

Resource Kit No. 7

Civil Rights Law and Disabled People

CONTENTS

- INTRODUCTION
- The Way that the resource kit is organised
- PART ONE
- ARE CIVIL RIGHTS LAWS WHAT WE NEED?
- DIFFERENT TYPES OF LAW
- Civil rights, human rights and non-discrimination
- WHY BOTHER WITH CIVIL RIGHTS LEGISLATION?
- Well it worked there...
- Everyone will support what we are trying to do... won't they?
- PUTTING CIVIL RIGHTS ON THE AGENDA
- SETTING THE AGENDA
- Can you draw up your own legislation?
- PART 2
- WHAT MIGHT CIVIL RIGHTS LEGISLATION INCLUDE?
- DECIDING WHO WILL BE PROTECTED BY THE LEGISLATION
- Defining 'disabled' - the different approaches
- WHAT AREAS OF LIFE SHOULD BE AFFECTED BY THE CIVIL RIGHTS LAW?
- How different areas of life affect each other
- Watch your language!
- Does existing civil rights law offer a blueprint for disability legislation?
- Adjustments - what, when and where?
- PART 3
- WHERE DO YOU GO FROM HERE?
- SPEAKING WITH ONE VOICE
- CONCLUSION
- APPENDIX 1
- DEFINITIONS OF 'DISABLED PERSON'
- DETAILED EXAMPLES
- The Disability Discrimination Act 1995 - a lesson in complexity!
- USA - The Americans With Disabilities Act 1990
- Definitions of 'disabled person' around the world

INTRODUCTION

This is a Resource Kit for organisations of disabled people that need to know more about legislation to protect the rights of disabled people. In preparing the Resource Kit, we have tried to remember that:

- law is often talked about and used in a way that few people understand - the language and procedures of law seem to be designed to exclude people and prevent them understanding what is going on.
- law is not the most exciting subject!

So, although this Resource Kit looks at different types of law, it tries to do so in a practical way. We are aware that having a law and having access to it are often very different things. The Resource Kit also looks at some of the problems with law itself and the strange way that courts sometimes interpret it.

If your organisation is determined to work towards full and enforceable rights for disabled people, remember to look at other issues, such as:

- making sure that your organisation can deal with extra calls for information or help from disabled people, politicians and the media,
- running seminars to explain the need for civil rights law to journalists, for example.

Other resource kits published by DAA may help you to organise an effective campaign.

THE WAY THAT THE RESOURCE KIT IS ORGANISED

The Resource kit is divided into three sections:

- Part 1 looks at whether it is worth bothering with civil rights laws and some of the objections that will be raised. We also look at some of the things that organisations will have to do to make sure that they don't give politicians excuses to forget the need for civil rights law!
- Part 2 examines the areas of life that might be included in civil rights legislation for disabled people, as well as the way in which it is decided who will be protected by it and how.
- Part 3 reminds us that the need for effective representation of disabled people, in all aspects of life, does not stop when civil rights laws are passed - many people would say that it is just the beginning!

Although campaigns for full and enforceable rights for disabled people have not been easily won in any country, disabled people have already made the wider society understand the issues and won their support for legislation.

PART ONE

ARE CIVIL RIGHTS LAWS WHAT WE NEED?

DIFFERENT TYPES OF LAW

CIVIL RIGHTS, HUMAN RIGHTS AND NON-DISCRIMINATION

When people talk about stopping discrimination against a particular group in society, there are a number of phrases that are usually used, but not always in the same way. People talk about 'civil rights', 'human rights' and 'anti-discrimination legislation', but often they talk as if all these things are the same. In normal conversation, the differences between 'civil rights' and 'human rights' may not matter but, as is often the case, they mean very different things in law.

Although this is not meant to be a legal textbook, it might be worthwhile if we spend a little time thinking about what these popular phrases actually mean to lawyers, if for no other reason than to help you to be clear about what it is you would like!

The idea of human rights has an ancient history - Greek and Roman philosophers, religious leaders and legal experts have all considered those 'rights' that are owed to all humans, for no other reason than that they are human. Such 'rights' are seen as going to the very heart of what it is to be human and are traditionally treated as being 'above' law made by man[What legal scholars describe as positive law.] - the result is that, at least in legal theory, man-made law cannot reduce or remove human rights, human rights exist whether man-made laws say they do or not. This way of viewing human rights sets a standard that cannot be affected by law, they exist whatever the law may say, but as is clear all over the world, reality often fails to meet such philosophical ambitions.

Civil rights, rather than being rights that all of us should have, simply because we are human beings, deal with what individuals or groups of people can do within the law. In legal terms, civil rights can be thought of as those that are written in a country's law or code and interpreted by the courts. Although human rights are thought to exist, no matter what the law says, civil rights exist only to the extent that there are laws that create those rights.

A particularly dramatic example of the difference between human and civil rights might help; the right to life is a universal and essential human right but,

if the law in my country gives permission for the state to take away my life, so long as the correct legal procedures have been followed, executing me would not be a breach of my civil rights, even though it must be a breach of my human rights.

Non-discrimination or anti-discrimination laws are specific pieces of legislation that protect the rights of certain groups of people against poor treatment based on a particular characteristic, such as their gender, religion, ethnic background or disability. For present purposes, we can say that anti-discrimination legislation would prohibit people and organisations treating us less favourably than other people, on the basis of our impairments. Rather than stating what our rights are, as disabled people, anti-discrimination legislation is more likely to describe the kinds of things that other people cannot do to disabled people - preventing use of a shop, refusing employment, or failing to remove physical barriers.

Perhaps the easiest way to think of human rights, civil rights and anti-discrimination legislation is to view them as a list, with human rights being the most important, and therefore at the top of the list, followed by civil rights and anti-discrimination legislation at the bottom.

Although discussion of the various phrases used, and their legal meanings, may seem needlessly complicated, it does hint at the size of the task facing you when drawing up laws to protect our rights. In order to ensure that the situation of disabled people is fully protected, all three areas - human rights, civil rights and anti-discrimination legislation - will have to be addressed.

The right to shop or work is meaningless without the right to life, to found a family and to self-determination.[The right to self-determination means that people can make decisions for themselves, rather than having officials make and impose decisions for them.] The right to vote or take part in the political life of a country is meaningless unless disabled people are able to gain access to the polling station or to information they need.

