is also specifically addressed. In this case, the Act states that “[i]t is a discriminatory practice for a person against whom a complaint has been filed...or any person acting on their behalf to retaliate or threaten retaliation against the individual who filed the complaint or the alleged victim.”¹³

The list of exceptions state that, in the case of employment, refusals, exclusions, limitations, and preferences may be based on *bona fide* occupational requirements.¹⁴ In determining whether a requirement is a *bona fide* occupational one, the Tribunal and the courts often seek to determine whether it may be based upon some need, but may still be overly broad. In such cases, the Tribunal and the courts will hold that the employer must refine its criteria to exclude as few persons as is possible.

The list of exceptions also excludes employment practices that are consistent

⁷ R.S.C., ch. H-6, § 7 (1985), as amended. *See* Appendix I.

⁸ Douglas Gilbert, Brian Burkett, Moira McCaskill, *CANADIAN LABOUR AND EMPLOYMENT LAW FOR THE U.S. PRACTITIONER* 228 (2000).

⁹ *Id.*

¹⁰ *Canadian Civil Liberties Association v. Toronto Dominion Bank* [1998] CLLC 98 (F.C. 1998).

¹¹ R.S.C. Ch. H-6, § 7 (1985), as amended. *See* Appendix I.I.

¹² *Id.* §8.

¹³ *Id.* §14.

¹⁴ *Id.* §15(1)(a).

with guidelines issued by the Canadian Human Rights Commission.¹⁵ However, the Commission has not yet exercised its powers to issue such guidelines. Consequently, employers must be guided by case law. One problem here is that the cases in this field are not always consistent with one another in a manner that makes them easily reconcilable.

C. Enforcement

The remedies available from the Canadian Human Rights Tribunal are quite broad. The Tribunal can award an person who has filed a claim:

- monetary damages for losses, including loss of wages
- monetary damages for injury to self-respect and the loss of enjoyment of human rights
- reinstatement

The Tribunal can also order the employer to:

- institute an anti-discrimination policy
- report regularly to the Canadian Human Rights Commission
- make specific changes to its employment systems

Provincial tribunals have similar powers.¹⁶

Canada's human rights laws do not contain general criminal penalties, although a refusal to follow a court order could be prosecuted for constituting contempt of court in violation of the Criminal Code.¹⁷ However, there are several specific offenses that are punishable with up to six months imprisonment and a fine of up to Can\$50,000. These are: 1) obstructing a member or panel in carrying out its functions; 2) reducing wages in order to eliminate a discriminatory practice; 3) obstructing an investigator; and 4) threatening, intimidating, or discriminating against an individual who has made a complaint, given evidence, or assisted in a prosecution.¹⁸

D. Exemptions

In addition to the exemptions already mentioned, the Canadian Human Rights Act provides that in determining whether an occupational requirement is *bona fide*, consideration must be given to whether accommodation would impose undue hardship on an employer. Although this section was only added in 1998, the Tribunal and courts had

¹⁵ *Id.* §15(1)(e).

¹⁶ CANADIAN LABOUR LAW REPORTS, ¶7134 (2002).

¹⁷ R.S.C., ch. C-46, § 9 (1985).

¹⁸ Canadian Human Rights Act, R.S.C., ch. H-6, § 60, as amended (1985).

already adopted this rule as setting the proper standard for review and the “undue hardship” exceptions exists in the case law of all of the provinces that have not followed the Federal Government in giving it statutory recognition. However, while “undue hardship” is a universal standard, determining what types of accommodation cannot be mandated is often extremely difficult. In looking at costs, consideration is given to the resources of the employer, whether they can be phased-in over time, and whether they can be recovered from government programs. In looking at health and safety issues, consideration is given to whether the risk is greater than is normally tolerated, who will bear the risk, and the willingness of the employee to bear any risk that he or she will have to assume. In addition to these factors, “[s]ome human rights boards of inquiry have also taken into account such factors as disruption in the workplace, including disruption to administration, payroll and work scheduling systems, in determining undue hardship.”¹⁹

E. Administering Authority

The Canadian Human Rights Commission investigates complaints and refers what it deems to be appropriate case to the quasi-judicial Canadian Human Rights Tribunal for consideration. The provinces also have two-step procedures for the assessment of claims.

F. Certificates

Canada’s human rights bodies do not issue certificates for exceeding statutory requirements.

G. Agencies Responsible for Coordination

The Canadian Human Rights Act is administered by the Minister of Justice.

H. Employment Equity

In addition to the human rights laws described above, the federal government and the Province of Quebec have employment equity laws designed to increase employment of women, aboriginals, visible minorities, and persons with disabilities. The federal law applies to the Federal Government and employers falling under its jurisdiction who have 100 or more employees. The term “persons with disabilities” is defined to mean persons who have long-term or recurring physical, mental, sensory, psychiatric, or learning impairment and who consider themselves to be disadvantaged in employment. Included in this group are persons who have been accommodated in their current job or workplace.²⁰

The Employment Equity Act requires employers to conduct a workforce survey to determine the degree of under representation of persons in the designated systems. Employers

¹⁹ *Id.* at ¶7131.

²⁰ Employment Equity Act, S.C., ch. 44, § 3 (1995). *See* Appendix III.

are also required to conduct a review of their employment systems and policies. Based on this information, the employer must develop an employment equity plan that includes positive policies, measures that will be taken, short term numerical goals, and longer term goals for increasing the representation of persons in designated groups. Once adopted, a plan must be monitored. Private sector employers who are subject to the Employment Equity Act are required to file annual reports.

The Employment Equity Act is enforced by the Canadian Human Rights Commission. The Commission can direct an employer to take actions to comply with the Act but cannot issue directions that would cause undue hardship, require an employer to hire or promote unqualified persons, require an employer to create new positions, or impose quotas.²¹ Failure to file the required report or to include required information is an offense that is punishable with a fine of up to Can\$10,000 for a single occurrence. Continuing violations are punishable with fines of up to Can\$50,000.²²

Employment equity has been a controversial subject in Canada. Critics contend that employment equity ultimately leads to the creation of quotas. This is why the Progressive Conservative Government that assumed power in Ontario in 1995 immediately repealed the Employment Equity Act that had been created by the New Democratic Party Government in 1994. In fact, the law enacted for this purpose was entitled the Job Quotas Repeal Act.²³ Since then, only the Government of Quebec has entered the field.²⁴ Quebec's program is, however, limited to government. The federal program is not so limited, but government service has received greatest attention under it. A major development in this field occurred earlier this year when plans to increase the percentage of targeted groups in the public service from around 6 to 20 percent were announced.

III. Public Services and Transportation

A. Covered Entities

The Canada Transportation Act contains a National Transportation Policy. This policy states that

each carrier or mode of transportation, as far as is practicable, carries traffic to and from any point in Canada under fares, rates and conditions that do not constitute...an undue obstacle to the mobility of persons,

²¹ *Id.* §6.

²² *Id.* §35.

²³ S.O., ch. 4 (1995).

²⁴ An Act Respecting Equal Access to Employment in Public Bodies and Amending the Charter of Human Rights and Freedoms, S.Q., ch. 45 (2000). *See* Appendix III.

including persons with disabilities.²⁵

The term “disabilities” is not limited to any particular group or groups.

B. Actions Considered to be Discriminatory

The Federal Government has established regulations for services that air carriers are required to provide within Canada on aircraft carrying 30 or more passengers. These regulations are not comprehensive, but do establish some basic rules that must be complied with. For other types of transportation and to supplement the Air Transportation Regulations, the Government has created the Canada Transportation Agency. This agency is directed to remove undue obstacles to the mobility of disabled persons. In fulfilling this mandate, the Agency has issued Codes of Practice. The Codes of Practice were reportedly introduced as an alternative to regulations as a result of the current government policy to effect change through non-regulatory measures.²⁶

The Codes of Practice cover a number of areas. For example, the Code for aircraft covers the physical accessibility of equipment used in aircraft with 30 or more passenger seats. There are also Codes for rail, marine, and inter-city bus travel. Complaints of violations of the Codes may be filed with the Canada Transportation Agency. However, as these Codes are all fairly new, there have not been many reported cases involving formal complaints. In 1998, there were only 39 new complaints.

C. Enforcement

The Codes of Practice are not enforceable through civil or criminal penalties. Violations of the regulations are enforceable through various criminal sanctions.

D. Exemptions

The standard for determining whether there is discrimination in transportation services is whether the problem complained of constitutes an “undue obstacle.” In one reported case, the Agency found that requiring persons riding motorized scooters to use the freight elevator to reach the platform at Toronto’s train station did not constitute an “undue obstacle.”²⁷

E. Administering Authority

The administering authority is the Canada Transportation Agency.

²⁵ S.C., ch. 10, § 5 (1996). *See* Appendix IV.

²⁶ *Supra* note 1 at 20.

²⁷ *Id.* at 23

F. Certificates for Exceeding Requirements

The Canada Transport Agency does not appear to issue such certificates.

G. Agencies Responsible for Coordination

The Canada Transport Agency is the coordinating authority.

IV. Public Accommodation

Canada's human rights laws apply not only to employment, but also to the provision of goods, services, facilities, and accommodations that are customarily available to the public. However, the number of complaints based on allegations of discrimination in public accommodation has been much smaller than the number of complaints based on allegations of discrimination in employment. The reported cases also indicate that the Commission is generally more willing to address issues of discrimination in employment than it is in addressing discrimination in public accommodation.

The Canadian Human Rights Commission has been criticized for not following the "lead established under the Americans with Disabilities Act, which would allow [it] to establish areas for systemic remedies and pursue them aggressively."²⁸ Instead of using the Commission to pursue issues on behalf of various groups of disabled persons, Canada generally relies on individual complaints to develop its anti-discrimination policies.

V. Telecommunications

Canada does not have legislation that specifically addresses the problems encountered by disabled persons in the field of telecommunications. However, the Government has established a Canada Radio-television and Communications Commission that is authorized to issue decisions and policies as well as to impose conditions on carriers. This power has reportedly been used "as a vehicle for removing communication barriers."²⁹ Nevertheless, it has been contended that "the efforts that the {Commission} has undertaken to make... telecommunications accessible to persons with disabilities has lacked direction."³⁰ This lack of direction has been partially attributed to the fact that the Commission does not have a social policy group to enforce policies to remove discrimination.

Canada has been a leading nation in the development of a message relay service. This service allows persons who are deaf to use the TTY to communicate with persons who are not deaf with the assistance of an operator. Carriers are required to offer this service before they can register with the Commission. The Commission does not regulate

²⁸ *Id.* at 13.

²⁹ *Id.* at 26.

³⁰ *Id.* at 27.

the quality of the message relay service.

The Commission has issued a decision that requires carriers to only accept privately-owned phones to have a switch to make them compatible with hearing aids. The CRTC has also ruled that toll discounts must be given to TTY users.

VI. Conclusion

Canada does not have one statute that is equivalent to the Americans with Disabilities Act. However, Canada does not a number of statutes that cover many of the same fields. These statutes generally rely upon complaints procedures for the development of policies through the issuance of rulings and decisions by commissions. Generation of policies with the responsible agencies has generally been retarded by shortages of personnel assigned to that task. While the Government has been criticized for not assigning more personnel to the relevant agencies and departments, the approach of addressing problems in more of a piecemeal fashion than the United States has generally been approved by groups representing disabled persons. The groups appear to believe that progress can best be made within the current system rather than through adopting a Canadians with Disabilities Act. Approval for the strong participation of the provincial government has also been widely expressed. This approval reflects the fact that Canadians tend to look more to their provincial governments in matters involving human rights than Americans look to their state governments for the same types of protections and interventions.

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PEOPLE'S REPUBLIC OF CHINA
RIGHTS OF PEOPLE WITH DISABILITIES

The central statute on the disabled in the People's Republic of China (PRC) is the 1991 Law of the People's Republic of China on the Protection of Disabled Persons. In general the PRC law seems to be wider in focus than the Americans with Disabilities Act and more hortatory in tone. It contains provisions on employment of the disabled, public services and transportation, and legal sanctions for infringement of their rights, but it also covers rehabilitation, education, and cultural issues, among others. The State and local governments are responsible for administering the Law, while the China Disabled Persons' Federation and its local branches are to represent the interests of the disabled and coordinate provision of services to them.

Introduction

The People's Republic of China has an estimated 60 million disabled people, constituting about five percent of the total population. As of June 2000, it was reported that 75 percent of the disabled had employment, and that the Chinese government had pledged to raise that figure to 85 percent by 2005.¹

The Law of the People's Republic of China on the Protection of Disabled Persons, which went into effect on May 15, 1991, was formulated in accordance with the PRC Constitution to protect the lawful rights and interests of the disabled.² The Law is divided into 54 articles and nine chapters, which include general provisions, rehabilitation (i.e., rehabilitation to regain normal functions or to compensate for lost functions), education, employment, cultural life, welfare, environment, legal liability, and supplementary provisions.

Definition

A disabled person is defined as one who suffers from abnormalities, the loss of a certain organ or function (psychologically, physiologically, or in anatomical

¹ *China Helps Disabled Persons Find Jobs*, XINHUA, June 11, 2000, via Foreign Broadcast Information Service (FBIS) online subscription database; *Comparison - 'Full Text' of PRC White Paper on Poverty Reduction in Rural Areas*, XINHUA, Oct. 15, 2001, as translated in FBIS.

² Art. 1. The Law was adopted on Dec. 28, 1990, and promulgated on the same day. For the Chinese text, see 30 ZHONGHUA RENMIN GONGHEGUO GUOWUYUAN GONGBAO [Gazette of the State Council of the People's Republic of China] 1116-1125 (Feb. 25, 1991) (hereafter STATE COUNCIL GAZETTE). For an English translation, see 4 THE LAWS OF THE PEOPLE'S REPUBLIC OF CHINA (1990-1992) 123-136 (Beijing, Science Press, 1993).

structure), or the loss wholly or in part of the ability to engage in activities in a normal way. Disabled persons are those with visual, hearing, speech, or physical disabilities; mental retardation; mental disorders; multiple disabilities; and/or other disabilities. Criteria for classification of disabilities are established by the State Council.³

Anti-Discrimination and Other General Provisions

The PRC Law contains a general provision banning discrimination against the disabled, instead of focusing more specifically, like the Americans with Disabilities Act (ADA), against discrimination by public and private entities. While other individual articles in the PRC Law proscribe acts deemed to be discriminatory, lists of such actions are not included under each chapter of the PRC Law, in contrast to most titles of the ADA.

Other general provisions deal with, among others, incorporating undertakings for the disabled into plans for social and economic development at all levels of government and giving “special assurance, treatment and pension” to wounded or disabled servicemen and persons who became disabled while on duty or while protecting the interests of the State and people.⁴ The Law also obliges disabled persons to abide by the law and to “display an optimistic and enterprising spirit” and “have a sense of self-respect, self-confidence, self-exertion and self-reliance.”⁵

Employment

Covered Entities

The State guarantees the right of the disabled to work, and all levels of government are to formulate plans for the employment of disabled persons and create the conditions for it. The principle to be followed is one of combining collective arrangements with arrangements for individuals. Preferential policies are to be adopted, along with measures of support and protection, to help gradually popularize and rationalize employment of the disabled through multiple channels.⁶

There is a quota system for the employment of the disabled: State organs, public organizations, enterprises, institutions, and urban and rural collective economic organizations are to employ “a certain proportion of disabled persons in appropriate types of jobs and posts.” The specific ratio may be determined by the people’s governments at the provincial level.⁷ Enterprises or institutions where the disabled work are to

³ *Id.* art. 2, ¶¶1-3.

⁴ *Id.* arts. 5-6.

⁵ *Id.* art. 9, in part.

⁶ *Id.* arts. 27 and 28.

⁷ *Id.* art. 30.

ensure that they have appropriate working conditions and labor protection. Such enterprises and institutions are to provide in-house technical training to disabled employees to help them upgrade their skills.⁸

The State and society are to establish welfare enterprises for the disabled, workers' sanatoria, and massage therapy centers as a means of providing concentrated employment for disabled persons. The property ownership and managerial decision-making power of welfare enterprises and institutions for the disabled are to be protected by the State.⁹ Welfare enterprises and institutions for disabled persons and self-employed disabled workers in urban and rural areas will enjoy a State policy of tax reduction or exemption. The State will also provide assistance in production, management, funds, material supplies, and other areas.¹⁰

Some 80 percent of the disabled in China live in rural areas, and a large number—estimated to be 20 million people in 1992—are impoverished. To ameliorate their condition, among other measures the State began in 1992 to offer special loans to alleviate poverty among the disabled; by 2000, some 2.6 billion *yuan* had been disbursed in small loans for individual persons and households.¹¹

Actions Considered Discriminatory

The Law stipulates in general that disabled persons enjoy equal rights with other citizens; that their rights and personal dignity are protected by law; and that discriminating against, insulting, or infringing upon the disabled is prohibited.¹² All of society is to show humanitarianism towards and “understand, respect, care for and assist people with disabilities” and to support work on behalf of the disabled.¹³

The State guarantees disabled persons' right to work.¹⁴ The Law declares that “no discrimination shall be practised against disabled persons in employment, engagement, status regularization, promotion, determining technical or professional titles, payment for labour, welfare, labour insurance or in other respects.”

⁸ *Id.* arts. 34, ¶4 and 35.

⁹ *Id.* arts. 29 and 34.

¹⁰ *Id.* art. 33, ¶1.

¹¹ *Supra* note 1, *Comparison- 'Full Text' of PRC White Paper on Poverty Reduction in Rural Areas.*

¹² *Supra* note 2, art. 3, ¶¶1-3 of the Law on the Protection of Disabled Persons.

¹³ *Id.* art. 7, ¶1.

¹⁴ *Id.* art. 27, ¶1.

Enforcement

The Law provides that if their lawful rights and interests are violated, disabled persons or their agents have the right to appeal to the competent authorities for disposition or to institute a lawsuit in a people's court. If such rights and interests are infringed upon by government functionaries unlawfully neglecting their duties, the units to which the functionaries belong or their higher authorities will instruct the offenders to correct their wrongdoing or will subject them to administrative sanctions. Where property or other loss or damage is caused, compensation must be made or other civil liability must be borne.¹⁵ It may be noted that interested parties in a lawsuit who are disabled and have no fixed sources of income to cover living expenses are eligible to apply for judicial aid from the people's courts.¹⁶

Anyone who infringes upon the right of the person or other lawful rights of the disabled by taking advantage of their disability, if it constitutes a crime, will be given a heavier punishment in conformity with the relevant provision(s) of the Criminal Law. Whoever publicly insults a disabled person, by violence or other means, will be investigated for criminal responsibility if the circumstances are serious, or to administrative punishment if they are less serious.¹⁷

No enterprise or institution is to deny employment to disabled graduates assigned by the State from institutions of higher learning, polytechnic schools, or technical schools solely on the ground of their disabilities. If denial of employment occurs, the disabled person may appeal to the departments concerned for disposition of the matter

¹⁵ *Id.* arts. 49-51.

¹⁶ Art. 3(5) of the Supreme People's Court Regulations on Giving Judicial Aid to the Poor, adopted on July 12, 2000. For the Chinese text, see 5 ZHONGHUA RENMIN GONGHEGUO ZUIGAO RENMIN FAYUAN GONGBAO (Gazette of the Supreme People's Court of the People's Republic of China) 148 (2000). For an English translation, see *PRC Supreme People's Court Provisions on Judicial Aid*, XINHUA, July 27, 2000, as translated in Foreign Broadcast Information Service (FBIS) online subscription database.

¹⁷ The Law on the Protection of Disabled Persons, *supra* note 2, art. 52, ¶¶1-2. Art. 52 refers to art. 145 of the Criminal Law; however, the Criminal Law was revised in 1997, and the relevant provision is now art. 246. The punishment is up to three years' imprisonment, criminal detention, public surveillance, or deprivation of political rights. The crime is to be handled only upon complaint, unless "serious harm" is done to public order or to State interests. The Criminal Law was adopted on July 1, 1979, and extensively revised on Mar. 14, 1997. It went into effect on Oct. 1, 1997, and was last amended on Dec. 29, 2001. For the 1997 text, see 2 ZHONGHUA RENMIN GONGHEGUO QUANGUO RENMIN DAIBIAO DAHUI CHANGWU WEIYUANHUI GONGBAO [Gazette of the Standing Committee of the National People's Congress of the People's Republic of China] 138-218 (Mar. 30, 1997); for an English translation, see 9 The Laws of the People's Republic of China (1997) 21-149 (Beijing, Publishing House of Law, 1998). According to art. 52 of the Law on the Protection of Disabled Persons, administrative punishment will be based on art. 22 of the Regulations on Administrative Penalties for Public Security, which was adopted on Sept. 25, 1986, and amended on May 12, 1994. Art. 22, item 3, stipulates that anyone who openly insults another person or slanders another person with fabricated facts will be subject to detention for up to 15 days, a fine of up to 200 yuan (US\$24), or a warning. For the Chinese text, see 11 STATE COUNCIL GAZETTE 438-449 (June 27, 1994); for an English translation, see *Regulations Governing Public Offenses*, BBC SUMMARY OF WORLD BROADCASTS, May 18, 1994, via LEXIS/NEXIS, News Library, Allnews File.

and the relevant departments will instruct the enterprise or institution to accept the said person.¹⁸

The Law also provides that having illicit sexual relations with disabled persons who cannot account for their own conduct due to mental retardation or mental disorder will be deemed rape, and the perpetrator will be investigated accordingly for criminal liability.¹⁹

Exemptions or Defenses to Sanctions for Discrimination

The PRC Law on the Protection of Disabled Persons does not have provisions that allow public or private entities to take certain actions against disabled persons.

Administering Authority

The government at all levels is to make overall plans and create conditions for employment of the disabled, based on the principle of combining collective arrangements with the needs of the individual. The Law calls for the adoption of preferential policies and measures of support and protection for the disabled in order to gradually popularize, stabilize, and rationalize their employment through multiple channels, at various levels and in a variety of forms.²⁰ The State is to promote employment of disabled persons, by various units, with the government at all levels and the departments concerned organizing and providing guidance.²¹

In regard to welfare enterprises and institutions for the disabled, local governments and the departments concerned determine the types of products suitable for production by disabled persons, give priority to production of those products by the welfare enterprises, and gradually determine which products will be produced exclusively by such enterprises. Government departments concerned, in determining the quota for employing workers and staff, are to allot a certain proportion of the quota to disabled persons. Priority is to be given to the disabled who apply for licenses as self-employed workers or businessmen, and they are also to receive preferential treatment in the allotment of work sites and loans and “in other ways.” The relevant departments are to assist disabled persons who work in rural areas by providing them with technical guidance, supply of materials for agricultural use, loans, and so on.²²

¹⁸ *Id.* art. 34, ¶¶3-4.

¹⁹ *Id.* arts. 49, 51, and 52.

²⁰ *Id.* arts. 27, ¶2 and 28.

²¹ *Id.* art. 30, in part.

²² *Id.* art. 33, ¶¶2-5.

Certifications for Meeting or Exceeding Statutory Requirements

Certifications for meeting or exceeding statutory requirements have not been included in the Law.

Agencies Responsible for Coordination

Under the State Council, the Coordinating Committee for State Council's Work Related to the Disabled provides general coordination.²³ The China Disabled Persons' Federation and its local branches are to represent the common interests of the disabled, protect their lawful rights and interests, and "unite, educate and provide service to disabled persons." The federations undertake tasks entrusted by the government, work on behalf of the disabled, and mobilize social undertakings for disabled persons.²⁴ In regard to poverty alleviation among the disabled, by 2000 about 80 percent of the counties in China had established 2,238 county-level service centers for the disabled and 60 percent of all townships had established 28,427 township-level service centers.²⁵

Public Services/Transportation

The Law contains a general stipulation that the State shall provide disabled persons with assistance by adopting supplementary methods and supportive measures to alleviate or eliminate the effects of their disabilities and external barriers and to ensure the realization of their rights.²⁶

Covered Entities

Public service agencies are to provide preferential and auxiliary services to disabled persons. In taking public transportation, the disabled are to be accorded convenience and special consideration. They will be allowed to bring on board, free of charge, any indispensable and auxiliary equipment. The blind may take local buses, trolleys, subways, and ferries free of charge. People in rural areas are to be exempted from, or enjoy a reduction of, obligatory labor, public utilities fees, and other social obligations.²⁷

The Law provides in general that the State and society are to step-by-step create a sound environment to improve conditions for disabled persons to participate in social life. More specifically, they are to gradually regularize the design of urban roads

²³ *Supra* note 1, *Comparison- 'Full Text' of PRC White Paper on Poverty Reduction in Rural Areas*.

²⁴ *Supra* note 2, art. 8, ¶1 of the Law on the Protection of Disabled Persons.

²⁵ *Supra* note 1, *Comparison- 'Full Text' of PRC White Paper on Poverty Reduction in Rural Areas*.

²⁶ *Supra* note 2, art. 4 of the Law on the Protection of Disabled Persons.

²⁷ *Id.* art. 44, ¶¶1-4.

and buildings for the convenience of disabled persons and adopt obstacle-free measures.²⁸ The Design Standards for City Roads and Structures To Facilitate Use by the Disabled require all localities to construct obstacle-free, handicapped-accessible facilities when building municipal buildings and other structures, appropriate for the PRC's actual conditions and economic development.²⁹ As of May 1, 2001, Technical Standards for Airport Passenger Terminal Facilities with Accessibility by Individuals with Disabilities, for trial implementation, went into effect. These standards were reportedly the PRC's first industrial standards on handicapped-accessible facilities.³⁰

The State guarantees the right of disabled persons to an education, and the government at various levels is to make education of the disabled part of the State educational program. Compulsory education is to be provided to disabled children and juveniles; those who accept it are exempt from tuition and enjoy reduced or exempted fees. The State offers grants to aid poor and disabled students.³¹ It also must set up educational institutions for the disabled, although disabled persons who are responsive to ordinary education are to be provided an education by ordinary educational institutions.³²

The Law provides that the State will encourage and assist disabled persons to participate in cultural, sports, and recreation activities and sets forth specific measures to be adopted to enhance their spiritual and cultural life. These include, for example, reflection of their lives in broadcast and print media; compilation and publication of braille books and audio materials for the blind and of reading materials for the deaf and mentally retarded and offering of TV programs in sign language; support for special sport meets and participation in international sports games and exchanges for the disabled; provision of facilities and accommodations for the disabled in places where cultural, sports, recreational, and other public activities are held; and the like.³³

Under the Law, the State and society are to adopt welfare measures to improve the life of disabled persons. Relief and subsidies will be provided to those with real financial difficulties and assistance will also be given to those who lack the capacity to work or who have no legal foster or financial resources. Welfare centers and other placement and foster institutions for the disabled are to be set up as well. Public

²⁸ *Id.* arts. 45 and 46.

²⁹ *Articles Preview 'White Paper' on Human Rights Rights of Disabled Guaranteed* [sic], XINHUA, Dec. 27, 1995, via FBIS; State Council Information Office, *White Paper Describes Human Rights Progress, Part II*, Dec. 1995, as translated in FBIS, Dec. 1, 1995 (Part II of the Information Office's report "Human Rights Progress in China").

³⁰ *China To Launch 1st Industrial Standards on Accessibility for Disabled*, XINHUA, Apr. 27, 2001, via FBIS.

³¹ *Supra* note 2, art. 18 of the Law on the Protection of Disabled Persons.

³² *Id.* arts. 21 and 22.

³³ *Id.* arts. 36 and 38.

transportation and mailing and delivery of braille books are to be free of charge for the blind, and disabled persons in rural areas are to have reduced or be exempted from obligatory labor, public utilities fees, and other social obligations. Government at various levels is to gradually increase care and support for the disabled.³⁴ Under measures issued by the General Administration of Customs, items used exclusively for the handicapped are exempt from import duties.³⁵

The Law provides that the State and society will adopt measures of rehabilitation to help disabled persons regain normal functions or compensate for lost ones. It sets forth the general manner in which such rehabilitation efforts are to be carried out, the role of government in setting up the relevant appropriate departments and institutions, the mechanisms for training personnel, and so on.³⁶

Actions Considered Discriminatory

See the general *provis* cited above under the corresponding section for “Employment.”

Enforcement

Please refer to the section on enforcement above, under “Employment.”

Exemptions or Defenses to Sanctions for Discrimination

This topic is not covered in the Law.

Administering Authority

Public service agencies are to provide preferential and auxiliary services to the disabled. People’s governments at the county and township level are responsible for giving disabled persons in rural areas the reductions in or exemptions from various social obligations (noted above). People’s governments at various levels are to gradually increase their care and support for the disabled.³⁷

Certifications for Meeting or Exceeding Statutory Requirements

This subject is not covered under the current Law.

³⁴ *Id.* arts. 40, 41, 43, and 44, ¶¶3-5.

³⁵ See “Interim Measures on Exemption from Import Duties on Articles Used Exclusively for the Handicapped,” promulgated on Apr. 4, 1997, and effective the same day. For the Chinese text, see 14 STATE COUNCIL GAZETTE 655-656 (May 7, 1997). For an English translation, see Isinolaw subscription database, ID:0-304-5000451.

³⁶ *Supra* note 1, arts. 13-17 of the Law on the Protection of Disabled Persons.

³⁷ *Id.* art. 44, ¶¶1, 4, and 5.

Agencies Responsible for Coordination

The China Disabled Persons' Federation and its local branches are to represent the common interests of the disabled, as was noted in the corresponding section above.

Public Accommodation and Services by Private Entities

The role of private entities is not clearly distinguished in the Law. Instead, the Law refers to "the State and society" (*see* previous section) adopting various measures to accommodate the disabled.

Telecommunications

This subject is not covered under the current Law.

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CZECH REPUBLIC
RIGHTS OF PEOPLE WITH DISABILITIES

The Czech Republic strives to improve the living conditions of persons with disabilities by promoting its plans in this respect and by enacting pertinent legislation. The rights of persons with disabilities are protected by a combination of special and general legislation. The judicial mechanism available to protect the rights of persons with disabilities is a legal remedy through the courts. The non-judicial mechanism is an administrative remedy through the offices of public administration.¹

The Czech Republic enacted legal provisions concerning persons with disabilities along the lines of the Americans with Disabilities Act of 1990. The provisions deal with the employment of disabled persons, with making public transportation user-friendly for the disabled, with making public accommodation accessible to the disabled, and also attempting to make provisions for the improvement of services for the hearing- and speech-impaired.

Disability organizations are always consulted, when laws and regulations with a disability aspect are being prepared. Consultations occur at the national level. The role of the organizations of persons with disabilities is to advocate rights and improve services; identify needs and priorities; participate in the planning, implementation, and evaluation of services and measures concerning the lives of persons with disabilities; contribute to public awareness; provide services; and promote/organize income generating activities.²

There is a coordination committee at the government level that reports to the Prime Minister's Office. It includes representatives of concerned Ministries and organizations of persons with disabilities. The establishment of the coordination committee has led to improved coordination of measures/programs, improved legislation, improved integration of responsibility, a better dialogue in the disability field, more accurate planning, more effective use of resources, and improved promotion of public awareness.³

Employment

Employers are required to create employment opportunities for the disabled and

¹ DPI and RI Country Reports on the UN Standard Rules - Czech Republic, Government Implementation of the Standard Rules As Seen By Member Organizations of Disabled Peoples' International - DPI and of Rehabilitation International - RI, at <http://www.independentliving.org/standardrules/DPO> and [RI-Answers/Czech.html](http://www.independentliving.org/standardrules/RI-Answers/Czech.html).

² *Id.*

³ *Id.*

to notify the pertinent employment office of vacancies suitable for persons with disabilities. Once employed, the employers must take special care in improving their skills and qualifications. Employers must employ persons with disabilities recommended by the pertinent employment offices within the scope of the number of positions reserved to the disabled.

Every employer who employs more than 25 persons is under an obligation to comply with the requirements of the Law on Employment concerning the disabled. He/she must have at least four percent disabled in his/her work force, or buy products from firms employing more than 50 percent disabled, or pay 1.5 times the average wage for each person with a disability that he/she fails to employ. He/she can comply with the requirement by combining all three choices. The employer must report his/her yearly compliance record with the pertinent employment office by February 15 of the next calendar year and make the required payment, if necessary. If he/she complies fully with the requirements, he/she is entitled to receive from the state a contribution of 35 percent of the average wage for each person with a disability he/she employs.

A person with a disability is entitled to re-qualification to acquire skills for a new trade or occupation and to 70 percent of his/her previous wages during re-qualification. He/she may be entitled to further support after re-qualification and receives a monthly payment for his wife and children.⁴

The provisions of the Employment Law are enforced by the employment offices.

Public Transportation

Every carrier is required to create conditions for the transport of persons with disabilities. This applies to all carriers in railroad, street car, city, intercity, and international bus services.⁵

Persons with disabilities have priority to seats reserved and marked for their use. In every individual carriage there must be at least two seats so reserved. In each city tramway, trolley bus, and bus there must be at least six seats so reserved. Carriages constructed to accommodate persons in wheelchairs must be so marked. The markings are the international signs of accessibility.

The Social Security Law⁶ provides for special advantages to persons with

⁴ Law of Jan. 31, 1991, on Employment, No. 1, COLLECTION OF LAWS, as amended by Law of Nov. 29, 2001, No. 474, COLLECTION OF LAWS, arts. 21-25.

⁵ Law of Dec. 30, 1994, on Railroads, No. 266, COLLECTION OF LAWS, consolidated text of Jan. 26, 2001, No. 35, COLLECTION OF LAWS as amended by Law of Feb. 5, 2002, No. 77, COLLECTION OF LAWS. Law of Apr. 26, 1994, on Road Transport, No. 111, COLLECTION OF LAWS, consolidated text of Jan. 9, 2001, No. 1, COLLECTION OF LAWS. Both Laws on Railroads and on Road Transport were amended by Law of Apr. 2002, No. 175, COLLECTION OF LAWS. Regulation of June 15, 2000, on Railroad and Road Transport, No. 175, COLLECTION OF LAWS, arts. 8-13.

⁶ Law of June 16, 1988, on Social Security, No. 100, COLLECTION OF LAWS as amended, arts. 86-89.

disabilities and those using wheelchairs, namely free transportation and reserved seats in street cars and busses, a 75 percent reduction in train fares, and a guide in all means of public transportation for those in need.

The compliance with the Law is enforced by the Ministry of Transport and its subordinate agencies.

Public Accommodation and Services by Private Entities.

