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# Employment of People with Disabilities: The Impact of Legislation Asia and the Pacific: Report of a Project Consultation

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# Employment of People with Disabilities: The Impact of Legislation Asia and the Pacific: Report of a Project Consultation

## **Abstract**

[From Introduction] This review is being conducted in the framework of an ILO Project 'The Employment of People with Disabilities: the Impact of Legislation', funded by the Government of Ireland. The project aims to enhance the capacity of national governments of selected countries to implement effective legislation on the employment of people with disabilities. The project sets out to document existing legislation, identify the implementation mechanisms in place, highlight improvements that may be required, and provide technical assistance to selected national governments for implementing necessary improvements.

## **Keywords**

disability, employment, Asia, Pacific, project, consultation, legislation, impact, disabled, provision, report, training, law, job

## **Comments**

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# **Employment of People with Disabilities**

## **The Impact of Legislation**

**Asia and the Pacific**

**Report of a Project Consultation**

*Bangkok, 17 January 2003*

*Organized by the ILO InFocus Programme on Skills, Knowledge and  
Employability  
in the framework of a project funded by Ireland Aid*



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# 1. Introduction

Considerable attention has been paid in recent years to examining the provisions of the different types of disability-related legislation concerning vocational rehabilitation, skills training and employment promotion through quota or quota/levy schemes, anti-discrimination laws as well as job retention and return to work requirements. Less attention has been devoted to the question of the laws' effectiveness in improving training and employment opportunities for disabled persons. This question is central, not only in terms of the economic rights of disabled people, but also to their broader social and political rights which are closely linked to economic empowerment.

Concern has been expressed by organisations of and for people with disabilities that legislation and international instruments have not yet had a significant impact on improving the lives of people with disabilities. Given this concern, and the need to be informed about implementation strategies which are effective in terms of employment outcomes for disabled people, the International Labour Office has initiated a systematic examination of laws in place to promote employment and training opportunities for disabled people in certain countries of the Asia and the Pacific (Australia, Cambodia, China, Fiji, India, Japan, Mongolia, Sri Lanka, and Thailand) and of East Africa (Ethiopia, Kenya, Mauritius, Seychelles, Sudan, United Republic of Tanzania and Uganda).

This review is being conducted in the framework of an ILO Project 'The Employment of People with Disabilities: the Impact of Legislation', funded by the Government of Ireland. The project aims to enhance the capacity of national governments of selected countries to implement effective legislation on the employment of people with disabilities. The project sets out to document existing legislation, identify the implementation mechanisms in place, highlight improvements that may be required, and provide technical assistance to selected national governments for implementing necessary improvements.

The first step was to review existing national policy and legislation pertaining to the employment of persons with disabilities in the selected countries, along with related documentation and evaluation materials. Country Profiles were prepared, using the information collected and these formed the basis of a Regional Overview compiled as a background paper for a Project Consultation with representatives of participating countries. Participants in the Project Consultations included representatives of government ministries responsible for employment and disability matters, employer and worker organizations, as well as national organizations of persons with disabilities. In the East Africa Consultation in Addis Ababa, May 2002, members of parliament were also represented. The Consultations provided the opportunity to discuss the situation the participant countries and identify areas in which change was required, as a basis for further collaboration in the framework of the project.

The Project Consultation for the selected countries of Asia and the Pacific took place in Bangkok on 17 January 2003, following on a three-day ILO Regional Consultation on Vocational Training and Employment of People with Disabilities funded by the Government of Japan. This is a report of that Project Consultation.

## **2. Overview**

The ILO Project Consultation on the topic ‘Employment of People with Disabilities: the Impact of Legislation’ was held in Bangkok, Thailand, 17 January 2003, as part of the ILO project funded by the Government of Ireland. The overall purpose of the Project Consultation was to examine the strengths and weaknesses of employment-related laws concerning people with disabilities in nine selected countries (Australia, Cambodia, China, Fiji, India, Japan, Mongolia, Sri Lanka and Thailand) and their implementation mechanisms, in order to identify required revisions.

### **2.1 Themes**

The Project Consultation was planned in collaboration and in conjunction with the ILO Regional Technical Consultation on ‘Vocational Training and Employment of People with Disabilities’ funded by the Government of Japan 14 – 16 January 2003, attended by representatives of fourteen countries, including project participants. Two of the presentations at the Regional meeting were particularly pertinent to the project and are included in this Report. The technical presentations were:

- Decent Work for People with Disabilities: International Perspectives
- Translating International Principles into Practice in National Legislation
- Legislation concerning training and employment of persons with disabilities in the project countries: Key elements and outstanding issues.

In addition to the technical presentations (see Section 4), representatives of the country teams made a brief presentation on employment-related legislation concerning people with disabilities in their own country. This provided an opportunity for participants to share information and discuss commonalities between their legislative frameworks and implementation issues which they faced. Participants also used this opportunity to comment on and suggest any necessary amendments to the background documents on national disability policy and/or legislation in the selected countries, which had been prepared and circulated in advance of the meeting.

The technical sessions were complemented by working group sessions focusing on the following questions:

- What action is needed to improve the process of developing legislation and implementation measures?
- What are the strengths and weaknesses of existing laws concerning the employment of people with disabilities, and their implementation measures?
- What action is required to improve the effectiveness, in practice, of laws concerning training and employment of persons with disabilities in each of the project countries?

The main points emerging from these discussions are summarized in Section 5.

### **2.2 Participants**

The 38 participants from nine countries (Australia, Cambodia, China, Fiji, India, Japan, Mongolia, Sri Lanka and Thailand) included five representatives of organisations of people with disabilities, eight government representatives, six workers’ representatives, ten employers’ representatives, three resource persons and seven observers (See Annex 1). There was a slight gender imbalance among participants, with 14 women and 24 men attending. Eight participants were persons with disabilities.

## 2.3 Resource persons

The workshop was conducted by three ILO resource persons from the Skills Department, Geneva, the East Asia Multidisciplinary Advisory Team (EASMAT), Bangkok, the South Asia Advisory Team (SAAT), New Delhi with the assistance of two ILO consultants:

- Ms Barbara Murray, Manager, Equity Issues Group, IFP/Skills, ILO, Switzerland
- Ms Debra Perry, Senior Specialist in Vocational Rehabilitation, ILO EASMAT, Bangkok, Thailand
- Mr Coen Kompier, Specialist on International Labour Standards, ILO SAAT, New Delhi, India
- Ms Julie Yoder, ILO Consultant
- Ms Sarah Field, ILO Consultant

## 2.4 Resource Materials

- Biwako Millenium Framework for Action Towards an Inclusive, Barrier-Free and Rights-Based Society for Persons with Disabilities in Asia and the Pacific, May 2002
- Country Profiles on Legislation, Policies and Programmes concerning the Employment of People with Disabilities in Australia, Cambodia, China, Fiji, India, Japan, Mongolia, Sri Lanka and Thailand
- ILO Convention No. 159 on Vocational Rehabilitation and Employment (Disabled Persons), 1983
- ILO *Legislation, Policies and Programmes concerning the Employment of People with Disabilities in Selected Countries of Asia and the Pacific*. Background Paper (Annex 2)
- ILO Recommendation No. 168 on Vocational Rehabilitation and Employment (Disabled Persons), 1983
- ILO Recommendation No. 99 on Vocational Rehabilitation (Disabled), 1955
- ILO Code of Practice on Managing Disability in the Workplace, 2002
- O'Reilly, Arthur *The Right to Decent Work of Persons with Disabilities*, ILO Skills Department Working Paper No. 14, 2003
- Zadek, Simon and Susan Scott-Parker, *Unlocking Potential – The New Disability Business Case*, Employers' Forum on Disability, UK, 2001

### 3. Official Opening

The Technical Consultation was officially opened by Ms Pongsri Phantumvanit, Deputy Director, ILO East Asia Multidisciplinary Advisory Team and Bangkok Area Office and Ms Venus Ilagan, Chairperson, Disabled Persons International.

In her opening remarks, Ms Phantumvanit explained how the ILO project 'Employment of People with Disabilities – the Impact of Legislation', funded by the Government of Ireland, aimed to assist governments to improve the situation of people with disabilities, not just by introducing laws, but also ensuring that they are effectively implemented and that they make a difference to disabled persons seeking to earn a living. The project thus fitted well into the framework of ILO activities concerning people with disabilities, contributing to the development of knowledge on effective training and employment promotion strategies, as well as advocating equal opportunities. It also contributed to the achievement of the work-related targets set in the Biwako Millennium Framework for Action towards an Inclusive, Barrier-Free and Rights-Based Society for Persons with Disabilities in Asia and the Pacific. She encouraged participants to take the opportunity provided by the Project Consultation, to focus specifically on action needed to ensure that laws concerning the training and employment of persons with disabilities are effectively implemented. The Consultation would also enable participants to explore the possibilities for closer collaboration and mutual support between countries in the Region, to the benefit of people with disabilities who wish to work and can work, and to make a contribution not only to their own livelihood, but also to their families, communities and the wider society.

Referring to the emergence of the disability rights movement worldwide since the 1980s, Ms Venus Ilagan said that the Asia/Pacific Decade of People with Disabilities 1993-2002 heralded a new era in which the focus switched to disability as a social issue and more recently, a human rights issue. During the Decade, many states in the region enacted legislation concerning disabled persons, but these have fallen short in producing results, since over 200 million people with disabilities of working age in the Asia/Pacific region were still denied access to employment. She hoped the proposed UN Convention to promote and protect the rights and dignity of persons with disabilities would further highlight the right to work of disabled persons and that partnerships forged during the ILO Project Consultation would help make a difference to the gainful employment of people with disabilities.

Ms Barbara Murray, IFP/SKILLS, outlined the objectives of the Project Consultation, which was intended to provide participants with an overview of the main trends in employment-related legislation concerning people with disabilities in the Asian and Pacific Region and its implementation. She invited participants to review the country reports on existing disability policy and legislation and suggest amendments to these where necessary. During the working group sessions of the Consultation, they would be asked to identify revisions required in existing laws and their implementation mechanisms, and identify possible technical support which might be provided at national level through the ILO project in drafting or revising these laws and implementation mechanisms. Such technical support would be provided on request and might include a national workshop for drafters of legislation, employers', workers' and disabled persons' representatives and/or specialist advice on the drafting or revision of national legislation concerning the employment of disabled persons.

## 4. Technical Presentations

### 4.1 Decent Work for People with Disabilities—International Perspectives

*Barbara Murray, Manager, Equity Issues Group, IFP/Skills, ILO, Switzerland*

#### Introduction

The primary goal of the International Labour Organization is to promote decent work for everyone, including persons with disabilities, in the form of productive work in conditions of freedom, equity, security and human dignity. The ILO, in particular through its Disability Programme, has worked for over 50 years to promote employment opportunities for people with disabilities, based on the principles of equal opportunity, equal treatment, mainstreaming and community involvement. The principle of non-discrimination is increasingly emphasised, as disability issues have come to be seen as issues of *human rights*.

Progress towards decent work is reflected in policy statements and laws, as well as in programmes, services and projects initiated at national and international levels. Main trends in policies and laws are summarized in this presentation, before examining the question of impact and highlighting the key issues that remain to be tackled, if decent work is to become a reality for people with disabilities.

#### Moving towards Decent Work – International Level Initiatives

There have been 13 international initiatives concerning persons with disabilities since 1955. These initiatives aim to promote full participation with equality of disabled persons in all aspects and sectors of society, and point to the need for a society for all. Increasingly, disability is viewed internationally as a form of diversity and people with disabilities are seen as citizens with the same rights as other citizens.

##### **International Initiatives concerning Disabled Persons, 1955 - 2002**

- ILO Recommendation concerning Vocational Rehabilitation of the Disabled 1955
- UN Declaration on the Rights of Mentally Retarded Persons 1971
- UN Declaration on the Rights of Disabled Persons 1975
- UN International Year of Disabled Persons 1981
- The World Programme of Action Concerning Disabled Persons 1982
- UN Decade of Disabled Persons 1983-1992
- ILO Convention concerning Vocational Rehabilitation and Employment (Disabled Persons) 1983, (No. 159) and Recommendation No. 168.
- Council of Europe Coherent Policy for the Rehabilitation of Persons with Disabilities, 1992
- UN Standard Rules 1993
- The Asian and Pacific Decade of Disabled Persons, 1993-2002 and 2003-2012
- Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities 1999
- The African Decade of Disabled Persons 1999 - 2009
- Proposed UN Convention on the Rights of Persons with Disabilities

In addition to these initiatives specifically concerning persons with disabilities, there have been 13 international instruments and documents dealing with general population since 1944, including several dealing with human rights, which make explicit mention of disabled persons.

#### **International Instruments and other Documents mentioning Disabled Persons**

- ILO Employment (Transition from War to Peace) Recommendation (No. 71) 1944
- ILO Social Security Convention 1952
- European Social Charter 1961
- ILO Human Resources Development Convention (No. 142) and Recommendation (No. 150), 1975
- African Charter on Human and Peoples' Rights 1981
- Additional Protocol on the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights 1988
- UN Convention on the Rights of the Child 1989
- Vienna Declaration and Programme of Action, World Conference on Human Rights 1993
- The Copenhagen Declaration and Programme of Action, World Summit for Social Development, 1995
- The Beijing Platform for Action, Fourth World Conference on Women, 1995
- EU initiatives
  - Treaty of Amsterdam 1997
  - EU Charter of Fundamental Rights 2000
  - EU Directive on Discrimination 2000

Finally, since 1948, there have been five other significant international legal instruments dealing with human rights or with discrimination, in which there is no mention of disabled persons, although the provisions of the instruments apply to all citizens.

#### **Human Rights/Non Discrimination Instruments - no explicit mention of disabled persons**

- Universal Declaration of Human Rights 1948
- European Convention on Human Rights 1950
- ILO Discrimination (Employment and Occupation) (No. 111) 1958
- UN Covenant on Economic, Social and Cultural Rights 1966
- UN Covenant on Civil and Political Rights 1966

#### ***ILO Standards concerning Persons with Disabilities***

While all ILO standards apply to persons with disabilities either explicitly or implicitly, four instruments have been introduced to deal specifically with disability-related concerns in vocational training and employment.

Convention No. 159 on Vocational Rehabilitation and Employment (Disabled Persons) was adopted by the ILO in 1983, at the start of the United Nations Decade of Disabled Persons. This Convention, which is a binding international treaty, calls upon States to formulate, implement and periodically review a national policy on vocational rehabilitation and employment of persons with disabilities, based on the principles of equal opportunity and

equal treatment, aimed at mainstreaming of opportunities and services where possible and appropriate. Consultation should take place with the social partners and with organizations of and for persons with disabilities in developing an implementation strategy for this policy. Measures to be introduced should include vocational guidance, vocational training, placement, employment and other related services, using existing services. Provision should be made for the needs of disabled persons in rural as well as urban areas, and those in remote communities. Provision should also be made for the training and availability of suitably qualified staff. The Convention has been ratified by 73 States to date, with 14 new ratifications since 1999 – a reflection of the level of priority that governments around the world attach to disability issues.

Guidance on the implementation of Convention No. 159 is given through Recommendation No. 168 concerning Vocational Rehabilitation and Employment (Disabled Persons) which accompanies it, and also through Recommendation No. 99 concerning Vocational Rehabilitation of the Disabled of 1955, a stand-alone recommendation which was before its time in proposing mainstream training and employment opportunities for people with disabilities, where appropriate. Support is given to ILO Member States in implementing the Convention through activities of the ILO Disability Programme - policy advice, training programmes, seminars, meetings, publications as well as technical cooperation activities. Regular reporting is required and the ILO Committee of Experts monitors the implementation of the Convention.

The ILO Code of Practice ‘Managing Disability in the Workplace,’ adopted in October 2001, provides guidance on managing disability issues in recruitment, promotion, job retention and return to work. While Convention 159 targets national governments, the Code is aimed primarily at enterprises – to large, medium-sized or small enterprise, in the private or public sector, in urban and rural areas of developing or highly industrialized countries, in market economies and transition economies. The Code also addresses employer organizations, which have an important role to play in the process of promoting disability management, and thus employment opportunities for disabled persons among their members’ companies. They may act as advocates, providing information and advice, as well as providing opportunities for employers and disabled persons to meet in both formal and informal settings. The Code is also aimed at workers’ organizations and governments, whose support and cooperation is required if the integration of people with disabilities into the workplace is to be effectively promoted. The role of organizations of and for people with disabilities is also part of the mosaic, and important to effective implementation. This is acknowledged in the Code, which recommends consultation with these organizations, in addition to consultation with the individual worker with a disability.

The Code, which is an agreed set of guidelines on the topic of disability management, adds to the range of standards which the ILO uses in its work to promote the employment of disabled persons, reflecting the significant changes which have taken place in the understanding of disability and in legislation, policies and services concerning disabled persons since 1983.

### ***Proposed UN Convention***

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

(...) to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities, based on the holistic approach in the work done in the fields of social development, human rights

and non-discrimination and taking into account the recommendations of the Commission on Human and the Commission for Social Development.

The work of this Committee commenced in July 2002. The work on drafting the Convention is expected to commence in June 2003, during the second meeting of the Ad Hoc Committee. Regional meetings will take place in preparation for this in the early months of 2003. The ILO has commissioned a paper on 'The Right to Decent Work of Persons with Disabilities' as a contribution to the deliberations taking place in preparation for the development of this Convention. The paper is intended to be of specific relevance to those involved in drafting the provisions concerning employment and work in the proposed Convention. By examining the development over time of the 'right to work' of disabled persons, the way in which this matter has been dealt with in international instruments and national legislation to date, and the experience in implementing employment and work opportunities, it is hoped that the paper will enable those involved in the preparation of the proposed UN Convention to build on achievements so far.

### ***Impact of International Initiatives***

There has been considerable support for the international initiatives and instruments concerning persons with disabilities, not only from governments, but also from disabled persons' organizations, non-governmental organizations, and to a certain extent, employers' and workers' organizations. This is reflected, for example, in the widespread adoption of the goal of full participation with equality, and the development of national policies and programmes to give effect to this. It is also reflected in the campaign to develop a UN Convention on the issue coming from national level, with organizations of and for disabled persons playing a key role in the process.

