Comparative Summary

Protecting People with Disabilities:

National Laws in Selected Foreign Countries

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COMPARATIVE SUMMARY

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I. Introduction

It should be emphasized that this study deals with foreign law on the protection of the basic human rights of people with disabilities and not with the Americans with Disabilities Act (ADA), the basic law on this subject in the United States. This comparative summary gleans some of the major aspects of such foreign legislation to assist with an inspection or recognition of subjects which may be similar to the law in the United States. However, the details or comprehensive application of any of the laws of these foreign nations should be made only by a reading and reference to the individual nation reports themselves.

Various approaches can be derived from the national reports to examine parallels and reference points between the foreign law legislation and the ADA, such as:

- The identification of any foreign law legislation that protects the basic human rights of people with disabilities.
- The identification of foreign countries which have an ADA-type law, namely local legislation that may use the ADA as a point of reference in its regulation of the subject matter. If such foreign laws are available, examples are provided.
- The identification of any constitutional provisions that prescribe the disability law. In certain countries, constitutional provisions emanate from the country's obligations under international human rights law with specific reference to the rights of the disabled. These international human rights instruments are described in their direct connection to the local constitutional document on the subject and can be considered part of the requisite constitutional norms of that particular country. This is the case in Argentina, India, and Poland.
- The availability of one or more statutory enactments that regulate the rights of the disabled.

Case law emanating under disability legislation, which is crucial for interpreting the law in the United States, has been examined in each foreign country as applicable. This is evident from the reports on **Australia**, **Canada**, **Germany**, the **Czech Republic**, **Israel**, and the **United Kingdom**. Judicial review of the law may be as important as the statute itself, because it can be a way to gauge its practical utility. In these and other countries with a similar important role of judicial review, it is not enough that the law provides for disability rights if they are not realized. They are fully enjoyed when the matter is in dispute and the courts determine and award remedies that indeed the law has been violated.

II. Worldwide View on Methodology in the Analysis of Disability Laws

A. Different Approaches to the Analysis of Disability Laws

Many different approaches are used to examine disability laws around the world, including: civil rights based, special needs based, rehabilitation and sanction based, constitutional based, and religious and customary law based.

1. Civil Rights Based

One approach closely associated with the examination of disability rights, *vis-a-vis* the ADA, is the guarantee of equality of opportunity by proscribing discrimination.[1] This approach applies to legislation in **Australia**, **Canada**, New Zealand, and the **United Kingdom**.[2]

2. Special Needs Based

Special needs based aims at ensuring equality of results by emphasizing special needs over equal rights mandating quotas. Traditionally, this has been the continental European and Japanese models. However, efforts are underway even in continental Europe and **Japan** to base their laws on the civil rights based approach.[3]

3. Rehabilitation and Sanction Based

Another approach combines the ADA-type of equality based and special needs without quotas. Here special needs and rehabilitation are emphasized. Failure to comply by proprietors culminates in penal sanctions. This is the **Zimbabwean** (included in the report on **Sub-Saharan Africa**) model.

4. Constitutional Based

Constitutional based is found in many of the countries covered in the Law Library study, especially in **Sub-Saharan Africa**. These primarily guarantee disability rights as part of the constitutional norm on fundamental human rights of the individual prior to its regulation in statutory instruments.

5. Religious and Customary Law Based

Another approach to the issue of disability is under indigenous customary laws, prevalent in Islamic law. This is typically not codified.

Generally, the equal treatment approach of the ADA is viewed from a civil rights perspective. To this extent, it requires neutrality or "blind justice" in dealing with those protected by the legislation. The ADA approach is to prohibit employment discrimination *per se*. In contrast, however, European and Japanese models emphasize

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[1] For an analysis of the ADA, *see*, N.L. Jones, *The Americans with Disability Act (ADA): Statutory Language and Recent Issues* (CRS Report for Congress, updated Aug. 1, 2002); *also see* N.L. Jones, *The Supreme Court and the Americans With Disabilities Act: Decisions in the 2001-2002 Term*, FEDERAL LAW UPDATE (Sept. 19, 2002). The information on the ADA in this comparative summary is taken from these journals.

