

CHAPTER 4

INTERNATIONAL DISABILITY MANAGEMENT POLICY FRAMEWORK

“...the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries”. Constitution of the International Labour Organisation (www.ilo.org/ilolex/english/iloconst.htm).

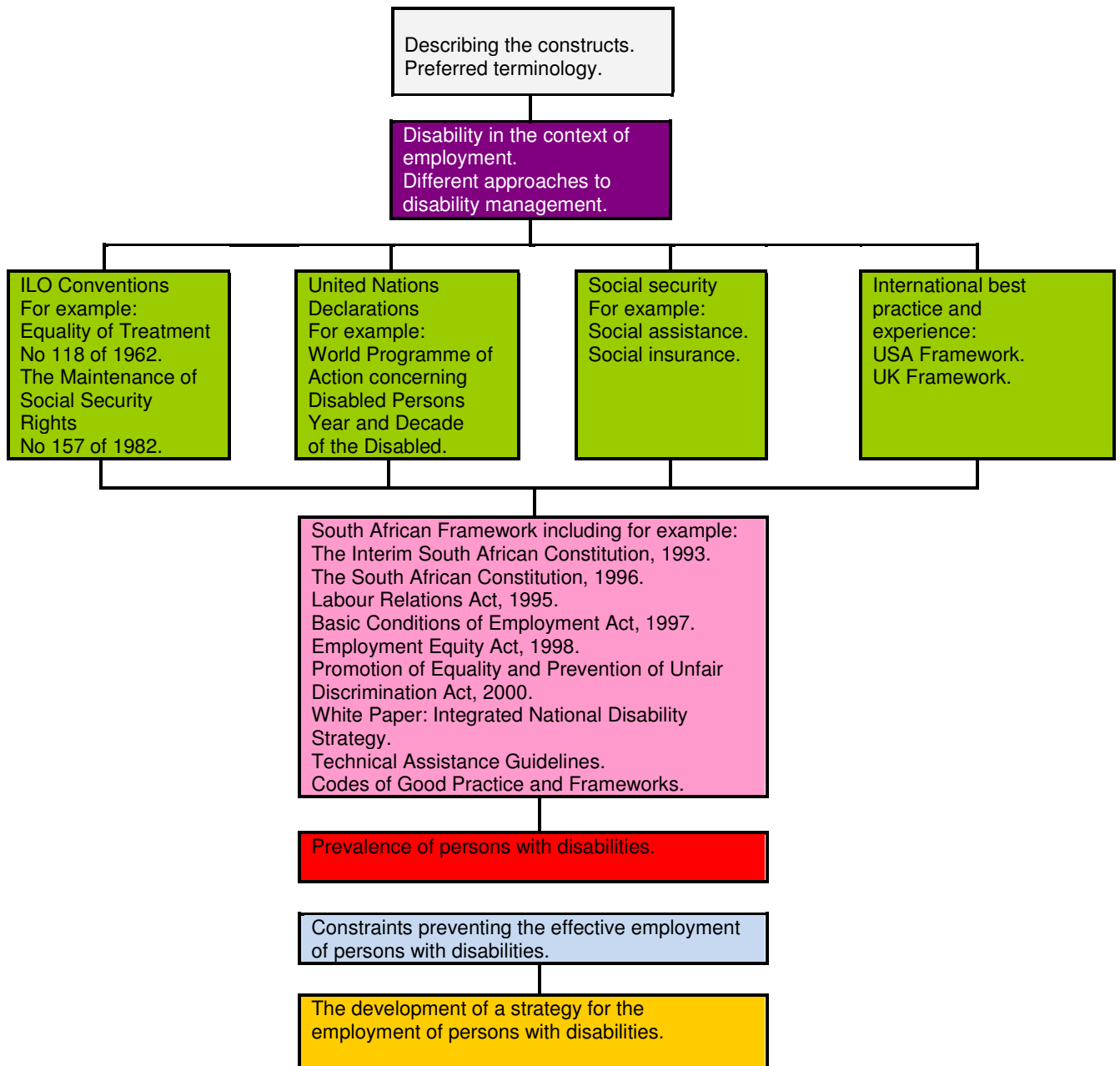
4.1 INTRODUCTION

The purpose of this chapter is threefold namely, to identify the different strands of social security and its impact on disability management, the international policy framework related to disability management and the international principles and conventions on which it is based and lastly, the disability management frameworks in the United States of America (USA) and the United Kingdom (UK).

The relevance of this chapter to the development of a strategy to employ persons with disabilities is that social security and the international disability policy framework guided the development of the South African disability management policy framework. The international disability management policy framework started many years ago (as early as 1944) while the South African disability management policy framework only came into place after 1994, and specifically during 1997 when the INDS (1997) was published. International practice also provided a benchmark for the South African disability policy framework.

The international policy framework is discussed as far as it is relevant to the employment of persons with disabilities. The aspects which are relevant to the South African disability policy framework and employment of persons with disabilities are specifically identified and elaborated upon. The relevant positive and negative contributors to the development of a strategy to increase the employment of persons with disabilities, identified from the literature study of the international disability policy framework and social security, will serve as basis in analysing the South African disability management framework and will impact on the strategy to employ persons with disabilities. The relevant part of the Disability Management Research framework dealt with in this chapter is coloured green.

Table 10: Disability management literature review research framework



4.2 SOCIAL SECURITY

4.2.1 DEVELOPMENT OF THE EARLY WELFARE SYSTEMS

Thompson et al (1999:4) introduces the concept of social security and the obligation of a state to provide such security as a relatively new phenomenon which has developed rapidly since the latter part of the 20th century. Today the obligation to provide for social security is entrenched in the constitutions of most democracies.

Strydom (2006:1) confirms that in modern times it is a common phenomenon for society to be involved in the welfare of its members who are unable to provide for themselves. This is usually done through statutory measures. Strydom (2006:1) points out that less than 150 years ago destitute citizens from countries which are today considered to be developed countries, could not count on their governments for assistance. Instead they had to rely on, amongst others, their families and the church for assistance.

Marshal, a British social historian, had enormous influence with his thesis of a three-stage development of the rights of citizens ending with the emergence of social rights (Siegel 1994:23 and 24). The work of Marshal led to the recognition of social protection to every citizen as a matter of legal right.

The Great Depression during the 1930s as well as the First and Second World Wars of the 20th century, contributed to the development of the current systems of social security (O'Day and Berkowitz 2001: 634). The Great Depression played a particularly important role in the development of a social security system in the USA. It caused large numbers of breadwinners to lose their jobs, compelling the national government to assist destitute families. The First and Second World Wars caused devastation in Europe. It ruined economies and left many persons homeless and displaced, created many orphans, caused the death of large numbers of breadwinners and left a vast number of breadwinners without jobs (Strydom, 2006:2).

Most African countries at present have large numbers of destitute persons resulting from high unemployment, the lack of sufficient funds and the inefficient administration of funds. In addition, the Aids pandemic is likely to increase the demand for disability benefits dramatically, work related dependents benefits, foster care and adoptive care for children orphaned by AIDS (Strydom 2006:3).

O'Day and Berkowitz (2001:633) state that disability benefit programmes as part of a social safety net often face common complaints that they are growing too fast, they have become too expensive and they do a less than adequate job in returning

persons to work once they are on the benefit rolls. This is a challenge faced in South Africa at present.

4.2.2 THE DIFFERENT STRANDS OF SOCIAL SECURITY

According to CHPI and SAFCD (2001:6) and the White Paper for Social Welfare (1997:48), social security refers to a wider range of public and private measures that provide cash or in-kind benefits or both. Social security includes both social insurance and social assistance.

Pieters (1993 as in CHPI & SAFCD 2001:12)) defines social security as the “body of arrangements shaping the solidarity with persons facing (the threat of) a lack of earnings (that is, from paid labour) or particular costs”.

