

# **Employment of People with Disabilities**

## **The Impact of Legislation**

### **Report of a Technical Consultation**

*Addis Ababa, 20-22 May 2002*

*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, including vocational rehabilitation, quota legislation, anti-discrimination and employment equity legislation, and legislation to promote job retention and return to work of people with disabilities. Less attention has been devoted to the question of the effectiveness of the laws in improving 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 selected countries of East Africa (Ethiopia, Kenya, Mauritius, Seychelles, Sudan, United Republic of Tanzania and Uganda), and Asia (Australia, Cambodia, China, Fiji, India, Japan, Malaysia, Mongolia, Sri Lanka and East Timor).

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 promote the economic rights of people with disabilities in selected countries of East Africa and Asia and, thereby, their broader social and political rights, by enhancing the capacity of national governments to implement effective legislation on the employment of people with disabilities. The project sets out to examine the extent of such 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 in the review process was the compilation of existing national policy and legislation pertaining to the employment of persons with disabilities in the selected countries of East Africa. A Country Profile was then prepared for each country, using the information collected. The Country Profiles were then summarized in a Background Paper. A similar process is underway for selected countries in Asia.

In order to share ideas between representatives of stakeholders in each country, including members of Parliament, government ministries responsible for employment and disability matters, employer and worker organizations, as well as national organizations of persons with disabilities, regional technical consultations were planned. The first Technical Consultation involved countries in East Africa. This is a report of that Consultation.

## **2. Overview**

The ILO Technical Consultation on the topic ‘Employment of People with Disabilities: the Impact of Legislation’ was held in Addis Ababa, Ethiopia, 20 to 22 May 2002, as part of the ILO project, funded by the Government of Ireland. The overall purpose of the Technical Consultation was to examine the strengths and weaknesses of employment-related laws concerning people with disabilities in seven selected countries (Ethiopia, Kenya, Mauritius, Seychelles, Sudan, Uganda, United Republic of Tanzania) and also their implementation mechanisms, in order to identify required revisions.

### **2.1 Themes**

The Technical Consultation was participative in nature with two lecture-discussion sessions, complemented by three working groups sessions.

ILO presentations focused on the following:

- International trends in employment-related legislation concerning people with disabilities
- How to translate international principles on disability into national legal frameworks.

Representatives from the country teams made a brief presentation on employment-related legislation concerning people with disabilities in their own country. This was an opportunity for participants to comment on and suggest any necessary amendments to the background documents on existing disability policy and/or legislation in the selected countries, which had been prepared and circulated in advance of the meeting.

Working group sessions focused on the following questions:

- What elements should be contained in a modern law to promote employment opportunities for people with disabilities?
- What are the strengths and weaknesses of existing laws concerning the employment of people with disabilities, and their implementation measures?
- What needs to be done to improve the existing national laws and their implementation?

During the working groups discussions, there was general agreement on the necessity of considering disability as a human rights issue; formulating disability policies in consultation with the social partners and organisations of disabled persons; strengthening implementation and coordination mechanisms relating to the laws; and ratifying ILO Convention No. 159 on Vocational Rehabilitation and Employment (Disabled Persons) of 1983. The importance of sensitising, informing and training key actors of the implementation of disability laws and policy was also stressed.

## 2.2 Participants

The 32 participants from seven countries (Ethiopia, Kenya, Mauritius, Seychelles; Sudan; United Republic of Tanzania, Uganda) included 4 members of Parliament; 6 representatives of organisations of people with disabilities; 14 government's representatives, 6 workers' representatives and 2 employers' representatives (See List of Participants, Annex 1).

There was a fairly even gender balance among the participants, almost half of whom (13) were women. People with disabilities were represented by nine participants.

## 2.3 Resource persons

The workshop was conducted by four ILO resource persons from the Skills Department, InFocus Programme on Social Dialogue, Labour Law and Labour Administration (IFP/DIALOGUE) and ILO Eastern Africa Multidisciplinary Advisory Team (EAMAT) with the assistance of an ILO consultant. These were:

- Ms Barbara Murray, Manager, Disability Programme, IFP/Skills, ILO, Switzerland
- Mr Bob Ransom, Senior Specialist, Disability Programme, IFP/Skills, ILO Switzerland
- Ms Jane Hodges, Senior Labour Law Specialist, IFP/Dialogue, ILO, Switzerland
- Ms Monika Sommer, Senior Specialist in Labour Administration and Social Dialogue, ILO EAMAT, Ethiopia
- Ms Eléonore d'Achon, ILO Consultant

## 2.4 Resource Materials

- Country Profiles on Legislation, Policies and Programmes concerning the Employment of People with Disabilities in Ethiopia, Kenya, Madagascar, Mauritius, Seychelles, Sudan and United Republic of Tanzania
- Background Paper (Annex 2) on Legislation, Policies and Programmes concerning the Employment of People with Disabilities in selected countries of East Africa
- ILO Convention No. 159 on Vocational Rehabilitation and Employment (Disabled Persons), 1983
- Recommendations No. 168 on Vocational Rehabilitation and Employment (Disabled Persons), 1983 and Recommendation No. 99 on Vocational Rehabilitation (Disabled), 1955
- ILO Code of Practice on Managing Disability in the Workplace, 2001
- Simon Zadek and Susan Scott-Parker, Unlocking Potential – The New Disability Business Case, Employers' Forum on Disability, UK, 2001
- Aeberhard-Hodges Jane and Raskin Carl, Affirmative Action in Employment of Ethnic Minorities and Persons with Disabilities, ILO, 1997
- African Decade of Persons with Disabilities, Decade Action Plan 1999-2009, adopted by the Pan African Conference on the African Decade, July 2002
- Labour Legislation Guidelines, IFP/Dialogue, ILO, 2001, <http://www.ilo.org/public/english/dialogue/ifpdial/llg/index.htm>

### **3. Official Opening**

The Technical Consultation was officially opened by Mr Michel Gozo, Director, ILO Addis Ababa Area Office and Ms Pauline Conway, Irish Ambassador and Head of Ireland Aid in Ethiopia.

Mr Bob Ransom, IFP/SKILLS summarized the objectives of the Technical Consultation, which was intended to provide participants with an overview of the main trends worldwide in employment-related legislation concerning people with disabilities and its implementation; and of approaches to translating international principles on disability into national legal frameworks. Participants were also asked to review reports on existing disability policy and/or legislation for their country and correct these where necessary. During the working sessions, they would be asked to identify revisions required in national employment laws concerning people with disabilities and their implementation mechanisms, and make proposals for follow-up technical support in drafting or revising these laws and implementation mechanisms. He emphasised that follow-up activities could be arranged at national level arising from the recommendations of the country teams at the end of the Consultation, including national workshop for drafters of legislation, as well as employers', workers' and disabled persons' representatives and, where necessary, the provision of specialist advice on the drafting or revision of national legislation concerning the employment of disabled persons.

In his opening remarks, Mr Gozo explained how the Technical Consultation reflected the ILO priorities, which involve advocacy, service and knowledge development. He encouraged countries to envisage ratification of ILO Convention No. 159 concerning Vocational Rehabilitation and Employment (Disabled Persons) of 1983 and to formulate policies to promote employment opportunities for people with disabilities.

Ms Conway reminded participants that the overall objective of the partnership agreement between Ireland Aid and the ILO was to create employment opportunities for women and men, including persons with disabilities. She said that reducing poverty was the main objective of Ireland Aid. Since people with disabilities are among the poorest of the poor, the project 'Employment of People with Disabilities: the Impact of Legislation' perfectly fits in with Ireland Aid priorities. She welcomed the project which, by considering employment-related legislation concerning people with disabilities, contributed to promoting their human rights as well as their economic rights. She hoped that the Technical Consultation would be followed by discussions in each of the participating countries about technical support that might be requested in revising legislation and implementation mechanisms.



## **4. Technical Presentations**

### **4.1 International Trends in Employment-Related Legislation concerning People with Disabilities**

*Barbara Murray, Manager, Disability Programme, IFP/Skills, ILO*

#### **Introduction**

Training and employment opportunities for people with disabilities have changed dramatically in recent years. These changes reflect 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. New approaches have been developed to assist this process - Supported Employment and Social Firms are notable examples.

In the field of training, training in special centres continues in many countries to be a component part of the range of services which are needed, though there is an emphasis now in viewing time spent in such centres as a transitional phase for many people. There is a growing emphasis on opening mainstream training centres to people with disabilities, and associated with this trend, training is increasingly viewed as part of a package of interlinked support measures, rather than sufficient in itself to ensure the entry of people with disabilities to the labour market. In some countries, special centres operate as resource centres to support the movement of people with disabilities into mainstream programmes. Attempts are being made to make training more responsive to the needs of employers and the market. On-the-job training is becoming more common, sometimes provided by the employer, and more frequently as part of a supported employment placement, where a job coach from a specialist agency provides training in the workplace.

An important reason for these changes is the growing awareness that many of the obstacles which disabled people face in seeking to earn a living arise from the way society is structured and organised (e.g. lack of access to education, training in employable skills, buildings, public transport) rather than from the disability itself, as well as from mistaken assumptions about the working capacity of disabled persons. These obstacles can be removed if appropriate action is taken. Another reason is the recognition that people with disabilities, like non-disabled persons, have varying work-related abilities and needs, and that their disability may have little impact on their ability to work and take part in society, or it may have a major impact, requiring considerable support and assistance, with many variations in between. This changed understanding is reflected in significant changes in legislation and policies which have been introduced in many countries in recent years.

#### **National Legal Frameworks**

National laws 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 jobseekers, rather than to 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 fulfillment of their quota requirement.

Countries with this type of legislation include many European countries, such as France, Germany and Italy, several Asian countries, such as China, Japan and Thailand, and several African countries, including Ethiopia, Mauritius and Tanzania (Mainland).

***Equity/Non-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. In Ethiopia, the Proclamation on the Rights of People with Disabilities to Employment is an example of civil anti-discrimination law. Other 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 only 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 centers. Quota laws generally do not make provision for training. In some countries, the decision to promote access of disabled persons to mainstream training centers is made by government decision, rather than laid down in formal provisions.

## **What determines effectiveness?**

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

- the underlying model of disability
- the concept of equality
- the location of the legal provisions.

In addition, measures to promote implementation and enforcement mechanisms are considered.

### ***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 (c.f. 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 which are often 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, 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. There is considerable debate about the impressions which quota systems give about disabled persons. Some argue that they portray disabled workers as lower prospect workers with lower productive capacity than non-disabled workers, who cannot be employed on merit. They also hold that a negative message is conveyed, where not meeting the quota obligation is a criminal offence. 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 more of an affirmative action tool.

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.

### ***Concept of equality***

In looking at the laws with a view to analysing their effectiveness in promoting opportunities for people with disabilities, 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 that 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 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.

### *Location of legal provisions in law*

In considering the effectiveness of laws in practice, another dimension which needs to be examined is the location of the legal provisions – 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. This 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. They also require large amount of resources. Nonetheless, such provisions do 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 provisions for people with disabilities are made in **Social Welfare Law**, they are usually vague, sometimes combining limited rights-based provisions alongside traditional provisions on disability prevention, 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 as 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).

## **Impact**

Systematic evidence on the impact of employment related legislation is available only for some countries. 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 or as easy as had been hoped. Some of the reasons for ineffectiveness of the laws arise from the coexistence of laws based on different concepts of disability, making conflicting provisions for disabled persons. Others lie in the inappropriate location of the law, while others lie in the lack of adequate enforcement mechanisms. Key factors in increasing the impact of employment-related legislation are provisions for affirmative action, and importantly, the involvement of the social partners (both employer and worker representativeness) and representatives of and for disabled persons in the process of designing law and policy.

## 4.2 Translating International Principles on Disability into National Legal Frameworks

*Jane Hodges, Senior Labour Law Specialist, IFP/Dialogue, ILO*

Among the main international instruments related to employment, including that of persons with disabilities, are the ILO Convention No. 159 on Vocational Rehabilitation and Employment (Disabled Persons) of 1983, and Recommendation No. 168 of 1983, Convention and Recommendation No. 111 on non-discrimination in employment and occupation of 1958, the Declaration on Fundamental Principles and Rights at Work of 1998, the UN Standards Rules of 1993, the UN Covenants of 1966, and the proposed UN Convention on the Rights of People with Disabilities. Other international initiatives concerning the employment of persons with disabilities are the World Programme of Action concerning Disabled Persons 1982, the UN Decade of Disabled Persons 1983-92, the Council of Europe Coherent Policy for the Rehabilitation of People with Disabilities, the Asian and Pacific Decade of Disabled Persons 1993-2002, and the African Decade of Disabled Persons 1999-2009. These initiatives aim to promote the full participation of disabled persons in all aspects and sectors of society; point to disability as a form of social diversity; and view people with disabilities as citizens, and disability issues as rights issues.

ILO Convention No. 159 is a legal policy instrument in this area, which has directly influenced a large body of domestic laws. It requires that ratifying countries develop a national policy on employment and vocational rehabilitation of disabled persons. It also requires Governments to consult with employers', workers' and disabled persons' organisations when implementing this policy; to provide special services for vocational guidance, vocational training, placement and employment (also in rural areas); and to apply the principles of equality between disabled workers (men and women) and workers generally. An important provision makes it clear that special positive measures aimed at effective equality of opportunity and treatment between disabled workers and other workers shall not be regarded as discriminating against other workers. This is key when introducing labour market interventions in favour of such workers, such as flexible working time or workplace adaptations. A total of 73 countries around the world, from a wide variety of cultures and socio-economic situations, have ratified ILO Convention No. 159. Among the countries represented at the Technical Consultation, only two – Ethiopia and Uganda – have ratified the Convention.