[2] *See* K. Heyer, *From Special Needs to Equal Rights: Japanese Disability Law*, 1 ASIAN -PACIFIC L. AND PO'Y J. 6 (Feb. 2000).

[3] *Id. See also*, Edith Palmer, *Germany,* and Karel Wennink, *Netherlands*, RIGHTS OF PEOPLE WITH DISABILITIES, Law Library Report for Congress (multinational study #2002-13479).

the need to protect differences and analyze disability as a category that must be accorded special consideration, supported by the assistance of the state. The salient feature of the European and Japanese models is the employment quota. A movement is currently underway in Europe and Japan to move from quotas to ADA-type regulation.

The ADA's interpretation of equality is to place an emphasis on sameness and non-discrimination; *i.e.,* the ADA mandates that people with disabilities must be treated in the same way as other citizens with reasonable accommodation of their differences. Therefore, under the ADA emphasis is on the removal of barriers that jeopardize equal opportunities. This approach pertains to rights and representation.[4]

B. Illustration: The Definition of "Disability" under the ADA and the British DDA

An example of the issue of defining the term "disability" under the ADA and the British Disability Discrimination Act (DDA) can be found in the United Kingdom report. The British Disability Discrimination Act, 1995, effective in 1996, can be said to be a turning point in the history of civil rights in the United Kingdom.

Three different ways exist under the ADA to consider a person disabled. The classification of disability as "a physical or mental impairment that substantially limits one or more of the major life activities" is crucial to all three definitions of an individual with a disability. These guidelines suggest that the work should be used as a major life activity and as a last resort. On the other hand, the definition of "disability" under the DDA is purely in the present tense. It does not incorporate an individual with a history of disability. "Is" is determined by the verb "has" in the critical clause "a person has a disability for the purpose of this Act if he has a physical or mental impairment." Under the DDA, the definition of "disability" requires that an individual is a disabled person if he/she "has" a physical or mental impairment which "has" a substantial and long term adverse effect on his/her ability to carry out normal day-to-day activities. There are five key elements to the DDA definition, namely: impairment, substantial, long-term, adverse effect, and normal day-to-day activities.[5]

1. Elements of the Definition of Disability under the DDA

a. Impairment

An impairment may be either physical or mental. The DDA does not include alcoholism or drug addiction as disabilities. But the effect of these conditions may constitute impairment under the Act.

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[4] *See further*, N. Wenbourne, *Disabled Meanings: A Comparison of the Definitions of Disability in the British Disability Discrimination Act of 1995 and the Americans With Disabilities Act, 1990*, 23 HASTINGS INTL. AND COMP. L. REV. 149 (Fall 1999).

[5] *See further*, L. Waddington, *Reassessing the Employment of People with Disabilities in Europe: From Quotas to Anti-Discrimination Laws,* 18 COMP. LAB. L. 62 (Fall 1996).

b. Substantial

The word substantial means an effect that is more than minor for the purpose of the Act.

c. Long-term

The effect of an impairment is long-term if it has lasted at least 12 months, the period of which it lasts is likely to be at least 12 months, or it is likely to last for the rest of the life of the person affected. Where an impairment ceases to have a substantial effect, it will still qualify if it is likely to reoccur. The likelihood of recurrence is therefore the main factor to be considered.

d. Adverse Effect

When determining the adverse effect, a tribunal considers what the individual either cannot do or can do only with difficulty, not what the individual can actually do.

e. Normal Day-to-Day Activities

Normal day-to-day activities constitute mobility; manual dexterity; physical coordination; continence; the ability to lift, carry, or otherwise move everyday objects; speech, hearing, or eye sight; memory or the ability to concentrate, learn, or understand; and the ability to perceive the risk of physical danger.

2. Elements of the Definition of Disability Under ADA

Under the ADA a person is covered by the provisions of this Act if he/she meets one of the following three criteria. First, the person has a physical or mental impairment that substantially limits one or more major life activity. Second, such a person has a record of such impairment. Third, such a person is regarded as having such an impairment. Even though there are three different ways to consider an individual disabled under the ADA, the definition of disability as a "physical or mental impairment that substantially limits one or more of the major life activities" is central to all the three definitions of an individual with a disability.