When working toward enforceable rights for disabled people, it will be helpful if you are clear about what sort of rights you are talking about - are your human rights already protected by the constitution, or do you need to win constitutional protection for your human rights? Are you trying to protect your civil rights or is the need for anti-discrimination legislation? The answers to these questions will help you to organise a more effective campaign.

Trying to achieve protection of disabled people's rights in all these areas - human, civil and anti-discrimination - would be an enormous task. From now on, we will refer to 'civil rights' in this Guide, as it seems to more accurately describe the sort of legal protection that most disabled people are working towards.

WHY BOTHER WITH CIVIL RIGHTS LEGISLATION?

WELL, IT WORKED THERE...

Disabled people in more and more countries are trying to persuade their government to pass civil rights law that will help to improve the way in which disabled people are treated. A growing number of reports, from all over the world, show that disabled people are excluded from even the most basic human rights that other people take for granted. But, as a group, disabled people are becoming much better at organising themselves and working toward greater inclusion for all disabled people.

Some laws that have been passed in one country have been heard about in others and the hopes and plans of thousands of disabled people around the globe are affected by it: 'they managed it there, we can do it here!' But the situation in one country-its history, culture, economy and politics-is likely to be very different from the situation in other countries. To put it another way, just because one sort of law works in the USA does not mean that it would work in Zimbabwe.

It is always helpful for disabled people in one region to know as much as possible about what is happening to disabled people in other countries, but we must remember to apply that information in a way that takes account of the local situation. Some countries have a long tradition of human and civil rights law to protect its citizens, so there is far more support for new types of law. Other places manage to achieve a great deal, but without having to rely on formal measures, like law. One is not necessarily better than the other - it is the result that matters!

EVERYONE WILL SUPPORT WHAT WE ARE TRYING TO DO... WON'T THEY?

No!

Not only might there be quite a few people who are against civil rights law, you may also be surprised by who is against it. Even among disabled people themselves, there are very different opinions about the advantages and disadvantages of passing laws intended to protect our civil rights. If your efforts to get civil rights law passed are gaining support, then all sorts of people will want to publicise how bad such laws would be for everyone - including disabled people themselves!

Starting a campaign for full and enforceable civil rights will upset a lot of people-disabled and non-disabled-and is likely to mean that your organisation will be looked at under a microscope. If you are going to be able to deal with some of the foolish

things that you will be accused of, it is vital that your organisation is prepared. For example:

- Some people will suggest that you do not represent disabled people in your country - you must make sure that your organisation is democratic and that it is disabled people themselves who make the decisions, after a fair vote.
- Make sure that your organisation listens to the views of others - even those who disagree with your views - and tries to learn from them. It is better to know and understand what other people think so that you can put your arguments more clearly.
- Ensure that your organisation is run in a professional way - bills are paid on time, staff are treated properly and any funding that you have received has been spent wisely and properly accounted for. You must practice what you preach!

It doesn't matter how 'right' the case for civil rights legislation or how irrelevant these other issues might seem, if you are winning the argument some groups will sink to any level to try and stop you.

IN SOME COUNTRIES, ANY ATTEMPT TO IMPROVE CIVIL RIGHTS IS LIKELY TO ANNOY SOME POWERFUL GROUPS SO MUCH THAT DISABLED PEOPLE'S SAFETY MAY BE PUT AT RISK. IF YOU THINK THAT THIS MIGHT BE THE CASE IN YOUR COUNTRY, THE SAFETY OF DISABLED PEOPLE MUST BE YOUR GREATEST CONCERN.

PUTTING CIVIL RIGHTS ON THE AGENDA

We have already talked about 'campaigning' for civil rights legislation a number of times in this Kit, and this is precisely what you will need to do. Governments, the world over, have the difficult task of choosing, from a vast selection of competing claims, the issues on which they will legislate. The economy, environmental protection, general employment measures, sophisticated international crime - any number of issues will matter at different times.

The challenge for disabled people is to make disability an important issue.

Because of people's attitude toward, and non-disabled 'experts' ownership of, disability, creating a situation where disability is seen as important is very difficult.

Many of us know about the Americans with Disabilities Act, but few are aware of the effort that thousands of disabled Americans put into getting that law. Because of the very different opinions that disabled people have, agreeing a strategy for a civil rights campaign may be far more difficult than you think. Even before you consider the issues that should be included in that campaign, you will need to agree how the campaign is to be run. Some people think that 'direct action' - demonstrations, sit-ins and marches, are the best way to campaign. Other people are against direct action and would encourage

meetings with ministers, so that they can be persuaded of the need for civil rights legislation.

We do not think that there is a 'right' way to campaign for enforceable civil rights for disabled people. Experience in some countries suggests that a combination of direct action and shrewd negotiation is extremely effective.

Whatever method or methods you choose be aware that there may be a price to pay. If you demonstrate, other people may be inconvenienced, making them hostile to your demands, or the police may be called in to break up the demonstration, risking injury to disabled people and themselves. Alternatively, if you concentrate on negotiation, some people will become impatient, it will be difficult to keep others informed of the progress you are making and politicians are unable to see just how many people are angry.

SETTING THE AGENDA

We are rarely thanked for stating the obvious, but there are times when things are so obvious we all overlook them! So, welcome or not, it might be useful if we make some very general comments before we go any further.

1) Ensure that everyone knows precisely what the goals are and how you intend to achieve them.

2) Be realistic - no matter how much you may want full and enforceable civil rights, if your country has yet to provide basic healthcare or educational opportunity for disabled people, these may be more important goals for now!

Anyone who has been involved in agreeing a complicated agenda amongst people with very different goals will confirm how important it is for these 'obvious' issues to be fully discussed and agreed. Under no circumstances must any one group or interest, no matter how widely supported, be allowed to drown minority concerns. The motto 'might is right' only works with tyrants and we already have more than enough of those. It does not matter whether you are meeting to discuss life and death issues or some routine administrative problem; it is vital that all those around the table are given an equal voice.

Be particularly aware that experience tells us that where civil rights campaigns are gaining support, a common trick is for politicians to single out 'minority' issues, promising that if only you forget such issues, the rest of what you want can be achieved. Having sacrificed minority interests once, you may send a very clear signal that you are prepared to do it again, or that you do not have a strong coalition amongst your various members. Passage of the Americans with Disabilities Act offers an example of politicians using this tactic, in this case in an attempt to exclude people who were HIV positive or who had AIDS from protection under the Act.