The subject of public accommodations by private entities has been under consideration by the government for a number of years including measures to be adopted, such as leveling of pavements; marking parking areas; installing automatic doors, lifts, and accessible toilets; ensuring access to public places; improving accessibility in housing; providing financial support for adapting private buildings to the needs of persons with disabilities; and installing special lighting and using contrast colors for visually impaired.⁷

Provisions of the Building Code for accessibility of buildings by persons with disabilities apply to buildings with more than three apartments; to housing for such persons; to buildings intended for the use by the general public; to buildings in which more than 20 persons are expected to work if use by persons with disabilities is presumed; and to schools and educational institutions. Thus, included are buildings of:

- public administration such as courts, prosecutor's offices, police stations, prisons, and postal services
- communications such as broadcasting, television, associations, and political parties
- business establishments such as public services, restaurants, stores, and storage facilities
- recreation intended for sporting activities
- cultural events, especially theaters, movie houses, libraries, museums, exhibition halls, and churches
- health and social services
- access to transport services, gas stations, rest areas
- tourist facilities such as hotels, motels, and similar housing

In all housing there must be at least one entrance for wheelchair access and an elevator large enough to hold them. There must be at least one restroom at every other floor for entry by wheelchair, one for men and one for women. In hotels there must be at least one room for 100 accessible by wheelchairs with a properly adapted restroom and bathroom, and one percent of rooms over 100. Theaters, movie houses, and other places of public entertainment to which there is admission by box-office, must

⁷ *Supra* note 1, DPI and RI Country Reports on the UN Standard Rules - Czech Republic.

be accessible by wheelchair. Sidewalks, underpasses, and platforms to access public transport must be protected against sliding and accessible by wheelchair. Parking lots must provide reserved spaces for persons with disabilities, one for up to 20 spaces, two for up to 40 spaces, and five percent for more. They must be marked by the international sign of accessibility. Likewise, all facilities accessible to persons with disabilities must be marked by the international signs.⁸

The compliance with the Law is enforced by the Ministry of Local Development.

Telecommunications

The government encourages media and other forms of public information to make their services accessible to persons with disabilities. The following are available: literature in Braille/tape, news magazines on tape/Braille, sign language interpretation for any purpose, and easy readers.

To date, no legislation has been enacted providing for relay services for hearing-impaired and speech-impaired individuals, however, the Law on Sign Language⁹ gives the deaf and hearing impaired the right to the use and education in sign language. They are entitled to the free service of an interpreter for official business, medical services, and the like. Students of schools, including universities, are entitled to such services.¹⁰

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⁸ Law of Apr. 27, 1976, the Building Code, No. 50, COLLECTION OF LAWS, consolidated text of Mar. 29, 2001, No. 109, COLLECTION OF LAWS. Regulation of Oct. 10, 2001, on the Use of Buildings by Persons with a Disability, No. 369, COLLECTION OF LAWS.

⁹ Law of June 11, 1998, on Sign Language, No. 155, COLLECTION OF LAWS.

¹⁰ *Supra* note 1, DPI and RI Country Reports on the UN Standard Rules - Czech Republic.

LAW LIBRARY OF CONGRESS
EGYPT
RIGHTS OF PEOPLE WITH DISABILITIES

The closest legislation that Egypt has to the U.S. Americans with Disabilities Act is the law on Rehabilitation of Disabled Persons.¹ The purpose of the legislation is to help the disabled to be trained and become employed, rather than to eliminate any discrimination against them.

The law considers the rehabilitation of disabled persons as providing such persons with the necessary social, psychological, medical, educational, and professional assistance to overcome weaknesses caused by their disability. It defines "disabled" as a person who, because of muscular, mental, or sensational weakness, is, since birth or has subsequently become, unable to assume or maintain a job by relying on his/her own ability to do so.²

The law authorizes the Minister of Social Affairs to establish the necessary schools and institutions, which would provide rehabilitation services to the disabled, and to require the recipients of social security who qualify for rehabilitation and work to enroll in these schools and institutions within 30 days, failing which would deny the recalcitrant social security payments. The law also authorizes the Minister to establish, with the concurrence of the government departments concerned, a roster of vacant posts to be reserved for the disabled.³

The Minister must ensure that employment is provided for those who have been rehabilitated by recording their names in a special register at the local Employment Offices, which will in turn proceed to locate jobs suitable to their abilities and qualifications.⁴

In order to ensure that the right of the disabled to work is respected and to guarantee that they are not discriminated against, the Egyptian law requires that the number of disabled persons hired by owners of firms with 50 or more employees should constitute no less than five percent of their workforce.⁵ The law imposes a similar quota for disabled persons to be employed in government offices and other public sector

¹ Law No. 39 of 1975

² *Id.* §2.

³ *Id.* §§6 and 11.

⁴ *Id.* §8.

⁵ *Id.* §9.

institutions,⁶ and guarantees them the same rights and privileges available to the other employees in their areas of work.⁷

Failure to abide by these requirements of the law would subject the person in charge of hiring, whether in the private or the public sector, to a fine of 100 Egyptian Pounds and/or imprisonment up to one month. And in the event the employer fails to pay the appropriate salary or compensation at the appropriate time, in accordance with this law, the disabled may, at no cost to him/her, seek relief by an administrative sequestration order against the employer.⁸

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⁶ *Id.* §10.

⁷ *Id.* §14.

⁸ *Id.* §16.

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EUROPEAN UNION
RIGHTS OF PEOPLE WITH DISABILITIES

I. Introduction

The year 2003, which is the 10th anniversary of the UN General Assembly's adoption of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, has been designated as the European Year of People with Disabilities. The Council of the European Union¹ made this decision in order to heighten Europeans' awareness concerning the rights as well as the needs of people with disabilities.

The issue of disability was of low priority in the European Union, in comparison with the United States, which has been a pioneer in this field with the enactment of the American with Disabilities Act in 1990.

In 1996, the EU disability policy began to emerge when the Commission adopted its initial communication, *Equality of Opportunity for People with Disabilities—A New Community Disability Strategy*,² as a follow-up to the 1993 UN General Assembly Resolution stated above. In its communication, the Commission followed the overall trend of granting rights to disabled people and viewing disability as an issue that concerns everyone in society.

While the Commission's first communication represented the initial step towards establishing a Community policy on disability, the 2000 Communication, *Towards a Barrier-Free Europe for People with Disabilities*,³ goes a step further in establishing a comprehensive EU disability policy.

In the EU, approximately 10 percent of the overall population, that is 37 million people, are disabled. Disability affects all ages but in particular the elderly. In most Member States, between 35 to 45 percent of disabled people are age 65 and older. A recent survey of people's attitude towards persons with disabilities undertaken by the Eurobarometer, indicates that in all Member States people generally feel at ease in the presence of persons with a disability. The countries where people felt most at ease are Denmark, Ireland, Netherlands, Sweden, Spain, and the United Kingdom, whereas

¹ Council Decision of Dec. 3, 2001, on the European Year of People with Disabilities 2003 (OJ L335/15, Dec. 19, 2001).

² COM(1996) 406 final.

³ Communication from the Commission to the Council, the European parliament, the Economic and Social Committee and the Committee of the Regions, COM(2000) 284 final (Brussels, May 12, 2000).

Germany and Greece ranked the lowest.⁴

The European Social Fund provides funding to Member States in order to implement programs promoting equal employment opportunities to people with disabilities.

II. Legislative Initiatives

A. Legal Basis

Article 13 of the Treaty of Amsterdam contains a general anti-discrimination clause. It grants the Council the authority to take action, based on a Commission proposal, to combat discrimination on the following grounds: sex,⁵ racial or ethnic origin, religion or belief, disability, age, or sexual orientation. Moreover, Declaration No. 22 of the Treaty of Amsterdam, obliges the Community institutions to prepare legislative measures that will harmonize the legislation of the Member States dealing with the function of the internal market taking into account the needs of people with disabilities.

The Community Charter on the Fundamental Social Rights of Workers of 1989 states that:

all disabled persons, whatever the origin and nature of their disability, must be entitled to additional countermeasures aimed at improving their social and professional integration. These measures must concern, in particular, according to the capacities of the beneficiaries, vocational training, ergonomics, accessibility, mobility, means of transport and housing.

Article 13, stated above, gave the impetus to the EU institutions to enact specific legislation barring discrimination on the enumerated grounds. In November 1999, the Commission adopted a series of measures that included a legislative proposal for a directive banning discrimination in the field of employment and occupation, and an action program containing additional measures.

III. Employment

Employment issues fall under Title VIII of the EC Treaty as amended. This is an area of shared competence between the Community and the Member States as enunciated in article 127:

The Community shall contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action. In doing so, the competence of the Member States shall be respected.

⁴ EUROBAROMETER 54.2: Attitudes of Europeans to Disability.

⁵ Discrimination solely on the basis of sex is dealt with a separate Community action.

Prior to taking a decisive and positive action in the form of a directive in the area of employment, a number of measures paved the way for the later action.

The Commission in *Raising Employment Levels of People with Disabilities– the Common Challenge* (document adopted September 1998) emphasized that the EU must move away from piecemeal initiatives and formulate a comprehensive policy.

The Council, in its Resolution on Equal Employment Opportunities for People with Disabilities of June 17, 1999,⁶ acknowledged the efforts that have been made at the national level by the Member States and urged them to pay special attention to general employment opportunities for people with disabilities, to take full advantage the funding opportunities offered by EU such as the European Social Fund, and to explore new employment venues for people with disabilities opened by information technologies.

The Social Partners prepared a compendium of best practices on employment issues of people with disabilities in 1998. A year later they followed up with a Joint Declaration focusing on the issue of promoting employment for such people.

In 1998, the European institutions (Commission, Council, and Parliament) adopted a Code of Good Practice which deals with internal policies of the institutions in regard to people with disabilities.⁷

Directive for Equal Treatment in Employment and Occupation

On November 2000, the Council adopted a general framework Directive for equal treatment in employment and occupation.⁸ In contrast to the legislative actions stated above, Directives are binding for the Member States as to the results to be achieved. Its goal is articulated in article 1: “combating discrimination on the grounds of religion or belief, *disability*, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.”

Pursuant to the Directive, the principle of “equal treatment” warrants that no direct or indirect discrimination is permitted on the grounds mentioned above.

- Direct discrimination occurs when on person is treated less favorably than another is, has been, or would be treated in comparable situations on any grounds.
- Indirect discrimination occurs when “an apparently neutral” provision, criterion, or practice would put persons having a particular disability at a particular disadvantage compared with other persons unless:
 - (a) that provision, criterion, or practice, is justified based on a legitimate

⁶ OJ C 186, 3 (July 2, 1999).

⁷ *Supra* note 3, at 6.

⁸ OJ L 303, 16 (December 12, 2000).

goal and the means of reaching the goal are appropriate and necessary,
or

- (b) with regard to people with a particular disability, the employer, or any person or organization is obliged based on domestic law to take the necessary measures to provide reasonable accommodation in order to eliminate disadvantages caused by such provision, criterion or practice.

According to the Directive, harassment is also a form of discrimination. It falls within the ambit of the Directive if the following conditions are met: a) unwanted conduct, b) based on one or several of the discrimination grounds stated above, and c) with the intent or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating, or offensive environment.

The scope of the Directive extends to private and public sectors, including public entities in the following areas:

- conditions for access to employment, self employment, or occupation (This also includes criteria for selection and recruitment as well as promotion.)
- access to vocational guidance, training, and retraining
- employment and working conditions, including dismissals and pay
- membership and involvement in an organization of workers

On the other hand, the scope of the directive does not extend to the following cases:

- differences in treatment based on nationality (However, it does apply to nationals of third countries.)
- state social security or social protection schemes
- armed forces as far as discrimination on the grounds of disability and age (The rationale for such an exemption is that Members are concerned with maintaining strong and effective armed forces.)⁹
- national provisions on public security, maintenance of public order, and prevention of criminal offenses as well as health and the protection of rights and freedoms of others

Reasonable Accommodation for Disabled Persons

In an effort to comply with the principle of equal treatment, article 5 of the Directive requires that employers provide “reasonable accommodation.” The Directive elaborates further on the concept of “reasonable accommodation” by stating that employers “shall take appropriate measures, where needed in a particular case to enable a person

⁹See Commission’s response to a written question #-3421/01 on the subject of Application of the Commission’s Discrimination Directives. OJ C 134 E, 231 (June 6, 2002).

who has a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer.” If the burden can be sufficiently remedied based on disability measures already in place in the Member State, then it is not disproportionate.

Recital 20 of the Directive’s preamble further clarifies the concept of reasonable accommodation, by stating that employers should provide “effective and practical measures” in order to adapt the working conditions to disability, such as, making changes to equipment, patterns of working time, training, etc.

Recital 21 of the Directive elaborates on the issue of whether the required measures would result in placing a disproportionate burden on the employer. It suggests that consideration should be given to the economic and other costs involved, the scale and financial resources of the entity or organization, and the likelihood of receiving state funds.

Exemptions or Defenses

Member States may provide that a difference of treatment which is based on a characteristic related to disability does not constitute discrimination due to the nature of the particular occupational activities concerned, or of the context under which they are being carried out, such a characteristic constitutes a “genuine and determining occupational requirement” and it meets the following two additional criteria: the objective is legitimate, and the requirement is proportionate.

Obligations of Member States

Overall, the Directive establishes minimum requirements. In practical terms, this indicates that Member States are obliged to transpose into national law these minimum requirements. The Directive does not impose an affirmative action on employers. However, since Members are free to enact more favorable provisions than those in the Directive, they may do so. The general implementation deadline is December 2, 2003. However, this deadline has been extended for three additional years in order to implement the provisions on age and disability. Member States are also obliged send a follow-up report to the Commission as to the measures taken. By December 2, 2005, Members are required to provide a report to the Commission as to the implementation results. This report is required every five years. Based on the findings, the Commission will prepare a report that is to be forwarded to the Council and the Parliament. A Member State which already employs more favorable provisions may not use as a basis this Directive to reduce the level of protection already afforded.

The Member States are obliged to do the following:

- ensure that remedial measures (judicial, administrative, or conciliation procedures) exist to those who consider themselves wronged. Those persons must also be able to issue a complaint or to bring an action even after the relationship in which discrimination was based has ended.

- ensure that organizations, associations, and other entities which have a legitimate interest may engage on behalf and/or in support of the complainant in any procedure.
- ensure that the burden of proof falls on the respondent to prove that the principle of equality was not violated. This rule does not apply to criminal proceedings nor does it apply to proceedings under which it is for the court or other competent body to investigate the facts of the case.
- protect employees against dismissal or other adverse treatment by the employer in direct reaction to the complaint.
- abolish all legislation or practices contrary to the principle of equal treatment.
- establish appropriate, effective, and dissuasive sanctions on violations of the domestic legislation enacted in implementation of the Directive, including provisions on compensation of the victims of discrimination.
- disseminate the information in regard to the implementation of this Directive and any other national provisions already in force.
- promote dialogue with the social partners in order to ensure effective implementation of the principle of equal treatment through monitoring the working environment, collective agreements, codes of conduct, and other means.
- encourage the social partners to include anti-discrimination rules in the conclusion of agreements subject to collective bargaining.
- encourage dialogue with non-governmental organizations which under their domestic law have a legitimate interest in combating discrimination.

IV. Public Services– Transportation

The initial step towards making transportation means accessible to those with disabilities was taken in 1993, when the Commission adopted a Community Action Program for Accessible Transport.¹⁰ The document introduced a number of measures in order to improve accessibility of transportation means.

The Commission, in its 2000 Communication *Towards a Barrier Free Europe for People with Disabilities*, not only acknowledges the significance of mobility in enabling those with restrictions to participate in social, commercial, cultural, and political activities,¹¹ but also recognizes that it is a right which should be enjoyed by every person, subject to certain limitations. The Commission also emphasized that EU employment policies will not be effective without taking action to improve accessibility by people with reduced mobility.

¹⁰ COM (1993) 433 final.

¹¹ See Communication *Towards a Barrier Free Europe for People with Disabilities*, from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions COM (2000) 284 final (Brussels, May 12, 2000).

The EU has adopted legislative measures in the following fields: vehicles (buses and coaches), maritime transport, elevators, and parking cards for the disabled.

A. Vehicles (Buses and Coaches)

In 2001, Directive 85/EC, which deals with safety issues related to vehicles with more than eight seats in addition to the driver's seat, aims to improve access to such vehicles. Recital No. 11 and article 3 state that persons of reduced mobility or those in wheelchair must be able to access such vehicles through technical solutions. The Directive introduces technical standards that must be adopted in order to increase accessibility.

The Commission has established a computerized database, the European Local Transport Information Service (ELTIS). It contains information related to good practices in local and regional means of transportation and also specific case studies of accessible transport to those with limited mobility.

B. Maritime Transport

In line with the 1991 recommendation of the International Maritime Organization (IMO) "on the design and operation of passenger ships to respond to elderly and disabled person's needs," the Commission has espoused the recommended standards in several initiatives. For example, Directive 99/35/EC¹² imposes a requirement on host states to ensure that companies which own ferries and high-speed passenger crafts operating to and from Community ports disseminate information on the services they provide to the elderly and disabled persons on board. The information must be in a format that is readable by people with limited vision.

C. Elevators

In 1995, the Commission recommended that existing elevators must be accessible by unaccompanied disabled persons.¹³ This action was followed by a Directive in order to approximate the legislation of the Member States on elevators. Elevators must meet the health and safety requirements as specified out in the Annex.

D. Parking Cards for Disabled

In 1998, the Council recommended that Member States introduce a parking card for people with disabilities¹⁴ to enable them to park in designated places close to facilities.

¹² *On a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services*, OJ L 138, 1 (June 1, 1999).

¹³ 95/216/EC: Commission Recommendation of June 8, 1995, concerning improvement of safety of existing lifts OJ L 134, 37 (June 20, 1995).

¹⁴ 98/376/EC, Council Recommendation of June 4, 1998, on a parking card for people with disabilities. OJ L 167, 25 (June 12, 1998).

The parking cards are issued according to national provisions. The standardized Community model has been in use as of January 1, 2000. In practice, Member States allow reciprocal recognition of parking concessions to people with disabilities.

VI. Telecommunications

Directive 98/10/EC on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment,¹⁵ aims to ensure the availability of good quality fixed public telephone services and to define the services to which all users should have access. The Directive requires Member States to take appropriate measures to ensure access and affordability of all fixed public telephone services for disabled users and those with special social needs. Such measures could include making available public text telephones to other measures suitable for deaf or speech impaired people or for people with impaired vision and itemized bills in alternative format available upon request

Directive 99/5/EC, on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity, establishes a regulatory framework governing the placing on the market radio equipment and telecommunications terminal equipment.¹⁶ The Directive requires that radio and telecommunications terminal equipment have features for users with disability.

VII. Information and Communication Technologies (ICTs)

In its 1996 communication, the Commission stressed that people with disabilities must have access to information and communication technologies. This is an area that according to the Commission's opinion, the EU is far behind the United States where under federal law ITC producers are obliged to ensure that people with disabilities have unfettered access to information technologies.

A Communication adopted in 2000 on Jobs in the Information Society deals with the employment of people with disabilities in the information age and urges the Information Society Industries to apply standards for user-friendly equipment.

VIII. Public Web Sites Accessibility

The issue of accessibility of public websites by disabled people was initially considered in the eEurope Action Plan 2002, adopted by the European Council convened in Feira in June 2000. The action plan, under objective 2c, stresses that "public sector websites and their content in Member States and in the European institutions must be designed to be accessible to ensure that citizens with disabilities can access information and take full advantage of the potential of e-government."

¹⁵ OJ L 101, 24 (Apr. 1, 1998).

¹⁶ OJ L 91, 10 (Apr. 7, 1999).

In 2001, the Commission adopted communication *eEurope 2002– Accessibility of Public Web Sites and the Content*.¹⁷ In this document, the Commission urges the Member States to adopt the World Wide Consortium/Web Accessibility Initiative (W3C/WAI) Web Content Accessibility Guidelines.¹⁸ The guidelines offer technical assistance and guidance which are available online in order to make Internet accessible to people with disabilities.

A committee comprised of representatives of the Member States, the High Level Group on Employment and the Social Dimension of the Information Society (ESDIS), is monitoring implementation of the guidelines by the Member States and any progress made in this area.

VI. Action Plan– Funding

The EU has financially supported a number of projects that focus on the needs of people with disabilities, through various programs, such as Socrates, Health Promotion, Daphne, Phare, and others.

The European Social Fund is the main instrument that funds projects of a social nature. Among its objectives is to integrate disabled people in the employment sector. For the period 2001-2006, the Fund will support a number of initiatives designed to improve the social and professional integration of disadvantaged groups, including those with disability.¹⁹

The Council adopted a Community action program²⁰ to effectively combat direct or indirect discrimination on all grounds except discrimination based on sex, which is subject to a separate community action. The program aims to promote measures, facilitate the exchange of good practices among the Members and to further develop new practices for the period of 2001-2006. Members of the EFTA/EEA (European Free Trade Association/European Economic Area) and the candidate countries may participate in this program in accordance with the terms and conditions established in their respective documents.

The amount authorized for the implementation of this program was established at 98.4 million. The European Commission is in charge of monitoring implementation of this program, together with the Member States. An evaluation report is due by December 31, 2005.

The following areas of action fall within the scope of the program:

¹⁷COM (2001) 529 final (Brussels, Sept. 25, 2001).

¹⁸[Http://www.w3.org/WAI](http://www.w3.org/WAI).

¹⁹A DG V services working paper, *Mainstreaming disability within EU Employment and Social policy*.

²⁰Council Decision 2000/750/EC of Nov. 27, 2000, establishing a Community action program to combat discrimination (2001-2006) OJ L 303, 23 (Dec. 2, 2000).

- non-discrimination within and by public administrations
- non-discrimination within and by the media
- equal participation in political, economic and social decision-making
- equal access to, and supply of, good and services which are available to the public, such as housing, transport, culture, leisure, and sport
- effective monitoring of discrimination
- dissemination of information concerning equal treatment rights and non-discrimination

The program is open to the following public and/or private bodies and institutions:

- Member States
- local and regional authorities
- social partners
- non-governmental organizations
- universities and research institutes
- national statistical offices
- the media

The program envisions action at the EU and the Member States level. The Community is responsible for the following:

- preparation of studies for in-depth analysis of the reasons of discrimination
- evaluation of anti-discrimination legislation and practice
- transnational cooperation and promotion of networking between those involved in the fight against discrimination including NGO's
- raising public awareness of discrimination issues and increasing the publicity of the program, through promotional campaigns, events, and communications

The Member States in cooperation with the Commission are responsible for the correct and efficient implementation of the program and exchange information with representatives of NGO's and the social partners on the design, implementation and follow-up of the program.

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FRANCE

RIGHTS OF PEOPLE WITH DISABILITIES

The cornerstone of French disability legislation is a 1975 Law which makes the integration of all disabled people in the educational system and in working and social life a national obligation. It falls to the state and local governments and all public and private bodies and groups to ensure the maximum level of autonomy for each disabled individual. To further this goal many laws and decrees were enacted covering topics including education, employment, training, transportation accessibility, building requirements, roads, access to sports and culture, and availability of social benefits. A 1987 Law for the benefit of the employment of disabled workers was a radical reform. It requires employers who employ 20 or more employees to employ a number of disabled persons equal to six percent of their workforce. In addition, the Law on discrimination contained in the Penal Code was amended to protect disabled persons against discrimination in employment and in obtaining goods and services. Organizations and committees representing persons with disabilities are consulted when laws and regulations on disability issues are prepared and participate in disability policy making. Rights of disabled persons are enforced through the courts.

Introduction

French disability legislation was gradually developed during the course of the 20th century. Up to that time, the French authorities were mainly concerned with the disabilities resulting from war injuries, and they did not take into account disabled civilians apart from a Law of 1898 on the Protection of Victims of Work Accidents. Many sporadic measures were passed from 1905 to 1975 ranging from assistance to the elderly and disabled persons to vocational rehabilitation. In addition, the creation of the social security system helped to protect all employees against the consequences of non-work related diseases and accidents by compensating them for loss of earnings.¹

These measures were compiled and harmonized in Law 75-534 of June 30, 1975,² which is considered the cornerstone of the French disability legislation. Article 1 states that the integration of disabled people in the educational system and in working and social life is a national obligation. It relates to disabled people of all ages and includes education, social security, access to buildings, and employment matters. It further provides that "families, the state, local authorities, public organizations,

¹ [Http://www.travail.gouv.fr/dossiers/handicap.htm](http://www.travail.gouv.fr/dossiers/handicap.htm).

² JOURNAL OFFICIEL, J.O. (Official Gazette of France), July 1, 1975, at 6596.

social security organizations, associations, public and private sector groups, organizations and enterprises” must all contribute to achieve this goal.

Other fundamental laws include Law 87-517 of July 10, 1987,³ on the employment of handicapped workers; Law 89-486 of July 10, 1989,⁴ concerning educational reforms which addresses the school integration of young disabled people; Law 90-602 of July 12, 1990,⁵ on the protection of individuals against discrimination on the grounds of their state of health or their disability as amended by Law 2001-1066 of November 16, 2001;⁶ and Law 91-663 of July 13, 1991,⁷ which includes several measures aimed at improving access of the disabled to housing, work places, and public buildings. A *Conseil National consultatif des personnes handicapées* composed of representatives of government authorities, labor and management organizations, disabled person associations, and social security organizations participates in policy making and gives advice regarding draft legislation on any issues concerning disabled people.

In addition, France has signed many international instruments⁸ which guarantee equal opportunities for the disabled and enable them to acquire as much autonomy as possible. In pursuance of all these commitments undertaken at the international level, the French policy towards the disabled is currently aimed at developing their autonomy and facilitating their social and professional integration.

Employment

Definition of a Disabled Worker

There is no general legislative definition of disability. People are classified as disabled according to differing criteria depending on the benefits or services they are claiming. The Labor Code provides that a disabled worker is a person “for whom the possibility of obtaining or retaining employment is effectively reduced due to a deficiency or diminution of physical or mental capacity.”⁹ To be recognized as a disabled worker, one has to apply to a *Commission technique d'orientation et de reclassement professionnel*, COTOREP. Its general role is to assess the needs of the disabled persons for employment,

³ CODE DU TRAVAIL, (C. TRAV), arts. L.323-1 to L.323-35, (ed., Dalloz 2001).

⁴ J.O., July 14, 1989, at 8860.

⁵ J.O., July 13, 1990.

⁶ J.O., Nov. 19, 1991, at 18311.

⁷ J.O. July 19, 1991, at 9531.

⁸ *Supra* note 1.

⁹ C. TRAV, art. L.323-10.

training, and financial and social assistance.¹⁰ It has two branches. One approves the status of handicapped workers, evaluates the degree of disability and assigns a person to a category A, B, or C (blind and severely visually impaired people, for example, are assigned to category C). The other branch is concerned with vocational integration and guides disabled people towards either training or open or sheltered employment.¹¹

There is one commission in each *département*.¹² It is comprised of physicians, psychologists, social workers, and representatives from labor unions, for disabled organizations, and local and central government authorities. The commission must state the grounds upon which it bases its decisions regarding the classification of a disabled person.¹³

Appeals to the commissions' decisions can be made to the *Commission départementale des travailleurs handicapés, des mutilés de guerre et assimilés*. This commission is presided by a judicial judge designated by the first president of the competent court of appeals and is comprised of the regional director of labor and employment, a labor physician, a representative of the employees, a representative of the employers, a representative of the handicapped workers, and a representative of the departmental service of the national office of veterans. Further appeals are made to the *Conseil d'état* (the highest administrative court).

The Employment Obligation

All employers in the public or private sector employing at least 20 employees, whether full time or part-time, must employ a number of handicapped persons, victims of work-related accidents and illnesses, war invalids, and others sharing the status of war invalids equal to six percent of their work force.¹⁴

The compulsory employment obligation cover the following main categories of workers:

- workers recognized as handicapped by COTOREP
- persons with an occupational injury or disease that has led to permanent incapacity of at least 10 percent
- persons entitled to an invalidity pension under the general social security system, any other compulsory social insurance system or provisions governing public servants, where the invalidity reduced, by at least two-thirds, the person's capacity to

¹⁰ C. TRAV, art. L.323-11.

¹¹ *Id.*

¹² Metropolitan France is divided into 22 regions, which in turn are divided into 96 *départements*.

¹³ C. TRAV, art. L.323-11.

¹⁴ C. TRAV, arts. L.323-1 and 323-2.

work or to earn a living

- war veterans (and similar) entitled to a military invalidity pension

For the purpose of calculating fulfillment of the employment obligation, certain categories of disabled employees are counted as if they were one and a half, two, or two and a half individuals. This system is intended to privilege the employment of the severely disabled, young people, older people, those pursuing training at the employing organization, and those engaged on leaving a sheltered workshop or vocational training center.¹⁵

Employers can choose to fulfill this requirement by direct employment of the beneficiaries under the law, by entering into services contracts with or subcontracting to certain enterprises which employ disabled persons, by instituting a program for the benefit of disabled persons, or by making a contribution to the *fonds de développement pour l'insertion professionnelle des handicapés* [Development Fund for the Professional Integration of the Handicapped] in an amount fixed by a regulation.¹⁶ The fund is administered by a national private association. Its Board of Directors comprises representative of trade unions, employers' organizations, national organizations of disabled, and others appointed by those bodies and by the State. It complements state assistance and finances actions encouraging vocational integration and job retention of disabled workers in the mainstream work environment.¹⁷

Each year employers subject to the foregoing provisions must file an annual declaration to the appropriate administrative authorities relating to the fulfillment of such provisions. The declaration must be filed no later than February 15 and is to cover the period from January 1 through December 31 of the preceding year.¹⁸ The Workers Representation Committee, or where applicable the personnel delegates, must be informed of the declaration.

The failure of an employer to fulfill the provisions relating to the employment of disabled persons is punishable by a fine in an amount equal to the contribution to the *fonds de développement pour l'insertion professionnelle des handicapés* increased by 25 percent.¹⁹

¹⁵ C. TRAV, art. L. 323-4

¹⁶ C. TRAV, art. L.323-8-1.

¹⁷ C. TRAV, art. L.323-8-2 to L.323-8-4.

¹⁸ C. TRAV, art. L. 323-8-5.

¹⁹ C. TRAV, art. L.323-8-6.

Rights of Disabled Employees in the Private Sector

Disabled employees have the same status, with respect to the Labor Code as other company employees, except for wage adjustment and extended period of advance notice prior to dismissal.²⁰ Their salary may not be lower than the amount decided by the applicable collective agreement, although if overall productivity is diminished, the employer may be authorized by the competent authority to operate a wage reduction.²¹ In this case, the employee receives an additional wage financed by the *fonds de développement pour l'insertion professionnelle des handicapés*, in addition to the salary paid by the employer, guaranteeing resources for an amount between 100 and 130 percent of the minimum wage salary.

Disabled Employee in the Civil Service

As seen above, the six percent disabled workers employment obligation also applies to the public sector, the local and regional authorities, the hospital sector, and their public institutes. Access by disabled persons to civil service employment is subject to prior approval of the COTOREP “civil service” subcommittee. There are three means of access to the civil service for disabled persons:²²

- competitive examination. This is the way civil servants are usually hired in France. It is open to disabled persons regardless of age. They are entitled to accommodations or adjustments applied for at the time of registration including longer time, secretarial support, and specially adapted equipment.
- reserved positions. A certain number of positions are reserved for the disabled, under the only condition of testing the candidate's level of knowledge. This option is falling into disuse as the number of positions available is constantly diminishing and the waiting period grows longer.
- contract-based recruitment. Disabled workers may be hired on the basis of a one-year contract, renewable for a single term only, at the end of which they may become permanent if they are deemed professionally fit. They must have the same qualifications as candidates for the competitive examination relating to the position.

The careers of disabled civil servants progress in the same way as any other civil servant. However, they are given priority in regards to transfer requests subject to the requirements of the service. Each ministry department has at least one “disability

²⁰ C. TRAV, art. L.323-7. The period of advanced notice prior to dismissal is twice as long as for an able-bodied worker, but limited to three months.

²¹ C. TRAV, art. L.323-6.

²² Law 87-517 of July 10, 1987, J.O., July 12, 1987, at 7822; Law 95-116 of Feb. 4, 1995, J.O., Feb. 5, 1995, at 1992; Decrees 95-979 of Aug. 25, 1995, J.O., Sept. 1, 1995, at 12943; 96-1087 of Dec. 10, 1996, J.O., Dec. 12, 1996, at 18284; and 97-185 of Feb. 25, 1997, J.O., Mar. 4, 1997, at 3425.

representative” tasked with facilitating the vocational integration of disabled civil servants. In addition, an inter-ministry fund was set up in 1998 to enhance the integration of disabled persons into the civil service. The fund is used to contribute towards experimental equipment and the adapting of work stations.²³

Sheltered Working Activities

Some disabled persons have an insufficient capacity to have a job in the open work environment despite accommodations or adjustments to their work stations. A sheltered work environment enables them to carry on a salaried activity while benefitting from conditions adapted to their ability. They are two types of sheltered work; disabled people are directed by COTOREP to one or the other.

The first type, comprising sheltered workshops and distribution centers for home work, is intended for people whose capacity is at least equal to one-third of normal capacity. Employees are subject to the same legal, administrative, and contractual regulations as ordinary employees. No more than 20 percent of the employees in sheltered workshops may be non-disabled.²⁴ Shelter workshops may be established by local authorities, public institutions, and private establishments. They may receive public aid at *département*, regional, or local levels.²⁵ In addition, special grants are allocated through the Regional Directorates of Labor and Employment.

The second type, the *Centre d'aide par le travail* (CAT), caters to people from the age of 20 with temporary or permanent disabilities whose working capacity is less than one-third and whose potential aptitude for work is sufficient but whose condition does not permit a normal working life. Disabled workers in a CAT do not enjoy the status of salaried workers: they have no work contract and the rules regarding the representation of employees within a company do not apply. However, they are covered by the social security system. They also benefit from the income guarantee which may vary between 55 percent and 110 percent of the minimum wage salary.²⁶

Each workshop or CAT has at least three different activities, so that workers have a chance to find a suitable job. Sheltered workshops and CAT are constantly expanding. Expansion is one of the policy objectives of the French authorities.²⁷

²³ *Supra* note 1.

²⁴ C. TRAV, arts. L.323-30 to L.323-32.

²⁵ C. TRAV, art. L.323-31.

²⁶ *Supra* note 1.