The key non-discrimination instrument is Convention No.111, which prohibits any distinction, exclusion or preference which directly affects – or has the indirect result of nullifying or impairing – access to education and training, access to jobs, terms and conditions of employment, retaining jobs and promotions and career prospects. Since it covers indirect discrimination, it is an extremely useful instrument to protect against situations which are apparently neutral but which, in practice, result in unequal treatment of persons with certain characteristics. This is very often the type of discrimination practised against persons with disabilities. The Convention covers both private and public employment, and extends protection to the informal economy, where so many of the world's marginalized people gain a living. The text – ratified by 156 member States of the ILO - requires there to be a national policy promoting equality in employment and occupation and eliminating discrimination on seven stated grounds. Provisions made for needs related to the inherent requirements of particular jobs are not classed as discriminatory. In the same vein, special measures to assist entry into and stability in the active labour market (like affirmative action targets, mentoring schemes, accelerated training and fast-track career experience) are not regarded as

discrimination under this Convention. While disability is not currently listed among the seven grounds<sup>1</sup>, it is specifically mentioned as a ground on which certain special assistance can be offered to persons, without there being discrimination. The text requires the repeal of all discriminatory legislation and administrative practices, requires the civil service and other areas where the State is the employer to be a leader in the fight against discrimination, and requires active involvement of the employers' and workers' organisations, and other appropriate bodies such as equality commissions, ombudspersons and tripartite employment boards in promoting the principle of employment equality.

The ILO Declaration on Fundamental Principles and Rights at Work of June 1998 promotes rights to freedom of association and collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour, and elimination of discrimination in respect of employment and occupation. The last principle is clearly relevant to people with disabilities; but so is the first principle, since people with disabilities should have their voice at work to be able to form and join organizations of their own choosing so as to defend their rights.

At national level, the above principles may be 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 bargaining agreements. For States which are members of regional bodies like the European Union, there may also be supranational law which applies directly to the national system. For example, the European Union Directive Establishing a General Framework for Equal Treatment in Employment and Occupation (No. 2000/78/EC of 27/11/2000) lays down a number of requirements concerning the employment of people with disabilities in the 15 member countries, such as accommodation, adapted premises and equipment, flexible patterns of working time, innovative distribution of tasks, extra training and resources to help integrate that worker.

The choice of how to translate international principles into domestic laws depends on the policy objectives that the legislature wishes to achieve. The aims of the policy or legislation may be a response to a particular historic event; intended to promote non-discrimination, quota provisions, job retention or return-to-work measures; protected or sheltered employment schemes; employment equity provisions of a temporary nature; reasonable accommodation requirements; social protection through social security benefits; sector-specific provisions; or in response to the ratification of ILO Conventions.

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, self-assessment; research and advocacy; benefits - qualifying requirements, disqualification, level; enforcement - role of inspection services and labour courts, complaints, Equal Employment Opportunities plans; sanctions - administrative/penal fines, imprisonment, civil actions; and transitional arrangements and regulations.

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<sup>1</sup> A proposal to extend the grounds of discrimination covered by C111 to include disability is at present before the ILO Governing Body.

**Consultation** is a key prerequisite for any legislation. 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 the representatives of employers' and workers' organizations and relevant government institutions, including concerned stakeholders. To be effective, workable and to realistically meet the needs of the country, consultations take the form of ad hoc Tripartite Task Forces (such as is currently underway in Kenya, United Republic of Tanzania, Uganda). Sometimes, the consultation process is made using the existing tripartite bodies (Nigeria) or through the Ministry of Labour's direct contacts with the social partners and the issuing of White Papers (Bahamas, Barbados, Ghana, Russia). Sometimes, the consultation process is driven by national or international consultants who are hired to assist the drafting of the law. It is common practice for national or provincial National Tripartite Seminars to be carried out to finalise the texts with as wide a stakeholder involvement as possible.

The seminar is a good occasion for participants representing Employers' Organizations, Trade Unions, NGOs and Governments to compare notes on the various major labour law reform processes currently underway – or recently concluded – in several of the countries present. The discussions which the participants would carry out when they return to their countries could feed into the larger law reform work already underway. This was particularly the case for Kenya, Uganda, Tanzania, and to some extent Mauritius. Part of the national debate could rely on the ILO's "Labour Legislation Guidelines", which although focussing on translating the 1998 Declaration's principles into domestic legal frameworks, includes several sections relevant to disability legislation.

Examples of good practice regarding legal provisions for disabled persons are found in Kuwait, Philippines, Zambia, and in European Union legal frameworks. The main legislative instrument promoting employment opportunities for people with disabilities in the Philippines is the Magna Carta for Disabled Persons, Republic Act No. 7277, 1992. The Magna Carta contains provisions asserting equal opportunity for people with disabilities in employment and prohibiting discrimination. It also established a number of employer incentives: private entities that employ qualified disabled persons either as regular employee, apprentice or learner shall be entitled to an additional deduction from their gross income for the taxable year, in an amount equivalent to 25 per cent of the total amount paid as salaries and wages to disabled persons. In Zambia, the Persons with Disabilities Act No. 33 of November 1996 is a good example of anti-discrimination law. In Kuwait, employment promotion for persons with disabilities is tackled through quota obligations. Law No. 49 of 1996 on the Welfare of Disabled Persons states that governmental and non-governmental bodies which employ at least 50 workers shall be obliged to employ at least 2 per cent of disabled workers. The European Union Directive Establishing a General Framework for Equal Treatment in Employment and Occupation, (No. 2000/78/EC described above) aims to combat discrimination on a number of grounds, including disability.



### 4.3 Discussion

Participants, assisted by the resource persons, entered into a lively debate on the broader conceptual issues raised in the presentations. Do quota systems really work, since countries with a long history, like France, have recently changed their legislation on this to encourage more employers to provide jobs rather than making a financial contribution? Do strong enforcement mechanisms work in a globalised economy? Should legal provisions punish employers who violate the laws, recompense the victims, send messages on non-discrimination to society at large, or try to do all of this? What is an adequate definition of “disability”, and should it cover all contingencies, like HIV infection or alcoholism? Which is the best type of legal text in which to situate provisions on access to, advancement in and retention of jobs by people with disabilities - general labour codes? Equal opportunity laws? Laws concerning people with disabilities? How best to use quota levies? What incentives are working to encourage employers to understand the business case for employing people with disabilities? What is the role of social protection for disabled persons in countries with frail social security systems, or systems called into question by from international financial institutions?

The issue at the heart of the debate was **the impact** of disability laws, whatever their format and detailed or general content. It appears that few labour administrations carry out regular assessments of the laws concerning the training and employment of people with disabilities, especially if the laws are under the responsibility of different ministries and agencies. The role of labour inspectorates was discussed at length, as well as the importance of informing (‘training’) the other actors who play vital roles in enforcing disability laws, such as labour court judges and various tripartite or tripartite-plus national labour councils.

## 5. Working Groups

In the course of the Technical Consultation, participants were requested to take part in three working groups whose conclusions were reported in plenary session. The main conclusions are summarised below:

### **Session 1: What elements should be contained in a modern law to promote employment opportunities for people with disabilities?**

The working group conclusions on this topic are listed below:

- Disability should be regarded as a human rights issue
- Medical provision should be required at the workplace
- Provision should be made for social security benefits
- Enforcement mechanisms are essential
- Anti-discrimination provisions should be made
- Measures to promote employment opportunities should be introduced
- Equality should be the basic principle
- People with disabilities should be encouraged to be independent
- People with disabilities should be represented in workers' and employers' organisations
- Education for all people with disabilities should be compulsory
- A national body to coordinate and consolidate policies and existing services/activities relating to disability should be established
- Training of staff to provide services to employers and workers is required
- ILO Convention No. 159 should be ratified and adapted to the specificity of each country
- Data on disability should be collected/analysed/disseminated
- All disability-related laws should be reviewed and amended in line with modern law. Implementation should be persuasive at the beginning
- 'Disability' should be clearly defined
- Quota schemes should be provided for
- Equal opportunities should be promoted

- Registration of employers/registration of persons with disabilities seeking employment is required
- Incentives to employers should be introduced
- Accessibility/reasonable accommodation to buildings/information/labour market/technical devices should be provided for
- Personal support service to ease communication barriers should be provided for
- Measures to promote job retention should be introduced
- A national multi-sectoral mechanism -a Council or Committee- should be established
- Reservation of posts should be provided for

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

The conclusions of the three working groups on this topic are listed below

**Strengths**

- Laws have been introduced
- Provision for the rights of people with disabilities is made in some national constitutions
- Laws put forward a human rights approach to disability
- Laws are flexible
- Laws make provision for formal, integrative employment
- Specific provisions are made for training
- Some provision is made for social security
- Provision is made for data collection, registration of people with disabilities, in some cases
- Disabled persons' organisations are involved in the development of laws, in some cases

**Weaknesses**

*In the laws themselves*

- Laws too general, vague, specific
- No enforcement/implementation mechanisms specified

- No provision for affirmative action
- No provision for reasonable accommodation
- No provision for equal opportunities
- Definition of disability too narrow
- No provision for representation of people with disabilities
- No consideration of financial implications
- No provisions for coordination mechanisms, in some cases
- Lack of constitutional provision, in some cases
- Narrow scope – only apply to public sector in some cases
- No specific provision for civil service, in some cases

***In the wider context***

- No policy framework
- Lack of programmes to support laws
- Lack of supportive services and facilities
- Lack of labour market information
- Inability to cope with the implications of globalization, liberalization

**Session 3: What needs to be done to improve the existing national laws and their implementation?**

Working Groups were formed for each country to identify what needs to be done in each case to improve the impact of national laws.

**Ethiopia**

- Disability should be provided as one of the grounds of non-discrimination;
- Implementing regulations and directives should be issued;
- Article 3 of Proclamation No. 101 provides that ‘*a disabled person having the necessary qualifications shall, unless the nature of the work dictates otherwise, have the right to compete and to be selected for (a) a vacant post in any office or undertaking; (b) a training programme*’. This gives unlimited power to the employer. This power should be given to a supervising government body.

**Kenya**

- Employment policies are not specific and do not therefore benefit people with disabilities. A workshop should be organised to discuss the policy in order to have input from the umbrella body of persons with disabilities;

- Create or revive the National Disability Council and the various District and National Rehabilitation Committees which are inter-ministerial and multi-sectoral, in order to come up with sound policy guidelines on people with disabilities;
- There is need for the United Disabled Persons of Kenya to promote itself in the tripartite body in order to create awareness of the perspective of disabled persons to this body. There is the need to sensitise the tripartite body on disability issues, especially in view of the current labour laws review process;
- The Ministry of Labour should start a Desk on Disability. The officers in the Desk should be sensitised on disability issues;
- Specific laws should be enacted on job retention, assistive-devices, definition of disability; reasonable accommodation and training;
- The policies adopted should aim to promote the rights of people with disabilities in order for them to participate as fully as possible in society. Policies should be backed by legislation such as a quota system; a central fund for promoting accessibility of workplaces; anti-discrimination/equity laws;
- ILO 'Code of Practice on the Management of Disability at the Workplace' should be presented to all social partners;
- Any survey undertaken on disability should include data on employment of disabled persons;
- Any discriminatory law should be repealed;
- Sensitisation on the rights of persons with disabilities should be undertaken;
- Multi-sectoral and inter-ministerial approach should be adopted;
- ILO Convention No. 159 should be ratified;
- Disability should be considered as a human rights issue.

### **Mauritius**

- Achieve the objectives of the National Council for the Rehabilitation of Disabled (NCRD) Persons Act, 1986 more effectively; more human and financial resources are needed; programmes should be more adequate; research to identify and register disabled persons in the country should be conducted;
- Training and Employment of Disabled Persons Act 1996: Redefine the notion of 'disabled person' in line with the new concept of disability as a rights issue; review the composition of the Board;
- Provide for the training of disabled persons within the existing Industrial and Vocational Training Board (IVTB); use facilities in existing training institutions to train disabled persons; operate training projects through service club; provide for training of trainers for special needs with the Mauritius Institute of Education and IVTB;
- ILO Convention No. 159 should be ratified;
- Information on the labour market and specific data should be made available;
- There should be a balance between rights of Government, competent authorities and employers' and workers' organisations;
- Quota system should be applicable to the public sector;
- Interaction between NCRD and the Training and Employment of Disabled Persons Board should be improved;
- Government should devise means to have more effective enforcement mechanisms;
- General consciousness and advocacy should be undertaken.

## **Seychelles**

- People with disabilities should participate in every decision-making process;
- People with disabilities should know their rights in the provision of the Constitution, the Employment Act and any other relevant acts, especially the Social Security Act and Means Testing Act;
- More sensitisation programmes should be organised through the media, workshops, seminars and consultation to bring awareness to persons with disabilities and their parents, guardians, carers and workers of institutions of persons with disabilities;
- The Act establishing 'the National Council for Disabled Persons' makes provisions for 10 members representing the organisations connected with matters relating to persons with disabilities, but, in practice, disabled persons are under-represented. People with disabilities should be more active in national activities organised by the Council, and Disabled Persons' Organisations should be aware of their obligations vis-à-vis any existing legislations and policies;
- The National Council for Persons with Disabilities should be given more power to deal directly with the employment of persons with disabilities and any other issues concerning people with disabilities;
- Persons with disabilities and parents should be made aware of the importance of training for employment;
- The Social Security Act should provide better incentives for persons with disabilities and employers of persons with disabilities;
- Placement to jobs and monitoring should be done by the National Council of Disabled Persons and training centres, in collaboration with the Ministry of Social Affairs and Employment;
- Comprehensive legislation should be enacted to cater for all the needs of persons with disabilities in the country;
- Training programmes of rehabilitation centres should be reviewed.