Yet, although considerable progress has been made at the international level in promoting opportunities for disabled persons, international action is directed to assisting and supporting national efforts, as it is at individual country level that primary responsibility lies.

### **Moving towards Decent Work – National Legal Frameworks**

In line with the policy developments that have taken place internationally, training and employment opportunities for people with disabilities have changed dramatically at national level in recent years, reflecting a strong, growing movement towards promoting the inclusion of disabled persons in all sectors of society. In the field of employment, there is much greater emphasis than before on the promotion of opportunities in competitive employment, with supports where required, and a smaller emphasis on providing work opportunities in special centres. National laws now in place to promote employment opportunities for people with disabilities include legislation on quota obligations, employment equity and non-discrimination laws, and laws on job-retention.

***Quota schemes*** involve an obligation on companies of a certain size to employ a specified percentage of people with disabilities in their workforce. If employers do not fulfil this obligation, many countries require them to pay a contribution into a central fund to be used to promote the accessibility of workplaces or for vocational rehabilitation purposes. Some countries have recently introduced new options for employers, in an attempt to promote the effectiveness of such schemes in leading to jobs for disabled job-seekers, rather than monetary contributions to the special funds. In France, for example, employers may enter into an agreement with the State concerning the recruitment, training or integration of workers with disabilities, or adaptation to technological change, in partial fulfilment of their quota requirement. Countries with this type of legislation include many European countries, such as

France, Germany, Poland and Italy, several Asian countries, such as China, Japan and Thailand, and several African countries, including Mauritius and Tanzania (Mainland).

**Anti-Discrimination Laws** make it unlawful for employers to discriminate on the basis of disability in recruitment, promotion, dismissal and other aspects of employment, or in training programmes. These laws generally require employers and service providers to make *reasonable accommodation* for any specific requirements they may have, and in some cases, to develop affirmative action plans. Employers and service providers may be required to demonstrate compliance with the law in tendering for government contracts. Countries with this type of legislation include Australia, Canada, Namibia, New Zealand, the Scandinavian countries, South Africa, the United Kingdom and the United States.

**Job Retention Laws** oblige employers to retain a worker who acquires a disability while in employment. In some cases, this obligation applies where the worker's disability arises from a work-related accident, injury or disease, while in others, it also applies where the disability is not work-related. Under this group of laws, workers are encouraged to return to work, after retraining if necessary. In some cases, employers are required to play an active role in the early detection of disability and the development of rehabilitation programmes.

Provisions concerning training of persons with disabilities are made in equity/anti-discrimination laws, constitutional provisions and laws or regulations relating to special training centres. Quota laws generally do not make provision for training. In some countries, the decision to promote access of disabled persons to mainstream training centres is made by government decision, rather than laid down in formal provisions.

## **Outcomes**

While it is easy to document the shifts which have taken place in disability-related policies and legislation, it is less easy to document the outcomes of these innovations, in terms of impact on opportunities open to disabled persons. Systematic evidence on the impact of employment related legislation is available for some countries only. More commonly, there is a lack of impact assessment. It is clear that in the move to promoting the civil rights of persons with disabilities, considerable progress has been made at the legislative and policy levels, and in some areas of service provision. It is also clear, from what evidence has been compiled, that progress has not been as fast, as easy, or as far as had been expected.

### ***What determines effectiveness?***

In addressing the question of the effectiveness, several key aspects of legislation are examined here:

- the model of disability
- the concept of equality
- the location of the legal provisions
- implementation measures
- enforcement mechanisms

### **Model of Disability**

Where disability is understood as a 'moral' matter, associated with shame or guilt, the policy response is generally one of care by the family or by religious institutions, and solutions often involve charity. The legal approach associated with this understanding of disability has been described as 'Charity Law' (cf Degener and Quinn, 2000). This type of law (often called 'Poor Law') aims to alleviate complete destitution and provides for basic services, in segregated settings that are often very stigmatised.

Where disability is understood as a medical matter, the policy approach involves care, service provision in separate institutions, and solutions involve individual rehabilitation to enable a person to live life as *normally* as possible. Legislation based on this understanding of disability provides for social security, social protection, and health services. More fundamentally, this type of legislation aims to provide compensation to an individual for the disability, and service provision is in segregated settings, sometimes stigmatised. In relation to employment, quotas have been provided for under this approach, where the underlying assumption is that people with disabilities are lower prospect workers with lower productive capacity than non-disabled persons. Enforcement mechanisms associated with quota schemes often gave the impression that people with disabilities could not be employed on merit, and in some cases that not to meet the quota obligation was a criminal offence.

Where disability is seen as a social construct, the policy approach emphasises integration or inclusion and solutions involve removal of social barriers – in the built environment, in laws and policies, in the way activities are organized, in the assumptions people make. Equity/Anti-Discrimination Laws are the type of legislation associated with this approach. Such laws focus on tackling structural inequality and societal exclusion, treat disability as a human rights issue, seeing people with disabilities as citizens with citizenship rights and require that reasonable accommodation be made to cater to any special requirements which they may have. The emphasis is on mainstreaming. The laws may cater specifically to people with disabilities, or may cater to a number of groups facing disadvantage.

More recently, taking into account the need to improve the effectiveness of quotas in promoting employment for disabled persons, some countries (e.g.; France) have introduced reforms to focus more on the removal of social barriers in the workplace, and to provide a wider range of options for employers, including the option of providing for training on the job (Apprenticeships), thus making the quota scheme into more of an affirmative action tool.

### Concept of equality

In looking at the laws with a view to analysing their effectiveness in promoting opportunities for people with disabilities on the ground, it is important to examine the concept of equality as it is defined in the laws. A judicial, formal concept of equality makes direct discrimination illegal and underlines the notion that disability is not the problem, but does not require accommodations or adjustments be made. Where equality is viewed in terms of results, or outcomes, it is implicit that account is taken for example, of any additional costs a disabled worker has, in examining the question of whether they receive equal pay. This concept of equality does not give a clear indication though of whether the State or the private sector is responsible for meeting the needs of disabled persons, and may give legitimacy to separate service provision for disabled persons

Another way in which equality may be conceptualised is through equality of opportunity. This concept provides for equal chances, but not necessarily equal results. In this way of looking at equality, both stereotypes and structural barriers are seen as obstacles to inclusion. In this approach, disability is ignored if stereotypes are the basis for action, and considered if changes to the social or built environment are necessary to promote access and inclusion. This concept is now the most frequently applied.

### Legal Approach

In considering the effectiveness of laws in practice, another dimension which needs to be examined is the legal approach adopted: whether the provisions are located in criminal law, constitutional law, civil law, labour law or social welfare law. **Criminal law provisions** - involving fines and imprisonment – only have impact if it can be proven that the person (e.g.

the employer) had bad intention. This can rarely be proved since persons frequently discriminate without having hostile feelings to disabled persons. Such provisions do not seem to have much impact. **Constitutional law provisions** usually prohibit discrimination in general terms, without defining it specifically. As the constitution is the highest law in the land, constitutional amendments have to be taken into account by the judiciary, thus may lead to reform in disability case law. But this type of provision does not give substantive rights to citizens, and tends to be broad and vague. Procedures are very complicated, if someone wishes to bring a court case and also require a large amount of resources. Nonetheless, such provisions have more impact than criminal law. In **Civil and Labour Law provisions**, the scope of the law is specified in greater detail, precise definitions are given (e.g. of what constitutes discriminatory practice) and provision is made for enforcement. This is the most effective location of laws relating to the rights of people with disabilities. Where provision for people with disabilities is made in Social Welfare Law, they are usually vague, sometimes combining limited, vague rights-based provisions alongside traditional provisions on disability prevention and rehabilitation, but often having a sole focus on social services and integration principles, rather than rights.

Some countries take what has been described as a ‘twin track approach’, combining provisions in the labour law with additional provisions in laws specific to people with disabilities or other vulnerable groups.

#### Implementation Measures

Many governments have introduced a range of measures to support the implementation of policies and laws. These include financial supports to employers to serve as an incentive or to ensure that the employment of the person does not cause any additional cost or other problems to the employer, and support services to ensure that the relevant technical advice is provided and any problems are quickly resolved. Supports are also provided for workers with disabilities, including personal assistance services, communications services, assistive devices and on-going support with problem resolution.

#### Enforcement mechanisms

Enforcement of the law may be foreseen through the Labour Inspectorate; through an administrative monitoring system, such a National Disability Council or an Equality Commission which caters to the population at large; or through the judicial system, either in the criminal courts, civil courts (dealing with a variety of cases) or labour law courts (dealing specifically with labour-related topics).

### Key Issues

It is generally agreed that, while considerable progress has been made in recent decades in the development of policies and laws which aim at promoting equality of opportunity for people with disabilities, these have not yet had a significant impact in improving the lives of people with disabilities. Some of the reasons for ineffectiveness of the progressive laws which have appeared on statute books around the world lie in the legislative framework, arising from the co-existence of laws on the statute books which are based on different concepts of disability and make conflicting provisions for disabled persons. Others lie in the inappropriate location of the law, while others lie in the lack of adequate enforcement mechanisms. Provision for affirmative action appears to be a key factor in increasing the impact of employment-related legislation and, importantly, the involvement of the social partners (both employer and worker representatives) and representatives of and for disabled persons in the process of designing law and policy.

## **4.2 Translating International Principles into Practice**

*Coen Kompier, International Labour Standards Specialist, ILO/SAAT, New Delhi*

### **The Principle: Rights for People with Disabilities are Human Rights**

Today it is universally accepted that rights for people with disabilities are human rights, and not merely a welfare matter. This dramatic shift is the result of hard work by numerous organisations and individuals over the two past decades at national and international level. In essence, the human rights perspective on disability means viewing people with disabilities as subjects, and not objects. It entails moving away from viewing people with disabilities as problems towards viewing them as holders of rights. Importantly, it means locating problems outside the disabled person and addressing the manner in which various economic and social processes prevent and accommodate the difference of disability. The debate about the rights of disabled persons is therefore connected to a larger debate about their place in society.

### **The Practice: Towards Achievement of the Principle**

#### ***Policy***

Economic and social empowerment and mainstreaming people with disabilities into the labour market is at the heart of the mandate of the ILO. Underlying the ILO international labour standards relating to disability is the conviction, that issues facing disabled persons are issues of human rights. Issues to do with economic empowerment are of central importance to independent living and sustainable livelihoods, and need to be dealt with in the framework of labour market policy rather than under the umbrellas of social protection.

Labour market policies for people with disabilities have many faces, but the sheer recognition, by governments, business, labour and interest groups, of the human rights factor has been spurring action taking major steps towards these goals of independent living and sustainable livelihood for people with disabilities. Most countries have now developed policies towards people with disabilities since the nineties of the past century. In general, these policies include the establishment of Ministries, Disability Councils, or similar competent authorities endowed with a variety of powers. These powers can vary from advisory services and research to the specific task of drafting and proposing new legislation.

#### ***Legislation***

In pair with the policy development process over the past twenty years, considerable international and national efforts have been made to put specific legal provisions regarding disability on the agenda of national governments. At national level, international principles have been translated into different types of legal frameworks, such as Constitutions, Labour Codes, Employment or Conditions of Work Acts, Equality or Non-discrimination Acts, Laws concerning Training and Access to Employment, Public Services Statutes and Regulations, Disability Acts, Health Acts, HIV/AIDS laws, codes of practice and collective agreements.

#### ***Constitution***

Constitutional provisions generally lay down fundamental rights such as the right to work, to engage in a freely chosen occupational activity, to education and vocational training (Bangladesh), or set forth general principles such as equality of opportunity and treatment. In many countries worldwide, provisions refer to the rights of people with disabilities in employment and occupation, or guarantee the means to further their social integration. These include provisions concerning vocational rehabilitation and employment of disabled persons (China, Philippines).

### ***Special legislation***

Many Asia Pacific states have enacted legislation that aims to protect the rights and ensure the social equality of persons with a disability<sup>1</sup>. These include Indonesia, Japan, Pakistan, Philippines, New Zealand, Australia, India, Sri Lanka and Thailand. However, the approach used and the extent to which these laws are implemented varies widely.

A critical review of different national legal measures, by the Asia Pacific Human Rights Network (New Delhi, November 2002)<sup>2</sup>, has proven to be a mixed one. On the positive side, it testifies of an extremely comprehensive system in Australia underpinning the Commonwealth Government disability strategy. The 1992 Federal Disability Discrimination Act is implemented through a series of Disability Standards, for which non-compliance is punishable by law.

On the negative side, APHRN states that Indian legislation on persons with a disability is vague in terminology and lacks a supporting framework. Moreover, funding of an effective policy is made dependent on the limits of the state's economic capacity. The Philippines fares little better. The human rights group claims that the effectiveness of the country's Magna Carta for Disabled Persons is undermined by lack of awareness, and puts the fact forward that it took nearly ten years before the first cases were filed under this enactment. In April 2002, those cases had yet to be heard by a court of law. Despite recent disability legislation, some Thai laws still exclude people with disabilities from several occupations. In October 2002, a Constitutional Court upheld the decision of a government agency to bar a person with a disability from taking an exam to become a prosecutor, effectively concurring with the agency's assessment that his "personality and body were in an inappropriate state".<sup>3</sup>

Human rights groups are critical by nature, but an ILO Technical Consultation Meeting on Employment of People with Disabilities<sup>4</sup> confirmed that the impact of legislation was at the heart of their meeting's debate as well. It appeared from the discussions that few labour administrations carry out regular assessments of laws concerning training and employment of people with disabilities, especially when laws fall under the responsibility of various ministries and agencies. The role of labour inspectorates was discussed at length, as well as the importance of informing and training actors that play a vital role in enforcing disabilities laws.

### ***Consultation***

Consultation is a key prerequisite for any legislation and policy matters. Different forms of consultation, of varying scope, may take place when translating international policy into national legal frameworks. From the ILO's standpoint, consultations must be with representatives of employers' and workers' organisations<sup>5</sup> and relevant (government)

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<sup>1</sup> Disability legislation generally contains sections dealing with: scope of the law; definitions; rights and responsibilities; ban on dismissal and other detrimental acts; special measures; institutional structures within or outside the labour administration - tripartite plus composition - reporting - budget - administrative support -; functions of National Disability Councils; employment services; role of medical board; research and advocacy, but not to forget enforcement - role of inspection services and labour courts, complaints, sanctions, administrative/penal fines, imprisonment, civil actions; and Equal Employment Opportunities Plans.

<sup>2</sup> Document submitted at the Seventh Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, on the proposed UN Convention on the Rights of People with Disabilities

<sup>3</sup> Associated Press, available at [www.mdtp.org/tt/2002.10/art\\_2.html](http://www.mdtp.org/tt/2002.10/art_2.html)

<sup>4</sup> Employment of People with Disabilities: The Impact of Legislation, Report of a Technical Consultation, Addis Ababa, 20 - 22 May 2002

<sup>5</sup> Consultation of social partners on matters regarding international labour standards are compulsory for governments if states have ratified ILO Convention No. 144 on Tripartite Consultation (ILS), while numerous ILO Conventions specify areas for tripartite consultation. Among them is Convention 159.

institutions, including the participation of concerned stakeholders. The importance of genuine consultation and full participation cannot be underestimated, and the active participation of social partners in Australia may well be at the very heart of its relative success on integrating persons with disabilities into the labour market.

Comments by the ILO's Committee of Experts<sup>6</sup> on the application of ILO Convention No. 159 make it clear that not all countries have adopted a genuine and fruitful *tripartite* approach towards disability legislation and policies. In Japan, normally a beacon of light in the land of consultation, the Committee points out that the Central Deliberative Council is comprised of 20 members, mainly representatives of disabled persons' organizations, social agencies concerned with issues of disabled persons, academics, and one business representative. It appears to the Committee that trade unions are not represented.<sup>7</sup> In Pakistan on the other hand, the Committee noted that one representative of registered trade unions is appointed to the national and to each of the provincial councils for the rehabilitation of disabled persons, by virtue of Sections 3 and 5 of the Disabled Persons (Employment and Rehabilitation) Ordinance, 1981.<sup>8</sup>

To be effective, workable and to realistically meet the needs of a country, consultations take different forms. Ad hoc tripartite task forces are established in some countries, or sometimes, the consultation process uses existing tripartite bodies or the Ministry of Labour's direct contacts with social partners and the issuing of White Papers. Alternatively, the consultation process is driven by national and international consultants who are hired to assist the drafting of law. It is common practice for national or provincial tripartite seminars to be carried out to finalise the texts with optimum stakeholder involvement.

## **Globalization and the Role of the State**

Finding its roots in the World Programme of Action concerning Disabled Persons (1982), the 1993 UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities provides policy guidance to States. There are 22 Standard Rules in which States are requested that they *should* do something. On employment, "States *should* recognise the principle that persons with disabilities must be empowered to exercise their human rights, particularly in the field of employment. In both rural and urban areas they must have equal opportunities for productive and gainful employment in the labour market."

The current wave of globalisation hitting all economies makes the question relevant whether the Standard Rules are directed to the right party. Globalisation diminishes the role of the state in a substantial matter. Trade rules and environmental standards are now at the prerogative of the world community at large, with influential actors on board, and more vulnerable ones. Competition is becoming increasingly fierce, and there is real fear for a race to the bottom undermining rights at work. At national level in some countries, social partners manage day-to-day management of the labour market through collective agreements without any substantial interference of governments. It is therefore a necessity that all relevant stakeholders and actors in the field of disability should be defined as the "State", and not governments only.

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<sup>6</sup> In general, the ILO Committee of Experts in its supervising work on ILO Conventions can play an instrumental role in identifying shortcomings and strong points of national legislation and policies.

<sup>7</sup> Direct Request 2000 on application of Convention No. 159.