²⁷ *Id.*

Right to Vocational Rehabilitation

Any disabled worker has a right to vocational rehabilitation and training.²⁸ It is provided through public or private centers supervised by the Ministry of Labor. They are financed by the national health insurance. Training may last from 10 to 30 months. Trainees receive financial support through the national employment agency (ANPE) and the *fonds de développement pour l'insertion professionnelle des handicapés*. ANPE assists persons who are looking for a job, training, or vocational advices. It also assists employers with the hiring of personnel. It manages a register of job seekers.

Protection Against Discrimination

Provisions regarding discrimination based on state of health or disability can be found in both the Penal Code and the Labor Code. Law 90-602 of July 12, 1990, concerning the protection of individuals against discrimination on grounds of their state of health or their disability amended the Penal Code²⁹ which already covered discrimination based on race or origin, sex, customs, marital status, ethnicity, and nationality. It was further amended by Law 2001-1066 of November 2001 and Law 2002-303 of March 2, 2002,³⁰ which added to the list physical appearance, sexual orientation, age, and genetic characteristic.

Discriminatory behavior is punishable by two years imprisonment and a fine of _30,000 when it consists of:

- refusing to provide a good or service
- hindering the normal exercise of any economic activity
- refusing to employ a person, or sanctioning or dismissing a person
- subjecting the supply of a good or service to a condition based on one of the grounds in article 225-1
- subjecting an offer of employment, a request for a training course or training in a company to a condition based upon the grounds in article 225-1
- refusing to accept a person to one of the training courses listed in article L.412-8(2) of the Social Security Code.

Law 2001-1066 of November 16, 2001,³¹ also modified the provisions of the Labor Code on discrimination in the workplace. The relevant section of the Labor Code³² now

²⁸ C. TRAV, art. L.323-15 to L.323-18.

²⁹ CODE PÉNAL, art. 225-1, (ed., Dalloz 2001).

³⁰ J.O., Mar. 5, 2002, at 4118.

³¹ *Supra* note 6.

³² C. TRAV, art. L.122-45.

reads:

no person can be eliminated from a recruitment process, sanctioned or dismissed due to their age, sex, lifestyle, sexual orientation, age, family situation, non-membership, whether genuine or assumed, of an ethnic group, nation, race, political beliefs, trade union activities, religious beliefs, physical appearance, surname, state of health or disability.

In addition, the definition of discriminatory practice was broadened to cover an employee's entire career. The ban on discrimination covers: recruitment, access to a placement or in company training program, pay, training, redeployment within a company, posting, qualifications, job classification, promotion, transfer from one workplace to another, and renewal of contract.

In addition, the provision concerning the burden of proof was modified. It is no longer only the employee's responsibility. The burden of proof now falls equally upon the employer.³³ The right to bring a discriminatory action to court has been extended to trade unions provided that they have representative status either nationally or in the relevant workplace.³⁴

Public Service/Transportation

Education of Disabled Children

The 1975 Law³⁵ provides for compulsory education for disabled children. This principle was reaffirmed by Law 89-486 of July 10, 1989,³⁶ relating to educational reform. A joint regulation by the Ministry of Employment and Solidarity, dated November 19, 1999, reasserts the right to schooling for disabled children, whatever their needs in terms of education, care, and rehabilitation may be. It also states that priority must be given to schooling in the mainstream environment.

Schools have developed various methods of integration: individual or collective, in mainstream or special classes, full or part time. The 1975 Law creates in each *département* a *commission de l'éducation spéciale*. This commission decides which facilities or services are best adapted to the child's age, abilities, and the nature and extent of his/her disability. It also grants special needs education allowances. Decisions of the commission are appealable before the social security courts.

Initial vocational training is provided at the secondary school level and beyond.

³³ *Id.*

³⁴ *Id.* art. 122-45-1

³⁵ *Supra* note 2 , arts. 4 to 8.

³⁶ *Supra* note 4.

Apprenticeship is also provided for young disabled persons. The admission conditions are less stringent than those. Many academic assistance programs exist that are essentially financed by the state and supervised by the Ministry of Education. The French authorities are also working on improving orientation and guidance for disabled children and providing better training for state education personnel.

School transportation is organized under the authority of the *département*. Students with a disability rate equal to or above 50 percent will be provided with adapted individual transport to and from school throughout the academic year.³⁷ The *commission de l'éducation spéciale* will assesses the degree of disability. Parents who provide transportation may claim compensation from the *département*.

Transportation

The 1975 Law provides that public transport must be progressively adapted to the needs of disabled by way of regulation.³⁸ In addition, Law 82-1153 of December 30, 1982,³⁹ on urban transport reform states that special measures must be taken to accommodate the special needs of people with limited mobility. A report on the accessibility of public transport prepared in 2001 at the request of the Ministry of Transport shows that progress is slowly being made. For example, 200 train stations are fully accessible to disabled, while 50 others, among the most important, have either equipment or services to cater to their needs. Old trains are replaced by trains with wheelchair spaces and adapted restrooms. The Ministry of transport and seven commercial airline companies recently signed “a code of good practices” relating to the accessibility of disabled to commercial airlines. The adaptation of the public buses network is slowly taking place. Both buses and stopping places need to be modified. The town of Paris is planning to have its 59 bus routes accessible by the end of 2006. Some of the major obstacles, in making public transportation accessible to disabled persons have been budgetary and technical factors and lack of co-operation from the numerous authorities and organization involved.⁴⁰

There is also special transportation reserved for persons with severe disability available for medical treatment, education, employment, and recreational purpose. Unfortunately, the demand is very high, and waiting lists are long. According to the French National Institute of Statistics 5.5 million persons stated having an impairment or a disability in their daily lives, and 1.8 million stated as having a severe disability

³⁷ CODE DE L'ÉDUCATION, art. L.213-16.

³⁸ *Supra* note 2, art. 52.

³⁹ J.O., Dec. 31, 1982, at 4004.

⁴⁰ [Http://equipement.gouv.fr/actualites/dossiers/2001/accessibilite/rapport](http://equipement.gouv.fr/actualites/dossiers/2001/accessibilite/rapport).

considerably restricting their autonomy.⁴¹

Public Accommodations and Services by Privates Entities

Access to Housings, Public Buildings, Public and Private Roads

Law 75-534 establishes the principles governing the accessibility and adaptability of public housing.⁴² In compliance with this Law, all new construction since 1983 must be adapted to the needs of a person requiring a wheelchair. Law 91-663 extends the principles of Law 75-534 and imposes various measures aimed at facilitating the access of disabled persons to housing, workplaces, and public buildings, in particular schools and universities. It extends the accessibility requirements to workplaces and offices with more than 20 employees. Building permits for public buildings cannot be delivered if such buildings are not accessible to the disabled.⁴³ Repair or restoration of places receiving the public must also comply with all the accessibility requirements.⁴⁴ The 1991 Law also authorizes associations set up to defend and assist disabled persons to take legal action in cases of failure to comply with the regulation concerning accessibility.

Decree 94-86 of January 26, 1994,⁴⁵ on the accessibility of the disabled to housing and establishments receiving the public sets forth in great detail the technical accessibility requirements for elevators, restrooms, showers, parking, telephone, hotels, sport facilities, etc. Decree 95-260 of March 8, 1995,⁴⁶ creates a safety and accessibility advisory committee at the *département* level. It defines the role and function of the committee and provides for the creation, under the control of the *préfet*,⁴⁷ of communal, inter-communal, or district accessibility committees in which associations of disabled participate.

Decrees 99-756 and 99-757 of August 31, 1999,⁴⁸ define the technical rules governing access by disabled persons to public or private road networks open to the public, particularly in terms of traffic routing, traffic signals, adaptation to pavement and

⁴¹ *Supra* note 1.

⁴² *Supra* note 2, art. 49.

⁴³ CODE DE LA CONSTRUCTION ET DE L' HABITATION, arts. L.111-7, L. 111-8, L.1118-1, and L.1118-2 (ed. Dalloz 1998)

⁴⁴ *Id.*

⁴⁵ J.O., Jan. 28, 1994, at 1585.

⁴⁶ J.O., Mar. 10, 1995, at 3754.

⁴⁷ The representative of the State in the *département*.

⁴⁸ J.O., Sept 4, 1999, at 13271.

parking spaces, both for private cars displaying a disabled person sticker and for low-floor buses.

A liaison committee for accessibility of transport and buildings reports to the Minister of Transport. It participates in the development and implementation of the policy on accessibility. It issues advice, recommendations, and proposals for new regulations, programs, and measures.

Access to Culture and Sports

Law 75-534 provides that "...access to sport and leisure activities by minors and adults with physical, sensory, or mental disability constitute a national obligation."⁴⁹ In addition, Law 2000-627 of July 6, 2000⁵⁰ on the organization and promotion of physical and sport activities emphasizes the obligation to take into account the different types of disabilities in the organization of physical and sports education programs within educational and vocational training centers or special facilities. As a result of the law, sports specialists and teachers are required to receive an initial special training and continuing education to better facilitate the access of disabled persons to physical and sport activities.

Discrimination

As seen above, under employment, France has a general criminal law on discrimination, which was extended to include discrimination based on state of health and disabilities.

Telecommunication

The use of information and communication technology has become an essential part of the economic, educational, and social life of individuals. As seen above, the policy of the French government is aimed at developing the autonomy of the disabled persons, and accessibility to new telecommunication services and products can only further this goal. In 1997, the French Government launched an action program for the information society. Through this program, the French authorities have been promoting the widest possible internet access in schools, open public places, and availability is also being improved for disabled persons. The *fonds de développement pour l'insertion professionnelle des handicapés* (previously mentioned in the section on employment) grants financial aids to workers and students to acquire computers and the equipment necessary to adapt such computer to their specific disability. In 1999, the government vowed to make public sites accessible to all and in particular to the handicapped.⁵¹

⁴⁹ *Supra* note 2, art. 1.

⁵⁰ J.O., July 8, 2002, at 10311.

⁵¹ LE MONDE, Stéphane Mandard, *Les technologies de l'information offrent aux personnes invalides un moyen de conquérir leur autonomie*, June 27, 2001, Lexis: Le Monde.

Enforcement

Enforcement of the rights of persons with disabilities is done through various courts (administrative, civil, criminal, labor, social security) depending upon the nature of the claim. As seen above, associations set up to defend and assist disabled persons and labor unions are authorized by law to take legal action on behalf of a disabled person in some cases. The principal alternative to the courts is the *médiateur* [mediator], the French “ombudsman” established by a Law of January 3, 1973.⁵² The mediator was created to restrain the excesses of the administration and to provide a simple, free, and readily accessible remedy. He investigates complaints that the administration has failed to live up to its mission in both the central government and local governments. In addition, the *médiateur* includes proposals for reform in his annual reports to the administration; the proposals focus on matters which have surfaced during his investigations. These proposals are taken seriously by the government and are often implemented.

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⁵² John Bell, Sophie Boyron & Simon Whittaker, *PRINCIPLES OF FRENCH LAW*, 200, 201 (Oxford University Press, 1998).

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GERMANY
RIGHTS OF PEOPLE WITH DISABILITIES

Germany recently enacted disability legislation requiring the removal of barriers in employment and granting unfettered access to facilities and services operated by the public and private sectors. Individual causes of action exist for discrimination in employment matters, though violations are also punishable by administrative fines. In addition, violations of the requirements for employment, public services, and public accommodations can be pursued through class actions by associations for the disabled. Anti-discrimination legislation is being drafted that would expand the individual's possibilities to sue for violations of the new requirements. Despite this new direction in German legislation for the disabled, social entitlements will continue to play a major role in providing a barrier-free environment for the disabled.

Introduction

Change in Philosophy

Germany has a long-standing tradition of providing for the disabled through social and labor laws and of promoting their integration into the mainstream of society through special protections and benefits.¹ In recent years, however, there has been a shift in emphasis toward ensuring a higher level of empowerment and self-determination for the disabled through more detailed pronouncements of their rights of equality and through the creation of statutory affirmative duties aimed at helping the disabled to lead normal lives.

The starting point in this policy change was a constitutional amendment in 1994 that specifically prohibits discrimination on account of disability² and thereby places disability on a better footing than other suspect classifications such as race, ethnicity, or religion. There appears to have been an intent that the constitutional provision

¹ Sozialgesetzbuch Erstes Buch, Dec. 11, 1975, BUNDESGESETZBLATT [BGBl., official law gazette of the Federal Republic of Germany] I at 3015, §10, as initially enacted and as amended by Gesetz, July 24, 1986, BGBl. I at 1110; Schwerbehindertengesetz, repromulgated Aug. 26, 1986, BGBl. I at 1421, as amended, and as in effect until July 1, 2001.

² "No one shall be disfavoured because of disability." [Grundgesetz für die Bundesrepublik Deutschland [GG], May 23, 1949, BGBl. at 1, as amended by Gesetz zur Änderung des Grundgesetzes, Oct. 27, 1994, BGBl I at 3146; translation from C. Tomuschat and D. Currie, BASIC LAW FOR THE FEDERAL REPUBLIC OF GERMANY (Bonn, 1998).]

should require affirmative action. In any event, the constitutional antidiscrimination clause has generated a substantial amount of judge-made laws in favor of the disabled.³

Recent Legislation

Between 2000 and 2002, three major laws were enacted to further implement the rights of equality for the disabled. These were the Act Combating Unemployment among the Severely Disabled,⁴ which increases the obligations of employers to hire the disabled and to improve their working conditions; Title 9 of the Social Code,⁵ which codifies the heretofore scattered provisions on rehabilitation and employment of the disabled and creates new administrative structures to ensure implementation;⁶ and the Disability Equalization Act.⁷ The last aims to compensate for the disadvantages experienced by the disabled and empower them to shape their own destiny by requiring public and private providers of goods and services to remove the barriers that have kept the disabled from fully participating in the life of the community.

Comparison with U.S. Law

The German Disability Equalization Act is similar to the Americans with Disabilities Act of 1990,⁸ however, there are some major difference between the two acts. The German Act is not as detailed and comprehensive as the American Act. Some of the areas covered in the Americans with Disabilities Act are covered in Germany by provisions of Title 9 of the Social Code. This is particularly true of employment law. In addition, much of the assistance for the disabled continues to be provided by social service providers, even though the newly enacted laws stress the equal rights aspects of the entitlements of the disabled. On the whole, much of the German legislative framework for the disabled creates the impression of mixing the formerly prevailing welfare philosophy with the new thinking of anti-discrimination measures.

Planned Legislation

The German Disability Equalization Act relies on the associations for the disabled to work toward its implementation by forging agreements with industry associations on

³ L. Osterloh in H. Dreier, 1 GRUNDGESETZ KOMMENTAR at 291 (Munche, . 1999); G. Beaucamp, *Das Behindertengrundrecht (Art. 3 Abs. 3 S. 2 GG) im System der Grundrechtsdogmatik*, 117 DEUTSCHES VERWALTUNGSBLATT at 997 (2002).

⁴ Gesetz zur Bekämpfung der Arbeitslosigkeit Schwerbehinderter, Sept. 29, 2000, BGBl. I at 1394.

⁵ Sozialgesetzbuch, Neuntes Buch, [SGB IX] June 19, 2001, BGBl. I at 1046.

⁶ A. Marschner, *Normen unter neuem Dach*, 56 ARBEIT UND ARBEITSRECHT at 300 (2001).

⁷ Behindertengleichstellungsgesetz [BGG], art. 1 of Gesetz zur Gleichstellung behinderter Menschen Apr. 27, 2002, BGBl. I at 1467.

⁸ 42 USC §§ 12101-12213.

specific requirements for accessibility or adaptation. Under this framework, it can be expected that progress may be gradual. The German Act does not forge legal remedies for individuals that would allow them to claim damages for discrimination. Such remedies, however, are in the planning stage. An Anti-discrimination Act, being drafted by the executive branch of government, appears to aim at implementing the European Union equal treatment directive for racial and ethnic minorities⁹ by going beyond the requirements of the directive and by creating a civil rights act that would give causes of action against discrimination to a broad range of disadvantaged groups, including the disabled. It is expected that the bill will give causes of action for discrimination in private contractual dealings, including employment and housing.¹⁰

Employment

Hiring Requirements

Employers with at least 20 full time employees must employ severely disabled individuals in at least 5 percent of the overall number of qualifying full-time positions;¹¹ in the future this quota may be adjusted to between 4 and 6 percent by regulation, depending on the level of unemployment among the severely disabled. The duty to employ the severely disabled applies to both private and governmental employers, and included in the definition of the latter are federal, state, and municipal agencies and institutions, as well as corporations, foundations, and institutions that have some official or quasi-governmental functions.¹²

Disabilities Defined

Severely disabled within the meaning of these employment provisions are individuals with a disability of at least 50 percent. In addition, individuals with a disability of more than 30 percent but less than 50 percent may be certified as qualifying for employment as though they were severely disabled. Physical, mental, and emotional disabilities are recognized, and the degree of disability is determined by the state agencies for disabled veterans. Within their quotas, employers have an obligation to employ severely disabled individuals who require special assistance to carry out their work or in other ways impose special obligations on employers, or whose performance is significantly impaired. For the employment of such disabled individuals, the employers

⁹ Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, June 29, 2000, OFFICIAL JOURNAL OF THE EUROPEAN COMMUNITIES [OJ] L 180/22. The directive must be implemented by the member countries by June 2003.

¹⁰ S. Baer, *Ende der Privatautonomie, oder grundrechtlich fundierte Rechtsetzung*, 35 ZEITSCHRIFT FÜR RECHTSPOLITIK at 290 (2002); Beck: *Ziele druchgesetzt*, FRANKFURTER ALLGEMEINE ZEITUNG [FAZ] at 2 (Oct. 12, 2002).

¹¹ SGB IX, §74.

¹² SGB IX, §§68 *et seq.*

may get additional credits in the determination of their quota of positions to be filled with the severely disabled.

Compliance Through the Payment of Levies

Employers who are not able to hire the required number of severely disabled individuals must pay a levy to the federal labor authorities. The levy is between 105 and 260 for each non-occupied position, the rate varies according to the rate of compliance by the employer.¹³ In Germany, employment agencies are operated by self-governing, quasi-governmental agencies at the federal and state level.¹⁴ These agencies are heavily involved in finding work for the disabled. The money that is raised by the employer fines is passed on to the "integration offices" that exist in each of the states and that coordinate measures that benefit the disabled (*see* below within this section).

Prohibition of Discrimination and Affirmative Requirements

The anti-discrimination provisions of Title IX of the Social Code implements the European directive on equal treatment in employment and occupation.¹⁵ Section 81 of Title IX provides that an employer may not discriminate against employees because of their disabilities, and they may not treat them differently from other workers in matters of the employment contract, in advancement, in the giving of directions, and in dismissal. The employer, may however take measures to the extent that the disabled are incapable of carrying out certain activities.

In addition to being liable for discrimination, the employers are under certain affirmative duties to create working conditions that make it possible for the disabled to work in occupations that use their abilities. The employers must make certain adjustments that allow the disabled to participate in career-advancing or training measures, and must reconfigure work spaces so the disabled can function, including adjustments to machinery and equipment. Governmental employers are under various obligations, including a duty to report vacancies suitable for disabled persons to the official employment agencies.

Legal Remedies

The disabled worker has a cause of action for damages against the employer, yet these damages appear to be capped at three months' salary, and the employer cannot be forced to hire the disabled person, even if there was discrimination. In the legal action, the burden of proof is reversed. If the disabled employee brings credible evidence of

¹³ SGB IX, §77.

¹⁴ Sozialgesetzbuch Drittes Buch, Mar. 24, 1997, BGBI. I at 594, as amended, §§367 *et seq.*

¹⁵ Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, Nov. 27, 2000, OJ L 393.

differentiated treatment, then the employer has the burden of exonerating himself by proving that there were justifying reasons for the different treatment.

Class action law suits are also possible for violations resulting from an employment relationship. In Germany, such lawsuits are brought by the associations for the disabled if the rights arising from the Act of at least one worker are violated. In the legal actions, the association that has standing to sue represents all potential victims of the violation.¹⁶ The most common sanctions, however, for violations of the employment requirements for the disabled, are administrative fines of up to 2,500. These fines are imposed by the governmental employment offices at the state level, and the revenue generated by the fines accrues to the integration offices of the states.

Agencies and Institutions Involved

The integration offices of the states are the primary coordinating agency for all administrative and social matters concerning the disabled. In the field of employment law, the integration offices have various functions. In particular, they monitor the employers' compliance with the statutory requirements, and they may assist employers financially with the moneys generated from fees and fines. In addition, the integration offices must be involved when a disabled worker is threatened by dismissal. On a day-to-day basis, the integration offices keep a close surveillance of the actual working conditions and social conditions of the disabled, and they attempt to alleviate problems through advice, training, and financial assistance for various equipment, housing, and other special needs of the disabled.

In the implementation of Title IX of the Social Code, the employers must also work closely with the works council that represents the workers of the enterprise and with the representatives for the disabled within the enterprise, and also with the employer's appointed officer for the disabled, who should be disabled, if possible. "Integration agreements" must be executed that prescribe working conditions and other pertinent matters. The groups representing the interests of the disabled for both the employer and employee side must also be consulted if an employee is threatened with dismissal. All possible measures should be undertaken to avoid this.

In summary it can be stated that the rights of the disabled in the workplace are protected by a close cooperation between the employers and employees, and also between employers and state- or nationwide associations of the disabled, and governmental agencies at the state and federal level. The interaction and cooperation between these groups purports to avoid discrimination and to improve the situation of the disabled through many affirmative measures.

¹⁶ F. Welti, *Das neue SGB IX - Recht der Rehabilitation und der Teilhabe behinderter Menschen*, 54 NEUE JURISTISCHE WOCHENSCHRIFT at 2214 (2001).

Public Services/Transportation

General Mandates Imposed on Public Entities

The Disability Equalization Act contains some general mandates and some specific rules for public entities that apply to Federal and state agencies and to various foundations and institutions that are recognized as having quasi-governmental function or that obtain governmental funding. The public entities within the purview of the Act are required to prevent discrimination within their sphere of operation and to empower the disabled to participate in the life of the community. The Act furthermore exhorts the public sector to ensure the equal treatment of disabled women and requires the removal of barriers in buildings, transportation, information technology, and communications.

Specific Requirements

In addition to these general mandates, the Disability Equalization Act imposes additional specific requirements on public entities. Among these is the recognition of sign language and other means of communication of the disabled as official forms of communication that must be accepted in official dealings and that must be provided when needed. Forms and applications must be made available in printed modes that are legible to the blind and visually impaired. Governmental websites must employ technology that make them accessible to the disabled and contain information that is relevant for them.

Further requirements are imposed on the public sector through amendments to numerous laws that were enacted together with the Disability Equalization Act. Among these are amendments to the Federal Voting Act¹⁷ and to the Voting Act for European Elections¹⁸ that require the granting of access to the physically or visually impaired.

Schools and Universities

State universities (the vast majority of the German institutions of higher learning) are required to promote the social life of the disabled, to create conditions that allow the disabled to avail themselves of the educational opportunities on their own, without requiring personal assistance, and to provide athletic programs for the disabled.¹⁹

Schools and universities appear to be generally subjected to the mandates for public entities. However, in this area much anti-discrimination law has already been made by the courts on the basis of the constitutional anti-discrimination guarantee. The courts have held that disabled children have a right to be educated together with non-disabled children, if the disabled children and their parents so desire. The school

¹⁷ Bundeswahlgesetz, repromulgated July 23, 1993, BGBI. I at 1288, as amended, §50, ¶4.

¹⁸ Europawahlordnung, repromulgated May 2, 1994, Bgbl. I at 957, as amended, §§38, 39, and 50.

¹⁹ Hochschulrahmengesetz, repromulgated Jan. 19, 1999, BGBI. I at 18, as amended, §2, ¶4 and §16,

systems must make classrooms available that can accommodate the disabled, within certain financial and geographic limits, and non-disabled children cannot categorically state that it hurts their education to be taught together with the disabled.²⁰

Transportation

In the realm of transportation, numerous laws were amended to ensure the removal of barriers and the granting of full access to the disabled. Among these laws are the Act on Federal Highways, the Act on Public Transportation, the Act on the Construction and Operation of Railroads, the Act on the Construction and Operation of Streetcars, the Act on Civil Aviation, and the Act on the Financing of the Local Communities, and the Act on Housing Subsidies.²¹ Most of these amendments took the form of requiring barrier-free access to the disabled. It is expected that these new provisions will result in the further installation of ramps, elevators, and rest rooms for the disabled in trains, airplanes, train and bus stations, and airports.²²

Enforcement

To ensure enforcement of these requirements, class action suits are being made available. These can be brought by associations that represent the disabled and these can be certified by the authorities. Individuals may also have causes of actions, as, for instance, under the constitutional discrimination guarantee, yet no specific causes of actions for individuals were created in the Disability Equalization Act. The class action is available for violations that are or could be relevant to a significant number of disabled individuals.

Agencies Involved

An institution to promote compliance with the legal requirements is the Federal Commissioner for the Disabled. Such an official is appointed by the executive branch of government during each legislative period. The primary function of the Commissioner and of his/her staff is to monitor the situation of the disabled and to advise the government of any problems and how to solve them. The Commissioner is to be consulted by the executive branch of government when pertinent legislation or regulations are being drafted and at any other time when important issues concerning the disabled are being discussed.

²⁰ Beaucamp, *supra* note 3.

²¹ The amendments and citations of the Acts are contained in Gesetz zur Gleichstellung behinderter Menschen und zur Änderung anderer Gesetze, Apr. 27, 2002, Bgbl. I at 1046, arts. 1a, 2, 3, and 48-53.

²² S. Spahn, *Koalition will Behinderten den Alltag erleichtern*, SÜDDEUTSCHE ZEITUNG at 5 (Sept. 1, 2001).

Public Accommodation and Services by Private Entities

Requirements in the Hotel and Restaurant Business

The Act on the Hotel and Restaurant Business²³ was amended in April 2002 by requiring a barrier-free environment in establishments that serve beverages or food or provide lodging and that are being newly built or remodeled substantially after May 1, 2002, if no building permit was necessary, or after November 1, 2002, for construction that requires a building permit. The requirement of creating a barrier-free environment is enforced through the denial or revocation of a permit to operate the establishment if it does not live up to the statutory requirements. However, the law also foresees the granting of exemptions if a barrier-free environment cannot be created or can only be created at disproportionate cost in the facilities where the enterprise is operated. The exact requirements for barrier-free environments are to be determined by regulations at the state level, and the conditions for the granting of exemptions may also be regulated in the same manner.²⁴

Transportation

In the area of transportation, the laws described on various forms of public transport and the therein expressed requirements for a barrier-free environment apply to private carriers in the same manner that they apply to governmental or mixed economy carriers. Private carriers that provide transportation services to the public must create a barrier-free environment.

Barrier-free Environments

An obligation to create barrier-free environments is imposed on industry in general by the Equalization Act's definition of "barrier-free," which indicates that the concept applies not only to public accommodation but also to industrial producers of articles of daily use. However, the statutory concept of "barrier-free" is somewhat elusive, in that it has to be established for each industry or type of service by agreements between the associations of the disabled and the representatives of industry. Freedom from barriers is statutorily defined as follows:

Sec. 4. Barrier-free environments

Free from barriers are buildings and other installations, means of transport, technical articles of daily use, information-processing systems, acoustical and visual sources of information, and communication devices, as well as other spheres of daily life, to the extent that they are accessible or

²³ Gaststättengesetz, repromulgated Nov. 20, 1998, BGBl. I at 3418, as amended, §4, ¶1, No. 2a.

²⁴ BGG, §4.

useable for disabled human beings in the generally intended manner, without special difficulty and in principle without the help of others.²⁵

Housing

The rights of the disabled were strengthened in German landlord and tenant law, in the course of a major reform in 2001.²⁶ Among the newly enacted provisions is section 554(a) of the Civil Code²⁷ which requires the landlord to tolerate modifications to the premises by the disabled tenant if these are necessary to grant access, and if a balancing of the interests of landlord and tenant weighs in favor of the tenant. This statutory requirement was preceded by a case law development that granted the same right to the tenant on the basis of the constitutional anti-discrimination clause for the disabled.²⁸

Until now, the ensuring of access to buildings was primarily secured through the building codes of the states. These contain provisions on the types of buildings which must allow for barrier-free access. An example of these provisions is section 39 of the Building Code of Baden-Württemberg.²⁹ It requires a barrier-free environment for facilities used by small children, the disabled, and the elderly. In addition, such an environment must be provided not only in governmental buildings, but also in various other facilities that serve the public, including post offices, banks, churches, museums, athletic facilities, office buildings, and garages.

Enforcement

The main enforcement tool for the violation of statutory requirements by the private sector is the class action by the associations for the disabled, as described above (*see* Employment), though there may at times be grounds for individual legal actions. It appears that a general cause of action for discrimination for the non-providing of adequate barrier-free standards does not as yet exist. However, it is possible that such a cause of action may be created when a general Anti-discrimination Act is enacted (*see* Introduction).

The constitutional anti-discrimination clause for the disabled has had some effects on private providers of goods and services, though it does not generally require individuals to refrain from discriminating in their dealings of private law. The District Court of Kleve held in March 1999 that a travel agency was not liable for damages for booking travelers into a vacation hotel where severely disabled individuals were also vacationing.

²⁵ *Id.*

²⁶ Mietrechtsreformgesetz, June 19, 2001, BGBl. I at 1149.

²⁷ Bürgerliches Gesetzbuch, Aug. 18, 1986, REICHSGESETZBLATT at 195, as amended.

²⁸ Bundesverfassungsgericht, decision, Mar. 28, 2000, docket No. 1 BvR 1460/99.

²⁹ Landesbauordnung für Baden-Württemberg, Aug. 8, 1995, GESETZBLATT FÜR DAS LAND BADEN-WÜRTTEMBERG at 617, as amended.

The Court held that the constitutional provision requires the non-disabled to be tolerant against the disabled, and that merely having to look at the disabled is not an actionable shortcoming in a travel arrangement.³⁰

Telecommunications

A strong mandate for making telecommunications accessible to the disabled appears to be contained in section 4 of the Equalization Act, which defines a barrier-free environment (*see* Public Accommodation). However, the exact rights and entitlements that flow to the disabled from this provision will depend on the agreements reached between industry and the associations of the disabled. As described above (*see* Public Services), strong statutory requirements are imposed on the websites of government agencies. These must keep up with technical developments in their efforts to be accessible to the disabled. In addition, future implementing laws of the states may also have a bearing on what communication services will be made available to the disabled.

Until now, telecommunication equipment was provided by the social health insurers, the welfare offices, and other providers of social benefits on the basis of broadly worded provisions that guarantee benefits to the disabled that promote their rehabilitation or compensate for their disability.³¹ Given the universal health insurance coverage that exists in Germany, and the density of the other social networks, such as workman's compensation or veterans benefits, there almost always has been a social insurance provider who is responsible to provide socialized equipment for a disabled individual, and if there is no other coverage, the local welfare offices are under an obligation to provide equipment for the disabled or to provide funds for such equipment.³²

The entitlement of the hearing disabled to be supplied by their health insurers with text telephones or fax machines has been established by case law.³³ Also established was the entitlement of the disabled to be furnished with a personal computer. However, disputes continue to arise about the generosity of these benefits, and there may be a gap between technological developments and what the courts consider as necessary equipment. In a decision of January 2001, the Federal Social Court denied the claim for a specially equipped computer notebook of a visually impaired individual on the grounds that he had already been granted a personal computer and that he needed the notebook for his studies as a law student, which was not the health insurer's responsibility.³⁴ It remains to be seen if under the governance of the Disability Equalization Act, and under the

³⁰ Amtsgericht Kleve, decision, Mar. 12, 1999, docket No. 3C 460/98.

³¹ For the social health insurers, Fünftes Buch Sozialgesetzbuch, repromulgated Dec. 20, 1988, BGBI. I at 2477, as amended, §33.

³² Bundessozialhilfegesetz, June 30, 1961, BGBI. I at 815, as amended, §39.

³³ Bundessozialgericht [BSG], decision, Jan. 17, 1996, docket No. 3 RK 39/94.

³⁴ BSG, decision, Jan. 30, 2001, docket No. B 3 KR 10/00 R.

new requirements for educational institutions, the policy concerning electronic equipment for the disabled will change.

Much appears to be done at the local level by private firms in cooperation with local governments. In 1999, in the city of Münster, in the state of North-Rhine Westphalia, a relay center was established that translates visual telephone calls from the hearing impaired into spoken language and passes these on to the recipient of the communication. Plans existed at that time for North Rhine-Westphalia to equip all work stations of the hearing disabled with visual telephones.³⁵ These developments have not led to any specific statutory or regulatory requirements at the Federal level. However, it appears that there is some interest in the development of visual telephones combined with relay centers for the hearing disabled at the European level.³⁶

Conclusion

In some ways, Germany lags behind the American anti-discrimination standard for the disabled. Sign language is only now becoming mandatory in Germany, and a general civil rights act for the disabled has not as yet been enacted, though such legislation is currently being drafted. However, the German constitutional provision that prohibits discrimination of the disabled has brought many improvements for the disabled, and recent legislation has continued on this path. Nevertheless, the German approach toward integrating the disabled and toward removing the barriers that keep them from participating in the life of the community will continue to rely strongly on the provision of numerous social benefits, and this approach is also rooted in the German Constitution.

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³⁵ *Telefonieren ohne zu sprechen*, FAZ at 134 (May 18, 1999).

³⁶ *Gebärden-Telefon*, FOCUS MAGAZIN at 184 (May 14, 2001).

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INDIA

RIGHTS OF PERSONS WITH DISABILITIES

The 1995 Act of India,¹ on rights of persons with disabilities, is a comprehensive piece of legislation. It spells out the state's responsibility towards prevention of impairments and protection of disabled persons' rights in health, education, vocational training, employment, and rehabilitation. In an effort to give the disabled a level playing field, it provides for non-discrimination against the disabled, reservation of jobs in all establishments, public or private, and free education until the age of 18. It also establishes a simple, inexpensive, and speedy mechanism for the redress of grievances.