The ILO (1952) defines social security as follows in Convention 102 of 1952: “..... it can be taken to mean the protection which society provides for its members, through a series of public measures, against the economic and social distress that otherwise will be caused by the stoppage or substantial reduction of earnings resulting from sickness, maternity, employment injury, unemployment, invalidity, old age and death; the provision of medical care; and the provision of subsidies for families with children” (Convention 102 of 1952, www.ilo.org, Strydom, 2006:4, Thompson, et al, 1999:14, 15, CHPI and SAFCD 2001). In summary the following elements can be distinguished in the ILO’s definition of social security:

Table 11: Summary of the elements of the ILO’s definition of social security

<p>Protection by society through a series of public measures such as the payment of benefits, or the provision of things such as medical care to members of society who have no or insufficient income as a result of the occurrence of one or more of the following contingencies:</p> <ul style="list-style-type: none"> ➤ A condition which requires medical care; ➤ sickness which incapacitates a person; ➤ unemployment; ➤ old age; ➤ death of the breadwinner; ➤ an employment injury; ➤ the continued expense of raising a family; ➤ pregnancy; and ➤ invalidity which causes an inability to work.
--

(Source: Strydom 2006:5 and 6).

The ILO's definition can be described as relatively narrow, as it does not cover all the strands or categories of social security. However, it does cover social assistance (also known as social welfare) and social insurance, which are undoubtedly the two most important strands of social security. It also covers the strand called employer assistance (Strydom 2006:6).

Furthermore, the contingencies in the ILO definition, with the exception of a condition requiring medical care and the maintenance of children, are all linked to a lack of income due to the cessation or interruption of employment. The definition does not cover contingencies such as individual or community crises, hardship and suffering caused by the state, and the lack of opportunities for the disadvantaged members of the society (Strydom 2006:6).

Pieters (1993:1 as quoted by Strydom 2006) criticises the ILO definition because it describes the material scope of application causing the definition not to leave sufficient room for the development of new answers to new challenges. Pieters suggests the following definition:

“Social security can be perceived as the body of arrangements shaping the solidarity with people facing (the threat of) a lack of income from paid labour or facing particular costs.”

Although the ILO definition is not a broad all-encompassing definition that covers all the strands of social security and every contingency against which social security can be provided, it remains a good point of departure for the research of social security (Strydom, 2006:6). It provides better direction than the definition by Pieters (1993) since it identifies specific areas of focus.

The South African definition differs from the ILO definition and Pieters' definition in an important sense: both the ILO and Pieters' definitions refer to social security as public measures while the South African definition includes private forms of social security, including private medical aids, retirement schemes and life insurance. In so doing, it is broader than the international definitions of social security. In a positive sense it includes a wider scope of protection for more persons but it could be

regarded as excusing the government from performing its full Constitutional duty (CHPI & SAFCD, 2001:12).

There is a larger variety of strands, or categories of social security, than social insurance and social assistance. The variety of strands of social security is funded differently. Some of the strands are financed through taxes while others are financed through contributions by individuals or organisations. Some of the strands are restricting benefits to those members of society that comply with a means test while others restrict benefits to employees (Strydom 2006:6).

The various strands also provide assistance in respect of different contingencies. There are strands that cover contingencies linked to employment, such as employment injury or unemployment. Other strands cover contingencies that occur outside the workplace, such as community crises caused by natural disasters or the hardship caused by a government (Strydom 2006:6). Table 12 illustrates the different strands and sub-strands of social security:

Table 12: Strands and sub-strands of social security

➤	Social assistance-
○	means-tested social assistance.
○	national social assistance.
➤	Social insurance.
➤	Social relief.
➤	Social compensation.
➤	Social upliftment.
➤	Employer assistance.
➤	Private savings and assistance.

(Source: Strydom 2006:7).

The different strands and sub-strands are detailed below. Some of these strands directly relate to the employment of employees, including employees with disabilities, while others relate to the social responsibility of a government towards its citizens. The different strands and sub-strands of social security either directly or indirectly impact upon persons with disabilities and it largely reflects the thinking that policy makers are having in respect of disability issues.

Table 13: Summary of the characteristics of the various strands of social security

SOCIAL ASSISTANCE	SOCIAL INSURANCE	SOCIAL RELIEF	SOCIAL COMPENSATION	SOCIAL UPLIFTMENT	EMPLOYER ASSISTANCE	PRIVATE SAVINGS AND ASSISTANCE
Characteristics						
Often established through “poor laws” and it is a well-known form of social welfare.	Form of insurance established by means of a contract between the insurer and the insured.	Short-term measures undertaken by a state to assist citizens during individual or community crises.	Refers to compensation which governments give to express their solidarity with people who have been exposed to certain types of hardship caused by a government or its predecessor.	To address poverty and people who have been disadvantaged through for example: government policies.	The providing of assistance by employers to employees in respect of certain contingencies. It could either be compulsory or voluntary.	Self-funded.
Causes						
<ul style="list-style-type: none"> ➤ A condition requiring medical care. ➤ Sickness which incapacitates a person. ➤ Old age. ➤ Death of a breadwinner. ➤ Cost of raising a family. ➤ Invalidity. 	<ul style="list-style-type: none"> ➤ A condition requiring medical care. ➤ Ill-health. ➤ Unemployment. ➤ Old age. ➤ Death of breadwinner. ➤ Employment injury. ➤ Pregnancy and confinement. ➤ Invalidity. 	Hardship caused by personal or community crises.	<ul style="list-style-type: none"> ➤ War. ➤ Victims of compulsory vaccination that went wrong. ➤ Persons who lost everything to fight in a revolution. ➤ Violation of basic human rights. 	Lack of opportunity for some people.	<ul style="list-style-type: none"> Sickness which incapacitates a person. ➤ Unemployment due to the operational requirements of the employer. ➤ Death of a close relative of an employee. ➤ Illness of a child of an 	Not relevant.



SOCIAL ASSISTANCE	SOCIAL INSURANCE	SOCIAL RELIEF	SOCIAL COMPENSATION	SOCIAL UPLIFTMENT	EMPLOYER ASSISTANCE	PRIVATE SAVINGS AND ASSISTANCE
					employee. ➤ Birth of a child of a male employee. ➤ Pregnancy and confinement. ➤ Invalidity.	
Responsibility						
Exclusive responsibility of the state.	The individual with assistance from employer in some instances.	Exclusive responsibility of the state.	Exclusive responsibility of the state.	Mainly the responsibility of the state.	Mainly the responsibility of the employer.	Exclusive the responsibility of the individual.
How regulated						
Regulated through legislation.	Regulated through legislation.	Regulated through legislation.	Regulated through legislation.	Regulated through legislation or voluntary undertakings and agreements.	Largely regulated through collective/ labour agreements.	Regulated through legislation.
Funding						
Funded through taxes.	Self-financed through regular contributions.	Funded through taxes.	Funded through taxes.	Funded through taxes or funding or levies.	Mainly funded by an employer but employees sometimes contribute.	Self-financed through regular contributions.
Temporary or permanent						
Permanent for as long as the condition continues.	Usually permanent upon occurrence of the insured event.	Temporary to tide a person over for the period of crises or until social assistance is	Temporary.	Temporary.	Temporary.	Temporary.

SOCIAL ASSISTANCE	SOCIAL INSURANCE	SOCIAL RELIEF	SOCIAL COMPENSATION	SOCIAL UPLIFTMENT	EMPLOYER ASSISTANCE	PRIVATE SAVINGS AND ASSISTANCE
		paid.				
Qualifying criteria						
Means tested or national social assistance.	Well-described circumstances in respect of each of the contingencies insured against.	Nature of the crises often requires whether compliance with a means test is required.	Means test is not always required.	Means test is not always required.	Well-described in respect of certain contingencies.	Not relevant.
Form of assistance						
Monetary payment.	Monetary payment.	Monetary payment.	Monetary payment.	Monetary payment.	Monetary payment.	Monetary payment.

(Developed from Strydom, 2006).

The relevance of the various strands of social security on disability and employment is embedded in the nature and character of each of the strands. Social security, and specifically social welfare, can be traced back to the industrial revolution and the history depicted above indicates the reasons why social security systems began to develop. The very nature of this development process has not focussed on the management of disability but rather on providing people with a monetary payment as a form of assistance. The provision of money was deemed to be sufficient to solve the problem.

The form of assistance provided, combined with the past medical model thinking would often place persons with disabilities in a disadvantaged position. The receipt of social assistance is often seen as a sympathetic hand-out and not as part of a more comprehensive strategy which is aimed at restoring the dignity of a person with disabilities and to re-introduce them into the mainstream of society and economic activity as soon as possible. It also creates the mental state that a person is only “good enough” to receive social security and not good enough to earn a living through work.

It is also a well-known phenomenon that individuals receiving social assistance, give up the challenge to better themselves as they become dependent on the social assistance, without them having to make a meaningful contribution for it.