<sup>8</sup> Direct Request 1998 on application of Convention No. 159

## *Voluntarism*

With government under pressure and finding it increasingly difficult to implement policies and enforce legislation in general, the responsibility of social partners and other stakeholders are steadily increasing to resolve matters without government interference. Government may face constraints from various sides, but funding is increasingly becoming the core problem for smooth implementation. If business and labour can mutually agree on fundamentals and policy implementation, labour inspection services could shift their attention from inspection and dispute settlement towards monitoring and conflict prevention, possibly a more efficient solution. According to ILO research, social dialogue, especially at sectoral and enterprise level, is the highway towards globalisation.

Globalisation has given rise to mushrooming of Codes of Conduct and Codes of Practice. Some are established by multinational enterprises themselves. Others are constructed by business and labour together affecting an entire sector, while some take advantage of input by academicians and human rights groups, such as Social Accountability 8000 (SA 8000). All these Codes have the intention to monitor producers on working conditions and labour relations in common, and are based on voluntary compliance. Ironically, when similar provisions are deriving from labour laws, implementation tends to be weak in many countries. As soon as producers are confronted with possible negative production output because of violation of Codes of Conduct, compliance tends to increase.

The ILO Code of Practice on Managing Disability in the Workplace, agreed by a tripartite meeting of experts and adopted by the ILO Governing Body in 2001, is designed to provide guidance both to employers who have already provided opportunities to disabled persons and those who have not yet done so, in managing disability issues which may arise in recruitment, employment, advancement, job-retention and return to work for people with disabilities. Specifically, it looks at the design and establishment of work practices which will effectively enable people with disabilities to integrate in the workplace. While legal in tone, the Code is not a legally binding instrument and is not intended to supersede or replace national legislation. Rather, it is intended to be read in the context of national conditions, as an additional guidance in the field of employment to that contained in ILO Conventions and Recommendations.

This 'peer pressure' created by voluntary codes, whatever one may think about it, creates new opportunities of different character, with the objective to promote employment opportunities for persons with disabilities. It encourages social dialogue whereby both employers' organisations and trade unions are refraining from confrontation, but depart from the premise that a healthy society will be reflected in a sound and productive working environment. Second, codes of conduct affecting exporting firms in developing nations can include provisions on promoting and mainstreaming employment for people with disabilities.

A vital opportunity can also be found in "the business case". In general, the ILO is emphasising that initial costs made to respect labour standards are outweighed by its benefits, both socially and economically. Simplifying the matter, it is argued that a happy worker is skilled, committed, efficient and productive. Turnover of labour is minimised, industrial accidents decrease and the labour force is motivated hence disciplined. The ILO Code of Practice reiterates the importance of removing barriers to recruitment, promotion, job retention and return to work which disabled job-seekers face. It highlights the business case for employing people with disabilities<sup>9</sup>, which has grown stronger as more and more women

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<sup>9</sup> See "Unlocking Potential - The New Disability Business Case", by Simon Zadek and Susan Scott-Parker, Employers' Forum on Disability, UK, 2001

and men with disabilities have entered the active labour market and demonstrated their work capacity.

### ***Funding***

Some countries, despite political willingness and a sound regulatory framework, face difficulties in footing the bill of policies dealing with people with a disability. Economic downturn and massive unemployment, under the umbrella of globalisation according to some, will make it extra difficult to mainstream persons with disabilities into the labour market. In their 1998 General Survey, the ILO Committee of Experts reported "that a significant number of developing countries cited economic and social obstacles, in particular the unemployment situation affecting the non-disabled population, in justification of the fact that they have not formulated even the most basic national policy or measures to promote the employment of people with disabilities."<sup>10</sup> To remedy this situation, additional sources of funding may become necessary for countries that wish to undertake these policies in spite of economic and social adversaries. Ultimately, lending may be sought from international financial institutions, such as the World Bank, which is now, it seems, opening up to provide loans and improved technical assistance on the issue of disability.

In the 1990s, the World Bank took the position that investments in human resources are among the most important to the development process, and social and economic inclusion of the world's most marginalised populations is counted among the Bank's highest priorities. In his recommendations<sup>11</sup>, Robert Metts encourages the Bank to extend its lending initiatives to development activities and social programmes for the benefit of people with disabilities. He urges that the Bank should do more than simply request that clients make an effort to include people with disabilities in its sponsored activities. It must also assist them by developing and providing in-house expertise on disability-related technical assistance. He also encourages the Bank to extend loans for taking down architectural and design barriers to allow a smooth physical infrastructure for people with a disability.

Appropriate funding remains at the core of any policy promoting social and economic inclusion of persons with a disability. More and more, countries are exploring financial incentives to both employers and employees to minimise the cost of related social security schemes. To facilitate the employment of disabled employees, financial incentives to employers include grants, relief from social security contributions, tax credits and wage subsidies. Financial support to employees may take the form of direct assistance for tools, equipment, educational material and technical aids. In some countries, social security measures are now being designed to encourage disabled beneficiaries to become employed.

### ***Private/Public Partnerships?***

Whatever the nature of "States", or whatever the character of supervision or enforcement, a successful national policy on promoting employment of people with disabilities is a matter for all. Governments retain their responsibility to sketch the general framework. Genuine consultation of all stakeholders thereby is an indispensable factor. At the same time, employers' organisations and their members can join government in creating awareness and advocacy campaigns. Training of their members on disability issues, and special measures to integrate persons with disabilities are being applied and explored, while more research should be conducted on the relevance of "the business case" when hiring persons with disabilities. Trade unions play a similar role. They could also ensure increased membership of persons with disabilities, and include them at all ranks.

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<sup>10</sup> par. 189

<sup>11</sup> See note 2

When both business and labour are consulted by government and invited to participate at all stages of policy-making and in the preparation and drafting of legislation, policies are likely to succeed. Business and labour together can support and facilitate governmental efforts by ensuring application of voluntary codes, such as the ILO Code of Practice, at sectoral and enterprise level. They have other instruments at their disposal also. Very little use, for example, is made of collective agreements to address promotion of employment of people with disabilities<sup>12</sup>, either between social partners directly, either between public authorities or agencies responsible for vocational rehabilitation programmes and training, vocational training and placement institutions, or with enterprises on specific measures for people with disabilities.

### ***Or Public/Private partnerships?***

Whereas social partners can exert their influence in the formal labour market, the majority of the workforce in Asia and the Pacific is employed in the informal economy. Though business in developing countries has established firm backward linkages with the informal part of the economy, it would be unfair to leave promotion of persons with a disability in this sector to business alone. Self-employment schemes for persons with disabilities deserve the greatest attention of governments in particular, while trade unions and other stakeholders should not stay behind. Access to credit, and training schemes such as the ILO's Start Your Business/Improve Your Business, could be at the forefront to promote employment of people with disabilities in the informal economy.

Local authorities in particular have a preponderant responsibility for special vulnerable persons with a disability. Approximately eighty percent of all persons with disabilities in developing countries live in rural areas and remote communities. The problem is exacerbated by the fact that in most cases people with disabilities also live in extreme poverty. The absence of medical infrastructures in these areas means that the disability is detected too late, and so is often irreversible. Thus the number of disabled persons in developing countries continues to grow, and what is more, their isolation and exclusion are compounded by the population explosion.

### **Points for Discussion**

The world community effectively embraces the statement that rights for persons with disabilities are human rights. The objective of these rights, social and economic empowerment of people with a disability, can only be assured through political and social action, and institutional and legal strengthening with full participation of social partners complemented by other relevant actors in society. The equal inclusion of all persons with a disability in the labour market, whether man or woman, affluent or poor, urban or rural, employed or unemployed in the formal or informal economy, needs more than a private/public partnership where life depends on volunteering. Preventive measures, effective policies and appropriate legislation remain necessary to achieve social and economic empowerment of people with disabilities, as expressed by numerous principles in national and international instruments. Only a strong and determined government, supported by a committed and active community, surrounded by a generous and equitable international environment will surpass the achievements made in the past twenty years.

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<sup>12</sup> In Fiji, the banking sector has concluded one collective agreement to integrate persons with disabilities in its employment policy.

## **4.3 Legislation concerning Persons with Disabilities in Project Countries: Key Elements and Outstanding Issues**

*Barbara Murray, Manager, Disability Programme, IFPSkills, ILO, Geneva*

A review of legislation concerning vocational training and employment of people with disabilities in selected countries of Asia and the Pacific was carried out as the starting point of the ILO/Ireland Aid project *Employment of People with Disabilities – the Impact of Legislation* in the region. The countries included in the review are Australia, Cambodia, China, Fiji, India, Japan, Mongolia, Sri Lanka, and Thailand. In addition to examining the provisions of the laws, the review compiled information on the consultation procedures involved in developing and implementing the laws, the measures introduced to promote their implementation and enforcement mechanisms in place. Information was also sought on the impact of the laws in terms of their outcome for persons with disabilities. This presentation summarizes the findings of the review in terms of the general approach taken, the consultative processes involved, the enforcement mechanisms in place, the implementation strategy adopted, and the outcome of the legal provisions. The review is presented in full in the Background Document prepared for this Project Consultation (see Annex 2)

### **General Approach**

#### ***General Laws or Disability-Specific Laws***

Several of the countries studied - Australia, Fiji, Japan, Mongolia and Sri Lanka - make provision for people with disabilities in general laws concerning training and employment of persons with disabilities. Two of the countries (Japan and India) have laws specifically concerning the vocational rehabilitation and/or employment of disabled persons while eight countries have specific disability laws containing a range of provisions in different areas (Australia, Cambodia, China, Fiji, India, Japan, Sri Lanka and Thailand).

Four countries – Australia, Fiji, Japan and Sri Lanka take a ‘twin-track’ approach to promoting training and employment opportunities for people with disabilities, in that provisions are included both in general laws and in those specifically focused on the employment and vocational rehabilitation of persons with disabilities.

#### ***Provisions for Employment***

Seven of the countries have quota or quota/levy systems in place (China, India, Japan, Mongolia, Sri Lanka, Thailand) or are proposing to introduce such a scheme (Cambodia). In India and Sri Lanka, the quota obligation applies only to public sector, while in Thailand, it applies solely in the private sector.

Five countries - Australia, China, India, Mongolia and Sri Lanka – include anti-discrimination provisions in their laws, as does the draft law in Cambodia. With the exception of Australia and Fiji, these provisions are included in disability-specific laws, rather than in general anti-discrimination legislation.

#### ***Provisions for Vocational Training and Rehabilitation***

Six of the countries studied make legal provision for vocational training of people with disabilities – Australia, China, Fiji, Japan, Sri Lanka and Thailand, while the draft law in Cambodia also contains such a provision. One country – Fiji – makes a provision for this in its constitution.

The vocational training provisions in these laws either state that people with disabilities have the right to vocational training (Thailand) and/or stipulate that the acceptance of disabled persons into training institutions is mandatory (Cambodia (draft law) and China). In Thailand, access of disabled persons to mainstream training was introduced by a Cabinet Resolution. Some legal instruments contain provisions requiring proactive measures to be taken by the institutions and/or government (Cambodia, China, Fiji and Japan).

In addition to vocational training provisions, specific provision is made for vocational rehabilitation in the legislation of Japan and Fiji.

### ***Definition of Disability***

Definitions of disability are found in the laws of six of the countries studied – Australia, China, Fiji, India, Japan and Thailand, and also in the draft Cambodian law. The definitions in place in the law of India and Thailand focus on the impairment of the disabled person (a definition associated with the medical model of disability), while the other laws refer to the limiting effect of the disability on activities of daily living (a definition more associated with the social and human rights models of disability).

### **Consultative Process**

Consultation with the social partners and with organizations of persons with disabilities is a key factor in ensuring that laws are comprehensive and appropriate. Countries in the project vary in the extent of consultation which takes place. In three countries - Australia, China and Japan – government ministries, the social partners and organizations of persons with disabilities are consulted as a matter of practice. In five countries – Cambodia, Fiji, India, Sri Lanka and Thailand – the consultative mechanisms involve representatives of government ministries and disabled persons’ organizations. In one country – Mongolia – there is no consultative mechanism in place.

### **Enforcement Mechanisms**

Enforcement of the laws concerning the training and employment of disabled persons in the countries studied is generally through administrative monitoring and inspection, carried out by designated national agencies. In one country – Australia – monitoring of the laws’ implementation takes place through a combination of self-assessment by the relevant authorities and through designated agencies. Two countries – India and Thailand – do not have enforcement mechanisms in place.

### **Implementation Strategies**

#### ***Financial Incentives***

Eight of the countries studied have introduced some form of financial incentive or incentives intended to compensate employers for any additional cost they may incur associated with the employment of a disabled person or persons. Most commonly, tax reduction or exemption measures were in place, along with subsidies for workplace accommodations or adaptations. Wage subsidies to compensate employers in the case of workers whose productivity is less than average are only available in Australia. Both Australia and Japan have the most elaborate systems of financial incentives in place to promote employment opportunities for persons with disabilities, each having over six different schemes to provide financial incentives of different kinds, either to the employer or the disabled person.

### ***Employment Services***

Three of the countries studied – Australia, China and Japan – have extensive specialist placement services which provide a range of supports to job seekers with disabilities. In Cambodia, Sri Lanka and Thailand, a limited employment service is available. In Sri Lanka, a specialist employment service is planned. In two countries – Fiji and Mongolia – there is to date no employment service for persons with disabilities.

### ***Supported Employment***

Two of the countries studied – Australia and Japan – have introduced supported employment programmes which aim to train and support people with disabilities in the workplace. These programmes, which involve the provision of support to the individual disabled persons through a job coach on either a permanent or intermittent basis, and also offer advice and support to employers, are proving to be increasingly effective in enabling the disabled person to secure a job.

### ***Outcomes***

Systematic information on the training and employment situation of persons with disabilities is gathered regularly in two of the countries studied – Australia and Japan. In three countries – China, India and Thailand - some information is available, though this is partial and not gathered consistently. In the remaining countries – Cambodia, Fiji, Mongolia and Sri Lanka – available evidence is largely anecdotal.

Based on the available evidence, it is clear that there is enormous variation across the region in the training and work opportunities open to people with disabilities. Opportunities are much greater in countries with well-established laws and policies, implemented following extensive consultation with social partners and disabled persons' organizations, clearly defined enforcement mechanisms and a range of supports and incentives to employers and disabled persons, than in countries where laws have been introduced by governments acting on their own, with minimal provision for implementation. There is clearly great potential for countries in the region to learn from each other and to build on existing examples of good practice.

A surprising conclusion to be drawn from the available data is that, irrespective of the approach taken and even in the countries with the most elaborate legal and policy provision, people with disabilities remain underrepresented in both mainstream training and employment. This indicates a need for all countries to review their disability-related policies and practices, taking account of changing labour market requirements arising from globalization and technological change.

## **4.4 Discussion**

The technical presentations were followed by discussions in plenary, before participants formed working groups. The key points raised in these discussions are summarized here.

### ***Public Perception of People with Disabilities***

Participants from different countries identified public perceptions of people with disabilities as constituting a major barrier to employment. There is a tendency to focus on the disability rather than on the abilities of disabled persons in initiatives to promote employment opportunities, and this needs to be tackled. Sensitization campaigns need to focus in particular on private employers, who face increasing competitive pressure and need to be assured that people with disabilities are capable of work and can be as productive as non-disabled persons. These campaigns also need to tackle the general perception of some employers that people with disabilities are high-risk, even unproductive, employees, who are difficult to employ and require many accommodations, when the evidence indicates that disabled employees generally have better attendance records, are often as productive if not more productive than non disabled employees, have fewer accidents at work and do not require adjustments.

### ***Information***

Linked to the issue of public perception of people with disabilities and disability-related issues, is the fact that in many countries, there is a dearth of adequate information on the prevalence of disability, and on the service requirements of people with disabilities. Participants emphasised the need for all countries to compile reliable data, broken down by sex, so as to provide an equitable basis for policy making and service provision.

### ***Legislation***

The question of whether the right to work of people with disabilities was only applicable during times of economic prosperity, or whether there was a fundamental right to work that should apply in all circumstances was raised in the discussion. Most participants agreed that this right should not depend on economic circumstances and should be embodied in law. Legislation should have a human rights focus, and take into account that many people with disabilities also face discrimination on the basis of other criteria – a clear example being women with disabilities. Legislation should also apply to people with all types of disability – including intellectual disability and mental health difficulties, which was not always the case at present. It should be based on the social model of disability and make provisions for affirmative action to ensure that people with disabilities have equal opportunities. Provision should be made for enforcement of the laws to promote employment opportunities, to ensure that employers are in compliance. It is important that people with disabilities should be made aware of their legal rights through a concerted campaign, particularly in rural areas.

### ***Policy Measures***

A holistic approach is needed if policy is to have a sustainable impact. This means that in addition to training and recruitment, appropriate provisions need to be made in relation to health, business assistance and self-employment, among other matters. Resources need to be allocated the improvement of training and employment opportunities for disabled persons. Incentives should also be introduced for employers in the form of grants and subsidies, where these are not already in place. The possibility of introducing a universal symbol indicating compliance by employers should be considered. Policy measures should be regularly reviewed to ensure that the desired outcomes are being achieved and that the measures maintain their effectiveness over time. This is particularly important since people with

disabilities face increasing difficulties in accessing the labour market, due to the impact of globalisation and technological change.

### ***Skills Training***

Even where employers have a sense of social responsibility, the question remains of how disabled persons can demonstrate their capacity to work and attempt to be part of the mainstream, especially in those nations where unemployment rates are high. Skills training is of central importance in this and people with disabilities require training in employable skills which reflect the labour market requirements in their localities. The lack of relevant skills training for people with disabilities was identified as a widespread obstacle which prevents them from entering work, even though employers may be willing to hire them.

### ***Capacity-Building***

Organizations providing services to disabled persons require capacity-building to increase the effectiveness of the services they provide and ensure that they are adequately meeting the needs of their clients. Skills training centres in particular need to ensure that the training provided is better linked to labour market needs.