In addition, an individual with a disability must also be a qualified individual who can perform the essential functions of the job concerned in order to fall within the ambit of the provisions of the Act. As a result, an individual with a disability may perform these essential functions with or without reasonable accommodations. The concept of qualified individuals who can perform essential functions of a position with or without reasonable accommodations thus further defines those who are covered by the Act. The eight elements to the definition of disability under ADA are as follows: impairment, substantially limits, major life activities, qualified individuals, essential functions, reasonable accommodations, record of impairment, and regarded as having such an impairment.

a. Impairment

The Equal Employment Opportunity Commission (EEOC)[6] has defined "physical or mental impairment" to cover the following:

- any physiological disorder or condition, cosmetic or disfigurement, or anatomical loss affecting one or more of the following: body systems, neurological, musculoskeletal, special sense organs, respiratory (including speech organs) cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine
- any mental or physiological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific disabilities[7]

However, under the EEOC definition of disability, impairment does not include physical, psychological, environmental, cultural, or economic characteristics that are not impairment.[8] On the other hand, the Supreme Court of the United States has held asymptomatic HIV to be an impairment for the purposes of the ADA. The Court has stated that "HIV infection must be regarded as a physiological disorder with a constant and detrimental effect on the infected person's hemic and lymphatic systems from the moment of infection."[9]

b. Substantial Limits

An individual's impairment must be one that substantially limits a major life activity protected by the Act.[10] The EEOC has defined "substantially limits" as being unable to perform a major life activity that the average person in the population can perform or as being significantly restricted as to the condition, manner, or duration

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[6] ADA in 42 U.S.C. §12116 stipulates that the EEOC will promulgate regulations with respect to the employment title of the Act. Nancy L. Jones has identified five Supreme Court cases as being at issue in the definition of disability under ADA. These include: Bragdon v. Abbott 524 U.S. 624 (1998); Sutton v. United Airlines 527 U.S. 471 (1999); Murphy v. United Parcel Services 527 U.S. 516 (1999); Albertson v. Kirkinburg 527 U.S. 555 (1999); and Toyota Motor Manufacturing of Kentucky v. Williams 534, U.S. 184 (2002).

These cases are also with respect to Titles III to V of the ADA. Chevron v. Echazabal, 153 L. Ed. 2d 82 (2002) and Barnes v. Gorman 153 L. Ed. 2d 230 (2002) deals with Titles VI and VII of the ADA. Furthermore, Jones' piece *supra* explains the statutory language of the ADA and case law arising under it. This piece through judicial review of the ADA explores for example the definition of disability, employment, public services, public accommodations, telecommunications, and the miscellaneous provisions of Title V of the Act. At 2, she notes "the ADA is a civil rights statute." From her discussion, it is evident that, under the ADA, it is not sufficient that certain legislative measures have been prescribed on disability or that the EEOC has promulgated certain rules and regulations with respect to disability, *but rather* that these statutory measures have received a "stamp of approval" through their interpretation by the courts.

[7] 29 C.F.R. § 1630 2(h).

[8] *Id.*

[9] *See* Bragdon v. Abbott, 118 U.S. 2196, 2196 (1998). *See also* N. Jones, *supra* note 3.

[10] *See* 42 U.S.C. § 12102 (2)

under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.[11] For example, an individual is a disabled person if an impairment either prevents the performance of a major life activity or if it significantly restricts the performance of a major life activity.[12]

The EEOC has also set forth a number of factors to determine whether an individual is substantially limited in a major life activity, namely the nature and severity of the impairment, the duration or expected duration of the impairment, and the permanent or long term impact, or the expected permanent long term impact of or resulting from the impairment.[13]

In this particular case, "duration" signifies the length of time of an impairment persists and "impact" refers to the residual effects of an impairment[14] and the definition of "substantial" is by and large fact based.[15]

c. Major Life Activity

The term "major life activity" constitutes a function such as caring for oneself, performing manual tasks, walking, seeing, hearing, breathing, learning, and working. But this enumeration of subjects contained in "major life activity" is not exhaustive as stated by the EEOC and the courts.[16]

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[11] 29 C.F.R. § 1630.2 (j) (1).