## **Sudan**

- Review the definition of disability in light of international trends;
- Amend legislation to include the principles of Convention No. 159;
- Add provisions about employment opportunities;
- Hold a consultation for the amendment of the Labour Act 1992;
- Encourage opportunities in the open labour market for persons with disabilities;
- Include the representatives of disability organizations in the decision-making process.

## **Tanzania (United Republic of)**

### **Tanzania Mainland**

- Create awareness and sensitise the society through: consultations with disabled persons' organisations and other social partners for reviewing the existing laws to comply with the two policies; consultation with other stakeholders which include employers, decision/policy makers and trade unionists with respect to formulation of legislation.
- Formulate a programme on sensitisation to implement effectively the above mentioned activities. Tanzania Mainland will be working in collaboration with Zanzibar.

## **Uganda**

- Review the Employment Bill to include the ideas generated in this workshop: quota system; implementation mechanisms; share documents with relevant authorities to generate consensus on the Bill; sensitisation activities; mass media;
- Ensure that policy on disability adequately takes into account employment-related issues for persons with disabilities. There is a need for consultation meetings on the draft policy, to take care of employment concerns. Lobbying activities will also be required;
- Conduct research on employment situation of persons with disabilities to give information to improve lobbying work. Existing information and data on disability and employment should be reviewed;
- Guidelines on vocational training should be reviewed. The following actions will be needed: review training curriculum; assess the quality of the training in relation to the labour market; identify groups; develop a new curriculum; apply the new curriculum;
- Counsellors for persons with disability should be trained in advocacy and lobbying with specific focus on employment issues;
- Consultation on employment of persons with disabilities should be arranged with employers; World Bank, IMF and ILO;
- Affirmative action in recruitment and enrolment of persons with disabilities should be undertaken;
- The ILO should develop guidelines to guide the inclusion of persons with disabilities in specific programmes at national level. The guidelines should be shared with all country offices and ministers in charge of disability.

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# **Annex 2**



**Legislation, policies and programmes  
concerning the employment of  
people with disabilities  
in selected countries of East Africa**

**BACKGROUND PAPER**

**International Labour Office, Geneva**





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## INTRODUCTION

Policies aiming to promote the rights of people with disabilities to full and equal participation in society – often in response to the ILO Convention No. 159 concerning Vocational Rehabilitation and Employment of Disabled Persons (1983)<sup>1</sup> – have been adopted by numerous governments throughout the world. In many countries, policy on employment opportunities for people with disabilities is frequently supported by legislation and implementation strategies as essential tools of integration.

Considerable attention has been paid in recent years to examining the provisions of different types of legislation: vocational rehabilitation, quota legislation, anti-discrimination and employment equity legislation, and legislation to promote job retention and return to work of people with disabilities. Less attention has been devoted to the question of the effectiveness of these laws in improving 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 organizations of and for people with disabilities that legislation and international instruments have not yet had a significant impact in improving the lives of people with disabilities.<sup>2</sup> Given this concern, 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 East Africa – Ethiopia, Kenya, Mauritius, Seychelles, Sudan, Uganda and the United Republic of Tanzania.

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 promote the economic rights of people with disabilities in selected countries of Asia and East Africa (and their broader social and political rights), by enhancing the capacity of national governments to implement effective legislation concerning the employment of people with disabilities. Building on the 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 main provisions of the laws in place in selected countries are outlined, based on a survey of documentary sources and comments made at a Technical Consultation held in Addis Ababa, Ethiopia in May 2002. A brief review of the implementation of the legislation is also provided.

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<sup>1</sup> See Annex 1 for further details of this Convention.

<sup>2</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

## 1. BACKGROUND

The review of legislation in place to promote training and employment opportunities for people with disabilities was conducted for selected countries of East Africa – Ethiopia, Kenya, Mauritius, Seychelles, Sudan, Uganda and the United Republic of Tanzania. To place these laws in context, a summary profile of their levels of social and economic development follows.

### *1.1 Living standards*

As Table 1.1 shows, according to the Human Development Index (HDI) developed by the United Nations Development Programme (UNDP) to measure and monitor living standards, three of the countries in this study (Kenya, Seychelles and Mauritius) were ranked as having medium levels of development, while four countries (Ethiopia, Sudan, Uganda and the United Republic of Tanzania) were placed in the group of countries with low levels of development. Three of the key indicators used in calculating the HDI are life expectancy, literacy rate and GDP per capita. The countries studied varied significantly on each of these indicators.

**Table 1.1 Human Development Index ratings, selected countries, 2001<sup>3</sup>**

Countries	HDI-ranked position (Total: 164 countries)
Ethiopia	158
Uganda	141
U.R.Tanzania	140
Sudan	138
Kenya	123
Mauritius	63
Seychelles <sup>4</sup>	(estimate 49-50)

#### **1.1.1 Literacy rate**

Table 1.2 shows the wide range in literacy rates in the adult population, varying from 88 per cent in the Seychelles to 37 per cent in Ethiopia. Considerable variation in the literacy rates of women and men were noted, with the rates for women being consistently lower.

<sup>3</sup> Human Development Report 2001, UNDP

<sup>4</sup> Seychelles is not included in the UNDP Human Development Index (HDI) 2001 because of lack of data.

**Table 1.2. Literacy rate, by gender, selected countries, 1999<sup>5</sup>**

Countries	Literacy rate (%)		
	Women	Men	Total
Ethiopia	31.8	42.8	37.4
Uganda	55.5	76.8	66.1
U.R.Tanzania	65.7	84.0	74.7
Sudan	44.9	68.9	56.9
Kenya	74.8	88.3	81.5
Mauritius	80.8	87.6	84.2
Seychelles	-	-	88.0 <sup>6</sup>

### 1.1.2 Life expectancy

Table 1.3 shows that the lowest life expectancy among the selected countries was in Uganda, where a person could expect to live, on average, for slightly more than 40 years, in contrast with the Seychelles and Mauritius, where an average person could expect to live for over 70 years.

**Table 1.3. Average life expectancy, by gender, selected countries, 1999<sup>7</sup>**

Countries	Life expectancy (years)		
	Women	Men	Total
Ethiopia	44.9	43.3	44.1
Uganda	43.8	42.5	43.2
U.R.Tanzania	52.2	50.0	51.1
Sudan	57.0	54.2	55.6
Kenya	52.2	50.4	51.3
Mauritius	75.1	67.3	71.1
Seychelles	-	-	72.0

### 1.1.3 Annual average income

The countries studied ranged very significantly in terms of annual Gross Domestic Product (GDP) per head of the population in 1999, from US\$ 628 in Ethiopia to US\$ 10,600 in the Seychelles.

<sup>5</sup> Human Development Report 2001, UNDP

<sup>6</sup> UNESCO, 2000. Education for All: 2000 Assessment. CD-ROM. Paris

<sup>7</sup> op. cit.

**Table 1.4. Annual average income in selected countries, 1999**

Countries	Annual GDP/Capita (US\$)
Ethiopia	628
Uganda	1,167
U.R. Tanzania	501
Sudan	1394
Kenya	1,022
Mauritius	9,107
Seychelles <sup>8</sup>	10,600

### 1.1.4 GDP by sector

Three countries – Ethiopia, Uganda and the United Republic of Tanzania, have predominantly agricultural economies, with over 50 per cent of the GDP originating in this sector.<sup>9</sup> In Kenya, most employment is also in the agricultural sector, which accounts for approximately one-quarter of GDP (26 per cent). In contrast, the services sector predominates in Mauritius and the Seychelles, with agriculture accounting for a relatively small percentage of GDP, as Table 1.5 shows.

**Table 1.5. Composition of GDP in selected countries, by sector 1998 (%)<sup>10</sup>**

Countries	Agriculture	Industry	Services
Ethiopia	49.8	6.7	43.5
Uganda	44.6	17.6	37.8
U.R. Tanzania	45.7	14.9	39.4
Sudan	39.3	18.2	42.6
Kenya	26.1	16.2	57.7
Mauritius	8.6	33.1	58.3
Seychelles	4.1	23.6	72.4

## 1.2. Labour market information

The majority of the labour force is engaged in agriculture in most of the countries selected for review, with the exception of Mauritius. As Table 1.6 shows, here the services sector is the main source of employment. Although no data was available for the Seychelles, its services sector is likely to be the major source of employment.

<sup>8</sup> Human Development Report 2000, UNDP

<sup>9</sup> African Development Report 2000, African Development Bank

<sup>10</sup> Human Development Report 2001, UNDP

**Table 1.6. Distribution of the labour force, by sector, 1996<sup>11</sup> (%)**

Countries	Agriculture	Industry	Services
Ethiopia	72	12	16
Uganda	81	6	13
U.R.Tanzania	79	7	14
Sudan	62	11	25
Kenya	75	9	16
Mauritius	20	23	54
Seychelles	-	-	-

The majority of men of working age participate in the labour force in the countries selected, but women's labour force participation ranges from one-third of working-age women (Sudan and Mauritius) to over half in Ethiopia. Table 1.7 also shows that women's participation is higher in Uganda, the United Republic of Tanzania and Kenya (81, 83, and 74 per cent respectively).

**Table 1.7. Economic activity rate, by gender, 1995/96<sup>12</sup> (%)**

Countries	Male (15+)	Female (15+)
Ethiopia	86	58
Uganda	91	81
U.R.Tanzania	89	83
Sudan	86	33
Kenya	89	74
Mauritius	80	39
Seychelles	-	-

### *1.3 Population of people with disabilities*

In the East African countries studied, there are no comprehensive, reliable data on the population of people with disabilities. Some statistics are available for four of the countries and are presented in Table 1.8 (although it is generally agreed that these do not give an accurate picture of actual prevalence rates). The figures in Table 1.9 are extracted from national census reports. Inter-country comparisons should not be made on the basis of these statistics, since different concepts of disability and data collection methods were used.

<sup>11</sup> African Development Report 2000, African Development Bank

<sup>12</sup> United Nations Statistics Division, The World's Women 2000: Trends and Statistics: [www.un.org/depts/unsd/ww2000/table5d.htm](http://www.un.org/depts/unsd/ww2000/table5d.htm)

**Table 1.8a People with disabilities as a percentage of the total population, by age and sex<sup>13</sup>**

Ethiopia 1984 Census <sup>14</sup>				Kenya 1989 Census			Sudan 1993 Census			Uganda 1991 Census		
All areas	Total	M	F	Total	M	F	Total	M	F	Total	M	F
<b>Total</b>	3.8	-	-	0.7	0.8	0.7	1.6	1.8	1.4	1.2	1.3	1.0
<b>0-14</b>	1.8	-	-	0.6	0.6	0.5	0.7	0.8	0.6	0.7	0.8	0.6
<b>15-59</b>	4.5	-	-	0.7	0.8	0.6	2.3	2.6	2.0	1.3	1.6	1.0
<b>60+</b>	9.4	-	-	2.2	2.4	2.1	-	-	-	4.1	4.6	3.7

According to the National Census 2000, there are 40,000 persons with disabilities in Mauritius (3.36 per cent of the population). The National Council for Disabled Persons in collaboration with the Ministry of Social Affairs and Employment is currently carrying out a survey of people with disabilities (2002). Until the results of this survey are published, the country relies on estimates of the number of people with disabilities at 2,000, or 2.5 per cent of the population.

**Table 1.8b Population of people with disabilities, based on reported prevalence rates**

Countries	Total Population (million)	Reported % disability	Pop. Of Disabled Persons
Ethiopia	42.8	3.8	1,626,400
Kenya	21.4	0.7	149,800
Mauritius	1,18	2.5	2,000
Seychelles	79,715	-	
Sudan	25.6	1.6	409,600
U.R. Tanzania	33.8	-	
Uganda	16.6	1.2	199,200

A contrasting picture is obtained if the estimate of the World Health Organization, 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.

**Table 1.9 Estimated population of people with disabilities, by country, 2001**

Countries	Total population	10% Estimate	7% Estimate
Ethiopia	65,891,874	6,589,187.4	4,612,431.2
Kenya	30,765,916	3,076,591.6	2,153,614.1
Mauritius	1,189,825	118,982.5	83,287.75
Seychelles	79,715	7,971.5	5,580.05
Sudan	36,080,373	3,608,037.3	2,525,626.1
U.R. Tanzania	33,776,988	3,377,698.8	2,364,389.2
Uganda	23,985,712	2,398,571.2	1,678,999.8

Clearly, in the absence of comprehensive reliable statistics, it is difficult to pinpoint the dimension of needs for services of various kinds – or the dimension of the employment problem.

<sup>13</sup> Total population of Kenya in 1989: 21.4 million; Sudan: 25.6 million; Uganda: 16.6 million; Ethiopia: 42.8 million

<sup>14</sup> In accordance with the report of Population and Housing Census in 1994, out of a total population of 53,477,265 there are 988,849 people with disabilities in Ethiopia (caused by disease, accidents and armed conflict). The 1994 Census is acknowledged to have underestimated the number of disabled persons in the country – today, it is estimated that there are over 5 million children, youth, adults and elderly persons with disabilities in Ethiopia.