### ***Impact***

One of the key points to emerge concerned the impact of disability laws, whatever their format or content. There was general consensus that the impact was less than satisfactory, even in countries with well established legislation, policy and services. Better observance of the laws were seen as a solution, along with better monitoring systems, set up by law or on an ad-hoc basis, involving the social partners and disabled persons' representatives.

## 5. Working Groups

In the course of the Project Consultation, participants were invited to take part in three working group sessions. The groups were divided into government, employers', workers' and disabled persons' representatives for the first two sessions and into country groups for the final session. Their respective conclusions were reported in plenary session and are summarised below.

### **Session 1: What action is needed to improve the process of developing legislation and implementation measures in the project countries?**

#### *Disabled Persons' Organizations (DPOs)*

- There should be active participation by representatives of disabled persons in drafting and amending laws to ensure legislators are fully aware of the needs of people with disabilities. People with disabilities should be educated in the language of law so that their participation is effective.
- DPOs should act as watchdogs of the legislation by monitoring and reviewing its implementation through their presence on specially established committees.
- A campaign to increase awareness of disabled persons of their legal rights should be undertaken, particularly in rural areas.

#### *Employers' Representatives*

- Consultative mechanisms between social partners should be streamlined.
- Advisory Boards should be established to develop strategies for drafting and amending existing legislation.
- The role of government agencies should be well defined and there should be better coordination between agencies.
- Monitoring of the implementation of legislation should be well coordinated and tripartite mechanisms used, where these exist. Good communication should be developed between employers and the enforcers of legislation.

#### *Workers' Representatives*

- Strong tripartite representation at developmental and implementation stages of legislation is required. Representatives should be nominated by social partners and not by governments. Financial backing is needed for social partners, to enable them to take part in this process.
- An awareness-raising is required, particularly concerning the employment of people with disabilities.
- There should be central collection of data and annual reporting procedures.
- Legislative goals and implementation targets need to be realistic.
- Programmes should operate in rural as well as urban areas.
- An effective monitoring system is needed.
- Incentives for employers should be introduced as well as penalties to ensure compliance with the law.
- Closer links should be developed between DPOs and employment services to ensure better skills matching.
- The involvement of multinationals companies should be encouraged, particularly in developing countries.

### ***Government Representatives***

- People with disabilities and disabled persons' representatives should lobby politicians for the introduction of legislation and/or to amend existing legislation.
- There is a lack of understanding of the critical importance of the drafting stage of legislation and corresponding necessity to consult with all social partners including people with disabilities.
- A media campaign should be developed, to increase public awareness of abilities of people with disabilities.
- Consultative mechanisms should be improved, with employers particularly.
- A monitoring system is essential – this could involve an adapted labour inspection process.

## **Session 2: What are the strengths and weaknesses of existing laws concerning the employment of people with disabilities, and their implementation measures?**

### ***Strengths***

- Laws have been introduced.
- Existence of laws creates awareness and gives certainty.
- Quota systems lead to the employment of at least some people with disabilities.
- Incentives and levies for and against employers promote employment opportunities.

### ***Weaknesses***

- Disability legislation is fashionable but often only of “paper worth”.
- Discriminatory laws exist e.g. wage differentiation for disabled and non-disabled persons.
- Some laws are outdated and need to be amended.
- There are clashes between some laws within legal systems.
- Definitions of disability do not always include all disability groups.
- Provisions in the laws are frequently too broad.
- Compliance with laws is difficult to prove particularly in the case of human rights legislation.
- Most workers compensation laws do not have return to work provisions.
- There is lack of awareness of the content of the laws particularly in rural areas.
- There is a lack of enforcement mechanisms, inconsistent enforcement or reluctance to use enforcement mechanisms e.g. taking legal proceedings, or paying levies instead of employing disabled persons.

### **Session 3: What action is required to improve the effectiveness, in practice, of laws concerning training and employment of persons with disabilities?**

#### *Australia*

- Produce National Standards on State Work/Compensation Systems including return to work and vocational training programmes.
- Increase number of employers who produce Action Plans under the Disability Discrimination Act.
- The Human Rights/Equal Opportunities Commission (HREOC) to review of participation of people with disabilities in employment.
- Shift focus of funding for day programs to vocational training and supported employment programs at commonwealth and state level.
- Produce National Strategy to promote awareness of the need to remove barriers to employment and re-employment of people with disabilities and the engagement of all social partners.
- Refocus vocational training and employment programmes to ensure higher rates of employment for people with disabilities e.g. shift public funding from institutional training to formal work-based training with national and industrial qualifications.
- Act as a resource for other countries in the Asia/Pacific Region:
  - Provide information through Country Profile and reporting ongoing developments to ILO and Asia/Pacific country participants.
  - Seek to have government (commonwealth and states), industry and unions influence multi-national employers to employ people with disabilities within the Asia/Pacific Region.

#### *Cambodia*

- Lobby to pass the Draft Law on the Rights of Persons with Disabilities, now at inter-ministerial stage.
- Disseminate Draft Law.
- Invite ILO Expert to provide advice and recommendations.

#### *China*

- Increase awareness among people with disabilities of their right to employment particularly in rural areas.
- Support and direction required for drafting and/or implementing provincial regulations.
- Improve implementation of law through further State Level Recommendations like Regulations on Accessibility to improve implementation.
- ILO assistance requested.

#### *Fiji*

- Implement mechanisms to include people with disabilities in training, employment and self-employment programmes.
- Develop and implement employer incentives and affirmative action programmes to employ people with disabilities and to recognise that government, as a major employer has an active role in the hiring, retention and advancement of people with disabilities.
- Enforce anti-discrimination legislation that protects the rights of people with disabilities.

### *Japan*

- Reduce exclusion rate so employers in all industries are encouraged to employ people with disabilities.
- Apply quota system to people with mental illness.
- Reflect employment labour productivity and part time workers in employment rate.
- Implement system of collaboration between sections engaged in employment and welfare issues so it is possible to access open market from welfare facilities.
- Economic downturn has increased problems for employment of people with disabilities. Although, Japan has still a long way to go, the Japanese delegation would be pleased to provide advice and information to other countries.

### *Mongolia*

- Adopt new law or change existing legislation.
- Important to provide rural areas with training opportunities and centres for people with disabilities.
- Necessity for tripartite meeting with support from ILO to improve existing legislation.
- Prior to consultation, it is important to appraise existing legislation and whether in compliance with international laws and work out a case study of what is working and what is not for future developments.

### *Sri Lanka*

- ILO to conduct a workshop in Colombo to promote ratification of Convention 159 and to promote the implementation of the 3% quota allocation for disabled persons, in the public sector. Extend quota to the private sector. Galvanize the relevant Ministries and Government departments to act.
- Repealing of old laws, which are in conflict with new laws.
- Amendment to Wages Board Act No.27 of 1941, which discriminates against workers with disabilities.

### *Thailand*

- Remove discriminatory laws.
- Include people with disabilities in all legislative meetings.
- Change public attitude towards employing people with disabilities through Thai Authority on Disability Issues.
- Encourage employers who employ people with disabilities to influence other employers.

## **6. Next Steps**

The Project Consultation in Bangkok provided the opportunity to review and discuss the regional review of legislation on the vocational rehabilitation and employment of people with disabilities, prepared as a background paper, and to amend and supplement it, where necessary. It gave the opportunity for delegates to identify ways in which the existing legislation might be improved and made more effective, make recommendations for action at national level and propose steps which might be taken to act on these recommendations, with the support of the project 'Employment of People with Disabilities – the Impact of Legislation'. Participants were invited to discuss these recommendations with relevant stakeholders in their countries following the Consultation and to submit a formal request for project support, if required.

Following the meeting, requests for specific assistance under the project were submitted by two countries - China and Thailand - while more general requests were received from other participant countries.



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# **Annex 2**



**Legislation, Policy and Programmes  
Concerning the  
Employment of People with Disabilities  
in Selected Countries of Asia and the Pacific**

**Background Document**

**Employment of People with Disabilities -  
the Impact of Legislation**

**Project Consultation**



Organized by the ILO InFocus Programme on  
Skills, Knowledge and Employability  
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**Bangkok, 17 January 2003**



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## 1. INTRODUCTION

Many countries throughout the world have, in recent years, adopted policies aiming to promote the rights of people with disabilities to full and equal participation in society – often in response to ILO Convention No. 159 concerning Vocational Rehabilitation and Employment of Disabled Persons (1983). Policy on employment opportunities for people with disabilities is frequently supported by legislation and implementation strategies as essential tools to promote integration and social inclusion.

Countries in Asia and the Pacific have made considerable progress in introducing legislation concerning the equalization of opportunities for persons with disabilities, particularly during the Asian and Pacific Decade of Disabled Persons 1993-2002. However, many of these laws have yet to be effectively implemented. The Biwako Millennium Framework for Action towards an Inclusive, Barrier-Free and Rights-Based Society for Persons with Disabilities in Asia and the Pacific refers to this in identifying critical issues to be tackled in the second decade which will span the period 2003 – 2012:

‘The challenge of integrating and including persons with disabilities in the economic mainstream has not been met. Despite international standards and the implementation of exemplary training and employment legislation, policies and practices in some countries, persons with disabilities, and especially women, youth and those in rural areas, remain disproportionately undereducated, untrained, unemployed, underemployed and poor.’

The question of the effectiveness of laws in improving employment opportunities for disabled persons – whether they are vocational rehabilitation laws, quota or quota/levy legislation, anti-discrimination or job retention legislation - is central, not only in terms of the economic rights of disabled people, but also to their broader social and political rights, which are closely linked to economic empowerment.

Given the concern that legislation and international instruments have not yet had a significant impact in improving the lives of people with disabilities<sup>1</sup>, coupled with the need to identify which implementation strategies are effective in term of employment outcomes for disabled people, the International Labour Office has initiated a systematic examination of laws in place to promote employment and training opportunities for people with disabilities in selected countries of Asia and the Pacific (Australia, Cambodia, China, Fiji, Japan, India, Mongolia, Sri Lanka and Thailand).

The present report is part of the project ‘Employment of People with Disabilities – the Impact of Legislation’. Funded by the Government of Ireland, this project aims to enhance the capacity of national governments to implement effective legislation concerning the employment of people with disabilities in selected countries of Asia and the Pacific and East Africa. Building on research already carried out by the ILO and other institutions, the project sets out to examine the operation of such legislation, identify the implementation mechanisms in place and suggest improvements. Later in the project, technical assistance will be provided to selected national governments in implementing necessary improvements.

The report, which was prepared as a background document for a Project Consultation in Bangkok, 17 January 2003, and amended following discussions at the Consultation, provides

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<sup>1</sup> See, for example, the Beijing Declaration on the Rights of People with Disabilities in the New Century, adopted on 12 March 2000 at the World NGO Summit on Disability, Beijing, People’s Republic of China.

a regional overview of national legislation, policies and programmes concerning the employment of people with disabilities. The overview outlines the main provisions of the laws in place in the selected countries, based on a survey of documentary sources and inputs of participants at the Project Consultation. A brief review of the implementation of the legislation is also provided, insofar as this was possible based on available information.

## 2. BACKGROUND

The review of legislation in place to promote training and employment opportunities for people with disabilities was conducted for selected countries of Asia and the Pacific - Australia, Cambodia, China, Fiji, Japan, India, Mongolia, Sri Lanka and Thailand. To place these laws in context, a summary profile of the levels of social and economic development of these countries is given below.

### 2.1 *Living Standards*

Two of the countries in this study (Australia and Japan) were ranked as having high levels of development, according to the United Nations Development Programme's (UNDP) Human Development Index (HDI), while three countries (Mongolia, India and Cambodia) were placed in the group of countries with low levels of development.

**Table 2.1: Countries studied, by Human Resource Development Index rank position**

Countries	HDI Rank position (Total: 173 countries)
Australia	5
Cambodia	130
China	96
Fiji	72
India	124
Japan	9
Mongolia	113
Sri Lanka	89
Thailand	70

Source: Human Development Index 2002

Three of the key indicators used in calculating the HDI are life expectancy, literacy rate and Gross Domestic Product (GDP) per capita. The countries studied varied significantly in each of these indicators.

#### 2.1.1 Literacy Rate

Adult literacy rates were high in five of the countries, with rates of over 90 per cent reported. Slightly lower rates were reported for China, Cambodia and India. Considerable variation between the literacy rates of women and men was noted for three of the countries, and slight variation for a further three, with the rates for women being consistently lower.

**Table 2.2: Literacy rate in countries studied, by gender**

Countries	Literacy rate (% age 15 and above)		
	Female	Male	Total
<b>Australia</b>	99	99	99
<b>Cambodia</b>	57.1	79.8	67.8
<b>China</b>	76.3	91.7	84.1
<b>Fiji</b>	90.8	94.9	92.9
<b>India</b>	45.4	68.4	57.2
<b>Japan</b>	99	99	99
<b>Mongolia</b>	98.8	99.1	98.9
<b>Sri Lanka</b>	89.0	94.4	91.6
<b>Thailand</b>	93.9	97.1	95.5

Source: Human Development Index 2002

### 2.1.2 Life Expectancy

Life expectancy was highest in Japan, where a person could expect to live, on average, for 81 years, in contrast with Cambodia, where an average person could expect to live for 56 years. Consistently across all countries, women had higher life expectancy than men, though the difference ranged significantly, from 1 year in India to 7 in Japan.

**Table 2.3: Average life expectancy, in years, in countries studied, by gender**

Countries	Life expectancy at birth (years)		
	Female	Male	Total
<b>Australia</b>	81.8	76.1	78.9
<b>Cambodia</b>	58.6	53.9	56.4
<b>China</b>	72.8	68.5	70.5
<b>Fiji</b>	70.9	67.4	69.1
<b>India</b>	63.8	62.8	63.3
<b>Japan</b>	84.4	77.4	81.0
<b>Mongolia</b>	64.9	60.9	62.9
<b>Sri Lanka</b>	75.3	69.5	72.1
<b>Thailand</b>	73.2	67.3	70.3

Source: Human Development Index 2002

### 2.1.3 Annual Average Income

Annual Gross Domestic Product (GDP) per head of the population in the countries studied in 1999 varied significantly from US\$1 446 in Cambodia to US\$26 755 in Japan, reflecting the fact that Asia and the Pacific includes some of the world's wealthiest and poorest countries.

**Table 2.4: Annual Average Income in the selected countries**

Countries	Annual GDP/Capita (US\$)
Australia	25 693
Cambodia	1 446
China	3 976
Fiji	4 668
India	2 358
Japan	26 755
Mongolia	1 783
Sri Lanka	3 530
Thailand	6 402

Source: Human Development Index 2002

### 2.1.4 GDP by sector

Five countries – Australia, Fiji, Japan, India and Sri Lanka, have predominantly service economies, with over 50 per cent of the GDP originating in this sector. In Mongolia, most employment is in the services sector, which accounts for 42 per cent of GDP. In contrast, the agricultural sector predominates in Cambodia and Thailand.

**Table 2.5: Composition of GDP in the selected countries, by sector (per cent)<sup>2</sup>**

Countries	Year	Agriculture	Industry	Services
Australia	1999	3	26	71
Cambodia	1998	43	20	37
China	2000	15	50	35
Fiji	1999	16	30	54
India	2000	25	24	51
Japan	1999	2	35	63
Mongolia	2000	36	22	42
Sri Lanka	1998	21	19	60
Thailand	1996	54	15	31

## 2.2 Labour Market Information

The labour market information presented below includes the labour force participation rate and unemployment rates for the selected countries.

China, Cambodia and Thailand have the highest labour force participation rate of the countries studied, with over 75 per cent of the working age population engaged in the labour market. In contrast, the rates for the countries of Fiji, Mongolia and Sri Lanka are relatively lower, ranging from 64 per cent to 59 per cent.

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<sup>2</sup> World Fact Book

**Table 2.6: Labour Force Participation Rate for people aged from 15-64 years**

Country	Year	Labour Force Participation Rate (per cent)
Australia	1999	72.9
Cambodia	1998	79.0
China	1995	85.4
Fiji	1995	58.9
India	1995	66.4
Japan	2000	72.5
Mongolia	1998	62.0
Sri Lanka	1999	61.9
Thailand	1999	76.7

Source: KILM ILO

Unemployment rates of over 5 per cent are reported for three countries – Australia, Mongolia and Fiji, while in China and Thailand, the unemployment rate was 3 per cent or lower. No information was available for three countries – Cambodia, India and Sri Lanka.

**Table 2.7: Unemployment Rate**

Country	Year	Unemployment Rate (per cent)
Australia	2002?	6.2
Cambodia	-	-
China	2000	3.1
Fiji	1995	5.4
India	-	-
Japan	2000	4.8
Mongolia	1998	5.7
Sri Lanka	-	-
Thailand	2000	2.4

Source: KILM ILO

### ***2.3 Population of Persons with Disabilities***

In most of the Asia and Pacific countries studied, there are no comprehensive, reliable data on the population of people with disabilities. Available statistics available are presented in Table 2.8. Given that different concepts of disability and methods of data collection were used in each case, inter-country comparisons are not advisable.

**Table 2.8: Number of people with disabilities, by country**

Country	Year	Number of People with Disabilities
Australia	1998	3,600,000 <sup>3</sup>
Cambodia	1999	150,000-180,000 <sup>4</sup>
China	1999	60,000,000 <sup>5</sup>
Fiji	1996	12,000 <sup>6</sup>
India	1991	16,000,000 <sup>7</sup>
Japan	1991	4,000,000 <sup>8</sup>
Mongolia	1996	18,701 (working age) <sup>9</sup>
Sri Lanka	2002	1 629 000 <sup>11</sup>
Thailand	1991	1,057,000

A contrasting picture is obtained if the World Health Organization estimate, that 7-10 per cent of the world population have a disability, is applied to the population figures for the countries under review in the present report. Using this estimate, a higher population of people with disabilities is identified for Cambodia, China, India and Japan.