The decline in the employment of economically active disabled males and females as depicted in Chapter 6 could result from this. Although the causes of this decline have not been researched scientifically, it is likely that the decline is due to the payment of the disability grant. The reason for this likelihood is that the majority of persons with disabilities have no or limited schooling resulting in them being employed, if at all, at the minimum wage. The effort of employment and the costs related thereto like amongst others, transport and clothing, could easily make it a better financial proposition to rather receive the disability grant than to work. Social security could, therefore, have a direct negative impact on the employment of persons with disabilities.

Social assistance, with its origin in Europe, has also led towards the need arising for the establishment of the ILO. The conventions of the ILO and the UN, which are discussed below, can be clearly identified in accordance with the various strands of social security. Social security has also evolved into the concept of basic human rights, captured in legislation. As can be seen from Strydom (2006) social security developed in response to human suffering. The initial response was voluntary, mainly to avoid uprisings from the suffering masses. The evolvement of political systems and basic human rights has ensured that social security became legislated and even entrenched into constitutions of many countries.

Despite the protective measures, persons with disabilities continue to remain poverty stricken. Their exclusion from mainstream society, their difficulty to access services and to exercise their basic rights, has contributed to a serious limitation in the capacity to implement disability related programmes, especially in rural areas of the country. One of the key factors that contribute to this ongoing negative situation is the fact that disability issues have been addressed in a piecemeal, fragmented fashion, coupled with a serious lack of reliable information on the nature and prevalence of disability within South Africa. For many persons with disabilities their reduced opportunities for education, training and employment contribute to their

increased exposure to poverty and poor living conditions. As a result many adults and children with disabilities require income maintenance mechanisms to compensate for their lack of income (Bhagvanjic AM and Skurd R as quoted in CHPI and SAFCD 2001:9, 10).

The most fundamental form of provisioning entails “safety nets”, that is, various forms of social security, insurance and assistance aimed mainly at poverty alleviation, safety nets against destitution and to ensure an adequate standard of living. They achieve this by attempting to raise the incomes and standards of living of those individuals and families in dire poverty; smoothing income over the life-cycle; compensating for the inability to work (through disability, retrenchment, illness); and by meeting the needs of particularly vulnerable groups (CHPI & SAFCD, 2001:10).

There are, however, three general aims to any social protection policy:

- Avoid risk where possible (prevention). An example of this in South Africa is occupational safety legislation in the form of the Occupational Health and Safety Act and the Occupational Diseases in Mines and Works Act which aims to avoid injuries and diseases in the workplace.
- Repair the damage (reparation). An example of this in South Africa is the Restitution of Land Rights Act and other land reform legislation.
- Compensation (in the form of benefits). Where an injury does occur in the workplace, the Compensation Commissioner will ensure that the injured worker is paid compensation for the injury in terms of the Compensation for Occupational Injuries and Diseases Act (CIODA) (CHPI & SAFCD, 2001:11).

4.3 THE CONTRIBUTION OF THE INTERNATIONAL LABOUR ORGANISATION TO DISABILITY MANAGEMENT

The disability and employment policy framework internationally evolved over time from a very comprehensive set of Conventions, Regulations and Strategies/Policies. A critical component of this evolution is the ILO.

The ILO emerged with the League of Nations from the Treaty of Versailles in 1919. It was founded to give expression to the growing concern for social reform, including for soldiers and citizens emerging from World War I as disabled, and the conviction that any reform had to be conducted at an international level. It was specifically stated that "... conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled" (Rules of the Game 2009:6, Christianson 2007:156,157).

One of the earliest international acknowledgements of the right of persons with disabilities to have access to work opportunities was made by the ILO in 1944. In a comprehensive and far-seeing recommendation, the ILO stated unequivocally that disabled, "whatever the origin of their disability, should be provided with full opportunities for rehabilitation, specialised vocational guidance, training and retraining, and employment on useful work" (ILO Employment Recommendation No. 71, 1944, O'Reilly 2003:2). The ILO promulgated that persons with disabilities should, wherever possible, be trained with other workers, under the same conditions and the same pay, and called for equality of employment opportunities for disabled workers and for affirmative action to promote the employment of workers with serious disabilities (O'Reilly 2003:2).

Following World War II, the basic goals and principles of the ILO were restated in the Declaration of Philadelphia. The Declaration anticipated post-war growth in national independence and large scale cooperation with the developing world. In 1946, the ILO became the first specialised agency associated with the UN, which was newly formed at that time (Christianson 2007:156,157).

The ILO has a tripartite structure in which employer representatives and employee representatives have an equal voice with the governments who are members of the ILO. Minimum international labour standards are set by the International Labour Conference, which meets annually. Every two years the Conference adopts the ILO's biennial work programme and budget, which is financed by member states (www.ilo.org). The focus of these programmes is on the areas covered by the ILO's four strategic objectives namely:

- The promotion of fundamental principles and rights at work;
- employment protection;
- social protection; and
- strengthening of tripartism and social dialogue.

What proved to be one of the most important international instruments in relation to the right to work of persons with disabilities, was adopted by the ILO in 1955, namely ILO Vocational Rehabilitation (Disability) Recommendation No. 99, 1955. Until the adoption of ILO Convention No. 159 and Recommendation No. 168 almost 30 years later, namely in 1983, Recommendation No. 99 served as the basis for national legislation and practice in relation to vocational guidance, vocational training and the placement of disabled persons. Recommendation No. 99 built on the core provisions of earlier instruments in relation, for example, to vocational training, equality of opportunity and equal pay for equal work (Christiaanson 2007:158).

The ILO's vision has developed into a comprehensive Decent Work Agenda which takes up many of the same challenges that the organisation faced at its inception. The Decent Work Agenda aims to achieve decent work for all by promoting social dialogue, social protection and employment creation, as well as respect for international labour standards. These standards have grown into a comprehensive system of "instruments" on work and social policy. They are the legal component of the ILO's strategy for governing globalisation, promoting sustainable development, eradicating poverty, and ensuring people can work in dignity and safety (Rules of the game 2009:7, www.ilo.org/global).

Within this framework, the major portion of the ILO's technical cooperation is in the areas of policy development and programmes for poverty alleviation through job creation, enterprise and cooperative development.

The ILO has also played an important role in the development of social security systems, not only in developed countries but also in developing countries. This was achieved through the adoption of conventions and recommendations that deal with social security and the contingencies in respect of which benefits must be provided (Strydom, 2006:3).

The ILO has made a significant contribution to the South African labour policy framework, and specifically to social security and the management of disability and employment of persons with disabilities. Its contribution can be identified clearly in the South African labour policy and legislation. This will be discussed in the next chapter of this research. South Africa is a member state of the ILO and subscribes to the conventions of the ILO. The contribution of the ILO is to “...show member states the way...” in certain areas concerning employment and South Africa has certainly followed this direction.

Through research, advocacy and lobbying the ILO sets out clear guidelines and member states are then, by implication of their membership, obliged to implement these guidelines.

It is unlikely that vulnerable groups, including persons with disabilities, would have received the protection by law against discrimination, if the ILO was not in existence.

The ILO can also be criticised, and specifically due to the following:

- The conventions are high level and sometimes require member states to develop complex legislation to enact these conventions;
- the non-compliance by member states is not dealt with actively as the ILO is a voluntary organisation, relying on the good faith of members to implement the conventions of the ILO;
- activists use the ILO as their platform from which to promote their cause and these causes are not always to the best benefit of member states based on the financial and other realities prevailing at the time; and
- the publications issued by the ILO are not widely circulated and is only available to a select group of activists, scholars and politicians who are familiar with the activities of the ILO.

Siegel (1994:27) says that the avoidance of the term “right to work” in most ILO instruments has helped the ILO Committee concerned with the application of labour standards, to be free to ignore such a right in its regular reviews of compliance.

These criticisms are overshadowed by the positive impact the ILO is having internationally on employment practice and specifically on the employment of persons with disabilities.

4.4 THE CONTRIBUTION OF THE UNITED NATIONS TO DISABILITY MANAGEMENT

The UN facilitates cooperation of nations concerning law, security, economic development, social development and basic human rights. It was founded in 1945 and has 192 member states. One of the most significant contributions of the UN is the Universal Declaration of Human Rights which was adopted in 1948.