Wonderful though true democracy is, unless those taking part have:

- realistic expectations
- an understanding of the 'big picture' (or the ability to take a global view)
- a genuine desire to make progress, and
- a willingness to sacrifice some of their goals for the wider good progress will not be made.

As disabled people, we know that disability issues are complicated and varied, few non-disabled people do. In order to make progress in a world that is not terribly interested in the needs of disabled people, you may have to work toward full and enforceable civil rights in small stages over long periods. There may be times when it appears that such an approach is going nowhere, but your goal must be effective and lasting progress. To achieve this, you must be able to identify where concessions can be made, without moving on key principles.

CAN YOU DRAW UP YOUR OWN LEGISLATION?

Disabled people who live in countries that have civil rights legislation are usually reluctant to leave politicians and civil servants to decide what the law should be. Disabled people can and should take a major role in drawing up the legislation and there is no reason why disabled people should not draw up civil rights law themselves. It is unlikely that the politicians, or their legal advisers, will agree with everything you write, but it gives a clear idea of what you expect them to be working towards!

PART 2

WHAT MIGHT CIVIL RIGHTS LEGISLATION INCLUDE?

DECIDING WHO WILL BE PROTECTED BY THE LEGISLATION

In legal terms, people who will be protected by a law, especially civil rights law, are usually described as the 'protected class'. Various reasons are put forward for having to define who will fall into the protected class, including the need for courts to interpret the legislation in the same way across the country and to protect only those people who are 'really' disabled.

The usual way of deciding who is inside or outside the protected class is to write a legal definition of who will be treated as a 'disabled person'. The definition might amount to a list of impairments that the policy-maker is prepared to include as producing disability but, more usually, it is a set of features or characteristics that the person will have to show they have. These

features may refer to a medical condition or they may refer to something that cannot be done - functional limitations often they are a mixture of the two.

An example might make this clearer -

The Americans with Disabilities Act defines the protected class with a two-part test. First, you would have to show that you have (or have had) a physical or mental impairment, and that this impairment has (or had) a substantial effect on your ability to do everyday things.

Although physical and mental impairments are not defined in the ADA, information issued by federal agencies, since the Act was passed, shows that a physical impairment would be:

- something that caused difficulty with the 'normal' functioning of the body
- disfigurement, or
- the loss of part of the body.

And mental impairments would be mental and psychological disorders and learning difficulties.[Inevitably, the definitions are more complicated than they might appear from this discussion. The U.S. Equal Employment Opportunities Commission has issued guidance as to what 'physical impairment' means: "any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; neuromuscular; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine...", and 'mental impairment' means: "any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities." EEOC Technical Assistance Manual 29 C.F.R. 1630.2(h) (1991).]

A particularly important category of people that are also covered by the US legislation are those who are 'regarded' - or treated by others - as if they had such an impairment. So, it can be seen that US legislation defines the protected class in terms of:

- an existing impairment that 'substantially limits' a 'major life activity'
- an impairment that a person used to have and, when they did, it 'substantially limited a 'major life activity'.
- being thought of by others as having an impairment that 'substantially limits'a 'major life activity'

Although following a broadly similar formula, the UK's Disability Discrimination Act generally requires that the impairment, and the functional limitation that flow from it, last at least twelve-months to count as a disability. Appendix 1, at the end of this Resource Kit, provides a selection of definitions that exist in various countries.

Advantages and disadvantages of trying to define the 'protected class'

The advantages of defining the protected class, or those who will be treated as 'disabled' in this case, mainly affect the non-disabled parties:

- it provides the courts with a more certain means of identifying disabled people
- it limits the number of people who might claim to be disabled

There are a number of disadvantages that flow from trying to define the protected class:

- Few non-disabled people really understand how large and varied the disabled population is - so some disabled people may not be included in the legislation, because of the way that the protected class is defined. This happened with the UK's Disability Discrimination Act, and people who were disfigured had to be added to the usual definition, as a separate class of people.
- One way of defining the 'protected class' is to write a list of qualifying impairments. This method is unlikely to work because:
 - The list would be huge.
 - Deciding the impairments to include will be very subjective - the policy-maker's opinion of what should be included may be very different from other peoples'. * The list would change over time, as new impairments were identified and others disappear - because of a public vaccination programme for example.
- Rather than consider whether a disabled person has been treated unfairly, the defence lawyer is likely to insist that the court examine whether the person complaining can meet the legal requirement of being a 'disabled person'. This technique has been widely used in the USA and UK, producing some extremely unfair decisions.
- None of the parties involved in a dispute would know whether the complainant was entitled to protection under the civil rights law - as a 'disabled person' - until they get to court. This is because the court is usually the only agency that can decide whether somebody can satisfy the legal definition of 'disabled person'.
- From a philosophical point of view, it should not matter whether someone is actually a disabled person or not, if they are treated as if they are disabled, and that treatment is discriminatory, then surely they should have the opportunity to call for the court's help? The difficulty with this approach is that the court is being asked to consider what was in the discriminator's mind - something that is very difficult to establish.

DEFINING 'DISABLED' - THE DIFFERENT APPROACHES

As disabled people, we tend to take a very different approach to defining disability than that of policy-makers. After long and frustrating discussions, it is easy to dismiss alternative definitions as prompted by a lack of understanding... which might be true. But we do have to be aware of the long-

standing issues, not necessarily relating to disability, which may worry policy-makers. For example, 'if we take a broad interpretation of legislation, there is a danger that we will open the floodgates, with the result that the courts would be swamped with new cases'. The legal approach is to bring about change in a slow and methodical way - an evolutionary, rather than revolutionary approach.

Inevitably campaigners for change tend to become frustrated by this 'little-by-little' process, pointing out - often quite accurately - that individuals continue to face unfairness as a result of such a cautious approach. However, we need to understand that no matter how much we believe that reform is required, our case for civil rights legislation must be won through the political process, competing with other issues for political and public support.

There can be no better example of the practical effect of conservative attitudes than the struggle to create a definition of disability. For the disabled community, disability is everywhere present but rarely acknowledged - our views on definitions of disability are affected by that view. For people that do not identify as 'disabled', disability is more usually seen as a personal tragedy or societal burden; small wonder that their definitions tend to be far more restrictive than ours, with an emphasis on protecting only those they view as 'truly disabled'.