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] In Bragdon, the Supreme Court has held that an eight percent risk of transmission of HIV met the substantial requirement. The Court stated that when an impairment is serious enough to necessitate hospitalization "it is a fact more than sufficient to establish one or more of the individual's major life activities were substantially limited." *Supra* note 11, Bragdon, 118 U.S. § 2196. *See also*, School Board of Nassau County v. Arline, 480 U.S. §§ 273 and 281 (1986); Bartlett v. New York State Board of Bar Examiners 156 F.3d 321 (2nd Cir. 1998). In this case, the court held that the plaintiff was substantially limited in the major activities of reading and learning. An expert on behalf of the defendant had testified that the plaintiff did not have a learning disability because she had scored higher than the 30th percentile on a reading test. But the court held that, the appropriate comparing factor was the manner and conditions under which an average person can read and/or learn. Under this test, the plaintiff surely had a learning disability. *For a full analysis of* case Law on the ADA, *see supra* note 3 Jones. *See further* Murphy v. United Parcel Service Inc., 119 U.S. § 2133 (1999); Sutton v. United Airlines Inc., 119 U.S. § 2139 (1999); Albertsons Inc. v. Kirkinburg, 119 U.S. § 2162 (1999); Holihan v. Lucky Stores, 87 F.3d 362, 366 (1996); Price v. National Board of Med. Examiners, 966 F.Supp. 419 (1997); Davidson v. Midelfort Clinics Ltd., 133 F.3d 499, 506 (7th Cir. 1997).

[16] *Id. See further* Davidson, *id.* 133 F.3d at 507; Soileau v. Guilford of Maine, 105 F.3d 12 (1st Cir. 1997); 29 C.F.R. § 1630.2 (i).

d. Qualified Individuals with Disabilities

Those who meet the definition of "disabled" under the provisions of the Act must also be qualified individuals in order to come under the scope of the ADA. Therefore, a qualified individual with a disability denotes an individual with a disability, who, with or without reasonable accommodation, could perform essential functions of the job. The EEOC has defined "qualified individual with a disability" to mean "an individual with a disability who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such an individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position."[17]

e. Essential Functions

The purpose of considering whether or not the individual can perform the essential functions of the position is to ensure that individuals with disabilities who can perform the essential functions of the position are not denied employment because they cannot perform the marginal functions of the position.[18]

f. Reasonable Accommodations

A reasonable accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy employment opportunities. Under the ADA, a reasonable accommodation may include: making existing facilities used by employees readily accessible to and usable by individuals with disabilities; job restructuring; part-time work or modified work schedules; reassignments to a vacant position; acquisition of or modification to equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for persons with disabilities.[19]

g. Record of Impairment

This provision was intended to ensure that individuals are not discriminated against because of a history of disability or because they have been mis-classified as disabled. The recorded impairment must be one that substantially limits or more major life activities.[20]

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[17] 29 C.F.R. § 1630.2 (m).

[18] *Id. See also* 29 C.F.R. § 1630. 2(n); 42 U.S.C. § 12111 (8).

[19] 29 C.F.R. § 1630.2 (o). *See further* Bultemeyer v. Fort Wayne Community Sch., 100 F.3d 1281 (7th Cir. 1996); Taylor v. Principal Fin. Group, 93 F.3d 155 (5th Cir. 1996); Miller v. National Gas Co., 61 F.3d 627 (8th Cir. 1995); Pesterfield v. Tennessee Valley Auth., 941 F.2d 437 (6th Cir. 1991).