The right of everyone to work, including persons with disabilities, was confirmed by the UN. Article 23 of the Universal Declaration of Human Rights states as follows: “Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. Everyone, without discrimination, has the right to equal pay for equal work. Everyone who works has the right to just and favourable remuneration ensuring for himself and his or her family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. Everyone has the right to form and to join trade unions for the protection of his interests” (UN, Universal Declaration of Human rights, adopted by the General Assembly on 10 December 1948).

Internationally the UN launched its World Programme of Action concerning Disabled Persons many years later and declared 1981 the International year of the disabled. The purpose of the world programme was to promote effective measures for the prevention of disability, rehabilitation and the realisation of equal opportunities for persons with disabilities. Shortly thereafter the UN declared 1983 to 1993 as the decade of the disabled persons. The South African government at the time did not recognise the United Nations programme and this led to the rise of a disability rights movement within South African (INDS 1997:15).

The UN facilitated the drafting of Standard Rules for the Equalisation of Opportunities for Disabled Persons, which was adopted by the UN General

Assembly on 20 December 1993. The aim of these guidelines was to provide governments with clear direction in disability management.

The most recent and also most significant contribution of the UN to disability management was the implementation of the International Convention on the Rights of Persons with Disabilities and its Optional Protocol (ICRPD). According to Disabled Peoples' International (DPI) they called upon member states of the UN to adopt a specific international human rights treaty on the Rights of Persons with Disabilities. On 13 December 2006 (five years later) the UN General Assembly adopted the ICRPD (<http://v1.dpi.org/lang-en/index?page=18>). Mexico was the original sponsor of the proposal to pursue a UN Convention on the rights of persons with disabilities (International Rehabilitation Review 2002:7). The CRPD was the 8th core international human rights instrument created by the UN (Making It Work 2009:10).

South Africa signed both treaties on the day that they were opened for signature on 30 March 2007 and South Africa thereafter also became one of the first countries to deposit instruments of ratification for both treaties with the UN Secretary-General on 30 November 2007, showing its clear commitment to national and global implementation thereof (<http://v1.dpi.org/lang-en/index?page=18>).

The ICRPD incorporates 25 principles which are fundamental to the rights of persons with disabilities. The relevant principles are summarized as follows:

- Recognition of the inherent dignity, worth and the equal and inalienable rights of all members of the human family;
- everyone is entitled to all the rights and freedoms without distinction of any kind;
- guaranteed full employment without discrimination;
- recognising various international covenants aimed at protecting the rights of persons with disabilities;
- disability is an evolving concept which results from the interaction between persons with impairments and attitudinal and environmental constraints that hinder their full and effective participation in society on an equal basis with others;

- emphasising the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development;
- discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person;
- recognising the diversity of persons with disabilities;
- promote and protect the human rights of all persons with disabilities, including those who require more intensive support;
- persons with disabilities continue to face constraints in their participation as equal members of society and violations of their human rights in all parts of the world;
- the valued existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities;
- the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices;
- active involvement of persons with disabilities in decision-making processes related to policies and programmes;
- concern about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination; and
- women and girls with disabilities are often at greater risk.

The signatories undertake to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability, namely to:

- Adopt all appropriate legislative, administrative and other measures;
- modify or abolish existing laws, regulations, customs and practices that constitutes discrimination against persons with disabilities;
- protect the human rights of persons with disabilities in all policies and programmes;
- refrain from engaging in any act or practice that is inconsistent with the present Convention;
- take all appropriate measures to eliminate discrimination on the basis of disability;
- understand or promote research and development of universally designed goods, services and equipment;

- promote research and development of new technologies;
- provide access to information to persons with disabilities about mobility aids, devices and assistive technologies; and
- promote the training of professionals and staff working with persons with disabilities in the rights recognised in the ICRPD.

Of particular relevance to this research the ICRPD (Article 27) determines that state parties should recognise the right of persons with disabilities to work, on an equal basis with others. This includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and a work environment that is open, inclusive and accessible to persons with disabilities. State parties are expected to safeguard and promote the realisation of the right to work, including those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, *inter alia*:

- Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;
- protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;
- ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;
- enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;
- promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;
- promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting of businesses;
- employ persons with disabilities in the public sector;

- promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;
- ensure that reasonable accommodation is provided to persons with disabilities in the workplace;
- promote the acquisition by persons with disabilities of work experience in the open labour market; and
- promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

This ICRPD has a particular relevance to this research as it emphasises the commitment of South Africa as a signatory to the ICRPD to promote employment opportunities and career advancement for persons with disabilities in the labour market as well as assistance in firstly, obtaining, maintaining and returning to employment. This research endeavours to respond to this ICRPD by providing a strategy for the employment of persons with disabilities.

The UN has a similar role as the ILO, apart from the fact that the ILO has an employment focus while the UN has a more general focus. The UN also includes employment issues in their conventions but these are generally well aligned with the ILO conventions. The general scope of the International Convention on the Rights of Persons with Disabilities and its Optional Protocol is indicative of this. The ICRPD deals with all aspects of disability management of which employment of persons with disabilities is but one area.

The most significant contribution of the UN is the role it played in confirming the social model and human rights approach to disability management issues. Quinn and Degener (2002:10) state that the switch to human rights perspective has been automatically endorsed at the United Nations level over the past two decades. The implementation of these rules by member states is monitored by a Special Rapporteur and reported on.

4.5 SELECTED EXAMPLES (COUNTRIES) OF INTERNATIONAL DISABILITY MANAGEMENT

There is no doubt that South Africa can learn from the international leader-countries with regard to disability management. For this purpose the USA and the UK were identified for a comparative discussion on the policies, structures and strategies they follow to manage disability.

4.5.1 REASONS FOR SELECTING CERTAIN COUNTRIES

It is important, at the outset, to explain the reasons the two countries are selected for purposes of a comparative discussion. In deciding which countries to study as “role models” a number of criteria were considered namely:

- Comprehensiveness of the countries’ disability management framework;
- accessibility of research material;
- participation of the country in international activities like the UN and ILO;
- level of employment of persons with disabilities in the country, reflecting the focus of the disability management framework on the employment of persons with disabilities; and
- politicisation of disability by persons with disabilities and their organisations.

In applying these criteria the USA and the UK were selected. The availability of literature to conduct such analysis was an important factor in making this selection. Although countries like Germany, Netherlands, France and other members of the European Union (EU) have made significant progress in implementing disability management strategies, the body of literature emanating from there is not as rich and as available in South Africa as in the selected two countries.

The role of the EU in establishing minimum standards for disability management practice and the process related thereto is also placing the emphasis on other aspects than the focus of this research.

In the UK the politicisation of disability by disabled persons and their organisations can be traced back to the 19th century (Campbell and Oliver 1996, Pagel 1988,

Barnes 1997). As discussed in Chapter 3, socio-political theories of disability can be divided into two distinct but linked traditions. The first draws heavily on American functionalism and deviance theory, explaining the “social construction” of the problem of disability as an outcome of the evolution of contemporary society while the second maintains that disability and dependence are the “social creation” of industrial capitalism. This served as the basis for the evolution of disability management, through many different stages, as a rights-based issue (Barnes 1997).

There are close relationships between the South African disability management system and those of the USA and the UK. The various similarities make a comparison of this nature meaningful to the development of a strategy to employ persons with disabilities in South Africa, especially because these two countries are far more advanced in respect of the employment of persons with disabilities. The lessons learnt by the USA and the UK can therefore enrich the South African experience and could lead to quicker results.

The other reason for selecting the USA and the UK is the overall employment rate for persons with disabilities in the USA and the UK. In the USA the overall employment rate for persons with disabilities in the age group 21 to 64 years, was 75.1%. This is only slightly below the overall employment rate of 80.5% in the USA (McNeil date unknown).

In the UK the figure is lower with 50% of persons with disabilities of a working age being employed compared to 80% of not disabled persons being employed (Dunneil 2008). Schriener (2001:645) states a lower number namely that two-thirds of people with disabilities in the UK do not work.

An assessment cannot be performed effectively without a standard framework which makes comparison possible at a later stage. The documents to be assessed vary widely and are not necessarily relevant in their entirety to this research. To make the assessment possible, a framework was developed consisting of the areas or criteria relevant to this research.

A framework of criteria for the assessment of a country's disability management strategy and the reason why each component of the framework is deemed to be relevant is presented in Table 14 below.