Concern to protect only those who are 'truly disabled' takes what should be certain and predictable - law - into the realms of personal experience and/or prejudice. One man's disability is another woman's inconvenience. A prime example of this difficulty is provided by the backlash against people with 'bad-backs', who became frequent complainants under the Americans with Disabilities Act. As a spinal cord injured man I have no difficulty in saying that people with bad-backs - who were able to satisfy the ADA's definition of 'disabled person' - should certainly be included within its protection. However, my opinion was not, apparently, shared by many American journalists, politicians or members of the public, who seemed outraged that such people should be included within the legislation.[There are signs that such concerns are gaining ground with complaints brought under the UK's Disability Discrimination Act.]

It is at this point that we can highlight the greatest practical difference between civil rights legislation concerning race, gender and disability. Although there are race and gender cases where the courts have considered whether the complainant was part of a distinct ethnic group or a woman, it has not generally been difficult for the complainant to show that they were part of the protected class. At its most simple, we could say that the issue of gender or race is usually a question of fact; the very nature of 'disability' - label rather than characteristic - makes consideration of the 'protected class' far more subjective.

WHAT AREAS OF LIFE SHOULD BE AFFECTED BY THE CIVIL RIGHTS LAW?

There is often a substantial difference between the views of disabled people and policy-makers about the areas of life that should be included within civil rights legislation, and the importance of each. For the policy-maker, there are many advantages, not least economic, in getting disabled people off benefits and into work. Not surprisingly, therefore, employment is the area that most policy-makers would rate most highly. By comparison, disabled people might argue that measures that support independent living - personal assistance or aids and equipment - are a vital first priority.

Before trying to draw up a list of areas that you think should be protected by the law, it would be useful to consider any existing legislation. For example, in addition to the Americans with Disabilities Act, that many disabled people have heard of, there are a large number of other laws in the US that affect civil rights and entitlement to various services and facilities. These include:

- Architectural Barriers Act 1968
- Fair Housing Act 1968
- Urban Mass Transportation Act 1970
- Rehabilitation Act 1973, and the
- Individuals with Disabilities Education Act 1975.

In the UK, before the Disability Discrimination Act 1995 was passed, there were eight Acts of Parliament that had some effect, just on the employment of disabled people:[There were also many other Acts that dealt with welfare benefits, local services, health-care, driving etc.]

- Disabled Persons (Employment) Act 1944 * Disabled Persons (Employment) Act 1958 * Employment and Training Act 1973
- Health and Safety at Work Act 1974
- Companies' Act 1985
- Employment Act 1988
- Local Government Act 1988
- Disability Living and Disability Working Allowance Act 1991

It is likely that much the same situation will exist in your country or region. Just because some legislation exists, it does not mean that a single law, to cover all areas, could not be passed, but the political reality is that such dramatic changes are unlikely to be made at one time. Again, you will need to be realistic (but not pessimistic) about what is possible. You will need to find out what issues are the most important for disabled people in your country. We have provided a list of things that might be included below. The list is not intended to be complete, but it should help you to draw up your own action plan for a civil rights campaign:

- Right to life (for the unborn, the sick, disabled people and those in need of medical care, for example)
- The right to self-determination, so that disabled people can make their own decisions, rather than having other people's decisions forced on them * The right to live outside institutions
- The right to appropriate medical treatment

- Entitlement to welfare benefits, personal assistance and other social and welfare services
- Access to housing and the built environment
- Education
- Transport
- Access to leisure
- Insurance
- Employment.

As we have already said, the list is not complete and you would have to choose the areas that should be part of your campaign for civil rights law.

HOW DIFFERENT AREAS OF LIFE AFFECT EACH OTHER

Few non-disabled people realise how the various issues, listed above, have an effect on each other - the right to work is not very helpful unless disabled people:

- Have an opportunity to attend schools and universities, so that they can gain the same qualifications as non-disabled people.
- Have accessible housing and personal assistance to help them to get ready to leave the house?
- Can move around outside the home. Do they have access to necessary mobility aids, are the streets barrier-free, and is there an accessible public transport system? Without these facilities, how are disabled people supposed to reach work? * Once at work, disabled people are protected from discrimination, both from their employer and colleagues.
- Have social advantages in working. Will the disabled employee have the same chances to be promoted at work? Can disabled people obtain appropriate healthcare to promote better health and ensure that work is not causing new risks? Are social and leisure facilities available for disabled people?
- There are financial advantages in working, or will the cost of providing personal assistance, overcoming inaccessible transport or buying equipment needed at work mean that the disabled person would be better off not working?
- Finally, there are safeguards to ensure that any social security benefits lost when they started or returned to work are easy to get again, if working becomes impossible?

It is vital that any attempt to draw up civil rights legislation takes account of the relationship between these very different areas of life.

It is equally vital that you make non-disabled people aware of this fact - if any campaign for civil rights law is going to be successful, you will need to convince politicians and the wider public that protecting just one area - employment for example will not be enough to make a real difference.

WATCH YOUR LANGUAGE!

Written law is usually complicated - it needs to be, so that the words used do not have more than one meaning! Consider legislation to protect disabled people against discrimination at work - the following sentence might appear quite straightforward, as well as clearly stating what most disabled people would like:

'disabled people will not be discriminated against at work'

Legally, such a simple statement creates all sorts of problems:

- 1) As discussed above, who is included in the phrase: 'disabled people'? Is it just people who receive certain kinds of benefit, those who are registered as disabled with a local or regional authority, those who are blind...
- 2) What will count as 'discrimination'? Paying disabled employees less, preventing them having access to insurance, sickness benefits, a staff canteen, promotion?
- 3) If the law uses the phrase 'at work', does it mean that there is no protection for disabled people applying for work - from a legal point of view, somebody cannot be 'at work' if they are looking for work. If we limit protection to people 'at work', will this mean that disabled people who are dismissed from their job, made redundant or retire will have no protection from discrimination?

The language used when drawing up law is vital - courts will only be allowed so much freedom to consider what the words used were intended to mean. If the law is written badly, it will be impossible for the court to interpret it in a 'common-sense' way.

DOES EXISTING CIVIL RIGHTS LAW OFFER A BLUEPRINT FOR DISABILITY LEGISLATION?

Many countries already have laws that protect different groups from discrimination - women, people from different ethnic or racial backgrounds, people who practise particular religions. Although these laws can provide some useful suggestions for civil rights law to protect disabled people, there is one substantial difference relating to disability - the things that prevent us doing or using things. Many of us would focus on the inaccessibility of the world around us to describe this difference but, because of traditional attitudes toward disability amongst policy-makers, they usually refer to functional limitations - things that disabled people cannot do. Whichever way the 'problem' is defined, the issue remains the same - ensuring that disabled people can do things, despite the barriers they face.