Evidence indicates, however, that the population of people with disabilities in each of these countries is substantial. It also indicates their bleak employment situation. There is also evidence that the incidence of disability is increasing in many of these countries, owing to widespread poverty, poor living conditions, overall population growth, urbanization, road traffic accidents, the HIV/AIDS epidemic and armed conflict. Part 2 of this report examines the constitutional provisions specific to people with disabilities.

## 2. CONSTITUTIONAL PROVISIONS – PEOPLE WITH DISABILITIES

Five of the seven East African countries studied specifically refer to people with disabilities in their constitutions, as shown in Table 2.1.

**Table 2.1: Constitutional Provisions – Disability**

Country	Constitutional provisions
<b>Ethiopia</b>	<i>“The State shall, within the limits permitted by the economic capability of the country, care for and rehabilitate the physically and mentally handicapped, the aged, and children deprived of their parents or guardians.”</i> [Constitution of 1994; Article 41]
<b>Kenya</b>	No provision
<b>Mauritius</b>	No provision
<b>Seychelles</b>	<i>“The State undertakes – (a) to protect effectively the rights of people with disabilities to earn a living in human dignity in a freely chosen occupation, profession or trade; (b) to make statutory provisions for safe, healthy and fair conditions of work, including reasonable rest, leisure, paid holidays, remuneration which guarantees, as a minimum, decent living conditions for all workers, including workers with disabilities and their families, fair and equal wages for work or equal value without distinction and stability of employment”.</i>  <i>“The State recognizes the right of the aged and the right of the disabled to special protection and with a view to ensuring the effective exercise of this right undertakes - (a) to make reasonable provision for improving quality of life of and for the welfare and maintenance of the aged and disabled; (b) to promote programmes specifically aimed at achieving the greatest possible development of the disabled”.</i> [Article 36]
<b>Sudan</b>	<i>“The Republic of Sudan shall guard justice and prompt social solidarity to establish a basic structure of society that provides the highest standard of living for every citizen and fairly distributes the national income, curtailing excesses and preventing the exploitation of the vulnerable, elderly and handicapped”.</i> [Constitution of 1998; Article 11]
<b>U.R.T.- Tanzania Mainland</b>	<i>“The State authority shall make appropriate provisions for the realisation of a person’s right to work, to self education and social welfare at times of old age, sickness or disability and in other cases of incapacity. Without prejudice to those rights, the State authority shall make provisions to ensure that every person earns his<sup>15</sup> livelihood.”<sup>16</sup></i> [Constitution of 1977; Article 11]
<b>U.R.T.- Zanzibar<sup>17</sup></b>	No provision

<sup>15</sup> Note to readers: Throughout this report, the use of ‘his’ in this and other instances reflects the original text of the legislation or provisions cited.

<sup>16</sup> In addition, under Article 5 (2) Parliament may enact a law imposing conditions restricting a citizen from exercising the right to vote by reason (among others) of intellectual (‘mental’) disability.

<sup>17</sup> Shortly after independence, Tanganyika and Zanzibar merged to form the nation of Tanzania in 1946. Zanzibar has a semi-autonomous status and thus has its own labour law.

<b>Uganda</b>	<p><i>“A person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion or disability”</i>; <i>“The State shall take affirmative action in favour of groups marginalized on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exists against them”</i><sup>18</sup>; <i>“(1) Persons with disabilities have a right to respect and human dignity and the State and society shall take appropriate measures to ensure that they realize their full mental and physical potential. (2) Parliament shall enact laws appropriate for the protection of persons with disabilities”</i>.<sup>19</sup> [Constitution of 1995; Article 21, 32, 35].</p> <p>Under the Ugandan Constitution the objectives include:  <i>“The State shall ensure gender balance and fair representation of marginalized groups on all constitutional and other bodies; Society and the State shall recognize the rights of persons with disabilities to respect and human dignity; the State shall promote the development of a sign language for the deaf.”</i></p> <p>Article 59 refers to facilitating access to voting processes:  <i>“Parliament shall make laws to provide for facilitating the processes of registration and voting for citizens with disabilities.”</i></p>
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Their constitutional provisions either state fundamental rights, such as rights to employment, education and vocational rehabilitation (Seychelles, Ethiopia, Tanzania Mainland) or lay down general principles such as justice and social solidarity (Sudan), or make specific provisions for the rights of people with disabilities and guarantee the means to prevent discrimination and to further integration (Uganda, Seychelles). The constitutions of Kenya, Zanzibar and Mauritius make no specific mention of people with disabilities. It should be noted here that a constitutional reform process is underway in Kenya. Submissions have been made by disabled persons' organizations in favour of including disability-related provisions.

<sup>18</sup> Based on this affirmative-action clause of the Constitution, Uganda's legislators passed several acts to increase the representation of persons with disabilities in the public sphere. For instance, a provision in the Local Government Act 1997 allocates disabled persons a defined number of seats in elected political bodies at all levels. As a result, there are more than 2,000 persons with disabilities who are elected officials, ranging from the parish to the district level in present-day Uganda [T. Degener and G. Quinn, 2000 ]

<sup>19</sup> In Uganda, PERSONS WITH DISABILITIES participated in the process of developing the National Constitution. It is the only East African country to have a constitutional anti-discrimination provision which explicitly covers disability. It is one of the few countries in the world to recognize sign language as an official language in its Constitution (section 14). Moreover, Uganda has attained a status that is perhaps unique among nations. The National Union of Disabled Persons of Uganda (NUDIPU) managed to include a clause in the Constitution providing for five seats in Parliament for representatives of persons with disabilities. (Article 78 (1): *“Parliament shall consist of such numbers of representatives of the army, youth, workers, persons with disabilities and other groups as Parliament may determine”*).

### 3. LEGAL PROVISIONS FOR VOCATIONAL REHABILITATION AND EMPLOYMENT

This section examines the legal provisions for vocational rehabilitation and employment in relation to people with disabilities, including the various definitions of disability which these contain and looks into policies for promoting employment opportunities for this group.

#### 3.1 Legislation

**Table 3.1 Legal provisions for the employment and training of people with disabilities, selected countries, 1982–2001**

Type of legislation	National legislation
General Laws with disability component	<ul style="list-style-type: none"> <li>- Employment Act 1998, Seychelles</li> <li>- Draft Employment Bill, Uganda</li> <li>- The Universities and Tertiary Institutions Act 2001, Uganda</li> <li>- The National Institute of Special Education Act, (year not available) Uganda</li> <li>- National Employment Promotion Service Act 1999, Tanzania Mainland</li> <li>- Constitution of 1977, Tanzania Mainland</li> <li>- The Vocational Education and Training Act, 1994, Tanzania Mainland</li> <li>- Draft Equity Bill 2000, Kenya<sup>20</sup></li> <li>- Social Security Act, Mauritius</li> <li>- Social Security Act, Seychelles</li> <li>- Uganda Constitution</li> <li>- Constitution 1994, Ethiopia</li> <li>- Zanzibar Labour Act 1997</li> <li>- Zanzibar Education Master Plan</li> </ul>
Specific Disability Law concerning employment and/or vocational rehabilitation	<ul style="list-style-type: none"> <li>- Disabled Persons (Employment) Act 1982 (No.2), Tanzania Mainland<sup>21</sup></li> <li>- The Government Notice: Disabled Persons (Employment) Regulations 1985, Tanzania Mainland</li> <li>- The Training and Employment of Disabled Persons Act 1996, Mauritius</li> <li>- The National Council for the Rehabilitation of Disabled Persons Act 1986, Mauritius</li> <li>- The Right of Disabled Persons to Employment Proclamation 1994, Ethiopia<sup>22</sup></li> <li>- An order to provide for the Establishment of a Rehabilitation Agency for the Disabled, No. 70 of 1971, Ethiopia</li> <li>- National Council for Disabled Persons Act 1994, Seychelles</li> </ul>
Specific Disability Law concerning a range of measures	<ul style="list-style-type: none"> <li>- The Act of Welfare and Rehabilitation of Disabled Persons 1984, Sudan<sup>23</sup></li> <li>- Disabilities Bill 2001</li> </ul>

<sup>20</sup> Kenya has drafted a Disabilities Bill, though detailed information could not be sourced. An Affirmative Action Bill is also being drafted. It promises to guarantee minority groups, including persons with disabilities, a minimum of 33 per cent of representation in parliament and on local authority bodies.

<sup>21</sup> Tanzania Mainland also issued 'The Disabled Persons (Care and Maintenance) Act No. 3 of 1982' which gives legal support as well as stipulating the obligation of the traditional system of family support for persons with disabilities. The Act also provides for the registration of persons with disabilities and of institutional settlements operated by local authorities and voluntary organizations. Finally, the Act establishes a 'National Fund for Disabled Persons' to provide for the "maintenance, education, benefit or advancement of disabled persons; to provide assistance to any disabled person; to establish and maintain any settlements and other institutions for the disabled; to provide financial assistance to voluntary or charitable organizations that are providing for the welfare of disabled persons".

<sup>22</sup> Ethiopia's Labour Code also addresses the issue of workers with disabilities in sections 99-102. However, these sections do not refer to specific measures in their favour. (Ethiopian Labour Proclamation: s. 99-101 define the concept and degrees of disablement, while section 102 indicates that the degree of disability shall be fixed by a competent medical board in accordance with the assessment table of disability prescribed by directives issued by the Minister. Disablement which has been assessed may be reviewed where the worker's condition deteriorates or improves or is wrongly diagnosed). The Labour Codes of Mauritius, Kenya and Sudan do not mention the issue of disability.

Several of the countries studied (Ethiopia, the Seychelles, Tanzania Mainland) take a ‘twin-track’ approach to promoting training and employment opportunities for people with disabilities: provisions are included both in general laws and in those specifically focused on the employment and vocational rehabilitation of persons with disabilities. In Mauritius, such provisions are included in a disability-specific law only. In Uganda, to date, provisions concerning the employment of persons with disabilities are stipulated solely in general labour law. In Sudan, legislation on disabled persons deals with the broad range of services and provisions they require. In Kenya, legislation is currently in draft form.

### 3.2 Definitions of Disability

**Table 3.2 Definitions of disability in laws reviewed, 1971–2000**

Country	Definition
<b>Ethiopia</b>	<p>“Disabled shall mean any person who, because of limitations of physical or mental health, is unable to earn his livelihood and does not have anyone to support him; and shall include any person who is unable to earn livelihood because of young or old age”. [Order No. 70/1971]</p> <p>“A person who is unable to see, hear or speak or suffering from injuries to his limb or from mental retardation, due to natural or man-made causes; provided, however, that the term does not include persons who are alcoholics, drug addicts and those with psychological problems due to socially deviant behaviours”. [Proclamation concerning the Rights of Disabled Persons to Employment]</p> <p>“Disablement means any employment injury as a consequence of which there is a decrease in capacity to work”. [Section 99 of Labour Proclamation]</p>
<b>Kenya</b>	Not available
<b>Mauritius</b>	“Disabled person is a person with a physical, mental or sensory disability, including a visual, hearing or speech functional disability, which gives rise to barriers inhibiting him from participating at an equal level with other members of society in activities, undertakings or fields of employment that are open to other members of society; and who is willing and able to work.” [Training and Employment of Disabled Act 1996]
<b>Seychelles</b>	“A disabled person is a person suffering from a physical or mental disability on account of injury, disease or congenital deformity” [National Council for Disabled Persons Act, 1994]
<b>Sudan</b>	“A disabled person is defined as a person who is permanently unable, due to a physical or emotional or visual or hearing defect, to perform action done by healthy persons of similar age.”
<b>U.R.T.- Tanzania Mainland</b>	“A person who, on account of injury, disease or congenital deformity is substantially handicapped in obtaining employment, or in undertaking work on his own account, of a kind which apart from injury, disease or deformity would be suited to his age, experience and qualifications” [Disabled Persons (Employment) Act 1982 (No. 2)]
<b>U.R.T.- Zanzibar</b>	“A person who has a physical or mental impairment that substantially limits one or more of the major life activities of such individuals” [Zanzibar Labour Act 1997]
<b>Uganda</b>	“A disabled person is a person who experiences a restriction or lack of ability to perform any activity in the manner or within the range considered normal for human beings, within the cultural context.” [Workers’ Compensation Act 2000]

The definitions of disability in the laws of Ethiopia, Mauritius and Tanzania focus on the limiting effects of impairment on employment opportunities. Tanzania refers to physical and mental

<sup>23</sup> Sudan is reported to have passed a Law of Privileges of War in 1998 concerning persons with disabilities, but no further details have been obtained in a review of the literature.

impairment but also to substantial reduction in an individual's employment prospects as a result of impairment. The Mauritius definition also refers to the limiting effects of the impairment on the person concerned but, here, sensory impairment is included, along with physical and mental impairment. In the laws of Uganda, Zanzibar and Sudan, definitions of disability are broader, extending the limiting effects of impairment to any activity or social function. Notably, the definition in use in Uganda does not expressly refer to mental and physical impairment. In the case of the Seychelles, the definition of disability focuses on the medical side of the impairment.

### ***3.3 Provisions for Vocational Rehabilitation***

In most of the East African countries under review, the national policy on vocational rehabilitation is based in law, usually in a disability-specific law, although in one case (Tanzania Mainland) provisions concerning disability issues appear also to have been incorporated into the general act on training. As Table 3.3 shows, most of these provisions establish rehabilitation offices, which provide rehabilitation and coordinate disability-related services provided by other agencies (Ethiopia, Tanzania, Seychelles, Sudan and Mauritius).