Table 14: Appropriate criteria (areas) for assessment of a country's disability management strategy

No	RELEVANT AREA	REASON/S FOR INCLUSION AS CRITERION
1.	Constitutional determination and protection against discrimination for persons with disability.	Since equality and protection against discrimination is a fundamental human right it is of particular relevance whether the rights of persons with disabilities are protected in the constitution of a country, or not. If disability is an area specifically protected in a country's constitution, it is expected that disability management would be well legislated and regulated.
2.	General legislative determination against discrimination and the protection of persons with disabilities.	It is of relevance whether a country has general legislation concerning disability management or legislation which is only focussed on employment of persons with disabilities. General legislation covers all aspects of disability management, which creates a more accommodative environment for disability management. The absence of general legislation leaves a vacuum and results in separate determinations of disability management in legislation dealing with education, employment, accessibility of the physical environment, etc. The coordination of these various pieces of legislation is cumbersome and could constrain the employment of persons with disabilities.
3.	Institutions responsible for the implementation and enforcement of the constitutional and legislative provisions.	The rights created in a constitution or legislation is of little value if the implementation thereof is not made the responsibility of a department or agency. Dedicated capacity should be made available to implement the constitutional and legislative provisions. Should a person with disabilities declare a dispute because he or she is of the view that established rights have been violated a structure which is easily accessible in every sense should be available to consider the matter.
4.	Definition of disability.	The definition of disability (as discussed in Chapter 2 of this research) is very important to the management of persons with disabilities. The definition could either be open and more inclusive of individuals with lesser disabilities or it can be exclusive of many persons with disabilities because of the strict requirements which are laid down. The definition of disability is the key around which disability centres, especially in the employment situation.

No	RELEVANT AREA	REASON/S FOR INCLUSION AS CRITERION
5.	Human resource management practices covered.	<p>The human resource management profession has a very important contribution to make to the employment of persons with disabilities. The various human resource management practices could constrain or enhance the employment of persons with disabilities. It would be useful to determine the manner in which other countries have adjusted the human resource management practices to enhance the employment of persons with disabilities. This analysis could assist to determine best practice and will inform the strategy to employ persons with disabilities, which is the primary objective of this research. The discussion on talent management in Chapter 2 of this research is of particular relevance. The specific practices that will be considered as part of this assessment are:</p> <ul style="list-style-type: none"> ➤ Recruitment and selection including medical and psychological testing, placement, compensation and benefits, confidentiality and disclosure; ➤ training and career advancement; ➤ performance management; ➤ employee retention and exit management strategy; and ➤ labour relations management strategy.
6.	Reasonable accommodation.	<p>The levelling of the playing fields in the employment situation by means of reasonable accommodation is a very important aspect of the employment of persons with disabilities. The analysis will try to establish the extent to which an employer must go to reasonably accommodate an employee with disabilities. This analysis could assist to determine best practice and will inform the strategy to employ persons with disabilities, which is the primary objective of this research.</p>
7.	Comprehensiveness and user friendliness of the legislative and policy framework to support the human resource management profession, persons with disabilities and managers employing persons with disabilities.	<p>The analysis would indicate whether the legislative and policy framework are comprehensive by covering all aspects related to the employment of persons with disabilities and whether it is user friendly and easy to understand. The main question arising is whether the legislative and policy framework support the human resource management profession, persons with disabilities and managers in employing persons with disabilities.</p>
8.	General impact of the Constitutional determination, legislative framework and employment policy framework on the improvement of the employment numbers of persons with disabilities.	<p>The overall employment figures of persons with disabilities would be indicative of the impact the legislative and policy framework of a country is having on the employment of persons with disabilities. The higher the employment percentage the more positive the impact of the legislative and policy framework.</p>
9.	Employers and employer	<p>The three groupings have a role to play in the formulation and</p>

No	RELEVANT AREA	REASON/S FOR INCLUSION AS CRITERION
	organisations.	implementation of a disability management strategy. This role is very important to ensure the sustainable implementation of such strategy.
10.	Trade Unions.	
11.	Persons with disabilities.	

The relevant documents to be utilised for assessment do not deal directly with the aspects included in the framework. In analysing the relevant documents it will be indicated whether the relevant aspect is addressed in the particular document analysed.

4.5.2 DISABILITY MANAGEMENT IN THE UNITED STATES OF AMERICA

4.5.2.1 Early Developments

The development of a civil rights-based approach to human rights in the USA has a long history, but it became formalised only during 1963. The initial process was race-based and did not make specific reference to disability but more the general development of a civil rights approach. This was preceded by a decade or longer of insistent civil rights activism. The turning point came during the spring of 1963 when “...Americans and the world were shocked to see civil rights demonstrators beaten, attacked by police dogs, sprayed with high pressure hoses, arrested and jailed” (www.eeoc.gov/abouteeoc/40th/panel/firstprinciples.html). Shortly thereafter an incident occurred whereby a court order of the federal district court had to be enforced by the Alabama National Guard. The court order related to the admission of two black students to the University of Alabama (www.eeoc.gov/abouteeoc/40th/panel/firstprinciples.html).

Dr Martin Luther King Jnr made his “I have a dream” speech on 28 August 1963 which also had an impact on the proposed legislation. His speech was followed by the bombing of a black church in Alabama and the killing of several children. This led to the further strengthening of the key provisions of Title VII. The key features of this process included the establishment of the US Equal Employment Opportunity Commission and made Title VII applicable to all employers with more than 25 employees. The bill was sent to the Rules Committee the day before President

Kennedy was assassinated and it was signed into law on 2 July 1964 (www.eeoc.gov/abouteeoc/40th/panel/firstprinciples.html).

The legislation which came about as a result of these developments was the first major American civil rights legislation. Specifically Title VII of the legislation dealt with prohibitions of discrimination in employment.

4.5.2.2 Present legislative and policy framework

The Americans with Disabilities Act of 1990 (ADA) is the pillar of the American disability management strategy. It aims to advance the civil rights for persons with disabilities. “The ADA was the nation’s commitment that its sorrowful legacy of oppression, segregation and inequality in dealing with disability would be overturned by ADA’s ‘clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities’ in which sweeping protections were provided in employment, public services, public accommodation and services operated by private entities, transportation and telecommunications. The ADA has been the impetus for a revolution in the inclusion, integration and empowerment of Americans with disabilities” (Introductory Paper: The Americans with Disabilities Act of 1990, October 2002). The ADA is comprehensive legislation and aims to legislate on all matters related to persons with disabilities. Other relevant legislation is the Rehabilitation Act of the USA which, as the title suggests, focuses on rehabilitation.

Employment of persons with disabilities is a critical aspect of the American disability strategy and as a result is comprehensively dealt with in the ADA. The focus of further discussions will therefore be the ADA.

The relevant areas of the ADA (and where relevant other legislation or policies) are described in Table 15 below:

Table 15: Assessment of the disability management strategy of the United States of America

No	RELEVANT CRITERIA/AREA	CONCISE DESCRIPTION OF CRITERIA/AREA
1.	Constitutional determination and protection against discrimination	Constitutional protection to the rights of persons with disabilities is provided for in terms of the protection of civil rights.



No	RELEVANT CRITERIA/AREA	CONCISE DESCRIPTION OF CRITERIA/AREA
	for persons with disability.	
2.	General legislative determination against discrimination and the protection of persons with disabilities.	Legislation gives effect to the constitutional protection namely The Americans with Disabilities Act, 1990 (ADA), its regulations and various codes. This legislation is very comprehensive and deals with every aspect of disability management in a detailed manner.
3.	Institutions responsible for the implementation and enforcement of the constitutional and legislative provisions.	The Department of Justice (DOJ) and the Equal Employment Opportunity Commission (EEOC) supported by the National Council on Disability are the main role players in disability strategy.
4.	Definition of disability.	The definition is based on the social model of disability and it is to be interpreted in favour of broad coverage of individuals to the maximum extent permitted by the terms of the ADA and generally do not require extensive analysis. The effect of these changes is to make it easier for an individual seeking protection under the ADA to establish that he or she has a disability within the meaning of the ADA. The definition is clear and understandable.
5.	Human resource management practices covered.	
5.1.	Recruitment and selection (including medical and psychological testing, placement, compensation, employment benefits, confidentiality and disclosure).	<p>Discrimination against individuals is prohibited in job application procedures, hiring, dismissal, advancement, compensation, job training, and other terms, conditions, and privileges of employment.</p> <p>A qualified individual with a disability who can satisfy the requisite skill, experience, education and other job-related requirements and perform the essential functions of a position with or without reasonable accommodation must be considered for employment.</p> <p>Job-related requirements, also known as “qualification standards”, may include the following:</p> <ul style="list-style-type: none"> ➤ Possessing specific training; ➤ possessing specific licences or certificates; ➤ possessing certain physical or mental abilities (e.g., meeting vision, hearing, or lifting requirements; showing an ability to run or climb; exercising good judgment); ➤ meeting health or safety requirements; and ➤ demonstrating certain attributes such as the ability to work with other persons or to work under pressure. <p>Most jobs require that employees perform both “essential functions” and “marginal functions”.</p> <p>An employer is not required to lower quality or production standards to make an accommodation; nor is an employer</p>