Most discrimination comes from assumptions people make about others - 'women can't drive', 'black people listen to loud music at all times of the day

and night'. The fact that the discriminatory behaviour comes from ridiculous assumptions does not reduce its effects - discrimination is wrong no matter what the grounds for it - but, in many ways, it is easier to legislate against. The discrimination flows from prejudiced assumptions, rather than on any real effect on someone's ability to work or use public transport.

Discrimination based on incorrect assumptions affects disabled people as well - the most obvious being that anyone with a physical impairment also has a learning difficulty, or that disabled people in the workplace are a health hazard - but we also have the additional barrier caused by inaccessibility. We are excluded from things because the non-disabled majority has built a world that takes no account of the needs of disabled citizens. Because of that, a simple legal order to allow disabled people to use a service, for example, is of little use. As a wheelchair-user, giving me a right to go into a cinema or other public building is meaningless if the only way to get in involves climbing steps! Ordering a train company not to discriminate against disabled people is meaningless if Deaf people do not have access to visual information.

The usual way in which this difference between disabled and non-disabled people is dealt with is to require that adjustments or accommodations be made to allow disabled people to do jobs or use services. For a blind person to get an accountant's job, an adjustment may be to provide a computer with voice-synthesis and/or a Braille. An adjustment appropriate to a take-away food shop may be to ensure that Deaf people can order food using a textphone.

ADJUSTMENTS - WHAT, WHEN AND WHERE?

It is perfectly easy to draw up a list of 'adjustments' that will make the world around us less inaccessible - the problem is the size of the list and the cost of making those adjustments!

Make no mistake about it; one of the main objections to civil rights legislation for disabled people is likely to be cost. Inevitably, those with the least knowledge of disability are likely to be the people that assume that increasing accessibility will bankrupt the country. Although it would be very useful to provide people with information about the number of things that could be improved at little or no cost, or the wider benefits of spending money on increased accessibility, you have a number of important issues to decide before you get too involved with your campaign for civil rights:

- Perhaps the first decision is whether to refuse to discuss cost at all - you might take the view that civil rights have nothing to do with cost and there should be an absolute right for disabled people to enjoy full civil rights. Attempts to keep cost out of the campaign may be unrealistic - all your opponents have to do is suggest that the cost would be too high and you may find that public-opinion is turned against your campaign.

- If you are going to acknowledge that there will be costs involved in civil rights legislation for disabled people, it will be useful to be able to provide some information that reassures the public. The danger is that the government or business community is going to find it easier to draw up a list of costs than you will - they have greater resources and easier access to information - and there is likely to be a huge difference between what disabled people say adjustments will cost and what opponents say they will cost!

Whichever position you take, be aware of the risks involved and make sure that you have information readily available to support your campaign - either examples of other civil rights legislation that was not opposed on cost grounds or some suggestions for the financial benefits of civil rights legislation.

The information that you prepare should take account of the situation in your country:

- Is there a history of civil rights law already and, if so, was cost allowed to influence that?
- How much would have to be done to ensure the civil rights of disabled people?
- Are you going to propose that only those adjustments that can be made at small cost are required - if so, will the law actually make much difference? * Are you going to use a particular formula - an organisation will not have to spend more than a certain per cent of its annual turnover?
- Are other groups of people subject to similar exclusion to that faced by disabled people?

PART 3

WHERE DO YOU GO FROM HERE?

SPEAKING WITH ONE VOICE

Do you actually have a mandate for civil rights legislation?

Most disabled people's organisations have, at one time or another, been accused of being unable to talk for all disabled people. The fact that the same can be said of national government seems, conveniently, to be forgotten. Although few governments manage to win an overall majority of the votes cast in an election, some politicians seem to think that their party must be more representative than your organisation! Nonetheless, two wrong's do not make a right - you must be sure that your members and a sufficiently large group of other disabled people are as keen as you are to have civil rights legislation. Being democratic is not enough - you must clearly be seen as democratic.

Apart from the ethical need to ensure that you are actually proposing legislation that disabled people want, listening to disabled people across your country offers a valuable opportunity for you and the government. Our colleagues in the USA gained support, new ideas and dramatic evidence of the need for civil rights legislation by holding 'listening meetings' all across North America, giving ordinary people the opportunity to have their say. The message coming from these meetings was so loud and clear even the politicians heard it!

In Ireland, the government set up a Commission to look at ways of improving the situation of disabled people and a vital part of the Commission's work was holding meetings with disabled people across the country.[Ireland offers other examples of best practice - the Disability Commission itself included representatives of disabled people.]

Gather the evidence

Evidence is central to the administration of justice; offering evidence of the need for legislation is just as central to the struggle for full and enforceable civil rights. Whether through genuine or deliberate ignorance, many people will have no idea of the extent to which the rights of disabled people are at risk. You will certainly need to be able to justify your call for legislation - to politicians, the media and ordinary citizens who are worried about the cost of that legislation to them.

Try and choose legislation that protects other citizens, or perhaps an international declaration on human rights, and have a catalogue of examples where disabled people have been denied these rights[As an example, see DAA's *Are Disabled People Included?*, available free from DAA.]. Remember to provide evidence for all the areas of life that you would like the legislation to protect - access to education, health-care, employment, housing, travel, communication and justice, for example.

The personal stories of ordinary disabled people, that they have written or recorded themselves, can be a powerful way of getting the message across. However, if drawing attention to these sorts of things would put people at risk, you **MUST** be able to protect them, by making sure that individual disabled people cannot be identified. For example, a disabled person who is being forced out of their home because the landlord does not like disabled people might find that things got much worse if the landlord were to find out that they had written to your organisation about this.

No matter how great the need for civil rights legislation might be, you MUST protect those at risk by speaking out.

Present the Evidence

It does not matter how strong the evidence you collect, unless it is presented effectively, it will be useless. Produce briefing papers and press releases that are professionally written and backed up by strong evidence[DAA has

Resource Kits on effective communication and using the media, available free from the DAA office.]. Circulate this material widely - to journalists, civil rights groups, politicians and disabled people - and remember to circulate to local, not just national, sources.

Provide contact points where people can go for more information, and make sure that the contact point has people available who can actually answer the questions asked! The contact point is a vital resource - choose the people who will staff it carefully and make sure that they are kept informed of developments in the campaign.