Employment

The appropriate Government identifies posts in every establishment, public or private, that can be reserved for disabled persons and reviews them periodically, at least every three years, taking into consideration the development of technology.² No less than three percent of posts must be provided to disabled persons in every establishment of which one percent each shall be reserved for the blind or low vision, hearing impaired, and for persons with locomotor disability or cerebral palsy. Each employer in an establishment is required to submit, in a prescribed form, to the Government certain information on vacancies that are available or will become available in the future for the disabled. Free education is guaranteed to every disabled person until he/she attains the age of 18 years.³

Each Government and local authority is required to create schemes formulated to ensure the employment of disabled persons; such schemes may provide for the training, welfare, health, and safety of the disabled. They must also constitute an authority for administering the scheme. Every establishment, governmental or non-governmental, including corporations, must reserve at least three percent of their jobs for the disabled. Similarly, all educational institutions, too, must reserve at least three percent of their seats for the education of the disabled.

In establishing 47 Special Employment Exchanges and 41 Special Cells in the regular Employment Exchanges, the objective of the Governments is to assist disabled persons

¹ *The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, No. 1 of 1996.*

² *Id.* §§32-41.

³ *Id.* §26.

in obtaining gainful employment. The scheme has successfully led 49,000 disabled persons to obtain employment, of which 4,158 were visually handicapped, 4,126 hearing impaired, and 40,589 orthopaedically disabled.⁴ The scheme is implemented through the State Governments.

Pre-employment training for disabled persons is provided under the Apprentices Act, 1961,⁵ by reserving three percent of the seats for training disabled persons. Since 76 percent of the disabled live in rural areas, in order to provide for their rehabilitation, a scheme to establish District Rehabilitation Centers (DRCs) in selected districts of the country was introduced by the Government of India. The objective is to devise a suitable delivery scheme, for promoting the most cost effective technologies, and restructure jobs of rehabilitation professionals so that a minimum number of specialists could be utilized for the delivery of services.

Vocational training for persons with disabilities is imparted in specialized institutions as well as in ordinary training institutions. The government of India has established 17 Vocational Rehabilitation Training Centres (VRCs) in the country in state capitals, two of which are exclusively for disabled persons. At seven of the above centers, skill training facilities have also been provided. Their main task is to assess training needs and to impart short term training. Each year, the VRCs are able to rehabilitate about 7,000 disabled persons in various areas.

In addition, India has about 2,000 Industrial Training Institutes (ITIs), of which 852 are government undertakings and the remaining are privately owned. These give practical training in a variety of engineering and non-engineering occupations to about 332,700 trainees. Three percent of the seats in these institutes also have been reserved for the disabled.

A number of government-assisted, private, voluntary organizations, like Amar Jyoti Trust, Fellowship of the Physically Handicapped, National Society for Equal Opportunities for the Handicapped, the National Association for the Blind, and the All India Federation of the Deaf, etc. also impart vocational courses. Blind Men's Association runs a variety of vocational courses including technical trades, which are recognized by the Department of Technical Education, and stenography courses recognized by the Department of Education. Overall, there are 142 voluntary organizations which offer facilities for vocational training of the disabled.

By constituting Coordination Committees at the Central and State levels, the state has provided a mechanism for implementing the objectives of the Act. The committees, chaired by the Welfare Ministers and consisting of high officials and eminent personalities, including representatives of the disabled and other NGOs, discuss problems confronting

⁴ Available at <http://www.healthlibrary.com>.

⁵ No. 52 of 1961.

disabled persons with the concerned authorities and the international organizations with a view to provide schemes and projects for them.⁶ They also review existing legislation and identify provisions and facilities that are discriminatory to such people. The law treats disability as a civil right rather than merely a health and welfare issue. Failure to adapt buildings and transportation vehicles to accessibility for facile entry of the disabled is deemed a violation of their civil right and is actionable as a ground for discrimination before the administering authority.

The Chief Commissioner for the Disabled Persons and Commissioners in each State of India, who are deemed public servants, enforce the provisions of the Act for the disabled.⁷ The Chief Commissioner, including state commissioners exercise powers of a civil court in matters of issuance of subpoena, production of documents, or recording of testimony when they adjudicate, after hearing the parties, and decide issues of affecting rights or discrimination against the disabled, non-implementation of laws, rules, bylaws, regulations, executive orders, guidelines, or instructions made or issued by the appropriate authorities. This procedure enables an aggrieved person to approach the above authority with a simple application to set the law in motion.

The commissioners, in ranks equal to the Secretary to Government, are empowered to investigate on their own and take necessary steps to safeguard the disabled persons' rights. They also monitor the utilization of funds dispersed by the Government. Any deprivation of a disabled person's rights or a violation of law, rules, and regulations is looked into for the welfare of the disabled. Thus, It is an expeditious forum for enforcement of the disabled persons' rights without cost to them and provides them relief against discrimination.

Whoever fraudulently avails, or attempts to avail, any benefit meant for person with disabilities, shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to 20,000 India *rupees* (US\$420) or with both.

Public Services/Transportation

Special consideration is shown to the disabled in public services and use of their transportation needs, in which they are granted specially discounted fares and concessions. In the case of railroads, disabled persons get discounts of up to 75 percent for travel in the first and second classes. The escorts accompanying the blind, orthopaedically and mentally handicapped, too, are similarly entitled to a 75 percent discount in the basic fare. Airlines allow them 50 percent fare discounts. Transmission of "Blind Literature" packets, both inland and foreign, by surface mail is exempt from payment of postage. All disabled employees in the Central Government employment are given an additional transportation allowance of up to 100 Indian *rupees* (US\$2.05). The Ministry of Railways, in a further concession to the disabled persons, has exempted

⁶ *Supra* note 1, §8 (2)(d).

⁷ *Id.* §57.

them from payment of baggage charge on wheelchairs used by such persons.⁸

There has been a growing awareness and concern for the issues relating to barrier free environment and easy access for persons with disabilities. The 1995 Act provisions deal with non-discrimination against the disabled in matters of transportation and built environment.⁹ It requires all establishments in such businesses, within the limits of their economic capacity, to adapt compartments, buses, vessels, and aircrafts, including the toilets, in such a way as to permit easy access for disabled persons. They must also install auditory signals at red lights on roads, cause curb cuts and slopes on pavements and sidewalks, and engravings at the pedestrian crossings. In addition, they must develop ramps in public buildings, adapt toilets for wheelchairs, and install braille symbols and auditory signals in elevators.

No establishment or entity shall dispense with the services or reduce in rank a person who becomes disabled during the course of his/her employment. If the employee is no longer suitable for the job which he/she held prior to his/her acquiring the disability, he/she may be moved to another job with the same pay scale and benefits. If it is not possible to fit the employee on any other post, he/she may be kept on a supernumerary post until the availability of a suitable position or until he/she attains the age of retirement, whichever is earlier, nor can a person be denied a job on ground of his/her disability unless the Government, by notification, has declared exempt an establishment from compliance with the provisions of the Act.

Public Accommodation and Services by Private Entities

In affirming a disabled person's right to housing, the Act states that the appropriate Governments and local authorities shall create schemes in favor of such persons for the allotment of land at discounted rates for housing and setting up special recreation centers and businesses, etc.¹⁰ The banks give the disabled loans at a lower rate of interest, thus, assisting to buy homes and start business.

To further help their lives, enlightened persons of good repute have volunteered to provide their time and effort in the cause of disabled persons. According to a recent count, there are over 1,600 volunteer organizations in India engaged in the service of disabled people. These range from the very professional, well-managed, high-profile national and immensely successful to the well-meaning, small neighborhood groups.

Examples

Sanjivini is a registered and non-profit volunteer organization. It works for

⁸ THE HINDU, News Update at 14.00 hours (IST), Sept. 19, 2002.

⁹ *Supra* note 1, §§44-47.

¹⁰ *Supra* note 1, §43.

the mental health of the disabled in Delhi and is funded largely by public donations and grants from the Government.

Amar Jyoti Rehabilitation and Research Centre, founded in 1981 for the disabled children, employs an integrated approach with a package comprising a school with integrated education, vocational training in many courses, including computer training, fashion and dress designing, knitting, textile designing, screen printing, etc., in addition to medical care with an OPD.

The National Association for the Blind India (NAB) is a pioneering blind welfare institution in the country, providing a wide range of services for the comprehensive rehabilitation of the blind including education, training, employment, and placement services.

All India Federation of the Deaf (AIFD) was set up in 1955 with the aim of uniting the deaf all over the country, to strive for their welfare and total rehabilitation. Its activities include free distribution of hearing aids to the needy and the poor. It also counsels and guides other organizations of the deaf in cultural performances, painting, and other activities.

Telecommunications

The law also requires the appropriate Government to create schemes for making available aids and appliances to persons with disabilities.¹¹ The Ali Yavar Jung National Institute for the Hearing Handicapped has developed a Loop Induction System, to facilitate communication of the hearing impaired at crowded places like railway stations, etc. Initially, 15 railway stations were proposed to be fitted with the system; Delhi Railway station has already been fitted with one. The Institute is an autonomous body and is under the administrative control of the Ministry of Welfare. Its main objectives are to:

- develop manpower by undertaking or sponsoring trainees and teachers, employment officers, psychologists, vocational counselors, and other personnel as deemed necessary by the institute for promoting the education, training, or rehabilitation of the hearing handicapped.
- conduct, sponsor, coordinate, and subsidize research into all aspects of the education and rehabilitation of the hearing handicapped.
- develop model services for rehabilitation of the handicapped due to deficient hearing.
- serve as an apex information and documentation center in the area for the hearing deficient.

The Institute has its regional centers in main cities of the country and a State

¹¹ *Supra* note 1, §42.

Collaborated Centre in Bhubaneshwar. It also runs the following training programs:

- Bachelor of Education (Deaf)
- Bachelor of Science (Audiology and Speech Pathology, Hearing, Language and Speech)
- Diploma in Education of the Deaf
- Diploma in Communication Disorders

For the visually handicapped, the National Institute for the Visually Handicapped has developed a low cost Braille which is under production by the Hindustan Tele Printer. The Government of India has also supported many Talking -Book projects for visually impaired persons.

In order to provide suitable and cost-effective aids and appliances through the application of technology and also to improve the mobility and employment opportunities and integration of disabled persons in the mainstream, a scheme of Science and Technology (S&T) – Project in Mission Mode – was launched in 1988. The project represents a new approach aimed at ensuring that emerging inter-disciplinary efforts to meet large scale societal/national needs. It can fulfill their potential in a time-targeted manner.

The Government of India launched, for the first five years, a coordinated program for developing aids and appliances for persons with disability. The financial assistance provided was 100 percent. So far, 45 projects have been identified for assistance and 37 of them are at various stages of completion, some of them have been put to commercial production. Some of the products developed for the use of the disabled are a speech synthesizer; interpointing braille writing frame; closed circuit TV with magnification facility; photo-voltaic charger; Feeding aids for children with cerebral palsy; multifunctional wheelchair; telefilm for training of parents of mentally retarded; and microprocessor based braille embosser.

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IRAN
RIGHTS OF PEOPLE WITH DISABILITIES

The Constitution

There is no reference to the question of people with disabilities and their basic human rights, *per se*, in the Constitution of the Islamic Republic of Iran (approved by the referendum of March 31, 1979, and amended on July 28, 1989).

Disability and Disability Law

The landmark legislation in Iran in the field of disability protection came into effect in November 1959. The legislation approved Recommendation No. 99 concerning Vocational Rehabilitation of the Disabled, adopted by the General Conference of the International Labor Organization during the 38th session on June 1, 1955.¹

The law defines the term "disabled person" as an individual whose prospects of securing and retaining suitable employment are substantially reduced a result of physical or mental impairment.²

Scope of Vocational Rehabilitation

Vocational rehabilitation services are to be made available to all disabled persons, whatever the origin and nature of their disability and whatever their age, provided they can be prepared for, and have reasonable prospects of, security and retaining suitable employment.

In this respect the Recommendation 99 states: All necessary and practicable measures should be taken to establish or develop specialized vocational guidance services for disabled persons requiring aid in choosing or changing their occupation. The process of vocational guidance should include, as far as practicable in the national circumstances and as appropriate in individual cases.

The principles, measures and methods of vocational training generally applied in the training of non-disabled persons should apply to disabled persons in so far as medical and educational conditions permit.

The Recommendation stresses that the training of disabled persons should, wherever possible, enable them to carry on an economic activity in which they can use their vocational qualifications or aptitudes in the light of employment prospects.

¹ International Labor Conventions and Recommendations, 1952-1976.

² THE OFFICIAL GAZETTE, No. 17536, Iran, Oct. 24, 1959 (in Persian).

The law states that disabled persons should not be discriminated against as a result of their disability in respect to wages and other conditions of employment if their work is equal to that of non-disabled persons.

Administrative Organization

Vocational rehabilitation services should be organized and developed as a continuous and coordinated program by the competent authority or authorities and, as practical, use should be made of existing vocational guidance, vocational training, and placement services.

Administrative responsibility for the general organization and development of vocational rehabilitation services should be entrusted to one authority, or jointly to the authorities responsible for the different activities in the program with one of these authorities entrusted with primary responsibility for coordination.

Enforcing Civil Rights for People with Disabilities

The legislation makes no reference to human or civil rights as such. It is, however, recommended by the International Labor Organization.

Employment

The adopted Recommendation states that:

all necessary and practicable measures should be taken to establish or develop specialized vocational guidance services for disabled persons requiring aid in choosing or changing their occupations... The training of disabled persons should, wherever possible, enable them to carry on an economic activity in which they can use their vocational qualifications or aptitudes in the light of employment prospects... contacting employers, when necessary, to demonstrate the **employment capacities**.

It also states that the training of disabled persons should, when possible, enable qualifications or aptitudes in the light of **employment prospects**.

In connection with the placement of disabled persons, section 9 states that "measures should be taken to develop special arrangements for the placement of disabled persons."

No. 11 (b) states that "to remove as far as possible obstacles which would prevent a disabled person from being satisfactorily settled in work."

Methods of Enabling Disabled Persons to Make Use of Vocational, Rehabilitation Services (No. 25) states that : "disabled persons should not as a result of their disability be discriminated against in respect of wages and other conditions of employment if their work is equal to that of non-disabled persons."

Methods of Widening Employment Opportunities for Disabled Persons (No. 31) states

that:

Wherever appropriate in the national circumstances, and consistent with national policy, the employment of disabled persons should be promoted by means such as

(a) the engagement by employers of a percentage of disabled persons under such arrangements as will avoid the displacement of non-disabled workers;

(b) serving certain designated occupations for disabled persons;

(c) arranging that seriously disabled persons are given opportunities for employment or preference in certain occupations considered suitable for them.

Public Services

There is no reference in the law to public services.

Public Transport Services

No reference is made in the law to the public transport services.

Telecommunications

No reference is made to telecommunications.

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ISRAEL
RIGHTS OF PEOPLE WITH DISABILITIES

Introduction

Israel's Equal Rights for Persons with Disabilities Law, 5758-1998,¹ (hereafter the Law) went into force on January 1, 1999. It provides for a statutory framework for the protection and equality of the rights of persons with disabilities. Subsidiary legislation was issued in accordance with the Law, including regulations providing protection of minimum pay, regulations providing preference in assignment of parking at the workplace, etc.

However, the rights of persons with disabilities were recognized by statutory law, as well as by Israeli courts, even before the enactment of the Law. For example, special provisions were introduced in the Amendment of Election Law (Polling Place) 5750-1990,² which imposed on every local authority the duty to provide at least one polling station with suitable access for disabled persons in any geographical area with over 20,000 residents.³

In interpreting the law, Israeli courts have been guided by the 1999 Law, other provisions in various laws, as well as by general principles of the legal system, particularly those enumerated in the Basic Law: Human Dignity and Freedom.⁴

General Principles

A person with disabilities is defined by the Law as a person with a permanent or temporary disability, either physical, mental, or intellectual, which substantially affects his/her functioning in one or more principal areas of life.⁵ The Law declares the following as a basic principle:

1. The rights of persons with disabilities and the commitment of the society in Israel to these rights are based on the recognition of the principle of equality, recognition of the value of the human being who was created

¹ SEFER HA-HUKIM [Book of Laws, Official Gazette] issue 1658, at 152 (5758-1998).

² SEFER HA-HUKIM 1322, at 162 (5750-1990).

³ For an analysis of the law *see* Avretz *et. al.* v. Election Officer for the Mayorship of Jerusalem *et. al.*, 52(5) Piske Din [Decisions of the Supreme Court], hereafter PDJ 323 (5758-1998).

⁴ SEFER HA-HUKIM, issue 1391, at 159 (5752-1992).

⁵ *Supra* note 1, §5.

in the image and the principle of respect to human beings.

The Law sets as its goal the protection of the dignity and freedom of a person with disabilities, the ensuring of his/her right to equal and active participation in society in all areas of life, and the provision of proper response to his/her special needs in a way that enables him/her to live with maximum independence, privacy, and respect, while utilizing his/her utmost ability.⁶ The law declares that a person with disabilities is entitled to receive decisions related to his/her life, in accordance with his/her will and preferences, subject to law.

The Law further specifies that an action designed to correct prior or present discrimination of persons with disabilities or to promote their equality is not illegal discrimination.⁷

Equal Rights Commission for Persons with Disabilities

The Law establishes a special Commission for Equal Rights for Persons with Disabilities. The Commission should act:

- to further the basic principles of the law
- to further equality and to prevent discrimination
- to further the incorporation and active participation of persons with disabilities in society
- to fulfil other tasks imposed by the law

The government, in consultation with the Minister of Justice and the Minister of Labor and Welfare, will appoint a commissioner for equal rights for persons with disabilities. An advisory committee shall be appointed to the commission. The committee shall include persons with different disabilities (or their representatives), experts in the areas of activity of the commission, lawyers, and public representatives. The majority of the members in the committee shall be persons with disabilities. The commissioner should consult with the committee in areas related to the work of the commission.

Employment

The Law imposes certain requirements in the area of the employment of persons with disabilities. The requirements differ according to the size of the business and the burden imposed on the employer by compliance.

⁶ §2.

⁷ §3.

Illegal Discrimination

An employer is prohibited from discriminating among his/her workers or employment seekers, as long as they qualified for the job. Discrimination is prohibited in the following areas:

- admission for employment, including admission tests and setting irrelevant conditions
- employment conditions
- employment promotion
- training or professional advancement
- severance and severance pay
- benefits and retirement compensation

An action or an omission mandated by the substantial requirements of the job is not regarded as prohibited discrimination.⁸

Special Accommodations

An employer is required to provide accommodations for the employment of persons with disabilities. These include workplace and equipment accommodations, job requirements, hours of work, employment admission tests, training, and work procedures. Accommodations are required, however, only as long as the adjustments shall not impose on the employer a too-heavy burden. To be considered too heavy, the burden must be unreasonably heavy in the circumstances in consideration, among others, of the cost of the adjustment and its nature, the size of the business and its structure, the scope of activities, size and composition of labor force, and the existence of exterior or national financing resources for carrying out the adjustment.

Proper Representation for People with Disabilities in the Work Force

The Law imposes a special representation requirement on employers who employ more than 25 employees. Accordingly, an employer is under an obligation to act as proper representation of people with disabilities if they are not adequately represented among employees at the workplace. The employer's actions may include the preparation of a program that will provide for preference for the employment and advancement of people with disabilities who have similar qualifications for the job or position.⁹

The Law authorizes the Minister of Labor and welfare to determine additional provisions for either a specific case or type of cases, the severity of disability of persons to be employed or promoted, etc. In addition, the Minister may also impose reporting

⁸ §8.

⁹ §9.

requirements on employers.

The State and other public bodies specified by law are subject to a similar requirement under the State Service (Appointments) Law, 5719-1959, as amended.¹⁰ This law guarantees proper representation in all levels and professions in each office, of persons of both genders, of persons with disabilities, and of members of the Arab population, including Druze and Carcase. The law provides detailed requirements associated with guaranteeing proper representation in the workforce of the above groups.

Judicial Interpretation

A December 2001 decision of the regional labor court in Jerusalem analyzes the law provisions prohibiting discrimination in employment and requiring proper representation of people with disabilities in the workplace.¹¹ The issue centered over the legality of the termination of employment of a person who became disabled as a consequence of contracting polio. The Court held that the requirement imposed on an employer to act to advance proper representation of persons with disabilities in his/her business by way of affirmative action applies to both the admission into work and to the severance of employment. The meaning of proper representation at the termination of employment is that the employer must consider the disabilities of a person among the considerations of who to fire, especially when the termination does not derive from the employee's behavior but from the organizational need of the employer. The Court further held that the employer's duty to not discriminate, to provide for special accommodations, and to act towards proper representation of persons with disabilities at his/her workplace, does not mean that he/she must forever employ an employee with disabilities, even if his/her suitability and qualifications are greatly inferior from other candidates who do not have disabilities and even if there are additional substantive considerations against his/her employment. Rather, the employer's duty means that he/she must consider the disability of the employee favorably. This duty also derives from the generally recognized requirement to consider the personal circumstances of employees at a time of reduction in force. Since the respondent in the case admitted that it did not consider the requester's disability in considering the termination of his employment, it did not comply with the requirements of the Law and the termination was therefore void.

Enforcement

Implementation

The Minister of Labor and Welfare is responsible for implementation and is authorized to issue implementing regulations regarding the nature of accommodations necessitated by the Law. Regulations should be passed after consultation with the Equal Rights Commission for Persons with Disabilities and relevant organizations promoting their rights.

¹⁰ §15a, 13 LAWS OF THE STATE OF ISRAEL (hereafter LSI), 64 (5719-1958/59).

¹¹ Bilati v. Jerusalem Post Publications Ltd., Takdin-Avoda33 (2001), available on Takdin-Juridisc, Legal Database.

The Law specifically instructs the Minister of Labor and Welfare, in consultation with the Minister of the Interior, to pass regulations to provide preference to persons with disabilities in the assignment of parking in workplaces. The Law requires that regulations regarding accommodations and parking should be made in consultation with representatives of organizations of both employees and employers. Accordingly, Equal Rights for Persons with Disabilities (preference in parking space in the workplace) 5752-2001 were issued on October 25, 2001.

The Law further instructs the Minister of Labor and Welfare, together with the Minister of the Treasury, to determine in regulations the financial contribution required from employers for accommodations for persons with disabilities.

Special Programs

The law instructs the Minister of Labor and Welfare to prepare programs for:

- employment and rehabilitation of persons with disabilities while giving preference to their absorption in regular workplaces
- establishment of a suitable employment and professional review for guaranteeing the absorption of persons with disabilities into the workplace
- provision of professional counseling and guidance to employers and employees on the absorption of persons with disabilities in the work force

The Minister of Labor and Welfare should provide a yearly report on programs prepared in accordance with this requirement to the Knesset (Parliamentary) commission for Labor and Welfare.¹²

Complaints

Complaints under the law may be lodged by employees or, with the consent of the employees, by unions, agencies, or organizations dealing with promoting the rights of persons with disabilities.

Labor courts have exclusive jurisdiction to hear proceedings involving violation of the Law, impose compensation, and issue injunctions as necessary. In addition to civil remedies, the courts may convict persons found in violation of the Prohibition on Discrimination and Retaliation and may impose fines as listed in the Penal Law, 5737-1977.¹³

The Law prohibits retaliation against an employee for issuing or assisting in a complaint or a law suits under the Law except if performed with malice and knowledge

¹² §16.

¹³ LSI Special Volume (5737-1977).

that the complaint is false.¹⁴

Public Services/Transportation

The Law declares that a person with disabilities is entitled to public transportation services that are accessible and suitable for his/her use, in a reasonable frequency, including access to stations and ports from which public transportation is provided. Public transportation includes buses in municipal routes, trains, and air and sea transportation designated for the public. The Law authorizes the Minister of Transportation and the Minister of the Treasure to pass regulations for the implementation of the requirement for accessibility. Violation of the requirement to provide suitable public transportation may result in a fine.¹⁵

Public Accommodations and Services by Private Entities

As described above, the law requires employers to provide special accommodations to persons with disabilities, including workplace and equipment accommodations, reasonable in the circumstances.

In addition, the law imposes a duty on those providing services to the general public, to provide persons with disabilities services while recognizing their human dignity and freedom and protecting their privacy. While services provided by non-public bodies must include “the adjustments required in the relevant circumstances,” services provided by public bodies are required to be “in a proper quality, reasonable time and distance from the person’s residence, and all within financial resources allocated to the public body.” Public bodies subject to the latter requirements include government ministries, local authorities, corporations, governmental companies, or other publically audited bodies.¹⁶

Special accommodations are also required from builders of public buildings. Planning and Buildings Construction (Request for Permit, Conditions and Fees) 5730-1970,¹⁷ as amended, defines public buildings as buildings or part thereof, designed for the following objectives: entertainment, retirement homes, public gatherings, hospitals and clinics, recognized higher and adult education, museums, fields or locations designed for sports events, stores, including supermarkets exceeding certain cubic feet, air, sea, train, and bus terminals. Other types of public buildings include buildings designed for post office, religious centers, hotels, pools, restaurants serving more than 25 guests, etc. Thus, public buildings covered by the regulations may include those owned by private entities but providing public service.

¹⁴ §10.

¹⁵ §19.

¹⁶ §6.

¹⁷ Kovetz Hatakanot at 1841(5730-1970).

Among the accommodations requirements imposed by the regulations are the building in public buildings of special access, entry doors, internal doors, passages, elevators, water fountains, etc., specifically for the benefit of persons with disabilities.

Telecommunications

Although the law does not specifically require suitable telecommunications services to persons with disabilities, such a requirement exists based on the general requirement on providers of public services to provide such persons with the appropriate level of service subject to necessary adjustments.

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ITALY

RIGHTS OF PEOPLE WITH DISABILITIES

Introduction

The reasons for the specific protection of disabled people derive from the necessity to assure them of the right to overcome their condition with the support of the national community. To this right corresponds the duty of the individuals and of the State institutions to make this happen and to make disabled people's participation effective and productive for society.

The Italian Constitution recognizes and guarantees the inviolable human rights and requires the performance of fundamental duties of political, economic, and social solidarity.¹ Among these, the duty to work is grounded in article 4. The Constitution, in fact, recognizes the right to work for all citizens and binds the institutions of the State to promote the conditions that render this right effective. On the other hand, work is considered a citizens's duty to be carried out according to personal concrete abilities and opportunities, and to one's own free choice, for the purpose of contributing to the material and spiritual progress of society, based on the principle that all citizens have equal social standing and are equal before the law, without distinction of sex, race, language, religion, political opinion, or social and personal conditions.²

The duty to work, consequently, concerns also disabled people, who must contribute, within the limits of their abilities, to the common progress of the community of which they are an integral part, since work does not only provide economic means, rather it is a form of participation and socialization.

An important expression of the principle of equality is the provision according to which the Republic must protect health not only as a fundamental, individual right, but also as a public interest since the physical and mental integrity of the individual members of society is a precious asset for the population as a whole, and enriches the community.³ Furthermore, the Constitution specifically addresses the situation of citizens unfit for work in a provision that constitutes the focal point for the constitutional protection of the disabled. It establishes that every citizen unfit for work and without means of livelihood has the right to maintenance and social assistance, and that the

¹ The Italian Constitution, art. 2.

² *Id.* art. 3

³ *Id.* art. 32.

unfit and disabled have the right to vocational instruction and training.⁴

Handicapped Protection Legislation

Legislation for the protection of handicapped people developed over the years in a fragmentary fashion until 1992 when Parliament approved the first organic law, a type of charter for disabled people that incorporated some of the previous provisions and established the general principles from which appropriate rules may be developed in specific areas to better address the needs of people with disabilities, and to guide the government institutions in their action aiming at implementing the constitutional scheme.⁵

The Law provides for the implementation and monitoring of its provisions at the central and local government levels, and assigns to the Minister for Social Policies the task of coordinating the activities of the Public Administrations responsible for achieving the objectives established by the law, and to promote supporting policies for disabled people.

Article 36 of Law No. 104 establishes that punishment for certain crimes including non-negligent crimes against the person is increased from one-third to one-half when the victim is a disabled person.

Employment

Inclusion and integration of disabled people in the social fabric is deemed to be best served by measures capable of favoring their full integration in the labor environment, through individual or cooperative efforts, and of assuring the protection of their job positions.⁶ Consequently, Law No.68, containing provisions on the right to work of disabled individuals, was approved in 1999.⁷

This law, which replaced legislation dating back to 1968, aims at promoting the full working integration of the categories of protected people through individualized services of support and job placement, so that disabled individuals may be able to realize their personality in the work environment according to their own specific abilities. The law further aims at providing the disabled with a job that fits his/her actual integration abilities, and at the same time is concretely useful for the business or for the public office. The law makes other profound innovations by drastically limiting dismissal of disabled employees for justified reasons and imposes on both public and private employers the obligation of preserving the employee's job position if he/she becomes disabled

⁴ *Id.* art. 38.

⁵ Law No. 104 of Feb. 5, 1992, as amended, in *Il Codice per i disabili*, (Piacenza, La Tribuna, 2001).

⁶ Law 104/1992, art. 8.

⁷ *Supra* note 5, *Codice per i disabili*.

as a consequence of a job related accident or illness.⁸

As a general rule the Law requires public and private employers to hire disabled workers in proportion of the total number of people employed:

- 7 percent of a workforce exceeding 50 workers
- 2 disabled workers in a workforce of 36 to 50 workers
- 1 disabled worker in a workforce of 15 to 35 workers

The law regulates in great detail the various categories of disabled people, the conditions under which quotas apply and the criteria for determining their application, cases of exclusion or partial exoneration from the application of quotas, and alternative solutions for promoting the employment of disabled. Public and private employers are subject to fines for violation of their obligation to hire disabled workers, imposed by the Provincial Directorate of Labor. Fines are periodically revised by the Ministry of Labor.

Public Services and Transportation

Based on the constitutional principles that school is open to all, and that instruction and training for the disabled must be guaranteed,⁹ Italian legislation protects the right of disabled children to attend school at any level, and to be integrated in all grades. This goal is pursued through the cooperation of various services and institutions, the professional development of specialized school personnel, and the provision of special educational materials. Disabled students attending university are entitled to specific technical and educational assistance.¹⁰

The Law requires that all public and private facilities open to the public, including schools and other buildings of social interest, must be accessible to disabled people, and that licenses and authorizations for the construction of such facilities are issued under the condition of their compliance. When modifications cannot be made due to the special historic, artistic, or cultural character of the building access must be provided through provisional accommodations. Any work done in public and private buildings open to the public not in compliance with the rules on accessibility and removal of architectural barriers can not be licensed for use. The designer, project director, and inspector engineer are personally responsible. For failure to comply, they are subject to a fine, and suspension from their profession for up to six months. Similar conditions apply to sport facilities to encourage the practice of sports.¹¹

⁸ Law 68/1999, arts. 1 and 4.

⁹ The Italian Constitution, arts. 34 and 38.

¹⁰ Law No. 104/1992, arts. 12-16.

¹¹ *Id.* arts. 23 and 24.

Freedom of movement by public transportation must be guaranteed to the disabled at the same conditions applicable to anyone. The regional government authorities predispose mobility plans in coordination with municipalities. The latter, within their budget resources, assure individual transportation services for those who are unable to use public transportation. Disabled individuals capable of driving a car modified for their needs, may obtain from the Local Health Units a contribution equal to 20 percent of the expenses necessary for the modifications and a reduction of the tax rate on the purchase of their car. Special spaces are reserved in public and private parking facilities.

Public Accommodations and Services by Private Entities

Projects for the construction of new buildings, both for private and public or subsidized housing, must comply with the prescriptions established by decree of the Minister of Public Works for the elimination of architectural barriers. Restructuring of private buildings, for the same purpose, must be approved by the assembly of the co-owners according to the provisions of the Civil Code. If the assembly refuses approval, disabled individuals may still install certain equipment, easily removable, for their own use at their own expenses. A special fund for the elimination of architectural barriers in private buildings is managed by the Ministry of Public Works in cooperation with local governments which distribute the available resources.¹²

Telecommunications

Companies licensed for the distribution of radio and television services and for telephone services, in cooperation with the Minister of Post and Telecommunications, predispose projects aiming at facilitating access to information distributed via radio and television programs, and to telephone services, by means of special equipment, and by adapting telephone-booths to the needs of disabled people.¹³

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¹² *Id.*

¹³ *Id.* art. 25.

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JAPAN

RIGHTS OF PEOPLE WITH DISABILITIES

Japan does not have an ADA-type law, a law protecting basic human rights of people with disabilities. Rather, Japan has, among other laws related to the disabled, a law which establishes mandatory employment based on a quota-levy system, a law which promotes the welfare of disabled people, and a law which mandates public transportation and buildings with certain features for the disabled. In general, these laws do not give rights to the disabled, but oblige or promote certain actions of the government and private sectors.

Constitution

Fundamental human rights are secured under the Constitution.¹ Article 14 of the Constitution provides for the equality of the people. Although it does not specifically prohibit discrimination based on disability, it is commonly understood such discrimination is prohibited.

Basic Law

The Basic Law of Disabled People² provides basic policies concerning the disabled in order to promote disabled people's independence and their participation in society.

Based on this law, the government must establish the Basic Plan Concerning Policies for Disabled People in order to implement basic policies.

Welfare Law

The Physically Disabled Welfare Law³ and the Intellectually Disabled Welfare Law⁴ allocate the operation of welfare measures among the state, prefectures, and municipal government. Municipal government provides various services. Prefectures must establish clinics and have qualified welfare officers for the disabled. The national government must operate specified facilities and reimburse a portion of the welfare costs spent by local government.

¹ The Constitution of Nov. 3, 1946.

² Law No. 84 of 1970, as amended by Law No. 160 of 1999.

³ Law No. 283 of 1949, as amended by Law No. 50 of 2002.

⁴ Law No. 37 of 1960, as amended by Law No. 1 of 2002.

The Law Concerning Mental Health and Psychotic's Welfare⁵ also provides welfare measures. In addition, this law allows mandatory hospitalization and restrictions of hospitalized psychotic's activities under standards set by the Minister of Health, Labor, and Welfare.

Under these welfare laws, the standards for facilities for the disabled have been set. The Ministry of Health, Labor and Welfare administers welfare policies.

Mandatory Employment

The Law Concerning Promotion of Employment of Disabled People⁶ established a quota-levy system. Employers must employ certain ratio of physically or intellectually disabled⁷ among their employees. The ratios are established in the Enforcement Order of the Law Concerning Promotion of Employment of Disabled People.⁸ Currently, the ratio is 1.8 percent for private sectors and 2.0 percent for national and local government. Employers who employ 56 or more employees must follow this ratio. For the purpose of calculating the fulfillment of the quota, people with grave disabilities are counted as two disabled employees. A parent company can include employees in a subsidiary which satisfies the specified criteria. Employers who exceed the quota receive money from the government in accordance with the degree of the excess. Employers who do not meet the quota must pay a levy in accordance with the degree of the default. The Japan Association for Employment of Persons with Disabilities was established based on this law and administers the quota-levy system. The association is under the Ministry of Health, Labor and Welfare which administers labor policies.