**Table 3.3 Legal provisions for vocational rehabilitation in selected countries, 1971–2001**

<b>Country</b>	<b>Provisions</b>	<b>Institutions provided for by law</b>
<b>Ethiopia</b>	- An Order to provide for the Establishment of a Rehabilitation Agency for the Disabled, No.70 of 1971 - Constitution, Article 41	'Rehabilitation Agency' now became 'Rehabilitation Affairs Department' of the Ministry of Labour and Social Affairs
<b>Kenya</b>	No provision	-
<b>Mauritius</b>	- The Training and Employment of Disabled Persons Act 1996 - The National Council for the Rehabilitation of Disabled Persons Act 1986	National Council for the Rehabilitation of Disabled Persons, 1986
<b>Seychelles</b>	- The National Council for Disabled Persons Act 1994	National Council for Disabled Persons
<b>Sudan</b>	- The Act of Welfare and Rehabilitation of Disabled Persons of 1984	National Council for the Welfare and Rehabilitation of Disabled Persons
<b>U.R.T.- Tanzania Mainland</b>	- The Vocational Education and Training Act 1994 - The Government Notice: Disabled Persons (Employment) Regulations 1985 - The Disabled Persons (Employment) Act 1982	National Advisory Council; not yet established (?)
<b>U.R.T.- Zanzibar</b>	No provision	-
<b>Uganda</b>	- The Universities and Tertiary Institutions Act 2001, Uganda - The National Institute of Special Education Act (year data not available)	-

### *Ethiopia*

**Article 41 of the 1994 Constitution** sets out the State's responsibility for the provision of necessary rehabilitation and support services for people with disabilities:

“The State shall, within the limits permitted by the economic capability of the country, care for and rehabilitate the physically and mentally handicapped, the aged, and children deprived of their parents or guardians.”

**The Order to Provide for the Establishment of a Rehabilitation Agency for the Disabled (No. 70 of 1971)** states that the Rehabilitation Agency is an autonomous government organization with the purpose of providing rehabilitation services for those in need of it, and fostering and facilitating effective participation of private charitable organizations engaged in rehabilitation work. Its duties include the coordination of rehabilitation programmes run by private welfare organizations; the provision of support to these organizations; and the establishment and administration of pilot rehabilitation projects.

### *Mauritius*

**The National Council for the Rehabilitation of Disabled Persons Act, 1986** provides for the establishment of a National Council for the Rehabilitation of Disabled Persons (NCRD). The NCRD has the following objectives: to coordinate the activities of voluntary organizations catering for people with disabilities; to promote the development and expansion of rehabilitation services; to advise the government on all aspects of the rehabilitation of disabled persons; to coordinate with international agencies engaged in such rehabilitation; and to promote the welfare of people with disabilities.

**The Training and Employment of Disabled Persons Act, 1996** established a Board for Training and Employment of Disabled Persons. One of the Board's objectives is to provide appropriate training to disabled persons (Article 4):

“(a) The functions of the Board shall be to [...] encourage the establishment of appropriate vocational centres and other institutions for the training of disabled persons (b) operate and encourage schemes and projects for the training and employment of disabled persons”.

### *Seychelles*

**The National Council for Disabled Persons Act, 1994** established the National Council for Disabled Persons. This Act mainly provides for the welfare of persons with disabilities, with only brief reference to vocational rehabilitation (Article 5). Sections (ii) and (e) state that the function of the Council are, among others, to promote, develop and organize services and programmes for rehabilitation and employment of people with disabilities; and to advise the government on education, sports, training programmes, employment and vocational training courses for disabled persons. The National Council for Disabled Persons is the agency responsible for providing care and assistance and to coordinate the activities of public or private organizations and other persons engaged in the welfare of persons with disabilities.

### *Sudan*

**The Act of Welfare and Rehabilitation of Disabled Persons, 1984** (Article 12) provides for the establishment of a fund for the welfare and rehabilitation of disabled persons to finance the activities undertaken in this field. It also provides for the foundation of a National Council that lays down general policy for the welfare of disabled persons and would supervise regional councils in Sudan. The Act refers to welfare and rehabilitation rather than to vocational rehabilitation.

The Ministers' Council has approved the following regulations:

Regulations of the fund of disabled persons' welfare and rehabilitation, 1991

Regulations for establishing and organizing instructions and centres for the rehabilitation of disabled persons, 1991

Regulations governing the organization of the National Council of Disabled Persons

The Labour Act, 1997 provision 3 states that:

“Every person desiring recruitment and capable of working is entitled to become registered for this purpose.”

While people with disabilities are not mentioned specifically in this provision, the Labour Act could be interpreted as implicitly including them.

### *United Republic of Tanzania*

#### *Tanzania Mainland*

**The Disabled Persons (Employment) Act, 1982** provides for vocational training and industrial rehabilitation courses. The Act also provides for the establishment of a National Advisory Council, with the functions of assisting and advising the Minister in the formulation of programmes which may secure the educational, vocational and integration of people with disabilities (Part II, Article 4). The National Advisory Council also has the duty to advise and assist the Minister on:

“the training or facilitation of the training of persons as counsellors or administrators who will carry out programmes for the vocational rehabilitation of disabled persons” (Part II, Article 4).

The **Government Notice: Disabled Persons (Employment) Regulations, 1985** reserve 2 per cent of the vacancies in mainstream vocational training centres for persons with disabilities.

In addition, **the Vocational Education and Training Act, 1994 (No. 1 1994)** establishes a Vocational Education Training Authority, imposes a vocational training levy on every employer who has four or more employees, and makes further provisions for the regulation of vocational education and training (VET). The objectives and functions of the Authority include: promoting access to VET for disadvantaged groups and satisfying the demands of the labour market for employees with trade skills.



### *Uganda*

There is no specific provision in law for vocational rehabilitation services, although these are provided. In a report on the implementation of ILO Convention No. 159, it was noted that people with intellectual disability are excluded from vocational rehabilitation measures in Uganda.<sup>24</sup>

The **National Institute of Special Education Act** (year data not available) establishes the National Institute of Special Education (UNISE) which provides for training of teachers and of community workers to work with and support persons (adults and children) with disabilities.

The **Universities and Tertiary Institutions Act, 2001** provides for affirmative action in the form of extra points to students with disabilities in admission to higher education institutions. The Act creates a National Council for Higher Education with a disabled persons' representative. Before registering, it also requires tertiary learning institutions to ensure their buildings are physically accessible.

### *Kenya*

A draft **Disabilities Bill** (2001) is currently in preparation in Kenya, encompassing all disability-related concerns (see also Section 4.2).

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

In the legislation reviewed, the main stated objective of policies promoting employment opportunities for people with disabilities is to guarantee their right to compete for jobs on an equal basis with other citizens. The legislation of the countries studied in East Africa makes the following types of provision:

- (a) Measures which oblige employers to employ workers with disability, such as quotas
- (b) Civil anti-discrimination provisions
- (c) Provisions in the general labour legislation
- (d) Employment-related measures (accessibility of the built environment, accommodation, job placement services).

Table 3.4 presents a summary of the enactments of this legislation.

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<sup>24</sup> Report of the Government of Uganda, 1999 on ILO Convention No. 159 (1983) concerning Vocational Rehabilitation and Employment of Disabled Persons.

**Table 3.4 Legal measures to promote employment opportunities, East African countries, 1971–2000**

Country	Legislation
<b>Ethiopia</b>	- The Right of Disabled Persons to Employment Proclamation No. 101/1994 - Order to Provide for the Establishment of a Rehabilitation Agency for the Disabled (No. 70), 1971
<b>Kenya</b>	- Draft Equity Bill 2000 - Draft Disabilities Bill, 2001 - National Security Act (C. 226) (year data not available) - Workmen's Compensation Act (C. 236) (year data not available) - Regulation of Wages and Conditions of Employment Act (C. 229) (year data not available)
<b>Mauritius</b>	- The Training and Employment of Disabled Persons Act 1996 - The Accessibility/Amendment and Building Act 1999 - Social Security Act (year data not available)
<b>Seychelles</b>	- Employment Act 1998 - The National Council for Disabled Persons Act 1994 - Social Security Act (year data not available) - Means-Testing Act (year data not available)
<b>Sudan</b>	- The Act of Welfare and Rehabilitation of Disabled Persons, 1984
<b>U.R.T.- Tanzania Mainland</b>	- Disabled Persons (Employment) Act 1982 - Disabled Persons (Employment) Regulations 1985 - Employment Promotion Service Act 1999 - Constitution of 1977 - Accessibility/Amendment and Building Act 1999
<b>U.R.T.- Zanzibar</b>	- Zanzibar Labour Act 1997
<b>Uganda</b>	- Constitution of 1995 - Uganda Communications Act 1998 - Uganda Traffic and Road Safety 1998 - Draft Employment Bill (year data not available)

***Ethiopia***

**The Right of Disabled Persons to Employment Proclamation** (Proclamation No. 101/1994 of 26 August 1994) aims to protect the rights of disabled persons to appropriate training, employment opportunities and salary, and to stop any workplace discrimination. Sections 3 and 4 refer to how employment opportunities for disabled persons should be promoted in the open labour market. They state that no selection criteria shall refer to the disability of the candidate, and that necessary equipment shall be provided to allow a disabled person to carry out his duty. Article 6 emphasizes:

“Any disabled person whose rights are affected because of non-compliance with the provisions of this Proclamation and regulations and directives issued hereunder, may lodge his grievance to the organ empowered by law to hear the labour dispute”.

Section 6, paragraph 8, of **Order No. 70/1971** provides that a rehabilitation agency shall promote job placement services for disabled persons.

### *Mauritius*

The **Trust Fund for Disabled Persons Act, 1988** makes provisions for the establishment of a Trust Fund to provide vocational training to disabled persons. This Act, replaced by the **Training and Employment of Disabled Persons Act, 1996**, has been amended to include a section on anti-discrimination. It is now an offence for an employer to discriminate against disabled persons in relation to advertisement of and recruitment for employment, and the determination or allocation of wages, salaries, pensions and other matters relating to employment. Offenders shall be liable to a fine or imprisonment. In addition, the Act aims to improve the social and economic status and conditions of people with disabilities by operating and encouraging schemes and projects for their employment. The Training and Employment of Disabled Persons Board is responsible for assisting disabled persons to secure employment.

The Accessibility/Amendment and Building Act 1999 requires that public buildings be accessible.

### *Seychelles*

The **National Council for Disabled Persons** is responsible for:

- (i) promotion, development and organization of services and programmes for the employment of persons with disabilities
- (ii) assisting public and private organizations in promoting and organizing projects and income generating activities for the benefit and welfare of disabled persons (according to the National Council for Disabled Persons Act, 1994).

The **Employment Act 1998** (Article 40) empowers the Minister to make regulations governing conditions of employment for persons with disabilities. Article 44 provides for a competent officer to issue a permit to a job-searching person with disabilities, exempting employers from providing the minimum wage and others benefits subject to such conditions as the competent officer deems fit.

Notwithstanding the foregoing, workers with disabilities enjoy the same rights under the Act as other workers, including the right of not being discriminated against, the right to lodge grievances before the Employment Tribunal against their employers, the right to leave, paid holidays, rest period, medical leave.

The **Social Security Act** and the **Means-Testing Act** (year data not available) ensure that people with disabilities, irrespective of whether they are in employment or not, are properly maintained in human dignity. To achieve this, disabled persons receive monthly benefits from the Social Security Fund and Means-Testing Board. Recognizing that disabled persons may be discriminated against where wages are concerned, the Social Security Fund and the Means-Testing Board pay benefits even to those in employment, but at a lesser rate than to unemployed disabled persons.

### *Sudan*

The measures needed to guarantee the right of people with disabilities to compete for jobs on an equal basis with other citizens can be successfully implemented if financial support is provided

for the purpose.<sup>25</sup> Such measures are provided in Sudan. The **Act of 1984 on the Welfare and Rehabilitation of Disabled Persons**, based on a recommendation from the National Council for the Welfare and Rehabilitation of Disabled Persons, provides that disabled persons may benefit from fiscal exemption measures when purchasing equipment for their work, as well as exemption from income tax.<sup>26</sup> Regulations governing the special exemptions and facilities accorded to disabled persons (1991) have been issued. The 1984 Act also delegated authority to the Ministers' Council to lay down regulations on the employment of persons with disabilities.

### *United Republic of Tanzania*

#### *Tanzania Mainland*

The Constitution of Tanzania Mainland provides for the right of disabled persons to employment:

“The State authority shall make appropriate provisions for recognizing the individual's right to work, to self-education and social welfare in times of old age, sickness or disability and in other cases of incapacity. Without prejudice to those rights, the State authority shall make provisions to ensure that every person earns his livelihood.”

The **Disabled Persons (Employment) Act, 1982 (No.2)** makes provisions for enabling persons with disabilities to secure employment or own-account work. It provides for the establishment of a register of job-seekers who are also disabled persons. The Act gives the National Advisory Council the function of advising and assisting the Minister in matters relating to employment of persons with disabilities. The **Disabled Persons (Employment) Regulations 1985** define the eligibility and registration requirements under the Disabled Persons Employment Act, 1982. The Regulations require every registered employer (employing 50 people or above) to reserve at least 2 per cent of jobs for registered disabled persons. The **National Employment Promotion Service Act, 1999** establishes a government service that provides or makes arrangements for the registration, employment, counselling, vocational rehabilitation and placement of people with disabilities (Article 4 (i)). Under Article 11, the Service shall maintain a register of persons with disabilities at every employment services office.