Forming Alliances

Although the struggle for civil rights may be primarily ours, you must not forget that many other people will support your efforts, maybe in very practical ways. Make it easy for journalists, lawyers, teachers and others to do what they can to help. Ask ordinary people to write in support of legislation, a surprisingly large proportion of non-disabled people will support what you are trying to achieve. Of course disabled people must lead and direct efforts to protect our rights, but we need the support of other people to make it happen. What you are working towards is fair legislation introduced through the democratic process; to achieve this you must persuade others of the strength of your case - or at least provide them with the evidence.

Divide and rule

An extremely easy way for policy-makers to defeat or dilute effective legislation is to encourage disputes between the various organisations involved. This is particularly true amongst disability groups because of the widely different needs and demands that disabled people have. Whilst we may be trying to deal with the very different access needs of Deaf people, those who are visually impaired, wheelchair-users and all the other impairment groups, many people will think that as long as a few ramps are built, disabled people's civil rights have been dealt with.

As well as the enormous difference in needs amongst and between disabled people, the political process in most countries is built on compromise, or perhaps more accurately 'horse-trading'. Against this background it is only too easy for a united disability movement to be split by politicians agreeing to some requests but refusing the requests of other, perhaps smaller, groups of disabled people. Immediately the disability movement is faced with the unpleasant prospect of getting what most of their number want, but leaving the rest to fight their own battle.

The idea of the greatest good for the greatest number is familiar to students of law (as well social groups that have been caught out by this trick) and remains difficult to resolve. Our advice is that the alliance must resist these arguments, both for moral and practical reasons - once such dramatic concessions have weakened the alliance once, what is to stop the same thing happening again?

Just this approach was used by some politicians in the USA, during the passage of the Americans with Disabilities Act. The movement was told that most of their requests could easily be met, but that by including people with HIV and AIDS they were risking

a vote against the Act. Disabled Americans stood firm and refused to agree to the exclusion of people with HIV and AIDS.

Judges and perverse decisions

Once civil rights law has been passed, judges in most countries have enormous discretion to interpret and apply the law to particular cases, in such a way that all the cases that follow will be adversely affected by their decision. In extreme instances, the judge's verdict or reasoning may substantially weaken the civil rights legislation completely.

For example, as this Resource Kit goes to press, the U.S. Supreme Court has delivered two judgements that serve to exclude huge numbers of disabled people from the Americans with Disabilities Act.

The campaign for full and enforceable rights must continue, even after the law has been passed, so that perverse or unreasonable decisions are publicised. Detailed information on the way complaints are dealt with, the number of cases that disabled people have won - and the number that they have lost, any unforeseen problems arising from the legislation. In short, you must remain capable of campaigning again, as particular issues are revealed.

That was then, this is now...

Please do not think that once passed, politicians will remain supportive of civil rights legislation for disabled people. A day is a long time in politics and politician's can be a fickle breed!

You will need to be prepared to campaign for effective civil rights legislation again and again - as soon as you hear talk of the costs associated with the legislation, or suggestions that it is not working, prepare for an attack on the legislation! Just as laws can be made by the political process, they can be repealed by the same process.

CONCLUSION

Although we have tried to make this Resource Kit as straightforward and 'non-legal' as possible, it will be obvious that working towards full and enforceable rights for disabled people is a complicated process. To participate in all areas of the campaign, and at all times, a great deal of preparation, team working and expertise is required. Even where the government and public are supportive of your efforts, the campaign will require you to find considerable resources.

No matter how complicated or lengthy the campaign may be, take heart - disabled people across the world continue to work towards full and effective civil rights - the bad news is that even after the laws have been passed, you will need to be constantly vigilant so as to avoid changes that will weaken or entirely wreck those laws.

Finally, DAA is committed to addressing the information needs of disabled people everywhere; keep us informed about your campaign and good luck!

APPENDIX 1

DEFINITIONS OF 'DISABLED PERSON'

DETAILED EXAMPLES

THE DISABILITY DISCRIMINATION ACT 1995 - A LESSON IN COMPLEXITY!

'Disability'

The Disability Discrimination Act provides an ideal example of making civil rights legislation as complicated as possible! Only those people who can show that they have a 'disability', which is defined by Section 1 of the Act, are protected by it.

"1.-(1) ... a person has a disability for the purposes of this Act if he has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities."

"(2) In this Act "disabled person" means a person who has a disability."

"2.-(1) The provisions of this Part and Parts II and III apply in relation to a person who has had a disability as they apply in relation to a person who has that disability."

Notes

The definition creates a four-part test for deciding whether a person is a 'disabled person', so they would have to satisfy all the following criteria:

- 1) That they have a 'physical or mental impairment'
- 2) that the physical or mental impairment causes 'substantial adverse effects'
- 3) the substantial adverse effects must be 'long-term', and

4) the substantial long-term adverse effects must be to 'normal day-to-day activities'.

'Physical and mental impairment'

Neither 'physical impairment' nor 'mental impairment' is defined in the Act. However, Schedule 1 to the Act states that impairments resulting from or consisting of 'mental illness' will only qualify as a 'mental impairment' when they are 'well-recognised'.

A mental illness is 'well-recognised' if it is recognised as such by 'a respected body of medical opinion' [Paragraph 14 of the Guidance].

"Substantial adverse effect"

A 'substantial' effect is one that is more than merely minor or trivial; it must be understood that it is precisely the effect of the impairment, and not its severity, that is the crucial factor. Guidance to the Act offers examples of the issues to be considered when deciding whether the effects of a disability (or more accurately: "impairment") are 'substantial', these include:

- the time taken to carry out an activity;
- the way in which the activity is carried out;
- the cumulative effects;
- the effects of behaviour, and
- the effects of the environment.

"Long-term"

Effects of an impairment must be 'long-term'; Paragraph 2 of Schedule 1 to the Act states that effects of an impairment are long term when:

- they have lasted at least 12 months, or
- they are likely to last at least 12 months, or
- they are likely to last for the rest of the person's life.

"Normal day-to-day activities"

'Normal day-to-day activities' are not defined in the Act, but an impairment will only be treated as affecting 'normal day-to-day activities' when it affects one or more of the following:

- mobility
- manual dexterity
- physical co-ordination
- continence
- ability to lift, carry or otherwise move everyday objects
- speech, hearing or eyesight
- memory or ability to concentrate, learn or understand; or

- perception of the risk of physical danger [Schedule 1 paragraph 4(1)]

Additional Matters

Severe disfigurement

The Act states that severe disfigurement is considered to have a substantial adverse effect on the ability to carry out normal day-to-day activities.