**Table 2.9: Estimated population of people with disabilities, by country, 2001**

Country	Total Population	10% Estimate	7% Estimate
Australia	19,357,594	1,935,759	1,355,031.6
Cambodia	12,491,501	1,249,150	874,405
China	1,273,111,290	127,311,129	89,117,790
Fiji	844,330	84,433	59,103
India	1,029,991,145	102,999,114	72,099,380
Japan	126,771,662	12,677,166	8,874,016
Mongolia	2,654,999	265,500	185,850
Sri Lanka	19,408,635	1,940,863.5	1,358,604
Thailand	67,797,751	6,779,775.1	4,745,842.57

In the absence of comprehensive reliable statistics for all the countries studied, it is difficult to estimate the dimensions of need for services of various kinds or the dimensions of the employment problem. Evidence indicates, however, that the population of people with disabilities in each of the countries is substantial; that their employment situation is bleak; and that the incidence of disability is increasing in many of these countries, owing to widespread poverty, poor living conditions, overall population growth and urbanization.

<sup>3</sup> Australian Bureau of Statistics 1998

<sup>4</sup> Cambodia Country Profile, Developing an Effective Placement Service for People with Disabilities, Report of a Technical Consultation organised by ILO EASMAT in collaboration with UNESCAP and the Government of Singapore.

<sup>5</sup> Op. Cit. Country Profile China

<sup>6</sup> Based on 1996 Census figures, and widely regarded as an underestimate.

<sup>7</sup> Indian National Survey 1991

<sup>8</sup> Survey from Ministry of Health and Welfare 1991

<sup>9</sup> Economic and Social Statement of Mongolia published by the State Statistical Board 1996

<sup>11</sup> Sri Lanka National Census 2002. Figure is reportedly inaccurate due to lapses in the collection of statistics.

### **3. CONSTITUTIONAL PROVISIONS - PEOPLE WITH DISABILITIES**

Four of the nine Asia and Pacific countries studied specifically refer to people with disabilities in their constitutions (Cambodia, China, Fiji and Mongolia). The constitutional provisions either state fundamental rights, such as rights to employment, education and vocational rehabilitation (China and Mongolia) or make specific provisions for the rights of people with disabilities (China, Mongolia and Fiji) and guarantee the means to prevent discrimination and to further integration (China and Fiji). In Cambodia, the Constitution focuses on the provision of assistance to persons disabled as a result of armed conflict.

Table 3.1: Constitutional Provisions Promoting the Employment of Disabled Persons

Country	Right to Work	Non Discrimination	State's Obligation to Assist
<b>Cambodia</b>			The Constitution obliges the State to assist "...the disabled and the families of combatants who sacrificed their lives for the nation." (1993 Constitution of the Kingdom of Cambodia, Article 74)
<b>China</b>	The state is obliged to "...help make arrangements for the work, livelihood and education of the blind, deaf mutes and other handicapped persons." (Constitution of China 1988, Article 45.3)	"Disabled persons enjoy the same rights as other citizens in respect of political, economic, cultural and social aspects as well as family life..." "...it is forbidden to discriminate against, insult or harass disabled persons..". (Constitution of China 1988, Article 3)	The Constitution not only grants all the citizens of China "...the right to material assistance from the state and society when they are...disabled..." but also ensures "...the livelihood of disabled members of the armed forces...". (Constitution of China 1988, Article 45)
<b>Fiji</b>		<p>The Constitution propounds that "...every person has the right to equality before the law..." (Fiji Constitution 1988, Section 38.1)</p> <p>Discrimination is also prohibited "...a person must not be unfairly discriminated against, directly or indirectly..." (Section 38.2)</p> <p>Disability is specifically referred to as one of the "actual or supposed personal characteristics or circumstances" upon which discrimination is disallowed. (Section 38.2a)</p>	<p>The Constitution advocates the provision of programmes for all "persons disadvantaged" to ensure effective access to education and training. It further specifies the content of an Act establishing such a programme. It is to include the goals, the intended beneficiaries (if a group, the criteria for selection), the means by which the goals are to be achieved and the performance indicators for judging the efficacy of the programme (Section 44.2)</p> <p>Special measures are deemed lawful for "...the purpose of achieving substantial equality between different groups or different categories of persons." (Section 44.3). Such measures are not discriminatory, (Section 44.4) but are not authorised if "substantial equality" has already been achieved. (Section 44.5). The efficacy of each programme is to be monitored with reference to the specified performance indicators by the department or agency responsible and reported annually to Parliament (Section 44.6). Such programmes will expire automatically after ten years if they have not already done so but, may be re-established if the beneficiaries are still in need of assistance (Section 44.7)</p>

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Country	Right to Work	Non Discrimination	State's Obligation to Assist
<p><b>Mongolia</b></p>	<p>The Constitution unambiguously states that "...everyone has the right to work..." and that "the duty to work is inseparable from the right to work, except for those persons whose capacities have been diminished by age, sickness, or disability." (Constitution of Mongolia, 1992, Article 58)</p> <p>The state must ensure "special protection at work...for disabled persons."</p> <p>The Constitution comprehensively identifies the rights of workers as well as the duties of the State in respect of work. (Articles 59 (1) and (2)). State duties include securing "the conditions of work, remuneration, and rest to which workers are entitled...", proposing and maintaining "a national minimum wage and maximum wage" and "setting limits on the length of working time at national level."</p> <p>The state is obliged to take note of "...workers' needs, the increase in the cost of living, the degree of development of the forces of production, economic and financial stability, and the formation of capital for development..."<sup>1</sup></p>		<p>The necessity for the provision of "Material assistance when [disabled people] are involuntarily unemployed." is also observed (Article 52.2). The Constitution also grants the "...right to material and financial assistance..." for disabled persons "...as provided by law." (Article 16)</p> <p>In addition, the Constitution advocates the "...systematic development of a network of rest and holiday centres, in co-operation with welfare organizations." Reference is made to "...a weekly rest day and holidays with pay..." and limiting the working day and also to the creation of "...Safe and healthy working conditions..." (Article 59 (2))</p>

## 4. LEGAL PROVISIONS FOR VOCATIONAL TRAINING AND EMPLOYMENT

This section examines the legal provisions for vocational rehabilitation, vocational training and employment of people with disabilities, including the various definitions of disability which these contain. It also summarizes policies in place to promote employment opportunities for this group.

### 4.1 Legislation

**Table 4.1: Legal provisions for the employment and training of people with disabilities, selected countries by type for each country**

Type of Legislation	National Legislation
<b>General Laws with disability component</b>	<p><b>Australia:</b> Equal Employment Opportunity Act 1987, Workplace Relations Act 1996, Industrial Relations Act 1993, Safety, Rehabilitation and Compensation Act 1988</p> <p><b>Fiji:</b> Social Justice Act 2001, Human Rights Act 1999</p> <p><b>Japan:</b> Labour Act 1994, Employment Countermeasures Law (Law No. 132, 1996); Human Resources Development Promotion Law (Law No. 64, 1969)</p> <p><b>Mongolia:</b> Labour Law 1999</p> <p><b>Sri Lanka:</b> Social Security Board Act No. 17 of 1996, Wage Board Ordinance No 27, 1941, Employees Trust Fund, Workmen's Compensation Act Chapter 139, 1934</p>
<b>Specific Disability Law concerning employment and/or vocational rehabilitation</b>	<p><b>India:</b> The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.</p> <p><b>Japan:</b> Law for Employment Promotion etc... of the Disabled (Law No. 123, 1960)</p>
<b>Specific Disability Law concerning a range of provisions in different areas.</b>	<p><b>Australia:</b> Disability Services Act 1991; Disability Discrimination Act 1992</p> <p><b>Cambodia:</b> Draft Law on Rights of People with Disabilities 2002</p> <p><b>China:</b> Law of the People's Republic of China on the Protection of Disabled Persons 1990</p> <p><b>Fiji:</b> Fiji National Council for Disabled Persons Act 1994</p> <p><b>India:</b> The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995</p> <p><b>Japan:</b> Disabled Persons' Fundamental Law (Law No. 84, 1970);</p> <p><b>Mongolia:</b> Mongolian Social Security Law for People with Disabilities, 1995, Amended 1998</p> <p><b>Sri Lanka:</b> Protection of the Rights of Persons with Disabilities Act No. 28, 1996, Visually Handicapped Trust Fund Act No. 9 of 1992; Ranaviru Seva Act No. 54 of 1999</p> <p><b>Thailand:</b> Rehabilitation of Disabled Persons Act A.D. 1991</p>

Four of the countries studied (Australia, Fiji, Japan and Sri Lanka) take a 'twin-track' approach to promoting training and employment opportunities for people with disabilities, in that provisions are included both in general laws and in those specifically focused on the employment and vocational rehabilitation of persons with disabilities. In Japan, for example, provisions focussing on the training and employment of people with disabilities are included in general labour law and general disability law as well as in a specific employment law for disabled persons.

In Thailand and Cambodia, provisions concerning disabled persons are included in disability-specific laws only.

In Mongolia, provisions concerning the employment of persons with disabilities are stipulated solely in general labour law.

### **4.1.1. Definition of Disability**

The legislation of Australia, China, Fiji, India, Japan and Thailand contain definitions of disability, as does the draft law in Cambodia, while those of Mongolia and Sri Lanka do not.

The definitions used in the laws of Australia, Cambodia, China, Fiji and Japan refer to the limiting effects of disabilities on daily living activities as well as to the impairment. Additionally, in the case of Australia, the definition specifies the necessity that the disability be permanent and give rise to the need for support services. In contrast, the laws of India and Thailand focus only on the impairment and provide a list of disabilities ranging from physical impairment or anatomical disability to psychological impairment or mental illness respectively.

**Table 4.2: Definitions of Disability in the laws of Australia, Cambodia, China, India, Japan and Thailand.**

Country	Definition
<b>Australia</b>	<p>Persons with a disability are classified as being persons whose disability is firstly "...attributable to an intellectual, psychiatric, sensory or physical impairment or a combination of such impairments..." and secondly, the disability "...be permanent or likely to be permanent..." and results in "...a substantially reduced capacity of the person for communication, learning or mobility; and the need for continuing support services..." are covered by the Act. (Disability Services Act 1986 Part II 8).</p> <p>Disability in relation to a person is defined in the Disability Discrimination Act 1992 as: total loss of the person's bodily or mental functions, or total or partial loss of part of the body, or the presence in the body of organisms causing disease or illness, or the presence in the body of organisms capable of causing disease or illness, or the malfunction, malformation or disfigurement of a part of the person's body or a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction or a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour and includes a disability that presently exists, or previously existed but no longer exists or may exist in the future or is imputed to the person.</p>
<b>Cambodia</b>	<p>A person with a disability is defined as "...any citizen who lacks any physical organ or capacity or suffers any mental impairment, which causes decent restriction on his/her daily life or activities such as loss of limbs, quadriplegia, visual or hearing impairment or mental handicap etc. (Article 2, Draft Law on the Rights of People with Disabilities).</p>
<b>China</b>	<p>The Law of the People's Republic of China on the Protection of Disabled Persons 1990 defines both "disabled person" and "disabled persons". A "disabled person" is defined as a "...person who suffers from abnormalities or loss of a certain organ or function, psychologically or physiologically, or in anatomical structure and has lost wholly or in part the ability to perform an activity in the way considered normal...". The term "disabled persons" is defined as those persons "...with visual, hearing, speech or physical disabilities, intellectual disability, mental disorder, multiple disabilities and/or other disabilities..." (Article 2)</p>
<b>Fiji</b>	<p>The Act defines "disabled persons" as "...persons, who as a result of physical, mental or sensory impairment are restricted or lacking in ability to perform an activity in the manner considered normal for human beings...". (Fiji National Council for Disabled Persons Act 1994 Article 2)</p>
<b>India</b>	<p>Within the Act, "Person with disability" is defined as a person suffering from not less than forty per cent of any disability as certified by a medical authority. (The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 Chapter I Section 2 (i)). In addition, the definition of disability is divided into seven groups: blindness, low vision, leprosy-cured, hearing impairment, locomotor disability, mental retardation and mental illness. With the exception of blindness, each of these has a specific definition in the Act.</p> <p><i>Person with Low Vision</i> A person with low vision is defined as a person with an impairment of visual functioning even after treatment or standard refractive correction but who uses or is potentially capable of using vision for the planning or execution of a task with appropriate assistive device.</p> <p><i>Leprosy Cured Person</i> A leprosy cured person is defined as any person who has been cured of leprosy but is suffering from:</p>

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Country	Definition
	<p>i. loss of sensation in hands or feet as well as loss of sensation and paresis in the eye and eye-lid but with no manifest deformity;</p> <p>ii. manifest deformity and paresis but having sufficient mobility in their hands and feet to enable them to engage in normal economic activity;</p> <p>iii. extreme physical deformity as well as advanced age which prevents him from undertaking any gainful occupation, and the expression "leprosy cured" shall be construed accordingly.</p> <p><i>Hearing Impairment</i> A hearing impairment is defined as the loss of sixty decibels or more in the better ear in the conversational range of frequencies.</p> <p><i>Locomotor Disability</i> A locomotor disability is defined as a disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy.</p> <p><i>Mental Retardation</i> Mental Retardation is defined as a condition of arrested or incomplete development of mind of a person which is specially characterised by sub-normality of intelligence.</p> <p><i>Mental Illness</i> Mental illness is defined as any mental disorder other than mental retardation.</p>
<b>Japan</b>	<p>The term "Disabled persons" is defined as referring to "...persons whose daily life or life in society is substantially limited over the long term due to a physical disability, mental retardation or mental disability (hereinafter referred to as "disability/ies")." (Disabled Persons' Fundamental Law (Law No. 84 1970) 1993 Article 2). The Japanese Law for Employment Promotion, etc... of the Disabled (Law No. 123, 1960 Law for Employment Promotion, etc... of the Disabled Guidelines) initially defined disabled persons as referring solely to persons with a physical disability but later extended this to include persons with a mental impairment.</p>
<b>Thailand</b>	<p>The Act defines a disabled person as "...a person with physical, intellectual or psychological abnormality or impairment...". (Rehabilitation of Disabled Persons Act A.D. 1991). Ministerial Regulation 2 establishes a classification system for type of disability (Ministerial Regulation No.2 B.E. 2537 (1994))</p>

## ***4.2 Provision for Vocational Rehabilitation and Training***

Six of the nine countries studied have provisions in their laws or in one case, in the Constitution, dealing specifically with vocational training for people with disabilities.

- Disability Services Act 1986, Disability Discrimination Act 1992 (Australia)
- Law of the People's Republic of China on the Protection of Disabled Persons 1990
- Fiji Constitution, 1988
- Disabled Persons' Fundamental Law (Law No. 84 1970) 1993, Employment Countermeasures Law (Law No. 132, 1966) (Japan)
- Ranaviru Seva Act No. 54 of 1999, and Trust Fund for the Visually Handicapped Act No.09 of 1992 (Sri Lanka)
- Rehabilitation of Disabled Persons Act A.D.1991 (Thailand)

The 1988 Constitution of Fiji advocates effective access to education and training for "persons disadvantaged" (including people with disabilities). Cambodia makes such a provision in its Draft Law on the Rights of People with Disabilities.

The vocational training provisions in these laws either state people with disabilities have the right to vocational training (Thailand) and/or stipulate that the acceptance of disabled persons into training institutions is mandatory (Cambodia (draft law), China). In Thailand, access of disabled persons to mainstream training was introduced by a Cabinet Resolution. Some legal instruments contain provisions requiring proactive measures to be taken by the institutions and/or government (Cambodia, China, Fiji and Japan). In Cambodia, for example, Cabinet Resolution on the Principles of Rehabilitation, Vocational Training and Job Placement for Persons with Disabilities (Mo181/SSR) of December 1990 provides guidelines on vocational rehabilitation and training of persons with disabilities. In Australia and in the draft law in Cambodia, employers and training institutions respectively are obliged to provide accommodation for people with disabilities. In the draft Cambodian law, the requirement is limited to "reasonable accommodation", and in Australia the accommodation must not cause unjustifiable hardship upon the employer. In China, Fiji and Japan there is no legal obligation of accommodation.

In addition to provisions for vocational training, Japan has a provision concerned with vocational rehabilitation of disabled persons (Law for the Employment Promotion etc... of Disabled - Law No. 123, 1960). Similarly, the Fiji National Council for Disabled Persons Act 1994 when establishing the National Council stipulates that it should develop a plan of action for implementing rehabilitation services for people with disabilities.

Table 4.3 lists existing provisions for vocational rehabilitation and training of persons with disabilities in the countries studied.