[20] 29 C.F.R. § 1630.2 (k). In School Board of Nassau County v. Arline 480 U.S. 283, the Supreme Court held that

h. Regarded as Having Such an Impairment

If an individual has either a physical or mental impairment that substantially limits a major life activity, or a record of such an impairment, the person is considered as "having such an impairment."[21] Thus, in terms of comparisons of definitions between the DDA and the ADA some of the terms in their definitions are identical or similar in form and practical effect. For instance, "physical or mental impairment" is a term common to both statutes in the definition of disabled. On the other hand, the term "substantial adverse effect" is also somewhat parallel to the ADA's "substantially limits." Under the DDA, "substantial adverse effect" indicates an affect that is more than trivial. The phrase "substantially limits" under the ADA involves a comparison of the ability of an able-bodied person and a disabled individual to perform a major life activity.[22]

III. The Quota System in Europe: Perspectives to Anti-discrimination Legislation

A. Introduction

Early European legislation on disability required employment quotas.[23] Europeans were mandated to employ a certain percentage of disabled war veterans. For example, one commentator has examined the quota system and anti-discrimination legislation and has considered the reassessment of disability employment policy that is on-going in some European countries.[24] The **United Kingdom** and **Germany** where this legislation is in force, and in the **Netherlands**, where a bill is awaiting final approval to be effective in 2003. All these countries are adopting or have adopted disability employment and anti-discrimination legislation founded on civil rights similar to the ADA.[25]

In some respects, the current on-going European movement to adopt disability employment and anti-discrimination statutes, founded on civil rights (as in the United States) and in **Sub-Saharan Africa**, where disability is first and foremost a constitutional principle, and second where it is part of the fundamental human rights of the individual (civil rights) or where it is part of the State Principles and Fundamental Objectives of Government (non-justiciable) can be viewed as a return to the concept of duty, though in a variant form.

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a teacher's hospitalization for tuberculosis substantially limited one or more of her major life activities. This was sufficient to establish a record of impairment.

[21] *Id.* 29 C.F.R. § 1630.2 (1). *See also* Holihan 87 F.3d 366; Arline, 480 U.S. 283.

[22] For details *see* Wenbourne, *supra* note 6.

[23] Quotas are also noted in the case of the People's Republic of China and Japan.

[24] *Supra* note 7.

[25] *Id.*

B. Background

A full appreciation of the current wave of disability law in Europe requires a bird's eye view of the emergence and development of the quota system on the continent. The first quota systems originated in the post-WW I era and was tailored primarily to veterans. "These quotas were based on the idea that society owed a duty to those who have been disabled while serving their country, and by the end of 1923, **Germany**, Austria, **Italy**, **Poland** and **France** had all adopted such systems."[26]

However, some countries did not follow this path to impose mandatory requirements on employers to employ a certain number of disabled war veterans. Rather, they sought to encourage their voluntarily compliance. But the lack of success of voluntarism led most of the non-mandatory European countries to go back to the quota system in the post-WW II era. The second generation quota system now even applied to civilian populations.

> A consequence of the extension was that, the concept of duty, which had existed when the systems were exclusively targeted at veterans was lost, and the new quotas became part of overall social welfare policy....[27]

By 1996, 10 of the 15 Members States of the **European Union** still used quotas to employ the disabled.[28] Even certain non-members of the Union have quotas for the employment of the disabled, *e.g.*, **Poland**. All quota systems require the employment of a certain percentage of disabled people. But even within this general framework of the quota system, variations exist. Consequently, there does not seem to be a unified European quota system. Three main variations are discernible as follows:

1. The Legislative Based Quota System

Under the legislative based quota system, employers are not mandated to employ a certain percentage of employees, but it is recommended that they do so. This system operates in the **Netherlands**. Prior to 1986 in the **Netherlands**, a quota system similar to that operational in the United Kingdom in the post-WW II era was in force. This system imposed a legislative obligation without sanction. However, in 1986, the Handicapped Workers Employment Act (WGW)[29] supplanted the Employment of the Disabled Act, 1947.[30] The Law of 1986 introduced a new quota system and removed the registration

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[26] *Id.* Waddington at 2.

[27] *Id.*

[28] Denmark, Finland, Portugal, and Sweden do not have a quota system. The United Kingdom abolished its quota system with the enactment of the DDA.

[29] Wet Arbeid Achandicapte Werknemers, Law of May 16, 1986, STAATSBLAD VAN HET KONINKRIJK DE NEDERLANDER [STB.300] (1986) as amended by Law of Apr. 26, 1995, STB.250 (1995).