Regulation 5 of the Disability Discrimination (Meaning of Disability) Regulations 1996 excludes tattoos and body piercing (for decorative or non-medical purposes) from counting as 'severe disfigurement'.

Progressive conditions

As long as a progressive condition has, or has had, an effect on a person's ability to carry out normal day-to-day activities, they will be protected by the Act, even where the effect is not or was not substantial.

The following examples of progressive conditions are provided by the Act:

- cancer
- multiple sclerosis
- muscular dystrophy, and
- infection with HIV.

The effect of medical treatment

There are many impairments whose effects can be controlled or reduced by drugs, prosthetics, treatment, aids or equipment, to the extent that there is no 'substantial adverse effect on the ability to carry out normal day-to-day activities'. The Act states

that people with this sort of impairment will count as a 'disabled person' where effects would be likely to follow without medical treatment. The obvious example is of a person who has epilepsy but, by taking medication, can prevent an attack.

People who have had a disability

Section 2(1) of the Act provides that Part I (definition of disability) and Part II (discrimination in employment) apply to people who have had a disability, in the same way that they apply to people who have a disability. So long as the individual has had a physical or mental impairment that had a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities, they will be protected.

Summary

It must be remembered that the discussion above deals only with the definition of 'disability' in the Disability Discrimination Act. Despite the complicated nature of the definition (or perhaps because of it), many disabled people would not be included within the Section 1 definition, including people who are 'disfigured', those with progressive conditions and people who have had a disability, all of whom are included only after being specifically mentioned as 'special cases' later in the Act. This illustrates one of the major weaknesses of the Act - rather than trying to protect anyone who might be discriminated against on the basis of disability, the Act attempts to tightly control who will be included within its protection.

Experience in Britain has shown that some Industrial Tribunals (the court to which employment discrimination complaints are first made) have made a very bad job of interpreting the legislation. If the Tribunal members cannot make sense of the definition of 'disability', what chance does anyone else have?

No matter how obscene or obvious the discrimination, if the complainant cannot show that they have a 'disability', as defined by Section 1 of the Act, the Tribunal will never have an opportunity to consider the complaint of discrimination itself. Not surprisingly, lawyers acting for the alleged discriminator usually try and show that the complainant does not have a 'disability'.

The requirement for the complainant to show that they have a 'disability', as the first stage in any legal action, can result in a situation where the discriminator blatantly discriminates against someone, on the basis of disability, but because the complainant cannot show that they have a 'disability', the discrimination is not actionable!

USA - THE AMERICANS WITH DISABILITIES ACT 1990

Section 3(2) of the Americans with Disabilities Act uses the definition of 'disability' first provided by the Rehabilitation Act Amendments 1974, regarding a 'handicapped individual'. According to the Equal Employment Opportunities Commission [EEOC - the federal agency charged with responsibility for combating discrimination in employment], this was a deliberate decision by the US Congress to ensure that the case law developed under the Rehabilitation Act applied to this later legislation.

For the purpose of the Rehabilitation Act 1974 and the American with Disabilities Act 1990:

The term "disability" means, with respect to an individual -

(i) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

- (ii) a record of such impairment; or
- (iii) being regarded as having such an impairment.

By defining 'disability' in this way, US legislators have made an important move away from a strictly medical way of defining disability. Although the definition still includes reference to 'functional limitation', those people who have no such limitation, but are treated by others as if they do, are included within the protection of the legislation.

Physical or Mental Impairment

EEOC Regulations describe 'physical or mental impairment' as:

- (a) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; neuromuscular; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
- (b) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities[EEOC Technical Assistance Manual 29 C.F.R. ? 1630.2(h) (1991)].

In deciding whether a complainant has a 'physical or mental impairment', no account is to be taken of 'mitigating measures', such as assistive technology or prescribed drugs. The EEOC Interpretative Guidance cites the example of an individual with epilepsy who, with medication, is able to completely control the symptoms; for the purposes of assessing whether that individual has an impairment, the absence of symptoms would be ignored. Congress specifically refused to provide an exhaustive list of impairments, recognising the difficulties in keeping the list up to date.

Substantially Limits... Major Life Activities

Even where an individual has an 'impairment', it is only a qualifying impairment where it 'substantially limits' one or more 'major life activities' that would include: 'caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.'[EEOC Technical Assistance Manual 29 C.F.R. ? 1630.2(i) (1991).]Once again, this list is not exhaustive: according to the Interpretative Guidance "'Major life activities" are those basic activities that the average person in the general population can perform with little or no difficulty.'

The Regulations state that "substantially limits" means:

- (i) unable to perform a major life activity that the average person in the general population can perform; or

(ii) significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.

In determining if an individual is substantially limited in a major life activity, consideration should be given to: 'the nature and severity of the impairment', its 'duration or expected duration' and the actual or expected 'permanent or long term impact... of or resulting from the impairment'.

"A record of such an impairment"

An individual will be able to show that they have a 'record of impairment' in two ways:

(i) by being an individual who no longer has a substantially limiting impairment but has had such an impairment previously, or

(ii) by having been misclassified as having a substantially limiting impairment.

The inclusion of people who have had, and those misclassified as having, an impairment is a vital element in the inclusive nature of the protection provided by the ADA. The first category would include, for example, people who been successfully treated for cancer. Because most health insurance benefits are provided by individual employers in the US, this protection provides a vital safeguard for job-applicants and employees who would not otherwise be able to get health insurance.

It should be noted that the past or misclassified impairment must still be one that 'substantially limits'. In the event that a record indicates an impairment that is not substantially limiting, the individual would need to show that they were a 'disabled person' for the purposes of the ADA by using the third part of the definition: 'being regarded as having such an impairment'.

"Being regarded as having such an impairment"

According to the EEOC, an individual might be 'regarded as having such an impairment' where s/he:

1) has an impairment that is not substantially limiting but is treated as if it were by a covered entity

2) has an impairment that is only substantially limiting because of the attitudes of others, or

3) has no impairment whatsoever, but is regarded by a covered entity as having an impairment that substantially limits them.