**Table 4.3: Disability specific legal provisions for vocational training/rehabilitation -selected countries**

<b>Country</b>	<b>Legislative Measures for Vocational Training/Rehabilitation</b>
<b>Australia</b>	<p>The <i>Disability Services Act, 1986</i> outlines a number of key principles and objectives that specifically relate to the workplace including skills development.</p> <p>The <i>Disability Discrimination Act, 1992</i> cites that it is deemed "...unlawful for an employer or a person acting or purporting to act on behalf of a employer, to discriminate against a person on the grounds of the other person's disability or a disability of any of that other person's associates...". Training is one of the areas listed in Section 15 when discrimination in employment is unlawful.</p>
<b>Cambodia</b>	<p>The <i>Draft Law on Rights of People with Disabilities</i> has a specific section on employment and vocational training. With regard to vocational training, all such institutions whether state, public or private are to provide training to "qualified people with disabilities." (This term is defined as a "person with a disability who has the capacity to perform positions, duties and responsibilities in the functions in which such person holds and wishes to hold.") These institutions are under an obligation to provide reasonable accommodation to "...qualified person with disabilities who is an applicant, trainee or intern...", this is similarly limited by "...unless such accommodation causes undue burden." Articles 35-50</p> <p>Cabinet Resolution on the Principles of Rehabilitation, Vocational Training and Job Placement for Persons with Disabilities (No. 181/SSR) December 1990 (Cambodia) provides guidelines on rehabilitation and training for people with disabilities.</p> <p>Ministerial Decision on Implementation of the Cabinet Resolution No. 181/SSR (No.02 PRNN) 1991</p>
<b>China</b>	<p><i>The Law of the People's Republic of China on the Protection of Disabled Persons 1990</i> guarantees "The right of disabled persons to education" (<i>Article 18</i>) In particular; "...Departments of education, welfare enterprises and institutions and other service organisations for disabled persons should create conditions for rehabilitation training activities." (<i>Article 15</i>) With regard to "Enterprises and institutions where disabled persons work..." provision of "...technical training for disabled employees, with a view to upgrading their skills and techniques..." (<i>Article 35</i>) are deemed compulsory.</p>
<b>Fiji</b>	<p><i>Fiji Constitution, 1988 Section 44</i> concerns the provision of programmes for all "persons disadvantaged" to ensure effective access to education and training. It further specifies the content of an Act establishing such a Programme. It is to include the goals, the intended beneficiaries (if a group, the criteria for selection), the means by which the goals are to be achieved and the performance indicators for judging the efficacy of the programme.</p> <p><i>Fiji National Council for Disabled Persons Act 1994</i> requires that Fiji National Council for Disabled Persons is to develop a plan of action for implementing rehabilitation services for people with disabilities. A Vocational Training and Employment Advisory Committee is established by virtue of the Act to advise and assist in the implementation on 'suitable activities and projects'.</p>

Country	Legislative Measures for Vocational Training/Rehabilitation
<p><b>Japan</b></p>	<p>Measures will be taken "...in order to enable disabled persons to engage in appropriate occupations according to their abilities with due consideration for the type and severity of their disability..." by the State and local public entities. These services will include vocational guidance and vocational training. <i>Disabled Persons' Fundamental Law (Law No. 84 1970) 1993 Article 14.1</i></p> <p><i>Employment Countermeasures Law (Law No. 132, 1966)</i> contains provisions concerning vocational training of people with disabilities. Measures are provided to improve vocational training for people with disabilities including vocational training facilities, improvement of the content of training programmes and the quality of the training of guidance workers. In addition, provision is made for allowances for adjustment training and a training allowance for employers. <i>(Article 16-18)</i></p> <p><i>The Law for Employment Promotion, etc... of the Disabled (Law No. 123, 1960)</i> objective is to take comprehensive measures for the promotion of employment "...based on the obligation for employment of the physically [and intellectually] disabled...". These measures include vocational rehabilitation. <i>(Article 1)</i></p> <p>"Such conditions as the type and degree of disability and the desires, aptitude and vocational experience of each disabled person..." shall be considered. Vocational rehabilitation measures shall be co-ordinated with measures for medical rehabilitation and social rehabilitation. <i>(Article 3)</i></p> <p>The National Institute of Vocational Rehabilitation, Large Region Vocational Centres for the Disabled and Local Vocational Centres for the disabled are to be established with the purpose of promoting self-support in vocational life for disabled persons. <i>(Article 9)</i></p>
<p><b>Mongolia</b></p>	<p><i>Law of Mongolia on Vocational Education and Training (LMVET), June 2002</i> has many important provisions that directly support vocational training for persons with disabilities. Article 12.4 covers education and vocational training for persons with disabilities. Article 11.2 contains organizational matter on the training at classrooms and employment places. Article 11.3 notes that the nature of training "... shall be provided by day, evening, external and distant learning courses, best suited for the persons with disabilities.</p>
<p><b>Sri Lanka</b></p>	<p>The main activity of the <i>Ranaviru Seva Act No. 54 of 1999</i> is assisting disabled ex combatants to secure employment through the provision of vocational training and job placement. Additionally, the <i>Trust Fund for the Visually Handicapped Act No. 09 of 1992</i> provides vocational training opportunities and guidance for self employment.</p>
<p><b>Thailand</b></p>	<p>"Rehabilitation of Disabled Persons" is defined as meaning the improvement of the potentials and capacities of disabled persons. Vocational training is specifically referred to as a means of increasing the employment opportunities of people with disabilities. <i>Rehabilitation of Disabled Persons Act A.D. 1991</i></p> <p>Vocational training institutions must accept students with disabilities. <i>Cabinet Resolution 12 July 1994</i></p> <p><i>Cabinet Resolution 10 November 1998</i> states disabled persons have the right to receive vocational training.</p>

### ***4.3 Promotion of Employment Opportunities for Disabled Persons***

Two main approaches to promoting employment opportunities for people with disabilities are found in the countries studied: through anti-discrimination laws, and through quota legislation.

#### **4.3.1 Non-Discrimination Provisions**

Five of the countries studied - Australia, China, Fiji, India, Mongolia and Sri Lanka - have laws which prohibit discrimination on the grounds of disability and one (Cambodia) has a draft anti-discrimination law. With the exception of Australia and Fiji, non-discrimination provisions concerning employment are present only in the legal instruments specifically for people with disabilities. In Australia, these provisions are present in the Equal Employment Opportunity Act 1987, as well as in the Disability Discrimination Act 1992.

##### *4.3.1.1 Disability-specific laws*

Some laws simply state the principle of non-discrimination in employment on the ground of disability (India and Mongolia). Others either state the right to work (Cambodia - draft law) and/or contain provisions detailing when discrimination is unlawful (Australia, Cambodia and China). Some of these also provide for enforcement mechanisms (Australia and China). Notably, in Cambodia, the right to work without discrimination is restricted in the draft law to a “qualified person with a disability” and in Australia there is a proviso exempting an employer from responsibility in certain circumstances.

Table 4.4 lists the non-discrimination provisions in disability-specific laws of the countries studied.

**Table 4.4: Employment non-discrimination provisions in disability-specific legislation - selected countries**

Country	Employment Non Discrimination Provision
<b>Australia Disability Discrimination Act 1992</b>	<p>It is deemed "...unlawful for an employer or a person acting or purporting to act on behalf of an employer to discriminate against a person on the grounds of the other person's disability or a disability of any of that other person's associates..." (Disability Discrimination Act 1992 Section 15.0 Discrimination in Employment)</p> <p>The Act clarifies the circumstances when discrimination may be unlawful "...in the arrangements made for the purpose of determining who should be offered employment; or in determining who should be offered employment; or in the terms or conditions on which employment is offered." (Neither, the second or the latter circumstance "...renders it unlawful for a person to discriminate against another person, on the ground of the other person's disability, in connection with employment to perform domestic duties on the premises on which the first-mentioned person resides." The second circumstance is not unlawful "...if taking into account the person's past training, qualifications and experience relevant to the particular employment and, if the person is already employed by the employer, the person's performance as an employee, and all other relevant factors that it is reasonable to take into account, the person because of his or her disability:</p> <ul style="list-style-type: none"> <li>(a) would be unable to carry out the inherent requirements of the particular employment; or</li> <li>(b) would, in order to carry out those requirements, require services or facilities that are not required by persons without the disability and the provision of which would impose an unjustifiable hardship on the employer".)</li> </ul> <p>The Act further clarifies discrimination "...It is unlawful for an employer or a person acting or purporting to act on behalf of an employer to discriminate against an employee on the ground of the employee's disability or a disability of any of that employee's associates..." The circumstances when this particular type of discrimination may occur is firstly "...in the terms or conditions of employment that the employer affords the employee" or secondly, "...by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefit associated with employment" or thirdly, "...by dismissing the employee; or fourthly "...by subjecting the employee to any other detriment." However, this is not unlawful "...if taking into account the person's past training, qualifications and experience relevant to the particular employment and, if the person is already employed by the employer, the person's performance as an employee, and all other relevant factors that it is reasonable to take into account, the person because of his or her disability:</p> <ul style="list-style-type: none"> <li>(a) would be unable to carry out the inherent requirements of the particular employment; or</li> <li>(b) would, in order to carry out those requirements, require services or facilities that are not required by persons without the disability and the provision of which would impose an unjustifiable hardship on the employer."(Op. Cit. Section 15.4 Discrimination in Employment). <p>Enforcement is through Disability Discrimination Commissioners appointed by the Human Rights and Equal Opportunity Commission to settle the Act by conciliation and if transgression proves difficult to rectify, refer the matter back to the Commission with an accompanying report.</p> </li></ul>
<b>Cambodia</b>	<p>"People with disabilities are fully entitled to exercise their rights as citizens..." including the "...right to work." (Draft Law on Rights of People with Disabilities, Article 3). Qualified person with disability (a person with disability who has capacity to perform positions, duties and responsibilities in the functions in which such person holds or wishes to hold) has the right to work without discrimination, in all aspects, including apprenticeship and internship. (Article 35). The discrimination is aimed at circumstances such as application for employment, acceptance salary, rank promotion, job termination, compensation, training and other conditions. (Op. Cit. Article 37)</p>
<b>China</b>	<p>Discrimination both direct and indirect is prohibited by the Act. With regard to direct discrimination it is stated "...No discrimination shall be practised against disabled persons in recruitment, employment, granting of permanent employee status, promotion, determining technical or</p>

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Country	Employment Non Discrimination Provision
	<p>professional titles, payment, welfare, labour insurance or in other aspects.” The Act further prohibits denial of employment to graduates “...of higher learning, polytechnic schools or technical schools solely on the ground of their disabilities.</p> <p>Indirect discrimination is prohibited in so far as the state is obliged to “...protect the property ownership and the managerial decision-making power of welfare enterprises and institutions for disabled persons...” and “enterprises and institutions where disabled persons work shall provide the disabled workers with appropriate working conditions and labour protection.” (Law of the People’s Republic of China on the Protection of Disabled Persons 1990 Article 34).</p> <p>The action propounded in the event of a violation is an “...appeal to the concerned departments for disposition...” and instruction to “... the concerned enterprises or institutions to accept the said graduates.”</p>
<b>India</b>	<p>There is a specific provision advocating non-discrimination in government employment: “No establishment shall dispense with or reduce in rank an employee who acquires a disability during his service...” Neither shall any “...promotion be denied to a person merely on the ground of his disability...” (The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 Non Discrimination Chapter VIII Section 47).</p>
<b>Mongolia</b>	<p>The last provision prohibits denial of employment to disabled or pygmy person “...if their physical state does not create a disturbance when engaged in labour or an inimical labour condition.” (Labour Law 1999, Article 111).</p>
<b>Sri Lanka</b>	<p>The Act unambiguously states “...No person with a disability shall be discriminated against on the ground of such disability in recruitment for any employment or office...” (Protection of the Rights of Persons with Disabilities Act, No. 28 1996 Part V Section 23.1 Provisions for the protection and advancement of Persons with Disabilities). This is extended to include not only “...admission to any educational institution...” but any restrictions “...with regard to access to, or use of, any building or place which any other member of the public has access to or is entitled to use, whether on the payment of any fee or not.”. (Protection of the Rights of Persons with Disabilities Act, No. 28 1996 Part V Section 23.2 Provisions for the protection and advancement of Persons with Disabilities).</p> <p>In the event of a contravention of the above provision, the provision can be enforced by a written petition to the High Court which may grant relief as it deems “...just and equitable in the circumstances.” (Protection of the Rights of Persons with Disabilities Act, No. 28 1996 Part V Section 24 Remedy for the contravention of the provisions of Section 23).</p>

#### 4.3.1.2 General Laws

As already noted, Australia and Fiji alone of the countries studied include provisions prohibiting discrimination on the grounds of disability in general laws concerning the population as a whole.

Article 3 of the **Equal Employment Opportunity Act 1987 in Australia** defines discrimination with regard to disability as:

Discrimination by which a person with a physical or mental disability "...is, because of the disability, treated less favourably than a person without the disability..."

It also establishes an Equal Opportunity Program:

"...to ensure that appropriate action is taken by the [relevant] authority; to eliminate discrimination by it against and to promote equal opportunity..." for specified groups including people with disabilities, in relation to employment matters."

Section 17 of the Fiji **Human Rights Act 1999** prohibits discrimination in employment as well as application for work on the ground of disability.

#### 4.3.2 Employment Quotas

Employment quotas have been introduced to promote employment opportunities for disabled persons in the some of the countries studied. China, Japan, Mongolia and Thailand have introduced quotas, backed by legislation to oblige employers to reserve a specified proportion of available jobs for people with disabilities, combined with the requirement of a compensatory payment for non-compliance, while India has a quota which does not have such a requirement and Sri Lanka's quota was introduced through a Public Administration Circular. The respective legal instruments are

- the Law of the People's Republic of China on the Protection of Disabled Persons 1990,
- The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 (India),
- the Disabled Persons' Fundamental Law 1993 and Law for Employment Promotion, etc... of the Disabled 1960 (Japan),
- Labour Law 1999 (Mongolia),
- Sri Lanka Public Administration Circular No.27/88 dated 18 August 1988, and
- Rehabilitation of Disabled Persons Act A.D. 1991 (Thailand).

A legal quota is envisaged in the Cambodian system by virtue of the Draft Law on the Rights of People with Disabilities.

The quota schemes in the region vary in terms of the level of quota; whether they apply to the public sector only, (India and Sri Lanka), private sector only (Thailand), or both (China, Japan, Mongolia), and the size of enterprise to which they apply.

The objectives of the laws in place in China and Japan are stated in Table 4.5 below, as an illustration, as these laws are well embedded in a broader policy framework in the countries concerned, in which provisions are made for placement, employment support and preferential

policies to ensure the full employment of disabled persons. The detailed quota provisions of all of the countries are summarized in table 4.6.

**Table 4.5: Objectives of quota laws in China and Japan**

Countries	Objectives of Laws containing Quotas for the Employment of People with Disabilities
<b>China</b>	<p>The State is obliged to protect the “disabled person's right to work” and in this respect the people's government is vested with the authority “to formulate overall plans on the employment of disabled persons and create conditions for their employment.” (Op. Cit. Article 28).</p> <p>This general obligation is further clarified as following the principle “...of combining concentrated job placement with dispersed job placement.” In addition, the Act stipulates “...preferential policies and measures of support and protection shall be adopted with a view to gradually popularising, stabilizing and rationalizing employment of disabled persons through multiple channels...”. (Op. Cit. Article 30)</p> <p>The Act promulgates that “...the promotion of the employment of disabled persons” should take a multi-departmental approach. “...The people's government at all levels and concerned departments should organize and provide guidance in this regard.” (Op. Cit. Article 30)</p>
<b>Japan</b>	<p>The Law's objective is to take comprehensive measures for the promotion of employment “...based on the obligation for employment of the physically [and intellectually] disabled...” (Law for Employment Promotion, etc... of the Disabled (Law No. 123, 1960) Article 1). These measures include vocational rehabilitation “...and other measures for promoting self-support in vocational life through the placement of disabled in occupations suited to their abilities, and thereby to contribute to the occupational stability of the disabled.” (Op. Cit.)</p>

**Table 4.6: Quota provisions for the employment of people with disabilities, in the selected countries**

Countries	Quota Provisions
<b>Cambodia (Draft Law)</b>	<p>An employer, who employs more than a certain number of full-time employees, shall employ appropriate percentage of full time disabled employees (Article 38, Draft Law on the Rights of People with Disabilities). Employers are obliged by the Act to make a periodic declaration to the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation “...on the number of full time employees and full time disabled employees (Op. Cit. Article 39). In the event of non-fulfilment of the “appropriate percentage of full time disabled employees...” (Op. Cit. Article 38) the employer shall pay a contribution to the People with Disabilities' Fund..” (Op. Cit. Article 40).</p>
<b>China</b>	<p>In respect of the employment quota the Act stipulates “...state organs, non-governmental organizations, enterprises, institutions and urban and rural collective economic organizations should employ a certain proportion of disabled persons in appropriate types of jobs and posts.” With regard to the specific ratio, it is to be “...determined by the people's government of provinces, autonomous regions and municipalities directly under the Central Government and in line with the actual conditions...” (Law of the People's Republic of China on the Protection of Disabled Persons 1990 Article 30). The concerned governmental departments are vested with the authority to determine “...the quota for recruiting and employing workers and staff members”, this is limited by the proviso “...a certain proportion of the quota to disabled persons.” (Op. Cit. Article 33).</p>
<b>India</b>	<p>The government is compelled by virtue of this instrument to firstly, identify posts that</p>

Countries	Quota Provisions
	can be reserved for persons with disabilities, secondly reserve “not less than three per cent” of vacancies for people with disabilities (one per cent being reserved for persons suffering from “blindness or low vision; hearing impairment; locomotor disability or cerebral palsy”).
<b>Japan</b>	<p>This Law established an employment quota for physically disabled persons. Since the 1997 revision “the quota rate for physically disabled persons” is to be replaced with “the quota rate of disabled persons” including intellectually disabled persons as well as physically disabled persons (140th Ordinary Session of the Diet, a partial revision of “Law for Employment Promotion etc of the Disabled” was approved (Promulgated April 8, 1997; Effective 1 July 1998). Cabinet Orders prescribes the employment quota rate for disabled persons (Law for Employment Promotion, etc... of the Disabled (Law No. 123, 1960) Article 14.2, Article 11 describes the procedure for enumerating the number of people with disabilities working in a particular organisation and whether the number is within the quota).</p> <p>The Japanese legislative employment quota for people with disabilities is comprehensive including a formula to ensure the employment rate of disabled persons corresponds to the state of full-time employment and unemployment in the general market place. However, constant fluctuation in the employment quota would make stability impossible and thus it is to be revaluated every five years.</p>
<b>Mongolia</b>	<p>The Act promotes employment of people with disabilities by providing that if “...an enterprise and /or establishment, [has]...50 or more employees [it] shall occupy three or more percent of the work and/or positions for the disabled or pygmy persons...” with the one proviso “...if such employment is not inimical to the specific nature of the work and industry.” This is enforced by the payment of a monthly fee “appropriate to each count as if it were occupied...” by the enterprise/establishment. The fee is to be fixed by the government and “...concentrated in the central budget and be allocated to fund social security measures for disabled and pygmy persons” (Labour Law Act 1999 Article 111).</p>
<b>Thailand</b>	<p>The Rehabilitation of Disabled Persons Act A.D. 1991 authorizes the Minister to establish regulations prescribing...a quota system to require that private employers “employ disabled persons at the ratio prescribed” and to hire a certain percentage of disabled workers. Ministerial Regulation 1 (B.E. 2537 (1994)) established a ratio of disabled employees to be hired by private companies (employers with more than 200 employees must hire at least one disabled person and for employees with more than 200 employees, they must hire one additional disabled person for every 100 additional employees and a financial allocation is to be made to the fund by employers who do not hire the stated number of people with disabilities.</p>

The laws of India, Mongolia and Thailand fix the quotas for employing people with disabilities, while in China the employment quota is to be determined at Provincial level and in Japan the quota is based upon a formula, which ensures the employment rate for disabled persons reflects the rate for non-disabled persons (see Table 4.6). In most cases, the application of the employment quota applies to a certain size of enterprise. Additionally, the word “appropriate” is used in the legal instrument of Cambodia in reference to the percentage of full time disabled employees to be employed. The legislative instrument in India determines the quota not only for people with disabilities but also for people with specific types of disabilities. The legal instrument in Mongolia adds the proviso “... such employment is not inimical to the specific nature of the work and industry.”