[30] Wet Plaatsing Minder-valide Arbeidskrachten, Act of Aug. 1, 1947, Neth. STB.283 (1947), (respecting the placement of persons with reduced working capacity).

requirement of disabled persons. However, there was no significant improvement in the employment of the disabled.[31]

Under the WGW, public and private employers were still required to facilitate the employment of disabled persons, and a quota target between three and five percent to be achieved over three years was set. But the quota was voluntary and the WGW did not provide for any sanctions if employers did not make the requisite quota. Rather, the government indicated that it intended to initiate a legislative obligation founded on a quota of between three and seven percent depending on the branch of the industry or public sector involved if it was discovered that after three years employers were still not making the quota. This mandate was to be supported with a fine for every position not occupied by disabled persons in each year. Employers who exceeded their quota were similarly to receive compensation of a certain amount of money for every position filled by a disabled person in each year.[32]

> By 1989, there had been little improvement in the employment situation of the disabled people, and an official government report showed that only 2.2% of workers with a contract of fifteen days or more were disabled. The government did not respond to this problem by introducing a compulsory quota as it had threatened to do, but rather concluded that such a quota across all sectors of industry was not "a practicable policy."
>
> The Dutch experience suggests that a voluntary quota...which imposes no legal obligation upon employers and provided for no sanctions has little impact on the numbers of disabled people in open employment.[33]
>
> The British pre-war experience was similar.[34]

2. Legislative Model Without Effective Sanction

Under this system of quotas, employers are under legislative mandate to employ a quota of disabled people. But the law does not provide any effective sanctions where the quota is not made. The **United Kingdom** typified this system of quotas subsequent to WW II as established by the Disabled Persons Employment Act, 1944,[35] which was supplanted by the DDA.

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[31] *Supra* note 7 at 3.

[32] *Id.*

[33] *Id.* at 3.

[34] *Id.*

[35] 7 and 8 Geo. 6 Ch. 10 (1944).

> In practice, the British quota was not successful in promoting employment of disabled people and each year progressively fewer employers met their quota obligation so that in 1993 only 18.9% of employers achieved the 3% quota compared with 30.4% in 1984.[36]

3. Legislative Obligation Backed-up by Sanction (Levy-Grant System)

The levy-grant system is the form of quotas which attracted most attention through modification of the quota system in the early 1980s and 1990s. It requires setting a quota and providing that all covered employers who do not meet their obligation pay a fine or a levy that generally goes into a fund.[37] The **Germany** legislation of 1974 set quotas of 6 percent for all public and private employers with 16 or more employees. The quota could be adjusted as low as 4 percent or increased to 10 percent.

> The Germany quota system undoubtedly has made a greater contribution to promoting the employment of disabled people than the two previously described systems. However, in recent years, the Germany quota has become progressively less effective. Since 1982, when the average percentage of severely disabled workers employed within firms had fallen to 4.3%...the German quota has proved itself incapable of maintaining the targeted level of employment for severely disabled during a period of economic recession. The economic difficulties, combined with the relatively low levy, seem to make payment a more attractive option than the unknown risks of hiring a severely disabled worker.[38]

These three approaches of the quota system could be varied or adopted *in toto* in any given country. Another adaptation is through the setting of the pertinent quota percentage. Among the quota systems that operate in the **European Union**, the percentage varies from 2 percent in Spain to 15 percent in **Italy**, where the quota system is extended to cover the disabled, widows, orphans, and refugees. The obligation imposed on employers is also affected by the minimum number of workers that must be employed and the means of calculating this number before an employer is subject to the quota. The number varied from 16 employees in **Germany** to 50 in Spain. Additionally, the quota is varied by targeting either the public or private sector or both.

> In most European Union Member States, both kinds of employers are covered, although in Ireland, the legislation only applies to the public sector, while in the United Kingdom, the provisions of the recently abolished DPEA

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[36] *Supra* note 7 at 4.

[37] Germany was one of the countries as earlier example under the Severely Handicapped Persons Act, 1974, Schwerbehindergesetz [SchwbG] 30.4 1974 (BGBl. p. 1005). *See also ILO Legis. Series. Ger. F.R.* 3 (1974) (Eng. trans.). The SchwbG has been amended several times from 1974 to the currently applicable legislation discussed in the report on Germany in this Study.

[38] *Supra* note 7 at 6.