No	RELEVANT CRITERIA/AREA	CONCISE DESCRIPTION OF CRITERIA/AREA
		<p>obligated to provide personal use items such as glasses or hearing aids.</p> <p>Employees with disabilities must meet qualification standards that are job-related and consistent with business necessity and must be able to perform the “essential functions” of the position, with or without reasonable accommodation.</p> <p>An employee with a disability must meet the same production standards, whether quantitative or qualitative, as a non-disabled employee in the same job.</p> <p>Lowering or changing a production standard because an employee cannot meet it due to a disability is not considered a reasonable accommodation.</p> <p>Employers may not ask job applicants about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform specific job functions.</p> <p>A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in similar jobs. Medical examinations of employees must be job related and consistent with the employer’s business needs.</p>
5.2.	Training and career advancement.	Specific activities related to training and career advancement are limited.
5.3.	Performance management.	<p>The same performance standards apply to all employees, including employees with disabilities.</p> <p>The employer may evaluate the job performance of an employee with a disability differently from other employee’s performance, if it does not cause undue hardship.</p> <p>In many instances, an essential function can be performed in different ways (including with reasonable accommodation). An employee who must use an alternative method of performance because of a disability must be evaluated accordingly.</p> <p>If an employer gives a lower performance rating to an employee and the employee responds by revealing he or she has a disability that is causing the performance problem, the employer may still give the lower rating.</p> <p>The rating must reflect the employee’s performance regardless of</p>



No	RELEVANT CRITERIA/AREA	CONCISE DESCRIPTION OF CRITERIA/AREA
		<p>what role, if any, disability may have played.</p> <p>The employer may also seek appropriate medical documentation to learn if the condition meets the ADA's definition of "disability," whether and to what extent the disability is affecting job performance, and what accommodations may address the problem.</p> <p>The employer may also suggest possible accommodations.</p>
5.4.	Employee retention and exit management strategy.	Specific provisions do not exist.
5.5.	Labour relations management strategy.	<p>An employer may also discipline an employee with a disability for violating a conduct standard.</p> <p>An employer may hold the individual to the same conduct standards that it applies to all other employees, if the disability does not cause the misconduct.</p> <p>Private sector/state and local government employees who believe that their employment rights have been violated on the basis of disability and want to make a claim against an employer must file a "charge of discrimination" with the Equal Employment Opportunity (EEO) Commission.</p> <p>Before a formal investigation, the EEO Commission may select the charge for its mediation programme. Participation in mediation is free, voluntary, and confidential.</p> <p>An individual employed in the federal government who believes that his or her employment rights have been violated on the basis of disability and wants to make a claim against a federal agency must file a complaint with that agency.</p> <p>The first step is to contact an EEO Counsellor. The individual may choose to participate in either counselling or in Alternative Dispute Resolution (ADR).</p> <p>At the end of counselling, or if ADR is unsuccessful, the individual may file a complaint with the agency. The agency must conduct an investigation. If a complaint contains one or more issues that must be appealed to the Merit Systems Protection Board (MSPB), the complaint is processed under the MSPB's procedures.</p> <p>For all other EEO complaints, once the agency finishes its</p>

No	RELEVANT CRITERIA/AREA	CONCISE DESCRIPTION OF CRITERIA/AREA
		investigation the complainant may request a hearing before an EEOC administrative judge or an immediate final decision from the agency.
6.	Reasonable accommodation.	<p>Architectural constraints must be removed pro-actively to avoid discrimination.</p> <p>Employers may have to provide “reasonable accommodation” to enable an individual with a disability to meet a qualification standard that is job-related and consistent with business necessity or to perform the essential functions of a position.</p> <p>An employee generally has to request accommodation, but does not have to use the term “reasonable accommodation” or even “accommodation” to put the employer on notice.</p> <p>An employer is required to make a reasonable accommodation to the known disability of a qualified applicant or employee if it would not impose an "undue hardship" on the operation of the employer’s business.</p> <p>Employers are required to modify attendance policies as a reasonable accommodation, but it should not cause undue hardship.</p> <p>An employer may require an employee with a disability to observe a dress code but where an employee’s disability makes it difficult for him to comply fully with a dress code, an employer may be able to provide a reasonable accommodation. If the employee cannot meet the dress code because of a disability, the employer may still require compliance if the dress code is job-related and consistent with business necessity.</p> <p>The employer may not tell a co-worker that an employee is receiving a reasonable accommodation.</p>
7.	Comprehensiveness and user friendliness of the legislative and policy framework to support the human resource management profession, persons with disabilities and managers in employing persons with disabilities.	The ADA and its various technical assistance guidelines are easily accessible. These documents have been laid out clearly and it was written in a style which is easily understood. The level of detail in especially the guidelines is extensive and easy to understand examples are provided to clarify issues. The technical assistance guidelines especially are voluminous as a result of its comprehensiveness. It is however easy to read and to find the information required.
8.	General impact of the Constitutional determination,	From the literature under review the policy framework in the USA is having a significant impact on the employment of persons with

No	RELEVANT CRITERIA/AREA	CONCISE DESCRIPTION OF CRITERIA/AREA
	legislative framework and employment policy framework on the improvement of the employment numbers of persons with disabilities.	<p>disabilities. The framework sets out to clearly remove the constraints persons with disabilities may experience in the workplace and it actively pursues the objective of employment of persons with disability.</p> <p>As can be noted from the high incidence of disputes raised within the disability context it is evident that conflict do prevail within the employment context. However, persons with disabilities do declare disputes if they are of the view that their rights are infringed upon. This confirms the rights of persons with disabilities and assists to continuously stimulate further development.</p>
9.	Employers and employer organisations.	<p>The disability management framework in the USA places an important responsibility on employers since they are obligated to comply with wide ranging legal and regulatory determinations.</p> <p>Although there is leeway in many instances the obligations of employers are clearly defined and must be complied with. Compliance is therefore not negotiable. This is a very important characteristic of the USA disability management framework.</p>
10.	Trade unions.	<p>The role of trade unions is insignificant in the implementation of the USA disability management framework. This is a further characteristic which is also significant.</p>
11.	Persons with disabilities.	<p>Institutions making an impact in the American disability management strategy are organisations to which persons with disabilities belong. These organisations are actively ensuring that the rights of persons with disabilities are recognised. This is one of the critical success factors in the USA disability management framework.</p>

Sources: Americans with Disabilities Act and Regulations, U.S. Department of Justice A Guide to Disability Rights Laws, September 2005, www.1eeoc.gov/laws/statutes/ada.cfm?renderforprint=1 accessed on 22 March 2010, National Council on Disability Introductory Paper: The Americans with Disabilities Act, Blanck, 2006.

In summary the American disability management strategy is built around the ADA and its Regulations. The ADA is very comprehensive and it is further enhanced with a number of detailed technical assistance guidelines. These guidelines provide practical examples which are easy to understand. The extent to which detail is addressed in these guidelines is exhaustive, which is helping to address all possible scenarios which employers may be faced with. According to the American Department of Justice the implementation of ADA is regarded as the cumulative

effect of many small actions taken pursuant to ADA. These actions are making the American society more accessible for persons with disabilities. The goal is to make life in America more comprehensively accessible for persons with disabilities, which is a step-by-step process: “Every sign language interpreter we get for a police department, every curb ramp that gets put in, every door widened, every requirement in restrictive zoning that gets removed is another advance in bringing about equal opportunity for persons with disabilities” (Wodatch 2006).