This law also has provisions regarding vocational training centers and other institutions to promote employment of the disabled.

Education

Under article 26 of the Constitution, disabled children have the right to equal education. The School Education Law⁹ provides for a special class for the disabled and special schools for the blind, deaf, and physically handicapped or retarded. The Ministry of Education which administers education policies tried to create special schools depending on the kind and degree of children's disabilities. The integration of disabled children into mainstream schooling began recently.¹⁰ Whether a normal public school accepts a

⁵ Law No. 123 of 1950, as amended by Law No. 1 of 2002.

⁶ Law No. 123 of 1960, as amended by Law No. 35 of 2002.

⁷ The psychotic are not included.

⁸ Order No. 292 of 1960, as amended by Order No. 168 of 2002.

⁹ Law No. 26 of 1947, as amended by Law No. 10 of 2000.

¹⁰ *21 seikino tokushu kyoiku no arikata ni kansuru chosakenkyu kyoryokusha kaigi* [Conference by researchers on special education in 21st century], at http://www.mext.go.jp/b_menu/shingi/chousa/shotou/006/toushin/010102.htm.

child with disability who is qualified for special school depends on the school and municipal government's education committee.¹¹

Barrier-Free Transportation

Japan recently enacted the barrier-free transportation law.¹² The transportation companies must equip new stations and terminals with barrier-free devices, including elevators and escalators, to make it easier for the elderly and disabled. New trains, buses, and aircraft must meet the barrier-free standards set by the law.¹³ However, existing facilities do not have to be changed though efforts to change these to be barrier-free are required by the laws. Municipal governments which have stations that are used daily by more than 5,000 people or are used by many elderly and disabled may make basic plans in order to make stations accessible by elderly and disabled.¹⁴ For example, parking and other spaces around stations will be designed to make it easier for elderly and disabled's use. Public transportation companies and administrators of roads must make efforts to cooperate with the municipal government.¹⁵ The Ministry of Transportation administers this law¹⁶ and may grant money to the municipal governments through the Corporation for Advanced Transport and Technology in order to support barrier-free public transportation infrastructure.¹⁷ A violator of this law may be posed a fine up to one million *yen* (approximately US\$ 8,333).¹⁸

Barrier-Free Public Buildings

The barrier-free building law was enacted in 1994.¹⁹ At first, builders of new public buildings were obliged to make efforts to make the buildings accessible to elderly and disabled people. Public buildings are building to which many and unspecified persons have accesses, *i.e.*, department stores, hotels, theaters, and hospitals. Tax incentives, financial supports, and simplified building procedures were provided for the builders of qualified buildings. However, it was recognized that the builders' obligation to

¹¹ See The School Education Law Enforcement Order, Education Ministry Ordinance, No. 11 of 1947, art. 73-21.

¹² The Law Concerning Promotion of Easy Transportation for Elderly and Disabled via Public Transportation, Law No. 68 of 2000.

¹³ *Id.* art. 4.

¹⁴ *Id.* art. 6.

¹⁵ *Id.* arts. 7 and 10.

¹⁶ *Id.* art. 23.

¹⁷ *Id.* art. 21.

¹⁸ *Id.* art. 25.

¹⁹ The Law Concerning Promotion of Building Specified Buildings Easy to Use by Elderly And Disabled, Law No. 44 of 1994, as amended by Law No. 86 of 2002.

make efforts was not enough to promote barrier-free buildings, and the law was amended in 2002. Under the new law, builders of new public buildings must comply with standards set by the Minister of Land, Infrastructure and Transport.²⁰ The prefecture or municipal government gives an improvement order to the builder of a public building.²¹ If the builder does not follow the order, he/she will be sanctioned by a fine up to one million *yen* (approximately US\$ 8,333).²²

Telecommunications

The Advanced Information Communication Network Basic Law states that the digital divide derived from persons' physical conditions must be minimized.²³ Based on this law, the Information Telecommunication Network Society Promotion Headquarters was established under the Cabinet.²⁴ The Headquarters made the e-Japan Priority Program in March 2001.²⁵ Section 7, subsection (2), item 2 of the Program states that the government tries to make its websites usable for blind persons, conducts research and development broadcast software for blind and deaf, and supports production costs of programs with captions or sign languages. In addition, the government promotes development and wider-use of communication tools, including personal computers, which are easily used by disabled.

The Law Concerning Promotion of Business which Facilitate the Use of Telecommunications and Public Broadcasts by Disabled was enacted in 1993.²⁶ Based on this law, the Telecommunications Advancement Organization of Japan (TAO) was established under the Ministry of Public Management. TAO provides financial supports to the business which facilitate disabled people's use of information and communication services, *i.e.*, installing public phone booths for people in wheelchairs and providing TV programs with captions.²⁷ The Ministry of Public Management issued the Guidelines on Accessibility to Electronic Communication Facilities by Disabled in 1998.²⁸

The Ministry of Economy, Trade, and Industry (METI) released the Information Process Machine Accessibility Guidelines in 1990. The Guidelines aimed to facilitate

²⁰ *Id.* art. 3.

²¹ *Id.* art. 4.

²² *Id.* art. 19.

²³ Law No. 144 of 2000, art. 8.

²⁴ *Id.* art. 25.

²⁵ The e-Japan Priority Program at <http://www.kantei.go.jp/jp/it/network/dai3/3siryou40.html#hajimeni>.

²⁶ Law No. 54 of 1993, as amended by Law No. 160 of 1999.

²⁷ *Tsusin hoso shintai shogaisha riyo enkatsika jigyo no suishin* [Promotion of business which facilitate use of telecommunication and broadcast services by disabled] at <http://www.shiba.tao.go.jp/sien/sien0801.htm>.

²⁸ The Ministry of Public Management Notification, No. 515 on Oct. 30, 1998.

elderly and disabled's use of information process machines. The Guidelines were revised in 1995 and 2000, as new technology became available.²⁹ The METI and the New Media Development Association under the METI have programs to fund the development of information machines which are easy for the elderly and disabled.³⁰

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²⁹ The current one was issued as the METI Notification on June 5, 2000.

³⁰ The METI program at <http://www.meti.go.jp/information/data/c20419cj.html>; and the New Media Development Association program at <http://www.nmda.or.jp/fukushi/seika/index2.html>.

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MEXICO
RIGHTS OF PEOPLE WITH DISABILITIES

Mexico does not have a comprehensive statute such as the Americans with Disabilities Act. Nevertheless, it has been prolific in promulgating federal and state legislation for protection of the disabled. The last two Presidents have taken concrete actions towards meeting the needs of the disabled. But much remains to be done. The most obvious gaps in the provisions for the disabled are the lack of: effective enforcement of the laws, a stronger and comprehensive anti-discrimination federal mandate, and major allocation of resources to benefit the disabled.

Federal Legislation

Mexico protects the disabled in the Federal Constitution. Concern for their disadvantaged condition is specifically pointed out by providing that “the social security law is of public interest and it shall include insurance against disability.”¹

Other constitutional provisions, although they do not refer directly to the disabled, provide for the individual and social guarantees of every person. These include the right to equal protection of the law, employment, housing, education, health protection, etc. A comparable constitutional provision grants protection to workers of the Powers of the Union and the Government of the Federal District.² The above guarantees cannot be restricted or suspended except in such cases and under such conditions as provided in the Federal Constitution.³

Mexico does not have a comprehensive statute such as the Americans with Disabilities Act. However, Mexico has been prolific in enacting federal legislation dealing with the protection of the disabled. The constitutional statement of the “right to health protection”⁴ has been interpreted to include personal health services (preventive, curative, and rehabilitative medical care) and general or public health services.⁵

¹ *Constitución Política de los Estados Unidos Mexicanos, Comentada y Concordada*, 15th ed., (Editorial Porrúa-UNAM, 2000), art. 123, §XXIX.

² *Id.* art. 123, §B §XI.

³ *Id.* arts. 1-29.

⁴ *Id.* art. 4.

⁵ Pan American Health Organization, World Health Organization, *The Right to Health in the Americas* 379 (Washington, D.C., Scientific Publication No. 509, 1989).

Consistent with this constitutional guarantee, the General Law on Health,⁶ which regulates a citizen's right to health protection as guaranteed under the Federal Constitution, has significantly provided for the prevention of disabilities and for the cure and rehabilitation of the disabled. It seeks to guarantee protection to those who, because of a physiological, psychosomatic, or psychological illness, are less able to achieve their full development and integration into society. To guarantee the implementation of those services, the Law provides that a federal agency under the Ministry of Health, will be responsible for services relating to the prevention of a disability, rehabilitation of the disabled, and the uniformity of actions taken.⁷ Furthermore, the Law provides that those services of social assistance include advocacy for adequate urban and architectural facilities for the needs of the disabled; advocacy for the education, the occupational training and for employment of persons in the process of rehabilitation; and total attention to the disabled.⁸

The Law on the National System of Social Assistance, which governs the objectives and procedures of a national system to render services established by the General Law on Health throughout the nation, specifically identifies the disabled as one of the categories of individuals in need, because their physical, mental, and social conditions prevent them from developing fully.⁹ The implementing authority of the social assistance service for the disabled is the National System for the Integral Development of the Family. The social assistance services rendered by this institution include: technical support to conduct educational programs to socially integrate the disabled; work training; technical support for activities of social assistance performed by the states, other federal entities, local governments, and non-profit organizations; the collection of all kinds of information and preparation of studies on issues concerning the disabled; the operation of social assistance institutions to benefit the disabled, the elderly, and abandoned children; and the performance of all kinds of activities directed to prevent disabilities and to provide rehabilitation to the disabled.¹⁰

For the purpose of Social Security benefits, a disability is considered to exist when the insured person is prevented from earning a wage of more than one-half of the usual wage earned for equal work during the last year he/she worked due to an illness or non-work related accident.¹¹ An insured person suffering from a disability is entitled

⁶ *Ley General de Salud*, DIARIO OFICIAL [D.O.], Feb. 7, 1984, as amended, in *Ley General de Salud* (11th ed. México, Editorial Porrúa, 1994).

⁷ *Id.* arts. 167-180.

⁸ *Id.* art. 174, §V, VI, VII.

⁹ *Ley sobre el Sistema Nacional de Asistencia Social* (D.O., Jan. 9, 1986).

¹⁰ *Id.* arts. 13-16.

¹¹ *Ley del Seguro Social*, as amended, art. 119 (Editorial Sista, México, D.F., 2000), originally published in D.O., Mar. 12, 1973. A major amendment was published in D.O., December 21, 1995.

to a temporary or permanent pension, to medical care, to a family allowance, and to a personal attendance benefit.¹² If the worker becomes disabled but is still able to work, the employer must give him work compatible with his aptitudes.¹³

Most recently, many statutes have been amended benefitting the disabled, including the following:

- Rules of Operation of the Program of Educational Integration (*Diario Oficial (D.O.)*, March 13, 2002);
- General Law of Education (*D.O.*, June 12, 2000);
- Law of Tourism (*D.O.*, June 6, 2000);
- General Law of Human Dwellings (*D.O.*, August 5, 1994);
- Law of Acquisitions and Public Works (*D.O.*, August 5, 1994); and
- Customs Law (*D.O.*, August 5, 1994).

Other relevant enactments related to the disabled are:

- Accord of March 12, 2002, on the Program of Attention to Disabled People (*D.O.*, March 15, 2002);
- Technical Standard 345 of November 28, 1991, (*D.O.*, Dec. 4, 1991) specifying the architectural requirements of medical establishments in the National Health System that will allow easier access for the disabled;
- Executive Decree of July 29, 1988, (*D.O.*, Aug. 15, 1988) creating the National Institute of Rehabilitation Medicine, attached to the Secretary of Health;
- Executive Decree of July 29, 1988, (*D.O.*, Aug. 15, 1988) creating the National Institute of Human Communications, which has as one of its responsibilities to develop programs specializing in preventive and rehabilitative aspects of human communication;
- Law of the Institute of Insurance and Social Services of Government Workers (*D.O.*, January 4, 1993, and Mar. 27, 1992) which includes insurance for the disabled;
- Federal Law of Education (*D.O.*, Nov. 29, 1973); etc.

There are at least nine more federal legislative instruments dealing with the disabled.

State Laws

During the 1990s each of the 31 Mexican States plus the Federal District (Mexico

¹² *Id.* art. 120.

¹³ *Ley Federal del Trabajo* (81th ed. México, D.F., Editorial Porrúa, 2000), art. 54.

City, D.F.) promulgated their respective laws on the social integration of the disabled.¹⁴ The Law for Disabled Persons in the Federal District was enacted in 1995.¹⁵ It covers many aspects of life that concern the disabled. It includes provisions on health; rehabilitation, employment and training; promotion and defense of the rights of the disabled; requirements for urban and architectural facilities that are accessible to the disabled; transportation; social development; and penalties for violations.¹⁶

Discriminatory Laws

A standard used in U.S. law to determine whether an improper government classification has been applied to a class or group of individuals is that it must serve important governmental objectives and must be substantially related to achieving those objectives.¹⁷ If we apply this standard to the available Mexican legislation on the disabled, none of the legislation appears to be discriminatory.

The Civil Code of the Federal District stipulates that mentally incompetent individuals are to be placed under guardianship. A guardian or curator acts in behalf of the disabled in activities such as contracting; filing and defending against law suits; asserting authority over the mentally ill person's property and administering it; and in general, in all activities in which the individual assumes legal responsibilities. A physical disability cannot prevent an individual from getting married, but since a mental disability affects the capacity to give rational consent, the mentally disabled, as well as other disabled persons who are unable to unambiguously express their consent, are disqualified from entering into marriage.¹⁸ In these matters, the civil codes of the Mexican states have generally followed the lead of the Federal District.

These provisions of the Civil Code, although from a different legal system, are in harmony with one of the equal protection principles that sustain the 14th Amendment of the American Constitution: "equality can be denied when government *fails* to classify, with the result that its rules or programs do *not* distinguish between persons who, for equal protection purposes, should be regarded as differently situated."¹⁹

¹⁴ *Leyes de Integración Social para Personas con Discapacidad en las Entidades Federativas* (Comisión Nacional de los Derechos Humanos, México, D.F., 1999).

¹⁵ *Ley para las Personas con Discapacidad del Distrito Federal* (D.O., December 19, 1995).

¹⁶ *Id.*

¹⁷ S. Emmanuel, *CONSTITUTIONAL LAW* 222 (7th. ed. New York, 1989).

¹⁸ *Código Civil para el Distrito Federal* (Editorial Sista, México, D.F., 2000), arts. 23, 31, 1794, 1795, 1798, and First Book, Title IX, Chs. I, IV, XIV, XVI.

¹⁹ L.H. Tribe, *American Constitutional Law* 1438 (2nd. ed. New York, The Foundation Press, Inc., 1988).

Most Recent Government Actions

The President of Mexico, Vicente Fox has shown sensitivity toward the needs of the disabled. He proposed the elaboration of a convention for the protection of the human rights of the disabled during the 2001 U.N. General Assembly session.²⁰ On September 2001, President Fox unveiled a National Public Access Program designed to provide equal access and rights to Mexicans with disabilities and urged state and local governments to do likewise. He also asked the private sector to cooperate with his initiative. He ordered his Cabinet members to evaluate and improve accessibility for thousands of federal buildings, e.g., offices, hospitals, airports, and bus stations. Fox's government indicated that it would also change and create policies to guarantee the disabled's equal rights.²¹ In 2001, the government of the Mexico, D.F., equipped 50 buses to transport disabled people and it initiated a program aimed at providing 40 disabled with a monthly stipend.²² In 1998, the then President Ernesto Zedillo referring to notable progress done in favor of the disabled commented that:

Today, there are special public transit vehicles; major streets and avenues have been modified to make it easier for them to move around; parking lots at shopping and amusement centers include special areas for the handicapped; restrooms and phone booths have been modified for their benefit; and the handicapped can travel for free on the Metro of Mexico City, where the physically challenged are estimated at a million individuals.²³

In 1993, Congress passed a law requiring states to teach the deaf in special schools.²⁴ In 1997, Televisa, although a private enterprise, began broadcasting its TV news summaries in sign language.

Conclusion

There are numerous Mexican legislative instruments furthering the rights and welfare of the disabled. Mexican legislation has provided the disabled with the right to receive appropriate treatment services, rehabilitation, special education, and training necessary for their social integration. The U.S. Supreme Court, in pronouncing an opinion upon a case involving a category of the disabled in the United States, has remarked that:

²⁰ U.N. *Rights-based approach to disability issues, second ageing assembly discussed in Commission for Social Development*. M2 Presswire, February 15, 2002. LEXIS.

²¹ Carl Traci, Associated Press, September 18, 2001. LEXIS.

²² Feike Tycho de Jong, *Human rights commission seek protection for disabled*. WORLDSOURCES, INC., June 12, 2001. LEXIS.

²³ José Antonio O'Farriil, *Economic Hardships will Strengthen Mexico*, INFOLATINA, S.A., August 17, 1998. LEXIS.

²⁴ Martha Brant, *Pity the 'Minusvalidos,'* NEWSWEEK, August 4, 1997. LEXIS.

Such legislation that singles out the [disabled] for special treatment reflects the real undeniable differences between the [disabled] and others. That a civilized and decent society expects and approves such legislation indicates that governmental consideration of those differences in the vast majority of situations is not only legitimate but desirable.²⁵

In recent years, the Mexican Government has undertaken numerous steps to protect the disabled. But much remains to be done. Doubts about the degree of compliance with and the effective enforcement of the above-mentioned Mexican laws have been raised by the following finding:

There are still many disabled who “are forced to beg for spare change, pleading with passers-by on street corners or maneuvering wheelchairs through cars stopped at traffic lights.”²⁶ Most public buildings and facilities in Mexico City do not comply with the statutory mandate to provide access for persons with disabilities and this requirement does not exist elsewhere in the country.²⁷ Many of the sidewalks in Mexico, D.F. are high and have no ramps for wheelchair access.²⁸ In February 2000, Mental Disability Rights International published a three-year study spotlighting the horrific conditions in Mexico’s mental institutions. The Government took immediate action indicating that they took the report seriously and were investing a considerable amount of money to improve these conditions.²⁹ However, there are concerns about how much improvement remains to be done. In 1997, it was reported that in Mexico the deaf and other disabled people were often neglected, shunned, and scorned.³⁰ Furthermore, “some police not only abuse deaf vendors, they often extract bribes from their measly earnings.”³¹

Therefore, there seems to be missing from Mexican legislation a forceful law outlawing discrimination. This mandate could cover all forms of discrimination against the disabled: obvious and covert, direct and indirect, and passive discriminatory practices, as well as particularly irrational negative attitudes towards the disabled with immutable traits such as mental retardation, idiocy, mongolism, etc.

²⁵ City of Cleburne v. Cleburne Living Center, U.S., 105 S. Ct. 3249 (1985).

²⁶ *Supra* note 21,

²⁷ MEXICO, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES, U.S. Department of State, 2001.

²⁸ *Supra* note 22.

²⁹ *Supra* note 24.

³⁰ *Id.*

³¹ *Id.*

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THE NETHERLANDS
RIGHTS OF PEOPLE WITH DISABILITIES

The policy of the Dutch government towards people with a physical or mental disability is aimed at giving them the opportunity to function independently within society. It is the government's belief that within their capacities, disabled people themselves must be enabled to give shape and substance to their lives. The entire public sector in the Netherlands is involved in disability policies. The Ministry of Health, Welfare and Sport funds the majority of the care facilities through public health insurance. At the governmental level, this ministry is in charge of the coordination of policies on disability with four other ministries involved: the Ministry of Social Affairs and Employment; the Ministry of Education, Culture and Science; the Ministry of Transport, Public Works and Water Management; and the Ministry of Public Housing, Physical Planning and the Environment in the Interdepartmental Committee for Coherence and Coordination in Disability Policies and/or the Chronically Ill. This committee is a consultative body for the alignment, development, and coordination of the central government's disability policies in the Netherlands. Various national insurance schemes provide benefits to people with physical or mental disabilities in order to strengthen their independence and autonomy.

In July 2002, the Second Chamber of Parliament unanimously approved a Bill on Equal Treatment of People with a Handicap or Chronic Illness (the Bill). This Bill is similar to the Americans with Disabilities Act but not nearly as extensive. The Bill intends to create equal footing for the participation of people with disabilities or a chronic illness in society by forbidding discrimination of these people in three areas: employment, vocational training, and public transportation. The Second Chamber has asked the Government to propose a law within a year that will extend this Bill to the following three areas: the accessibility of public buildings, public services, and housing for people with disabilities.¹ This Bill marks a change from the "care" for people with disabilities to a "right" for these people in certain areas. The Bill has been sent to the First Chamber of Parliament for approval.² If approved, the Bill will come into effect in 2003.³

Wherever applicable to the topics below, reference will be made to the Bill.

¹Wet tegen discriminatie van gehandicapten aangenomen, July 2, 2002, supplemented July 11, 2002, at <http://www.handicap.nl/nieuws>.

²Eerste Kamer der Staten-Generaal, July 4, 2002, 2001-2202, Nr. 411, 28 169.

³Press Release, Ministry of Health, Welfare and Sport, at <http://www.minvws.nl/document.html>.

Employment

The Law on the (Re)Integration of Persons That Have a Disability to Perform Labor 1998⁴ (the Law) replaced the Law on Labor for Disabled Employees.⁵ The Law is meant to help reintegrate disabled persons into the labor force by extending existing legal instruments and removing institutional obstacles which obstruct this reintegration. The Law gives employers, employers' organizations, and employees' organizations the task, where reasonably possible after consultation, the ability to give equal opportunities to persons disabled to perform work as to persons not disabled to participate in the labor process and to make the necessary provisions aimed at keeping, recuperating, or the promotion of the suitability of employees to perform work.⁶ By a General Administrative Measure employers can be compelled to have a minimum of three percent and a maximum of seven percent disabled persons in their workforce. This quota obligation applies to (part of) an industry sector and to a section of the public sector. A quota obligation is applicable to all enterprises, regardless of size. The Minister of Social Affairs and Employment, responsible for coordination, can grant a conditional or unconditional exemption for a particular employer for the quota obligation.

The Law further regulates for disabled persons under the age of 65 the defrayment of employment and educational provisions, including transportation to and from work or school,⁷ and also aids or appliances for reading, writing and other, such as a seeing eye dog. Based on this Law, in certain circumstances subsidies for the salaries and for adaptation of the workplace may be given to the employer who employs or keeps in employment a disabled worker.

The Bill forbids discrimination against persons with a handicap or chronic illness in employment situations. The following points are enumerated in the Bill⁸ in areas in which employers may make no difference between persons with a handicap, chronic illness, or others:

- in the posting of the position and the processing of the applications. The employer has the obligation, if necessary, to make provisions to employ a person or to keep him/her in employment. This not only applies to adaptation at the workplace, but also to make the building of employment accessible.
- with the beginning and the end of employment
- with labor mediation

⁴Law of April 23, 1998, STAATSBLED (official law gazette of the Netherlands, STB.) 290, as amended.

⁵Law of May 16, 1986, STB. 300, as amended.

⁶*Supra* note 4, art. 4.

⁷This could be by train, bus, taxi, or reimbursement for mileage or costs of adaptation of a car.

⁸*Supra* note 2, art. 4.

- with the drawing up of the conditions of employment (such as the level of salary)
- the possibility to continue education and schooling preceding or during employment
- at promotions

A difference between person with a handicap and others may be made if:⁹

- the difference is necessary for the protection of the security and health
- the difference concerns a rule, norm, or practice whose aim it is to create or maintain specific provisions or facilities on behalf of handicapped persons
- the purpose of the difference is to give persons with a handicap a preferential position in order to alleviate or reduce disadvantages and the difference is in reasonable proportion to its aim

If employers discriminate in the above mentioned situations, a complaint may be lodged with the Committee on Equal Treatment,¹⁰ whose decision can then be appealed to the court.

The above mentioned four Ministries are responsible for coordination.¹¹

Public Services/Transportation

Public services will be added in the future to the Bill. However, it should be noted that people with disabilities have access to a large number of national insurance schemes to provide for their needs. People with disabilities can benefit from a large number of programs, services, and activities. Vocational education is one of the areas in which the Bill explicitly forbids discrimination. It is prohibited to discriminate against people with disabilities:

- when offering career orientation and information on career guidance
- with the granting of access to vocational education, the offering of the education itself, and at the taking of exams

The prohibition also means that providers of these services must have accessible buildings and be useful to people with disabilities.

The regulation in the Bill on equal treatment in public transportation is not yet quite clear. In principle, trains, busses, trams, and metro will need to be just as easily accessible for people with disabilities as for anyone else. This also includes the accessibilities of stations, stops, platforms, etc. (the infrastructure). Also,

⁹*Id.* art. 3.

¹⁰*Id.* art. 12.

¹¹*See* page 1, ¶1.

the travel information has to be usable to anyone, including deaf and blind people.¹²

At present, public transportation is not yet totally accessible to people with disabilities. A few years ago an agreement was made that transportation with buses had to be totally accessible to people with disabilities in 2010. Trains and trams at a much later date. Even though the law will come into effect before that date, these agreements stay in existence. The Bill states that by General Administrative Measure, the government will determine which accessibility requirements public transportation will have to meet and at which time.¹³

Complaints of discrimination, when the Bill comes into effect, may be lodged with the Committee on Equal Treatment, whose decision then can be appealed to the court.¹⁴ The above mentioned four Ministries will be responsible for coordination.

Public Accommodations and Services by Private Entities

The Building Decree of 1992¹⁵ contains national uniform technical rules with respect to buildings. It provides that all buildings not meant for housing must be accessible for people with wheelchairs.¹⁶ Municipalities issue the building permits in conformity with the Decree. This means that buildings used for public accommodations and services if built or remodeled after 1992 will be accessible for people who are disabled. The Ministry of Public Housing, Physical Planning and the Environment is responsible for coordination. Private entities that run transportation services, if they are on a schedule and open to the public, must meet the transportation requirements on accessibility in the Bill.¹⁷

Telecommunications

Under the Bill, after a person with a disability has been hired, the employer must adapt the job site so that the person will be able to perform the job in the best possible way, this also applies to making telecommunications accessible for employees with disabilities.¹⁸

In most cases an employer may qualify for subsidies and compensation in order

¹²*Supra* note 2, art. 7.

¹³*Supra* note 2, art. 8, §2.

¹⁴*Id.* art. 12.

¹⁵Decree of Dec. 16, 1991, STB. 680, as amended.

¹⁶*Id.* art. 212.

¹⁷*Supra* note 2, art. 7.

¹⁸*Id.* art. 4.

to facilitate the disabled person. The various national insurance schemes further provide means so that a person with a disability can live life as much as possible in his/her home environment independently; this includes the various ways to communicate with the help of telecommunications.

On November 8, 2001, the Minister installed an *ICT Platform On Care for People with Disabilities*. Internet cafes for people with disabilities were opened and a campaign “DrempelsWeg” (thresholds removed) was started. This initiative started to make websites of governments, corporations, and institutions accessible for people with disabilities. The campaign also was meant to stimulate these people to go on the web. The 62 most important websites have agreed to make their sites accessible.¹⁹

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¹⁹Speech by the Deputy Minister of Health, Nov. 8, 2001, at <http://www.minvws.nl/document.html>.

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PAKISTAN

RIGHTS OF PERSONS WITH DISABILITIES

Pakistan enacted the Disabled Persons (Employment and Rehabilitation) Ordinance 1981 for the benefit of disabled persons.¹ The Preamble of the 1981 Ordinance states that the purpose of the law is to provide for the employment, rehabilitation, and welfare of disabled persons; The Ordinance establishes a National Council to coordinate activities of the Provincial Councils, and also make provisions in policies for the benefit of disabled persons.

Employment

The Federal Government has constituted a National Council and each Province has constituted a Provincial Council for carrying out the objectives of the Disabled Persons (Employment and Rehabilitation) Act.² The National Council is responsible for formulating policy for the employment, rehabilitation, and welfare of disabled persons. It also evaluates, assesses, and coordinates the execution of the policy by the Provincial Councils.³ The policy may include preparing a survey of disabled persons, medical examinations and treatment, training for the disabled, and other measures as necessary to give effect to the provisions of the Act.

Each Provincial Council shall execute the policy made by the National Council and also undertake appropriate projects for these purposes. It may also issue instructions to the Employment Exchanges and other bodies for implementation of the projects.⁴

Every establishment, whether governmental, commercial, or industrial must employ disabled persons, who are registered on the list of the area Employment Exchange, no less than one percent of their total personnel. It is also imperative that the establishment shall ensure that the terms and conditions of the employment of the disabled persons shall not be less favorable than other members of the staff, impliedly ruling out any chance of discrimination against them.

An establishment which fails to employ a disabled person, as above stated, is required to pay into the Disabled Persons Fund the sum of money which it would have paid the disabled person as wages if he/she was employed.⁵ However, every disabled person who wishes to be employed must register himself/herself with the Employment Exchange

¹ No. 40 of 1981.

² The Disabled Persons (Employment and Rehabilitation) Ordinance, No. 46 of 1981, §§3 and 5.

³ *Id.* §4.

⁴ *Id.* §6.

⁵ *Id.* §11.

in the area. The Provincial Council will make every effort to assess the nature of employment that a disabled person can undertake and, for this purpose, have the person examined by an authorized medical officer. Upon certification by the medical officer, the Council will inform the Employment Exchange to register the person along with the kind of employment for which he/she is suitable. If the person is found unsuitable for any employment, the council shall inform the Employment Exchange accordingly for striking his/her name off the register.

For the training of disabled persons, the Provincial Council shall establish training centers in such trades or vocations as it may consider appropriate.⁶ The Provincial Council may debar any disabled person from further employment or training for such period of time as it may decide if the person refuses to accept training or employment without valid reason.⁷ Before debarment to employment or training, the disabled person shall be given an opportunity to be heard and explain as to why he/she failed to accept the offer. An appeal against the order of the Provincial Council may be filed before the National Council within 30 days of the order of denial.

Any establishment which fails to pay the money due in respect of a non-employed disabled person shall be punishable with fine which may extend to 1,000 Pakistani *rupees* (approximately US\$17), and in the case of non-payment of the fine, to an additional fine of 10 Pakistani *rupees* (approximately US\$0.16).

No court inferior to that of a Magistrate First Class shall try an offense punishable under this Ordinance, and no court shall take cognizance of an offense under this Ordinance except upon a complaint in writing made by or under the authority of the National Council or the Provincial Council.⁸

Examples

The Pakistan Society for the Rehabilitation of the Disabled⁹ is legally¹⁰ recognized for its operations to rehabilitate the disabled. Located in Lahore, it is well organized and has set up several committees to improve services for the disabled. It has set up committees for their vocational training, computer learning, building maintenance and construction, education, etc. The Society provides subsidized or free services to the disabled, subject to the extent of the disability and expense involved. It has an orthotics and prosthetics center where the disabled are not only given jobs but also are trained to make prosthetics for others. Disabled women are trained for sewing and other nursing needs of the patients.

⁶ *Id.* §13.

⁷ *Id.* §15.

⁸ *Id.* §21.

⁹ The Pakistan Society for the Rehabilitation of the Disabled, Annual Report 1998-99.

¹⁰ The Voluntary Social Welfare Agencies (Registration and Control) Ordinance, No. 46 of 1961.

In the education center of the Society, 146 students were enrolled in 1998. The school admits only such students who need physiotherapy treatment or surgical assistance. The children are encouraged to participate in sports and other outdoor activities.

Public Services/Transportation

The Ordinance has not provided for establishing free community housing. However, since the powers to respond to such needs of the disabled are entrusted to the National Council, the Council operates by making guideline for that purpose. The guidelines may ensure accessibility of the building environment requiring that school, hospitals, rehabilitation centers, the outdoor environment, and land, sea, and air transportation are made accessible.¹¹ Accessibility in the building environment is also observed by a national authority and local Governments.

The following measures have been promoted to facilitate accessibility in the building environment: leveling off pavements, installing elevators and accessible restrooms, ensuring access to public places, and provision of specially adapted motor vehicles. Special transportation is provided for the purpose of education only. When planning to build accessible environments, the most difficult obstacles are: economic/budgetary factors, lack of legislation and regulations, and lack of an enforcement mechanism. There is no disability awareness component incorporated in the training of planners, architects, and construction engineers.

Although there is a feeling of compassion in the general society toward disabled persons, an exercise of discrimination against them is cultural, e.g., in public transportation, people avoid sharing a seat with a disabled person, especially, when the person has a mental disability; in bars and restaurants, and swimming pools, they are not admitted normally, or people avoiding to give them housing accommodation; etc. Aside from requesting the appropriate council for help in such cases, the statute does not provide a judicial or semi-judicial authority for redress.

Accommodation and Services by Private Entities

There is no specially designed community housing for disabled persons. Moreover, the real estate owners avoid leasing their premises to the disabled. However, a large number of private entities espouse their causes, e.g., Lahore Chamber of Commerce and Industry (LCCI) which provides them jobs.

The Mardan Society for Deaf looks after the welfare of the hearing impaired. Mission Hospital provides for education of the mentally retarded.

The Governments' inability to make special housing or other accommodation available is due to lack of necessary funding.

Telecommunication

Sign language for deaf people is recognized as the main means of communication between deaf persons and others. There are Government measures for encouraging media

¹¹ http://www.independentliving.org/standardrules/UN_Answers/Pakistan.html

and other forms of public information to make their services accessible to person with disabilities. There is no legal provision to assist them to obtain audiometer supplements, etc., to improve their lives.

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POLAND
RIGHTS OF PEOPLE WITH DISABILITIES

The Republic of Poland does not have a comprehensive law similar to the ADA. The rights of people with disabilities in Poland are protected by various international and domestic laws. The Republic of Poland has signed most international conventions related to disabilities. The Polish Constitution also guarantees equal or preferential treatment to people with disabilities. However, these rights are not always enjoyed, either due to lack of appropriate laws or implementing regulations, or insufficient implementation of the existing laws.

Introduction

The rights of people with disabilities in Poland are protected by international and domestic laws. The Republic of Poland has ratified major international conventions relating to disabled people, including the Universal Declaration of Human Rights, the Convention on the Rights of the Child, and the Standardized Rules for Providing Equal Opportunities for Persons with Disabilities. Pursuant to the Polish Constitution, provisions of these conventions after their promulgation in the *Dziennik Ustaw* [Official Gazette] constitute part of the domestic legal order and apply directly, unless their application depends on the enactment of a statute.¹

The Republic of Poland does not have a comprehensive law similar to the ADA. The rights of disabled people are regulated by almost 60 various laws and regulations.