### *4.3.2.1 Compensatory Payment*

In China, Japan, Mongolia and Thailand, employers who do not fulfil their quota obligation are legally required to make a payment to a central fund, used to promote vocational training and employment-related opportunities for people with disabilities. The draft law in Cambodia also provides for such a payment.

### **4.3.3 Employment Promotion Measures**

The laws of the selected countries collectively contain a number of employment-related measures for the promotion of the employment of people with disabilities. These include workplace accommodation and accessibility, employment services and financial incentives.

#### *4.3.3.1 Workplace Accommodation*

The accommodation of people with disabilities in the workplace is specifically referred to in the:

- Disability Discrimination Act 1992 (Australia)
- Draft Law on the Rights of People with Disabilities (Cambodia)
- The Persons with Disabilities (Equal Opportunities Protection of Rights and full Participation) Act, 1995 (India)
- The Law for Promoting Businesses that Facilitate the Use of Communications and Broadcast Services by the Physically Disabled (Law No. 54 1993) and the Law for Buildings Accessible and Usable for the Elderly and Physically Disabled (Law No. 44 1994) (Japan)

In Australia, Commonwealth employers are required to develop an action plan to improve accessibility with the proviso that this should not cause "undue hardship".

In India, in the enabling provisions (Section E) of The Persons with Disabilities (Equal Opportunities Protection of Rights and full Participation) Act, 1995 "...governments at all levels are required to formulate schemes for promotion of employment of people with disabilities, providing...creation of a non handicapping environment in places where persons with disabilities are employed."

In Japan, both the Law for Promoting Businesses that Facilitate the Use of Communications and Broadcast Services by the Physically Disabled (Law No. 54 1993) and the Law for Buildings Accessible and Usable for the Elderly and Physically Disabled (Law No. 44 1994) are concerned with general accessibility.

In Thailand, Section 17 of the Rehabilitation of Disabled Persons Act A.D. 1991 gave the Minister the mandate to prescribe Regulations to improve the accessibility of buildings for people with disabilities. The Minister issued Ministerial Regulations on Accessibility for People with Disabilities, December 1999. The regulations include provisions promoting equality and eradicating any barriers, which deprive disabled persons from access to the facilities in building, sites, vehicles and public services.

The Fiji Constitution 1988 guarantees accessibility for all without discrimination (Section 38). The Human Rights Act 1999 also provides for accommodation of built environments to ensure non-discrimination in accessibility.

The draft law in Cambodia requires employers to make reasonable accommodation to facilitate the inclusion of people with disabilities in the workplace. Accommodation must be “reasonable”: it must not “cause undue burden to the employer” (Article 42) and be limited to “...qualified persons with disabilities whether they are applicants, employees, apprentices or interns...”.

In Sri Lanka, Regulations Regarding Accessibility are in the process of being drafted.

### *4.3.3.2 Employment Services*

The laws of Cambodia, India, Japan, Sri Lanka and Thailand all provide for the establishment of employment services in their countries:

- The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 (India)
- Law for Employment Promotion etc... of the Disabled (Law No. 123, 1960), Employment Countermeasures Law (Law No. 132, 1966) (Japan)
- Rehabilitation of Disabled Persons Act A.D. 1991, Cabinet Resolution 10 November 1998 (Thailand)
- Ranaviru Seva Act No.54 of 1999 (Sri Lanka)
- The Draft Law on the Rights of People with Disabilities, Cabinet Resolution on the Principles of Rehabilitation, Vocational Training and Job Placement for Persons with Disabilities (No. 181/SSR) December 1990, Ministerial Decision on Establishment of National Centre of Persons with Disabilities (NCDP) No 757 MOSALVY May 1997 (Cambodia)

The law in Sri Lanka is concerned with disabled ex combatants and simply states with regard to employment services that the main objective of the Act is to secure gainful employment for this specific disability group and this is to be facilitated through a number of measures including job placement.

The Cabinet Resolution of 1997 in Cambodia provides guidelines on job placement and the National Centre of Persons with Disabilities was established by a later Ministerial Decision to provide job placement and referral services for people with disabilities. The Draft law in Cambodia only mentions job placement in the context of the People’s Disability Fund being used to provide funding for such programmes and institutions (Article 66). In Thailand, in response to the Rehabilitation of Disabled Persons Act, a Cabinet Resolution (10 November 1998) was issued declaring disabled persons have the right to employment services. Employment referral is referred to in Article 14.1 of the law in Japan, as one of the measures to be taken “...in order to enable disabled persons to engage in appropriate occupations according to their abilities with due consideration for the type and severity of their disability...” by the State. In addition, study and research concerning the types and areas of occupations which are suited for disabled persons is to be promoted in Japan (Article 14.2).

In both India and Japan, placement centres were established as integral parts of the quota systems. The law states in Chapter VI Section 32 that a Special Employment Exchange is to be set up to monitor the implementation of the employment quota system. In Article 3-2 of the comparable law in Japan, Public Employment Security Offices are set up. These Offices promote the employment of disabled persons through gathering information on disabled persons seeking jobs, provide information to employers and encourage employers to employ disabled persons and seek to expand openings suited to the abilities of people with

disabilities. Additionally, in Japan the Employment Countermeasures Law provides employment placement assistance for disabled persons.

#### 4.3.3.3 Financial Incentives

Provision for financial incentives is laid down by law in China, India, Japan, Mongolia and Thailand, and in the draft law of Cambodia (see Table 4.7). These legal provisions are intended to compensate employers for any economic burden they may be under due to employment of disabled persons. The laws of China and India both provide for start up loans for businesses.

In Sri Lanka, financial assistance is provided for those visually disabled persons in self-employment and micro-finance facilities for disabled ex combatants.

In Japan, the Employment Countermeasures Act and in Thailand, the Vocational Training Act provide financial allowances for training. In Thailand, this is in the form of a tax reduction. In addition, China operates a system of tax reduction/exemption in relation to welfare enterprises.

**Table 4.7: Legal provisions for financial incentives**

Countries	Financial Incentives
<b>Cambodia (Draft Law)</b>	<p>“The Royal Government is to establish tax reductions and other incentives to employers who employ appropriate percentage or over percentage of people with disabilities.” Article 48 Draft law on the Rights of People with Disabilities</p> <p>Government Sub-decree on Investments (No. 88/ANK/BK) June 1999 regulates a tax reduction for foreign enterprises based on several factors, including percentage of disabled workers.</p>
<b>China</b>	<p>Incentive policies included in the Act include the implementation “...of a policy of tax reduction or exemption in relation to welfare enterprises and institutions for disabled persons and self-employed disabled workers in urban and rural areas...” as well as giving “...priority to disabled persons who apply for licences as self-employed workers or entrepreneurs and give them preferential treatment in allotting work sites and loans, and in other ways.”</p> <p>In addition, the concerned governmental departments are to “...encourage and assist disabled persons to obtain employment through voluntary organizations or to embark on self-employment ventures.” Article 31</p> <p>Law of the People’s Republic of China on the Protection of Disabled Persons 1990</p>
<b>India</b>	<p>Incentives for small enterprises are provided for by the Act: include “appropriate Governments and local authorities...by notification frame schemes in favour of persons, for the preferential allotment of land at concessional rates for setting up businesses and establishment of factories by entrepreneurs with disabilities. Chapter VII, Section 43</p> <p>“...governments and local authorities are obliged “within their economic capacity and development to provide incentives to employers in public and private sectors to ensure at least five per cent of their workforce is composed of people with disabilities.” Chapter VI Section 32 The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995</p>

Countries	Financial Incentives
<b>Japan</b>	<p>The State and local public entities shall take measures "...to reduce the economic burden on employers hiring disabled persons, and to promote their hiring and continued employment..." by supplying "...grants to defray to improve facilities or equipment for employing disabled persons." Law for Employment Promotion of the Disabled (Law No. 123 1960) Article 15.3</p> <p>Provision is also made in the Employment Countermeasures Law (Law No. 132, 1966) for allowances for adjustment training and a training allowance for employers. (Article 18)</p>
<b>Mongolia</b>	<p>Article 8 of the law covers education and vocational training for persons with disabilities. It states:</p> <p>5. The State shall financially support higher education, college and vocational training for students with disabilities that have successfully passed entrance exams. Beneficiary shall come from very poor families, or from families with a member that has fully lost his/her working ability.</p> <p>Article 9 of MSSLPWD is dedicated to employment of persons with disabilities. It states that:</p> <p>1. The State shall give all manner of support to employ persons with disabilities and support the businesses and services run by persons with disabilities based on the person's working skills and education.</p> <p>2. The State shall facilitate and support the enterprises and organizations employing persons with disabilities. A Committee of Government, Provincial/Municipal's Citizen Representatives can use state provincial budget resources to compensate business loss in connection with employing persons with disabilities or those run by the blind, deaf or/and people with physical disabilities. The Mongolian Social Security Law for People with Disabilities (MSSLPWD)</p> <p>State Social Welfare Law of Mongolia Article 25 7. Reimbursement of transportation cost to return home for students with disabilities upon graduation.</p>
<b>Sri Lanka</b>	<p>The Social Security Board Scheme Act has a social security benefit scheme for people who are self employed which expressly includes self employed persons with a disability. The Ranaviru Act provides microfinance facilities for disabled ex combatants and the Visually Handicapped Trust Fund Act also provides financial assistance.</p>
<b>Thailand</b>	<p>The Rehabilitation of Disabled Persons Act A.D. 1991 authorizes the Minister to establish regulations prescribing incentives to employers or owners of private companies, such as deducting "double the expenses" related to equipment purchases that facilitate employment of disabled persons, such as deducting double the expense from profits for tax purposes or entitlement to deductions for wages of disabled workers. In addition, by virtue of the Vocational Training Act 1996 private enterprises are entitled to a 50 per cent tax reduction of training expenses.</p> <p>Small and Medium Enterprise Promotion Act, February 2000 establishes a Board of SMSE development under the Office of SMSE that oversees fund for SMSE development and establishes a plan for SMSE development.</p>

## 5. IMPLEMENTATION

The effectiveness of policy and legislation on the training and employment of disabled persons depends on the involvement of all relevant government ministries; the extent to which the social partners and disabled persons' organizations are involved in their development; the establishment of appropriate and adequate enforcement mechanisms and the development of a range of employment promotion measures. Countries in the Asian and Pacific region vary significantly in all of these aspects.

### 5.1 Institutional Framework

A multisectoral collaborative approach is required if the wide-ranging needs of persons with disabilities are to be adequately met. This requires that various government ministries be actively involved in policy development and service provision, under the coordination of a key ministry – generally either the Ministry of Labour or the Ministry of Social Affairs or Social Welfare. Table 5.1 below shows the government ministries and agencies that have responsibility for promoting employment opportunities for people with disabilities, in the countries studied.

**Table 5.1: Government ministries and agencies which have responsibility for promoting employment of people with disabilities**

Country	Government Ministry/ies /Departments	Main National Disability Institution
<b>Australia</b>	<ul style="list-style-type: none"> <li>▪ Department of Family and Community Services incorporating the National Disability Advisory Council, National Caucus of Disability Consumer Organisations, Commonwealth Rehabilitation Service Australia, Centrelink, Disability Task Force</li> <li>▪ Department of Education, Employment, Training and Youth Affairs (DEETYA)</li> <li>▪ Department of Social Security</li> </ul>	<ul style="list-style-type: none"> <li>▪ Office of Disability</li> </ul>
<b>Cambodia</b>	<ul style="list-style-type: none"> <li>▪ Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation (MSALVY) incorporating the Disability Action Council</li> <li>▪ Ministry of Rural Development</li> </ul>	<ul style="list-style-type: none"> <li>▪ MSALVY Task Force on Disability Issues</li> </ul>
<b>China</b>	<ul style="list-style-type: none"> <li>▪ Ministry of Labour and Social Security incorporating the China Disabled Persons' Federation</li> </ul>	<ul style="list-style-type: none"> <li>▪ State Council Coordination Committee on Disability</li> </ul>
<b>Fiji</b>	<ul style="list-style-type: none"> <li>▪ Ministry of Employment and Industrial Relations incorporating the Fiji National Training Council</li> </ul>	<ul style="list-style-type: none"> <li>▪ Fiji National Council for Disabled Persons</li> </ul>

<b>India</b>	<ul style="list-style-type: none"> <li>▪ Ministry of Labour</li> <li>▪ Ministry of Social Justice and Empowerment incorporating the Rehabilitation Council of India</li> </ul>	<ul style="list-style-type: none"> <li>▪ Central Coordination Committee</li> </ul>
<b>Japan</b>	<ul style="list-style-type: none"> <li>▪ Ministry of Health, Labour and Welfare incorporating the Japan Association for the Employment of the Disabled</li> <li>▪ Ministry of Health and Social Welfare</li> </ul>	
<b>Mongolia</b>	<ul style="list-style-type: none"> <li>▪ Ministry of Health and Social Welfare</li> </ul>	<ul style="list-style-type: none"> <li>▪ Mongolian National Coordination Committee on Disabilities</li> </ul>
<b>Sri Lanka</b>	<ul style="list-style-type: none"> <li>▪ Ministry of Social Services incorporating the Department of Social Services and the Committee on Accessibility</li> <li>▪ Ministry of Employment and Labour</li> <li>▪ Ministry of Tertiary Education and Training incorporating the Department of Technical Education and Training, Tertiary Education Commission, Vocational Training Authority of Sri Lanka, National Apprentice and Industrial Training Authority, National Institute of Technical Education of Sri Lanka, Sri Lanka Institute of Advanced Technical Education</li> </ul>	<ul style="list-style-type: none"> <li>▪ National Council for Persons with Disabilities</li> <li>▪ National Secretariat for Persons with Disabilities</li> </ul>
<b>Thailand</b>	<ul style="list-style-type: none"> <li>▪ Ministry of Labour and Social Welfare incorporating the Department of Public Welfare, Department of Skills Development, Department of Labour Protection and Welfare and the Social Security office.</li> <li>▪ Ministry of Education</li> <li>▪ Ministry of Finance</li> </ul>	<ul style="list-style-type: none"> <li>▪ Office of the Committee for Rehabilitation of Disabled Persons</li> </ul>

### 5.1.1 Role of Differing Ministries

In most countries studied, the principal responsibility for the employment of people with disabilities is split between the labour ministries and the welfare ministries. In Australia and India, this division is reflective of a twin track approach whereby policies and programmes specifically for people with disabilities and mainstream policies and programmes with a disability component are run in parallel by the respective labour and welfare departments. In China, the Ministry of Labour is solely responsible for enhancing the employment prospects of disabled job seekers and providing support to disabled employees, and has delegated this

responsibility largely to the China Disabled Persons' Federation. In Mongolia and Sri Lanka, the sole responsibility lies with the Welfare ministries. In Thailand, the labour and social welfare portfolios have been, up to recently, combined in the same Ministry.

### **5.1.2 Role of the National Institutions**

In all of the countries studied, a national coordinating committee or council has been established to oversee the development of policy and the provision of services for persons with disabilities. The main aim of these bodies is to serve as the national focal point on disability matters and facilitate the development and strengthening of a comprehensive policy aimed at furthering the integration of people with disabilities into all areas of society including employment.

These national committees generally include representatives of all concerned ministries, non-governmental organisations and disabled persons organisations. They are responsible for coordinating the activities of all the representative agencies. The committees are the central focus for all matters concerning people with disabilities and in this regard have key roles in the formulation of policies and programmes and monitoring existing policies and programmes. Many of the committees have produced policy statements in the form of Policy Statement, National Strategic Plans, Frameworks for Action or White Papers (such as China, Japan, Sri Lanka and Thailand) or have a separate Task Force on Disability Issues, with the responsibility for this (such as Australia).

Some countries have established separate institutions, councils or committees with responsibility for promoting the employment of people with disabilities. Both Japan and Australia have specific government agencies concerned with support for disabled employees and enhancing employment opportunities for disabled jobseekers. These are respectively the Japan Association for Employment of the Employment of the Disabled and the Commonwealth Rehabilitation Service of Australia. In China, the State Council for Work Concerning Disabled Persons holds the responsibility for employment-related policy concerning while in Thailand, the Committee for the Rehabilitation of Persons with Disabilities has a Sub-committee on Employment Promotion for People with Disabilities.

## **5.2 Policy**

Information on the implementation measures relating to legislation in the selected countries was gathered during the literature review using existing documentary sources. This information will be complemented with data compiled at national level at a later stage in the project.

Data has been compiled on policies and programmes that either enhance the existing legislative framework, fill in any existing loopholes or exist apart from any legislative measure for the promotion of employment of disabled persons. Policies and programmes not only emanate from government sources but also from employers' and workers' organisations, non-governmental organisations and international non-governmental organisations.

### **5.2.1 Government Policies**

While government policies of the countries studied share the overriding objective of furthering integration of people with disabilities into society through employment, the details

of the policy and the programmes for which they provide are very diverse. These are discussed below with a specific focus on vocational training, placement services, employment quotas, financial incentives and employment support.

### *5.2.1.1 Vocational Training*

In all the countries studied, there are policies to enhance the employment of people with disabilities through vocational training. Generally, training is provided in centres catering to disabled persons only, although in recent years, countries have to varying extents started to promote access of persons with disabilities to mainstream training centres. Non-governmental organizations play an important role in training provision, and in some countries are the main training providers for disabled persons.