The question of reasonable accommodation and the cost thereof have been studied extensively by the EEOC. Wodatch (2006) voiced his opinion that it is a misconception that accessibility always costs money. Planning and thinking things through need not be resource intensive. While there are costs, they are often overestimated. Planning and thinking things through obviously need not be resource intensive. One of the major requirements of the ADA is that all new construction has to be accessible. Designing a door 36 inches wide so that it allows a wheelchair to pass through when opened costs no more than a 28-inch door. If you apply that in the process of looking at the laws, you can disabuse people of the notion that it will always cost money. Estimates suggest that 1 percent or less of construction costs goes to accessible features. Many accessibility features do not entail any costs at all (Wodatch, 2006).

According to the Federal Register/ Vol.74, No.183/ of 23 September 2009, a Preliminary Regulatory Impact Analysis had to be performed following the proposed revision of the ADA Regulations. In this analysis reference is made to a number of studies performed to determine the cost of reasonable accommodation. The studies referred to are:

- National Organisation on Disability/Harris survey, conducted in 1986, which found that 51% of corporations surveyed had made some accommodations for persons with disability. The same research was conducted in 1995 again and then it showed that 81% of corporations surveyed had made accommodation. It also reported that 80% of the executives of large companies reported that the cost associated with the accommodation of persons with disabilities had only increased a little or not at all.

- Helen, Schartz, Hendricks and Blanck found in 2006 that the mean cost of reasonable accommodation in the USA was \$865,43.
- Bruy're and Nishi during 2009 found that 50% of the accommodation requested by persons with disabilities cost the company no money, and 75% of accommodation cost less than \$500.

Although it is admitted that these three studies illustrate a large variance in the estimates of mean costs it is clear that the cost associated with reasonable accommodation in the USA is not high. It is also reported by Bruy're and Nishi that the percentage of persons with disabilities that request accommodation is similar to the number of not disabled employees requesting accommodation.

Another area where the Department of Justice focuses much of its implementation attention is the issue of effective communication. The ADA requires the whole range of entities covered by it (for example police departments, town governments and hotels) to provide communication in a form that is effective for persons with disabilities. Materials must be accessible and may include accessible formats such as Braille or large print, or communication assistance such as sign language interpretation or Computer Assisted Real Time (CART) services.

From an external perspective in conducting this analysis it became apparent that this is a matter which enjoys the interest of the American government and the agencies which implement the policies of the American government. This may be the case as a result of pressure from disability organisations, social conscience or due to the disputes lodged by persons with disabilities whose rights have been violated. The cause of this interest could not be determined but it makes a significant difference in the manner in which the American nation responds to disability management.

4.5.3 DISABILITY MANAGEMENT IN THE UNITED KINGDOM

4.5.3.1 Early Developments

The United Kingdom has been in the forefront of the development of the social model of disability as described in Chapter 3 of this research.

4.5.3.2 Present legislative and policy framework and implementation structures

The relevant areas of the UK disability management framework identified for comparative analysis are discussed in Table 16 below.

Table 16: Analysis of the disability management framework of the United Kingdom

No	RELEVANT AREA	CONCISE DESCRIPTION OF AREA
1.	Constitutional determination and protection against discrimination for persons with disability.	None.
2.	General legislative determination against discrimination and the protection of persons with disabilities.	The Disability Discrimination Act, 1995 (DDA) and the Code of Practice Employment and Occupation issued by the Disability Rights Commission, 2004. The Code does not impose legal obligations.
3.	Institutions responsible for the implementation and enforcement of the constitutional and legislative provisions.	The Disability Rights Commission (DRC) has statutory powers to work towards the elimination of discrimination and to promote the equalisation of opportunity for disabled persons.
4.	Definition of disability.	<p>The DDA defines disability and disabled person and distinguishes between physical and mental impairments, applies to all persons and not just employees, and requires a "substantial and long-term adverse effect" on "normal day-to-day activities".</p> <p>The Minister of Justice, in explaining the DDA, indicated that "[the] terms physical and mental are intended to be seen in their widest sense and should comprehensively cover all forms of impairment" (Gooding 1996:11 as in Christiaanson 2007).</p> <p>The DDA, in Schedule 1, describes progressive conditions as conditions such as cancer, multiple sclerosis, muscular dystrophy or HIV. The DDA goes on to state that an individual will only be considered to have an impairment if he or she, as a result of the progressive condition, has an impairment which has an effect on his or her ability to carry out normal day-to-day activities.</p>
5.	Human resource management practices covered.	
5.1.	Recruitment and selection (including medical and psychological testing, placement, compensation, employment benefits, confidentiality and	It is unlawful for an employer to discriminate against a disabled person in the arrangements made for determining who should be offered employment, the terms on which the disabled person is offered employment, or by refusing to offer, or deliberately not offering, the disabled person employment.



No	RELEVANT AREA	CONCISE DESCRIPTION OF AREA
	disclosure).	<p>The DDA Code encourages employers who are recruiting persons with disabilities to approach local employment services, the Jobcentre Plus and specialist disability employment services to encourage disabled persons to apply.</p> <p>It is lawful for an employer to advertise a vacancy as open only to disabled persons.</p> <p>An employer displaying the Disability Symbol must commit itself to offering a guaranteed interview to any disabled person who meets the essential requirements of the job.</p> <p>An employer will have to assess an applicant's merits as they would be if any reasonable adjustments required under the DDA had been made. If, after allowing for those adjustments, a disabled person would not be the best person for the job, the employer does not have to recruit that person.</p> <p>The DDA does not prevent employers from carrying out aptitude or other tests, including psychological tests.</p> <p>The DDA does not prohibit an employer from seeking information about a disability but the information should not be sought from applicants unless necessary to enable the recruitment decision to be made, or for a related purpose such as equal opportunities monitoring.</p> <p>Once a decision has been made to appoint a disabled person, it is good practice for an employer to discuss reasonable adjustments with him or her before he or she starts to work.</p> <p>Terms and conditions of service should not discriminate against a disabled person. In general, an employer should not offer a job to a disabled person on terms which are less favourable than those which would be offered to other people. Where the terms and conditions of employment include an element of performance-related pay, the employer must ensure that the way such pay arrangements operate does not discriminate against a disabled employee. If, on the ground of disability, an employee is denied the opportunity to receive performance-related pay, this is likely to be direct discrimination.</p> <p>The extent to which an employer is entitled to let other staff know about an employee's disability will depend partly on the terms of</p>



No	RELEVANT AREA	CONCISE DESCRIPTION OF AREA
		<p>employment. An employer could be discriminating against the employee by revealing such information if the employer would not reveal similar information about another person for an equally legitimate management purpose.</p> <p>Employers must ensure that arrangements for promoting staff, or for transferring staff between jobs, do not discriminate against disabled persons. It is likely to be direct discrimination if a disabled employee is treated less favourably on the ground of disability. If the treatment is not directly discriminatory, but is for a reason related to the disability, it will amount to disability-related discrimination unless the employer can show that it is justified.</p>
5.2.	Training and career advancement.	Employers must not discriminate in their induction procedures. The employer may have to make adjustments to ensure a disabled person is introduced into a new working environment in a clearly structured and supported way, with an individually tailored induction programme if necessary.
5.3.	Performance management.	Specific provisions do not exist.
5.4.	Employee retention and exit management strategy.	<p>The DDA covers the job applicant, the employee during employment and the person following the termination of his or her employment.</p> <p>In relation to the retention of staff, the DDA determines that it is unlawful for an employer to discriminate against a disabled person whom it employs by dismissing the employee, or subjecting him or her to any other detriment.</p> <p>It is also unlawful for an employer to subject a disabled person to harassment for a reason which relates to his or her disability.</p> <p>An employer must not discriminate against an employee who becomes disabled, or who has a disability which worsens. If there are no reasonable adjustments which would enable the disabled employee to continue in his or her present job, the employer must consider whether there are suitable alternative positions to which he or she could be redeployed.</p> <p>The Access to Work Scheme could advise in determining what adjustments to make to facilitate the employment of a disabled person.</p> <p>Where a disabled person is dismissed or is selected for redundancy or for compulsory early retirement (including compulsory ill-health retirement), the employer must ensure that</p>