#### *Zanzibar*

The **Zanzibar Labour Act, 1997** lays down the following anti-discrimination provisions (Section 120):

“(1) Persons with any kind of disability shall have equal right to be employed in any type of work depending on their standard of education, skill and ability and shall be employed on the same terms and enjoy the same rights and privileges under the contract. (2) No employer shall deny a disabled person employment on grounds of his disability. (3) No employer shall terminate a disabled person from employment before the expiry of his term of service on grounds of disability. (4) The Minister may make regulations to provide for further conditions and procedure of employment of disabled persons.”

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<sup>25</sup> Vocational Rehabilitation and Employment of Disabled Persons, ILO, 1998

<sup>26</sup> In addition, the Act provides for financial benefits and facilities in such fields as education, hobbies, communications and medicaments.

## *Kenya*

The **Draft Equity Bill 2000** deals with discrimination that occurs in the context of employment, education, health services, health-care benefits, accommodation, property, associations, professions, appointments to public office, and the provisions of goods, services and facilities. The Bill aims at stopping the discrimination faced by various marginalized groups, including persons with disability. To this end, the Bill prohibits discrimination on the grounds of disability. For example, an employer may not discriminate against persons in the terms and conditions of employment on which employment is offered. The Bill also prohibits employers from paying employees differently for work of equal value. There is a general prohibition of discrimination in the appointment of persons to public office. Moreover, the Bill prohibits the forcible allocation of learners with special needs to special schools or programmes based on disability or educational capability.

The **National Security Act** (C. 258), only mentions invalidity benefits for workers incapacitated before normal retirement age. The **Workmen's Compensation Act** C. 236 recognizes disability but, again, only to a limited extent. The disability must have been acquired during and in the course of work. It also operates under limited wage earnings and sets payment ceilings, including compensations for fatalities. No provision is made for the rehabilitation of the worker; the payments may be made in part or in full, with final payment being made after full recovery. The only mention of disability found in the **Regulation of Wages and Conditions of Employment Act**, (C. 229) is in Section 18. This section allows for permits to be issued by an authorised officer to employers, permitting payment to disabled employees of wages below the statutory minimum.

## *Uganda*

The **Constitution of Uganda, 1995** (Article 21) states:

“A person shall not be discriminated against on the grounds of sex, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion or disability.”

The Constitution also provides for affirmative action to combat disability (Article 32).<sup>27</sup>

The Ministry of Gender, Labour and Social Development proposes to table a Bill to Parliament, which will provide for affirmative action in favour of persons with disabilities. The provisions addressing employment of disabled persons in the Bill include discrimination, quotas and records in relation to disabled workers. The Employment Bill also includes a section empowering the Minister to make regulations governing the employment of workers with disabilities.

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<sup>27</sup> The Uganda Communications Act 1998 provides for promotion of research into the development and use of new communications technologies including those which promote accessibility of hearing-impaired people to communication services. The Uganda Traffic and Road Safety Act, 1998 provides for provisions to ensure adequate safety for cyclists, pedestrians and drivers who are disabled and the provision of a track or ramp for vehicles of conveyance operated by persons with disabilities.

### 3.4.1. Quotas

Quotas are one of the two main legal measures used by the selected East African countries to promote employment opportunities for disabled people. In Ethiopia, these provisions are found alongside anti-discrimination provisions.

In two of the seven countries studied – Mauritius and Tanzania Mainland - quota regulations have been introduced, obliging employers to hire persons with disabilities as a specified percentage of their workforce. A third country, Ethiopia, has a provision for a quota that has not been implemented, while Uganda is in the process of introducing a quota.

Tanzania Mainland has adopted legislation providing for the compulsory placement of disabled persons. Under the Disabled Persons (Employment) Act, 1982 (Section 15), every registered employer must give a job to job-seekers who are registered as persons with disabilities. The Government Notice No. 464 requires every registered employer to provide at least 2 per cent of jobs to registered disabled persons. Any employer who fails to fulfil the quota is liable to a compensatory payment.

In Mauritius, the **Training and Employment of Disabled Act, 1996** requires organizations with 35 or more employees to set aside at least 3 per cent of their positions for disabled persons. Any employer who contravenes this provision is liable to a compensatory payment or to imprisonment. The compensatory payment is used to finance better access to employment for people with disabilities. In practice, employers who fail to meet the quota may be required to pay a contribution to the Training and Employment of Disabled Persons Board.

Ethiopia recommends quota through the **Right of Disabled Persons to Employment Proclamation, 1994** (Article 4), stating that posts suitable for persons with disabilities shall be identified and reserved from among vacancies created in offices and undertakings. While the legislative framework is in place to introduce quota regulations, these have not yet been introduced. Finally, Uganda introduced a provision establishing quotas in its Employment Bill.<sup>28</sup>

### 3.4.2. Anti-discrimination provisions

Ethiopia, Kenya Mauritius, Uganda and Zanzibar have enacted (or are about to enact) civil anti-discrimination laws for people with disabilities, but these cover only employment discrimination. The Kenyan Draft Equity Bill is broader in scope; Uganda is the only East African country to have a constitutional anti-discrimination provision that explicitly covers disability. In Seychelles and Sudan no anti-discrimination provisions have been found. Measures prohibiting discrimination on the basis of disability as part of a comprehensive special anti-discrimination act have not been introduced in the countries studied.

In Ethiopia, the Federal Civil Service Proclamation (Proclamation 262/2002) prohibits discrimination on the basis of *'ethnic origin, sex, religion, political outlook or any other*

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<sup>28</sup> The Bill intends (i) to identify posts in the establishments which can be reserved for the persons with disabilities; (ii) at periodical intervals not exceeding three years, review the list of posts identified and update the list, taking into consideration the developments in technology; (iii) appoint in every establishment a percentage of vacancies, not less than 3 per cent for persons or classes of persons with disabilities; (iv) within the limits of their economic capacity and development, provide incentives to employers both in public and private sectors to ensure that their work force also comprises persons with disabilities .

*grounds*' (Article 13). While disability is not expressly mentioned, the term 'any other grounds' can be interpreted as including this as a criterion of discrimination. The same can be said of the anti-discrimination provision in the Labour Proclamation No. 42 of 1993, which states that employers shall not discriminate against workers on the basis of '*nationality, sex, religion, political outlook or any other condition*'.

### 3.4.3. Provisions in labour law

Several of the selected countries, including Ethiopia, the Seychelles, Uganda and the United Republic of Tanzania, mention disabled persons in the general legislation concerning employment. The Zanzibar **Labour Act of 1997** guarantees the right of persons with disabilities to employment. The Seychelles' Employment Act of 1998 and Uganda's Employment Bill make provision for regulations governing the employment of people with disabilities. While the provisions of Ethiopia's labour code do not specifically mention people with disabilities, it does address the concept of disablement (see footnote 22), and the anti-discrimination provisions can be interpreted as applying to workers with disabilities (see 3.4.2).

### 3.4.4. Sheltered work

Sheltered work is available in many countries to persons with disabilities who are particularly vulnerable and who wish to work, but for whom access to open employment is not practicable. Some of the countries studied (for example, Ethiopia, Seychelles and Uganda) have sheltered workshops for this purpose. No specific legislation relates to these workshops, however. They are not covered by general labour legislation, so that conditions of work and occupational safety and health provisions are at the discretion of workshop management.

### 3.4.5. Employment-related measures

Promotion of employment opportunities may also involve the adoption of *accessibility measures*, so that disabled persons are not prevented from obtaining or retaining employment by obstacles in the built environment, inaccessible public transport, or inaccessible information technology. Mauritius alone, of the seven countries surveyed, has adopted a law mandating access to public buildings or facilities or requiring that work sites be accessible to disabled persons. Ethiopia, envisages the enactment of comprehensive legislation on accessibility under the National Programme of Action for Rehabilitation of Persons with Disabilities.

Only Uganda has legislated on the development of new technologies to promote accessibility of communication services to people with disabilities, and in particular, people with hearing impairment (**Uganda Communications Act, 1997**). Uganda has also legislated to ensure that disabled persons are entitled to driving licences and that their safety is specifically protected on the roads (Uganda Traffic and Road Safety Act, 1998).

Ethiopia makes provision for assistance to disabled persons in seeking employment through job-placement services, although regulations relating to this provision have yet to be introduced. Proclamation No. 101 of 1994 obliges employers and training institutions to provide people with disabilities with the equipment and materials necessary for them to carry out their job or pursue a training course.

### 3.4.6. Social security

Kenya, Mauritius and Seychelles have Social Security Acts that guarantee benefits for persons with disabilities.

Part 4 assesses how policies and legislation are being implemented and their effect on people with disabilities job opportunities.



## 4. IMPLEMENTATION OF LAWS AND POLICIES

The relevance of policy and legislation on the employment of disabled persons depends on the extent to which the social partners and disabled persons' organizations are consulted in their development. But policy impact on job opportunities will be limited in the absence of effective implementation mechanisms. These two aspects are discussed below, for the countries studied.

### *4.1 Consultation with Representative Organizations*

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 East African countries studied, the extent to which such consultation takes place varies.

In some countries, consultations are held with representatives of three categories of organizations – employers', workers' and disabled persons' organizations. This is the case in Uganda. According to the Government of Uganda, matters concerning persons with disabilities are settled in consultation with the National Union of Disabled Persons of Uganda and with employers' and workers' representatives.

In one country (Mauritius<sup>29</sup>), two of these organizations (employers and persons with disabilities) are represented. In Ethiopia only the representative of disabled persons' organization is consulted.

Consultation sometimes takes the form of ad hoc communications on the planned implementation of programmes or on general disability policy. In Tanzania Mainland, for example, organizations of employers and workers are called on to cooperate in the application of disability legislation via the Vocational Education and Training Authority and the National Advisory Council.

Some countries have set up permanent councils that are consulted on the implementation of the national policy. In Mauritius, the Training and Employment of Disabled Persons Board is consulted by the government. In Ethiopia, only organizations of and for people with disabilities are consulted in bodies set up for this purpose. In practice, the Department of Rehabilitation Affairs maintains regular contacts with disabled persons' associations (Rehabilitation Agency for the Disabled Order, No. 70/1971).

In the sources reviewed for the present, no information on the consultation process was found for Kenya, the Seychelles, Sudan and Zanzibar.

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<sup>29</sup> In Mauritius, the Training and Employment of Disabled Persons Board comprises four persons representing the interests of people with disabilities, and two representatives of employers appointed by the Labour Ministry.

## 4.2 Positive Measures

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.

### *Ethiopia*

In the past ten years, the Government of Ethiopia has introduced several affirmative-action measures to promote the integration of people with disabilities.

The Developmental Social Welfare Policy was developed in 1997 to safeguard the rights of persons with disabilities and provide opportunities for rehabilitation.

“It provides for creating conditions where rules, regulations, programs and services could be strengthened and expanded whilst enhance vocational training and placement opportunities for persons with disabilities.”

– National Programme of Action for Rehabilitation of Persons with Disabilities, 1999.

In 1999, the Minister of Labour and Social Affairs prepared a National Programme of Action for the Rehabilitation of Persons with Disabilities. The UN Standards Rules on the Equalization of Opportunities for Persons with Disabilities, conventions, recommendations, directives and the Development Social Welfare Policy of Ethiopia issued in 1997 were the basis for preparation of this Programme. This Programme of Action was formulated with a view to further promoting the social welfare development policy and the United Nations Standard Rules concerning disabled persons in Ethiopia. It was jointly prepared by the Ministry of Labour and the Ethiopian Federation of Persons with Disabilities in order to ensure equal opportunities and full participation of persons with disabilities in every socio-economic activity in the country.

The main objectives of the National Programme of Action are:

- To take disability prevention measures by promoting community participation
- To enable persons with disabilities and promote a better standard of living by building their capacity
- To ensure their equal rights and full participation in society

The Federal Ministry of Labour and Social Affairs (MOLSA), through its Rehabilitation Affairs Department, is responsible for providing policy guidance and technical support concerning social and economic integration of disabled persons, to its regional governments. In each of the 11 Regions of Ethiopia there is a Bureau for Labour and Social Affairs (BOLSA), responsible for mobilizing public and private services and for promoting integration. However, these Bureaus often lack the capacity to fulfil their mandate. In practice, few services are available. The government designed a community-based rehabilitation programme, including a vocational rehabilitation component to provide people with disabilities in rural areas with agricultural skills.

In order to train staff, a training programme for community rehabilitation workers and assistants has been incorporated into the community-based rehabilitation programme.

The Rehabilitation Affairs Department of the Ministry of Labour and Social Welfare (ex Rehabilitation Agency) operates various sheltered workshops employing persons with disabilities of different categories, and training centres that provide vocational training and job-placement services. However, according to the Programme of Action for Rehabilitation of People with Disabilities 1999, the number of beneficiaries is very limited compared with those in need of the service. A considerable number of people with disabilities have not had the opportunity to undergo vocational training. On the other hand, because existing established institutions have not undertaken some necessary training adjustments, disabled persons are not able to benefit equally from mainstream programmes.

Regulations for implementing disability-related legislation have not been issued. Concerning Proclamation No 101/1994, the Government of Ethiopia reports difficulties in putting it into effect. As a consequence, many persons with disabilities with the potential and capability to work are not employed and those who are employed encounter barriers. No measures have yet been enacted to ensure specially targeted consideration that would enable disabled persons to better compete in the labour market.