The majority of people with disabilities in training are catered to in separate centres, catering only to disabled persons in Cambodia, China, Fiji, India, Japan, Mongolia, Sri Lanka and Thailand. In Australia, some people with disabilities are catered to in specialist centres. The Commonwealth Rehabilitation Service (CRS Australia) and the Competitive Employment Training and Placement Services (CETP) are the principal bodies concerned with training of disabled persons for the workplace.

In Cambodia, India and Sri Lanka, non-governmental organizations play a key role in training provision, while in the other countries, such training in special centres is organized predominantly by public authorities. In Thailand, for example, vocational training courses specifically for people with disabilities are run by a number of government departments including the Ministry of Education and Special School Options and the Industrial Rehabilitation Centre operated by the Social Security Office. In addition, the Department of Public Welfare of the former Ministry of Labour and Public Welfare operates eight residential vocational training centres and provides seventeen training courses. In Sri Lanka, the Ministry of Social Welfare, through its Department of Social Services, operates Vocational Training Centres as well as providing three months on the job training specifically for people with disabilities.

Access of persons with disabilities to mainstream vocational training programmes is actively promoted in Australia. Vocational Education and Training Courses and Apprenticeship/Traineeship courses are open to all, with some institutes employing disability staff and additionally several national plans have been introduced in recent years to foster this: the National Plan for the Provisions of all Services to People with Disabilities; *Bridging Pathways*, a national strategy for increasing the participation and outcomes of people with disabilities in vocational education and training; the National Plan for Transition from School to Work; and Australians Working Together - A Better Deal for People with Disabilities. In Thailand, access of disabled persons to mainstream vocational training centres was opened by Cabinet Decision, and this reflected in the Draft Plan of Quality of Life Development for People with Disabilities (2002-2006) and the Plan for Employment Promotion and Development for People with Disabilities which states that opportunities are to be provided for persons with disabilities to gain access to all public and private training centres, and states that business firms are encouraged to provide on the job training for persons with disabilities especially those with intellectual, mental and behavioural disabilities. In Fiji, the Ministry of Employment and Industrial Relations operates the Fiji National Training Council, which works with employers' organisations to provide training for all persons. One of the objectives of the National Vocational Training Centre in Suva is to

integrate persons with disabilities into mainstream vocational training schemes. In India, the National Council of Vocational Training and the Apprenticeship Training Scheme reserve an unspecified number of places for people with disabilities.

Most training is provided in training centres, though several of the countries have introduced mobile training in order to reach out to persons with disabilities in more remote areas. In Cambodia, for example, the Ministry of Rural Development (MORD) has established a mainstream programme - Vocational Training to Alleviate Poverty (VTAP) – which focuses on providing more mobile rather than centre-based training specifically aimed at socially disadvantaged groups including disabled persons. The advantages of mobile courses are perceived as their shortness and their orientation towards agriculture. In addition, since the training is implemented in the trainees' own environment, the learning process is easier, immediately transferable and therefore more accelerated. In Thailand, mobile 'outreach' training is organized to a limited extent in the north of the country.

Both China and Japan's provisions for training are integrated into their employment quota systems. In China, the last Framework for Undertakings for Disabled Persons job training was stated as a goal, and the Ministry of Labour and Social Security has established vocational training centres in working toward the achievement of this goal. In Japan, Local Vocational Centres for Disabled Persons, Vocational Skill Development Centres and Human Resources Development Facilities operated by Ministry of Health, Labour and Welfare provide preparatory work training for disabled persons.

### *5.2.1.2 Employment Services*

Employment Placement Services are an essential part of the integration of disabled job seekers into the workplace. The countries studied differ in the extent to which such services are available to people with disabilities, either as a specialist service catering solely to disabled persons, as a mainstream service.

Some of the countries – such as Australia, China and Japan – have well-developed specialist placement services: the CRS Australia Business Services, and the employment centres of the Japan Association for the Employment of the Disabled and the China Disabled Persons' Federation. In India, the National Employment Service supports the integration of disabled persons into the workplace through 23 Special Employment Exchanges. In Thailand, a small scale specialist placement service is provided to disabled persons in Bangkok through the Office of the Committee for the Rehabilitation of Disabled Persons and the Vocational Training Centres of the Department of Public Welfare also seek jobs for graduates from their centres, relying primarily on arrangements which exist with specific companies locally and regionally, while in Cambodia, the National Council for Disabled Persons operates a small scale placement service as a pilot project, with international funding. In Sri Lanka, a specialist service is at the planning stage. Neither Fiji nor Mongolia provide such a service.

In Japan, the Employment Support Centres are run by the Japan Association for Employment of the Disabled, where staff offer support to disabled workers who have difficulty continuing to work. In addition, the promotion of the settlement of disabled persons into the workforce is aided through vocational life counsellors comprised of part of a task team for adapting to the job. The counsellors seek to raise the disabled person's ability to adapt to the workplace and provide a broad range of counselling with regard to all aspects of working life to enable him or her to manifest his or her ability to the fullest. The counsellors work in close coordination

with a team composed of a business executive, a member of the management staff, a production line supervisor, a representative of the disabled persons employed by the company and with the staff of the public employment security office.

Access to mainstream employment services varies among the countries studied. In Australia, the mainstream programmes of the Commonwealth Employment Service, JobNetwork, Disability Recruitment Coordinator Services and Special Employment Placement Officer Programme cater to people with disabilities. In Japan, the central implementation structure of the Japanese employment policies for disabled persons incorporates a Placement System through the Public Employment Security Offices, a network of 600 offices throughout the country. In India, 914 exchanges (Employment Exchanges) cater to people with disabilities as well as people without such special needs. In China, the option to use mainstream employment services is also open, though relatively few disabled persons use these services. In other countries studied, access to such services is minimal (such as in Thailand) or practically non-existent (such as in Mongolia).

### *5.2.1.3 Employment Quotas/ Quota-levy systems*

Some countries promote employment of people with disabilities through quotas. Seven of the countries studied have in place either quota/levy systems (China, Japan, Mongolia, Thailand) or quota systems without levy requirements (India, Sri Lanka). China and Japan's systems are well developed, including levies for non-fulfilment of quota obligations and grants to compensate employers for additional expenses incurred for workplace adaptations and training. The quota systems in India, Mongolia, Sri Lanka and Thailand are not supported by such promotional measures. The quota system in Sri Lanka, allocating 3 per cent of the job opportunities to people with disabilities in the public sector, is authorised by a decision of cabinet and relevant departments notified through a Public Administration Circular of 27/88. It is not backed by legislation nor is it enforced. While the quota system in Thailand is backed by law, there is no provision for its enforcement.

### *5.2.1.4 Financial Incentives*

Financial incentives include tax-reduction or exemption measures, subsidies for workplace accommodations or adaptations, wage subsidies for employers, and financial assistance towards training and self-employment activities of disabled persons. All the countries studied except Fiji have at least one form of financial incentive.

In Japan, the Ministry of Health, Labour and Welfare and the Employment Human Resources Development Organisation provide a fidelity guarantee system for those physically disabled persons who are employed as regular employees through the Public Employment Services Office and satisfy certain requirements guaranteeing a certain salary for a certain number of years. With regard to assistance for employers, there are approximately six systems, which encourage employers to positively recruit people with disabilities. These are grants under the levy and grant system for employing physically disabled persons, grants for employment development of hard to employ applicants, adaptation training system (long and short term), tax incentives for enterprises employing disabled persons, the severely disabled person's employment promotion loan and grants under the activities assisting continued employment of disabled persons. Two countries (China and India) provide incentives in the form of preferential treatment in allotment of land.

The Australian Department of Family and Community Services funds several programmes, which assist people with disabilities, secure, retain and advance in employment through encouraging employers to provide job opportunities for people with disabilities. These programmes include:

- The Wage Subsidy Scheme, which offers financial assistance through wage subsidies to employers of disabled persons;
- Re-entry to Work Incentives for disabled persons and employers who employ them, including special features in the Disability Support Pension to encourage workforce re-entry and study, as well as the Working Credit Scheme which allows people of working age to retain support payments whilst working;
- The Supported Wage System (SWS), which provides a productivity based wage arrangement for people with a disability that affects their productive capacity in the workplace;
- The Disabled Apprentice Wage Subsidy which provides assistance to disabled people who wish to gain an apprenticeship and subsequently undertake a basic trade course as part of their training and the Work Experience Programme for People with Disabilities (WEPD) scheme, under which wages are fully reimbursed up to a specified amount for clients referred by a Disabilities Panel;
- The National Training Wage is designed to place long term unemployed people in work that will result in an accredited vocational training outcome in which the rates of pay reflect the fact that the employee is in training;
- The Workplace Modification Grants scheme which provides up to \$5000 per individual to assist with the cost of workplace modifications, special or adaptive equipment for people with disabilities;
- Mobility Allowances for disabled people who are in training or employment for at least eight hours per week, who are unable to use public transport unaided (and who had not bought a car and received a sales tax exemption within the last two years);
- Allowances for Aids and Appliances - such as sales tax exemption on the purchase of a new motor vehicle for those persons who cannot use certain sorts of public transport and who are also gainfully employed; and
- The Continence Aids Assistance Scheme which also assists people with disabilities to obtain and retain employment by specifically subsidising the cost of continence aids for eligible people who are in work or of working age.

China and Thailand offer tax reductions to employers who employ disabled persons. Financial incentives are also given to disabled persons who wish to start a small business.

In both Cambodia and Mongolia, the main financial aid is credit schemes for the development of small-scale enterprises. The National Handicapped Finance and Development Corporation in India offers loans at concessional rates for persons with disabilities as well as income tax deductions. In Sri Lanka too, small-scale grants for starting up small businesses are provided as part of the services provided by the Department of Social Services. This may be complemented by wage subsidies and grants for assistive devices (being considered for disabled persons who cannot earn the minimum wage). The Samurdhi Bank Union is a pivotal part of poverty alleviation programme as it facilitates financial support for income generating activities for small enterprises and self employment.

### *5.2.1.5 Supported Employment*

Two of the countries studied place increasing emphasis on supporting persons with disabilities in employment through supported employment programmes. Support is either permanent, through a job coach; or intermittent, with a resource person available to talk about job progress and to identify problems as they arise and ways of overcoming them.

In Australia, there are two programmes which aim to support disabled employees in the workplace. These are the Supported Employment Services and the Competitive Employment Training and Placement Services (CETP). Japan has recently introduced supported employment schemes, involving on-the-job training of persons with disabilities by a job coach.

### **5.2.2. Policies of Workers' Organisations**

Workers' organisations with the stated objective of influencing the employment situation of disabled persons included in the countries studied are the Confederation of Mongolian Trade Unions, Mongolian Free Trade Unions' Federation, the Australian Confederation of Trade Unions (ACTU) and the All Japan Prefectural and Municipal Workers' Union (JICHRO).

The Confederation of Mongolian Trade Unions, which includes in its membership the Free Trade Union of Disabled People, states that its priority is job placement and training, particularly learning new skills.

The All Japan Prefectural and Municipal Workers' Union (JICHRO) is collaborating with a disabled persons organization in a campaign for unrestricted equality for people with disabilities, including the removal of the numerous "disqualification clauses" that prevent people with disabilities from working in particular jobs.

### **5.2.3. Policies of Employers' Organisations**

Employers' organizations in several of the countries studied are active in supporting and promoting the employment of disabled persons. The Employers' Federation of Ceylon in Sri Lanka and the Business Advisory Council in Cambodia are examples of employers' organisations that are most proactive. Employers' organizations in Australia, Japan and Thailand are also involved in employment-related initiatives for disabled job seekers.

The Employers' Federation of Ceylon (EFC) has established an Employer Network on Disability, which is working to set up a database of disabled job seekers and their skills. The Employer Network on Disability aims to act as a link between the business community and various organisations for disabled persons including Government and Non-Governmental, Vocational Training Providers and Funding Agencies.

The Business Advisory Council (BAC) in Cambodia is a group of employers and leaders from business associations who provide technical advice to assist in the vocational training and job placement of people with disabilities. BAC works in partnership with the National Council of Disabled Persons (NCDP) and non-governmental organizations providing training services for disabled persons, and providing advice and technical assistance to ensure that the training and employment services provided by these organisation result in job candidates that match local labour market needs.

In Australia, employers' representatives are involved in initiatives to improve training and employment opportunities for disabled persons – such as the Bridging Pathways initiative.

### ***5.3 Consultative Mechanisms***

In promoting employment opportunities for job-seekers with disabilities through legislation and policy, consultation with representative organizations of employers, workers and people with disabilities is essential, to ensure that proposals are comprehensive and appropriate. In the countries studied, the extent to which such consultation takes place varies.

The Disability Action Council of Cambodia and the Sri Lankan National Council of Persons with Disabilities are both comprised of representatives of the government and NGOs.

In China, when formulating laws, legislation and policies concerning disabled persons, the government consults the Chinese Federation of Disabled Persons, the All China Federation of Trade Unions and the Chinese Federation of Enterprise Societies. In addition, when implementing national policies, frequent contact is also maintained with the Federations for disabled persons, trade unions and enterprise societies.

In India, both the Central Coordination Committee and the State Coordination Committees have the authority to review and coordinate the activities of all the Departments of Government and other Governmental and non-governmental organisations which are dealing with matters relating to persons with disabilities. The National Centre for Promotion of Employment of Disabled People (NCPEDP) works as an interface between the government, industry, non-governmental organisations and international agencies to advocate appropriate policies and legislation for employment of persons with disabilities in collaboration with policy and decision makers.

In Australia, as a matter of practice, the social partners are involved in disability-related initiatives concerning training and employment. For example, Disability Service Standards were developed by a national working party consisting of representatives of Commonwealth and state governments and peak disability service providers and consumer organisations, through a process of wide consultation.

In Thailand, the Committee for Rehabilitation of Disabled Persons' broad composition of government and NGO representatives reflects the multidimensional nature of the task of improving opportunities for disabled people.

Whilst there is no reference to consultation in the mandate of the Mongolian National Coordination Committee on Disabilities, it is implicit in the target of establishing appropriate conditions for ratifying Convention 159.

### ***5.4 Enforcement Mechanisms***

Enforcement mechanisms for the laws in place in the countries studied generally take the form of administrative monitoring and inspection, carried out by designated national agencies. In some of the countries – notably India and Thailand, no specific enforcement mechanism exists. In Australia, where the approach to employment promotion is predominantly voluntaristic, the question of enforcement does not arise.

## **6. OUTCOMES.**

There is significant variation between the countries studied in the extent to which they gather systematic information on the impact of policies and laws concerning the training and employment of persons with disabilities. In some cases, the evidence cited is mainly anecdotal (e.g. Cambodia, Fiji, Mongolia, Sri Lanka) In other cases, partial information is available (e.g. China, India, Thailand). In others again, (Australia and Japan) Information is systematically gathered on a regular basis. There is great potential for improving the data on outcomes in many of the countries, drawing on the examples of good practice in the region.

In spite of its inadequacies, the available evidence shows that those countries which have well established laws and policies, with extensive consultation, monitoring, evaluation and data-gathering mechanisms in place have made greater progress than other countries in moving towards the full participation of disabled persons in the labour force and society. It also indicates that there is significant potential for countries throughout the region to learn from each other.

One of the striking points to emerge, however, is that no matter what approach has been adopted and irrespective of the policies, laws, programmes and consultation procedures the countries have put in place, people with disabilities remain underrepresented in mainstream training and employment. This evidence points to a need to review the approach taken, in light of the significantly changed labour market situation throughout the world, arising from globalization and technological change.

## 7. NEXT STEPS

The preliminary review indicates that, while most of the countries studied have legislation concerning the vocational rehabilitation and employment of disabled persons, the implementation of these laws is less than adequate, even in countries with the most advanced legal and policy systems, with the result that their potential to improve the employment situation of disabled persons has not yet been fully realized.

The Project Consultation in Bangkok provided the opportunity for delegates to identify ways in which the existing legislation might be improved and made more effective, make recommendations for action at national level and propose steps which might be taken to act on these recommendations, with the support of the project 'Employment of People with Disabilities – the Impact of Legislation'. It also provided participants with the opportunity to move towards the targets relating to legislation, training and employment set in the Biwako Millenium Framework for Action Towards an Inclusive, Barrier-Free and Rights-Based Society for Persons with Disabilities in Asia and the Pacific.

## **ANNEX 1 - ILO CONVENTION 159**

The primary goal of the International Labour Organization is to promote opportunities for women and men, including those with disabilities, to obtain decent and productive work in conditions of freedom, equity, security and human dignity.

The ILO's Disability Programme, like other ILO programmes, is based on the conviction that work is a fundamental element of personal fulfilment, social integration and recognition; and work of decent quality is the most effective means of escaping the vicious circle of marginalization, poverty and social exclusion.

These principles underlie the ILO Convention concerning Vocational Rehabilitation and Employment (Disabled Persons) Convention 1983 (No.159), its accompanying Vocational Rehabilitation and Employment (Disabled Persons) Recommendation, 1983 (No. 168) and other ILO conventions concerning equality of opportunity. These instruments are based on the view that vocational rehabilitation, freely chosen work and the opportunity to advance in employment are the essential prerequisites for the social integration of disabled persons.

In ratifying Convention No. 159, States parties undertake, in accordance with national conditions, practice and possibilities, to formulate, implement and periodically review a national policy on vocational rehabilitation and employment of disabled persons. The ILO Convention views disability as a condition of occupational disadvantage which can and should be overcome through a variety of policy measures, regulations, programmes and services. It calls upon countries to base their national policies on the principles of: equality of opportunity, equality of treatment, mainstreaming of training and employment opportunities and community participation. In addition, the Convention invites governments to consult the representative organizations of employers and workers on the action to be taken to give effect to the national policy. It also provides for consultation of representative organizations of and for disabled persons.

74 States have so far ratified this 1983 Convention (March 2003).



## ANNEX 2 - REFERENCES

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