The Resolution of the Sejm of the Republic of Poland, The Charter of Rights of Disabled People² defines disabled people as people whose physical, psychological, or mental capacity, permanently or temporarily, hinders, limits, or disables their everyday life, study, work, or fulfillment of social roles, according to legal and customary rules.³

The Charter states that disabled people have the right to an independent,

¹ Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. [The Constitution of the Republic of Poland of Apr 2, 1997, hereafter THE CONSTITUTION], *Dziennik Ustaw* [Polish official gazette, hereafter Dz.U.] No.78, item 483 (1997). See Appendix I.

² Uchwała Sejmu Rzeczypospolitej Polskiej z dnia 1 sierpnia 1997 t. Karta Praw Osob Niepełnosprawnych (hereafter The Charter), *Monitor Polski* (hereafter M.P., Polish official gazette for lower hierarchy legislation) No. 50, item 475 (1997).

³ *Id.* §1. This definition is similar to ADA but somewhat narrower.

self-sufficient, and active life and may not be discriminated against.⁴ The Charter further lists particular rights of disabled people. The list is not exclusive and includes such rights as:

- access to goods and services enabling full participation in social life
- access to health treatment, medical care, early diagnosis, rehabilitation and treatment education, as well as to health services appropriate for the kind and degree of disability, including providing orthopedic objects, aid devices, and rehabilitation equipment
- access to comprehensive rehabilitation with the purpose of social adaptation
- access to study in schools together with their non-disabled contemporaries, as well as to access to special or individual education
- psychological, pedagogical, and other specialized help enabling the achievement, development, and improvement of general and professional qualifications
- work on the open labor market according to qualifications, education, and abilities
- access to professional counseling and employment referral, as well as work in special conditions adapted to needs of disabled, when the disability and health condition so require
- social security and tax systems which take into consideration additional costs resulting from disability
- life in environment free of functional barriers which include:
 - access to offices, voting stations, and other public utilities
 - free movement and access to transportation means
 - access to information
 - access to social communication
- self-governing representation of their group and ability to express their opinions on all bills that relate to disabilities
- full participation in public, social, cultural, artistic, sport, and recreation and tourism life appropriate to their interests and needs⁵

The Charter explicitly states that rights of disabled people are guaranteed by the Polish Constitution, the Universal Declaration of Human Rights, the Convention on the Rights of the Child, and the Standardized Rules for Providing Equal Opportunities for Persons with Disabilities, as well as other international and domestic laws. The Charter requests central and local governments to undertake steps necessary for full

⁴ *Id.* §1.

⁵ *Id.* §1.

compliance with these laws and regulations.⁶

The *Sejm* requests the Polish government to provide annual information on activities undertaken in order to carry into effect disabled persons' rights.⁷

The Constitution of the Republic of Poland provides special treatment to disabled persons. It states that Polish citizens who are not able to work due to illness or disability have the right to social security. It refers to a special law which should determine the range and forms of social security.⁸ Such laws have been passed.

The Constitution further states that everybody has the right to health protection, which includes disabled persons.⁹ All citizens have equal access to health care services financed from public funds, irrespective of their financial situation.¹⁰ Public authorities are obliged to provide special health care to children, pregnant women, disabled people, and elderly people.¹¹

The most important provision of the Constitution is explicit obligation of public authorities with the duty to provide to disabled persons help in securing their subsistence, adaptation to work, and public communication, in accordance with the law.¹²

The most important law realizing Constitutional protection of the disabled is the Law on Professional and Social Rehabilitation and Employment of Persons with Disabilities.¹³ The purpose of professional rehabilitation is to help a person with disability to obtain and keep appropriate employment and professional advancement by providing such a person professional counseling, professional training, and employment services. These tasks are performed by district [*powiatowe*] employment agencies. The

⁶ *Id.* §2.

⁷ *Id.* §3.

⁸ *Id.* art. 67.

⁹ THE CONSTITUTION, art. 68, sec. 1.

¹⁰ *Id.* art. 68, §2.

¹¹ *Id.* art. 68, §3.

¹² *Id.* art. 69.

¹³ Ustawa z dnia 20 sierpnia 1997 r. o rehabilitacji zawodowej i społecznej oraz zatrudnianiu osób niepełnosprawnych [The Law of Aug. 27, 1997, on Professional and Social Rehabilitation and Employment of Persons with Disabilities, hereafter Disabled Employment Law], Dz.U. No. 123, item 776 (1997); amended: Dz.U. No. 160, item 1082 (1997); Dz.U. No. 99, item 628 (1998); Dz.U. No. 106, item 668 (1998); Dz.U. No. 137, item 887 (1998); Dz.U. No. 156, item 1019 (1998); Dz.U. NO. 162, item 1118 (1998); Dz.U. No. 1126 (1998); Dz.U. No. 49, item 486 (1999); Dz.U. No. 90, item 1001 (1999); Dz.U. No. 95, item 1101 (1999); Dz.U. No.111, item 1280 (1999); Dz.U. No. 48, item 550 (2000); Dz.U. No. 119, item 1249 (2000); Dz.U. No. 39, item 3=459 (2001); Dz.U. No. 100, item 1080 (2000); Dz.U. No. 125, item 1368 (2001); Dz.U. No. 129, item 1444 (2001); Dz.U. No. 154, item 1792 and 1800 (2001).

purpose of social rehabilitation is to enable a disabled person to participate in social life. These tasks are performed by local centers for family help through therapy workshops, rehabilitation camps, physical exercise and recreational groups, sport events, and other forms of social activity. Therapeutic rehabilitation is provided by health service centers, pursuant to other laws.

There are three groups of disabled: significant, moderate, and slight. District committees for disability level, situated at centers for family help, decide on disability level and qualify a disabled person for a particular group of disability.

In order to create economic motivation for employment of disabled persons, the Disabled Employment Law put certain obligations on employers who employ at least 25 employees. If there is no minimum number of disabled among these employees, the employer has to pay certain amount of money for State Fund for Rehabilitation of Persons with Disabilities (the Fund). However, most employers neither employ the minimum amount of disabled required for reliving them for obligation to pay for the Fund nor pay the fee required for not satisfying this requirement. Only a very small number of employers pay fees for the Fund. Presently, article 67 of the tax ordinance provides the possibility of forgiveness of tax obligations. Therefore most employers prefers to fight for the forgiveness than to fulfill their Fund obligations.¹⁴

Overall, the situation of disabled people is not satisfactory. Poland does not fulfill its international obligations and the rights of the disabled are not fully protected. Such a situation requires urgent government action. To comply with these requirements, Polish government has recently introduced a packet of new laws on people with disabilities which consists of amendments to the Disabled Employment Law together with implementing regulations.¹⁵

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¹⁴ Danuta Frey, *KARA CZY PODATEK* [Fine or Tax], Sept. 16, 2002, at C, col. 2-6.

¹⁵ *Id.*

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RUSSIAN FEDERATION
RIGHTS OF PEOPLE WITH DISABILITIES

Russia has over 11 million disabled people, 270,000 of whom became disabled during armed conflicts. In 2002, the federal budget allocated about US\$1.5 billion for the needs of the disabled. This amount is used mostly for the payment of disability pensions, which are below the subsistence level. In December 2001, President Putin acknowledged in a televised address that disabled people in Russia need far more support from the state than they presently receive.¹

Basic Legislation

The major document that determines the status of people with disabilities in Russia is Federal Law No. 181 of November 24, 1995, on Social Protection of People With Disabilities.² This Law establishes the official state policy in the field of social protection of disabled people in order to protect equal opportunities for the handicapped in implementing their economic and political rights. The Law is based on the provisions of article 39 of the Russian Federation Constitution that: 1) state that "each person shall be guaranteed social security in old age, in the event of sickness, disability, or loss of a family's primary provider, for the raising of children and in other cases specified by law"³ and 2) define the system of state-supported economic, social, and legal measures that secure the conditions necessary to compensate disability-related restrictions. Also, the Law determines the competence of federal and state authorities in regard to the rehabilitation of disabled people.

The Law focuses on protecting the rights of disabled people in the following major areas:

- access to information resources
- education
- decrease of restrictions related to traveling and transportation
- access to social infrastructure
- housing
- employment

¹ BBC MONITORING, Dec. 3, 2001, at www.site.securities.com.

² SOBRANIE ZAKONODATELSTVA ROSSIISKOI FEDERATSII [official gazette, SZ RF] 1995, No. 48, Item 4563.

³ CONSTITUTION OF THE RUSSIAN FEDERATION, adopted by the national referendum on Dec. 12, 1993.

· development of social organizations for the disabled

Public Services/Transportation

The Law stipulates that the creation of conditions enabling disabled people to have unrestricted access to the objects of social infrastructure is a duty of federal, state, and local executive authorities. That means to make transportation, government buildings, sport establishments, and places of recreation and entertainment accessible to people with disabilities, including those who use wheelchairs and service dogs. Regardless of the form of ownership, organizations providing transportation service must equip the means of transportation with special devices that will assist people with disabilities. This work shall be financed through federal and state budgets. The Law introduced a 10 percent quota for parking spots designated for the use of disabled people on all parking lots. The Law makes the approval of a petition of a disabled individual to allocate a land lot for building a garage for a specially adjusted car near his/her residence a legal requirement for all local government officials. Such pieces of land shall be exempt from taxation. At the end of 2001, in the city of Moscow only 819 out of 42,000 buildings had special ramps and elevators for the handicapped.⁴ It is planned to build 3,000 apartments with the special equipment needed by disabled people and to adjust 1,810 buildings entrances before 2004.⁵

Public Accommodation

The Law gives disabled people and families with a disabled child priority in receiving municipal residences that are equipped in accordance to the needs of the disabled individual. Services of social assistance shall take into account the special needs of the person with disabilities. The Government guarantees disabled people the fulfillment of necessary conditions in order to get general and vocational education for free.

Employment

In order to secure the employment of people with disabilities, the law requires a particular number of the positions to be reserved for the disabled. Local authorities establish employment quotas for people with disabilities on all enterprises with more than 30 employees regardless of the form of ownership. This quota shall be no less than three percent of the entire number of employees. The Law states that special working places which accommodate the needs of the disabled shall be created. Labor contracts and collective agreements may not worsen the labor conditions of the disabled employees. In addition, private companies may develop their own policies on hiring the disabled, if these policies do not violate federal labor legislation. Another measure aimed at improving the employment of the disabled is the increase in state purchasing orders from companies employing disabled workers. Present legislation states that five percent

⁴ RIA OREANDA NEWS AGENCY, *Economic and Political Press Review*, Dec. 4, 2001.

⁵ *Id.*

of state purchases must be made from such companies.

Most of the working disabled people are employed by the enterprises included in the system of social organizations of the disabled. The All-Russian Organization for the Deaf operates 74 companies for deaf people nationwide. The All-Russian Society for the Blind operates 174 companies nationwide; employing 90 percent of all the working blind people in the country. The largest organization is the All-Russian Society for the Disabled, which runs 3,000 enterprises employing 32,000 disabled people. Most of these enterprises are small, and their ability to compete on the job market is limited. During the Soviet time, these societies used to receive direct federal subsidies. But in 1954, the subsidies were stopped and the system of tax breaks and mandatory state orders was introduced instead. Under this system, the societies of disabled people thrived, receiving orders from state-controlled enterprises and building up an infrastructure for the disabled. Before January 1, 2002, companies where disabled employees made up at least half of the workforce were exempt from a range of taxes, including the 24 percent profit tax, 14 percent pension tax, and 14 percent insurance tax. In order to combat widespread abuses of these privileges by companies that fraudulently acquired tax-exempt status, either by registering non-disabled workers as disabled or by hiring disabled workers and then not giving them anything to do, most of the previously existing tax breaks were abolished. Simultaneously, the Value Added Tax for items necessary for the treatment and rehabilitation of disabled people was lifted. That includes cars specially adapted for handicapped, wheelchairs, prosthetic appliances and the materials from which they are made, and educational games.

Telecommunication

In order to secure the basic rights and activities of disabled people, the Law gives the federal and state authorities the obligation to provide unrestricted access to information. For this purpose, the Government undertakes measures to develop special publications and audio and video recordings, and to produce learning materials for the disabled. Under the Law, subtitles shall be available for all video performances, and the use of sign language is mandatory on government-owned TV channels.

Enforcement

The Ministry of Social Protection of Population (similar to the Social Security Administration in the United States) and its branches in Russia's provinces is responsible for the implementation and enforcement of the laws protecting basic rights of people with disabilities. The implementation of the Law on Social Protection of People with Disabilities is complicated because social security legislation in Russia is not separated into a specific branch of law, and the care for the disabled is usually limited to "various discounts and benefits, often miserly and irregularly fulfilled."⁶ Even though the President of the Russian Federation and particular cabinet agencies have adopted a number

⁶ *Russia's Putin Tells Government to Heed Problems of Disabled People*, REPORT IN ENGLISH BY RUSSIAN NEWS AGENCY ITAR-TASS, Dec. 3, 2001, FBIS Document ID: CEP20011203000067.

of legislative documents aimed at the increase of state support to disabled people,⁷ the existing policy did not make it possible to integrate the disabled into society and adapt them to social life.⁸ Neither public buildings nor transport in Russia's cities meet the requirements for disabled people. Although the Law states that officials violating these provisions are liable under administrative legislation, and money received from the imposed fines shall be spent for improving living conditions of the disabled, these legal requirements are not fully implemented.

According to the Law, every five years the Government shall adopt a federal-targeted program of social support and rehabilitation of people with disabilities. The program that is currently in force was passed in the year 2000. The program implements provisions of the Law through the resolution of particular problems that shall help to integrate people with disabilities into society. The goal of the program is to rehabilitate and return people to work annually and to increase the quality of their lives up to 15 percent.⁹

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⁷ See: ROSSIISKAIA GAZETA [official newspaper published by the RF Government], No. 125, July 7, 1996.

⁸ *Supra* note 6.

⁹ SZ RF 2000, No. 4, Item 393.

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SUB-SAHARAN AFRICA
RIGHTS OF PEOPLE WITH DISABILITIES
SUMMARIES OF 30 COUNTRIES

Overview

This study examines national laws from a constitutional point of view that protect the basic human rights of people with disabilities. It also incorporates synoptic highlights of countries such as Lesotho, Malawi, Nigeria, Zambia, and Zimbabwe to determine whether they reflect legislation similar to the Americans with Disability Act (ADA). The illustrative example is the Zimbabwean Disability Act of 1992.

The study covers 31 Sub-Saharan African countries in English and French-speaking Africa in regard to constitutional provisions that either directly or indirectly address the basic human rights of disabled persons. Other constitutions have general provisions that may be deemed applicable to the disabled.

Concerning national legislation, examples from five English-speaking countries in Africa are provided which govern the basic human rights of the disabled. Among these, Zimbabwe appears to have an ADA-type statute and is described in more detail in the last portion of this study.

This study is sub-divided into three parts: constitutional provisions that protect the basic human rights of people with disabilities; an overview to determine which countries have an ADA-type law or national legislation in selective English-Speaking Sub-Saharan Africa; and the Zimbabwean Disability Act of 1992 as an illustrative example.

Constitutional Provisions Protecting Basic Human Rights of People with Disabilities

Benin

The Constitution applicable in Benin is that of December 11, 1990, as amended.¹ Articles 7-40 of Title II pertain to the rights and duties of the individual. Article 7 incorporates into the national law of Benin the African Charter on Human and People's Rights of 1981, in force in 1986.²

Articles 2, 15, 16, and 19 of the Charter contain broad principles that may be applied to secure and guarantee the basic human rights of disabled persons. These pertain to the equal enjoyment of rights and freedoms without any discrimination or distinction, the right to work for anyone and to

¹ J.L. Matthews, Supp. Rep. Of Benin, Law No. 90-32 of December 11, 1990, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 143 (1993).

² 21 I.L.M. 58.

receive equal remuneration for equal work, and the right to enjoy physical and mental health and for the state to take measures to protect the health of their people. In addition, article 19 of the Charter states:

All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

In Benin, these Charter provisions have found expression in article 26 of the Constitution which states:

The state shall assure to everyone equality before the law without any distinction of origin, of race of sex, of religion, of political opinion or of social position. Men and women are equal under the law. The state shall protect the family and particularly, the mother and the child. It shall take care of handicapped and aged persons.

Botswana

Article 15 of the Constitution of Botswana of 1966 as amended³ prohibits discrimination of anyone. Furthermore, no law can contain any provision that is discriminatory either of itself or in its effect. Similarly, no person can use the law to justify such discriminatory practices. Article 15 (3) defines discrimination as:

affording different treatment to different persons, attributable wholly or mainly to their respective descriptions by race, tribe, place of origin, political opinion, color or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

Burkina Faso

The Constitution applicable in this country is that of 1997 as amended.⁴ Chapters 1-4, articles 1-30 constitute fundamental human rights and duties. Article 2 of the Constitution stipulates that the protection of life, security, and physical integrity is guaranteed by the state. Furthermore, article 23 of the Constitution outlaws discrimination in all its forms against any person. This article also secures and protects the rights of the child.

³ P.E. Larkin et al., Supp. Rep. of Botswana, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 133 (1989).

⁴ Id. Inter- University Associates Inc., Supp. Burkina Faso, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 84 (1998).

Burundi

The Constitution of Burundi was approved by referendum on March 9, 1992. But this Constitution was superseded on June 8, 1998, by the Constitution Act of Transition, signed on the same day by the President of Burundi who came into power through a bloodless coup on July 25, 1996.⁵

Title III, articles 12-54, constitutes fundamental rights and freedoms. Articles 15, 17, 34-36, and 47 could be applied to secure and protect the rights of the disabled. These relate to the right to life and the security of the person and to physical integrity (art. 15); equal dignity in rights and duties and equal protection under the law (art. 17); equal access to education and culture (art. 34); equal work and equal pay (art. 35); and the duty to respect and value his/her fellow person without discrimination (art. 47).

Central African Republic

The Constitution applicable in the Central African Republic is that of 1994, effective 1995 as amended.⁶ Article 5 on equal protection under the law without any distinction could be used to govern and secure the rights of persons with disabilities.

Republic of Chad

The Constitution of Chad is that of April 14, 1996, as amended.⁷ Title II, articles 12-59, deals with liberties, fundamental rights, and duties. Article 13 affords equal protection under the law for all persons deemed Chadians. Article 14 prohibits discrimination against any person on any ground. Articles 31-35 secure and guarantee employment without discrimination, the right to work for equal pay, and the right to education and culture.

Republic of Cote D' Ivoire

In Cote D'Ivoire, article 6 of the Constitution of 2000 as amended⁸ states: "The State assures the protection of children, the aged and the handicapped."

⁵ Id. Inter-University Associates Inc., Supp. Rep., of Burundi, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 63 (1999).

⁶ Id. D.G. Ana, Supp. Central African Republic, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 59 (1995).

⁷ Id. Inter-University Associates Inc., Supp. Rep. of Chad, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 36 (1997).

⁸ Id. Inter-University Associates Inc., Supp. Cote D' Ivoire, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 43 (2000).

Democratic Republic of Congo (DRC) (Formerly Zaire)

Articles 12-31 of the Constitution of 1978 as amended⁹ enshrine the fundamental rights and duties of citizens. Article 12 proscribes all forms of discrimination. This article also accords equal protection under the law.

Eritrea

The Constitution of Eritrea is that of May 23, 1997, as amended.¹⁰ Articles 14-29 reflect fundamental rights, freedoms, and duties. Article 14 protects all persons from all forms of discrimination including for reasons of “disability.”

Republic of Gabon

The Constitution of Gabon of 1991 as amended¹¹ in article 1(8) stipulates the following:

The state according to its possibilities guarantees to all, notably to the child, the mother, the handicapped, to the aged workers and to the elderly the protection of health and social security, a preserved natural environment, rest and leisure.

The Gambia

The Constitution of the Gambia of 1996, effective 1997 as amended¹² is a good example of the protection of the rights of minorities and the rights of the disabled. The African Charter on Human and Peoples Rights, also known as the Banjur Charter, was promulgated in Banjur, which is the capital city of the Gambia. The African Commission on Human Rights is also based in this country.¹³

Article 28 secures and guarantees the rights of women while the rights of children and the rights to education and to culture are secured and protected in articles 29, 30, and 32 of the Constitution. Articles 31 and 33, respectively, deal with the rights of disabled persons and protection against discrimination. These two articles jointly state:

The right of the disabled and handicapped to respect and human dignity shall be recognized by the state and society. Disabled persons shall be entitled to protection against exploitation and to protection against discrimination, in particular as regards

⁹ Id. J. Vanderlinden, Supp. Zaire, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 42 (1978).

¹⁰ Id. G.H. Flanz, Supp. Eritrea, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 24 (1999).

¹¹ Id. Inter-University Associates Inc., Supp. Rep. of Gabon, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 32 (1991).

¹² Id. G.H. Flanz, Supp. The Gambia, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 176 (1997).

¹³ Supra note 2.

access to health services, education and employment. In any judicial proceedings in which a disabled person is a party, the procedure shall take his or her condition into account. All persons shall be equal before the law... No law shall make any provisions which is discriminatory either of itself or in its effect... no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any public office or any public authority.¹⁴

Ghana

Ghana also contains express provisions on the protection of the rights of the disabled. Articles 27-30 of the Constitution of Ghana of 1992 as amended¹⁵ contain guarantees and protection of these rights. Article 27 affords and protects the rights of women. Article 28 deals with the rights of children. Article 30 prescribes the rights of sick persons. Article 29 is the pertinent section that covers the rights of disabled persons. This article states as follows:

Disabled persons have the right to live with their families or with foster parents and to participate in social, creative or recreational activities. A disabled person shall not be subjected to differential treatment in respect of his residence other than that required by his condition or by the improvement which he may derive from the treatment. If the stay of a disabled person in a special establishment is indispensable, the environment and living conditions shall be as close as possible to those of the normal life of a person of his age. Disabled persons shall be protected against all exploitation, all regulations and all treatment of a discriminatory, abusive or degrading nature. In any judicial proceeding in which a disabled person is a party the legal procedure applied shall take his physical and mental condition into account. As far as practicable, every place to which the public have access shall have appropriate facilities for disabled persons. Special incentives shall be given to disabled persons engaged in business organizations that employ disabled persons in significant numbers. Parliament shall enact such laws as are necessary to ensure the enforcement of the provisions of this article.

This Ghanaian provision is important also from the point of view of the distinction between state policy provisions that are non-justiciable even though they may contain similar provisions with respect to the protection of the disabled.

Kenya

Article 82 of the Constitution of Kenya of 1969 as amended¹⁶ guarantees non-discrimination

¹⁴ Article 33 (4) defines discrimination as “affording different treatment to different persons attributable wholly or mainly to their respective description by race, color, gender, language, religion, political or other opinion, national or social origin, property, birth, or other status whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or accorded privileges or advantages which are not accorded to persons of another such description.”

¹⁵ Govt. of the Rep. of Ghana., CONSTITUTION OF THE REP. OF GHANA, 1992 at 242.

¹⁶ Laws of Kenya, 1987, rev., 1992. See also, Inter-University Associates Inc., Supp. Kenya, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 97 (1999).

against any person including the disabled. The definition of discrimination is identical to that encountered above in the cases of Botswana and the Gambia.

Lesotho

The Lesotho Constitution (Commencement) Order of 1993 was published on March 16, 1993. The new Constitution of Lesotho became effective on April 2, 1993.¹⁷

Freedom from discrimination of any kind is found in article 18 of the Constitution as part of the fundamental rights of the individual. Article 19 constitutes the section on equal protection under the law. These two articles form a part of Chapter II of the Constitution that guarantees fundamental human rights of the individual in articles 4-24 of this instrument.

Chapter III of the Constitution of Lesotho is designated as “Principles of State Policy” enumerated in articles 25-36. Article 25 of the Lesotho Constitution states as follows:

The principles contained in this Chapter shall form a part of the public policy of Lesotho. These principles shall not be enforceable by any court, subject to the limits of the economic capacity and development of Lesotho, shall guide the authorities and agencies of Lesotho and other public authorities, in the performance of their functions with a view to achieving progressively, by legislation, or otherwise, the full realization of these principles.

Consequently, even though a policy exists on rehabilitation, training, and social resettlement of the disabled, these are not rights that are enforceable in a court of law. Nonetheless, article 33 of the Lesotho Constitution states:

With a view to ensuring the rehabilitation, training and social resettlement of disabled persons, Lesotho shall adopt policies designed to (a) provide for training facilities, including specialized institutions, public or private; and (b) place disabled persons in employment and encourage employers to admit disabled persons to employment.

The Principles of State Policy in Chapter III of the Lesotho Constitution require that legislation give effect to these principles and render them justiciable not as a constitutional right within the framework of fundamental human rights, but rather as a legal right governed by statute as is the case in Zimbabwe, as described below. Lesotho has enacted such legislation in the Human Rights Act of 1983 as amended,¹⁸ but this law does not contain any enforcement mechanism.

¹⁷ Inter-University Associates Inc., Supp. Lesotho, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 163 (1999).

¹⁸ *Infra* note 38, The Laws of Lesotho 211-215 (1983).

Liberia

The Constitution of Liberia of 1986 as amended¹⁹ is to a certain extent similar to Lesotho's concerning a separate prescription of principles of state policy and fundamental human rights. The policies are set forth in Chapter II of the Constitution and fundamental human rights are enshrined in Chapter III of this Constitution.

According to article 4 of the Constitution, the general principles of national policy act as guidelines to formulate legislative, executive, and administrative measures and directives. Even though the general principles are defined as fundamental under Chapter II of the Constitution, this instrument does not provide for any enforcement mechanism under these provisions. Chapter II on general principles of national policy contains principles of equal opportunities for all including non-discrimination in employment.

However, fundamental human rights as contained in Chapter III, articles 11-26 could become applicable to specific instances governing the rights of the disabled. These inter-alia deal with the right to equal protection under the law and the right to equal opportunity for work and employment.

Madagascar

The Constitution of Madagascar of 1998 as amended²⁰ has two titles. Title I constitutes the general principles of state policy, and Title II deals with the fundamental rights, better known in this country as "Freedoms, Rights and Duties."

Articles 28 and 30, in Title II on freedoms, rights and duties, respectively state that:

No one may be discriminated against in his work or in his employment because of sex, of age, of religion, of opinions, of origins, of adherence to a union or of political convictions. The state strives to provide for the needs of every citizen who, by reason of his age or his physical or mental ineptitude, finds himself unable to work, notably through the institution of organisms of social character.

Malawi

The Constitution of Malawi of 1994 as amended²¹ also has sections that appear to relate to the rights of disabled people. In Chapter III of the Constitution, Principles of National Policy, the pertinent articles with respect to policies that may be relevant to the rights of the disabled are articles

¹⁹ Liberian Codes Revised 88 (1998).

²⁰ Inter-University Associates Inc., Supp. Rep. of Madagascar, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 72 (1999).

²¹ Id. G.H. Flanz, Supp. Rep. of Malawi 96 (1994).

13 and 14 of the Constitution. Chapter IV constitutes the fundamental human rights provisions of the Constitution.

Article 13(g) states that:

The State shall actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies and legislation aimed at achieving the following goals... to support the disabled through (i) greater access to public places (ii) fair opportunities in employment; and (iii) the fullest possible participation in all spheres of Malawi society.

In addition, article 13 promotes progressive adoption and implementation of policies and legislation relating to the welfare of the people of Malawi, including gender equality, nutrition, health, the environment, rural life, education, children, the family, and the elderly.

Chapter IV, articles 15-40 on fundamental human rights, includes the same rights that are found in the principles of national policy such as the rights of the family and marriage, the rights of children, the rights of women, and the right to education. Under Chapter IV of the Constitution, it appears that these rights will be enforceable in a court of law. Discrimination in any form against persons is also prohibited under the fundamental human rights provisions and would be deemed justiciable. The definition of discrimination is the same as that encountered in the cases of Botswana and the Gambia, examined above.

Mali

The applicable Constitution of Mali is that of 1992 as amended.²² The rights and duties of the human person are contained in articles 1-24. Article 2 prohibits all forms of discrimination and could be rendered applicable to the disabled.

Mauritius

The Constitution of Mauritius of 1968 as amended²³ contains in articles 3-19 of Chapter II the fundamental rights and freedoms of the individual. Equal protection under the law is in article 10 of the Constitution and may be deemed pertinent to the rights of the disabled. Article 16 prohibits all discrimination by anyone against any person which includes the disabled. The definition of discrimination found in article 16(3) of the Constitution is identical to those already examined above.

²² Id. D.G. Anna trans., Supp. Mali 24 (1997).

²³ Id. A.H. Angelo & R. Gordon, Supp. Mauritius 121 (1998).

Mozambique

The Constitution of Mozambique which applies in this country is that of 1990 as amended.²⁴ Article 68 of this instrument governs the rights of the disabled stating:

Disabled citizens shall enjoy fully the rights enshrined in the Constitution and shall be subject to the same duties, with the exclusion of those rights and duties which their disability prevents them from undertaking.

Namibia

The Constitution of Namibia of 1990 as amended²⁵ in article ___ contains provisions on equality before the law, while proscribing discrimination in all its forms against anyone including the disabled. This Constitution also defines extensive and detailed rights on the protection of children and the family and the right to education and culture, as well as specific provisions prohibiting apartheid, the extreme aspect of discrimination in its abhorrent form. Namibia is a former South African-administered territory under the auspices of the League of Nations Mandate. The previous minority regime in South Africa had extended the notions of apartheid to Namibia as practiced in South Africa itself. Therefore, article 23 of the Constitution of Namibia outlaws apartheid, but also ensures affirmative action where this form of racial discrimination may have occurred in the past.

Republic of Niger

Niger is one of the countries with specific provisions on the rights of the disabled in its Constitution of 1996 as amended.²⁶ Article 19 of this instrument states that:

The state sees to the equality of opportunities for handicapped persons with a view to their promotion or their social reinsertion.

Federal Republic of Nigeria

The Constitution applicable in Nigeria is that of May 29, 1999, as amended.²⁷ Article 42 on the right to freedom from discrimination in all its forms against any person could be considered also applicable to the disabled.

²⁴ C. Tenney, Supp. Mozambique, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD” 104 (1992). The Constitutional document includes a Draft Constitution of RENAMO, a former rebel group, since integrated in the political life and government of the country.

²⁵ Id. A.P. Blaustein, Supp. Rep. of Namibia 73 (1990).

²⁶ G.H. Flanz, Supp. Rep. of Niger, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 29 (1997).

²⁷ Id. Supp. Fed. Rep. of Nigeria 252 (1999).

Republic of Rwanda

Title II, articles 12-33 of the Constitution of Rwanda of 1991 as amended²⁸ contains the fundamental human rights and freedoms in Rwanda, better known as “Public Liberties.” Article 16 secures and affords equal protection under the law, while proscribing discrimination in all its forms against any person.

Seychelles

The Constitution of Seychelles of 1992, effective 1993 as amended²⁹ in Chapter III sets forth the Seychellois Charter of Fundamental Human Rights and Freedoms. Equal protection under the law is enshrined in article 27 of the Constitution. Other articles pertain to the protection of families in article 32, the right to education in article 33, the right to shelter in article 34, and the right to work in article 35. Some others include the right to social security in article 37, the right to a safe environment in article 38, and the right to cultural life and values in article 39 of the Constitution. These provisions could be applied to govern the rights of the disabled as well.

Article 36 of the Constitution of Seychelles directly governs the rights of the disabled and aged persons, specifically stating:

The state recognizes the right of the aged and the disabled to special protection and with a view to ensuring the effective exercise of this right undertakes (a) to make reasonable provision for improving the quality of life of and for the welfare and maintenance of aged and disabled and (b) to promote programs specifically aimed at achieving the greatest possible development of the disabled.

Sierra Leone

The Constitution of Sierra Leone, as amended in 1991,³⁰ recognizes fundamental principles of state policy in Chapter II and fundamental human rights in Chapter III.

Fundamental principles of state policy in article 8 (3) (f) includes the following provision:

The state shall direct its policy towards ensuring that the care and welfare of the aged, young and disabled shall be actively promoted and safeguarded.

Similar to countries described above, the fundamental principles of state policy are not justiciable. Article 14 of the Constitution of Sierra Leone stipulates that the provisions on state policy

²⁸ G.H. Flanz, Supp. Rep. of Rwanda, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD, 52 (1993).

²⁹ In 1994, 1995 and 1996 the Constitution was amended extensively, see G.H. Flanz, Supp. Rep. of Seychelles, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 195 (1996).

³⁰ Supp. to the Sierra Leone Gazette of Sep. 25, 1991, at 124.

shall not confer any legal right on its citizens and shall not be enforceable in any court of law. However, the principles contained in Chapter II are nonetheless considered fundamental in the governance of the state. It shall be the duty of Parliament to apply the principles in enacting any laws.

Fundamental human rights provisions in Chapter III of the Constitution are outlined in articles 15-30. Article 27 proscribes discrimination in any form against any person. The definition of discrimination is identical to those examined above for other countries. Article 23 on equal protection under the law could possibly also be extended to govern the rights of the disabled.

South Africa

The Constitution of the Republic of South Africa, as amended, took effect on February 4, 1997.³¹ Considering its experience with apartheid, the extreme form of racial discrimination, the South African Constitution is a model among African Constitution in its prescription and protection of fundamental human rights.

Articles 1 and 3 of the Constitution deal with the establishment and constitution of the Republic of South Africa including matters pertaining to citizenship. Article 1 prohibits racial discrimination and sexism. Article 3 on citizenship declares that all citizens of South Africa enjoy a common citizenship and are equally entitled to the rights, privileges, and benefits of this citizenship. These two provisions equally apply to protect the rights of the disabled as well.

The South African Bill of Rights is in Chapter II, articles 7-39 of the Constitution. Article 9 is the non-derogable right of equality of all persons before the law without any discrimination. Discrimination is defined in a manner similar to the definitions examined above for other countries. Under article 10, the right to human dignity and the right to have this dignity respected and protected cannot be derogated. The same applies to the right to life under article 11 of the Constitution, consistent with the provisions of article 37 (5). Labor relations, trades, occupations and professions, the environment, housing, health care, food, water, and social security are all protected under the Bill of Rights in articles 22-27 of the Constitution.