Other laws specifically discriminate: for example, deaf people are legally forbidden to drive a car in Ethiopia and blind people are not entitled to sign a bank cheque.

### *Kenya*

A Task Force on Laws related to People with Disabilities was appointed in 1992. Its terms of reference included a review of all laws, regulations, customs and practices relating to people with disabilities which, in their application, may discriminate against or infringe on disabled persons' human rights or full participation in society. Based on its findings, the Task Force made recommendations on legislation that focuses on the special needs and requirements of persons with disabilities. Although the Task Force completed its work in 1997, its recommendations have not yet been implemented.

A Draft Disabilities Bill, 2001 has been approved by Cabinet and is awaiting discussion in Parliament. The United Disabled Persons of Kenya (UDPK) group claims the Bill is inadequate because disabled persons were not consulted sufficiently. In a recent report on the inclusion of people with disabilities into socio-economic life, the UDPK calls for a constitutional ban on discrimination on the basis of disability and to cater for the special needs of persons with disabilities. As a contribution to the constitutional reform process, the UDPK is preparing proposals for what the revised Constitution should include for disabled persons.

The Department of Social Services of the Ministry of Home Affairs, Heritage, Culture and Sports coordinates vocational rehabilitation services. The Vocational Rehabilitation Division of the Department of the Social Services (DSS) is responsible for 12 rural vocational rehabilitation centres throughout the country and Nairobi's Industrial Rehabilitation Centre (IRC), which trains persons with disabilities to find jobs. The DSS also carries out economic projects aimed at local markets. The National Rehabilitation Committee of the DSS also provides for vocational rehabilitation services. It was decentralized into 41 District Rehabilitation Centres. A National Vocational Rehabilitation Programme has been established, providing disabled persons with the

opportunity to acquire employable skills. Programme activities are conducted by the National Rehabilitation Committee, appointed in compliance with Paper No. 5 (1968).

In addition, people with disabilities are assisted to secure employment by personnel from the Department of Social Services and Labour, which collects information regarding suitable vacancies from employers.

A Draft Session Paper 2001 on national employment policy and strategy was approved by Cabinet and at the time of writing this report was awaiting parliamentary approval and the President's assent to become operational. This policy includes a clause concerning the promotion of training and employment opportunities for disabled persons. The Draft proposes the Government should promote schemes that give equal opportunities to persons with disabilities, to enable them to compete for jobs and, also, provide special tools and equipment for national training techniques, to facilitate entry into appropriate jobs, either as workers or as self-employed persons. To the extent possible, specialized programmes should be reoriented to mainstream persons with disabilities into regular employment and training programmes. During the period of the national development plan 2002-2008, concerted action will be taken to focus on issues that affect mentally and physically challenged persons (MPCP). Interventions will include the operationalization of the National Disability Policy and enactment and enforcement of the Disability Bill, to ensure proper coordination of all programmes for MPCP; capacity-building of vulnerable groups through imparting leadership and management skills; the strengthening of vocational rehabilitation centres that handle MPCPs; affirmative action for MPCPs in areas of employment, vocational training and education; and the establishment of integrated counselling units at district level to cater for the increasing social problem.

### *Mauritius*

The Rehabilitation Unit of the Ministry of Social Security and National Solidarity serves as the 'focal point' for issues relating to training and employment of people with disabilities. The Unit liaises with those governmental and non-governmental organizations (NGOs) which provide a wide range of services to children and adults with disabilities in Mauritius. NGOs are key players in providing and arranging services.

In the context of the International Year of Disabled Persons, in 1981 the Government of Mauritius established a National Committee to organize and coordinate activities to focus attention on the needs of persons with disabilities and the particular problems they face. In 1986, this ad hoc committee obtained legal status and became the National Council for the Rehabilitation of Disabled Persons (NCRD) by an Act of Parliament. Recently, there has been a paradigm shift of government policy on disability, which is now regarded as a human rights issue.

The NCRD is a parastatal body under the aegis of the Ministry of Social Security, National Solidarity and Senior Citizens Welfare. The Council has an advisory, brokerage and coordinating role: it has a consultative status on matters relating on disability, advising government on policy issues via the Ministry of Social Security and National Solidarity and it serves as a clearing house for organizations which apply to the government. It comprises four persons representing the interests of disabled persons, and two representatives of employers appointed by the Labour Ministry. The Committee brings together the stakeholders involved in the process of rehabilitation and coordinates the various activities and programmes to advance disability issues.

The National Council for the Rehabilitation of Disabled Persons (NCRD) carries out sensitization and information campaigns, seminars and workshops. It is involved in advocacy (specially concerning accessibility) and has embarked, in collaboration with the Ministry of Social Security and National Solidarity, on a programme of adjustment of existing public building and places in order to improve accessibility. The Government of Mauritius also envisages the enactment of a comprehensive piece of legislation on accessibility.<sup>30</sup> The NCRD assists NGOs in the funding of micro projects, the provision of logistic support, and improvement of infrastructure and training of personnel.

The Training and Employment of Disabled Persons Board runs two training centres.<sup>31</sup> Every individual registered with the Board is interviewed by a Socio-psychologist/Career Guidance Officer and is recommended for appropriate training and/or employment. Trainees who satisfy the requirements are sponsored to follow courses at the Industrial and Vocational Training Board (IVTB)<sup>32</sup> or other training institutions approved by the IVTB.

The Board works in close collaboration with employers and trade unions to ascertain that persons with disabilities do not suffer discrimination in the interviewing process or at the workplace. The Board has a policy to assist persons with disabilities with job-search but is not an employment provider. Information on job prospects and vacancies are communicated to the Board by registered employers. Board officers then forward the profiles of individuals who match the job descriptions. They also assist to write CVs, prepare disabled persons for the interview procedure and provide back-up during their first weeks in employment. Officers visit employers to identify jobs which individual job-seekers with disabilities are qualified for and able to perform. They have also implemented an awareness-raising campaign to remind employers of their social and legal responsibilities. According to the Board, only one-third of around 1,000 employers with more than 35 persons are registered with it.

The quota system has not been effectively enforced, because emphasis concentrated on the persuasion and sensitization campaign. Initially, the appeal made to the social responsibility of employers and their response was quite positive: some 200 persons with disabilities were able to secure employment as clerks, telephonists, computer operators or machinists. A number of incentives are also being given to employers to encourage them to recruit disabled persons, primarily a fiscal measure introduced in 1999 that entitles employers to a 200 per cent tax deduction on the salary of each disabled employee. (The new government did not follow up on this initiative.)

### *Seychelles*

The Ministry of Social Affairs and Employment and the National Council for Disabled Persons assist persons with disabilities in finding suitable employment, especially in sheltered employment.

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<sup>30</sup> Report for the period ending 15 March 1997, made in accordance with Article 19 of the Constitution of the ILO by the Government of Mauritius, on the position of national law and practise in regard to the matters dealt with in ILO Convention No. 159 and Recommendation No. 168.

<sup>31</sup> Courses available: telephone operator; computer skills; woodwork; leathercraft; handicrafts; dressmaking; drafting expertise; jewellery; hairdressing; mechanics; electronics.

<sup>32</sup> The IVTB is a parastatal body monitoring training needs in consultation with relevant authorities controlling and operating schemes, providing for, promoting, assisting in and regulating the training of persons (already employed or prospective), in commercial, technical and vocational fields.

The School for Children with Disabilities, apart from academic subjects, also provides pre-vocational training in home economics, arts, sewing, carpentry and agriculture. From the above school, upon reaching the age of 15, persons with disabilities are transferred to the Rehabilitation Centre where they continue vocational training. The National Council for the Disabled is currently reviewing the training programmes of the Centre to include computer training, basic office administration, electrical repairs and commercial sewing. The Council is also planning the construction of centres to re-train those who acquire a disability in the course of employment that prevents them from returning to the same type of job.

The main aim of the Seychelles Industrial Development Corporation is to make funds available to people who would like to start a small business and be self-employed. Emphasis is placed on disabled persons who would like to start small craft businesses. A considerable number of persons with disabilities have received funds under the scheme and started up their own businesses.

### *Sudan*

The Ministry of Social Planning is at present responsible for disability issues, reflected in its objectives and policies in the framework of the national comprehensive strategy, as well as in the “Rehabilitation and Integration of Special Categories in Society Programme 1992-2000”.

Recently, Sudan opted for institutional arrangements to promote social integration of disabled persons. It has established an Office on Disability and organized a forum on disability, with participants from governmental and non-governmental organizations and the private sector.

A Community-Based Rehabilitation programme (CBR) started in 1991, in cooperation with the UNDP and the ILO. During the first stage, it covered six States in Sudan. In early 1996, the community-based training programme was initiated for all categories of persons with disabilities. The purpose of the CBR programme in Sudan is to develop effective measures for the rehabilitation of persons with disabilities, to achieve the goal of their full participation and equality, and to make full use of local potential in the area of vocational rehabilitation in terms of training and employment.

The Government of Sudan has put forward resolutions for:

- Exemption of disabled persons from all study fees;
- Comprehensive survey in Sudan of all persons with disabilities and of elderly persons, in collaboration with the Islamic World Council on Disability and Rehabilitation;
- Establishment of a city called Alamal in Khartoum, to be equipped with the most advanced instruments for the care and rehabilitation of disabled persons;
- Review current disability rules in Sudan; and
- Ensure the conducting of the National Survey.

The available information did not cover guidance services, vocational training or job placement.

## *United Republic of Tanzania*

### *Tanzania Mainland*

The Government plans to elaborate a National Policy on People with Disabilities, as stated in the National Population Policy Draft 1999.<sup>33</sup> In addition, the Draft allocates to the Ministry of Labour and Youth Development the responsibility of promoting employment opportunities for youth and for persons with disabilities [Section 76 (ii)]; the Ministry of Development, Gender and Children is charged with ensuring that special attention is paid to programmes directed at elimination of discriminatory practices against disabled persons [Section 77 (iii)]. The Ministry of Labour and Youth Development is responsible for promoting, in liaison with other institutions, employment opportunities especially for youth and people with disabilities [Section 76 (ii)]. In addition, The National Population Policy Draft indicates persons with disabilities as a target group for the following strategies:

“(i) encouraging the private sector, NGOs and religious organizations to invest in provision of social services for people with disabilities; (ii) developing the talents and capabilities of people with disabilities; (iii) establishing social security measures that address the problems of people with disabilities”.

Disability issues are part of national employment policies. The National Employment Policy 2000, the National Youth Development Policy 2000 and the SME policy take disabled persons into account.<sup>34</sup>

The Government of Tanzania established several vocational training centres to cater specifically for persons with disabilities. According to the Government,<sup>35</sup> these centres are inadequate. The Tanzania Assistance Strategy 2000 emphasizes the need to reorient vocational education and training, particularly to strengthen its links to labour market requirements, with special attention to disadvantaged groups, and to strengthening and adapting them to newly emerging demands in the economy.

The Ministry of Education and Culture administers an Integrated Community-based Adult Education programme that aims at providing essential skills to illiterate and neo-literate individuals, with special attention to people with disabilities. In addition, the Department of Social Welfare adopted a strategy of community-based rehabilitation in the 1980s. At national level, the Department is headed by a Commissioner for Social Welfare, with an Assistant

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<sup>33</sup> No information mentions whether the Draft has yet been adopted.

<sup>34</sup> The National Employment Policy 2000 contains employment strategies for youth, persons with disabilities and women. The thrust of the employment policy and programme to promote employment in general is to assist these disadvantaged groups to engage in self-employment, mainly in agriculture and the informal sector. The National Youth Development Policy 2000 specifically makes reference to the empowerment of persons with disabilities as central to socio-economic development. Tanzania's SME policy ensures equal access to employment for women, youth and persons with disabilities.

<sup>35</sup> Report for the period ending 1 April 1997 made in accordance with article 19 of the ILO Constitution by the Government of the United Republic of Tanzania, on the position of National law and practice in regard to the matters dealt with in the Vocational Rehabilitation and Employment (Disabled Persons) Convention 1983 (No.159) and the Vocational Rehabilitation and Employment (Disabled Persons) Recommendation No. 168 (1983)

Commissioner in charge of rehabilitation. The Assistant Commissioner's staff includes two rehabilitation officers and a placement officer, as well as social welfare officers.

A pilot CBR programme was established in 1986, with international assistance. The Department of Social Welfare CBR programme uses specially trained social workers at district level, working in close collaboration with primary health care personnel, to provide assistance to people with disabilities and their families in their villages. In the mid-1990s, the Government planned to expand the CBR programme to additional districts through the training of more social workers in CBR techniques, the establishment of a revolving fund, and the provision of technical training and follow-up to individuals and groups of disabled persons engaged in small-scale income-generating activities.<sup>36</sup>

According to the Government of the United Republic of Tanzania, difficulties have been encountered in the implementation of the Disabled Persons (Employment) Act, 1982 arising especially from austerity measures undertaken by the government. Lay-offs, redundancies and retrenchments have hit employed disabled persons hardest in spite of the provisions of the Act.<sup>37</sup> According to the available information, the provisions of the Act concerning arrangements for the vocational training of disabled persons have not been implemented, nor has the requirement on employers to reserve 2 per cent of jobs for disabled persons.

#### *Zanzibar*

Disability matters in Zanzibar are the responsibility of the Ministry of Health and Social Welfare. Based on the conviction that without policies no law can be implemented positively, Zanzibar has worked on the development of policies regarding the employment of disabled persons. Once these are in place, disability-related legislation will be enacted. Zanzibar has a policy on special education adopted in 1990. It has recently enacted the Zanzibar Education Master Plan, which provides for inclusive education for children with disabilities.