It is this final part of the classification of disability that offers protection from discriminatory attitudes and would include, for example, those whose facial

disfigurement is perceived as being 'upsetting' for other employees or customers. EEOC guidance refers to the Supreme Court's decision in *School Board of Nassau County v. Arline* [480 U.S. 273 (1987).] in order to describe the purpose of this section[EEOC Technical Assistance Manual B-16.]:

The Court noted that, although an individual may have an impairment that does not in fact substantially limit a major life activity, the reaction of others might prove just as disabling. "Such an impairment might not diminish a person's physical or mental capabilities, but could nevertheless substantially limit that person's ability to work as a result of the negative reactions of others to the impairment." 480 U.S. at 283. The Court concluded that by including "regarded as" in the Rehabilitation Act's definition, "Congress acknowledged that society's accumulated myths and fears about disability and diseases are as handicapping as are the physical limitations that flow from such impairment [480 U.S. at 284]".

Summary

Although the US legislation allows a broader group of people to be included within the definition, particularly including those who are regarded as having an impairment, experience shows that American lawyers, like their British counterparts, will usually try and show that a complainant is not entitled to protection because they are not 'really' disabled people.

Since the ADA was passed, there has been a backlash because people who were 'not really disabled' were being protected by it. People with bad-backs have made up a large proportion of people making complaints under the ADA, and it would seem that the non-disabled majority were uncomfortable with this. Inevitably, critics of the legislation claimed that it was not helping the people it was intended to.

Recent decisions by the US Supreme Court have caused particular worry amongst disability advocates in America, because they too seem to want to limit protection to those who were traditionally viewed as 'disabled'. On 22 June 1999, the Supreme Court dramatically reduced the scope of the ADA by ruling that physical impairments, that can be treated, are not protected from discrimination.

According to the justices, 'Congress had never intended the law to cover American workers who can correct their impairments by wearing glasses or hearing aids or taking medication. Instead, the law covers the 43 million people with more serious disabilities who need its protection to bring them into the economic and social mainstream.'

As the Supreme Court judgements show, it is all too easy for progress to be wrecked by judges who do not understand disability, or who do not agree with legislative protection for the civil rights of disabled people.

Finally, both the American and English legislation put disabled complainants in an impossible situation - the complainant will need to show that their

impairment prevents them from doing things, but not that it prevents them from working. The danger is that having proved that they have a disability, within the terms of the legislation, the court or tribunal then considers them too disabled to work.

DEFINITIONS OF 'DISABLED PERSON' AROUND THE WORLD

Country Legislation Definition

Australia

Disability Discrimination Act 1992 - Section 4

"disability" , in relation to a person, means:

(a) total or partial loss of the person's bodily or mental functions; or (b) total or partial loss of a part of the body; or

(c) the presence in the body of organisms causing disease or illness; or

(d) the presence in the body of organisms capable of causing disease or illness; or

(e) the malfunction, malformation or disfigurement of a part of the person's body; or

(f) disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or

(g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgement or that results in disturbed behaviour; and includes a disability that: (h) presently exists; or previously existed but no longer exists; or may exist in the future; or

(i) is imputed to a person.

Belgium

Social Rehabilitation Act 1963

'people whose chances for employment are effectively reduced by an insufficiency or diminution of at least 30 per cent of their physical capacities or at least 20 per cent of their mental capacities' (article 2).

Canada

Employment Equity Act 1986

'A person will be considered disabled for the purpose of the Act if their prospects of employment are substantially reduced as a result of an ongoing or recurring physical, mental, sensory, psychiatric or learning impairment and if they consider themselves, or who believe a potential employer would consider them, disadvantaged in employment because of their impairment.'

Finland

Act on Rehabilitation to be provided by the Social Insurance Institution 1991

'A disabled person is a person whose working ability and earning capacity have substantially reduced as a result of impairment, injury or sickness'.

France

Labour Code (article L323-10)

'A disabled worker is a person whose chances of obtaining or retaining a job in normal employment are effectively restricted because of insufficient or reduced physical or mental capacity.'

Germany

Section 3 of the Severely Disabled Persons Act

'Disabled persons are all those who are limited in their capacity for integration into society because of the effects of a physical, mental or psychological condition which is contrary to the norm, and where limitation of this capacity for integration is not merely of a temporary nature.'

Greece

Law 1648 of 1986 (as amended)

Defines a disabled person for the purposes of employment as 'someone aged 15 to 65 who has limited possibilities for occupational activity due to any chronic physical, mental or psychological illness or impairment, provided that he or she is listed in the register of the disabled unemployed, held by the Manpower Employment Organisation [OAED], with a disability of more than 40 per cent.'

Ireland

1996 Employment Equality Bill

(a) the total or partial loss of a person's bodily or mental functions, including the loss of a part of a person's body, or

(b) the presence in the body of organisms causing, or likely to cause, chronic disease or illness, or

(c) the malfunction, malformation or disfigurement of a part of a person's body, or

(d) a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or

(e) a condition, illness or disease which affects a person's thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour, and shall be taken to include a disability which presently exists, or which previously existed but no longer exists, or which may exist in the future or which is imputed to a person.

Italy

Law 104 of 5 February 1992

'Someone who has a physical, mental or sensory impairment, stable or progressive, resulting in difficulties in vocational training, in social life or in professional integration such as to be at a disadvantage and to lead towards social marginalisation.'

Luxembourg

Law of 12 November 1991 on disabled workers

Disabled workers are people disabled through accident at work or war and people with a physical, mental or sensory disability. The capacity for work must be reduced by at least 30 per cent.

New Zealand

(a) physical disability or impairment

(b) physical illness

(c) psychiatric illness

(d) intellectual or psychological disability or impairment

(e) any other loss or abnormality of psychological, physiological, or

(f) anatomical structure or function

(g) reliance on a guide dog, wheelchair, or other remedial means

(h) the presence in the body of organisms capable of causing illness

Portugal

Article 2 of the comprehensive law (9/89)

a person who, because of a loss or abnormality, congenital or acquired, of psychological, intellectual, physiological or anatomical structure or function susceptible of causing limitations to capacity, may be considered in disadvantageous situations for the fulfilment of activities considered normal, taking into account age, sex and the prevailing socio-cultural factors.

Spain

Disabled Persons Social Integration Act (Act no. 13 of 7 April 1982),

'disabled person' means any person whose possibilities of participating in education, work or social activity are reduced as a result of a physical, mental or sensory impairment, whether congenital or not, which is likely to be permanent.

Sweden

occupational disability is used in conjunction with labour market measures

a jobseeker has an occupational disability if, as a result of impairment, medical condition or illness of a physical, mental, or intellectual or social nature, he or she has, or is expected to have, difficulties in obtaining or retaining gainful employment.