Other rights that may also protect the disabled include the right to education; the right to language and culture; the right to belong to cultural, religious, and linguistic communities; and the right of access to information, courts, and other administrative agencies in accordance with articles 29-34 of the Constitution. Article 28 constitutes an extensive provision on the rights of the child.

³¹ M. Rwelamira, *Supp. Rep. of South Africa, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD* 161 (1997).

United Republic of Tanzania

The Constitution of the United Republic of Tanzania of 1977, as amended in 1998,³² apporitions fundamental objectives and directive principles of state policy in Part II, articles 6-11, and sets forth the Tanzanian Bill of Rights in Part III, articles 12-32.

According to article 7(2) of the Constitution, fundamental objectives and directives principles of state policy are not enforceable in a court of law. Notwithstanding the dichotomous nature, the non-enforceable principles of state policy and the enforceable Bill of Rights are intertwined and also reinforce each other under the Constitution of Tanzania.

Articles 9 and 11 constitute fundamental objectives and directive principles of state policy on human dignity, equal protection under the law, the right to work, non-discrimination, and the right to education. Fundamental human rights under Part III, articles 12-24 for example also contain similar provisions on the right to human dignity, equality before the law, non-discrimination, and the right to work.

It is conceivable therefore, that while as principles they may not be enforced in a court of law, they are enforceable as fundamental human rights. This dichotomy may cause confusion in addressing the rights of individuals including that of the disabled.

Republic of Uganda

The Constitution of Uganda is that of 1995 as amended.³³ Uganda has specific provisions recognizing and protecting the dignity of persons with disabilities according to Objective 16 of the Constitution as part of state policy, but also in articles 32 and 33 of the Constitution as part of the provisions on enforceable fundamental human rights.

Similar to Tanzania and other countries discussed above, the Constitution of Uganda has two parts with provisions that relate to the rights of the disabled. The portion on National Objectives and Directive Principles of State Policy in Objective 16 (XVI) recognizes the dignity of persons with disabilities. Chapter IV, articles 20-58, of the Constitution deals with fundamental human rights.

Objective 16 obligates society and the state to recognize the rights of persons with disabilities as part of the respect of human dignity. However, Objective 16 is not enforceable in any court of law.

Articles 30-34 and 36-39 on fundamental human rights deal with the rights to education, the right to the family, affirmative action in favor of “marginalized groups,” the rights of women, the rights of children, the rights of minorities to participate in decision-making processes, the rights to culture, and the rights to a clean and healthy environment.

³² Id. G.H. Flanz, SUPP. UNITED REP. OF TANZANIA 142 (2000).

³³ Id. J.J. Ruchti, SUPP. REP. OF UGANDA at 216 (1996).

Articles 32 and 35 on fundamental human rights directly impact the rights of the disabled. These may be deemed enforceable in a court of law. These jointly state as follows:

Notwithstanding anything in this Constitution, the state shall take affirmative action in favor of groups, marginalized on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purposes of redressing imbalances which exist against them. Parliament shall make relevant laws, including laws for the establishment of an equal opportunities commission, for the purpose of giving full effect to this article. Persons with disabilities have a right to respect and human dignity and the state and society shall take appropriate measures to ensure that they realize their full mental and physical potential. Parliament shall enact laws appropriate for the protection of persons with disabilities.

Though, not contradictory, the unenforceable Objective 16, which acts as a guideline as a matter of state policy in matters pertaining to the rights of disabled persons, could be considered redundant in the light of the comprehensive and enforceable provisions on the disabled are found in articles 32 and 35 of the Constitution.

Republic of Zambia

The Constitution of Zambia integrates the text of the Constitution of Zambia of 1991 and the text of the Constitution of Zambia Act of 1996.³⁴ Fundamental human rights provisions are set forth in articles 11-32 of the Constitution. Article 23 proscribes discrimination in any form against any person and could be used to govern the rights of the disabled.

Zimbabwe

The Constitution of Zimbabwe of 1979, has been in force in the country since 1980 with a revised edition in 1996 as amended.³⁵ The Constitution of Zimbabwe (Amendment) Act, No. 14 of 1996 and the Constitution of Zimbabwe (Amendment) Act, No. 15 of 1998³⁶ significantly changed the original version enacted in 1979.

Article 23 protects everyone from discrimination on any grounds. The definition of discrimination under this article is the same as that found in other parts of this study.

Conclusion

It is evident from the discussion above that provisions of law under the various constitutions of

³⁴ Id. Inter-University Associates Inc., SUPP. REP. OF ZAMBIA 78 (1998).

³⁵ The Statute L. of Zimbabwe 1-51 (1996).

³⁶ G.H. Flanz, ed., Supp. Rep. of Zimbabwe, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD, 56 (1998).

Sub-Saharan Africa, directly or indirectly, might be utilized to regulate the rights of disabled persons. Also evident is the dichotomy between the fundamental principles of state policy that cannot be enforced in a court of law and the fundamental human rights provisions that are enforceable.

Benin, Burundi, Cote D'Ivoire, Gabon, the Gambia, Ghana, Madagascar, Mozambique, Niger, Seychelles, and Uganda all have direct enforceable rights under their Constitutions that guarantee and secure the protection of the rights of the disabled.

In Lesotho, Malawi, and Sierra Leone, the rights of the disabled as contained in the constitutional instruments constitute part of state policy, but are not enforceable in any court of law. Tanzania (indirectly) and Uganda are hybrid systems that address the rights of the disabled as part of their state policies and as an integral component of enforceable fundamental human rights.

An Overview to Determine Which Countries Have ADA-Type Laws: National Legislation in Selective Countries

A sample of national legislation in Lesotho, Malawi, Nigeria, Zambia, and Zimbabwe is provided below. Only Zimbabwe, as indicated in the last portion of this study, has specific legislation that is somewhat similar to the U.S. ADA-type statute.³⁷

Lesotho

The Human Rights Act of 1983 as amended has been alluded to earlier in the discussion on constitutional provisions.³⁸ Section 16 (4) and (5) of this Act states that:

The state shall ensure the elimination of every discrimination against the woman and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions. The aged and the disabled shall have the right to special measures of protection in keeping with their physical or moral needs.

As seen earlier, this section amounts only to an unenforceable declaration of intent by the state even though enforceable legislation has been enacted to prescribe the legal rights of women, children, the disabled, and the aged.

According to the preamble of this legislation, the purpose of the statute is to guarantee and safeguard the rights of individuals and “to ensure that conduct of persons administering the laws of the country conform with the provisions of this Act.” The statute does not contain any enforcement mechanisms to address the prescribed rights, nor does it indicate remedies in case of infringement.

³⁷ See The Employment of Disabled Persons Act of Mauritius, No.3 of 1988, effective 1989, Supp. To the Govt. Gazette of Mauritius, 1988, Mauritius Laws 1990 at 340.

³⁸ Supra note 18.

The conflict arises from the fact that principles of state policies as formulated in the constitutional provisions examined above require that legislation be enacted to enforce the stated policies, including those that affect the rights of women, children, the disabled, and the aged. The policies and rights set forth in Chapter III of the Constitution are unenforceable in any court of law according to article 25 of the Constitution of 1993 as amended. Among these non-justiciable principles of state policy are the protection of children and young persons and also the rehabilitation, training, and social resettlement of disabled persons in keeping with articles 32 and 33, respectively. To this extent therefore, the statute has limited utility and minimal force of law for the disabled and other minorities because it cannot be enforced.

Malawi

The Handicapped Persons Act of 1972 as amended³⁹ contains provisions to improve the care, assistance and education of the disabled in the country. This law also establishes a Council for the disabled, provides for voluntary registration of disabled persons, and also provides for the registration, direction, control, and regulation of associations whose objectives incorporate working for the disabled. Both the disabled and the corporate bodies responsible for the welfare of the disabled must be registered under sections 19-20 of the Act.

If a person is no longer certified by a medical practitioner as disabled, this person will no longer maintain the status of a recognized and registered disabled person. Penalties under this legislation are imposed on associations responsible for the welfare of the disabled in case of non-compliance with the mandate of the law according to section 23 of the Act.

The Malawian statute is similar to the Zambian statute discussed below in that they both contain identical mechanisms that focus more on the corporate bodies that look after the welfare of the disabled persons, rather than on the express prescription of legal rights and also imposing penalties in case of their infringement as these affect the well being of the disabled person.⁴⁰

Nigeria

Nigeria has re-enacted in its entirety the African Charter on Human and People's Rights of 1981 as its Chapter X of the national laws of the Federal Republic of Nigeria.⁴¹ The Charter has no specific provision on disabled persons, but articles 15-19 deal with the right to work, the right to enjoy the best attainable state of physical and mental health, the right to education, non-discrimination against women, the right of the child, and equality before the law could be applied to govern the rights of the disabled as well.

³⁹ THE LAWS OF MALAWI, Ch. 32:02 (rev. 1973).

⁴⁰ *Infra* note 42, THE LAWS OF THE REP. OF ZAMBIA, Ch. 309, 15 (1995).

⁴¹ The African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, at 1. The Laws of the Federation of Nigeria, Ch. 10, 77-92 (1990).

Zambia

Zambia also has a specific legislation on the disabled, as indicated above, contained in the Handicapped Persons Act of 1968 as amended.⁴² The Zambian statute mirrors the Malawian legislation. It establishes a Council of the disabled, which provides for voluntary registration of disabled persons and of associations that maintain their welfare. A commissioner of the disabled is responsible for the administration of the Act.

Illustrative Example: The Zimbabwean Disabled Persons Act of 1992

The Zimbabwean Disabled Persons Act of 1992, as amended⁴³ is used as the illustrative example of a country with an ADA-type national law in protecting the rights of the disabled.

According to section 2 of the Disabled Persons Act, a disabled person is one with:

a physical, mental or sensory disability which includes, visual, hearing or speech functional disability, which gives rise to physical or social barriers inhibiting him from participating at an equal level with other members of society in activities, undertakings or fields of employment that are open to other members of society.

The Act establishes the office of Director for Disabled Persons Affairs and constitutes a National Disability Board as required by sections 3 and 4. The Director formulates proposals and other measures that are submitted to the Board and also coordinates the activities of various institutions, associations, and organizations that deal with the welfare of the disabled. The Board develops measures and also policies that govern the disabled in the country. Under section 5(b)(i)–(xiii), these include the following:

to achieve equal opportunities for disabled persons by ensuring, so far as possible, that they obtain education and employment, participate fully in sporting, recreation and cultural activities and are afforded full access to community and social services; to enable disabled persons, so far as possible, to lead independent lives; to give effect to any international treaty or agreement relating to the welfare or rehabilitation of disabled persons to which Zimbabwe is a party; to prevent discrimination against disabled persons resulting from or arising out of their disability; to encourage and put into operation schemes and projects for the employment of or generation of income by disabled persons who are unable to secure employment elsewhere; to encourage and secure the rehabilitation of disabled persons within their own communities and social environment; to encourage and secure the establishment of vocational rehabilitation centers, social employment centers and other institutions and services for the welfare and rehabilitation of disabled persons...

⁴² Supra note 40.

⁴³ STAT. L. OF ZIMBABWE, Ch. 17:01, 51-54 (1996).

The Board is responsible for the registration of disabled persons as well as associations, institutions, and organizations including state institutions dealing with the welfare of the disabled. The Board provides as far as reasonably practicable orthopaedic appliances and access to relevant information, supplied to these applicable entities. The Board must provide skilled staff for the successful implementation and enforcement of measures and activities that pertain to the disabled. It is required by this statute to generally improve the conditions, social and economic status of disabled persons, and to advance their interests. The Board submits its reports to the responsible Minister according to section 6 of the Act.

Section 7 of the Act is a bridge between formulation and enforcement of measures and activities pertaining to the protection of the rights of the disabled. Under this section, any premises to which members of the public are ordinarily admitted for a fee and any places, services, or amenities that are ordinarily provided to the members of the public (including those that are stated owned) if discovered by the Board to have barriers or lack of access to these facilities, the Board will require any such entity to rectify the inaccessibility including stipulating the period when such remedial action must be accomplished. An appeal process is available under this section in cases of non-compliance.

However, this section ordering compliance in terms of impediments and other barriers to accessibility by disabled persons, is not applicable to state hospitals and nursing homes, unless the responsible Minister of Health consents. It also does not apply to any state schools or educational and training institution without the consent of the Minister of Education.

Denying the disabled access to public places, services, and other amenities is strictly prohibited under section 8, while section 9 proscribes discrimination against disabled persons in employment. These two sections jointly state in part:

No disabled person shall on the ground of his disability alone be denied (a) admission into any premises to which members of the public are ordinarily admitted; or (b) the provision of any service or amenity ordinarily provided to members of the public, unless such denial is motivated by a genuine concern for the safety of the disabled person concerned. The proprietors of premises referred to above shall not have the right on the ground of a person's disability alone to reserve the right of admission to his premises against such a person. A disabled person who is denied admission... shall be deemed to have suffered an injury and shall have the right to recover damages in any court of competent jurisdiction... No employer shall discriminate against a disabled person in relation to advertisement and/or recruiting for employment; or creation, classification or abolition of jobs or posts or the determination or allocation of wages, salaries, pensions, accommodation, leave or other such benefits or the choice of persons for jobs or posts, training, advancement, apprenticeship, transfers, promotion or retrenchment or the provision of facilities related to or connected with employment or any other matter related to employment.

However, it is not discrimination on the part of the employer if his action was not predicated on the disability of the aggrieved person or if the disability in question was a relevant consideration with respect to the particular requirements of the employment concerned. Finally, it is not discrimination on the part of the employer if special facilities or modifications, whether physical, administrative, or

otherwise, are required at the workplace to accommodate the disabled person which the employer can reasonably be expected to provide.

Section 10 constitutes the enforcement provision of the statute prescribing offences and penalties. Any person who fails to comply with any order issued under section 7, better known as Adjustment Orders; or willfully denies to a disabled person, on the ground of his disability alone (i) admission to any premises and facilities to which members of the public are ordinarily admitted or (ii) the provision of any service or amenity ordinarily provided to members of the public for any reason other than one motivated by a genuine concern for the safety of the disabled person involved; or discriminates against a disabled person in relation to matters of employment under section 9 notwithstanding the defenses under this same section, this person shall be guilty of an offense liable to a fine not in excess of \$4,000 or to imprisonment for a period not exceeding one year or a combination of both such a fine and imprisonment.

Rule-making powers are vested in the responsible Minister following consultations with the Board to promulgate any rules and regulations for the better protection of the rights of disabled persons.

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TAIWAN

RIGHTS OF PEOPLE WITH DISABILITIES

The 1980 Law on the Protection of the Physically and Mentally Handicapped of the Republic of China on Taiwan and its subsidiary measures provide for the employment, education, rehabilitation, and welfare services of the disabled. The overall authority in charge of the disabled is the Ministry of Interior, but government agencies in charge of labor, health, education, housing transportation, and finance also play a role. Protection committees for the physically and mentally handicapped, established by the relevant government agencies at all levels, are to help protect the rights and interests of the disabled. A Disability Certificate is issued to a person who has been confirmed disabled on the basis of a medical examination. In general, the principle of equal pay for equal work is to be followed in hiring the disabled. Discriminatory treatment is prohibited; the amount that a disabled person earns during regular work hours cannot be less than the basic wage. The profession of massage is almost exclusively reserved for the visually handicapped.

In the public sector (the central and local government, public schools, and publicly run institutions), if 50 or more persons are employed, at least two percent must be disabled persons. In private schools and groups and privately run institutions who have 100 or more employees at least one percent of those hired must be from among the disabled. Hiring a severely disabled person will be regarded as hiring two (average) disabled persons.

If an organ or institution fails to meet the hiring quota, it must regularly contribute to a Special Employment Fund Account for the Disabled, established by the local government labor organ, for each disabled person not yet hired.

In terms of public services, the disabled are to receive certain government subsidies, depending on the nature and severity of the handicap. The disabled and a guardian or companion are entitled to half-price fares on public or private means of transport and free admission to public scenic areas, entertainment sites, and cultural or educational facilities (half-price for private ones). Every newly built public building, recreation site, and public transport facility must contain obstacle-free facilities and equipment. The typical means of enforcing the Law is through the application of fines.

Introduction

As of the year 2000, over 700,000 people in the Republic of China (ROC) on Taiwan, among a population of over 22 million, held Disability Certificates. In that year, the central government subsidized local governments with almost US\$241 million to cover

living allowances, nursing and medical stipends, and supplementary device payments for the disabled. In 2001, the government allocated about US\$53 million for welfare services for the disabled. This figure does not include the amount spent by local governments, because as of 2001 the local governments had to collect the money to cover the certain types of assistance that were formerly centrally subsidized.¹

The 1947 Constitution of the Republic of China provides in general for equality under the law (art. 7).² Under the Additional Articles of the Constitution,³ the State is to guarantee insurance, medical care, obstacle-free environments, education and training, vocational guidance, and support and assistance in every day life to the physically and mentally handicapped. It is also to help the disabled to develop and attain independence (art. 10, para. 7).

The Law on the Disabled

The Law on the Protection of the Physically and Mentally Handicapped of the ROC on Taiwan was adopted on June 2, 1980.⁴ Its eight chapters include general provisions, medical rehabilitation, education rights and interests, promotion of employment, welfare services, welfare agencies, penalty provisions, and supplementary provisions. The stated purpose of the Law is to safeguard the lawful rights and livelihood of the physically and mentally disabled, protect their opportunities for equal participation in society, and unite government and popular resources to plan and carry out various measures for their support and welfare (art. 1). Many different sets of legal measures have also been adopted to implement the Law's provisions.⁵

Definition of the Disabled

The “physically and mentally handicapped” refers to those who because of birth or psychological factors are limited in, or have no means to exercise, the ability to

¹ THE REPUBLIC OF CHINA YEARBOOK-TAIWAN 2002, Appendix 3-1, via <http://www.gio.gov.tw/taiwan-website/5-gp/yearbook/chpt19-6.htm>.

² Adopted on Dec. 25, 1946, promulgated on Jan. 7, 1947, and effective from Dec. 25, 1947. For the Chinese text, see TSUI HSIN LIU FA CH'UAN SHU [Most Recent Complete Book of the Six Codes] 1-8 (Taipei, San Min Books, 2001. Tao Pai-ch'uan, ed.) (hereafter SIX CODES); for an English translation, see YEARBOOK, *supra* note 1.

³ The Additional Articles were originally adopted on Apr. 22, 1991, and promulgated on May 1, 1991; as last amended on Apr. 24, 2000, and promulgated on Apr. 25, 2000. For the Chinese text, see *id.* at 8-10; for an English translation, see YEARBOOK, *supra* note 1, Appendix 3-1, via <http://www.gio.gov.tw/taiwan-website/5-gp/yearbook/appendix3-1.htm>. Note: In the English translation, there seems to be a typographical error in the introductory paragraph on the Council of Grand Justices' Interpretation declaring one of the sets of revisions void; “2000” should probably be “1999.”

⁴ The Law was adopted on June 2, 1980, and last amended on Apr. 26, 1997. For the Chinese text, see SIX CODES, *supra* note 2, at 888-894.

⁵ For a list of some of them, including the Detailed Rules of Implementation of the Law on the Protection of the Physically and Mentally Handicapped, see <http://law.moj.gov.tw/Scripts/Query2.asp?no=D005>.

personally participate in society and engage in production activities and who have a Disability Certificate. To obtain a Disability Certificate, a person must be examined and the disability must be graded and determined to fit in one of the following categories by the central agencies in charge of health:

- the blind
- the deaf
- the spastic
- the dumb or aphasic
- the physically disabled (because of handicaps in the limbs)
- the cognitively disabled
- those who have lost the use of important organs
- the facially damaged
- vegetables
- idiots
- the autistic
- the [clinically] depressed
- the multiply disabled
- others stipulated as disabled by the central health organ in charge (art. 3, para. 1)

General Provision on Reporting Requirements

An investigation of the living requirements of the physically and mentally disabled is to be made at every level of government at least every three years (in December), and the statistical results of the investigation are to be published. When the national census, which takes place every 10 years, is conducted, a survey of the disabled population is to be included (art. 8). In addition, every level of government is to make an annual report to the people's representative body on the conditions of the implementation of the Law on the Protection of the Physically and Mentally Disabled (art. 73).

Employment

Covered Entities

In various levels of government agencies, public schools, and publicly run institutions who have 50 or more employees, at least two percent of the personnel hired must be disabled persons who have the ability to work. In private schools and groups and privately run institutions who have 100 or more employees, the minimum quota is one percent. If the severely disabled are hired (in the case of any of these entities), the hiring of one such person will be regarded as hiring two disabled persons. Any

of the above-mentioned agencies (institutions) that do not meet the above-mentioned standards, must periodically contribute a subsidy equal to the amount they would have paid the disabled person/s to a Special Employment Fund Account for the Disabled, established by the city or county government organ in charge of labor where the organ (institution) is located. The calculation of the total number of people hired by quota for the police administration, consumers, customs, and justice units is to be separately stipulated in the detailed rules of implementation of the Law (art. 31, paras. 1-5).⁶

A special examination will be given to disabled persons who apply for government jobs and jobs in public schools or institutions (art. 32, in part).

City or county agencies in charge of labor are to use the Special Employment Fund Account to subsidize agencies or institutions that exceed the set standard for hiring the disabled, in order to help them offset expenses incurred for purchasing, refitting, or repairing equipment and facilities or other necessary expenses. Hiring rewards will be issued to private institutions, with the amount calculated on the basis of the number of persons hired beyond the quota times one-half the basic monthly wage; the rewards are to be used to assist with support needed for hiring the disabled (art. 34).

Only the visually disabled as defined under the Law are allowed to engage in the profession of massage (art. 37, para. 1, in part). The visually disabled who have completed specialized training and qualifications can engage in physiotherapeutic massage work in fixed locations (art. 37, para. 2).

The government is to reserve a quota for priority approval of applications by the disabled for licenses to set up retail stores or street stalls in publicly owned places and of applications to purchase or rent public housing or parking spaces. Persons who receive such approvals must personally manage, reside in, or use the store, stall, housing, or space, and do so for a definite period of time; rental or transfer must be to another handicapped person. The government is to provide low-interest loans to the disabled for the purchase or rental of a store, stall, public housing, or a parking space. Measures concerning such loans are to be formulated by the central government organ in charge (art. 47, paras. 1-3).

Actions Considered Discriminatory

The Law protects the dignity of the person and ensures that the lawful rights and interests of the disabled are respected and protected. Unless there is a proven lack of the competent ability to provide special facilities, a physical or mental handicap cannot be the sole reason for refusal to provide opportunities for education or employment or for any other unequal treatment (art. 4). Examinations for public officials that place unreasonable restrictions on positions for disabled personnel are to be eliminated (art. 32, in part).

⁶ According to the YEARBOOK, *supra* note 1, employers who do not meet the quota must pay US\$507 for each handicapped person not yet hired into the Special Account every month.

In general, the principle of equal pay for equal work is to be followed in hiring the disabled. Discriminatory treatment is prohibited, and the amount a disabled person earns during regular work hours cannot be less than the basic wage (art. 33, para. 1).

Enforcement

Any public official who, in exercising his/her duties, infringes on the personal dignity or the lawful rights and interest of the disabled will receive a reprimand.

Anyone who violates the provision protecting the dignity and rights of the disabled or the provisions on equal pay for equal work and prohibition against discriminatory treatment will be subject to a fine of NT\$100,000–\$500,000 (about US\$2,865–\$14,323) (art. 64, paras. 1-2).

Those who violate the provision concerning reserving the massage profession for the visually disabled will be subject to a fine of NT\$10,000–\$30,000 (about US\$286–\$859).

If the violation occurs in a place of business, double the fine may be applied to the responsible persons or the owner of the place. The fines collected will not be entered in the annual accounts; they will be placed in a special account to be used exclusively for employment of the visually disabled, to provide for promotion of professional training, employment services and placement, starter business loans, and subsidies for massage centers (institutes). Measures on the funds' management and use are to be formulated by the central government agency in charge of labor in collaboration with the organ in charge of the target institutions (art. 65, paras. 1-3).

The government is to set a quota and give preferential approval for the disabled who apply for permits to operate retail shops or stalls in public places or who purchase or rent public housing or parking spaces. Those who are in violation of the provision concerning preferential treatment for the disabled in business licensing or housing and parking space permits (art. 47, para. 1) will not be issued a profit-making institution registration certificate or a public housing or parking space user permit. A disabled person who has obtained such preferential approval must personally manage, reside in, or use the store/stall, housing, or space for a certain period of time. If it must be rented out or transferred, it can only be rented or transferred to another disabled person (art. 47, para. 2). In the case of a violation, the organ in charge will compulsorily recall the certificate or permit and give preferential sale or rental to another disabled person (art. 70).

The fines imposed as penalties under the Law and the fees to be paid into a Special Employment Fund Account by government organs or other institutions that fail to meet the disabled person hiring quota are to be paid within a notified time limit. If the payment has not been made within the time limit, the case will be sent to a court for compulsory execution (art. 72).

Exemptions or Defenses to Sanctions for Discrimination

An entity must be able to prove that it lacks the competent ability to provide special facilities for the disabled in order to refuse provision of educational, employment,

or other opportunities. Such opportunities cannot be denied solely on the grounds that a person has a physical or mental handicap (*as above*, art. 4).

Salaries of the disabled are to be treated the same as for other workers, but if a disabled worker is not able to produce as much, his/her compensation can be reduced. However, it cannot be less than 70 percent of regular pay (art. 33, para. 2).

Medical personnel who use massage as a treatment for disease are an exception to the rule that only the blind are allowed to engage in the profession of massage (art. 37, para. 1, in part).

Administering Authority

The government agency in charge of labor is to make plans to create job opportunities for the disabled who, because of their handicap, are not able to compete with other people. That agency and the organs in charge of various target institutions must establish or encourage the establishment of protected factories or shops in order to provide employment opportunities for the disabled (art. 30).

The government agency in charge of labor is to establish or encourage the establishment of professional training and employment service organs, which, according to the actual needs of the mentally and physically disabled, will provide professional training, employment services, and research development on, and related services for, auxiliary devices needed for employment (art. 27). In assisting disabled persons to find employment, the government labor organ must first conduct a study to determine how much guidance and assistance they need in order to be employed, so that the agency can provide appropriate employment services (art. 28). Depending on the needs of the disabled, the labor agencies are to provide professional rehabilitation (i.e., professional training, professional and guidance assessment, employment services, follow-up, and re-employment assistance), starter loans, and auxiliary apparatus needed for employment (art. 29, paras. 1 and 2).

The central government agency concerned and the central government agency in charge of health are responsible for recognition of, and guidelines and implementation measures concerning, qualifications for masseurs/masseuses and for formulating provisions on control of the profession (art. 37, para. 3).

Certifications for Meeting or Exceeding Statutory Requirements

Municipal and county agencies in charge of health are to establish examination groups for the appointment of medical treatment agencies or small groups for examining employment to handle medical examination services for persons defined as disabled under article 3 of the law. For those who have received an examination in conformity with the provisions and established their household registration within the areas of jurisdiction, the organ in charge must issue a Certificate of Physical or Mental Disability (referred to above as Disability Certificate). The standards for measuring employment qualifications/abilities referred to above will be determined by the central organs

in charge of health; standards for issuance of the Certificates are to be determined by the central organs in charge (art. 10).

Agencies Responsible for Coordination

Every level of government is to provide specialized professional training and employment services to disabled persons according to the nature and degree of their handicap (art. 26).

Public Services/Transportation

Sources of funding for the disabled include welfare budget funds set aside on an annual basis at every level of government, social welfare funds, private donations, and the like (art. 9).

Covered Entities

The disabled are to receive certain subsidies from the local government in accordance with the level of the handicap, the type of handicap, and the family's economic circumstances (art. 38, para. 1). The government at all levels, based on need, is to provide a place, equipment, money, or other kinds of welfare services to the disabled, in collaboration with non-governmental resources (art. 39). The home-based welfare services for the disabled include home care, home nursing, assistance with routine family matters, friendly visits, telephone inquiries about the disabled person's welfare, meals on wheels, home improvements, and other related home services (art. 40). Community services for the disabled include rehabilitative services, psychological consultation, day care, temporary and short-term care, food and beverage services, recreation services, professional education, information service, employment referral services, and other related community services (art. 41, items 1-5, 7-11). The relevant departments at various levels of government are to formulate plans to meet the welfare needs of the disabled at different stages of their lives (art. 42).

A welfare agency or group for the disabled that applies to set up a protected workplace or a welfare factory or shop in a public place, or that applies to set up a community home or group housing in public residences, must set aside a quota and give preferential approval to disabled persons. Those agencies that receive approval must personally manage, reside in, or use such workplaces or housing and must do so for a certain period; if they must rent or transfer them, it must be restricted to welfare agencies or groups for the disabled (art. 63, paras. 1 and 2).

All levels of government as well as non-government resources are to adopt various measures to enrich the cultural and spiritual life of the disabled. These include using all kinds of media to reflect the life of the disabled; providing reading material for the disabled and using sign language and closed captioning on television; and holding all kinds of special activities and competitions for the disabled (art. 53, para. 1).

When a disabled person and his/her guardian or necessary companion takes either public or private water, land, or air public means of transport, they are entitled to half-price fares as well as preferential seating (art. 50, paras. 1-2). Two percent of public parking spaces are to be reserved for the disabled; if a public parking place has less than 50 spaces, at least one space should be reserved for the disabled (art. 48, para. 1). If disabled children are unable to go to school by themselves, the government is to provide free transportation for them. If the government lacks that ability, it will give a transportation subsidy to the disabled children. If a local government lacks sufficient funds, the central government will supplement them (art. 2, para. 2). Community services for the disabled also include transportation services (art. 41, item 6).

When a disabled person and his/her guardian or necessary companion enter publicly established scenic areas, places of entertainment, or cultural or educational facilities, admission will be free (art. 51, in part). Anyone who owns or rents a place open to the public cannot, solely because of a person's disability, make it impossible for him/her to completely and equitably enjoy the goods, services, equipment, rights, interests, or facilities (art. 52).

Every newly built public building, recreation site, and public transportation facility must plan to establish facilities and equipment to facilitate movement within and use by the disabled. Building permits or rights of public use cannot be granted to builders who fail to provide such facilities and equipment. Provisions on the establishment of obstacle-free facilities and equipment by public buildings, recreation sites, and public transportation facilities will be formulated in related laws and regulations by the central organs in charge of the target institutions. If the obstacle-free facilities and equipment of buildings, sites, or transport facilities for which there is already a permit or right of public use do not conform to the stipulation above, the agencies at various levels in charge of the target institutions will order the owner or the responsible persons of the management organ to make improvements. However, if establishment of obstacle-free equipment and facilities presents difficulties because of special circumstances such as military control, historic preservation, or natural environment factors or restrictions on building construction or equipment, an improvement plan may be prepared by the owner or the responsible persons of the management organ and reported to the agencies in charge of the target institutions for determination of a deadline for making the improvements. The operational procedures and principles of recognition of improvements are formulated by the central organ in charge of the various target institutions (art. 56, paras. 1-3).

Assistance is to be given to disabled litigants who are parties to or giving evidence in criminal cases according to the special needs posed by the nature of the handicap (art. 57).

Enforcement

Setting up a welfare agency for the disabled without applying for permit is punishable by a fine of NT\$60,000-\$300,000 (about US\$1,719-\$8,594). If within the mandated time limits registration as a corporate legal person has not been carried out or outside solicitation activities have not ceased (in violation of art. 59), the responsible persons will be subject to a fine of NT\$100,000-\$500,000, and they can be successively fined for each instance, their names can be publicly announced, and they can be ordered to close down (art. 66, paras. 1-2).

If a welfare agency for the disabled is notified by the government organ in charge that it must make improvements within a time limit and it fails to do so, it must be ordered to close down for one month to one year and its name must also be publicly announced. If, after the period of closure is complete, it still has not made improvements or has committed serious violations of the laws and regulations, its permit will be revoked and, if it is a legal entity, it will be disbanded (art. 67).

Welfare agencies for the disabled that refuse to stop operating after having been ordered to do so by the government organ in charge will be fined NT\$200,000-NT\$1,000,000 (about US\$5,729- US\$28,645), and they can also be successively fined for each instance (art. 68).

When a welfare agency for the disabled closes down or is disbanded, the government organ in charge must take appropriate measures to provide for the disabled persons whom the agency served, and the agency must cooperate in fulfilling its responsibilities. Those that fail to comply will be compelled to implement such measures and will be subject to a fine of NT\$60,000-NT\$600,000 (about US\$1,719- US\$17,187) (art. 69).

In regard to creating obstacle-free environments, if newly built public buildings, recreation sites, or public transportation facilities violate the Law's provisions by not making improvements or by not presenting alternative plans for improvements or by not completing improvements within the time limit determined in an improvement plan, they will be compelled by an injunction to stop being used and the owner or responsible persons of the management organ will be fined NT\$60,000-\$300,000 and be ordered to complete improvements within a time limit. If the time limit expires without the improvements having been made, they can be successively fined for each instance of the violation until the improvements are made. When necessary, their water or electricity may be shut off or they may be closed or compulsorily dismantled. A fund is to be established from the revenue of the fines collected, to be used in outlays for improvements and obstacle-free equipment and facilities. Measures on the fund's management and utilization are to be formulated by the central organ in charge of the various target institutions (art. 71, paras. 1-2).

Exemptions or Defenses to Sanctions for Discrimination

An entity must be able to prove that it lacks the competent ability to provide special facilities for the disabled in order to refuse provision of educational, employment, or other opportunities (art. 4).

Administering Authority

At the central level, the organ in charge of matters relating to the disabled is the Ministry of the Interior. At the provincial (municipal) level, it is the provincial (municipal) government department (bureau) of social affairs; at the county (municipal) level, it is the county (municipal) government (art. 2, para. 1).

The government at all levels, in accordance with need, on its own or in cooperation with non-governmental resources, is to set up the following types of welfare agencies for the disabled:

- educational, medical, nursing, and rehabilitative facilities
- publishing agencies and special libraries for the visually disabled
- protected workplaces
- professional training and employment services
- shelter and support agencies
- service and recreation agencies
- other welfare agencies for the disabled (art. 58, para. 1)

The agencies may be set up individually or in combination. The measures and standards for their establishment, for the facilities, and on encouragement and assistance are to be formulated by the central organ in charge of each target institution (art. 58, para. 3).