#### *Uganda*

In 1998, the Government appointed a Minister of State for Disabled Persons. A Department for Disabled Persons also exists under the Ministry of Gender, Labour, and Social Development. These bodies and positions have, to date, little funding either to undertake or support any initiatives.<sup>38</sup>

The Department for Disabled Persons of the Ministry of Gender, Labour and Social Development, has the primary responsibility for the registration, vocational rehabilitation and coordination of employment for persons with disabilities. The Ministry is in the process of designing a 'National Policy on Vocational Rehabilitation and Employment of Disabled Persons' aiming at offering training in marketable skills that can enable them to obtain paid employment

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<sup>36</sup> No information mentions whether it has been done or not

<sup>37</sup> In 1998, the Tanzanian Government planned to organize a workshop to review the Disabled Persons Employment Act of 1982. No information mentions whether it has been done or not.

<sup>38</sup> See U.S. State Department, 'Human Rights Reports Include Disability Focus': [http://www.disabilityworld.org/April\\_May\\_2000/Governance/StateDept.htm](http://www.disabilityworld.org/April_May_2000/Governance/StateDept.htm)



or reliant self-employment.<sup>39</sup> A National Council on Disability will be established to coordinate and monitor policy implementation.

The Employment Exchange Service of the Ministry of Labour and Social Development facilitates job placement of persons with disabilities. The government provides vocational rehabilitation and resettlement services. Since 1992 it has run a Community-based Rehabilitation programme<sup>40</sup> with a training-employment component. It also operates sheltered workshops. The Employment Exchange Service has been decentralized to cater for all employees, including persons with disabilities.

One mobile unit exists for vocational rehabilitation of women with disabilities.<sup>41</sup> At community level, the CBR services encourage local employers to facilitate resettlement and selective employment of persons with disabilities. This is done in consultation with the National Union of Disabled Persons of Uganda (NUDIPU).

One imperative for satisfactory and effective rehabilitation is that personnel are adequately trained. Training, seminars and workshops are conducted from time to time for government staff involved in disability services. By 1998, 270 Community Development Assistants had received training under the CBR programme.<sup>42</sup> The government provides training for teachers of persons with disabilities as well as for government staff. A diploma course in community-based rehabilitation is also offered and advisory and supervisory services are delivered to those handling disability issues at various levels (community, district and national).

The Uganda National Institute of Special Education (UNISE) is the leading institute of higher learning in Uganda focusing on training teachers and community workers to work with, and support persons (adults and children) with different categories of disabilities.<sup>43</sup> Its activities include: training of teachers and other personnel involved in special-needs education and rehabilitation for the empowerment of persons with special needs in education, including disabled persons;<sup>44</sup> design and production of educational materials and appropriate appliances for persons with special needs in education, including people with disabilities; promoting awareness on inclusion of learners with special needs in education and in all activities of society.

In addition, Nzamizi School of Social Development trains community-based rehabilitation extension staff to address the needs of all members of the community. The Institute of Polytechnics, Kyambogo trains people with disabilities in vocational skills.

Part 5 summarizes the main findings of this report.

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<sup>39</sup> Report for the period 1 June 1998 to 31 May 1999 made by the Government of the Republic of Uganda, October 1999 on ILO Convention No. 159

<sup>40</sup> CBR programmes have so far been set up in 16 of the 56 Districts in Uganda

<sup>41</sup> International Labour Conference, 1998

<sup>42</sup> International Labour Conference, 1998

<sup>43</sup> The National Institute of Special Education Act established the National Institute of Special Education.

<sup>44</sup> The UNISE offers: a one-year Post Graduate Diploma in Community-Based Rehabilitation; a two-year Bachelor's Degree or a two-year Diploma in Special Needs Education (SNE) and Inclusive Education; a two-year Diploma in Community-Based Rehabilitation; a two-year Diploma in Mobility and Rehabilitation; a three-month Certificate course in Management of Special Needs; Proficiency Courses in Braille, Sign Language, Speech and Language Difficulties; Evening Programmes: Post Graduate Diploma in CBR, Ordinary Diploma CBR, Certificate in Management of SNE and Inclusion; Distance Education in SNE and Inclusive Education.

## 5. SUMMARY

This regional overview, carried out as part of the project ‘Employment of People with Disabilities – the Impact of Legislation’ examined legal provisions for the vocational rehabilitation and employment of people with disabilities in seven countries of East Africa – Ethiopia, Kenya, Mauritius, the Seychelles, Sudan, Uganda and the United Republic of Tanzania (URT), with a view to assessing the effectiveness of these laws, and their impact on the employment opportunities for disabled job-seekers.

As Part 1 shows, while the countries vary significantly in terms of their social and economic development, each has made provision for people with disabilities, either in disability-specific laws dealing with vocational rehabilitation and employment, in the general legislation on training and employment, or in laws making general provision for state services to persons with disabilities.

Five of the seven countries have disability-related provisions in their constitutions, as described in Part 2. However, only the Seychelles and the Tanzania Mainland (URT), make specific mention of the right to work for persons with disabilities. The Ugandan Constitution has an anti-discrimination provision that explicitly covers disability. In the other countries (Ethiopia, Sudan), the provisions deal with the obligations of the State or the Community to support people with disabilities.

While no two countries in the study use the same definition of disability in their laws, most define the concept in terms of the restrictions arising from a disability (see Section 3.2). In three cases (Ethiopia, Mauritius and Tanzania Mainland, URT) the definition focuses on the limiting effects of disability on employment opportunities. In a further three cases (Sudan, Uganda, and Zanzibar, URT) the definition extends to the limiting effects of impairment on any activity or social function. The definition used in the Seychelles focuses solely on the perspective of medical impairment.

Four countries (Ethiopia, Mauritius, the Seychelles and Sudan) and also the Tanzania Mainland, (URT) make legal provision for the vocational rehabilitation of people with disabilities, establishing institutions charged with implementation of the law, coordination and, in some cases, provision of services. (see Section 3.3). In Tanzania Mainland and Uganda, legal provision is made for the training of teachers and instructors of people with disabilities.

Specific laws concerning the employment of disabled persons have been passed in Ethiopia, Mauritius, Seychelles and Tanzania Mainland, URT. One country, Uganda has taken the approach of incorporating disability issues into general laws. Two of the countries (Seychelles, Sudan) have welfare-oriented legislation: their laws refer more to the obligation of the State to support persons with disabilities, than to the promotion of employment opportunities for people with disabilities, as described in Section 3.4.

Employment promotion is tackled in the countries under review in two ways: either through quota obligations (Mauritius, Tanzania Mainland, URT) or anti-discrimination provisions (Ethiopia, Kenya, Mauritius, Uganda and Zanzibar, URT). In some cases, such as Ethiopia and Zanzibar, URT, there are both types of provision.

Four (Ethiopia, the Seychelles, Zanzibar (URT) and Uganda) mention people with disabilities in the general legislation concerning employment.

None of the countries make legal provision for sheltered workshops, although these are an important source of occupation for people with disabilities in several countries.

Information available on the implementation of the vocational rehabilitation and employment-related laws focuses on the institutional structures which have been set up to give effect to the laws, and the activities undertaken within this framework. No reliable information was found concerning the impact of the laws on the actual employment of working-age persons with disabilities.

## 6. NEXT STEPS

Most of the countries under review have legislation on the vocational rehabilitation and employment of people with disabilities. However, the implementation of these laws is inadequate, with the result that their potential to improve the employment situation of people with disabilities has not yet been realized.

The Technical Consultation in Addis Ababa provided the opportunity to review and discuss this regional review, with a view to amending and supplementing it, where necessary. It also 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'.

Through the various activities undertaken and proposed, it is envisaged that the project will assist countries to implement the Action Plan of the African Decade of Persons with Disabilities (1999– 2009). The Action Plan calls upon Member States of the African Union to review and amend all legislation that impacts negatively on the lives of people with disabilities, to pass and promulgate enabling disability-related legislation aiming at equal opportunity and to amend constitutional bills of rights to include a non-discriminatory clause on the basis of disability.<sup>45</sup>

In these ways, legislation can effectively integrate people with disabilities into the life of the community and achieve self-reliant participation.

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<sup>45</sup> Continental Action Plan for the African Decade of Persons with Disabilities, Addis Ababa, Ethiopia, February, 2002

## ANNEX 2.1 – ILO CONVENTION NO. 159 (1983)

The primary goal of the International Labour Organization is to promote opportunities for women and men (with and without disabilities) to obtain decent and productive work in conditions of freedom, equality, 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 ILO Convention No. 159 (1983) concerning Vocational Rehabilitation and Employment (Disabled Persons<sup>46</sup>), its accompanying Recommendation, No. 168 (1983) 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 people with disabilities.

In ratifying Convention No. 159, States undertake, in accordance with national conditions, practice and possibilities, to formulate, implement and periodically review a national policy on vocational rehabilitation and the employment of disabled persons. Convention No.159 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, this Convention invites governments to consult the representative organizations of employers and workers on action to be taken for the implementation of national policy. It also provides for consultation of representative organizations of and for people with disabilities.<sup>47</sup>

To date, 73 States have ratified this Convention. Of the countries studied in the foregoing report, Uganda ratified in 1990 and Ethiopia in 1991.

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<sup>46</sup> The term "disabled person" means an individual whose prospects of securing, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognized physical or mental impairment (ILO Convention No. 159).

<sup>47</sup> The Convention consists of three parts, containing nine Articles, followed by the usual final provisions. Part I (Article 1) defines the term 'disabled person' (see footnote 47) and the concept of vocational rehabilitation. It specifies that the latter shall be made available to all categories of disabled persons. Part II (Articles 2 to 5) lays down the principles of a national policy on vocational rehabilitation and employment (Article 2). The policy must ensure that appropriate measures are made available to all categories of disabled persons (Article 3) and must be based on the principle of equality of opportunity between disabled men and women workers (Article 4). Article 5 provides for consultation on the implementation of the policy of the representative organizations of employers and workers, as well as representative organizations of and for disabled persons. Part III (Articles 6 to 9) deals with the action to be taken to develop vocational rehabilitation and employment services for disabled persons. Article 6 provides that members shall take the necessary steps to give effect to Articles 2 to 5. Article 7 provides for the setting up and evaluation of vocational guidance, vocational training, placement and employment services for disabled persons and recommends the use of services existing for workers generally; under Article 8, vocational rehabilitation and employment services for disabled persons should be established in rural areas and remote communities. Article 9 requires to ensure the training and availability of rehabilitation counsellors and qualified staff responsible for the vocational guidance, vocational training, placement and employment of disabled persons.

## ANNEX 2.2 - NATIONAL LEGISLATION AND REPORTS

### ❖ Ethiopia

- The Right of Disabled Persons to Employment Proclamation, Proclamation No. 101/1994 of 26 August 1994
- Constitution of 1994
- Labour Proclamation No. 42/1993
- An Order to Provide for the Establishment of a Rehabilitation Agency for the Disabled, No. 70 of 1971
- Report for the period ending 31 May 1999 made by the Federal Democratic Republic of Ethiopia under article 22 of the Constitution of the International Labour Office, on measures taken to give effect to provisions of the ILO Convention No. 159 (1983)
- National Programme of Action for Rehabilitation of Persons with Disabilities, Ministry of Labour and Social Affairs, June 1999, Addis Ababa

### ❖ Mauritius

- The Training and Employment of Disabled Persons Act 1996, Act No. 9 of 1996
- Labour Act, 1975 (as amended to 1992)
- Report for the period ending 15 March 1997, made in accordance with Article 19 of the Constitution of the ILO by the Government of Mauritius, on the position of national law and practice in regard to the matters dealt with ILO Convention No. 159 (1983) and Recommendation No. 168 (1983)

### ❖ Seychelles

- National Council for Disabled Persons Act, 1994 (Act 3 of 1994)
- Employment Act, 1995
- The Constitution of the Republic of Seychelles

### ❖ Sudan

- The 1997 Labour Code
- Protection and Rehabilitation of People with Disabilities in Sudan, 1996
- The Report of the Government of Sudan on ILO Convention No. 159 (1983) and Recommendation No. 168 (1983) concerning Vocational Rehabilitation
- Constitution of 1998

### ❖ Uganda

- The Employment Decree, 1975
- The National Employment Policy for Uganda, Ministry of Labour and Social Welfare, 1997
- The Workers' Compensation Act, 2000
- Report for the period 1 June 1998 to 31 May 1999 made by the Government of the Republic of Uganda on the Vocational Rehabilitation and Employment (Disabled Persons) Convention No. 159 (1983)

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- Constitution of 1995
  - ❖ United Republic of Tanzania
    - Disabled Persons (Employment), No.2 of 1982
    - The Disabled Persons (Care and Maintenance) Act, 1982
    - Zanzibar Labour Act 1997
    - The Vocational Education and Training Act 1994, No. 1 1994
    - The Constitution of the United Republic of Tanzania of 1977, 1998
    - Report for the period ending 1 April 1997 made in accordance with Article 19 of the ILO Constitution by the Government of the United Republic of Tanzania, on the position of national law and practice in regard to the matters dealt with in the following instruments: the Vocational Rehabilitation and Employment (Disabled Persons) Convention No. 159 (1983) and Recommendation No. 168 (1983) concerning Vocational Rehabilitation and Employment (Disabled Persons).

**ANNEX 2.3 - BIBLIOGRAPHY**

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