> did not apply to the public sector, the Crown, however accepted the same obligation...where quotas are based on the levy-grant system, the size of the levy can be altered.[39]

In **France**, the mandatory quota is 6 percent for both public and private sectors employing at least 20 or more employees. Also, to encourage the employment of the severly disabled, certain categores of disabled are counted as if they were 1.5, 2, or 2.5 individuals. Failure to fulfill this obligation results in a fine.

IV. Worldwide Overview

From the various national studies, a number of observations can be made.

A. Constitutional Provisions

In terms of constitutional provisions, **Argentina** under the National Constitution of 1984; **Canada** according to the Canadian Bill of Rights, 1983; **Mexico** consistent with the provisions of the Federal Constitution; **Germany** under the Constitutional Amendment of 1994; **Poland** with respect to its Constitution in keeping with international human rights instruments concerning its obligations under international human rights law that require security and protection of basic human rights of people with disabilities; the **Russian Federation** in accordance with the Russian Federation Constitution, 1993; **Israel** consistent with the Basic Law: Human Dignity and Freedom; **Sub-Saharan African** countries (31); the **Peoples Republic of China** (PCR) under its Constitution; **India**, in accordance with its Constitution pursuant to international obligations as required by international treaties and agreements, incorporating pertinent provisions of these international instruments into the national Constitution; and **Japan**'s general fundamental human rights provisions, all contain provisions regulating the basic human rights of disabled persons.

These constitutional provisions span a wide spectrum ranging from the general to the very specific formulation of disability rights. Countries with specific provisions include **Argentina**, **Canada**, **Germany**, **India**, **Mexico**, the **People's Republic of China**, the **Russian Federation**, and the 31 **Sub-Saharan African** countries. General security and protection of the basic human rights of people with disabilities under their Constitutions is found in **Israel** and **Japan**.

There seems to be no constitutional provisions on the subject in **Australia**, **Egypt**, **France**, **Iran**, **Italy**, **Pakistan**, **Taiwan**, and the **United Kingdom**. The countries with constitutional provisions securing and protecting the basic human rights of people with disabilities are referred to above as "civil rights" or constitutional law based, while those without constitutional provisions on the subject may have grounded their statutory enactments from the point of view of criminal law as in **France**, civil law

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[39] *Supra* note 7 at 6.

and/or with a history of the quota system as in Italy, Japan, the Netherlands, the People's Republic of China, and the United Kingdom.

In the Sub-Saharan Africa countries, though civil rights based, their enforcement of disability laws is criminal in nature tailored mostly against offending employer institutions and organizations and no case law by large emanate from administrative decisions made in the enforcement of the rights of the disabled.

B. The Quota System

The quota system, as discussed earlier, is an another important historical, and in some countries current, application needed to fully understand the evolution of law on disability from this genesis to anti-discrimination laws. The quota system is mostly in European countries, even though movement has been discussed to anti-discrimination laws. Historically, Austria (not part of this study), Germany, France, Italy, the Netherlands, Poland, the Russian Federation, and the United Kingdom have used or are still using quotas to employ the disabled. By 1996, 10 out of 15 members of the European Union apparently still utilized quotas to employ the disabled. Though not covered in this study, Denmark, Finland, Portugal, and Sweden do not have a quota system. The Japan and People's Republic of China still utilize the quota system in the employment of people with disabilities.

C. Statutory Measures

Another salient feature which emerges is the fact that certain countries have multiple statutory enactments that deal with the basic human rights of people with disabilities. Other countries, even though a number of statutory enactments may be available, have primary statutory instruments that by and large consolidate and enhance the basic human rights of people with disabilities is in force. Countries with multiple laws include Argentina, Australia, Canada, Czech Republic, France, Germany, Israel to a certain extent, Italy, Japan, Mexico, and Poland.

Countries with primary disability legislation include Lesotho, Malawi, Nigeria, Uganda (not included in this study), Zambia, and Zimbabwe in Sub-Saharan Africa, and Australia, Argentina, Canada, Egypt, Germany, India, Iran, Israel, Italy, Japan, the Netherlands, Pakistan, People's Republic of China, Poland, the Russian Federation, Taiwan, and the United Kingdom.