The procedures for obtaining subsidies from the local government are to be formulated by the central government agency in charge (art. 38, para. 2).

The central government agency in charge, along with the target institutions, formulates measures of implementation on enriching the cultural and spiritual life of the disabled (art. 53, para. 2).

Certifications for Meeting or Exceeding Statutory Requirements

Establishment of a welfare agency for the disabled requires the submission of an application for a permit to the organ in charge of the various target institutions.

Within three months of the day on which the permit was obtained, an agency must arrange for registration as a corporate legal person in accordance with related laws and regulations.

Once registration has been completed, the agency can receive subsidies or, upon approval from the organ in charge, solicit outside contributions and also earmark funds for specific

purposes. In certain circumstances, however, an agency may be exempt from registering as a corporate legal person: 1) if it is a corporate legal entity that has applied for establishment in accordance with other laws or a public interest group legal entity applying for supplementary establishment as a welfare agency for the disabled; or 2) if it is an agency that is small-scale and that does not solicit outside funds, receive subsidies, or enjoy rental tax reductions or exemptions. If an agency that has not yet registered as a corporate legal entity or that does not conform to the provision on exemption from registration engages in solicitation of outside funds, the organ in charge must set a time limit and order it to register or to cease its solicitation activities (art. 59).

The government organ in charge must periodically give guidance to and evaluate welfare agencies for the disabled and reward those that excel. If a welfare agency for the disabled has poor management or violates the standards for establishment, the government organ in charge is ordered it to make improvements within a time limit. Evaluation work is to be carried out by an Evaluation Commission set up by the central government organ in charge, which will formulate measures concerning it (art. 61, paras. 1-3).

Agencies Responsible for Coordination

The agencies in charge at every level of government and at every target institution are to set up a solely responsible unit or assign solely responsible persons to handle matters related to the rights and interests of the physically and mentally disabled. The number of persons involved will be determined according to the actual need for the services they provide. Specialized personnel are to be chosen to handle matters related to the welfare of the physically and mentally disabled (art. 6, paras. 1 and 2).

The agencies in charge at every level of government are to establish a Committee for the Protection of the Physically and Mentally Disabled, with the administrative head as the chairperson. Members of the Committee include every target institution's organ in charge, the disabled or their guardians' representatives, scholars or specialists of welfare for physical and mental handicaps, public opinion representatives and non-governmental agencies, representatives of groups, etc. Among them, the representatives of the disabled or their guardians, the public opinion representatives and the non-governmental agencies, and the group representatives should constitute at least one-third. The Committee handles matters concerning: 1) making plans, research, and consultation conform to expediting and advancing protection of the disabled; 2) deliberation of complaints of damage to the rights and interests of the disabled; and 3) other matters related to advancing the rights and interests and welfare protection of the disabled. The organization rules of the Committee will be stipulated by the central organ in charge. When the rights and interests of the disabled suffer harm, final appeal and arbitration will be handled by the Protection Committee of the central organ in charge (art. 7).

Public Accommodation and Services by Private Entities

As noted above, when a disabled person and his/her guardian or necessary companion takes either public or private water, land, or air public means of transport, they are entitled to half-price fares as well as preferential seating (art. 50, paras. 1 and 2). When a disabled person and his/her guardian or necessary companion enter privately established scenic areas, places of entertainment, or cultural or educational facilities, admission will be half-price (art. 51, in part).

Telecommunications

The Law on the Protection of the Physically and Mentally Disabled provides that the communications industry should provide telecommunications receivers or other special delivery services. The measures for implementation are formulated by the central organ in charge of the target industry (art. 55, in part).

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UNITED KINGDOM
RIGHTS OF PEOPLE WITH DISABILITIES

Despite disability legislation in the United Kingdom dating back to the 1940s, the UK has failed to take as aggressive a stance towards discrimination as the United States. Until the Disabilities Discrimination Act 1995, preventing discrimination mainly relied on voluntary measures, particularly in the area of employment. Despite the increased duties placed upon public transport, service and facilities providers, and employers, disabled people viewed the 1995 Act as a disappointment, especially when compared to the current legislation in the United States. Flaws in the enforcement of the legislation that emerged were rectified to some extent by the Disability Rights Commission Act 1999. Discrimination still continues today, and the lobby groups for the disabled continue to pressure the government with various measures of success, to pass further legislation to guarantee their right to live without discrimination.

Background

Disability legislation in the UK dates back to the 1940s with the enactment of the Disabled Persons (Employment) Act 1944,¹ which provided a framework for the employment of disabled persons. The Act established a register of disabled persons, aided them in obtaining jobs through rehabilitation and training, and imposed the requirement that employers of 20 or more people employ a minimum of three percent of disabled persons. To help secure jobs for persons listed in the register, a specialized employment placement service was created to monitor employment vacancies that could be filled by persons on the register. A National Advisory Council for the Employment of People with Disabilities was also established. The quota system apparently failed due to the extensive application of exemptions and poor publicity of the Act, which left many businesses unaware of their obligations. These defects, compounded by inadequate resources, led to inefficient monitoring of available opportunities and poor implementation of the Act.

One in seven people in the United Kingdom has a disability, i.e., approximately 8.5 million people throughout the nation.² As a result of the large population of disabled persons who have been deprived of a number of basic rights through discrimination and accessibility issues, disability rights groups have intensively lobbied the government for a change in the law. The government responded to the groups by repealing the quota system and introducing the Disability Discrimination Act³ (DDA) 1995. The new law took

¹ 7 & 8 Geo. 6, c. 10.

² Disability Rights Commission, *Championing Change for Disabled People*, FIRST ANNUAL REVIEW, 2000-2001.

³ Ch. 50.

into account the various models offered by different countries, including the United States.

Disability Discrimination Act 1995

The DDA contains a variety of measures aimed at preventing discrimination towards disabled persons and ensuring equal rights to employment; access to facilities, goods, and services; and in purchasing or renting property. It also established the National Disability Council whose purpose is to advise the Secretary of State on the operation of the legislation and matters of discrimination and ways to reduce and eliminate it.

After considerable debate, the government defined disability as a “physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.”⁴ Despite schedule 1 of the DDA defining each term and the Secretary of State issuing guidelines on how to determine questions relating to the definition of disability, it was still criticized as being too “wooly” and posing “a challenge to litigation and a paradise for lawyers.”⁵

As the requirements of the DDA are extensive, the government did not introduced them all in one stage, but used regulations to introduce them periodically. Most of the provisions of the DDA are currently in force.

Employment

Part II of the DDA applies to employment and makes it unlawful for an employer with more than 15 employees at an establishment in Britain⁶ to discriminate against disabled persons during the recruitment process, the work period, promotions, and any redundancy processes. The number of employees that employers were required to have before they became subject to the DDA was decreased from 20 to 15 as a result of pressure from lobbying groups, who still consider the number to be discriminatory. The lobby groups, and some Members of Parliament, believe that the government used the number arbitrarily after looking at disability legislation in America. This exemption is currently being challenged before the courts as being incompatible with the European Convention on Human Rights based on the lack of a right to a fair trial and the prohibition on discrimination that the Convention contains.⁷

The DDA also exempts charities, persons providing supported employment under section 15 of the Disabled Persons (Employment) Act 1944, the armed forces, police,

⁴DDA, §1.

⁵101 PARL. DEB., H.C. (6th ser.) (1995) 171.

⁶DDA, §7. Other groups exempt from these statutory obligations include charities (DDA, §10).

⁷Arts. 6 and 14 of the Convention. *Whittaker v P&D Watson t/a P&M Watson Haulage*, Case No. 1805354/00.

firefighters, prison guards,⁸ and acts done under statutory or to safeguard national security⁹ from the obligations of this part of the DDA.

The DDA prohibits discrimination against disabled persons in advertisements where the employer has indicated that the individual hired will not have a disability, and a disabled person has applied for and was refused, or not offered, employment.¹⁰ Such cases can be taken before an Employment Tribunal where the burden of proof is on the employer to prove that the refusal to offer employment was not related to the person's disability.¹¹ If a disabled person employed on contractual terms which contravenes, limits, or excludes the provisions relating to employment the DDA renders it, or the appropriate sections thereof, void.¹²

Discrimination in the work place can manifest itself in a number of ways. The DDA defines discrimination in this context as unjustifiably treating disabled persons less favorably than other workers due to their disability or unjustifiably failing to make reasonable adjustments to accommodate disabled persons. The DDA gives additional specific examples of when it is unlawful to discriminate against disabled employees, such as through unfair terms in the contract of employment, and ensuring the availability and fair consideration of promotion opportunities, transfers, training, and other benefits.¹³

Where circumstances exist that place disabled people at a substantial disadvantage in comparison to able bodied people, the DDA requires that employers make reasonable adjustments to rectify the situation.¹⁴ The DDA cites examples and gives a number of steps that can be taken to reasonably adjust the situation to ensure that the disabled person is not disadvantaged, including:

- reassigning the disabled persons duties to another person
- adjusting the premises
- transferring the disabled person to another existing vacancy or another place of work
- altering working hours

⁸DDA, §64(5-8).

⁹DDA, §59.

¹⁰DDA, §11.

¹¹*Id.*

¹²DDA, §9.

¹³DDA, §4(2).

¹⁴DDA, §6.

- acquiring or modifying equipment to suit the disabled person
- modifying assessment and testing procedures
- modifying instructions and training manuals
- providing supervision, a reader, or interpreter¹⁵

To ensure that employees are not unduly burdened by taking such measures, the DDA looks at whether the measures are reasonable, by considering the extent that the measures would prevent discrimination; whether it is practical for the employer to take the measures considering, among other things, financial constraints; and the impact of the costs upon the running of the business.¹⁶

Individuals who believe that they have been discriminated against on the basis of their disability can bring a complaint before an Employment Tribunal.¹⁷ If the Tribunal believes that the case has merit it can take a number of steps to remedy the situation including making a declaration concerning the party's rights, ordering compensation,¹⁸ and recommending that the employer undertake reasonable adjustments.¹⁹ If such measures are not complied with, the Tribunal can, in cases where compensation has not been given, order it or increase the cost of compensation already ordered.²⁰

In the DDA's first year of operation, 92 cases of discrimination were brought under its provisions, although only 16 percent of the cases that reached a conclusion in a Tribunal were in the claimants favor.²¹ Cases brought before the Disability Rights Commission regarding the failure of employers to abide by the provisions of the DDA include:

- The failure of employers to make reasonable adjustments by moving hand rails to accommodate a person with a mobility disability, which resulted in a £13,000 settlement.²²
- The dismissal on grounds of gross misconduct of an individual with bi-polar affective disorder who experienced a mental breakdown at work that required hospitalization.

¹⁵ *Id.*

¹⁶ DDA, §6(4).

¹⁷ DDA, §8.

¹⁸ DDA, §8(3) applies the test used to calculate damages in tort for breach of statutory duty, including injury to feelings, as to the compensation to be awarded.

¹⁹ DDA, §8(2).

²⁰ DDA, §8(5).

²¹ EMPLOYERS DISCRIMINATE MOST AGAINST DISABLED, May 20 1999, at <http://news.bbc.co.uk/1/hi/health/348665.stm>.

²² Failure of an Employer to Make Reasonable Adjustments to Accommodate Mobility Impairment, DRC/00/218.

An employment tribunal ruled that, although reasonable adjustments could not have been made to accommodate the individual, he had been unfavorably treated because of his disability. The settlement awarded was £23,069.80, which included £8,000 for injury to feelings.²³

An individual with schizophrenia was repeatedly refused a volunteer post at the citizens advice bureaux. The DRC reasoned that as in many cases a volunteer position can lead to paid employment and therefore failing to recruit a disabled person as a volunteer may constitute a failure to “make adequately adjusted arrangements for recruitment to paid employment.”²⁴ The employment tribunal ruled that there had been no less favorable treatment on the basis of the individuals disability.

While there have been many successful cases pursued of employment discrimination, the DRC claims that the DDA does not have an impact on over 80 percent of the UK’s employers as they employ less than 15 people, exempting them from the obligations and duties contained in the DDA. The DRC is currently pushing to change the exemption.

Public Transportation

The DDA contains provisions that apply directly to public transportation and grants the Secretary of State the power to make regulations to ensure accessibility for disabled persons on such transportation. It breaks down public transportation into three different sections: taxis, public service vehicles,²⁵ and rail vehicles. The DDA grants the Secretary of State the power to make regulations to provide minimum access requirements to ensure disabled persons have access to public transportation. Currently, there have been no regulations that bring sections 32 through 36, relating to the accessibility of taxis for individuals with disabilities, into force.

When the regulations relating to the accessibility of taxi’s are made, licensing authorities may only grant licences for taxis that meet the accessibility standards. Licensing authorities can apply to the Secretary of State for an exemption if they believe that it is inappropriate to license only taxis accessible to disabled persons if it would lead to “an unacceptable reduction in the number of taxis in its area.”²⁶ The licensing authorities can also exempt a taxi driver from the duties under the act if it is appropriate due to medical reasons relating to the driver, or if the driver has a physical disability that makes it impossible or unreasonably difficult to comply

²³DRC/00/020: Dismissal of a Person with Bipolar Defective Disorder for Alleged Gross Misconduct.

²⁴DRC/00/282: Refusal of Citizens Advice Bureaux to Recruit as Volunteer Because Applicant has a History of Schizophrenia.

²⁵Public service vehicles are defined in the DDA as a vehicle adapted to carry more than 8 passengers, or a vehicles falling within the purposes of the Public Passenger Vehicles Act 1981, ch. 14.

²⁶DDA, §35.

with the DDA.²⁷ If a person fails to meet the duties imposed by the DDA they can be fined up to £1,000 upon conviction.²⁸

Despite the legislation not yet being in force, some taxi licensing authorities have already adapted their policies and taxis to ensure that they will be in compliance with the legislation when it commences.²⁹ In addition to this, drivers of licenced taxis, not private hire taxis, carry assistance dogs without charging extra, although there are not any regulations in force that require this action.³⁰ Exemptions for this provision are available if the driver of the taxi has a valid medical reason for not carrying dogs.³¹

The Secretary of State has made regulations to commence sections 40 through 45 of the DDA.³² These provisions require that providers of public service vehicles make them accessible, comfortable, and safe for disabled persons and place a number of specifications on the providers to ensure that they meet the requirements.

Since the commencement of the above sections, public service vehicles, unless exempted by the Secretary of State,³³ are not permitted on the roads unless they have been issued a certificate stating that the regulations have been met.³⁴ In cases where a certain type of vehicle meets the accessibility requirements, the Secretary of State can approve certification for all vehicles of that particular type.³⁵ If a person violates these provisions, he/she is guilty of an offense and can be fined up to £2,500.

Under the regulations passenger-carrying rail vehicles are required to be accessible to disabled persons. The regulations require that doors, door controls, steps, floors, seats, stop controls, interior transparent surfaces, handrails, door handles, passenger information, and toilets meet certain specifications that ensure accessibility to disabled persons. In addition to this, rail vehicles must have the capability to carry passengers who are in wheelchairs by providing sufficient space for the wheelchairs and boarding

²⁷DDA, §36(7).

²⁸DDA, §36(5).

²⁹Graham v Bristol City Council (2001), LLR 471 (EAT).

³⁰The Disability Discrimination Act 1995 (Taxis) Carry of Guide Dogs, etc. (England and Wales) Regulations, S.I. 2000 No. 2990. Assistance dogs are defined in the statutory instrument as dogs that have been "trained by a specific charity to assist a disabled person with a physical disability."

³¹DDA, §37(5).

³²Public Service Vehicles Accessibility Regulations, S.I. 2000 No. 1970.

³³DDA, §43.

³⁴DDA, §41.

³⁵DDA, §42.

devices, when necessary. When services and facilities, such as tables, catering services, sleeping cars, toilets, telephones, etc., are provided for passengers, they must also be made accessible to disabled persons.³⁶ If a rail vehicle does not conform with the regulations, the operator³⁷ is guilty of an offense and can be fined up to £2,500.

Although the provisions on rail transportation have been complied with, the total replacement of all rail vehicles using the current guidelines and methods is not expected to be completed under 2032. However, the measures have been met with some trepidation due to the regulatory impact; it is estimated that the cost to make 6,000 passenger trains wheelchair accessible will be over £600 million. In addition to the expense of outfitting the trains, there are concerns that it is not proportional to the number of disabled people who use rail facilities and that it takes away space for others in already overcrowded trains.³⁸

Public Accommodation and Services by Private Entities

Part II of the DDA prohibits discrimination against disabled persons in relation to access to services, goods, and facilities. The statute cites examples of services that include access to and use of places where members of the public are admitted, access to and use of communications, and accommodation in hotels and entertainment facilities. The DDA provides that certain bodies are exempt from the requirements of this section, such as local education authorities, voluntary organizations, and teacher training organizations. The Secretary of State may also prescribe an exemption to any other group where he/she considers that it is appropriate to do so.³⁹

The DDA specifically prohibits service providers from unjustifiably:

- refusing or deliberately failing to provide services to disabled persons
- making it unreasonably difficult for a disabled person to access a service
- providing services of a lesser standard than would be given to an able bodied person
- providing a lesser standard of service to disabled persons without just cause
- providing a service on worse terms to disabled persons

³⁶Rail Vehicle Accessibility Regulations, S.I. 1998 No. 2456.

³⁷Defined in §46(6) as the "person having management over the vehicle."

³⁸Ben Webster, *Rail Chiefs Fear Rail Regulations Will Cost Billions*, THE TIMES, Apr. 5, 2001.

³⁹DDA, §19(5).

failing to make reasonable adjustments for disabled persons⁴⁰

As these requirements are wide ranging, they have been introduced in stages, so as not to present too much of a burden on those who need to make changes to meet with their legal obligations. Since December 2, 1996, it has been unlawful for service providers to treat disabled persons less favorably due to the disability.⁴¹

From October 1, 1999, service providers have been required to make reasonable adjustments for disabled persons, such as "providing extra help, or making changes to the way that they conduct their business."⁴² Wider ranging duties under this part of the DDA will come into force for business and service providers to the public after 2004.⁴³ Such places will then have to take reasonable steps to ensure access to people with disabilities by making permanent physical alterations to their structures if access is impossible or unreasonably difficult for people with disabilities. Such steps include the removal of features that makes access to disabled persons impossible, or provide a way for the disabled person to avoid the feature, or use any other reasonable method that provides the results in the provision of the same service to disabled persons.⁴⁴

Any contract for providing services, goods, or facilities is rendered void if it does not comply with the duties of this part of the DDA. If the court feels that it is just, it can modify the agreement so that it is in accordance with the DDA.⁴⁵ If a disabled person believes that he/she has been discriminated against contrary to the provisions of the DDA he/she can bring a claim before the County Courts.⁴⁶ If the court finds that a case of discrimination has occurred, it can award damages including compensation for injury to feelings.

Education

The DDA provides that all students with disabilities should be provided with "an education and school appropriate for their needs."⁴⁷ In response to the governments'

⁴⁰DDA, §19.

⁴¹*Id.*

⁴²Disability Rights Commission, Disability Discrimination Act 1995, Code of Practice, Rights of Access, Goods, Facilities, Services and Premises, 2002.

⁴³DDA, §21.

⁴⁴*Id.*

⁴⁵DDA, §26.

⁴⁶DDA, §25.

⁴⁷Minister for Disabled People, DISABILITY DISCRIMINATION ACT, EDUCATION, DL 100, 1996, at 3.

Green Paper, entitled *Excellence for All Children: Meeting Special Educational Needs*⁴⁸ the Special Education Needs and Disabilities Act (SEN) was passed.⁴⁹ The Act comes into force in September 2002 and places duties on educational services, such as schools, colleges, and providers of youth services and adult education, to not discriminate against disabled persons in the admissions and exclusions processes and in educational and other associated services. It aims to provide equal access in mainstream educational facilities on a choice basis to disabled persons provided that it is in accordance with the wishes of the child's parents and that it does not affect the provision of education to other children. However, in higher education, discrimination can be justified when it is to maintain academic or other standards.⁵⁰

The SEN provides a wide definition of discrimination in education, including unjustifiably treating a pupil less favorably than others and unjustifiably failing to ensure that disabled pupils are not substantially disadvantaged in comparison to those who are not disabled. While the SEN does not specifically require that the school remove or alter physical features of the property, or provide auxiliary aids or services, it permits the making of regulations to provide for circumstances in which it is reasonable for the local education authority to take action to rectify the situation.⁵¹ The DDA provides for a Special Educational Needs and Disability Tribunal to consider cases of discrimination. The Tribunal can order that there has been discrimination, and aim to reduce the discrimination that has occurred, but it cannot make an order for the payment of compensation.⁵² If a person has been discriminated against in higher education, he/she can bring a civil claim against the offending body.⁵³

Telecommunications

The Director General of Telecommunications and the Secretary of State have a duty, when providing telecommunication services and in the Director General's job functions, to promote the interests of disabled consumers, purchasers, and other users of telecommunications services in the UK.⁵⁴ When granting licences to run a telecommunications system, certain licences contain conditions that require the provider to not discriminate

⁴⁸Department for Education and Skills, *EXCELLENCE FOR ALL CHILDREN: MEETING SPECIAL EDUCATIONAL NEEDS*, Cm. 3785 (1997).

⁴⁹ 2001, Ch. 10.

⁵⁰ *Id.* §27.

⁵¹ SEN, §13.

⁵² SEN, §18.

⁵³ SEN, §30.

⁵⁴ Telecommunications Act 1984, ch. 12, §3.

against a class of persons regarding the service that it provides and to not charge for services that are required by individuals who are blind or otherwise disabled.⁵⁵

The UK has passed various regulations that require the Secretary of State and the Director General of Telecommunications to take specific measures to “ensure equal access to and affordability of fixed publicly available telephone services for disabled users and users with special social needs.”⁵⁶ The regulations also emphasize that the Director General of Telecommunications and the Secretary of State should consult with bodies that represent disabled persons on how to improve such services at any time they feel appropriate or when new services are being discussed.

Schedule 1 of the regulations lists a number of services that are required from licensees that provide publicly available telephone services.⁵⁷ Such requirements include that directory information services are appropriate for disabled persons needs, accessible and provided without charge.⁵⁸ The regulations call for the use of text phones to be charged for standard price of a voice call, and implements a tariff scheme to compensate disabled persons who need to use text phones for the additional time required to make a call. There are also a number of protections contained in the regulations that ensure disabled persons the use of the applicable system without prolonged interruption. It allows disabled persons to receive priority fault repair services for any faults on the systems at no extra charge and provides a scheme of bill payments to help prevent the disconnection of services to those who are dependent upon it.

Licensees have also had to make adjustments to public telephone call boxes to ensure that a minimum of 75 percent are accessible to people in wheelchairs and that 70 percent of the telephones allow users to amplify the sound.⁵⁹

Enforcement and Monitoring of the DDA

The DDA was a disappointment to the groups who lobbied the government as they wanted full civil rights legislation and instead got “limited, but nevertheless significant rights.”⁶⁰ The provisions concerning employment were not seen as sufficiently extensive and concerns were raised that there was not an investigative body to determine compliance with the DDA or enforcement mechanisms. In response to the latter criticisms, the

⁵⁵ *Id.* §8(1)(d) and (2).

⁵⁶ The Telecommunications (Open Network Provision) (Voice Telephony) Regulations, S.I. 1998 No. 1580, ¶12.

⁵⁷ Defined in the regulations as a “fixed publicly available telephone service or a publicly available mobile telephone service or both.”

⁵⁸ The Telecommunications (Services for Disabled Persons) Regulations, S.I. 2000, No. 2410, sch. 1, ¶26.5.

⁵⁹ *Id.* Sch. 1.

⁶⁰ Secretary of State for Education and Employment, PROMOTING DISABLED PEOPLE’S RIGHTS CREATING A DISABILITY RIGHTS COMMISSION FIT FOR THE 21ST CENTURY, Cm. 3977 (1998).

Disability Rights Commission Act 1999⁶¹ (DRCA) that abolished the National Disability Council and provided for such a body. The Disability Rights Commission (DRC) assists and informs disabled people and their employers in a number of areas, provides codes of practices, conducts investigations, and researches the effectiveness of the legislation. It also works directly with disabled people who have complaints of discrimination by “advising or directly negotiating settlements, recommending policy and practice changes, or identifying reasonable adjustments” in cases referred to them.⁶² If such actions cannot be achieved, the DRC refers cases to external conciliators or internal legal officers where there is the belief that the case warrants consideration for legal action.

Prior to the commencement of the DRCA, enforcement procedures in the DDA provided that complaints of unjustified discrimination went to the Advisory, Conciliation and Arbitration Service, and in Northern Ireland the Labor Relations Agency. If a settlement could not be reached through these services, the case then went on to an industrial tribunal. These procedures were criticized as inadequate because many people were unaware of their rights, and legal aid was not available for such proceedings. As a result of this, the DRC was granted the authority to assist disabled persons in disputes with employers and service providers. The DRC’s annual report cites an example of its mediation with the case of a wheelchair user who was sent a bill for damage to carpets and doorframes that the owner of the apartment building believed was caused by the wheelchair. The owner then deemed that the building was not suitable for the wheel chair user, despite the fact that the user had been continually using it for 18 months without problems. The DRC intervened and settled the case with a £600 out of court settlement and a letter of apology.⁶³

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⁶¹Ch. 17.

⁶²*Supra* at 1.

⁶³*Id.*

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ZIMBABWE
RIGHTS OF PEOPLE WITH DISABILITIES

I. Zimbabwean Disabled Persons Act 1992

The Zimbabwean Disabled Persons Act 1992¹ ("ZDPA") covers two main areas prohibiting discrimination against disabled persons. These are:

1. access to public premises, services, and amenities
2. employment

A. Enforcement, Penalties, and Sanctions Under the Two Statutes

Under the statute, Section 10, ZDPA imposes a fine not to exceed \$4,000 (Zimbabwean dollars) or imprisonment for a term not to exceed one year for failure to comply with adjustment orders, for wilful denial to admit any disabled person to any premises covered by the Act, or denying to provide any services or amenities required by this Act.

B. Administering Authority

The Zimbabwean Disabled Persons Act established the National Disability Board, a single national entity, with the Director for Disabled Persons Affairs as the administering authority. The Minister of Public Services, Labor and Social Welfare, or any other minister appointed by the President, is vested with rule-making powers.

C. Rule-Making Powers

The Attorney General of the United States under the ADA is the primary rule-making power. In Zimbabwe, the Minister of Public Service, Labor and Social Welfare or any other designated minister is the rule-making authority.

D. Scope of Legislation

The Zimbabwean legislation extends to the entire population and does not quantify how many people in Zimbabwe suffer from any type of disability.

II. Analysis of the Zimbabwean Disabled Persons Act 1992

The Zimbabwean Disabled Persons Act prohibits discrimination against disabled persons in two main areas:

¹ 3 STATUTE LAWS OF ZIMBABWE, Ch. 17:01, 51-54 (1996).

- access to public premises, services, and amenities
- employment

1. Section 8: Prohibition of Denial to Disabled Persons of Access to Public Premises, Services, and Amenities

No disabled person, based on his/her disability alone, can be denied the following:

- admission into any premises to which members of the public are ordinarily admitted. The proprietor has no right under this provision to deny admission to his/her premises on the grounds of a person's disability alone.
- any service or amenity ordinarily provided to members of the public.

a) Exemptions

Concerns for the safety of the disabled person concerned may serve as a basis for denying access and/or provide service. A disabled person who is denied admission to any premises or is denied any service or amenity is considered to have suffered an *injuria* (an actionable injury *per se*). Such a person has the right to recover damages in any court of competent jurisdiction. For this purpose, the Zimbabwean legislation provides for both civil damages for those who have been victims of discrimination under the Act, and criminal penalties against those found in violation of the Act, especially if adjustment (or access) orders were disregarded.

2. Section 9: Prohibition of Discrimination Against Disabled Persons in Employment

The act prohibits discrimination against disabled persons in all phases of employment, including:

- advertisement for employment
- recruitment and other hiring methods for employment
- classification, creation of positions or their abolition
- the determination or allocation of wages, salaries, pensions, accommodation, leave, or other such benefits
- the choice of persons for jobs or positions, training, advancement, apprenticeships, transfer, promotion, or retrenchment
- the provision of facilities related to or connected with employment
- any other matters of employment

a) Exemptions

An employer has not discriminated against a disabled person under section 9 if:

- The challenged act or omission was not wholly or mainly attributable to the disability of the disabled person.
- The disability in question was relevant to the particular requirements of the denied position.
- Special facilities or modifications whether physical or administrative or otherwise are required at the workplace to accommodate the disabled person which the employer cannot reasonably be expected to provide.

3. Enforcement, Offenses, and Penalties

Any person who:

- fails to comply with an adjustment order (access orders) served under the terms of section 7 of the Act, or
- wilfully denies to a disabled person on the ground of his/her disability alone:
 - admission to any premises to which members of the public are ordinarily admitted
 - the provision of any service or amenity ordinarily provided to members of the public, for any reason other than one motivated by a genuine concern for the safety of the disabled person concerned, or
- discriminates against a disabled person in relation to the matters specified above as part of section 9,

shall be guilty of an offence and liable for a fine not exceeding \$4,000 Zimbabwean dollars or to imprisonment for a period which does not exceed one year or both to such a fine and/or imprisonment.

a) Defenses

It is not a violation of the Disabled Persons Act if the act or omission alleged to constitute the discrimination was not wholly or mainly attributable to the disability of the disabled person. It is a defense to alleged discrimination, if the disability in question was a relevant consideration in relation to the particular requirements of the employment concerned. It is also a defense to alleged discrimination if special facilities or modifications whether physical, administrative, or otherwise are required at the workplace to accommodate the disabled person which the employer cannot reasonably be expected to provide.

4. Section 11: Rule-Making Powers-Regulations

Subject to the provisions of this Act and any other pertinent law in Zimbabwe, the Minister of Public Service, Labor and Social Welfare or any other designated minister following consultations with the National Disability Board, may promulgate regulations that provide, *inter alia*, for the:

- coordination of services provided in Zimbabwe for the welfare or rehabilitation of disabled persons
- registration of:
 - disabled persons
 - institutions, associations and organizations including those controlled and managed by the State and local authorities that provide services for the rehabilitation of disabled persons
 - places at which services for the rehabilitation of disabled persons are provided.
- effect to be given to Zimbabwe's obligations under any international convention, treaty, or agreement concerning disabled persons
- any other matter which in terms of this Act is required or permitted to be prescribed

a) Exemptions

However, the Minister is precluded from promulgating regulations on registration of:

- state hospitals, nursing homes, or clinics any other such institution or facility registered under the Medical, Dental and Allied Professions Act, 1971 as amended² and the Psychological Practices Act, 1972 as amended³ except with the consent of the responsible minister of health
- state schools or education or training institutions registered under the Education Act, 1987 as amended⁴ and the Manpower Planning and Development Act, 1994 as amended,⁵ unless the minister responsible for the administration of the institution consents

5. Administering Authority

The National Disability Board, managed by the Director for Disabled Persons Affairs, has authority to administer the Act. The Board and the Director are established and constituted under sections 3 and 4 of the Act. The National Disability Board has two broad mandates:

- to issue adjustment orders under section 7 to comply with the provisions of the Act

² 5 *Stat. L. of Zimbabwe*, Ch. 27:08, 179-202 (1996).

³ *Id.*, Ch. 27:11, 225-237.

⁴ 4 *Stat. L. of Zimbabwe*, Ch.25:04, 617-630 (1996).

⁵ *Id.* Ch. 28:02, 323-340.

- to formulate and develop measures and policies that may relate to a number of subjects relevant to the disabled, including:
 - measures and policies to achieve equal opportunities for disabled persons in employment, education, sports, recreation, and cultural activities with full access to community and social services
 - measures and policies to enabled disabled persons to lead independent lives
 - measures and policies to give effect to international treaties and agreements on the disabled
 - measures and policies to prevent discrimination against the disabled as a result of their disabilities
 - measures and policies to institute schemes and projects geared for the employment of disabled persons who cannot secure employment elsewhere
 - measures and policies to encourage and secure rehabilitation and social employment centers, institutions, and other services for the welfare and rehabilitation of the disabled
 - measures and policies to coordinate services provided in Zimbabwe for the welfare and rehabilitation of disabled persons
 - measures and policies to register disabled persons as well as institutions, organizations, and communities, both public and private that cater to the needs of the disabled
 - measures and policies to provide as far as possible orthopaedic appliances and other equipment to disabled persons, etc.

The Board provides reports to the responsible Minister.

6. Section 7: Adjustment Orders by the Board

a) Enforcement

Adjustment orders apply to premises to which members of the public are ordinarily admitted, whether on payment of a fee or otherwise and services or amenities ordinarily provided to members of the public. These include premises owned or services and/or amenities provided by statutory corporations or local authorities.

Therefore, where the Board considers that any premises, services, or amenities as described above are inaccessible to disabled persons by reason of any structural, physical, administrative, or other impediment to such access, the Board, subject to the provisions of this section, shall issue and serve an adjustment order to the owner of the premises or provider of the service or amenity concerned. The Order must contain a full description of the premises or service and/or amenity concerned and the grounds upon which the Board considers the premises, service, or amenity inaccessible to disabled persons.

The order may require the following:

- that the owner or provider undertake at his/her own expense any action mandated by the order to ensure reasonable access by the disabled to the premises or amenities
- stipulate the maximum period to accomplish the adjustments and also the time frame to implement the action required by the order
- call upon the person involved to make representations to the Board within 30 days from the date of service of the notice (The Board could discontinue the Order following such representations.)
- any person who has been served with an adjustment order may within 30 days appeal to an Administrative Court against such an order based on the following grounds
- the person concerned cannot reasonably be expected to bear the whole or any part of the expense required to implement the adjustment order
- the period stipulated for the implementation of the adjustment order is unreasonable
- the nature of the action required to be taken as required by the adjustment order is in the circumstances unreasonable
- that adequate access to the premises, service, or amenity could be secured without recourse to the action required by the adjustment order or on any other ground

b) Remedies

Adjustment Orders may be appealed to administrative courts. Once the court has heard the appeal, it can either confirm, vary the adjustment order, or set it aside and make such order as to costs of the appeal as the court deems fit.

The Board is preempted from serving an adjustment order on any state hospitals, nursing homes, or clinics regulated under the Medical, Dental and Allied Professions Act and the Psychological Practices without the consent of the responsible Minister.

The Board also cannot serve an adjustment order on any state school, educational or state training institutions under the Education Act and the Manpower Planning and Development Act without the consent of the responsible minister.

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