No	RELEVANT AREA	CONCISE DESCRIPTION OF AREA
		<p>the disabled person is not being discriminated against. It is likely to be direct discrimination if the dismissal or selection is made on the ground of disability (paragraph 4.5). If the dismissal or selection is not directly discriminatory, but is made for a reason related to the disability, it will amount to disability-related discrimination unless the employer can show that it is justified. The reason would also have to be one which could not be removed by any reasonable adjustment.</p> <p>Where the dismissal of a disabled person is being considered for a reason relating to that person's conduct, the employer should consider whether any reasonable adjustments need to be made to the disciplinary or dismissal process. In addition, if the conduct in question is related to the employee's disability that may be relevant in determining the sanction which it is appropriate to impose.</p> <p>Where a disabled person's employment has come to an end, the DDA determines that it will still be unlawful for his or her former employer:</p> <ul style="list-style-type: none">➤ To discriminate against him or her by subjecting him or her to a detriment; or➤ to subject him or her to harassment. <p>This applies if the discrimination or harassment arises out of the employment which has come to an end or is closely connected to it.</p>
5.5.	Labour relations management strategy.	<p>Employers should attempt to resolve disputes as they arise. Grievance procedures are an open and fair way for employees to make their concerns known, and enable grievances to be resolved quickly before they become major problems. Employers should ensure that grievance procedures are accessible to disabled persons.</p> <p>If internal dispute procedures exist, employers and employees are required by law to comply with it before making a complaint to a tribunal. It provides extensive further information about grievance procedures and about resolving disputes under the DDA. Internal dispute resolution should be carried out in a non-discriminatory way to comply with the DDA.</p> <p>The Employment Act 2002 (Dispute Resolution) Regulations 2004 (the 2004-Regulations) provide that the statutory</p>



No	RELEVANT AREA	CONCISE DESCRIPTION OF AREA
		<p>procedures do not need to be followed if:</p> <ul style="list-style-type: none"> ➤ One of the parties to the dispute has reasonable grounds to believe that compliance with the procedure would result in a significant threat to himself or herself, his or her property or another person; or ➤ one of the parties has been subjected to harassment and has reasonable grounds to believe that complying with the procedure would result in his or her being subjected to further harassment; or ➤ it is not practicable to comply with the procedure within a reasonable period. <p>The 2004-Regulations determine that, where an employee's grievance is that disciplinary action taken against him or her amounts to discrimination by the employer, the parties are not required to meet to discuss the matter. However, an employee must still send the employer written details of his grievance before commencing employment tribunal proceedings.</p> <p>The DDA allows compensation for injury to feelings to be awarded whether or not other compensation is awarded.</p>
6	Reasonable accommodation.	<p>The DDA provides for:</p> <ul style="list-style-type: none"> ➤ Making adjustments to premises; ➤ allocating some of the disabled person's duties to another person; ➤ transferring the person to fill an existing vacancy; ➤ altering the person's hours of working or training; ➤ assigning the person to a different place of work or training; ➤ allowing the person to be absent during working or training hours for rehabilitation, assessment or treatment; ➤ giving, or arranging for, training or mentoring (whether for the disabled person or any other person); ➤ acquiring or modifying equipment; ➤ modifying instructions or reference manuals; ➤ modifying procedures for testing or assessment; ➤ providing a reader or interpreter; and ➤ providing supervision or other support. <p>The factors that might be considered as relating to the value of an employee would include:</p> <ul style="list-style-type: none"> ➤ The amount of resources (such as training) invested in the individual by the employer; ➤ the employee's length of service; ➤ the employee's level of skill and knowledge;



No	RELEVANT AREA	CONCISE DESCRIPTION OF AREA
		<ul style="list-style-type: none"> ➤ the employee's quality of relationships with clients; and ➤ the level of the employee's pay. <p>It is more likely to be reasonable for an employer to have to make an adjustment with significant costs for an employee who is likely to be in the job for some time than for a temporary employee.</p> <p>If as a result of the disability an employer's arrangements or a physical feature of the employer's premises place the employee at a substantial disadvantage in doing his or her existing job, the employer must consider any reasonable adjustment that would resolve the difficulty. The nature of the adjustments which an employer may have to consider will depend on the circumstances of the case, but the first consideration in making reasonable adjustments should be to enable the disabled employee to continue in his or her present job if at all possible.</p> <p>The employer should consult the disabled person at appropriate stages about what his or her needs are and, where the employee has a progressive condition, what effect the disability might have on future employment, so that reasonable adjustments may be planned.</p> <p>In appropriate cases, the employer should also consider seeking expert advice on the extent of a disabled person's capabilities and on what might be done to change premises or working arrangements. Where an employee has been away from work, a phased return might be appropriate. A failure to comply with a duty to make a reasonable adjustment in respect of a disabled person amounts to discrimination and is therefore unlawful.</p>
7.	Comprehensiveness and user friendliness of the legislative and policy framework to support the human resource management profession, persons with disabilities and managers in employing persons with disabilities.	The DDA and guidelines are easily accessible on the web. These documents have been laid out clearly and it was written in a style which is easily understood. The level of detail in the Act and the guidelines is extensive and easy to understand examples are provided to clarify issues. The guidelines are voluminous as a result of its comprehensiveness. It is however easy to read and to find the information required.
8.	General impact of the Constitutional determination, legislative framework and employment policy framework on the improvement of the employment figures of persons	From the literature under review the policy framework in the UK is also having a significant impact on the employment of persons with disabilities. The framework sets out to remove the constraints persons with disabilities may experience in the workplace. It is evident that conflict does prevail within the employment context and this confirms the rights of persons with disabilities and assists to

No	RELEVANT AREA	CONCISE DESCRIPTION OF AREA
	with disabilities.	continuously stimulate further development.
9.	Employers and employer organisations.	The disability management framework in the UK places an important responsibility on employers since they are obligated to comply with wide ranging legal and regulatory determinations. This obligation is clearly defined and must be complied with. Compliance is therefore not negotiable. This is a very important characteristic of the UK disability management framework.
10.	Trade unions.	The role of trade unions is significant in the implementation of the UK disability management framework. The trade unions in the UK have a long tradition in ensuring the rights of workers, including persons with disabilities. This is a further characteristic which is also significant.
11.	Persons with disabilities.	Persons with disabilities are well represented through organisations to which persons with disabilities belong. These organisations are actively ensuring that the rights of persons with disabilities are recognised. This is a further critical success factor in the UK disability management framework.

Sources: DDA and Codes, Employment Act 2002, Gooding 1996 as in Christiaanson 2007.

In summary the UK disability management strategy is built around the DDA and its Code. The DDA is, similar to the ADA, very comprehensive and it is further enhanced with the Code. The Code provides practical examples which are easy to understand. The extent to which detail is addressed in these guidelines is exhaustive, which is helping to address all possible scenarios which employers may be faced with.

From an external perspective in conducting this analysis it is apparent that the heart of the British disability management framework is not in government and the Departments which implement the policies of the government, like in the USA, but rather in the DDA and the Code. Nevertheless, South Africa can learn from the exhaustive legislative and policy framework and the practical examples it provides.

It should be noted that the UK is far advanced in a process to replace the DDA with another act which is not disability specific but covers all vulnerable groups. The planned date of enactment is not yet known. At the time of completion of this research, sufficient information was not available to include it in this analysis.

4.6 SUMMARY

The contribution of this chapter to the research process and the development of a strategy to employ persons with disabilities can be summarised as follows:

- There is a large variety of strands, or categories of social security.
- The variety of strands of social security is funded differently and they cover a number of contingencies. These contingencies are dealt with from a social perspective, specifically that the “state must assist”.
- The relevance of the various strands of social security on disability and employment is embedded in the nature and character of each of the strands.
- Social security, and specifically social welfare, can be traced back to the industrial revolution and the history depicted the reasons why social security systems began to develop.
- The very nature of this development process has not focussed on the management of disability but rather on providing people with a monetary payment as a form of assistance. The provision of money was deemed to be sufficient to solve the problem.
- The ILO has played an important role in the development of social security systems through the adoption of conventions and recommendations that deal with social security and the contingencies in respect of which benefits must be provided.
- The UN has also made a significant impact on social security and disability management by establishing the principle that persons with disabilities are entitled to equality in every aspect of life.
- The ICRPD is the latest initiative to establish the rights of persons with disabilities.
- Article 27 of the ICRPD is dedicated to establish the employment rights of persons with disabilities.
- The American disability management strategy is designed around the ADA and its Regulations. The ADA is very comprehensive and it is further enhanced with a number of detailed technical assistance guidelines.
- The UK disability management strategy on the other hand is designed around the DDA and its Code.

- The DDA is, similar to the ADA, very comprehensive and it is further enhanced with the Code.
- The heart of the British disability management framework is not in government and the departments which implement the policies of the government, as is the case in the USA but rather in the DDA and the Code.

----- o O o -----