D. Judicial Review

Case law is another important feature emerging as a source of disability law. The countries with this feature include Australia, Canada, the Czech Republic, France, Germany, Israel, and the United Kingdom.

E. ADA-type Classification

The countries with ADA-type classification of subject matter whether they are *on all fours* or in selective areas only are: first and foremost **Taiwan** which appears to be the most comparable to ADA. Others where such comparisons could be made are **Australia**, **Canada**, **Germany**, **Israel**, the **Netherlands** (under a pending bill), and the **United Kingdom**. Others in variant forms include **Argentina**, **France**, **India**, **Italy**, **Pakistan**, the **People's Republic of China**, the **Russian Federation**, and to a very restricted sense in two areas only **Zimbabwe**.

F. Innovations

The **Netherlands** more than any other country has implemented the telecommunications accessibility requirement to people with disabilities. The use of the Internet and access to more than 62 websites by the disabled is innovative to secure and protect the basic human rights of people with disabilities.

V. Additional Nations Not Included in Original Study

A. Republic of Ireland

In the Republic of Ireland, a report was issued in 1996 on "A Strategy for Equality: Report of the Commission on the Status of People with Disabilities." The Commission, 60 percent of whose membership consisted of people with disabilities and their care givers or family members, produced a "wide ranging and innovative" proposal and put forward the key message that there was a "need to move away from a charity and welfare model to one based on rights in the field of disability."[40]

Based on the findings of the Commission, the National Disability Authority Act 1999[41] was enacted to establish a new body whose functions include, *inter alia*:

- to act as a central, national body to assist in the coordination and development of policy in relation to persons with disabilities
- to undertake research on disability issues and to develop statistical information for the planning, delivering, and monitoring of programs and services
- to advise on appropriate standards for programs and services for the disabled
- to monitor the implementation of standards and codes of practices in programs and services

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[40] IRISH CURRENT LAW STATUTES ANNOTATED, 1999, ¶ 14-2, annotations by Dr. Gerard Quinn, Lecturer in Law, Former Member of the Commission on the Status of People with Disabilities.

[41] No. 14, § 8(1).

Other measures on rights of the disabled include the Employment Equality Act 1998[42] which prohibits discrimination by employers in relation to access to, conditions of, training, promotion, etc., in relation to employment.

In June 2000, the new National Disability Board (NDA) was launched. Twenty-one members were appointed in January 2001 for a four-year term. Sixty-five percent of the members were drawn from people with disabilities or their families. The membership also represents the entire disability sector including physical, sensory, learning disability, and mental disability.[43] The Equal Status Act 2000[44] prohibits discrimination on grounds of disability in providing goods or services and requires providers to do all that is reasonable to accommodate the needs of a person with disability, including providing special treatment or facilities.

The first Strategic Plan of the NDA was launched on May 2, 2001, identifying four priority action areas for 2001-2003:

- developing policies that promote the equal stats of people with disabilities
- guiding and monitoring the implementation within five years of the accessible public services program
- influencing attitudes in Irish society
- assuring best practices in services for people with disabilities[45]

The Minister of Justice, Equality and Law Reform presented a Disability Bill 2001[46] on December 19, 2001. The Bill makes further and better provision for persons with disabilities in respect of :

- accessibility to public buildings, public services, and to employment in the public service
- establishment of a personal advocacy service to represent, help, or support persons with certain disabilities in seeking assistance from statutory or voluntary bodies
- additional powers to be granted to the NDA for monitoring and promoting compliance by public bodies and other service providers
- regulating genetic testing of persons

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[42] No. 21, §§ 2 and 8.

[43] Press Release, *Minister announces chair and board members of the newly established national disability authority*, www.justice.ie/80256996005F3617/vWeb/wpJWOD4TFL38.

[44] No. 8, §§2 and 4.

[45] Press Release, *Launch of the first strategic plan of the national disability authority*, www.justice.ie/802569B20047F907/vWeb/pcRXHR4X8FDG.

[46] No. 68.

- establishing a center for excellence in universal design[47]

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[47] The full text of the Bill is available *at* www.gov.ie/bills28/bills/2001/6801/default.htm.